ESTTA Tracking number:

ESTTA143730

Filing date:

06/01/2007

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

Proceeding	91174465
Party	Defendant First Quality Hygienic, Inc. First Quality Hygienic, Inc. Suite 500 80 Cuttermill Road Great Neck, NY 11021 ptodocket@arelaw.com
Correspondence Address	HOLLY PEKOWSKY, ESQ. AMSTER, ROTHSTEIN & EBENSTEIN LLP 90 PARK AVE NEW YORK, NY 10016-1301 UNITED STATES ptodocket@arelaw.com
Submission	Reply in Support of Motion
Filer's Name	Holly Pekowsky
Filer's e-mail	ptodocket@arelaw.com
Signature	/Holly Pekowsky/
Date	06/01/2007
Attachments	Reply Memorandum in Support of Applicant's Motion to File Amended Answer.pdf (7 pages)(378572 bytes) Second Declaration in Support of Applicant's Motion to File Amended Answer.pdf (28 pages)(2663347 bytes)

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

In the matter of Trademark Application:

Applicant

First Quality Hygienic, Inc.

Serial No.

78/704,010

Mark

FEMTEX

Serial No. :

78/854,326

Mark

FEMTEX CROWN JEWEL

VITAMIN WORLD, INC.,

Opposer,

Consolidated Opposition Nos.

91174465 (Parent)

and 91174466

Applicant.

FIRST QUALITY HYGIENIC, INC.,

APPLICANT'S MOTION TO FILE AN AMENDED ANSWER

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF

I. INTRODUCTION

Applicant First Quality Hygienic, Inc. ("FQH") submits this Reply Memorandum of Law in further support of its Motion to amend its Answer to assert a counterclaim to cancel Registration No. 2,438,301 ("the Subjection Registration").

Applicant seeks to cancel the Subject Registration, which is for the mark FEMGEST (the "FEMGEST Mark") as applied to medicated topical transdermal creams for application to irritated or itchy skin ("Creams for Irritated or Itchy Skin") on the grounds that: (1) Opposer Vitamin World, Inc. ("Vitamin") abandoned the FEMGEST

Mark; and (2) Vitamin committed fraud on the U.S. Patent and Trademark Office when it obtained and maintained the Subject Registration. ¹

II. Argument

1. If Vitamin Had Used The FEMGEST Mark On Creams For Irritated Or Itchy Skin, It Would Have Affirmatively Stated So In Its Opposition To FQH's Motion

FQH seeks to cancel the Subject Registration on the basis that neither Vitamin nor its predecessors-in-interest used the FEMGEST Mark in connection with Creams For Irritated Or Itchy Skin. Surely, if Vitamin or its predecessors-in-interest had used the FEMGEST Mark in connection with these goods, Vitamin would have stated this in a simple declaration (with or without documentary evidence) in opposition to FQH's Motion. It failed to do so.

Vitamin makes a transparent attempt to distract the Board from this fatal failure by arguing (without any supporting evidence) that the smoking gun label on its FEMGEST progesterone cream which states: "Do **not** apply to broken or irritated skin or areas affected by rashes" (emphasis added) should **not** be taken at face value because such "warning notices" "are routinely and regularly placed on labels." Mem. in Opposition at p. 9. Vitamin's allegation that it was able to find three instances in which a product which is the subject of a trademark registration for "irritated or scarred skin" contains a warning not to use the product on broken skin, even if true, is simply not a substitute for a clear statement from Vitamin that **its** product is, in fact, intended for use on irritated or itchy skin.

369601.1 -2-

¹ The Board has the discretion to consider a Reply brief. *See* T.B.M.P. § 3:17. Since Vitamin World's Opposition raises new issues and/or mischaracterizes FQH's position, it is respectfully submitted that the Board should consider this Reply. *See Id.*

In any event, Vitamin has mischaracterized the nature of the three referenced registrations. Specifically: (1) Vitamin Exh. D is a printout of a registration for "topical gel for the treatment of scars," and a scar is not broken skin (see Second Pekowsky Decl., Exhibit B, submitted concurrently herewith, defining a scar as "a mark left (as in the skin) by the healing of injured tissue"); (2) Vitamin Exh. E is a printout of a registration for a topical pain reliever for nerve damage caused by shingles, diabetes, injury and related causes, which suggests that the product is not used on broken skin, but rather, on skin that has already healed; and (3) Vitamin Exh. F is a printout of a registration for cosmetics, which has nothing to do with broken skin. Moreover, although the mark is apparently used for a product to help improve the appearance of scars, as indicated above, a scar is not broken skin.

Vitamin's attempt to distract the Board with its advertisements is equally unavailing. Although the advertisements may not expressly state "do not use on irritated or itchy skin" this does not mean that Vitamin's cream is **intended** for use on irritated or itchy skin. This is particularly true since the advertisements tout alleged advantages of the product, such as relieving hot flashes, night sweats and mood changes, none of which relate to irritated or itchy skin. *See* Pekowsky Decl., Exhs. E and G.²

2. <u>FQH's Counterclaim Is Not Untimely</u>

Contrary to Vitamin's contention, when FQH filed its Answer, it had no reason to suspect that the FEMGEST Mark was not being used for the goods covered by the Subject Registration. Indeed, Vitamin specifically alleged in Par. 2 of the Notices of Opposition

369601.1 -3-

² "Pekowsky Decl." refers to the Declaration of Holly Pekowsky, submitted concurrently with FQH's Memorandum Of Law In Support Of Applicant's Motion To File An Amended Answer.

that it was using the Mark in connection with these goods. Vitamin's allegation that FQH, as the defendant in the Oppositions, had an affirmative duty, at the time it answered the Notices of Opposition, to locate and purchase Vitamin's cream, even though it had no reason at that time to suspect that Vitamin had abandoned the FEMGEST Mark, is clearly a misstatement of the law.

Indeed, it is Vitamin which had a duty to confirm that its Mark was in use in connection with the goods covered by the Subject Registration **before** asserting the Registration in the Oppositions. *See* T.B.M.P. § 5:27.02 (a party in a Board proceeding may be subject to sanctions if it violates Rule 11, Fed. R. Civ. P., which requires, among other things, that "the allegations and other factual contentions have evidentiary support"); *The Clorox Co.. v. Chemical Bank*, 40 U.S.P.Q.2d 1098 n. 9 (T.T.A.B. 1996) (where respondent stated in its papers that the relevant assignment was recorded on a certain date and the related registration issued in the name of a certain entity, and those statements were "blatantly false", the Board cited Rule 11 and cautioned that "greater attention to accuracy in factual representations is expected.").

Vitamin's allegation that FQH could have learned of the non-use solely through the materials Vitamin provided during discovery (which, as previously advised, were not received until approximately March 22, 2007), is equally disingenuous. Vitamin neglects to tell the Board that none of the "specimens" it produced contain a clear copy of the label which currently appears on the product with the warning not to use the product on "broken or irritated skin or areas affected by rashes." The fact that neither a current

³ Contrary to Vitamin's contention (see Declaration In Opposition To Applicant's Motion at Par. 5), it did not provide specimens of FEMGEST products, but rather, photocopies of what appear to be portions of -4-

specimen nor a legible copy of the current label were provided appears to be a deliberate attempt on the part of Vitamin to mislead FQH and the Board.⁴

In any event, the amount of time between receipt of Vitamin's discovery by FQH's counsel on or about March 22 and FQH's Motion To Amend on April 23, 2007 is just over a month, and therefore, even calculated from this date, FQH's Motion was clearly timely. *See Turbo Sportswear, Inc. v. Marmot Mountain Ltd.,* 77 U.S.P.Q.2d 1152 (T.T.A.B. 2005) (granting motion filed approximately five weeks after discovering relevant facts); *Boral Ltd. v. FMC Corp.* 59 U.S.P.Q.2d 1701 (T.T.A.B. March 29, 2000) (granting motion filed approximately five weeks after relevant statute enacted).

The cases cited by Vitamin are clearly distinguishable. In *S&L Acquisition Co. v. Helene Arpels, Inc.*, 9 U.S.P.Q.2d 1221(T.T.A.B. 1987), there was no allegation that the **facts** relevant to the claim were unknown at the time the original answer was filed (the issue was whether the relevant case law was sufficiently developed at the time of the answer, and the Board held it was). In *Vitaline Corp. v. General Mills, Inc.*, 891 F.2d 273, 276 (Fed. Cir. 1989), the party which asserted a counterclaim for cancellation based on fraud in a Board proceeding sought, **three years later**, to bring a separate cancellation proceeding against the same registration based on abandonment, relying on the same facts it had alleged in its counterclaim three years earlier. Lastly, in *Capital Speakers, Inc. v. Capital Speakers Club of Washington, D.C., Inc.*, 41 U.S.P.Q.2d 1030 (T.T.A.B. 1996),

labels for the creams (as well as advertisements and labels for another FEMGEST product), without any indication as to whether they were actual labels or mock-ups, and whether they were currently in use. *See* Second Pekowsky Decl. at Exh. A.

369601.1

⁴ This conclusion is bolstered by the fact that the Bates Nos. for the "specimens" are referenced in the Declaration of Vitamin's counsel as "evidence" that the "specimens" were provided, but the actual documents were not included as part of Vitamin's Opposition to the Motion.

the motion to amend was made **three years after** the relevant factual information was obtained through discovery.

III. CONCLUSION

Based on the foregoing, it is respectfully requested that Applicant's Motion be granted in its entirety.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP Attorneys for First Quality Hygienic, Inc. 90 Park Avenue New York, New York 10016 (212) 336-8000

Dated: New York, New York

June 1, 2007

Kenneth P. George

Holly Pekowsky

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is one of the attorneys for Applicant

First Quality Hygienic, Inc. in the above-captioned opposition proceeding and that on the

date which appears below, caused copy of the foregoing REPLY MEMORANDUM OF

LAW IN FURTHER SUPPORT OF APPLICANT'S MOTION TO FILE AN AMENDED

ANSWER to be served on the attorneys for Opposer Vitamin World, Inc. by first class

mail by causing a copy thereof to be placed in a depository under the care and custody of

the United States Postal Service, in the State of New York, postage pre-paid, in wrappers

addressed as follows:

Scott B. Fisher, Esq. Jaspan Schlesinger Hoffman LLP

300 Garden City Plaza Garden City, NY 11530

Dated: New York, New York

June 1, 2007

369601.1

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

In the matter of Trademark Application:

Applicant

First Quality Hygienic, Inc.

Serial No. :

78/704,010

Mark

FEMTEX

Serial No. : 78/854,326

Mark

: FEMTEX CROWN JEWEL

VITAMIN WORLD, INC.,

Consolidated Opposition Nos.

91174465 (Parent)

Opposer,

and 91174466

v.

FIRST QUALITY HYGIENIC, INC.,

Applicant.

SECOND DECLARATION OF HOLLY PEKOWSKY IN FURTHER SUPPORT OF APPLICANT'S MOTION TO FILE AN AMENDED ANSWER

HOLLY PEKOWSKY declares as follows:

- I am an associate at the law firm of Amster Rothstein & Ebenstein LLP, 1. counsel of record to Applicant First Quality Hygienic, Inc. ("FQH") in the above-entitled Consolidated Oppositions (the "Oppositions").
- 2. I submit this Declaration in further support of FOH's Motion to amend its Answer to assert a counterclaim to cancel Registration No. 2,438,301 ("the Subjection Registration"), the registration asserted against FQH by Opposer Vitamin World, Inc. ("Vitamin") in the Oppositions.
- 3. Unless otherwise indicated, I have personal knowledge of the facts and circumstances set forth herein.

- 4. Attached as Exhibit A are the documents referenced in Paragraph 5 of Declaration in Opposition To Applicant's Motion For Leave To File An Amended Answer With Counterclaim which purportedly contain "specimens" of Vitamin's products sold under the FEMGEST Mark, namely, Bates-stamped documents VW0008, VW0010, VW0012, VW0014, VW0016, VW0071, VW0079-83, 89, VW0091-93, VW0096, VW0107, VW0110 and VW0190-92.
- 5. As is evident from a review of Exhibit A, these documents are not specimens of FEMGEST products, but rather, photocopies of what appear to be portions of labels for FEMGEST products, as well as some advertisements. There is no indication whether the labels are actual labels or mock-ups, and whether they are for current products or past products.
- 6. As is also evident from Exhibit A, none of the "specimens" Vitamin produced contain a clear copy of the label which currently appears on the product with the warning not to use the product on "broken or irritated skin or areas affected by rashes."
- 7. Attached as Exhibit B is a definition of the word "scar" from the online medical dictionary http://www.intelihealth.com/cgibin/dictionary.cgi?book=-Medical&adv=0&cgi=1&t=9276&p=%7Ebr%2CRNM%7C%7Est%2C331%7C%7Er%2CWSRNM000%7C%7Eb%2C*%7C&WEB_HOME=%2FIH%2F&MIVAL=ihtIH&WEB_HOST=http%3A%2F%2Fwww.intelihealth.com&va=scar&search.x=8&search.y=10

8. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that all of the foregoing is true and correct.

Executed in New York, New York this 1st day of June, 2007

Holly Pekowsky

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is one of the attorneys for FQH First

Quality Hygienic, Inc. in the above-captioned Opposition proceedings and that on the

date which appears below, caused copy of the foregoing SECOND DECLARATION OF

HOLLY PEKOWSKY IN FURTHER SUPPORT OF APPLICANT'S MOTION TO FILE AN

AMENDED ANSWER to be served on the attorneys for Opposer Vitamin World, Inc. by

first class mail by causing a copy thereof to be placed in a depository under the care and

custody of the United States Postal Service, in the State of New York, postage pre-paid,

in wrappers addressed as follows:

Scott B. Fisher, Esq.

Jaspan Schlesinger Hoffman LLP

300 Garden City Plaza

Garden City, NY 11530

Dated: New York, New York

June 1, 2007

EXHIBIT A

INGREDIENTS: Aloe Vera Gel in distilled Water, d-alpha Tocopherol and Mixed Tocopherols, Cetyl Alcohol, Almond Oil, Octyl Palmitate, Panthenol, Peg 3 Stearate, Glycerine, Progesterone, Polysorbate 60, Hyaluronic Acid, Oil of Lemon, Keratin, Carbomer 940, and Grapefruit Seed Extract. Contains MO Mineral Oil.

- Fem-Gest has not been tested on animals -

THE NATURAL CREAM FOR WOMEN

THE NATURAL CREAM FOR WOMEN

THE NATURAL CREAM FOR WOMEN

NET WT. 2 OZ.

THE ENCLOSED PRODUCT HAS BEEN SEALED FOR YOUR PROTECTION.

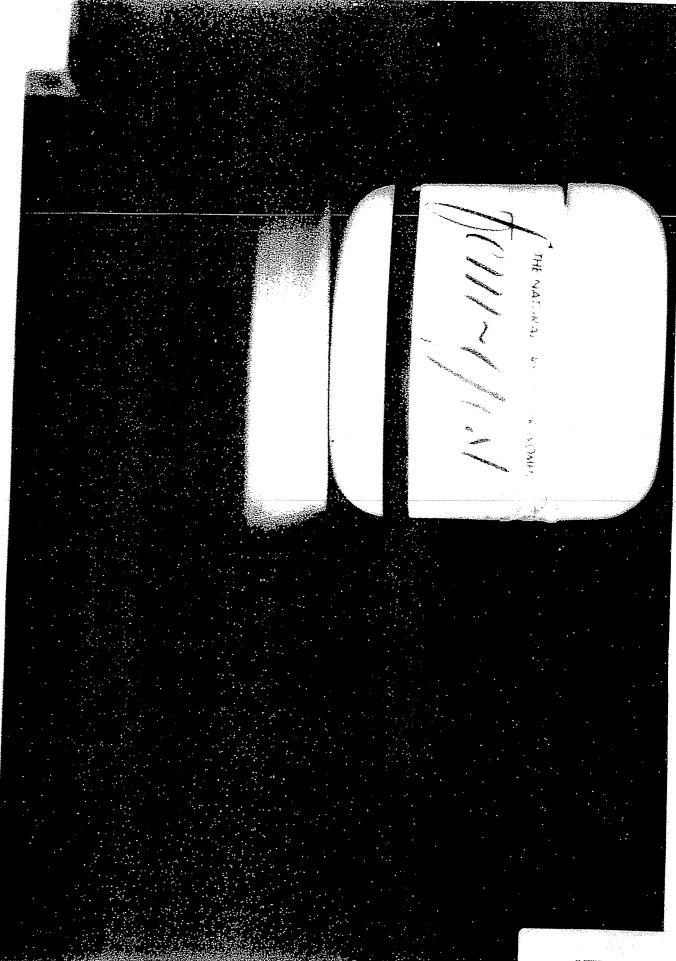
BIO-NUTRITIONAL FORMULAS, INC.º MINEOLA, NY 11501

Part of the proceeds will be donated to E.A.I.M.
The FOUNDATION for the ADVANCEMENT
of INNOVATIVE MEDICINE

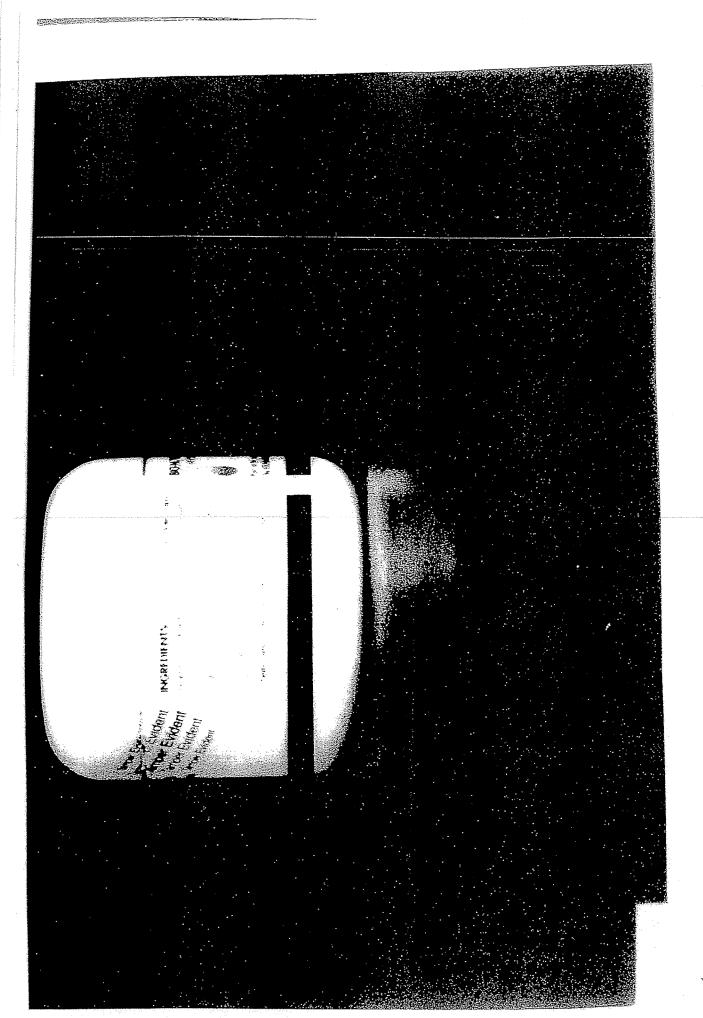
7 29427

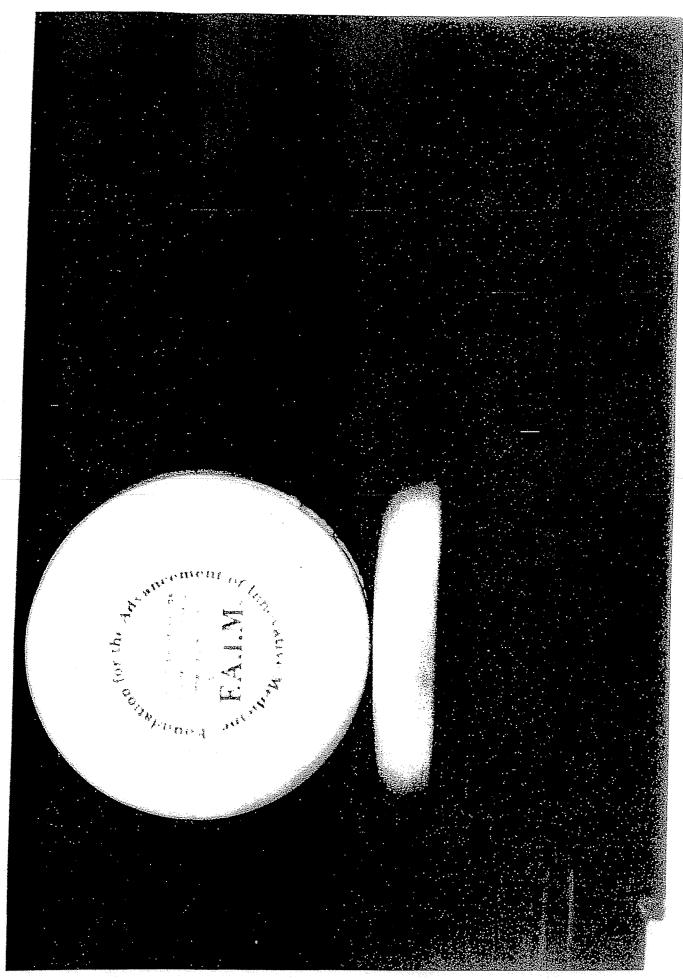
THE NATURAL CREAM FOR WOMEN

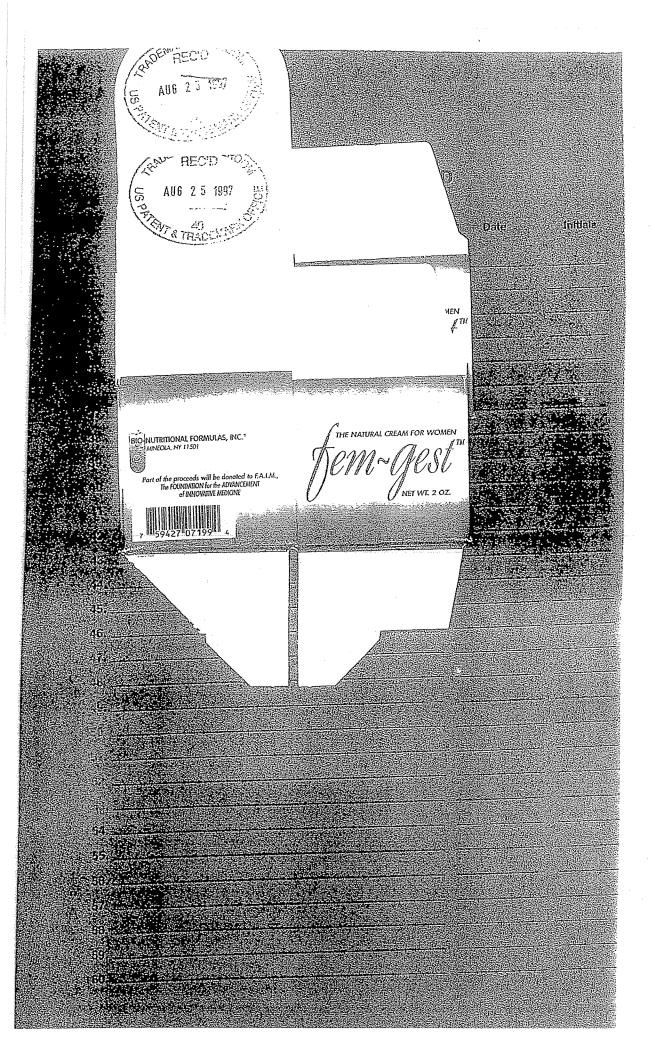
VW 0010



VW 0012









Prod. Ro. 5717
Recommendations: Rub 114112 leaspean into the paints of
your hards, soles of your feet
or other soft areas of skin
once or bulce delay.

@Home Health



FemGestO has not been tested on animals.

Warning: This product contains a chemical known to the State of California to cause cancer.

FOR EXTERNAL USE ONLY, Pregnant or lactating women should consult a doctor before using any product. Consult doctor before use if you have, or have had, a medical consistion or fiver disease. your doctor II any adverse madiana count, including some or vaginal spotting or blocking. Do sed apply to the same size area as other size products, NIOT INTERIDED FOR USE BY PERSONS UNDER THE AGE OF 18. KEEP DUT OF REACH OF 18. KEEP DUT OF REACH OF COIL MADEN. STORE IN A

FemGest is a registered trademark of Home Health, Inc. 01D Regist

8571



FemGest® is a progesterone cream designed especially for:

- · Perimenopausal women
- Menopausal women



NET WI. 2 oz. (57 g)



Unconditional Guarantee:
Home Health™ is committed to our customers, and the service we provide for them. If you are not satisfied with this product, please return it with your receipt to the place of purchase.

NET WT. 2 oz. (57 g)





Prod. No. 5717

FemGest⁹ is an organically based form of progesterone cream designed especially for perimenopausal and menopausal women. Our unique formula represents a gentle, holistic approach to your body's need for balance. Using progesterone combined with soothing Aloe Vera gel and Grapefruit extract; FemGest⁹ is for those times when you want a supportive, soothing cream that harmonizes with your unique nature. FemGest⁹ - inspired by the natural rhythm of life.

Recommendations: Rub 1/4-1/2 teaspoon into the palms of your hands, soles of your feet or other soft areas of skin once or twice daily.

Ingredients: Purified Water, Tocopheryl Acetate (Vitamin E). Cetearyl Alcohol and Ceteareth-20, Glyceryl Stearate, C12-15 Alkyl Benzoate, Stearic Acid, Cetyl Alcohol, Glycerin, Progesterone, Triethanolamine, Polysorbate 80, Keratin Amino Acids, Diazolidinyl Urea, Carbomer, Methylparaben, Coconut Oil, Almond Oil, Grapefruit Seed Extract (Citrus grandis), Propylparaben, BHA, Lemon Oil (Citrus medica limonum), Aloe Vera Gel, Sodium Hyaluronate.

Contains No Mineral Oil

FemGest® has not been tested on animals.

Warning: This product contains a chemical known to the State of California to cause cancer.

FOR EXTERNAL USE ONLY.

Pregnant or lacteling-women should consult a doctor before using any product. Consult doctor before use if you have, or have had, a medical condition or liver disease. Discontinue use and consult your doctor if any adverse reactions occur, including aone or vaginal spotting or bleeding. Do not apply to the same skin area as other skin product of the product of the

ACE. FemGest[©] is a registered trademark of Home Health, Inc.

Carefully Manufactured by

10 Home Health.

Holbrook, NY 11741 U.S.A. Home Health, 2003 www.homehealthproducts.com

03C

85717

FemGest® is a progesterone cream designed especially for:

- Perimenopausal women
- Menopausal women

About the Company

FemGest* is manufactured by Home Health, TM Home Health Provides quality products for those choosing alternative healthcare. FemGest* has been recognized in the Townsend Letter, the Whitaker Newsletter, and other alternative healthcare journals. Home Health* is dedicated to the support of the alternative healthcare community.



Part No. 22-12922

Prod. No. 12922

Supplement Facts

Serving Size: 3 Capsules Servings Per Container: 60

1

Amount Per Serving % Daily Value Vitamin C (as Ascorbic Acid) 150 mg 250% 270 mg

Enhancement Blend Hydrolyzed Collagen Vitex (Vitex agnus castus) (Chasto tree fruit powder)

(Chasto tree fruit provider)
(Chasto tree fruit provider)
(Sew Patimetro (Sevenoa repens) (berry)
Damians (Timera aphrodissica) (loal)
Dong Otual (Angelica stinensis) (root)
Fenugreek (Titiponella foemam-graecum) (seed)
Dandelfon (Taraxacum officinale) (root)
Blessed Thistle (Chicus benedictus) (herb)
Wild Yam (Dioscorea villosa) (root)
Motherwort (Leonurus cardiaca) (herb)
Corn Powder

· Daily Value not established

Other Ingredients: Gelatin, Vegetable Magnesium Stearate, Silica.

Stearaio, silica.

Directions: For adults, take three (3) capsules two times daily, preferably with meals.

TAMPER RESISTANT: DO NOT USE IF IMPRINTED SEAL UNDER CAP IS BROKEN. KEEP OUT OF REACH OF CHILDREN. Store in a cool, dry place.

Carefully Manufactured by: Home Health Ronkonkoma, NY 11779 U.S.A ©Home Health, 2002

B12921

Outer beauty comes from the internal assurance you feel when you know you're doing something right for your body. Breast Assure is an extraordinary product that enhances your breast health just the way nature intended—without harsh chemicals or surgery." Breast Assure insurance the underlying support structure of the breast from the inside, to give you that beautiful glow on the outside. Brought to you by the makers of Fengest," Breast Assure helps you look better to give you the enhanced beauty you deserve.

This product is intended for use by women and not intended for use by men, pregnant or lactating woman, persons with depression, intestinal, bite duet or galibladder problems, or by PERSONS UNDER THE AGE OF 18. Consult doctor before use if you have, or have had, gastrointeelinal discorders, ellergies to daisy-file flowers, hormone, dependent cencers, plan to have surgery, are on hormonal therapy, or are taking prescription medication (especially birth control pills, anti-coagulants (blood thinner medication) i.e., Commadin and warfarin. Dieconthine use and consult your doctor if any adverse reactions occur including gastroin-testinal discomfort, headaches, altwige reactions (including skin rash), excessive menstrual bleeding, or blumed vision. Use of this product may make skin sensitive to sunlight and UV light, which could result in sun-unor or skin rash after several days of usage. Limit exposure to the sun or any indoor tanning equipment including beds, tamps or booths.

"These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diag-nose, treat, cure or prevent any disease.









Serving Size: 3 Capsules Servings Per Container: 60 Amount Per Serving Supplement Facts Prod. No. 12922

/Itamin C (as Ascorbic Acid) 270 mg 150 mg % Daily Value

Enhancement Blend Hydrolyzed Collagen Vitex (Vitex agnus castus) (Chaste tree fruit powder)

Sow Pedinatry Bland
Sow Pedinatry (Sternou repens) (berny)
Daniana (Tunnar aphrodisinas) (lean)
Daniana (Tunnar aphrodisinas) (lean)
Danialna (Tunnar aphrodisinas) (lean)
Fenugreek (Tigonella beanum graecum) (seed)
Danialion (Tarasacum officinals) (lean)
Danialion (Tarasacum officinals) (lean)
Wild Yean (Dascotas silvas) (lean)
Wild Yean (Dascotas silvas) (lean)
Moltenvori (Leanurus cardisca) (lenth)
Com Powder

Daily Values not established

Oltier Ingredients: Gelatin, Vegetable Magnosium Sleirate, Silica,

Directions: For adults, take three (3) capsules two times daily, preferably with meals.

Carefully Manufactured by: Home Health Ronkonkoma, NY 11779 U.S.A ©Home Health, 2002 TAMPER RESISTANT: DO NOT USE IF IMPRINTED SEAL UNDER CAP IS BROKEN. KEEP OUT OF REACH OF CHILDREN. Store in a gool, dry place.

812921

010

Hydrolycad Gollagen for underlying support struc-tures, plus Dandelion." By combining time-resead botanteals, Breast Assure" help: you enhance the Body, mind and spirit - you are forever reying to locg in balance. Breast Assure" constins genete botanicals that complement the varieties and beautiunique unture of your inner and auter beauty. ful balance in your nature. There's Dong Quai and Wild Tam, plus Claste Tree to support your breass beaths." Our formula also councins Vitamin Cand

This product is intended for use by women and not intended for use by men, pregnant or lactaling women, persons with depression, intestinal, bile duct or gail-bile duct or gail duct or stin cash after several days of usage. Limit exposure to the sain or any indoor tanning equipment including eats, lamps or booths.

"These statements have not been evaluated by the Food and Grug Administration. This product is not intended to diagnose, treat, cure or provent any disease.

The progesterone level used in Fem-Gest[™] is recommended by John Lee, MD, and used in his clinical studies. For nearly 20 years, the formula used in Fem-Gest[™] body cream has been the preferred choice of thousands of women to help maintain balance and keep them feeling in harmony with their bodies.

THE NATURAL CREAM FOR WOMEN

Part of the proceeds will be donated to F.A.I.M.; The FOUNDATION for the ADVANCEMENT of INNOVATIVE MEDICINE

ION - 100% Natural

The juice from the Aloe Vera plant throughout history has been one of the most renowned natural healing aids. Now offered in two delicious flavors.

Cranberry Alae Drink

Ingredients: Vitamins, Minerals, Essential Amino Acids, Water, Cranberry, Aloe Vera Juice.

ITEM IN-104

ITEM IN-105

32 oz.- **7.95** 5.99

64 oz. 12.95 10.99

Apple Alee Drink

Ingredients: Vitamins, Minerals, Essential Amino Acids, Water, Apple, Aloe Vera Juice.

ITEM IN-106

ITEM IN-107

32 oz. - 7:95 5.99

64 oz. 12.95 10.99

Bio-Nutritional Formulas



Aloe Ointment

Whole Leaf Aloe Vera

For thousands of years, the whole leaf of the Aloe Vera plant has been used topically for a variety of skin conditions. X-32 is a unique formula that contains all the vital healing components of the legendary Aloe Vera leaf.

ITEM KM-154

1 oz. (cream) - 18-95 15.16 20% Off Manufacturer's Suggested Retall Price

Bio-Nutritional Formulas

ALOE-ACE® The Premier Alne

"The Product Closest To Fresh, Whole Leaf Aloe Vera."

- The first Aloe juice containing the whole leaf!
- Made from the gel plus the sap and the rind of organically grown fresh whole Aloe leaves
- A 40:1 concentrate.
- · High concentration of polysaccharides.
- Stabilized to preserve/ strengthen potency.
- · Contains healing components not found in other Aloe juices.

ITEM KM-104

4 oz. - 24.95 19.96

20% Off Manufacturer's Suggested Retall Price!



(Uña De Gaio)

500 mg.

"The Wondrous Herb" From The Peruvian Rain Forest. Cat's Claw was used for thou-

sands of years by Ashanica Indians for treatment of a wide variety of health problems associated with the immune and digestive systems.

ITEM 3180

100 - 8.95

250 - **19:95**

Bio-Nutritional Formulas



Breathe Easier.. Get Healthier

Sinus Survival products are specifically designed to benefit respiratory function, increase productivity, and improve quality of life. Sinus Survival products are all formulated with Nature's remedies: herbs, vitamins and minerals. These products contain no harsh chemicals, they're physician formulated, incorporate the latest scientific knowledge and can be used as a complement to a medical treatment plan.

ITEM KM-109

2 oz.

7.95 6.36

ITEM KM-110

4 oz.

8.95 7.16

Nasal Spray | Cough Syrup | Cough Drops

ITEM KM-111

*5.*95 4.76

20% Off Manufacturer's Suggested Retail Price

Ester C[®] 550 mg. Tabs ITEM KM-112

220 - 17:95 14.36

Grape Seed Extract 100 mg. Caps

ITEM KM-113

30 -21:95 17.56

20% Off Manufacturer's Suggested Retail Price



Bio Nutritional Formulas

The Natural Cream For Women

Fern-Gest" is formulated with a progesterone level that is recommended by Dr. John Lee, M.D., and also used in his clinical studies. Fem-Gest™ contains natural progesterone which may help relieve symptoms associated with menopause, such as hot flashes, night sweats, mood changes, and vaginal dryness.



Part of the proceeds will be donaled to F.A.I.M. (The Foundation for the Advancement Of Innovative ITEM KM-123

2 oz. - 28:95

Bio-Nutritional Formulas

Isoflavones - Genistein and Daidzein

Soybeans contain a type of phytoestrogen called Isoflavones. Health promoting benefits are being studied by the National Cancer Institute that are attributed to sov isoflavones. They may serve as adaptogens for hormonal balance in women, may positively affect bone mass, and may have antioxidant and cholesterol lowering properties. This soy extract is subjected to a heat process to reduce protease inhibitors and maximize the digestibility of soy proteins.

Warning: Consult a health care professional first if you are pregnant or nursing.

ITEM KM-170

90 Tabs - **15:95** 12,76 20° off Manufacturer's Suggested Retail Prices

WILD MEXICAN YAM EXTRACT

500 mg. with Raw Adrenal

Wild Mexican Yam and the adrenals are the richest natural source of DHEA (Dehydroepiandrosterone)

Two Capsules Contain:

Wild Mexican Yam Extract (10:1)

ITEM 3104

100 - 19.95

250 - **44.95**

Vitamin Power

BlackCohosh Root

Capsules

421 mg.

ITEM VP-112 100 Caps - 6.95

300 (3x100) Caps - 17.95

Dong Quai

Capsules 500 mg.

ITEM 3130

100 Caps - 8.95

250 Caps - 19.95

Nature's Herbs

Chaste-Berry Power®

Women's Hormonal Support

Each Capsule Contains:

100 mg. Certified Potency Chasteberry fruit and seeds (Vitex agnus castus) concentrated and standardized for a minimum of 1.1% Glycosides combined with a base of Dong Quai Root and Siberian Ginseng.

S ITEM NH 676 S 60 - 11.99 7.19

Bio - Nutritional Formulas

ro-Geste Body Cream Specific

Pro-Gest® may be used in alleviating discomforts associated with menopause, PMS, and Osteoporosis as recommended by a health care provider.

ITEM KM-105

2 oz. - 31:95 25.56

Enzymatic Therapy Kemifenin-

The Natural Choice for Women experiencing normal mid-life changes

Each Tablet Contains:

Cimicfuga racemosa roof & rhizome (Black Cohosh) 40 mg. Triterpene Glycosides standardized at 1 mg.

Remarkable plant extract used by millions of satisfied women

ITEM ET-272

120 - **29:9**5 23.96

20% Off Manufacturer's Suggested Retail Price

Bio-Nutritional Formulas

Isoflavones - Genistein and Daidzein

Soybeans contain a type of phytoestrogen called Isoflavones. Health promoting benefits are being studied by the National Cancer Institute that are attributed to soy isoflavones. They may serve as adaptogens for hormonal balance in women, may affect bone mass, and may have antioxidant and cholesterol lowering properties.

WARNING: Consult a health care professional first if you are pregnant or nursing.

ITEM KM-170

90 Tabs - 15.95 12.76

20% Off Manufacturer's Suggested Retail Pricel

Bio Nutritional Formulas

The Natural Cream For Women



Fem-Gest™ is formulated with a progesterone level that is recommended by Dr. John Lee, M.D., and also used in his clinical studies. Fem-Gest™ contains natural progesterone which may help relieve symptoms associated with menopause, such as hot flashes. night sweats, mood changes, and vaginal dryness.

Part of the proceeds will be donated to F.A.I.M. (The Foundation for the

ITEM KM 123 S

2 oz. **28.95** 17.37

Sunsource REJUVEX

The Natural Way to Ease

Additional Ingredients: Raw mammary, raw ovary, raw uterus, raw adrenal and raw pitultary powders

ITEM GI-101

Each Caplet Contains:

Magnesium 500 mg. Boron 3 mg. Manganese...... 2 mg. Selenium 25 mcg. the Symptoms of Menopause Vitamin E...... 30 I.U. Dong Quai..... 200 mg. Vitamin B1 2 mg. Vitamin B2 2 mg. Vitamin B3 10 mg.

Vitamin B6 10 mg.

Pantothenic Acid 10 mg.

30 - 15,95

REMIFEMIN:

HERBAL RELIEF for MENOPAUSAL SYMPTOMS

Hot flashes are hard to treat-but an extract of the herb Black Cohosh, Remifemin, has been shown to be as effective as hormones, with- out the troubling side effects and risks in dealing with menopausal and premenopausal symptoms.

ITEM KE-184

Book - 3.95

New York State Residents Add Applicable Sales Tax



Take Control Of Your Health



106 EAST JERICHO TURNPIKE P.O. BOX 311, MINEOLA, N.Y.11501-0311

PHONE IN YOUR ORDER MON. - FRI. 9-8, SAT. 10-6

PH. 516-741-2929 FAX 800-321-2573

ANO HELEPHONE ORDERS ON SUNDAYS

Charge orders MasterCard-Visa-Discover-American Express (\$20 Minimum order)

CATALOG JULY 97

Exp. Date 8-7-97

For charge orders over \$20 Call Toll Free

-800-645-2929

BULK RATE THIRD CLASS ZIP+ 4 BARCODE US POSTAGE PAID PERMIT 113 MINEOLA NY 11501

JUL97

PLEASE HAVE CUSTOMER I.D. NUMBER READY WHEN CALLING IN YOUR ORDER

100 EAST JERICHO TURNPIKE (516) 741-2929

STORE HOURS: Mon-Fri 9-8, Sat 10-6, Sun 12-5

MASSAPEQUA PARK 5272 SUNRISE HIGHWAY

(516) 795-6523 STORE HOURS:

Fri 10-8, Sat 10-6, Suri 12

HEWLETT

1235 BROADWAY (516) 374-2099

Store Hours: Thur 10-7, Fri-Sat 10-6, Sun 12-5

PLAINVIEW

377B SOUTH OYSTER BAY ROAD (516) 935-2929

Store Hours: Mon-Fri 10-8, Sat 10-6, Sun 12-3

219 SOUTH SERVICE ROAD (516) 293-4667

STORE Hours: Mon Fri 9-7, Sat 10-6, Sun 12-

6300 JERICHO TURNPIKE (516) 462-5529

Store Hours: Mon Fri 9-7, Sat 10-6; Sun 12-5

MERRICK

2216 SUNRISE HIGHWAY (516) 379-7935

NEW LOCATION!

LAKE GROVE

Grand Opening!

COMING SOON!

STED RETAIL P

Come Visit Nutrition Warehouse® At Our New Website! http://www.nutrition-warehouse.com



50 -100 -8.37 250 - 18.57 500 - 35.37

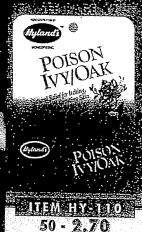
SET PAGES AT 80 nature's

HERBS



TWINLAB®





VW 0093

1-800-645-2929 • SE HABLA ESPAÑOL • SEE INDEX PAGI

When Your Customers Reach Menopause, They'll Reach for

The natural cream for women

Progesterone | Gream

FemGest is a natural progesterone cream created for:

• Women of childbearing years

• Peri-menopausal, menopausal and post-menopausal women.

Every change brings challenge. For a woman, normal life stage transitions can be especially challenging. Disruptions in mood and sleep can disturb the natural rhythm of life and create a feeling of disharmony within. But now there is an answer... FemGest.

FemGest combines ancient wisdom

neip ease the discomfort caused by
Woman's natural transitions and to he
achieve a more 'harmonious balance' h
help your customers achieve inner nealth
harmony with the soothing comfort of Fem

Formulation by Bio-Nutritional Formulas
Caretolly Manufactured by Home Health
Available Inrotogravour local distributor of
for more information reals 1-800-445-7137.

In 631-244-1777 or write to
Home Health, 90 Orville Drive FORTOR ANY ATTAINED USE A

The natural cream for women



NEWI2joz (67.g)

The natural crown for women

of our Buy One

E 60% OFF ALL YOUR FAVORITE NATIONAL BRANDS & PRODUCTS!



IMPROVE YOUR BONE HEALTH

Cal Mag Boron from Puritan's Pride provides a triple combination of the nutrient, Boron. Cal Mag Boron also contains the other essential minerals and vitamins you need for bones*-Calcium and Magnesium. Don't miss out on this important supplement for promoting and supporting bone health.*

Palle	XH. I	1:11	
NITTY	RETAIL PRICE	YOUR PRICE	YOU SAVEI
TABS	\$7.80	\$3.04	\$4.56
TABS	\$13:95	\$5.58	\$8.37
TARS	\$25-50	\$10.20	\$15.30



h Potency Calcium and Magnesium Tablet For Easy and Efficient Utilization

ELATED CAL-MAG

'00 mg. Calcium & 250 mg. Magnesium Sugar, Starch & Preservative Free

w get more from a calcium supplement. For total pron, Puritan's Pride CAL-MAG combines healthful calcium peneficial magnesium. It's the nutritional partnership works together in your body. Two CAL-MAG tablets pro-.000 mg. of calci-

ith 500 mg. of esium.

		PHI PAGE	FIRHI	THE F
ITEM NO.	QUANTITY	RETAIL PRICE	YOUR PRICE	YOU
4082	100 TABS	\$8:95	\$3.58	\$5.37
4083	250 TABS	\$20:95	\$8.38	\$12.57
4086	500 TABS	\$38.75	\$15.50	\$23.25
4088	1000 TABS	\$71.65	\$28.66	\$42.99

acua flora phase t

Its called AQUA FLORA Phase 1 and it has been shown to help provide women with personal support for their most intimate concerns. The secret is in Aqua Flora's unique ingredients. Believing that "like cures like" we have blended Candida Albicans 300 HPUS with purified water to bring you a product that is unlike any other. Discover for

yourself the difference AQUA FLORA Phase 1 can make in your life.

	Apple Glo	EUL	ST	
ITEM NO.	QUANTITY	RETAIL PRICE	YOUR	YOU
37513	I6 fl. oz.	\$23.95	\$19.16	\$4.79

Hatural "SUPPORT" When You Need It Most ..

The Natural Cream for Women

FemGest is an organically based form of progesterone cream designed especially for women of childhearing years, peri-menopausal and menopausal aged women. For a woman, normal life stage transitions can be especially challenging. Disruptions in mood and sleep can disturb the normal rhythm of life and create a feeling of disharmony within. But now there is an answer....FemGest. Created from naturally occurring plant sterols, this transdermal progesterone cream was developed to ease the discomfort caused by a woman's natural transitions and to help achieve a more harmo-

	dinesse	alla een	1831	100	1
TTEM NO.	QUANTITY	RETAIL PRICE	YOUR PRICE	YOU	
75717	2 - 2 oz.	\$49:00	\$24.50	\$24.50	·



Now You Can Promote :

nious balance.



Breast Nutrients is a natural formulation specifically created to nurture your most attractive assets from the inside to make you look and feel better on the outside. This proprietary blend of 14 ingredients, including Collagen, Mammary substance, Selenium, Chromium and Kelp, is nutrapathically processed to ensure you receive the best in personal care.

Milit	patina B	HELE II	Weile	1113	
ITEM NO.	QUANTITY	RETAIL PRICE	YOUR PRICE	YOU SAVE!	
38963	60 TABS	\$16:00	\$12.80	\$3,20	



EPO PIUS SOY ISOFLAVONES

For Menopausal Support**



Evening Primrose Oil (EPO) contains one of the richest sources of Gamma Linolenic Acid (GLA), which helps regulate a variety of important functions in the body.** Soy Isoflavones help alleviate the hot flashes and night sweats that are so common during midlife years.** EPO Plus Soy Isoflavones is the perfect menopausal supplement to help relieve the midlife changes for peri-menopausal, menopausal, and post-menopausal

			USU	1500 F 17	WIS
	ITEM NO.	QUANTITY	RETAIL PRICE	YOUR PRICE	YOU
	12231	60 SG/C	\$13:50	\$5.40	\$8.10
-	12232	120 SG/C	\$24.95	\$9.98	\$14.97

PAGE 32

FOR CUSTONER SERVICE 1-000-545-9504

These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease.

Natural "SUPPORT" When You Need It Most ...

The Natural Cream for Women

FemGest is an organically based form of progesterone cream designed especially for women of childbearing years, peri-

menopausal and menopausal aged women. For a woman, normal life stage transitions can be especially challenging. Disruptions in mood and sleep can disturb the normal rhythm of life and create a feeling of disharmony within. But now there is an answer.....FemGest. Created from naturally occurring plant sterols, this transdermal progesterone cream was developed to ease the discomfort caused by a woman's natural transitions and to help achieve a more harmonique balance

TTOTE COL		220 2101111	omono i	varance.
	omelle		田宇田	
ITEM NO.	QUANTITY	RETAIL PRICE	YOUR PRICE	YOU
75717	2 - 2 oz.	\$49.00	\$24.50	\$24.50



SUPPLEMENT EVERY WOMAN SHOULD BE TAKING

Estrotone gently and naturally promotes a woman's balance with an array of time-tested botanicals.* Black Cohosh and Vitex (or Chaste tree berry) offer the holistic support you need to relieve the periodic changes, such as mild mood swings, cramping, hot flashes and night sweats, taking place

during menstruation and menopause.* Studies show Ginger helps fight cell damaging free-radicals while Evening Primrose oil delivers a rich source of essential fatty acids (EFAs) that help provide nutritional support for women.* Soothe

i wis and	i menopausai ;	sympton	is with E	stroton	ıe
	New Chapter		UNE A		İ
ITEM NO.	QUANTITY	RETAIL PRICE	YOUR PRICE	YOU	
87616	60 CAPS	\$21:95	\$16.46	\$5.49	*******



The Natural Way To A More ...

BEAUTIFUL YOU...

Looking good on the outside often means taking care of yourself on the inside.

Herbal GroBust is an all-natural, 100% proprietary combination of

eight female-specific herbs - including:

Damiana - First discovered and used in South America, this herb is traditionally used for female health.

Dong Quai - this remarkable Chines herb has an extremely long history of use, dating as far back as 588 B.C. For centuries, women have traditionally relied on Dong Quai supports balanced health for women.

Sabal - Often known as Saw Palmetto, this versatile plant provides a wide range of benefits for women. It contains concentrated amounts of free fatty acids and sterols, which can have an effect on health.

Many satisfied users report that after using Herbal GroBust, and it has been the subject of recent studies in Mexico where it has been tested on over 100 women!

But here's the best part - Herbal GroBust is all-natural, quality supplementation that will give you just what you are looking for in a female nutritional product!

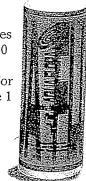
Available in tablets, liquid or lotion, GroBust is all you will ever need to enhance your natural beauty.

			State
QUANITTY	RETAIL PRICE	YOUR	YOU SAVE!
180 CAPS	\$49:95	\$39.96	\$9,99
4 fl. oz. LOT.	\$49:95	\$39.96	\$9.99
4 fl. oz. LIQ.	\$49.95	\$39.96	\$9.99
	180 CAPS 4 fl. oz. LOT.	180 CAPS \$49.95 4 fl. oz. LOT. \$49.95	180 CAPS \$49:95 \$39.96 4 fl. oz. LOT. \$49:95 \$39.96

AQUA FLORA PHASE 1

Its called AQUA FLORA Phase 1 and it has been shown to help provide women with personal support for their most intimate concerns. The secret is in Aqua Flora's unique ingredients. Believing that "like cures like" we have blended Candida Albicans 300 HPUS with purified water to bring you a product that is unlike any other. Discover for yourself the difference AQUA FLORA Phase 1 can make in your life.

	Agua Fio		S = 1	
ITEM NO.	QUANTITY	RETAIL PRICE	YOUR PRICE	YOU SAVE
37513	16 fl. oz.	\$23.95	\$19.16	\$4.79



Now You Can Promote

Breast Nutrients is a natural formulation specifically created to nurture your most attractive assets from the inside to make you look and feel better on the outside. This proprietary blend of 14 ingredients, including Collagen, Mammary substance, Selenium, Chromium and Kelp, is nutrapathically processed to ensure you receive the best in personal care.

	nathic B	ari:Eii	Elinu	IIG.
ITEM NO.	QUANTITY	RETAIL PRICE	YOUR PRICE	YOU SAVE!
38963	60 TABS	\$16.00	\$12.80	\$3.20



FIBRO MALIC

FIBRO MALIC is the #1 all-natural supplement containing a combination of nutrients women need on a daily basis. The specialized blend of Magnesium, Malic Acid, Olive Leaf Extract and MSM help to provide a dietary foundation for good health.* As part of the energy producing biochemical reactions in cells, Malic acid plays an important role in the body.

This outstanding supplement is available in 👍 three convenient sizes for your individual needs.

WILE		(13)(11)		I (P
ITEM NO.	QUANTITY	RETAIL PRICE	YOUR PRICE	YOU SAVE!
39941	90 CAPS	\$19.95	\$15.96	\$3,99
39942	180 CAPS	\$29.95	\$23.96	\$5.99
39939	270 CAPS	\$59.85	\$47.88	\$11.97



* These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease

The natural cream for women

Hemaest Progesterone | Cream

- ◆ A natural progesterone cream
- ✦ Harmonizes with a woman's unique nature
- ◆ Enhanced with Aloe Vera gel and Grapefruit extract
- ♦ Now available as Buy One Get One Free Two 2 oz. Jars SRP \$24.50
- **→ FemGest™** has been recognized in the Townsend Letter, the Whitaker Newsletter and other alternative healthcare journals

Formulation by



Carefully Manufactured by



Bohemia, NY 11716 U.S.A. ©Home Health, 2000

Prod. No. 5717



FemGest is a natural, transdermal progesterone cream developed especially for women of childbearing years as well as perimenopausal, menopausal and postmenopausalaged women. Created from naturallyoccurring plant sterols, this unique formula combines ancient wisdom with modern science to offer a gentle, holistic approach to the body's need for balance. An organicallybased form of progesterone, enriched with Aloe Vera gel and Grapefruit extract, FemGest is a soothing, supportive cream inspired by the natural rhythm of life.



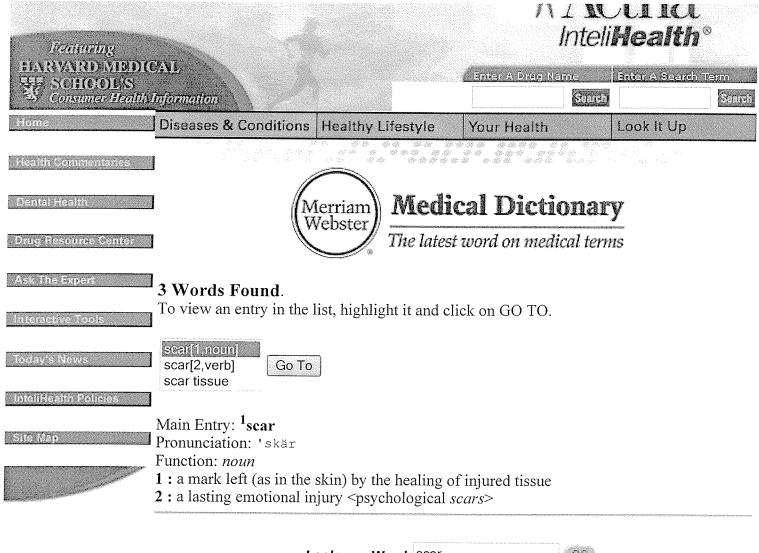
Contains NO Mineral Oil FemGest* has not been tested on animals.

(800) 445-7137 • (631) 244-2021 • Fax (631) 244-1777 • E-Mail: ahealth@nbty.com International Sales: (631) 244-2150 • Fax (631) 244-2153 • E-Mail: nbtyintl@nbty.com





EXHIBIT B



Lookup a Word: scar

GO

Advanced Search | Explanatory Notes | Pronunciation Guide | Help

© 2002 by Merriam-Webster, Incorporated



Help | About Us | Privacy Policy | Editorial Policy | Advertising Policy | Contact Us | Register Change Profile

© 1996-2007 Aetna InteliHealth Inc. All rights reserved. All information is intended for your general knowledge only and is not a substitute for medical advice or treatment for specific medical conditions. You should seek prompt medical care for any specific health issues and consult your physician before starting a new fitness regimen. Use of this online service is subject to the disclaimer and the terms and conditions. External website links provided on this site are meant for convenience and for informational purposes only; they do not constitute an endorsement. These external links open in a different window. Aetna InteliHealth subscribes to the HONcode principles principles of the Health On the Net Foundation. "InteliHealth" and "The Trusted Source" are trademarks of Aetna InteliHealth Inc.