

## Request for Reconsideration after Final Action

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

| Input Field   | Entered                                 |
|---|---|
| <b>SERIAL NUMBER</b>  | 77928276                                |
| <b>LAW OFFICE ASSIGNED</b>  | LAW OFFICE 103                          |
| <b>MARK SECTION (no change)</b>   |   |
| <b>GOODS AND/OR SERVICES SECTION (current)</b>                              |   |
| <b>INTERNATIONAL CLASS</b>  | 005                                     |
| <b>DESCRIPTION</b>  |   |
| Ingredient blend sold as a component of dietary and nutritional supplements |   |
| <b>FILING BASIS</b>   | Section 1(a)                            |
| <b>FIRST USE ANYWHERE DATE</b>  | At least as early as 02/28/1997         |
| <b>FIRST USE IN COMMERCE DATE</b>   | At least as early as 02/28/1997         |
| <b>GOODS AND/OR SERVICES SECTION (proposed)</b>                             |   |
| <b>INTERNATIONAL CLASS</b>  | 005                                     |
| <b>DESCRIPTION</b>  |   |
| Ingredient blend sold as a component of dietary and nutritional supplements |   |
| <b>FILING BASIS</b>   | Section 1(b)                            |
| <b>SIGNATURE SECTION</b>  |   |
| <b>DECLARATION SIGNATURE</b>  | /Howard J. Shire/                       |
| <b>SIGNATORY'S NAME</b>   | Howard J. Shire, Esq.                   |
| <b>SIGNATORY'S POSITION</b>   | Attorney of Record, New York Bar member |
| <b>SIGNATORY'S PHONE NUMBER</b>   | 212-425-7200                            |
| <b>DATE SIGNED</b>  | 12/05/2011                              |
| <b>RESPONSE SIGNATURE</b>   | /Howard J. Shire/                       |
|   |   |

|                                   |   |
|-----------------------------------|---|
| SIGNATORY'S NAME                  | Howard J. Shire, Esq.   |
| SIGNATORY'S POSITION              | Attorney of Record, New York Bar member   |
| SIGNATORY'S PHONE NUMBER          | 212-425-7200  |
| DATE SIGNED                       | 12/05/2011  |
| AUTHORIZED SIGNATORY              | YES   |
| CONCURRENT APPEAL NOTICE FILED    | YES   |
| <b>FILING INFORMATION SECTION</b> |   |
| SUBMIT DATE                       | Mon Dec 05 16:24:44 EST 2011  |
| TEAS STAMP                        | USPTO/RFR-65.246.216.100-<br>20111205162444456602-7792<br>8276-490bf1552bb247c5f81d<br>ca575564651ab45-N/A-N/A-2<br>0111205162303707887 |

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. **77928276** has been amended as follows:

#### CLASSIFICATION AND LISTING OF GOODS/SERVICES

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

**Current:** Class 005 for Ingredient blend sold as a component of dietary and nutritional supplements

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 02/28/1997 and first used in commerce at least as early as 02/28/1997, and is now in use in such commerce.

**Proposed:** Class 005 for Ingredient blend sold as a component of dietary and nutritional supplements

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)).

## **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: /Howard J. Shire/ Date: 12/05/2011

Signatory's Name: Howard J. Shire, Esq.

Signatory's Position: Attorney of Record, New York Bar member

Signatory's Phone Number: 212-425-7200

### **Request for Reconsideration Signature**

Signature: /Howard J. Shire/ Date: 12/05/2011

Signatory's Name: Howard J. Shire, Esq.

Signatory's Position: Attorney of Record, New York Bar member

Signatory's Phone Number: 212-425-7200

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: 77928276

Internet Transmission Date: Mon Dec 05 16:24:44 EST 2011

TEAS Stamp: USPTO/RFR-65.246.216.100-201112051624444

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