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

Proceeding	77756102
Applicant	Schel, Charles L.
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Submission	Appeal Brief
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Signature	/sls/
Date	03/25/2011

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

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In re: Application of Charles L. Schel	)	Estta No.: 391777
	)	Serial No. : 77/756,102
	)	Mark: <b>CELLULIFE</b>
	)	Owner: Charles L. Schel
	)	Filing Date: 06/10/2009

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**APPLICANT'S APPEAL BRIEF**

Pursuant to 37 C.F.R. § 2.142(b)(1), the Appellant, CHARLES L. SCHEL, ("Applicant") hereby submits its appeal brief in the appeal of the final refusal to register the mark CELLULIFE (SELL-YOU-LIFE) that is dated August 6, 2010.

The only outstanding issue in the appeal is the refusal to register the Applicants mark under Trademark Act Section 2(d) based on United States Trademark Registration No. 1,785,193 identified as being originally owned by CellLife International, Inc.<sup>1</sup> ("Registrant"). However, the Registrant does not appear to exist.

I. APPELLANT'S MARK

The Applicant, Charles L. Schel, filed an application on June 10, 2009 for the mark CELLULIFE (SELL-YOU-LIFE), the name of a nucleotide based product sold by the Applicant since August of 2006. The applicant develops and sells specialty nutritional supplements that include concentrated nucleotides obtained

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<sup>1</sup> The Office records indicate that a security interest in the cited registration was assigned by Natural Alternatives International, Inc., a Delaware corporation, to UPS Capital Corporation in 2002. However, there is no record of assignment from Celllife International, Inc. to Natural Alternatives International, Inc. Celllife International, Inc. does not appear to have ever been authorized to conduct business in California. There is no record of Celllife International, Inc. in

by a novel process, under the mark. These formulations are unique and not available from any other source.

Prior to the citation by the Examining Attorney, the Applicant had never heard of the cited mark and the Registrant does not appear to offer goods or services in the same channels of commerce as the Applicant. There have been no side by side sales or competing advertising in the same markets and there have not been any inquiries regarding the products of the Registrant in the past five years since the date of first use.

## II. THE CITED REGISTRATION

The Examining Attorney has refused registration based on U.S. Reg. No. 1,785,193, for the mark CELLLIFE (SELL-IFE) issued to a company called Celllife International, Inc. in San Marcos, California. According to the registration, the mark is used by the Registrant as: "Vitamins, minerals and dietary food supplements" in International Class 005 for "Pharmaceuticals." The specimens suggest that the Registrant uses the mark as a house mark rather than the name given to a product.

Although the Board will rely on the Identification of Goods or Services in the Registration and the Application in its determinations (TMEP §1207.01(a)(iii)), information concerning the conditions of sale and the relatedness of goods etc. However, since the Registrant corporation does not appear to exist and there does not appear to be any products sold under the mark it is difficult to evaluate

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the records of the Secretary of State of California or Delaware and the Applicant can find no evidence of use by the Registrant.

the commercial presence of the use of the mark by the Registrant or provide any information that supports the evaluation of the *Dupont* factors.

Likewise, Natural Alternatives International, Inc., mentioned in the Assignment records as giving a security interest in the registration, is a contract manufacturer and does not directly sell “vitamins, minerals or dietary supplements.” Therefore, no further information is available to be used to determine commercial impression and the evaluation of a likelihood of confusion.

### III. ARGUMENT

According to TMEP §1207.01, the determination of a likelihood of confusion must be undertaken on a case-by-case basis and the marks must be compared in their entireties. It is improper to dissect a cited mark and compare the dissected parts of the cited mark while ignoring other parts in the comparison with the mark of an Applicant. The whole mark and the type of goods or services sold under the mark are involved in the creation of the commercial impression and in the likelihood of confusion analysis. Therefore, TMEP §1207.01 provides:

“There is no mechanical test for determining likelihood of confusion. The issue is not whether the actual goods are likely to be confused but, rather, whether there is a likelihood of confusion as to the *source* of the goods. *In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993), and cases cited therein. Each case must be decided on its own facts. “ ...

“The Court of Appeals for the Federal Circuit has provided the following guidance with regard to determining and articulating likelihood of confusion:

The basic principle in determining confusion between marks is that ***marks must be compared in their entireties*** and must be considered in connection with the particular goods or services for which they are used (citations omitted). ***It follows from that principle that likelihood of confusion cannot be***

***predicated on dissection of a mark, that is, on only part of a mark*** (footnote omitted). ...

*In re National Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 750-51 (Fed. Cir. 1985)." (emphasis added)

In an *ex parte* case, the following factors are usually the most relevant:

- The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.
- The relatedness of the goods or services as described in an application or registration or in connection with which a prior mark is in use.
- The similarity or dissimilarity of established, likely-to-continue trade channels.
- The conditions under which and buyers to whom sales are made, i.e. "impulse" vs. careful, sophisticated purchasing.
- The number and nature of similar marks in use on similar goods.
- A valid consent agreement between the applicant and the owner of the previously registered mark.

The typical analysis of a likelihood of confusion of a word mark compares the sight, sound and meaning of the marks within the context of the markets where the goods or services are distributed. TMEP §1207.01(b)(i) provides:

"The points of comparison for a word mark are appearance, sound, meaning, and commercial impression. *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005), citing *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973). Similarity of the marks in one respect -- sight, sound or meaning -- will not automatically result in a finding of likelihood of confusion even if the goods are identical or closely related. ..."

Since the issue of a likelihood of confusion is based on the overall commercial impression generated by a mark, there is no rule that confusion is automatically likely when a junior mark has similar features. See TMEP §1207.01(a)(iv).

In the present case, the Examining Attorney has refused registration of the Applicants mark based on a comparison of CELLULIFE and CELLLIFE, even though there are significant differences in commercial impression to sophisticated purchasers who are particular about what is put into their bodies. [TMEP §1207.01(d)(vii) “[c]ircumstances suggesting care in purchasing may tend to minimize likelihood of confusion.”]

A. Sight, Sound And Meaning Of The Marks Are Substantially Distinct

Even if the marks are considered to be in the same channels of trade, there are substantial differences in the sight, sound and meanings of the marks that they form different commercial impressions when taken in context with the goods and services provided under the marks. [See TMEP §1207.01(b)(i) “Similarity of the marks in one respect – sight, sound, or meaning – *will not automatically result in a finding of likelihood of confusion* even if the goods are identical or closely related.” (emphasis added)]

In the present case, the Examining Attorney dissected the “U” element from the mark of the Applicant and gave it no significance in the analysis of the commercial impression created by mark of the Applicant. Elimination of the “U” element made the two marks substantially identical in terms of sight, sound and

meaning according to the Examining Attorney. The Applicant respectfully submits that this was error.

1. Applicant's Mark Creates A Distinct Visual Impression

A visual comparison between the marks CELLULIFE and CELLIFE show differences that are immediately recognizable with even a casual look by a consumer. The differences in the appearance of the respective marks are not insubstantial or inconsequential to the commercial impression created by the marks. This is particularly true with the sophisticated consumers that have an interest in the specialty products of the Applicant.

The "LLL" found in the center of cited mark creates a visual draw to these letters and has a block geometry. Every letter besides the first has vertical and horizontal elements and is a very distinctive element of the Registrants mark. In contrast, the mark of the Applicant has a "U" at the same location and the eye is quickly drawn to the curvature of the "U." The Applicant submits that the "U" element has a distinctive source indicating function that is significantly different that the "LLL" element and block geometry of the Registrants mark.

Accordingly, there are distinct visual differences between the marks and the Registrant's mark creates a different visual impression due to the presence of the "U" and "LLL" as part of the different marks. Sophisticated purchasers interested in their health and what is consumed will easily distinguish between the differences in spelling and appearance between the two marks.

## 2. Applicant's Mark Creates A Distinct Verbal Impression

Predictably, the differences in the letters used to create the marks also create different sounds when spoken by a potential consumer. The trademark of the Applicant is said: "SELL-YOU-LIFE." The trademark of the cited registration is said: "SELL-IFE." The first obvious difference in the sound of the marks is that the Applicant's mark has THREE syllables while the registered mark has only TWO. The difference in syllables also influences the emphasis that is placed on portions of each of the terms by the speaker. For example, the "YOU" of the Applicant's mark breaks up the mark and accentuates the "SELL" and "LIFE" portions of the mark. The "YOU" sound is the dominant sound of the mark and forces the first letter of both "SELL" and "LIFE" to be enunciated by the speaker.

In contrast, when the mark of the Registrant is spoken the long "I" sound of the "IFE" is emphasized and the "L" sound at the end of "SELL" syllable is *de-emphasized*.

Therefore, the sounds used by a potential purchaser looking for the nutraceutical nucleotide products of the Applicant would be different from those used by a purchaser looking for the goods of the Registrant, if any exist, and confusion would be unlikely.

## 3. The Marks Have Distinct Meanings

The meanings given to the marks are also substantially different. The mark of the Registrant could be said to be a combination of two descriptive words "CELL" and "LIFE," suggesting a scientific connotation or that product consists of "cell life."



In contrast, there is no literal meaning of the term “CELLULIFE.” The term is a take off of the phrase “SELL YOU LIFE,” suggesting that the product will “Sell you life” or provide “life in a bottle.” This first meaning arises from the context created by the letter “U” that is not present in the mark of the Registrant.

The presence of the “U” also creates a connection and meaning of “YOU” (meaning the purchaser) when viewed by the market. In this context, the “YOU” modifies the meaning of the “CELL” and “LIFE” terms to suggest a meaning of the Applicant’s product bringing “LIFE TO YOUR CELLS.” This second meaning is also due to the presence of the “U” and provides a context that is not found in the mark of the Registrant.

It can be seen that the mark of the Applicant taken as a whole creates a commercial impression that is complex requiring some mature thought to appreciate the complexities. The mark of the Registrant does not have these complexities.

In summary, there are distinct differences in sight, sound and meaning between the cited mark and the mark of the Applicant. Sophisticated purchasers will easily distinguish the source of the products because of the differences in the terms and the differences in the commercial context of the services.

Accordingly, in view of the highly unrelated nature of the goods and the commercial impression of the marks, confusion as to the source of goods is very unlikely under Section 2(d) of the Trademark Act.

B. The Applicant's Mark is at Least as Distinctive as Other Marks Found to be Registrable For Marks With Similar Goods/Services.

According to TMEP §1207.01(d)(iii), "Third-party registrations may be relevant to show that the mark or a portion of the mark is descriptive, suggestive, or so commonly used that the public will look to other elements to distinguish the source of the goods or services. See, e.g., *AMF Inc. v. American Leisure Products, Inc.*, 474 F.2d 1403, 1406, 177 USPQ 268, 269-70 (C.C.P.A. 1973); *Plus Products v. Star-Kist Foods, Inc.*, 220 USPQ 541, 544 (TTAB 1983)" (emphasis added). In addition, "Evidence of third-party use falls under the sixth *du Pont* factor – the "number and nature of similar marks in use on similar goods." *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973)." See TMEP 1207.01(d)(iii).

A review of the treatment of the Trademark Office of the terms "CELL" and "LIFE" in trademarks generally as well as for dietary supplements has been consistent and the Principal Register is crowded with variations using these terms. The Trademark Office and the public look to other elements besides "CELL" or "LIFE" to distinguish trademarks. However, the Examining Attorney has eliminated the "other elements," namely the "U" or "LLL" and given these elements no consideration.

The Examining Attorney cited Reg. No. 1,785,193 for CELLLIFE for dietary supplements, registered in 1993, against the application. However, the Trademark Office registered LIFECELL, the transposition of that mark, in 1998 in Reg. No. 2,163,264 for use on dietary supplements. [See Exhibit A hereto]. Furthermore, the Office registered LIVE CELL for nutritional supplements in Reg.

No. 3,875,611 in 2010. [Exhibit B]. This registration for LIVE CELL was granted in view of both LIFECELL and CELLIFE trademark registrations for essentially the identical goods (dietary supplements) and no likelihood of confusion was found.

The treatment of the Office of the terms “CELL” and “LIFE” can also be shown in Reg. No. 1,475,428 for LIFECELL for tissue sample preparation [Exhibit C] and Reg. No. 1,466,274 for the identical mark LIFECELL for use on tissue culture flasks [Example D]. The identical marks were allowed to register in connection with goods or services within a medical related field.

The treatment of the Office of the terms “CELL” and “LIFE” individually for marks that are used on “dietary supplements” also shows that the terms are descriptive and that the “other elements” dominate. For example, in Reg. No. 3,778,203 for the mark CELLPRIME for protein supplements [Exhibit E], the Office required the registrant to enter a disclaimer of the term “CELL.” See also Application No. 85/013,181 for CELL KEM [Exhibit F] for dietary supplements disclaiming “CELL.” There are many other registrations with the term “CELL” for dietary supplements as well. For example, Reg. No. 2,083,802 for CELLFOOD [Exhibit G], Reg. No. 2,873,939 for CELLMAX [Exhibit H], Reg. No. 3,653,333 for CELLAID [Exhibit I], and Reg. No. 3,906,255 for OXICELL [Exhibit J], illustrate the broad use of the term “CELL” and the significance of the “other elements” to distinguish the trademarks in the dietary supplement channels of commerce.

Similarly, the term “LIFE” has been used extensively in the supplement marketplace alone or in combination with other terms. For example, Reg. No.

2,651,897 for ENERLIFE [Exhibit K], Reg. No. 3,859,093 for INSTALIFE [Exhibit L], Reg. No. 3,124,375 for NATROLIFE [Exhibit M], and Reg. No. 3,107,486 for FEM-LIFE [Exhibit N] are illustrative of such use with dietary supplements emphasizing the importance of the “other elements” of the mark to distinguish.

Finally, the dietary supplement market is able to distinguish between marks that contain a “U.” This can be illustrated with Reg. No. 1,401,820 for CELL-U-LOSS [Exhibit O], Reg. No. 2,582,943 for CELLUWAY [Exhibit P], and Reg. No. 1,765,205 for FORM-U-LIFE [Exhibit Q], all used with dietary supplements.

In view of the treatment of the public and the Office of the terms “CELL” and “LIFE” for use on goods in the dietary supplement marketplace, the significance given to these terms should not overwhelm the “other elements.” Not only is it improper to dissect out the “other elements” from the Applicant’s mark, these “other elements” should be given greater weight than the “CELL” and “LIFE” terms. The differences in sight, sound and meaning between the marks discussed above demonstrate distinctive features of the trademark in the marketplace that is very crowded with marks “CELL” and “LIFE” terms and where sophisticated purchasers are able to make a determination as to source.

The Applicant submits that the analysis of the Examining Attorney of the mark of the Applicant has been inconsistent with the treatment of *these same terms* by the Office and the marketplace with respect to a likelihood of confusion. Taken as a whole, the mark of the Applicant creates a substantially different

commercial impression than that of the cited registration. Confusion as to source is therefore unlikely and the mark of the Applicant should be allowed to register.

C. Conclusion

The Applicant submits that its mark CELLULIFE is entitled to registration on the Principal Register for the goods identified in its pending application, and respectfully requests that the final refusal to register the mark made in the Final refusal dated August 6, 2010 be reversed and the mark be allowed to publish.

Respectfully, Submitted,

Dated: March 24, 2011

O'BANION & RITCHEY LLP

By:  \_\_\_\_\_.

Steven L. Smith, Esq. Reg. No. 44,343  
**O'BANION & RITCHEY LLP**  
400 Capitol Mall, Suite 1550  
Sacramento, California 95831  
(916) 498-1010  
**Attorneys for Applicant**  
*Charles L. Schel*

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51 and 52

Reg. No. 2,163,264

**United States Patent and Trademark Office**

Registered June 9, 1998

**TRADEMARK  
PRINCIPAL REGISTER**

**LIFECELL**

BERRY, JEAN (UNITED STATES CITIZEN)  
LIFECELL TECHNOLOGIES  
284 BAL BAY DR.  
BAL HARBOUR, FL 33154

FOR: DIETARY SUPPLEMENTS, NAMELY,  
VITAMINS, MINERALS, HERBS OR OTHER  
BOTANICAL EXTRACTS, AMINO ACIDS, ME-  
TABOLITES, EXTRACTS AND OTHER DIE-  
TARY SUBSTANCES USED TO SUPPLEMENT

THE DIET BY INCREASING THE TOTAL DIE-  
TARY INTAKE, IN CLASS 5 (U.S. CLS. 6, 18, 44,  
46, 51 AND 52).

FIRST USE 3-1-1995; IN COMMERCE  
3-1-1995.

SER. NO. 75-157,567, FILED 8-29-1996.

ANDREW BENZMILLER, EXAMINING AT-  
TORNEY

EXHIBIT   A

# United States of America

United States Patent and Trademark Office

## LIVE CELL

**Reg. No. 3,875,611**

NORTH AMERICAN PHARMACAL, INC. (CONNECTICUT CORPORATION)  
213 DANBURY ROAD  
WILTON, CT 06897

**Registered Nov. 16, 2010**

**Int. Cl.: 5**

FOR: PROBIOTIC NUTRITIONAL SUPPLEMENTS DERIVED FROM SPROUTED FOODS,  
IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

**TRADEMARK**

FIRST USE 4-3-2003; IN COMMERCE 4-3-2003.

**PRINCIPAL REGISTER**

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

SEC. 2(F).

SER. NO. 77-833,980, FILED 9-24-2009.

JOHN SCHUYLER YARD, EXAMINING ATTORNEY



*David J. Kappas*

Director of the United States Patent and Trademark Office

EXHIBIT   B

Int. Cl.: 42

Prior U.S. Cl.: 100

**United States Patent and Trademark Office**

**Reg. No. 1,475,428**

Registered Feb. 2, 1988

**SERVICE MARK  
PRINCIPAL REGISTER**

**LIFECELL**

LIFECELL CORPORATION (TEXAS CORPORATION)  
SUITE 1380  
PLAZA MEDICAL CENTER, 1200 BINZ  
STREET  
HOUSTON, TX 77004

FIRST USE 7-30-1986; IN COMMERCE  
7-30-1986.

SER. NO. 633,487, FILED 12-3-1986.

FOR: PREPARING AND PRESERVING  
TISSUE SAMPLES FOR USE BY OTHERS FOR  
LATER ANALYSIS, IN CLASS 42 (U.S. CL. 100).

MARGERY A. TIERNEY, EXAMINING ATTORNEY

EXHIBIT     C



Int. Cl.: 10

Prior U.S. Cl.: 44

**United States Patent and Trademark Office** **Reg. No. 1,466,274**  
Registered Nov. 24, 1987

**TRADEMARK  
PRINCIPAL REGISTER**

**LIFECELL**

BAXTER TRAVENOL LABORATORIES, INC.  
(DELAWARE CORPORATION)  
ONE BAXTER PARKWAY  
DEERFIELD, IL 60015

FOR: MEDICAL APPARATUS, NAMELY,  
CELL CULTURING TISSUE FLASK WITH  
SEPTUM AND BOTTLE CAPS, HANGERS,  
HOOKS, PLASMA EXTRACTOR, TUBE STRIP-

PER, HAND SEALER SLIPS AND COUPLER,  
IN CLASS 10 (U.S. CL. 44).  
FIRST USE 12-11-1986; IN COMMERCE  
12-11-1986.

SER. NO. 646,754, FILED 2-26-1987.

RICHARD A. STRASER, EXAMINING ATTOR-  
NEY

EXHIBIT   D

# United States of America

United States Patent and Trademark Office

## CellPrime

**Reg. No. 3,778,203**

**Registered Apr. 20, 2010**

**Int. Cls.: 1 and 5**

**TRADEMARK**

**PRINCIPAL REGISTER**

NOVOZYMES A/S (DENMARK CORPORATION)  
KROGSHOEJVEJ 36  
DK-2880 BAGSVAERD  
DENMARK

FOR: CHEMICALS USED IN INDUSTRY AND SCIENCE IN THE NATURE OF PROTEIN ADDITIVES; CHEMICAL USED IN INDUSTRY IN THE NATURE OF PROTEIN ADDITIVES FOR THE RESEARCH AND PREPARATION OF PHARMACEUTICALS, IN CLASS 1 (U.S. CLS. 1, 5, 6, 10, 26 AND 46).

FOR: PROTEIN SUPPLEMENTS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CELL", APART FROM THE MARK AS SHOWN.

PRIORITY DATE OF 9-29-2008 IS CLAIMED.

OWNER OF INTERNATIONAL REGISTRATION 0983010 DATED 10-28-2008, EXPIRES 10-28-2018.

THE MARK CONSISTS OF THE UNDERLINED WORDING "CELL PRIME" IN STYLIZED FONT.

SER. NO. 79-061,284, FILED 10-28-2008.

WILLIAM ROSSMAN, EXAMINING ATTORNEY



*David J. Kappas*

Director of the United States Patent and Trademark Office

EXHIBIT   E



United States Patent and Trademark Office

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# CELL KEM

**Word Mark** CELL KEM  
**Goods and Services** IC 005. US 006 018 044 046 051 052. G & S: Dietary and nutritional **supplements**  
**Standard Characters Claimed**  
**Mark Drawing Code** (4) STANDARD CHARACTER MARK  
**Serial Number** 85013181  
**Filing Date** April 13, 2010  
**Current Filing Basis** 1B  
**Original Filing Basis** 1B  
**Published for Opposition** March 22, 2011  
**Owner** (APPLICANT) RAMBOD, HANY INDIVIDUAL UNITED STATES 1484 POLLARD RD SUITE 222 LOS GATOS CALIFORNIA 95032  
**Attorney of Record** XAVIER MORALES  
**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CELL" APART FROM THE MARK AS SHOWN  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

EXHIBIT     F    

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Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51 and 52

Reg. No. 2,083,802

**United States Patent and Trademark Office**

Registered July 29, 1997

**TRADEMARK  
PRINCIPAL REGISTER**

**CELLFOOD**

RHOTEN, LARRY J. (UNITED STATES CITIZEN), DBA NU SCIENCE CORP.  
42541 N. 8TH ST. EAST  
LANCASTER, CA 93535

FIRST USE 2-1-1996; IN COMMERCE  
2-1-1996.

FOR: MINERAL SUPPLEMENTS FOR  
HUMAN CONSUMPTION, IN CLASS 5 (U.S.  
CLS. 6, 18, 44, 46, 51 AND 52).

SER. NO. 75-137,992, FILED 7-22-1996.

ANNA CALDERON, EXAMINING ATTORNEY

EXHIBIT 6

Int. Cls.: 3 and 5

Prior U.S. Cls.: 1, 4, 6, 18, 44, 46, 50, 51 and 52

**United States Patent and Trademark Office**

Reg. No. 2,873,939

Registered Aug. 17, 2004

**TRADEMARK  
PRINCIPAL REGISTER**

**CELLMAX**

HERBACEUTICALS, INC. (NEVADA CORPORATION)  
630 AIRPARK ROAD  
NAPA, CA 94558

FOR: NON-MEDICATED SKIN PREPARATIONS,  
NAMELY ASTRINGENTS, MOISTURIZERS, AND  
TONERS FOR COSMETIC USE, IN CLASS 3 (U.S.  
CLS. 1, 4, 6, 50, 51 AND 52).

FIRST USE 7-25-2003; IN COMMERCE 7-25-2003.

FOR: DIETARY SUPPLEMENTS AND HOMEOPATHIC PREPARATIONS TO SUPPORT HEALTHY HAIR, SKIN, NAILS, HEART, LUNGS, JOINTS, MUSCLES, AND CONNECTIVE TISSUES, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 7-25-2003; IN COMMERCE 7-25-2003.

SER. NO. 76-536,390, FILED 8-13-2003.

SHARI SHEFFIELD, EXAMINING ATTORNEY

EXHIBIT   H

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51 and 52

United States Patent and Trademark Office

Reg. No. 3,653,333

Registered July 14, 2009

TRADEMARK  
PRINCIPAL REGISTER

CELLAID

JIA XINFENG (CHINA INDIVIDUAL)  
FLAT 807, BL 9, CITY VALLEY, TONGGU RD  
NANSHAN DISTRICT, SHENZHEN  
GUANGDONG, 51800, CHINA

FOR: SOY PROTEIN FOR USE AS A NUTRITIONAL SUPPLEMENT IN VARIOUS POWDERED AND READY-TO-DRINK BEVERAGES; DIETETIC FOODS ADAPTED FOR MEDICAL USE; NUTRITIONAL ADDITIVES FOR MEDICAL PURPOSES FOR USE IN FOODS AND DIETARY SUPPLEMENTS FOR HUMAN CONSUMPTION; FOOD FOR BABIES; NUTRITIONALLY FORTIFIED BEVERAGES; DIETETIC SUGAR FOR MEDICAL USE;

MINERAL FOOD SUPPLEMENTS; POWDERED MILK FOR BABIES, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 10-3-2007; IN COMMERCE 10-3-2007.

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

SER. NO. 77-477,559, FILED 5-19-2008.

LEIGH LOWRY, EXAMINING ATTORNEY

EXHIBIT   1

# United States of America

United States Patent and Trademark Office

## OXICELL

**Reg. No. 3,906,255**

**Registered Jan. 18, 2011**

**Int. Cl.: 5**

**TRADEMARK**

**PRINCIPAL REGISTER**

APEX ENERGETICS, INC. (CALIFORNIA CORPORATION)  
16592 HALE AVE  
IRVINE, CA 92606

FOR: NUTRITIONAL SUPPLEMENTS, NAMELY, ANTIOXIDANTS IN CREAM FORM;  
NONE OF THE ABOVE FOR SKIN CARE AND ACNE CARE, IN CLASS 5 (U.S. CLS. 6, 18,  
44, 46, 51 AND 52).

FIRST USE 5-4-2004; IN COMMERCE 5-4-2004.

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

SER. NO. 77-762,391, FILED 6-17-2009.

ALEXANDER L. POWERS, EXAMINING ATTORNEY



*David J. Kappas*

Director of the United States Patent and Trademark Office

EXHIBIT

J

**Int. Cl.: 5**

**Prior U.S. Cls.: 6, 18, 44, 46, 51 and 52**

**United States Patent and Trademark Office**

**Reg. No. 2,651,897**

**Registered Nov. 19, 2002**

**TRADEMARK  
PRINCIPAL REGISTER**

**ENERLIFE**

ARDYSS INTERNATIONAL (NEVADA COR-  
PORATION)  
6780 S. PARADISE ROAD  
LAS VEGAS, NV 89119

FIRST USE 1-1-2002; IN COMMERCE 1-1-2002.

SER. NO. 76-361,865, FILED 1-24-2002.

FOR: DIETARY SUPPLEMENT DRINK MIXES  
PRIMARILY COMPRISED OF VITAMINS AND FI-  
BER, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

ALEXANDER L. POWERS, EXAMINING ATTOR-  
NEY

EXHIBIT     K



# United States of America

United States Patent and Trademark Office

## InstaLIFE

**Reg. No. 3,859,093**

**Registered Oct. 12, 2010**

**Int. Cl.: 5**

**TRADEMARK**

**PRINCIPAL REGISTER**

2KW, INC. (WASHINGTON CORPORATION)  
28913 NE. 2ND PLACE  
CARNATION, WA 98014

FOR: AMINO ACIDS FOR NUTRITIONAL PURPOSES; ANIMAL FEED ADDITIVE FOR USE AS A NUTRITIONAL SUPPLEMENT FOR MEDICAL PURPOSES; ANIMAL FEED ADDITIVES, NAMELY, ENZYMES FOR USE IN ANIMAL FEEDS TO ASSIST IN DIGESTION; DIETARY SUPPLEMENTS FOR ANIMALS; LIQUID NUTRITIONAL SUPPLEMENT; NON-MEDICATED ADDITIVES FOR ANIMAL FEED FOR USE AS NUTRITIONAL SUPPLEMENTS; NUTRITIONAL ADDITIVES FOR MEDICAL PURPOSES FOR USE IN FOODS AND DIETARY SUPPLEMENTS FOR HUMAN CONSUMPTION; NUTRITIONAL DRINK MIX FOR USE AS A MEAL REPLACEMENT; NUTRITIONAL DRINKS FOR ANIMALS; NUTRITIONAL DRINKS USED FOR MEAL REPLACEMENT; NUTRITIONAL ENERGY BARS FOR USE AS A MEAL SUBSTITUTE; NUTRITIONAL FOOD BARS FOR USE AS A MEAL REPLACEMENT; NUTRITIONAL MEAL REPLACEMENT BARS FOR INDIVIDUALS UNDERGOING MEDICAL TREATMENTS; NUTRITIONAL SHAKES FOR USE AS A MEAL SUBSTITUTE; NUTRITIONAL SUPPLEMENT IN THE NATURE OF A NUTRIENT-DENSE, PROTEIN-BASED DRINK MIX; NUTRITIONAL SUPPLEMENTS; POWDERED NUTRITIONAL SUPPLEMENT DRINK MIX; SOY PROTEIN FOR USE AS A NUTRITIONAL SUPPLEMENT IN VARIOUS POWDERED AND READY-TO-DRINK BEVERAGES; VITAMIN AND MINERAL SUPPLEMENTS; VITAMINS AND DIETARY FOOD SUPPLEMENTS FOR ANIMALS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 8-26-2009; IN COMMERCE 8-26-2009.

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

SER. NO. 77-814,959, FILED 8-28-2009.

DAVID H. STINE, EXAMINING ATTORNEY



*David J. Kappas*

Director of the United States Patent and Trademark Office

EXHIBIT   L

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52

Reg. No. 3,124,375

United States Patent and Trademark Office

Registered Aug. 1, 2006

TRADEMARK  
PRINCIPAL REGISTER

NATROLIFE

NATROLIFE INTERNATIONAL INC. (NEW  
YORK CORPORATION)  
22ND FLOOR  
PMB #2211 67 WALL STREET 22ND FLOOR  
NEW YORK, NY 100053111

FOR: NUTRACEUTICALS FOR USE AS A DIET-  
ARY SUPPLEMENT, IN CLASS 5 (U.S. CLS. 6, 18, 44,  
46, 51 AND 52).

FIRST USE 3-15-2005; IN COMMERCE 3-30-2005.

THE COLOR(S) PURPLE AND GREEN IS/ARE  
CLAIMED AS A FEATURE OF THE MARK.

THE MARK CONSISTS OF LETTERS NATRO  
ARE IN PURPLE COLOR THE O IS IN THE FORM  
OF A DESIGN WITH A LEAF WITHIN IT, FOL-  
LOWED BY THE WORD LIFE IN GREEN LETTERS.  
THE DESIGN IS UNDERLINED WITH A GREEN  
LINE.

SN 78-378,566, FILED 3-4-2004.

RONALD AIKENS, EXAMINING ATTORNEY

EXHIBIT     M

**Int. Cl.: 5**

**Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52**

**United States Patent and Trademark Office**

**Reg. No. 3,107,486**

**Registered June 20, 2006**

**TRADEMARK  
PRINCIPAL REGISTER**

**FEM-LIFE**

GENERAL MARKS, INC. (FLORIDA CORPORATION)  
2180 CALUMET STREET  
CLEARWATER, FL 33765

FIRST USE 5-5-2004; IN COMMERCE 9-15-2004.

SN 78-218,195, FILED 2-24-2003.

FOR: DIETARY SUPPLEMENT, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

ALICE SUE CARRUTHERS, EXAMINING ATTORNEY

EXHIBIT     N

Int. Cl.: 5

Prior U.S. Cl.: 18

**United States Patent and Trademark Office** **Reg. No. 1,401,820**  
Registered July 22, 1986

**TRADEMARK  
PRINCIPAL REGISTER**

**CELL-U-LOSS**

HERBALIFE INTERNATIONAL (CALIFORNIA  
LIMITED PARTNERSHIP)  
P.O. BOX 80210  
9800 LA CIENEGA BLVD.  
LOS ANGELES, CA 900800210

FIRST USE 7-18-1980; IN COMMERCE  
7-18-1980.

SER. NO. 571,407, FILED 12-2-1985.

FOR: NUTRITIONAL SUPPLEMENTS OF VI-  
TAMINS, MINERALS AND HERBS, IN CLASS 5  
(U.S. CL. 18).

TERRY ELLEN HOLTZMAN, EXAMINING AT-  
TORNEY

EXHIBIT 0

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52

**United States Patent and Trademark Office**

Reg. No. 2,582,943

Registered June 18, 2002

**TRADEMARK  
PRINCIPAL REGISTER**

**CELLUWAY**

L A WEIGHT LOSS CENTERS, INC. (DELAWARE  
CORPORATION)  
255 BUSINESS CENTER DRIVE  
SUITE 150  
HORSHAM, PA 19044

FIRST USE 11-12-1999; IN COMMERCE 11-12-1999.

SN 75-803,288, FILED 9-20-1999.

FOR: DIETARY SUPPLEMENTS, IN CLASS 5 (U.S.  
CLS. 6, 18, 44, 46, 51 AND 52).

TONI HICKEY, EXAMINING ATTORNEY

EXHIBIT P

Int. Cl.: 5

Prior U.S. Cl.: 18

**United States Patent and Trademark Office**

Reg. No. 1,765,205

Registered Apr. 13, 1993

**TRADEMARK  
PRINCIPAL REGISTER**

**FORM-U-LIFE**

SPECTRAMIN, INC. (FLORIDA CORPORATION)  
10561 N.W. 53RD STREET  
SUNRISE, FL 33351

FIRST USE 11-15-1991; IN COMMERCE  
11-15-1991.

SN 74-211,047, FILED 10-10-1991.

FOR: VITAMINS, MINERALS, AND FOOD  
SUPPLEMENTS, IN CLASS 5 (U.S. CL. 18).

JOHN MICHOS, EXAMINING ATTORNEY

EXHIBIT

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