

PTO Form 1930 (Rev 9/2007)

OMB No. 0651-0050 (Exp. 4/30/2009)

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	76685673
LAW OFFICE ASSIGNED	LAW OFFICE 101
MARK SECTION (no change)	
ARGUMENT(S)	
<p>This Request for Reconsideration is responsive to the trademark examining attorney's final Office action mailed on September 12, 2008. Notice of Appeal of the trademark examining attorney's refusal to register the mark has been filed separately herewith.</p> <p>The trademark examining attorney has refused registration under Trademark Act § 2(d) on grounds that applicant's mark, when used in connection with applicant's fruit juice products, so resembles the following registered marks as to be likely to cause confusion, to cause mistake, or to deceive:</p> <p style="padding-left: 40px;">OASIS, for "distilled water" and "bottled water and spring water for drinking purposes," subject to a registration owned by Nestle Waters North America, Inc. (by assignment from Great Spring Waters of America, Inc.) Registration No. 1,191,458.</p> <p style="padding-left: 40px;">TROPICAL OASIS, for "teas, iced teas, teas containing fruit, herbal teas containing fruit for food purposes, non-alcoholic tea-based beverages containing fruit; herbal infusion food beverages, herbal food beverages containing fruit, herb iced teas containing fruits and herbs, all for food purposes," subject to a registration owned by Numi, L.L.C. Registration No. 2,806,813.</p> <p>Applicant would request that the trademark examining attorney reconsider this final refusal.</p> <p>A. <u>Applicant's Evidence and Arguments.</u></p>	

In response to the trademark examining attorney's refusal, applicant has previously submitted evidence and arguments to the effect that there is no likelihood of confusion between applicant's mark and the cite registered marks for the following reasons:

1. The term "oasis" is highly suggestive of beverage products.

The term "oasis," defined as "an area in a desert where water is found," immediately conjures the notion of a refreshing beverage. See Response filed July 8, 2008, at p. 2. and Annex 1. The Trademark Trial and Appeal Board has held that the use and registration of highly suggestive marks in connection with non-identical goods in the same product field is unlikely to cause confusion as to source. In re General Motors Corp, 23 USPQ2d 1465, 1469-70 (TTAB 1992); In re Daily Juice Products, Inc., 163 USPQ 658 (TTAB 1969). See also Plus Products v. Redken Laboratories, Inc., 199 USPQ 111 (TTAB 1978) ("It is settled that highly suggestive terms, because of their connotation and possible frequent registration, per se, and as components of marks for the same or similar goods, have been considered to fall within the category of "weak" marks, and the scope of protection afforded these marks has been limited to the substantially identical designation and/or to the subsequent use thereof on substantially similar goods.") Applicant has asserted that there is no likelihood of confusion between applicant's mark and the cite registered marks accordingly.

2. The term "oasis" is subject to extensive third party use and registration in connection with beverage products.

The term "oasis" is subject to extensive third party use and registration in connection with beverage products. See Response filed July 8, 2008, at p. 3 and Annex 2. The Trademark Trial and Appeal Board has held that marks which consist of or include terms which are subject to common third party use and registration in a particular product field have only a limited capacity to distinguish source. General Mills, Inc. v. Health Valley Foods, 24 USPQ2d 1270, 1277 (TTAB 1992). In the present case applicant's mark and the cited registered "oasis" marks are hemmed in on all sides by similar marks for similar goods, "customers will not likely be confused between any two of the crowd." J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition at Section 11:85 (4th Ed. 2008). Again, applicant has asserted that there is no likelihood of confusion between applicant's mark and the cite registered marks in view thereof.

B. The Trademark Examining Attorney's Evidence and Arguments.

The trademark examining attorney has taken the following positions in response to applicant's

evidence and arguments:

1. Re cited Registration No. 1,191,458: OASIS for distilled water and drinking water.

Upon considering applicant's evidence and arguments, the trademark examining attorney has maintained that there is a likelihood of confusion between applicant's mark and this cited registered mark on grounds:

- (a) That the marks are identical.
- (b) That "fruit juice and bottled water (are) related goods because they originate from a single source and they are sold in the same channels of trade." Office Action mailed September 12, 2008, at p. 2.

The trademark examining attorney has attached evidence to the effect that fruit juice and bottled water products may emanate from a single source and be sold in the same channels of trade to her final refusal to register.

2. Re cited Registration No. 2,806,813: TROPICAL OASIS for tea beverage products.

Upon considering applicant's evidence and arguments, the trademark examining attorney has maintained that there is a likelihood of confusion between applicant's mark and this cited registered mark on grounds:

- (a) That the marks are similar, noting in response to applicant's evidence of dilution that:

"The mere addition of a term to a registered mark generally does not obviate the similarity between the marks nor does it overcome a likelihood of confusion under Trademark Act Section 2(d). *See, e.g., In re Chatam Int'l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944 (Fed. Cir. 2004); *In re El Torito Rests., Inc.*, 9 USPQ2d 2002 (TTAB 1988). The only exceptions are when the matter common to the marks is merely descriptive or diluted, *and* not likely to be perceived by purchasers as distinguishing source, *or* when the marks in their entireties convey a significantly different commercial impression. TMEP §1207.01(b)(iii); *see, e.g., Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 73 USPQ2d 1350 (Fed. Cir. 2004); *In re Shawnee Milling Co.*, 225 USPQ 747 (TTAB 1985); *In re S.D. Fabrics, Inc.*, 223 USPQ 54 (TTAB 1984). The term OASIS is not descriptive of the goods; rather, as the sole term in the mark, it is used to identify the source of applicant's goods. The term is likely to be perceived as the

source identifier for the goods. Therefore, the addition of a term to this mark is likely to result in confusion."

Office Action mailed September 12, 2008, at p. 3.

(b) That fruit juice and tea products are "closely related" because they "emanate from a single source and they sold in the same channels of trade." Office Action mailed September 12, 2008, at p. 3.

The trademark examining attorney has attached evidence to the effect that fruit juice and tea products may emanate from a single source and be sold in the same channels of trade to her final refusal to register.

C. Applicant's Rebuttal.

Please consider the following in reply the trademark examining attorney's arguments.

1. Re cited Registration No. 1,191,458: OASIS for distilled water and drinking water.

(a) The inherent and marketplace strength of the OASIS mark.

The trademark examining attorney has maintained that there is a likelihood of confusion because the marks are identical. However, because the products are not likewise identical, the trademark examining attorney must consider the following du Pont factors for purposes of evaluating the issue of likelihood of confusion:

- * The inherent strength of the registrant's mark in relation to its goods; and
- * The number and nature of similar marks in use on similar goods.

In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973).

Applicant has presented evidence sufficient to establish that the term "oasis" is (1) highly suggestive of beverage products and (2) subject to extensive third party use and registration in connection with beverage products. As to the latter evidence, Trademark Manual of Examining Procedure § 1207.01(d)(iii) provides that:

"Evidence of third-party use falls under the sixth *du Pont* factor - the "number and nature of similar marks in use on similar goods." *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973). If the evidence establishes that the consuming public is exposed to third-party use of similar marks on similar goods, this evidence 'is relevant to show that a mark is relatively weak and entitled to only a narrow scope of protection.' *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondee en 1772*, 396 F.3d 1369, 1373, 73 USPQ2d 1689, 1693 (Fed. Cir. 2005)."

The sixth DuPont factor - the "number and nature of similar marks in use on similar goods" - clearly indicates that there is no likelihood of confusion in this case. The record shows:

- * That different beverage manufacturers have used and registered OASIS and "oasis" formative marks for different beverage products;
- * That no beverage manufacturer is entitled to use or register OASIS for the entire spectrum of beverage products;
- * That the right of each beverage manufacturer to use and register OASIS is circumscribed by the third party use and registration of highly similar or identical marks for closely related products; and
- * That trademark rights in OASIS attached on a product by product basis in the field of beverage products.

Due to these existing market conditions, which were not created by applicant, consumers are unlikely to mistake the source of any one OASIS beverage product for that of another, as long as the products themselves differ. The registrant's OASIS mark is hemmed in on all sides by similar marks for similar goods, and "customers will not likely be confused between any two of the crowd." J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition at Section 11:85 (4th Ed. 2008). It is applicant's belief that the trademark examining attorney may withdraw her refusal to register for this reason alone.

(b) The goods relationship.

In other respects, trademark examining attorney has maintained that there is a likelihood of confusion because "the attached evidence demonstrates that fruit juice and bottled water (sic)

related goods because they originate from a single source and are sold in the same channels of trade." However, the evidence attached to the trademark examining attorney's final action shows:

* That fruit juice and water products are very rarely sold by the same manufacturer under the same mark. Instead, registrant Nestle appears to typify U.S. industry practice by selling its fruit juice products (JUICY JUICE and JAMBA JUICE) and water products (e.g., DEER PARK and POLAND SPRINGS) under different product names. See Annex 3 (materials from Nestle websites concerning its relevant U.S. product offerings).

* That fruit juice and bottled waters are not sold in the same sections of grocery stores, and comprise separate and distinct product categories in the minds of manufacturers, retailers and consumers. Office Action mailed September 12, 2008 (attached article entitled "Tropicana Fruit Squeeze").

Because fruit juice and water products are not typically sold by the same manufacturer under the same mark, and the marks at issue are not grocery store house marks, there is no reason for consumers to presume that applicant's fruit juice products and the registrant's water products emanate from a single source. In fact, the reasonable consumer should assume, correctly, that they do not. It would be quite unusual to find fruit juice and bottled water sold under the same mark. The goods are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source, and confusion is not likely. Trademark Manual of Examining Procedure § 1207.01(a)(i) ("Conversely, if the goods or services in question are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source, then, even if the marks are identical, confusion is not likely."). Again, the trademark examining attorney may withdraw her refusal to register accordingly.

2. Re cited Registration No. 2,806,813: TROPICAL OASIS for tea beverage products.

For purposes of determining that OASIS and TROPICAL OASIS are similar marks, the trademark examining attorney has asserted that:

* The "(t)he mere addition of a term to a registered mark generally does not obviate the similarity between the marks nor does it overcome a likelihood of confusion under Trademark Act Section 2(d)."; and

* "The only exceptions are when the matter common to the marks is merely descriptive or diluted, *and* not likely to be perceived by purchasers as distinguishing source, or when the marks in their entireties convey a significantly different commercial impression."

The trademark examining attorney's assertion is a reiteration of the principal set forth in Trademark Manual of Examining Procedure §1207.01(b)(iii). However, the trademark examining attorney's reiteration is in error as to the law. The legal holdings set forth in the two cases cited in §1207.01(b)(iii) which reference diluted marks provide that:

In cases involving the addition of a housemark to one of two otherwise confusingly similar marks, it has been held that such ordinarily does not serve to avoid likelihood of confusion. In fact, such addition may be an aggravation of the likelihood of confusion as opposed to an aid in distinguishing the marks so as to avoid source confusion. See: In re *Christian Dior, S.A.*, 225 USPQ 533 (TTAB 1985) (use of LE CACHET DE DIOR for men's dress shirts and CACHET for toilet soap and cologne held likely to cause confusion), citing In re *Cosvetic Laboratories, Inc.*, 202 USPQ 842 (TTAB 1979) and *Key West Fragrance & Cosmetic Factory, Inc. v. The Mennen Co.*, 216 USPQ 168 (TTAB 1982). **However, in cases where there are some recognizable differences in the assertedly conflicting product marks or where the conflicting marks in question are highly suggestive or merely descriptive or play upon commonly used or registered terms, the addition of a housemark and/or other material to one of the marks has been held sufficient to render the marks as a whole distinguishable.** See: In re *Christian Dior, S.A.*, supra, citing In re *Cosvetic Laboratories, Inc.*, supra; In re *Hill-Behan Lumber Company*, 201 USPQ 246 (TTAB 1978) and In re *Champion International Corporation*, 196 USPQ 48 (TTAB 1977).

In re Shawnee Milling Co., 225 USPQ 747 (TTAB 1985) (emphasis added).

Although it has often been said that the addition of a trade name, house mark, or surname to one of two otherwise confusingly similar marks will not generally serve to avoid a likelihood of confusion between them, exceptions to this general rule are made (1) when there are recognizable differences between the assertedly conflicting product marks, or (2) when the alleged product marks are highly suggestive or merely descriptive or play upon commonly used or registered terms. See: In re *C. F. Hathaway Company*, 190 USPQ 343 (TTAB 1976); In re *Hill Behan Lumber Company*, 201 USPQ 246 (TTAB 1978); In re *Cosvetic Laboratories, Inc.*, 202 USPQ 842 (TTAB 1979); and cases cited therein.

In re S.D. Fabrics, Inc., 223 USPQ 54 (TTAB 1984).

It is plain that there are "recognizable differences" between the cited registered mark OASIS and applicant's mark TROPICAL OASIS. As previously discussed, it is also the case:

- (1) That the term "oasis" is highly suggestive of beverage products; and
- (2) That the term "oasis" is commonly used and registered in connection with beverage products.

The Trademark Trial and Appeal Board has held that any one of the three circumstances described above may be sufficient to preclude likelihood of purchaser confusion as to source. In re Shawnee Milling Co., supra.; In re S.D. Fabrics, Inc., 223 USPQ 54 (TTAB 1984). Here all three relevant circumstances are present, and confusion is unlikely as the result. Applicant would request that the trademark examining attorney withdraw her refusal to register applicant's mark on grounds of alleged likelihood of confusion with TROPICAL OASIS.

It is applicant's belief that the foregoing submissions place the referenced application in condition for approval for publication. Approval for publication is therefore requested at this time. Should the trademark examining attorney believe that a telephone conference will expedite prosecution of the referenced application, the examining attorney is invited to call undersigned counsel for applicant at her convenience.

EVIDENCE SECTION

EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	http://tgate/PDF/RFR/2009/02/03/20090203114532861504-76685673-001_001/evi_63146184126-113612665_.oasis_annex_3_Feb_02_2009_16_16_48_913.pdf
CONVERTED PDF FILE(S) (6 pages)	\\TICRS\EXPORT5\IMAGEOUT5\766\856\76685673\xml1\RFR0002.JPG
	\\TICRS\EXPORT5\IMAGEOUT5\766\856\76685673\xml1\RFR0003.JPG
	\\TICRS\EXPORT5\IMAGEOUT5\766\856\76685673\xml1\RFR0004.JPG
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DESCRIPTION OF EVIDENCE FILE	Annex 3 (registrant advertising materials)

SIGNATURE SECTION	
RESPONSE SIGNATURE	/Stephen J. Jeffries/
SIGNATORY'S NAME	Stephen J. Jeffries
SIGNATORY'S POSITION	Attorney of record, DC bar member
DATE SIGNED	02/03/2009
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMATION SECTION	
SUBMIT DATE	Tue Feb 03 11:45:32 EST 2009
TEAS STAMP	USPTO/RFR-63.146.184.126- 20090203114532861504-7668 5673-440e84b14ed54d2ab90f 0dc5e5ce67f81d-N/A-N/A-20 090203113612665149

PTO Form 1930 (Rev 9/2007)

OMB No. 0651-0050 (Exp. 4/30/2009)

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. **76685673** has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

This Request for Reconsideration is responsive to the trademark examining attorney's final Office action mailed on September 12, 2008. Notice of Appeal of the trademark examining attorney's refusal to register the mark has been filed separately herewith.

The trademark examining attorney has refused registration under Trademark Act § 2(d) on grounds that applicant's mark, when used in connection with applicant's fruit juice products, so resembles the following registered marks as to be likely to cause confusion, to cause mistake, or to deceive:

OASIS, for "distilled water" and "bottled water and spring water for drinking purposes," subject to a registration owned by Nestle Waters North America, Inc. (by assignment from Great Spring Waters of America, Inc.) Registration No. 1,191,458.

TROPICAL OASIS, for "teas, iced teas, teas containing fruit, herbal teas containing fruit for food purposes, non-alcoholic tea-based beverages containing fruit; herbal infusion food beverages, herbal food beverages containing fruit, herb iced teas containing fruits and herbs, all for food purposes," subject to a registration owned by Numi, L.L.C. Registration No. 2,806,813.

Applicant would request that the trademark examining attorney reconsider this final refusal.

A. Applicant's Evidence and Arguments.

In response to the trademark examining attorney's refusal, applicant has previously submitted evidence and arguments to the effect that there is no likelihood of confusion between applicant's mark and the cite registered marks for the following reasons:

1. The term "oasis" is highly suggestive of beverage products.

The term "oasis," defined as "an area in a desert where water is found," immediately conjures the notion of a refreshing beverage. See Response filed July 8, 2008, at p. 2. and Annex 1. The Trademark Trial and Appeal Board has held that the use and registration of highly suggestive marks in connection with non-identical goods in the same product field is unlikely to cause confusion as to source. In re General Motors Corp, 23 USPQ2d 1465, 1469-70 (TTAB 1992); In re Daily Juice Products, Inc., 163 USPQ 658 (TTAB 1969). See also Plus Products v. Redken Laboratories, Inc., 199 USPQ 111 (TTAB 1978) ("It is settled that highly suggestive terms, because of their connotation and possible frequent registration, per se, and as components of marks for the same or similar goods, have been considered to fall within the category of "weak" marks, and the scope of protection afforded these marks has been limited to the substantially identical designation and/or to the subsequent use thereof on substantially similar goods.") Applicant has asserted that there is no likelihood of confusion between applicant's mark and the cite registered marks accordingly.

2. The term "oasis" is subject to extensive third party use and registration in connection with beverage products.

The term "oasis" is subject to extensive third party use and registration in connection with beverage products. See Response filed July 8, 2008, at p. 3 and Annex 2. The Trademark Trial and

Appeal Board has held that marks which consist of or include terms which are subject to common third party use and registration in a particular product field have only a limited capacity to distinguish source. General Mills, Inc. v. Health Valley Foods, 24 USPQ2d 1270, 1277 (TTAB 1992). In the present case applicant's mark and the cited registered "oasis" marks are hemmed in on all sides by similar marks for similar goods, "customers will not likely be confused between any two of the crowd." J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition at Section 11:85 (4th Ed. 2008). Again, applicant has asserted that there is no likelihood of confusion between applicant's mark and the cited registered marks in view thereof.

B. The Trademark Examining Attorney's Evidence and Arguments.

The trademark examining attorney has taken the following positions in response to applicant's evidence and arguments:

1. Re cited Registration No. 1,191,458: OASIS for distilled water and drinking water.

Upon considering applicant's evidence and arguments, the trademark examining attorney has maintained that there is a likelihood of confusion between applicant's mark and this cited registered mark on grounds:

- (a) That the marks are identical.
- (b) That "fruit juice and bottled water (are) related goods because they originate from a single source and they are sold in the same channels of trade." Office Action mailed September 12, 2008, at p. 2.

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Upon considering applicant's evidence and arguments, the trademark examining attorney has maintained that there is a likelihood of confusion between applicant's mark and this cited registered mark on grounds:

- (a) That the marks are similar, noting in response to applicant's evidence of dilution that:

"The mere addition of a term to a registered mark generally does not obviate the similarity between the marks nor does it overcome a likelihood of confusion under Trademark Act Section 2(d). *See, e.g., In re Chatam Int'l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944 (Fed. Cir. 2004); *In re El Torito Rests., Inc.*, 9 USPQ2d 2002 (TTAB 1988). The only exceptions are when the matter common to the marks is merely descriptive or diluted, *and* not likely to be perceived by purchasers as distinguishing source, or when the marks in their entireties convey a significantly different commercial impression. TMEP §1207.01(b)(iii); *see, e.g., Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 73 USPQ2d 1350 (Fed. Cir. 2004); *In re Shawnee Milling Co.*, 225 USPQ 747 (TTAB 1985); *In re S.D. Fabrics, Inc.*, 223 USPQ 54 (TTAB 1984). The term OASIS is not descriptive of the goods; rather, as the sole term in the mark, it is used to identify the source of applicant's goods. The term is likely to be perceived as the source identifier for the goods. Therefore, the addition of a term to this mark is likely to result in confusion."

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(b) That fruit juice and tea products are "closely related" because they "emanate from a single source and they sold in the same channels of trade." Office Action mailed September 12, 2008, at p. 3.

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C. Applicant's Rebuttal.

Please consider the following in reply the trademark examining attorney's arguments.

1. Re cited Registration No. 1,191,458: OASIS for distilled water and drinking water.

(a) The inherent and marketplace strength of the OASIS mark.

The trademark examining attorney has maintained that there is a likelihood of confusion because the marks are identical. However, because the products are not likewise identical, the trademark examining attorney must consider the following du Pont factors for purposes of evaluating the issue of likelihood of confusion:

* The inherent strength of the registrant's mark in relation to its goods; and

- * The number and nature of similar marks in use on similar goods.

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"Evidence of third-party use falls under the sixth *du Pont* factor - the "number and nature of similar marks in use on similar goods." *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973). If the evidence establishes that the consuming public is exposed to third-party use of similar marks on similar goods, this evidence 'is relevant to show that a mark is relatively weak and entitled to only a narrow scope of protection.' *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 1373, 73 USPQ2d 1689, 1693 (Fed. Cir. 2005)."

The sixth DuPont factor - the "number and nature of similar marks in use on similar goods" - clearly indicates that there is no likelihood of confusion in this case. The record shows:

- * That different beverage manufacturers have used and registered OASIS and "oasis" formative marks for different beverage products;
- * That no beverage manufacturer is entitled to use or register OASIS for the entire spectrum of beverage products;
- * That the right of each beverage manufacturer to use and register OASIS is circumscribed by the third party use and registration of highly similar or identical marks for closely related products; and
- * That trademark rights in OASIS attached on a product by product basis in the field of beverage products.

Due to these existing market conditions, which were not created by applicant, consumers are unlikely to mistake the source of any one OASIS beverage product for that of another, as long as the products themselves differ. The registrant's OASIS mark is hemmed in on all sides by similar marks for similar goods, and "customers will not likely be confused between any two of

the crowd." J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition at Section 11:85 (4th Ed. 2008). It is applicant's belief that the trademark examining attorney may withdraw her refusal to register for this reason alone.

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2. Re cited Registration No. 2,806,813: TROPICAL OASIS for tea beverage products.

For purposes of determining that OASIS and TROPICAL OASIS are similar marks, the trademark examining attorney has asserted that:

* The "(t)he mere addition of a term to a registered mark generally does not obviate the similarity between the marks nor does it overcome a likelihood of confusion under Trademark Act Section 2(d)."; and

* "The only exceptions are when the matter common to the marks is merely descriptive or diluted, *and* not likely to be perceived by purchasers as distinguishing source, *or* when the marks in their entireties convey a significantly different commercial impression."

The trademark examining attorney's assertion is a reiteration of the principal set forth in Trademark Manual of Examining Procedure §1207.01(b)(iii). However, the trademark examining attorney's reiteration is in error as to the law. The legal holdings set forth in the two cases cited in §1207.01(b)(iii) which reference diluted marks provide that:

In cases involving the addition of a housemark to one of two otherwise confusingly similar marks, it has been held that such ordinarily does not serve to avoid likelihood of confusion. In fact, such addition may be an aggravation of the likelihood of confusion as opposed to an aid in distinguishing the marks so as to avoid source confusion. See: In re *Christian Dior, S.A.*, 225 USPQ 533 (TTAB 1985) (use of LE CACHET DE DIOR for men's dress shirts and CACHET for toilet soap and cologne held likely to cause confusion), citing In re *Cosvetic Laboratories, Inc.*, 202 USPQ 842 (TTAB 1979) and *Key West Fragrance & Cosmetic Factory, Inc. v. The Mennen Co.*, 216 USPQ 168 (TTAB 1982). **However, in cases where there are some recognizable differences in the assertedly conflicting product marks or where the conflicting marks in question are highly suggestive or merely descriptive or play upon commonly used or registered terms, the addition of a housemark and/or other material to one of the marks has been held sufficient to render the marks as a whole distinguishable.** See: In re *Christian Dior, S.A.*, supra, citing In re *Cosvetic Laboratories, Inc.*, supra; In re *Hill-Behan Lumber Company*, 201 USPQ 246 (TTAB 1978) and In re *Champion International Corporation*, 196 USPQ 48 (TTAB 1977).

In re Shawnee Milling Co., 225 USPQ 747 (TTAB 1985) (emphasis added).

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Cosvetic Laboratories, Inc., 202 USPQ 842 (TTAB 1979); and cases cited therein.

In re S.D. Fabrics, Inc., 223 USPQ 54 (TTAB 1984).

It is plain that there are "recognizable differences" between the cited registered mark OASIS and applicant's mark TROPICAL OASIS. As previously discussed, it is also the case:

- (1) That the term "oasis" is highly suggestive of beverage products; and
- (2) That the term "oasis" is commonly used and registered in connection with beverage products.

The Trademark Trial and Appeal Board has held that any one of the three circumstances described above may be sufficient to preclude likelihood of purchaser confusion as to source. In re Shawnee Milling Co., supra.; In re S.D. Fabrics, Inc., 223 USPQ 54 (TTAB 1984). Here all three relevant circumstances are present, and confusion is unlikely as the result. Applicant would request that the trademark examining attorney withdraw her refusal to register applicant's mark on grounds of alleged likelihood of confusion with TROPICAL OASIS.

It is applicant's belief that the foregoing submissions place the referenced application in condition for approval for publication. Approval for publication is therefore requested at this time. Should the trademark examining attorney believe that a telephone conference will expedite prosecution of the referenced application, the examining attorney is invited to call undersigned counsel for applicant at her convenience.

EVIDENCE

Evidence in the nature of Annex 3 (registrant advertising materials) has been attached.

Original PDF file:

http://tgate/PDF/RFR/2009/02/03/20090203114532861504-76685673-001_001/evi_63146184126-113612665_.oasis_annex_3_Feb_02_2009_16_16_48_913.pdf

Converted PDF file(s) (6 pages)

Evidence-1

Evidence-2

Evidence-3

Evidence-4

Evidence-5

Evidence-6

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Stephen J. Jeffries/ Date: 02/03/2009

Signatory's Name: Stephen J. Jeffries

Signatory's Position: Attorney of record, DC bar member

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 76685673

Internet Transmission Date: Tue Feb 03 11:45:32 EST 2009

TEAS Stamp: USPTO/RFR-63.146.184.126-200902031145328

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5ce67f81d-N/A-N/A-20090203113612665149

ANNEX 3



Our Brands : OVERVIEW



Introduction

Explore all our worlds . . . from bakers to babies, parents to pet owners and from single servings to family-sized meals, we've got just the right thing for the way you live. No matter which product you choose, rest assured that all share a common ingredient: quality.

Learn more by selecting a brand from the menu on the left or use the button below to view an alphabetical list of all Nestlé USA brands

SHOW ALL NESTLÉ USA BRANDS

Nestlé USA has a variety of Web sites designed to provide you with product information, recipes, tips and fun activities. Use the button below to view all of our Web sites.

SHOW ALL NESTLÉ USA WEBSITES



Our Brands : NESTLÉ BRANDS

JAMBA® BOTTLED SMOOTHIES AND JUICIES

Since 1990, JAMBA® has inspired and simplified healthy living with their line of delicious, nutritious fruit-filled beverages. Now, Nestlé® and Jamba Juice® have entered into a licensing agreement to provide a line of ready-to-drink, bottled smoothies and juices to consumers, sold conveniently at your local grocers.

Jamba® Smoothies are a deliciously fruitful, nourishing blend of natural ingredients like real fruit with a splash of low fat milk, while Jamba Juicies are a lighter, refreshing blend of fruit and a splash of nonfat milk. Each Jamba® Smoothie and Juicie comes with an added "boost" of nutrients to truly inspire some healthy living. With Jamba RTD, the combination of the fruit, milk and added nutrients make you feel more energetic, healthy, light and free. Best of all, that great Jamba taste you love in the Jamba store is now conveniently available any time of day. It's you, to the power of fruit!

Products

JAMBA® SMOOTHIE: nourishing fruit smoothie
JAMBA® JUICE: refreshing juice smoothie



Our Brands : NESTLÉ BRANDS

NESTLÉ® JUICY JUICE® 100% fruit juices

For over 25 years, NESTLÉ® JUICY JUICE® has helped parents raise healthy kids by providing them with a wide variety of nutritious 100% juice options. All NESTLÉ JUICY JUICE products are made from 100% real fruit juice, providing an excellent source of Vitamin C with no added sugars or artificial flavors. With 13 flavors and 3 forms to choose from, NESTLÉ JUICY JUICE has the widest variety of flavors of any 100% juice product. JUICY JUICE balances the wholesome goodness of real fruit and a delicious taste that will make your child smile with every glass.

JUICY JUICE has also made it easier to store the family-sized bottles in your refrigerator or pantry. All 64 oz. flavors now come in a square bottle, making them easier to grip any time your child craves a sip of JUICY JUICE 100% real fruit juice.

Products

NESTLÉ® JUICY JUICE® Family Size

NESTLÉ® JUICY JUICE® Juice Boxes

NESTLÉ® JUICY JUICE® Concentrate



NORTH AMERICA



CALISTOGA



About Us

Our Brands

Environmental Stewardship

Community Involvement

Corporate Citizenship

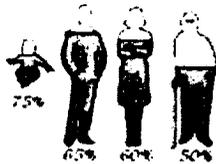
Issues & Answers

Careers

Home Delivery

Related Sites

- Nestlé Waters Canada
- Nestlé Waters Worldwide
- Nestlé USA
- Nestlé Canada
- Nestlé Worldwide



Learn about water's role in your body.

- Importance of hydration
- How much you need
- Avoiding excess beverage calories

[Read More](#)



Leadership commitment to good environmental steward:

- Protecting water sources
- Reducing packaging
- Limiting energy use

[See environment video](#)

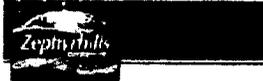


The Shape of Citizenship

Nestlé Waters North America strives to provide healthful beverages with the lightest possible environmental footprint.

[Learn more](#)

Water Quality Reports



Nestlé Waters North America publishes water quality reports and cites sources for its brands to keep consumers informed.

[Water Quality Reports](#)

Feature



Video: Nestlé Waters North America's video response to the movie "FLOW: For Love of Water"

[Video Response to FLOW](#)

Press Center

Company Statement, January 26, 2009
Nestlé Waters North America Statement on Expansion of Connecticut Bottle Bill

Press Release: January 6, 2009

Nestlé Waters Announces Strategic Partnership with Bob Greene, Founder of the Best Life Program

[Press Center](#)

[Quality Reports](#) | [Water & You](#) | [Home Delivery](#) | [Press Center](#) | [Careers](#) | [Contact](#)

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About us

- Heritage
- Culture & Values
- Performance
- Innovation
- Operations
- Awards and Letters
- Executive Team
- Nestlé Waters Q & A Regarding Environmental Working Group Study
- Kim Jeffery - Nestlé Waters Beyond Sustainability
- Seven Myths About Bottled Water

Our brands

- Heritage
- Source Management
- Water Properties
- Quality Process
- Regulation and Oversight
- Package Sizes and Varieties
- U.S. Brand Availability
- Canadian Brand Availability
- Acqua Panna
- Arrowhead
- Calistoga
- Contrex
- Deer Park
- Ice Mountain
- Nestlé Pure Life
- Ozarka
- Perrier
- Poland Spring
- San Pellegrino
- Zephyrhills

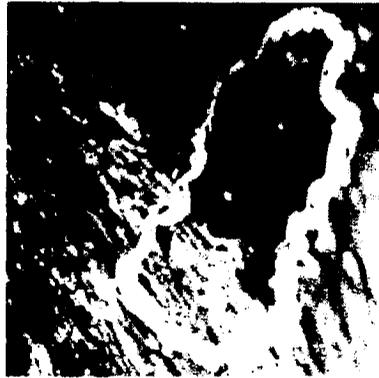
Environmental stewardship

> Home /Our Brands

Our brands

"Naturalness, authenticity, heritage and taste are the four pillars of Nestlé Waters North America's brands."

Kim Jeffery
President and Chief Executive Officer
Nestlé Waters North America
Beverage World, September 2002



What do values have to do with bottled water? In a word: everything.

Nestlé Waters North America brand excellence results from our commitment to expert **source water management** and a rigorous **quality assurance process**. Consumers also gain confidence in the safety of our bottled water products because they meet all **federal and state regulatory requirements**.

How are our sources are **selected**?

Our spring water products come from **spring sources** that are honored for their natural features and good-tasting water. And, **quality assurance** for spring water, as well as Nestlé Waters purified, drinking and distilled products, is a critical part of our state-of-the-art bottling process.

Our brands are available in just about every **size**, in sparkling or non-sparkling **varieties**, and just about every place imaginable - from urban pretzel carts to grocery chains, convenience stores, stadiums and beaches everywhere in the U.S. and Canada.

To learn more about all of our brands, including their **heritage, source, quality reports** and **where you can find them** click on a brand from the list below.

Domestic: Arrowhead, Calistoga, Deer Park, Ice Mountain, Ozarka, Poland Spring, Zephyrhills

Imported: Perrier, S. Pellegrino, Acqua Panna, Contrex

National: Nestlé Pure Life