

ESTTA Tracking number: **ESTTA734614**

Filing date: **03/18/2016**

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	03/18/2016
Attachments	92061862 Cyan NRI JointMtnRemoveParties signed.pdf(161134 bytes) 92061862 Second Decl of DavidM.Wallace Feb2016 dr4, signed.pdf(80269 bytes) ttabvue-94002616-CNU-11 NNV at tradeshow.pdf(2627028 bytes) ttabvue-94002616-CNU-10 Aff David Wright.pdf(259257 bytes) ttabvue-94002616-CNU-5 IneffectSrv1 Loppe.pdf(134666 bytes) ttabvue-94002616-CNU-9 IneffectSrv2 Loppe.pdf(1259713 bytes) RespOA in 85423915 15Jan2013 First Wallace Decl.pdf(1422398 bytes)

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

Cancellation No. 92061862

Cyanotech Corporation

v.

Nutrex Research, Inc.

Consolidated with

Concurrent Use No. 94002616

Cyanotech Corporation

v.

Nutrex Research nv

v.

Nutrex Research, Inc.

v.

Monique Loppe

Joint Motion to Remove Nutrex nv and Monique Loppe as Parties

18 March 2016

**Cyanotech's and Nutrex Research's
Joint Motion to Remove Nutrex nv and Monique Loppe as Parties**

1. Comes now Plaintiff Cyanotech Corporation (“Cyanotech”) and Defendant Nutrex Research, Inc. (“Nutrex Research”) to request the USPTO Trademark Trial and Appeal Board (“Board”) under TBMP 1104 to remove Defendant Nutrex nv, and under TBMP 1104 and 1106.05 to remove Defendant Monique Loppe, as parties in Concurrent Use No. 94002616, a child proceeding consolidated with Cancellation No. 92061862. Cyanotech is Petitioner, and Nutrex Research is a Registrant, in Concurrent Use No. 94002616 and in Cancellation No. 92061862. Concurrent Use No. 94002616 and Cancellation No. 92061862 are collectively referred to herein as the “Consolidated Proceeding”.
2. Defendant Nutrex nv was deemed a common law user after Nutrex nv’s former Registration Nos. 3798632 and 3849395 were cancelled in ttabvue-92061883-CAN-7 for failure to file an Answer in Cancellation No. 92061883. Former Registration Nos. 3798632 and 3849395 were originally cited by an Examining Attorney as bases for refusal to register Cyanotech’s Application Nos. 85423915 and 85423883.
3. Defendant Monique Loppe was deemed a common law user after Loppe’s former Registration No. 3204937 was cancelled for failure to file a Declaration of Use under Section 8. Registration No. 3204937 was originally cited by an Examining Attorney as a basis for refusal to register Cyanotech’s Application Nos. 85423915 and 85423883.
4. In support of this Joint Motion to Remove Nutrex nv and Monique Loppe as Parties, Cyanotech and Nutrex Research rely upon (i) the record in the Consolidated Proceeding, (ii) paragraphs 5 and 6 of the Declaration of David M.

Wallace submitted 15 January 2013 and 30 May 2013 in Cyanotech's Application Nos. 85423915 and 85423883, respectively ("2013 Wallace Declaration"), and (iii) the Second Declaration of David M. Wallace dated 15 February 2016 ("2016 Wallace Declaration") submitted herewith.

5. Cyanotech and Nutrex Research have reached agreement-in-principal for a Trademark Co-Existence Agreement to settle the Consolidated Proceeding. Cyanotech and Nutrex Research jointly request removal of Nutrex nv and Monique Loppe as common law users, based on the evidence submitted herewith and the argument presented below, to facilitate settlement of the Consolidated Proceeding.
6. Cyanotech requests amendment of Application Serial Nos. 85423883 and 85423915 ("Applications") to delete reference to Nutrex nv and Monique Loppe as excepted users based on the evidence submitted herewith and the argument presented below.
7. Deletion of Nutrex nv as an excepted user and removal of Nutrex nv as a party in the Consolidated Proceeding is based on paragraphs 8 to 11 below.
8. Nutrex nv established in paper no. ttabvue-94002616-CNU-11 that Nutrex nv's use in the U.S. of the marks in now-cancelled Reg. Nos. 3798632 and 3849395 ("Nutrex nv Marks") has been participation by its representatives in trade shows, as distinct from use in the U.S. of the Nutrex nv Marks on goods in Class 005.
9. In the Affidavit of Private Investigator David A. Wright (ttabvue-94002616-CNU-10), paragraph 6, the affiant states that the Sales and Marketing Manager of Nutrex nv (Mr. Kurt Van de Mierop) stated to Mr. Wright that "there is no use in the U.S. [of the Nutrex nv Marks] at this time."
10. In the 2013 Wallace Declaration, paragraph 6, the declarant states that online searching produced no evidence of use of the Nutrex nv Marks in the U.S. and

that “In a telephone interview with Nutrex NV in Belgium, I was informed that Nutrex NV ‘currently had no distribution in the U.S.’”.

11. In the 2016 Wallace Declaration, paragraph 7, the Declarant states that online searching produced no evidence of use of the Nutrex nv Marks in the U.S. as of 15 February 2016 or prior to that date.
12. Deletion of Monique Loppe as an excepted user and removal of Monique Loppe as a party in the Consolidated Proceeding is based on paragraphs 13 to 18 below.
13. Monique Loppe abandoned Reg. No. 3204937 (for NUTRIX) by failure to a Declaration of Use under Section 8, and Reg. No. 3204937 was cancelled on 13 Sept. 2013. See 13 September 2013 entry in the TSDR file of Reg. No. 320497.
14. Service of process in Concurrent Use No. 94002616 on Monique Loppe at her address of record in TSDR was undeliverable, as shown in paper nos. ttabvue-94002616-CNU-5 and ttabvue-94002616-CNU-9.
15. In the 2013 Wallace Declaration, paragraph 5, the declarant states, “I found no use whatsoever of [now-abandoned] Reg.No: 3204937, NUTRIX, a word mark. I found no website associated with the NUTRIX mark or the owner thereof”.
16. In the 2016 Wallace Declaration, paragraph 6, the declarant states that online searching produced no evidence of use of Loppe’s NUTRIX mark in the U.S. as of 15 February 2016 or prior to that date.
17. Submitted herewith is a true and accurate copy of the 2013 Wallace Declaration downloaded from TSDR. The 2016 Declaration of David M. Wallace is submitted herewith.
18. Wherefore, Cyanotech and Nutrex Research move that the Board make and enter an Order against Defendant Nutrex nv and against Defendant Monique Loppe deleting Defendants Nutrex nv and Monique Loppe as excepted users,

and removing Defendants Nutrex nv and Monique Loppe as parties, in the Consolidated Proceeding.

18 March 2016

/George E. Darby/

George E. Darby

Reg. No. 44,053

Darby Law Corporation

Voice: 808.626.1300

Email: pto@teleport-asia.com

Counsel for Plaintiff

CYANOTECH

CORPORATION

18 March 2016

/Ava K. Doppelt/

Ava K. Doppelt

Allen, Dyer, Doppelt, Milbrath
& Gilchrist, P.A.

255 South Orange Avenue

Orlando, Florida 32801

Telephone: (407) 841-2330

Facsimile: (407) 841-2343

Email: adoppelt@addmg.com

Attorneys for Respondent

Certificate of Service

USPS online records, and paper nos. ttabvue-94002616-CNU-5 and ttabvue-94002616-CNU-9, establish that postal mail to Defendant Monique Loppe at her address of record (33 Avenue de Saxe, Paris 75007, France) in TSDR is undeliverable. Plaintiff lacks any other contact information for Defendant Monique Loppe.

I certify that a true and complete copy of Cyanotech's and Nutrex Research's Joint Motion to Remove Nutrex nv and Monique Loppe as Parties in Cancellation No. 92061862 (consolidated with Concurrent Use No. 94002616) was served on the Defendant listed below via (i) USPS First Class Mail, postage prepaid, and (ii) email.

Nutrex nv
Attn: Kurt Van de Mierop
kurt.vandemierop@nutrex.be
Achterstenhoek 5
Lille, 2275
Belgium
Representative of record for Nutrex nv

18 March 2016

/ George E. Darby /
George E. Darby
Reg. No. 44,053
Darby Law Corporation
Counsel for Plaintiff
Cyanotech Corporation

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

Cancellation No. 92061862)
)
Consolidated with)
)
Concurrent Use No. 94002616)
)
_____)

SECOND DECLARATION OF DAVID M. WALLACE

I, DAVID M. WALLACE, declare:

1. I am the President of Wallace Scientific Consulting in San Diego, CA. I have a Ph.D. in organic chemistry from the Univ. of California at Davis. My professional career has been in medicinal chemistry and biotechnology. I am a registered patent agent with the USPTO with experience in online and traditional research. I have consulted in the areas of freedom to operate, patentability, and prior art matters for over nine years and in trademark research matters for over three years. All statements herein are based upon my personal knowledge unless otherwise indicated.

2. I was engaged by Cyanotech Corporation to research use in the United States of the following common law trademarks by the named users:

NUTRIX, a word mark, as used by Monique Loppe;

NUTREX, a word mark, and NUTREX THE FINISHING TOUCH FOR NUTRITION, as a word mark or as the literal element in a design mark, as used by Nutrex nv, of Lille, Belgium.

3. NUTRIX as used by Monique Loppe, and NUTREX, and NUTREX THE FINISHING TOUCH FOR NUTRITION as used by Nutrex nv, are individually a “Cited Trademark”, and collectively, are the “Cited Trademarks”.

4. I used (i) online search engines, and (ii) information on the website of Nutrex nv (no website was found for NUTRIX as used by Monique Loppe) to determine the use of the Cited Trademarks in the U.S. My online search strategies included combinations of a Cited Trademark, key words from the Description of Goods of the now-cancelled U.S. Registrations of each Cited Trademark, and product names found on Nutrex nv’s website (www.nutrex.be).

5. In my opinion, the research results reasonably reflect the complete lack of current use in the U.S. of the Cited Trademarks on goods and/or services.

6. I found no use whatsoever of NUTRIX, a word mark, by Monique Loppe. I found no website associated with Loppe’s NUTRIX mark. Based on my earlier search report on the NUTRIX mark in 2013, submitted 15 January 2013 and 30 May 2013 in Trademark Application Nos. 85423915 and 85423883, respectively (my “First Declaration”), and on the research performed for this Declaration, in my opinion (i) there has been no use of the NUTRIX mark on goods or services in the stream of commerce in the United States, currently or in the past, by Monique Loppe.

7. I found no use of NUTREX, a word mark, or of NUTREX THE FINISHING TOUCH FOR NUTRITION, as a word mark or as the literal element in a design mark, on goods or services in the United States by Nutrex nv. Based on my earlier search report on the NUTREX and NUTREX THE FINISHING TOUCH FOR NUTRITION marks, submitted in my First Declaration, and on the

research performed for this Declaration, in my opinion (i) there has been no use by Nutrex nv of the NUTREX or of NUTREX THE FINISHING TOUCH FOR NUTRITION mark on goods or services in the stream of commerce in the United States, currently or in the past.

8. The undersigned being hereby 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 he is properly authorized to execute this document on behalf of Wallace Scientific Consulting; and all statements made of his own knowledge are true and that all statements made on information and belief are believed to be true.

Executed this 15th day of February 2016 in San Diego, California.



DAVID M. WALLACE

ESTTA Tracking number: **ESTTA682587**

Filing date: **07/09/2015**

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

Proceeding	94002616
Party	Registrant Nutrex nv
Correspondence Address	KURT VAN DE MIEROP NUTREX NV ACHTERSTENHOEK 5 LILLE, 2275 BELGIUM info@nutrex.be
Submission	Other Motions/Papers
Filer's Name	Kurt Van de Mierop
Filer's e-mail	kurt.vandemierop@nutrex.be
Signature	/Kurt Van de Mierop/
Date	07/09/2015
Attachments	94002616 - Nutrex's Response to Cyanotech's claim of Non-use of trademarks by Nutrex nv.pdf(6301 bytes) 94002616 - Nutrex Proof of active use of Reg. Nos. 3798632 and 3849395.pdf(2968387 bytes)

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

Concurrent Use No. 94002616

Cyanotech Corporation
Serial Nos. 85423915 and 85423883

v.

Nutrex nv
Registration Nos. 3798632 and
3849395

Nutrex Research, Inc.
Registration Nos. 3870696 and
3870697

Monique Loppe
Common Law User

Nutrex nv's notice in response to Cyanotech's Notice under TBMP §1104 ¶2
of claimed Non-Use by Nutrex nv of Reg. Nos. 3798632 and 3849395

9 July 2015

Nutrex nv's response to Cyanotech's Notice under TBMP §1104 ¶2 of claimed
Non-Use by Nutrex nv of Reg. Nos. 3798632 and 3849395

In response to Plaintiff Cyanotech Corporation's Notice under TBMP §1104 ¶2 of claimed Non-Use by Nutrex nv of Reg. Nos. 3798632 and 3849395, Nutrex nv hereby submits proof that, as owner of Reg. Nos. 3798632 and 3849395, it is and has been actively using in the United States the marks registered as Reg. Nos. 3798632 and 3849395 at least since 2011. Nutrex nv therefore insists that Reg. Nos. 3798632 and 3849395 should be not be deleted as an exception to Cyanotech's claim of exclusive use.

This notice and response is supported by the letter of Nath Morris, Director of Sales of USPOULTRY, submitted herewith.

9 July 2015

/ Kurt Van de Mierop /

Kurt Van de Mierop

Representative of record for Nutrex nv

Certificate of Service

Previous “Returned as Undeliverable” service copies establish that postal mail to Defendant Monique Loppe (common law user) at 33 Avenue de Saxe, Paris 75007, France, is undeliverable. Defendant lacks any other contact information or Defendant Monique Loppe. Consequently, service hereof on Defendant Monique Loppe has not been attempted.

I hereby certify that true and complete copies of the Nutrex nv’s Notice under TBMP §1104 ¶2 in response to Cyanotech’s notice of claimed Non-Use by Nutrex nv of Reg. Nos. 3798632 and 3849395 were served on the Parties listed below via email.

Nutrex Research , Inc
c/o Allen, Dyer, et al.
Attn: Ava K. Doppelt
adoppelt@addmg.com
Suite 1401
255 South Orange Ave.
Orlando Florida 32801
Counsel for Nutrex Research, Inc.

Cyanotech, Inc
c/o Darby Law Corporation
Attn: George E. Darby
darby-patent@teleport-asia.com and pto@teleport-asia.com
PO BOX 893010
MILILANI, HI 96789-0010
UNITED STATES
Counsel for Plaintiff
Cyanotech Corporation

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

Concurrent Use No. 94002616

Cyanotech Corporation
Serial Nos. 85423915 and 85423883

v.

Nutrex nv
Registration Nos. 3798632 and
3849395

Nutrex Research, Inc.
Registration Nos. 3870696 and
3870697

Monique Loppe
Common Law User

Proof of active use by Nutrex nv of Reg. Nos. 3798632 and 3849395

9 July 2015



**U.S. Poultry & Egg
Association**

1530 Cooledge Road
Tucker, GA 30084-7303, USA
Telephone: 770.493.9401
Facsimile: 770.493.9257
www.uspoultry.org

Chairman
Sherman Miller
Cal-Maine Foods
Jackson, MS

Vice Chairman
Paul Hill
West Liberty Foods
Ellsworth, IA

Treasurer
Jerry Moyer
Cobb-Vantress
Siloam Springs, AR

Secretary
Tom Hensley
Fieldale Farms Corporation
Baldwin, GA

Immediate Past Chairman
Elton Maddox
Wayne Farms
Oakwood, GA

President
John Starkey
U.S. Poultry & Egg Association
Tucker, GA

July 8, 2015

To Whom It May Concern,

This is to confirm that Nutrex has been a participating exhibitor at the annual International Production and Processing Expo (IPPE) since 2011. The IPPE is a tradeshow featuring educational programs, products and services for the meat, poultry and feed industries and is sponsored by U.S. Poultry and Egg Association, the American Feed Industry Association and the North American Meat Institute. The show takes place each January in Atlanta, Georgia, USA.

Sincerely,

Nath Morris
Director of Sales
USPOULTRY



U. S. Poultry & Egg Association
Show Sublicense Agreement - Contract
Exhibit Booth Space
2015 IPPE

Contract Date: 04/07/2014

Exhibitor: Nutrex nv

CID: 19040

Booth Number & Hall:	A1452 A Hall	Total Square Feet:	200
Booth Type:	Linear	Booth Dimensions:	10 X 20
Corners	0	Building Support Post	0

Total Price: \$3,200.00 Three Thousand, Two Hundred and 00/100 Dollars

Payment Terms: Due on or before June 5, 2014

In accordance with regulations governing sublicensing and occupying of exhibit booth space during the INTERNATIONAL PRODUCTION & PROCESSING EXPO (IPE, IFE, & IME) held at the Georgia World Congress Center in Atlanta, Georgia, USA January 27-29, 2015, this agreement is hereby made between the U.S. Poultry & Egg Association (USPOULTRY) hereinafter designated as Management, and the Exhibitor as named above. Management agrees to sublicense said space and Exhibitor agrees to pay the total price according to the terms as stated in this agreement.

CANCELLATION POLICY

All cancellations must be made in writing and are not deemed accepted until acknowledged in writing by management. Once cancellation is accepted, exhibitor forfeits all rights to the above referenced space.

REFUND POLICY

REFUNDS ARE MADE ACCORDING TO THE FOLLOWING SCHEDULE:

Through September 30, 2014	50% Refund of Payments Received
After September 30, 2014	No Refunds - NO Exceptions

By signing this agreement, Exhibitor agrees to abide by the display rules and regulations posted on the IPPE web site and contained in the 2015 Exhibitor Manual, and to provide by January 10, 2015, proof of insurance showing policy effective dates through at least January 31, 2015. Exhibitor qualifies for membership discount if Exhibitor is member of U.S. Poultry & Egg Association, American Feed Industry Association, and/or American Meat Institute at time of contract and Exhibitor remains member in good standing on December 15, 2014. If Exhibitor is not a member of said association at time of contract, membership discount will not be extended. If Exhibitor receiving membership discount is not member in good standing of said association on December 15, 2014, Exhibitor agrees that Management will collect fee of membership discount applied prior to allowing Exhibitor to exhibit in 2015 IPPE.

For Management:

Charles Olentine
Management Signature

Charles Olentine
Printed Name

June 5, 2014
Date

For Exhibitor:

Kurt Van der Meer
Exhibitor Signature

VAN DER MEER KURT
Printed Name

5 June 2014
Date

Return signed contract within 5 business days to prevent cancellation of booth space reservation:

U.S. Poultry & Egg Association, 1530 Cooledge Road, Tucker GA 30084
EIN: 58-0704657
Telephone: 678.514.1976 Fax: 770.938.6915 Web Site: www.ippexpo.org

International Production & Processing Expo (IPE, IFE, & IME)



U. S. Poultry & Egg Association
Show Sublicense Agreement - Contract
Exhibit Booth Space
2014 IPPE

Contract Date: 07/01/2013

Exhibitor: Nutrex nv

CID: 19040

Booth Number & Hall:	3425 A Hall	Total Square Feet:	200
Booth Type:	Perimeter	Booth Dimensions:	10 X 20
Corners	0	Building Support Post	0

Total Price: \$3,000.00 Three Thousand, and 00/100 Dollars

Payment Terms: Due on or before July 31, 2013

In accordance with regulations governing sublicensing and occupying of exhibit booth space during the INTERNATIONAL PRODUCTION & PROCESSING EXPO (IPE, IFE, & IME) held at the Georgia World Congress Center in Atlanta, Georgia, USA January 28-30, 2014, this agreement is hereby made between the U.S. Poultry & Egg Association (USPOULTRY) hereinafter designated as Management, and the Exhibitor as named above. Management agrees to sublicense said space and Exhibitor agrees to pay the total price according to the terms as stated in this agreement.

CANCELLATION POLICY

All cancellations must be made in writing and are not deemed accepted until acknowledged in writing by management. Once cancellation is accepted, exhibitor forfeits all rights to the above referenced space.

REFUND POLICY

REFUNDS ARE MADE ACCORDING TO THE FOLLOWING SCHEDULE:

Prior to July 2, 2013	75% Refund of Payments Received
July 2 through September 30, 2013	50% Refund of Payments Received
After September 30, 2013	No Refunds - NO Exceptions

By signing this agreement, Exhibitor agrees to abide by the display rules and regulations posted on the IPPE web site and contained in the 2014 Exhibitor Manual, and to provide by January 10, 2014, proof of insurance showing policy effective dates through at least January 31, 2014. Exhibitor qualifies for membership discount if Exhibitor is member of U.S. Poultry & Egg Association, American Feed Industry Association, and/or American Meat Institute at time of contract and Exhibitor remains member in good standing on December 15, 2013. If Exhibitor is not a member of said association at time of contract, membership discount will not be extended. If Exhibitor receiving membership discount is not member in good standing of said association on December 15, 2013, Exhibitor agrees that Management will collect fee of membership discount applied prior to allowing Exhibitor to exhibit in 2014 IPPE.

For Management:

Charles Olentine
Management Signature

Charles Olentine
Printed Name

July 1, 2013
Date

Return signed contract within 5 business days to prevent cancellation of booth space reservation:

U.S. Poultry & Egg Association, 1530 Cooledge Road, Tucker GA 30084
EIN: 58-0704657

Telephone: 678.514.1976 Fax: 770.938.6915 Web Site: www.ippexpo.org

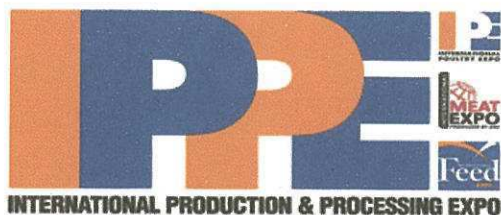
International Production & Processing Expo (IPE, IFE, & IME)

For Exhibitor:

VAN DE MIEROP KURT
Exhibitor Signature

VAN DE MIEROP KURT
Printed Name

July 2nd, 2013
Date



**U. S. Poultry & Egg Association
Show Sublicense Agreement - Contract
Exhibit Booth Space
2013 IPPE**

Contract Date: 05/16/2012

Exhibitor: Nutrex nv

CID: 19040

Booth Number & Hall:	2722 A Hall	Total Square Feet:	200
Booth Type:	Linear	Booth Dimensions:	10 X 20
Corners	2	Building Support Post	0

Total Price: \$3,200.00 Three Thousand, Two Hundred and 00/100 Dollars

Payment Terms: Due on or before June 15, 2012

In accordance with regulations governing sublicensing and occupying of exhibit booth space during the INTERNATIONAL PRODUCTION & PROCESSING EXPO (IPE, IFE, & IME) held at the Georgia World Congress Center in Atlanta, Georgia, USA January 29-31, 2013, this agreement is hereby made between the U.S. Poultry & Egg Association (USPOULTRY) hereinafter designated as Management, and the Exhibitor as named above. Management agrees to sublicense said space and Exhibitor agrees to pay the total price according to the terms as stated in this agreement.

CANCELLATION POLICY

All cancellations must be made in writing and are not deemed accepted until acknowledged in writing by management. Once cancellation is accepted, exhibitor forfeits all rights to the above referenced space.

REFUND POLICY

REFUNDS ARE MADE ACCORDING TO THE FOLLOWING SCHEDULE:

Prior to July 2, 2012	75% Refund of Payments Received
July 2 through September 30, 2012	50% Refund of Payments Received
After September 30, 2012	No Refunds - NO Exceptions

By signing this agreement, Exhibitor agrees to abide by the display rules and regulations posted on the IPE web site and contained in the 2013 Exhibitor Manual and to provide proof of insurance no later than January 10, 2013. Signature of both parties is required for contract to become effective.

For Management:

Charles Olentine

Management Signature

Charles Olentine

Printed Name

May 16, 2012

Date

For Exhibitor:

Kurt Van de Mierop

Exhibitor Signature

KURT VAN DE MIEROP

Printed Name

May 17, 2012

Date

Return signed contract within 5 business days to prevent cancellation of booth space reservation:

U.S. Poultry & Egg Association, 1530 Cooledge Road, Tucker GA 30084

EIN: 58-0704657

Telephone: 678.514.1976 Fax: 770.493.9257 Web Site: www.ipe13.org



**U. S. Poultry & Egg Association
Show Sublicense Agreement - Contract
Exhibit Booth Space
2012 IPE/IFE**

Contract Date: 08/16/2011

Exhibitor: Nutrex nv

Booth Information:

Booth Number & Hall:	407 A Hall	Total Square Feet:	185
Booth Type:	Linear	Booth Dimensions:	10 X 20
Corners	0	Building Support Post	3

Total Price: \$2,590.00 Two Thousand, Five Hundred Ninety and 00/100 Dollars

Payment Terms: Due on or before September 15, 2011

In accordance with regulations governing sublicensing and occupying of exhibit booth space during the INTERNATIONAL POULTRY EXPO and the INTERNATIONAL FEED EXPO held at the Georgia World Congress Center in Atlanta, Georgia, USA January 24-26, 2012, this agreement is hereby made between the U.S. Poultry & Egg Association (USPOULTRY) hereinafter designated as Management, and the Exhibitor as named above. Management agrees to sublicense said space and Exhibitor agrees to pay the total price according the terms as stated in this agreement.

CANCELLATION POLICY

ALL CANCELLATIONS MUST BE MADE IN WRITING AND ARE NOT DEEMED ACCEPTED UNTIL ACKNOWLEDGED IN WRITING BY MANAGEMENT. ONCE CANCELLATION IS ACCEPTED, EXHIBITOR FORFEITS ALL RIGHTS TO THE ABOVE REFERENCED SPACE.

REFUND POLICY

REFUNDS ARE MADE ACCORDING TO THE FOLLOWING SCHEDULE:

Prior to May 31, 2011	75% Refund of Payments Received
June 1 through September 30, 2011	50% Refund of Payments Received
After September 30, 2011	No Refunds - NO Exceptions

By signing this agreement, Exhibitor agrees to abide by the display rules and regulations posted on the IPE web site and contained in the 2012 Exhibitor Manual and to provide proof of insurance no later than January 10, 2012. Signature of both parties is required for contract to become effective.

For Management:

Charles Olentine
Management Signature

Charles Olentine
Printed Name

August 16, 2011
Date

For Exhibitor:

Kurt Van de Mierop
Exhibitor Signature

KURT VAN DE MIEROP
Printed Name

August 16, 2011
Date

Return signed contract within 5 business days to prevent cancellation of booth space reservation:

U.S. Poultry & Egg Association, 1530 Cooledge Road, Tucker GA 30084
EIN: 58-0704657
Telephone: 678.514.1976 Fax: 770.493.9257 Web Site: www.ipeweek12.org



**U. S. Poultry & Egg Association
Show Sublicense Agreement - Contract
Exhibit Booth Space**

Contract Date: 10/08/2010

Exhibitor: Nutrex nv

Booth Information:

Booth Number & Hall:	314 A Hall	Total Square Feet:	200
Booth Type:	Linear	Booth Dimensions:	20 X 10
Corners	1	Building Support Post	0

Total Price: \$3,600.00 Three Thousand Six Hundred and 00/100 Dollars

Payment Terms: Due on or before October 29, 2010

In accordance with regulations governing sublicensing and occupying of exhibit booth space during the INTERNATIONAL POULTRY EXPO and the INTERNATIONAL FEED EXPO held at the Georgia World Congress Center in Atlanta, Georgia, USA January 26-28, 2011, this agreement is hereby made between the U.S. Poultry & Egg Association (USPOULTRY) hereinafter designated as Management, and the Exhibitor as named above. Management agrees to sublicense said space and Exhibitor agrees to pay the total price according to the terms as stated in this agreement.

CANCELLATION POLICY

ALL CANCELLATIONS MUST BE MADE IN WRITING AND ARE NOT DEEMED ACCEPTED UNTIL ACKNOWLEDGED IN WRITING BY MANAGEMENT. ONCE CANCELLATION IS ACCEPTED, EXHIBITOR FORFEITS ALL RIGHTS TO THE ABOVE REFERENCED SPACE.

REFUND POLICY

REFUNDS ARE MADE ACCORDING TO THE FOLLOWING SCHEDULE:

Prior to May 31, 2010	75% Refund of Payments Received
June 1 through September 30, 2010	50% Refund of Payments Received
After September 30, 2010	No Refunds - NO Exceptions

By signing this agreement, Exhibitor agrees to abide by the display rules and regulations posted on the IPE web site and contained in the 2011 Exhibitor Manual and to provide proof of insurance no later than January 10, 2011. Signature of both parties is required for contract to become effective.

For Management:


Management Signature

Charles Olentine
Printed Name

October 8, 2010
Date

For Exhibitor:


Exhibitor Signature

VAN DE MEROP KURT
Printed Name

Oct 11, 2010
Date

Return signed contract within 5 business days to prevent cancellation of booth space reservation:

U.S. Poultry & Egg Association, 1530 Cooledge Road, Tucker GA 30084
EIN: 58-0704657
Telephone: 678.514.1976 Fax: 770.493.9257 Web Site: www.ipe11.org

Affidavit of Kurt Van de Mierop

I, Kurt Van de Mierop, declare as follows :

1) Via the below URL the Engormix website, a leading provider of industry information, a list of past events can be viewed in which Nutrex nv has participated as an exhibitor :

http://en.engormix.com/nutrex/sh1606_events.htm

This URL links further to videos of participation by Nutrex nv as an exhibitor showing clear In-use of the marks registered as Reg. Nos. 3798632 and 3849395 at IPPE, held in Atlanta. Atlanta is located in the state of Georgia, where Mr David A. Wright - who has provided the Affidavit of his extensive research regarding the claimed Non-use of the marks registered as Reg. Nos. 3798632 and 3849395 to which this is a response - is licensed as a private investigator.

2) In order to find my phone number, a simple Google search, as apparently performed by David A. Wright, for "Kurt Van de Mierop" would have resulted in the below links being shown as the third search result on the first page. It shows that Nutrex was also present at IPPE in Atlanta in 2014 and there appears to be a video proving this as well as the In-use of Reg. Nos. 3798632 and 3849395. Above that would be images of myself present at IPPE in from of our booth showing In-use of the marks registered as Reg. Nos. 3798632 and 3849395.

Nutrex present at IPPE 2014: Kurt Van de Mierop - Engormix

[en.engormix.com](#) > [Pig Industry](#) > [Videos](#) > [Vertaal deze pagina](#)

10 feb. 2014 - Kurt Van de Mierop, Technical Sales Manager at Nutrex talks about their products for animal feed and the phylosophy they have in research ...

2) In my professional opinion, the results of David A. Wright's In-Use Research do NOT support that the marks registered as Reg. Nos. 3798632 and 3849395 are currently not in-use in the United States.

3) I hereby confirm that I have not spoken over the phone with anyone introducing himself as David A. Wright, so if the claimed conversation has taken place, then I can only conclude that Mr Wright has willfully misrepresented himself, possibly also asking different questions from the ones of which he has reported.

4) In my professional, my conclusions are based are based on sufficient facts and data and are the product of reliable principles and method WHEN professionally executed.

5) The undersigned being hereby 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 ay jeopardize the validity of the application or document or any registration resulting therefrom, declares that he is properly authorized to execute this document on behalf of the Applicant; and all statements made of his own knowledge are true and that all statements made on information and belief are believed to be true.

Executed this day 9th of July 2015
in Lille, Belgium

/ Kurt Van de Mierop /
Respresentative of record for Nutrex nv

ESTTA Tracking number: **ESTTA669057**

Filing date: **04/27/2015**

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

Proceeding	94002616
Party	Applicant Cyanotech Corporation
Correspondence Address	GEORGE E DARBY DARBY LAW CORPORATION PO BOX 893010 MILILANI, HI 96789-0010 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	04/27/2015
Attachments	94002616 Plntfs Notice under TBMP 1104.2 3pp.pdf(126046 bytes) 94002616 Affidavit of DWright 3pp 27Apr2015.pdf(1469048 bytes)

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

Concurrent Use No. 94002616

Cyanotech Corporation
Serial Nos. 85423915 and 85423883

v.

Nutrex nv
Registration Nos. 3798632 and
3849395

Nutrex Research, Inc.
Registration Nos. 3870696 and
3870697

Monique Loppe
Common Law User

Cyanotech's Notice under TBMP §1104 ¶2 of Non-Use
by Nutrex nv of Reg. Nos. 3798632 and 3849395

27 April 2015

**Cyanotech's Notice under TBMP §1104 ¶2 of Non-Use
by Nutrex nv of Reg. Nos. 3798632 and 3849395**

Plaintiff Cyanotech Corporation has learned that Defendant Nutrex nv, owner of Reg. Nos. 3798632 and 3849395, is not currently using, and has not previously used, in the United States the marks registered as Reg. Nos. 3798632 and 3849395, and hereby requests under TBMP §1104 ¶2 that Reg. Nos. 3798632 and 3849395 should be deleted as an exception to Cyanotech's claim of exclusive use.

This notice and request is supported by the Affidavit of David A. Wright, submitted herewith.

27 April 2015

/George E. Darby/

George E. Darby
Reg. No. 44,053
Darby Law Corporation
Counsel for Plaintiff
CYANOTECH
CORPORATION

Certificate of Service

Previous “Returned as Undeliverable” service copies establish that postal mail to Defendant Monique Loppe (common law user) at 33 Avenue de Saxe, Paris 75007, France, is undeliverable. Plaintiff lacks any other contact information for Defendant Monique Loppe. Consequently, service hereof on Defendant Monique Loppe has not been attempted.

I hereby certify that true and complete copies of the Cyanotech’s Notice under TBMP §1104 ¶2 of Non-Use by Nutrex nv of Reg. Nos. 3798632 and 3849395 were served on the Defendants listed below via email.

Nutrex BV
Attn: Kurt Van de Mierop
kurt.vandemierop@nutrex.be
Achterstenhoek 5
Lille, 2275
Belgium
Representative of record for Nutrex nv

Nutrex Research , Inc
c/o Allen, Dyer, et al.
Attn: Ava K. Doppelt
adoppelt@addmg.com
Suite 1401
255 South Orange Ave.
Orlando Florida 32801
Counsel for Nutrex Research, Inc.

27 April 2015

/ *George E. Darby* /
George E. Darby
Reg. No. 44,053
Darby Law Corporation
Counsel for Plaintiff
Cyanotech Corporation

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

Concurrent Use No. 94002616

Cyanotech Corporation
Serial Nos. 85423915 and 85423883

v.

Nutrex nv
Registration Nos. 3798632 and
3849395

Nutrex Research, Inc.
Registration Nos. 3870696 and
3870697

Monique Loppe
Common Law User

Affidavit of David A. Wright

27 April 2015

AFFIDAVIT OF DAVID A. WRIGHT

I, David A. Wright, declare as follows:

1. I am David A. Wright and am a contractor to Marksmen, whose offices are in Los Angeles, CA, Seattle, WA, Chapel Hill, NC, and London, UK. Marksmen performs intellectual property investigations, including "in-use trademark investigations" to determine whether a given trademark is "in-use" in commerce in the U.S., e.g., whether a trademark is or has been affixed to goods, shipping containers of goods, point of sale displays for goods, etc., sold or offered for sale in the U.S. More extensive information about Marksmen is at www.marksmen.com.
2. I am licensed as a private investigator in the State of Georgia, and have managed approximately 34,000 intellectual property investigations between 2001 and 2010 conducted by investigators employed by, or contracted to Marksmen and under my supervision. I have personally conducted approximately 3,000 in-use trademark investigations over the past 15 years. I understand that whether a trademark is in-use is very relevant to whether the registration of that trademark can be cancelled or deemed abandoned.
3. I was retained by Darby Law Corporation, counsel for Plaintiff Cyanotech Corporation in Concurrent Use Proceeding No. 94002616, to investigate whether U.S. Registered Trademark Nos. 3798632 (NUTREX word mark) and 3849395 (NUTREX THE FINISHING TOUCH FOR NUTRITION design mark) are currently in-use in the U.S., and to the degree possible by searching archives, whether Reg. Nos. 3798632 and 3849395 had ever been used in the U.S. ("the In-Use Research").
4. My research methods for conducting the In-Use Research involved online research using Google and other common search engines, searching product databases in the market segments described in the Descriptions of Goods and Services of Reg. Nos. 3798632 and 3849395 and in related market segments, reviewing the website of Nutrex nv (nutrex.be), and conversing with Mr. Kurt Van de Mierop, Sales and Marketing Manager of Nutrex nv, Achterstenhoek 5, 2275 Lille, Belgium, the owner of Reg. Nos. 3798632 and 3849395. The nutrex.be website domain name is registered to Agrimex nv, with the same address as Nutrex nv, and the registration recites a domain name contact of Mr. Kurt Van de Meirp.
5. My In-Use Research retrieved no evidence of references to NUTREX or to NUTREX

THE FINISHING TOUCH FOR NUTRITION indicating present or past sales of goods or services in the United States by the owner of Reg. Nos. 3798632 and 3849395 or by agents of the owner.

6. When I spoke with Mr. Kurt Van de Mierop, Sales and Marketing Manager of Nutrex nv, by telephone on April 21, 2015, Mr. Van de Mierop told me that Nutrex nv does not have any distributors in the U.S. He said that Nutrex nv has extensive sales in Latin America and Canada, as well as Europe and Asia, but that they registered the trademarks in the U.S. because they were planning to deal with larger companies in the US directly. When asked what companies in the U.S. are currently using NUTREX products, Mr. Van de Mierop said, "No one, there is no use in the U.S. at this time." Mr. Van de Mierop's remark about non-use of Nutrex nv's products and trademarks was completely unsolicited.

7. In my professional opinion, the results of the In-Use Research support, without qualification, that Reg. Nos. 3798632 and 3849395 are not currently in-use in the United States. I found no evidence of past use of Reg. Nos. 3798632 and 3849395 in the United States.

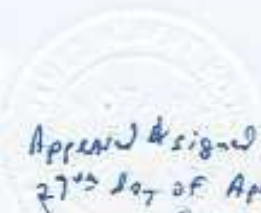
8. In my professional opinion, my conclusions are based on sufficient facts or data and are the product of reliable principles and method reliably applied to the facts of the case.

9. The undersigned being hereby 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 he is properly authorized to execute this document on behalf of the Applicant; and all statements made of his own knowledge are true and that all statements made on information and belief are believed to be true.

Executed this 27th day of April 2015
in Dublin, GA



DAVID A. WRIGHT
Georgia PI License No. PDE 048218


Appeared & signed before me this
27th day of April, 2015
James Robert Ward, Notary Public
My Commission expires 8/18/18

ESTTA Tracking number: **ESTTA644863**

Filing date: **12/16/2014**

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

Proceeding	94002616
Party	Applicant Cyanotech Corporation
Correspondence Address	GEORGE E DARBY DARBY LAW CORPORATION PO BOX 893010 MILILANI, HI 96789-0010 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	12/16/2014
Attachments	94002616 Ntc & Cert. of Serv re UndelivServCopy M.Loppe.pdf(24724 bytes) 94002616 Exhibit A NtcOfUndeliverableSrvCopy M.Loppe.pdf(123547 bytes)

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

Concurrent Use No. 94002616

Cyanotech Corporation
Serial Nos. 85423915 and 85423883

v.

Nutrex nv
Registration Nos. 3798632 and
3849395

Nutrex Research, Inc.
Registration Nos. 3870696 and
3870697

Monique Loppe
Common Law User

Notice of Undeliverable Service Copy

16 December 2014

**Notice of Undeliverable Service Copy of Trademark Applications
Serial Nos. 85423915 and 85423883**

Notice is hereby given that the USPS online database reports that the service copies to Defendant Monique Loppe of U.S. Trademark Application Serial Nos. 85423915 and 85423883 have not been delivered after multiple delivery attempts.

Delivery of service copies of Plaintiff's U.S. Trademark Application Serial Nos. 85423915 and 85423883 addressed to Monique Loppe (common law user) was first attempted on 05 December 2014. That attempted delivery, and all subsequent delivery attempts made by the French post office at the address of record for Ms. Loppe, have been unsuccessful, based on the USPS online records of Exp. Mail No. ED 845295695 US. A true and accurate copy of said USPS online records as of 16 December 2014 is attached hereto as Exhibit A.

Plaintiff Cyanotech has not yet received any "returned service copy" or formal notice that the French post office has deemed the service copy undeliverable. However, given the fact that the address is in France, the service copy may not be returned and there may not be any formal notice from the French post office that the service copy is undeliverable. Given the passage of 10 days from the first delivery attempt, and multiple unsuccessful delivery attempts, Plaintiff assumes the service copy to Defendant Monique Loppe is undeliverable.

16 December 2014

/ George E. Darby /
George E. Darby
Reg. No. 44,053
Darby Law Corporation
Counsel for Plaintiff
CYANOTECH
CORPORATION

Certificate of Service

I hereby certify that true and complete copies of the Notice of Undeliverable Service Copy are being served on the Defendants listed below via the USPTO ESTTA system:

Nutrex NV
Achterstenhoek 5
Lille, 2275
Belgium

Nutrex Research , Inc
c/o Allen, Dyer, et al.
Suite 1401
255 South Orange Ave.
Orlando Florida 32801
Counsel for Nutrex Research, Inc.

Monique Loppe
33 Avenue de Saxe
Paris 75007
France

16 December 2014

/ George E. Darby /
George E. Darby
Reg. No. 44,053
Darby Law Corporation

Counsel for Plaintiff
CYANOTECH
CORPORATION



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Tracking Number: ED845295695US

Scheduled Delivery Day: Thursday, December 4, 2014

Product & Tracking Information

Postal Product:

Priority Mail Express International™

Features:

PO to Addressee

Up to \$100 insurance included

Available Actions

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DATE & TIME	STATUS OF ITEM	LOCATION
December 5, 2014 , 12:16 pm	Addressee not available - Will attempt delivery on next working day	FRANCE
Your item could not be delivered on December 5, 2014 at 12:16 pm in FRANCE due to the addressee not available at time of delivery. It is scheduled for another delivery attempt tomorrow.		
December 5, 2014 , 10:26 am	Out for Delivery	
December 5, 2014 , 5:57 am	Arrival at Post Office	FRANCE
December 4, 2014 , 10:47 am	Customs clearance processing complete	FRANCE
December 4, 2014 , 9:34 am	Customs Clearance	FRANCE
December 4, 2014 , 9:32 am	Processed Through Sort Facility	FRANCE
December 3, 2014 , 12:56 pm	Departed	Paris, FRANCE
December 3, 2014 , 9:14 am	Departed	Paris, FRANCE
December 2, 2014 , 6:34 pm	Departed	Newark, UNITED STATES
December 1, 2014 , 7:47 pm	Departed	Newark, UNITED STATES
November 29, 2014 , 10:19 pm	Departed	Honolulu, UNITED STATES
November 29, 2014 , 3:32 pm	Arrived	Honolulu, UNITED STATES
November 28, 2014 , 9:59 pm	Processed Through Sort Facility	P&DC HONOLULU HI 968 (USPS)
November 28, 2014 , 9:58 pm	Arrived at Sort Facility	P&DC HONOLULU HI 968 (USPS)
November 28, 2014 , 6:24 pm	Departed Post Office	MILILANI, HI 96789
November 28, 2014 , 3:35 pm	Arrived at USPS Origin Facility	HONOLULU, HI 96820

DATE & TIME	STATUS OF ITEM	LOCATION
November 28, 2014 , 10:36 am	Acceptance	MILILANI, HI 96789

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Tracking (or receipt) number

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ESTTA Tracking number: **ESTTA648826**

Filing date: **01/07/2015**

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

Proceeding	94002616
Party	Applicant Cyanotech Corporation
Correspondence Address	GEORGE E DARBY DARBY LAW CORPORATION PO BOX 893010 MILILANI, HI 96789-0010 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	01/07/2015
Attachments	94002616 Ntc & Cert. of Serv re SrvCopy M.Loppe Returned Undeliverable.pdf(1519409 bytes)

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

Concurrent Use No. 94002616

Cyanotech Corporation
Serial Nos. 85423915 and 85423883

v.

Nutrex nv
Registration Nos. 3798632 and
3849395

Nutrex Research, Inc.
Registration Nos. 3870696 and
3870697

Monique Loppe
Common Law User

Notice of Service Copy to Monique Loppe
Returned as Undeliverable

07 January 2015

**Service Copy of Trademark Applications Ser. Nos. 85423915 and 85423883
to Monique Loppe Returned as Undeliverable**

Notice is hereby given that service copies of Plaintiff's U.S. Trademark Application Serial Nos. 85423915 and 85423883 addressed to Monique Loppe (common law user) was first attempted on 05 December 2014 and returned as undeliverable to Plaintiff Cyanotech Corporation on 07 January 2015. A true and accurate copy of the USPS Express Mail No. ED 845295695 US exterior, addressed to Monique Loppe with "undeliverable" markings by the French post office, is attached hereto as Exhibit A. USPS Express Mail No. ED 845295695 US contained service copies of Plaintiff's U.S. Trademark Application Serial Nos. 85423915 and 85423883.

07 January 2015

/George E. Darby/
George E. Darby
Reg. No. 44,053
Darby Law Corporation
Counsel for Plaintiff
CYANOTECH
CORPORATION

Certificate of Service

I hereby certify that true and complete copies of the Notice of Service Copy to Monique Loppe Returned as Undeliverable were served on the Defendants listed below via email:

Nutrex BV
Attn: Kurt Van de Mierop
kurt.vandemierop@nutrex.be
Achterstenhoek 5
Lille, 2275
Belgium
Representative of record for Nutrex nv

Nutrex Research , Inc
c/o Allen, Dyer, et al.
Attn: Ava K. Doppelt
adoppelt@addmg.com
Suite 1401
255 South Orange Ave.
Orlando Florida 32801
Counsel for Nutrex Research, Inc.

07 January 2015

/ George E. Darby /
George E. Darby
Reg. No. 44,053
Darby Law Corporation

Counsel for Plaintiff
CYANOTECH
CORPORATION

CALL 1-800-222-1811 FO



1000

U.S. POSTAGE
PAID
MILLAN, HI
95789
NOV 28, 14
AMOUNT
\$46.50
0045119-08

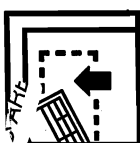
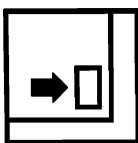


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The efficient
the Express Mail

BEL

Type or print required.



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ORIGIN (POSTAL SERVICE USE ONLY)

PO ZIP Code	Day of Delivery	Postage	
Date Accepted	<input type="checkbox"/> Next <input type="checkbox"/> 2nd <input type="checkbox"/> 3rd Del. Day	Return Receipt Fee	
Mo. Day Year	Scheduled Date of Delivery	COD Fee	Insurance Fee
Time Accepted <input type="checkbox"/> AM <input type="checkbox"/> PM	Month Day		
Fiat Rate <input type="checkbox"/> or Weight	Scheduled Time of Delivery	Total Postage & Fees	
lbs. ozs.	Military <input type="checkbox"/> Non <input type="checkbox"/> 3 PM		
	<input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	Acceptance Emp. Initials	
	Int'l Alpha Country Code		

FROM: (PLEASE PRINT)

PHONE ()

FOR PICKUP OR TRACKING
Visit www.usps.com
Call 1-800-222-1811



Addressee copy

Label 1-B, March 2004

DELIVERY (POSTAL SERVICE USE ONLY)

Delivery Attempt	Time	Employee Signature
Mo. Day	<input type="checkbox"/> AM <input type="checkbox"/> PM	
Delivery Attempt	Time	Employee Signature
Mo. Day	<input type="checkbox"/> AM <input type="checkbox"/> PM	
Delivery Date	Time	Employee Signature
Mo. Day	<input type="checkbox"/> AM <input type="checkbox"/> PM	

CUSTOMER USE ONLY

PAYMENT BY ACCOUNT ☐ **WARRANTY OF SIGNATURE (Domestic Mail Only)**
Express Mail Corporate Acct. No. _____
Federal Agency Acct. No. or Postal Service Acct. No. _____
I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.

☐ **NO DELIVERY** ☐ Weekend ☐ Holiday ☐ Mailer Signature

TO: (PLEASE PRINT)

PHONE ()

ZIP + 4 (U.S. ADDRESSES ONLY. DO NOT USE FOR FOREIGN POSTAL CODES.)

FOR INTERNATIONAL DESTINATIONS, WRITE COUNTRY NAME BLANK.

EXHIBIT A

FLAT RATE ENVELOPE

FLAT RATE POSTAGE
REGARDLESS OF WEIGHT
DOMESTIC USE ONLY

ED84 5295 6956 39N
US-9
ROW3
299-US-0
10/12/2014
VPA CHM RETOUR TREX
0000 000E D845 2956 9563 9299 840T

EXPRESS
TIVIM

CHRONOPOST
13 H RET
ED845295695US
DATE 19/12/2014
Motif du retour : Destinataire avisé, envoi non réclamé dans les 10 jours
Cause of undelivery : Receiver notified, shipment unclaimed

CHRONOPOST INTER
1 OF 1 IMPOF

FROM : see Chronopost AMB # ED845295695US
WEIGHT : 0.10 KG
TO : MONIQUE LOPPE
33 AVENUE DE SAXE
75007 PARIS 07
FR
REF ED8452956956339N

TOURNÉE : 97402
DATE : 08/12/14
APPEL CLIENT ? OUI ☐ NON ☐
Cocher la case correspondante
- Mauvaise adresse ou incomplète (RC) Précisez en cochant une ou plusieurs cases
MANQUE :
N° de rue ☐ Adresse
N° de bâtiment ☐ Ville
N° d'esc ☐
PROBLEME ADRESSE Litige Ville
- Porte Codée (CO) ☐
Porte codée ☐
Code porte erroné ☐
Accès avec bip ☐
- Destinataire inconnu à l'envoi ☒
Pas de Nom sur la Boîte aux Lettres ☒
- Présenté mais non livré (P) ☐
Fermé (horaires) ☐
Fermé pour congés ☐
Absence du client ☐
Avisé mais lieu d'instance fermé ☐
- Présenté Refusé (PR) ☐
Livraison Hors Délai ☐
Marchandise incomplète ☐
Etat (avarié) de l'envoi ☐
- AUTRES CAUSES DE NON ☐

ED 8452956 95US
Tel :
Dgtic :/
ETG :

EXPRESS

TOURNÉE: 97402

Si groupage, indiquer le nombre d'envois concernés :

DATE: 08/12/14

COMMENTAIRE

Cocher la case correspondante

APPEL CLIENT ? OUI ☐ NON ☐

Préciser en cochant une ou plusieurs cases, les causes de la non distribution

- Mauvaise adresse ou incomplète (RCI)

MANQUE :

N° de rue ☐ Adresse Ville ☐
N° de bâtiment ☐ N° d'état ☐

PROBLEME ADRESSE Litige Ville ☐

- Porte Codée (CO)

Porte codée ☐
Code porte erroné ☐
Accès avec bip ☐

- Destinataire inconnu à l'adresse

Pas de Nom sur la Boîte aux Lettres ☒

- Présenté mais non livré (P)

- Présenté mais impossibilité de

Fermé (horaires)

Fermé pour congés

Absence du client

Avisé mais lieu d'instance fermé

- Présenté Refusé (PR)

Livraison Hors Délai

Marchandise incomplète

Etat (avarie) de l'envoi

- AUTRES CAUSES DE NON

STOCKER LOCAL INSTANCE

Consigne :

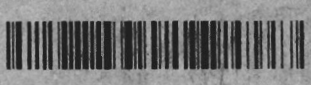
Date fin instance: 19/12 Date relivraison:

Type de colis : autres

33 AVENUE DE SAXE

Bat:
Tél:
ETG:
Digic: /

ED 8452956 95US

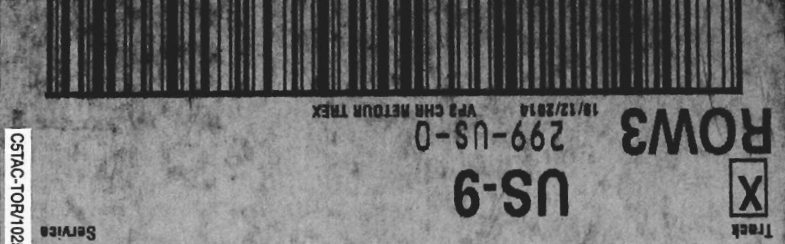


CSTAC-TOR/1025.V1.S

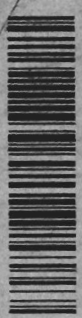
CHRONOPOST INTER
1 OF 1 IMPOF

FROM : see Chronopost AMB # ED845295695US
WEIGHT : 0.10 KG
TO : MONIQUE LOPPE
33 AVENUE DE SAXE
75007 PARIS 07
FR
REF ED8452956956339N

ED84 5295 6956 39N
US-9
ROW3
18/12/2014
VPS CHN RETOUR TREX
CSTAC-TOR/1025.V1.S
RETURN



13 H RET



ED845295695US

DATE 19/12/2014

Motif du retour : Destinataire avisé, envoi non réclamé dans les délais
Cause of undelivery : Receiver notified, shipment unclaimed

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**UNITED STATES DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE**

In re Application of)	Trademark Law Office: 113
)	
Cyanotech Corporation)	Examining Atty: KAHN, Ahsen
)	
Serial No.: 85423915 for NUTREX HAWAII)	Atty Dkt: NUTREXHI.w
)	
Serial No.: 85423883 for NUTREX (design))	Atty Dkt: NUTREX.d
)	
_____)	All Apps. Filing Date: 15 Sept. 2011

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

DECLARATION OF DAVID M. WALLACE

I, DAVID M. WALLACE, declare:

1. I am the President of Wallace Scientific Consulting in San Diego, CA. I have a Ph.D. in organic chemistry from the Univ. of California at Davis. My professional career has been in medicinal chemistry and biotechnology. I am a registered patent agent with the USPTO with experience in online and traditional research. I have consulted in the areas of freedom to operate, patentability, and prior art matters for over six years and more recently in trademark research matters. All statements herein are based upon my personal knowledge unless otherwise indicated. U.S. states and territories are denoted herein by USPS two letter abbreviations.

2. I was engaged by Cyanotech Corporation to research the geographic areas of use of the following registered trademarks:

Reg.No: 3204937, NUTRIX, a word mark;

Reg.No: 3798632, NUTREX, a word mark;

Reg.No: 3849395, a design mark containing the text, NUTREX THE
FINISHING TOUCH FOR NUTRITION;

Reg.No: 3870696, a design mark containing the text, NUTREX RESEARCH;
and

Reg.No: 3870697, for a design mark containing the text, NUTREX
RESEARCH (individually, a “Cited Trademark”, and collectively, the “Cited
Trademarks”).

3. I used (i) online search engines, (ii) information on the websites of the owners of the Cited Trademarks (other than Reg. 3204937), and (iii) telephone calls to Nutrex Research, Inc. and to Nutrex NV (Belgium) to determine the geographic locations of retailers and distributors in the U.S. that promoted or sold goods identified by the Cited Trademarks of a given owner. My online search strategies included combinations of a Cited Trademark, key words from the Description of Goods of the Cited Trademark, product names found on a registrant’s website, and geographic terms such as state names and zip codes of larger cities, etc.

4. In my opinion, the research results reasonably reflect the current geographic use of the Cited Trademarks. Given the registration dates of the Cited Trademarks, in my opinion it is a reasonable assumption that further geographic expansion of use of the marks of Reg.Nos: 3204937, 3870696, 3870697, 3798632, and 3849395 is unlikely.

5. I found no use whatsoever of Reg.No: 3204937, NUTRIX, a word mark. I found no website associated with the NUTRIX mark or the owner thereof.

Declaration of Dr. David M. Wallace

Trademark Apps for: NUTREX HAWAII (word mark, 85/423915), and NUTREX (design mark, 85/423883)

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6. Reg.No: 3798632, NUTREX, a word mark, and Reg.No: 3849395, NUTREX THE FINISHING TOUCH FOR NUTRITION, a design mark, are both owned by Nutrex nv naamloze vennootschap (nv), of Lille, Belgium. Extensive online research retrieved no use in U.S. states or territories of Reg.No. 3798632 (NUTREX) or of Reg.No: 3849395 (NUTREX THE FINISHING TOUCH FOR NUTRITION). In a telephone interview with Nutrex NV in Belgium, I was informed that Nutrex NV “currently had no distribution in the U.S.”

7. Reg.No: 3870696, a design mark containing the text, NUTREX RESEARCH and Reg.No: 3870697, a design mark containing the text, NUTREX RESEARCH, are commonly owned by Nutrex Research, Inc., of Oviedo, Florida. In a telephone interview with Nutrex Research, Inc., Nutrex Research, Inc., refused to disclose any information about its distributors or retailers. Through extensive online research, I found use of Reg.Nos. 3870696 and 3870697 (both design marks containing the text, NUTREX RESEARCH) by retailers or distributors in AL, AZ, AR, CA, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, MA, MD, MI, MN, NV, NJ, NY, NC, OH, IK, OR, PA, SC, TN, TX, VA, WA, and WI, and in no other U.S. states or territories.

8. The undersigned being hereby 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 he is properly authorized to execute this document on behalf of the Wallace Scientific Consulting; and all statements made of his own knowledge are true and that all statements made on information and belief are believed to be true.

Declaration of Dr. David M. Wallace

Trademark Apps for: NUTREX HAWAII (word mark, 85/423915), and NUTREX (design mark, 85/423883)

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DAVID M. WALLACE