

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
Christopher E. Walach		04/22/2011	INDIVIDUAL: UNITED STATES
RECEIVING PARTY DATA			
Name:	Gulf Coast Nutritionals, Inc.		
Street Address:	6166 Taylor Road, Suite 103		
City:	Naples		
State/Country:	FLORIDA		
Postal Code:	34109		
Entity Type:	CORPORATION: FLORIDA		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Serial Number:	77825849	SMART KENNEL ARK	
CORRESPONDENCE DATA			
Fax Number:	(239)261-0057		
Phone:	239-262-1001		
Email:	usptomail@whitelawfirm.com		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>			
Correspondent Name:	Jennifer L. Whitelaw		
Address Line 1:	3838 Tamiami Trail North, Suite 310		
Address Line 4:	Naples, FLORIDA 34103		
NAME OF SUBMITTER:	Jennifer L. Whitelaw		
Signature:	/JENNIFER L. WHITELAW/		
Date:	10/07/2011		

OP \$40.00 77825849

Total Attachments: 8

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SETTLEMENT AGREEMENT

This Agreement (hereinafter "the Agreement") is made effective as of the date set forth below, by and between Gulf Coast Nutritionals, Inc., a Florida corporation, (hereinafter "GCN"), whose address is 6166 Taylor Road, Suite 103, Naples, Florida 34109, and Christopher E. Walach, an individual, (hereinafter "WALACH"), whose address is 2747 Paradise Road #2801, Las Vegas, Nevada 89109. GCN and WALACH are jointly referred to hereinafter as "the parties".

WHEREAS GCN is the owner of all right, title and interest in numerous trademarks containing the term "ARK", "ARK NATURALS", and related terms and designs, for a variety of pet products, pet treats, and other goods and services, including that which is set forth in certain U.S. trademark registrations and applications presently of record in the United States Patent and Trademark Office, including ARK NATURALS & design, U.S. Trademark Registration No. 2324098 and ARK NATURALS, U.S. Trademark Application Serial No. 77/945,954 (hereinafter the GCN "ARK MARKS");

WHEREAS the GCN ARK MARKS are valid, enforceable, and owned exclusively by GCN;

WHEREAS WALACH has applied for a trademark registration, on an intent to use basis, for the mark SMART KENNEL "ARK", U.S. Trademark Serial No. 77/825,849, (hereinafter the '849 Application), for "*dog kennels, kennels with carriers and portable kennels*" in International Class 20, (hereinafter the WALACH goods and services);

WHEREAS WALACH represents and warrants that he has not heretofore assigned to any person or entity all or a portion of any interest in the Application;

WHEREAS GCN has filed an opposition action with the Trademark Trial and Appeal Board in the United States Patent and Trademark Office to prevent registration of the '849 Application, which action has been designated Opposition No. 91196754 (the "Opposition");

WHEREAS the parties wish to resolve the opposition action to eliminate any likelihood of any consumer confusion occasioned by their respective usages of the marks at issue herein; and

WHEREAS this Agreement is effective as of the last date on which the parties sign below,

NOW, THEREFORE, the parties hereto, intending to be legally bound hereby, and in consideration of the mutual promises, covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

1. WALACH shall permanently cease and desist from any and all use, advertisement, promotion, sponsorship, or the like, of any marks incorporating the terms ARK, ARK NATURAL'S, and/or any confusingly similar mark or term.
2. WALACH shall not apply for, register, or otherwise seek to protect, any mark consisting of or incorporating the term ARK , ARK NATURALS, and/or any confusingly similar mark or term.
3. Within five (5) days of the execution hereof, the proposed Amendment of **Exhibit 1** hereto shall be properly filed to permanently and unconditionally delete all references to the term ARK from the mark and the '849 application (hereinafter the "Proposed Amendment").

4. In the event that the United States Trademark Trial and Appeal Board does not accept the Proposed Amendment for any reason upon the initial filing of the Proposed Amendment, then (a) WALACH hereby assigns all right, title and interest in and to the '849 Application, together with all attendant goodwill in the applied-for mark therein, to GCN, and (b) separately and independently of any other term or provision in this Agreement, Applicant agrees that judgment in this action should be entered in favor of GCN, at GCN's election.
5. WALACH consents to the registration of Opposer's mark ARK NATURALS in U.S. Application No. 77945954 for the reasons set forth in this agreement.
6. GCN consents to WALACH's registration of the amended mark set forth in the Proposed Amendment.
7. GCN consents to WALACH's future new application filing, if any, for the term SMART KENNEL so long as no other matter is contained in such an application that would create a likelihood of confusion with, or dilution of, any mark or right in which GCN has an interest, whether now or at the time of such filing by WALACH.
8. Upon permanent acceptance by the United States Patent and Trademark Office of the Proposed Amendment, Opposition shall be dismissed without prejudice.
9. The parties hereto agree to cooperate fully in the execution of any documents or performance in any way which may be reasonably necessary to carry out the purposes of this Agreement and to effectuate the intent of the parties hereto.

10. The parties enter into this Agreement with the expectation that compliance with the terms, conditions and restrictions set forth herein will prevent a likelihood of confusion between the names and marks of the respective parties. If either party becomes aware of or is informed of any confusion arising from the parties' respective uses of their marks, then the parties shall promptly and in good faith meet and determine appropriate steps to prevent such confusion.
11. Nothing contained in this Agreement shall be construed in any manner as creating a license to WALACH and nothing contained in this Agreement shall be construed to preclude GCN from entering into agreements of any type with other parties.
12. This Agreement shall be binding upon and inure to the benefit of the respective parties hereto, and their affiliates, agents, successors in interest and/or assigns, and upon any and all others acting by or through them or under their direction, except that the consents granted by GCN herein shall not be assigned, or assignable, by WALACH without the prior written permission of GCN.
13. The failure of any party to demand strict performance by the other party of any of the terms or conditions of this Agreement shall not be construed as a waiver or relinquishment thereof and either party may, at any time, demand strict and complete performance by the other party of said terms and conditions.
14. A facsimile signature shall be deemed equivalent to an original signature for purposes of executing this Agreement and that this Agreement may be executed in counterparts. Each such counterpart shall be deemed to be an original and all of such counterparts shall constitute together one and the same Agreement.

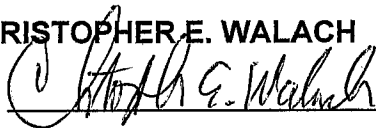
15. The parties have each contributed to the drafting of this agreement and therefore waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

WHEREFORE, the parties, by and through their duly authorized representatives, hereto execute this Agreement as indicated by their respective signatures below.

ACCEPTED AND ACKNOWLEDGED:

Effective date: April 22, 2011

CHRISTOPHER E. WALACH

By: 

Name: Christopher E. Walach

Title: Trademark Applicant

GULF COAST NUTRITIONALS, INC.

By: 

Name: JAY B WEISS

Title: C.O.O.

EXHIBIT 1

AMENDMENT TO APPLICATION SERIAL NO. 77/825849

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

To the Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

In the matter of Application Serial No. 77/825849, Published in the Official Gazette on
August 3, 2010

GULF COAST NUTRITIONALS, INC.)	
)	
Opposer,)	Opposition No. 91196754
)	
v.)	
)	
CHRISTOPHER E. WALACH)	
)	
Applicant.)	

CERTIFICATE OF MAILING

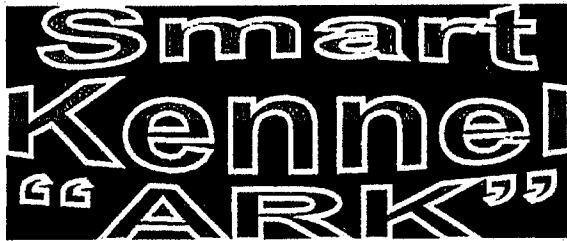
I HEREBY CERTIFY that the original of this Memorandum in Opposition is being electronically filed with the Trademark Trial and Appeal Board of the United States Patent and Trademark Office through the web site at <http://esta.uspto.gov> on

CHRISTOPHER E. WALACH

AMENDMENT WITH CONSENT OF OPPOSER

The parties to this proceeding have entered into a final settlement agreement whereby the Applicant has, at his own suggestion, requested to be permitted to file an amendment in to the mark of the subject Application herein. In light of the terms of the settlement agreement, which is filed herewith as **Exhibit A**, the Opposer has no opposition to the proposed amendment, which is sought by Applicant as follows:

The mark is amended from:



To:



The description of the mark is amended from:

~~The mark consists of the wording "SMART KENNEL "ARK"" in stylized lettering with a rectangular carrier~~

To:

The mark consists of the wording "SMART KENNEL in stylized lettering with a rectangular carrier

Applicant therefore requests the above amendment be made to the subject

Application herein.

A handwritten signature in black ink, appearing to read "Christopher E. Walach".

CHRISTOPHER E. WALACH

Applicant

2747 Paradise RD

Suite 2801

Las Vegas, NV 89109

Telephone: (702) 684-1865

Email: cwalach@gmail.com