

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85180281
LAW OFFICE ASSIGNED	LAW OFFICE 114
MARK SECTION (no change)	
ARGUMENT(S)	<p>In response to the March 4, 2011, Office Action, Applicant has amended the description of goods as follows:</p> <p style="padding-left: 40px;">Powdered mixes in the nature of powdered nutritional supplement mix when used in conjunction with a separately stated trademark, namely, Kherb</p> <p>The Examining Attorney has refused registration on the ground that the mark "Kherb your appetite!" is merely descriptive pursuant to Section 2(e). Accordingly, Applicant has amended the description of the goods to limit protection of the applied-for mark to use in conjunction with the mark "Kherb." A Notice of Allowance issued on September 22, 2009, for the single word "Kherb," Ser. No. 77/682,325, for "Nutritionally fortified beverage; powdered nutritionally fortified beverage mix." Applicant respectfully submits that use of the inherently-distinctive mark "Kherb" along with the applied-for mark will eliminate any possibility that the sole significance of the applied-for mark to consumers would be merely descriptive.</p> <p>Applicant also has amended the application to disclaim the phrase "Curb your appetite" apart from the mark as shown. The disclaimer ensures that registration of "Kherb your appetite!" will not prohibit competitors from using any components of the applied-for mark other than the fancifully-spelled term "Kherb."</p> <p>Applicant having fully responded to the March 4, 2011, Office Action, consideration and allowance of this application is respectfully requested.</p> <p>In the event that the proposed amendment does not result in a Notice of Allowance, the Examiner is requested to enter the amendments for purposes of appeal. A Notice of Appeal is being filed concurrently herewith.</p>
GOODS AND/OR SERVICES SECTION (current)	
INTERNATIONAL CLASS	005

DESCRIPTION

Powdered mixes in the nature of powdered nutritional supplement mix

FILING BASIS

Section 1(b)

GOODS AND/OR SERVICES SECTION (proposed)**INTERNATIONAL CLASS**

005

TRACKED TEXT DESCRIPTION

~~Powdered mixes in the nature of powdered nutritional supplement mix~~; Powdered mixes in the nature of powdered nutritional supplement mix when used in conjunction with a separately stated trademark, namely, Kherb

FINAL DESCRIPTION

Powdered mixes in the nature of powdered nutritional supplement mix when used in conjunction with a separately stated trademark, namely, Kherb

FILING BASIS

Section 1(b)

ADDITIONAL STATEMENTS SECTION**DISCLAIMER**

No claim is made to the exclusive right to use "Curb your appetite" apart from the mark as shown.

SIGNATURE SECTION**RESPONSE SIGNATURE**

/Sarah Silbert/

SIGNATORY'S NAME

Sarah Silbert

SIGNATORY'S POSITION

Attorney of record, California bar member

DATE SIGNED

09/01/2011

AUTHORIZED SIGNATORY

YES

CONCURRENT APPEAL NOTICE FILED

YES

FILING INFORMATION SECTION**SUBMIT DATE**

Thu Sep 01 16:33:27 EDT 2011

TEAS STAMPUSPTO/RFR-76.238.240.9-20
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901143952791140

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

Application serial no. **85180281** has been amended as follows:

ARGUMENT(S)

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

In response to the March 4, 2011, Office Action, Applicant has amended the description of goods as follows:

Powdered mixes in the nature of powdered nutritional supplement mix when used in conjunction with a separately stated trademark, namely, Kherb

The Examining Attorney has refused registration on the ground that the mark "Kherb your appetite!" is merely descriptive pursuant to Section 2(e). Accordingly, Applicant has amended the description of the goods to limit protection of the applied-for mark to use in conjunction with the mark "Kherb." A Notice of Allowance issued on September 22, 2009, for the single word "Kherb," Ser. No. 77/682,325, for "Nutritionally fortified beverage; powdered nutritionally fortified beverage mix." Applicant respectfully submits that use of the inherently-distinctive mark "Kherb" along with the applied-for mark will eliminate any possibility that the sole significance of the applied-for mark to consumers would be merely descriptive.

Applicant also has amended the application to disclaim the phrase "Curb your appetite" apart from the mark as shown. The disclaimer ensures that registration of "Kherb your appetite!" will not prohibit competitors from using any components of the applied-for mark other than the fancifully-spelled term "Kherb."

Applicant having fully responded to the March 4, 2011, Office Action, consideration and allowance of this application is respectfully requested.

In the event that the proposed amendment does not result in a Notice of Allowance, the Examiner is requested to enter the amendments for purposes of appeal. A Notice of Appeal is being filed concurrently herewith.

CLASSIFICATION AND LISTING OF GOODS/SERVICES

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

Current: Class 005 for Powdered mixes in the nature of powdered nutritional supplement mix

Original Filing Basis:

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)).

Proposed:

Tracked Text Description: ~~Powdered mixes in the nature of powdered nutritional supplement mix;~~
Powdered mixes in the nature of powdered nutritional supplement mix when used in conjunction with a separately stated trademark, namely, Kherb

Class 005 for Powdered mixes in the nature of powdered nutritional supplement mix when used in conjunction with a separately stated trademark, namely, Kherb

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

Disclaimer

No claim is made to the exclusive right to use "Curb your appetite" apart from the mark as shown.

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Sarah Silbert/ Date: 09/01/2011

Signatory's Name: Sarah Silbert

Signatory's Position: Attorney of record, California bar member

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: 85180281

Internet Transmission Date: Thu Sep 01 16:33:27 EDT 2011

TEAS Stamp: USPTO/RFR-76.238.240.9-20110901163327251

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