
To: Sensa Products, LLC (trademarks@ipla.com)
Subject: U.S. TRADEMARK APPLICATION NO. 77538559 - SPRINKLE DIET - N/A
Sent: 1/4/2010 8:59:49 PM
Sent As: ECOM107@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE**SERIAL NO:** 77/538559**MARK:** SPRINKLE DIET**CORRESPONDENT ADDRESS:**

John M. Kim
IP Legal Advisors, PC
Suite 230
1940 Garnet Avenue
San Diego CA 92109

GENERAL TRADEMARK INFORMATION:
<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Sensa Products, LLC**CORRESPONDENT'S REFERENCE/DOCKET NO:**

N/A

CORRESPONDENT E-MAIL ADDRESS:
trademarks@ipla.com**REQUEST FOR RECONSIDERATION DENIED****ISSUE/MAILING DATE:** 1/4/2010

Applicant is requesting reconsideration of a final refusal issued/mailed June 12, 2009.

After careful consideration of the law and facts of the case, the examining attorney must deny the request for reconsideration and adhere to the final action as written since no new facts or reasons have been presented that are significant and compelling with regard to the point at issue. The following are the issues discussed in applicant's request for reconsideration:

Weakness of "SPRINKLE" or "SPRINKLES"

In its request for reconsideration, applicant listed ten registrations "for similar food-related goods" and argued that "SPRINKLE" or "SPRINKLES" is thus weak.

Third-party registrations for seemingly similar marks featuring goods and/or services dissimilar or unrelated to those in the application and the cited registration are of little probative value in determining the weakness of a mark or portions of a mark. Weakness or dilution is generally determined in the

context of the number and nature of similar marks in use in the marketplace on similar goods and/or services. See *Nat'l Cable Television Ass'n, Inc. v. Am. Cinema Editors, Inc.*, 937 F.2d 1572, 1579-80, 19 USPQ2d 1424, 1430 (Fed. Cir. 1991); *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973). Moreover, the existence on the register of other seemingly similar marks does not provide a basis for registrability for the applied-for mark. *AMF Inc. v. Am. Leisure Prods., Inc.*, 474 F.2d 1403, 1406, 177 USPQ 268, 269 (C.C.P.A. 1973); *In re Total Quality Group, Inc.*, 51 USPQ2d 1474, 1477 (TTAB 1999).

Prior decisions and actions of other trademark examining attorneys in registering different marks have little evidentiary value and are not binding upon the Office. TMEP §1207.01(d)(vi). Each case is decided on its own facts, and each mark stands on its own merits. See *AMF Inc. v. Am. Leisure Prods., Inc.*, 474 F.2d 1403, 1406, 177 USPQ 268, 269 (C.C.P.A. 1973); *In re Int'l Taste, Inc.*, 53 USPQ2d 1604, 1606 (TTAB 2000); *In re Sunmarks, Inc.*, 32 USPQ2d 1470, 1472 (TTAB 1994).

The Court of Appeals for the Federal Circuit and the Trademark Trial and Appeal Board have recognized that marks deemed "weak" or merely descriptive are still entitled to protection against the registration by a subsequent user of a similar mark for closely related goods and/or services. *In re Colonial Stores, Inc.*, 216 USPQ 793, 795 (TTAB 1982); TMEP §1207.01(b)(ix); see *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 1401, 182 USPQ 108, 109 (C.C.P.A. 1974). This protection extends to marks registered on the Supplemental Register. TMEP §1207.01(b)(ix); see, e.g., *In re Clorox Co.*, 578 F.2d 305, 307-08, 198 USPQ 337, 340 (C.C.P.A. 1978); *In re Hunke & Jochheim*, 185 USPQ 188 (TTAB 1975).

Here, dietary food supplements and nutritional additives for weight loss and weight management are dissimilar from those in seven of the ten registrations that applicant identified, namely snack foods, ice cream, seasoning mixes and bakery goods. The other three registrations are (1) the cited registration "SPRINKLE" for nutritional supplements and dietary supplements, (2) "JUST A SPRINKLE A DAY KEEPS THE TEAR STAINS AWAY" for medicated food supplement to prevent or eliminate tear stains in animals, and (3) "CAL/TRAP CALORIE INHIBITOR SPRINKLE AWAY CALORIES" and design for dietary supplements. When considering the similarities between applicant's mark and these registrants and the relatedness of their goods, and based on the above discussion, the examining attorney maintains the finding of a likelihood of confusion between applicant's mark and the cited registrant's mark and their goods.

Similarities of Applicant's and Registrant's Marks and Relatedness of Their Goods

Applicant's arguments in its request for reconsideration that its mark and the registrant's mark are not confusingly similar and their goods are not closely related have been responded to in the final Office action.

Accordingly, applicant's request for reconsideration is *denied*. The time for appeal runs from the date the final action was issued/mailed. 37 C.F.R. Section 2.64(b); TMEP Section 715.03(c). If applicant has already filed a timely notice of appeal, the application will be forwarded to the Trademark Trial and Appeal Board (TTAB).

If applicant has questions about its application or needs assistance in responding to this Office action, please telephone the assigned trademark examining attorney directly at the number below.

/Dawn Han/

Trademark Examining Attorney
Law Office 107
(571) 272-9432

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

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IMPORTANT NOTICE REGARDING YOUR TRADEMARK APPLICATION

Your trademark application (Serial No. 77538559) has been reviewed. The examining attorney assigned by the United States Patent and Trademark Office ("USPTO") has written a letter (an "Office action") on 1/4/2010 to which you must respond (*unless the Office letter specifically states that no response is required*). Please follow these steps:

1. Read the Office letter by clicking on this [link http://tmportal.uspto.gov/external/portal/tow?DDA=Y&serial_number=77538559&doc_type=REC&mail_date=20100104](http://tmportal.uspto.gov/external/portal/tow?DDA=Y&serial_number=77538559&doc_type=REC&mail_date=20100104) OR go to <http://tmportal.uspto.gov/external/portal/tow> and enter your serial number to access the Office letter. If you have difficulty accessing the Office letter, contact TDR@uspto.gov.

PLEASE NOTE: The Office letter may not be immediately available but will be viewable within 24 hours of this e-mail notification.

2. Contact the examining attorney who reviewed your application if you have any questions about the content of the Office letter (contact information appears at the end thereof).

3. Respond within 6 months, calculated from 1/4/2010 (*or sooner if specified in the Office letter*), using the Trademark Electronic Application System (TEAS) **Response to Office Action form**. If you have difficulty using TEAS, contact TEAS@uspto.gov.

ALERT:

Failure to file any required response by the applicable deadline will result in the ABANDONMENT (loss) of your application.

Do NOT hit "Reply" to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses.