



JS 44 Reverse (Rev. 12/96)

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44**

## Authority For Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b.) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States, are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a) Do not use this for within district transfers or multi district litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause.

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS-44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

**SUMMONS IN A CIVIL ACTION**

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

World Health Products

v.

ISI Brands, Inc. and  
Twin Laboratories, Inc.

CIVIL ACTION NO.

TO: (NAME AND ADDRESS OF  
DEFENDANT)

ISI Brands, Inc.  
3133 Orchard Vista Drive, SE  
Grand Rapids, MI 49546

**YOU ARE HEREBY SUMMONED** and required to serve upon

Plaintiff's Attorney (Name and Address)

Scott J. Fields, Esquire  
National IP Rights Center, LLC  
550 Township Line Road, Suite 400  
Blue Bell, PA 19422

an answer to the complaint which is herewith served upon you, within \_\_\_\_\_ days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Michael E. Kunz, Clerk of Court

Date:

(By) Deputy Clerk

**SUMMONS IN A CIVIL ACTION**

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

World Health Products

v.

ISI Brands, Inc. and  
Twin Laboratories, Inc.

CIVIL ACTION NO.

TO: (NAME AND ADDRESS OF  
DEFENDANT)

Twin Laboratories, Inc.  
150 Motor Parkway  
Hauppauge, NY 11788

**YOU ARE HEREBY SUMMONED** and required to serve upon

Plaintiff's Attorney (Name and Address)

Scott J. Fields, Esquire  
National IP Rights Center, LLC  
550 Township Line Road, Suite 400  
Blue Bell, PA 19422

an answer to the complaint which is herewith served upon you, within \_\_\_\_\_ days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Michael E. Kunz, Clerk of Court

Date:

(By) Deputy Clerk

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

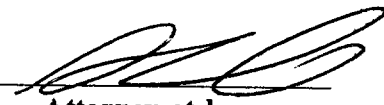
**CASE MANAGEMENT TRACK DESIGNATION FORM**

World Health Products	:	CIVIL ACTION
	:	
v.	:	
ISI Brands, Inc. and	:	
Twin Laboratories, Inc.	:	NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. §2241 through §2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks.

November 29, 2005		Plaintiff
_____	Attorney-at-law	_____
610-680-2301	610-680-2319	sfields@niprc.com
_____	_____	_____
<b>Telephone</b>	<b>FAX Number</b>	<b>E-Mail Address</b>

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 64 Sunnyside Avenue, Stamford, Connecticut 06902

Address of Defendant: 3133 Orchard Vista Drive, SE, Grand Rapids, Michigan 49546 and 150 Motor Parkway, Hauppauge, New York, 11788

Place of Accident, Incident or Transaction: Eastern District (Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock? (Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes [ ] No [x]

Does this case involve multidistrict litigation possibilities? Yes [ ] No [x]

RELATED CASE, IF ANY:

Case Number: Judge Date Terminated:

Civil cases are deemed related when yes is answered to any of the following questions:

- 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes [ ] No [ ]
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes [ ] No [ ]
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes [ ] No [ ]

CIVIL: (Place [x] in ONE CATEGORY ONLY)

A. Federal Question Cases:

- 1. [ ] Indemnity Contract, Marine Contract, and All Other Contracts
2. [ ] FELA
3. [ ] Jones Act-Personal Injury
4. [ ] Antitrust
5. [ ] Patent
6. [ ] Labor-Management Relations
7. [ ] Civil Rights
8. [ ] Habeas Corpus
9. [ ] Securities Act(s) Cases
10. [ ] Social Security Review Cases
11. [x] All other Federal Question Cases (Please specify)

B. Diversity Jurisdiction Cases:

- 1. [ ] Insurance Contract and Other Contracts
2. [ ] Airplane Personal Injury
3. [ ] Assault, Defamation
4. [ ] Marine Personal Injury
5. [ ] Motor Vehicle Personal Injury
6. [ ] Other Personal Injury (Please specify)
7. [ ] Products Liability
8. [ ] Products Liability — Asbestos
9. [ ] All other Diversity Cases (Please specify)

ARBITRATION CERTIFICATION

(Check appropriate Category)

I, Scott J. Fields, counsel of record do hereby certify:

- [ ] Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs,
[x] Relief other than monetary damages is sought.

DATE: 11/25/05

[Signature] Attorney-at-Law

47,519 Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 11/28/05

[Signature]

47,519

CIV. 609 (4/03)

Attorney-at-Law

Attorney I.D.#

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WORLD HEALTH PRODUCTS, LLC  
64 Sunnyside Ave.  
Stamford, CT 06902

Plaintiff,

v.

Civil Action No.

ISI BRANDS, INC.  
3133 Orchard Vista Drive, SE  
Grand Rapids, MI 49546

and

TWIN LABORATORIES, INC.  
150 Motor Parkway  
Hauppauge, NY 11788

Defendant.

COMPLAINT

This is an action for a Declaratory Judgment, under 28 U.S.C. §§ 2201 and 2202, of the non-infringement, invalidity, and unenforceability of the federally registered United States trademarks attached hereto as Exhibit "A", and for unfair competition at common law.

THE PARTIES

1. World Health Products, LLC (hereinafter "Plaintiff") is, and at all times hereinafter mentioned was, a Connecticut limited liability corporation with a principal place of business at 64 Sunnyside Avenue, Stamford, Connecticut 06902. Plaintiff sells nutritional supplements and vitamin products under a number of brands including the "German American Technologies" label. Plaintiff sells and markets nutritional

supplements under the trademark JETFUEL and has filed for a federal trademark registrant and JETFUEL for a nutritional and dietary supplement, which is pending as U.S. Serial No. 76/626,192. See Exhibit "B".

2. The Defendant, ISI Brands, Inc., ("ISI"), is, and at all times hereinafter mentioned was, a Michigan corporation with a principal place of business at 3133 Orchard Vista Drive, SE, Grand Rapids, MI 49546. Defendant purports to market and sell a number of nutritional products, including in this District and has charged Plaintiff with trademark infringement in this district.

3. The Defendant, Twin Laboratories, Inc., ("Twin Labs"), is, and at all times hereinafter mentioned was, a New York corporation with a principal place of business at 150 Motor Parkway, Hauppauge, NY 11788. Twin Lab, on information and belief is a related to market and sell nutritional supplements, including in this District, and has charged Plaintiff with trademark infringement in this district.

4. On information and belief, ISI and Twin Labs (collectively "Defendants") are related companies.

#### **JURISDICTION OF VENUE**

5. Jurisdiction in this case is based on the original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks in accordance with 28 U.S.C. §1338(a), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the doctrines of pendent and ancillary jurisdiction. Personal jurisdiction exists as the Defendants regularly do extensive business in this District involving the goods marked with the trademarks at issue. Plaintiff regularly does

business in this District. The letter charging Plaintiff with infringement was addressed to counsel in this district.

6. Venue in this case exists in this district under 28 U.S.C. §1391(b), based upon the regular and ongoing business activities of Plaintiff and Defendant involving the subject trademarks mark and the fact that Plaintiff was charged with infringement by Defendants in this District.

### **FACTS**

7. On November 18, 2005, Defendants' attorney, Holly Pakowsky, Esquire, gave written notice to Plaintiff, via letter addressed to Plaintiff's counsel in this District that Defendants were charging Plaintiff with infringement of a so called family of "FUEL" marks. Exhibit "C". As can be seen, counsel's letter included the list of alleged family marks attached as Exhibit "A" and further included what appeared to be a "canned" Settlement Agreement. Defendants demanded that Plaintiff cease and desist from its lawful use of the JET FUEL mark and further agree never to adopt any other mark using the word "FUEL". Defendants have further filed papers in the U.S. Patent and Trademark Office to extend the period for them to oppose Plaintiff's trademark registration.

8. Plaintiff has thus been placed in immediate apprehension of litigation and the loss of its rights, and therefore, this is an immediate and justiciable controversy.

### **FIRST CAUSE OF ACTION DECLARATORY JUDGMENT OF INVALIDITY, NON-INFRINGEMENT AND UNENFORCEABILITY**

9. The allegations of the foregoing paragraphs 1-8 are hereby incorporated by reference.

10. There is an actual, justiciable controversy between Plaintiff and Defendant regarding the right by Plaintiff to continue to own and use JETFUEL name and mark.

11. The Defendants are claiming ownership over a generic term "FUEL" which has been extensively used in the nutritional products industry. Tens of thousands of articles, books, dictionaries, thesauruses, and the like clearly establish the genericness of the term "FUEL" as applied to the area of nutrition and nutritional supplements and use of the term "FUEL" to generically describe food or nutrition.

12. "Fuel" is used as part of the trademark in the products of dozens of companies. Non-exclusive examples of "Fuel" related marks which have coexisted in the nutritional products market with Defendants' so called "family" and with Defendant' full knowledge and acquiescence include: G FUEL; MOLECULAR FUEL CELL; LIQUID FUEL; BODY FUEL; FUEL FOR THOUGHT; X2O BODY FUEL; RELAX FUEL; FUEL UP; FUEL FOR THE HUMAN RACE; RACE FUEL; DIESEL FUEL; PRO4BODY FUEL; METABOLIC FUEL; EAS PEAK MAX FUEL; MUSCLE FUEL; PERFORMANCE FUEL; ROCKET FUEL; SMART FUEL; FITNESS FUEL; FUN FUEL; BRAIN FUEL; JUICY FUEL; SPACE FUEL and FOCUS FUEL.

12. Further, notwithstanding defendant's claim to ownership over a "family" of FUEL marks, Defendants have knowingly abandoned at least forty-two marks in this so-called family of FUEL marks. These marks include GROWTH FUEL; FEMALE FUEL; MALE FUEL; EGG FUEL; SPORT FUEL; DIET FUEL; ULTRA FUEL; MASS FUEL; GAINERS FUEL; NITRO FUEL; and PRO FUEL.

13. On information and belief, in order to advance its illicit claim to the generic term FUEL, the Defendants have engaged in an ongoing and aggressive pattern of

bullying and intimidation of competitors, including Plaintiff. This pattern has included the filing of specious claims before the U.S. Patent and Trademark Office Trademark Trials and Appeals Board (TTAB) intended to pressure competitors to accept their false claim of ownership over the generic term "FUEL" as a bogus "family mark".

14. Plaintiff requests the declaratory relief set forth in the Prayer which follows.

**SECOND CAUSE OF ACTION**  
**UNFAIR COMPETITION**

15. The allegations of the foregoing paragraphs 1-14 are hereby incorporated by reference.

16. Subject matter jurisdiction exists under the laws of the United States conferring original jurisdiction on the federal district courts in actions arising under the trademark laws, Title 15, United States Code, Section 1121 and Title 28, United States Code, Sections 1338(a) and 1338 (b) and the doctrines of pendant and ancillary jurisdiction. Venue is proper in this district under 28 United States Code, Section 1391. Personal jurisdiction exists as the Defendants regularly do extensive business in this District involving the goods marked with the trademarks at issue. Plaintiff regularly does business in this District. The letter charging Plaintiff with infringement was addressed to counsel in this district.

17. The actions of the Defendants, as set forth above, in engaging in a pattern of commercial intimidation, threats of legal action, and duress to pressure competitors, including Plaintiff to accept their unfounded and unsupportable claim of ownership over

the generic term FUEL, constitutes misuse of their federal and common law trademark rights and constitutes unfair competition at common law.

18. Plaintiff has been harmed irreparably by this conduct and seeks monetary damages and injunctive relief.

**WHEREFORE**, the Plaintiff prays judgment in his favor and against Defendants.

1. In the form of a Declaratory Judgment, holding that:

- (a) under the Lanham Act and the applicable state and common law, Plaintiff's use of the JETFUEL name and mark is not an infringement of Defendants' registered and/or common law trademarks and that Defendants have no basis to oppose U.S. Serial No. 76/262,192;
- (b) that the term FUEL when applied to the Plaintiff's and Defendant's goods is generic and/or highly descriptive and has no trademark distinctiveness;
- (c) that the Defendants have knowingly engaged in a pattern of trademark misuse and unfair competition against Plaintiff; and that this wrongful conduct renders the Defendants' portfolio of marks which include the generic term FUEL invalid and/or unenforceable.

2. The Plaintiff further requests judgment holding that Defendants have engaged in unfair competition and further awarding Plaintiff its damages, attorney's fees, costs and punitive damages.

3. Granting such other and further relief as the Court deems just and proper, including punitive damages, attorney's fees and costs.

Respectfully submitted,



Scott J. Fields, Esq.  
NATIONAL IP RIGHTS CENTER, LLC  
550 Township Line Road, Ste. 400  
Blue Bell, PA 19422  
(610) 680-2301 x102  
(610) 680-2319 (fax)

Attorney for Plaintiff,  
World Health Products

Dated: 11/28/05

**A**

**EXHIBIT A**

**SCHEDULE OF  
TRADEMARK REGISTRATIONS**

1. Registration No. 1,388,002 for the trademark CARBO FUEL, covering “dietary supplement, namely, a carbohydrate energy drink” in International Class 5;
2. Registration No. 1,437,049 for the trademark AMINO FUEL, covering “dietary supplement” in International Class 5;
3. Registration No. 1,487,374 for the trademark HERBA FUEL, covering “dietary supplement” in International Class 5;
4. Registration No. 1,501,862 for the trademark VITA FUEL, covering “dietary nutritional supplement” in International Class 5;
5. Registration No. 1,508,880 for the trademark GAINERS FUEL, covering “dietary supplement” in International Class 5;
6. Registration No. 1,509,858 for the trademark ANABOLIC FUEL, covering “dietary nutritional supplement” in International Class 5;
7. Registration No. 1,540,057 for the trademark ULTRA FUEL, covering “dietary supplement energy drink” in International Class 5;
8. Registration No. 1,544,159 for the trademark DIET FUEL, covering “dietary supplement” in International Class 5;
9. Registration No. 1,583,283 for the trademark CHROMIC FUEL, covering “dietary chromium supplement capsule used as an additive to other dietary supplements” in International Class 5;
10. Registration No. 1,584,280 for the trademark OPTI FUEL, covering “body building and athletic dietary supplement” in International Class 5;
11. Registration No. 1,597,123 for the trademark MCT FUEL, covering “high energy liquid dietary food supplement” in International Class 5;
12. Registration No. 1,698,746 for the trademark PHOS FUEL, covering “dietary supplements” in International Class 5;
13. Registration No. 1,655,100 for the trademark HYDRA FUEL, covering “nutritional supplement” in International Class 5;

14. Registration No. 1,709,127 for the trademark POWER FUEL, covering “sports nutrition powdered drink mix dietary supplement” in International Class 5;
15. Registration No. 1,692,371 for the trademark MASS FUEL, covering “dietary supplements” in International Class 5;
16. Registration No. 1,773,392 for the trademark RIPPED FUEL, covering “dietary supplements” in International Class 5;
17. Registration No. 1,781,039 for the trademark VEGE FUEL, covering “dietary supplements” in International Class 5;
18. Registration No. 1,864,175 for the trademark CREATINE FUEL, covering “dietary supplements” in International Class 5;
19. Registration No. 1,885,533 for the trademark ANTIOXIDANT FUEL, covering “dietary supplements” in International Class 5;
20. Registration No. 1,920,669 for the trademark ANTI-CATABOLIC FUEL, covering “dietary supplements” in International Class 5;
21. Registration No. 1,954,899 for the trademark GLUTAMINE FUEL, covering “dietary supplements” in International Class 5;
22. Registration No. 1,954,900 for the trademark SUPER VANADYL FUEL, covering “dietary supplements” in International Class 5;
23. Registration No. 2,066,656 for the trademark JOINT FUEL, covering “dietary supplements” in International Class 5;
24. Registration No. 2,186,898 for the trademark MEGA GLUTAMINE FUEL, covering “dietary supplements” in International Class 5;
25. Registration No. 2,185,075 for the trademark HMB FUEL, covering “dietary supplements” in International Class 5;
26. Registration No. 2,188,532 for the trademark MEGA HMB FUEL, covering “dietary supplements” in International Class 5;
27. Registration No. 2,350,510 for the trademark ALC FUEL, covering “dietary supplements containing Acety-L-Carnitine” in International Class 5;
28. Registration No. 2,209,776 for the trademark AMINO FUEL STACK, covering “dietary supplements” in International Class 5;

29. Registration No. 2,448,371 for the trademark CREATINE FIZZ FUEL, covering “dietary supplements” in International Class 5;
30. Registration No. 2,476,268 for the trademark CLA FUEL, covering “dietary supplements containing conjugated linoleic acid” in International Class 5;
31. Registration No. 2,293,619 for the trademark TRIPLE WHEY FUEL, covering “dietary supplements containing three types of whey” in International Class 5;
32. Registration No. 2,293,618 for the trademark ANDRO FUEL, covering “nutritional supplements containing rostenedione” in International Class 5;
33. Registration No. 2,513,423 for the trademark STRENGTH FUEL, covering “dietary supplements” in International Class 5;
34. Registration No. 2,595,723 for the trademark ENERGY FUEL, covering “nutritional supplements” in International Class 5; and
35. Registration No. 2,729,521 for the trademark FUEL PLEX, covering “dietary supplements” in International Class 5.

\*\*\*\*\*

**SETTLEMENT AGREEMENT**

**THIS SETTLEMENT AGREEMENT** is made effective as of \_\_\_\_\_, 2005, by and between **ISI BRANDS INC.**, a corporation organized and existing under the laws of the State of Michigan, having a principal place of business at 150 Motor Parkway, Hauppauge, NY 11788 (hereinafter, "ISI Brands"); and **WORLD HEALTH PRODUCTS**, a limited liability company organized and existing under the laws of Connecticut, having a principal place of business at 64 Sunnyside Avenue, Stamford, CT 06902 (hereinafter, "World Health Products").

**WHEREAS**, on or about November 18, 2005, ISI Brands sent a notice letter to World Health Products putting World Health Products on notice of its objections to World Health Products' intent-to-use trademark Application Serial No. 76,626,192 for the mark JET FUEL, and World Health Products' stated intention to use the mark based on ISI Brands' allegations of a likelihood of confusion with ISI Brands' family of marks which include the word "FUEL"; and

**WHEREAS**, the parties desire to settle and resolve the disputes between them on the terms hereof without any admission of liability.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein contained, the parties agree as follows:

**1. Future Use in the United States**

World Health Products and any related companies or persons or entities acting under their direction or control agree not to use any trademark or service mark which

includes the word FUEL, including but not limited to the mark JET FUEL, on or in connection with the performance of any services or the offer for sale or sale of any products.

## **2. Applications and Registrations**

World Health Products and any related companies or persons or entities acting under their direction or control agree not to register or seek to register, as a trademark or service mark, any mark which includes the word FUEL, including but not limited to the mark JET FUEL. Promptly after execution of this Agreement, World Health Products shall execute and file with the United States Patent and Trademark Office the Withdrawal of Application, with Prejudice, in the form attached hereto as Exhibit A.

## **3. Mutual Releases**

ISI Brands on the one hand, and World Health Products on the other hand, hereby release and discharge one another from any and all claims which could have been made against the other prior to the date hereof related to the use and/or registration of the mark JET FUEL, including specifically that ISI Brands will make no claim against World Health Products for any activities related to the offer for sale or sale of goods under the mark JET FUEL. ISI Brands further releases World Health Products' customers for any sales of products which are otherwise released by this Settlement Agreement.

## **4. Miscellaneous**

This Settlement Agreement contains the entire agreement between the parties with respect to the subject matter hereof; and may not be altered except by an instrument in

writing signed by the party against whom the alteration is charged; and shall be interpreted in accordance with the laws of the State of New York.

**5. Successors and Assigns**

This Settlement Agreement shall be binding upon and inure to the benefit of the successors and assigns of each party as well as all parents, subsidiaries and affiliated companies.

**ISI BRANDS INC.**

By \_\_\_\_\_  
Name:  
Title:

**WORLD HEALTH PRODUCTS, LLC**

By \_\_\_\_\_  
Name:  
Title:

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant : World Health Products, LLC

Serial No. : 76,626,192

Filed : September 23, 2005

Mark : JET FUEL

"Express Mail" mailing label No.: \_\_\_\_\_

Date of Deposit: \_\_\_\_\_

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

**WITHDRAWAL OF APPLICATION, WITH PREJUDICE**

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

Hon. Commissioner:

Pursuant to 37 C.F.R. §2.68, Applicant hereby expressly withdraws and abandons the above-referenced application Serial No. 76,626,192 for the mark JET FUEL with prejudice.

Respectfully submitted,

World Health Products, LLC

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

**B**



United States Patent and Trademark Office

Home | Site Index | Search | FAQ | Glossary | Guides | Contacts | eBusiness | eBiz alerts | News | Help

Trademarks > Trademark Electronic Search System(Tess)

TESS was last updated on Sat Nov 26 04:10:40 EST 2005

TESS HOME NEW USER STRUCTURED FREE FORM BROWSE DICT SEARCH OG BOTTOM HELP

Logout Please logout when you are done to release system resources allocated for you.

Record 1 out of 1


TARR Status ASSIGN Status TDR TTAB Status ( Use the "Back" button of the Internet Browser to return to TESS)

JET FUEL

Word Mark JET FUEL
Goods and Services IC 005. US 006 018 044 046 051 052. G & S: nutritional supplements, namely, weight loss pills and energy and weight loss drinks and mixes
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Design Search Code
Serial Number 76626192
Filing Date December 28, 2004
Current Filing Basis 1B
Original Filing Basis 1B
Published for Opposition October 25, 2005
Owner (APPLICANT) World Health Products, LLC LTD LIAB CO CONNECTICUT 64 Sunnyside Avenue Stamford CONNECTICUT 06902
Attorney of Record Scott J. Fields
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

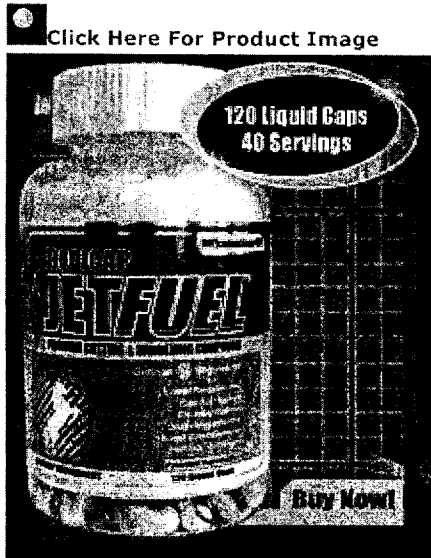
TESS HOME NEW USER STRUCTURED FREE FORM BROWSE DICT SEARCH OG TOP HELP

[.HOME | SITE INDEX | SEARCH | eBUSINESS | HELP | PRIVACY POLICY

**German American Technologies**   
 QUALITY PERFORMANCE ENHANCING & SPECIALTY HEALTH PRODUCTS

Order By Phone (888) 811 4286 [View your shopping cart](#)

[Products](#) [Distribution](#) [Free Catalog](#) [Calendar](#) [Research](#) [Contact Us](#)



Retail Price: \$49.95  
 Buy Two Bottles at: \$39.95 each  
[Click Image To Add to Cart](#)

**GET NOTICED NOW**

**Product Info:**

Jetfuel: The Number One Thermogenic!

Yohimbine H  
 & Synephrine  
 More Comp  
 w/ Over 12 Ingre  
 Phosphatidyls  
 Blend

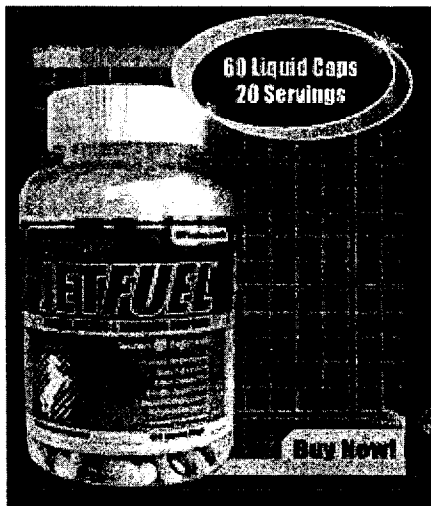
[Click Here For Details](#)

**Feel the most uplifting, fat-destroying thermoge without the jitters!**

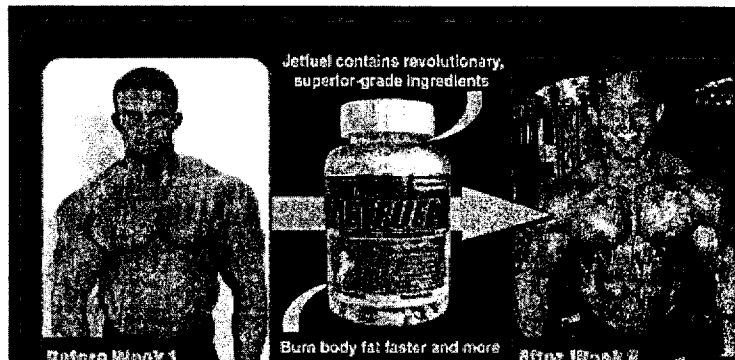
Want to experience the most intense workouts or craz to crush your competition on a bench press or squat? shredded faster and easier while preserving lean muscle some Jetfuel™.

Feel the initial burst of energy! Continuous energy tha lengthy workouts or daily activities provided by Jetfue based delivery system. Experience the ultimate "lift-of targets specific receptors in your brain creating a pow stimulating effect.

Melt away bodyfat like never before! Turbo-charge yo and lifestyle. Feel confident as you shock and awe with physique. Amazing results with energy levels you mus Propel yourself into a lean, hard muscle machine. Get With Jetfuel™!



**OUT OF STOCK**  
 Retail Price: \$29.95  
 Buy Two Bottles at: \$19.95 each  
[Click Image To Add to Cart](#)





**See The Difference JetFuel Can Do!**

Bodybuilding has fascinated me from the very beginning. American Technologies products while training hard and really made a difference in my life. I used to take ephedrine and aspirin but now I take Jetfuel™ which works practically better. If your skeptical, just try some of their products for yourself. They really do work! - **Derek Anthony** -

**Suggested Use:**



**Supplement Facts**

Serving Size: 3 Liqui-Caps  
Servings per Container: 40

	Amount Per Serving	% Daily Value
Vitamin B3	25mg	100%
Vitamin B12	333mcg	50%
<b>Jetfuel Proprietary Blend</b>	<b>2164 mg</b>	
MCT OIL (Medium Chain Triglycerides)	†	
Guarana Extract(22% Caffeine)	†	
Caffeine Anhydrous USP	†	
Panax Quiquefolium	†	
Green Tea Extract (50% Polyphenols)	†	
Synephrine HCL	†	
Yohimbine Hcl	†	
Acetyl L-Carnitine	†	
Evodiamine 98%	†	
Hoodia Gordonii Extract	†	
Synthetic Guggulsterone E&Z 99%	†	
Vinpocetine	†	
Octopamine	†	
5 HTP (5-hydroxy - L- tryptophan)	†	
cAMP (Adenosine Cyclic 3:5 Monophosphate)	†	

<b>Rhodiola Rosea Extract</b>	†
<b>CortiRX Proprietary Blend</b>	<b>75 mg</b>
Phosphatidylserine	†
<b>Phosphatidylcholine</b>	†
<b>Phosphatidylethanolamine</b>	†
Magnolia Bark Extract (50% Honokiol)	†
<b>L-Theanine</b>	†
<b>Piperine Extract (Bioperine)</b>	5mg

\*\*Daily Value not established. No sugar, starch, artificial preservatives or colors. Keep in a cool dry place.

Other Ingredients: Titanium Dioxide, Gelatin, and Silica

German American Technologies© 2004 All Rights Reserv

**C**

**AMSTER  
ROTHSTEIN  
& EBENSTEIN LLP**

*Intellectual Property Law*

90 Park Avenue  
New York NY 10016  
Main 212 336 8000  
Fax 212 336 8001  
Web www.arelaw.com

*Partners*  
Morton Amster  
Jesse Rothstein (1934 - 2003)  
Daniel Ebenstein  
Philip H. Gottfried  
Michael J. Berger  
Neil M. Zipkin  
Anthony F. Lo Cicero  
Kenneth P. George  
Abraham Kasdan, Ph.D.  
Ira E. Silfin  
Chester Rothstein  
Craig J. Arnold  
Kenneth M. Bernstein

*Senior Counsel*  
Charles R. Macedo  
Mark J. Rosenberg  
Nancy M. Dodderidge  
Joseph M. Casino  
  
*Associates*  
Neal L. Rosenberg  
Patrick Boland\*  
John S. Economou  
Michael V. Solomita  
Holly Pekowsky  
Michael P. Kenney  
Marion P. Metelski

Max Vern  
Karl J. Kolbinger  
Brian A. Comack  
Richard S. Mandaro  
Marc J. Jason  
Elie H. Gendloff, Ph.D.  
David Mitnick  
Charles W. Rath  
David A. Boag  
Karen J. Bernstein  
Matthieu Hausig  
Jung S. Hahn  
Reiko Kaji  
Alan D. Miller, Ph.D.

Hsin-Hsin (Ginger) Liu  
John A. Lepore  
Norjean McCaffrey  
Benjamin M. Halpern\*  
Matthew A. Fox  
Michael J. Kasdan  
Rebecca R. Eisenberg

\*Not admitted in New York

November 18, 2005

**via FedEx**

Scott J. Fields, Esq.  
National IP Rights Center, LLC  
550 Township Line Rd Ste 400  
Blue Bell, PA 19422-2726

Holly Pekowsky  
Direct 212 336 8116  
E-mail hpekowsky@arelaw.com

Re: ISI Brands Inc./Twinlab Corporation/  
World Health Products, LLC  
Trademark: JET FUEL  
Serial No. 76,626,192  
Our File: 91006/535

Dear Mr. Fields:

We represent ISI Brands Inc. and Twinlab Corporation (individually or collectively, "Twinlab") in its intellectual property matters. Twinlab is one of the nation's leading manufacturers and distributors of dietary and nutritional supplements, energy drinks, and foods. This letter is sent to you as the listed filing correspondent for Application Serial No. 76,626,192 for the above referenced mark owned by World Health Products, LLC ("World Health Products"). If you do not represent World Health Products or will not represent World Health Products for this matter, please immediately advise and we will contact World Health Products directly.

The purpose of this letter is to put World Health Products on formal, legal notice of Twinlab's objections to World Health Products' intention to use the trademark JET FUEL in connection with nutritional supplements, namely, weight loss pills and energy and weight loss drinks and mixes (the "Accused Mark").

For over twenty years Twinlab has developed a series of trademarks covering dietary and nutritional supplements, powdered and liquid drinks, and foods marketed under its FUEL family of trademarks. Twinlab's FUEL family can be described as containing at least two words, the second of which consists of the term FUEL.

Scott J. Fields, Esq.

-2-

November 18, 2005

Twinlab is the owner of approximately 35 federally registered trademarks comprising its FUEL family of products. Attached as Exhibit A is a Schedule showing some of Twinlab's registrations.

These products are advertised, promoted, and sold either individually, or in groups, as the Twinlab FUEL family of products. The public has come to associate products which are labeled with those marks with our client. Our client's product list under the FUEL family of marks is constantly expanding, and the public expects that new FUEL products of our client are continually being introduced.

It has recently come to our attention that you have filed, on behalf of World Health Products, Serial No. 76,626,192 on an intent-to-use basis for the Accused Mark as applied to nutritional supplements, namely, weight loss pills and energy and weight loss drinks and mixes.

The Accused Mark is very similar to our client's marks, and the goods are directly competitive and related to goods sold by our client. As such, when World Health Products' intended use of the Accused Mark is made, the public will falsely believe that it is a new product of our client and it will be an infringement of our client's family of marks in violation of Section 32 of the Trademark Act of 1946, 15 U.S.C. §1114, as well as unfair competition under Section 43(a) of the Trademark Act of 1946, 15 U.S.C. §1125(a). World Health Products' use will also constitute common law trademark mark infringement and unfair competition, and trademark dilution under both federal and state law. Our client is entitled to an injunction, 15 U.S.C. §1116, and if use is eventually made, additional monetary compensation owing to the infringement, 15 U.S.C. §1117(a).

While our client has every intention of vigorously enforcing its rights, it prefers to resolve disputes short of litigation. In that regard, if World Health Products is willing to agree not to use the Accused Mark and any other mark which includes FUEL, and to expressly abandon his application, our client will likely be amenable to an agreed arrangement whereby World Health Products is released for any claims or damages related to this matter. In that regard, in the event that World Health Products has any inventory, our client may be amenable to a reasonable time to sell that inventory, assuming this matter is otherwise resolved.

Scott J. Fields, Esq.

-3-


November 18, 2005

If World Health Products accepts our proposal, we have prepared and enclose a form of Settlement Agreement for your client's review and execution (in duplicate originals). Please note that this Settlement Agreement includes a release to World Health Products for any activities related to his intention to use the Accused Marks. This offer shall be deemed revoked after ten (10) days. We hope to hear from you within that time.

Nothing herein shall be deemed to be a waiver of our client's rights or remedies, all of which are expressly reserved.

Very truly yours,

AMSTER, ROTHSTEIN & EBENSTEIN LLP



Holly Pekowsky

HP/jw  
Attachment  
(Exhibit A)  
Enclosure  
(proposed Settlement Agreement)

cc: Richard H. Neuwirth, Esq. (via facsimile)  
Chester Rothstein, Esq.

**EXHIBIT A**

**SCHEDULE OF  
TRADEMARK REGISTRATIONS**

1. Registration No. 1,388,002 for the trademark CARBO FUEL, covering “dietary supplement, namely, a carbohydrate energy drink” in International Class 5;
2. Registration No. 1,437,049 for the trademark AMINO FUEL, covering “dietary supplement” in International Class 5;
3. Registration No. 1,487,374 for the trademark HERBA FUEL, covering “dietary supplement” in International Class 5;
4. Registration No. 1,501,862 for the trademark VITA FUEL, covering “dietary nutritional supplement” in International Class 5;
5. Registration No. 1,508,880 for the trademark GAINERS FUEL, covering “dietary supplement” in International Class 5;
6. Registration No. 1,509,858 for the trademark ANABOLIC FUEL, covering “dietary nutritional supplement” in International Class 5;
7. Registration No. 1,540,057 for the trademark ULTRA FUEL, covering “dietary supplement energy drink” in International Class 5;
8. Registration No. 1,544,159 for the trademark DIET FUEL, covering “dietary supplement” in International Class 5;
9. Registration No. 1,583,283 for the trademark CHROMIC FUEL, covering “dietary chromium supplement capsule used as an additive to other dietary supplements” in International Class 5;
10. Registration No. 1,584,280 for the trademark OPTI FUEL, covering “body building and athletic dietary supplement” in International Class 5;
11. Registration No. 1,597,123 for the trademark MCT FUEL, covering “high energy liquid dietary food supplement” in International Class 5;
12. Registration No. 1,698,746 for the trademark PHOS FUEL, covering “dietary supplements” in International Class 5;
13. Registration No. 1,655,100 for the trademark HYDRA FUEL, covering “nutritional supplement” in International Class 5;

14. Registration No. 1,709,127 for the trademark POWER FUEL, covering “sports nutrition powdered drink mix dietary supplement” in International Class 5;
15. Registration No. 1,692,371 for the trademark MASS FUEL, covering “dietary supplements” in International Class 5;
16. Registration No. 1,773,392 for the trademark RIPPED FUEL, covering “dietary supplements” in International Class 5;
17. Registration No. 1,781,039 for the trademark VEGE FUEL, covering “dietary supplements” in International Class 5;
18. Registration No. 1,864,175 for the trademark CREATINE FUEL, covering “dietary supplements” in International Class 5;
19. Registration No. 1,885,533 for the trademark ANTIOXIDANT FUEL, covering “dietary supplements” in International Class 5;
20. Registration No. 1,920,669 for the trademark ANTI-CATABOLIC FUEL, covering “dietary supplements” in International Class 5;
21. Registration No. 1,954,899 for the trademark GLUTAMINE FUEL, covering “dietary supplements” in International Class 5;
22. Registration No. 1,954,900 for the trademark SUPER VANADYL FUEL, covering “dietary supplements” in International Class 5;
23. Registration No. 2,066,656 for the trademark JOINT FUEL, covering “dietary supplements” in International Class 5;
24. Registration No. 2,186,898 for the trademark MEGA GLUTAMINE FUEL, covering “dietary supplements” in International Class 5;
25. Registration No. 2,185,075 for the trademark HMB FUEL, covering “dietary supplements” in International Class 5;
26. Registration No. 2,188,532 for the trademark MEGA HMB FUEL, covering “dietary supplements” in International Class 5;
27. Registration No. 2,350,510 for the trademark ALC FUEL, covering “dietary supplements containing Acety-L-Carnitine” in International Class 5;
28. Registration No. 2,209,776 for the trademark AMINO FUEL STACK, covering “dietary supplements” in International Class 5;

29. Registration No. 2,448,371 for the trademark CREATINE FIZZ FUEL, covering “dietary supplements” in International Class 5;
30. Registration No. 2,476,268 for the trademark CLA FUEL, covering “dietary supplements containing conjugated linoleic acid” in International Class 5;
31. Registration No. 2,293,619 for the trademark TRIPLE WHEY FUEL, covering “dietary supplements containing three types of whey” in International Class 5;
32. Registration No. 2,293,618 for the trademark ANDRO FUEL, covering “nutritional supplements containing rostenedione” in International Class 5;
33. Registration No. 2,513,423 for the trademark STRENGTH FUEL, covering “dietary supplements” in International Class 5;
34. Registration No. 2,595,723 for the trademark ENERGY FUEL, covering “nutritional supplements” in International Class 5; and
35. Registration No. 2,729,521 for the trademark FUEL PLEX, covering “dietary supplements” in International Class 5.

\*\*\*\*\*

**SETTLEMENT AGREEMENT**

**THIS SETTLEMENT AGREEMENT** is made effective as of \_\_\_\_\_, 2005, by and between **ISI BRANDS INC.**, a corporation organized and existing under the laws of the State of Michigan, having a principal place of business at 150 Motor Parkway, Hauppauge, NY 11788 (hereinafter, "ISI Brands"); and **WORLD HEALTH PRODUCTS**, a limited liability company organized and existing under the laws of Connecticut, having a principal place of business at 64 Sunnyside Avenue, Stamford, CT 06902 (hereinafter, "World Health Products").

**WHEREAS**, on or about November 18, 2005, ISI Brands sent a notice letter to World Health Products putting World Health Products on notice of its objections to World Health Products' intent-to-use trademark Application Serial No. 76,626,192 for the mark JET FUEL, and World Health Products' stated intention to use the mark based on ISI Brands' allegations of a likelihood of confusion with ISI Brands' family of marks which include the word "FUEL"; and

**WHEREAS**, the parties desire to settle and resolve the disputes between them on the terms hereof without any admission of liability.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein contained, the parties agree as follows:

**1. Future Use in the United States**

World Health Products and any related companies or persons or entities acting under their direction or control agree not to use any trademark or service mark which

includes the word FUEL, including but not limited to the mark JET FUEL, on or in connection with the performance of any services or the offer for sale or sale of any products.

## **2. Applications and Registrations**

World Health Products and any related companies or persons or entities acting under their direction or control agree not to register or seek to register, as a trademark or service mark, any mark which includes the word FUEL, including but not limited to the mark JET FUEL. Promptly after execution of this Agreement, World Health Products shall execute and file with the United States Patent and Trademark Office the Withdrawal of Application, with Prejudice, in the form attached hereto as Exhibit A.

## **3. Mutual Releases**

ISI Brands on the one hand, and World Health Products on the other hand, hereby release and discharge one another from any and all claims which could have been made against the other prior to the date hereof related to the use and/or registration of the mark JET FUEL, including specifically that ISI Brands will make no claim against World Health Products for any activities related to the offer for sale or sale of goods under the mark JET FUEL. ISI Brands further releases World Health Products' customers for any sales of products which are otherwise released by this Settlement Agreement.

## **4. Miscellaneous**

This Settlement Agreement contains the entire agreement between the parties with respect to the subject matter hereof; and may not be altered except by an instrument in

writing signed by the party against whom the alteration is charged; and shall be interpreted in accordance with the laws of the State of New York.

**5. Successors and Assigns**

This Settlement Agreement shall be binding upon and inure to the benefit of the successors and assigns of each party as well as all parents, subsidiaries and affiliated companies.

**ISI BRANDS INC.**

By \_\_\_\_\_  
Name:  
Title:

**WORLD HEALTH PRODUCTS, LLC**

By \_\_\_\_\_  
Name:  
Title:

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant : World Health Products, LLC

Serial No. : 76,626,192

Filed : September 23, 2005

Mark : JET FUEL

"Express Mail" mailing label No.: \_\_\_\_\_

Date of Deposit: \_\_\_\_\_

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

**WITHDRAWAL OF APPLICATION, WITH PREJUDICE**

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

Hon. Commissioner:

Pursuant to 37 C.F.R. §2.68, Applicant hereby expressly withdraws and abandons the above-referenced application Serial No. 76,626,192 for the mark JET FUEL with prejudice.

Respectfully submitted,

World Health Products, LLC

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title: