

10-21-1998

R SHEET

Docket No.:



ONLY

VKH-65836

Tab settings → → → ▼

100856416

To the Honorable Commissioner of Patents and Trademarks, please record the attached original documents or copy thereof.

10-13-98

1. Name of conveying party(ies):

InterHealth Nutritionals Incorporated

- Individual(s)
- General Partnership
- Corporation-State California
- Other _____

Additional names(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies):

Name: InterHealth Nutraceuticals Incorporated

Internal Address: 1320 Galaxy Way

Street Address: same

City: Concord State: CA ZIP: 94520

- Individual(s) citizenship _____
- Association _____
- General Partnership _____
- Limited Partnership _____
- Corporation-State California
- Other _____

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designations must be a separate document from Assignment)
Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other _____
- Merger
- Change of Name

Execution Date: March 23, 1998

4. Application number(s) or registration numbers(s):

A. Trademark Application No.(s)

See attached list.

B. Trademark Registration No.(s)

See attached list.

Additional numbers attached? Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Tawnya R. Wojciechowski, Esq.

Internal Address: 650 Town Center Drive, 4th Floor

Costa Mesa, California 92626

Street Address: same

City: Costa Mesa State: CA ZIP: 92626

6. Total number of applications and registrations involved:.....

9

7. Total fee (37 CFR 3.41):.....\$ 240

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

500209

10/20/1998 DNGUYEN 00000272 74497000

DO NOT USE THIS SPACE

01 FC:481
02 FC:482

40.00 OP
200.00 OP

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Tawnya R. Wojciechowski

Name of Person Signing

Signature

October 7, 1998

Date

Total number of pages including cover sheet, attachments, and document: 9

TRADEMARK

REEL: 1801 FRAME: 0621

List of Trademark Application/Registration Numbers

4(a) Trademark Application Numbers:

74/497000
75/519387
75/519386
75/355255
75/355254
75/174808
75/406034

4(b) Trademark Registration Numbers:

1627865
1756011

State of California



I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 4 page(s) was prepared by and in this office from the record on file, of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this

AUG 25 1998



Bill Jones

Secretary of State

A0507303

1199303
AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
INTERHEALTH NUTRITIONALS INCORPORATED

FILED *WELL*
In the office of the Secretary of State
of the State of California

APR 16 1998

Bill Jones
BILL JONES, Secretary of State

The undersigned certifies that:

1. He is the president and secretary of InterHealth Nutritionals Incorporated, a California corporation.
2. The Articles of Incorporation of this corporation are amended and restated to read as follows:

I.

The name of the corporation is InterHealth Nutraceuticals Incorporated.

II.

The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III.

The corporation is authorized to issue one class of stock to be designated Common Stock. Upon filing of these Amended and Restated Articles of Incorporation, the total number of shares of stock that the corporation shall have authority to issue shall become 10,000,000.

IV.

No dividend shall be paid or declared or set apart, and no distribution shall be made, respecting any shares of Common Stock, or any capital stock of any subsidiary of the corporation, unless it is first approved by the affirmative vote or written consent of at least 65% of the outstanding shares of Common Stock, provided, however, that the provisions of this Article IV shall terminate upon the closing of a public offering of any of the corporation's securities registered under the Securities Act of 1933, as amended.

V.

Except for the repurchase of the corporation's shares issued upon exercise of options where the repurchase is pursuant to the terms of the option, no shares of Common Stock or other security of the corporation, or of any subsidiary of the corporation, shall be repurchased redeemed or acquired, and no sinking fund shall be established or paid into for the purpose of repurchasing, redeeming or acquiring such shares or other securities, unless the transaction is first approved by the affirmative vote or written consent of at least 65% of the outstanding shares of Common Stock; provided, however, that the provisions of this Article V shall terminate upon the closing of a public offering of any of the corporation's securities registered under the Securities Act of 1933, as amended.

VI.

(a) In the event that the corporation intends to consummate an "Issuance" (as defined below) at any time prior to the closing of a public offering of any of the corporation's securities registered under the Securities Act of 1933, as amended;

(i) the corporation shall give each shareholder of the corporation (the "Holder") five (5) business days' notice of the corporation's intent to offer an Issuance (as defined below) together with the terms of such Issuance, which notice shall identify the intended purchaser(s) of the Issuance, or, if such purchasers cannot be identified, then the notice shall identify a reasonably defined class of purchasers (the "Issuance Notice");

(ii) the corporation shall offer each Holder (the "Preemptive Rights") that portion of the Issuance which equals the proportion that the number of shares of Common Stock held by each Holder bears to the total number of shares of all Common Stock outstanding immediately prior to the Issuance or such lesser portion as each Holder may elect (the "Elected Portion").

(b) If any Holder fails to:

(i) elect in writing to purchase the Holder's Elected Portion within five (5) business days after the Issuance Notice or, if the Issuance is not closed within seven (7) business days after the Issuance Notice, no later than one (1) business day after written notice from the corporation of the date that a purchaser or purchasers and the corporation have entered into a binding agreement to purchase the Issuance; or

(ii) tender to the corporation the purchase price of the Holder's Elected Portion of such Issuance at the closing,

then the corporation shall be entitled to close the Issuance without the participation of that Holder.

(c) If any Holder timely elects in writing to purchase such Holder's Elected Portion and tenders to the corporation the purchase price of the Holder's Elected Portion of such Issuance at the closing, then the corporation shall issue to the Holder its Elected Portion of such Issuance if, and only if, the purchaser or purchasers remain willing to purchase the balance.

(d) An "Issuance" shall mean an issuance and sale of shares or options for shares or any other right convertible or exercisable into shares of capital stock of the corporation for consideration consisting of cash or property, provided, however, that Issuance shall not include the issuance and sale of shares or options to an employee of the corporation as a part of his or her employment compensation.

(e) All Holders' rights under this Article VI may be eliminated with respect to any Issuance by the affirmative vote or written consent of at least 65% of the outstanding shares of Common Stock.

Notwithstanding the foregoing, the provisions of this Article VI shall terminate upon the closing of, and shall not be effective with respect to, a public offering of any of the corporation's securities registered under the Securities Act of 1933, as amended.

VII.

No securities (and no rights convertible or exercisable into securities) of the corporation or a subsidiary of the corporation may be issued, or agreed to be issued, unless the rights, preferences and privileges of the securities (and the terms and conditions of all rights that are convertible or exercisable into securities), the number of the securities, and the consideration for those securities (and rights), are first approved by the affirmative vote or written consent of at least 65% of the outstanding shares of Common Stock; provided, however, that the provisions of this Article VII shall terminate upon the closing of a public offering of any of the corporation's securities registered under the Securities Act of 1933, as amended.

VIII.

Any notice required by the provisions of these Articles to be given to the holders of Common Stock shall be in writing and shall be deemed given when such notice is deposited in the United States mail, postage prepaid, or sent by facsimile or delivered personally by hand or nationally recognized courier and addressed to each holder of record at such holder's address or facsimile number appearing in the records of the corporation.

IX.

No sale or transfer of all or a substantial portion of the assets of the corporation or the assets of any subsidiary of the corporation shall be made, and no consolidation, merger, split off or spin off, or other form of corporate reorganization in which shares of the corporation or any of its subsidiaries are exchanged for securities or other consideration shall be made, unless it is first approved by the affirmative vote or written consent of at least 65% of the outstanding shares of Common Stock; provided, however, that the provisions of this Article IX shall terminate upon the closing of a public offering of any of the corporation's securities registered under the Securities Act of 1933, as amended.

X.

The corporation shall not amend its Articles of Incorporation or Bylaws without the approval, by affirmative vote or written consent, of at least 65% of the outstanding shares of Common Stock; provided, however, that the provisions of this Article X shall terminate upon the closing of a public offering of any of the corporation's securities registered under the Securities Act of 1933, as amended.

XI.

No share or shares acquired by the corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be canceled, retired and eliminated from the shares which the corporation shall be authorized to issue.

XII.

The liability of the Directors of the corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

XIII.

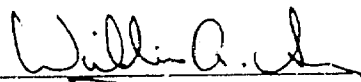
The corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) for breach of duty to the corporation and its stockholders through bylaw provisions or through agreements with the agents, or both, in excess of the indemnification otherwise permitted by Section 317 of the California Corporations Code, subject to the limits on such excess indemnification set forth in Section 204 of the California Corporations Code.

3. The foregoing amendment and restatement of the Articles of Incorporation has been duly approved by the board of directors.

4. The foregoing amendment and restatement of the Articles of Incorporation has been duly approved by the required vote of shareholders in accordance with Section 902 of the California Corporations Code. The total number of outstanding shares of the corporation is 4,548,466. The number of shares voting in favor of the amendment and restatement equaled or exceeded the vote required. The percentage vote required was greater than 65%.

I further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of my own knowledge.

DATED: March 23, 1998.



William A. Seroy, President and Secretary

