

TRADEMARK ASSIGNMENT

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	Security Interest

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Ultimate Nutrition, Inc.		01/20/2012	CORPORATION: CONNECTICUT

RECEIVING PARTY DATA

Name:	TD Bank, NA
Street Address:	2461 Main Street
City:	Glastonbury
State/Country:	CONNECTICUT
Postal Code:	06033
Entity Type:	A National Banking Association: CONNECTICUT

PROPERTY NUMBERS Total: 68

Property Type	Number	Word Mark
Serial Number:	77589364	ADRENOLINE
Serial Number:	77217107	AMINO BOLIC
Serial Number:	75782024	AMINO GOLD
Serial Number:	85183872	ANABOLIC RELOAD
Serial Number:	76586995	ARGINONE
Serial Number:	77236732	BETA K
Serial Number:	76288543	BETA METHOXY
Serial Number:	75688378	BIOVOLUMIZING
Serial Number:	75769622	BLOC
Serial Number:	78491114	B-POWER
Serial Number:	85121560	CELLSIZER HSP
Serial Number:	78173830	CLAPURE
Serial Number:	76475246	COLDPURE
Serial Number:	75245390	CREA/MAX

OP \$1715.00 77589364

Serial Number:	75653273	CREATINE SUPREME
Serial Number:	85320514	DAA X30
Serial Number:	78786807	DAILY COMPLETE FORMULA
Serial Number:	75731012	DIET RIPPED
Serial Number:	77590637	DYNAMITE
Serial Number:	76586996	F-16
Serial Number:	76475247	FERMAPURE
Serial Number:	85169385	FUELED BY RAGE
Serial Number:	77713794	FULL COMBAT
Serial Number:	85209701	GC-19
Serial Number:	74622539	GLUTAMAX
Serial Number:	78140410	GLUTAPURE
Serial Number:	78653530	HORSE POWER
Serial Number:	85170461	HYPER START
Serial Number:	85183573	INNER MEAL
Serial Number:	85168232	INNER RAGE
Serial Number:	85169380	INNER RAGE FUELED BY RAGE
Serial Number:	85183255	INTER-MEAL
Serial Number:	85183265	INTRA-MEAL
Serial Number:	77218568	ISO MASS
Serial Number:	77236734	ISO MASS XTREME GAINER
Serial Number:	77825733	ISO SENSATION
Serial Number:	78491118	ISOCOOL
Serial Number:	76475248	ISOPREME
Serial Number:	75561571	JOINT RENEW
Serial Number:	77651569	LEAN PHYSIQUE
Serial Number:	77942619	MASS EFFECT
Serial Number:	75653274	MAXIMUM MSM
Serial Number:	76288542	METHOXY WHEY
Serial Number:	76555348	MUSCLE JUICE
Serial Number:	85096486	OCTO-PRO
Serial Number:	78824908	PERFECT DIET
Serial Number:	75194143	PREMIUM MCT GOLD
Serial Number:	73828802	PROSTAR
Serial Number:	77848654	RED ZONE

**TRADEMARK**

**REEL: 004707 FRAME: 0808**

	77348569	RED ZONE
Serial Number:	77867981	RESISTANCE SHIELD
Serial Number:	75763142	SUPER WHEY AMINO 2000
Serial Number:	77012138	TESTOSTROGROW
Serial Number:	77844825	T-GROW
Serial Number:	85119751	UG ULTIMATEGEAR
Serial Number:	77868568	ULTIMATE ACTION
Serial Number:	75733966	ULTIMATE CUISINE
Serial Number:	77418115	ULTIMATE GEAR
Serial Number:	73677100	ULTIMATE NUTRITION
Serial Number:	77181059	ULTIMATE NUTRITION
Serial Number:	77925899	ULTIMATE NUTRITION
Serial Number:	76576821	ULTIMATE NUTRITION THE FUTURE OF SPORTS NUTRITION
Serial Number:	77181067	ULTIMATE NUTRITION THE FUTURE OF SPORTS NUTRITION
Serial Number:	77418129	ULTIMATEGEAR
Serial Number:	75634621	ULTRA RIPPED
Serial Number:	78491111	V-POWER
Serial Number:	75733974	WHEY SUPREME
Serial Number:	75688377	WHEY SUPREME

**CORRESPONDENCE DATA**

Fax Number: (212)292-5391  
Phone: 2122925390  
Email: mail@ipcounselors.com

*Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.*

Correspondent Name: William C. Wright  
Address Line 1: 60 East 42nd Street, Suite 2410  
Address Line 4: New York, NEW YORK 10165

ATTORNEY DOCKET NUMBER:	ULTIMATE NUTRITION
NAME OF SUBMITTER:	William C. Wright
Signature:	/William C. Wright/
Date:	01/31/2012

Total Attachments: 14

**TRADEMARK**  
**REEL: 004707 FRAME: 0809**

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## Trademark Collateral Assignment and Security Agreement

**TRADEMARK COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT** (“Trademark Agreement”) dated as of January 20, 2012, between **ULTIMATE NUTRITION, INC.**, a Connecticut corporation having its chief executive office and principal place of business at 21 Hyde Road, Farmington, Connecticut 06032 (the “Assignor”), and **TD BANK, N.A.**, a national banking association, with an office at 2461 Main Street, Glastonbury, Connecticut 06033 (the “Bank”).

WHEREAS, the Assignor, the Bank and others are parties to a Revolving Credit and Term Loan Agreement dated of even date herewith (as amended and in effect from time to time, the “Loan Agreement”); and

WHEREAS, it is a condition precedent to the Bank’s making any loans or otherwise extending credit to the Assignor under the Loan Agreement that the Assignor execute and deliver to the Bank a trademark agreement in substantially the form hereof; and

WHEREAS, in the Loan Agreement, the Assignor has granted to the Bank a security interest in all of Assignor’s personal property and fixture assets, including without limitation the United States trademarks, the U.S. applications therefor, and/or the U.S. registrations thereof listed on **Schedule A** attached hereto, all to secure the payment and performance of the obligations of Assignor to Bank under the Other Documents (as defined in the Loan Agreement, such obligations being hereinafter collectively referred to as the “Obligations”); and

WHEREAS, this Trademark Agreement is supplemental to the provisions contained in the Loan Agreement.

NOW, THEREFORE, in consideration of the premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

### **1. Definitions.**

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings provided therefor in the Loan Agreement. In addition, the following terms shall have the meanings set forth in this Section 1 or elsewhere in this Trademark Agreement referred to below:

**Proceeds.** Any consideration received from the sale, exchange, license, lease or other disposition or transfer of any right, interest, asset or property which constitutes all or any part of the Trademark Collateral, any value received as a consequence of the ownership, possession, use or practice of any Trademark Collateral, and any payment received from any insurer or other person or entity as a result of the destruction or the loss, theft or other involuntary conversion of whatever nature of any right, interest, asset or property which constitutes all or any part of the Trademark Collateral.

**PTO.** The United States Patent and Trademark Office.

**Trademark(s).** All trademarks and trademark applications, whether United States or foreign, that are owned by the Assignor or in which the Assignor has any right, title or interest, now or in the future, including but not limited to:

(a) the United States trademarks, the U.S. applications therefor, and/or U.S. registrations thereof listed on **Schedule A** hereto (as the same may be amended pursuant hereto from time to time);

(b) all trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and other source or business identifiers and the goodwill associated therewith, now and existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, whether registered in the PTO or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof or otherwise, including without limitation, any thereof referred to in this Trademark Agreement, the Loan Agreement or the Other Documents;

(c) all , divisions, , renewals or extensions thereof,

(d) the right (but not the obligation) to make and prosecute applications for such Trademarks.

**Trademark Agreement.** This Trademark Collateral Assignment and Security Agreement, as amended and in effect from time to time.

**Trademark Collateral.** All of Assignor's right, title and interest in and to all of the Trademarks, the Trademark License Rights, and all other Trademark Rights, and all additions, improvements, and accessions to, all substitutions for and replacements of, and all products and Proceeds (including insurance proceeds) of any and all of the foregoing, and all books and records and technical information and data describing or used in connection with any and all such rights, interests, assets or property.

**Trademark License Rights.** Any and all past, present or future rights and interests of Assignor pursuant to any and all past, present and future licensing agreements in favor of the Assignor, or to which said Assignor is a party, pertaining to any Trademarks, Trademark Rights or Trademark License Rights, owned or used by third parties in the past,

present or future, including the right in the name of Assignor or the Bank to enforce, and sue and recover for, any past, present or future breach or violation of any such agreement.

**Trademark Rights.** Any and all past, present or future rights in, to and associated with the Trademarks throughout the world, whether arising under federal law, state law, common law, foreign law, or otherwise, including but not limited to the following: all such rights arising out of or associated with the Trademarks; the right (but not the obligation) to register claims under any federal, state or foreign Trademark law or regulation; the right (but not the obligation) to sue or bring opposition or bring cancellation proceedings in the name of the Assignor or the Bank for any and all past, present and future infringements of or any other damages or injury to the Trademarks or the Trademarks Rights, and the rights to damages or profits due or accrued arising out of or in connection with any such past, present or future infringement, damage or injury; and the Trademark License Rights.

## **2. Grant of Security Interest.**

As collateral security for the payment and performance of all of the Obligations, Assignor hereby grants to the Bank a continuing security interest in the Trademark Collateral and the goodwill of the business associated therewith. THE BANK ASSUMES NO LIABILITY ARISING IN ANY WAY BY REASON OF ITS HOLDING SUCH COLLATERAL SECURITY.

## **3. Representations, Warranties and Covenants.**

Assignor represents, warrants and covenants that: (i) **Schedule A** attached hereto sets forth a true and complete list of all the United States trademark, U.S. applications therefor, and/or U.S. registrations thereof now owned, licensed, controlled or used by the Assignor; (ii) Assignor's issued Trademarks are subsisting and have not been adjudged invalid or unenforceable, in whole or in part, and there is no litigation or proceeding pending concerning the validity or enforceability of the issued Trademarks; (iii) to the best of Assignor's knowledge, each of the issued Trademarks is valid and enforceable; (iv) to the best of Assignor's knowledge, there is no infringement by others of the issued Trademarks or Trademark Rights; (v) to the best of Assignor's knowledge, no claim has been made that the current use of any of the Trademarks does or may violate the rights of any third person, and to the best of Assignor's knowledge there is no infringement by said Assignor of the Trademark rights of others; (vi) Assignor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks (other than ownership and other rights reserved by third party owners with respect to Trademarks which Assignor is licensed to practice or use), free and clear of any liens, charges, encumbrances and adverse claims, including without limitation pledges, assignments, licenses, shop rights and covenants by Assignor not to sue third persons, other than the security agreement created by the Loan Agreement and this Trademark Agreement; (vii) Assignor has the unqualified right to enter into this Trademark Agreement and perform its terms and has entered and will enter into written agreements with each of its present and future employees, agents, consultants, licensors and licensees which will enable it to comply with the covenants herein contained; (viii) this Trademark Agreement, together with the Loan Agreement and/or the Other Documents, will create in favor of the Bank a valid and perfected first priority security interest in the Trademark Collateral upon making the filings referred to in clause (ix) of this Section 3; (x)

except for the filing of financing statements with Secretary of State for the State of Connecticut under the Uniform Commercial Code and the filing of this Trademark Agreement with the PTO, no authorization, approval or other action by, and no notice to or filing with, any governmental or regulatory authority, agency or office is required either (1) for the grant by the Assignor or the effectiveness of the security interest granted hereby or for the execution, delivery and performance of this Trademark Agreement by the Assignor, or (2) for the perfection of or the exercise by the Bank of any of its rights and remedies hereunder; and (xi) Assignor represents and warrants that all of the Trademarks listed on **Schedule A** attached hereto are the only U.S. trademark, U.S. applications therefor, and/or U.S. registrations thereof owned by Assignor.

**4. No Transfer or Inconsistent Agreements.**

Without the Bank's prior written consent and except for licenses of the Trademark Collateral in the ordinary course of Assignor's business consistent with past practices with the prior written consent of Bank not be unreasonably withheld, Assignor will not (i) mortgage, pledge, assign, encumber, grant a security interest in, transfer, license or alienate any of the Trademark Collateral, or (ii) enter into any agreement (for example, a license agreement) that is inconsistent with said Assignor's obligations under this Trademark Agreement or the Loan Agreement and/or any Other Documents.

**5. After-Acquired Trademarks, etc.**

**5.1 After-Acquired Trademarks.** If, before all the Obligations shall have been finally paid and satisfied in full, Assignor shall obtain any right, title or interest in or to any other or new Trademarks, Trademark applications, or become entitled to the benefit of any Trademark application or Trademark or any, division, , renewal, or extension, of any of the Trademark Collateral, the provisions of this Trademark Agreement shall automatically apply thereto and said Assignor shall promptly give to the Bank notice thereof in writing and execute and deliver to the Bank such documents or instruments as the Bank may reasonably request further to transfer title thereto to the Bank.

**5.2 Amendment to Schedule.** Assignor authorizes the Bank to modify this Trademark Agreement, without the necessity of said Assignor's further approval or signature, by amending **Schedule A** hereto to include any future or other Trademarks or Trademark Rights under Section 2 or Section 5 hereof.

**6. Trademark Prosecution.**

**6.1 Assignor Responsible.** The Assignor shall assume full and complete responsibility for the prosecution, grant, enforcement or any other necessary or desirable actions in connection with the Trademark Collateral, and shall hold the Bank harmless from any and all costs, damages, liabilities and expenses which may be incurred by the Bank in connection with the Bank's title to any of the Trademark Collateral or any other action or failure to act in connection with this Trademark Agreement or the transactions contemplated hereby. In respect of such responsibility, the Assignor shall retain Trademark counsel acceptable to the Bank, and the Bank hereby confirms that Assignor's current Trademark counsel is acceptable



**6.2 Assignor's Duties, etc.** If commercially reasonable in the applicable Assignor's reasonable judgment, said Assignor shall have the duty, through Trademark counsel acceptable to the Bank, to prosecute diligently any Trademark applications of the Trademarks pending as of the date of this Trademark Agreement or thereafter, to make application for non-registered Trademarks but reasonably registrable Trademarks and to reasonably preserve and maintain all rights in the Trademarks, including without limitation the payment when due of all maintenance fees and other fees, taxes and other expenses which shall be incurred or which shall accrue with respect to any of the Trademarks. Any expenses incurred in connection with such applications and actions shall be borne by the applicable Assignor. If commercially reasonable in Assignor's reasonable judgment, Assignor may not abandon any filed Trademark application, or any pending Trademark application or Trademarks, without the consent of the Bank, which consent shall not be unreasonably withheld.

**6.3 Assignor's Enforcement Rights.** Assignor shall have the right, with the consent of the Bank, which shall not be unreasonably withheld, to bring suit or other action in Assignor's own name to enforce the Trademarks and the Trademark Rights. The Bank may join in such suit or action as may be necessary to assure Assignor's ability to bring and maintain any such suit or action in any proper forum so long as the Bank is completely satisfied that such joinder will not subject the Bank to any risk of liability. Assignor shall promptly, upon demand, reimburse and indemnify the Bank for all damages, costs and expenses, including legal fees, incurred by the Bank pursuant to this Section 6.3.

**6.4 Protection of Trademarks, etc.** If commercially reasonable in the applicable Assignor's reasonable judgment, in general, said Assignor shall take any and all such actions (including but not limited to institution and maintenance of suits, proceedings or actions) as may be necessary or appropriate to properly maintain, protect, preserve, care for and enforce the Trademark Collateral. No Assignor shall take or fail to take any action, nor permit any action to be taken or not taken by others under its control, which would affect the validity, grant or enforcement of any of the Trademark Collateral.

**6.5 Notification by Assignor.** Promptly upon obtaining knowledge thereof, Assignor will notify the Bank in writing of the institution of, or any final adverse determination in, any proceeding in the PTO or any similar office or agency of the United States or any foreign country, or any court, regarding the validity of any of the Trademarks or said Assignor's rights, title or interests in and to any of the Trademark Collateral, and of any event which does or reasonably could materially adversely affect the value of any of the Trademark Collateral, the ability of Assignor or the Bank to dispose of any of the Trademark Collateral or the rights and remedies of the Bank in relation thereto (including but not limited to the levy of any legal process against any of the Trademark Collateral).

**7. Left Intentionally Blank.**

## **8. Remedies.**

If any Event of Default shall have occurred and be continuing, then upon notice by the Bank to said Assignor: (i) said Assignor shall immediately cease and desist from the practice, manufacture, use and sale of the Trademark Collateral and/or Trademarks; and (ii) the Bank shall have, in addition to all other rights and remedies given it by this Trademark Agreement, the Loan Agreement, and the Other Documents, those allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in the State of Connecticut and any other relevant jurisdiction and, without limiting the generality of the foregoing, the Bank may immediately, without demand of performance and without other notice (except as set forth next below) or demand whatsoever to said Assignor, all of which are hereby expressly waived, and without advertisement, sell or license at public or private sale or otherwise realize upon the whole or from time to time any part of the Trademark Collateral, or any interest which said Assignor may have therein, and after deducting from the proceeds of sale or other disposition of the Trademark Collateral all expenses (including all reasonable expenses for broker's fees and legal services), shall apply the residue of such proceeds toward the payment of the Obligations as set forth in the Loan Agreement and/or the Other Documents. Notice of any sale, license or other disposition of any of the Trademark Collateral shall be given to the applicable Assignor at least sixty (60) days before the time that any intended public sale or other disposition of such Trademark Collateral is to be made or after which any private sale or other disposition of such Trademark Collateral may be made, which Assignor hereby agrees shall be reasonable notice of such public or private sale or other disposition. At any such sale or other disposition, the Bank may, to the extent permitted under applicable law, purchase or license the whole or any part of the Trademark Collateral or interests therein sold, licensed or otherwise disposed of.

## **9. Collateral Protection.**

If said Assignor shall fail to do any act that it has covenanted to do hereunder, or if any representation or warranty of Assignor shall be materially breached, the Bank, in its own name or that of the Assignor (in the sole discretion of the Bank), may (but shall not be obligated to) do such act or remedy such breach (or cause such act to be done or such breach to be remedied), and the Assignor agrees promptly to reimburse the Bank for any reasonable cost or expense incurred by the Bank in so doing.

## **10. Power of Attorney.**

If any Event of Default shall have occurred and be continuing, Assignor does hereby make, constitute and appoint the Bank (and any officer or agent of the Bank as the Bank may select in its exclusive discretion) as Assignor's true and lawful attorney-in-fact, with the power to endorse the Assignor's name on all applications, documents, papers and instruments necessary for the Bank to use any of the Trademark Collateral, to grant or issue any exclusive or nonexclusive license of any of the Trademark Collateral to any third person, or necessary for the Bank to assign, pledge, convey or otherwise transfer title in or dispose of the Trademark Collateral or any part thereof or interest therein to any third person, and, in general, to execute and deliver any instruments or documents and do all other acts which the Assignor is obligated to execute and do hereunder. Assignor hereby ratifies all that such attorney shall lawfully do or

cause to be done by virtue hereof, and releases the Bank from any claims, liabilities, causes of action or demands arising out of or in connection with any action taken or omitted to be taken by the Bank under this power of attorney (except for the Bank's gross negligence or willful misconduct). This power of attorney shall be irrevocable for the duration of this Trademark Agreement.

**11. Further Assurances.**

Assignor shall, at any time and from time to time, and at its expense, make, execute, acknowledge and deliver, and file and record as necessary or appropriate with governmental or regulatory authorities, agencies or offices, such agreements, assignments, documents and instruments, and do such other and further acts and things (including, without limitation, obtaining consents of third parties), as the Bank may request or as may be necessary or appropriate in order to implement and effect fully the intentions, purposes and provisions of this Trademark Agreement, or to assure and confirm to the Bank the grant, perfection and priority of the Bank's security interest in any of the Trademark Collateral.

**12. Termination.**

At such time as all of the Obligations have been finally paid and satisfied in full, this Trademark Agreement shall terminate and the Bank shall, upon the written request and at the expense of the Assignor, execute and deliver to Assignor all deeds, assignments and other instruments as may be necessary or proper to reassign and reconvey to and re-vest in the applicable Assignor the entire right, title and/or interest to the Trademark Collateral previously granted, assigned, transferred and conveyed to the Bank by the Assignor pursuant to this Trademark Agreement, as fully as if this Trademark Agreement had not been made, subject to any disposition of all or any part thereof which may have been made by the Bank pursuant hereto or the Loan Agreement and/or any of the Other Documents.

**13. Course of Dealing.**

No course of dealing between the Assignor and the Bank, nor any failure to exercise, nor any delay in exercising, on the part of the Bank, any right, power or privilege hereunder or under the Loan Agreement or other Other Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

**14. Expenses.**

Any and all reasonable fees, costs and expenses, of whatever kind or nature, including the reasonable attorneys' fees and legal expenses incurred by the Bank in connection with the preparation of this Trademark Agreement and all other documents relating hereto, the consummation of the transactions contemplated hereby or the enforcement hereof, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise protecting, maintaining or preserving any of the Trademark Collateral, or in defending or

prosecuting any actions or proceedings arising out of or related to any of the Trademark Collateral, shall be borne and paid by the Assignor.

**15. Overdue Amounts.**

Until paid, all amounts due and payable by the Assignor hereunder shall be a debt secured by the Trademark Collateral and other Collateral and shall bear, whether before or after judgment, interest at the rate of interest for overdue principal set forth in the Loan Agreement.

**16. No Assumption of Liability; Indemnification.**

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE BANK ASSUMES NO LIABILITIES OF SAID ASSIGNOR WITH RESPECT TO ANY CLAIM OR CLAIMS REGARDING SAID ASSIGNOR'S OWNERSHIP OR PURPORTED OWNERSHIP OF, OR RIGHTS OR PURPORTED RIGHTS ARISING FROM, ANY OF THE TRADEMARK COLLATERAL OR ANY USE, LICENSE OR SUBLICENSE THEREOF, WHETHER ARISING OUT OF ANY PAST, CURRENT OR FUTURE EVENT, CIRCUMSTANCE, ACT OR OMISSION OR OTHERWISE. ALL OF SUCH LIABILITIES SHALL BE EXCLUSIVELY BORNE BY THE ASSIGNOR, AND THE ASSIGNOR SHALL INDEMNIFY THE BANK FOR ANY AND ALL COSTS, EXPENSES, DAMAGES AND CLAIMS, INCLUDING LEGAL FEES, INCURRED BY THE BANK WITH RESPECT TO SUCH LIABILITIES.

**17. Rights and Remedies Cumulative.**

All of the Bank's rights and remedies with respect to the Trademark Collateral, whether established hereby or by the Loan Agreement or by any other agreements or by law, shall be cumulative and may be exercised singularly or concurrently. This Trademark Agreement is supplemental to the Loan Agreement, and nothing contained herein shall in any way derogate from any of the rights or remedies of the Bank contained therein. Nothing contained in this Trademark Agreement shall be deemed to extend the time of attachment or perfection of or otherwise impair the security interest in any of the Trademark Collateral granted to the Bank under the Loan Agreement.

**18. Notices.**

All notices and other communications made or required to be given pursuant to this Trademark Agreement shall be in writing and shall be delivered in hand, mailed by United States registered or certified first-class mail, postage prepaid, or sent by telegraph, telecopy or telex and confirmed by delivery via courier or postal service, addressed as follows:

(a) if to Assignor:

**ULTIMATE NUTRITION, INC.**  
21 Hyde Road  
Farmington, Connecticut 06032  
Attention: Elizabeth A. Rubino, President

or at such other address for notice as the Assignor shall last have furnished in writing to the person giving the notice; and

(b) if to the Bank:

**TD BANK, N.A.**  
2461 Main Street  
Glastonbury, Connecticut 06033  
Attn: Mark Wasilefsky, Vice President

or at such other address for notice as the Bank shall last have furnished in writing to the person giving the notice.

Any such notice or demand shall be deemed to have been duly given or made and to have become effective (i) if delivered by hand to a responsible officer of the party to which it is directed, at the time of the receipt thereof by such officer, (ii) if sent by registered or certified first-class mail, postage prepaid, two (2) Business Days after the posting thereof, and (iii) if sent by telegraph, telecopy, or telex, at the time of the dispatch thereof, if in normal business hours in the country of receipt, or otherwise at the opening of business on the following Business Day.

#### **19. Amendment and Waiver.**

This Trademark Agreement is subject to modification only by a writing signed by the Bank and the Assignor, except as provided in Section 5.2. The Bank shall not be deemed to have waived any right hereunder unless such waiver shall be in writing and signed by the Bank. A waiver on any one occasion shall not be construed as a bar to or waiver of any right on any future occasion.

#### **20. Governing Law; Consent to Jurisdiction.**

**THIS TRADEMARK AGREEMENT IS INTENDED TO TAKE EFFECT AND SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CONNECTICUT.** The Assignor agrees that any suit for the enforcement of this Trademark Agreement may be brought in the courts of the State of Connecticut or any federal court sitting therein and consents to the nonexclusive jurisdiction of such court and to service of process in any such suit being made upon the Assignor by mail at the address specified in Section 18. The Assignor hereby waives any objection that it may now or

hereafter have to the venue of any such suit or any such court or that such suit is brought in an inconvenient court.

**21. Waiver of Jury Trial.**

**ASSIGNOR WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS TRADEMARK AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR THE PERFORMANCE OF ANY SUCH RIGHTS OR OBLIGATIONS.** Except as prohibited by law, the Assignor waives any right which it may have to claim or recover in any litigation referred to in the preceding sentence any special, exemplary, punitive or consequential damages or any damages other than, or in addition to, actual damages. The Assignor (i) certifies that neither the Bank nor any representative, agent or attorney of the Bank has represented, expressly or otherwise, that the Bank would not, in the event of litigation, seek to enforce the foregoing waivers, and (ii) acknowledges that, in entering into the Loan Agreement and the other Other Documents to which the Bank is a party, the Bank is relying upon, among other things, the waivers and certifications contained in this Section 21.

**22. Miscellaneous.**

The headings of each section of this Trademark Agreement are for convenience only and shall not define or limit the provisions thereof. This Trademark Agreement and all rights and obligations hereunder shall be binding upon the Assignor and its successors and assigns, and shall inure to the benefit of the Bank and its successors and assigns. In the event of any irreconcilable conflict between the provisions of this Trademark Agreement and the Loan Agreement, or between this Trademark Agreement the provisions of the Loan Agreement shall control. If any term of this Trademark Agreement shall be held to be invalid, illegal or unenforceable, the validity of all other terms hereof shall in no way be affected thereby, and this Trademark Agreement shall be construed and be enforceable as if such invalid, illegal or unenforceable term had not been included herein. The Assignor acknowledge receipt of a copy of this Trademark Agreement.

**IN WITNESS WHEREOF**, this Trademark Agreement has been executed as of the day and year first above written.

**ULTIMATE NUTRITION, INC.**

By: *Elizabeth A. Rubino*  
Elizabeth A. Rubino  
Its President  
Duly Authorized

TD BANK, N.A.

By: Lacey Bigos  
Lacey Bigos  
Its Vice President  
Duly Authorized

STATE OF CONNECTICUT )

: ss Hartford

January 20, 2012

COUNTY OF HARTFORD )

Personally Appeared Elizabeth A. Rubino, President of **ULTIMATE NUTRITION, INC.**, a Connecticut corporation, as aforesaid, signer of the foregoing instrument, and acknowledged the same to be her free act and deed as such President and the free act and deed of said corporation, before me.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Barry S. Feigenbaum  
Barry S. Feigenbaum  
Commissioner of Superior Court  
Notary Public \_\_\_\_\_  
My Commission Expires:

STATE OF CONNECTICUT )

: ss:

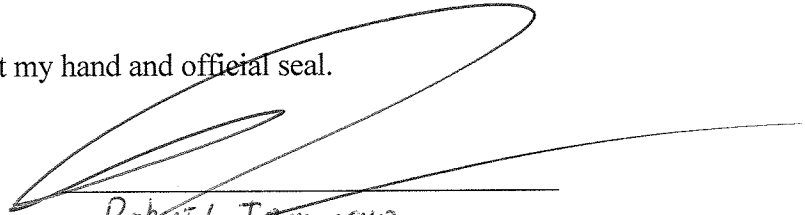
Hartford

January 20, 2012

COUNTY OF HARTFORD )

Personally appeared Lacey Bigos, Vice President of TD BANK, N.A., a Connecticut banking institution, as aforesaid, signer of the foregoing instrument, and acknowledged the same to be her free act and deed as such Vice President and the free act and deed of said banking institution, before me.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Robert L. DeMano  
Commissioner of Superior Court  
Notary Public  
My Commission Expires:

4275-483/ Trademark Collateral Assignment and Security Agreement (Ultimate)



**SCHEDULE A**

<b>Trademark</b>	<b>Serial Number</b>	<b>Registration Number</b>
ADRENOLINE	77589364	3870986
AMINO BOLIC	77217107	3372734
AMINO GOLD	75782024	2562814
ANABOLIC RELOAD	85183872	
ARGINONE	76586995	3011893
BETA K	77236732	3522827
BETA METHOXY	76288543	2603198
BIOVOLUMIZING	75688378	2340948
BLOC	75769622	2663687
B-POWER	78491114	3094261
CELLSIZER HSP	85121560	
CLAPure	78173830	2821790
COLDPURE	76475246	2843729
CREA/MAX	75245390	2135796
CREATINE SUPREME	75653273	2407205
DAA X30	85320514	
DAILY COMPLETE FORMULA	78786807	3658096
DIET RIPPED	75731012	2398728
DYNAMITE	77590637	
F-16	76586996	3011894
FERMAPURE	76475247	2818237
FUELED BY RAGE	85169385	
FULL COMBAT	77713794	4035406
GC-19	85209701	
GLUTAMAX	74622539	1938883
GLUTAPURE	78140410	2709537
HORSE POWER	78653530	3290350
HYPHER START	85170461	
INNER MEAL	85183573	
INNER RAGE	85168232	
INNER RAGE FUELED BY RAGE	85169380	
INTER-MEAL	85183255	
INTRA-MEAL	85183265	
ISO MASS	77218568	3479152
ISO MASS XTREME GAINER	77236734	3479289
ISO SENSATION	77825733	3780847
ISOCOOL	78491118	3202672
ISOPREME	76475248	2818238
JOINT RENEW	75561571	2376019
LEAN PHYSIQUE	77651569	3871049
MASS EFFECT	77942619	3884330
MAXIMUM MSM	75653274	2324171
METHOXY WHEY	76288542	2551363
MUSCLE JUICE	76555348	2942790
OCTO-PRO	85096486	3937843
PERFECT DIET	78824908	3327423
PREMIUM MCT GOLD	75194143	2117810
PROSTAR	73828802	1597133

Trademark	Serial Number	Registration Number
RED ZONE	77848654	3882270
RED ZONE	77348569	3857251
RESISTANCE SHIELD	77867981	
SUPER WHEY AMINO 2000	75763142	2410301
TESTOSTROGROW	77012138	3271105
T-GROW	77844825	3858129
UG ULTIMATEGEAR	85119751	4039609
ULTIMATE ACTION	77868568	
ULTIMATE CUISINE	75733966	2333263
ULTIMATE GEAR (& DESIGN)	77418115	
ULTIMATE NUTRITION	73677100	1541169
ULTIMATE NUTRITION & design	77181059	3377646
ULTIMATE NUTRITION Globe Logo	77925899	3909232
ULTIMATE NUTRITION THE FUTURE OF SPORTS NUTRITION	76576821	3088065
ULTIMATE NUTRTION THE FUTURE OF SPORTS NUTRITION	77181067	3503661
ULTIMATEGEAR	77418129	3897610
ULTRA RIPPED	75634621	2328920
V-POWER	78491111	3160199
WHEY SUPREME & design	75733974	2333264
WHEY SUPREME	75688377	2396522