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

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WELLNESS RESOURCES, INC.,

Petitioner,

Cancellation No. 92041697

v.

Reg. No. 2,136,776

GRIFFIN, NANCY M.

Registrant.

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03-04-2004  
U.S. Patent & TMO/c/TM Mail Rcpt Dt. #78

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**RESPONSE TO REGISTRANT'S MOTION TO COMPEL RESPONSES,  
REQUEST FOR PROTECTIVE ORDER AND  
REQUEST FOR SANCTIONS**

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RELEVANT HISTORY

On February 12, 2004, Registrant moved for an order (i) compelling Petitioner to furnish responses to Interrogatories and Document Requests propounded by Registrant, (ii) granting Registrant an extension of time to furnish responses to Interrogatories and Document Requests propounded by Petitioner until Petitioner has furnished responses to the Interrogatories and Document Requests propounded by Registrant, (iii) preventing Petitioner from conducting further discovery until Petitioner has furnished responses to the Interrogatories and Document Requests propounded by Registrant, and (iv) sanctioning Petitioner for failing to respond to Interrogatories and Document Requests propounded by Registrant by requiring Petitioner to respond to the Interrogatories and Document Requests without objection.

Petitioner received Registrant's motion to compel on February 17, 2004. [Sherrill Affidavit ¶16]. On February 10, 2004, seven days prior to Petitioner's receipt of Registrant's motion to compel, Petitioner mailed responses to the Interrogatories and Document Requests propounded by Registrant. [Sherrill Affidavit ¶¶14-15]. Clearly, Registrant's motion and Petitioner's discovery responses crossed in the mailed.

On February 25, 2004, Michael Sherrill, counsel for Petitioner, corresponded with Warren L. Dranit, counsel for Registrant, requesting that Registrant withdraw its motion to compel since complete responses to the Interrogatories and Document Requests propounded by Registrant had been received by Registrant. [Sherrill Affidavit ¶18]. No response was received from Registrant. [Sherrill Affidavit ¶18]. Mr. Sherrill then telephoned Mr. Dranit on February 27, 2004 in a final attempt to persuade Registrant to withdraw the motion. [Sherrill Affidavit ¶19]. Mr. Sherrill was unable to reach Mr. Dranit by phone, but received a phone message from Mr. Dranit that same day, indicating that he intended to maintain the motion unless and until Petitioner completed additional tasks related to delivery of the requested document and execution of a protective order. [Sherrill Affidavit ¶19].

Since Registrant has received complete responses to the Interrogatories and Document Requests propounded by Registrant, Registrant's motion is moot and should be dismissed.

Respectfully submitted,

Date

01 Mar 04

By

M. Sherrill

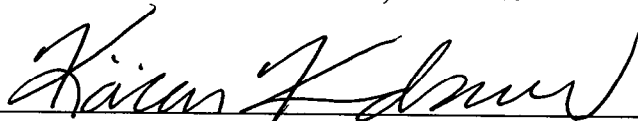
Michael S. Sherrill  
SHERRILL LAW OFFICES, PLLC  
4756 Banning Avenue, Suite 212  
White Bear Lake, Minnesota 55110-3205  
(651) 426-2400

Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing RESPONSE TO REGISTRANT'S MOTION TO COMPEL RESPONSES, REQUEST FOR PROTECTIVE ORDER AND REQUEST FOR SANCTIONS has been served on counsel for Registrant by mailing said copy on March 1, 2004, by First Class mail, postage prepaid to:

Warren L. Dranit  
Spaulding McCullough & Tansil LLP  
3550 Round Barn Boulevard, Suite 306  
Santa Rose, CA 95403


  
\_\_\_\_\_  
Karen L. Knudson

**CERTIFICATE OF MAILING**

I hereby certify that this RESPONSE TO REGISTRANT'S MOTION TO COMPEL RESPONSES, REQUEST FOR PROTECTIVE ORDER AND REQUEST FOR SANCTIONS is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Commissioner of Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513  
Box TTAB

on March 1, 2004.

  
\_\_\_\_\_  
Karen L. Knudson

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**DECLARATION OF MICHAEL S. SHERRILL IN OPPOSITION TO REGISTRANT'S  
MOTION TO COMPEL RESPONSES, REQUEST FOR PROTECTIVE ORDER;  
REQUEST FOR SANCTIONS**

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I, Michael S. Sherrill, declare:

1. I am an attorney at law, duly licensed to practice in the state of Minnesota.
2. I am the Chief Manager of Sherrill Law Offices, PLLC, attorneys of record for Petitioner, Wellness Resources, Inc.
3. I have first-hand, personal knowledge of the matters set forth herein and, if called upon to do so, could and would competently testify hereto.
4. The above-referenced proceeding was suspended on September 25, 2003 for the stated purposes of facilitating settlement negotiations between Petitioner and Registrant.
5. On October 2, 2003, Registrant propounded a set of Interrogatories on Petitioner.
6. On October 2, 2003, Registrant propounded a set of Requests for Production of Documents on Petitioner.
7. In November 2003, Petitioner retained Sherrill Law Offices, PLLC to handle this cancellation proceeding.

8. Settlement negotiations were conducted through early December 2003 and were terminated on or about December 12, 2003 without resolution. A Consented Motion to Resume Proceedings and Extend Discovery was filed with the TTAB on December 23, 2003. This motion was granted by the TTAB on February 8, 2004.

9. Shortly after filing of the Consented Motion to Resume Proceedings and Extend Discovery, Petitioner began preparation of (i) a first set of interrogatories, Document Requests and Requests for Admissions to be propounded upon Registrant, and (ii) responses to Registrant's Interrogatories and Document Requests previously served upon Petitioner.

10. On January 22, 2004, Petitioner propounded a first set of Interrogatories on Registrant.

11. On January 22, 2004, Petitioner propounded a first set of Requests for Production of Documents on Registrant.

12. On January 22, 2004, Petitioner propounded a first set of Requests for Admissions on Registrant.

13. On February 5, 2004, Petitioner received correspondence from Registrant expressing surprise at receiving the discovery referenced in ¶ 10-12 above and requesting an extension of time to respond to Petitioner's discovery.

14. On February 10, 2004, Petitioner responded to Registrant's Interrogatories. Kären L. Knudson, secretary with Sherrill Law Offices, PLLC, served the Answers to Interrogatories by mail. A true and correct copy of these Answers to Interrogatories, with the Certificate of Service, is attached hereto as Exhibit A, and incorporated herein by reference.

15. On February 10, 2004, Petitioner responded to Registrant's Request for Production of Documents. Ms. Knudson also served the Responses to Requests for Production

of Documents by mail. A true and correct copy of these Responses to Requests for Production of Documents, with the Certificate of Service, is attached hereto as Exhibit B, and incorporated herein by reference.

16. Petitioner received Registrant's Motion to Compel Responses, Request for Protective Order and Request for Sanctions (Motion to Compel) on February 17, 2004.

17. On February 23, 2004, I received a telephone call from someone indicating that they were calling on behalf of Warren Dranit. This person requested a two-week extension of time for Registrant to respond to Petitioner's Interrogatories, Requests for Production of Documents, and Requests for Admissions. I granted their request during the phone conversation.

18. On 25 February 2004, I sent a facsimile to Warren L. Dranit, counsel for Registrant, requesting that he withdraw the Motion to Compel since complete responses to the Interrogatories and Document Requests propounded by Registrant had been received by Registrant. No response was received.

19. Further to my facsimile of February 25, 2004, I telephoned Mr. Dranit on February 27, 2004 in a final attempt to persuade him to withdraw the Motion to Compel. I was unable to reach Mr. Dranit but left a detailed voice message. Mr. Dranit returned my call that same day and left a message indicating that he intended to maintain the motion unless and until Petitioner completed certain tasks related to delivery of requested documents and execution of a protective order. A true and correct copy of a summary of that phone message prepared by Sharon Bloomquist of Sherrill Law Offices, PLLC and e-mailed to Michael Sherrill is attached hereto as Exhibit C.

20. The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false

statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

Date 01 Mar 04

Respectfully submitted,

By M. Sherrill

Michael S. Sherrill  
SHERRILL LAW OFFICES, PLLC  
4756 Banning Avenue, Suite 212  
White Bear Lake, Minnesota 55110  
(651) 426-2400

Attorney for Petitioner

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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WELLNESS RESOURCES, INC.,

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Registrant.

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PETITIONER'S RESPONSE TO REGISTRANT'S  
FIRST SET OF INTERROGATORIES

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Petitioner, Wellness Resources, Inc. (hereinafter "Wellness Resources"), without waiving any objections and without admitting the relevancy or materiality of any of the interrogatories and/or responses, hereby responds to REGISTRANT'S FIRST SET OF INTERROGATORIES based upon the information presently available and known to Wellness Resources.

Notwithstanding anything contained herein to the contrary, responses to those interrogatories requesting information protectable from discovery as subject to the attorney-client privilege and/or under the work product doctrine will not be provided to the extent that the response would call for such information.

1. *What has been Petitioner's principal type of business from 1985 to the present?*

**Response:** Assessment of personal nutrition and lifestyle. Sale of dietary and nutritional supplements. Providing information, education and counseling on nutrition and healthy lifestyles.

2. *Identify each subsidiary or affiliate of Petitioner.*



**Response:** Opposer objects to this interrogatory as vague and indefinite. Opposer is unable to ascertain what is meant by "affiliate". Subject to this objection, Petitioner advises that Petitioner has no subsidiary or "affiliate".

3. *Identify all companies to which Petitioner is related.*

**Response:** Opposer objects to this interrogatory as vague and indefinite. Opposer is unable to ascertain what is meant by "related". Subject to this objection, Petitioner advises that Petitioner is not "related" to any company.

4. *On what date was Registrant's '797 mark selected?*

**Response:** Winter of 1991/1992.

5. *Identify each and every search or investigation you conducted, or was conducted on your behalf, in order to determine whether Petitioner's Marks, individually or collectively, might infringe the rights of others.*

**Response:** None.

6. *Identify each and every search or investigation you conducted, or was conducted on your behalf, in order to determine whether Petitioner's Trade Name might infringe the rights of others.*

**Response:** None.

7. *For each search identified in response to interrogatories 4 and 5, identify each alteration made in the design, wording, use or any other matter relating to the proposed mark as a result of the findings of any such search investigation including, without limitation,*

(a) *A description of the alteration;*

- (b) *Whether it was made to avoid conflict with another mark, and if so, give the name and address of the owner and the number or other means of identification of each such mark;*
- (c) *For what other reasons the alteration was made;*
- (d) *The date it was made.*

**Response:** Opposer objects to this interrogatory as illogical to the extent it references a search identified in response to interrogatory 4. Interrogatory 4 does not request identification of a search. Subject to this objection, Petitioner advises that no response to this interrogatory is necessary as no searches were identified in response to interrogatory 5.

8. *Identify on what date the decision was made to adopt Petitioners Trade Name and each of Petitioner's Marks.*

**Response:** TRADENAME: Winter 1991/1992. PETITIONER'S '232 MARK: Summer 1995. PETITIONER'S '797 MARK: Winter 1991/1992. PETITIONER'S '522 MARK: Fall 2000.

9. *For each subsidiary company, agent, licensee or other person you have permitted to use any of your marks, identify the following:*

- (a) *The name and address of the person.*
- (b) *The inclusive dates the person used the mark.*
- (c) *On what goods or services the person used the mark.*
- (d) *The relationship between you and that person.*
- (e) *The name and address of the person who has custody of any contract that existed between you and the person as to the use of the mark.*

**Response:** Petitioner objects to this interrogatory as irrelevant to the extent it requests information relating to Petitioner's marks other than Petitioner's Marks. Subject to this objection, Petitioner advises that no response to this interrogatory is necessary as Petitioner has not permitted any subsidiary company, agent, licensee or other person to use any of Petitioner's Marks.

10. *For each of Petitioner's Marks, identify each period during which the use of the mark has been discontinued.*

**Response:** Petitioner advises that no response to this interrogatory is necessary as Petitioner has never discontinued use of any of Petitioner's Marks.

11. *For each of Petitioner's Marks, identify each product or services used in connection with the mark.*

**Response:** The answer to this interrogatory may be derived or ascertained from documents 000001 - 000085 which shall be produced in accordance with Fed. R. Civ. Proc. 33(d).

12. *State all facts that support your contention that you have acquired common law rights in the trademark "Wellness Resources" for use in connection with educational and counseling services in the field of health, nutrition, and healthy lifestyle.*

**Response:** Petitioner has enjoyed extensive and continuous use of the trademark WELLNESS RESOURCES in connection with educational and counseling services in the field of health, nutrition, and healthy lifestyle since at least as early as the summer of 1995. Further details responsive to this interrogatory may be derived or ascertained from the documents produced in response to Registrant's Document Request No. 2.

13. *State all facts that support your contention that you have acquired common law rights in the trademark "Wellness Resources" for use in connection with vitamin and mineral supplements.*

**Response:** Petitioner has enjoyed extensive and continuous use of the trademark WELLNESS RESOURCES in connection with vitamin and mineral supplements since at least as

early as the summer of 1995. Further details responsive to this interrogatory may be derived or ascertained from the documents produced in response to Registrant's Document Request No. 3.

*14. State all facts that support your contention that the services identified in Registrant's United States trademark registration number 2,136,776 are closely related to the services provided and goods sold by you.*

**Response:** The services identified in Registrant's United States trademark registration number 2,136,776 are "educational services, namely conducting classes of instruction in nutrition, exercise and a healthy lifestyle". Petitioner provides educational and counseling services in the field of nutrition and healthy lifestyles, including the conducting of classes directed to such topics. Instructional materials directed to health and nutrition, and nutritional supplements are natural and inherent components of a holistic approach to living a healthy lifestyle. Further details responsive to this interrogatory may be derived or ascertained from the documents produced in response to Registrant's Document Request No. 4.

*15. State all facts that support your contention that your use of WELLNESS RESOURCES in connection with vitamin and mineral supplements has priority over Registrant's Mark.*

**Response:** Petitioner began use of the trademark WELLNESS RESOURCES in connection with vitamin and mineral supplements prior to the filing date of United States Trademark Registration 2,136,776 and has continuously used the WELLNESS RESOURCES mark in connection with vitamin and mineral supplements since then. Further details responsive to this interrogatory may be derived or ascertained from the documents produced in response to Registrant's Document Request No. 5.

16. *State all facts that support your contention that your use of WELLNESS RESOURCES in connection with educational and counseling services has priority over Registrant's Mark.*

**Response:** Petitioner began use of the trademark WELLNESS RESOURCES in connection with educational and counseling services prior to the filing date of United States Trademark Registration 2,136,776 and has continuously used the WELLNESS RESOURCES mark in connection with educational and counseling services since then. Further details responsive to this interrogatory may be derived or ascertained from the documents produced in response to Registrant's Document Request No. 6.

17. *State all facts that support your contention that your use of WELLNESS RESOURCES in connection with instructional materials has priority over Registrant's Mark.*

**Response:** Petitioner began use of the trademark WELLNESS RESOURCES in connection with instructional materials prior to the filing date of United States Trademark Registration 2,136,776 and has continuously used the WELLNESS RESOURCES mark in connection with instructional materials since then. Further details responsive to this interrogatory may be derived or ascertained from the documents produced in response to Registrant's Document Request No. 8.

18. *For each of Petitioner's Marks, identify each label, wrapper, package, sign, brochure, advertisement used on or in connection with any good or service from 1992 to the present.*

**Response:** The answer to this interrogatory may be derived or ascertained from the documents produced in response to Registrant's Document Request No. 9.

19. *For each of Petitioner's Marks, identify each and every method and mechanism by which the mark has been made known to the public including, without limitation, magazine articles, newspaper articles, trade publications.*

**Response:** A book, an internet website, magazine articles and advertisements, direct mailings, and a radio show.

20. *Other than U.S. Registration No. 2,132,232, U.S. application Serial No. 78/151,797, U.S. application Serial No. 78/164,522, and your trade name application, have you filed any applications or achieved any registrations which include the term "Wellness Resources" or any similar variation thereof.*

**Response:** Petitioner objects to this interrogatory as irrelevant to the extent it requests information relating to an application or registration other than trademark applications and registrations. Subject to this objection, Petitioner advises that no such trademark applications have been filed by Petitioner.

21. *Identify each instance when a person has been confused, mistaken or deceived as to the source of your goods or services.*

**Response:** None known to Petitioner.

22. *Identify each instance when a person has been confused, mistaken or deceived as to the source of Registrant's services.*

**Response:** None known to Petitioner.

23. *On what date did you first become aware of Registrant's Mark?*

**Response:** January 6, 2002.

24. *Describe the circumstances through which you became aware of Registrant's Mark.*

**Response:** The USPTO refused registration of Petitioner's '797 Mark as confusingly similar to Registrant's Mark.

25. For each lawsuit or governmental proceeding involving one or more of Petitioner's Marks, state:

- (a) The name of the parties to the suit.
- (b) Your status with respect to the suit.
- (c) The name of the court where it was filed.
- (d) The date of filing and the file number.
- (e) The results of the trial, if any.
- (f) The ultimate disposition of the case.

**Response:** Petitioner's Marks are not involved in any lawsuit or governmental proceeding other than the present cancellation proceeding.

26. For each of Petitioner's Marks, state the name and address of the persons most knowledgeable concerning:

- (a) The selection of the mark;
- (b) Adoption of the mark;
- (c) First use of the mark;
- (d) Continuous use of the mark;
- (e) Nature of the use of the mark including without limitation types of goods and services, channels of commerce, marketing efforts;
- (f) Sales of goods or service in connection with the mark;
- (g) Advertising of the goods or services used in connection with the mark; and
- (h) registration of the mark throughout the world.

**Response:** (a) Byron J. Richards and Mary Guignon Richards of Wellness Resources, Inc. (b) Byron J. Richards and Mary Guignon Richards of Wellness Resources, Inc. (c) Byron J. Richards and Mary Guignon Richards of Wellness Resources, Inc. (d) Byron J. Richards and Mary Guignon Richards of Wellness Resources, Inc. (e) Byron J. Richards and Mary Guignon Richards of Wellness Resources, Inc. (f) Byron J. Richards and Mary Guignon Richards of Wellness Resources, Inc. (g) Byron J. Richards and Mary Guignon Richards of Wellness Resources, Inc.

Resources, Inc. (h) Daniel Tysver and Stephanie James of Beck & Tysver, 2900 Thomas Avenue South, Suite 100, Minneapolis, Minnesota 55416-4477.

27. *For each of Petitioner's Marks, identify each and every product, brochure, pamphlet, label, tag, price list, catalog, catalog display, and other sales and promotional material distributed by or on your behalf which uses the subject mark.*

**Response:** See responses to Interrogatories Nos. 11 and 18.

28. *For each of Petitioner's Marks, describe the market segment to which the goods or services sold under the mark are primarily promoted including, without limitation, geographic location, age group, sophistication of consumer, income of consumer, whether the consumer is a household or commercial enterprise, and whether the consumer is an end-consumer or purchasing agent.*

**Response:** Petitioner offers goods and services under Petitioner's Marks nationwide with a focus upon direct sales to adult consumers regardless of income, education or sophistication.

29. *For each of Petitioner's Marks, describe each and every method by which you distribute, sell, or advertise the products or services used in connection with the mark.*

**Response:** An internet website, magazine articles and advertisements, direct mailings, and a radio show.

30. *For each of Petitioner's Marks, identify the geographic location where you have advertised or sold services or products in connection with the mark.*

**Response:** Nationwide.



31. For each geographic location identified in Interrogatory 30, identify sales revenues, for each year from 1992 to the present, for each service or product used in connection with the mark.

**Response:** The answer to this interrogatory requires disclosure of certain confidential information which will not be provided absent a confidentiality agreement or protective order from the Board. Petitioner does not maintain records indicating annual sales revenues for each service or product. Upon entry of a confidentiality agreement or protective order, Petitioner shall produce sales records as maintained by Petitioner in accordance with Fed. R. Civ. Proc. 33(d).

32. For each geographic location identified in Interrogatory 30, identify how many consumers have purchased each service or product used in connection with the mark, for each year from 1992 to the present.

**Response:** The answer to this interrogatory requires disclosure of certain confidential information which will not be provided absent a confidentiality agreement or protective order from the Board. Petitioner does not maintain records indicating how many consumers have purchased each service or product offered by Petitioner each year. Upon entry of a confidentiality agreement or protective order, Petitioner shall produce customer records as maintained by Petitioner in accordance with Fed. R. Civ. Proc. 33(d).

**AS TO OBJECTIONS:**

Dated: 10 Feb 04

SHERRILL LAW OFFICES, PLLC

By: 

Michael S. Sherrill  
(Atty Reg. No. 164,987)  
4756 Banning Avenue, Suite 212  
White Bear Lake, MN 55110-3205  
TEL: (651) 426-2400

Attorney for Petitioner

AS TO ANSWERS:

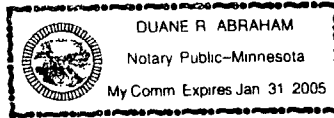
WELLNESS RESOURCES, INC.

Dated: Feb 4, 2004

By: Byron Richards  
Byron Richards  
President

Subscribed and sworn to before me  
this 4 day of February, 2004.

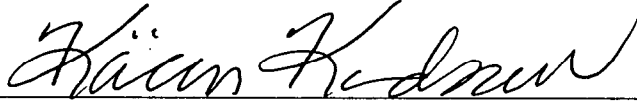
Duane Abraham  
Notary Public



**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing PETITIONER'S RESPONSE TO REGISTRANT'S FIRST SET OF INTERROGATORIES has been served on counsel for Registrant by mailing said copy on February 10, 2004, by First Class mail, postage prepaid to:

Warren L. Dranit  
Spaulding McCullough & Tansil LLP  
3550 Round Barn Boulevard, Suite 306  
Santa Rose, CA 95403



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Kären L. Knudson

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Registrant.

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**PETITIONER'S RESPONSE TO REGISTRANT'S  
FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS**

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Petitioner, Wellness Resources, Inc. (hereinafter "Wellness Resources"), without waiving any objections and without admitting the relevancy or materiality of any of the requests for production and/or responses, hereby responds to REGISTRANT'S FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS based upon the information presently available and known to Wellness Resources.

Notwithstanding anything contained herein to the contrary, responses to those requests for production requesting information protectable from discovery as subject to the attorney-client privilege and/or under the work product doctrine will not be provided to the extent that the response would call for such information.

*1. For each of Petitioner's Marks, documents sufficient to establish continuous use in commerce from the date of first use in commerce through to the present.*

**Response:** Petitioner shall produce the requested documents in the possession, custody or control of Petitioner.

2. *All documents that support your contention that you have acquired common law rights in the trademark "Wellness Resources" for use in connection with educational and counseling services in the field of health, nutrition, and healthy lifestyle.*

**Response:** Petitioner shall produce the requested documents in the possession, custody or control of Petitioner.

3. *All documents that support your contention that you have acquired common law rights in the trademark "Wellness Resources" for use in connection with vitamin and mineral supplements.*

**Response:** Petitioner shall produce the requested documents in the possession, custody or control of Petitioner.

4. *All documents that support your contention that the services identified in Registrant's United States trademark registration number 2,136,776 are closely related to the services provided and goods sold by you.*

**Response:** Petitioner shall produce the requested documents in the possession, custody or control of Petitioner.

5. *All documents that support your contention that your use of WELLNESS RESOURCES in connection with vitamin and mineral supplements has priority over Registrant's Mark.*

**Response:** Petitioner shall produce the requested documents in the possession, custody or control of Petitioner.

6. *All documents that support your contention that your use of WELLNESS RESOURCES in connection with educational and counseling services has priority over Registrant's Mark.*

**Response:** Petitioner shall produce the requested documents in the possession, custody or control of Petitioner.

7. *All documents arising from or related to the circumstances through which you became aware of Registrant's Mark.*

**Response:** Petitioner shall produce the requested documents in the possession, custody or control of Petitioner.

8. *All documents that support your contention that your use of WELLNESS RESOURCES in connection with instructional materials has priority over Registrant's Mark.*

**Response:** Petitioner shall produce the requested documents in the possession, custody or control of Petitioner.

9. *For each of Petitioner's Marks, an exemplar of each label, wrapper, package, sign, brochure, advertisement used on or in connection with any good or service from 1992 to the present.*

**Response:** Petitioner shall produce the requested documents in the possession, custody or control of Petitioner.

10. *For each of Petitioner's Marks, an exemplar of each and every method and mechanism by which the mark has been made known to the public including, without limitation, magazine articles, newspaper articles, trade publications.*

**Response:** Petitioner shall produce the requested documents in the possession, custody or control of Petitioner.

11. *All documents arising from or related to any registration or application to register "Wellness Resources", whether as a word mark or in connection with a design, including, without limitation, U.S. Registration No. 2,132,232, U.S. application Serial No. 78/151,797, U.S. application Serial No. 78/164,522, and your trade name application.*

**Response:** Petitioner shall produce the requested documents in the possession, custody or control of Petitioner.

12. *All documents arising from or related to each instance when a person has been confused, mistaken or deceived as to the source of your goods or services.*

**Response:** Petitioner has no such documents in its possession, custody or control.

13. *All documents arising from or related to each instance when a person has been confused, mistaken or deceived as to the source of Registrant's services.*

**Response:** Petitioner has no such documents in its possession, custody or control.

SHERRILL LAW OFFICES, PLLC

Date 10 Feb 04

By M. Sherrill

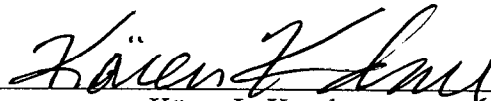
Michael S. Sherrill  
4756 Banning Avenue, Suite 212  
White Bear Lake, Minnesota 55110-3205  
(651) 426-2400

Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing PETITIONER'S RESPONSE TO REGISTRANT'S FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS has been served on counsel for Registrant by mailing said copy on February 10, 2004, by First Class mail, postage prepaid to:

Warren L. Dranit  
Spaulding McCullough & Tansil LLP  
3550 Round Barn Boulevard, Suite 306  
Santa Rose, CA 95403

  
Kären L. Knudson



**Michael S. Sherrill**

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**From:** Sharon Bloomquist [sharonb@sherrilllaw.com]  
**Sent:** Friday, February 27, 2004 3:02 PM  
**To:** Mike Sherrill  
**Subject:** Phone Message from Warren Dranit

Friday, February 27, 2004

Time: 3:01 PM  
Name: Warren Dranit  
Of:  
Phone: 707-524-1900  
Re: Motion to Compel

Wants the documents in before he takes off motion to compel. He is going to send a protective order so produce the other documents. Do you want to see a draft of it first? Please call. He will be out for the remainder of today you can either leave a voicemail or call Monday.