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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
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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

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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

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

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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*

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Affidavit of David A. Wright

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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](http://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](http://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](http://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 27<sup>th</sup> day of April 2015  
in Dublin, GA

  
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DAVID A. WRIGHT  
Georgia PI License No. PDE 048218

  
Appeared & signed before me this  
27<sup>th</sup> day of April, 2015  
James Robert Wood, Notary Public  
my commission expires 8/18/15