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Filing date: **04/11/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	86393524
Applicant	Bald Eagle Health Group, LLC
Applied for Mark	SUNRISE DETOX
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Submission	Applicant's Statement Regarding Board's Order of April 11, 2016
Attachments	4703U005StatementReOrder041116.pdf(369631 bytes)
Filer's Name	Brian M. Taillon
Filer's e-mail	ustrademarks@mchaleslavin.com
Signature	/Brian M. Taillon/
Date	04/11/2016

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application of

Bald Eagle Health Group, LLC
(a Delaware Limited Liability Company)

Serial Number 86/393,524
for the mark SUNRISE DETOX
Filed September 12, 2014

APPLICANT'S STATEMENT REGARDING BOARD'S ORDER OF APRIL 11, 2016

Applicant, BALD EAGLE HEALTH GROUP, LLC, provides the following statement to the Board, following receipt of the Board's Order of April 11, 2016 regarding Applicant's Request for Consistency Review for the mark SUNRISE DETOX and the mark DETOX WITH DIGNITY.¹

The Order states that Applicant failed to send its Request to TMCONSISTENCY@USPTO.GOV, and therefore the Request will be given no consideration, even as a request for reconsideration. Applicant hereby advises that it did not direct the Request to the Examining Attorney, as indicated in the Order, but rather sent the Request to the TMCONSISTENCY@USPTO.GOV e-mail address as required. The e-mail was sent on December 7, 2015, and a Read Receipt was received from this address on December 8, 2015. A copy of a print-out of the e-mail is attached as Exhibit "A" hereto.

It is unclear as to the effect this apparent miscommunication would have on these proceedings. Applicant provides this statement in the interest of clarity and a proper reflection of the history of this Application in the record.

¹ An Ex-Parte Appeal for the DETOX WITH DIGNITY application, U.S. Serial No. 86/393,297, is pending simultaneously herewith. The file wrappers for both applications refer to the submission of the Request as an "E-mail Incoming" dated December 7, 2015

Respectfully submitted,

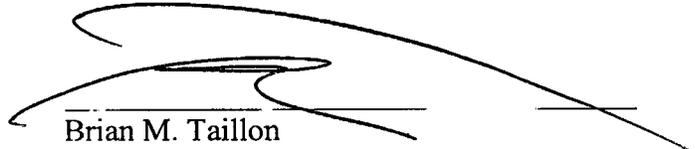


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Attorneys for Applicant/Appellant

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically through the Electronic System for Trademark Trials and Appeals on April 11, 2016. Notice of this filing will be sent to all parties by operation of the ESTTA.



Brian M. Taillon

EXHIBIT “A”

USTRademarks

From: USTRademarks <ustrademarks@mchaleslavin.com>
Sent: Monday, December 7, 2015 4:45 PM
To: 'tmconsistency@uspto.gov'
Subject: Request for Consistency Review of Substantive/Procedural Issue
Attachments: ReqforConsistencyReview 12072015.pdf

Tracking:	Recipient	Read
	'tmconsistency@uspto.gov'	Read 12/8/2015 7 51 AM
	gatekeeper@mchaleslavin.com	
	ustrademarks@mchaleslavin.com	Read 12/7/2015 5 02 PM

Hello,

Attached please find a Request for Consistency Review on behalf of Applicant Bald Eagle Health Group, LLC for its co-pending Applications Serial No. 86/393,297 - DETOX WITH DIGNITY and Serial No. 86/393,524 - SUNRISE DETOX. Notices of Appeal for these Applications are being filed contemporaneously herewith.

Feel free to contact me with any questions.

Very truly yours,

Brian M. Taillon

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INTELLECTUAL PROPERTY LAW



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**REQUEST FOR CONSISTENCY REVIEW
OF A SUBSTANTIVE/PROCEDURAL ISSUE**

In re application of : Bald Eagle Health Group, LLC
Serial No. : 86/393,297
For : DETOX WITH DIGNITY
Examiner : Odessa Bibbins
Law Office : 118
Atty. File No: : 4703U.000002

In re application of : Bald Eagle Health Group, LLC
Serial No. : 86/393,524
For : SUNRISE DETOX
Examiner : Odessa Bibbins
Law Office : 118
Atty. File No: : 4703U.000005

Assistant Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Madam:

In accordance with the Consistency Initiative of the United States Patent and Trademark Office, Applicant for the above-referenced pending Applications respectfully submits this Request for Consistency Review of a Substantive/Procedural Issue in connection therewith, and states the following in support of this request:

Remarks

Applicant requests Consistency Review based on the refusal to register the above-referenced Applications for likelihood of confusion with prior third-party registrations, despite approving Applicant's other co-pending applications for similar marks without citing any mark for possible likelihood of confusion. In addition to believing that there is no likelihood of confusion between the above-referenced marks and the prior registrations cited against them, Applicant believes that the above-referenced Applications were treated in a manner inconsistent with the treatment given to Applicant's other co-pending applications. Applicant therefore respectfully submits this Request for Consistency Review.

1) *Identification of Co-Pending Applications or Registrations Owned by Applicant*

Applicant has five co-pending applications and registrations. The following two Applications are the subject of this Request for Consistency Review:

A. U.S. Trademark Application Serial No. 86/393,297 – DETOX WITH DIGNITY (“the ‘297 Application”), as referenced above, directed to: Addiction treatment services; Alternative medicine services, namely, detoxification services; Drug and alcohol testing for substance and alcohol abuse; Rehabilitation of alcohol and drug and narcotic addicted patients; Rehabilitation patient care services which includes inpatient and outpatient care and counseling, in International Class 044, with first use in interstate commerce on June 1, 2009. The ‘297 Application was filed on September 12, 2014.

B. U.S. Trademark Application Serial No. 86/393,524 – SUNRISE DETOX (“the ‘524 Application”), as referenced above, directed to identical services as the ‘297 Application set forth

above, with first use in interstate commerce on June 1, 2004. The '524 Application was filed on September 12, 2014.

Both of the foregoing Applications are in pre-publication condition, as they have each been subject to Final Refusal despite Applicant's Requests for Reconsideration submitted on September 9, 2015. Applicant's other co-pending applications and registrations, from which the '297 and '524 Applications have received inconsistent treatment, are as follows:

A. U.S. Trademark Application Serial No. 86/393,180 – RECOVERY WITH DIGNITY (“the '180 Application”), directed to identical services as the '297 and '524 Applications set forth above, with first use in interstate commerce on October 14, 2015. The '180 Application was filed on September 12, 2014. The review prior to registration for the '180 Application was completed of November 24, 2015.

B. U.S. Trademark Application Serial No. 86/393,382 – COUNSELING WITH DIGNITY (“the '382 Application”), directed to identical services as the '297, '524 and '180 Applications set forth above, with first use in interstate commerce on October 14, 2015. The '382 Application was filed on September 12, 2014. The review prior to registration for the '382 Application was completed as of November 24, 2015.

C. U.S. Trademark Registration No. 4,738,393 – SUNRISE CARES (“the '393 Registration”), directed to identical services as the '297, '524, '180 and '382 Applications set forth above, with first use in interstate commerce on June 1, 2012. The application that became the '393 Registration was filed on September 12, 2014. The '393 Registration registered on May 19, 2015.

2) *The '297 and '524 Applications Have Been Treated Inconsistently from Applicant's '180 and '382 Applications and '393 Registration*

Applicant submits this Request for Consistency Review on the belief that its '297 and '524 Applications have been treated inconsistently from Applicant's '180 and '382 Applications and '393 Registration, notwithstanding that each of its Applications have been reviewed by the same Examining Attorney.

The '297 Application is for the mark DETOX WITH DIGNITY. The '297 Application has been refused registration based on a likelihood of confusion with the mark PUTTING DIGNITY BACK IN DETOX for addiction treatment services, U.S. Registration No. 4,392,221 ("the cited '221 Registration"). Applicant's '180 and '382 Applications for RECOVERY WITH DIGNITY and COUNSELING WITH DIGNITY, however, each proceeded to publication – and now toward registration – without a such a refusal. The only difference between the '297 Application and the '180 and '382 Applications is the first word of the mark, namely DETOX rather than RECOVERY or COUNSELING.

The '524 Application is for the mark SUNRISE DETOX. The '524 Application has been refused registration based on a likelihood of confusion with the mark SUNRISE RECOVERY RANCH for addiction treatment services, U.S. Registration No. 3,346,110 ("the cited '110 Registration"). Applicant's '383 Registration, however, for the mark SUNRISE CARES, was granted without such a refusal. The only difference between the '524 Application and the '383 Registration is the second word of the mark, namely DETOX rather than CARES.

The inconsistency in treatment of Applicant's applications is that the Examining Attorney appears to have improperly dissected the marks in the '297 and '524 Applications but not in the '180

and '382 Applications and '393 Registration, and while doing so appears to have considered certain elements of Applicant's marks interchangeable in some instances but not in others.

For example, the Examining Attorney appears to have considered the term DETOX interchangeable with the term RECOVERY RANCH in refusing registration for the '524 Application, thus refusing registration for SUNRISE DETOX – but not SUNRISE CARES - for a likelihood of confusion with SUNRISE RECOVERY RANCH. The Examining Attorney issued a disclaimer requirement for the term DETOX for the '524 Application. The term SUNRISE is the dominant portion of the mark in Applicant's '524 Application and '393 Registration as well as in the cited '110 Registration. Nevertheless, the marks in the '393 and cited '110 Registrations do not appear to have been dissected in the manner done for the '524 Application, and the cited '110 Registration was not cited as a conflicting mark against the '393 Registration during prosecution. There is no likelihood of confusion between the marks in the '524 Application and the cited '110 Registration, and the '524 Application should be placed in condition for publication.

Conversely, the Examining Attorney appears to have considered the term DETOX *distinct* from the terms RECOVERY and COUNSELING in refusing registration for DETOX WITH DIGNITY – but not RECOVERY WITH DIGNITY or COUNSELING WITH DIGNITY – for likelihood of confusion with PUTTING DIGNITY BACK IN DETOX. The Examining Attorney initially issued a disclaimer requirement for the term DETOX but later withdrew the requirement. The '180 Application was subject to a disclaimer requirement for the term RECOVERY, while the term COUNSELING was not the subject of a disclaimer for the '324 Application. Thus, because of the inconsistent treatment it has received, the '297 Application has received a Final Refusal, while

the '180 and '324 Applications proceeded toward registration. There is no likelihood of confusion between the marks in the '297 Application and the cited '221 Registration, and the '297 Application should be placed in condition for publication.

The Office Action of July 11, 2015 and Denial of Request for Reconsideration of October 7, 2015 for each the '297 and '524 Applications cite authority generally holding that each mark is decided on its own facts and stands on its own merits, but give no indication of why these applied-for marks have been treated differently than Applicant's other co-pending marks. No explanation has been provided as to a difference in the facts that would support the refusal to register Applicant's DETOX WITH DIGNITY and SUNRISE DETOX marks while Applicant's RECOVERY WITH DIGNITY, COUNSELING WITH DIGNITY and SUNRISE CARES marks proceeded toward publication and registration. For example, no explanation has been provided as to why the term DETOX is interchangeable with RECOVERY RANCH, but distinct from the term RECOVERY, in supporting the Final Refusals to register the SUNRISE DETOX and DETOX WITH DIGNITY marks, respectively, while Applicant's SUNRISE CARES and RECOVERY WITH DIGNITY marks proceeded toward registration.

Notices of Appeal

Applicant advises that it is filing Notices of Appeal for the '297 and '524 Applications contemporaneously herewith, in advance of the January 11, 2016 deadline in which to do so.

Conclusion

The RECOVERY WITH DIGNITY, SUNRISE DETOX, DETOX WITH DIGNITY, COUNSELING WITH DIGNITY and SUNRISE CARES marks are owned by the same entity,

Bald Eagle Health Group, LLC
Serial No. 86/393,297 – DETOX WITH DIGNITY
Serial No. 86/393,524 - SUNRISE DETOX

Request for Consistency Review
December 7, 2015
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directed toward the same services and the subject of applications filed on the same date and assigned to the same Examining Attorney. Nevertheless, while the RECOVERY WITH DIGNITY, COUNSELING WITH DIGNITY and SUNRISE CARES marks proceeded toward registration, the SUNRISE DETOX and DETOX WITH DIGNITY marks have been refused registration. Applicant believes that this is the result of inconsistent treatment of these Applications in examination. Applicant respectfully submits this Request for Consistency Review accordingly, and requests that the '297 and '524 Applications be placed in condition for publication.

Respectfully submitted,



Brian M. Taillon

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