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

Proceeding	91172885
Party	Plaintiff Ayush Herbs, Inc.
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Attachments	Opposer's REPLY.pdf ( 11 pages )(75957 bytes ) Reply Exhibit 1 (part 1 of 5).pdf ( 7 pages )(2910786 bytes ) Reply Exhibit 1 (part 2 of 5).pdf ( 6 pages )(2940717 bytes ) Reply Exhibit 1 (part 3 of 5).pdf ( 5 pages )(2329351 bytes ) Reply Exhibit 1 (part 4 of 5).pdf ( 5 pages )(1973551 bytes ) Reply Exhibit 1 (part 5 of 5).pdf ( 5 pages )(2001207 bytes ) Reply Exhibit 2.pdf ( 10 pages )(1557889 bytes ) Reply Exhibit 3.pdf ( 4 pages )(508411 bytes ) Reply Exhibit 4.pdf ( 3 pages )(635613 bytes ) Reply Exhibit 5.pdf ( 3 pages )(709921 bytes ) Reply Exhibit 6.pdf ( 5 pages )(988392 bytes )

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

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AYUSH HERBS, INC.,	)	
Opposer,	)	
v.	)	Opposition No. 91,172,885
	)	Application Serial No. 76/602,470
HINDUSTAN LEVER LTD. CO.,	)	
Applicant,	)	

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**OPPOSER’S REPLY IN SUPPORT OF SUMMARY JUDGMENT**

**I. INTRODUCTION**

In a last-gasp effort to avoid summary judgment, Applicant attempts to manufacture an issue of fact by bringing untimely and improper attacks on the validity of Opposer’s registration. However, even if the allegations raised in one or both Applicant’s counterclaims are presumed for the sake of the present motion to be true,<sup>1</sup> they leave Opposer’s common law priority use unaffected. Based on registration or common law, the record confirms that there are no reasonable factual issues concerning priority and likelihood of confusion, and summary judgment in favor of Opposer is appropriate.

**II. ARGUMENT**

**(1) There is No Genuine Issue as to Opposer’s Priority**

Opposer has plead and proven undisputed priority. Applicant’s earliest possible priority date is July 12, 2004. *See, Application, Serial No. 76/602,407.* Opposer first used its AYUSH HERBS mark on cosmetics and dietary supplements nearly twenty (20) years ago, and has done so continuously since then. These facts are undisputed. Instead, Applicant has attempted to sandbag Opposer with two untimely and previously undisclosed counterclaims in an attempt to defeat Opposer’s priority by canceling Opposer’s federal registration. However, a federal registration is not necessary to successfully oppose Applicant’s application. Applicant’s effort misses the mark for several reasons.

A. *Opposer’s Summary Judgment Priority Is Not Based Upon Registration Alone and its Common Law Rights Are Undisputed*

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<sup>1</sup> Opposer denies that Applicant’s counterclaims are proper, and also denies the conclusory and contradicted statements contained in Applicant’s Response and supporting Declarations. Opposer makes no admissions concerning any of Applicant’s statement by this Reply, unless expressly noted.

Despite Applicant's assertions, Opposer has not merely relied on its registration and has sufficiently alleged and proven common law priority. Opposer alleged common law use in its Notice of Opposition making it a proper basis for summary judgment. *See, Opposer's Notice of Opposition*, at ¶¶ 2, 5, 6 and 17. In addition, Opposer's Motion for Summary Judgment repeatedly asserts common law use of its AYUSH HERBS mark. *Opposer's Brief in Support of Motion for Summary Judgment ("MSJ")*, at pp. 3, 4 and 8 (stating "Section 2(d) priority is not an issue because Opposer's first use, application and registration dates" all pre-date Applicant). In connection with its Motion for Summary Judgment, Opposer submitted dated evidence of common law use which pre-dates Applicant's priority date. *MSJ* at Ex. 2 (three dated advertisements pre-dating Applicant's priority date, appearing magazines of nation-wide circulation).

The Federal Circuit has determined that proof of prior use, even if only in intrastate commerce, is sufficient to preclude registration. *See National Cable Television Association v. American Cinema Editors, Inc.*, 19 USPQ2d 1424, 1429 n.4 (Fed. Cir. 1991); *Corporate Document Services, Inc. v. I.C.E.D. Management, Inc.*, 48 USPQ2d 1477 (TTAB 1998) (stating that "[i]t is well established that rights in and to a trademark are created by use of the mark in either intrastate or interstate commerce."). The burden of proving common law rights sufficient to establish priority is not onerous. The Federal Circuit has consistently held that even non-technical use (*e.g.* "advertising, use as a trade name, or any other manner of public use"), insufficient to obtain registration, is sufficient to establish priority rights as against subsequent users or registrants of a similar mark. *See, Jim Dandy Co. v. Martha White Foods, Inc.*, 173 USPQ 673 (CCPA 1972); *National Cable Television Ass'n., Inc. v. American Cinema Editors, Inc.*, 19 USPQ2d 1424 (Fed. Cir. 1991).

Opposer in this case has alleged and proven use sufficient to show priority. Opposer submitted dated advertisements showing the AYUSH HERBS mark used in promotion of dietary supplements and cosmetics. *MSJ*, at Ex. 2 (showing advertisements in several nationwide publications in 2002 and 2003); *Opposer's Reply Brief*, Selected Advertisements (attached as Exhibit 1)(showing AYUSH HERBS advertisements published in nation-wide magazines dating from 2003-2007); *Id.* at Opposer's Web Site

(attached as Exhibit 2)(showing current use of the AYUSH HERBS mark on supplements and cosmetics); *Id.* at Archive.org Printout (attached as Exhibit 3)(showing that www.ayush.com has been used since 1998); and *Id.* at Opposer’s Washington State Registration, (attached as Exhibit 4)(showing Opposer’s Washington state registration for the AYUSH mark).<sup>2</sup>

Applicant has not provided testimony or any other evidence contravening the existence or validity of Opposer's prior use. Even if its registration is cancelled, Opposer’s common law priority date is simply not reasonably in dispute.

*B. Applicant’s Attack on Opposer’s Registration Does Not Create A Disputed Issue of Material Fact*

Rather than attack Opposer’s common law priority, Applicant chose to attack Opposer’s registration. Applicant’s attempted amendment adds counterclaims to cancel Opposer’s registration on the basis of fraud for non-use on “candy” and “skin lotion”. Applicant relies on the decision in *Medinol Ltd. v. Neuro Vasx Inc.*, 67 USPQ2d 1205 (TTAB 2003) to invalidate Opposer’s entire registration based on an alleged lack of sales of candy and lotion.<sup>3</sup> Applicant also seeks to cancel Opposer’s registration based on an alleged violation the Food, Drug and Cosmetic Act by making improper claims concerning four (4) of Opposer’s many products.

While Opposer disputes the timeliness, veracity and legal merit of the new counterclaims, for purposes of its Summary Judgment Motion, Opposer will concede the contentions to be treated as established. Even treated as true, Applicants allegations do not foreclose summary judgment in Opposer’s favor. In the context of a motion for summary judgment, a fact is material only if it “may affect the decision.” *See, Institut National Des Appellations d’Origine v. Brown-Forman Corp.*, 47 USPQ2d 1875, 1879 (TTAB 1998). A dispute over a fact that would not alter the Board’s decision on the

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<sup>2</sup> While Exhibits 1-4 to this brief were not submitted in connection with Opposer’s original brief, Opposer has identified and produced each of the documents to Applicant in discovery. The advertisements are cumulative of the advertising material originally submitted with Opposer’s Motion and Brief. The website is available to Applicant online, and has been repeatedly cited by Applicant in its Response. Likewise, www.archive.org is available to Applicant online. Thus, this evidence will not result in unfair surprise or prejudice to Applicant. It is being submitted in response to the new matters which were raised for the first time in Applicant’s Response (namely, the Counterclaim attacks on Opposer’s registration and common law rights in the AYUSH HERBS mark).

<sup>3</sup> It should be noted, however, that if the Board denies either of Applicant’s *two* Motions to Amend, Opposer’s registration will remain in tact.

legal issue will not prevent entry of summary judgment. *See e.g., Kellogg Co. v. Pack'Em Enterprises, Inc.*, 14 USPQ2d 1545 (TTAB 1990), *aff'd*, 951 F.2d 330, 21 USPQ2d 1142 (Fed. Cir. 1991).

(i) *Applicant's Fraud Claim Will Not Affect Opposer's Common Law Rights*

Here, conceding Applicant's first counterclaim for fraud as it is set forth in Applicant's counterclaims (*i.e.* non-use on "candy" and/or "lotion") will result only in cancellation of Opposer's registration (possibly only two classes). It will not affect Opposer's common law rights, nor would it foreclose Opposer from re-filing and re-registering the same mark with a corrected identification of goods. *See, McCarthy on Trademarks*, Vol. 6, § 31:60 (Thompson/West 2007)(if a defendant succeeds in canceling plaintiff's registration, plaintiff's common law rights continue unabated); *Standard Knitting, Ltd. v. Toyota Jidosha Kabushiki Kaisha*, 2006 TTAB LEXIS 9 (TTAB 2006). Applicant has not challenged Opposer's common law priority, and has not offered any evidence to rebut the dated Exhibits attached to Opposer's motion. Opposer's priority is unaffected.

(ii) *Applicant's "Unlawful Use" Claim Will Not Affect Opposer's Common Law Rights*

Applicant's second and final counterclaim for unlawful use is similarly unavailing. Applicant's *Second Motion for Leave to Amend* cites to the 9<sup>th</sup> Circuit's decision in *CreAgri Inc. v. USANA Health Sciences Inc.*, 81 USPQ2d 1592 (9<sup>th</sup> Cir. 2007), presumably to argue that alleged improper claims on Applicant's website in connection to several of the Applicant's products under the mark warrant the cancellation of Applicant's registrations and obliteration of its common law rights.

First, Applicant's counterclaim does not allege misconduct that rises to the level that warrants cancellation of Opposer's registration. A de minimis violation of federal labeling laws will not result the draconian result of invalidation. *General Mills, Inc. v. Health Valley Foods*, 24 USPQ2d 1270, 1274-75 (TTAB 1992). Applicant must allege and prove that the noncompliance was "of such gravity and significance that the usage must be considered unlawful -- so tainted that, as a matter of law, it could create no trademark rights -- warranting cancellation of the registration of the mark involved". *Id.* Applicant's own authority, *Santinine Societa v. P.A.B. Produits*, 209 USPQ 958 (TTAB 1981) points out that "while some unlawful uses are of such a nature (*e.g.* use of a mark in connection with an illegal drug)

that it would be unthinkable to register a mark, other uses should not result in refusal of registration (or cancellation of registration) because of some purely collateral defect.” In the present case, a violation in connection with the online promotion of four (4) of many products is collateral and de minimis.

Second, *CreAgri* addresses the situation where there has been no lawful use of a product trademark whatsoever due to pervasive mislabeling, and not where *some* improper labeling on a select few product occurs long after a house mark has been lawfully used on numerous products. Applicant misreads the holding in *CreAgri*. In *CreAgri*, the mark at issue was a product name used in connection with a single product. The violation revolved around a literally false claim knowingly placed on the product label. The Ninth Circuit sustained the unlawful use defense based on mislabeling where it was shown that there was not a single instance of compliance prior to a certain date. The non-compliance was significant, in that there was not even one instance of prior lawful use upon which to base priority. Without *any* lawful use in commerce, the registrant could not claim to be the first to use the mark in lawful commerce.

Such is not the case here. Oppose has used AYUSH HERBS as a house mark on a large variety of goods, including supplements, cosmetic and herbal products for nearly twenty (20) years.<sup>4</sup> Applicant’s counterclaim makes allegations as to only four (4) specific products. The claims are neither printed on, nor alleged to be printed on, any product label. They appear only on Opposer’s web site as collateral material. There has also been absolutely no allegation that Opposer has failed to engage in any lawful on any product use prior to July of 2004, as was the case in *CreAgri*.

Under Applicant’s supposed interpretation of *CreAgri*, every lawfully established trademark in existence is imperiled the moment a wrongful claim is made on a product website, regardless of how famous the mark is, the number of other products upon which it is used, or the resulting confusion that would result when an intent-to-use applicant rushed in to capture the mark for themselves. For example, under Applicant’s interpretation, were AMWAY to violate a labeling regulation on just *one* of its many products, all rights in the AMWAY mark would instantly be lost. Such an expansion of the *CreAgri*

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<sup>4</sup> Incidentally, this undisputed fact strongly favors Opposer with respect to the 9<sup>th</sup> *DuPont* factor (*i.e.* the variety of goods on which the mark is used) cited in Applicant’s Response at page 8.

ruling is untenable, and none of Applicant’s remaining authority supports this extreme position. Put simply, limited unlawful use of a 20-year-old house mark on a select small number of products on a dynamic website will not invalidate all rights in that house mark (which has been and continues to be lawfully used on many products).

**(2) There Are No Genuine Factual Issues On The Likelihood of Confusion Factors**

Applicant’s Response is not supported by facts or evidence, but merely expresses disagreement with Opposer. This is insufficient to overcome summary judgment. *Octocom Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937 (Fed. Cir. 1990). A verified statement of the non-moving party that is unsupported by documentary evidence may be given consideration only if the statements contained therein are clear and convincing in character and uncontradicted. *TBMP* § 528.05(b). Applicant raises only legal questions, which are well-suited for determination as a matter of law by the Board.

*A. The Marks AYUSH and AYUSH HERBS are Effectively Identical*

The marks at issue are AYUSH HERBS and AYUSH. Both are word-marks. Applicant has admitted that “AYUSH” is a “strong” trademark, as well as its belief that the consuming public would perceive no meaning in the term. *MSJ*, Ex. 37 at Req. No. 30 (“Admit that Applicant’s [AYUSH] Mark is a strong trademark” – “admitted”); Nos. 38 and 39 (“admitted” that “Applicant believes that the consuming public would perceive no meaning in the word AYUSH” and “admitted” that “Applicant believes that the consuming public would view the word AYUSH as an invented term”).<sup>5</sup> Both marks share the admittedly “strong” AYUSH element. However, Applicant now argues, with no evidence, that the disclaimed and descriptive term “Herbs” should be given *more* weight (not less), and that it creates an entirely distinct commercial impression.<sup>6</sup> Regardless, comparison of the two word marks requires no further evidence, and certainly does not require a trial.

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<sup>5</sup> Applicant did qualify its responses by excluding “Indian” consumers. However, Applicant’s evidence shows “Indian” consumers make up less than 1% of the consuming population in the U.S.

<sup>6</sup> Tellingly, Applicant supports its purely legal argument with non-precedential TTAB decisions. *See, Applicant’s Response*, at Attachments 1-3. This is clearly improper. *TBMP* § 101.03 (and cases cited). Indeed, if Opposer had chosen to cite non-precedential decisions, it surely would have cited to *In re BioGenesis USA, Inc.*, S.N. 75/513,763(TTAB Oct. 19, 2000) (attached as Exhibit 6), which found that services identified as “health spas featuring wellness services . . .” were closely related to “nutritional

*B. The Goods and Services at Issue are Highly Related*

Opposer has submitted uncontested evidence showing the relatedness of the relevant goods and services. Opposer's internet evidence shows Opposer's goods being promoted, used and sold within the very health spas and health clinics that Applicant intends to open. The removal of ¶ 12 Dr. Sodhi's declaration has no consequence because Opposer had not relied "solely" on that statement as proof of the relatedness of the goods and services.<sup>7</sup>

Opposer's failure to use the AYUSH HERBS mark in connection with its Ayurvedic Clinic is similarly of no consequence. Applicant relies on *Physicians Formula Cosmetics, Inc. v. West Cabot Cosmetics, Inc.*, 8 USPQ2d 1136, 1138, n.1 (2d Cir. 1988).<sup>8</sup> In that case, the Court noted that a refusal to apply the "expansion of trade doctrine" must be based on the equities of each particular case, and is proper only where the senior user's delay was coupled with extensive promotion by the junior user. Here, Applicant has made no effort to market its services. Thus, the equities favor Opposer.

Relying on *Cognis Corp. v. DBC, LLC*, 73 USPQ2d 1766 (TTAB 2004), Applicant next argues that the very existence of its counterclaims preclude summary judgment. *Response* at p. 13. In *Cognis*, the applicant had counterclaimed to partially cancel opposer's registration by specifically limiting opposer's goods. *Id.* The counterclaim specifically alleged that the proposed restriction would avoid a likelihood of confusion. That is not the case here. First, Applicant's proposed counterclaim does not allege that cancellation of Opposer's registration will avoid a likelihood of confusion. Second, even if Applicant wins its counterclaims, there will be no affect on Opposer's common law rights.<sup>9</sup>

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supplements and vitamins" and that both goods and services used the same channels of commerce and were promoted to the same consumers.

<sup>7</sup> In fact, Opposer's Motion never cited to that particular paragraph of the Declaration at all. It was superfluous and unnecessary in light of Applicant's admissions and Opposer's objective documentary evidence.

<sup>8</sup> *Physician's Formula*, a Second Circuit decision on appeal from a District Court, is yet another cite to a decision that is simply not binding on the TTAB.

<sup>9</sup> To adopt Applicant's position, there would never be summary judgment. All a non-moving party would need to do is file a Motion for Leave to Amend simultaneously with its Response brief, asserting a counterclaim upon information and belief. That is exactly what Applicant has done here.



Applicant's challenge of Opposer's third-party registrations is misleading. Opposer submitted twenty (20) registrations.<sup>10</sup> Applicant has challenged only a handful of those registrations. As its leading case on this point, Applicant cites to the *non-precedential* decision in *7-Eleven, Inc. v. HEB Grocery Company*, 83 USPQ2d 1257 (TTAB 2007). In *7-Eleven*, the Board gave limited probative value to third party registrations where "all but three of the third party uses and registrations presented" were "store brands". *Id.* In our case, roughly fifteen (15) of Opposer's registrations have gone entirely unchallenged because they are limited to solely to the relevant goods and services.

Applicant's never disputes that it in fact promotes the relevant goods and services together, to the same consumers, under the same mark. Instead, it attacks Opposer's evidence on the basis that Applicant's *actual use of the AYUSH mark* in India is irrelevant. To the contrary, this particular evidence is most relevant and quite persuasive. The TMEP confirms that, as long as it is written in English, material originating from a foreign website may be relevant and may have probative value. *See, Internet Evidence*, TMEP § 710.01(b).

Applicant's attempted challenge of Opposer's internet evidence is similarly misguided. The evidence shows both Opposer's goods and Applicant's services being promoted at *the same internet site, to the same consumers, by the same companies*. Opposer's evidence shows Ayurvedic spas and clinics (like Applicant's) selling, promoting and using cosmetic and supplement products (like Opposer's). *MSJ*, Exs. 32-36 and 38.

Finally, Applicant offers no evidence to support its conclusion that Opposer's goods are not related to Applicant's services. Given the opportunity, Applicant's Vice President, Vipul Chawla, cannot even utter the words that the goods and services at issue are unrelated. *See generally, Chawla Declaration*. In fact, Mr. Chawla's declaration supports Opposer's position. *Chawla Declaration*, at ¶ 12 ("HUL consumers who are familiar with ayurveda use ayurvedic products or seek ayurvedic services)(emphasis added); ¶ 14 ("HUL . . . will not be selling any third party's traditional ayurvedic

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<sup>10</sup> Indeed, there are hundreds if not thousands of additional similar registrations and applications. In the interest of judicial economy, Opposer submitted only a representative sample.

products at [its] centres.” This carefully worded qualifying language implies that Applicant will indeed sell “traditional ayurvedic products” at its centres).

*C. Trade Channels and Consumers are Unrestricted*

As the Board has pointed out more times than one can count, the likelihood of confusion determination is to be made based upon the goods as identified in the involved registration, regardless of what the record may reveal as to the actual nature of an applicant's goods, channels of trade or the class of purchasers to which the sales of goods are directed.<sup>11</sup> Yet Applicant continuously attempts to limit its channels of commerce and consumers. *Response* at pp. 17-18. Applicant argues that its consumers are “sophisticated” and implies that its services are high-end and expensive. *Chawla Declaration*, at ¶¶ 12 and 14. However, Applicant submits no evidence regarding the cost of its services. *Id.* In fact, in promoting his allegedly expensive and “high-end” wares, Mr. Chawla has been quoted as saying that that Applicant’s AYUSH products and services are for “everyday” use “offer[ing] high functionality, but its pricing is affordable”. *See, Hll launches “Lever Ayush” Ayurvedic Health & Beauty Care Products*, available at <http://www.reachouthyderabad.com/business/biznews/hll.htm> (Aug. 2002)(attached as Exhibit 5).

Mr. Chawla also testifies that the majority of Applicant’s customers are Indian. Not surprising, considering Applicant’s clinics are currently located in India. However, Applicant’s classification of the American Indian population as “significant” contradicts its own evidence, which shows that less than 1% of the U.S. population is Indian. *Aplert Declaration*, at Ex. C (U.S. census report showing that Asian Indians represent less than 1% of the total U.S. population).

*D. Applicant Has Readily Admitted the Strength of Opposer’s Mark*

Applicant has already admitted the trademark strength of the term “AYUSH.” *MSJ*, Ex. 37 at RFA. No. 30 (“Admit that Applicant’s [AYUSH] Mark is a strong trademark – admitted”); Nos. 38 and 39

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<sup>11</sup> Welsh, John L., *Top Ten Losing TTAB Arguments*, AIPLA Advanced Copyright/Trademark Practice Seminar (Boston, June 1, 2001) (identifying limitation of goods/services as the #1 most “popular” losing TTAB argument).

“admitted” that “Applicant believes that the consuming public would perceive no meaning in the word AYUSH” and “admitted” that “Applicant believes that the consuming public would view the word AYUSH as an invented term”). Applicant has also admitted that the consuming public would perceive no meaning in the term AYUSH. *MSJ*, Ex. 37 at RFA. Nos. 38 and 39 (“admitted” that “Applicant believes that the consuming public would perceive no meaning in the word AYUSH” and “admitted” that “Applicant believes that the consuming public would view the word AYUSH as an invented term”). Applicant cannot argue that AYUSH is a weak trademark. There is no evidence that any portion of the consuming public associates any meaning to the term AYUSH.<sup>12</sup>

*E. One Mark Does Not A Crowded Field Make*

In *Old Tyme*, 22 USPQ 1542, cited by Applicant, there were 217 similar marks and registrations. Here, Applicant has submitted two: AYUSHMAN, which is no longer registered or in use in the U.S.; and AYUSHAKTI. There is no evidence that any consumers are aware of the AYUSHAKTI mark.<sup>13</sup> Finally, Applicant already admitted that AYUSHAKTI and AYUSH were dissimilar. *MSJ* at Ex. 26.

**III. CONCLUSION**

Despite extensive argument, Applicant has offered no credible supporting evidence. There are no genuine issues of material fact for trial. Even conceding Applicant’s counterclaims, Opposer is still entitled to judgment in its favor based on unabated common law rights. Any issues raised by Applicant can be resolved by the Board, thereby obviating the need for a costly trial.

Dated: July 13, 2009

AMIN TALATI, LLC

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<sup>12</sup> Those who do know the meaning of the word would associate the same meaning to Opposer and Applicant. Further evidence of the identity in commercial impressions of the marks.

<sup>13</sup> In fact, Applicant’s investigator has shown how difficult it is for anyone to even purchase AYUSHAKTI products. *Elfed Declaration*, at ¶ 3 (stating that it required “a series of telephone calls and emails” before she was able to place a “telephone order”).

**PROOF OF SERVICE**

I am over the age of 18 and not a party to the within action; my business address is Amin Hallihan, LLC, 444 North Orleans Street, Suite 400, Chicago, IL 60654. On **July 13, 2009**, a copy of the attached **REPLY IN SUPPORT OF SUMMARY JUDGMENT** was served on all interested parties in this action via email and U.S. Mail, FedEx or the equivalent, postage prepaid, at the addresses as follows:

To: Robert Alpert  
BRYAN CAVE LLP  
1290 Avenue of the Americas  
New York, NY 10104

Executed on **July 13, 2009**, at Chicago, Illinois. I declare under penalty of perjury that the above is true and correct. I declare that I am employed in the office of Amin Talati, LLC at whose direction service was made.

/s/ Ryan M. Kaiser  
Ryan M. Kaiser

**CERTIFICATE OF TRANSMISSION**

I hereby certify that this correspondence is being transmitted to the United States Patent and Trademark Office using the ESTTA system on **July 13, 2009**.

/s/ Ryan M. Kaiser  
Ryan M. Kaiser

# **REPLY EXHIBIT 1**

# TOWNSEND LETTER *for* Doctors & Patients

THE EXAMINER OF MEDICAL ALTERNATIVES

Is Sugar Turning Us Into Fatties?

Trigger Point Acupuncture for Sports Injuries

The Importance of Restorative Sleep

Homeopathy for Arthritic Pain

The Anti-Inflammatory Effects of Enzymes

Antioxidants for Chronic Fatigue



TOWNSEND LETTER for DOCTORS and PATIENTS

#240

SPORTS INJURIES

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## Influenza A Supplement

of TNF-alpha and IL-1 by a human monocytic macrophage cell line.<sup>94</sup>

**Antioxidants (Collectively):** Antioxidants collectively (vitamin A, vitamin E, vitamin C, NAC, glutathione, and alpha lipoic acid) have reduced serum levels of TNF-alpha and IL-6.<sup>97</sup> Another study reported that antioxidants suppressed reactive oxygen intermediaries-stimulated production of the pro-inflammatory cytokine IL-6 in bronchial epithelial cells.<sup>98</sup> An authoritative commentator (Peterhans) noted that antioxidants that downregulate pro-inflammatory cytokines "may be a useful complement to specific antiviral drugs in the therapy of viral diseases."<sup>99</sup>

**Vitamin A, Vitamin C, Riboflavin (Vitamin B2), Pantothenic Acid (Vitamin B5), Folic Acid, Cobalamin (Vitamin B12), Vitamin K1, and Magnesium:** A larger complement of micronutrients may play a supporting role in the antagonism of H5N1 influenza pathogenesis. For example, research has shown that vitamin A supplementation in patients with low levels of the vitamin

results in an increase of the anti-inflammatory cytokine interleukin 10 and a decrease in TNF-alpha in both plasma and monocyte supernatants.<sup>100</sup> Vitamin C helps preserve intracellular-reduced glutathione concentrations.<sup>56</sup> The antioxidant activity of riboflavin (vitamin B2) is derived principally from its role as a precursor of flavin adenine dinucleotide (FAD) and the role of this cofactor in the production of reduced glutathione.<sup>56</sup> Pantothenic acid has been shown to increase levels of cellular-reduced glutathione.<sup>56</sup> Low folate status is thought to be common among the elderly, and dietary folate improves age-related decreases in lymphocyte function.<sup>101</sup> Cobalamin (vitamin B12) deficiency is accompanied by overproduction of TNF-alpha.<sup>102</sup> Lipopolysaccharide-stimulated production of IL-6 is inhibited by naphthoquinones (vitamin K compounds).<sup>103</sup> And magnesium-deficient rodents have been found with high elevations of the macrophage-derived cytokines IL-1, IL-6, and TNF-alpha.<sup>104</sup>

### Conclusion

Taken prophylactically, prior to an H5N1 influenza infection and throughout the duration of illness and recovery, the

nutritional supplement formula described herein may redundantly antagonize the major pathogenic processes of H5N1 influenza by multiple therapeutic mechanisms, and thus increase the likelihood of survival without major complications, according to the preponderance of evidence presented here. Given also the multiple therapeutic mechanisms involved (antiviral, anticytokine, antioxidant) and the redundancy by which these mechanisms act (including by selenium-, NAC/glutathione-, resveratrol-, quercetin-, curcumin-, and vitamin E-mediated mechanisms), the formula may be less likely to lead to H5N1 resistance. The therapeutic value of the formula likely would be low if used as a treatment upon onset of an H5N1 infection, without prophylactic use prior to an H5N1 infection. It may also present individuals, as well as government, public-health, health care, and corporate organizations, with an adjunctive means of preparedness for an H5N1 influenza pandemic. Given the plausible prophylactic properties of the formulation, we urge that laboratory and animal experiments be conducted to gain more data with respect to the antiviral, anticytokine, and antioxidant capabilities of the formulation and its ingredients with respect to the pathogenesis of H5N1 influenza. Finally, given the evident involvement of micronutrients in the virulence and replication of influenza type A viruses, and in the activation and production of pro-inflammatory cytokines, we additionally urge investigations into the micronutrient status of animals and humans infected with H5N1 influenza and the relationship of this status to the clinical course and outcome of the disease.

Howard Friel is coauthor (with Richard Falk) of *The Record of the Paper: How The New York Times Misreports US Foreign Policy* (Verso, 2004), and is coauthor (with Falk) of *Israel-Palestine on Record: How The New York Times Misreports Conflict in the Middle East* (Verso, 2007). He is researching and writing a book on emerging viruses, climate change, and globalization, from which much of this research emerged. Harvey Lederman, MD, is Medical Director of the Pioneer Valley Family Practice, Northampton, Massachusetts, and a former Associate Clinical Professor at Yale and Tufts University Schools of Medicine.


### Correspondence

Howard Friel  
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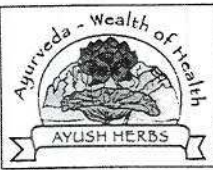
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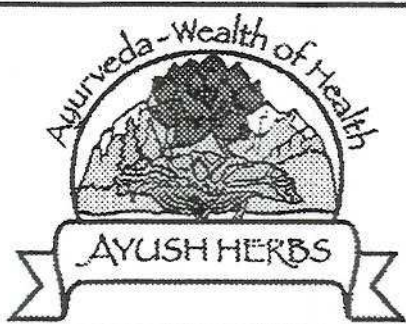
# COMMON GROUND

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While there have been products in these categories for many years, demand—and awareness—finally seem to be increasing. “Interest in natural approaches tends to increase with availability,” said Grace Ormstein, M.D., scientific advisor for Houston-based Himalaya USA. “Ayurvedic products are becoming more available and therefore demand is increasing in Western culture.” However, the dilemma at the store level remains the same: How much background about the healing system does a consumer need to use these remedies?

Understanding the basic principles may offer more than enough information. Ayurveda is the traditional medical system of India that originated more than 5,000 years ago and means “the science of life.” Its written origins are found in the Vedas, the sacred texts of India, which were written in approximately 2500 B.C. Ayurveda inherently focuses on the individual, whose own blend of emotions, physical characteristics and mental qualities make up his constitution. The qualities are expressed through the doshas—three keys that, when balanced, ensure the body’s overall health.

The dosha Vata is associated with air or space elements and is often referred to as wind (light, cool and dry). Vata governs what moves in and out of the body and controls movement within the body (digestive enzymes, lubricating fluids, muscle movement, etc.). Pitta is comprised of fire and water, and affects digestion, metabolism and nutrition. Imbalances are seen in conditions such as inflammatory disorders, digestive pain and digestive upset. The final dosha, Kapha, is dominated by water and earth, and is cool, moist and heavy. Kapha governs the structures of the body, and when out of balance, congestion and lethargy can result.

“Ayurveda is so logical that many of life’s concepts we routinely face suddenly seem to fit nicely into the principles of Ayurveda,” Davé said. For example, pitta is the “fire” dosha, so pitta-dominant individuals tend to have fiery traits—ambitious, warm skinned, active digestive power, red hair, etc. In addition, “flame” is a root word for “inflammation;” as such, pitta imbalances may be linked to inflammatory conditions such as arthritis.

Beyond knowing the differences among the doshas, there is a concept of natural balance. “The concept of prakriti states everyone has a unique, natural state of balance, and the wellness goal is to maintain that balance,” Seguire said. “This takes into account that no one diet or exercise program will be right for everyone. We must all find our own path to wellness that’s right for our individual constitution.”

Traditional Ayurvedic formulas and products support an overall lifestyle plan. Many are considered *adaptogens*, a category

of botanicals that are neither stimulating nor depressing. Instead, they have a general tonifying effect, enhancing the body’s ability to handle stress and supporting the function of the body’s organs and glands. One of the best known Ayurvedic adaptogens is ashwagandha. This shrub is traditionally used to enhance immune function and moderate the stress response. Another Ayurvedic adaptogen is Chyawanprash, a traditional herbal jam made in a base of alma (Indian gooseberry), a rich source of antioxidants. It contains around 40 different botanicals, such as ashwagandha and cinnamon, and is designed to balance the body and particularly support digestive function, enhancing nutrient assimilation.

Other botanicals have been used for chronic conditions or to correct imbalances. Gymnema was traditionally used for sugar balance, and newer research studies support its role in blood glucose management. The resin from the boswellia tree (*Boswellia serrata*) was considered an anti-inflammatory; one recent study conducted by Sabinsa Corp. on its patented Boswellin® extract found 97 percent of arthritis patients taking the extract reported moderate to excellent improvement in inflammatory and pain responses. Two herbs traditionally used for cardiovascular function include guggul (*Commiphora mukul*) and arjuna (*Terminalia arjuna L.*). Sabinsa’s patented Gugulipid® has been shown to reduce LDL (“bad”) and total cholesterol. Arjuna, meanwhile, has been shown in studies to prevent atherosclerosis and benefit patients with chronic angina.

Ayurvedic dietary supplements tend to focus on the ingredients, rather than trying to educate customers about the history of the health care system. “We sell the benefits of the herbs,” said Russell Frankenfeld, president of Boulder, Colo.-based Om Organics. “Consumers want to find a specific herb that meets their needs. If someone has problems with regularity, the answer is triphala. They don’t need to know about doshas or anything else.”

Similarly, products are often formulated with multiple ingredients to offer benefits over time. “Multi-herbal formulations are tri-dosha,” Ormstein said. “They address each of the three doshas to create total balance in the body. This holistic approach supports weak areas in the body first, then provides ‘whole body’ support.” Himalaya USA offers such multi-herbal formulas, developed by its parent company, the Himalaya Drug Co., which was founded in 1930 with the goal of placing Ayurveda-based formulas on par with pharmaceuticals.

TCM is a newer player in the dietary supplement field, though its own history extends back more than 3,000 years. “TCM is a relatively new concept to the industry,” said

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## NAFFS Announces Food Ingredient Speakers

Drs. Paul LaChance and Claire Kruger are scheduled to appear at the upcoming National Association of Food-Ingredient Systems (NAFFS) Technical Meeting on April 15 at the New Jersey Conference & Expo Center, Edison, NJ.

# NAFFS

National Association of Flavors and Food-Ingredient Systems

Director of the Nutraceuticals Institute at Rutgers University, LaChance will talk about what's fact and what's fiction in the nutraceutical industry, said NAFFS marketing director Diane Davis. Kruger, who is principal at Environ Corporation International, will give a talk titled "Current Status of GRAS and the Self Affirmation Process." Davis said guest speaker Janet Scalese is slated for a presentation titled "Current and Forthcoming Regulations That Impact Flavored Beverages."

The half-day session will run from 9 a.m. to noon. After the morning's events, there will be a networking lunch. The Institute of Food Technologists (IFT) Suppliers Day Show will begin after the networking lunch. For more information, contact NAFFS at (732) 922-3218.

## IFT Cosponsors Labeling Conference

The Institute of Food Technologists (IFT) Continuing Education Committee is co-sponsoring "Labeling Requirements For Foods Marketed In The United States." It is scheduled for March 24-25 at the Woodfield Hyatt, Woodfield, IL.

The program has been redesigned to include the basics of Food and Drug Administration (FDA) and U.S. Department of Agriculture (USDA) labeling regulations. Topics covered include

principal display and information panels, proper naming of products, ingredients' statements, declaration of weights or volume, nutrition labeling, health and nutrients content claims, and requirements for "healthy."

Course fees are \$895 for IFT members and \$945 for nonmembers. The event is also cosponsored by FDA and USDA. Call (312) 782-8424 for more information.

## ISM Offers Six-Step Program

The Tempe, AZ-based Institute for Supply Management's (ISM) "Six Sigma: A Process Improvement Tool for Supply Management Professionals" is intended to cover the steps organizations go through to begin the journey of implementing an effective Six Sigma program using breakthrough strategies. ISM's "Six Sigma" will be offered in Las Vegas, and is scheduled for June 25-26.

According to ISM, each purchasing and supply professional needs to be acutely aware of the impact of Six Sigma on suppliers and customers. Participants will learn how to use date-driven, Six Sigma concepts to enhance the value of the supply chain and impact the bottom line of their organization.

This program is intended for both non-manufacturing and manufacturing supply managers, according to ISM. Purchasers and supply managers of materials and services, quality assurance professionals, and those involved with manufacturing processes, supplier selection, and supplier evaluation wanting to learn the importance of Six Sigma and its application within their firm would be the appropriate audience for the workshop, ISM said.

Topics covered in this program include: "The importance of Six Sigma to supply managers including the 'why do it?' factor," "The basics of customer-focused Six Sigma and its date-driven methodology," "A process to use to introduce Six Sigma

(continued on page 58)

# Whole Foods Magazine

JULY, 2003

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INFORMING AND EDUCATING NATURAL PRODUCTS RETAILERS

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## Retailer of the Year ..... 32



One of the true pioneers of the natural products industry, Akin's Natural Foods Market is now in its seventh decade and still going strong in Tulsa, OK, the town that was its first home during the Great Depression. Today, the store stands at the top of a 13-store chain, with outlets in five states. In choosing Akin's as the 2003 Retailer of the Year, **WHOLE FOODS** recognizes its dedication to sound, healthy principles and impeccable service.

## news

### Bad News Abounds in Popular Media . . . 8

**New York, NY**—In the wake of Baltimore Orioles pitcher Steve Bechler's death while taking a supplement containing ephedra, there has been a wave of articles questioning the safety of ephedra in particular, and dietary supplements in general. Many of these articles also suggest that dietary supplements are insufficiently regulated by government agencies like the FDA and FTC.

### Bush Challenges The World Over GMOs . . . 18

**Geneva, Switzerland**—Determined to follow its own path, regardless of criticism, the Bush administration has taken the first formal steps to initiating a challenge to the European Union's policy concerning genetically modified organisms (GMOs). The action comes in the form of a complaint to the Geneva, Switzerland-based World Trade Organization (WTO).

### Long-Range Study Confirms Value of CLA . . . 45

**LaGrange, IL**—Results from the first long-term study of conjugated linoleic acid (CLA) have demonstrated a significant reduction in body fat and an increase in lean muscle for subjects taking Tonalin brand CLA. Cognis, which has offices here, supplied the CLA.

### Marketing Women's Products . . . . . 25

Freud asked it first: "What do women want?" In the natural products field, the answer is safe, effective products, fair prices and lots of information. This review of the women's products category addresses the industry's options for customers seeking help for osteoporosis, PMS, menopause, sexual function, breast health and weight management. One thing retailers should never forget: female natural products shoppers outnumber men by four to one.

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 Plant City, FL 33566-5117  
 (813)359-5128  
 (800)237-7629  
 FAX: (813)757-6060  
 dblanchar@crystals-inc.com  
 Year Founded: 1955  
 Company Founder: Bill Carr  
 Types of Products: Foods/Beverages  
 Present No. of Products: 400+  
 Best Sellers: Frz-dried Fruit & Veg. Pwdr & Flavs, Dry Pwdr Bev & Pie  
 Mix, True Crystals Cocktl Mix, CrystaLac Frz-dried Swznd Milk Pwd  
 Key Personnel: Jennifer Closshey, Pres. & CEO; Linda L. Harrell,  
 Strategic mktg. commns.; Lewis Marshall, Fdsvc. Sls./Dev.; Steve  
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 (516)674-2441  
 (800)444-3563  
 FAX: (516)674-3788  
 cwrenviro@att.net  
 www.cwrenviro.com  
 Year Founded: 1987  
 Company Founder: Dr. Roy M. Speiser  
 Types of Products: Water, air and shower filters  
 Present No. of Products: 50+  
 Best Sellers: Care 2000 air filter, douiton water filter, sports bottle,  
 high output shower filter  
 Key Personnel: Dr. Roy Speiser, Pres.; Dr. Diane Romeo, V.P.

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 www.cypsystems.com  
 Year Founded: 1996  
 Company Founder: Paul A. Willis  
 Types of Products: Dietary Supplements  
 Present No. of Products: 24  
 Best Sellers: Selenium Yeast, Chromium Yeast, Zinc Yeast, Nutritional  
 Yeast, Beta 1,3 Glucan.  
 Key Personnel: Paul A. Willis, Pres.; Nick Meyer, Bus. Mgr.; Dr. Lou  
 Banyh, Tech. Dir.

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 Year Founded: 1999  
 Company Founder: Adrian Weber  
 Types of Products: Dietary Supplements, Health & Beauty Care  
 (HBC) Products, Raw Materials.  
 Best Sellers: Special Delivery Colostrum, First Harvest Colostrum,  
 Miracel Therapeutic Skin Gel, PepTalk Pro, Remedium.  
 Key Personnel: Adrian Weber, C.E.O./President; Jerry Colburn, V.P.  
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 (949)622-9030

(888)992-9839  
 FAX: (949)622-9033  
 sales@cyex.com  
 www.cyex.com  
 Year Founded: 1984  
 Company Founder: Gilbert Gluck  
 Types of Products: Dietary Supplements, Ingredients.  
 Present No. of Products: 20  
 Best Sellers: BioVin, ArthroColl Chicken Collagen Type II, BioVinca  
 Vinpocetine, Broccoli Sprout Extracts, Benecosanol Rice Policosano  
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 (800)221-1833  
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 info@dnepharm.com  
 www.dnepharm.com  
 Year Founded: 1978  
 Company Founder: Eric Organ  
 Types of Products: Dietary Supplements, Herbal  
 Products/Supplements  
 Present No. of Products: 24  
 Best Sellers: Super Caps, Nature's White Cross, Yellow Subs, Herbal  
 Dynamite, Krypto Caps.  
 Annual Sales: \$6,000,000  
 Key Personnel: Eric Organ, C.E.O.; Denise Organ, Pres.; Richard  
 Quine, V.P.; Kevin Flakerty, Global Sls. Mgr.

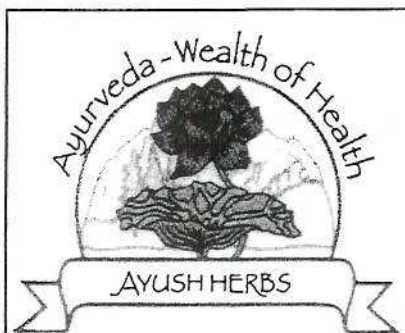
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 (800)798-7226  
 FAX: (217)352-6433  
 bioactives.usa@degussa.com  
 www.degussa-bioactives.com  
 Year Founded: 1985  
 Company Founder: Mr. Sid Tracy  
 Types of Products: Herbal Products/Supplements, Dietary  
 Supplements  
 Present No. of Products: 50+  
 Best Sellers: Lecil PS, Cholesterolin, Creapure, Arthred, GLA Oils.  
 Key Personnel: Mr. Sid Tracy, Pres./C.E.O.; Mr. Harlee Sorking, V.P.  
 Mktg.; Mr. Ed Saxton, v.P. Sls.; Dr. Ivo Pichel, V.P. R & D/Tech; Ms. Sarah  
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 Wall, NJ 07719-1108  
 (732)681-0200  
 (800)394-2709  
 FAX: (732)681-8468  
 sales@deitzco.com  
 www.deitzco.com  
 Year Founded: 1960  
 Company Founder: Stephen J. Deitz, Sr.  
 Present No. of Products: 10  
 Best Sellers: Pharmafill Tooaz, Pharmafill CS-1  
 Annual Sales: \$1,500,000  
 Key Personnel: James Deitz, Pres.; Charles Deitz, V.P.; S. John Deitz,  
 Jr. Eng'g.

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 4357 S. Santa Rita Ave.  
 Tucson, AZ 85714  
 (520)294-5676  
 FAX: (520)294-9227  
 descale@mindspring.com  
 www.descale-it.com  
 Year Founded: 1985  
 Company Founder: Marianne Muller  
 Types of Products: 100% Biodegradeable Household Cleaners  
 Present No. of Products: 10  
 Best Sellers: Descale-It Bathroom, Descale-It Lime-Eater, Pool &  
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- Iodine - Iodine is an important compo-

appetite, central nervous system disorders and symptoms of arthritis.

- Selenium - Selenium is essential for healthy heart and immune system functioning. It promotes the production of many hormones and it is necessary for the function of the important antioxidant enzyme called glutathione peroxidase. A deficiency of selenium has been associated with cancer, heart disease, birth defects, arthritis, cataracts and autoimmune disease.

Meletis has no problem supporting this argument. He notes that today's diet is "suboptimal" in numerous nutrients and minerals, and he further remarks that minerals tend to work best when they work in synergy with one another. Thus, he recommends taking coral calcium with other critically needed miner-

## Coral calcium has over 600 years of history and thousands of testimonials on its benefits

ment of thyroid hormones and it is necessary for normal growth and general body metabolism. Deficiencies of iodine have been associated with cretinism, low thyroid function and fibrocystic disease of the breasts, goiter and hypothyroidism.

- Lithium - Lithium is an important modulator in the conversion of essential fatty acids to prostaglandins that play an important role in several body functions, including the production of white cells and T-suppressor cells.
- Molybdenum - Molybdenum is important for the normal handling of carbohydrates by the body. It helps in the elimination of waste products from the body. Molybdenum deficiencies are rare, but can result in abnormal heartbeats, migraines, anemia, partial blindness, gastrointestinal upset and mental disorders.
- Nickel - Nickel is essential for maintaining the normal functioning of several hormones and is a co-factor for several enzymes. It also maintains cell membranes and is involved in protein replication. Low levels of nickel have been reported to cause liver problems, abnormal reproductive functioning and skin rashes.
- Phosphorus - Phosphorus is essential for the proper balance of body chemistry, bone structure and energy production. Phosphorus joins with fats to produce phospholipids, which are vital to the function of cell membranes and to the structure of the nervous system. A phosphorus deficiency may lead to weakness, loss of

als and trace minerals. Finally, he says, "The use of high bioavailable ion trace minerals that readily disassociate in solution can help provide an added vehicle for overall absorption."

According to Japanese folklore, the islands of Okinawa will cure the world. Wouldn't it be wonderful if this indeed were coming true as the Western world discovers the health benefits of coral calcium? This "powerhouse of health," as Barefoot calls it, combines many different minerals to promote substantial body chemistry, and inhibit disease. Coral calcium has over 600 years of history and thousands of testimonials on its benefits, says Barefoot. Looking at the people of Okinawa as evidence, the effects of coral calcium promise to be far-reaching. WF

### References:

[www.ioniccoralcalcium.com](http://www.ioniccoralcalcium.com)

[www.coralminerals.com](http://www.coralminerals.com)

*Barefoot on Coral Calcium: An Elixir of Life?* by Robert R. Barefoot

*Natures Benefit From Coral Calcium: Sorting Facts From Speculation* by Stephen Holt, M.D.

*Coral Calcium* by Bruce W. Halstead, M.D.

"Fabric of a long life: Centenarians on Okinawa credit healthy diet, youthful outlook" by Paul Wiseman, *USA Today*, January 8, 2002

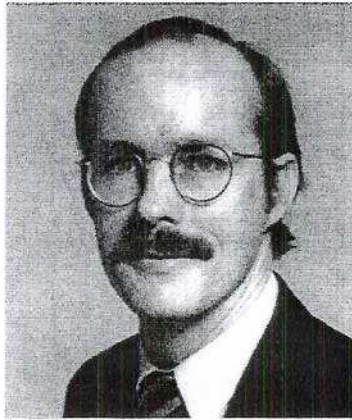
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# Keep Your Personal Data Semi-Private

By SCOTT TIPS



**Y**ou could wallpaper a room with them—you know, all of those privacy notices that come to you folded three or four times and tucked away inside mailed envelopes along with statements from your bank, credit union, insurance company, stockbroker, mortgage lender, and even lawyers in certain instances. Most likely, your only notice of them is as they sail from your hand into the nearest trashcan. You don't pay any attention to them, but perhaps you should.

These "privacy" notices that build up your wrist-flicking strength are the darling children of the Gramm-Leach-Bliley Act (GLB Act or Financial Services Modernization Act) that took effect on July 1, 2002. The GLB Act supposedly protects privacy, but the "exceptions" to the Act make it a privacy-protection failure. Under the Act, three industries—banking, insurance, and securities—may affiliate under one corporate roof.

These financial institutions are then allowed to trade back and forth among themselves their customers' private and personal information. They can even share this personal data with others, such as "insurance service providers," "marketing services," and any other entity that has a "joint" marketing agreement with the financial institution. As if that were not enough, the Act permits these financial institutions to sell the consumer's private information to others (third parties) for additional profits without ever telling the consumer!

Don't kid yourself. These institutions have a lot of information about you (including the key to unlock the door to virtually

all of your personal and private information: your Social Security number). Insurance records can include your cradle-to-grave health history, while your brokerage and banking records can reveal the wealth of your assets and your spending and saving habits—what you buy, whom you make political and charitable contributions to, and your entertainment and recreation choices. Leaving aside the very real danger of use by identity thieves and stalkers that this treasure trove of personal information presents, such data-rich profiles on you and me will also offer tempting targets to government tax and criminal investigators as well as simple citizens who might want to crush you in a business dispute, divorce, or child-custody lawsuit.

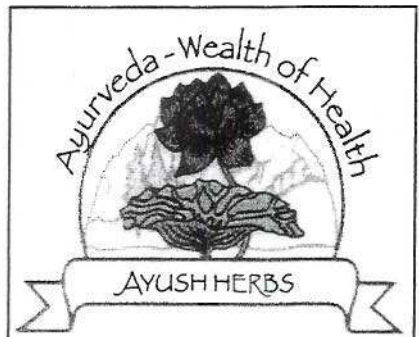
### Opt-out vs. opt-in

Under the GLB Act, the financial institutions have to tell you what they do with that personal data. You cannot stop them from sharing your data with their subsidiaries or affiliates, but if they want to sell it to a third party, then they must give you a chance to "opt-out" (say "no"). If the legislators had really wanted to protect your privacy, then they would have adopted an "opt-in" system. With "opt-out," you must take the affirmative step to tell the company that you do not want your personal information shared with third parties. With an "opt-in" system, the company must take the affirmative step to obtain your consent to such data sharing first. Some states, such as Vermont, have "opt-in" privacy laws that automatically prohibit these companies from data sharing unless their residents give their permission.

Residents of most other states, however, have to send (or call) in the form to obtain some small privacy protection. So, what do you, the consumer, do in these instances?

First of all, the law requires financial institutions to issue privacy notices once every year. But, watch the mail because you may get additional privacy notices when you open a new account or when an institution changes its policy.

Second, take the time to read the fine print in the notice. Most privacy notices offer a form (sometimes a toll-free number) that allows you to "opt-out," that is, block



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Boswellia	Neem
Capsicum oleoresin	Noni
Coleus forskoli	Phyllanthus amaran/niruri
Centella asiatica	Picrorhiza
Curcumin 95%	Pippli
Echinacea	Sida Cordifolia
Eclipta alba	Tinospora cordifolia
Garcinia cambogia	Tribulus terrestris
Ginger	Trifla
Ginkgo biloba	Tylophora
Guggal	Valerian
Gymnema sylvestre	Sitawari
Haritaki	St. Johns Wort

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www.ayush.com

*A graduate of the University of California at Berkeley Law School, Scott Tips currently practices internationally, emphasizing Food-and-Drug law, business law and business litigation, trade practice, and international corporate formation and management. He has been involved in the nutrition field for more than three decades and may be reached at (415) 296-7003.*

November 2004

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# WholeFoods

## MAGAZINE

Informing and Educating Natural Products Retailers On Dietary Supplements, Herbs, HBC, Homeopathy, Foods

# Who's Who of Manufacturers and Suppliers - 2004 -

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2086761-000411WHO P B  
SUSHMA SODHI OFFICE MANAGER 214 703  
AYUSH HERBS  
2115 112TH AVE NE  
BELLEVUE WA 98004-2946

00427



Digestion • Beverages • Low-Carb Desserts • Eye Care • Oral Care



mum Male.  
Key Personnel: Candis Scott,  
C.E.O.; Lennaz Hitzemann, Custom  
Salces; Brain Taschereau, Sales

Hobe Laboratories, Inc.  
6479 S. Ash Ave.  
Tempe, AZ 85283  
(480)413-1950  
(800)528-4482  
FAX: (480)413-2005  
hobelabs@aol.com  
www.hobelabs.com  
Year Founded: 1975  
Company Founder: Bill Robertson  
Types of Products: Health & Beauty  
Care (HBC) Products  
Present No. of Products: 70  
Best Sellers: Slim Tea, Energizer  
Hair Care, Great Stuff, Sunartals,  
Hand Sanitizers.  
Key Personnel: Bill Robertson,  
Pres.; Brenda Martin, Natl. Sls. Mgr.;  
Peter Samueli, Dir. Manufacturing;  
Debbie Yilla, Warehouse Mgr.; Drea  
Yellowhair, Customer Service

Homeopathy + Herbal Labs  
1445 30th St.  
Suite B  
San Diego, CA 92154  
(619)429-6012  
(800)641-3332  
FAX: (619)429-7512  
Year Founded: 1994  
Company Founder: Michael Martins  
Types of Products: Dietary supple-  
ments, homeopathic products  
Present No. of Products: 400+  
Best Sellers: B-Complex, Candida,  
Bio-Plus, Homeopathy, Memory  
Plus  
Key Personnel: Michael Martins,  
Pres.; Ana V. Sanchez, E.E.O.

Hsu's Ginseng Enterprises Inc.  
T6819 County Highway W.  
Wausau, WI 54403  
(715)675-2325  
(877)446-7668  
FAX: (715)675-9730  
Ron@hsuginseng.com  
www.hsuginseng.com  
Year Founded: 1974  
Company Founder: Paul C. Hsu  
Types of Products: Herbal Prod-  
ucts/Supplements  
Present No. of Products: 11  
Best Sellers: American, Asian, Eu-  
thero Powder, Amer. Powder Ex-  
tract, Asian Powder Extract  
Key Personnel: Paul Hsu, Pres.;  
Sharon Hsu, V.P.

Humanetics Corp.  
12200 Middle Set Rd., Ste. 500  
Eden Prairie, MN 55344  
(952)937-7660  
FAX: (952)937-7667  
info@humaneticscorp.com  
www.humaneticscorp.com  
Year Founded: 1988  
Company Founder: Ron Zenk  
Types of Products: Dietary Supple-  
ments, Herbal Products/Supple-  
ments  
Present No. of Products: 3  
Best Sellers: 7-Keto, Inzitol, Micro-  
Lactin  
Key Personnel: Ron Zenk, C.E.O.;  
John Dukstra, C.O.O.; Dr. John  
Zenk, Chief Science Officer; Scott  
Steil, Sls. & Mktg.

Inca Organics  
330 N. Jefferson Suite 1401  
PO Box 61-8154  
Chicago, IL 60661  
(312)575-9880 (866)328-4622  
FAX: (312)575-9881  
incaorganics@aol.com  
www.incaorganics.com  
Year Founded: 1996  
Company Founder: Bob and Mar-

lorie Leventry  
Types of Products: Foods/Bever-  
ages  
Present No. of Products: 2  
Best Sellers: Organic Quinoa, Black  
Amaranth  
Annual Sales: \$1,000,000

Institut Rosell/Lallemand  
8480 St. Laurent Blvd.  
Montreal, QC H2P 2M6 Canada  
(514)381-5631  
(800)452-4364  
FAX: (514)383-4493  
human@lallemand.com  
www.lallemand.com  
Year Founded: 1932  
Company Founder: Dr. Brochu  
and Dr. Rosell  
Types of Products: Dietary Sup-  
plement Ingredients, Probiotics,  
Bio-Supplements  
Best Sellers: STAR, Probiocap, L-  
acidophilus Rosell-52, L-ramno-  
sus Rosell-II, Lalmin  
Key Personnel: Olizier Clech,  
Pres.; Henri Durand, Scientific  
Dir.; Patrice Malard, Sls. Dir. Eura-  
sia; Aldo Fuoco, V.P.; Nathalie  
Radptont, Mgr.

Integrated BioCeuticals  
120 Eider Lane  
Eastham, MA 02642-3401  
(508)240-5773  
FAX: (508)255-9214  
gary@ibopc.com  
Year Founded: 1999  
Company Founder: Gary Senecal  
Types of Products: Herbal Prod-  
ucts/Supplements  
Present No. of Products: 3  
Best Sellers: Masquelier's OPC, An-  
thogenol  
Key Personnel: Gary Seneca, Mar-  
keting Partner

Integrity Nutraceuticals International  
201 Field St.  
Sarasota, FL 34240  
(941)342-0007  
(800)479-8994  
FAX: (941)342-7337  
gus@integritynut.com  
www.integritynut.com  
Year Founded: 2000  
Company Founder: Lloyd Slabach,  
Tim Romero  
Types of Products: Dietary Supple-  
ments, Herbal Products/Supple-  
ments  
Best Sellers: Cinnulin PF, RC-Nos,  
Thermodiamine, Osteo CQ  
Key Personnel: Lloyd Slabach,  
President; Tim Romero, V.P.; Gus  
Romero, Sales, Dave Bender Ware-  
house Mgr.

InterHealth Nutraceuticals, Inc.  
5451 Industrial Way  
Benicia, CA 94510  
(707)751-2800  
(800)783-4636  
FAX: (707)751-2801  
info@interhealthusa.com  
www.interhealthusa.com  
Year Founded: 1987  
Company Founder: William A. Seroy  
Types of Products: Dietary supple-  
ment Ingredients, Herbal Product In-  
gredients  
Present No. of Products: 15  
Best Sellers: Super CitriMax Clinical  
Strenth, Aller-7, ChromeMate,  
Optiberry, UC-II.  
Key Personnel: Ph.D. Debasis  
Bagchi, Admin/Mgr; William "Skip"  
Seroy, Pres./C.E.O.; Gary Troxel,  
Exec. V.P.; Mary Helen Lucero,  
C.F.O.

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51 Sawyer St.  
Suite 200  
Waltham, MA 02453

(781)314-4033  
(877)696-2525  
edkeohan@invmed.com  
www.invernessmedical.com

ISP  
1361 Alps Rd.  
Wayne, NJ 07470  
(973)628-3000  
FAX: (973)628-4117

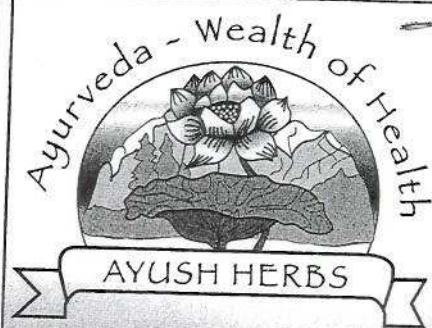
J  
Jarrow Formulas, Inc.  
1824 So. Robertson Blvd.  
Los Angeles, CA 90035-4317  
(310)204-6936  
(800)726-0886  
FAX: (310)204-2520  
info@jarrow.com  
www.jarrow.com  
Year Founded: 1976  
Company Founder: Jarrow Ro-  
govin  
Types of Products: Dietary Sup-  
plements, Herbal Products/ Sup-  
plements  
Present No. of Products: 350  
Best Sellers: Jarrow-Dophilus  
EPS, BioSil, Q-Absorb, Bone-up,  
SAM-e  
Key Personnel: Jarrow Rogovin,  
Pres.; Sid Shastri, V.P./Prod. Dev.;  
Clay DuBose, VP Sales; Ben  
Khowing, CFO; Perla Guo, VP  
functiona food, clinical research  
& Asia market development

Jarrow Industries  
12246 Hawkins Street  
Santa Fe Springs, CA 90670  
(562)906-1919  
FAX: (562)906-1979  
siva@jiiimg.com  
www.jiiimg.com  
Year Founded: 2001  
Company Founder: Jarrow Rogovin  
Types of Products: Dietary Supple-  
ments, Herbal Products/Supple-  
ments, Contract manufacturing ser-  
vice  
Present No. of Products: 500+  
Best Sellers: Contract manufactur-  
ing service  
Key Personnel: Siva Hari, Presi-  
dent/C.E.O.; Jarrow Rogovin, Chair-  
man; Eiger Bjornstad, Dir./Pod. Mgr.

John Henry Packaging  
101 H Street Ste. M  
Petaluma, CA 94952  
(707)778-1250  
(800)327-5997  
FAX: (707)762-1253  
Year Founded: 1912  
Company Founder: John Henry  
Types of Products: Miscellaneous:  
Packaging (Labels, Cartons)  
Best Sellers: Digital Labels, Flexo  
Labels, Flexo Cartons, Offset Car-  
tons  
Annual Sales: \$120 million  
Key Personnel: Dan Welty, Market  
Director

Juice Mart, Inc.  
6758 Julie Lane  
West Hills, CA 91307-2727  
(818)992-4442  
(877)888-1011  
FAX: (818)992-4479  
juice@juicemart.com  
www.juicemart.com  
Year Founded: 1996  
Company Founder: Linda Renaud  
Types of Products: Foods/Bever-  
ages, Herbal Products/ Supple-  
ments.  
Present No. of Products: 100  
Best Sellers: Juice Concentrates,  
Nutritional Supplements  
Key Personnel: Linda Renaud,  
Pres.

K  
KGK Synergize Inc.



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Asparagus racemosus	Kava kava
Bacopa monnieri	Mucuna prurens
Bitter melon	Milk thistle
Boswellia	Neem
Capsicum oleoresim	Noni
Coleus forskoli	Phyllanthus amarun/niruri
Centella asiatica	Picrorhiza
Curcumin 95%	Pippli
Echinacea	Sida cordifolia
Eclipta alba	Tinospora cordifolia
Garcinia cambogia	Tribulus terrestris
Ginger	Trifla
Ginkgo biloba	Tylophora
Guggal	Valerian
Gymnema sylvestre	Sitawari
Haritaki	St. John's Wort

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# WholeFoods MAGAZINE

Informing and Educating Natural Products Retailers On Dietary Supplements, Herbs, HBC, Homeopathy, Foods

# Who's Who of Manufacturers and Suppliers 2005

Including a List of  
Key Personnel

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 2086761-DQD511WHO A A 903 38  
 SUSHMA SODHI  
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 AYUSH HERBS  
 2115 112TH AVE NE  
 BELLEVUE WA 98004-2946 00423  
 |||||

ocery Focus:  
esterol Management

**A & A Nutritional International**  
 A & A Pharmachem Inc.  
 ABCO Laboratories, Inc.  
 ADH Health Products Inc.  
 Albion Advanced Nutrition  
 Alfa Chem  
 American Health & Herb Ministry  
 American Ingredients Inc.  
 American Int'l Chemical Inc.  
 American Supplement Technologies  
 Arizona Nutritional Supplements (ANS)  
 Ashland Distribution Co.  
 Atlas Operations Inc.  
 B.O.S.S.-Bob O'Leary Sport Science  
 Biotron Laboratories  
 C & L Health Products  
 California Energy Nutraceuticals  
 Chelated Minerals Corporation  
 Chemi Nutra  
 Doctor's Nutraceuticals  
 Eckhart Contract Manufacturing  
 Falcon Trading International Corp.  
 Famarco Ltd. Inc. (also see B&K Intl.)  
 Garden State Nutritionals  
 Generichem Corp.  
 Global Botanical Corporation  
 Global Laboratories  
 Global Nutrients Incorporated  
 Hawk Biopharma  
 Healthco International  
 Healthy 'N Fit Nutritionals  
 IntraCell Nutrition Inc.  
 Licata Enterprises  
 Martec Industries  
 MiniStar International, Inc.  
 Nature's Products  
 NHK Laboratories, Inc.  
 North West Marketing Co., Inc.  
 NOW Foods Private Label  
 Nuvite Laboratories  
 Pacific Nutritional Inc.  
 Paragon Laboratories  
 Pharmachem Laboratories, Inc.  
 Pharmline Inc.  
 Purac America  
 Reliance Private Label Supplements  
 St. John's Botanicals Inc  
 Stauber Performance Ingredients, Inc.  
 Superior Nutraceuticals, Inc.  
 Taiyo International, Inc.  
 Tishcon Corp.  
 To Your Health  
 Trace Minerals Research  
 Tri-Light  
 Unique Vitality Products Inc.  
 Vitamer Laboratories  
 Watson Industries Inc  
 World Organic Corp.

**Isoflavone**  
 A & A Nutritional International  
 A & A Pharmachem Inc.  
 A.S.I. International  
 ABCO Laboratories, Inc.  
 Acatris Inc. USA  
 ADH Health Products Inc.  
 ADM/Archer Daniels Midland  
 AIDP Inc.  
 Alfa Chem  
 American Ingredients Inc.  
 American Supplement Technologies  
 AnMar Int'l Ltd.  
 Arizona Nutritional Supplements (ANS)  
 Atlas Operations Inc.  
 ATZ Natural, (Div. Of ATZ Chemical)  
 B.O.S.S.-Bob O'Leary Sport Science  
 BI Nutraceuticals  
 BioTech Corporation  
 Botanical Laboratories Inc.  
 California Energy Nutraceuticals  
 Collagen Nutraceuticals, Inc.  
 Compound Solutions, Inc.  
 Coral Minerals Inc.  
 Curamux Inc.  
 Cyvex Nutrition  
 Deodorant Stones of America  
 Doctor's Nutraceuticals  
 Earth's Bounty/Matrix Health Prods. Inc.  
 Eckhart Contract Manufacturing

**Cyvex Nutrition**  
 DNP International Co., Inc.  
 Doctor's Nutraceuticals  
 Eckhart Contract Manufacturing  
 Ecuadorian Rainforest LLC.  
 Elixir Int'l of New Mexico, Inc.  
 Essential Fine Ingredients, Inc.  
 Falcon Trading International Corp.  
 Famarco Ltd. Inc. (also see B&K Intl.)  
 Fortune Bridge Co., Inc.  
 Functional Foods Corp.  
 Future Foods, Inc.  
 Garden State Nutritionals  
 GCI Nutrients  
 GCI Nutrients (Canada) Inc.  
 Global Laboratories  
 Global Nutrients Incorporated  
 Harten Corp.  
 Hawk Biopharma  
 Healthco International  
 Healthy 'N Fit Nutritionals  
 Integrity Nutraceuticals International  
 KDN-Vita International, Inc.  
 Kingchem, LLC.  
 Licata Enterprises  
 Maypro Industries Inc.  
 MegaCare, Inc.  
 MiniStar International, Inc.  
 Nature's Products  
 NHK Laboratories, Inc.  
 NOW Foods Private Label  
 NutriScience Innovations, LLC  
 Nuvite Laboratories  
 OptiPure Brand Chemco Industries  
 P.L. Thomas & Co., Inc.  
 Pacific Nutritional Inc.  
 Paragon Laboratories  
 Pharmachem Laboratories, Inc.  
 Pharmline Inc.  
 Sabinsa Corporation - Utah  
 Soft Gel Technologies, Inc. (SGTI)  
 St. John's Botanicals Inc  
 Stella Labs, LLC  
 To Your Health  
 Unique Vitality Products Inc.  
 Van Druen Farms  
 Vitamer Laboratories  
 Watson Industries Inc

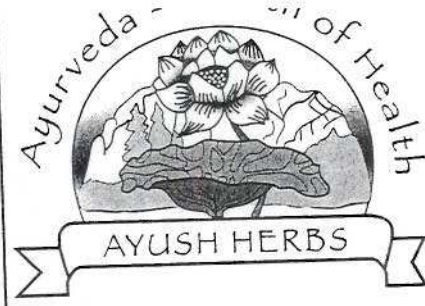
**Joint Care**  
 A & A Nutritional International  
 ABCO Laboratories, Inc.  
 Acta Health Products  
 ADH Health Products Inc.  
 AIDP Inc.  
 Alfa Chem  
 American Health & Herb Ministry  
 American Nutraceuticals Inc.  
 American Supplement Technologies  
 Ameriden International, LLC  
 Ancient Formulas, Inc.  
 Ancient Sun  
 Applied Nutritionals  
 Arizona Natural Products  
 Arizona Nutritional Supplements (ANS)  
 Atlas Operations Inc.  
 ATZ Natural, (Div. Of ATZ Chemical)  
 B.O.S.S.-Bob O'Leary Sport Science  
 BI Nutraceuticals  
 BioTech Corporation  
 Botanical Laboratories Inc.  
 California Energy Nutraceuticals  
 Collagen Nutraceuticals, Inc.  
 Compound Solutions, Inc.  
 Coral Minerals Inc.  
 Curamux Inc.  
 Cyvex Nutrition  
 Deodorant Stones of America  
 Doctor's Nutraceuticals  
 Earth's Bounty/Matrix Health Prods. Inc.  
 Eckhart Contract Manufacturing

**Euro-4**  
 Five Continent Enterprises Inc.  
 Functional Foods Corp.  
 Future Foods, Inc.  
 Garden State Nutritionals  
 GCI Nutrients  
 Genesis Research Corporation  
 Global Laboratories  
 Global Nutrients Incorporated  
 GMP Laboratories Of America, Inc.  
 Hawk Biopharma  
 Health Plus Inc.  
 Healthco International  
 Healthy 'N Fit Nutritionals  
 Herbal Answers Inc.  
 Hsu's Ginseng Enterprises Inc.  
 Humanetics Corp.  
 Indiana Botanic Gardens, Inc.  
 InnoMark Inc.  
 Integrity Nutraceuticals International  
 Inter-Health Nutraceuticals, Inc.  
 IntraCell Nutrition Inc.  
 Licata Enterprises  
 Liddell Laboratories  
 LycoRed Corp  
 MegaCare, Inc.  
 MiniStar International, Inc.  
 National Enzyme Company  
 Nature's Products  
 Nature's Purest  
 Next Pharmaceuticals  
 NHK Laboratories, Inc.  
 North West Marketing Co., Inc.  
 NOW Foods Private Label  
 Nutraceutix, Inc.  
 Nutrigenesis LLC  
 Nutrition Farm, The  
 Nuvite Laboratories  
 Orcas International, Inc.  
 Organic By Nature  
 P.L. Thomas & Co., Inc.  
 Pacific Nutritional Inc.  
 Pacific Rainbow Intl. Inc.  
 Paragon Laboratories  
 Pharmline Inc.  
 Pharmore Ingredients, Inc.  
 Proprietary Nutritionals, Inc.  
 Rexam Closures & Containers  
 Sabinsa Corporation - Utah  
 Science & Ingredients, Inc.  
 Sea-Health Imports  
 SeaTech Bioproducts  
 St. John's Botanicals Inc  
 Stella Labs, LLC  
 Technical Sourcing International, Inc.  
 To Your Health  
 Trace Minerals Research  
 UAS Laboratories  
 Unique Vitality Products Inc.  
 Valentine Enterprises, Inc.  
 Vitamer Laboratories  
 Vita-Vista  
 Watson Industries Inc  
 World Organic Corp.  
 Wysong Corporation

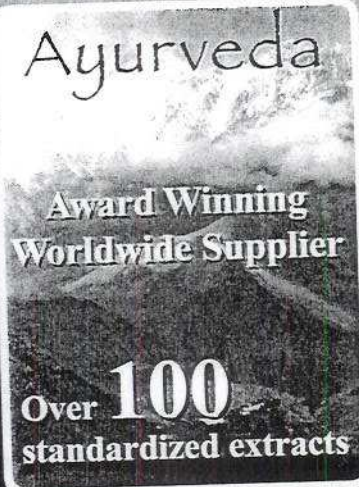
**Kosher Supplements**  
 A & A Nutritional International  
 ABCO Laboratories, Inc.  
 AIDP Inc.  
 Ancient Sun  
 Atlas Operations Inc.  
 Blue California Co.  
 Carotech Inc.  
 Earth's Bounty/Matrix Health Prods. Inc.  
 Fitness & Nutrition Center  
 Freeman Industries, L.L.C.  
 GCI Nutrients  
 Hawk Biopharma  
 Hsu's Ginseng Enterprises Inc.  
 InnoMark Inc.  
 Life Science Laboratories, LLC  
 Pacific Rainbow Intl. Inc.  
 Penta Manufacturing Company, Inc., Div.  
 Sabinsa Corporation - Utah  
 Valentine Enterprises, Inc.

**Lactoferrin**  
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 Atlas Operations Inc.  
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 California Energy Nutraceuticals  
 Doctor's Nutraceuticals  
 Falcon Trading International Corp.  
 Future Foods, Inc.  
 Garden State Nutritionals  
 Global Laboratories  
 Global Nutrients Incorporated  
 Hawk Biopharma  
 Healthy 'N Fit Nutritionals  
 Kingchem, LLC.  
 Mak Wood, Inc.  
 Millennium Health Supplement Inc.  
 MiniStar International, Inc.  
 NHK Laboratories, Inc.  
 NOW Foods Private Label  
 NutriScience Innovations, LLC  
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 Paragon Laboratories  
 Paul Schueller International Inc.  
 Pharmline Inc.  
 St. John's Botanicals Inc  
 Unique Vitality Products Inc.  
 Valentine Enterprises, Inc.

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 Alfa Chem  
 Amax NutraSource, Inc.  
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 Healthy 'N Fit Nutritionals  
 HerbaKraft Inc.  
 Hsu's Ginseng Enterprises Inc.  
 Indiana Botanic Gardens, Inc.  
 Liberty Natural Products Inc.  
 Licata Enterprises  
 Martec Industries  
 Maypro Industries Inc.  
 MegaCare, Inc.  
 Millennium Health Supplement Inc.  
 MiniStar International, Inc.  
 Nature's Products  
 NHK Laboratories, Inc.  
 Northland Organic  
 Foods/Northland Seed  
 NOW Foods Private Label  
 Nuvite Laboratories



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- Amla
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- Bacopa monnieri
- Bitter melon
- Boswellia
- Capsicum oleoresim
- Coleus forskoli
- Centella asiatica
- Curcumin 95%
- Echinacea
- Eclipta alba
- Garcinia cambogia
- Ginger
- Ginkgo biloba
- Guggal
- Gymnema sylvestre
- Haritaki
- Holy basil
- Green Tea
- Inula racemosa
- Kava kava
- Mucuna prurens
- Milk thistle
- Neem
- Noni
- Phyllanthus amaran/niruri
- Picrorhiza
- Pippli
- Sida cordifolia
- Tinospora cordifolia
- Tribulus terrestris
- Trifla
- Tylophora
- Valerian
- Sitawari
- St. John's Wort

and many more.....  
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 www.ayush.com

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# Vitamin Connection

mechanisms that produce these agents inside the vascular bed at sites where they are needed.

ATP and adenosine are powerful vasodilators inside the vascular bed, acting through interactions with P2Y (ATP) and A2 (adenosine) receptors present on vascular endothelial cells. In addition to their powerful vasodilatory activities, chronic oral administration of ATP provides purine precursors (adenosine) for salvage synthesis of ATP in peripheral tissues.

The most important aspect of the vasodilatory activities of blood plasma ATP and adenosine is the stimulation of blood flow, without affecting heart rate or arterial blood pressure. I am reminded of your theme in several of your recent columns — "It is all about ATP" — in stating that "The most important effect of oral ATP is about its ability to stimulate blood flow, where and when it is needed, without affecting heart rate or arterial blood pressure." All of these effects are the direct result of the expansions of liver, red blood cell and blood plasma ATP pools after administration of ATP. Circulatory, blood plasma ATP is now widely acknowledged to be the master regulator of intravascular events.

**Passwater:** *What is the mechanism of vasodilation by blood plasma ATP and adenosine?*

**Rapaport:** Animal studies showed that chronic administration of oral ATP, at levels similar to the dose recommended for human use, yielded significant positive cardiovascular and pulmonary responses. These included significant reductions in pulmonary vascular resistance and significant reductions in peripheral vascular resistance followed by increases in blood flow. No effect on arterial blood pressure or heart rate was observed.

An increase in left ventricular work index, which is an indication of improved cardiac index was also observed. Cardiac index is a value that expresses the efficiency of the heart in circulating the blood throughout the vascular bed and is expressed in units of L/min/sq m. In addition, an increase in arterial oxygen pressure (PaO<sub>2</sub>) was established. Intraluminal ATP, at physiological concentrations, was shown to produce not only local vasodilation, but also vasodilation at sites upstream from the site of its application.

Adenosine on the other hand, induced only local vasodilation. Low physiological levels of blood plasma ATP (about one micromolar), induced 8% increase in vascular diameter, corresponding to a minimum of 17% increase in blood flow. Vasodilation induced by physiological levels of ATP is mediated primarily through nitric oxide (NO), which is synthesized by the enzyme NO synthetase in vascular endothelial cells in response to the interaction of ATP with P2Y receptors. The NO then acts in neighboring perivascular smooth muscle cells, which control vascular tone and produce relaxation and vasodilation of the blood vessel in response to NO.

At higher levels of ATP, corresponding to ATP released from red blood cells containing

expanded ATP pools, other mechanisms of vasodilation operate besides NO synthesis. These mechanisms include induction of vasodilatory prostaglandins synthesis,



Eliezer Rapaport, Ph.D.

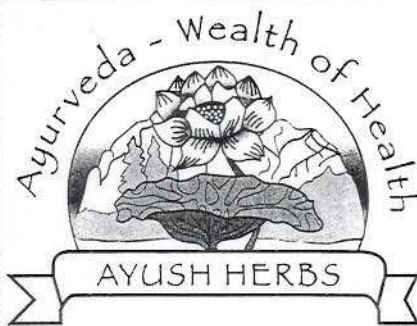
mostly prostacyclin (PGI<sub>2</sub>) as well as non-NO, non-prostacyclin induced vasodilation that is mediated by the direct interactions of ATP and adenosine with their corresponding receptors. As importantly, endothelium-derived hyperpolarization factor (EDHF) is synthesized and released in response to intraluminal ATP. In the cerebral arteriols elevated ATP stimulates blood flow in response to metabolic demand by inducing EDHF synthesis. Thus, circulatory ATP regulates and controls blood flow to the central nervous system as well as to peripheral sites.

**Passwater:** *What is the importance of the stimulation of blood flow? Does it have practical health consequences?*

**Rapaport:** *The stimulation of blood flow by exogenously administered ATP is extremely important not only from a physiological mechanistic point of view but also from a practical point of view. Stimulation of blood flow in answering the metabolic demands of peripheral tissue—such as cardiac or skeletal muscle, lung or liver—supports oxygen delivery and nutrient disposal at these sites. It also improves the removal of waste products such as lactic acid from skeletal muscle environment. Stimulation of blood flow to the brain improves oxygen consumption, which leads to improved brain metabolism and function. One can state that improvements in blood flow, slow aging at cellular and organ levels.*

**Passwater:** *Could you point to a specific clinical indication where orally consumed, ATP-induced stimulation of blood flow leads to a practical result?*

**Rapaport:** Yes. An example is the treatment of low back pain by ATP capsules consumed orally, at a total of 90 mg per day. Oral ATP for the treatment of sub-acute low back pain is approved as a drug in France. *It has been established that the administration of ATP elevates levels of extracellular ATP, the "master regulator" of blood flow.* Providing the body with supplemental ATP activates ATP receptors on vascular endothelial cells, the layer of cells lining the blood vessels. This improves the tone of the blood vessels and relaxes the vessel walls so



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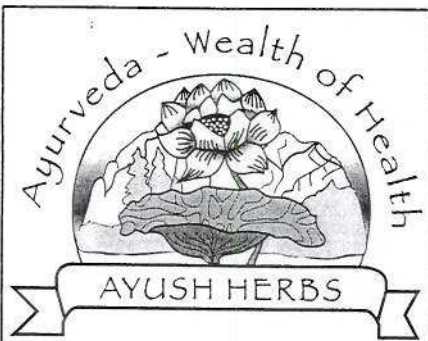
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# East Meets West

and illness, but the explanation and understanding of the detrimental effects of imbalances in the body is still appropriate in today's world," she notes.

With all of this said, it must again be reiterated that similar to Ayurvedic medicine, TCM also stresses individuality. Chan, for instance, says, "We tackle the issue individually—a major difference compared to Western medicine .... Chinese doctors find solutions like a tailor." Chan explains that Chinese medicine views the body as a combination of systems rather than a single entity. "We're not singular parts—everything in the body is connected," he declares.

## A Ship to the East

Although most of us would love a vacation to China and other areas in the East, it's not something we'll all get to have during our lifetimes. But luckily, as mentioned earlier, the East has come to us, bringing with it tons of cultural influences. Yet for some of your customers this isn't enough, as they may want to sample a taste of the East by improving their health. So in many regards, a trip to a natural products store, may in fact (metaphorically speaking), be like taking a ship to the East, as retailers can provide their customers with the Ayurvedic and Chinese herbs they need. But of course, as in most markets, there are many products to choose from, so you may want to hop onto this ship to learn about some of the traditional and unique Eastern products offered:

Chung states that Superior Trading's most popular product is Nin Jiom Loquat Syrup,

which is a traditional remedy for coughs and sore throats. This formula, he says, is over 45 years old, but what's even more noteworthy about the product is that it has been registered as an over-the-counter drug with FDA. "We also carry a formula called 'Superior' Hong Kong Soothing Herbal Tea that helps with cold symptoms. This is also a traditional formula that was recently reformulated as an ephedra-free product. We also carry a few external products for pain relief named Superior Dragon Balm, Superior Dragon Analgesic Plasters, and Superior Zheng Gu Shui," Chung adds.

Yellow Emperor, Inc., located in Eugene, OR, is a custom manufacturer that makes liquid extracts for other companies, according to Andrew T. Levine, president. "We make combinations of herbs into formulas in every way imaginable. We add flavors to the herbs to make them more palatable," he says. Some of these products also include tonics and "symptom-oriented medicaments, such as digestive bitters." Interestingly, Levine says that the Chinese medicine category is expanding to cosmetics. "One important product that we have developed is cosmetic superconcentrates. These products are concentrated up to 24 pounds per end gallon. As little as one ml can be used effectively in an eight ounce lotion or other topical," he relates.

## Ayurvedic Offerings

Chinese medicine alone isn't the only Eastern medicine that is penetrating the health and beauty care industry. As Vanzetti says, "Au-

## Some Frequently Asked Questions

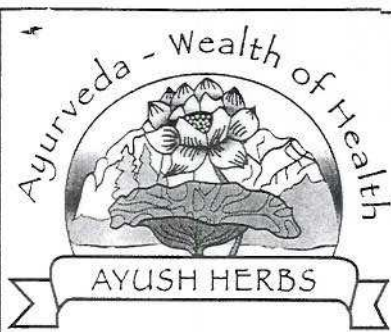
Although traditional Chinese medicine (TCM) and Ayurvedic medicine are in fact ancient, in the United States, they aren't quite familiar to the mainstream public. For this reason, if you have customers who are becoming interested in Eastern medicine, they may have some questions; luckily, some of the sources for this story have told **WholeFoods** what they think are the most frequently asked Eastern medicine-related questions/concerns and their answers.

P.K. Dave, president of Nature's Formula, LLC in Albany, NY says that in regard to Ayurveda, one of the most frequently asked questions is, "In what way is Ayurveda different from Western herbalism?" Dave's response to this question is as follows: "Western herbalism offers many great traditions. Yet, a holistic practice that treats the whole body emphasizing prevention rather than cure is not as emphatic as it is in Ayurveda."

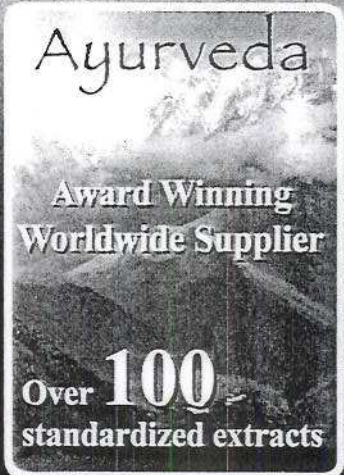
According to Michael Chung, a partner at the San Francisco, CA-based Superior Trading Company, the most common question he hears with regard to TCM is, "Are there any

side effects from taking these products?" "I generally advise people to see a licensed Chinese doctor or acupuncturist and steer them away from patent medicines. The biggest worry is that the symptoms may be aggravated from the side effects of the herbs in a product. Another worry is that there was a problem with various Chinese patent medicines (pills, tablets) containing pharmaceutical ingredients such as codeine. Retailers should advise their customers to seek professional advice before taking any herbs if they do not feel well. They should also confirm allergies or existing medical problems before recommending the herbs."

Lastly, Dakshina Vanzetti, president of Auromere Ayurvedic Imports, located in Lodi, CA, makes mention of the fact that some consumers may question the safety of Eastern medicinal products. She says, "Generally, these Eastern methods have not undergone the type of double-blind studies and animal-testing that Western medicinal products are subjected to. Instead, these ingredients have been time-tested over thousands of years of practical experience."



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## ANTIOXIDANT DIRECTORY

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E-mail: trishad@rfiingredients.com

Website: www.rfiingredients.com

Contact: Trisha Devine

**Antioxidant Products:** OxyPhyte line of natural antioxidants standardized to ORAC; freeze dried and spray dried berry powders; açai juice powder; acerola extract; AC-11 DNA repair product; yerba maté; quercetin; pomegranate extract

### Sabinsa Corporation

Telephone: 801-465-8400

Fax: 801-465-8600

E-mail: todd@sabinsa.com

Website: www.sabinsa.com

Contact: Todd Norton

**Antioxidant Products:** Curcumin C3 Complex; Selenium SeLECT; Zealutein; alpha lipoic acid; Methyselene; green tea; rosemary extract; n-acetyl-cysteine

### Soft Gel Technologies, Inc. (SGTI)

Telephone: 800-360-SGTI (7484)

Fax: 323-726-7065

E-mail: dianeh@soft-gel.com

Website: www.soft-gel.com

Contact: Diane Hembree

**Antioxidant Products:** CoQsol patented, clinically studied, all natural, enhanced absorption, soft gel formulation of CoQ10; Wasabisol real wasabi in a unique soft gel formulation for enhanced detoxification and immune function; Carnisol, Lonza's CarniPure L-Carnitine L-Tartrate in an exclusive soft gel delivery system; Carnisol-Q10, Lonza's CarniPure L-Carnitine L-Tartrate and CoQ10 in an exclusive soft gel delivery system

### Solbar Plant Extracts

Telephone: 972-8-8632111

Fax: 972-8-8561455

E-mail: spe@solbar.com

Website: www.solbar.com

Contact: Karima Bedrack

**Antioxidant Products:** Solgen 3/S, Solgen 10, Solgen 10/S, Solgen 40, Solgen 40/S, Solgen SR, Solgen C, Nutragen 3/10, Nutragen 10

### Synergy Production Laboratories

Telephone: 435-259-4787

Fax: 435-259-4919

E-mail: slatthey@synergy-co.com

Website: www.synergyproduction.com

Contact: Steven Lattey

**Antioxidant Products:** Synergized Berry Powder, a full spectrum, proprietary pow-

dered blend of organic and wild fresh freeze dried whole and juiced berries and fruits; Synergized Wolfberries (goji berries); Synergized Apple Powder (including peel); Synergized Acerola Extract Powder, standardized to a minimum 25% naturally occurring vitamin C; Synergized Camu Camu Extract Powder, standardized to a minimum 20% naturally occurring vitamin C; Synergized Sprout Powders, standardized cruciferous sprout powders of broccoli, cabbage, kale, cauliflower; Synergized Tomato Juice Powder, water soluble; Synergized Beet Juice Powder, freeze dried and water soluble; Synergized Carrot Juice Powder, freeze dried and water soluble; Synergized Active 15+ Manuka Honey Powder, freeze dried and water soluble; All above mentioned products are certified organic and Kosher, with the exception of camu camu, which is certified wild

### Taiyo

Telephone: 763-398-3003

Fax: 763-398-3007

E-mail: billd@taiyoint.com

Website: www.taiyointernational.com

Contact: Bill Driessen

**Antioxidant Products:** Sunphenon green tea catechins

### WILD Flavors

Telephone: 859-342-3573

Fax: 859-342-3688

E-mail: ghorn@wildflavors.com

Website: www.wildflavors.com

Contact: Greg Horn

**Antioxidant Products:** Water soluble CoQ10; water soluble vitamin E; de-flavored green tea polyphenols; white tea polyphenols; chlorogenic acid (green coffee extract); water soluble lutein esters; water soluble lycopene; vitamin A and E water soluble emulsion; high anthocyanin juice extracts; apple polyphenols

### The Wright Group

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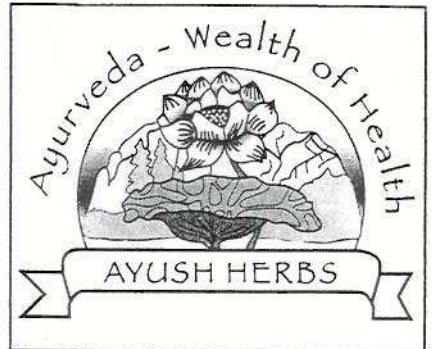
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Website: www.thewrightgroup.net

Contact: Joel McSpadden

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## BRANDING UPDATE

prevents wasted inefficient effort, and allows the various partners to focus on the customers they can influence most effectively," said Mr. Israel. "Assuring message discipline is perhaps the most important benefit of co-branding because it can help create a consistent product message throughout the supply chain."

Most branded ingredient companies have strict formulation guidelines for manufacturers to ensure efficacy. From the consumer's standpoint, they can feel confident that the product they are purchasing contains the proper ingredient dosage, and that the structure/function language on the label is accurate.

### Making the Co-branding Commitment

Co-branding is not new. However, over the past few years, it has certainly grown in importance to nutraceutical companies that want to develop and maintain sales. Co-branding is also not cheap. Indeed, annual marketing budgets of a \$500,000 to \$2 million are not uncommon.

As is the case with all branding, how quickly you become a recognized brand can most often be measured by the rate at which you can get targeted media exposure. So the smaller the budget, the longer it takes to build a brand.

Success comes to companies that never waiver in marketing support, especially those that continue to support the brand even after it appears the brand has sufficient sales momentum. Remember, just as consumers and health professionals become aware of your product, another up-and-coming star will appear on the horizon every few months. If you let your branding campaign slide, or limit its layers, you might as well put out the welcome mat for your competition.

By the time a co-branded nutraceutical product hits store shelves these days, chances are excellent that people have heard about its proprietary ingredient from a variety of reliable sources, including doctors or even medical reporters on the evening news.

An effective co-branding marketing campaign should focus on five key areas:

- Targeted special interest media such as *Prevention Magazine* and *Vegetarian Times*. This is your core audience because they tend to understand the value of blending traditional and homeopathic medicine.
- Consumer health and medical media. The public has come to trust the medical doctors and reporters on TV who write columns in regional or national publications.
- Tradeshow and ads reaching medical and healthcare professionals. This target is key because they represent a primary source of information among consumers. Your branding campaign should focus on the research supporting the product, specifically safety, efficacy and the brand's ability to support or supplement traditional prescription drugs.
- Specialized health conferences and seminars. Reach out to the ultimate experts. If the branded ingredient or finished product targets hypertension, for example, its research might ideally be presented at the American Heart Association Annual Conference.
- Retail and Point of Sale Displays. The importance of this layer cannot be emphasized enough. Branding campaigns should seek to educate retailers about ingredient differences. Point of sale materials should clearly differentiate brands at a glance. Don't leave any communications avenue to chance because it is far too easy for misinformation to spread by word of mouth.

*About the author: Mike Danielson joined Media Relations, Inc., Minneapolis, MN, in 1988, and has been a driving force behind the launch and growth of the agency's Health & Medical Division. In addition to helping clients build brands from the ground level and develop effective marketing campaigns, Mr. Danielson has also brokered book deals, negotiated celebrity endorsements, coordinated media and speaking tours, managed large direct response programs, and worked on campaigns involving some of the nation's largest retailers. He can be reached at miked@mediarelations.com.*



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## HERBS & BOTANICALS

super fruits," said Alex Moffet, president and CEO of Renaissance Herbs, Chatsworth, CA. "In fact, there have recently been some exciting product and clinical research developments related to mangosteen, goji berry and pomegranate."

Steve Siegel, vice president, Ecuadorian Rainforest, Belleville, NJ, also believes in connecting the herbs/botanicals market with the growing popularity of fruits and vegetables. He claims consumers are turning to herbs and botanicals with more frequency because they want to get their vitamins and nutrients from whole food sources rather than heavily processed foods. "Even some multivitamins, which previously consisted of only common botanical additives," he added.

UNPA's Mr. Israelsen believes consumers are headed back to more traditional roots, presenting many opportunities for product development. "I think the adoption of a lifestyle approach to health is really good news for the herbs and botanicals category," he said. "Consumers are waking up again to the beauty of plants in every aspect of their lives, whether it is in their kitchen while cooking a meal, working in the garden or using beautiful essential oils in a bath. Getting back to a traditional appreciation of these things will only help boost the image and value of herbs and botanicals."

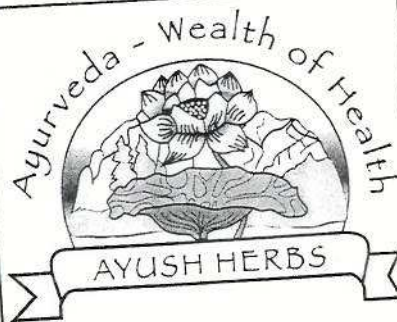
There is another opportunity that seems to be gaining some momentum among herb enthusiasts and that is a new regulatory category currently being explored by several companies. This new category is called Botanical Drugs, which allows companies to rely heavily on history or traditional use in order to, more or less, skip the pre-clinical step and head right into clinical trials for a particular composition. The "Botanical Drug Guidance" issued by FDA in June 2004 made it possible to bring to market a complex mixture for which adequate safety and efficacy evidence had been established. Those companies successfully making it through the process would then be awarded a certain period of exclusivity. But navigating this new

regulatory scheme has not been easy for companies, and only one product has actually received approval and been allowed to go to market.

Mr. Blumenthal believes the botanical drug route is a potential direction for pharmaceutical and herb companies that have significant capitalization and a pharmaceutically oriented corporate culture. The problem, as Mr. Blumenthal sees it, is that the regulation has created an easier and more attractive way for companies to get in but there is no guarantee they will ever make it through the process. (For more information on Botanical Drugs, see this issue's feature on the subject by turning to page 78.)

Other opportunities avail themselves in the functional food market, according to Paul Dijkstra, executive vice president, InterHealth Nutraceuticals, Inc., Benecia, CA, who sees an increased number of consumers who prefer to obtain the benefits of herbs and botanicals via foods and beverages when and where possible. "This trend has created new opportunities for manufacturers to develop alternative forms of delivery that are more appealing to consumers which, in turn, increase compliance, results and repeat purchases," he said. "Companies can leverage consumers' increasing knowledge, familiarity and interest in these options. As consumers become more knowledgeable and sophisticated in this arena, they will expect to see branded ingredients with research supporting the products' claims."

Julie Hirsch, director, Product Development, Wellgen, New Brunswick, NJ, touched on functional foods and botanical drugs. "The growth of functional foods and the role that herbs and botanicals play will require a higher level of sophistication from ingredient suppliers with regard to efficacy and quality. Because 'new' drives the category, new TCM (traditional Chinese medicine) and Ayurvedic herbs/botanicals will continue to surface," she said. "However, we predict that old will become new again. R&D from companies like ours and the new botanical drug companies that are springing are beginning to develop a deeper understanding why very familiar plants have their effects.



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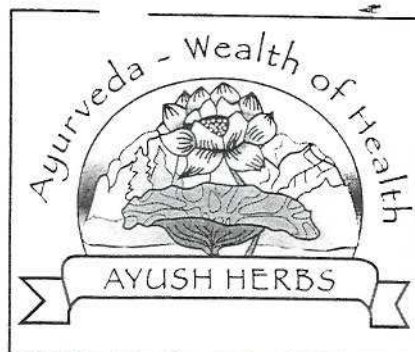
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## ENERGY BOOSTERS

"This raises many questions about the purity of ginseng root products and how to ensure that ginseng extracts meet safety standards." Using a proprietary process, Naturex tests to make sure that its ginseng root products are not contaminated with procymidone and quintozone or their metabolites and related impurities, including HCB (hexachlorobenzene), PCB (pentachlorobenzene), TCA (tetrachloroaniline), PCA (pentachloroaniline), a-BHC (benzene hexachlororide), R-BHC,  $\gamma$ -BHC (lindane) and b-BHC residues.

Also popular on the energy front, according to Rodger Jonas, national business development manager, PL Thomas, Morristown, NJ, are rhodiola rosea and antioxidants. "Rhodiola rosea has been shown to increase brain energy and accelerate the recovery processes after workouts. It also stimulates muscle energy status, glycogen synthesis in muscles and liver and anabolic activity," he said. "And antioxidants, like green tea extract, grape seed extract and lycopene, provide a scientifically applied way of obtaining energy by helping to prevent damage of free radicals in the body."

### Stricter Standards?

A relatively unenforced regulatory environment has finally caught up with the energy market. Recently, certain groups have asked for a crackdown on claims made by energy product manufacturers.

"There is a non-profit consumer group called Center for Science in the Public Interest (CSPI) (Washington, D.C.) that has been aggressively lobbying the FDA to enforce stricter standards for functional foods," said Nutratech's Ms. Thomas. "Much of its focus seems to be on energy drinks. CSPI states that some alcohol drinkers rely on energy drinks to 'sober them up' after imbibing and thus may falsely assume they are not too impaired to drive. Other young drinkers are mixing the drinks with alcohol for a 'better buzz.' The FDA doesn't seem to be listening to CSPI at present, but if adverse event reports start filtering in, some of these drinks may come under greater scrutiny."

Sigma Tau's Dr. Hassen believes it only takes one irresponsible member to make

things difficult for everybody else. He said while DSHEA (the Dietary Supplement Health & Education Act) was a very good attempt to fulfill a need in the industry, there is too much uncertainty of what is allowed and what isn't. "And too much leeway allows for certain people to make a quick dollar and escape," he said. "This kind of activity injures us all."

Mr. Phillips from BI Nutraceuticals agreed. "At the moment the regulations are not that great. Beverage manufacturers are releasing most of these products, and they generally develop a formula, market it and sell it," he said. "There has been some talk that the regulatory agencies may put certain restrictions on caffeine intake, however, nothing has been passed to date."

### A Stimulating Outlook

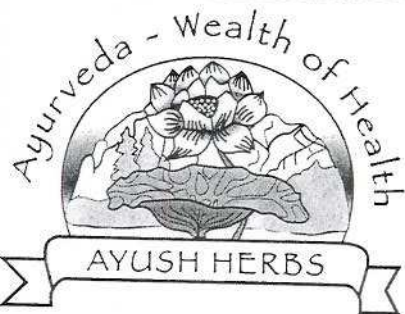
Despite recent controversy, the desire for energy-enhancing products will remain strong in the future. As quick fix products lessen in demand, sustainable energy products will rise to the top. "The major trend will be to move from caffeine-laden energy products to more natural products," said Mr. Jonas of PL Thomas.

Ms. Vickery also feels consumers will start demanding healthier energy options. "Energy beverages will continue to be hot and very popular," she said. "But you are going to start seeing more healthy functional food applications for energy products that are low in caffeine and calories."

An educated population will increase the interest in botanicals, according to Naturex's Mr. Dauby. "The distributors will have to communicate more about the targeted benefits, the active compounds content and the proven efficacy," he said. "This will be accompanied by an increase in the level of active compounds and the development of blends of several botanicals in order to satisfy customer expectations."

BI Nutraceuticals' Mr. Phillips claims energy will be a dominant category as long as consumers continue to eat poorly, don't get enough sleep or exercise regularly. "I anticipate the category to grow at double-digit rates over the next couple of years," he said. "Consumers continue to demand more products."

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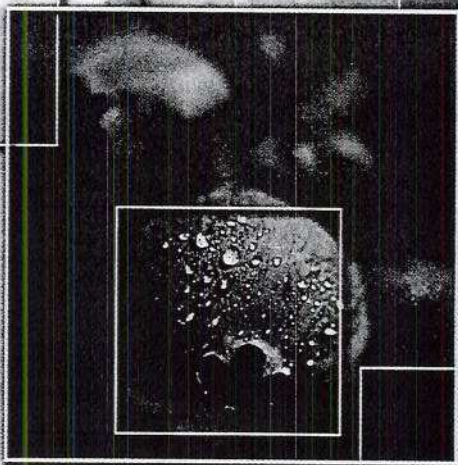
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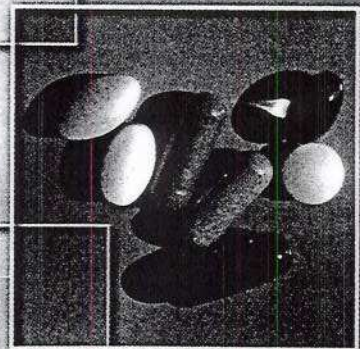
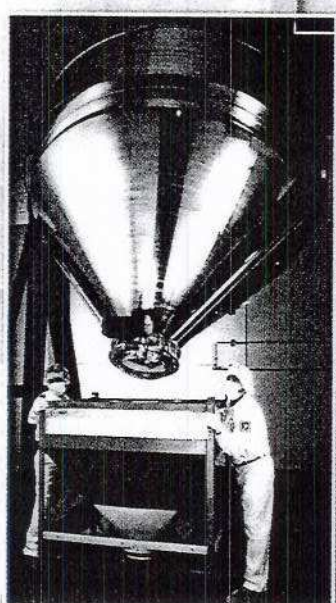
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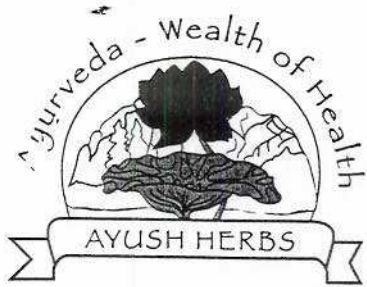
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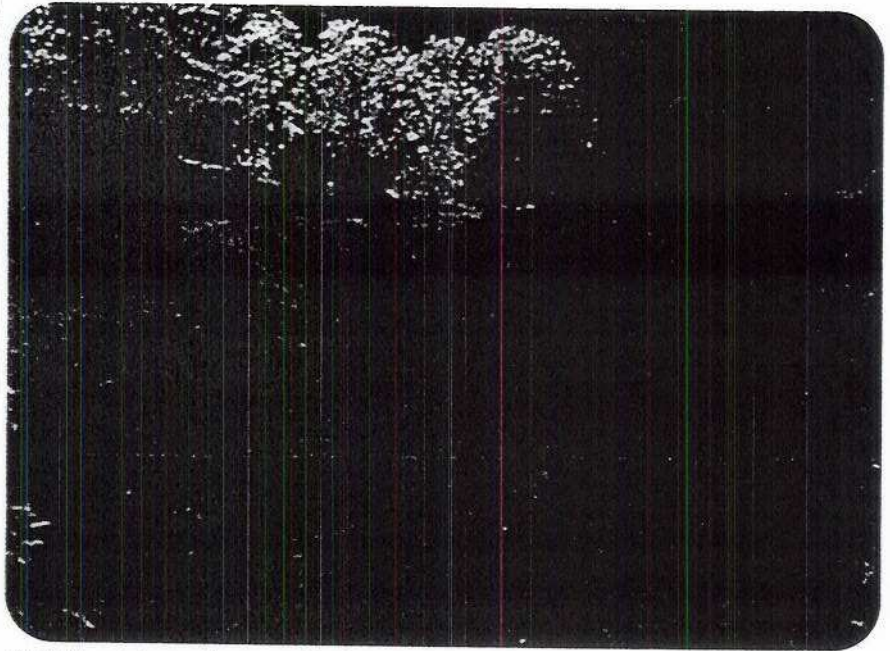
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## INGREDIENTS TO WATCH



Stella Laboratories gets its green coffee bean extract from European sources. Photo courtesy of Stella Laboratories.

### HEALTHY HELP: ANTIOXIDANTS AND IMMUNE HEALTH INGREDIENTS

Tea isn't the only "green" beverage that lays claim to the power of antioxidants. Stella Laboratories (Paramus, NJ) launched a new green coffee bean extract last November at SupplySide West in Las Vegas that boasts twice the antioxidant strength of green tea.

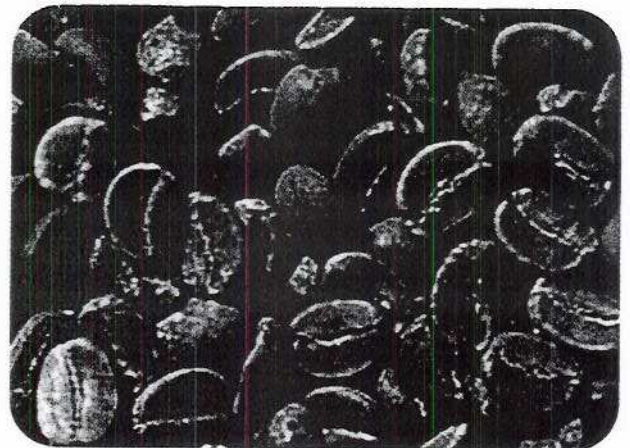
"Green coffee bean extract previously has been available here and there, but there wasn't a sufficient supply," says Deborah Vickery, director of marketing at Stella Laboratories, adding that the company has a sufficient supply out of Europe to fulfill customer needs without running into problems.

The green coffee bean extract is standardized to the marker compound chlorogenic acid, which is believed to be the main source of its antioxidant properties and may also alter patterns of glucose uptake. Another constituent of the extract, caffeic acid, helps to provide an energy boost.

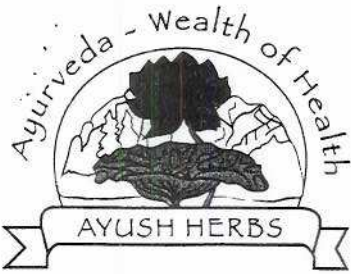
Also new on the antioxidant scene is

Xanthosteen 3510, a standardized mangosteen (*Garcinia mangostana*) extract from Martin Bauer North America (Torrance, CA). The extract is harvested from the peel of mangosteen, an antioxidant-rich Southeast Asian fruit that is taken to support the immune system, supply energy, and improve stamina.

"There is a substantial body of scientific evidence surrounding the health benefits of mangosteen, yet it remains relatively unknown throughout the United States," says Stefan Wypyszyk, vice president of marketing for Martin Bauer North America.



Stella's green coffee bean extract is standardized to the marker compound chlorogenic acid. Photo courtesy of Stella Laboratories.



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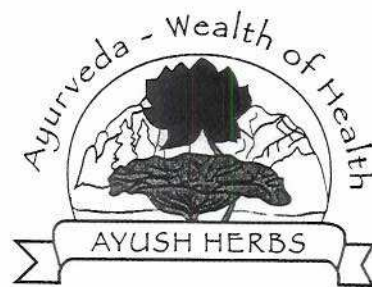
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### Key Personnel

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Virender Sodhi, CEO  
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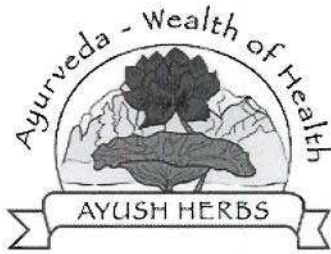
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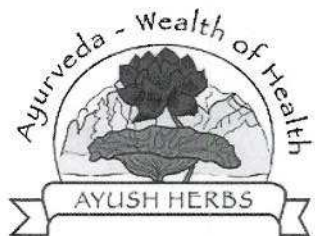
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AYUSH  
HERBS  
INC.

800-925-1371

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Healthy Recipes Wellness Library

Monday, July 13, 2009

Search Site  
Entire Site



Product Finder

UPC/Product Name

Choose Brand

Choose Category

Departments

- Home
- Products A to Z
- Buy Online
- Articles
- Resource Links
- Raw Materials
- Veterinary Care
- Ayurvedic Clinic
- RU VED
- Wellness Library
- News & Features
- Health Calculators
- Health Assessments
- CAM Links
- Healthy Recipes
- Ingredient Glossary

Category Brand Shop by A..Z History

2 found: All Categories > Professional Health Products > Herbal Products

Page: 1

Results per page: 25

PRODUCT	SIZE	SALE	REG	ADD TO CART
Ayush Herbs Ashwagandha 60c			\$19.00	<input type="button" value="ADD TO CART"/>
Ayush Herbs Curcumin 97 90c			\$25.00	<input type="button" value="ADD TO CART"/>

Page: 1

Results per page: 25



Order Information

- [Help](#)
- [Order Shipping](#)
- [Sales Tax](#)
- [Order Payment](#)
- [Return](#)

- 
- 
- 
- 
- 
- 

Ordering Information and Policies  
[Click Here](#)

Shopping Cart

Qty: Item(s): Ea.

No items in your Cart

Sub Total: \$0.00

Your cart is empty.

What's Cooking?

Green Bean Pate

Fill celery sticks with pate and garnish with red pepper strips and a ca...

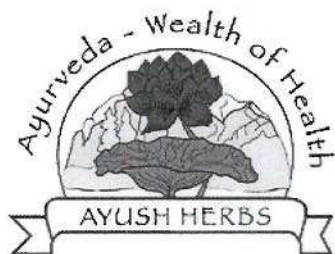
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800-925-1371  
425-637-1400  
425-451-2670 (fax)

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Monday, July 13, 2009

**Product Finder**

UPC/Product Name

Choose Brand

Choose Category

**Shopping Cart**

Qty: Item(s):  Ea.

No items in your Cart

Sub Total: \$0.00

Your cart is empty.

**What's Cooking?**

**Lentil Burgers**

Make a double batch and freeze after cooking. Will keep up to 6 months ...

**Visit our Store**

**OPEN**

2239 152nd Ave. NE  
Redmond, WA 98052  
800-925-1371  
425-637-1400  
425-451-2670 (fax)

Email our Store

Driving Directions

Category Brand Shop by A..Z History

4 found: All Categories > Professional Health Products > Skin Products

Page: 1 Results per page: 25

PRODUCT	SIZE	SALE	REG	ADD TO CART
<b>Ayush Herbs</b> Ayush Face Pack 4oz			\$15.90	<input type="button" value="ADD"/>
<b>Ayush Herbs</b> Neem Oil 8oz			\$25.50	<input type="button" value="ADD"/>
<b>Ayush Herbs</b> Neem Plus 90c			\$29.70	<input type="button" value="ADD"/>
<b>Ayush Herbs</b> Neem-Col 3oz			\$27.50	<input type="button" value="ADD"/>

Page: 1 Results per page: 25



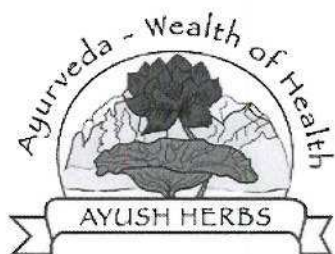
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BUY ONLINE

Monday, July 13, 2009

Product Finder

UPC/Product Name

Choose Brand

Choose Category

SEARCH

Continue Shopping

Product Profile

All Categories > Professional Health Products > Multi-Vitamins/Mineral



Larger View

Ayush Herbs

Multi Vitamin/Ayush 90c

Barcode: 40077110601

SKU: AY0088

Reg. Price: \$33.00

Quantity:

1

Add to Cart

Multi Vitamin/Ayush 90c is available by Ayush Herbs.

Multivitamin Dietary Supplement. Each nutrient undergoes a process of individual micro-coating that prevents oxidation and provides a time release action of the nutrients in the body.

E-mail a Friend

Ingredients:

Serving Size: 2 capsules
Servings Per Container: 45

- Vitamin A ...21, 400 IU (47% [10, 000 IU] as palmitate 53% [11, 400 IU] as beta carotene)
Vitamin D ...800 IU (as cholecaliferol)
Vitamin E ...40 IU (as d-alpha tocopheryl acetate)
Mixed Tocopheryl 40 IU
Vitamin K ...960mcg (as phytonadione)
Thiamin ...14mg (Vitamin B-1)
Riboflavin ...14mg (Vitamin B-2)
Niacin ...66mg (as niacinamide)

Shopping Cart

Qty: Item(s): Ea.
No items in your Cart
Sub Total: \$0.00
Your cart is empty.

What's Cooking?

Yogurt Cheese and Blue Cheese Dip
Use only 1/2 cup for the Blue cheese Topping and save the remainder to m...

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Redmond, WA 98052
800-925-1371
425-637-1400
425-451-2670 (fax)
Email our Store
Driving Directions

**Vitamin B6** ...72mg  
 (as pyridoxine)  
**Folic Acid** ...1600mcg  
**Vitamin B12** ...140mcg  
 (as hydroxycobalamine)  
**Biotin** ...4000mcg  
**Pantothenic Acid** ...270mg  
 (Vitamin B-5)  
**Iodine** ...200mcg  
 (as potassium iodide)  
**Zinc** (as malate) ...20mg  
**Selenium** (AAC) ...70mcg  
**Copper** (as citrate) ...2mg  
**Manganese** (as citrate) ...2mg  
**Chromium** ...100mcg  
 (as polynicotinate)  
**Molybdenum** ...400mcg  
 (as chelate)  
**Boron** ...2mg  
 (as aspartate)  
**L-Cysteine HCL** ...152mg

#### Dosage:

2 capsules a day, with meals or as directed by physician.

#### Recommendations:

Keep out of reach of children.

#### Contains:

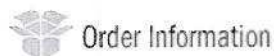
Rosemary Extract, Trikatu (long pepper, black pepper, ginger), Hesperidin, Hesperidin Methyl Chalcone, Naringin, Cellulose, Natural Oils in Vegetarian Capsules

#### Does Not Contain:

Milk, Soy, Egg, Wheat

#### Warnings:

Do not use if seal is broken.



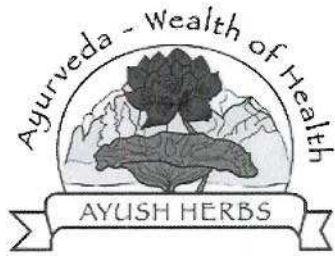
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Ordering Information and Policies Click Here



BUY ONLINE

Monday, July 13, 2009

Product Finder

UPC/Product Name

Choose Brand

Choose Category



Continue Shopping

Product Profile

All Categories > Professional Health Products > Skin Products



Larger View

Ayush Herbs

Ayush Face Pack 4oz

Barcode: 400771036053

SKU: AY0060

Reg. Price: \$15.90

Quantity:

1



Add to Cart

Ayush Face Pack 4oz is available by Ayush Herbs.

Ayush Face Pack is formulated especially for acne prone skin. The face pack works to dry up blemishes and acne while providing a cooling sensation that leaves your skin smooth and soft.

E-mail a Friend

Ingredients:

Neem, manjishta, tumeric powder, indian glacial clay, rose powder, mentha piperita, sandal wood powder

Supplement Facts:

DOSAGE: Take one (1) teaspoon of powder and add 3 tablespoons of water to make thin paste. Apply paste on face (preferably with brush) and let it dry for 20 to 30 minutes. Rinse with warm water. Apply twice a week or as needed.

Recommendations:

Keep out of reach of children.

For External use only.

Shopping Cart

Qty: Item(s): Ea.

No items in your Cart

Sub Total: \$0.00

Your cart is empty.

What's Cooking?

Hi Pro Pudding

A great way to boost your protein intake..

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**Warnings:**

May cause tearing from eyes. Do not apply too close to eyes.

In case of allergic reaction, stop using this product and contact your physician.



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# **REPLY EXHIBIT 3**



Enter Web Address:  All  Adv. Search Compare Archive Pages

Searched for <http://ayush.com>

144 Results

Note some duplicates are not shown. See all.  
\* denotes when site was updated.  
Material typically becomes available here 6 months after collection. See FAQ.

Search Results for Jan 01, 1996 - Jan 14, 2009

1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
0 pages	0 pages	2 pages	7 pages	15 pages	13 pages	14 pages	19 pages	21 pages	13 pages	21 pages	10 pages	2 pages
	May 07, 1998 Dec 12, 1998	* Feb 08, 1999 Feb 20, 1999 Feb 21, 1999 Feb 22, 1999 Apr 30, 1999 May 03, 1999 Oct 12, 1999	* Mar 03, 2000 May 10, 2000 May 19, 2000 May 20, 2000 May 28, 2000 Jul 06, 2000 Jul 11, 2000 Aug 17, 2000 Oct 17, 2000 Oct 18, 2000 Oct 31, 2000 Nov 01, 2000 Nov 02, 2000 Dec 02, 2000 Dec 18, 2000	Feb 01, 2001 Feb 02, 2001 Mar 09, 2001 Mar 31, 2001 Apr 01, 2001 Apr 05, 2001 Apr 08, 2001 Jul 11, 2000 May 16, 2001 Jun 06, 2001 Jul 21, 2001 Aug 12, 2001 Sep 23, 2001 Nov 28, 2001	Feb 01, 2001 Feb 02, 2001 Mar 09, 2001 Mar 31, 2001 Apr 01, 2001 Apr 05, 2001 Apr 08, 2001 Jul 11, 2000 May 16, 2001 Jun 06, 2001 Jul 21, 2001 Aug 12, 2001 Sep 23, 2001 Nov 28, 2001	Mar 29, 2002 Mar 31, 2002 May 28, 2002 Jul 23, 2002 Jul 27, 2002 Aug 02, 2002 Aug 06, 2002 Sep 21, 2002 Sep 24, 2002 Sep 26, 2002 Nov 24, 2002 Nov 26, 2002 Nov 28, 2002 Dec 01, 2002	Feb 04, 2003 Feb 16, 2003 Feb 20, 2003 Mar 21, 2003 Mar 22, 2003 Apr 08, 2003 Apr 09, 2003 Apr 26, 2003 May 24, 2003 May 31, 2003 Jun 19, 2003 Jul 21, 2003 Jul 29, 2003 Aug 05, 2003 Sep 20, 2003 Oct 03, 2003 Nov 28, 2003 Dec 01, 2003 Dec 29, 2003	Jan 02, 2004 Apr 04, 2004 Apr 07, 2004 May 12, 2004 May 18, 2004 Jun 04, 2004 Jun 05, 2004 Jun 07, 2004 Jun 10, 2004 Jun 11, 2004 Jun 12, 2004 Jun 15, 2004 Jul 22, 2004 Jul 25, 2004 Jul 28, 2004 Aug 29, 2004 Sep 23, 2004 Sep 24, 2004 Oct 22, 2004 Nov 27, 2004 Dec 06, 2004	Jan 12, 2005 Jan 31, 2005 Feb 07, 2005 Mar 03, 2005 Mar 05, 2005 Mar 17, 2005 Apr 03, 2005 May 12, 2005 May 31, 2005 Jul 28, 2005 Nov 04, 2005 Dec 04, 2005 Dec 12, 2005	Jan 05, 2006 Jan 05, 2006 Jan 14, 2006 Feb 04, 2006 Feb 08, 2006 Feb 12, 2006 Feb 15, 2006 Feb 20, 2006 Feb 25, 2006 Mar 14, 2006 Mar 19, 2006 Mar 31, 2006 Jun 13, 2006 Jun 23, 2006 Jun 29, 2006 Aug 06, 2006 Aug 13, 2006 Aug 24, 2006 Oct 04, 2006 Oct 17, 2006 Dec 05, 2006	* Feb 02, 2007 * Apr 06, 2007 * Apr 23, 2007 * May 24, 2007 * Jun 07, 2007 * Jun 24, 2007 * Jul 23, 2007 * Sep 11, 2007 * Oct 12, 2007 * Dec 12, 2007	Jan 06, 2008 Feb 06, 2008

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## WHOIS Search Results

### Your WHOIS Search Results



**ayush.com**

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Personalize your space on the Internet with a .ME domain.

### SEARCH AGAIN

Enter a search term:

e.g. networksolutions.com

Search by:

- Domain Name
- IP Address

Visit AboutUs.org for more information about AYUSH.COM AboutUs: AYUSH.COM

**Registrant:**  
Ayush Herbs, Inc.  
2115 112th Ave NE  
Bellevue, WA98004  
US

[Make this info private](#)

**Domain Name:** AYUSH.COM

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[Learn More](#)

**Administrative Contact :**

Sodhi, DrVirender  
webmaster@BLOSSOMINGWAY.COM  
2115 112TH AVE NE  
BELLEVUE, WA98004-2946  
US  
Phone: 206/637-1400

**Technical Contact :**

Hosting.com, Domain AdminTelecom, Inc  
domainsupport@wsmdomains.com  
PO Box 22789  
contact.abuse@hosting.com  
Louisville, KY40252  
US  
Phone: 800-455-1795  
Fax: 123 123 1234

**Record expires on** 22-Jul-2015

**Record created on** 23-Jul-1996

**Database last updated on** 06-Oct-2006

**Domain servers in listed order:**

[Manage DNS](#)

NS1.LIVINGNATURALLY.COM  
NS2.LIVINGNATURALLY.COM

[Show underlying registry data for this record](#)

**Current Registrar:** NETWORK SOLUTIONS, LLC.

**IP Address:** 1.1.1.1 (ARIN & RIPE IP search)

**IP Location:** (-)

**Record Type:** Domain Name

When you register a domain name, current policies require that the contact information for your domain name registration be included in a public database known as WHOIS. To learn about actions you can take to protect your WHOIS information visit [www.internetprivacyadvocate.org](http://www.internetprivacyadvocate.org).

**NOTICE AND TERMS OF USE:** You are not authorized to access or query our WHOIS database through the use of high-volume, automated, electronic processes or for the purpose or purposes of using the data in any manner that violates these terms of use. The Data in Network Solutions' WHOIS database is provided by Network Solutions for information purposes only, and to assist persons in obtaining information about or related to a domain name registration record. Network Solutions does not guarantee its accuracy. By submitting a WHOIS query, you agree to abide by the following terms of use: You agree that you may use this Data only for lawful purposes and that under no circumstances will you use this Data to: (1) allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via direct mail, e-mail, telephone, or

**Server Type:** IIS 5  
**Lock Status:** clientTransferProhibited  
**Web Site Status:** Active  
**DMOZ:** no listings  
**Y! Directory:** see listings  
**Secure:** No  
**E-commerce:** Yes  
**Traffic Ranking:** 1  
**Data as of:** 22-Apr-2008



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# **REPLY EXHIBIT 4**

# STATE of WASHINGTON



## SECRETARY of STATE

I, *SAM REED*, Secretary of State of the State of Washington and custodian of its seal,  
hereby issue this certificate that according to records on file in this office,  
trademark:

**AYUSH**

registered in the State of Washington to  
**AYUSH HERBS INC.**

names of partners: (if any) ,

state of incorporation: (if any) Washington and I further certify that such trademark  
with file # 25449 was renewed on August 1, 2002 and will expire on August 28, 2008.

I further certify that the classification number of the trademark is 31 and the  
actual goods or services with which the trademark is used are

ayurvedic herbal products

The date the trademark was first used anywhere is 9-1990 and the date the  
trademark was first used in Washington is 9-1-1990.

Date: August 5, 2002



*Given under my hand and the Seal of the State  
of Washington at Olympia, the State Capital*

dmn   
Sam Reed, Secretary of State

00057



# STATE of WASHINGTON



## SECRETARY of STATE

I, RALPH MUNRO, Secretary of State of the State of Washington and custodian of its seal,

hereby issue this certificate that according to records on file in this office,

trademark: AYUSH

registered in the State of Washington to

AYUSH HERBS, INCORPORATED  
2115 112TH AVE SE  
BELLEVUE WA 98004

names of partners: (if any) ,

state of incorporation: (if any) WASHINGTON and I further certify that such trademark with file # 25449 was issued on August 28, 1996 and will expire on August 28, 2002.

I further certify that the classification number of the trademark is 31 and the actual goods or services with which the trademark is used are

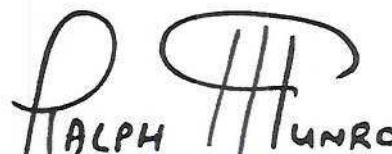
AYURVEDIC HERBAL PRODUCTS

The date the trademark was first used anywhere is SEPTEMBER 1990 and the date the trademark was first used in Washington is SEPTEMBER 1990.



Date: September 18, 1996

Given under my hand and the Seal of the State of Washington at Olympia, the State Capital

  
RALPH MUNRO

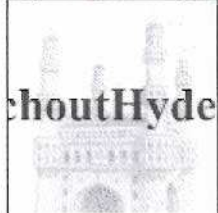
Ralph Munro, Secretary of State

D. PETERS

00056

# **REPLY EXHIBIT 5**

<a href="#">Home</a>	<a href="#">BizHyderabad</a>	<a href="#">Students Den</a>	<a href="#">ITHyderabad</a>	<a href="#">Movie Reviews</a>	<a href="#">Newsmakers</a>
----------------------	------------------------------	------------------------------	-----------------------------	-------------------------------	----------------------------



**ReachoutHyderabad.com**  
**Biz News**

### HLL launches 'Lever Ayush' Ayurvedic Health & Beauty Care Products

#### **Purity of ingredients endorsed by Arya Vaidya Pharmacy, Coimbatore Benefits proven through clinical testing**

**Hyderabad, August, 2002 :** Hindustan Lever Limited (HLL) announced the launch of its Health Care portfolio with Lever Ayush ayurvedic health and beauty care products. The purity of the ayurvedic ingredients in Lever Ayush is endorsed by the renowned Arya Vaidya Pharmacy (AVP) of Coimbatore. Lever Ayush products' benefits and safety have been proven through extensive testing at reputed hospitals of the country and research organisations. It is for the first time that rigorous testing procedures of the pharmaceutical industry have been applied to ayurvedic products. That is why the brand seal is 'Truth of Ayurveda; Proof of Science'.

These non-prescription over-the-counter products will be sold through retail and chemist outlets.

Under Lever Ayush, HLL will market personal care, and daily health care products. HLL will also set up centres for ayurvedic care services, called Lever Ayush Therapy Centre.

The Lever Ayush range, at present, includes five products:

- Cough Naashak Syrup, which starts showing effect in 30 minutes
- Headache Naashak Roll On, which provides significant relief within 15 minutes
- Hair Poshak Oil, which reduces hair fall within 3 weeks
- Dandruff Naashak Shampoo, which is proven to be 100% effective in two washes
- Body Rakshak Soap, which kills 99.9% of all 7 types of skin and scalp germs, and is India's first Ayurvedic Antiseptic Soap.

The first Lever Ayush Therapy Centre is set up in Chennai. The services will be provided under the guidance of experts from the Arya Vaidya Pharmacy, Coimbatore.

Lever Ayush products have been launched after one and a half years of rigorous R & D and extensive clinical testing. India's laws do not require clinical or laboratory proof of product performance, for ayurvedic products. However, HLL has adopted the principles and rigour of new drug and new formulation development as practiced by the pharmaceutical industry for prescription drugs, to develop and clinically evaluate its product range.

In developing Lever Ayush, HLL first tied up with the country's leading ayurvedic experts to identify and then select those Ayurvedic ingredients, which best delivered the desired effects. HLL's scientists, specialising in biology, toxicology and pharmaceutical R&D, then designed and developed the Lever Ayush formulations, in collaboration with external Ayurvedic experts. Comprehensive safety evaluation of the ingredients and products was conducted in accordance with international guidelines. The formulations were then evaluated in clinical trials, wherein the formulations were administered to people suffering from the specific problem, and the improvement in symptoms was independently assessed by qualified medical experts. HLL conducted these clinical trials through reputed hospitals and with well-known clinicians.

The Lever Ayush range therefore has the power of the best ingredients recommended in ayurveda,

selected and formulated with the knowledge of India 's best-known experts. The clinical trials add the internationally accepted proof of science that Lever Ayush products deliver the intended benefits.

Announcing the launch of Lever Ayush, HLL's Director New Ventures, Mr. Dalip Sehgal, said, HLL has a deep understanding of the needs of Indian consumers. Today's aware and health-conscious consumers need scientifically formulated and tested herbal health care products in personal care areas like skin and hair, and for relief from problems like cough & cold and aches and pains. Our rigorous R&D and subsequent clinical evaluation have proved that Lever Ayush delivers these benefits, combining our in-house expertise with the expertise and knowledge of India's best-known ayurvedic specialists. We have now launched five products, and will introduce more as we expand the business.

Dr.G.Gangadharan Vice President, Technical, of AVP Coimbatore, said, AVP Coimbatore, is India's best known name in Ayurvedic products. For the last 60 years, we have been developing ayurvedic formulations of the highest quality standards. We confidently endorse the ayurvedic purity of Lever Ayush, because we have seen the rigour with which HLL has developed the products. AVP and HLL can together meet the growing requirement of ayurvedic products and services.

HLL's Business Manager Health Care, Mr. Vipul Chawla, said, "Through Lever Ayush we have entered the fast growing health care market in India, by delivering functional / therapeutic benefits in everyday healthcare products. This Rs.2000-crore market is growing at a rate of 15 to 17%, and almost 50% faster than similar non-herbal products. Lever Ayush offers high functionality, but its pricing is affordable. The three legs of the business -- products with proof of performance, services focused on experience of authentic ayurvedic practice, and authority through AVP -- should drive Lever Ayush to be a growth contributor to the company in the coming years. Starting with Tamil Nadu, we will expand across the country in phases."

HLL is India's largest company in Home & personal Care, and Foods & Beverages. It markets such household names like Hamam, Lifebuoy, Lux soaps, Pepsodent toothpaste, Clinic shampoo, Fair & Lovely cream, Nihar coconut oil, 3 Roses Tea, Bru Coffee and Annapurna Atta & Salt.

-August '2002  
Reachout's News Bureau

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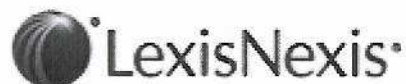
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# **REPLY EXHIBIT 6**



1 of 1 DOCUMENT

In re Bio Genesis USA, Inc.

Serial No. 75/513,763

Trademark Trial and Appeal Board

*2000 TTAB LEXIS 795*

October 19, 2000, Decided

**DISPOSITION:**

[\*1]

Decision: The refusal to register is affirmed.

**COUNSEL:**

Katherine G. Schmidt and Donald L. Dennison of Dennison, Meserole, Scheiner & Schultz for applicant.

Darlene D. Bullock, Trademark Examining Attorney, Law Office 111 (Craig Taylor, Managing Attorney).

**JUDGES:**

Before Quinn, Walters and Holtzman, Administrative Trademark Judges.

**OPINION BY: QUINN**

**OPINION:**

**THIS DISPOSITION IS NOT CITABLE AS PRECEDENT OF THE T.T.A.B.**

Opinion by Quinn, Administrative Trademark Judge:

An application has been filed by Bio Genesis USA, Inc. to register the mark BIO GENETIQUES for "health spas featuring wellness services, namely, nutrition plan counseling and weigh-ins, weight reduction diet planning and supervision, massage and sauna." n1

n1 Application Serial No. 75/513,763, filed July 6, 1998, alleging a date of first use anywhere of March 1996, and a date of first use in commerce of October 23, 1996.

Registration has been refused by the Trademark Examining Attorney under Section 2(d) of the Trademark Act on the ground that applicant's mark, when used in connection with applicant's services, so resembles the previously registered mark BIO GENETIC HEALTH GROUP ("HEALTH GROUP" disclaimed) for [\*2] "nutritional supplements and vitamins" n2 as to be likely to cause confusion.

n2 Registration No. 2,128,648, issued January 13, 1998.

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney have filed briefs. Applicant filed a request for an oral hearing, but later withdrew the request.

Applicant states that its mark comprises a French term which is translated into English as "biogenetics." Applicant goes on to point to a dictionary which defines "biogenetic" as "relating to or produced by biogenesis," which term is defined as "the development of life from preexisting life." n3 Applicant goes on to contend that registrant's mark is merely descriptive and, therefore, essentially that it is entitled to a narrow scope of protection. Applicant also relies on the differences between the involved goods and services, contending that its services are provided exclusively through its spa outlet whereas nutritional supplements and vitamins are customarily sold in health food, vitamin, drug and grocery stores. Applicant also asserts that consumers of applicant's services and registrant's goods may be expected "to exercise special care" in choosing and [\*3] purchasing such services and goods.

n3 While applicant failed to cite the relevant dictionary or submit a copy of the listing therein, the definitions comport with ones found by the Board in *Webster's Third New International Dictionary* (1993), evidence of which we may take judicial notice.

The Examining Attorney maintains that applicant's mark is the foreign equivalent of the dominant portion of the cited mark. The Examining Attorney also states that supplements are often used in weight reduction programs, a fact shown by the specimens of record. In connection with her contention that the good and services are related, the Examining Attorney submitted third-party registrations showing that goods and services of the types involved herein are marketed by a single entity under a single mark.

Our determination under Section 2(d) is based on an analysis of all of the facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities [\*4] between the goods. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

We first turn to consider the marks. Although we stress that we have considered the marks in their entireties, including the disclaimed portion, "there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided [that] the ultimate conclusion rests on consideration of the marks in their entireties." *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). For example, "that a particular feature is descriptive or generic with respect to the involved goods or services is one commonly accepted rationale for giving less weight to a portion of a mark. . ." *Id.* at 751. In this connection, "BIO GENETIC" is clearly the dominant part of registrant's mark, with the disclaimed terms "HEALTH GROUP" being relegated to a subordinate role because they have no source-identifying function. The term "BIO GENETIC" alone would likely be used in calling for registrant's goods. Applicant readily recognizes that the French term "biogenetique" is translated into English [\*5] as "biogenetic" and that, therefore, the terms are foreign equivalents. See, e.g.: *In re Hub Distributing, Inc.*, 218 USPQ 284 (TTAB 1983). As such, applicant's mark is identical in meaning to the dominant portion of registrant's mark. Further, unlike some situations with foreign and English equivalent words, applicant's mark BIOGENETIQUES, although a French term, sounds similar to "biogenetics" and the terms look alike. Even consumers not familiar with the French language likely would readily translate applicant's mark into "biogenetics". With respect to appearance, we especially note that both marks employ a separate "BIO" portion as opposed to the normal presentation "biogenetic" as a unitary word. We view this similar construction as enhancing the likelihood of confusion, given the normal fallibility of human memory over time and the fact that consumers retain a general rather than a specific impression of trademarks/service marks encountered in the marketplace. In sum, the similarities between the marks BIO GENETIQUES and BIO GENETIC HEALTH GROUP, when considered in their entireties, outweigh the dissimilarities.

Also with respect to the marks, we note that the record [\*6] is devoid of evidence of any third-party uses or registrations of the same or similar marks in the fields of weight reduction, supplements and vitamins. And, although the marks may be viewed as somewhat suggestive given the meaning of "biogenetic", the same suggestion is conveyed by the marks. n4

n4 Contrary to applicant's arguments, we do not view registrant's mark as merely descriptive. The mark registered on the Principal Register and is an inherently distinctive mark.

We next turn to compare applicant's nutrition plan counseling and weigh-ins, weight reduction diet planning and supervision services with registrant's nutritional supplements and vitamins. With respect to the goods and services, it is not necessary that they be similar or competitive, or even that they move in the same channels of trade to support a holding of likelihood of confusion. It is sufficient that the respective goods and/or services are related in some manner, and/or that the conditions and activities surrounding the marketing of the goods and/or services are such that they would or could be encountered by the same person under circumstances that could, because of the similarity of the marks, give [\*7] rise to the mistaken belief that they originate from the same producer. *In re International Telephone & Telegraph Corp.*, 197 USPQ 910, 911 (TTAB 1978). In the present case, we find the goods and services to be sufficiently related that, when marketed under similar marks, consumers are likely to be confused. As identified, registrant's goods are presumed to encompass all types of nutritional supplements and vitamins, including those that may be used in weight loss programs. Applicant's services and registrant's goods also are presumed to be purchased by the same classes of purchasers, that is, ordinary consumers. See: *Octocom Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1990); and *Canadian Imperial Bank of Commerce, N. A. v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987). There is no evidence to suggest that these consumers would be expected, in applicant's words, "to exercise special care" in purchasing the goods and services.

In finding that applicant's nutrition plan counseling and weight reduction diet planning and supervision services are related to registrant's nutritional supplements [\*8] and vitamins, we have considered the five third-party registrations which the Examining Attorney has submitted. The registrations show marks which are registered for both types of goods and services as those involved here. Although these registrations are not evidence that the marks shown therein are in use or that the public is familiar with them, they nevertheless have probative value to the extent that they serve to suggest that the goods and services listed therein are of a kind which may emanate from a single source. See, e.g., *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TAB 1993); and *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467, 1470 at n. 6 (TTAB 1988). Indeed, this view is buttressed by applicant's informational brochures which were submitted as specimens. The brochures highlight applicant's weight loss program and read, in pertinent part, as follows: "Bio Genetiques has combined this 'state of the art' [medical diagnostic] equipment with the amazing thermogenic **supplements** for the first time in a clinical setting . . . You can enjoy your life-style and still dine out with the help of **supplements** to curb your appetite, [\*9] increase your energy and raise the level of calorie burning." [emphasis added]

Lastly, to the extent that any of the points argued by applicant cast doubt on our ultimate conclusion on the issue of likelihood of confusion, we resolve that doubt, as we must, in favor of the prior registrant. *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988); and *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984).

We conclude that consumers familiar with registrant's nutritional supplements and vitamins sold under its mark BIO GENETIC HEALTH GROUP would be likely to believe, upon encountering applicant's mark BIO GENETIQUES for nutrition plan counseling and weigh-ins, and weight reduction diet planning and supervision services, that the goods and services originated with or are somehow associated with or sponsored by the same entity.

T. J. Quinn

C. E. Walters



T. E. Holtzman

Administrative Trademark Judges, Trademark Trial and Appeal Board

**Legal Topics:**

For related research and practice materials, see the following legal topics:

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