

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL

**CONVEYING PARTY DATA**

Name	Formerly	Execution Date	Entity Type
Kustomer Kinetics, Inc.		11/14/2002	CORPORATION:

**RECEIVING PARTY DATA**

Name:	Biofreeze Associates
Street Address:	1017 Boyd Road
Internal Address:	Suite 100
City:	Export
State/Country:	PENNSYLVANIA
Postal Code:	15632
Entity Type:	PARTNERSHIP:

Name:	Performance Health, Inc
Street Address:	1017 Boyd Road
Internal Address:	Suite 100
City:	Export
State/Country:	PENNSYLVANIA
Postal Code:	15632
Entity Type:	CORPORATION: PENNSYLVANIA

**PROPERTY NUMBERS Total: 1**

Property Type	Number	Word Mark
Registration Number:	2334826	CRYOFREEZE

**CORRESPONDENCE DATA**

Fax Number: (412)471-4094  
*Correspondence will be sent via US Mail when the fax attempt is unsuccessful.*  
 Email: webblaw@webblaw.com  
 Correspondent Name: The Webb Law Firm  
 Address Line 1: 436 Seventh Avenue

OP \$40.00 2334826

Address Line 2: 700 Koppers Building  
Address Line 4: Pittsburgh, PENNSYLVANIA 15219-1845

NAME OF SUBMITTER:	Kent E. Baldauf, Jr.
Signature:	/KEBjr/
Date:	04/05/2005

Total Attachments: 7  
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AGREEMENT

AND NOW, PERFORMANCE HEALTH, INC., a corporation and BIOFREEZE ASSOCIATES, a partnership, and KUSTOMER KINETICS, INC. a corporation, enter the following Agreement;

WHEREAS, PERFORMANCE HEALTH INC. and BIOFREEZE ASSOCIATES, distribute and sell a topical analgesic balm, lotion and gel under the trademark "Biofreeze"; and

WHEREAS, PERFORMANCE HEALTH, INC. is the exclusive licensee of the trademark "Biofreeze" which is registered for analgesics balm under the U.S. Trademark Registration No. 1,741,041 issued June 1, 1993; and

WHEREAS, said trademark "Biofreeze" became incontestable pursuant to Lanham Act 15 U.S.C § 1065; and

WHEREAS, PERFORMANCE HEALTH, INC. is the exclusive licensee also of the U.S. Trademark Registration No. 2,001,198 for "Cryotherapy-The Cold Method"; and

WHEREAS, both trademarks are owned by BIOFREEZE ASSOCIATES by assignment or otherwise; and

WHEREAS, KUSTOMER KINETICS, INC. is a corporation that manufactures, distributes, and sells a topical analgesic balm under the U.S. trademark "Cryofreeze"; and

WHEREAS, KUSTOMER KINETICS. INC. has been granted and is the owner of U.S. Trademark Registration No. 2,334,826, with registration date of March 28, 2000 for the mark "Cryofreeze"; and

WHEREAS, PERFORMANCE HEALTH, INC. and BIOFREEZE ASSOCIATES on their behalf and their principals, licensors, distributors and all others connected with their said marks "Biofreeze" and "Cryotherapy - The Cold Method" have requested KUSTOMER KINETICS, INC.,  
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its principals, licensors, owners and related and affiliated companies forbear use of the mark "Cryofreeze" due to concerns of customer confusion; and

WHEREAS, PERFORMANCE HEALTH, INC. and BIOFREEZE ASSOCIATES instituted a lawsuit in United States District Court for the Western District of Pennsylvania at Civil Action No. 00-2323, claiming Trademark Infringement under statutory section 15 U.S.C § 1114, section 32(1) of the Lanham Act, False Designation of Origin and Unfair Competition under section 43(a) of the Lanham Act, 15 U.S.C § 1125 (a), Trademark Dilution under Section 43 (c)(1) of the Lanham Act 15 § 1125 (c) (1) and Trademark dilution under Section 1124, 54 Pa. C.S.A. § 1124 and common law unfair competition; and

WHEREAS, KUSTOMER KINETICS, INC. has denied said claims, filed an answer to the lawsuit, and continues to so deny any unlawful conduct; and moreover, entry into this agreement should not be construed as any liability admission; and

WHEREAS, PERFORMANCE HEALTH, INC., and BIOFREEZE ASSOCIATES, on behalf of their principals, licensors, owners, distributors, related and affiliated companies and all others connected with their said marks, wish to resolve their differences amicably with KUSTOMER KINETICS, INC., its owners, principals, licensors, distributors, related and affiliated companies.

NOW THEREFORE witness the following agreement:

1. In consideration of the payment by certified check of Twenty-Five Thousand Dollars (\$25,000) by PERFORMANCE HEALTH, INC. and BIOFREEZE ASSOCIATES to KUSTOMER KINETICS, INC. upon execution of this agreement and in consideration of the dismissal with prejudice of the lawsuit at Civil Action No. 00-2323 in the United States District Court for the Western District of Pennsylvania, KUSTOMER KINETICS, INC., its owners, principals, licensees,

agents, employees, related and affiliated companies, successors and assigns agree to forbear all use of the mark "Cryofreeze" in any manner, and forbear all use of "Cryofreeze" on all labels, cartons, packaging signs, catalogs, literature, publications, marketing materials, and advertisements. This restriction is subject to the provisions of paragraph 2 hereof.

2. KUSTOMER KINETICS, INC. shall be permitted to exhaust its current inventory of products and materials bearing the mark "Cryofreeze" until December 31, 2002. No further sales of KUSTOMER KINETICS, INC.'s current inventory of products and materials bearing the mark "Cryofreeze" will be permitted after December 31, 2002.

3. KUSTOMER KINETICS, INC. will not license, assign, or sell any rights to the mark "Cryofreeze" to any other person, corporation or entity for any use, except as provided in paragraph 4.

4. KUSTOMER KINETICS, INC. hereby assigns to PERFORMANCE HEALTH, INC. and BIOFREEZE ASSOCIATES its entire right, title and interest to the trademark "Cryofreeze", including without limitation U.S. Trademark Registration No. 2,334,826, as well as all goodwill associated therewith. PERFORMANCE HEALTH, INC. and BIOFREEZE ASSOCIATES, their owners, agents, employees, related and affiliated companies, shall not use such mark on a topical analgesic or pain relief product or any product that would be in competition with the products of Kustomer Kinetics, Inc., for two and one half years from the date of the assignment. Nor shall PERFORMANCE HEALTH, INC. and BIOFREEZE ASSOCIATES, their owners, agents,

employees, related and affiliated companies transfer, sell, or assign or license said "Cryofreeze" to any other entity or persons for use on products that compete with Kustomer Kinetics, Inc., for two and one half years from the date of the assignment. KUSTOMER KINETICS, INC. will cooperate with PERFORMANCE HEALTH, INC. and BIOFREEZE ASSOCIATES to execute any documents to effect the transfer, assignment or recordation of assignment of U.S. Trademark Registration No. 2,334,826.

5. All future fees, expenses, legal costs for counsel approved by PERFORMANCE HEALTH, INC. and other costs associated with the said assignment of "Cryofreeze" shall be born by PERFORMANCE HEALTH, INC. or BIOFREEZE ASSOCIATES.

6. Any KUSTOMER KINETICS INC. product literature or product bearing the mark "Cryofreeze" remaining in existence unused on December 31, 2002, shall be destroyed by KUSTOMER KINETICS INC.

7. PERFORMANCE HEALTH, INC. and BIOFREEZE ASSOCIATES, for themselves, their successors, predecessors, distributors, representatives, shareholders, directors, partners, officers, licensors, and licensees and assigns and all other entities, persons or corporations do hereby release and forever discharge KUSTOMER KINETICS, INC., their successors, predecessors, distributors, representatives, shareholders, directors, partners, officers, licensors, and licensees and assigns and all other entities, persons or corporations from all claims, causes of action and all matters of liability whether in equity or in law and whether under statute or at common law, which in anyway pertain

to the use by KUSTOMER KINETICS, INC. of the mark "Cryofreeze" from the initial use in commerce thereof by KUSTOMER KINETICS, INC. of "Cryofreeze" through and including December 31, 2002; beyond that date KUSTOMER KINETICS, INC. agrees to forbear use of this mark, or at the exhaustion of product and product literature, whichever event first occurs as aforesaid.

8. It is further agreed that this agreement and the terms thereof shall be kept confidential and neither party shall disclose same; however, each party shall be permitted to state when necessary and appropriate that "any differences between them have been resolved to their mutual satisfaction".

9. PERFORMANCE HEALTH, INC. and BIOFREEZE ASSOCIATES and KUSTOMER KINETICS, INC. shall make no negative comment about each other nor with regard to the subject of the litigation at Civil Action No. 00-2323 and the resolution of said proceedings.

10. Except for payment of the \$25,000 required by paragraph number 1, should any party to this agreement believe that there has been non-compliance at any point in time with the terms of this agreement by the other party, written notice of said non-compliance shall be given to the alleged offending, non-complying party, and that non-complying party shall be given thirty days from the date of notice to return to compliance before any legal proceedings shall be instituted; and, if compliance is restored within thirty days, no action against the non-complying party shall be taken.

11. Written notices may be given to PERFORMANCE HEALTH, INC. and BIOFREEZE ASSOCIATES at 1017 Boyd Road, Suite 100, Export PA 15632 and to KUSTOMER KINETICS, INC. at 1145 Encanto Drive, Arcadia, CA 91007.

12. Should any party violate the terms of this agreement it may specifically enforced in any court having jurisdiction.

13. The drafting party of this agreement shall not have imposed upon it any special burdens merely due to the fact of authorship when interpreting this agreement.

14. This agreement shall be interpreted according to the laws of Pennsylvania and any applicable Unites States statutes.

15. This agreement is the complete agreement of the parties and there are no provisions not incorporated into or expressed herein and there are no oral understandings in addition to this document.

16. The undersigned warrant that they have been duly authorized by appropriate corporate or partnership resolution to enter this agreement on behalf of the principal.

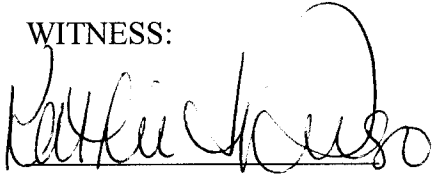
THE UNDERSIGNED DECLARE THAT THEY FULLY UNDERSTAND THE TERMS OF THE SETTLEMENT AGREEMENT; THAT THEY HAVE VOLUNTARILY ACCEPTED THESE TERMS FOR THE PURPOSE OF MAKING FULL AND FINAL COMPROMISE AND



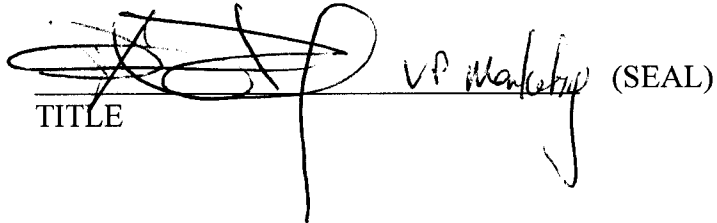
THESE TERMS FOR THE PURPOSE OF MAKING FULL AND FINAL COMPROMISE AND SETTLEMENT OF THEIR DISPUTED CLAIMS; AND ACKNOWLEDGE THAT THE USE OF THE SINGULAR NUMBER MAY INCLUDE THE PLURAL NUMBER, AND THE MASCULINE GENDER SHALL BE CONSTRUED TO INCLUDE THE FEMININE AND NEUTER GENDER.

IN WITNESS WHEREOF, we have set our hands and Corporate Seals this 14th day of November, 2002, INTENDING TO BE LEGALLY BOUND HEREBY.

WITNESS:



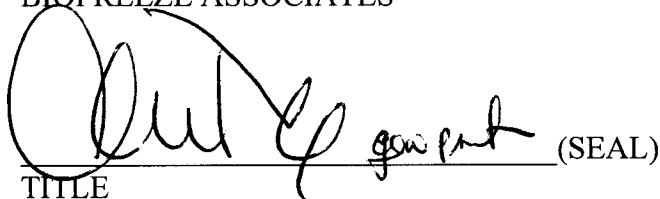
PERFORMANCE HEALTH, INC.



VP Marketing (SEAL)

TITLE

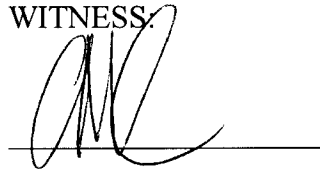
BIOFREEZE ASSOCIATES



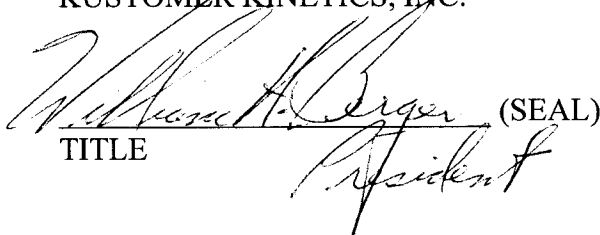
gen. ent. (SEAL)

TITLE

WITNESS:



KUSTOMER KINETICS, INC.



(SEAL)

TITLE