

ESTTA Tracking number: **ESTTA1054831**Filing date: **05/12/2020**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party has filed a petition to cancel the registration indicated below.

Petitioner Information

Name	ConSeal International Incorporated		
Entity	Corporation	Citizenship	Florida
Address	90 Kerry Place Suite 2 Norwood, MA 02062 UNITED STATES		

Attorney information	Joshua D. Martin Johnson & Martin, P.A. 500 West Cypress Creek Road Suite 430 Fort Lauderdale, FL 33309 UNITED STATES josh.martin@johnsonmartinlaw.com, litigation@johnsonmartinlaw.com 954-790-6699
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Registration Subject to Cancellation

Registration No.	4169328	Registration date	07/03/2012
Registrant	MEDTRITION, INC. 2733 LITITZ PIKE LANCASTER, PA 17601 UNITED STATES		

Goods/Services Subject to Cancellation

Class 005. First Use: 2010/09/00 First Use In Commerce: 2010/09/00
All goods and services in the class are subject to cancellation, namely: Dietary supplements;
Powdered nutritional supplement drink mix

Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)
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Attachments	ConSeal-Medtrition- Petition for Cancellation-PHYTOFU-SION-5-12-2020.pdf(2829142 bytes)
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Signature	/Joshua D. Martin/
Name	Joshua D. Martin
Date	05/12/2020

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

In re Trademark Registration

Serial No.: 85/406,114

Reg. No.: 4,169,328

Trademark: PHYTOFUSION

Filing Date: August 24, 2011

Registration Date: July 3, 2012

ConSeal International Incorporated)
)
 Petitioner,)
)
 v.)
)
 Medtrition, Inc.)
)
 Registrant.)

Cancellation No.: _____

PETITION FOR CANCELLATION

Petitioner, ConSeal International Incorporated (“Petitioner” or “ConSeal”), a Florida corporation, having a principal place of business at 90 Kerry Place, Suite 2, Norwood, MA 02062, believes that it is being damaged by the registration of the mark PHYTOFUSION, shown in U.S. Trademark Registration No. 4,169,328, which has a Registration Date of July 3, 2012, by Medtrition, Inc. (“Registrant”), and hereby petitions to cancel registration of the mark.

As grounds for cancellation, Petitioner asserts as follows:

1. On August 24, 2011, Registrant (formerly known as National Nutrition, Inc.) filed U.S. Trademark Application Serial No. 85/406,114 for the PHYTOFUSION Mark

(“PHYTOFUSION Mark” or “Registrant’s Mark”), which became registered by the United States Patent and Trademark Office (“USPTO”) on July 3, 2012 and was assigned Registration No. 4,169,328 (“the ‘328 Registration”). This Petition for Cancellation is timely filed.

2. Registrant’s Mark is registered in connection with “Dietary supplements; Powered nutritional supplement drink mix” in International Class 05. Registrant alleges a date of first use of September 1, 2010.

3. However, it is apparent from Registrant’s website and other sources, such as Google searches, that Registrant has ceased selling “Phytofusion” products, or never sold them, and has ceased using and abandoned the PHYTOFUSION Mark. Printouts from Registrant’s website, www.medtrition.com, reflecting that it does not use the PHYTOFUSION Mark, including the “Products Page” on Registrant’s website, are attached hereto as **Exhibit A**. A printout of Google search results for “Phytofusion,” reflecting no results for or related to any products sold by Registrant under the PHYTOFUSION Mark or any other use by Registrant of the PHYTOFUSION Mark, is attached hereto as **Exhibit B**.

4. Moreover, upon information and belief, Registrant has had no bona fide use of the PHYTOFUSION Mark cited in the ‘328 Registration in the ordinary course of trade in the United States within the last three years. A printout from the WaybackMachine Internet Archives, reflecting a webpage on Registrant’s website as it appeared in 2017 listing products sold by Registrant as of 2017, is attached hereto as **Exhibit C**. As can be seen from Registrant’s product page in 2017, Registrant did not sell “Phytofusion” products or otherwise use the PHYTOFUSION Mark in connection with any products in 2017.

5. Moreover, upon information and belief and based on the lack of use of the PHYTOFUSION Mark for years, Registrant has no intent to resume use of the PHYTOFUSION

Mark on the goods covered by the ‘328 Registration.

6. As a result, Registrant has abandoned the PHYTOFUSION Mark and the ‘328 Registration.

7. On September 30, 2019, ConSeal filed U.S. Trademark Application Serial No. 88/635,821 for the mark PHYTOFUSION (“the ‘821 Application”), in connection with “Dietary supplements; nutritional supplements; nutrient food additive powder for use in supplementing human and pet food products for human and animal consumption for healthful advantages; dietary and nutritional supplements for human and animal consumption; dietary supplements for humans and pets; nutritional supplements for humans and pets; botanically derived food additives for use in food products for human and pet consumption for nutrient supplementation” in International Class 05. *See Exhibit D*, filing receipt for the ‘821 Application.

8. On November 14, 2019, ConSeal received an Office Action from the USPTO in connection with the ‘821 Application. In the Office Action, the examining attorney refused registration of ConSeal’s ‘821 Application based on a likelihood of confusion with Registrant’s ‘328 Registration.

9. Thus, continued registration of the ‘328 Registration is likely to cause injury and damage to ConSeal and ConSeal’s rights in the ‘821 Application and its applied-for mark and will prevent ConSeal from obtaining federal registration of its PHYTOFUSION mark.

10. The ‘328 Registration should be cancelled for non-use of the PHYTOFUSION Mark for at least three years and abandonment of the PHYTOFUSION Mark.

WHEREFORE, Petitioner respectfully requests that registration of the PHYTOFUSION Mark, shown in U.S. Trademark Registration No. 4,169,328, be cancelled, and that this petition be sustained.

Please recognize as attorney for Petitioner in this proceeding Joshua D. Martin (member of the Florida Bar and North Carolina Bar) and the law firm Johnson & Martin, P.A., 500 West Cypress Creek Road, Suite 430, Fort Lauderdale, FL 33309.

This Petition for Cancellation is being filed electronically. The filing fee required under 37 C.F.R. § 2.6(a)(16) is being paid concurrently with the filing of this Petition for Cancellation.

Dated: May 12, 2020

Respectfully submitted,

By: /Joshua D. Martin/
Joshua D. Martin
JOHNSON & MARTIN, P.A.
500 W. Cypress Creek Rd., Suite 430
Fort Lauderdale, Florida 33309
Telephone: (954) 790-6699
Facsimile: (954) 206-0017
Email: josh.martin@johnsonmartinlaw.com

*Attorney for Petitioner, ConSeal International
Incorporated*

CERTIFICATE OF SERVICE

I hereby certify a true and correct copy of this Petition for Cancellation, which was electronically filed, is being sent via email Registrant's Counsel at the address below on this 12th day of May, 2020:

Michael A. Doctrow
MCNEES WALLACE & NURICK
100 Pine Street
Harrisburg, PA 17101
E-Mail: trademarks@mwn.com
Telephone: (717) 232-8000

Date: May 12, 2020

By: /s/ Joshua D. Martin
Joshua D. Martin, Esq.

EXHIBIT A

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ucts

We help people feel better. All of our products are clinically supported and provide cost-effective solutions to address over 20 common conditions. Most importantly, the products deliver the outcomes you desire for and improve dignity without the use of unnecessary medications.

(click on product image to go to that product's page).

Product information is subject to change. Please refer to the product label for the most current ingredient list and nutrition facts panel information.





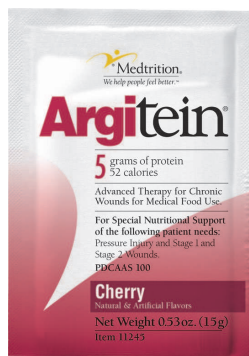
ArgiMent

Arginine and Glutamine for pressure injuries



ArgiMent AT

High protein/nitrogen for staged wounds



Argitein

Nutritional Support for Stage 1 and Stage 2 Pressure Injuries

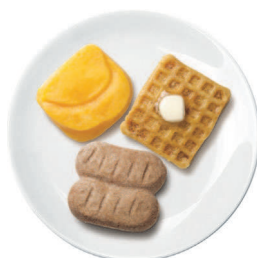


Banatrol Plus

Controls the length of time and severity of diarrhea naturally

Cafe Parfait

Reduce supplement waste and taste fatigue with Cafe Parfait desserts



Cafe Puree Breakfast

Three dimensional,



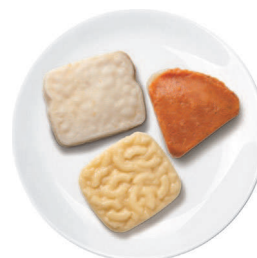
Cafe Puree Fruits

Three dimensional,



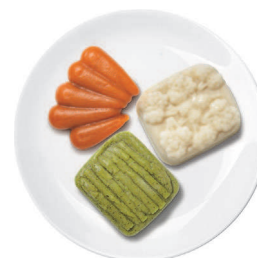
Cafe Puree Meats

Three dimensional,



Cafe Puree Specialties

Three dimensional,



Cafe Puree Vegetables

Three dimensional,

microwavable
shaped purees
for IDDSI Level
4 dysphagia
diets

microwavable
shaped purees
for IDDSI Level
4 dysphagia
diets

microwavable
shaped purees
for IDDSI Level
4 dysphagia
diets

microwavable
shaped purees
for IDDSI Level
4 dysphagia
diets

microwavable
shaped purees
for IDDSI Level
4 dysphagia
diets



Cafe Thickened Dairy

Made from real
2% reduced fat
milk and
fortified with
vitamins A and
D

Flora Fuel

Prebiotic to
feed the good
bacteria

Gelatein 20

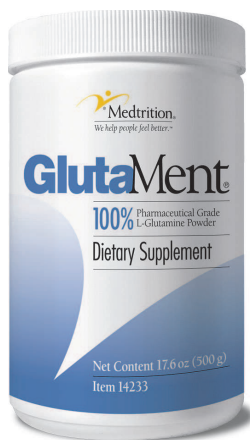
Sugar Free/20
grams of
protein

Gelatein Plus

20 grams of
protein/160
calories

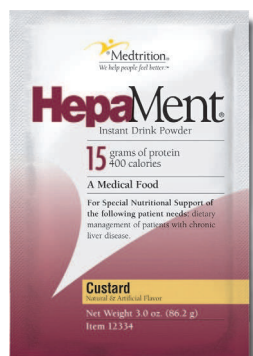
Gelatein Plus W/MCT Oil

20 grams of
protein/220
calories



GlutaMent

Pharmaceutical
grade L-
Glutamine



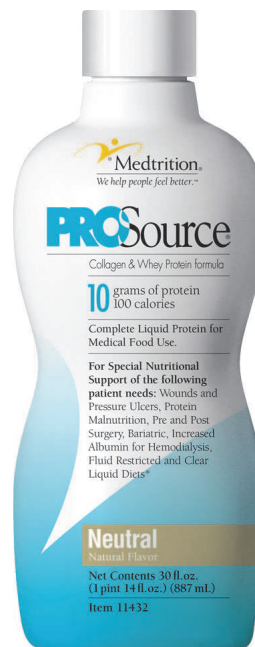
HepaMent

Amino Acid
and calorie
shake



HyFiber

Relief from
constipation
and hard
stools without
medication



Prosource Liquid Protein

10 grams, 100
calories



ProSource NoCarb Liquid Protein

15 grams of
protein, sugar
free



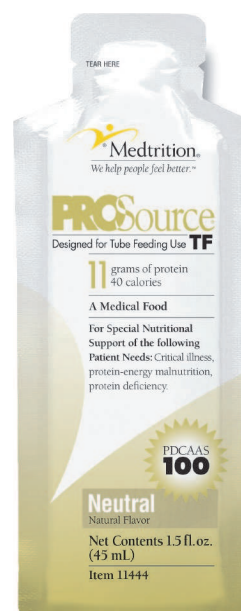
ProSource Plus Liquid Protein



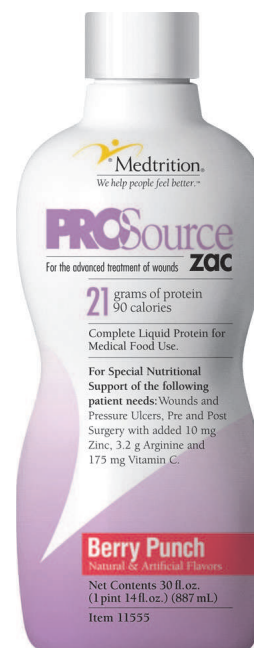
Prosource Protein Powder



ProSource TF Free Liquid Protein



ProSource TF Liquid Protein



ProSource Liquid P

Privacy - Terms

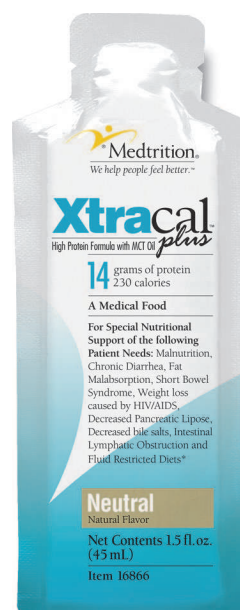
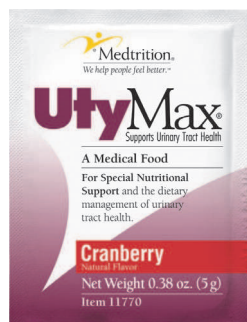
15 grams of
protein, 100
calories

Whey and
Casein protein
powder

Allergen Free,
100% plant
based,
modular liquid
protein for the
enterally fed
population

The new
generation of
enteral liquid
protein

21 grams
protein, sugar
free



RenaMent

Low Volume
Shake Mix

UtyMax

One pack of
UtyMax is
equivalent to 8
lbs of
cranberries

VitaMent

Multi-vitamin
powder

XtraCal Plus

14 grams
protein, 230
calories



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CONTACT US

Phone:

(877) 271 3570

Address:

Medtrition Inc.,

P.O. Box 5387

Lancaster, PA

17606, USA

FOR PRODUCT UPDATES, INFORMATION AND PROMOTIONS

Email Address

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EXHIBIT B



PHYTOFUSION

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Phytofusion Oral : Uses, Side Effects, Interactions, Pictures ...

Phytofusion 1,000 Unit-100 Mcg Oral Powder Packet. GENERIC NAME(S): Herbal #206-D3-Selenium Yeast. OTHER NAME(S): **Phytofusion** Powder In Packet.

www.webmd.com › drugs › details › list-conditions ▼

Conditions that Phytofusion Oral Treats - WebMD

What Conditions does **Phytofusion** 1,000 Unit-100 Mcg Oral Powder Packet Treat? Sorry, we have no data available. Please contact your doctor or pharmacist.

us.coral-club.com › shop › products ▼

PhytoFusion #1 Coral Club

Buy **PhytoFusion** #1 Coral Club - Properties BP Phyto Control regulates the functioning of cardiovascular system, stimulates blood circulation, and has ...

See results about

[Phytofusion Limited \(Company\)](#)

Founded: 2002

Images for PHYTOFUSION

plants

justia trademarks

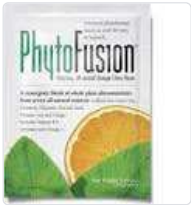
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cancer fighting

phytoplankton powder

dietary

pk



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PhytoFusion oral: Uses, Side Effects, Interactions & Pill Images

Find comprehensive medical information for **PhytoFusion** oral on RxList including its uses, side effects, precautions, drug interactions, overdose, pill images ...

[fdb.rxlist.com](#) › [drugs](#) › [drug-162983-PhytoFusion+oral](#)

[PhytoFusion oral Drug information on Uses, Side Effects ...](#)

Learn about **PhytoFusion** oral - its uses, dosage, side effects, drug interactions, and safety information on RxList.

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Phyto Fusions takes pride in providing our customers with the highest quality pure CBD, grown and processed in the USA.

[www.skinmoderne.com](#) › ... › [By Line](#) › [LIVE](#) ▼

[Phyto Fusion Smoothie - Skinmoderne++](#)

Phyto Fusion Smoothie. Nourishing Toner Spritz. 4/5. \$55.00. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 ...

[www.wellrx.com](#) › [prescriptions](#) › [phytofusion](#)

[PHYTOFUSION Prescription Price Comparison | Compare ...](#)

Save money on **PHYTOFUSION** with ScriptSave WellRx. Check current prices at your local pharmacy below and get your free prescription discount card today!

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[PhytoFusion 1,000 unit-100 mcg oral powder packet ...](#)

Esta no es una lista completa de los posibles efectos secundarios. Consulte a su farmacéutico.En los Estados Unidos -Llame a su médico para consultarlo ...

EXHIBIT C

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We help people feel better. All of our products are clinically supported and provide cost-effective solutions to address over 20 common conditions. Most important, the products deliver the outcomes you desire for your patients and improve both staff and patient dignity without the use of unnecessary medications.

*Medtrition medical foods are designed and dosed for adults and not intended for infant or pediatric use.
Please consult your healthcare provider for use.*

Medical Conditions (*click the condition to see the products associated with it.*)



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Medtrition, Inc.
site design by [Groft Design](#)
programming by [1 SkyMedia](#)

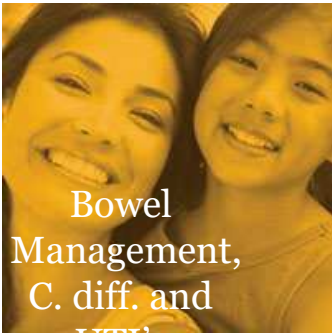


EXHIBIT D

**Filing Receipt for Trademark/Service Mark Application for Registration
on the Principal Register
and Next Steps in the Application Process**

Thank you for submitting your trademark application to the U.S. Patent and Trademark Office (USPTO). This filing receipt confirms your mark and serial number, describes next steps in the application process, and includes the information submitted in your application. Please read this receipt carefully and keep a copy for your records.

For an overview of important things to know after filing your application, visit our website to read the [After You File](#) page and watch video number 9 "[After You File](#)."

1. Your mark. PHYTOFUSION (Standard Characters, mark.jpg)

The literal element of the mark consists of PHYTOFUSION. The mark consists of standard characters, without claim to any particular font style, size, or color.

2. Your serial number. Your application was assigned serial number '88635821'. You must refer to your serial number in all communications about your application.

3. What happens next—legal examination. Your mark will not be registered automatically. In approximately three months, your application will be assigned to a USPTO examining attorney for review. The attorney will determine if your application meets all applicable legal requirements, and if it doesn't you will be notified in an email with a link to the official Office action (official letter from the USPTO). Visit our website for an explanation of [application process timelines](#).

If your mark includes a design element, we will assign it one or more [design search codes](#). We will notify you of these codes within the next few weeks and you can suggest that we add or delete a design search code from your file.

4. Keep your addresses current in USPTO records. We do not extend filing deadlines if you do not receive USPTO mail or email. If your postal address or email address changes, you must update the correspondence or owner's address using the [address forms](#) on our website.

5. Check your application status in our database every three to four months. To be sure that you don't miss an important email from us, and to avoid the possible [abandonment](#) of your application, check your application status and review your documents in our database, [Trademark Status and Document Retrieval \(TSDR\)](#), every three to four months.

6. Warning about private companies offering trademark-related services. Private companies may send you communications that resemble official USPTO communications. These private companies are not associated with the USPTO. All official correspondence will be from the "United States Patent and Trademark Office" in Alexandria, Virginia, and from emails with the domain "uspto.gov." If you are unsure about whether the correspondence is from us, check your records in our database, [TSDR](#). Visit our website for more information on trademark-related [communications that may resemble official USPTO communications](#).

7. Questions? Please visit our [website](#), [email us](#), or call us at 1-800-786-9199 and select option 1.

8. Application data. If you find an error in the data below, visit the [After You File](#) page on our website for information on correcting errors.

The information submitted in the application appears below:

Under the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PTO Form 1478 (Rev 09/2006)

OMB No. 0651-0009 (Exp 02/28/2021)

Trademark/Service Mark Application, Principal Register
The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	88635821
MARK INFORMATION	
*MARK	mark.jpg
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	PHYTOFUSION
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size, or color.
APPLICANT INFORMATION	
*OWNER OF MARK	ConSeal International Incorporated
INTERNAL ADDRESS	Suite 2
*STREET	90 Kerry Place
*CITY	Norwood
*STATE (Required for U.S. applicants)	Massachusetts
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. and certain international addresses)	02062
LEGAL ENTITY INFORMATION	
TYPE	corporation
STATE/COUNTRY OF INCORPORATION	Florida
GOODS AND/OR SERVICES AND BASIS INFORMATION	

INTERNATIONAL CLASS	005
*IDENTIFICATION	Dietary supplements; nutritional supplements; nutrient food additive powder for use in supplementing human and pet food products for human and animal consumption for healthful advantages; dietary and nutritional supplements for human and animal consumption; dietary supplements for humans and pets; nutritional supplements for humans and pets; botanically derived food additives for use in food products for human and pet consumption for nutrient supplementation
FILING BASIS	SECTION 1(b)
ATTORNEY INFORMATION	
NAME	James David Johnson
ATTORNEY DOCKET NUMBER	57997-0223
ATTORNEY BAR MEMBERSHIP NUMBER	578029
YEAR OF ADMISSION	2002
U.S. STATE/ COMMONWEALTH/ TERRITORY	Florida
FIRM NAME	Johnson & Martin, P.A.
INTERNAL ADDRESS	Suite 430
STREET	500 West Cypress Creek Road
CITY	Fort Lauderdale
STATE	Florida
COUNTRY	United States
ZIP/POSTAL CODE	33309
PHONE	954-790-6690
EMAIL ADDRESS	trademarks@johnsonmartinlaw.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
CORRESPONDENCE INFORMATION	
NAME	James David Johnson
FIRM NAME	Johnson & Martin, P.A.
INTERNAL ADDRESS	Suite 430

STREET	500 West Cypress Creek Road
CITY	Fort Lauderdale
STATE	Florida
COUNTRY	United States
ZIP/POSTAL CODE	33309
PHONE	954-790-6690
*EMAIL ADDRESS	trademarks@johnsonmartinlaw.com
*AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
APPLICATION FILING OPTION	TEAS RF
NUMBER OF CLASSES	1
APPLICATION FOR REGISTRATION PER CLASS	275
*TOTAL FEES DUE	275
*TOTAL FEES PAID	275
SIGNATURE INFORMATION	
SIGNATURE	/James David Johnson/
SIGNATORY'S NAME	James David Johnson
SIGNATORY'S POSITION	Attorney of Record; Florida Bar Member
SIGNATORY'S PHONE NUMBER	954-790-6690
DATE SIGNED	09/30/2019

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PTO Form 1478 (Rev 09/2006)

OMB No. 0651-0009 (Exp 02/28/2021)

Trademark/Service Mark Application, Principal Register

Serial Number: 88635821

Filing Date: 09/30/2019

To the Commissioner for Trademarks:

The applicant, ConSeal International Incorporated, a corporation of Florida, having an address of
Suite 2
90 Kerry Place
Norwood, Massachusetts 02062
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 005: Dietary supplements; nutritional supplements; nutrient food additive powder for use in supplementing human and pet food products for human and animal consumption for healthful advantages; dietary and nutritional supplements for human and animal consumption; dietary supplements for humans and pets; nutritional supplements for humans and pets; botanically derived food additives for use in food products for human and pet consumption for nutrient supplementation
Intent to Use: The applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the identified goods/services.

The applicant hereby appoints James David Johnson. James David Johnson of Johnson & Martin, P.A., is a member of the Florida bar, admitted to the bar in 2002, bar membership no. 578029, is located at
Suite 430
500 West Cypress Creek Road
Fort Lauderdale, Florida 33309
United States
954-790-6690(phone)
trademarks@johnsonmartinlaw.com (authorized).

The attorney docket/reference number is 57997-0223.

James David Johnson submitted the following statement: The attorney of record is an active member in good standing of the bar of the highest court of a U.S. state, the District of Columbia, or any U.S. Commonwealth or territory.

The applicant's current Correspondence Information:

James David Johnson

Johnson & Martin, P.A.
Suite 430
500 West Cypress Creek Road
Fort Lauderdale, Florida 33309
954-790-6690(phone)
trademarks@johnsonmartinlaw.com (authorized).

Email Authorization: I authorize the USPTO to send email correspondence concerning the application to the applicant, the applicant's attorney, or the applicant's domestic representative at the email address provided in this application. I understand that a valid email address must be maintained and that the applicant or the applicant's attorney must file the relevant subsequent application-related submissions via the Trademark Electronic Application System (TEAS). Failure to do so will result in the loss of TEAS Reduced Fee status and a requirement to submit an additional processing fee of \$125 per international class of goods/services.

A fee payment in the amount of \$275 has been submitted with the application, representing payment for 1 class(es).

Declaration

☒ **Basis:**

If the applicant is filing the application based on use in commerce under 15 U.S.C. § 1051(a):

- The signatory believes that the applicant is the owner of the trademark/service mark sought to be registered;
- The mark is in use in commerce on or in connection with the goods/services in the application;
- The specimen(s) shows the mark as used on or in connection with the goods/services in the application; and
- To the best of the signatory's knowledge and belief, the facts recited in the application are accurate.

And/Or

If the applicant is filing the application based on an intent to use the mark in commerce under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e):

- The signatory believes that the applicant is entitled to use the mark in commerce;
 - The applicant has a bona fide intention to use the mark in commerce on or in connection with the goods/services in the application; and
 - To the best of the signatory's knowledge and belief, the facts recited in the application are accurate.
- ☒ To the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive.

- ☒ To the best of the signatory's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the allegations and other factual contentions made above have evidentiary support.
- ☒ The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Declaration Signature

Signature: /James David Johnson/ Date: 09/30/2019

Signatory's Name: James David Johnson

Signatory's Position: Attorney of Record; Florida Bar Member

Signatory's Phone Number: 954-790-6690

Thank you,

The TEAS support team

Mon Sep 30 11:52:31 EDT 2019

STAMP: USPTO/BAS-34.226.80.156-20190930115231613373-88635821-

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