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Sent: 1/16/2015 2:05:43 PM

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Subject: U.S. TRADEMARK APPLICATION NO. 85819575 - N/A - Request for Reconsideration Denied -
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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. 85819575 MARK:	
CORRESPONDENT ADDRESS: MARSHALL-EDWARDS MIKELS BIO CORP 3053 W CRAIG RD SUITE E-124 NORTH LAS VEGAS, NV 89032	GENERAL TRADEMARK INFORMATION: http://www.uspto.gov/trademarks/index.jsp VIEW YOUR APPLICATION FILE
APPLICANT: Bio Corp, a corporation organized and ex ETC.	
CORRESPONDENT'S REFERENCE/DOCKET NO: N/A CORRESPONDENT E-MAIL ADDRESS: biocorp@nctv.com	

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 1/16/2015

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 refusal made final in the Office action dated April 4, 2014 and November 21, 2014 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.

In this case, both marks consists of a design of a stylized Vitruvian man, which is the famous Leonardo Da Vinci drawing of a naked man with arms and legs spread inside of a circle, showing the perfect proportions of the human figure against geometry. See the previously attached information from www.wikipedia.org. There are only slight differences in applicant's mark and the cited mark, namely, that the cited mark has its Vitruvian man flexing its biceps. But at first or quick glance, the marks look highly similar as pencil-type drawings inspired by the Da Vinci drawing. Both drawings show the Vitruvian man with the same facial features and hair, torso, legs spread apart and together at the same angles. Also, both marks contain the circular and square borders intersecting at the same points. The only difference is that applicant's mark is a precise copy of the Da Vinci artwork with the arms stretched out to the square's borders, while registrant's mark shows the man flexing its arm muscles. Noting how small both of these logos are likely to be depicted on packaging for dietary supplements, and indeed, how small the drawing is shown on applicant's and registrant's specimens, the small differences between the marks become even less significant. The examining attorney disagrees with applicant's characterization of the cited mark as a "significantly altered" version of the Vitruvian man.

Even if potential purchasers realize the apparent differences between the marks, they could still reasonably assume, due to the overall similarities in sound, appearance, connotation, and commercial impression in the respective marks, that applicant's goods sold under the Vitruvian man design constitute a new or additional product line from the same source as the goods sold under the "Flexing" Vitruvian man design with which they are acquainted or familiar, and that applicant's design is merely a variation of the above. This could be especially true if applicant's line of supplements includes certain products for muscle growth and enhancement and products for other purposes, and would use the "Flexing" Vitruvian man to denote its muscle growth supplements and its "regular" Vitruvian man for its other purposes unrelated to muscle strength and development. See, e.g., *SMS, Inc. v. Byn-Mar Inc.* 228 USPQ 219, 220 (TTAB 1985) (applicant's marks ALSO ANDREA and ANDREA SPORT were "likely to evoke an association by consumers with opposer's preexisting mark [ANDREA SIMONE] for its established line of clothing.").

Applicant's arguments relating to its ownership of the same mark for the same goods (Reg. No. 2964648) are unpersuasive, as this registration was cancelled prior to applicant's filing for the current application. It should also be noted that the examining attorney assigned to Serial No. 85670760, (which is now Reg. No. 4332952) searched the register for conflicting marks on October 27, 2012, a month after applicant's prior registration had been cancelled. Therefore, applicant's prior registration would never have appeared on the register as a potentially conflicting cite likely to cause confusion. Applicant's prior registration containing the same design mark, scaled down to accommodate the dominant wording NATURAL YOUTH FORMULA I, No. 2068276 did co-exist on the register with the cited registration; however, the additional wording in the mark was likely sufficient to distinguish its mark from the cited registration. Regardless, prior decisions and actions of other trademark examining attorneys in registering other marks have little evidentiary value and are not binding upon the USPTO 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).

Accordingly, the request is denied.

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. See TMEP §715.04(a).

/Toby E. Bulloff/

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