

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
Lose The Carbs, Inc.		11/30/2008	CORPORATION: NEW JERSEY
RECEIVING PARTY DATA			
Name:	CytoSport, Inc.		
Street Address:	4795 Industrial Way		
City:	Benicia		
State/Country:	CALIFORNIA		
Postal Code:	94510		
Entity Type:	CORPORATION: CALIFORNIA		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Registration Number:	3121197	PRE-FORMANCE	
CORRESPONDENCE DATA			
Fax Number:	(801)566-0750		
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>			
Email:	sisneros@tnw.com		
Correspondent Name:	Thorpe North & Western, LLP		
Address Line 1:	P.O. Box 1219		
Address Line 4:	Sandy, UTAH 84091-1219		
ATTORNEY DOCKET NUMBER:	01098-32796		
NAME OF SUBMITTER:	Jed H. Hansen		
Signature:	/Jed H. Hansen/		
Date:	04/28/2009		

OP \$40.00 3121197

900132776

TRADEMARK
 REEL: 003977 FRAME: 0986

Total Attachments: 3

source=Assignment#page1.tif

source=Assignment#page2.tif

source=Assignment#page3.tif

TRADEMARK

REEL: 003977 FRAME: 0987

SERVICE MARK AND TRADEMARK ASSIGNMENT AGREEMENT

This Service Mark and Trademark Assignment Agreement ("Agreement") is entered into by and between Lose the Carbs, Inc. ("Lose the Carbs"), a New Jersey corporation, with a principal office located at 318 Sawmill Lane, Wyckoff, NJ 07481 ("Assignor"), and CytoSport, Inc., a California corporation with a principal office located at 4795 Industrial Way, Benicia, CA 94510 ("Assignee"). Assignor and Assignee are at times hereafter referred to collectively as "the Parties."

RECITALS

A. Assignor is the purported owner of certain right, title and interest in and to the service mark, trademark and trade name PRE-FORMANCE, all as used in any form, design, color, size, print style or medium, with and without accompanying logos and/or slogans, as used in connection with meal replacement drinks, and all other goods and services offered by Assignor in connection with the PRE-FORMANCE mark (all of the foregoing service marks, trademarks and trade names are hereinafter collectively referred to as the "Marks").

B. As of November 17, 2008, Assignor is the owner of a U.S. Trademark Reg. No. 3,121,197 for the term PRE-FORMANCE filed on February 2, 2004 and having a date of first use at least as early as June, 2004 (hereinafter the "Trade Mark Registration"). A copy of the Trade Mark Registration is attached hereto as Exhibit A.

C. Assignee is desirous of acquiring all of Assignor's right, title and interest in and to the Marks and Trade Mark Registration.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Assignment. Assignor hereby unconditionally assigns, transfers, grants, conveys, sells and relinquishes to Assignee, forever, and Assignee hereby accepts, all of Assignor's right, title and interest, throughout the world, in and to:

(a) The Marks and Trade Mark Registrations, including, but not limited to, all trademark rights, service mark rights, trade name rights, and common law rights.

(b) The goodwill of the business symbolized by the foregoing.

(c) All documents, items and materials relating to ownership of the foregoing

(d) The right to file any further applications, renewals or extensions under any law, convention or treaty with respect to the foregoing.

(e) The rights, inter alia, in the name of Assignor and its predecessors in interest, to sue, maintain suits, take any and all actions, and recover, for any past, present or future infringements with respect to the foregoing.

(g) Any and all other powers, privileges and rights with respect to the foregoing (all of the foregoing are hereinafter collectively referred to as the "Assigned Rights").

2. Delivery. Assignor shall deliver and otherwise surrender possession of all documents, items and materials relating to ownership of the Assigned Rights to Assignee immediately upon execution of this Agreement by both Parties. Assignor shall sign and deliver all other documents, items and materials to, and cooperate with and undertake and perform all tasks reasonably requested by, Assignee, to make the assignment and other provisions of this Agreement effective and to allow Assignee to record, register, assign or otherwise perfect or improve Assignee's rights in the Assigned Rights.

3. Representations. Assignor acknowledges, agrees, represents and warrants that

(a) Assignee shall be and is now, as a result of the foregoing, exclusive owner of all of Assignor's right, title and interests in the Assigned Rights, free and clear of all liens, encumbrances and liabilities.

(b) Assignor has not granted or entered into, and will not grant or enter into, any assignments, licenses, leases or other agreements with third parties relating to or adversely affecting the Assigned Rights.

(c) There is no litigation, action or proceedings threatened or pending against Assignor which affect or relate to the Marks, Trade Mark Registrations or any other rights transferred by this Agreement.

(d) Assignor has continuously used the Mark since June 2004.

(e) Assignor will not file or otherwise seek registration or other rights in, whether domestic or foreign, and will not challenge or attempt to challenged Assignee's rights in, the Assigned Rights, except as requested by Assignee in writing.

(f) Assignor has full authority, capacity, ability and rights to enter into this Agreement and perform in accordance with it, with the person signing below as Assignor being duly authorized to do so.

(g) Assignee is not assuming any liabilities whatsoever under this Agreement.

4. Payment. In addition to any other consideration provided by Assignee, Assignee shall pay to Assignor Five Thousand Dollars (\$5,000) by good and valid check, within five (5) business days of execution of this Agreement by both Parties.

5. Phase-Out Period: Upon execution of the Agreement, Assignee shall immediately cease and desist from the manufacture and/or packaging of any product bearing the Marks or any word, term, or phrase which is confusingly similar to the Marks. Further, Assignee shall cease and desist from marketing, promotion, sale, offer for sale, and/or advertising of products bearing the Marks or any word, term, or phrase which is confusingly similar to the Marks, except that Assignee shall have six-months from the execution date of this Agreement to exhaust its then existing inventory of product bearing the Marks. As part of this, Assignor agrees not to file for

any trademark applications using or incorporating any of the Marks or confusingly similar marks.

6. Recordation. The Commissioner of Patents and Trademarks and other state, federal, foreign and international agencies and representatives are hereby requested to permit the recordation of a Service Mark and Trademark Assignment attached hereto as Exhibit B and to make corresponding changes to their respective registries to identify Assignee as owner of the Marks and Trade Mark Registration and related good will.

7. Interpretation. This Agreement shall be governed by the laws of the State of California. The headings herein are for reference only and shall not define or limit the provisions hereof.

8. Modification. This Agreement may not be altered, modified, amended or changed, in whole or in part, except by a writing executed by the parties.

9. Successors. This Agreement shall be binding upon the parties and their heirs, successors, assigns, transferees, grantees, executors and administrators.

10. Integration. This Agreement represents the entire agreement between the Parties and supersedes any prior understandings or written or oral agreements between the Parties regarding the subject matter of this Agreement.

11. Attorney Fees. In any dispute to enforce the terms of this Agreement, the prevailing party shall be awarded its costs and reasonable attorney's fees.

IN WITNESS WHEREOF, the parties have executed this Service Mark and Trademark Assignment Agreement to be effective as of the 30 day of November, 2008.

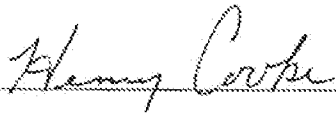
"Assignor"

"Assignee"

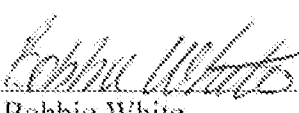
LOSE THE CARBS, INC.,

CYTOSPORT, INC.

By: _____



By: _____



Bobbie White