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Filing date: **05/30/2017**

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

| | |
|------------------------|--|
| Proceeding | 92061862 |
| Party | Plaintiff Cyanotech Corporation |
| Correspondence Address | GEORGE E DARBY DARBY LAW CORPORATION PO BOX 893010 MILILANI, HI 96789 UNITED STATES pto@teleport-asia.com |
| Submission | Other Motions/Papers |
| Filer's Name | George E. Darby |
| Filer's e-mail | pto@teleport-asia.com |
| Signature | /George E. Darby/ |
| Date | 05/30/2017 |
| Attachments | 92061862 Cyan.NRI Joint Motion RegByConsent 30May2017.pdf(133507 bytes) 92061862 Cyan.NRI Joint Stip 30May2017 final.pdf(131295 bytes) 92061862 Cyan.NRI Revised TM Coesistence signed.pdf(333398 bytes) 92061862 TCA Exh. 1 Cyan trade dress.pdf(889855 bytes) 92061862 TCA Exh. 2 NRI trade dress.pdf(401820 bytes) |

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

Cancellation No. 92061862

Cyanotech Corporation

v.

NRI, Inc.

Consolidated with

Concurrent Use No. 94002616

Cyanotech Corporation

v.

Nutrex Research, Inc.

Joint Motion for Registration by Consent

May 30, 2017

Joint Motion for Registration by Consent

1. In the Joint Stipulation filed herewith, Cyanotech Corporation (“Cyanotech”) and Nutrex Research, Inc. (“NRI”) have stipulated to Cyanotech’s withdrawal of Cyanotech’s Concurrent Use statement in Cyanotech’s Application Nos. 85423915 and 85423883 (collectively, “Cyanotech’s Applications”). Joint Stipulation ¶1. Cyanotech and NRI jointly request withdrawal of Cyanotech’s Concurrent Use statement in Cyanotech’s Applications.
2. Cyanotech and NRI hereby jointly request that the USPTO Trademark Trial and Appeal Board (“Board”) grant registration by consent of Cyanotech’s Applications. Cyanotech is Petitioner, and NRI is Registrant in Concurrent Use No. 94002616 and in Cancellation No. 92061862 (collectively referred to herein as the “Consolidated Proceeding.”).
3. This Joint Motion acknowledges the deletion of Monique Loppe and Nutrex nv as parties in the Consolidated Proceeding, and otherwise supersedes the Cyanotech’s and NRI’s previously filed Joint Motions in the Consolidated Proceeding.
4. In support of this Joint Motion, Cyanotech and NRI rely upon (i) the record in the Consolidated Proceeding; (ii) the parties’ Joint Stipulation submitted herewith, and (iii) the Revised Trademark Coexistence Agreement entered into by Cyanotech and NRI, annexed hereto as Exhibit A and fully incorporated herein.
5. After review of the Board’s Order CAN-11 (dated 29 March 2017) in the Consolidated Proceeding, Cyanotech and NRI have entered into the Revised Trademark Coexistence Agreement annexed as Exhibit A hereto to settle the Consolidated Proceeding.

6. Cyanotech began using the NUTREX HAWAII mark on its goods in International Class 5 in 1991, and has continuously used the NUTREX HAWAII mark *nationwide* on its goods since 1991. Joint Stipulation ¶3.
7. NRI began using the NUTREX RESEARCH mark (“NRI mark”) on its goods in International Class 5 in 2002, and has continuously used the NRI mark *nationwide* on its goods since 2002. Joint Stipulation ¶4.
8. NRI’s NRI mark and Cyanotech’s NUTREX HAWAII mark have coexisted on goods in International Class 5 *nationwide* since 2002. Joint Stipulation ¶5.
9. The predominant direct purchasers of Cyanotech’s and NRI’s goods are large distributors and national chain retailers with centralized purchasing management and distribution. Such purchasers are not impulse buyers, but are very skilled in distinguishing and specifying goods from various sources, particularly nutritional supplements in Class 5. Marketing messages directed by Cyanotech and NRI to such purchasers make confusion unlikely among such purchasers as to the source of each party’s goods. Joint Stipulation ¶6.
10. Cyanotech’s market at wholesale and retail levels is nutritional supplements for general health, promoted without emphasis on support for bodybuilding, libido, or weight loss, and its marketing messages, trade channels, and trade dress are directed to such general health market. Retail sales of Cyanotech’s products are primarily through big box retailers, supermarkets, pharmacies, general vitamin shops, and online vendors of general health nutritional supplements. Joint Stipulation ¶7.
11. NRI’s market at wholesale and retail levels is nutritional supplements for body building, libido, and weight loss, promoted without emphasis on support for general health, and its marketing messages, trade channels, and

trade dress are directed to such body building, libido, and weight loss markets. Retail sales of NRI's products are primarily through specialty vitamin shops and online vendors of nutritional supplements for bodybuilding, libido, or weight loss. Consumers of nutritional supplements for bodybuilding, libido, or weight loss are extremely attentive to label content and other marketing messages emphasizing bodybuilding, libido, or weight loss, as distinct from marketing messages about general health. Joint Stipulation ¶8.

12. Cyanotech's current trade dress has predominantly red, orange, or green background labels, with "calm, soothing" layouts, as shown in Exhibit 1 submitted herewith. Joint Stipulation ¶9.

13. NRI's current trade dress consistently uses black and white labels accented with red, with "emphatic, maximum exertion" layouts, as shown in Exhibit 2 submitted herewith. Joint Stipulation ¶10.

14. Cyanotech and NRI have reviewed their records and have found that confusion among buyers about Cyanotech's and NRI's marks, and goods, has been *de minimis* during the 15 years in which the parties' marks have coexisted nationwide. Joint Stipulation ¶11.

15. The parties agree to maintain trade dress no less distinctive than their current trade dress, and will not adopt a trade dress confusingly similar to that of the other party. Joint Stipulation ¶12.

16. Cyanotech and NRI will abstain from any promotion that their respective products are especially suited for use in the other party's market. Joint Stipulation ¶13.

17. Each party agrees it will not make its marks in their entirety more similar as to appearance, sound, connotation and commercial impression than such

party's marks are as of the submission of this Joint Motion. Joint Stipulation ¶14.

18. Neither Cyanotech nor NRI will use in their advertising and labeling the term NUTREX alone, but will use the term NUTREX only in their respective compound word marks or in their respective design marks. Joint Stipulation ¶15.

19. If in a communication between a party and a buyer, such buyer confuses the goods or services of one party with those of the other party, the party communicating with such buyer shall use commercially reasonable efforts to advise such buyer about the correct source of the goods about which the buyer is confused. If there are such events of buyer confusion of the parties' goods or services, the parties shall seasonably confer to develop and implement commercially reasonable changes in marketing and distribution under their control that are designed to reduce such confusion. Joint Stipulation ¶16.

20. Each party agrees it will not make the nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use more similar than such nature is as of the submission of this Joint Motion. Joint Stipulation ¶17.

21. Each party agrees it will not make trade channels under its control more similar than the trade channels used by such party are as of the submission of this Joint Motion. Joint Stipulation ¶18.

22. Each party agrees it will not make conditions under its control under which buyers to whom sales are made more similar than such conditions are as of the submission of this Joint Motion. Joint Stipulation ¶19.

23. The Revised Trademark Coexistence Agreement annexed as Exhibit A recites the agreement of Cyanotech and NRI concerning preceding

paragraphs 15 to 22 and contains other provisions adequately designed to avoid confusion in the reasonable circumstances in which the marks may be used by purchasers of each party's goods.

24. Wherefore, in view of the annexed Revised Trademark Coexistence Agreement, 15 years of *nationwide coexistence* of Cyanotech's and NRI's marks with *de minimis* confusion among buyers, and the differences in the (i) identity of their goods, (ii) purchasers at wholesale and retail levels, (iii) marketing messages, (iv) trade dress, (v) trade channels, and (vi) the undertakings in paragraphs 15 to 22 above, Cyanotech and NRI jointly move the Board to grant (i) withdrawal of Cyanotech's Concurrent Use statement and (ii) registration of Cyanotech's Application Nos. 85423883 and 85423915.

25. Wherefore, Cyanotech and NRI further jointly move that the Board toll the Proceeding pending decision on this Joint Motion for Registration Based on Consent.

May 30, 2017

/George E. Darby/

George E. Darby

Reg. No. 44,053

Darby IP & Law Corporation

Voice: 808.626.1300

Email: pto@teleport-asia.com

*Counsel for Cyanotech
Corporation*

May 30, 2017

/Ava K. Doppelt/

Ava K. Doppelt

Allen, Dyer, Doppelt, Milbrath
& Gilchrist, P.A.
Florida Bar No. 393738
255 South Orange Avenue
Orlando, Florida 32801
Telephone: (407) 841-2330
Facsimile: (407) 841-2343
Email: adoppelt@addmg.com

Counsel for Nutrex Research, Inc.

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

Cancellation No. 92061862

Cyanotech Corporation

v.

NRI, Inc.

Consolidated with

Concurrent Use No. 94002616

Cyanotech Corporation

v.

Nutrex Research, Inc.

**Joint Stipulation
in Support of the Parties
Joint Motion for Registration by Consent**

May 30, 2017

**Joint Stipulation in Support of the Parties
Joint Motion for Registration by Consent**

1. Cyanotech Corporation (“Cyanotech”), with consent by Nutrex Research, Inc. (“NRI”), hereby withdraws its Concurrent Use statement in Cyanotech’s Application Nos. 85423915 and 85423883 (collectively, “Cyanotech’s Applications”). Cyanotech and NRI file this Joint Stipulation in support of the parties’ Joint Motion for Registration by Consent (“Joint Motion”) filed herewith.
2. Cyanotech and NRI have signed the Revised Trademark Coexistence Agreement annexed as Exhibit A to the Joint Motion to settle Concurrent Use Proceeding No. 94002616 and Cancellation Proceeding No. 92061862 (collectively referred to herein as the “Consolidated Proceeding.”).
3. Cyanotech began using the NUTREX HAWAII mark on its goods in International Class 5 in 1991, and has continuously used the NUTREX HAWAII mark *nationwide* on its goods since 1991.
4. NRI began using the NUTREX RESEARCH mark (“NRI mark”) on its goods in International Class 5 in 2002, and has continuously used the NRI mark *nationwide* on its goods since 2002.
5. NRI’s NRI mark and Cyanotech’s NUTREX HAWAII mark have coexisted on goods in International Class 5 *nationwide* since 2002.
6. The predominant direct purchasers of Cyanotech’s and NRI’s goods are large distributors and national chain retailers with centralized purchasing management and distribution. Such purchasers are not impulse buyers, but are very skilled in distinguishing and specifying goods from various sources, particularly nutritional supplements in Class 5. Marketing messages

directed by Cyanotech and NRI to such purchasers make confusion unlikely among such purchasers as to the source of each party's goods.

7. Cyanotech's market at wholesale and retail levels is nutritional supplements for general health, promoted without emphasis on support for bodybuilding, libido, or weight loss, and its marketing messages, trade channels, and trade dress are directed to such general health market. Retail sales of Cyanotech's products are primarily through big box retailers, supermarkets, pharmacies, general vitamin shops, and online vendors of general health nutritional supplements.
8. NRI's market at wholesale and retail levels is nutritional supplements for body building, libido, and weight loss, promoted without emphasis on support for general health, and its marketing messages, trade channels, and trade dress are directed to such body building, libido, and weight loss markets. Retail sales of NRI's products are primarily through specialty vitamin shops and online vendors of nutritional supplements for bodybuilding, libido, or weight loss. Consumers of nutritional supplements for bodybuilding, libido, or weight loss are extremely attentive to label content and other marketing messages emphasizing bodybuilding, libido, or weight loss, as distinct from marketing messages about general health.
9. Cyanotech's current trade dress has predominantly red, orange, or green background labels, with "calm, soothing" layouts, as shown in Exhibit 1 submitted herewith.
10. NRI's current trade dress consistently uses black and white labels accented with red, with "emphatic, maximum exertion" layouts, as shown in Exhibit 2 submitted herewith.
11. Cyanotech and NRI have reviewed their records and have found that confusion among buyers about Cyanotech's and NRI's marks, and goods,

has been *de minimis* during the 15 years in which the parties' marks have coexisted nationwide.

12. The parties agree to maintain trade dress no less distinctive than their current trade dress, and will not adopt a trade dress confusingly similar to that of the other party.
13. Cyanotech and NRI will abstain from any promotion that their respective products are especially suited for use in the other party's market.
14. Each party agrees it will not make its marks in their entirety more similar as to appearance, sound, connotation and commercial impression than such party's marks are as of the submission of the Joint Motion.
15. Neither Cyanotech nor NRI will use in their advertising and labeling the term NUTREX alone, but will use the term NUTREX only in their respective compound word marks or in their respective design marks.
16. If in a communication between a party and a buyer, such buyer confuses the goods or services of one party with those of the other party, the party communicating with such buyer shall use commercially reasonable efforts to advise such buyer about the correct source of the goods about which the buyer is confused. If there are such events of buyer confusion of the parties' goods or services, the parties shall seasonably confer to develop and implement commercially reasonable changes in marketing and distribution under their control that are designed to reduce such confusion.
17. Each party agrees it will not make the nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use more similar than such nature is as of the submission of the Joint Motion.

18. Each party agrees it will not make trade channels under its control more similar than the trade channels used by such party are as of the submission of the Joint Motion.
19. Each party agrees it will not make conditions under its control under which buyers to whom sales are made more similar than such conditions are as of the submission of the Joint Motion.
20. The Revised Trademark Coexistence Agreement annexed as Exhibit A to the Joint Motion recites the agreement of Cyanotech and NRI concerning preceding paragraphs 12 to 19 and contains other provisions adequately designed to avoid confusion in the reasonable circumstances in which the marks may be used by purchasers of each party's goods.
21. In view of 15 years of *de minimis* confusion by buyers of the parties' goods and services, and the undertakings in the Revised Trademark Coexistence Agreement annexed as Exhibit A to the Joint Motion, the parties believe that (i) future confusion is unlikely, and (ii) if the parties become aware of buyer confusion, the undertaking in paragraph 16 above will promptly and effectively remove that confusion.

May 30, 2017

/George E. Darby/

George E. Darby

Reg. No. 44,053

Darby IP & Law Corporation

Voice: 808.626.1300

Email: pto@teleport-asia.com

*Counsel for Cyanotech
Corporation*

May 30, 2017

/Ava K. Doppelt/

Ava K. Doppelt
Allen, Dyer, Doppelt, Milbrath
& Gilchrist, P.A.
Florida Bar No. 393738
255 South Orange Avenue
Orlando, Florida 32801
Telephone: (407) 841-2330
Facsimile: (407) 841-2343
Email: adoppelt@addmg.com

Counsel for Nutrex Research, Inc.

REVISED TRADEMARK COEXISTENCE AGREEMENT

This REVISED TRADEMARK COEXISTENCE AGREEMENT ("Agreement") is entered into this 28th day of May, 2017, and is effective as of 15 January 2016, by and between (i) Cyanotech Corporation ("Cyanotech"), a Nevada corporation with a business and mailing address of 73-4460 Queen Kaahumanu Highway, Suite 102, Kailua-Kona, HI 96740, Petitioner in USPTO Trademark Trial and Appeal Board ("TTAB") Cancellation Proceeding No. 92061862 (consolidated with Concurrent Use Proceeding No. 94002616 (jointly, Proceeding")) in the Proceeding and (ii) Nutrex Research, Inc. ("NRI"), a Florida corporation with a business and mailing address of 579 South Econ Circle, Oviedo, Florida 32765, Registrant in the Proceeding.

RECITALS

WHEREAS, Cyanotech claims it began using the NUTREX HAWAII mark on its goods in International Class 5 in 1991, and that it has continuously used the NUTREX HAWAII mark on its goods since 1991; and

WHEREAS, NRI claims it began using the NUTREX RESEARCH mark on its goods in International Class 5 in 2002, and that it has continuously used the NUTREX RESEARCH mark on its goods since 2002; and

WHEREAS online marketing via the Internet ignores geographic boundaries, and website content becomes a means of setting market boundaries; and

WHEREAS, (i) the predominant direct purchasers of Cyanotech's and Nutrex Research's goods are large distributors and national chain retailers with centralized purchasing management and distribution; (ii) such purchasers are not impulse buyers, but are very skilled in distinguishing and specifying goods from various sources, particularly nutritional supplements in International Class 5; and (iii) marketing messages directed by Cyanotech and Nutrex Research to such purchasers make confusion unlikely among such purchasers as to the source of each party's goods; and

EXHIBIT A

WHEREAS, (i) Cyanotech's market at wholesale and retail levels is nutritional supplements for general health, promoted without emphasis on support for bodybuilding, libido, or weight loss, and its marketing messages, trade channels, and trade dress are directed to such general health market; and (ii) retail sales of Cyanotech's products are primarily through big box retailers, supermarkets, pharmacies, general vitamin shops, and online vendors of general health nutritional supplements; and

WHEREAS, (i) Nutrex Research's market at wholesale and retail levels is nutritional supplements for body building, libido, and weight loss, promoted without emphasis on support for general health, and its marketing messages, trade channels, and trade dress are directed to such body building, libido, and weight loss markets; (ii) retail sales of Nutrex Research's products are primarily through specialty vitamin shops and online vendors of nutritional supplements for bodybuilding, libido, or weight loss; and (iii) consumers of nutritional supplements for bodybuilding, libido, or weight loss are extremely attentive to label content and other marketing messages emphasizing bodybuilding, libido, or weight loss, as distinct from marketing messages about general health; and

WHEREAS, (i) Cyanotech's current trade dress has predominantly red, orange, or green background labels, with "calm, soothing" layouts, as shown in Exhibit 1 annexed hereto; and (ii) Nutrex Research's current trade dress consistently uses black and white labels accented with red, with "emphatic, maximum exertion" layouts, as shown in Exhibit 2 annexed hereto; and

WHEREAS, each party's products may be incidentally usable in the other party's market, but each party is willing to abstain from any promotion that its products are especially suited for use in the other party's market; and

WHEREAS, the parties desire to set forth their rights to use trademarks containing the term NUTREX, including without limitation NRI's right to use the trademarks that are the subject of U.S. Reg. Nos. 3870696 and 3870697 (owned by NRI), and Cyanotech's right to use trademarks that are the subject of U.S. Application Nos. 85423883 and 85423915 (owned by Cyanotech), on their respective goods and services so that these trademarks may coexist in the marketplace without confusion as to the source of the goods and services, as hereinafter set forth below; and

EXHIBIT A

NOW THEREFORE, for and in consideration of the promises, agreements and covenants herein contained, the adequacy, sufficiency and receipt of which are conclusively acknowledged, the parties hereto agree as follows:

1. Definitions.

1.1 "Cyanotech's Marks" shall mean the trademarks that are the subject of U.S. Application Numbers 85423883 and 85423915 (each, an "Application", and collectively, the "Applications").

1.2 "NRI's Marks" shall mean the trademarks that are the subject of U.S. Registration Numbers 3870696 and 3870697.

1.3 "Marks" refers to both parties' marks as described in both 1.1 and 1.2 above.

1.4 "Cyanotech's Market" shall mean nutritional supplements for general health, promoted without emphasis on support for bodybuilding, libido, or weight loss.

1.5 "NRI's Market" shall mean nutritional supplements for sports nutrition body building, libido and weight loss, promoted without emphasis on support for general health.

2. Marketing Messages.

2.1 Neither party shall use the term NUTREX alone (i.e., as a plain word, as distinct from NUTREX being the literal element of a design mark or as part of a compound (i.e., two or more words) mark) as a trademark or service mark on its products, packaging or advertising materials. Cyanotech shall use NUTREX HAWAII, and NRI shall use NUTREX RESEARCH, in their respective promotional and advertising materials, website content, social media, and similar marketing messages ("marketing copy"). Each party shall have three (3) months from the earliest date of execution hereof in which to revise its promotional, advertising, and social media materials to eliminate any use of the term NUTREX alone in such marketing copy.

2.2 Each party shall encourage the distributors and national chain retailers to which a given party sells its goods (i) not to use the term NUTREX alone (i.e., the plain word NUTREX that is not a part of a design or compound mark) in their promotional and advertising materials, website content, social media, and similar marketing messages, and (ii) to use the terms NUTREX RESEARCH for products bearing NRI's Marks, and NUTREX HAWAII for products

bearing Cyanotech's Marks, in their promotional and advertising materials, website content, social media, and similar marketing messages. Notwithstanding the foregoing, neither party shall be responsible for ensuring that third parties that are not controlled by either party hereto adhere to the usage requirements herein for the term NUTREX, and there shall be no sanctions imposed on the parties for any such third-party non-conforming use.

3. The Parties' Use of the Marks.

3.1 Cyanotech agrees to abstain from any promotion that its products are especially suited for use in NRI's Market;

3.2 NRI agrees to abstain from any promotion that its products are especially suited for use in Cyanotech's Market;

3.3 The parties agree to maintain trade dress no less distinctive than their current trade dress, and will not adopt a trade dress confusingly similar to that of the other party.

3.4 Each party shall keep the names, marks and Internet domains each party now has.

4. Further Assurances.

4.1 NRI agrees not to oppose U.S. Application Numbers 85423883 and 85423915 on publication or re-publication, consents to registration of Cyanotech's Marks, and consents to the filing of a Joint Motion for Registration by Consent to which the Trademark Coexistence Agreement shall be Exhibit A, together with Exhibits I and 2 annexed to that Agreement. Neither party will seek to cancel the other's registrations, nor file any lawsuits against the other, regarding the name NUTREX.

4.2 Each party agrees that it shall do, execute, acknowledge and deliver, at the other party's expense, all acts, agreements, instruments, notices and assurances as may be reasonably requested by the other party to further effect and evidence the transactions contemplated hereby.

4.3 If in a communication between a party and a buyer, such buyer confuses the goods or services of one party with those of the other party, the party communicating with such buyer shall use commercially reasonable efforts to advise such buyer about the correct source of

the goods about which the buyer is confused. If there are such events of buyer confusion of the parties' goods or services, the parties shall seasonably confer to develop and implement commercially reasonable changes in marketing and distribution under their control that are designed to reduce such confusion.

4.4 Each party agrees it will not make its marks in their entirety more similar as to appearance, sound, connotation and commercial impression than such party's marks are as of the date hereof.

4.5 Each party agrees it will not make the nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use more similar than such nature is as of the date hereof.

4.6 Each party agrees it will not make trade channels under its control more similar than the trade channels used by such party are as of the date hereof.

4.7 Each party agrees it will not make conditions under its control under which buyers to whom sales are made more similar than such conditions are as of the date hereof.

5. No Likelihood of Confusion. The parties acknowledge and agree that with the limitations on use set forth herein, and in view of the differences between the parties' Marks, respective goods and channels of trade and trade dress, and the acumen of purchasing managers at distributors and national chain retailers with centralized purchasing and distribution, confusion between the parties' respective goods, services and business is unlikely. The parties further acknowledge and agree that if either party receives a direct inquiry related to the goods and/or services of the other party hereunder, the party receiving such inquiry will use commercially reasonable efforts to direct that inquiry to the other party, and both parties will take reasonable mutually acceptable steps to prevent further instances of misdirected inquiries.

6. Representations and Warranties. Each party hereby represents and warrants to the other that it has the power and authority to execute and deliver this Agreement and to carry out its provisions.

7. Notices.

7.1 Any notice, demand, waiver, consent, approval, or disapproval (collectively referred to as "notice") required or permitted herein shall be in writing and shall be given personally, by messenger, by air courier, by facsimile transmission, by prepaid registered or certified mail, with return receipt requested, or by email acknowledged by the recipient, addressed to the parties at their

respective addresses set forth in this Section 8.1 or at such other address or email address as a party may hereafter designate in writing to the other party.

Specifically, notice shall be sent as specified herein to the following addressees:

| If to NRI: | If to Cyanotech: |
|---|--|
| Jens Ingenohl, President Nutrex Research, Inc. 579 South Econ Circle Oviedo, Florida 32765 jens@nutrex.com | Gerald Cysewski, Executive Vice-President Cyanotech Corporation 73-4460 Queen Kaahumanu Hwy, Suite I02 Kailua-Kona, Hawaii 96740 gcysewski@cyanotech.com |
| with a copy to: | with a copy to: |
| Ava K. Doppelt, Esq. Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A. 255 S. Orange Avenue, Suite 1401 Orlando, Florida 32801 adoppelt@addmg.com | George E. Darby, Esq. Darby IP & Law Corporation P.O. Box 893010 Mililani, Hawaii 96789 ged@darbyip.com |

7.2 A notice shall be deemed received on the date of receipt.

8. Enforceability. If any provision of this Agreement shall be invalid or unenforceable, in whole or in part, or as applied to any circumstance, under the laws of any jurisdiction which may govern for such purpose, then such provision shall be deemed to be modified or restricted to the extent and in the manner necessary to render the same valid and enforceable, either generally or as applied to such circumstance, or shall be deemed excised from this Agreement, as the case may require, and this Agreement shall be construed and enforced to the maximum extent permitted by law as if such provision had been originally incorporated herein as so modified or restricted, or as if such provision had not been originally incorporated herein, as the case may be.

9. Modification, Amendment, Supplement, or Waiver.

9.1 No modification, amendment, supplement to or waiver of this Agreement or any of its provisions shall be binding upon the parties hereto unless made in writing and signed by the party

against whom enforcement of any modification, amendment, supplement or waiver is sought.

9.2 A waiver by either party of any of the terms or conditions of this Agreement in any one instance shall not be deemed a waiver of such terms or conditions in the future.

10. No Third-Party Beneficiaries. Nothing expressed or implied in this Agreement is intended to confer upon any person, other than the parties hereto, or their respective successors or permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

11. Governing Law. Any dispute between the parties will be raised between the parties themselves or between their legal counsel and attempted to be resolved before any formal dispute resolution is undertaken. Any dispute between the parties that is not resolved by negotiation between the parties or their legal counsel shall be submitted to arbitration in San Francisco, California, under the 2014 WIPO Arbitration Rules, as amended, before a single arbitrator experienced in trademark likelihood of confusion litigation, who is a US-based member of the International Trademark Association ("INTA") Panel of Mediators, and who is jointly selected by the parties; provided, however, that if the parties cannot agree on an arbitrator, the arbitrator shall be selected by the chairperson of the INTA Alternate Dispute Resolution Committee. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Florida (without giving effect to the principles of conflict of laws thereof).


12. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. A party assigning its interest in this Agreement shall provide a copy of this Agreement to each prospective assignee, and a notice of such completed assignment to the other party hereto within thirty (30) calendar days of the date of execution of such assignment.

13. Entire Agreement. This Agreement, with the Trademark Coexistence Agreement annexed hereto as Exhibit A, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all previous agreements, promises, representations, understandings, and negotiations, whether written or oral, including the Memorandum of Understanding dated January 15, 2016, and Trademark Coexistence Agreement dated June 15, 2016. Neither party is deemed to be drafter of this Agreement.

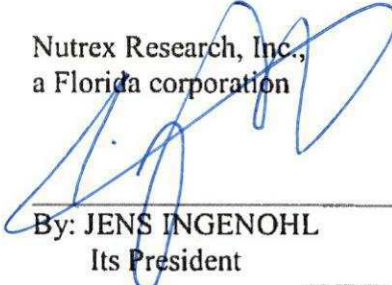
14. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the undersigned have executed the above and foregoing Revised Trademark Coexistence Agreement.

Cyanotech Corporation,
a Nevada corporation


By: GERALD CYSEWSKI Date: May 28, 2017
Its President and CEO
"Cyanotech"

Nutrex Research, Inc.,
a Florida corporation


By: JENS INGENOHL Date: 5/30/2017
Its President
"NRI"

End of document.

EXHIBIT 1 TO REVISED TRADEMARK COEXISTENCE AGREEMENT

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Nutrex Hawaii Hawaiian Spirulina 1000mg 180 Tablets 3-A-Day

\$31.99



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Nutrex Hawaii Hawaiian Spirulina
500mg 200 Tablets

\$20.99



Nutrex Hawaii Hawaiian Spirulina
16oz Powder

\$52.99



Nutrex Hawaii Hawaiian Spirulina
5oz Powder

\$20.99



Nutrex Hawaii Hawaiian Spirulina
Tablets 1,000mg 5lb. Bulk Bag

\$229.99



Nutrex Hawaii Hawaiian Spirulina
500mg Tablets 5lb. Bulk Bag

\$214.99



Nutrex Hawaii Hawaiian Spirulina
Powder 5lb. Bulk Bag

\$189.99

Benefits of Spirulina Pacifica - Nutrex Hawaii



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Nutrex Hawaii > BioAstin Hawaiian Astaxanthin

Hawaiian Astaxanthin

SUPPORTS JOINTS & TENDONS, SKIN,
CARDIOVASCULAR, EYE & BRAIN HEALTH*
BIOASTIN- NATION'S #1 BRAND OF ASTAXANTHIN†



Shop BioAstin Hawaiian Astaxanthin



Nutrex Hawaii Ultimate Health
Pack

\$132.99

Nutrex Hawaii BioAstin Hawaiian
Astaxanthin 12mg 120 Gelcaps

Was ~~\$85.99~~Now **\$71.99**

"BioAstin gives
me energy to do all
the things I love:
garden, yoga, walk,
swim, dance!"

Deborah Franke Ogg, 71[More Testimonials](#)

Nutrex Hawaii BioAstin Hawaiian
Astaxanthin 4mg 270 Gelcaps

\$75.99

Nutrex Hawaii BioAstin Hawaiian
Astaxanthin 12mg 50 Vegan Soft
Gels

\$42.99

Nutrex Hawaii BioAstin Hawaiian
Astaxanthin 12mg 75 Vegan Soft
Gels

\$60.99

Nutrex Hawaii BioAstin Hawaiian
Astaxanthin 4mg 120 Vegan Soft
Gels

\$43.99

Nutrex Hawaii BioAstin Hawaiian
Astaxanthin 12mg 75 Gelcaps

\$56.99



Nutrex Hawaii BioAstin Hawaiian
Astaxanthin 12mg 50 Gelcaps

\$41.99



Nutrex Hawaii BioAstin Hawaiian
Astaxanthin 12mg 25 Gelcaps

\$23.99



Nutrex Hawaii BioAstin Hawaiian
Astaxanthin 4mg 120 Gelcaps

\$41.99



Nutrex Hawaii BioAstin Hawaiian
Astaxanthin 4mg 60 Gelcaps

\$22.99



Nutrex Hawaii BioAstin Supreme
6mg 60 Vegan Soft Gels

\$29.99



Nutrex Hawaii MD Formulas
JointAstin 120 Vegan Soft Gels

\$39.99



Nutrex Hawaii MD Formulas
EyeAstin 60 Gelcaps

\$39.99



Nutrex Hawaii MD Formulas
OmegaAstin 60 Vegan Soft Gels

\$29.99



Nutrex Hawaii I take BioAstin tshirt

\$9.99

EXHIBIT 2 TO REVISED TRADEMARK COEXISTENCE AGREEMENT

PRODUCTS

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ALL PRODUCTS

WEIGHT LOSS SUPPORT

PRE-WORKOUT/ENERGY

MUSCLE GROWTH/RECOVERY

BLACK PERFORMANCE SERIES



AMINO DRIVE

BCAA / EAA FORMULA[†]

(119 reviews)



ANABOL-5

NON-STEROIDAL ANABOLIC AGENT[†]

(15 reviews)



BCAA DRIVE

MUSCLE GROWTH & RECOVERY[†]

(12 reviews)





CREATINE DRIVE

WORLD'S PUREST CREATINE
MONOHYDRATE[†]

(25 reviews)



GLUTAMINE DRIVE

REDUCES MUSCLE BREAKDOWN[†]

(7 reviews)



HEMO-RAGE

INTENSE PRE-WORKOUT ENERGY[†]

(8 reviews)



LIPO-6 Rx

CLINICALLY DOSED WEIGHT LOSS[†]

(13 reviews)



LIPO-6 BLACK UC

ONE PILL ONLY FAT LOSS AID[†]

(113 reviews)



LIPO-6 BLACK HERS UC

ONE PILL ONLY FEMALE FAT LOSS AID[†]

(32 reviews)



LIPO-6 BLACK HERS

**POWERFUL FEMALE WEIGHT LOSS
SUPPORT FORMULA[†]**

(44 reviews)



NIOX

NITRIC OXIDE BOOSTER[†]

(52 reviews)

LIQUID CARNITINE 3000

HELPS TURN FAT INTO MUSCLE ENERGY[†]

(2 reviews)



OUTLIFT

CLINICALLY DOSED PRE-WORKOUT[†]

(9 reviews)

MUSCLE INFUSION

ADVANCED SIX PROTEIN BLEND[†]

(211 reviews)



OUTRAGE EXTREME ENERGY SHOT EXTREME ENERGY IGNITER[†]

(68 reviews)



VITRIX

HELPS IMPROVE SEXUAL PERFORMANCE[†]

(32 reviews)

BASIX DIET SERIES



LIPO-6

ORIGINAL LIQUID CAPSULE DIET PILL[†]

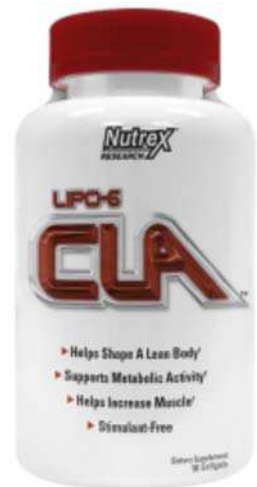
(47 reviews)



LIPO-6 STIM-FREE

STIMULANT FREE WEIGHT LOSS SUPPORT[†]

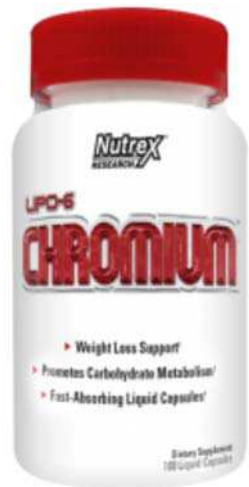
(3 reviews)



CLA

SUPPORTS HIGHER METABOLIC ACTIV

(20 reviews)



CHROMIUM

HELPS PROMOTE CARBOHYDRATE
METABOLISM[†]

(2 reviews)