

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: November 22, 2014

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

Denise M. DelGizzi,
Technical Program Manager:

The applicant in application Serial No. 85423915 and 85423883 has applied for concurrent use registrations for the trademark or service marks set forth below.

Serial Nos.	:85423915 and 85423883
Name of applicant	:Cyanotech Corporation
Applicant's address	:73-4460 Queen Kaahumanu Hwy., Suite 102 Kailua-Kona, HI 96740
Applicant's mark	: NUTREX HAWAII
Goods	

Concurrent Use No. 94002616

Serial No. 85423915

:Nutritional supplements for human consumption; nutraceuticals for the treatment of oxidative stress, decreased immunity, and inflammatory conditions; nutraceuticals for use as a dietary supplement; dietary supplements; nutritional supplements; nutritional additives for medical purposes for use in foods and dietary supplements for human consumption; nutritional additives for use in feed for animals for medical purposes; dietary supplements for animal consumption; food supplements; food supplements, namely, anti-oxidants; homeopathic supplements, namely, diluted doses from the plant, mineral and animal kingdoms for human consumption; drink mixes, namely, dietary drink mix for use as a meal replacement, powdered fruit-flavored dietary supplement drink mix, nutritional supplement in the nature of a nutrient-dense, protein-based drink mix; in International Class 5

Filing date

: 9/15/2011

Territory of use

:The area comprising the States of Alaska, Colorado, Hawaii, Idaho, Maine, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Rhode Island, South Dakota, Utah, Vermont, West Virginia, Wyoming and all U.S. Territories, including without limitation, Guam, Puerto Rico and the U.S. Virgin Islands

Goods

Serial No. 85423883

:Nutritional supplements for human consumption; nutraceuticals for the treatment of oxidative stress, decreased immunity, and inflammatory conditions; nutraceuticals for use as a dietary supplement; dietary supplements; nutritional supplements; nutritional

additives for medical purposes for use in foods and dietary supplements for human consumption; nutritional additives for use in feed for animals for medical purposes; dietary supplements for animal consumption; food supplements; food supplements, namely, anti-oxidants; homeopathic supplements, namely, diluted doses from the plant, mineral and animal kingdoms for human consumption; drink mixes, namely, dietary drink mix for use as a meal replacement, powdered fruit-flavored dietary supplement drink mix, nutritional supplement in the nature of a nutrient-dense, protein-based drink mix; in International Class 5

Filing date : 9/15/2011

Territory of use :The area comprising the States of Alaska, Colorado, Hawaii, Idaho, Maine, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Rhode Island, South Dakota, Utah, Vermont, West Virginia, Wyoming and all U.S. Territories, including without limitation, Guam, Puerto Rico and the U.S. Virgin Islands

Attorney :GEORGE E DARBY
DARBY LAW CORPORATION
PO BOX 893010
MILILANI, HI 96789-0010

In its application, the applicant (plaintiff in this proceeding) has recited as an exception to its allegation of exclusive use of said mark, use by each of you (defendants in this proceeding) of an identical or very similar mark. The applicant is required to serve on you a copy of its application, including specimens and mark drawing, within ten (10) days of the notice instituting this proceeding. Your mark, goods or services, and territory of use, as acknowledged in the referenced application, are set out below in a summary of details of the application.

Registration Nos. 3798632 and 3849395

Concurrent Use No. 94002616

Name of Registrant: :NUTREX NV
ACHTERSTENHOEK 5
LILLE, 2275
BELGIUM

Your mark :NUTREX

Your goods or services
Registration Nos. 3798632 :Chemical additives for use in the
manufacture of animal feed; Enzymes to
assist in digestion for use in the manufacture
of animal feeds in International Class 1; and
Animal feed additives, namely, enzymes for
use in animal feeds to assist in digestion;
Feed supplements for livestock; Non-
medicated additives for animal feed for use
as nutritional supplements in International
Class 5

Your territory of use :Unknown

Name of Registrant: :NUTREX NV
ACHTERSTENHOEK 5
LILLE, 2275
BELGIUM

Your mark



Your goods
Registration Nos. 3849395 :Chemical additives for use in the
manufacture of animal feed; Enzymes to
assist in digestion for use in the manufacture
of animal feeds in International Class 1; and
Animal feed additives, namely, enzymes for
use in animal feeds to assist in digestion;
Feed supplements for livestock; Non-
medicated additives for animal feed for use
as nutritional supplements in International
Class 5

Your territory of use :Unknown

Registration Nos. :3870696 and 3870697

Name of Registrant :Nutrex Research , Inc
5707 Dot Com Court, Suite 1001
Oviedo, FL 32765

Your mark
Registration No. 3870696



Your goods :Dietary supplements for enhancing energy,
athletic performance, physical prowess and
libido, developing muscle mass, and weight
loss in International Class 5

Your territory of use : Unknown

Name of Registrant :Nutrex Research, Inc.
5707 Dot Com Court, Suite 1001
Oviedo, FL 32765

Your mark
Registration No. 3870697



Your services :Online research store services featuring
dietary supplements for enhancing energy,
athletic performance, physical prowess and
libido, developing muscle mass, and weight
loss in International Class 35

Your territory of use : Unknown

Concurrent Use No. 94002616

Common Law User:¹

Name of User	:Monique Loppe 33 Avenue de Saxe Paris, FR 75007
Your Mark	:NUTRIX
Your Goods	:Nutritional and dietary food supplements; nutritionally fortified beverages; food for medically restricted diets, excluding breakfast cereals, fruit-derived snack foods, and yogurt in International Class 5; and Protein and soy protein for use as a food additive in food products other than breakfast cereals, fruit-derived snack foods, and yogurt in International Class 29

Since the Office has determined that applicant's mark appears entitled to registration, subject to a concurrent use proceeding with you (as defendants in this proceeding) and, if applicable, any other party listed in the caption of this order, a concurrent use proceeding is hereby instituted under the provisions of Section 2(d) of the Trademark Act of 1946.

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, of the Code of Federal Regulations ("Trademark Rules"). **The Trademark Rules may be viewed at the USPTO's trademarks webpage: <http://www.uspto.gov/trademarks/index.jsp>. The Board's main webpage (<http://www.uspto.gov/trademarks/process/appeal/index.jsp>) includes information on amendments to the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to the Board's manual of procedure (the TBMP).**

Trademark Rule 2.99, under which this notice is given, provides that:

An answer to the notice is not required in the case of an applicant or registrant whose application or registration is specified in the application to register as concurrent user in the application, but a statement, if desired, may be filed within forty days after the mailing of the notice;

¹ Registration No. 3204937 was cancelled under Section 8 on September 13, 2013. In view thereof, Monique Loppe is listed as a common law excepted user in this proceeding.

in the case of any other party specified as a concurrent user in the application, an answer must be filed within forty days after the mailing of the notice.

You are allowed until December 1, 2014 to file an answer in accordance with Trademark Rule 2.99. (See Patent and Trademark Rule 1.7 for expiration of this or any deadline falling on a Saturday, Sunday or federal holiday.) If filed, the answer should be directed to the allegations relating to concurrent use recited in the plaintiff's application identified herein.

If an answer is not filed by common law user, Monique Loppe, then the proceeding may be handled as in a case of default, and you will be precluded from claiming any right in your mark greater than that acknowledged by plaintiff in its concurrent use application. See Trademark Rule 2.99(d)(3).

Defendant's answer and any other filing made by any party must include proof of service. See Trademark Rule 2.119.

If they agree to, the parties may utilize electronic means, e.g., e-mail or fax, during the proceeding for forwarding of service copies. See Trademark Rule 2.119(b)(6).

You must advise the Trademark Trial and Appeal Board of any relevant applications or registrations, other than that of plaintiff already referenced herein, which should be included in this concurrent use proceeding. Your response, if any, should be in writing and should accompany your answer.

Trademark Rule 2.126 pertains to the form of submissions. Paper submissions, including but not limited to exhibits and transcripts of depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.

If one or both of the defending mark users file an answer, then a schedule for this concurrent use proceeding will be set, including time for conferencing, disclosures, discovery, trial and briefing. However, it is noted that most concurrent use proceedings result in a negotiated settlement and the parties are encouraged to promptly begin discussion of settlement. If the parties choose to begin settlement talks **prior to the due date for the answers**, they may stipulate to a suspension to accommodate settlement talks.

The Board allows parties to utilize telephone conferences to discuss or resolve a wide range of interlocutory matters that may arise during this case. In addition, the assigned interlocutory attorney has discretion to require the parties to participate in a telephone conference to resolve matters of concern to the Board. See TBMP § 502.06(a) (2d ed. rev. 2004).

If the parties to this proceeding are (or during the pendency of this proceeding become) parties in another Board proceeding or a civil action involving related marks or other issues of law or fact which overlap with this case, they shall notify the Board immediately, so that the Board can consider whether consolidation or suspension of proceedings is appropriate.

ESTTA NOTE: For faster handling of all papers the parties need to file with the Board, the Board strongly encourages use of electronic filing through the Electronic System for Trademark Trials and Appeals (ESTTA). Various electronic filing forms, some of which may be used as is, and others which may require attachments, are available at <http://estta.uspto.gov>.