

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	77519313
LAW OFFICE ASSIGNED	LAW OFFICE 108
MARK SECTION (no change)	
ARGUMENT(S)	
<p><u>REMARKS</u></p> <p>This is in response to the second Office Action electronically mailed May 4, 2009.</p> <p style="text-align: center;"><u>REQUEST FOR RECONSIDERATION</u></p> <p>The Office Action has been received and its contents carefully considered. Applicant notes that the Examining Attorney has continued the assertion that the mark may be refused registration pursuant to the Trademark Act Section 2(e)(1), 15 U.S.C. Section 1052(e)(1).</p> <p style="text-align: center;"><u>AMENDMENT OF GOODS</u></p> <p>Applicant has deleted Classes 29, 30 and 32 from this application, and respectfully amends the description of goods in Class 1 as shown below. The refusal based on likelihood of confusion with Registration No. 3372455 is made moot by this amendment.</p>	

Class 1: Botanical extracts for use in the manufacture of nutraceuticals; plant extracts for use in the manufacture of pharmaceutical preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules, pills, tincture, suppositories and ampule for injection; botanical extracts for use in the manufacture of nutraceuticals and pharmaceuticals; botanical extracts for use in the manufacture of nutraceuticals and pharmaceuticals; chemical extracts and active principles extracted from medicinal plants for use in the manufacture of nutraceuticals and pharmaceuticals; chemical extracts and active principles extracted from medicinal plants for use in the pharmaceutical industry, namely, chemical agents made from botanical extracts or association of chemical extracts for use in the manufacture of pharmaceutical or nutraceutical products; botanical extracts used in preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules, pills, lozenges, inhalers, tincture, suppositories and ampule for injection; botanical extracts for use in the manufacture of preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules, pills, lozenges, inhalers, tincture, suppositories and ampule for injection; botanical extracts used in the manufacture of pharmaceutical preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules, pills, tincture, suppositories and ampule for injection; botanical extracts for use in the manufacture of pharmaceutical preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules, pills, tincture, suppositories and ampule for injection; ~~botanicals and botanical blends, herbal extracts and herbal blends, botanical extracts and botanical extract blends, flavor extracts and flavor extract blends, algal extracts and algal extract blends, all for use in the manufacture of nutritional supplements and vitamins;~~ botanical extracts for use in making cosmetics; herbal extracts, botanical extracts, preparations, and blends, mushroom, fungus, or spore extracts or blends, for use in the manufacture of foods, functional foods, medicinal foods ~~nutritional supplements, nutraceuticals~~ or beverages; herbal extracts and blends for use in the manufacture of medicinal foods or beverages; botanical extracts for use in the manufacture of pharmaceutical preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules, pills, tincture, suppositories and ampule for injection

CONCLUSION

For all of the foregoing reasons, Applicant respectfully but urgently requests that the application be passed for publication.

GOODS AND/OR SERVICES SECTION (001)(current)

INTERNATIONAL CLASS	001
DESCRIPTION	
<p>Botanical extracts for use in the manufacture of nutraceuticals; plant extracts for use in the manufacture of pharmaceutical preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules, pills, tincture, suppositories and ampule for injection; botanical extracts for use in the manufacture of nutraceuticals and pharmaceuticals; botanical extracts for use in the manufacture of nutraceuticals and pharmaceuticals; chemical extracts and active principles extracted from medicinal plants for use in the manufacture of nutraceuticals and pharmaceuticals; chemical extracts and active principles extracted from medicinal plants for use in the pharmaceutical industry, namely, chemical agents made from botanical extracts or association of chemical extracts for use in the manufacture of pharmaceutical or nutraceutical products; botanical extracts used in preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules, pills, lozenges, inhalers, tincture, suppositories and ampule for injection; botanical extracts for use in the manufacture of preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules,</p>	

pills, lozenges, inhalers, tincture, suppositories and ampule for injection; botanical extracts used in the manufacture of pharmaceutical preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules, pills, tincture, suppositories and ampule for injection; botanical extracts for use in the manufacture of pharmaceutical preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules, pills, tincture, suppositories and ampule for injection; botanicals and botanical blends, herbal extracts and herbal blends, botanical extracts and botanical extract blends, flavor extracts and flavor extract blends, algal extracts and algal extract blends, all for use in the manufacture of nutritional supplements and vitamins; botanical extracts for use in making cosmetics; herbal extracts, botanical extracts, preparations, and blends, mushroom, fungus, or spore extracts or blends, for use in the manufacture of foods, functional foods, medicinal foods, nutritional supplements, nutraceuticals or beverages; herbal extracts and blends for use in the manufacture of medicinal foods or beverages; botanical extracts for use in the manufacture of pharmaceutical preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules, pills, tincture, suppositories and ampule for injection	
FILING BASIS	Section 1(b)
GOODS AND/OR SERVICES SECTION (001)(proposed)	
INTERNATIONAL CLASS	001
DESCRIPTION	
Botanical extracts for use in the manufacture of nutraceuticals; plant extracts for use in the manufacture of pharmaceutical preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules, pills, tincture, suppositories and ampule for injection; botanical extracts for use in the manufacture of nutraceuticals and pharmaceuticals; botanical extracts for use in the manufacture of nutraceuticals and pharmaceuticals; chemical extracts and active principles extracted from medicinal plants for use in the manufacture of nutraceuticals and pharmaceuticals; chemical extracts and active principles extracted from medicinal plants for use in the pharmaceutical industry, namely, chemical agents made from botanical extracts or association of chemical extracts for use in the manufacture of pharmaceutical or nutraceutical products; botanical extracts used in preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules, pills, lozenges, inhalers, tincture, suppositories and ampule for injection; botanical extracts for use in the manufacture of preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules, pills, lozenges, inhalers, tincture, suppositories and ampule for injection; botanical extracts used in the manufacture of pharmaceutical preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules, pills, tincture, suppositories and ampule for injection; botanical extracts for use in the manufacture of pharmaceutical preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules, pills, tincture, suppositories and ampule for injection; botanical extracts for use in making cosmetics; herbal extracts, botanical extracts, preparations, and blends, mushroom, fungus, or spore extracts or blends, for use in the manufacture of foods, functional foods, medicinal foods or beverages; herbal extracts and blends for use in the manufacture of medicinal foods or beverages; botanical extracts for use in the manufacture of pharmaceutical preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules, pills, tincture, suppositories and ampule for injection	
FILING BASIS	Section 1(b)
GOODS AND/OR SERVICES SECTION (029)(class deleted)	
INTERNATIONAL CLASS	029

DESCRIPTION	
Food beverages, namely, dairy-based food beverages, fruit-based food beverages, vegetable-based food beverages, dairy-based chocolate food beverages, soy-based food beverage used as a milk substitute, vegetable-based chocolate food beverages and peanut-based food beverages; milk beverages, namely, milk, milk beverages containing fruits, milk beverages with high milk content, milk based beverages containing fruit juice; milk beverages containing coffee; milk powder for nutritional purposes; powdered milk for food purposes; nut-based food beverages; oils, namely, edible oils, edible oil extracts, omega-3 oil extracts	
FILING BASIS	Section 1(b)
GOODS AND/OR SERVICES SECTION (030)(class deleted)	
INTERNATIONAL CLASS	030
DESCRIPTION	
Herbal food beverages; medicinal beverages for immunity enhancement; nutritionally fortified beverages for immunity enhancement; grain-based beverages with rice bran; grain-based beverages with wheat bran; medicinal herbs, namely, processed herbs; nutritionally fortified organic foods, namely, chocolate, dairy-free chocolate, reduced fat chocolate, reduced calorie chocolate, cocoa, chocolate chips, chocolate fondue, chocolate toppings, reduced fat candy, bakery products, namely, cookies, cakes, pies and muffins, crackers, biscuits, ready-to-eat cereal-derived food bars, pretzels, chewing gum, frozen yogurt, frozen custard, fruit ices, pancake, waffle and bread mixes, salad dressing, pasta and pasta mixes, rice, cornmeal and wheat based snack foods; food beverages, namely, chocolate food beverages not being dairy-based or vegetable based, herbal food beverages, and grain-based food beverages; functional foods, namely, chocolate, dairy-free chocolate, reduced fat chocolate, reduced calorie chocolate, cocoa, chocolate chips, chocolate fondue, chocolate toppings, reduced fat candy, bakery products, namely, cookies, cakes, pies and muffins, crackers, biscuits, ready-to-eat cereal-derived food bars, pretzels, chewing gum, frozen yogurt, frozen custard, fruit ices, pancake, waffle and bread mixes, salad dressing, pasta and pasta mixes, rice, cornmeal and wheat based snack foods, bread, breakfast cereals; functional beverages, namely, grain based food beverages containing oats or oat extracts, herbal food beverages; food beverages, namely, chocolate food beverages not being dairy-based or vegetable based, herbal food beverages, and grain-based food beverages; food flavorings; and wheat bran based foods and snacks; rice bran based food and snacks; and food flavorings prepared from herbal or botanical extracts or blends; herbal infusions	
FILING BASIS	Section 1(b)
GOODS AND/OR SERVICES SECTION (032)(class deleted)	
INTERNATIONAL CLASS	032
DESCRIPTION	
Organic beverages, namely, fruit drinks, soft drinks, drinking water and fruit and vegetable juices; functional beverages, namely, fruit drinks, soft drinks, drinking water and fruit and vegetable juices	
FILING BASIS	Section 1(b)
ADDITIONAL STATEMENTS SECTION	
To the extent applicant is referencing an amendment of the identification of goods/recitation of services herein, the	

MISCELLANEOUS STATEMENT	same is conditional upon the withdrawal of any pending, or later issued, refusal, if any, and the application having completed the publication period.
SIGNATURE SECTION	
RESPONSE SIGNATURE	/JENNIFER L. WHITELAW/
SIGNATORY'S NAME	Jennifer L. Whitelaw
SIGNATORY'S POSITION	Attorney of record, Florida bar member
DATE SIGNED	10/19/2009
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Tue Oct 20 08:54:25 EDT 2009
TEAS STAMP	USPTO/RFR-68.54.43.48-200 91020085425323729-7751931 3-46089191ac62b75cc5911c7 4d72bde12467-N/A-N/A-2009 1019160449206129

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. 77519313 has been amended as follows:

ARGUMENT(S)

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

REMARKS

This is in response to the second Office Action electronically mailed May 4, 2009.

REQUEST FOR RECONSIDERATION

The Office Action has been received and its contents carefully considered. Applicant notes that the Examining Attorney has continued the assertion that the mark may be refused registration pursuant to the Trademark Act Section 2(e)(1), 15 U.S.C. Section 1052 (e)(1).

AMENDMENT OF GOODS

Applicant has deleted Classes 29, 30 and 32 from this application, and respectfully amends the description of goods in Class 1 as shown below. The refusal based on likelihood of confusion with Registration No. 3372455 is made moot by this amendment.

Class 1: Botanical extracts for use in the manufacture of nutraceuticals; plant extracts for use in the manufacture of pharmaceutical preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules, pills, tincture, suppositories and ampule for injection; botanical extracts for use in the manufacture of nutraceuticals and pharmaceuticals; botanical extracts for use in the manufacture of nutraceuticals and pharmaceuticals; chemical extracts and active principles extracted from medicinal plants for use in the manufacture of nutraceuticals and pharmaceuticals; chemical extracts and active principles extracted from medicinal plants for use in the pharmaceutical industry, namely, chemical agents made from botanical extracts or association of chemical extracts for use in the manufacture of pharmaceutical or nutraceutical products; botanical extracts used in preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules, pills, lozenges, inhalers, tincture, suppositories and ampule for injection; botanical extracts for use in the manufacture of preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules, pills, lozenges, inhalers, tincture, suppositories and ampule for injection; botanical extracts used in the manufacture of pharmaceutical preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules, pills, tincture, suppositories and ampule for injection; botanical extracts for use in the manufacture of pharmaceutical preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules, pills, tincture, suppositories and ampule for injection; ~~botanicals and botanical blends, herbal extracts and herbal blends, botanical extracts and botanical extract blends, flavor extracts and flavor extract blends, algal extracts and algal extract blends, all for use in the manufacture of nutritional supplements and vitamins;~~ botanical extracts for use in making cosmetics; herbal extracts, botanical extracts, preparations, and blends, mushroom, fungus, or spore extracts or blends, for use in the manufacture of foods, functional foods, medicinal foods ~~nutritional supplements, nutraceuticals~~ or beverages; herbal extracts and blends for use in the manufacture of medicinal foods or beverages; botanical extracts for use in the manufacture of pharmaceutical preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules, pills, tincture, suppositories and ampule for injection

CONCLUSION

For all of the foregoing reasons, Applicant respectfully but urgently requests that the application be passed for publication.

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant hereby deletes the following class of goods/services from the application.

Class 029 for Food beverages, namely, dairy-based food beverages, fruit-based food beverages, vegetable-based food beverages, dairy-based chocolate food beverages, soy-based food beverage used as a milk substitute, vegetable-based chocolate food beverages and peanut-based food beverages; milk beverages, namely, milk, milk beverages containing fruits, milk beverages with high milk content, milk based beverages containing fruit juice; milk beverages containing coffee; milk powder for nutritional purposes; powdered milk for food purposes; nut-based food beverages; oils, namely, edible oils, edible oil extracts, omega-3 oil extracts

Applicant hereby deletes the following class of goods/services from the application.

Class 030 for Herbal food beverages; medicinal beverages for immunity enhancement; nutritionally fortified beverages for immunity enhancement; grain-based beverages with rice bran; grain-based beverages with wheat bran; medicinal herbs, namely, processed herbs; nutritionally fortified organic foods, namely, chocolate, dairy-free chocolate, reduced fat chocolate, reduced calorie chocolate, cocoa, chocolate chips, chocolate fondue, chocolate toppings, reduced fat candy, bakery products, namely, cookies, cakes, pies and muffins, crackers, biscuits, ready-to-eat cereal-derived food bars, pretzels, chewing gum, frozen yogurt, frozen custard, fruit ices, pancake, waffle and bread mixes, salad dressing, pasta and pasta mixes, rice, cornmeal and wheat based snack foods; food beverages, namely, chocolate food beverages not being dairy-based or vegetable based, herbal food beverages, and grain-based food beverages; functional foods, namely, chocolate, dairy-free chocolate, reduced fat chocolate, reduced calorie chocolate, cocoa, chocolate chips, chocolate fondue, chocolate toppings, reduced fat candy, bakery products, namely, cookies, cakes, pies and muffins, crackers, biscuits, ready-to-eat cereal-derived food bars, pretzels, chewing gum, frozen yogurt, frozen custard, fruit ices, pancake, waffle and bread mixes, salad dressing, pasta and pasta mixes, rice, cornmeal and wheat based snack foods, bread, breakfast cereals; functional beverages, namely, grain based food beverages containing oats or oat extracts, herbal food beverages; food beverages, namely, chocolate food beverages not being dairy-based or vegetable based, herbal food beverages, and grain-based food beverages; food flavorings; and wheat bran based foods and snacks; rice bran based food and snacks; and food flavorings prepared from herbal or botanical extracts or blends; herbal infusions

Applicant hereby deletes the following class of goods/services from the application.

Class 032 for Organic beverages, namely, fruit drinks, soft drinks, drinking water and fruit and vegetable juices; functional beverages, namely, fruit drinks, soft drinks, drinking water and fruit and vegetable juices

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 001 for Botanical extracts for use in the manufacture of nutraceuticals; plant extracts for use in the manufacture of pharmaceutical preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules, pills, tincture, suppositories and ampule for injection; botanical extracts for use in the manufacture of nutraceuticals and pharmaceuticals; botanical extracts for use in the manufacture of nutraceuticals and pharmaceuticals; chemical extracts and active principles extracted from medicinal plants for use in the manufacture of nutraceuticals and pharmaceuticals; chemical extracts and active principles extracted from medicinal plants for use in the pharmaceutical industry, namely, chemical agents made from botanical extracts or association of chemical extracts for

use in the manufacture of pharmaceutical or nutraceutical products; botanical extracts used in preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules, pills, lozenges, inhalers, tincture, suppositories and ampule for injection; botanical extracts for use in the manufacture of preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules, pills, lozenges, inhalers, tincture, suppositories and ampule for injection; botanical extracts used in the manufacture of pharmaceutical preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules, pills, tincture, suppositories and ampule for injection; botanical extracts for use in the manufacture of pharmaceutical preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules, pills, tincture, suppositories and ampule for injection; botanicals and botanical blends, herbal extracts and herbal blends, botanical extracts and botanical extract blends, flavor extracts and flavor extract blends, algal extracts and algal extract blends, all for use in the manufacture of nutritional supplements and vitamins; botanical extracts for use in making cosmetics; herbal extracts, botanical extracts, preparations, and blends, mushroom, fungus, or spore extracts or blends, for use in the manufacture of foods, functional foods, medicinal foods, nutritional supplements, nutraceuticals or beverages; herbal extracts and blends for use in the manufacture of medicinal foods or beverages; botanical extracts for use in the manufacture of pharmaceutical preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules, pills, tincture, suppositories and ampule for injection

Original Filing Basis:

Filing Basis: Section 1(b), Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

Proposed: Class 001 for Botanical extracts for use in the manufacture of nutraceuticals; plant extracts for use in the manufacture of pharmaceutical preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules, pills, tincture, suppositories and ampule for injection; botanical extracts for use in the manufacture of nutraceuticals and pharmaceuticals; botanical extracts for use in the manufacture of nutraceuticals and pharmaceuticals; chemical extracts and active principles extracted from medicinal plants for use in the manufacture of nutraceuticals and pharmaceuticals; chemical extracts and active principles extracted from medicinal plants for use in the pharmaceutical industry, namely, chemical agents made from botanical extracts or association of chemical extracts for use in the manufacture of pharmaceutical or nutraceutical products; botanical extracts used in preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules, pills, lozenges, inhalers, tincture, suppositories and ampule for injection; botanical extracts for use in the manufacture of preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules, pills, lozenges, inhalers, tincture, suppositories and ampule for injection; botanical extracts used in the manufacture of pharmaceutical preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules, pills, tincture, suppositories and ampule for injection; botanical extracts for use in the manufacture of pharmaceutical preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules, pills, tincture, suppositories and ampule for injection; botanical extracts for use in making cosmetics; herbal extracts, botanical extracts, preparations, and blends, mushroom, fungus, or spore extracts or blends, for use in the manufacture of foods, functional foods, medicinal foods or beverages; herbal extracts and blends for use in the manufacture of medicinal foods or beverages; botanical extracts for use in the manufacture of pharmaceutical preparations in the form of lotions, creams, and topical analgesics and anesthetics, tablets, capsules, pills, tincture, suppositories and ampule for injection

Filing Basis: Section 1(b), Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

ADDITIONAL STATEMENTS

To the extent applicant is referencing an amendment of the identification of goods/recitation of services herein, the same is conditional upon the withdrawal of any pending, or later issued, refusal, if any, and the application having completed the publication period.

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /JENNIFER L. WHITELAW/ Date: 10/19/2009

Signatory's Name: Jennifer L. Whitelaw

Signatory's Position: Attorney of record, Florida 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 filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 77519313

Internet Transmission Date: Tue Oct 20 08:54:25 EDT 2009

TEAS Stamp: USPTO/RFR-68.54.43.48-200910200854253237

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