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

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|---------------------------|---|
| Proceeding                | 92057500  |
| Party                     | Plaintiff<br>Orbis Distribution, Inc.   |
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| Submission                | Motion for Summary Judgment   |
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| Signature                 | /John M. Bolger/  |
| Date                      | 05/03/2015  |
| Attachments               | Motion for Summary Judgment. 5.3.15.pdf(695143 bytes )  |

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

In the Matter of Trademark Application Serial Number: 78/368710  
Registration Number: 3197276  
For the Mark: Bee Naturals

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|---|
| Orbis Distribution, Inc,<br>Plaintiff,<br><br>v.<br><br>Bee Naturals, Inc.,<br>Defendant. |
|---|

Cancellation Number:  
92057500

**PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT AND BRIEF IN SUPPORT**

Because the solely remaining issues before the Board are a legal matters, this Cancellation proceeding is appropriate for summary judgment.<sup>1</sup> Therefore, the Plaintiff requests that the Board decide the remaining legal issues.

**INTRODUCTION**

This matter concerns the most basis aspects of the federal laws governing trademark registration and maintenance: (1) use in commerce, and (2) ownership of a mark.

First, in order to maintain a federal trademark registration in the United States, a mark must be used in continuous lawful commerce during the five to six year period prior to the submission of the declaration of use document. The Defendant was administratively dissolved for nearly nine consecutive years of the “Bee Naturals” mark’s registration and was unable to use its mark in commerce as a matter of law. Thus, the mark must be cancelled.

The Defendant has made an argument in its Answer and its own Motion for Summary Judgment that Missouri law allows for rescission of the corporation; however, that argument is

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<sup>1</sup> The parties have exchanged Initial Disclosures and had a Discovery Conference.

contrary to the United States Code, decisions of the Federal Circuit, the Missouri statutes, and decisions of the Missouri Court of Appeals and Federal Courts.

Second, at the time of filing the Combined Declaration of Use and Incontestability, a registrant must be the owner of the mark. In this case, the Defendant could not have used the mark in commerce; thus, it was not an owner of the mark as a matter of law, and the mark must be cancelled.

The Defendant's case fails each of these basic areas of law. Each one of these carries the same penalty—cancellation of the mark; therefore, the Plaintiff is only required to prove one in order for the mark to be cancelled.

## **FACTS**

The following facts are undisputed.

### I. Facts Regarding Use in Commerce and Administrative Dissolution

The Defendant has admitted it was administratively dissolved. (Defendant's Answer, ¶¶24-25.) The Defendant was administratively dissolved in 2006. (Exhibit E.) The mark was registered in 2007. (TSDR, Serial Number 78368710, Registration Certificate.) The Defendant did not reinstate its company until April 29, 2014. (TTAB Record.)

The Defendant has admitted that a corporation when dissolved cannot carry on any business. (Defendant's Answer, ¶26.) Specifically, the Defendant answered two allegations by admitting that Missouri does not authorize an administratively dissolved corporation to carry on business except to wind up and liquidate its business and referenced two sections of the Missouri statutes in support. (*Id.* at ¶¶24, 26.) Sections 351.476 and 351.486 of the Missouri Statutes are incorporated into the Defendant's Answer. (*Id.*) The Defendant also admitted the following allegations of the Complaint:

24. As shown on the Missouri Secretary of State Business Name History webpage, the relevant part of which is attached hereto as Exhibit B, the business BeeNaturals, Inc. had been previously administratively dissolved and did not exist as a legal entity as of July 10, 2013. [ADMITTED as to Administrative Dissolution.]

25. As shown on the Administrative Dissolution or Revocation for a For-Profit Corporation dated December 29, 2006, attached hereto as Exhibit D, BeeNaturals, Inc. was administratively dissolved or revoked under relevant Missouri law “as of December 29, 2006.” [ADMITTED as to Administrative Dissolution or Revocation.]

26. As shown on the Administrative Dissolution or Revocation for a For-Profit Corporation dated December 29, 2006, attached hereto as Exhibit D, BeeNaturals, Inc., due to its administrative dissolution, cannot (as of 2006) carry on any business except that necessary to wind up and liquidate its business and affairs. [ADMITTED BY DEFENDANT, except for the year 2006.]

27. Pursuant to the Trademark Act, an owner must be a legal entity or person in order to maintain a trademark registration. [ADMITTED BY DEFENDANT.]

28. Pursuant to the Trademark Act, an owner must be a legal entity or person in order to file a Combined Declaration under Section 8 and Section 15. [ADMITTED BY DEFENDANT.]

(Petition to Cancel, ¶¶24-28.) Specifically, this is how the Defendant answered allegations 24-28 of the Complaint:

24. Defendant **admits that the corporation has been administratively dissolved** subject to rescission; however, under Missouri law, this does not mean the corporation ceases to exist. RSMO 351.486.

25. Denied. **The corporation was administratively dissolved or revoked**, subject to rescission.

26. **It is admitted that Missouri does not authorize an administratively dissolved corporation to carry on business except to wind up and liquidate its business as in RSMO 351.476.** The parenthetical “(as of 2006)” in paragraph 26 is denied.

27. **Admitted.**

28. **Admitted.**

Answer, ¶¶24-29. (Emphases added.)

## II. Facts Regarding Ownership

As the Board found in its Decision of June 14, 2014, the responded has put forth the contention that it alone owned the mark, and “the record now supports respondent’s contention that BeeNaturals Inc. is the sole owner of the registration . . . .” (Decision, June 14, 2014, 5.)

## LAW

### **Introduction: Summary Judgment and Abandonment**

#### A. The Law of Summary Judgment

Motion for summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Trademark Trial and Appeal Board Manual of Procedure, § 528.01 (2014)(citations omitted).

The purpose . . . [is] to avoid an unnecessary trial where there is no genuine issue of material fact and more evidence than is already available in connection with the summary judgment motion could not reasonably be expected to change the result in the case. . . . [T]he Board does not hesitate to dispose of cases on summary judgment when appropriate.

Id. (citations omitted).

A party moving for summary judgment has the burden of demonstrating the absence of any genuine issue of material fact, and that it is entitled to judgment as a matter of law . . . [which] may be met by showing “that there is an absence of evidence to support the nonmoving party's case.” If the moving party meets its burden, that is, if the moving party has supported its motion with affidavits or other evidence which if unopposed would establish its right to judgment, the nonmoving party may not rest on mere denials or conclusory assertions, but rather must proffer countering evidence, by affidavit or as otherwise provided in Fed. R. Civ. P. 56, showing that there is a genuine factual dispute for trial.

Id. (citations omitted).

A factual dispute is genuine only if, on the evidence of record, a reasonable fact finder could resolve the matter in favor of the nonmoving party. . . . A fact is material if it “may affect the decision, whereby the finding of that fact is relevant and necessary to the proceedings.” However, a dispute over a fact which would not alter the Board’s decision on the legal issue will not prevent entry of summary judgment.

Id. (citations omitted).

## B. The Law of Abandonment

### 1. Abandonment: United States Codes

A registered trademark may be canceled if it has been abandoned. 15 U.S.C. 1064(3). “Nonuse for 3 consecutive years shall be prima facie evidence of abandonment.” 15 U.S.C. 1127. “‘Use’ of a mark means the bona fide use of such mark made in the ordinary course of trade, and not made merely to reserve a right in a mark.” Id.

### 2. Abandonment: Federal Cases Interpreting the United States Code

Establishing a prima facie case “eliminates the challenger’s burden to establish the intent element of abandonment as an initial part of its case,” creating a presumption that the trademark owner has abandoned the mark. Imperial Tobacco Ltd. v. Philip Morris, Inc., 899 F.2d 1575, 1579, 14 USPQ2d 1390, 1393 (Fed. Cir. 1990)(holding that two years of nonuse was enough to establish abandonment and necessitated cancellation of the mark, where the registrant’s four excuses were not legitimate excuses for failure to use the mark in commerce). The burden then shifts to the trademark owner to produce evidence that it used the mark during the statutory period. Id.; *see also*, Rivard v. Linville, 133 F.3d 1446, 1449, 45 USPQ2d 1374, 1376 (Fed. Cir. 1998)(noting that the prima facie case creates a presumption that the trademark owner abandoned the mark and holding that five years of nonuse was enough to establish abandonment and necessitated cancellation of the mark, where registrant’s excuses for nonuse were not legitimate excuses).

## **I. The Law Regarding Use in Commerce and Administrative Dissolution**

### A. Federal Law Concerning Use in Commerce and Administrative Dissolution

1. United States Code Regarding Use in Commerce and Administrative  
Dissolution

Trademark Act Section 45, 15 U.S.C. Section 1127, states in relevant part that, “The term ‘use in commerce’ means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark.” 15 U.S.C. § 1127. “The word ‘commerce’ means all commerce which may lawfully be regulated by Congress.” Id.

2. Federal Cases Interpreting Use in Commerce and Administrative  
Dissolution

An administratively dissolved corporation does not have rights to its intellectual property as a result of the dissolution. Paradise Creations, Inc. v. UV Sales, Inc., 315 F.3d 1304, 1309 (Fed. Cir. 2003). The requirement of standing in the federal scheme must be complete at the inception of the lawsuit, and retroactive state statutes cannot subsequently give said rights nor allow the alleged owner to fulfill said federal requirements. Id.; accord Gaia Techs., Inc. v. Reconversion Techs., Inc., 93 F.3d 774, 778, 39 USPQ2d 1826, 1830 (Fed. Cir. 1996); Abraxis Bioscience, Inc. v. Navinta LLC, 625 F.3d 1359 (Fed. Cir. 2010).

B. Missouri Law Regarding Use in Commerce and Administrative Dissolution

1. Missouri Statutes Regarding Use in Commerce and Administrative  
Dissolution

The state of Missouri law provides in two separate statutes that once administratively dissolved, a corporation cannot conduct any business, except that necessary to wind up its affairs and liquidate its assets. Mo. Rev. Stat. §§ 351.486 & 351.476. Furthermore, the Missouri rescission statute was repealed in 1990. Mo. Rev. Stat. § 351.540 (repealed 1990).

## 2. Missouri Cases Interpreting Use in Commerce and Administrative Dissolution

The federal courts of Missouri have held that reinstatement of a corporation does not retroactively validate its illegal actions during the period of administrative dissolution. Byrd v. Hometown Heating & Air Conditioning, Inc., 228 B.R. 435, 437-38 (Bankr. W.D. Mo. 1999). The federal courts of Missouri have also held that an administrative dissolved corporation must not carry on any business except that necessary to wind up and liquidate its business and affairs. Id. at 437. Any exercise of corporate powers, including conducting any business, during a period of administrative dissolution is illegal and void. Id.

The Missouri Court of Appeals has also ruled in numerous cases that an administratively dissolved business cannot carry on any business except to wind up and liquidate its business and affairs. U.S. Ctr. Under. v. Manchester L. & Cas., 952 S.W.2d 719, 720-21 (Mo. App. 1997); Behr v. Bird Way, Inc., 923 S.W.2d 470, N.2 (Mo. App. 1996); Mabin Const. v. Historic Constructors, 851 S.W.2d 98, 102-03 (Mo. App. 1993).

## **II. The Law Regarding Ownership**

### A. Federal Law Regarding Ownership

#### 1. Federal Statutes Regarding Ownership

The United States federal trademark laws provide that a Section 8 Declaration of Use must be executed by and filed in the name of the then current owner of the trademark. 15 U.S.C. § 1058(a)&(c). If the affidavit or declaration was filed in the name of the wrong party, and there is no time remaining in the grace period, the registration will be cancelled. Id.

#### 2. Federal and Trademark Cases Interpreting Ownership

Filing in the name of another entity who is not the owner of the mark at that time is not a deficiency that can be corrected after the expiration of the grace period. *See In re Precious Diamonds, Inc.*, 635 F.2d 1637, 208 U.S.P.Q. 410 (C.C.P.A. 1980); *In re Media Central IP Corp.*, 65 U.S.P.Q.2d 1637 (Comm'r Pat. & Trademarks 2002); *In re Caldon Co. Ltd. Partnership*, 37 U.S.P.Q.2d 1539 (Comm'r pat. & Trademarks 1995); *In re Weider*, 212 U.S.P.Q. 947 (Comm'r Pat. & Trademarks 1981); *In re ACE III Communications, Inc.*, 62 U.S.P.Q.2d 1049 (TTAB 2001).

## B. The Missouri Laws Regarding Ownership

### 1. Missouri Statutes Regarding Ownership

As stated above, two sections of the Missouri statutes mandate that a dissolved corporation cannot conduct any business. Mo. Rev. Stat. §§ 351.476 & 351.486. Furthermore, Missouri Revised Statute Section 351.476 provides that “2. Dissolution of a corporation does not: (1) Transfer title to the corporation’s property . . . .” Mo. Rev. Stat. § 351.476.2(1).

### 2. Missouri Cases Interpreting Ownership

Any contract or agreement regarding a corporation’s property made during a period of dissolution are illegal acts and are void. *Byrd*, 228 B.R. at 437.

## **ARGUMENT**

### **I. Abandonment**

As shown in the Law section of this Brief, the United States federal trademark laws provide that a mark must be used in commerce. 15 U.S.C. § 1127. Nonuse for three consecutive years is prima facie evidence of abandonment. *Id.* Because the Defendant has admitted it could not have conducted any business for nearly nine years, the Defendant abandoned the mark. *Id.* The Defendant was administratively dissolved from prior to the mark’s certificate being issued

until well after the grace period for filing the Combined Declaration had expired. (Defendant's Answer, ¶¶24-25; Exhibit E; TSDR, Serial Number 78368710, Registration Certificate.)

Therefore, this abandonment is a matter of law due to (A) the federal trademark laws of the United States requiring use in commerce and relevant case law interpreting those laws, and (B) the statutory laws and relevant case law of the state of Missouri that prevent an administratively dissolved corporation from using a mark in commerce. As shown in the following two subsections, neither the federal trademark laws nor the Missouri corporate laws are compatible with the Defendant's erroneous claims of retroactive application due to the doctrine of rescission, by which the Defendant apparently hopes the Board will apply to this case to mean as "retroactive use in commerce" and "retroactive curing of illegalities." The Defendant's error is that both the federal and state statutes prevent such an interpretation. Furthermore, the Defendant ignores recent cases from both the Federal Circuit and the Missouri federal district courts, all of which hold that that the Defendant's argument is contrary to law. Finally, the statute allowing for rescission was repealed by the Missouri legislature (in 1990).

#### **A. Abandonment Pursuant to Federal Law**

##### 1. Abandonment Pursuant to Use in Commerce Laws

Trademark Act Section 45, 15 U.S.C. Section 1127, states in relevant part that, "The term 'use in commerce' means the bona fide use of a mark **in the ordinary course of trade, and not made merely to reserve a right in a mark. . . .**" 15 U.S.C. § 1127 (emphases added). "The word 'commerce' means all commerce which may **lawfully** be regulated by Congress." *Id.* (emphasis added). "**Nonuse for 3 consecutive years shall be prima facie evidence of abandonment.**" *Id.* (emphasis added).

Even if Missouri law were to allow for the reinstatement (or rescission) of a company as if a dissolution never occurred, trademark law does not allow for such variance. It is one of the most basic tenants of Trademark law that the Lanham Act allows for registration of trademarks that have been used in commerce that Congress may regulated, namely, legal, interstate commerce in the United States. 15 U.S.C. § 1127. Thus, use in commerce for a trademark must be:

- (1) good faith use,
- (2) used in ordinary course of trade,
- (3) not made merely to reserve a right,
- (4) placed on goods (etc.),
- (5) which are then sold or transported in commerce,
- (6) that is regulated by Congress, meaning
- (7) interstate commerce and extra-national commerce, which is also must be
- (8) lawful and
- (9) continuous.

Id. It is impossible to image a scenario whereby the above nine tenants of trademark law could be fulfilled by (A) a dissolved company, (B) conducting business against the express directive of both Statute and the Secretary of State, (C) whose owner knew that her company was dissolved and that any business transactions were contrary to law, (D) which was dissolved for nearly nine consecutive years, including prior to the registration's issuance and after the expiration of the grace period for filing the Declaration of Use. Even presuming that the Defendant sold its goods in commerce, such "business" would not meet the federal definition of use in commerce as a matter of law. How can an administratively dissolved company conduct "ordinary business"? Ordinary business by a corporation requires an actual, registered corporation. How can it transfer goods to another state if it is dissolved in its home state? Such an act would be contrary to numerous laws. How can such commerce be considered legal? Congress cannot regulate

goods passed through commerce by an illegal corporate act.<sup>2</sup> Thus, even if the Board were to find that the corporate reinstatement statute in Missouri<sup>3</sup> somehow legitimizes or legalizes illegal activity, it cannot retroactively confer such legitimacy on federal trademark law. Congress does not regulate nor does the Trademark Act provide for “retroactive commerce.” 27 U.S.C. § 1127.

Because the administratively dissolved Defendant could not have used its mark in the ordinary course of trade, and because there was nonuse for more than eight years, a prima facie case of abandonment has been established. Imperial Tobacco Ltd. v. Philip Morris, Inc., 899 F.2d 1575, 1579, 14 USPQ2d 1390, 1393 (Fed. Cir. 1990)(holding that two years of nonuse was enough to establish abandonment and necessitated cancellation of the mark); Rivard v. Linville, 133 F.3d 1446, 1449, 45 USPQ2d 1374, 1376 (Fed. Cir. 1998)(holding that five years of nonuse was enough to establish abandonment and necessitated cancellation of the mark). Reinstatement occurred nearly nine years after it had been dissolved, nearly a year after litigation began in this matter, and approximately one year after the grace period for filing the Combined Declaration had expired. (Facts Section, *supra*.) Thus, the duration of the Defendant’s nonuse of the mark was nearly twice as long as occurred in Rivard and nearly five times as long as in Imperial Tobacco. Therefore, the mark must be cancelled.

## 2. Abandonment: Defendant’s Retroactive Argument Does Not Apply to Federal Trademark Law Pursuant to Relevant Federal Cases

The United States Court of Appeals for the Federal Circuit recently examined a very similar defense to the one that the Defendant has raised—whether a reinstatement statute can retroactively confer intellectual property rights. Paradise Creations, Inc. v. UV Sales, Inc., 315

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<sup>2</sup> By analogy, Congress does not “regulate” illegal or black market goods and their peddlers, in terms of allowing registration of their marks. Rather, Congress attempts to establish laws that prevent and punish such behavior.

<sup>3</sup> As shown in the law section and argued in the argument section, the unambiguous language of two Missouri statutes and the precedent from federal and state Missouri courts expressly described conducting business while administratively dissolved as illegal behavior and any actions undertaken as void.

F.3d 1304 (Fed. Cir. 2003). The beginning of the Federal Circuit’s analysis involves the concept that an administratively dissolved corporation does not have rights to its patent as a result of the dissolution. Paradise, 315 F.3d at 1308-09, ¶¶14-16. In essence, the defending party argued that the party seeking to enforce its patent rights did not in fact have enforceable patent rights during the period of its administrative dissolution, and therefore, did not hold such rights to the patent at the time it filed suit. Id. at 1308, ¶15.

The Federal Circuit analyzed the Florida Corporations Statutes, which contains a clause that is essentially identical to the Missouri clause, stating that a “corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs.” Id. The defending party (the appellee) contended that a contract entered into in violation of the administrative dissolution statute cannot grant enforceable rights under Florida law, during the period of corporate dissolution. Id. Like the Defendant in this case, the party seeking to enforce its rights (the appellant) did not challenge this construction of the statute, thus admitting that it did not hold enforceable patent rights when the suit was filed. Id. Instead, again like the Defendant in this case, the appellant relied on the theory that when it gained reinstatement, under Florida Corporation Statutes corporate reinstatement provision, this reinstatement related back to the date of dissolution. Id.

Therefore, the main issue on appeal in Paradise was whether a state corporate revival statute can retroactively confer Article III standing where it did not exist at the time the complaint was filed. Id. Similarly, the primary issue before the Board is whether a state corporate revival statute can retroactively confer legal use in commerce where it did not exist

from before the mark's registration until a year after the Combined Declaration of Use and Incontestability was filed.

The appellant contends that, pursuant to this statute, its licensing agreement was retroactively validated upon reinstatement, and that it constructively held enforceable patent rights on the day it filed its complaint. The appellee counters that whatever the effect of the corporate revival statute in Florida State courts, it cannot retroactively confer standing in federal court.

Paradise, 1309, ¶16. Despite the alleged patent holder's objections to the contrary and citation to state reinstatement statutes, the federal court held that regardless of what the state courts might hold, they had no bearing on the federal laws concerning standing: "It cannot rely on the Florida corporate revival statute to retroactively claim enforceable patent rights on the day it filed its complaint, in order to assert standing." Id.

Again, the Federal Circuit agreed that regardless of the effect of the corporate revival statute, a state statute cannot confer standing upon it retroactively. Id. The Federal Circuit pointed to numerous cases that held that similarly. Id. Some of these cases also involved the retroactive application of trademarks rights, which were also denied because of the inability to retroactively claim interests in trademarks. *See Gaia Techs., Inc. v. Reconversion Techs., Inc.*, 93 F.3d 774, 778, 39 USPQ2d 1826, 1830 (Fed. Cir. 1996)(holding that the plaintiff's patent and trademark infringement claims were required to be dismissed for lack of standing, because of its "inability to prove that it was the owner of the Intellectual Property at the time the suit was filed"), as amended on rehearing on different grounds, 104 F.3d 1296, 41 USPQ2d 1134 (Fed. Cir. 1996); *accord Abraxis Bioscience, Inc. v. Navinta LLC*, 625 F.3d 1359 (Fed. Cir. 2010)("[D]ismissing plaintiff's patent and trademark infringement claims for lack of standing because of its 'inability to prove that it was the owner of the Intellectual Property at the time the suit was filed.'"). "Accordingly, this court has determined that in order to assert standing for

patent infringement, the plaintiff must demonstrate that it held enforceable title to the patent *at the inception of the lawsuit.*” Id. at 1309, ¶17 (emphasis in original).

In summary, the Paradise court found that (1) the alleged patent holder had the right to appear in state court, but only to wind up its affair and liquidate its business, id. at 1307-08, ¶12; (2) the alleged patent holder had no right to its patent during the period of dissolution, id. at 1308-09, ¶15; and as a result (3) the patent holder could not establish standing through retroactive arguments, id. at 1309, ¶16-17.

Similarly, in this Cancellation, the Defendant lacked the requisite legal ability to conduct legal business, to use its mark in commerce, and to obtain any interest in its trademark. Id. First, while administratively dissolved, no state or federal rights may be legally gained in intellectual property. Second, even presuming the state statute were to somehow allow for state rights to be obtained, because standing in federal court and rights pursuant to trademark law are federal issues that exist as of the date of filing a complaint, a state statute does not create new rights within the federal scheme; otherwise, the federal landscape would be filled with many peaks and valleys. Id. Certainly, federal trademark itself law would be compromised if companies could do business illegally and still obtain federal trademark registrations. In the same way that a state statute cannot retroactively allow for standing or patent rights in the Paradise Creations case, the federal issues of use in commerce cannot be met by a dissolved corporation.<sup>4</sup> If an administratively dissolved corporation has no rights to its patent for the purpose of standing, an administratively dissolved corporation that is expressly prevented from conducting business cannot have any ownership interests in its trademark, because such ownership would directly contradict the most basic tenant of federal trademark law: use in commerce.

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<sup>4</sup> Furthermore, as with standing, the defendant needed to be the owner of the mark at the time it filed the Declaration of Use, as argued in Section II of this Argument.

## **B. Abandonment Pursuant to Missouri Law**

### 1. Abandonment Pursuant to Missouri Administrative Dissolution Laws

Missouri law does not allow for a company that has been administratively dissolved to conduct any business, except for that necessary to wind up and liquidate its business and affairs. Mo. Rev. Stat. §§ 351.476 & 351.486. In fact, the state of Missouri law provides in two separate statutes that once administratively dissolved, a corporation cannot conduct any business, except that necessary to wind up its affairs and liquidate its assets. Id. First, Missouri Revised Statute Section 351.486 provides, which the Defendant directly references in its Answer mandates:

A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under section 351.476 and notify claimants under sections 351.478 and 351.482, and any officer or director who conducts business on behalf of a corporation so dissolved except as provided in this section shall be personally liable for any obligation so incurred.

Mo. Rev. Stat. § 351.486.3. Furthermore, Missouri Revised Statute Section 351.476, which the Defendant also directly references in its Answer mandates:

1. A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including: (1) Collecting its assets; (2) Disposing of its properties that will not be distributed in kind to its shareholders; (3) Discharging or making provision for discharging its liabilities; (4) Distributing its remaining property among its shareholders according to their interests; and (5) Doing every other act necessary to wind up and liquidate its business and affairs.

2. Dissolution of a corporation does not: (1) Transfer title to the corporation's property; (2) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records; (3) Subject its directors or officers to standards of conduct different from those applicable to directors and officers of a corporation which has not been dissolved; provided that any such officer or director who conducts business on behalf of the corporation except as provided in this section shall be personally liable for any obligation so incurred; (4) Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws; (5) Prevent commencement of a proceeding by or against the corporation in its

corporate name; (6) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; (7) Terminate the authority of the registered agent of the corporation; or (8) Make available for use by others its corporate name for a period of one year from the effective date of its dissolution.

Mo. Rev. Stat. § 351.476. These two sections of the statutes refer to each other and should be read in the context of providing an absolute prohibition against conducting business once a corporation has been administratively dissolved. *See* Mo. Rev. Stat. §§ 351.486 & 351.476.

Once a Missouri corporation is reinstated, it can “resume” normal business. RSMo. § 351.488.3 (emphasis added). It cannot “continue” business or “go on conducting its business,” but it must “resume” business from the point at which the company is reinstated. *Id.* According to Dictionary.com, “Resume,” when used as a verb with an object (in this case the object is the gerund phrase “carrying on its business”), means (1) “to go on or continue after interruption” as in the phrase “The dancing is about to resume” and (2) “to begin again.” Thus, the plain meaning of the statutes is contrary to the Defendant’s argument regarding rescission.

Additionally, the words “rescission” and “rescind,” which are so often cited by the Defendant in its Answer and its own Motion for Summary Judgment, are actually not mentioned at all in the section of the Missouri statutes relied upon by the defendant. *See* Mo. Rev. Stat. § 351.488. Instead, the word “reinstatement” is used, which according to the same source is derived from the verb “reinstate” which is defined as “to put back or establish again, as in a former position or state” as in the phrase “to reinstate the ousted chairman.”<sup>5</sup>

Moreover, the word “rescission” does not appear at all in the sections of the Missouri Statutes that concern this case. In fact, the relevant section of the Missouri statutes which once dealt with rescission has been repealed by the Missouri legislature. In fact, the former Missouri Revised Statute Section 351.540 which granted the rescission rights of which the Defendant

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<sup>5</sup> Here, the chairman was not a chairman while removed from office.

claims was enacted in 1986 and repealed almost immediately due to the problems it created. The statute was repealed in 1990, many years before the Defendant was administratively dissolved or even incorporated. Mo. Rev. Stat. § 351.540 (repealed 1990).

Thus, due to the legislature's repeal of the troubling rescission statute, the Missouri statutes now have unambiguous language: the reinstated company is back to good standing, meaning it can conduct legal business once more. Id. This section of the Missouri Statutes was altered to allow for corporate officers to wind up affairs and for the corporation to be sued by claimants. It also allowed for personal liability of corporate officers for illegal actions taken during that time, such as conducting business. In fact, the section of the statutes (Mo. Rev. Stat. § 351.488) relied upon by the Defendant really deals with the liability of the officers, meaning that the liability of corporate officers for illegal actions taken during that time fails back to the company, not to the corporate officers personally. As a whole, the problems these sections of the Missouri statutes attempt to address are as follows: (1) can a dissolved corporation be sued for liabilities during dissolution? (the former answer was that the corporation ceases to exist, and so those with claims against the corporation were left without recourse for their grievance; now, those with a claim may still sue the corporation as that is part of the winding up activities), (2) who or what is liable for illegal actions taken while a company is dissolved? (the liability falls on the officers or trustees, personally, as that is part of its winding up activities), and (3) who or what is liable for said actions of illegal while dissolved once the corporation is reinstated? (the officers are now shielded once again by the corporation for their actions).

Still, none of this means that a dissolved corporation can do business legally during the period of dissolution, nor that the illegal acts of a corporation during dissolution are somehow made legal. Most especially, none of it means that use in commerce or rights to a trademark are

obtained retroactively. Moreover, even the statute that the Defendant erroneously cites does not provide for rescission, nor for retroactive legalization of illegal actions during the period of dissolution. Mo. Rev. Stat. § 351.488.<sup>6</sup>

As argued above, in order to maintain a trademark's registration, that mark must be continuously used in legal, interstate commerce. However, when a company is dissolved in the state of Missouri, that company can no longer use its mark in legal commerce. Mo. Rev. Stat. §§ 351.476 & 351.48 (see also Exhibit E.) The statutes cited and the documents submitted by both the Plaintiff and Defendant itself show that Missouri law holds that a company must not conduct any business, and that any business conducted during the period of dissolution is not legal business in the State of Missouri. Id. It is only allowed to conduct whatever actions are necessary to wind-up its affairs and liquidate its assets. (Id.) Using a mark in continuous interstate commerce would hardly apply.<sup>7</sup>

Again, Section 351.488 of the Missouri statutes says nothing about illegal actions taken during its period of dissolution, which are addressed directly by Missouri Revised Statute Sections 351.486 and 351.476. Thus, the Defendant's argument for rescission is contrary to the law of the unambiguous statutes and fails.

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<sup>6</sup> This section of the Missouri statutes also provides that corporate naming rights are abandoned upon dissolution. For example, if a different company takes the dissolved company's name during the period of dissolution, the reinstated company must choose a different name. Mo. Rev. Stat. § 351.488.5. The Missouri Statutes clearly contemplate that an administratively dissolved corporation loses its interests in its name (and therefore potentially its trademark as well) upon dissolution after a period of one year. Mo. Rev. Stat. § 351.476.2(8). Thus, the administrative dissolution statute allows for the possibility that the name of the company (and potentially its trademark as well) might be used by another party during the period of dissolution.

<sup>7</sup> BeeNaturals, Inc. could not have used the mark legally in commerce. By analogy, a person who loses their State driver's license cannot operate their vehicle on an interstate freeway. It is not relevant that the person subsequently has their license restored if they are caught speeding on the interstate while their license is revoked. Similarly, a person convicted of a felony loses his rights to bear arms in some states; even if later reinstated, the criminal that is caught with a firearm will bear whatever heavy sanction a court deems appropriate. Likewise, an attorney who is disbarred would be unable to practice law before the USPTO during the period of prohibition. It is not relevant that the attorney is later reinstated; he simply cannot practice before the USPTO during the period he is disbarred.

## 2. Abandonment: Missouri Federal and Appellate Courts Have Rejected the Defendant's Retroactive Application Argument

In addition, according to a recent decision by three Missouri appellate courts and a Missouri federal court, the Defendant's argument regarding "retroactive application of rescission" is incorrect. First, the Missouri Court of Appeals has ruled that an administratively dissolved business cannot carry on any business except to wind up and liquidate its business and affairs. U.S. Ctr. Under. v. Manchester L. & Cas., 952 S.W.2d 719, 720-21 (Mo. App. 1997); Behr v. Bird Way, Inc., 923 S.W.2d 470, N.2 (Mo. App. 1996); Mabin Const. v. Historic Constructors, 851 S.W.2d 98, 102-03 (Mo. App. 1993).

Under the old statutory regime, a corporation which forfeited its charter immediately ceased its existence. Missouri Corporation Law & Practice, at Section 9.3[b]. However, a corporation administratively dissolved under the current law continues its corporate existence, but solely to wind up and liquidate its business and affairs. Id.; Section 351.486.3 RSMo 1994.

U.S. Ctr. Under. v. Manchester L. & Cas., 952 S.W.2d 719 (Mo.App.E.D. 1997)(emphasis added); *accord* Behr v. Bird Way, Inc., 923 S.W.2d 470 (Mo.App.S.D. 1996); Mabin Const. v. Historic Constructors, 851 S.W.2d 98 (Mo.App.W.D. 1993). Thus, a dissolved company must only perform winding up and liquidation activities after it has been dissolved. Any other reading of Sections 351.486 and 351.476 would render the Missouri corporate statutes meaningless and would allow Missouri companies to do business illegally and without a corporate charter, potentially for decades if not indefinitely.

Second, a Missouri federal court recently decided a very similar matter to this proceeding in Byrd v. Hometown Heating & Air Conditioning, Inc., 228 B.R. 435 (Bankr. W.D. Mo. 1999). In Byrd, the defendant-appellant corporation had been administratively revoked and did not apply for reinstatement until after litigation had commenced. The defendant later claimed that

the statutes allowed for the retroactive validation of actions taken by the corporate officers during the period of administrative dissolution. The Missouri federal court ruled that actions by an administratively dissolved corporation are unlawful and cannot be retroactively validated: “. . . certainly in this case, where the corporation purported to continue business for a period with full knowledge of the revocation, and thereafter made no effort to have its corporate powers restored until this litigation commenced, appellants cannot successfully argue that the reinstatement of corporate identity retroactively validates their unlawful action.” Byrd at 439 (emphasis added).

The federal court in Byrd carefully analyzed sections 351.476, 351.486 and 351.488, and noted:

The purpose of revocation is obviously to prohibit a corporation from enjoying the privileges of that status when it has failed to perform its resultant responsibilities. Revocation is a disability imposed on a corporation as a penalty. It would deprive the statute of its force and encourage a corporation to default on paying its taxes and fees and filing its annual reports if by subsequent compliance such a corporation could at its convenience completely erase the effects of the penalty.

Byrd at 439 (citation omitted)(emphasis added). The federal court also noted that the one of the primary purposes of the statute is assigning liability for illegal actions taken by a dissolved corporation during the period of dissolution and that “any officer or director who conducts business on behalf of a corporation so dissolved except as provided in this section shall be personally liable for any obligation so incurred.” Id. at 437 (citing Mo. Rev. Stat. § 351.486.3). The federal court also examined Missouri Statute Section 351.476.1, which provides that “[a] dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs . . . .” Id. (citing Mo. Rev. Stat. § 351.476.1). The court cited to the following well-established Missouri law, “A dissolved

corporation may not continue business as a going concern. [I]t is unlawful for persons to exercise corporate powers after a charter has been forfeited.” Id. (quotations omitted)(emphasis added). Thus, the Byrd court noted that a business may not continue, any such business is unlawful, and conveyance of property to others is also illegal. Id.

The federal court also wrote as follows regarding the illegal actions of the defendant, and the fact that any actions taken were void and no property rights could exist for the administratively dissolved corporation: “Under well-established law, the actions in which Hometown engaged concerning Byrd’s real property while it was administratively dissolved, beginning with the initial execution of the contract, promissory note and deed of trust and ending with the purchase of the property at the foreclosure sale, were void.” Id. at 437 (emphasis added). The federal court in Byrd also analyzed the defendant’s attempt to reactively validate its previously illegal actions through reinstatement and its claims reinstatement was reactive for the purpose of legitimizing illegal activities and for the creation of property rights:

However, in an effort to validate its prior void acts and, thus, attempt to remove the property from the estate, Hometown reinstated its corporate charter after the bankruptcy filing. The defendants appear to believe that since Hometown reinstated its corporate charter, all is well with their world as Hometown's actions did not constitute a violation . . . because according to Mo.Rev.Stat. § 351.488.3 . . . "When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred." The defendants believe that they are unsanctionable because once the corporate charter was reinstated, all of the actions engaged in by Hometown while it was administratively dissolved are now considered to have happened as if the administrative dissolution had never occurred. According to the defendants, there can be no violation . . . since Hometown's actions have been retroactively validated.

Id. at 437-38 (emphasis added). This argument is precisely the same as the Defendant Beenaturals, Inc. has put forth in this Cancellation proceeding before the Board. Here is how the Missouri federal court responded to the “retroactive validation” defense:

The defendants here need to remove their rose-colored glasses. “Courts have denied retroactive application of reinstatement if it would encourage fraud or permit a manifest injustice.” 16A Fletcher on Corporations, at § 8112.30. Further, the Court would like to direct the parties' attention to *Accurate Constr. Co. v. Washington*, 378 A.2d 681 (D.C.1977). *Accurate Constr. Co.* involved an action for the cancellation of a promissory note and deed of trust executed between an individual and a corporation whose articles of incorporation had been revoked under the statutes of the District of Columbia for failure to file annual reports. . . . After the initiation of the lawsuit to cancel the note and deed of trust, Accurate Construction was reinstated as a corporation. . . . The trial court also ruled that the documents were void because at the time of their execution Accurate Construction's corporate charter had been revoked and the transactions were not in the nature of winding up the business, and that in this case the reinstatement of the corporate charter did not operate to validate the corporate action. The appellate court affirmed the trial court on the second ground . . . . The court opined: “Upon the proclamation of revocation, the corporation was shorn of all its powers and rights, save those expressly reserved by the statute for the purpose of winding up its affairs (i.e. collecting assets, discharging obligations, and distributing property).”

Id. at 438 (emphasis added). However, the appellant-defendant urged the federal court “that because the revocation proceedings were ‘annulled,’ in the contemplation of the law, they never occurred; therefore, corporate acts undertaken during the period before reinstatement are valid.”

Id. While the Missouri federal court stated that defense had some “surface plausibility,” it failed as a defense because “the effect of reinstatement cannot be ascertained solely by reference to this language read in isolation. Because it is fundamentally at odds with the overall purpose and intent of this statutory scheme, we deem appellants’ position unsound.” Id.

Thus, the Defendant’s case fails as well. The Missouri statutes must be read in concert with each other and in terms of their overall purpose and intent. The fact that the rescission statute was also repealed in 1990 also dramatically hurts the Defendant’s case. Finally, the cases cited herein have ruled against the type of argument that the Defendant relies. As a matter of law, the Defendant cannot reactively claim use in commerce of the mark during the period of dissolution. Thus, the mark must be cancelled.

## II. Ownership of the Mark

As shown in the Law section of this Brief, the United States federal trademark laws provide that a mark must be used in commerce. 15 U.S.C. § 1127. Put more simply, ownership of a mark depends upon use in commerce. Id. Thus, because ownership depends upon use, and because the Defendant has admitted it could not have conducted any business, the Defendant could not have owned the mark. Id.

### A. Federal Statutes and Cases Regarding Ownership of the Mark

First, the defendant filed its Section 8 Declaration of the use as the owner. As the Board found in its Decision of June 14, 2014, the respondent has put forth the contention that it alone owned the mark, and the record now supports respondent's contention that BeeNaturals Inc. is the sole owner of the registration. (Decision, June 14, 2014, 5.) However, it could not have legally owned the mark at the time it filed its Section 8 documents.

The United States federal trademark laws provide that a Section 8 Declaration of Use must be executed by and filed in the name of the then current owner of the trademark. 15 U.S.C. § 1058(a)&(c).<sup>8</sup> If the affidavit or declaration was filed in the name of the wrong party, and there is no time remaining in the grace period, the registration will be cancelled. Id. As shown above, it could not have legally been the owner as the time it filed the Declaration of Use. Therefore, even presuming the mark was used by someone else, the Declaration of Use was filed in the name of the wrong owner.

Filing in the name of another entity who is not then the owner of the mark is not a deficiency that can be corrected after the expiration of the grace period. *See In re Precious Diamonds, Inc.*, 635 F.2d 1637, 208 U.S.P.Q. 410 (C.C.P.A. 1980); In re Media Central IP

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<sup>8</sup> Congress amended this section of the Code to substitute the word "owner" for the word "registrant" to make it clearer that it is the current owner's duty. Trademark Law Treaty Implementation Act, Pub. L., 105-330; 37 C.F.R. § 2.163 (amended 1999).

Corp., 65 U.S.P.Q.2d 1637 (Comm’r Pat. & Trademarks 2002); In re Caldon Co. Ltd. Partnership, 37 U.S.P.Q.2d 1539 (Comm’r pat. & Trademarks 1995); In re Weider, 212 U.S.P.Q. 947 (Comm’r Pat. & Trademarks 1981); In re ACE III Communications, Inc., 62 U.S.P.Q.2d 1049 (TTAB 2001). Therefore, the mark must be cancelled.

### **B. Missouri Statutes and Cases Regarding Ownership**

Regardless of whether the defendant claims it transferred its intellectual property while dissolved, pursuant to an affirmative defense, or even points to an agreement, such transfer or agreement would be illegal and void pursuant to Missouri law. Missouri Revised Statute Section 351.476 provides that “2. Dissolution of a corporation does not: (1) Transfer title to the corporation’s property . . . .” Mo. Rev. Stat. § 351.476.2(1). Missouri law also mandates that any contract or agreement regarding a corporation’s property made during a period of dissolution are illegal acts and are void. Byrd v. Hometown Heating & Air Conditioning, Inc., 228 B.R. 435, 437 (Bankr. W.D. Mo. 1999).

Therefore, regardless of whether the Defendant argues that the intellectual property was transferred to someone else or even if a contract exists, Missouri holds that such an act would be void and enforceable. Therefore, the mark must be cancelled.

### **CONCLUSION**

Summary Judgment is appropriate where the facts have been proved or admitted by the Defendant and the only issues that remain are matters of law. The Defendant has admitted that it was dissolved from December 2, 2006 until April 29, 2014. It has admitted that it could not have conducted legal commerce in the State of Missouri at least eight and half consecutive years. Trademark ownership requires use in commerce, and where a defendant has not used its mark for three consecutive years, a prima facie case of abandonment is established. Pursuant to both

federal and Missouri law, the Defendant could not have used the mark in lawful commerce for nearly nine consecutive years, and the cases from the Federal Circuit provide that retroactive state statutes have no impact on the federal scheme. The statutes and cases from Missouri provide that a corporation that is administratively dissolved cannot conduct any business, and the federal case law from Missouri holds that retroactive arguments fail. The Defendant has admitted it was not able to resume legal business until at least April of 2014, nearly a year after the six-month grace period for the Section 8 Declaration of Use document expired. The Defendant could never have met very threshold that is necessary to file the Section 8 Declaration of Use, and the grace period has now expired.

For each of these reasons, summary judgment in favor of the plaintiff is appropriate, and the mark must be cancelled.

Dated: May 3, 2015

Respectfully Submitted,  
/John M. Bolger/  
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(414)270-9900  
John@BolgerLegalGroup.com

Attorney for the Plaintiff

### **Declaration Regarding Exhibits**

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.

/John M. Bolger/

Attorney John M. Bolger, Wisconsin bar member

Attorney for the Plaintiff

May 1, 2015

The following exhibits are official documents posted on and recorded from the Missouri Secretary of State website on November 2, 2013:

- Exhibit A: A picture of the Missouri Secretary of State website dated Nov. 2, 2013, showing the titles of the documents on file regarding the Defendant BeeNaturals, Inc.
- Exhibit B: A picture of the Missouri Secretary of State website dated Nov. 2, 2013, showing status of BeeNaturals, Inc. as Administratively Dissolved.
- Exhibit C: A facsimile dated January 8, 2007 sent by Ms. Barbara Chappuis to the Missouri Secretary of State, acknowledging that the Defendant was administratively dissolved.
- Exhibit D: A Notice dated October 3, 2006 sent by the Missouri Secretary of State to Ms. Barbara Chappuis, stating that the Defendant would be administratively dissolved if an annual report was not filed by December 2, 2006.
- Exhibit E: A Letter dated December 26, 2006 sent by the Missouri Secretary of State to Ms. Barbara Chappuis stating that the Defendant is administratively dissolved, referencing Missouri Revised Statute Sections 351.486 & 351.476, and stating that it cannot carry on any business.

## Exhibit A

Status of filed documents prior to 5-12-03: If the Creation Filing is not available to be viewed, the entire file may be incomplete because it has not been scanned. Therefore, there may be other types of filings associated with this entity.

Once a copy request and appropriate fees have been received on a specific entity the entire file is completely scanned and available online to view and/or print.

Date: 11/2/2013

**Current Name:** BEENATURALS INC.

| Image   | Date       | Document                               |
|---|------------|--|
|       | 5/6/2003   | Creation Filing                        |
|   | 6/11/2003  | Annual Report                          |
|   | 7/23/2004  | Annual Report                          |
|   | 10/3/2005  | Reminder/Diss Notice for Annual Report |
|   | 10/19/2005 | Annual Report                          |
|   | 10/3/2006  | Reminder/Diss Notice for Annual Report |
|   | 12/29/2006 | Admin Dissolution                      |
|   | 1/8/2007   | Misc. Document                         |

 *View the images on-line!! Netscape users, use the  button.*

## Exhibit B

- Search
- [By Business Name](#)
- [By Charter Number](#)
- [By Registered Agent](#)
- [For New Corporations](#)
- Verify
- [Verify Certification](#)
- [Registration Report](#)
- [File Online](#)
- [File Fictitious Name Registration](#)
- [File Online](#)
- [Renew Online](#)
- [File LLC Registration](#)
- [File Online](#)
- [Online Orders](#)
- [Register for Online Orders](#)
- [Order Good Standing](#)
- [Order Certified Documents](#)

### Filed Documents

Date: 11/2/2013 (Click above to view filed documents that are available )

### Business Name History

| Name             | Name Type |
|------------------|-----------|
| BEENATURALS INC. | Legal     |

### General Business - Domestic - Information

|                                      |                        |
|--------------------------------------|------------------------|
| Charter Number:                      | 00520903               |
| Status:                              | Admin Dissolved Profit |
| Entity Creation Date:                | 5/6/2003               |
| State of Business.:                  | MO                     |
| Expiration Date:                     | Perpetual              |
| Last Registration Report Filed Date: | 10/19/2005             |
| Last Registration Report Filed:      | 2005                   |
| Registration Report Month:           | May                    |

### Registered Agent

|                 |   |
|-----------------|---|
| Agent Name:     | <a href="#">BARBARA T. CHAPPUIS</a>                           |
| Office Address: | 103 North First Street<br>P.O. Box 99<br>Clarksville MO 63336 |

Mailing Address:

Exhibit C

**VIA FAX**

January 08, 2007

TO: Missouri Corporations Division

FROM: **BEENATURALS, INC.** Corp. No. 00520903

CONTACT/ADDRESS: **BARBARA CHAPPUIS**  
**PO BOX 99, CLARKSVILLE, MO 63336**

TEL: **573-242-3803**

**Please supply application documents required for re-instatement of  
above MO corporation.**

**Thank you,**

**Barbara Chappuis**

## Exhibit D



Office of the Secretary of State  
State of Missouri  
Jefferson City  
65101

ROBIN CARNAHAN  
SECRETARY OF STATE

CORPORATIONS DIVISION  
(866) 223-6535 TOLL FREE

00520903  
BEENATURALS INC.  
BARBARA T. CHAPPUIS  
103 North First Street P.O. Box 99  
Clarksville, MO 63336

October 3, 2006

### IMPORTANT WRITTEN NOTICE

#### YOUR ANNUAL REGISTRATION REPORT MUST BE RECEIVED BY December 2, 2006

Immediate action is required! Our records indicate your annual registration report is PAST DUE. Failure to file your annual registration report by the date indicated above will result in:

ADMINISTRATIVE DISSOLUTION (Missouri Corporation)

or

REVOCAION OF AUTHORITY TO DO BUSINESS (Foreign Corporation)

For your business to remain in Good Standing, you are required to file the Annual Registration Report by the date above. Failure to file this report will result in the administrative dissolution of your corporate status; if administratively dissolved, you cannot legally conduct business in Missouri.

File your Annual Registration Report online 24 hours a day from our web site at: [www.sos.mo.gov](http://www.sos.mo.gov)  
<<http://www.sos.mo.gov>>. Under "Featured Items" choose "File Annual Report Online". You will need your charter number (appears above your corporate name on this notice) and a credit card.

If you wish to file your annual report by mail, the paper form may be printed from the web site above or ordered from our office by calling toll free (866) 223-6535. If filing a paper report, please complete and mail the annual registration report form, along with the appropriate filing and late fee, to:

Secretary of State  
PO Box 1366  
Jefferson City, MO 65102

If you have any questions regarding your Annual Registration Report, please contact us at the toll free number above or e-mail us at [annrep@sos.mo.gov](mailto:annrep@sos.mo.gov).

For your convenience, you may also contact one of our field offices:

Kansas City Office  
615 East 13<sup>th</sup> St.  
5<sup>th</sup> Floor, Room 513  
Kansas City, MO 64106  
(816) 889-2925

Springfield Office  
149 Park Central Square  
Room 624  
Springfield, MO 65806  
(417) 895-6330

St. Louis Office  
Wainwright State Office Bldg.  
111 N. 7<sup>th</sup>, 2<sup>nd</sup> Floor, Rm. 234  
St. Louis, MO 63101  
(314) 340-7490

Exhibit E

**ADMINISTRATIVE DISSOLUTION  
OR REVOCATION FOR A  
FOR-PROFIT CORPORATION**

00520903  
BEENATURALS INC.  
BARBARA T. CHAPPUIS  
103 North First Street P.O. Box 99  
Clarksville, MO 63336

December 29, 2006

BEENATURALS INC.  
00520903

The above corporation has failed to comply with Section 351.484, 351.525, or 351.598 RSMo, by:

*Failure to file a correct and current annual report*

Therefore, the above corporation stands **administratively dissolved or revoked** under the provisions of Section 351.486 or Section 351.602, RSMo, as of December 29, 2006, subject to rescission as in these acts provided. **A corporation administratively dissolved may not carry on any business except that necessary to wind up and liquidate its business and affairs under Section 351.476.**

For further information, please contact the Corporations Division at (866) 223-6535 toll free.



*Mark R. Reading*  
**Mark R. Reading**  
Executive Deputy Secretary of State

**CERTIFICATION OF SERVICE**

I hereby certify that a true and correct PDF copy of this Motion for Summary Judgment (per the Discovery Conference stipulation) was sent via email, delivery and read receipt requested, and that a courtesy phone call was also placed to Nelson D. Nolte at the email listed below and the phone number (which he provided by email) on May 3, 2015:

Nelson D. Nolte  
nn@noltefirm.com

/John M. Bolger/  
John M. Bolger, Esq.  
Wisconsin bar member  
Bolger Legal Group, LLC  
P.O. Box 170616  
Whitefish Bay, WI 53217