

## Request for Reconsideration after Final Action

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

Input Field	Entered
<b>SERIAL NUMBER</b>	85411072
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 103
<b>MARK SECTION (no change)</b>	
<b>ARGUMENT(S)</b>	
Please see Applicant's arguments attached in the Evidence section.	
<b>EVIDENCE SECTION</b>	
<b>EVIDENCE FILE NAME(S)</b>	
<b>ORIGINAL PDF FILE</b>	<a href="#">evi_742024398-182043874_.Drybev.Final.Office.Action.Response.pdf</a>
<b>CONVERTED PDF FILE(S) (1 page)</b>	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\854\110\85411072\xml7\RFR0002.JPG</a>
<b>DESCRIPTION OF EVIDENCE FILE</b>	Applicant's arguments
<b>SIGNATURE SECTION</b>	
<b>RESPONSE SIGNATURE</b>	/Remy M. Davis/
<b>SIGNATORY'S NAME</b>	Remy M. Davis
<b>SIGNATORY'S POSITION</b>	Attorney of record, Texas bar member
<b>SIGNATORY'S PHONE NUMBER</b>	214-367-6000
<b>DATE SIGNED</b>	08/07/2013
<b>AUTHORIZED SIGNATORY</b>	YES
<b>CONCURRENT APPEAL NOTICE FILED</b>	YES
<b>FILING INFORMATION SECTION</b>	
<b>SUBMIT DATE</b>	Wed Aug 07 18:25:54 EDT 2013

**TEAS STAMP**

USPTO/RFR-74.202.43.98-20  
130807182554822931-854110  
72-500b298a0ce29d722a6f9a  
05f5139c6988618c029611217  
fdbbfff80ca422f9d2ebd-N/A-  
N/A-20130807182043874579

PTO Form 1930 (Rev 9/2007)  
OMB No. 0651-0050 (Exp. 05/31/2014)

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

Application serial no. **85411072** has been amended as follows:

### **ARGUMENT(S)**

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

Please see Applicant's arguments attached in the Evidence section.

### **EVIDENCE**

Evidence in the nature of Applicant's arguments has been attached.

#### **Original PDF file:**

[evi\\_742024398-182043874\\_Drybev\\_Final\\_Office\\_Action\\_Response.pdf](#)

**Converted PDF file(s)** (1 page)

[Evidence-1](#)

### **SIGNATURE(S)**

#### **Request for Reconsideration Signature**

Signature: /Remy M. Davis/ Date: 08/07/2013

Signatory's Name: Remy M. Davis

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

Signatory's Phone Number: 214-367-6000

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: 85411072

Internet Transmission Date: Wed Aug 07 18:25:54 EDT 2013

TEAS Stamp: USPTO/RFR-74.202.43.98-20130807182554822

931-85411072-500b298a0ce29d722a6f9a05f51

39c6988618c029611217fdbb80ca422f9d2ebd

-N/A-N/A-20130807182043874579

### The Mark is Suggestive and Not Merely Descriptive of the Goods Provided

The examiner has issued a final office action refusing registration of Applicant's mark based on the belief that the applied for mark is merely descriptive of the goods identified in the application. By providing the dictionary definitions of "dry"~ meaning without water or without alcohol~ and that "bev" is an abbreviation for "beverage", the Examiner submits that Applicant's composite mark "DRYBEV" is descriptive of dietary and nutritional supplements. Applicant fully incorporates all arguments made in its initial Response to Office Action as if fully rewritten herein and maintains that the mark DRYBEV is suggestive, at most, of a dietary or nutritional supplement.

Applicant maintains that the term DRYBEV creates a unitary mark that requires a large mental leap to understand the nature of the product. Whether the individual components are descriptive of the mark is irrelevant, it is only the unitary mark, when viewed as a whole, which must be examined. Furthermore, the term "Dry" in applicant's mark does indicate a flavor of the drink, nor does it indicate that the mark is non-alcoholic, but instead that there is a dry element that is mixed with a liquid element to the nutritional supplement. As already has been indicated, there do not appear to be any Internet references that the Examiner was able to find that point to a search for the term "drybev" yielding any results at all, much less results for any description of a feature or character of nutritional supplement products.

Applicant has not found any competitive need to use the term "drybev", nor does there appear to be meaning attached to that term in the field of nutritional supplements, and the examiner has provided no evidence that the term "drybev", as a unitary mark, is descriptive of any particular product. Applicant respectfully notes that, unlike a Section 2(d) analysis, any doubts regarding the application of Section 2(e)(1) are to be resolved in favor of the applicant. *In re Conductive Services, Inc.*, 220 U.S.P.Q. 84, 86 (T.T.A.B. 1983). The ambiguity here about what meaning the general public may attach to the term "DryBev" or even "dry beverage" works in favor of registration for the applicant.

Accordingly, Applicant respectfully requests that its application proceed to publication.