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Filing date: **02/03/2006**

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

Proceeding	92043143
Party	Plaintiff Agrigenic Food Corporation d/b/a Biotec Foods
Correspondence Address	Robert G. Kavanaugh Agrigenic Food Corporation d/b/a Biotec Foods 5152 Bolsa Avenue, Suite 101 Huntington Beach, CA 92649 robert_kavanaugh@hotmail.com
Submission	Other Motions/Papers
Filer's Name	Robert G. Kavanaugh
Filer's e-mail	robert_kavanaugh@hotmail.com
Signature	/Robert G. Kavanaugh/
Date	02/03/2006
Attachments	Request for Judicial Notice with Exhibits.pdf (12 pages)

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8
9 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
10 **BEFORE THE TRADEMARK TRIAL AND APPEALS BOARD**

11
12 In the matter of Trademark Registration No. 2,711,341
13 Registration Date: April 29, 2003
14 For the Mark: "FIBERZYME"

15 Agrigenic Food Corporation, d/b/a)	Proceeding Number 92043143											
16 Biotec Foods by Robert G.)		Request for Judicial Notice in										
17 Kavanaugh, as assignee)			Support of Petitioner's Motion for									
18 Petitioner)				Summary Judgement with Exhibits								
19 vs.)												
20 AROMATIC RESEARCH &)												
21 TECHNOLOGY, LLC)												
22 d/b/a YOUNG LIVING)												
23 ESSENTIAL OILS, a Utah)												
24 corporation)												
25 Respondent)												
_____)												

26 **I. Introduction**

- 27 1. The Petitioner requests the Trademark Trials and Appeals Board ("Board")
28 take judicial notice pursuant to Federal Rules of Evidence §201, of the
29

1 pertinent documents in filed as attachment hereto in Support Petitioner's
2 Motion for Summary Judgement filed contemporaneously herewith.

3 **II. Legal Standard**

- 4
- 5 2. A court may take judicial notice when a party requests it and supplies the
6 court with the requisite information. Fed. R. Evid. 201(d). "*A judicially*
7 *noticed fact must be one not subject to reasonable dispute in that it is either*
8 *(1) generally known within the territorial jurisdiction of the trial court or (2)*
9 *capable of accurate and ready determination by resort to sources whose*
10 *accuracy cannot reasonably be questioned."* Fed. R. Evid. 201(b).
- 11
- 12 3. This Board may take judicial notice of "*records and reports of*
13 *administrative bodies."* Mack, 798 F.2d at 1282 (citing Interstate Natural
14 Gas Co. v. Southern California Gas Co., 209 F.2d 380, 385 (9th Cir. 1953)).
- 15
- 16 4. This Board may take judicial notice of its own records, and documents that
17 are public records and capable of accurate and ready confirmation by
18 sources that cannot reasonably be questioned. See MGIC Indem. Corp. v.
19 Weisman, 803 F.2d 500, 504 (9th Cir. 1986) (courts may take judicial notice
20 of matters of public record outside the pleadings); United States v. Wilson,
21 631 F.2d 118, 119 (9th Cir. 1980) (courts may take judicial notice of their
22 own records); see also United States v. Wilson, 631 F.2d 118, 119 (9th Cir.
23 24 25

1 1980) ("In particular, a court may take judicial notice of its own records in
2 other cases, as well as the records of an inferior court in other cases.").

3
4 5. Index of attached Exhibits and referenced trademark applications to be
5 Judicially Noticed:

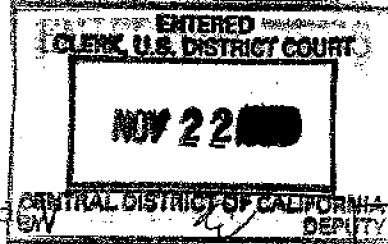
EXHIBIT ID	DESCRIPTION OF EXHIBIT
<u>EXHIBIT 1.0</u>	NOVEMBER 17TH, 1999 DEFAULT JUDGMENT AND ORDER (CV 99-02283)
<u>EXHIBIT 3.3</u>	FIRST CIRCUIT COURT HAWAII, CASE NUMBER 91-4257-12. ORDER CONFIRMING SHERIFF'S EXECUTION SALE AND DIRECTING APPLICATION OF PROCEEDS FILED AUGUST 8, 1997; EXHIBIT "A"
SERIAL # 78391126	PETITIONER'S "FIBERZYME" APPLICATION
SERIAL # 76445880	RESPONDENT'S "FIBERZYME" APPLICATION
SERIAL # 75102584	PETITIONER'S MAY 1996 ABANDONED "FIBERZYME" APPLICATION

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14 Dated this 2ndth day of February, 2006

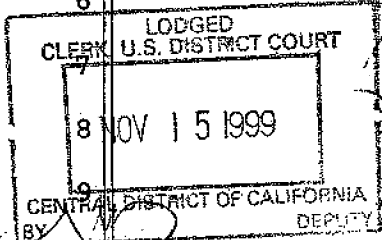
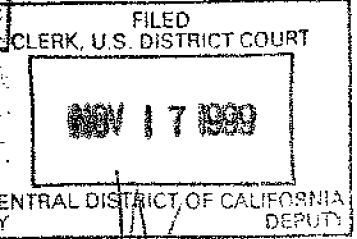
15
16
17 By: /ROBERT G. KAVANAUGH/
18 Robert G. Kavanaugh, Pro SE
19 As Assignee For Petitioner Agrigenic
20 Food Corporation
21
22
23
24
25

1 MICHAEL D. ROUNDS, State Bar No. 133972
2 The Law Offices of SKINNER, SUTTON & WATSON
3 A Professional Corporation
4 548 California Avenue
5 Reno, Nevada 89509
6 Telephone: (775) 324-4100
7 Facsimile: (775) 333-8171

8 Attorneys for Agrigenic Food
9 Corporation, et al



ENT- NO JS6
ORIGINAL



10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 BIOTEC FOODS CORPORATION, doing
13 business as BIOTEC FOODS, a
14 Hawaii corporation; PACIFIC
15 BOTANICALS CORPORATION, a
16 Delaware corporation,,

CASE NO. CV-99-2283 CAS (MANx)

(PROPOSED)
DEFAULT JUDGMENT

17 Plaintiffs,

18 -vs-

19 AGRIGENIC FOOD CORPORATION, a
20 Nevada corporation,

I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY
FIRST CLASS MAIL, POSTAGE PREPAID, TO ALL COUNSEL
(OR PARTIES) AT THEIR RESPECTIVE, MOST RECENT, ADDRESS OF
RECORD, IN THIS ACTION, ON THIS DATE,

DATED: NOV 22 1999
WJ
DEPUTY CLERK

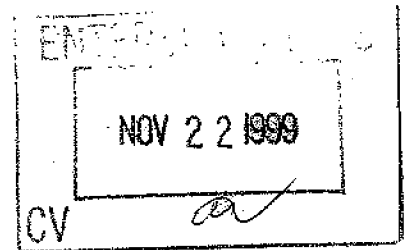
21 Defendant and Third-Party
22 Plaintiff,

23 -vs-

24 WILLIAM JAMES FAHEY,
25 individually and MARY JEAN FAHEY
26 aka MARY JEAN FEAKS,
27 individually, DOES 10 through
28 20,

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

29 Third-Party Defendants.



30 The Clerk having entered default against Defendants
31 Biotec Food Corporation and Pacific Botanicals Corporation as to
32 Counterclaimant Agriginec Food Corporation's counterclaim, and
33 having reviewed Agrigenics' Application for Default Judgment and
34 its pleadings on file herein, IT IS HEREBY ORDERED AND ADJUDGED:

35 DOC:2870
36 MLD COPY STYS
37 MLD NOTICE FTYS
38 JS-6

NOV 22 1999

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1. That judgment is entered for Counterclaimant Agrigenics Food Corporation and against Defendants Biotec Food Corporation and Pacific Botanicals Corporation on the counterclaim.

2. That Counterclaimant Agrigenics Food Corporation is the owner of the trade name and trademarks Biotec Foods, CellGuard, Extra-Energy Enzymes, Fiberzyme, Anti-stress Enzyme, Runners Edge, Jet Stress, Energy Health & Beauty, Ageless Beauty, Exercise Edge, Pacific Sea Plasma, Food Doctor and Biogestin.

3. That a permanent injunction is issued pursuant to 15 U.S.C. § 1116 enjoining Counter-Defendants and their agents, servants, employees and attorneys, and those persons in active concert or participation with them, from using any of the trade names or trademarks identified in paragraph 2, or any confusingly similar variations thereof.

4. That ~~the~~ ^{are denied without prejudice to} Attorney's fees ~~in the amount of \$~~ ^{demonstrating} ~~are awarded to~~ Agrigenics Food Corporation pursuant to 15 U.S.C. § 1117 ^{its entitlement to such award through time records and appropriate declarations.} IT IS SO ORDERED.

Dated: Nov. 17, 1999

Christine A. Sued
UNITED STATES DISTRICT JUDGE

PROOF OF SERVICE

I am a citizen of the United States and employed in Washoe County, Nevada. I am over the age of eighteen years and not a party to the within action. My business address is 548 California Avenue, Reno, Nevada 89509.

On this date, I served the foregoing document described as:

(PROPOSED) DEFAULT JUDGMENT

on the interested parties in the action by placing a true copy thereof, enclosed in a sealed envelope addressed as follows:

Pacific Botanicals Corporation 940 Royal St. New Orleans, LA 70116	Biotec Food Corporation 940 Royal St. New Orleans, LA 70116
William Fahey 940 Royal St. New Orleans, LA 70116	Mary Jean Fahey c/o William Fahey 940 Royal St. New Orleans, LA 70116

BY MAIL: I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Reno, Washoe County, Nevada.

BY CERTIFIED MAIL - RETURN RECEIPT REQUESTED: I caused such envelope with postage thereon fully prepaid to be sent via Certified Mail (Return Receipt Requested) and to be placed in the United States mail at Reno, Washoe County, Nevada.

BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the office(s) of the addressee(s).

BY FACSIMILE: I caused such document to be sent via facsimile addressed to the facsimile machine in the office(s) of the addressee(s).

BY FEDERAL EXPRESS: I caused such envelope to be delivered to Federal Express for overnight courier service to the office(s) of the addressee(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed this 12th day of November, 1999, at Washoe County, Nevada.

Tricia Trevino
Tricia Trevino

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

1997 SEP -3 PM 9:07

Of Counsel:
PAUL, JOHNSON, PARK & NILES
Attorneys at Law
A Law Corporation

R. HIGA
CLERK

SHERYL L. NICHOLSON 2998-0
WAYNE K. T. MAU 3455-0
1001 Bishop Street
Suite 1300, Pacific Tower
Honolulu, Hawaii 96813
Telephone No.: 524-1212

Attorneys for Plaintiff AGRIGENIC
FOOD CORPORATION AS ASSIGNEE FOR
CYANOTECH CORPORATION and NUTREX INC.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

CYANOTECH CORPORATION and NUTREX)	CIVIL NO. 91-4257-12
INC. BY AGRIGENIC FOOD)
CORPORATION, AS ASSIGNEE,)
)
Plaintiff,)
)
vs.)
)
)
BIOTEC FOODS-HAWAII, LTD., et)
al.,)
)
)
Defendants.)
)
)
)

ORDER CONFIRMING SHERIFF'S EXECUTION SALE
AND DIRECTING APPLICATION OF PROCEEDS
FILED AUGUST 8, 1997

Plaintiff CYANOTECH CORPORATION and NUTREX, INC. by
AGRIGENIC FOOD CORPORATION's, as Assignee ("Plaintiff") Motion
for Order Confirming Sheriff's Execution Sale and Directing

Application of Proceeds came on for hearing on August 22, 1997 at 9:00 o'clock a.m. before the Honorable Kevin S.C. Chang. Wayne K. T. Mau, Esq. appeared on behalf of Plaintiff and Norman K. K. Lau, Esq. appeared on behalf of Biotec Foods, Inc. There were no other appearances.

The court having reviewed the pleadings, records and files herein, heard arguments of counsel and good cause appearing;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion for Order Confirming Sheriff's Execution Sale and Directing Application of Proceeds filed herein on August 8, 1997 is hereby GRANTED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the sale of the property identified in the attached Exhibit "A" is sold to AGRIGENIC FOOD CORPORATION for the purchase price of ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00) and is hereby confirmed. Upon payment of the sums provided herein, the Sheriff is authorized and directed to execute and deliver to AGRIGENIC FOOD CORPORATION documents conveying all right, title and interest of BIOTEC FOODS-HAWAII, LTD., if any, in and to the identified property, subject to any and all valid liens and encumbrances which existing at the time of conveyance.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Sheriff is authorized and directed to disburse the sale proceeds relating to the Subject Property be applied against the outstanding indebtedness of AGRIGENIC FOOD CORPORATION under that

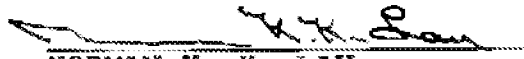
certain Final Judgment filed herein on May 5, 1997.

DATED: Honolulu, Hawaii SEP - 3 1997

KEYVIN S.C. CHANG
JUDGE OF THE ABOVE-ENTITLED COURT



APPROVED AS TO FORM:


NORMAN K. K. LAU
Attorney for Biotec Foods, Inc.

Cyanotech Corporation et al. v. Biotec Foods-Hawaii, Ltd. et al.;
Civil No. 91-4257-12; ORDER CONFIRMING SHERIFF'S EXECUTION SALE
AND DIRECTING APPLICATION OF PROCEEDS FILED AUGUST 8, 1997

EXHIBIT "A"

All assets and goodwill of Biotec Foods-Hawaii, Ltd., a liquidated Hawaii Corporation, and Biotec Foods-Hawaii, Ltd., a Hawaii Corporation, with the last known business address of 250 S. Hotel Street, Suite 200, Honolulu, Hawaii 96813, including but not limited to the interest in tangible personal property, real property, and intangible property, telecommunication rights, registered and unregistered trademarks, trade names, trade secrets and customer lists including but not limited to the following:

Telecommunication Rights: The rights to use and control the primary AT&T toll-free telephone numbers used by defendant Biotec Foods-Hawaii, Ltd.: (1) 800-468-7578, and (2) 800-331-5888.

Registered and Unregistered Trademarks and Trade Names:

- | | |
|--------------------------|----------------------------|
| 1. Cell Guard™ | 1. SOD/CAT™ |
| 2. Anti-Stress Enzymes™ | 2. GP/CAT™ |
| 3. Ageless Beauty™ | 3. Dismutase® |
| 4. Extra-Energy Enzymes™ | 4. Feline Support™ |
| 5. Runner's Edge™ | 5. Canine Support™ |
| 6. Exercise Edge™ | 6. Energy Health & Beauty™ |
| 7. Jet Stress® | 7. Food Doctor™ |
| 8. Pacific Sea Plasma™ | 8. Biotec Foods™ |
| 9. FiberZyme™ | 9. Biomed™ |
| 10. Biogestin™ | 10. Biovet International™ |
| 11. MET/CAT™ | |

1 Robert G. Kavanaugh, Pro SE
2 Agrigenic Food Company
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4 Huntington Beach, CA 92649-1047
5 Phone: 714-899-3477
6 Fax: 714-899-0078
7 Email: Robert_Kavanaugh@hotmail.com

8
9 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
10 **BEFORE THE TRADEMARK TRIAL AND APPEALS BOARD**
11

12 In the matter of Trademark Registration No. 2,711,341
13 Registration Date: April 29, 2003
14 For the Mark: "FIBERZYME"

15 I, the undersigned, certify and declare that I am over the age of 18 years, employed
16 in the County of Orange, State of California. On February 2nd, 2006, I served a
17 true copy of **Request for Judicial Notice in Support of Petitioner's Motion for**
18 **Summary Judgement with Exhibits.** pursuant to 37 C.F.R. §2.119 by depositing
19 it in the United States Mail in a sealed envelope with the priority mail, first-class
20 postage thereon fully prepaid with to the following recipient(s):

21 **John C Stringham**
22 **Workman Nydegger**
23 **60 East South Temple, 1000 Eagle Gate TW**
24 **Salt Lake City, UT 84111**
25 **jstringham@wnlaw.com**

Place of Mailing:
Arise Direct Marketing, Inc.
5152 Bolsa Avenue STE 101
Huntington Beach, CA 92649-1047
County of Orange, California

Executed on this 2nd day of February, 2006 at Huntington Beach, County of
Orange, California

1 I hereby certify under the penalty of perjury that the foregoing is true and correct.

2 */ROBERT G. KAVANAUGH/*

3 Robert G. Kavanaugh

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