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February 17, 2006

VIA EXPRESS MAIL NO. EV680072699US
Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Re: Opposition No. 91165942
Serial No.: 78/525,264
Mark: WIN FUEL & DESIGN
Filed: December 1, 2004
Published: July 7 2005
Our File No.: 041901-00017-034

Dear Sir or Madam:

Enclosed for filing in the U.S. Patent and Trademark Office are the following:

1. Stipulated Motion to Suspend Opposition Proceedings (in triplicate);

2. Exhibits A and B (in triplicate);

3. Certificate of Service to Counsel of Record; and

4. Return receipt postcard.

It is believed that no additional fee is due for submission of these papers. The Commissioner is hereby authorized to charge any additional fees that may be required to Deposit Account No. 12-1781 (041901-00017).

Respectfully submitted,

Bryan Haynes
For the Firm

SLS:djs
Enclosures

02-17-2006
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #34

DALLAS: 041901.00017: 1475242v1

CERTIFICATE OF MAILING UNDER 37 CFR § 1.10

I hereby certify that this document and its attachments are being deposited with the United States Postal Service, via Express Mail Post Office to Addressee service, as Express Mail No. EV680072699US, in an envelope addressed to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451, on this 17th day of February, 2006.

Printed Name: Bryan Haynes, Esq.

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

WELLNESS INTERNATIONAL, NETWORK, LTD.,	§	Serial Number: 78/525,264
	§	Filed: December 1, 2004
Opposer,	§	Mark: WIN FUEL & DESIGN
vs.	§	
WINFUEL, INC.,	§	Publication Date: July 7, 2005
Applicant.	§	Opposition No.: 91165942

TO: THE HONORABLE COMMISSIONER OF PATENTS AND TRADEMARKS

STIPULATED MOTION TO SUSPEND OPPOSITION PROCEEDINGS

Opposer, Wellness International Network, Ltd., a Texas limited partnership ("Wellness"), located and doing business at 5800 Democracy Drive, Plano, Texas 75024, which instituted the above-identified opposition proceedings against U.S. Trademark Application Serial No. 78/525,264 for the mark "WIN FUEL & DESIGN" (the "Opposition Proceeding") hereby respectfully requests that the Opposition Proceeding be suspended under the provisions of 37 C.F.R. Section 2.117(a) and TMBP Section 510.02(a), pending final determination of the lawsuit styled *Wellness International Network, Ltd. V. Winfuel, Inc.*, Civil Action No.3:05-CV-1697-P, In the United States District Court for the Northern District of Texas, Dallas Division (the "Lawsuit"), which Opposer instituted against Applicant. *Ex. A, Plaintiff's Original Complaint;*

Ex. B, Defendant's Original Answer. This Stipulated Motion is made with the consent of Winfuel, Inc.'s counsel, Kevin C. Dailey.

It is standard procedure for the Board to stay administrative proceedings pending the outcome of court litigation between the same parties involving related issues. *Alfred Dunhill of London, Inc. v. Dunhill Tailored Clothes, Inc.*, 293 F.2d 685, 130 U.S.P.Q. 412 (C.C.P.A. 1961), cert. denied, 369 U.S. 864, 8 L. Ed. 2d 84, 82 S. Ct. 1030, 133 U.S.P.Q. 702 (1962); *Whopper-Burger, Inc. v. Burger King Corp.*, 171 U.S.P.Q. 805, 1971 WL 16554 (T.T.A.B. 1971). Further, the Trademark Board Manual states that: "Ordinarily, the Board will suspend proceedings in the case before it if the final determination of the other proceeding will have a bearing on the issues before the Board." *T.B.M.P. § 510.02(a).* Furthermore, no dispositive motions or potentially dispositive motions are pending in this Opposition Proceeding. Accordingly, Trademark Rules of Procedure, § 2.117(b), is inapplicable to this Opposition Proceeding.

The Lawsuit involves numerous issues identical to and otherwise in common with those presented in this Opposition Proceeding. In particular, the outcome of the Lawsuit specifically involves a determination of whether the mark that is the subject of this Opposition Proceeding is confusingly similar to Opposer's trademarks, which is also one of the primary issues to be determined in this Opposition Proceeding. *See, Ex. A, Plaintiff's Original Complaint, paras. 17, 18, 23, 25, 27, 44 and 45.* Furthermore, and importantly, Opposer has requested in the Lawsuit, among other things, that the Court determine pursuant to 15 U.S.C. § 1119 whether the mark that is the subject of this Opposition Proceeding is entitled to registration on the principal register of the United States Patent and Trademark Office. *Ex. A., Plaintiff's Original Complaint, paras. 44 and 45.* Accordingly, the Board should suspend this Opposition Proceeding pending a final determination of the issues raised in the Lawsuit.

WHEREFORE, Opposer prays that proceedings for Opposition No. 91165942 against U.S. Trademark Application Serial No. 78/525,264 be suspended pending final determination of the Lawsuit for the reasons stated above.

This Stipulated Motion To Suspend Opposition Proceedings and attached Exhibits A and B are being filed in single copy form, with no fee required, pursuant to current guidelines followed by the Board.

Respectfully submitted,

Stephen L. Sapp
Bryan Haynes
Robert E. Nail
Locke Liddell & Sapp LLP
2200 Ross Avenue, Suite 2200
Dallas, TX 75201-6776
214/740-8570
214/756-8570 (Fax)

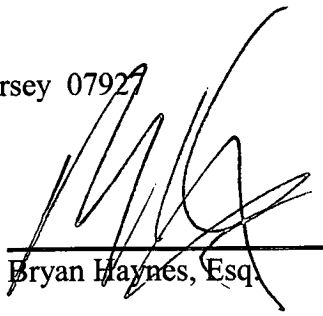
ATTORNEYS FOR OPPOSER, WELLNESS INTERNATIONAL NETWORK, LTD.

Dated: February 17, 2006

CERTIFICATE OF SERVICE

I hereby certify that a courtesy copy of the above and foregoing Stipulated Motion To Suspend Opposition Proceedings was mailed via Certified Mail Return Receipt Requested Number 7100 2039 1541 0009 6532, to the following correspondent of record for Applicant this 17th day of February, 2006:

Winfuel, Inc.
c/o Kevin C. Dailey
Legal Department
8 Ridgedale Avenue
Cedar Knolls, New Jersey 07927



Bryan Haynes, Esq.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

WELLNESS INTERNATIONAL NETWORK, LTD.,	§	
Plaintiff,	§	
v.	§	Civil Action No. _____
WINFUEL, INC.,	§	3-05 CV-1697P
Defendant.	§	

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

Wellness International Network, Ltd. ("WIN") files this Original Complaint as follows:

I.
PARTIES

1. Plaintiff WIN is a Texas limited partnership with its principal place of business at 5800 Democracy Drive, Plano, Texas 75024.

2. Defendant Winfuel, Inc. ("Defendant") is a New Jersey corporation with its principal place of business at 8 Ridgedale Avenue, Cedar Knolls, New Jersey 07927. It may be served by serving its registered agent, Corporation Service Company, 830 Bear Tavern Road, West Trenton, New Jersey 08628.

II.
JURISDICTION AND VENUE

3. This court has jurisdiction over the subject matter under 15 U.S.C. § 1121, 28 U.S.C. §§ 1331 and 1338(a) and (b). This Court has pendent jurisdiction of claims arising under state law pursuant to 28 U.S.C. §§ 1338(b) and 1367(a).

4. Defendant regularly and systematically conducts business in the State of Texas and in this District by advertising, soliciting and selling its products and services to customers in Texas and in this District. For example, the Defendant utilizes an interactive website through which consumers and potential consumers can purchase the Defendant's products. Additionally, Defendant sells its products through retailers in Texas and this District, such as Walgreens. Further, Defendant has marketed, promoted, given away and sold its product at certain sporting events in Texas and in this District such as the O'Reilly 300 and O'Reilly Challenge auto races held at the Texas Motor Speedway north of Fort Worth. Accordingly, Defendant is subject to the personal jurisdiction of this Court.

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant is a corporation and is subject to personal jurisdiction in this District, and because a substantial portion of the acts and omissions complained of herein occurred in this District.

III.
FACTS

A. The WIN Marks.

6. WIN produces, markets and sells in the United States and internationally a variety of health, nutritional, and personal care products, including dietary food supplements, in International Class 5. WIN also merchandises and promotes its own products and services and the products and services of others, particularly health, nutritional and personal care products, in International Classes 35 and 42 (collectively the "WIN Health Products and Services").

7. WIN owns U.S. Trademark Registration No. 1,790,083 for "WIN & DESIGN" in connection with dietary food supplements in International Class 5. The "WIN & DESIGN" mark was registered August 31, 1993 and has been in use in interstate commerce since at least September 18, 1992. Pursuant to 15 U.S.C. § 1065, the "WIN & DESIGN" mark under

Registration No. 1,790,083 is incontestable. A true and correct copy of Registration No. 1,790,083 is attached as Exhibit A.

8. WIN also owns a separate U.S. Trademark Registration No. 2,314,493 for "WIN & DESIGN" in connection with product merchandising of health and nutritional products, in International Class 35. This "WIN & DESIGN" mark was registered February 1, 2000 and has been in use in interstate commerce since at least September 18, 1992. Pursuant to 15 U.S.C. § 1065, this "WIN & DESIGN" mark under Registration No. 2,314,493 is also incontestable. A true and correct copy of Registration No. 2,314,493 is attached as Exhibit B.

9. WIN further owns U.S. Trademark Registration No. 2,422,626 for "WINRGY" in connection with nutritional and dietary food supplements and instructional manuals for use therewith, in International Class 5. The "WINRGY" mark was registered January 23, 2001 and has been in use in interstate commerce since at least October 20, 1993. A true and correct copy of Registration No. 2,422,626 is attached as Exhibit C.

10. Additionally, WIN owns U.S. Trademark Registration No. 2,600,464 for "WIN-MALL.COM & DESIGN" in connection with promoting the goods and services of others by means of operating an on-line shopping mall with links to the retail web sites of others, in International Class 35. The "WIN-MALL.COM & DESIGN" mark was registered July 30, 2002 and has been in use in interstate commerce since at least September 20, 2000. A true and correct copy of Registration No. 2,600,464 is attached as Exhibit D.

11. WIN also owns U.S. Trademark Registration No. 2,733,799 for "MYWINWEBPAGE.COM & DESIGN" in connection with computer services, namely, creating and maintaining web sites for others, in International Class 42. The "MYWINWEBPAGE.COM & DESIGN" mark registered July 8, 2003 and has been in use in

interstate commerce since at least September 20, 2000. A true and correct copy of Registration No. 2,733,799 is attached as Exhibit E.

12. WIN is also the owner of the common law trademark "WIN" in connection with dietary food supplements and in connection with product merchandising of health and nutritional products.

13. WIN's marks referenced herein are collectively referred to as the "WIN Marks." WIN is the exclusive owner of the WIN Marks.

14. WIN has engaged in extensive promotion of its products and services using the WIN Marks, and its customers and others have come to associate these marks with the source or origin of the WIN Health Products and Services. Among the numerous avenues of marketing WIN uses to promote its services is through its Internet web site. WIN's web site is linked to the "WINLTD.COM" Uniform Resource Locator, commonly known as a domain name ("URL"), which WIN owns. The web site is interactive and customers and potential customers use the site to obtain information on WIN's Health Products and Services. WIN uses the WIN Marks extensively throughout its Internet web site.

15. Additionally, in 2001, WIN, through certain of its distributors, began utilizing the sport of auto-racing to market the WIN Health Products and Services. Among other things, WIN, through its distributors, sponsors auto-racing teams during their participation in international auto-races. In connection with such sponsorship, the "WIN & DESIGN" mark is prominently displayed on the autos and the uniforms of the drivers, and is used throughout other marketing material utilized by the sponsored auto-racing teams. Examples of how the "WIN & DESIGN" mark is used in connection with auto racing are attached collectively as Exhibit F.

B. Defendant's Infringement and Unfair Competition.

16. Defendant has recently entered into the business of producing, marketing and selling multivitamins and dietary and nutritional supplements ("Defendant's Products"). The Defendant's Products compete with the WIN Health Products and Services, and are otherwise in the same class and category as the WIN Health Products and Services.

17. Defendant has advertised, offered for sale and sold its products using the designations "WINFUEL PLATINUM," "THE WINFUEL EDGE," "WINFUEL NRG," "WINFUEL IS THE FIRST EVER MULTI-VITAMIN THAT'S ALL ABOUT WINNING. THAT'S WHY WE CALL IT THE FIRST-EVER MULTI-VITAWIN," "WIN FUEL & DESIGN," "WINFUEL & DESIGN," "WIN & DESIGN," "I & DESIGN," "#1 MULTI VITAWIN," "NUMBER ONE MULTI VITAWIN," "VITAWIN," "1ST EVER MUTLI WIN VITAMIN," "1ST MULTI WIN VITAMIN," "MULTI WIN VITAMIN," "1ST EVER MULTIVITAWIN," "FIRST EVER MULTIVITAWIN," "1ST MULTIVITAWIN," "FIRST MULTIVITAWIN," "MULTIVITAWIN," "1ST EVER MULTI VITAWIN," "FIRST EVER MULTI VITAWIN," "1ST MULTI VITAWIN," "FIRST MULTI VITAWIN," "MULTI VITAWIN," "WINFUELKIDS," "WIN NRG," "WINFUELKID," "WIN FUEL," and "WINFUEL" (collectively, the "Infringing Marks").

18. In connection with its use or intent to use the Infringing Marks, Defendant has filed separate applications to register each of the Infringing Marks on the principal register of the United States Patent and Trademark Office. The natural and probable consequence of Defendant obtaining a registration of any of the Infringing Marks would be to give Defendant the *prima facie* exclusive right to the use of such mark(s). Such registration would be a source of irreparable damage and injury to WIN. Accordingly, WIN has timely opposed each of the

Defendant's applications which have published thus far, and WIN intends to timely oppose the registration of each of the other Infringing Marks as they publish for opposition.

19. Defendant is also the registered owner of the URL "WINFUEL.COM" (the "Infringing URL"). Defendant's Products are advertised, offered for sale and sold on the web pages displayed through the Infringing URL.

20. Defendant has also recently begun using auto-racing sponsorships to market Defendant's Products in a manner substantially similar to the manner in which WIN utilizes auto-racing sponsorships. Specifically, Defendant appears to have sponsored auto-racing teams for the purpose of having the Infringing Marks prominently displayed on the autos and uniforms of drivers, in addition to other marketing materials utilized by the auto-racing teams. Examples of how the Infringing Marks are used in connection with auto racing are attached collectively as Exhibit G.

21. Defendant began advertising, offering for sale, and selling its services using the Infringing Marks more than eleven (11) years after WIN adopted and began using the "WIN & Design" mark, and long after WIN adopted and began using the other WIN Marks. Furthermore, Defendant's use of the Infringing Marks and the Infringing URL have been without WIN's consent and, until recently, without WIN's knowledge.

22. Defendant's use of the Infringing Marks and the Infringing URL began at a time when Defendant had actual and/or constructive notice of WIN's exclusive right to use the WIN Marks. Despite such actual and/or constructive notice of WIN's exclusive right in and to the use of the WIN Marks, Defendant has intentionally infringed upon the WIN Marks by advertising and otherwise using the Infringing Marks and the Infringing URL.

23. The natural and probable consequence of Defendant's use of the Infringing Marks and the Infringing URL has been and will continue to be that the public and consumers will

likely be confused, misled, and deceived by the Defendant's competing products due to the similarity of the Infringing Marks and the Infringing URL to the WIN Marks, and such persons who are seeking WIN's business, products and services will likely be mistakenly led to deal with Defendant.

24. After learning that Defendant was using the Infringing Marks and the Infringing URL, WIN made demand that Defendant cease using the Infringing Marks and the Infringing URL on the grounds of, among other things, their confusing similarity to the WIN Marks. Despite receipt of such demand, however, Defendant has intentionally continued to unlawfully infringe upon the WIN Marks by using the Infringing Marks and the Infringing URL. As a result, consumers who would ordinarily do business with WIN have likely done business with, and are likely to continue to do business with Defendant believing they were and/or are doing business with WIN, and/or that they were and/or are obtaining WIN's products and services, thereby resulting in monetary damages and lost profits to WIN.

25. Additionally, Defendant's infringement upon the WIN Marks has caused WIN to lose control over its own reputation and goodwill, as well as other immeasurable damages. For the harm and loss suffered by WIN, and for the harm and loss that will continue but for intervention of this Court, WIN has no adequate remedy at law. Unless Defendant is enjoined from further infringement and unfair competition, WIN will suffer irreparable harm because the damages sustained will be immeasurable, unpredictable, and unending. Moreover, the Lanham Act and applicable state law specifically provide for injunctive relief to prevent further infringement of the WIN Marks.

26. All conditions precedent to this action have occurred or been waived.

IV.
CAUSES OF ACTION

A. Count I: Federal Trademark Infringement and Unfair Competition.

27. The above-referenced actions have caused and are likely to continue to cause confusion, or to cause mistake, or to deceive customers as to the affiliation, connection, or association of WIN with Defendant, or as to the origin, sponsorship or approval of Defendant's products and services by WIN in violation of 15 U.S.C. § 1125. As set forth above, such wrongful acts and unfair competition by Defendant has caused, and are likely to continue to cause, WIN to incur substantial damages. WIN seeks recovery from Defendant of all amounts it is entitled to under 15 U.S.C. § 1117(a), including without limitation: (1) Defendant's profits from the sale of each product and service marketed, advertised, sold or rendered using any of the Infringing Marks or the Infringing URL; (2) all damages sustained by WIN; (3) the costs of the action; and (4) an additional amount that the Court considers just.

B. Count II: Federal Dilution

28. The acts of Defendant complained of herein dilute or cause dilution of the distinctive quality of the WIN Marks, in violation of the Federal Trademark Dilution Act, 15 U.S.C. § 1125(c).

29. Defendant willfully intended to trade on the reputation of WIN and to dilute or cause dilution of the WIN Marks. WIN is therefore entitled to the damages resulting from Defendant's violation of the Federal Trademark Dilution Act.

C. Count III: Injury To Business Reputation And Dilution Under Texas Law

30. The foregoing acts of Defendant have resulted in dilution of the distinctive quality of the WIN Marks and have destroyed and continue to destroy the goodwill and reputation established by WIN in connection with the WIN Marks, thereby causing WIN irreparable harm.

31. The foregoing acts of Defendant accordingly constitute dilution of the distinctive quality of the WIN Marks, in violation of Texas Business & Commerce Code § 16.29, and Texas common law.

D. Count IV: Violation of the Anti-Cybersquatting Consumer Protection Act.

32. Defendant registered and began using the Infringing URL at least eleven (11) years after WIN began using the "WIN & DESIGN" designations, at least ten (10) years after WIN began using the "WINRGY" designation, and at least three (3) years after WIN began using the "WIN-MALL.COM & DESIGN" and "MYWINWEBPAGE.COM & DESIGN" designations.

33. The Infringing URL is identical to and otherwise confusingly similar to the WIN Marks. Specifically, the dominant distinctive component of the Infringing URL is identical to the dominant distinctive component of all of the WIN Marks.

34. Defendant knew or reasonably should have known of the WIN Marks at the time it sought registration for the Infringing URL. Further, the WIN Marks were distinctive in the subject market at least by the time Defendant applied for registration of the Infringing URL.

35. Defendant willfully intended to trade on WIN's reputation and/or the goodwill of the WIN Marks through its use of the Infringing URL, and otherwise intended to divert consumers and potential consumers from WIN for Defendant's own commercial gain.

36. As a result of Defendant's registration and use of the Infringing URL, WIN is entitled to the transfer of the Infringing URL, and the recovery of its damages, Defendant's profits received as a result of the infringement, costs of court, and attorney's fees pursuant to 15 U.S.C. § 1125(d)(1)(A). Additionally, pursuant to 15 U.S.C. § 1117(d), WIN is entitled to statutory damages in at least the amount of $100,000 for each of Defendant's violations of WIN's rights under the Lanham Act and the Anti-Cybersquatting Act.

E. Count VI: Unjust Enrichment.

37. Defendant has taken and infringed upon the WIN Marks for its own commercial benefit without compensation to WIN. As a result, Defendant has unjustly profited from the goodwill and reputation associated with the WIN Marks upon which Defendant unlawfully infringed. Accordingly, WIN seeks a full accounting and recovery from Defendant for the benefits and profits it has unjustly received.

F. Count VII: Common Law Unfair Competition.

38. The foregoing acts of Defendant constitute unfair competition, palming off, unjust enrichment, and misappropriation of WIN's rights in that such acts permit, and will continue to permit, Defendant to use and benefit from the goodwill and reputation earned by WIN to obtain an immediate customer acceptance for the products offered for sale and sold by Defendant under its identical and/or confusingly similar marks on the basis of reputation not established in Defendant's own right, and to give Defendant's products a marketableness they would not otherwise have, all at WIN's expense.

39. Defendant's continuing to offer products under identical, nearly identical and confusingly similar marks, will continue to constitute acts of unfair competition, palming off, unjust enrichment and misappropriation by Defendant against WIN, thereby causing irreparable harm.

40. The foregoing acts of Defendant accordingly constitute unfair competition, palming off, unjust enrichment and misappropriation of the common law of Texas and the common law of other States in which Defendant is conducting its activities.

G. Count VIII: Common Law Trademark Infringement

41. The acts of Defendant complained of herein constitute trademark infringement in violation of the common law of the State of Texas and the common law of other States in which Defendant is conducting its activities.

H. Count IX: Application for Injunctive Relief.

42. As set forth above, the Defendant's actions in violation of the Lanham Act, its violation of the Anti-Cybersquatting Consumer Protection Act, and its violation of applicable state law have caused, and are continuing to cause, substantial and irreparable damage to WIN for which there is no adequate remedy at law. WIN is, therefore, entitled to an injunction preventing the Defendant's continued infringement, including an injunction against the Defendant's continued use of the Infringing Marks and the Infringing URL. The Defendant has improperly used and will continue to improperly use the Infringing Marks and the Infringing URL unless prevented from doing so by this Court. While the Defendant illegally uses the Infringing Marks and the Infringing URL, WIN will continue to lose control over its own reputation and goodwill and the public and consumers will continue to likely be confused, misled, and deceived by the fact that the Infringing Marks and the Infringing URL are identical to and otherwise confusingly similar to the WIN Marks.

43. WIN requests that the Defendant, its employees, representatives, agents, members and others acting in concert with them be enjoined from: (1) advertising, marketing, selling or rendering any product or service or otherwise using or continuing to use the Infringing Marks or any other mark that is confusingly similar to the WIN Marks, (2) representing to any other person or entity that it has authority to use the WIN Marks, (3) representing to any other person or entity that Defendant or its products and services are in any manner associated with,

connected to, related to, sponsored by, affiliated with, endorsed by, approved by or recommended by WIN, and (4) using the Infringing URL.

I. Count X: Determination Of Right To Register

44. Pursuant to 15 U.S.C. § 1119, this Court has the power to determine the rights of Defendant to register the Infringing Marks on the principal register of the United States Patent and Trademark Office.

45. Pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d) and the priority of the WIN Marks, Defendants are not entitled to registration of the Infringing Marks. WIN is therefore entitled to a declaration by this Court that the trademark applications for each of the Infringing Marks must be refused by the United States Patent and Trademark Office.

J. Count IX: Attorneys' Fees.

46. Due to Defendant's wrongful conduct as alleged herein, WIN has retained the undersigned law firm to represent it and prosecute this action on its behalf, and has agreed to pay their reasonable attorneys' fees and expenses for prosecuting this action. Because Defendant's actions have been willful and deliberate, this is an exceptional case for which attorneys' fees are recoverable under 15 U.S.C. § 1117(a) and/or applicable state law, pursuant to which WIN requests an award of its attorneys' fees, costs, and expenses incurred in prosecuting this lawsuit.

V.
JURY DEMAND

47. WIN respectfully demands a jury.

VI.
RELIEF SOUGHT

48. WIN respectfully requests that Defendant be cited to appear and answer this suit, and that WIN be awarded the following relief from Defendant:

(a) That Defendant and all persons acting in concert with it be, upon application, preliminarily and, following trial, permanently enjoined from: (1) advertising, marketing, selling or rendering any product or service under or otherwise using or continuing to use the Infringing Marks or any other mark that is confusingly similar to the WIN Marks, (2) representing to any other person or entity that it has authority to use the WIN Marks, (3) representing to any other person or entity that Defendant or its products and services are in any manner associated with, connected to, related to, sponsored by, affiliated with, endorsed by, approved by or recommended by WIN, and (4) using the Infringing URL;

(b) That Defendant be required to report to WIN at least every 30 days its compliance with the preliminary injunction and the permanent injunction;

(c) That WIN receive and recover from Defendant all of: (1) Defendant's profits from each product and service marketed, advertised or sold using the Infringing Marks or Infringing URL; (2) all damages sustained by WIN; (3) costs of court; (4) statutory damages allowed by the Lanham Act; and (5) any additional amount that the Court determines to be just;

(d) That the Court determine that Defendant is not entitled to registration of the Infringing Marks on the principal register of the United States Patent and Trademark Office;

(e) That WIN receive and recover from Defendant WIN's actual damages under applicable state statutory and common law;

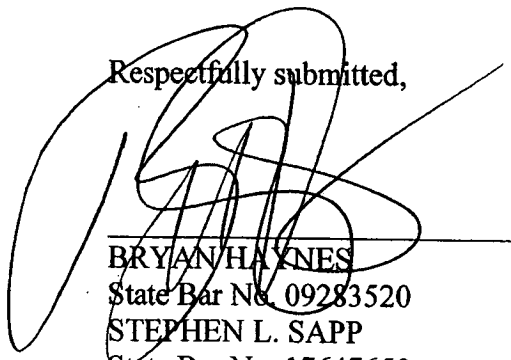
(f) That the Court order the transfer or forfeiture of the URL "WINFUEL.COM" from Defendant to WIN;

(g) That Defendant be ordered to pay WIN its reasonable costs, expenses, and attorneys' fees incurred in prosecuting this action, including any appeal;

(h) That WIN be awarded pre and post-judgment interest to the maximum extent allowed by law; and

(i) That WIN be awarded such other and further relief to which it may be justly entitled.

Respectfully submitted,



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State Bar No. 09283520
STEPHEN L. SAPP
State Bar No. 17647650
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ATTORNEYS FOR PLAINTIFF WELLNESS INTERNATIONAL NETWORK, LTD.

The United States of America

Nº 1790083

CERTIFICATE OF REGISTRATION

This is to certify that the records of the Patent and Trademark Office show that an application was filed in said Office for registration of the Mark shown herein, a copy of said Mark and pertinent data from the Application being annexed hereto and made a part hereof,

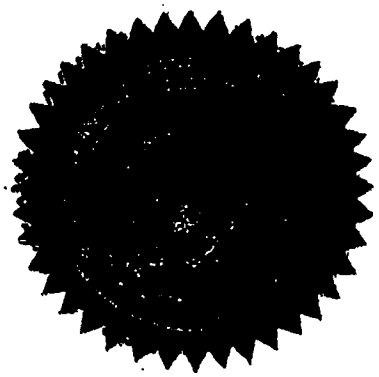
And there having been due compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents and Trademarks,

Upon examination, it appeared that the applicant was entitled to have said Mark registered under the Trademark Act of 1946, as amended, and the said Mark has been duly registered this day in the Patent and Trademark Office on the

PRINCIPAL REGISTER

to the registrant named herein.

This registration shall remain in force for TEN years unless sooner terminated as provided by law.



In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent and Trademark Office to be affixed this thirty-first day of August 1993.

Bruce Lehman

Commissioner of Patents and Trademarks

EXHIBIT A

Prior U.S. Cl.: 18

United States Patent and Trademark Office

Reg. No. 1,790,083
Registered Aug. 31, 1993

TRADEMARK
PRINCIPAL REGISTER

WELLNESS INTERNATIONAL NETWORK, INC. (COLORADO CORPORATION)
1501 LUNA ROAD, SUITE 102
CARROLLTON, TX 75006

FOR: DIETARY FOOD SUPPLEMENTS, IN CLASS 5 (U.S. CL. 18).
FIRST USE 9-16-1992; IN COMMERCE 9-18-1992.

THE LINING IS A FEATURE OF THE MARK AND DOES NOT INDICATE COLOR.

SER. NO. 74-340,949, FILED 12-17-1992.

NORA BUCHANAN WILL, EXAMINING ATTORNEY

EXHIBIT A

NOTICE

This Registration will be canceled by the Commissioner of Patents and Trademarks at the end of six years following the date of registration, unless within one year next preceding the expiration of such six years, the registrant files in the Patent and Trademark Office an affidavit showing that said mark is in use in Commerce or showing that its nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark. A fee of $100.00 for each class must accompany the affidavit.

EXHIBIT A

The United States of America

CERTIFICATE OF REGISTRATION
PRINCIPAL REGISTER

The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.

The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office; that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents and Trademarks; and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.

A copy of the Mark and pertinent data from the application are part of this certificate.

This registration shall remain in force for TEN (10) years, unless terminated earlier as provided by law, and subject to compliance with the provisions of Section 8 of the Trademark Act of 1946, as Amended.

Acting Commissioner of Patents and Trademarks

EXHIBIT B

Requirements for Maintaining a Federal Trademark Registration

SECTION 8: AFFIDAVIT OF CONTINUED USE

The registration shall remain in force for 10 years, except that the registration shall be canceled for failure to file an Affidavit of Continued Use under Section 8 of the Trademark Act, 15 U.S.C. §1058, upon the expiration of the following time periods:

i) At the end of 6 years following the date of registration.
ii) At the end of each successive 10-year period following the date of registration.

Failure to file a proper Section 8 Affidavit at the appropriate time will result in the cancellation of the registration.

SECTION 9: APPLICATION FOR RENEWAL

The registration shall remain in force for 10 years, subject to the provisions of Section 8, except that the registration shall expire for failure to file an Application for Renewal under Section 9 of the Trademark Act, 15 U.S.C. §1059, at the end of each successive 10-year period following the date of registration.

Failure to file a proper Application for Renewal at the appropriate time will result in the expiration of the registration.

No further notice or reminder of these requirements will be sent to the Registrant by the Patent and Trademark Office. It is recommended that the Registrant contact the Patent and Trademark Office approximately one year before the expiration of the time periods shown above to determine the requirements and fees for the filings required to maintain the registration.

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 2,314,493

Registered Feb. 1, 2000

SERVICE MARK
PRINCIPAL REGISTER

WELLNESS INTERNATIONAL NETWORK, LTD.
(TEXAS LIMITED PARTNERSHIP)
1501 LUNA ROAD, BUILDING 102
CARROLLTON, TX 75006

FOR: PRODUCT MERCHANDISING OF HEALTH AND NUTRITIONAL PRODUCTS THROUGH DIRECT SALES AND MULTI-LEVEL MARKETING CHANNELS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 9-16-1992; IN COMMERCE 9-18-1992.

OWNER OF U.S. REG. NOS. 1,790,083, 1,854,485 AND OTHERS.

THE LINING IS A FEATURE OF THE MARK AND DOES NOT INDICATE COLOR, AND COLOR IS NOT CLAIMED AS A FEATURE OF THE MARK.

SER. NO. 75-630,546, FILED 1-29-1999.

BARBARA RUTLAND, EXAMINING ATTORNEY

EXHIBIT B

The United States of America

CERTIFICATE OF REGISTRATION
PRINCIPAL REGISTER

The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.

The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office; that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Director of the United States Patent and Trademark Office; and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.

A copy of the Mark and pertinent data from the application are part of this certificate.

This registration shall remain in force for TEN (10) years, unless terminated earlier as provided by law, and subject to compliance with the provisions of Section 8 of the Trademark Act of 1946, as Amended.

Nicholas P. Godici

Acting Director of the United States Patent and Trademark Office

EXHIBIT C

Requirements for Maintaining a Federal Trademark Registration

SECTION 8: AFFIDAVIT OF CONTINUED USE

The registration shall remain in force for 10 years, except that the registration shall be canceled for failure to file an Affidavit of Continued Use under Section 8 of the Trademark Act, 15 U.S.C. §1058, upon the expiration of the following time periods:

i) At the end of 6 years following the date of registration.
ii) At the end of each successive 10-year period following the date of registration.

Failure to file a proper Section 8 Affidavit at the appropriate time will result in the cancellation of the registration.

SECTION 9: APPLICATION FOR RENEWAL

The registration shall remain in force for 10 years, subject to the provisions of Section 8, except that the registration shall expire for failure to file an Application for Renewal under Section 9 of the Trademark Act, 15 U.S.C. §1059, at the end of each successive 10-year period following the date of registration.

Failure to file a proper Application for Renewal at the appropriate time will result in the expiration of the registration.

No further notice or reminder of these requirements will be sent to the Registrant by the Patent and Trademark Office. It is recommended that the Registrant contact the Patent and Trademark Office approximately one year before the expiration of the time periods shown above to determine the requirements and fees for the filings required to maintain the registration.

Int. Cl.: 5

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

Reg. No. 2,422,626

United States Patent and Trademark Office

Registered Jan. 23, 2001

TRADEMARK
PRINCIPAL REGISTER

WINRGY

WELLNESS INTERNATIONAL NETWORK, LTD. (TEXAS LIMITED PARTNERSHIP)
1501 LUNA ROAD, BLDG. 102
CARROLLTON, TX 75006

FOR: NUTRITIONAL AND DIETARY FOOD SUPPLEMENTS AND INSTRUCTIONAL MANUALS FOR USE THEREWITH SOLD AS A UNIT, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 10-20-1993; IN COMMERCE 11-12-1993.

OWNER OF U.S. REG. NOS. 1,790,083, 1,913,678 AND OTHERS.

SER. NO. 75-586,496, FILED 11-11-1998.

BARBARA RUTLAND, EXAMINING ATTORNEY

EXHIBIT C

The United States of America

CERTIFICATE OF REGISTRATION
PRINCIPAL REGISTER

The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.

The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office; that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Director of the United States Patent and Trademark Office; and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.

A copy of the Mark and pertinent data from the application are part of this certificate.

This registration shall remain in force for TEN (10) years, unless terminated earlier as provided by law, and subject to compliance with the provisions of Section 8 of the Trademark Act of 1946, as Amended.

Director of the United States Patent and Trademark Office

EXHIBIT D

Requirements for Maintaining a Federal Trademark Registration

SECTION 8: AFFIDAVIT OF CONTINUED USE

The registration shall remain in force for 10 years, except that the registration shall be canceled for failure to file an Affidavit of Continued Use under Section 8 of the Trademark Act, 15 U.S.C. §1058, upon the expiration of the following time periods:

i) At the end of 6 years following the date of registration.
ii) At the end of each successive 10-year period following the date of registration.

Failure to file a proper Section 8 Affidavit at the appropriate time will result in the cancellation of the registration.

SECTION 9: APPLICATION FOR RENEWAL

The registration shall remain in force for 10 years, subject to the provisions of Section 8, except that the registration shall expire for failure to file an Application for Renewal under Section 9 of the Trademark Act, 15 U.S.C. §1059, at the end of each successive 10-year period following the date of registration.

Failure to file a proper Application for Renewal at the appropriate time will result in the expiration of the registration.

No further notice or reminder of these requirements will be sent to the Registrant by the Patent and Trademark Office. It is recommended that the Registrant contact the Patent and Trademark Office approximately one year before the expiration of the time periods shown above to determine the requirements and fees for the filings required to maintain the registration.

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 2,600,464

Registered July 30, 2002

SERVICE MARK
PRINCIPAL REGISTER

WIN-Mall.com

WELLNESS INTERNATIONAL NETWORK, LTD.
(TEXAS LIMITED PARTNERSHIP)
5800 DEMOCRACY DRIVE
PLANO, TX 75024

FOR: PROMOTING THE GOODS AND SERVICES OF OTHERS BY MEANS OF OPERATING AN ON-LINE SHOPPING MALL WITH LINKS TO THE RETAIL WEB SITES OF OTHERS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 9-20-2000; IN COMMERCE 9-20-2000.

OWNER OF U.S. REG. NOS. 1,790,083, 2,422,626 AND OTHERS.

SER. NO. 76-158,204, FILED 11-2-2000.

JAMES MARCUS, EXAMINING ATTORNEY

EXHIBIT D

The United States of America

CERTIFICATE OF REGISTRATION
PRINCIPAL REGISTER

The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.

The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office; that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Director of the United States Patent and Trademark Office; and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.

A copy of the Mark and pertinent data from the application are part of this certificate.

This registration shall remain in force for TEN (10) years, unless terminated earlier as provided by law, and subject to compliance with the provisions of Section 8 of the Trademark Act of 1946, as Amended.

Director of the United States Patent and Trademark Office

EXHIBIT E

Requirements for Maintaining a Federal Trademark Registration

SECTION 8: AFFIDAVIT OF CONTINUED USE

The registration shall remain in force for 10 years, except that the registration shall be canceled for failure to file an Affidavit of Continued Use under Section 8 of the Trademark Act, 15 U.S.C. §1058, upon the expiration of the following time periods:

i) At the end of 6 years following the date of registration.
ii) At the end of each successive 10-year period following the date of registration.

Failure to file a proper Section 8 Affidavit at the appropriate time will result in the cancellation of the registration.

SECTION 9: APPLICATION FOR RENEWAL

The registration shall remain in force for 10 years, subject to the provisions of Section 8, except that the registration shall expire for failure to file an Application for Renewal under Section 9 of the Trademark Act, 15 U.S.C. §1059, at the end of each successive 10-year period following the date of registration.

Failure to file a proper Application for Renewal at the appropriate time will result in the expiration of the registration.

No further notice or reminder of these requirements will be sent to the Registrant by the Patent and Trademark Office. It is recommended that the Registrant contact the Patent and Trademark Office approximately one year before the expiration of the time periods shown above to determine the requirements and fees for the filings required to maintain the registration.

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 2,733,799

Registered July 8, 2003

SERVICE MARK
PRINCIPAL REGISTER

MyWINWebpage.com

WELLNESS INTERNATIONAL NETWORK, LTD.
(TEXAS LIMITED PARTNERSHIP)
5800 DEMOCRACY DRIVE
PLANO, TX 75024

FOR: COMPUTER SERVICES, NAMELY, CREATING AND MAINTAINING WEB SITES FOR OTHERS, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 9-20-2000; IN COMMERCE 9-20-2000.

SER. NO. 76-158,677, FILED 11-2-2000.

GENE MACIOL, EXAMINING ATTORNEY

EXHIBIT E

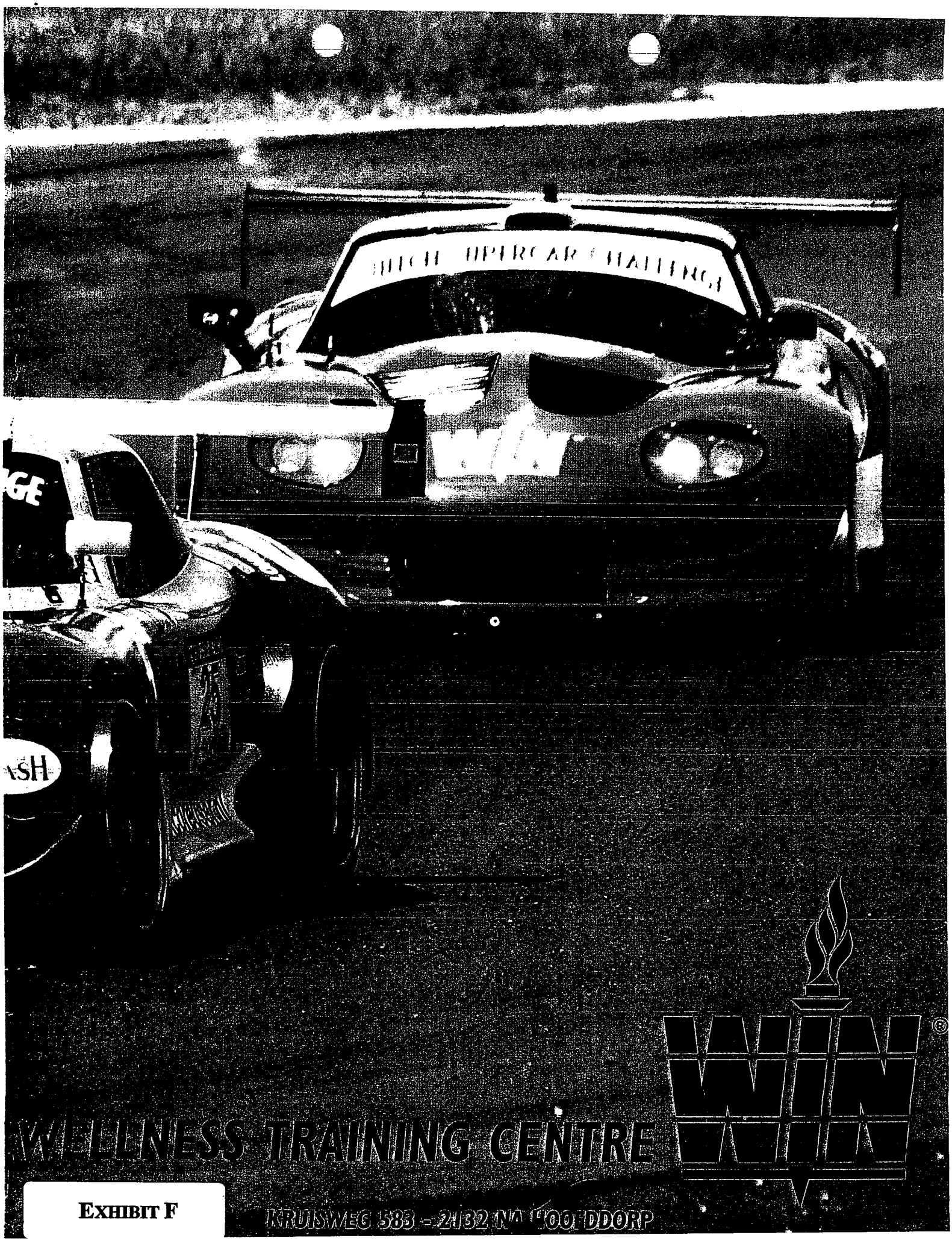

WELLNESS TRAINING CENTRE
WIN
KRUISWEG 583 - 2132 NA HOOFDDORP

EXHIBIT F

EXHIBIT F

EXHIBIT G

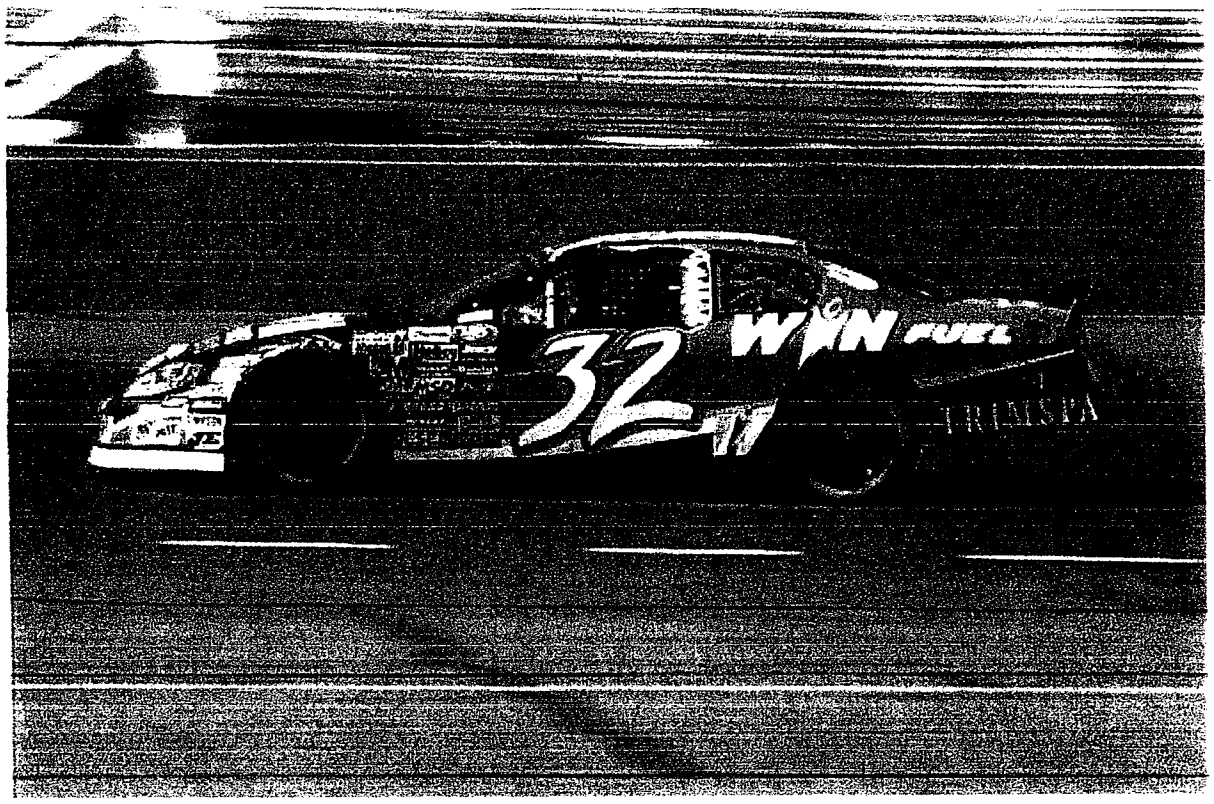


EXHIBIT G

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

WELLNESS INTERNATIONAL, NETWORK, LTD.	§	
Plaintiff,	§	
v.	§	Civil Action No. 3-05CV-1697-P
WINFUEL, INC.,	§	
Defendant.	§	

DEFENDANT'S ORIGINAL ANSWER

WINFUEL, INC. (the "Defendant") files this Answer to the Original Complaint filed by Wellness International Network, Ltd. (the "Plaintiff") and states as follows:

I.

PARTIES

1. Defendant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 1 of the Plaintiff's Complaint.

2. Defendant admits it is a New Jersey corporation and that it may be service via its registered agent. Defendant denies the remaining allegations contained in Paragraph 2 of the Plaintiff's Complaint.

II.

JURISDICTION AND VENUE

3. Defendant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 3 of the Plaintiff's Complaint.

4. Defendant admits the allegations contained in Paragraph 4 of the Plaintiff's Complaint.

5. Defendant admits that it is a corporation and subject to personal jurisdiction, but is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 5 of the Plaintiff's Complaint.

III.

FACTS

A. The WIN Marks

6. Defendant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 6 of the Plaintiff's Complaint.

7. Defendant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 7 of the Plaintiff's Complaint.

8. Defendant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 8 of the Plaintiff's Complaint.

9. Defendant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 9 of the Plaintiff's Complaint.

10. Defendant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 10 of the Plaintiff's Complaint.

11. Defendant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 11 of the Plaintiff's Complaint.

12. Defendant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 12 of the Plaintiff's Complaint.

13. Defendant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 13 of the Plaintiff's Complaint.

14. Defendant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 14 of the Plaintiff's Complaint.

15. Defendant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 15 of the Plaintiff's Complaint.

B. Defendant's Infringement and Unfair Competition.

16. Defendant admits that it has recently entered into the business of producing, marketing and selling multivitamins and dietary supplements. Defendant is without knowledge or information sufficient to admit or deny the remaining allegations contained in Paragraph 16 of the Plaintiff's Complaint.

17. Defendant admits that it has advertised, offered for sale and sold its products using certain of the marks listed in Paragraph 17 of the Plaintiff's Complaint. Defendant denies the remaining allegations contained in Paragraph 17 of the Plaintiff's Complaint. Defendant further denies for all purposes herein that the use by Plaintiff of the defined term "Infringing Marks" is a true and correct characterization, and instead simply acknowledges that Plaintiff uses the defined term to refer to those marks described in Paragraph 17.

18. Defendant admits that is has filed separate applications to register its Marks on the principal register of the United States Patent and Trademark Office. Defendant denies the remaining allegations contained in Paragraph 18 of the Plaintiff's Complaint.

19. Defendant admits the allegations contained in Paragraph 19 of the Plaintiff's Complaint.

20. Defendant admits that it utilizes auto-racing sponsorships to market its products, including the instance depicted in Exhibit G. Defendant denies the remaining allegations contained in Paragraph 20 of the Plaintiff's Complaint.

21. Defendant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 21 of the Plaintiff's Complaint.

22. Defendant denies the allegations contained in Paragraph 22 of the Plaintiff's Complaint.

23. Defendant denies the allegations contained in Paragraph 23 of the Plaintiff's Complaint.

24. Defendant admits that it received a Cease and Desist letter from Plaintiff with respect to Defendant's use of its Marks. Defendant denies the remaining allegations contained in Paragraph 24 of the Plaintiff's Complaint.

25. Defendant denies the allegations contained in Paragraph 25 of the Plaintiff's Complaint.

26. Defendant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 26 of the Plaintiff's Complaint.

IV.

CAUSES OF ACTION

A. Count I: Federal Trademark Infringement and Unfair Competition.

27. Defendant denies the allegations contained in Paragraph 27 of the Plaintiff's Complaint and denies that Plaintiff is entitled to any recovery from Defendant.

B. Count II: Federal Dilution.

28. Defendant denies the allegations contained in Paragraph 28 of the Plaintiff's Complaint.

29. Defendant denies the allegations contained in Paragraph 29 of the Plaintiff's Complaint.

C. Count III: Injury to Business Reputation And Dilution Under Texas Law.

30. Defendant denies the allegations contained in Paragraph 30 of the Plaintiff's Complaint.

31. Defendant denies the allegations contained in Paragraph 31 of the Plaintiff's Complaint.

D. Count IV: Violation of the Anti-Cybersquatting Consumer Protection Act.

32. Defendant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 32 of the Plaintiff's Complaint.

33. Defendant denies the allegations contained in Paragraph 33 of the Plaintiff's Complaint.

34. Defendant denies the allegations contained in Paragraph 34 of the Plaintiff's Complaint.

35. Defendant denies the allegations contained in Paragraph 35 of the Plaintiff's Complaint.

36. Defendant denies the allegations contained in Paragraph 36 of the Plaintiff's Complaint and denies that Plaintiff is entitled to any recovery from Defendant.

(Plaintiff's Complaint does not contain a Count V.)

E. Count VI: Unjust Enrichment.

37. Defendant denies the allegations contained in Paragraph 37 of the Plaintiff's Complaint and denies that Plaintiff is entitled to any recovery from Defendant.

F. Count VII: Common Law Unfair Competition.

38. Defendant denies the allegations contained in Paragraph 38 of the Plaintiff's Complaint.

39. Defendant denies the allegations contained in Paragraph 39 of the Plaintiff's Complaint.

40. Defendant denies the allegations contained in Paragraph 40 of the Plaintiff's Complaint.

G. Count VIII: Common Law Trademark Infringement.

41. Defendant denies the allegations contained in Paragraph 41 of the Plaintiff's Complaint.

H. Count IX: Application for Injunctive Relief.

42. Defendant denies the allegations contained in Paragraph 42 of the Plaintiff's Complaint.

43. Defendant denies the allegations contained in Paragraph 43 of the Plaintiff's Complaint, to the extent that any allegations are made therein.

I. Count X: Determination of Right to Register.

44. The allegations contained in Paragraph 44 of the Plaintiff's Complaint state a legal conclusion to which no response is required.

45. Defendant denies the allegations contained in Paragraph 45 of the Plaintiff's Complaint.

J. Count XI (*incorrectly numbered as "Count IX" in Plaintiff's Complaint*): Attorney's Fees.

46. Defendant admits that Plaintiff has retained the law firm of Locke, Liddell & Sapp, LLP to represent it in this matter. Defendant denies the remaining allegations contained in Paragraph 46 of the Plaintiff's Complaint.

Seventh Defense

The Plaintiff's Complaint is barred, in whole or in part, by the doctrine of unclean hands.

Eighth Defense

Defendant reserves its right to raise such further and additional defenses as may be available upon the facts to be developed in discovery and under other applicable substance of law.

CONCLUSION AND PRAYER

Defendant respectfully requests the entry of judgment in its favor and against Plaintiff dismissing with prejudice the Plaintiff's Complaint and an award in favor of Defendant against Plaintiff for attorneys fees and costs of suit and such further relief as this Honorable Court deems equitable and just, and for such other and further relief to which it may be justly entitled.

Respectfully Submitted,

Kevin C. Dailey by Mon Latin w/ permissio

Kevin C. Dailey
Motion for Admission Pro Hac Vice Pending
35 Melanie Lane
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Telephone: 973-267-4400 x 3668
Telecopier: 973-267-6951

Monica Wiseman Latin
State Bar No. 00787881
Craig W. Weinlein
State Bar No. 21095500
Omar Kilany
State Bar No. 24026974
CARRINGTON, COLEMAN, SLOMAN & BLUMENTHAL, L.L.P.
200 Crescent Court, Suite 1500
Dallas, Texas 75201
Telephone: 214-855-3000
Telecopier: 214-855-1333

Attorneys for Defendant

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause in accordance with Rule 5, Federal Rules of Civil Procedure, on this 26th day of September, 2005.

/s/ Mon Latin