

ESTTA Tracking number: **ESTTA680749**

Filing date: **06/29/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	77530392
Applicant	Sparta Beverage LLC
Applied for Mark	SPARTAN MEAL
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Submission	Appeal Brief
Attachments	Opening Brief-Spartan Meal.pdf(108425 bytes )
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**United States Patent and Trademark Office  
Trademark Trial and Appeal Board**

**In re Sparta Beverage LLC  
Mark: SPARTAN MEAL  
w/DESIGN  
Serial No. 77530392**

**OPENING BRIEF**

COMES NOW the Applicant, Sparta Beverage LLC, and hereby respectfully appeals the Examining Attorney's refusal to register the mark SPARTAN MEAL and design.

For the purposes of this appeal Applicant hereby incorporates by reference all prior evidence and argument previously submitted which is of the record.

**OPENING STATEMENT**

The examining attorney has refused applicant's mark under Trademark Act Section 2(d), 15 U.S.C. §1052(d) Likelihood of Confusion, based on the mark SPARTAN ORGANICS Reg. 4027315.

Applicant contends that said mark is not a bar since likelihood of confusion cannot be made and that applicant has priority of use.

Accordingly applicant will request full reversal of examiner's refusal with direction to allow the mark to proceed to publication and subsequent registration.

**I. THE CITED MARK IS ENTITLED TO ONLY A NARROW PROTECTION BECAUSE IT EXISTS IN A "CROWDED FIELD" OF SIMILAR MARKS.**

As evidenced with hundreds of applications and registration submitted on May 10, 2009 and November 9, 2014, the cited registration is weak because it exists in crowded field of similar marks that use the term SPARTAN. In a crowded field of similar marks, each member of the crowd is relatively weak in its ability to prevent use by others in the crowd. *Miss World Ltd V Mrs America Pageants* 856 F 2d 1445, 1449 8 USPQ 2d 1237 (9th Cir 1988) (*Mrs of the World for beauty pageant held not likely to be confused with Miss World for beauty pageant*). In such a crowd, consumers will not likely be confused between any two of the crowd and may have learned to carefully pick out one from the other."

## **II. APPLICANT'S MARK IS A COMPOSITE WHICH CONSUMER'S PERCEIVE IN ITS TOTALITY**

Applicant's mark is a composite with a distinguishing design element (greek letter Lambda) which which would differ from the cited mark, such that confusion is not likely.

## **III. THE TERM "MEAL" IS NOT DESCRIPTIVE AND IS A PART OF THE MARK AS A WHOLE**

The examining attorney argued that the term MEAL is merely descriptive . This however is not the case. The mark is filed under section 005 for nutritional supplements and therefore the term MEAL is arbitrary since nutritional supplement is not traditionally a meal.

### **A) Applicant has retracted the disclaimer of the term MEAL in the November 9, 2014 filing.**

Although ORGANICS is simply discriptive that the source are organics in nature, MEAL has no such meaning. In fact its an integral part of the applicant's mark. It conveys a meaning that the product is composed of many ingredients that may be considered a meal replacement, therefore the entirety of applicants mark must be considered.

Applicant may properly 'tack on' the term MEAL to it's own mark which is the legal equivalent of a prior registered mark.

## **IV. APPLICANT HAS PRIORITY OF USE**

Applicant is owner of the mark "SPARTA" (Reg. No. 3730440) also for nutritional supplements. This gives the applicant priority of right of use since it **was filed prior to mark cited by the examining attorney**, and for all practical purposes makes SPARTAN MEAL applicant's own mark with some modifications.

1212.04 Prior Registrations as Proof of Distinctiveness - Trademark Rule 2.41(b), 37 C.F.R. §2.41(b), provides that the examining attorney may accept, as prima facie evidence of acquired distinctiveness, ownership by the applicant of one or more prior registrations of the same mark on the Principal Register or under the Act of 1905

## **V. REQUEST FOR JUDICIAL NOTICE**

In addition to evidence which has been submitted in these proceedings, applicant requests that the Board take notice and applicant hereby incorporated by reference the arguments and the marks cited in applicant's motion to suspend submitted on April 6, 2015.

## CONCLUSION

The examining attorney's refusal to publish and register the mark is in error. Applicant's mark is a unique and composite mark that when considered in its entirety creates a completely different commercial impression and further more it contains partially applicant's own legal equivalent mark which the applicant has a priority right of use.

Accordingly applicant requests that the Board reverse the decision of the examining attorney in full with direction to approve the mark for publication.

Respectfully submitted;

*/sam hope/*

Sparta Beverage LLC

June 26, 2015