

From: Frazier, Tamara

Sent: 12/12/2015 4:38:35 PM

To: TTAB EFiling

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Subject: U.S. TRADEMARK APPLICATION NO. 86447383 - NUTRIVERUS - 1002.0006 - Request for
Reconsideration Denied - Return to TTAB - Message 1 of 2

Attachment Information:

Count: 15

Files: evid1-1.jpg, evid1-2.jpg, evid1-3.jpg, evid1-4.jpg, evid1-5.jpg, evid1-6.jpg, evid1-7.jpg, evid2-1.jpg,
evid2-2.jpg, evid2-3.jpg, evid2-4.jpg, evid2-5.jpg, evid2-6.jpg, evid3-1.jpg, 86447383.doc

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

U.S. APPLICATION SERIAL NO. 86447383

MARK: NUTRIVERUS



CORRESPONDENT ADDRESS:

SANFORD E WARREN JR

WARREN RHOADES LLP

1212 CORPORATE DRIVE SUITE 250

IRVING, TX 75038

GENERAL TRADEMARK INFORMATION:

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

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APPLICANT: Mannatech, Incorporated

CORRESPONDENT'S REFERENCE/DOCKET NO:

1002.0006

CORRESPONDENT E-MAIL ADDRESS:

ipdocketing@wriplaw.com

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 12/12/2015

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. §2.63(b)(3); TMEP §§715.03(a)(ii)(B), 715.04(a). The following refusal made final in the Office action dated November 13, 2015 is maintained and continue to be final: ***U.S. Registration No. 3774292***. See TMEP §§715.03(a)(ii)(B), 715.04(a).

In the present case, applicant's request has not resolved all the outstanding issue, nor does it raise a new issue or provide any new or compelling evidence with regard to the outstanding issue 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.

Specifically, in its Request for Reconsideration, applicant argues that its "mark should not be dissected or split up into component parts and each part then compared with the corresponding parts of the conflicting mark to determine the likelihood of confusion." Applicant further argues that the prefix, "NUTRI" meaning "nourishment" is merely suggestive of the goods described, because it is not definable as one particular meaning. The terms "NUTRI" and "VERUS" are combined to form a new word, "NUTRIVERUS" which is suggestive of the goods in that it fights for the health of the user.

Indeed 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. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1322, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014) ("[Regarding the issue of confusion,] there is nothing improper in stating that . . . more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties.") (quoting *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 751 (Fed. Cir. 1985))).

As previously discussed, applicant's mark merely adds the descriptive prefix "NUTRI" to the dominant feature of registrant's mark "VERUS". The term "VERUS" is a strong arbitrary term when used in the industry at hand. As such, it is likely that the average consumer encountering the mark "NUTRIVERUS" would likely confuse the mark with "NUVERUS".

Applicant also argues that in the registrant's mark, "[t]he mortar and pestle design and the term 'NU' is 75% larger than the term 'VERUS' ... Thus, the sheer size of the term 'NU' and the mortar and pestle design impress a greater commercial impression on the consumer as opposed to the term 'VERUS'. However, in applicant's mark - "NUTRIVERUS forms an entire, whole, new word which can be simply defined as 'fighting nutrition' based on the prefix 'NUTRI' ... followed by the Roman gladiator, 'Verus'..." Therefore, "[c]onsumers glean that Applicant's Mark means 'fighting nutrition' with respect to health and nature.

However, it is well established that for a composite mark containing both words and a design, the word portion may be more likely to be impressed upon a purchaser's memory and to be used when requesting the goods and/or services. *Joel Gott Wines, LLC v. Rehoboth Von Gott, Inc.*, 107 USPQ2d 1424, 1431 (TTAB 2013) (citing *In re Dakin's Miniatures, Inc.*, 59 USPQ2d 1593, 1596 (TTAB 1999)); TMEP §1207.01(c)(ii); see *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908, 1911 (Fed. Cir. 2012) (citing *CBS Inc. v. Morrow*, 708 F.2d 1579, 1581-82, 218 USPQ 198, 200 (Fed. Cir 1983)). Thus, although such marks must be compared in their entireties, the word portion is often considered the dominant feature and is accorded greater weight in determining whether marks are confusingly similar, even where the word portion has been disclaimed. *In re Viterra Inc.*, 671 F.3d at 1366, 101 USPQ2d at 1911 (Fed. Cir. 2012) (citing *Giant Food, Inc. v. Nation's Foodservice, Inc.*, 710 F.2d 1565, 1570-71, 218 USPQ2d 390, 395 (Fed. Cir. 1983)). As such, the design feature does not overcome a likelihood of confusion.

In this case, the word portions of the marks are nearly identical in appearance, sound, connotation, and commercial impression; therefore, the addition of a design element does not obviate the similarity of the marks in this case. See *In re Shell Oil Co.*, 992 F.2d 1204, 1206, 26 USPQ2d 1687, 1688 (Fed. Cir. 1993); TMEP §1207.01(c)(ii).

It is also worth noting that in the previous appeal for US Application No. 85558774, in which the Trademark Trial and Appeal Board affirmed the examining attorney's 2(d) refusal for the mark "NUTRIVERUS" in standard character, the Board stated that: *the first part of Applicant's mark NUTRIVERUS is the root of the word "nutrition" which, in the context of Applicant's goods, nutritional supplements, indicates nutrition and, as such, at a minimum is highly suggestive of the goods. By comparison, VERUS is arbitrary in connection with nutritional supplements and carries a stronger source-identifying significance.*

Furthermore, even though the prior mark (85558774) was a standard character mark, the Board actually pointed to applicant's use of the stylized version of its mark on its specimen to show that NUTRI could be presented as a prefix and VERUS as distinct. Thus, given the fact that the dominant feature of the parties' marks (VERUS) is identical, the strong arbitrary nature of this dominant feature, and the fact that the marks are used for essentially identical goods, there is a likelihood of confusion.

To further support its claim that the term "NUTRI" is suggestive, applicant references third party registrations that contain the term "NUTRI" for supplements, vitamins and other health products but do not disclaim the term "NUTRI" as being descriptive. However, all but one of the referenced examples third party registrations are one-word. As such, "nutri" would not need to be disclaimed in such cases.

Lastly, applicant argues that the goods travel in different trade channels and are sold to sophisticated purchasers since its “goods are specifically designed for sale by independent distributors and company sponsors.” However, as previously discussed, the applicant’s goods are “*Dietary and nutritional supplements sold through a multi-level marketing program*” and the registrant’s goods are “*Liquid nutritional supplement; Nutritional supplements; Vitamin and mineral supplements*”. As such, the registration uses broad wording to describe the goods and this wording is presumed to encompass all goods of the type described, including those in applicant’s more narrow identification. Please see attached article which discusses 7 multilevel marketing companies and states: *In addition to the companies listed above, there are probably close to 100 or more companies with vitamins and/or health and wellness products...* Therefore, based on the registrant’s identification of goods, it could provide supplements within this capacity. Indeed, as applicant states in its request for reconsideration, “Registrant’s website also suggests that NuVerus is a multi-level marketing program.” Please see attached website. Therefore, contrary to applicant’s argument that this sets the marks apart, it actually further indicates that the parties provide very similar marks (NUVERUS/NUTRIVERUS) for essentially identical goods (nutritional supplements provided through multi-level marketing).

Furthermore, 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. TMEP §1207.01(d)(vii); *see, e.g., Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d. 1317, 1325, 110 USPQ2d 1157, 1163-64 (Fed. Cir. 2014); *Top Tobacco LP v. N. Atl. Operating Co.*, 101 USPQ2d 1163, 1170 (TTAB 2011).

If applicant has already filed a timely notice of appeal with the Trademark Trial and Appeal Board, the Board will be notified to resume the appeal. *See* TMEP §715.04(a).

If no appeal has been filed and time remains in the six-month response period to the final Office action, applicant has the remainder of the response period to (1) comply with and/or overcome any outstanding final requirement(s) and/or refusal(s), and/or (2) file a notice of appeal to the Board. TMEP §715.03(a)(ii)(B); *see* 37 C.F.R. §2.63(b)(1)-(3). The filing of a request for reconsideration does not stay or extend the time for filing an appeal. 37 C.F.R. §2.63(b)(3); *see* TMEP §§715.03, 715.03(a)(ii)(B), (c).

/tfrazier/

Tamara Frazier

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Best MLM Vitamin Companies to Pick From

7 Replies

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What are the **Best MLM Vitamin Companies**? Let me start by telling you that there are hundreds of different health and wellness multi-level marketing companies in business. Many of these companies specialize in vitamins, supplements, or other health related products.

As I see it, MLM vitamin companies are a great niche within the MLM industry. I think that because:

- Most people are concerned about their health
- Vitamins have mass appeal, so just about anyone can become a customer
- The products are consumable, used and re-ordered every month

For the purpose of this article, I'm going to give you a little bit of information about seven different

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For the purpose of this article, I'm going to give you a little bit of information about seven different **MLM Vitamin Companies**. Please keep in mind that I am not affiliated with any of these companies. And please know that just because your **network marketing company** isn't listed, doesn't mean I don't think it's a great company. My goal is to simply give you a small idea as to what companies are available to choose from.

1. **USANA** is a large and successful MLM vitamin company with great health and wellness products.

2. **Amway** is one of the oldest and largest network marketing companies around. Their Nutrilite® products are very well known and respected in the network marketing community.

3. **Life Force International** produces some great health and wellness products, including vitamins. They even specialize in liquid nutrition.

4. **Melaleuca** is a great company with nutritional, health and wellness products. Their vitamins are high quality and come with a money back guarantee.

5. **Shaklee** is an older and established network marketing company with some great health and wellness products. During the past few years, they have experienced some phenomenal growth, under the leadership of their new CEO.

6. **Herbalife** is one of the biggest companies in the industry. Most of their products are health related and they have tons of great vitamins and supplements to choose from.

7. **Nature's Sunshine** has been around since 1972 (more than 40 years) and it has an awesome reputation for affordable, quality vitamins and supplements.

*** All of these names are registered trademarks and I am NOT affiliated with any of the companies mentioned above.

Final Thoughts

In conclusion, there are tons of **MLM Vitamin Companies** to choose from. If you are looking for a new health and wellness network marketing company to join, you have plenty of options. In

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addition to the companies listed above, there are probably close to 100 or more companies with vitamins and/or health and wellness products. Prior to joining any MLM Vitamin Company, you should sample the products first, to make sure they provide a good value for customers. They don't need to be the cheapest priced products around, but they must be affordable to the masses, AND provide a good value at their suggested **retail** price.

Your key to success is to team up with a MLM Vitamin Company with a proven track record, an exceptional product line and a decent compensation plan. Once you find **a good company to join**, you should look for a successful sponsor who can teach you the ropes and help you succeed. By doing so, you improve your chances of success.

What are your thoughts? What is your favorite MLM Vitamin Company? Leave a comment and let us know.

Best Regards,



Chuck Holmes
Phone: (352) 903-4816
Email: chuck@onlinemlmcommunity.com
SKYPE: mrchuckholmes

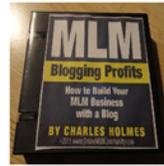
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This entry was posted in Success Tips and tagged best mlm vitamins, best mlm vitamin companies, mlm vitamin companies on August 21, 2013 by chuckholmes.



About chuckholmes
Chuck is a Network Marketing Professional, author, Certified Small Business Coach and blogger. He's been in the industry since 2002. He enjoys reading, writing, exercising, BBQ, buying and selling antiques, and watching funny movies. He lives in Homosassa, Florida with his wife, Rachel.
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/ thoughts on 'Best MLM Vitamin Companies to Pick From'



Greg Boudonck
April 25, 2015 at 7:09 pm

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The vitamins that Amway has in their Nutrilite line are magnificent. They are quite expensive, but I can testify to the quality of them. Maggie, my mate is a tutor on Saturdays. The woman who owns the place is also an Amway distributor and we ended up with a 60 day supply of the vitamins. I notice a huge difference in my energy and health.

The one thing I must say to people is be careful. You can overdose on vitamins just like regular drugs. Follow the directions, and always check with your Doctor beforehand.

Reply ↓



Greg Boudonck
February 20, 2014 at 11:33 am

It does seem there are many vitamin and mineral MLM companies. Personally, I am a huge fan of Herbalife products. They seem to carry a great line. Natures Sunshine also carries some fantastic products. I really like their price structure too. Some of Nature Sunshine's products are even lower priced than [retail](#) health stores. Melaleuca also carries a pretty good line of health and wellness products. I have just been perturbed by some of their representative's ways of handling matters.

Great post sir.

Reply ↓



Brie
February 14, 2014 at 8:20 am

I have only tried the Herbalife products. They were very effective. I was on their weight loss supplements for only a few weeks and really dropped significant weight. I didn't really like the consultants approach though of talking to everyone who looked like they were a little overweight. A person's size is a sensitive subject.

Reply ↓



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Faye
September 17, 2014 at 8:56 pm

Oh, I don't like that approach either! (The one where the Herbalife consultants approach everyone who looks a little bit overweight.) I am sure that I would fit into that target market, but I can tell you that I would NEVER do business with a consultant who initiated a conversation with me about my need to lose weight. It is one thing if your potential or current customer brings it up, but a real no-no for a consultant to do that, even if they are a very good friend. Thank goodness this has never happened to me.

Reply ↓



s. conard
October 31, 2013 at 6:49 pm

Years ago I was an Amway representative, but back then we didn't have the **training** that may be available (through the company) today. I am saddened to think that if your site had been available to me back then (ok - it WAS before the internet), I might have had a pretty nice side business. Thank you for all of this great information and encouragement!

Reply ↓



chuckholmes **Post author**
November 5, 2013 at 8:34 am

Amway is a great company.

Reply ↓



chuckholmes **Post author**
November 5, 2013 at 8:35 am

Most of the companies are pretty good. It's normally the distributors, some of them anyway, who do shady things.

Reply 1

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SuperFoods for the World

We live in a fast paced world where our nutritional needs and overall health are neglected on a daily basis. Unfortunately, we are surrounded by pollution, stress, and poor sources of food that are readily available. Free Radicals in our environment and our foods are destroying our health, our skin, and our bodies. NuVerus believes a healthy body should not be difficult to obtain and that good health is the key to happiness and success. To obtain good health we need a total approach that matches our

