

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 76/440599

APPLICANT: Klein's Naturals, Ltd.

CORRESPONDENT ADDRESS: STEPHEN E. FELDMAN 12 EAST 41ST STREET NEW YORK, NEW YORK 10017



RETURN ADDRESS: Commissioner for Trademarks 2900 Crystal Drive Arlington, VA 22202-3514

MARK: OH-SO HEALTHY

CORRESPONDENT'S REFERENCE/DOCKET NO: N/A

CORRESPONDENT EMAIL ADDRESS:

Handwritten signature

Please provide in all correspondence:

- 1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

TO AVOID ABANDONMENT, WE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF OUR MAILING OR E-MAILING DATE.

Serial Number 76/440599

File Remanded to the Trademark Examining Attorney

The applicant filed, on December 12, 2003, an amendment and a notice of appeal. The Trademark Trial and Appeal Board has remanded the file to the examining attorney for consideration of the applicant's amendment to the identification of goods.

This letter responds to the applicant's amendment to the identification of goods.

Identification of Goods - Indefinite

The current wording used to describe the goods needs clarification because the wording is indefinite and does not separate the type of nuts into their separate respective classes. (See the examining attorney's Office actions dated June 19, 2003 and December 17, 2002.) Also, the identification contains goods that are classified in additional international classes for which the applicant has not submitted the required additional fees. Applicant may adopt the following identification of goods, if accurate:

International Class 29

Nuts, namely, shelled, roasted, candied, or otherwise processed; seeds, namely, processed, edible sunflower seeds, pumpkin seeds, poppy seeds, and sesame seeds; coconut, namely, processed coconut;

dried fruits, namely, apricots, pineapple, ambrosia, papaya, cantaloupe, raisins, cranberries, bananas, prunes, dates, apples [the applicant misspelled this term as "applies"], mangos, peaches, pears, cherries, blueberries, figs, citrons, and esrogs; dried fruit and nut mix and dried fruit mix;

International Class 30
Chocolate covered nuts;

International Class 31
Fresh, raw, or unprocessed nuts.

TMEP §1402.01.

The applicant is advised that the Trademark Office *Manual of Acceptable Identifications of Goods and Services*, which includes the correct classifications of the listed goods and services, may be found online at [http://www.uspto.gov/web/offices/tac/doc/gsmannual/](http://www.uspto.gov/web/offices/tac/doc/gsmmanual/). The applicant may find this resource to be quite useful in framing an amended and acceptable identification of goods/services in this matter. Parentheses and brackets **should not** be included in the actual identification of goods or services adopted by the applicant.

Please note that, while the identification of goods may be amended to clarify or limit the goods, adding to the goods or broadening the scope of the goods is not permitted. 37 C.F.R. §2.71(a); TMEP §1402.06. Therefore, applicant may not amend the identification to include goods that are not within the scope of the goods set forth in the present identification.

Insufficient Fee -- Submit Additional Fee or Restrict the Number of Classes

Applicant must clarify the number of classes for which registration is sought. The submitted filing fees are insufficient to cover all the classes in the application. Specifically, the application identifies goods that are classified in at least three (3) international classes; however applicant paid the fee for only two (2) classes.

Applicant must either: (1) restrict the application to the number of classes covered by the fee already paid, or (2) pay the required fee for each additional class. 37 C.F.R. §2.86(a)(2); TMEP §§810.01, 1401.04, 1401.04(b) and 1403.01.

Requirements for a Combined Application

If applicant prosecutes this application as a combined, or multiple-class application, then applicant must comply with each of the requirements below for those goods and/or services based on actual use in commerce under Trademark Act Section 1(a):

- (1) Applicant must list the goods by international class with the classes listed in ascending numerical order. TMEP §1403.01.
- (2) Applicant must submit a filing fee for each international class of goods not covered by the fee already paid. 37 C.F.R. §2.86(a)(2); TMEP §§810.01 and 1403.01.
- (3) Applicant must submit:
 - (a) dates of first use of the mark anywhere and dates of first use of the mark in commerce; the dates of use, both anywhere and in commerce, must be at least as early as the filing date of the application; 37 C.F.R. §§2.34(a)(1)(i), 2.34(a)(1)(ii) and 2.86(a)(3);

- (b) one specimen showing use of the mark for each class of goods; the specimen(s) must have been in use in commerce at least as early as the filing date of the application; 37 C.F.R. §§2.34(a)(1)(iv) and 2.86(a)(3); and
- (c) both the dates of use and a statement that "the specimen was in use in commerce at least as early as the filing date of the application" must be verified in a notarized affidavit or a signed declaration under 37 C.F.R. §2.20; 37 C.F.R. §§2.59(a) and 2.71(c).

Further action awaits response to the above.

NOTICE: TRADEMARK OPERATION RELOCATING OCTOBER AND NOVEMBER 2004

The Trademark Operation is relocating to Alexandria, Virginia, in October and November 2004. Effective October 4, 2004, all Trademark-related paper mail (except documents sent to the Assignment Services Division for recordation, certain documents filed under the Madrid Protocol, and requests for copies of trademark documents) must be sent to:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Applicants, registration owners, attorneys and other Trademark customers are strongly encouraged to correspond with the USPTO online via the Trademark Electronic Application System (TEAS), at www.uspto.gov.

My Law Office will move on October 26, 2004. To reach me by telephone after that date call (571) 272-9391.

To submit a fax response to this Office action after that date, send your response to Law Office fax number, namely, (571) 273-9391.

/Mrs. W. K. H. Price, Esq./
Trademark Attorney
Law Office 111
(703) 308-9111, ext. 426

How to respond to this Office Action:

You may respond using the Office's Trademark Electronic Application System (TEAS) (visit <http://www.uspto.gov/teas/index.html> and follow the instructions therein), but you **must** wait until at least **72 hours** after receipt of the e-mailed office action. **PLEASE NOTE:** For those with applications filed pursuant to Section 66(a) of the Trademark Act, all responses to Office actions that include amendments to the identifications of goods and/or services must be filed on paper, using regular mail (or hand delivery) to submit such response. TEAS cannot be used under these circumstances. If the response does **not** include an amendment to the goods and/or services, then TEAS can be used to

respond to the Office action.

To respond formally via regular mail, your response should be sent to the mailing Return Address listed above and include the serial number, law office and examining attorney's name on the upper right corner of each page of your response.

To check the status of your application at any time, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov/>

For general and other useful information about trademarks, you are encouraged to visit the Office's web site at <http://www.uspto.gov/main/trademarks.htm>

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY.