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Mailed: September 8, 2009

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Vega

Serial No. 77279955
On Request for Reconsideration

Liliana Pineyro Vega, pro sé.[1]

Leigh A. Lowry, Trademark Examining Attorney, Law Office 115 (Thomas V. Vlcek, Managing Attorney).

Before Cataldo, Taylor and Bergsman, Administrative Trademark Judges.

Opinion by Taylor, Administrative Trademark Judge:

Liliana Pineyro Vega filed an application to register on the Principal Register the mark shown below for "natural food supplements."

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[1] We note that although Andrew D. Glasgow of Atlas Advocate International Law Firm, P.C. remains applicant's counsel of record, applicant filed the request for reconsideration. Mr. Glasgow should file a withdrawal of representation if he no longer represents applicant or, if accurate, applicant should file written submission indicating that she is now representing herself in this proceeding.

In a decision issued on July 16, 2009, this panel of the Board affirmed the examining attorney's final refusal to register applicant's mark pursuant to Trademark Act § 2(d) on the ground that applicant's mark so resembles the mark in Registration No. 0932491, NATURADE, for "medicinal preparations; namely chlorophyll compositions, vitamins and vitamin formulations, minerals and mineral formulations, nutritional supplements, amino acid tablets; cold aids; energy tonics; laxatives; digestive enzymes; constipation aids; expectorants; and diuretics."

Applicant filed a timely request for reconsideration of that decision. As grounds for her request, applicant contends, in essence, that: (1) based on the definition of record of "dietary supplements" from Merriam Webster Online, the Board incorrectly concluded that applicant's mark and the cited mark both identify dietary supplements, but applicant's goods "cannot be considered dietary supplements because Applicant's Mark specifically protects natural food supplements, i.e., supplements that have natural food as an ingredient" (Req. for recon. p. 5); and

(2) in terms of the overall commercial impression of applicant's mark, little weight was given to the design element and the words "health, quality, technology."

We first address applicant's contention that its goods and the registrant's goods are not closely related because the Board "confused" the definition of "dietary supplements."[2] Applicant essentially argues that based on the confusion regarding the definition, the Board assigned a non-food meaning to the goods protected by applicant's mark [natural food supplements]. Applicant goes on to argues that

> [I]t is the natural food component that is the main ingredient of the goods protected by NATURE-AID, HEALTH, QUALITY, TECHNOLOGY.
>
> Thus, the goods under NATURE-AID, HEALTH, QUALITY, TECHNOLOGY cannot be considered dietary supplements, contrary to the Board's conclusion.

(Req. for recon. p. 5) Applicant's argument is not well taken. First, our finding that applicant's goods and registrant's goods are closely related is not based solely on the above-cited definition. Rather, as clearly explained in the decision, several definitions of record confirm that both applicant's food supplements and

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[2] The definition referenced by applicant is from Merriam Webster Online which defines "dietary supplements" as "a product taken orally that contains one or more ingredients (as vitamins or amino acids) that are intended to supplement one's diet and are not considered food."

registrant's nutritional supplements are also known as dietary or diet supplements, which are intended to supply nutrients that are missing from a person's diet. In addition, as demonstrated by the eight used-based registrations made of record by the examining attorney, various trademark owners have adopted a single mark for both natural food supplements and nutritional supplements. As indicated in the decision, these registrations suggest that both applicant's goods and registrant's goods are types of goods which are related. Applicant also continues to stress that its products have "natural food" as an ingredient. We reiterate that as identified, applicant's goods are not natural food; rather applicant's goods are natural food *supplements*, which by definition are intended to supplement the diet. For the these reasons and for the reasons set forth in our July 16th decision, we find that applicant's natural food supplements are closely related to registrant's nutritional supplements.

As regards the marks, to the extent that applicant is arguing that the Board failed to consider her mark in its entirety, applicant's arguments are essentially a rehash, albeit in a slightly more detailed fashion, of the arguments originally raised in her brief on the case. As fully discussed in our July 16th decision, the design

element in applicant's mark, though clearly noticeable, has little visual impact on the overall commercial impression of the mark, and/or merely enhances the meaning of the wording "NATURE-AIDE." In addition, and again as fully discussed in the decision, the words "Health, Quality and Technology," as evidenced by the definitions of record (and not the disclaimers), describe qualities and/or features of applicant's goods and would not be looked to as source indicating elements.

In sum, we remain of the view that when applicant's mark NATURE-AIDE HEALTH, QUALITY, TECHNOLOGY and design and registrant's mark NATURADE are considered in their entireties, they are sufficiently similar that confusion is likely to result when used in connection with the closely related supplements.

In view of the foregoing, the request for reconsideration is denied.