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Subject: U.S. TRADEMARK APPLICATION NO. 77980412 - PLAQUE-ZAPPER -
N/A - SU - Request for Reconsideration Denied - Return to TTAB - Message 1 of 4

Attachment Information:

Count: 5

Files: treat1-1.jpg, treat1-2.jpg, treat1-3.jpg, treat1-4.jpg, 77980412.doc

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

APPLICATION SERIAL NO. 77980412

MARK: PLAQUE-ZAPPER



CORRESPONDENT ADDRESS:
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NAPLES, FL 34103

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

APPLICANT: Gulf Coast Nutritionals, Inc.

CORRESPONDENT'S REFERENCE/DOCKET NO:

N/A

CORRESPONDENT E-MAIL ADDRESS:

usptomail@whitelawfirm.com

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 12/8/2011

The trademark examining attorney has carefully reviewed applicant's request for reconsideration and is denying the request for the reasons stated below. *See* 37 C.F.R. §2.64(b); TMEP §§715.03(a), 715.04(a). The requirement(s) and/or refusal(s) made final in the Office action dated April 28, 2011, are maintained and continue to be final. *See* TMEP §§715.03(a), 715.04(a).

In the present case, applicant's request has not resolved all the outstanding issue(s), nor does it raise a new issue or provide any new or compelling evidence with regard to the outstanding issue(s) in the final Office action. In addition, applicant's analysis and arguments are not persuasive nor do they shed new light on the issues. Accordingly, the request is denied.

The issue is a final refusal of the specimens as being unacceptable to show use on the goods recited in Class 31 ONLY.

The applicant argues in the request for reconsideration that "Applicant clearly states for the record that the content of the package submitted herewith include what is properly also known as a treat and one which indeed the pet happily consumes." Just because the applicant states that the contents of the package contain a "pet treat" does not make it so, especially if the evidence in the record indicates otherwise. The examining attorney has

discussed in great detail the packaging for the applicant's goods, which clearly state that the goods are "Odorless – Colorless – Tasteless Will Not Change Pet's Drinking or Eating Habits." The examining attorney cannot see any argument to suggest that odorless, colorless and tasteless goods would be considered a treat, with particular emphasis on the "tasteless" characteristic. The applicant has not provided any evidence to support their claim other than an unsupported assertion in their response to the Office action.

Moreover, the applicant asserts that "the pet happily consumes" these goods, and they are therefore a treat. It is not clear how the applicant is determining that the pet is "happily" consuming the goods – i.e., how do they know the emotions of the animal? – and they have provided no evidence to support this assertion. Without any evidence to support these assertions made by the applicant, the arguments are not convincing and do not change the determination that the specimen does not support use on the recited goods.

The definition of "treat" in the record is "something enjoyable: something enjoyable, especially when a surprise." www.encyclopedia.com. As can be seen from the attached websites, pet treats are typically edible goods that do have flavor, and are usually given to a pet as a reward for good performance or to encourage certain desired behaviors during pet training. See, for example, http://74.6.238.254/search/srptcache?ei=UTF-8&p=what+are+%22pet+treats%22&fr=yfp-t-701&u=http://cc.bingj.com/cache.aspx?q=what+are+%22pet+treats%22&d=4638921541353495&mkt=en-US&setlang=en-US&w=6640a1d5,ea250d35&icp=1&intl=us&sig=ieXGKAB_vmHYgZAZZjLrOg--.

However, on websites featuring a broad variety of pet products, the applicant's "PLAQUE-ZAPPER" goods are listed under different departments/categories of goods. For example, on the "Only Natural Pet" website, the applicant's "PLAQUE-ZAPPER" goods are classified as "Grooming/Hygiene" goods.

<http://search.onlynaturalpet.com/search.aspx?st=natural-pet-grooming-cat-dog-feline-canine&avs|Department=Grooming+%2f+Hygiene&avs|Manufacturer=Ark+Naturals>.

However, when a search is conducted within the "Treats" department of the same pet product website for all goods offered by Ark Naturals in that category, the search results yield three products, but the applicant's "PLAQUE-ZAPPER" goods from this case are not found as one of the choices of pet treats manufactured by the applicant.

<http://search.onlynaturalpet.com/search.aspx?st=natural-pet-treats-dog-cat&avs|Department=Treats+/+Chews&avs|Manufacturer=Ark+Naturals>.

Similarly, on the "Entirely Pets" website, the applicant's "PLAQUE-ZAPPER" product is classified under "Dental Products" or "Dental Additives,"

<http://www.entirelypets.com/breathlessplaque-smmed.html>, and not as a pet treat,

<http://www.entirelypets.com/treats1.html> (see attached cached webpage – no "PLAQUE-ZAPPER" on the "All Treats for Dogs & Cats" page within the "Pet Food & Treats" category).

For all of these reasons, as well as those discussed in previous Office actions, the applicant's specimen does not support use of the proposed mark for the Class 31 goods recited in the application. Therefore, the final refusal is maintained, and the appeal will be resumed in accordance with the procedures outlined below.

The filing of a request for reconsideration does not extend the time for filing a proper response to a final Office action or an appeal with the Trademark Trial and Appeal Board (Board), which runs from the date the final Office action was issued/mailed. *See* 37 C.F.R. §2.64(b); TMEP §§715.03, 715.03(a), (c).

If time remains in the six-month response period to the final Office action, applicant has the remainder of the response period to comply with and/or overcome any outstanding final requirement(s) and/or refusal(s) and/or to file an appeal with the Board. TMEP §715.03(a), (c). However, if applicant has already filed a timely notice of appeal with the Board, the Board will be notified to resume the appeal when the time for responding to the final Office action has expired. *See* TMEP §715.04(a).

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. *See* TMEP §§705.02, 709.06.

/Jennifer H. Dixon/
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only -



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[Barkwheats \(1\)](#)
[Bones Galore \(9\)](#)
[Bravol \(3\)](#)
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