

## Request for Reconsideration after Final Action

**The table below presents the data as entered.**

Input Field	Entered
<b>SERIAL NUMBER</b>	77530392
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 107
<b>MARK SECTION (current)</b>	
<b>STANDARD CHARACTERS</b>	NO
<b>USPTO-GENERATED IMAGE</b>	NO
<b>LITERAL ELEMENT</b>	SPARTAN MEAL
<b>COLOR(S) CLAIMED (If applicable)</b>	Color is not claimed as a feature of the mark.
<b>DESCRIPTION OF THE MARK (and Color Location, if applicable)</b>	The mark consists of "SPARTAN MEAL" in stylized form.
<b>MARK SECTION (proposed)</b>	
<b>MARK FILE NAME</b>	<a href="\\TICRS\EXPORT16\IMAGEOUT16\775\303\77530392\xml5\ RFR0002.JPG">\\TICRS\EXPORT16\IMAGEOUT16\775\303\77530392\xml5\ RFR0002.JPG</a>
<b>STANDARD CHARACTERS</b>	NO
<b>USPTO-GENERATED IMAGE</b>	NO
<b>LITERAL ELEMENT</b>	SPARTAN MEAL
<b>COLOR MARK</b>	NO
<b>DESCRIPTION OF THE MARK (and Color Location, if applicable)</b>	The mark consists of "SPARTAN MEAL" in stylized form with a Greek letter Lambda in between.
<b>PIXEL COUNT ACCEPTABLE</b>	YES
<b>PIXEL COUNT</b>	938 x 757
<b>ARGUMENT(S)</b>	
<p>The examining attorney has cited registrations 3539227, 3735528, 4027315 and 4047270 as a potential bar due to possible confusion.</p> <p><b><u>I. Applicant has priority rights over cited marks</u></b></p> <p>Applicant's registered mark [3730440 SPARTA and Design] has priority over all cited marks, because it</p>	

was filed prior to all cited marks. *"Under 15 U.S.C. §§1057(c) and 1141f(b), filing any application for registration on the Principal Register, including an intent-to-use application, constitutes constructive use of the mark, provided the application matures into a registration. Upon registration, filing affords the applicant nationwide priority over others."*

## **II. Cited marks are for prostate health**

Although the words prostate health or prostate defense have been disclaimed, does not take away from limitations that such words clearly indicate, which is products for prostate health. The mark Spartan organics shows from its specimen (incorporated by reference) that it too appears on the same packaging as others, for prostate health. Therefore all 4 cited marks are for prostate health.

Applicant has now excluded products for prostate health, and therefore cannot be any further confusion.

## **III. Additional design element differentiates the mark**

Applicant hereby amended the mark with addition of Greek letter Lambda in the mark. Lambda is part of applicants registered mark 3730440. This addition design is added pursuant to 807.14(b). See *Florasynth Laboratories Inc. v. Mühlens*, 122 USPQ 284. Therefore it should be accepted.

### **GOODS AND/OR SERVICES SECTION (current)**

INTERNATIONAL CLASS

005

#### **DESCRIPTION**

Dietary and nutritional supplements; Dietary drink mix for use as a meal replacement

FILING BASIS

Section 1(a)

FIRST USE ANYWHERE DATE

At least as early as 07/20/2008

FIRST USE IN COMMERCE DATE

At least as early as 07/20/2008

### **GOODS AND/OR SERVICES SECTION (proposed)**

INTERNATIONAL CLASS

005

#### **TRACKED TEXT DESCRIPTION**

Dietary and nutritional supplements; [Nutritional supplements, namely, sport nutrition](#); Dietary drink mix for use as a meal replacement; [excluding products for prostate health](#)

#### **FINAL DESCRIPTION**

Dietary and nutritional supplements; Nutritional supplements, namely, sport nutrition; Dietary drink mix for use as a meal replacement; excluding products for prostate health

FILING BASIS

Section 1(b)

### **ADDITIONAL STATEMENTS SECTION**

PRIOR REGISTRATION(S)

The applicant claims ownership of U.S. Registration Number(s) 3730440.

MISCELLANEOUS STATEMENT

Applicant hereby amends the application. Amendment from

	1(a) to 1(b) pursuant to 806.03(c).
<b>SIGNATURE SECTION</b>	
<b>DECLARATION SIGNATURE</b>	/sam hope/
<b>SIGNATORY'S NAME</b>	sam hope
<b>SIGNATORY'S POSITION</b>	general manager
<b>DATE SIGNED</b>	01/20/2013
<b>RESPONSE SIGNATURE</b>	/sam hope/
<b>SIGNATORY'S NAME</b>	sam hope
<b>SIGNATORY'S POSITION</b>	general manager
<b>DATE SIGNED</b>	01/20/2013
<b>AUTHORIZED SIGNATORY</b>	YES
<b>CONCURRENT APPEAL NOTICE FILED</b>	NO
<b>FILING INFORMATION SECTION</b>	
<b>SUBMIT DATE</b>	Sun Jan 20 22:25:09 EST 2013
<b>TEAS STAMP</b>	USPTO/RFR-71.20.160.113-2 0130120222509513083-77530 392-4909b384fd6bd111375d2 e42ab683c8123-N/A-N/A-201 30120215727700265

## Request for Reconsideration after Final Action To the Commissioner for Trademarks:

Application serial no. **77530392** has been amended as follows:

### MARK

**Applicant proposes to amend the mark as follows:**

**Current:** SPARTAN MEAL (Stylized and/or with Design)

Color is not claimed as a feature of the mark.

The mark consists of "SPARTAN MEAL" in stylized form.

**Proposed:** SPARTAN MEAL (Stylized and/or with Design, see [mark](#))

The applicant is not claiming color as a feature of the mark.

The mark consists of "SPARTAN MEAL" in stylized form with a Greek letter Lambda in between.

## **ARGUMENT(S)**

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

The examining attorney has cited registrations 3539227, 3735528, 4027315 and 4047270 as a potential bar due to possible confusion.

### **I. Applicant has priority rights over cited marks**

Applicant's registered mark [3730440 SPARTA and Design] has priority over all cited marks, because it was filed prior to all cited marks. *"Under 15 U.S.C. §§1057(c) and 1141f(b), filing any application for registration on the Principal Register, including an intent-to-use application, constitutes constructive use of the mark, provided the application matures into a registration. Upon registration, filing affords the applicant nationwide priority over others."*

### **II. Cited marks are for prostate health**

Although the words prostate health or prostate defense have been disclaimed, does not take away from limitations that such words clearly indicate, which is products for prostate health. The mark Spartan organics shows from its specimen (incorporated by reference) that it too appears on the same packaging as others, for prostate health. Therefore all 4 cited marks are for prostate health.

Applicant has now excluded products for prostate health, and therefore cannot be any further confusion.

### **III. Additional design element differentiates the mark**

Applicant hereby amended the mark with addition of Greek letter Lambda in the mark. Lambda is part of applicant's registered mark 3730440. This addition design is added pursuant to 807.14(b). See *Florasynth Laboratories Inc. v. Mülhens*, 122 USPQ 284. Therefore it should be accepted.

## **CLASSIFICATION AND LISTING OF GOODS/SERVICES**

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

**Current:** Class 005 for Dietary and nutritional supplements; Dietary drink mix for use as a meal replacement

Original Filing Basis:

**Filing Basis: Section 1(a), Use in Commerce:** The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 07/20/2008 and first used in commerce at least as early as 07/20/2008, and is now in use in such commerce.

**Proposed:**

**Tracked Text Description:** Dietary and nutritional supplements; [Nutritional supplements, namely, sport nutrition](#); Dietary drink mix for use as a meal replacement; [excluding products for prostate health](#)

Class 005 for Dietary and nutritional supplements; Nutritional supplements, namely, sport nutrition; Dietary drink mix for use as a meal replacement; excluding products for prostate health

Deleted Filing Basis: 1(a)

**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**

### **Claim of Prior Registration(s)**

The applicant claims ownership of U.S. Registration Number(s) 3730440.

### **Miscellaneous Statement**

Applicant hereby amends the application. Amendment from 1(a) to 1(b) pursuant to 806.03(c).

## **SIGNATURE(S)**

### **Declaration Signature**

If the applicant is seeking registration under Section 1(b) and/or Section 44 of the Trademark Act, the applicant has had 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. 37 C.F.R. Secs. 2.34(a)(2)(i); 2.34 (a)(3)(i); and 2.34(a)(4)(ii); and/or the applicant has had a bona fide intention to exercise legitimate control over the use of the mark in commerce by its members. 37 C.F. R. Sec. 2.44. If the applicant is seeking registration under Section 1(a) of the Trademark Act, the mark was in use in commerce on or in connection with the goods and/or services listed in the application as of the application filing date or as of the date of any submitted allegation of use. 37 C.F.R. Secs. 2.34(a)(1)(i); and/or the applicant has exercised legitimate control over the use of the mark in commerce by its members. 37 C.F.R. Sec. 2.44. The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; that if the original application was submitted unsigned, that all statements in the original application and this submission made of the declaration signer's knowledge are true; and all statements in the original application and this submission made on information and belief are believed to be true.

Signature: /sam hope/ Date: 01/20/2013

Signatory's Name: sam hope

Signatory's Position: general manager

### **Request for Reconsideration Signature**

Signature: /sam hope/ Date: 01/20/2013

Signatory's Name: sam hope

Signatory's Position: general manager

The signatory has confirmed that he/she is not represented by either an authorized attorney or Canadian

attorney/agent, and that he/she is either (1) the applicant or (2) a person(s) with legal authority to bind the applicant; and if an authorized U.S. attorney or Canadian attorney/agent previously represented him/her in this matter, either he/she has filed a signed revocation of power of attorney with the USPTO or the USPTO has granted the request of his/her prior representative to withdraw.

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

Serial Number: 77530392

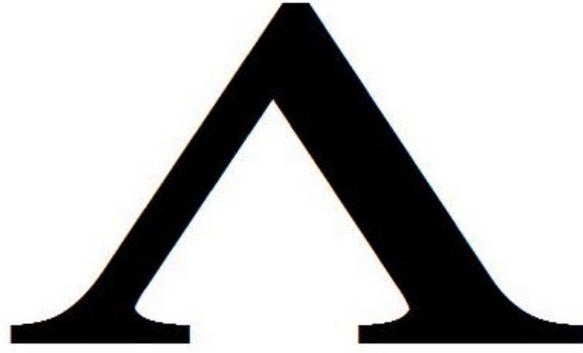
Internet Transmission Date: Sun Jan 20 22:25:09 EST 2013

TEAS Stamp: USPTO/RFR-71.20.160.113-2013012022250951

3083-77530392-4909b384fd6bd111375d2e42ab

683c8123-N/A-N/A-20130120215727700265

**SPARTAN**



**MEAL**