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Subject: U.S. TRADEMARK APPLICATION NO. 85501401 - LIFE-LINE - N/A - Request for Reconsideration Denied - Return to TTAB - Message 1 of 4

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

U.S. APPLICATION SERIAL NO. 85501401

MARK: LIFE-LINE



CORRESPONDENT ADDRESS:

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GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/trademarks/index.jsp>

APPLICANT: Trillsch, Markus

CORRESPONDENT'S REFERENCE/DOCKET NO:

N/A

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REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 7/3/2013

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)(2)(B), (a)(2)(E), 715.04(a). The requirement(s) and/or refusal(s) made final in the Office action dated December 10, 2012 are maintained and continue to be final. See TMEP §§715.03(a)(2)(B), (a)(2)(E), 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.

Section 2(d) – Likelihood of Confusion

In the last action, the examining attorney made final the refusal to register the applied-for mark is because of a likelihood of confusion with the mark in U.S. Registration No. 1303410. Trademark Act Section 2(d), 15 U.S.C. §1052(d); see TMEP §§1207.01 et seq. Trademark Act Section 2(d), 15 U.S.C. §1052(d); see TMEP §§1207.01 et seq.

Taking into account the relevant *du Pont* factors, a likelihood of confusion determination in this case involves a two-part analysis. The marks are compared for similarities in their appearance, sound, connotation and commercial impression. TMEP §§1207.01, 1207.01(b). The goods and/or services are compared to determine whether they are similar or commercially related or travel in the same trade channels. See *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002); *Han Beauty, Inc. v. Alberto-Culver Co.*, 236 F.3d 1333, 1336, 57 USPQ2d 1557, 1559 (Fed. Cir. 2001); TMEP §§1207.01, 1207.01(a)(vi).

Mark

The applicant's mark, LIFE-LINE, is virtually identical to registered mark, LIFE-LINE (stylized). The only difference in the marks is the registrant's mark features stylization. This difference does not alter the commercial impression of the marks.

The applicant argues the marks make different commercial impressions. However, the examining attorney is not persuaded.

Marks must be compared in their entireties and should not be dissected; however, a trademark examining attorney may weigh the individual components of a mark to determine its overall commercial impression. *In re Chatam Int'l Inc.*, 380 F.3d 1340, 1342, 71 USPQ2d 1944, 1946-47 (Fed. Cir. 2004); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 751 (Fed. Cir. 1985) (“[I]n articulating reasons for reaching a conclusion on the issue of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark”); *In re Kysela Pere et Fils, Ltd.*, 98 USPQ2d 1261, 1267 (TTAB 2011). The literal portions of both marks are identical.

Additionally, the applicant’s mark appears in standard character form. A mark in typed or standard characters may be displayed in any lettering style; the rights reside in the wording or other literal element and not in any particular display or rendition. *See In re Vittera Inc.*, 671 F.3d 1358, 1363, 101 USPQ2d 1905, 1909 (Fed. Cir. 2012); *In re Mighty Leaf Tea*, 601 F.3d 1342, 1348, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010); 37 C.F.R. §2.52(a); TMEP §1207.01(c)(iii). ***Thus, a mark presented in stylized characters and/or with a design element generally will not avoid likelihood of confusion with a mark in typed or standard characters because the marks could be presented in the same manner of display.*** *See, e.g., In re Vittera Inc.*, 671 F.3d at 1363, 101 USPQ2d at 1909; *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 1041, 216 USPQ 937, 939 (Fed. Cir. 1983) (stating that “the argument concerning a difference in type style is not viable where one party asserts rights in no particular display”). Accordingly, the stylization in the registrant’s mark does not change the commercial impression of the virtually identical marks.

Where the marks of the respective parties are virtually identical, the relationship between the relevant goods need not be as close to support a finding of likelihood of confusion. *See In re Shell Oil Co.*, 992 F.2d 1204, 1207, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993); *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202 (TTAB 2009); *In re Thor Tech, Inc.*, 90 USPQ2d 1634, 1636 (TTAB 2009); TMEP §1207.01(a).

Goods

The applicant’s goods are “*Dietary food supplements; Nutritional supplements; Vitamins.*” The registrant’s goods are “*Vitamins and Dietary Supplement Containing Vitamins.*”

Both applicant and registrant have identical goods namely, vitamins. The term “DIETARY SUPPLEMENT” also known as FOOD SUPPLEMENT or NUTRITIONAL SUPPLEMENT, is a preparation intended to supplement the diet and provide nutrients, such as vitamins, minerals, fiber, fatty acids, or amino acids, that may be missing or may not be consumed in sufficient quantities in a person's diet” (see previously attached). “Nutritional supplements include *vitamins*, minerals, herbs, *meal supplements*, sports nutrition products, *natural food supplements*, and other related products used to boost the nutritional content of the diet” (see attached).

Since the terms “dietary supplement” “food supplement” and “nutritional supplement” can all be used interchangeably, the applicant’s and registrant’s goods are all related. The fact that registrant’s dietary supplements contain vitamins does not change the relatedness of the goods because the applicant’s goods are broadly identified and could also contain vitamins.

The attached Internet evidence consists of webpages from third parties that sell dietary supplements. Food supplements, vitamins and other supplements. This evidence establishes that the relevant goods are sold or provided through the same trade channels and used by the same classes of consumers in the same fields of use. Therefore, applicant’s and registrant’s goods and/or services are considered related for likelihood of confusion purposes. *See, e.g., In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202-04 (TTAB 2009); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1268-69, 1271-72 (TTAB 2009).

Evidence obtained from the Internet may be used to support a determination under Trademark Act Section 2(d) that goods are related. *See, e.g., In re G.B.I. Tile & Stone, Inc.*, 92 USPQ2d 1366, 1371 (TTAB 2009); *In re Paper Doll Promotions, Inc.*, 84 USPQ2d 1660, 1668 (TTAB 2007).

The trademark examining attorney has previously attached evidence from the USPTO’s X-Search database consisting of a number of third-party marks registered for use in connection with the same or similar goods as those of both applicant and registrant in this case. This evidence shows that the goods listed therein, namely *dietary supplements and dietary food supplements*, are of a kind that may emanate from a single source under a single mark. *See In re Anderson*, 101 USPQ2d 1912, 1919 (TTAB 2012); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988); TMEP §1207.01(d)(iii).

The overriding concern is not only to prevent buyer confusion as to the source of the goods, but to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. *See In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt

regarding a likelihood of confusion determination is resolved in favor of the registrant. TMEP §1207.01(d)(i); see *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1025 (Fed. Cir. 1988).

The applicant argues that the purchasers are sophisticated because they likely exhibit care in purchasing supplements. However, the applicant does not provide any evidence showing the amount of care taken by purchasers in selecting their supplements. Further, the fact that purchasers are sophisticated or knowledgeable in a particular field does not necessarily mean that they are sophisticated or knowledgeable in the field of trademarks or immune from source confusion. *In re Power Distrib., Inc.*, ___ USPQ2d ___, Ser. No. 77825939, 2012 TTAB LEXIS 402, at *11 (Sept. 29, 2012); TMEP §1207.01(d)(vii); see *Imagineering Inc. v. Van Klassens Inc.*, 53 F.3d 1260, 34 USPQ2d 1526, 1530 (Fed. Cir. 1995).

Accordingly, the goods are related.

The applicant submitted several third party registrations that contain the term LIFE-LINE and thus the term LIFE LINE is diluted. This argument is not persuasive. Prior decisions and actions of other trademark examining attorneys in registering other marks have little evidentiary value and are not binding upon the Office or the Trademark Trial and Appeal Board. TMEP §1207.01(d)(vi); see *In re Midwest Gaming & Entm't LLC*, 106 USPQ2d 1163, 1165 n.3 (TTAB 2013) (citing *In re Nett Designs, Inc.*, 236 F.3d 1339, 1342, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001)). 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 Binion*, 93 USPQ2d 1531, 1536 (TTAB 2009). Even if prior decisions were binding the registrations either contain additional matter that distinguishes the registrations from the applicant's and cited registrant's mark or the goods are sufficiently different as to not be related.

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, (a)(2)(B), (a)(2)(E), (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)(2)(B), (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).

/Christina Sobral/

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Nutritional Supplements

Definition

Nutritional supplements include [vitamins](#), minerals, herbs, meal supplements, sports [nutrition](#) products, natural food supplements, and other related products used to boost the nutritional content of the diet.

Purpose

Nutritional supplements are used for many purposes. They can be added to the diet to boost overall health and energy; to provide immune system support and reduce the risks of illness and age-related conditions; to improve performance in athletic and mental activities; and to support the healing process during illness and disease. However, most of these products are treated as food and not regulated as drugs are.

Description

The Natural Nutritional Foods Association estimated that in 2003 nutritional supplements amounted to a \$19.8 billion market in the United States. By category, vitamins provided \$6.6 billion in sales, herbs \$4.2 billion, meal supplements \$2.5 billion, sports nutrition products \$2.0 billion, minerals \$1.8 billion, and specialty and other products totaling \$2.7 billion. The nutritional supplement industry provides a huge array of products for consumer needs.

Vitamins

Vitamins are micronutrients, or substances that the body uses in small amounts, as compared to macronutrients, which are the proteins, fats, and carbohydrates that make up all food. Vitamins are present in food, but adequate quantities of vitamins may be reduced when food is overcooked, processed, or improperly stored. For instance, processing whole wheat grain into white flour reduces the contents of vitamins B and E, fiber, and minerals, including zinc and iron. The body requires vitamins to support its basic biochemical functions, and deficiencies over time can lead to illness and disease.

Vitamins are either water-soluble or fat-soluble. Water-soluble vitamins dissolve in water and pass through the body quickly, meaning that the body needs them on a regular basis. Water-soluble vitamins include the B-complex vitamins and vitamin C. Fat-soluble vitamins are stored in the body's fatty tissue, meaning that they remain in the body longer. Fat-soluble vitamins include vitamins A, D, E, and K.

The amount of vitamins needed by the body has been the subject of much research. The U.S. government has published recommended dietary allowances (RDAs) for each vitamin for the general population. These figures can be used as guidelines, but individuals may have different needs depending on gender, age, and health

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...in general, supplements may have additional effects depending on genetic, age, and vitamin conditions.

Vitamins can be natural or synthetic. Natural vitamins are extracted from food sources, while synthetic vitamins are formulated in laboratory processes. The only vitamin for which there is a noted difference between the natural and synthetic forms is vitamin E. The natural form is labeled d-alpha-tocopherol while the synthetic form is named dl-alpha-tocopherol, with the extra "l" signifying laboratory production. Natural vitamin E has been shown to be slightly more absorbable by the body than the synthetic version, although for other vitamins no significant differences in absorption have been noted.

Minerals

Minerals are micronutrients and are essential for the proper functioning of the body. Cells in the body require minerals as part of their basic make-up and chemical balance, and minerals are present in all foods. Minerals can either be bulk minerals, used by the body in larger quantities, or trace minerals, used by the body in minute or trace amounts. Bulk minerals include sodium, potassium, calcium, magnesium, and phosphorus. Trace minerals include iron, zinc, selenium, iodine, chromium, copper, manganese, and others. Some studies have shown that the amount of minerals, particularly trace minerals, may be decreasing in foods due to mineral depletion of the soil caused by unsustainable farming practices and soil erosion. Supplemental minerals are available in chelated form, in which they are bonded to proteins in order to improve their absorption by the body.

Herbs

Herbal supplements are added to the diet for both nutritional and medicinal purposes. Herbs have been used for centuries in many traditional medicine systems, and as sources of phytochemicals, or substances found in plants that have notable effects in the body. Chinese medicine and [Ayurvedic medicine](#) from India, two of the world's oldest healing systems, use hundreds of herbal medications. Naturopathy and homeopathy, two other systems of natural healing, also rely on herbal preparations as their main sources of medication. The medicinal effects of herbs are getting scientific validation; about one-fourth of all pharmaceuticals have been derived directly from plant sources, including [aspirin](#) (found in willow bark), codeine (from poppy seeds), paclitaxel (Taxol), a patented drug for ovarian and [breast cancer](#) (from the Pacific Yew tree), and many others.

Herbs can supplement the diet to aid in overall health or to stimulate healing for specific conditions. For instance, ginseng is used as a general tonic to increase overall health and vitality, while [echinacea](#) is a popular herb used to stimulate the body's resistance to colds and infections. Herbs come in many forms. They can be purchased as capsules and tablets, as well as in tinctures, teas, syrups, and ointments.

Meal supplements

Meal supplements are used to replace or fortify meals. They may be designed for people with special needs, or for people with illnesses that may affect digestion capabilities and nutritional requirements. Meal supplements may contain specific blends of macronutrients, or proteins, carbohydrates, fats, and fiber. Some meal supplements consist of raw, unprocessed foods, or vegetarian or vegan options, or high protein and low fat composition. Meal supplements are available to support some popular diet programs. Meal supplements are often fortified with vitamins, minerals, herbs, and nutrient-dense foods.

Sports nutrition

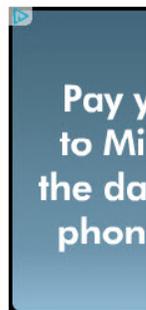
Nutritional supplements may be designed to provide specialized support for athletes. Some of these consist of high-protein products, such as amino acid supplements, while other products contain nutrients that support metabolism, energy, and athletic performance and recovery. People engaging in intense athletic activity may have increased needs for water-soluble vitamins, antioxidants, and certain minerals, including chromium. Sports drinks contain blends of electrolytes (salts) that the body loses during exertion and sweating, as well as vitamins, minerals, and performance-supporting herbs.

Other nutritional supplements

Other nutritional supplements include nutrient-dense food products. Examples of these are brewer's yeast, spirulina (sea algae), bee pollen and royal jelly, fish oil and essential fatty acid supplements, colostrum (a



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