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Filing date: **07/16/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Cyanotech Corporation		
Entity	Corporation	Citizenship	Nevada
Address	Ste. 102, 73-4460 Queen Kaahumanu Hwy Kailua-Kona, HI 96740 UNITED STATES		

Attorney information	George E. Darby Darby Law Corporation PO Box 893010 Mililani, HI 96789 UNITED STATES pto@teleport-asia.com Phone:808.626.1300		
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Registrations Subject to Cancellation

Registration No	3798632	Registration date	06/08/2010
Registrant	Nutrex nv Achterstenhoek 5 Lille, 2275 BELGIUM		

Goods/Services Subject to Cancellation

Class 001. First Use: 1995/06/20 First Use In Commerce: 1995/07/01 All goods and services in the class are cancelled, namely: Chemical additives for use in the manufacture of animal feed; Enzymes to assist in digestion for use in the manufacture of animal feeds
Class 005. First Use: 1995/06/20 First Use In Commerce: 1995/07/01 All goods and services in the class are cancelled, namely: Animal feed additives, namely, enzymes for use in animal feeds to assist in digestion; Feed supplements for livestock; Non-medicated additives for animal feed for use as nutritional supplements

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l. Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)		
Abandonment	Trademark Act section 14		
Registration No	3849395	Registration date	09/21/2010
Registrant	Nutrex nv Achterstenhoek 5 Lille, 2275 BELGIUM		

Goods/Services Subject to Cancellation

Class 001. First Use: 2009/11/24 First Use In Commerce: 2009/11/24
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All goods and services in the class are cancelled, namely: Chemical additives for use in the manufacture of animal feed; Enzymes to assist in digestion for use in the manufacture of animal feeds

Class 005. First Use: 2009/11/24 First Use In Commerce: 2009/11/24

All goods and services in the class are cancelled, namely: Animal feed additives, namely, enzymes for use in animal feeds to assist in digestion; Non-medicated additives for animal feed for use as nutritional supplements

Grounds for Cancellation

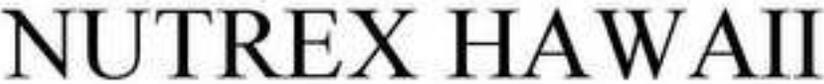
<i>Torres v. Cantine Torresella S.r.l. Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)
Other	No bona fide use of mark in commerce prior to filing date of trademark application; not the rightful owner of the mark; no use of the mark as a trademark.

Related Proceedings	94002616
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Application No.	85423897	Application Date	09/15/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NUTREX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1990/12/06 First Use In Commerce: 1991/03/01 Nutritional supplements for human consumption; nutraceuticals for the treatment of oxidative stress, decreased immunity, and inflammatory conditions; nutraceuticals for use as a dietary supplement; dietary supplements; nutritional supplements; nutritional additives for medical purposes for use in foods and dietary supplements for human consumption; nutritional additives for use in feed for animals for medical purposes; dietary supplements for animal consumption; food supplements; food supplements, namely, anti-oxidants; homeopathic supplements, namely, diluted doses from the plant, mineral and animal kingdoms for human consumption; drink mixes, namely, dietary drink mix for use as a meal replacement, powdered fruit-flavored dietary supplement drink mix, nutritional supplement in the nature of a nutrient-dense, protein-based drink mix		

U.S. Application	85423915	Application Date	09/15/2011
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No.			
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NUTREX HAWAII		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 005. First use: First Use: 1990/12/06 First Use In Commerce: 1991/03/01</p> <p>Nutritional supplements for human consumption; nutraceuticals for the treatment of oxidative stress, decreased immunity, and inflammatory conditions; nutraceuticals for use as a dietary supplement; dietary supplements; nutritional supplements; nutritional additives for medical purposes for use in foods and dietary supplements for human consumption; nutritional additives for use in feed for animals for medical purposes; dietary supplements for animal consumption; food supplements; food supplements, namely, anti-oxidants; homeopathic supplements, namely, diluted doses from the plant, mineral and animal kingdoms for human consumption; drink mixes, namely, dietary drink mix for use as a meal replacement, powdered fruit-flavored dietary supplement drink mix, nutritional supplement in the nature of a nutrient-dense, protein-based drink mix</p>		

U.S. Application No.	85423883	Application Date	09/15/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NUTREX		
Design Mark			
Description of Mark	<p>The mark consists of twelve radial blades narrow centripetally to a point, the collection of points implying an orb or sun, with the word "NUTREX" adjacent to the twelve radial blades.</p>		
Goods/Services	<p>Class 005. First use: First Use: 2010/05/05 First Use In Commerce: 2010/05/05</p> <p>Nutritional supplements for human consumption; nutraceuticals for the treatment of oxidative stress, decreased immunity, and inflammatory conditions; nutraceuticals for use as a dietary supplement; dietary supplements; nutritional supplements; nutritional additives for medical purposes for use in foods and dietary supplements for human consumption; nutritional additives for use in feed for animals for medical purposes; dietary supplements for animal consumption; food supplements; food supplements, namely, anti-oxidants; homeopathic supplements, namely, diluted doses from the plant, mineral and animal kingdoms for human consumption; drink mixes, namely, dietary drink mix for use as a meal re-</p>		

	placement, powdered fruit-flavored dietary supplement drink mix, nutritional supplement in the nature of a nutrient-dense, protein-based drink mix
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U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	NUTREX		
Goods/Services	Nutritional supplements for human consumption; nutraceuticals for the treatment of oxidative stress, decreased immunity, and inflammatory conditions; nutraceuticals for use as a dietary supplement; dietary supplements; nutritional supplements; nutritional additives for medical purposes for use in foods and dietary supplements for human consumption; nutritional additives for use in feed for animals for medical purposes; dietary supplements for animal consumption; food supplements; food supplements, namely, anti-oxidants; homeopathic supplements, namely, diluted doses from the plant, mineral and animal kingdoms for human consumption; drink mixes, namely, dietary drink mix for use as a meal replacement, powdered fruit-flavored dietary supplement drink mix, nutritional supplement in the nature of a nutrient-dense, protein-based drink mix		

Attachments	85423897#TMSN.png(bytes) 85423915#TMSN.png(bytes) 85423883#TMSN.png(bytes) Cyanotech PtnToCancel Nutrex nv marks.pdf(34418 bytes) Exh. 1. CxProc vs. NNV Affidavit of Gerald R. Cysewski.PDF(206132 bytes) Exh. 2. CxProc vs. NNV TwoRegCerts.pdf(53151 bytes) Exh. 3 CxProc vs. NNV Affidavit of DWright 3pp 27Apr2015.pdf(214729 bytes) Exh. A 2001 Nutrex ad Nw NHw.pdf(461704 bytes) Exh. B 2002 Nutrex ad Nw NHw.pdf(413844 bytes) Exh. C Invoices Mar2002 to May2011 Nw.NHw.Nd.12sun.PDF(380266 bytes) Exh. D Sales Sheet 2003 NHw.pdf(58671 bytes) Exh. E Sales Sheet 2006 NHw.pdf(199596 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/George E. Darby/
Name	George E. Darby
Date	07/16/2015

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Cyanotech Corporation
Serial Nos. 85423897, 85423915, and 85423883
and Common Law User

v.

Nutrex nv
Registration Nos. 3798632 and
3849395

Petition to Cancel
Reg. Nos. 3798632 and 3849395

16 July 2015

**Cyanotech's Petition to Cancel
Reg. Nos. 3798632 and 3849395**

1. Petitioner Cyanotech Corporation (“Cyanotech”), a Nevada corporation, with business address of Ste. 102, 73-4460 Queen Kaahumanu Hwy, Kailua-Kona, Hawaii 96740, owner of pending application Ser. Nos. 85/423915 and 85/423883, is plaintiff in Concurrent Use Proceeding No. 94002616 (“the ‘616 CUP”) pending before the United States Patent and Trademark Office (“Office”) Trademark Trial and Appeal Board (“Board”). Nutrex nv naamloze vennootschap (“Nutrex nv”, owner of Reg. Nos. 3798632 for NUTREX (word mark, Classes 001 and 005) and 3849395 (composite mark, Classes 001 and 005, with a literal element of NUTREX THE FINISHING TOUCH FOR NUTRITION) (collectively, Reg. Nos. 3798632 and 3849395 are “Nutrex nv’s marks”), and Nutrex Research, Inc. (owner of Reg. Nos. 3870696 and 3870697) are defendants in the ‘616 CUP. The ‘616 CUP is currently suspended for settlement negotiations, but neither defendant in the ‘616 CUP replied to Cyanotech’s repeated settlement proposals. Therefore, Cyanotech brings this Petition to Cancel Reg. Nos. 3798632 and 3849395, owned by Nutrex nv, a Belgium corporation, with business address of Achterstenhoek 5, Lille, Belgium 2275. Cyanotech has also filed a Petition to Cancel Reg. Nos. 3870696 and 3870697, owned by Nutrex Research, Inc.

2. This petition is filed within five (5) years of the date of registration of Reg. No. 3849395.

3. Cyanotech has used the common law word mark, NUTREX, nationwide since 1991, in the production, distribution, marketing, and sales of nutritional supplements (International Classes 005 and 035). See Exhibit 1, Affidavit of Gerald R. Cysewski, submitted herewith. Nutrex-Hawaii, Inc. (fka Nutrex, Inc.), is a wholly owned subsidiary of Cyanotech. Cyanotech is the prior user of the mark NUTREX ... alone, in composite marks, and as NUTREX HAWAII.

4. Reg. Nos. 3798632 and 3849395, attached as Exhibit 2, registered in 2010, and first uses claimed in 1995 and 2010, respectively, were cited as bases for refusal of registration of (i) Cyanotech's word mark, NUTREX, in application Ser. No. 85/423897; (ii) Cyanotech's word mark, NUTREX HAWAII, in application Ser. No. 85/423915; and (iii) Cyanotech's composite mark, NUTREX with design, in application Ser. No. 85/423883 (collectively, "Cyanotech's Applications" as to Ser. Nos. 85/423897, 85/423915, and 85/423883; and "Cyanotech's marks" as to the recited word marks and the composite marks of Cyanotech containing the literal element "NUTREX").

5. Cyanotech believes that it is or will be damaged by Reg. Nos. 3798632 and 3849395. In view of the Office's refusal of Cyanotech's Applications in view of Reg. Nos. 3798632 and 3849395, and the averments in the following paragraphs, Cyanotech has a real interest in the proceeding, and thereby has standing to petition to cancel. TBMP 309.03(b).

6. Cyanotech's further real interest in the proceeding, and Cyanotech's reasonable belief of damage by continued registration of Reg. Nos. 3798632 and 3849395, are found in the following averments.

7. As to Reg. No. 3849395, Nutrex nv's mark so resembles Cyanotech's marks previously used nationwide in the United States since 1991 by Cyanotech and its wholly owned subsidiary, Nutrex-Hawaii, and not abandoned, as to be likely, when used on or in connection with the goods or services of Nutrex nv, to cause confusion, or to cause mistake, or to deceive under Trademark Act § 2(d), 15 U.S.C. § 1052(d).

8. Nutrex nv had no bona fide use of Nutrex nv's marks in commerce prior to the filing of Nutrex nv's use-based applications for registration under Trademark Act § 1(a), 15 U.S.C. § 1051(a).

9. Nutrex nv is not (and was not, at the time of filing of its application for registration) the rightful owner of the registered mark. *Treadwell's Drifters Inc. v. Marshak*, 18 USPQ2d 1318, 1320 (TTAB 1990).

10. Nutrex nv has not used Nutrex nv's marks, as registered, as a trademark or service mark. *Anheuser-Busch Inc. v. The Florists Association of Greater Cleveland, Inc.*, 29 USPQ2d 1146, 1160 (TTAB 1993).

11. Nutrex nv has abandoned Nutrex nv's marks due to nonuse for three consecutive years. *City National Bank v. OPGI Management GP Inc./Gestion OPGI Inc.*, 106 USPQ2d 1676-79 (TTAB 2013).

12. Nutrex nv committed fraud in the procurement of its registration or during the prosecution of its application for registration. *Grand Canyon West Ranch LLC v. Hualapai Tribe*, 88 USPQ2d 1501, 1509 (TTAB 2008); *Standard Knitting Ltd. v. Toyota Jidosha Kabushiki Kaisha*, 77 USPQ2d 1917 (TTAB 2006). See attached Exhibit 3, Affidavit of David A. Wright, reciting with particularity facts showing nonuse of Nutrex nv's marks during and after Nutrex nv's applications for registration of Nutrex nv's marks.

13. Cyanotech petitions to cancel Reg. Nos. 3798632 and 3849395 in whole under 37 CFR § 2.111(b).

16 July 2015

/ George E. Darby /
George E. Darby
Reg. No. 44,053
Darby Law Corporation
Counsel for Plaintiff
CYANOTECH
CORPORATION

Certificate of Service

I hereby certify that true and complete copies of the Cyanotech's Petition to Cancel Reg. Nos. 3798632 and 3849395 were served on the Defendant listed below via (i) USPS Priority Mail and (ii) email.

Nutrex nv
Attn: Kurt Van de Mierop
kurt.vandemierop@nutrex.be
Achterstenhoek 5
Lille, 2275
Belgium
Representative of record for Nutrex nv

16 July 2015

/ George E. Darby /
George E. Darby
Reg. No. 44,053
Darby Law Corporation
Counsel for Plaintiff
Cyanotech Corporation

**UNITED STATES DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE**

In re Application of)	Trademark Law Office: <i>not assigned</i>
)	
Cyanotech Corporation)	Examining Atty: <i>not assigned</i>
)	
Serial No.: <i>Filed with application</i>)	App. Filing Date: 12 Sept. 2011
)	
Marks: NUTREX word mark)	
NUTREX HAWAII word mark)	
_____)	Atty Dkt: NUTREX.w and NUTREXHI.w

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

AFFIDAVIT OF GERALD R. CYSEWSKI

I, Gerald R. Cysewski, declare as follows:

1. I am Chief Science Officer and Executive Vice President of Cyanotech Corporation, a Nevada corporation headquartered in Kailua-Kona, Hawaii. I am authorized to make the following statements on behalf of Applicant, Cyanotech Corporation. These statements are based on my personal knowledge unless otherwise stated.

2. It is my belief that the NUTREX word mark and the NUTREX HAWAII word mark have become distinctive of the goods and services through Applicant's substantially exclusive and continuous use in commerce since 2001, in all 50 states, in Puerto Rico and Guam, and internationally, including the five years immediately before the date of this statement.

3. Applicant's substantially exclusive and continuous use in commerce of the NUTREX HAWAII word mark since 2001 is evidenced by, *inter alia*, Exhibits A to H attached to this affidavit. Such use in commerce has been for the goods and services described in the Application.

4. Based on my review of corporate records, the first use of the NUTREX HAWAII mark by Applicant was in December, 1990. Applicant incorporated a wholly owned subsidiary, Nutrex, Inc., in Hawaii, on December 6, 1990; Nutrex, Inc., changed its name to Nutrex Hawaii,

Inc., on March 22, 2001.

5. Exhibit A is a true and accurate copy of a magazine ad showing the NUTREX word mark and the NUTREX HAWAII word mark as used in commerce during 2001 in substantially all States of the United States and provinces of Canada by Applicant and dated “Expires 12/31/2001”.

7. Exhibit B is a true and accurate copy of a magazine ad showing the NUTREX word mark and the NUTREX HAWAII word mark as used in commerce during 2002 in substantially all States of the United States and provinces of Canada by Applicant and dated “Expires 12/31/2002”.

8. Exhibit C is a true and accurate copy of invoices for each year between 2002 and 2011, dated 03/12/2002, 05/28/2003, 04/29/2004, 03/11/2005, 03/17/2006, 11/09/2007, 01/29/2008, 12/29/2009, 10/11/2010, 05/04/2011, each of which invoices show the NUTREX word mark and the NUTREX HAWAII word mark. The design mark shown in the pages of Exhibit C shows a “12-bladed sun” graphic element adjacent to the word NUTREX; this is a result of the design mark being a “linked object” in Applicant’s invoicing software. The design mark using before 05/05/2010 featured an hibiscus flower adjacent to the word NUTREX word mark instead of the current “12-bladed sun” graphic adjacent to the word NUTREX. Invoices printed prior to 05/05/2010 would have shown the previous “hibiscus” graphic adjacent to the NUTREX word mark. The former “hibiscus” graphic adjacent to the NUTREX word mark is shown in the specimen for the NUTREX word mark filed herewith.

9. Exhibit D is a true and accurate copy of a distributor channel sales sheet showing the NUTREX HAWAII word mark and dated January 1, 2003.

10. Exhibit E is a true and accurate copy of a distributor channel sales sheet showing the NUTREX HAWAII word mark and dated January 1, 2006.

11. The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that he is properly authorized to execute this document on behalf of the Applicant; and all statements made of his own knowledge are true and that all

United States of America

United States Patent and Trademark Office

NUTREX

Reg. No. 3,798,632

Registered June 8, 2010

Int. Cls.: 1 and 5

TRADEMARK

PRINCIPAL REGISTER

NUTREX NV (BELGIUM NAAMLOZE VENNOOTSCHAP (NV))
ACHTERSTENHOEK 5
LILLE, BELGIUM 2275

FOR: CHEMICAL ADDITIVES FOR USE IN THE MANUFACTURE OF ANIMAL FEED;
ENZYMES TO ASSIST IN DIGESTION FOR USE IN THE MANUFACTURE OF ANIMAL
FEEDS, IN CLASS 1 (U.S. CLS. 1, 5, 6, 10, 26 AND 46).

FIRST USE 6-20-1995; IN COMMERCE 7-1-1995.

FOR: ANIMAL FEED ADDITIVES, NAMELY, ENZYMES FOR USE IN ANIMAL FEEDS TO
ASSIST IN DIGESTION; FEED SUPPLEMENTS FOR LIVESTOCK; NON-MEDICATED AD-
DITIVES FOR ANIMAL FEED FOR USE AS NUTRITIONAL SUPPLEMENTS, IN CLASS 5
(U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 6-20-1995; IN COMMERCE 7-1-1995.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PAR-
TICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 77-781,261, FILED 7-15-2009.

EVELYN BRADLEY, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office



Reg. No. 3,849,395

Registered Sep. 21, 2010

Int. Cls.: 1 and 5

TRADEMARK

PRINCIPAL REGISTER

NUTREX NV (BELGIUM NAAMLOZE VENNOOTSCHAP (NV))
ACHTERSTENHOEK 5
LILLE, BELGIUM 2275

FOR: CHEMICAL ADDITIVES FOR USE IN THE MANUFACTURE OF ANIMAL FEED;
ENZYMES TO ASSIST IN DIGESTION FOR USE IN THE MANUFACTURE OF ANIMAL
FEEDS , IN CLASS 1 (U.S. CLS. 1, 5, 6, 10, 26 AND 46).

FIRST USE 11-24-2009; IN COMMERCE 11-24-2009.

FOR: ANIMAL FEED ADDITIVES, NAMELY, ENZYMES FOR USE IN ANIMAL FEEDS TO
ASSIST IN DIGESTION; NON-MEDICATED ADDITIVES FOR ANIMAL FEED FOR USE AS
NUTRITIONAL SUPPLEMENTS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 11-24-2009; IN COMMERCE 11-24-2009.

THE MARK CONSISTS OF THE WORDING "NUTREX THE FINISHING TOUCH FOR NU-
TRITION" WITH A STYLIZED DEPICTION OF AN EAR OF WHEAT.

SER. NO. 77-781,242, FILED S.R. 7-15-2009 AM. P.R. 5-20-2010.

EVELYN BRADLEY, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Concurrent Use No. 94002616

Cyanotech Corporation
Serial Nos. 85423915 and 85423883

v.

Nutrex nv
Registration Nos. 3798632 and
3849395

Nutrex Research, Inc.
Registration Nos. 3870696 and
3870697

Monique Loppe
Common Law User

Affidavit of David A. Wright

27 April 2015

AFFIDAVIT OF DAVID A. WRIGHT

I, David A. Wright, declare as follows:

1. I am David A. Wright and am a contractor to Marksmen, whose offices are in Los Angeles, CA, Seattle, WA, Chapel Hill, NC, and London, UK. Marksmen performs intellectual property investigations, including "in-use trademark investigations" to determine whether a given trademark is "in-use" in commerce in the U.S., e.g., whether a trademark is or has been affixed to goods, shipping containers of goods, point of sale displays for goods, etc., sold or offered for sale in the U.S. More extensive information about Marksmen is at www.marksmen.com.
2. I am licensed as a private investigator in the State of Georgia, and have managed approximately 34,000 intellectual property investigations between 2001 and 2010 conducted by investigators employed by, or contracted to Markmen and under my supervision. I have personally conducted approximately 3,000 in-use trademark investigations over the past 15 years. I understand that whether a trademark is in-use is very relevant to whether the registration of that trademark can be cancelled or deemed abandoned.
3. I was retained by Darby Law Corporation, counsel for Plaintiff Cyanotech Corporation in Concurrent Use Proceeding No. 94002616, to investigate whether U.S. Registered Trademark Nos. 3798632 (NUTREX word mark) and 3849395 (NUTREX THE FINISHING TOUCH FOR NUTRITION design mark) are currently in-use in the U.S., and to the degree possible by searching archives, whether Reg. Nos. 3798632 and 3849395 had ever been used in the U.S. ("the In-Use Research").
4. My research methods for conducting the In-Use Research involved online research using Google and other common search engines, searching product databases in the market segments described in the Descriptions of Goods and Services of Reg. Nos. 3798632 and 3849395 and in related market segments, reviewing the website of Nutrex nv (nutrex.be), and conversing with Mr. Kurt Van de Mierop, Sales and Marketing Manager of Nutrex nv, Achterstenhoek 5, 2275 Lille, Belgium, the owner of Reg. Nos. 3798632 and 3849395. The nutrex.be website domain name is registered to Agrimex nv, with the same address as Nutrex nv, and the registration recites a domain name contact of Mr. Kurt Van de Meirp.
5. My In-Use Research retrieved no evidence of references to NUTREX or to NUTREX

THE FINISHING TOUCH FOR NUTRITION indicating present or past sales of goods or services in the United States by the owner of Reg. Nos. 3798632 and 3849395 or by agents of the owner.

6. When I spoke with Mr. Kurt Van de Mierop, Sales and Marketing Manager of Nutrex nv, by telephone on April 21, 2015, Mr. Van de Mierop told me that Nutrex nv does not have any distributors in the U.S. He said that Nutrex nv has extensive sales in Latin America and Canada, as well as Europe and Asia, but that they registered the trademarks in the U.S. because they were planning to deal with larger companies in the US directly. When asked what companies in the U.S. are currently using NUTREX products, Mr. Van de Mierop said, "No one, there is no use in the U.S. at this time." Mr. Van de Mierop's remark about non-use of Nutrex nv's products and trademarks was completely unsolicited.

7. In my professional opinion, the results of the In-Use Research support, without qualification, that Reg. Nos. 3798632 and 3849395 are not currently in-use in the United States. I found no evidence of past use of Reg. Nos. 3798632 and 3849395 in the United States.

8. In my professional opinion, my conclusions are based on sufficient facts or data and are the product of reliable principles and method reliably applied to the facts of the case.

9. The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that he is properly authorized to execute this document on behalf of the Applicant; and all statements made of his own knowledge are true and that all statements made on information and belief are believed to be true.

Executed this 27th day of April 2015
in Dublin, GA



DAVID A. WRIGHT
Georgia PI License No. PDE 048218


Appeared & signed before me this
27th day of April, 2015
James Robert Wood, Notary Public
My Commission expires 8/18/18

EXHIBIT A

You glow girl!

You look and feel best when you eat well.

Let Organic Spirulina Pacifica from Hawaii nourish your body for a beautiful glow. Nature's richest source of antioxidants and vitamins will boost your energy levels and give you radiant health.

1-800-453-1187
www.nutrex-hawaii.com

Expires 12/31/2001 | Manufacturer's Coupon

SAVE \$2.00

on any Nutrex Hawaii product

Spirulina Pacifica Tabs, Powder,
Flakes and Hawaiian Energizer



Retailer: Nutrex will reimburse you the face value of this coupon plus 8¢ handling, provided you and your customer have complied with the terms of this offer. Any other use constitutes fraud. Consumer must pay all applicable taxes. Coupons not properly redeemed will be voided. NO DOUBLING and no reproductions will be accepted. Cash value 1/100¢. Limit one coupon per purchase.

Send coupons to: Universal Marketing, 91 Rylander Blvd. Unit 7-262, Scarborough, ON M1B 5M5



You glow girl!



You look and feel best when you eat well. Let **Organic Spirulina Pacifica** from Hawaii nourish your body for a beautiful glow. Nature's richest source of antioxidants and vitamins will boost your energy levels and give you radiant health.



Expires 12/31/2002 | Manufacturer's Coupon

SAVE \$2.00

on any Nutrex Hawaii product
Spirulina Pacifica Tabs, Powder,
Flakes and Hawaiian Energizer

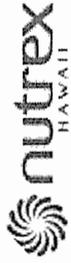


Retailer: Nutrex will reimburse you the face value of this coupon plus 8¢ handling, provided you and your customer have complied with the terms of this offer. Any other use constitutes fraud. Consumer must pay all applicable taxes. Coupons not properly redeemed will be voided. NO DOUBLING and no reproductions will be accepted. Cash value: 1/100¢. Limit one coupon per purchase.

Send coupons to: NUTX/Universat, P.O. Box 222510, Hollywood, FL 33022-2510

Available at Whole Foods, Wild Oats and in natural food stores.

1-800-453-1187
www.nutrex-hawaii.com



Nutrex Hawaii, Inc.
 73-4460 Queen Kaahumanu Hwy
 Suite 102
 Kailua-Kona, HI 96740
 Phone No. (800) 453-1187
 Fax No. (808) 329-4533

INVOICE

Invoice Number: 103452
 Invoice Date: 03/12/02

Page: 1

Bill Costco Wholesale (Waipio)
 To: 94-1331 Ka Uka Boulevard
 (808) 678-6115
 Waipahu, HI 96797

Ship Costco Wholesale (Waipio)
 To: 94-1331 Ka Uka Boulevard
 (808) 678-6115
 Waipahu, HI 96797

Tel: 425 313 8100
 Fax:

Tel: 425 313 8100
 Fax:

Ship Via
 Ship Date 04/10/02
 Due Date 04/11/02

Customer ID 100404
 P.O. Number 017563
 P.O. Date 04/10/02

Terms NET 30

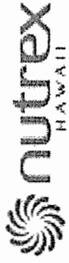
Our Order No.
 SalesPerson Hawaii Sales

Item	Description	Unit	Order Qty	Quantity	Unit Price	Total Price
	Accounts Receivable-Trade	Each	1	1	642.60	642.60

Subtotal: 642.60
 Invoice Discount: 0.00
 Tax: 0.00

Total: 642.60

CURRENCY IN U.S. DOLLARS



INVOICE

Nutrex Hawaii, Inc.
73-4460 Queen Kaahumanu Hwy
Suite 102
Kailua-Kona, HI 96740
Phone No. (800) 453-1187
Fax No. (808) 329-4533

Invoice Number: 106136
Invoice Date: 05/28/03

Page: 1

Bill Advantageline/Weborders 0523
To: Agnes Prehn
See detail from OrderPro

Ship Advantageline/Weborders 0523
To: Agnes Prehn
See detail from OrderPro

Tel: 808 331 4117
Fax: 808 329 3597

Tel: 808 331 4117
Fax: 808 329 3597

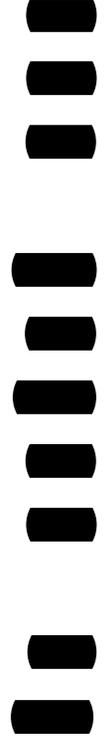
Ship Via Free On Board - Kona, HI
Ship Date 05/27/03
Due Date 05/28/03

Customer ID 100636
P.O. Number
P.O. Date 05/23/03

Our Order No. NSO-302571
SalesPerson Agnes Prehn

Terms MASTERCARD

Item	Description	Unit	Order Qty	Quantity	Unit Price	Total Price
OLD140	TABLET-400X500MG ORGANIC SP	Each	4	4	17.85	71.40
140002	POWDER-16OZ ORGANIC SPIRULINA	Each	2	2	29.32	58.64
OLD140	GELCAP-BIOASTIN 60X4MG	Each	2	2	12.50	25.00
OLD140	GELCAP-BIOASTIN 60X4MG	Each	6	6		
OLD140	GELCAP-BIOASTIN 60X4MG	Each	15	15	24.95	374.25
140018	GELCAP-BIOASTIN XP-60X4MG 500MG	Each	2	2	24.95	49.90
140000	POWDER-5OZ ORGANIC SPIRULINA	Each	16	16	10.52	168.32
140012	TABLET-200X500MG ORGANIC SP	Each	2	2	11.72	23.44
140011	TABLET-100X500MG ORGANIC	Each	3	3	11.79	35.37
140011	TABLET-100X500MG ORGANIC	Each	3	3		
140012	TABLET-200X500MG ORGANIC SP	Each	1	1	19.99	19.99
Transferred to page 2.....						826.31





Nutrex Hawaii, Inc.
 73-4460 Queen Kaahumanu Hwy
 Suite 102
 Kailua-Kona, HI 96740
 Phone No. (800) 453-1187
 Fax No. (808) 329-4533

INVOICE

Invoice Number: 108119
 Invoice Date: 04/29/04
 Page: 1

Bill VOID INVOICE

To: Howard Chiu
 4/F Bangkok Bank Bldg.
 490-492 Nathan Road
 Kowloon, Hong Kong, PH 384-8000

Ship VOID INVOICE

To: Howard Chiu
 4/F Bangkok Bank Bldg.
 490-492 Nathan Road
 Kowloon, Hong Kong, PH 384-8000

Tel:
 Fax:

Ship Via Free On Board - Kona, HI
 Ship Date 04/28/04
 Due Date 05/29/04
 Terms NET 30

Tel:
 Fax:

Customer ID 100196
 P.O. Number 040604ND
 P.O. Date 04/06/04
 Our Order No. NSO-304486
 SalesPerson Agnes Prehn - International P

Item	Description	Unit	Order Qty	Quantity	Unit Price	Total Price
140018	GELCAP-BIOASTIN XP-60X4MG 500MG	Each	30	30	3.00	90.00
700001	Freight Charges	Each	1	1	80.00	80.00

Subtotal: 170.00
 Invoice Discount: 0.00
 Tax: 0.00
 Total: 170.00

CURRENCY IN U.S. DOLLARS



INVOICE

Nutrex Hawaii, Inc.
73-4460 Queen Kaahumanu Hwy
Suite 102
Kailua-Kona, HI 96740
Phone No. (800) 453-1187
Fax No. (808) 329-4533

Invoice Number: 109795
Invoice Date: 03/11/05

Page: 1

Bill To: DTE - Honolulu
Mary, Keoki
Phone: (808) 947-7678
2525 S. King St.
Honolulu, HI 96826

Ship To: DTE - Honolulu
Mary, Keoki
Phone: (808) 947-7678
2525 S. King St.
Honolulu, HI 96826

Tel: 808-947-7678
Fax: 808-484-5896

Tel: 808-947-7678
Fax: 808-484-5896

Ship Via: Free On Board - Kona, HI
Ship Date: 03/10/05
Due Date: 04/25/05

Customer ID: 100415
P.O. Number
P.O. Date: 03/10/05
Our Order No. NSO-306303
SalesPerson: Hawaii Sales

Terms: NET 45

Item	Description	Unit	Order Qty	Quantity	Unit Price	Total Price
OLD140	TABLET-400X500MG ORGANIC SP	Each	24	24	14.055	337.32

Price includes a 25% discount

Subtotal: 337.32
Invoice Discount: 0.00
Tax: 0.00

Total: 337.32

CURRENCY IN U.S. DOLLARS



Nutrex Hawaii, Inc.
 73-4460 Queen Kaahumanu Hwy
 Suite 102
 Kailua-Kona, HI 96740
 Phone No. (800) 453-1187
 Fax No. (808) 329-4533

INVOICE

Invoice Number: 111781
 Invoice Date: 03/17/06

Page: 1

Bill To: Altura Distribution
 Javier Scalini
 16692 Burke Lane
 Huntington Beach, CA 92647

Ship To: Altura Distribution
 Javier Scalini
 16692 Burke Lane
 Huntington Beach, CA 92647

Tel: 714-698-0567
 Fax: 714-843-0448

Tel: 714-698-0567
 Fax: 714-843-0448

Ship Via Free On Board - Ontario, CA
 Ship Date 03/16/06
 Due Date 03/17/06

Customer ID 101162
 P.O. Number PO#8997
 P.O. Date 03/14/06
 Our Order No. NSO-308150
 SalesPerson Nutrex US

Terms VISA

Item	Description	Unit	Order Qty	Quantity	Unit Price	Total Price
OLD140	TABLET-400X500MG NATURAL SP	Each	240	240	13.49	3,237.60

Paid in full by Amex 3/14/06

Subtotal: 3,237.60
 Invoice Discount: 0.00
 Tax: 0.00

Total: 3,237.60

CURRENCY IN U.S. DOLLARS



Nutrex Hawaii, Inc.
 73-4460 Queen Kaahumanu Hwy
 Suite 102
 Kailua-Kona, HI 96740
 Phone No. (800) 453-1187
 Fax No. (808) 329-4533

INVOICE

Invoice Number: 115217
 Invoice Date: 11/09/07
 Page: 1

Bill To: Costco Wholesale (Waipio)
 Vendor #34114-00
 P.O. Box 34622
 Seattle, WA 98124

Ship To: Costco Wholesale (Waipio)
 94-1231 Ka Uka Boulevard
 (808) 678-6155
 Waipahu, HI 96797

Tel: 425 313 8100
 Fax:

Tel: 808 678 6115
 Fax:

Ship Via Free On Board - Kona, HI
 Ship Date 11/08/07
 Due Date 12/09/07
 Terms NET 30

Customer ID 100404
 P.O. Number 004851105322
 P.O. Date 11/06/07
 Our Order No. NSO-311412
 SalesPerson Hawaii Sales

Item	Description	Unit	Order Qty	Quantity	Unit Price	Total Price
OLD140	GELCAP-BIOASTIN 60X4MG	Bottle	60	60	11.99	719.40

Subtotal: 719.40
 Invoice Discount: 0.00
 Tax: 0.00

Total: 719.40

CURRENCY IN U.S. DOLLARS



Nutrex Hawaii, Inc.
 73-4460 Queen Kaahumanu Hwy
 Suite 102
 Kailua-Kona, HI 96740
 Phone No. (800) 453-1187
 Fax No. (808) 329-4533

INVOICE

Invoice Number: 115869
 Invoice Date: 01/29/08
 Page: 1

Bill Nutrition World
 To: Joanne Augusto
 2501 S. US 1
 Fort Pierce, FL 34982

Ship Nutrition World
 To: Joanne Augusto
 2501 S. US 1
 Fort Pierce, FL 34982

Tel: 772-464-3598
 Fax:

Tel: 772-464-3598
 Fax:

Ship Via Free On Board - Ontario, CA
 Ship Date 01/28/08
 Due Date 02/08/08

Customer ID 103417
 P.O. Number
 P.O. Date 01/18/08
 Our Order No. NSO-312043
 SalesPerson Nutrex US

Terms PRE-PAY

Item	Description	Unit	Order Qty	Quantity	Unit Price	Total Price
150000	GELCAP-CARDIOASTIN 60X4MG MD FO Bottle	Bottle	6	6	17.99167	107.95
OLD150	GELCAP-JOINTASTIN 120X3MG MD FO Bottle	Bottle	6	6	17.99167	107.95
150002	GELCAP-DERMAASTIN 60X4MG MD FO Bottle	Bottle	6	6	17.99167	107.95
150003	GELCAP-BIOASTIN SUPREME 60X6MG Bottle	Bottle	6	6	13.49167	80.95
500023	ASTAXANTHIN BOOK	Each	12	12		
500001	SPIRULINA BOOK REPLACES ITEM#802 Each	Each	12	12		

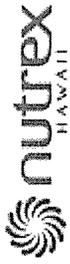
please include 25 md tri-folds and inserts

1/18/08 PAID IN FULL BY CC

Subtotal: 404.80
 Invoice Discount: 0.00
 Tax: 0.00

Total: 404.80

CURRENCY IN U.S. DOLLARS



Nutrex Hawaii, Inc.
 73-4460 Queen Kaahumanu Hwy
 Suite 102
 Kailua-Kona, HI 96740
 Phone No. (800) 453-1187
 Fax No. (808) 329-4533

INVOICE

Invoice Number: 121762
 Invoice Date: 12/21/09
 Page: 1

Bill Lizzie's Herb Shop
 To: 500 Pineview Rd. Suite # 115
 Kernersville, NC 27284

Ship Lizzie's Herb Shop
 To: 500 Pineview Rd. Suite # 115
 Kernersville, NC 27284

Tel: 336-996-4030
 Fax:

Tel: 336-996-4030
 Fax:

Ship Via Free On Board - Ontario, CA
 Ship Date 12/21/09
 Due Date 12/21/09

Customer ID 103463
 P.O. Number
 P.O. Date 12/18/09
 Our Order No. NSO-317839
 SalesPerson Nutrex US

Terms PRE-PAY

Item	Description	Unit	Order Qty	Quantity	Unit Price	Total Price
OLD150	VEGGIE CAP-JOINTASTIN 120X3MG MD Bottle	Bottle	10	10	19.192	191.92
150003	VEGGIE-BIOASTIN SUPREME 60X6MG	Bottle	8	8	14.3925	115.14
140010	TABLET-200X500MG NATURAL SP	Each	6	6	9.59167	57.55
OLD140	TABLET-400X500MG NATURAL SP	Each	3	3	15.83333	47.50

Paid in Full & Faxed to SD_SK

Subtotal: 412.11
 Invoice Discount: 0.00
 Tax: 0.00

Total: 412.11

CURRENCY IN U.S. DOLLARS



Nutrex Hawaii, Inc.
 73-4460 Queen Kaahumanu Hwy
 Suite 102
 Kailua-Kona, HI 96740
 Phone No. (800) 453-1187
 Fax No. (808) 329-4533

INVOICE

Invoice Number: 124436
 Invoice Date: 10/11/10

Page: 1

Bill Amazon.com
 To: Accounts Payable
 Inventory
 PO Box 80987
 Seattle, WA 98108
 U.S.A.

Ship Amazon.com
 To: 1600 East Newlands Dr.
 Fernley, NV 89408
 U.S.A.

Tel:
 Fax:

Tel:
 Fax:

Ship Via Free On Board - Ontario, CA
 Ship Date 10/11/10
 Due Date 12/10/10

Customer ID 103742
 P.O. Number P6319912
 P.O. Date 10/11/10
 Our Order No. NSO-320547
 SalesPerson Mainland Etailers

Terms 2%10, Net 60

Item	Description	Unit	Order Qty	Quantity	Unit Price	Total Price
140027	GELCAP-BIOASTIN 120X4MG	Bottle	12	12	23.99	287.88

Subtotal: 287.88
 Invoice Discount: 0.00
 Tax: 0.00

Total: 287.88

CURRENCY IN U.S. DOLLARS



INVOICE

Nutrex Hawaii, Inc.
73-4460 Queen Kaahumanu Hwy
Suite 102
Kailua-Kona, HI 96740
Phone No. (800) 453-1187
Fax No. (808) 329-4533

Invoice Number: 126888
Invoice Date: 05/04/11

Page: 1

Bill To: IHerb, Inc. - Moreno Valley
Brett Philipson
17825 Indian Street
Moreno Valley, CA 92551
U.S.A.

Ship To: IHerb, Inc. - Moreno Valley
Brett Philipson
17825 Indian Street
Moreno Valley, CA 92551
U.S.A.

Tel: 951-616-3600
Fax: 626-338-1326

Tel: 951-616-3600
Fax: 626-338-1326

Ship Via Free On Board - Ontario, CA
Ship Date 05/04/11
Due Date 06/03/11

Customer ID 103787
P.O. Number 149271
P.O. Date 05/02/11
Our Order No. NSO-323022
SalesPerson Mainland

Terms NET 30

Item	Description	Unit	Order Qty	Quantity	Unit Price	Total Price
140015	TABLET-400X500MG NATURAL SP	Each	288	288	12.61399	3,632.83
140027	GELCAP-BIOASTIN 120X4MG	Bottle	360	360	15.2915	5,504.94

Subtotal: 9,137.77
Invoice Discount: 0.00
Tax: 0.00

Total: 9,137.77

CURRENCY IN U.S. DOLLARS

Nutrex Hawaii

Organic Hawaiian Spirulina

BioAstin - Astaxanthin



Nutrex Hawaii Inc.
 73-4460 Queen Kaahumanu Hwy #102
 Kailua-Kona, HI 96740
 Tel: (800) 453-1187
 Fax: (800) 329-4533

	UPC Code	Item #'s	Wholesale	Sugg. Retail	Case Weight	Case Dimensions	Cs Cu
Spirulina Powder							
5 oz.	7 32894 01023 9	140000		\$17.99	10.5	8.5 x 11.25 x 5.75	0.33
16 oz.	7 32894 01026 0	140002		\$49.99	25.5	14 x 18 x 8.5	1.24
5 lbs.	7 32894 01028 4	140004		\$219.99	17.0	10.5 x 10.5 x 11.5	0.73
Spirulina Crystal Flakes							
7 oz.	7 32894 04001 4	140008		\$24.99	17.5	14 x 18 x 8.5	1.24
5 lbs.	7 32894 05800 2	140009		\$249.99	19.0	14.5 x 14.5 x 15	1.83
Cold Pressed 500 mg. Tablets							
100 tabs.	7 32894 01001 7	140011		\$11.99	5.3	7 x 9.5 x 4.5	0.17
200 tabs.	7 32894 01002 4	140012		\$19.99	7.2	8 x 10 x 5	0.23
400 tabs.	7 32894 01004 8	140013		\$29.99	13	18.5 X 11 X 5.5	0.33
BioAstin	7 32894 03508 9	140017		\$24.99	2.5	9 x7 x 4	0.09

Effective date January 1, 2003

Suggested retail 40% margin on all products except 1 lb and 5 lb sizes, 33%

Regular case sizes 12 each; 5lb powder 3 each

Potency 3 years from date of manufacture.

Spirulina Pacifica is certified organically grown and processed in accordance with the California Organic Food Law of 1990.



Nutrex Hawaii

All Natural Hawaiian Spirulina

BioAstin - Astaxanthin



Nutrex Hawaii Inc.
73-4460 Queen Kaahumanu Hwy #102
Kailua-Kona, HI 96740
Tel: (800) 453-1187 Fax: (800) 329-4533

	UPC Code	Item #'s		Wholesale	Sugg. Retail	Case Weight	Case Dimensions	Cs Cu
Spirulina Powder								
5 oz.	7 32894 01023 9	140001			\$17.99	10.5	8.5 x 11.25 x 5.75	0.33
16 oz.	7 32894 01026 0	140003			\$49.99	25.5	14 x 18 x 8.5	1.24
5 lbs.	7 32894 01028 4	140005			\$219.99	17.0	10.5 x 10.5 x 11.5	0.73
Spirulina Crystal Flakes								
7 oz.	7 32894 04001 4	140008			\$24.99	17.5	14 x 18 x 8.5	1.24
5 lbs.	7 32894 05800 2	140009			\$249.99	19.0	14.5 x 14.5 x 15	1.83
Cold Pressed 500 mg. Tablets								
100 tabs.	7 32894 01001 7	140006			\$11.99	5.3	7 x 9.5 x 4.5	0.17
200 tabs.	7 32894 01002 4	140010			\$19.99	7.2	8 x 10 x 5	0.23
400 tabs.	7 32894 01004 8	140015			\$29.99	13	18.5 X 11 X 5.5	0.33
BioAstin	7 32894 03508 9	140017			\$24.99	2.5	9 x7 x 4	0.09

Effective date January 1, 2006

Suggested retail 40% margin on all products except 1 lb and 5 lb sizes, 33%

Regular case sizes 12 each; 5lb powder 3 each

Potency 3 years from date of manufacture.

Spirulina Pacifica is certified Kosher and pesticide and herbicide free.