

ESTTA Tracking number: **ESTTA347662**

Filing date: **05/14/2010**

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

Proceeding	92050616
Party	Defendant LINDORA, INC.
Correspondence Address	Thomas A. Zeigler ADORNO YOSS ALVARADO & SMITH 1 MacArthur Place, Suite 200 Santa Ana, CA 92707 UNITED STATES ahunter@adorno.com
Submission	Motion to Amend/Amended Answer or Counterclaim
Filer's Name	Aileen M. Hunter
Filer's e-mail	ahunter@adorno.com
Signature	//amh//
Date	05/14/2010
Attachments	Opposition to Petitioner's Motion for Leave to File Amended Petition to Cancel.PDF (85 pages)(4182362 bytes)

granting the Motion will unduly prejudice Registrant by expanding and extending this litigation.

II. BACKGROUND

The present dispute centers around Registrant's mark LEAN FOR LIFE and Petitioner's repeated attempts for the past six years to obtain registration of its mark LEANLIFE. The instant cancellation proceeding has itself been pending for well over a year, and the parties have a much lengthier history together in proceedings before the USPTO and the TTAB.

A. Petitioner Has Been Aware of Registrant's Mark and The Goods It Is Used In Connection With Since At Least 2005 As Evidenced By The USPTO and TTAB Proceedings

The registration of the mark LEAN LIFE was cancelled in 2004 for failure to file the required Section 8 and Section 9 Declarations. (*See* Exhibit 1.) Since that time, Petitioner filed not one – but two – applications to re-register the mark. Petitioner abandoned the first application after registration was refused as a direct result of the registration of Registrant's mark (and after Petitioner failed to follow-up and file its brief with the TTAB on appeal). (Exhibits 2-3.) As the record of proceedings clearly reveals, since at least August 2005, Petitioner has been aware of Registrant's mark and the goods it is used in connection with because in an outgoing office action, the examining attorney at the time identified Registrant's mark (for which the application was pending at the time) as a source of potential consumer confusion. (Exhibit 4.)

After fighting for years to convince the USPTO that the two marks were not confusingly similar, in March 2009, Petitioner filed its petition in this action for cancellation of Registrant's mark. (Exhibit 5.) The original and operative petition for cancellation clearly identified the goods Registrant's Mark is used in connection with in the following manner:

- In Class 5, "Dietetic substances, namely, multi-vitamins, ketosis sticks for determining fat burning status; and meal replacement power drink in various flavors to be used in connection with medical clinics oriented to weight management and weight loss;"

- In Class 030, “meal replacement, namely, puddings, hot chocolate and pudding mixes in various flavors to be used in connection with medical clinics oriented to weight management and weight loss;” and
- In Class 029, “meal replacement, namely, chocolate drink in the nature of vegetable-based chocolate food beverages, snacks, namely, protein based nutrient-dense snack bars, soy nuts and soups.”

(Exhibit 5, ¶ 9.)

This language tracks the language used by Registrant in its application and the subsequent federal registration. The point being, since August 2005, Petitioner was on notice of Registrant’s mark and the goods it was used in connection with, and since at least March 2009, Petitioner’s own words in the original petition for cancellation admit knowledge that the mark LEAN FOR LIFE was used on the goods listed in its registration. As such, if Petitioner believed the mark was merely descriptive of “weight management and weight loss” goods, it should have, and easily could have, alleged this much in its original petition for cancellation.

B. Petitioner Has Been Aware For At Least Six Months What Registrant’s Mark’s “Commercial Impression, Connotation, Meaning And/Or Message Intended” Is

In October 2009, Registrant served its first set of responses to discovery propounded by Petitioner, including its responses to special interrogatories. (Exhibit 6.) In its responses to those interrogatories, Registrant again identified the goods its Mark was displayed on, including a detailed list of current products two pages long. (Exhibit 6, Response to Interrogatory No. 2.) In that same set of interrogatories, Petitioner asked Registrant to “Describe the commercial impression, connotation, meaning and/or message intended by Registrant through its use of Registrant’s Mark.” (Exhibit 6, Interrogatory No. 6.) In response, and in relevant part, Registrant stated, “The Mark is intended to connote and promote the impression of healthy weight loss and long-term management through the use of Registrant’s dietary programs, services, and products.” (Exhibit 6, Response to Interrogatory No. 6.)

Thus, since at least as early as August 2005 (when Petitioner first attempted to reregister the LEAN LIFE mark and was told by the examining attorney that Registrant's mark posed a problem) and March 2009 (when this cancellation proceeding was initiated), and certainly, no later than October 2009 (when discovery responses were served), Petitioner was fully aware of the products bearing the Mark and "commercial impression, connotation, meaning and/or message intended" by Registrant's mark.

Nonetheless, with discovery set to close in eight days and just after a settlement offer was rejected by Registrant, without even attempting to ask Registrant for its consent (presumably because Petitioner knew it would not be given for such a frivolous and untimely request), Petitioner filed the instant motion for leave to amend its complaint to add a claim for "descriptiveness" on the grounds that Petitioner somehow just discovered that Registrant's mark was "descriptive."

In support of its motion, Petitioner provides the following two grounds: (1) "the facts giving rise to proposed Count II were not known at the time Petitioner originally filed its Petition to Cancel;" and (2) those facts have only been revealed through discovery in this case (specifically responses to interrogatories provided by Registrant). . . ." As discussed further below, and as revealed by the lengthy history over the marks, both arguments are specious. The Motion must be denied.

III. STANDARD ON MOTION FOR LEAVE TO AMEND

A motion for leave to amend a pleading is within the sole discretion of the Board and is allowed only "when justice so requires." (Fed. R. Civ. P. 15 (a); TBMP, Rule 507.02.) A motion for leave to amend will be denied if the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party. (*International Finance Corp. v. Bravo Co.*, 64 U.S.P.Q.2d 1597, 1604 (TTAB 2002).) The timing of the motion is a "major factor" in determining whether the proposed amendment should be allowed. (*Id.*) A motion for leave to amend should be filed as soon as reasonably practical once the grounds for amendment are apparent. (*Id.*) When the proposed amendment appears based on facts within the moving party's

knowledge at the time the original pleading was filed, leave to amend is properly denied. (*Trek Bicycle Corp. v. StyleTrek Ltd.*, 64 USPQ2d 1540, 1541 (TTAB 2001).)

Even if a motion for leave to amend is made before the close of discovery, and the opposing party's ability to defend is not prejudiced by the additional claim, the motion may nonetheless be denied if it is made months after the original pleading was filed and the facts were within the moving party's knowledge at the time it filed its original pleading. (*Trek Bicycle*, 64 USPQ2d at 1541.) Undue delay is reason alone to deny the motion. (*Id.*)

Finally, where the proposed pleading is itself legally insufficient, the Board will normally deny the motion for leave to amend. (*Id.*)

III. THE MOTION MUST BE DENIED BECAUSE IT WAS BROUGHT AFTER INEXCUSABLE AND UNDUE DELAY

In the moving papers, Petitioner contends that (1) "the facts giving rise to proposed Count II were not known at the time Petitioner originally filed its Petition to Cancel;" and (2) those facts have only been revealed through discovery in this case (specifically responses to interrogatories provided by Registrant). . . ." Both arguments are without merit and unsupported by the procedural record and Petitioner's own admissions.

First, as evidenced by the lengthy procedural history recited above, Petition has been well aware of the fact that Registrant's mark has been used in connection with the particular goods and services offered for "weight management and weight loss," including "dietetic substances" and "meal replacement," since as early as August 2005, and potentially earlier. (*See* Exhibits 2-4; Exhibit 5, ¶ 9.) Accordingly, the facts comprising a claim for descriptiveness were known to Petition in 2005.

Amusingly, Petitioner's own proposed pleading alleges, "the expression "LEAN FOR LIFE" immediately describes a function, feature or characteristic of the goods marketed by Registrant and identified in the registration being opposed." (*See* Proposed First Amended Petitioner For Cancellation, ¶ 16 (emphasis added).) As such, Petitioner has admitted the grounds for its proposed claim of descriptiveness are readily apparent from Registrant's

registration of its mark, facts known to it before it filed its original petition for cancellation.

Second, Petitioner's contention that the facts comprising its claim were only "revealed through discovery in this case (specifically responses to interrogatories provided by Registrant)" is contrary to the procedural record. The types of goods and products sold by Registrant under its mark were recited by Petitioner in the original petition for cancellation, and were clearly listed in Registrant's application for the mark and subsequent registration. (*See* Exhibit 5, ¶ 9.)

Even more telling is Petitioner's reliance on discovery responses that were served on Petitioner back in October of 2009, six months before Petitioner filed the present motion. In those interrogatories, Registrant again identified the goods its Mark is displayed on, including a list of current products two pages long, and stated, "The Mark is intended to connote and promote the impression of healthy weight loss and long-term management through the use of Registrant's dietary programs, services, and products." (Exhibit 6, Response to Interrogatory No. 2, and No. 6.) These are the same underlying facts that Petitioner was aware of back in 2005, i.e., that the mark is displayed on an array of food products and nutritional supplements including "dietetic substances" and "meal replacement" for "weight management and weight loss." Thus, if Petitioner believed the mark LEAN FOR LIFE was merely descriptive of these goods, it could and should have alleged so at the earliest opportunity. Petitioner's first pleading was silent on this claim, and only after a proposed settlement offer was rejected, and eight days before discovery was set to close, did Petitioner bring this meritless motion to amend to add a claim based on facts that have been within its knowledge since 2005. The motion violates the spirit of Rule 15 (a) and is made with undue delay, bad faith, and a dilatory motive. (*Trek Bicycle*, 64 U.S.P.Q.2d at 1541, citing *Forman v. Davis*, 331 U.S. 178, 182 (1962).)

IV. REGISTRANT WILL BE PREJUDICED IF THE MOTION IS GRANTED

If the motion is granted, Registrant will be prejudiced by Petitioner's delay. Having already engaged in discovery for months, Registrant will be forced to propound further discovery on the new claim. Contrary to Petitioner's assertion that "any evidence bearing on Petitioner's proposed Count II is in Registrant's possession, or is available to Registrant publically,"

Registrant will be forced to engage in additional and unnecessary discovery to ascertain what “independent investigation of the marketplace for Registrant’s goods” Petitioner has conducted and what the results of those investigations were. (*See Motion at page 2*).

In fact, Petitioner’s own proposed pleading undermines this assertion wherein Petitioner alleges, “the expression ‘LEAN FOR LIFE’ is used through the supplemental, health care and weight-loss industries and in the media to generally describe the goods listed in Registrant’s registration.” (*See Proposed Amended Petition for Cancellation, ¶ 15.*) Clearly, if the Motion is granted, Registrant will have to engage in further discovery to ascertain the basis for this allegation, which will drive up litigation costs, and unnecessarily delay a proceeding on grounds that could have been raised by Petitioner in the beginning. The timing of the Motion causes even graver concerns of a punitive and bad faith motive as the Motion was filed shortly after Registrant rejected a settlement offer.

V. THE PROPOSED PLEADING IS LEGALLY INSUFFICIENT

Finally, the Motion should be denied because the proposed pleading is legally insufficient.

In order to plead and prove that registration should be canceled on the grounds that the mark is descriptive, the petition must plead and prove that the registration is inconsistent with the petitioner’s equal right to use the term on similar goods as a descriptive designation. (1 McCarthy on Trademarks and Unfair Competition § 20:50.50 (4th ed. 2009) citing *Yard-Man, Inc. v. Getz Exterminators, Inc.*, 157 U.S.P.Q. 100, 1968 WL 8094 (TTAB 1968).) Perhaps recognizing that raising a claim that LEAN FOR LIFE is “descriptive” will shoot Petitioner in its own foot, Petitioner fails to allege anywhere in the proposed pleading that it has an “equal right to use the term on similar goods as a descriptive designation.” Accordingly, the proposed pleading is itself legally insufficient, further justifying the denial of the Motion. (*Trek Bicycle*, 64 USPQ2d at 1541.)

VI. CONCLUSION

For the foregoing reasons, Registrant respectfully requests that the Board deny the Motion in its entirety.

DATED: May 14, 2010

Respectfully submitted,

ADORNO YOSS ALVARADO & SMITH
A Professional Corporation

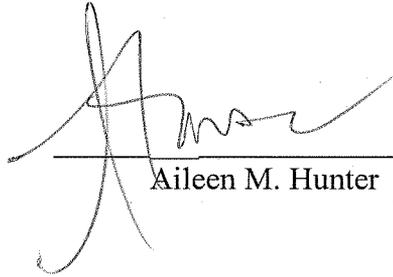
By: 

THOMAS A. ZEIGLER
AILEEN M. HUNTER
Attorneys for Registrant,
LINDORA, INC.

Certificate of Service

I hereby certify that on this 14th day of May, 2010, the foregoing Answer to Petition for Cancellation was served, by mailing same by overnight mail, on the following correspondent as set forth in the records of the U.S. Patent and Trademark Office:

Ryan M. Kaiser
AMIN HALLIHAN, LLC
225 N Michigan Ave., Suite 700
Chicago, IL 60601



Aileen M. Hunter

Exhibit 1



United States Patent and Trademark Office

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Trademarks > Trademark Electronic Search System (TESS)

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Typed Drawing

Word Mark	LEANLIFE
Goods and Services	(CANCELLED) IC 005. US 018. G & S: dietary food supplements of vitamins, minerals and herbs. FIRST USE: 19921210. FIRST USE IN COMMERCE: 19921210
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	74401158
Filing Date	June 14, 1993
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	December 28, 1993
Registration Number	1827182
Registration Date	March 22, 1994
Owner	(REGISTRANT) NUTRITION FOR LIFE INTERNATIONAL composed of Nutrition Express Corporation of Colorado, a Colorado corporation and Nutrition Express Corporation of Utah, a Utah corporation PARTNERSHIP TEXAS 8801 Jameel Houston TEXAS 77040 (LAST LISTED OWNER) RIOWELL, LLC LTD LIAB CO TEXAS 13105 NORTHWEST FREEWAY SUITE 1200 HOUSTON TEXAS 77040
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Rakesh M. Amin
Type of Mark	TRADEMARK

Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
Live/Dead Indicator DEAD
Cancellation Date December 25, 2004

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Serial Number: 74401158 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 1827182

Mark (words only): LEANLIFE

Standard Character claim: No

Current Status: Registration canceled under Section 8.

Date of Status: 2004-12-25

Filing Date: 1993-06-14

Transformed into a National Application: No

Registration Date: 1994-03-22

Register: Principal

Law Office Assigned: LAW OFFICE 11

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: SH0 -Office Of Public Record - Special Handling

Date In Location: 2009-12-11

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. RIOWELL, LLC

Address:

RIOWELL, LLC
13105 NORTHWEST FREEWAY SUITE 1200
HOUSTON, TX 77040
United States

Legal Entity Type: Limited Liability Company

State or Country Where Organized: Texas

GOODS AND/OR SERVICES

International Class: 005

Class Status: Section 8 - Cancelled

dietary food supplements of vitamins, minerals and herbs

Basis: 1(a)

First Use Date: 1992-12-10

First Use in Commerce Date: 1992-12-10

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2008-01-23 - Automatic Update Of Assignment Of Ownership
2004-12-25 - Canceled Section 8 (10-year)/Expired Section 9
2004-01-13 - TEAS Change Of Correspondence Received
2002-12-04 - TEAS Change Of Correspondence Received
2000-02-19 - Section 8 (6-year) accepted & Section 15 acknowledged
1999-10-01 - Section 8 (6-year) and Section 15 Filed
1994-03-22 - Registered - Principal Register
1993-12-28 - Published for opposition
1993-11-26 - Notice of publication
1993-10-04 - Approved for Pub - Principal Register (Initial exam)
1993-09-24 - Examiner's amendment mailed
1993-09-22 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Rakesh M. Amin

Correspondent

Rakesh M Amin
Amin Law, LLC
217 North Jefferson St Ste. 500
Chicago IL 60661
Phone Number: 312-327-3381
Fax Number: 312-466-0808

Exhibit 2

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 76/626479

APPLICANT: Riowell, LLC

CORRESPONDENT ADDRESS:

Rakesh M. Amin
Amin Law, LLC
217 N. Jefferson St., Suite 100
Chicago IL 60661

76626479

RETURN ADDRESS:

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

MARK: LEANLIFE

CORRESPONDENT'S REFERENCE/DOCKET NO: N/A

CORRESPONDENT EMAIL ADDRESS:

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

RESPONSE TIME LIMIT: TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE MAILING OR E-MAILING DATE.

MAILING/E-MAILING DATE INFORMATION: If the mailing or e-mailing date of this Office action does not appear above, this information can be obtained by visiting the USPTO website at <http://tarr.uspto.gov/>, inserting the application serial number, and viewing the prosecution history for the mailing date of the most recently issued Office communication.

Serial Number 76/626479

The current application was suspended pending the disposition of prior pending Application Serial No. 76/478967; the prior-filed application has since registered. Accordingly, registration of applicant's mark is now refused below under Section 2(d) of the Trademark Act.

Refusal: Likelihood of Confusion Refusal Under Section 2(d)

The examining attorney refuses registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d), because the applicant's mark, when used on or in connection with the identified goods/services, so resembles the mark in U.S. Registration No. 3228958 as to be likely to cause confusion, to cause mistake,

or to deceive. TMEP §§1207.01 *et. seq.* See the enclosed registration.

The examining attorney must analyze each case in two steps to determine whether there is a likelihood of confusion. First, the examining attorney must look at the marks themselves for similarities in appearance, sound, connotation and commercial impression. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Second, the examining attorney must compare the goods or services to determine if they are related or if the activities surrounding their marketing are such that confusion as to origin is likely. *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re International Telephone and Telegraph Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Products Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978). TMEP §§1207.01 *et. seq.*

Applicant seeks to register the mark LEANLIFE for “dietary food supplements in the nature of vitamins, mineral supplements, herbal dietary supplements”; the already-registered mark is LEAN FOR LIFE for “Dietetic substances, namely, multi-vitamins, ketosis sticks for determining fat burning status; and meal replacement powder drink in various flavors to be used in connection with medical clinics oriented to weight management and weight loss.”

Marks may be confusingly similar in appearance notwithstanding the addition, deletion, or substitution of letters or words. *Weiss Assoc. Inc. v. HRL Assoc.*, 14 USPQ2d 1840 (Fed. Cir. 1990) (TMM held confusingly similar to TMS); *Gillette Canada Inc. v. Ranir Corp.*, 23 USPQ2d 1768 (TTAB 1992) (ORAL-ANGLE held likely to be confused with ORAL-B); *Jockey Int'l, Inc. v. Mallory & Church Corp.*, 25 USPQ2d 1233 (TTAB 1992) (ELAAN stylized held likely to be confused with ELANCE); *Crocker National Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689 (TTAB 1986) (COMMCASH likely to be confused with COMMUNICASH); *In re Pellerin Milnor Corp.*, 221 USPQ 558 (TTAB 1983) (MILTRON likely to be confused with MILLTRONICS (stylized)). TMEP section 1207.01(b)(iii).

When applicant's mark is compared to a registered mark, “the points of similarity are of greater importance than the points of difference.” *Esso Standard Oil Co. v. Sun Oil Co.*, 229 F.2d 37, 40, 108 USPQ 161 (D.C. Cir. 1956) (internal citation omitted). Moreover, regarding the issue of likelihood of confusion, the question is not whether people will confuse the marks, but whether the marks will confuse people into believing that the goods they identify come from the same source. *In re West Point-Pepperell, Inc.*, 468 F.2d 200, 175 USPQ 558 (C.C.P.A. 1972). For that reason, the test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison. The question is whether the marks create the same overall impression. *Recot, Inc. v. M.C. Becton*, 214 F.2d 1322, 54 USPQ2d 1894, 1890 (Fed. Cir. 2000); *Visual Information Inst., Inc. v. Vicon Indus. Inc.*, 209 USPQ 179 (TTAB 1980). The focus is on the recollection of the average purchaser who normally retains a general rather than specific impression of trademarks. *Chemetron Corp. v. Morris Coupling & Clamp Co.*, 203 USPQ 537 (TTAB 1979); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975); TMEP §1207.01(b).

Further, the examining attorney must look at the marks in their entireties under Section 2(d). Nevertheless, one feature of a mark may be recognized as more significant in creating a commercial impression. Greater weight is given to that dominant feature in determining whether there is a likelihood of confusion. *In re National Data Corp.*, 224 USPQ 749 (Fed. Cir. 1985); *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693 (CCPA 1976). *In re J.M. Originals Inc.*, 6 USPQ2d 1393 (TTAB 1988). TMEP section 1207.01(b)(viii).

And finally, a mark in typed or standard character form means that the mark may be displayed in any lettering style. 37 C.F.R. §2.52(a). The rights associated with a mark in typed or standard character form reside in the wording itself, and registrant or applicant is free to adopt any style of lettering, including lettering identical to that used by the other. Therefore, where one mark at issue is in special form and the other in standard character form or typed, a likelihood of confusion will not be avoided because the standard character or typed mark could be used in the same manner of display as the stylized mark. See *In re Melville Corp.*, 18 USPQ2d 1386, 1387-88 (TTAB 1991); *In re Pollio Dairy Prods. Corp.*, 8 USPQ2d 2012, 2015 (TTAB 1988); *Sunnen Prods. Co. v. Sunex Int'l Inc.*, 1 USPQ2d 1744, 1747 (TTAB 1987); *In re Hester Indus., Inc.*, 231 USPQ 881, 882, n.6 (TTAB 1986); *United Rum Merchants, Ltd. v. Fregal, Inc.*, 216 USPQ 217, 220 (TTAB 1982); *Frances Denney, Inc. v. Vive Parfums, Ltd.*, 190 USPQ 302, 303-04 (TTAB 1976); TMEP §1207.01(c)(iii).

Here, applicant's mark is nearly identical to registrant's mark. Applicant's mark is comprised of the two terms, LEAN and LIFE; these same terms make up the dominant portion of registrant's mark. The lack of the term FOR in applicant's mark is not sufficient to obviate a finding of confusion. Moreover, while applicant seeks registration for a mark in standard character format, registrant's mark is in typed form; thus, both may use their marks in any fashion they choose – with any design and any font – including one that is identical to that of the other. Accordingly, the marks are confusingly similar in appearance, sound, connotation and overall commercial impression.

The goods of the parties need not be identical or directly competitive to find a likelihood of confusion. They need only be related in some manner, or the conditions surrounding their marketing be such, that they could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the goods come from a common source. *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984); *Guardian Products Co., Inc. v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); *In re International Telephone & Telegraph Corp.*, 197 USPQ 910 (TTAB 1978).

Moreover, likelihood of confusion is determined on the basis of the goods and/or services identified in the application and registration. If the application describes the goods and/or services broadly and there are no limitations as to their nature, type, channels of trade or classes of purchasers, it is presumed that the application encompasses all goods and/or services of the type described, that they move in all normal channels of trade, and that they are available to all potential customers. See *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991) (“With reference to the channels of trade, applicant's argument that its goods are sold only in its own retail stores is not persuasive ... There is no restriction [in its identification of goods] as to the channels of trade in which the goods are sold”); TMEP §1207.01(a)(iii).

In this instance, applicant's goods are highly related to – if not identical to – the goods of registrant. That is, both have dietary or dietic supplements or replacements. The attached sampling of registrations from this Office's database demonstrates that it is common for the same mark to be used on the goods of applicant and registrant. Furthermore, both have vitamins. Accordingly, it is presumed that the goods of applicant and those of registrant move through the same channels of trade and will be encountered by the same class of purchasers who will mistakenly believe they come from a single source.

Thus, applicant's mark is refused registration under §2(d) of the Trademark Act.

Although the examining attorney has refused registration, applicant may respond to the refusal to register

by submitting evidence and arguments in support of registration.

Response Guidelines

Please note, there is no required format or form for responding to this Office action. The Office recommends applicants use the Trademark Electronic Application System (TEAS) to respond to Office actions online at <http://www.uspto.gov/teas/index.html>. However, if applicant responds on paper via regular mail, the response should include the following information: (1) the name and law office number of the examining attorney; (2) the serial number of this application; (3) the mailing date of this Office action; and, (4) applicant's telephone number.

When responding to this Office action, applicant must make sure to respond to each refusal and requirement raised. If there is a refusal to register the proposed mark, then applicant may wish to argue against the refusal, i.e., submit arguments and/or evidence as to why the refusal should be withdrawn and why the mark should register. If there are other requirements, then applicant should simply set forth in writing the required changes or statements and request that the Office enter them into the application record. Applicant must also sign and date its response.

If applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

/Susan Kastriner Lawrence/
Trademark Examining Attorney
Law Office 116
(571) 272-9186

NOTICE OF NEW PROCEDURE FOR E-MAILED OFFICE ACTIONS: In late spring 2007, for any applicant who authorizes e-mail communication with the USPTO, the USPTO will no longer directly e-mail the actual Office action to the applicant. Instead, upon issuance of an Office action, the USPTO will e-mail the applicant a notice with a link/web address to access the Office action using Trademark Document Retrieval (TDR), which is located on the USPTO website at <http://portal.uspto.gov/external/portal/tow>. The Office action will not be attached to the e-mail notice. Upon receipt of the notice, the applicant can then view and print the actual Office action and any evidentiary attachments using the provided link/web address. TDR is available 24 hours a day, seven days a week, including holidays and weekends. This new process is intended to eliminate problems associated with e-mailed Office actions that contain numerous attachments.

HOW TO RESPOND TO THIS OFFICE ACTION:

- **ONLINE RESPONSE:** You may respond using the Office's Trademark Electronic Application

System (TEAS) Response to Office action form available on our website at <http://www.uspto.gov/teas/index.html>. If the Office action issued via e-mail, you must wait 72 hours after receipt of the Office action to respond via TEAS. **NOTE: Do not respond by e-mail. THE USPTO WILL NOT ACCEPT AN E-MAILED RESPONSE.**

- **REGULAR MAIL RESPONSE:** To respond by regular mail, your response should be sent to the mailing return address above, and include the serial number, law office number, and examining attorney's name. **NOTE: The filing date of the response will be the *date of receipt in the Office*, not the postmarked date.** To ensure your response is timely, use a certificate of mailing. 37 C.F.R. §2.197.

STATUS OF APPLICATION: To check the status of your application, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov>.

VIEW APPLICATION DOCUMENTS ONLINE: Documents in the electronic file for pending applications can be viewed and downloaded online at <http://portal.uspto.gov/external/portal/tow>.

GENERAL TRADEMARK INFORMATION: For general information about trademarks, please visit the Office's website at <http://www.uspto.gov/main/trademarks.htm>

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY SPECIFIED ABOVE.

Print: Apr 23, 2007

78573254

DESIGN MARK

Serial Number

78573254

Status

REGISTERED

Word Mark

WEIGHTWATCHERS

Standard Character Mark

No

Registration Number

3057762

Date Registered

2006/02/07

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

Weight Watchers International, Inc. CORPORATION VIRGINIA 175 Crossways
Park West Woodbury NEW YORK 11797

Goods/Services

Class Status -- ACTIVE. IC 005. US 006 018 044 046 051 052. G & S:
Dietary drink mix for use as a meal replacement; dietary food
supplements. First Use: 2003/01/01. First Use In Commerce:
2003/01/01.

Prior Registration(s)

2971486;2990687;AND OTHERS

Filing Date

2005/02/23

Examining Attorney

JOYNER, CHARLES

 WeightWatchers

Print: Apr 23, 2007

78710664

DESIGN MARK

Serial Number

78710664

Status

REGISTERED

Word Mark

NUTRILAND

Standard Character Mark

Yes

Registration Number

3221607

Date Registered

2007/03/27

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Nutriland Corporation CORPORATION CALIFORNIA 837 Silver Fir Road
Walnut CALIFORNIA 91789

Goods/Services

Class Status -- ACTIVE. IC 005. US 006 018 044 046 051 052. G & S:
Animal feed additive for use as a nutritional supplement; Animal feed
supplements; Bee pollen for use as a dietary food supplement; Calcium
supplements; Dietary drink mix for use as a meal replacement; Dietary
fiber as an additive for food products; Dietary food supplements;
Dietary supplemental drinks; Dietary supplements; Food supplements;
Food supplements, namely, anti-oxidants; Ground flaxseed fiber for use
as a dietary supplement; Herbal supplements; Homeopathic supplements;
Lecithin for use as a dietary supplement; Meal replacement and dietary
supplement drink mixes; Mineral nutritional supplements; Mineral
supplements; Mixed vitamin preparations; Multi-vitamin preparations;
Nutraceuticals for use as a dietary supplement; Nutritional additives
for use in foods and dietary supplements for human consumption;
Nutritional supplements; Nutritional supplements in lotion form sold
as a component of nutritional skin care products; Powdered nutritional
supplement drink mix; Vitamin and mineral formed and packaged as bars;
Vitamin and mineral preparations for medical use; Vitamin and mineral

Print: Apr 23, 2007

78710664

preparations for use as ingredients in the food and pharmaceutical industry; Vitamin and mineral supplements; Vitamin B preparations; Vitamin C preparations; Vitamin D preparations; Vitamin drops; Vitamin enriched water; Vitamin fortified beverages; Vitamin preparations; Vitamin supplements; Vitamin tablets; Vitamins; Wheat for use as a dietary supplement. First Use: 2003/10/30. First Use In Commerce: 2003/10/30.

Filing Date

2005/09/11

Examining Attorney

FAHRENKOPF PAUL E

NUTRILAND

Print: Apr 23, 2007

78769175

DESIGN MARK

Serial Number

78769175

Status

REGISTERED

Word Mark

LIVING HEALTH

Standard Character Mark

Yes

Registration Number

3168270

Date Registered

2006/11/07

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Eniva Corporation CORPORATION MINNESOTA 9702 Ulysses Street NE
Minneapolis MINNESOTA 55449

Goods/Services

Class Status -- ACTIVE. IC 005. US 006 018 044 046 051 052. G & S:
Dietary food supplements; Dietary supplemental drinks; Dietary
supplements; Food supplements; Food supplements, namely,
anti-oxidants; Meal replacement and dietary supplement drink mixes;
Mineral nutritional supplements; Mineral supplements; Nutraceuticals
for use as a dietary supplement; Nutritional additives for use in
foods and dietary supplements for human consumption; Nutritional drink
mix for use as a meal replacement; Nutritional supplements; Vitamin
and mineral supplements; Vitamin supplements. First Use: 2001/09/04.
First Use In Commerce: 2001/09/04.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "HEALTH" APART FROM THE
MARK AS SHOWN.

Filing Date

2005/12/08

Print: Apr 23, 2007

78769175

Examining Attorney
DOMBROW, COLLEEN

Living Health

Print: Apr 23, 2007

78769884

DESIGN MARK

Serial Number

78769884

Status

REGISTERED

Word Mark

ORCHARD OF HEALTH

Standard Character Mark

Yes

Registration Number

3201148

Date Registered

2007/01/23

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Lapte Enterprises, Inc. CORPORATION MICHIGAN P.O. Box 1229 Bellaire
MICHIGAN 49615

Goods/Services

Class Status -- ACTIVE. IC 005. US 006 018 044 046 051 052. G & S:
Dietary drink mix for use as a meal replacement; Dietary fiber as an
additive for food products; Dietary food supplements; Dietary
supplemental drinks; Dietary supplements; Food supplements; Food
supplements, namely, anti-oxidants; Herbal supplements; Homeopathic
supplements; Meal replacement and dietary supplement drink mixes;
Mineral nutritional supplements; Mineral supplements; Nutraceuticals
for use as a dietary supplement; Nutritional additives for use in
foods and dietary supplements for human consumption; Nutritional
supplements; Nutritional supplements in lotion form sold as a
component of nutritional skin care products; Powdered nutritional
supplement drink mix; Vitamin and mineral supplements; Vitamin
supplement in tablet form for use in making an effervescent beverage
when added to water; Vitamin supplements. First Use: 2005/04/01.
First Use In Commerce: 2005/04/01.

Disclaimer Statement

Print: Apr 23, 2007

78769884

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "Health" APART FROM THE MARK AS SHOWN.

Filing Date

2005/12/08

Examining Attorney

MCDOWELL, MATTHEW

Orchard of Health

Print: Apr 23, 2007

78807869

DESIGN MARK

Serial Number

78807869

Status

REGISTERED

Word Mark

HEALTH PLAN FOR LIFE

Standard Character Mark

Yes

Registration Number

3205557

Date Registered

2007/02/06

Type of Mark

TRADEMARK; SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Lundell, Dwight C. INDIVIDUAL UNITED STATES 6750 East Baywood Avenue,
Suite 504 Mesa ARIZONA 85206

Goods/Services

Class Status -- ACTIVE. IC 005. US 006 018 044 046 051 052. G & S:
Dietary and nutritional supplements; Dietary drink mix for use as a
meal replacement; Dietary food supplements. First Use: 2005/01/01.
First Use In Commerce: 2005/01/01.

Goods/Services

Class Status -- ACTIVE. IC 044. US 100 101. G & S: Food nutrition
consultation; Health care; Nutrition counseling; Providing information
about dietary supplements and nutrition; Weight reduction diet
planning and supervision. First Use: 2005/01/01. First Use In
Commerce: 2005/01/01.

Prior Registration(s)

2980244

Filing Date

2006/02/06

Print: Apr 23, 2007

78807869

Examining Attorney
RUTLAND, BARBARA

Attorney of Record
Bethany L. Jacobs

health plan for life

Print: Apr 23, 2007

78821427

DESIGN MARK

Serial Number

78821427

Status

REGISTERED

Word Mark

MAXIMUM PROTEIN

Standard Character Mark

Yes

Registration Number

3174205

Date Registered

2006/11/21

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Nature's Sunshine Products, Inc. CORPORATION UTAH PO Box 19005 75 East
1700 South Provo UTAH 846059005

Goods/Services

Class Status -- ACTIVE. IC 005. US 006 018 044 046 051 052. G & S:
Dietary and nutritional supplements; Dietary supplemental drinks;
Herbal supplements; Meal replacement and dietary supplement drink
mixes; Powdered nutritional supplement drink mix; Vitamin and mineral
supplements. First Use: 2003/10/31. First Use In Commerce:
2003/10/31.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "PROTEIN" APART FROM
THE MARK AS SHOWN.

Filing Date

2006/02/23

Examining Attorney

HIRSCHMAN, PAMELA

Print: Apr 23, 2007

78821427

Attorney of Record

Michael E. Mangelson, Esq.

MAXIMUM PROTEIN

Print: Apr 23, 2007

78845355

DESIGN MARK

Serial Number

78845355

Status

REGISTERED

Word Mark

CRUSADIAN

Standard Character Mark

Yes

Registration Number

3212916

Date Registered

2007/02/27

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Crusadian, Ltd CORPORATION OHIO Suite 250 7251 Engle Road Middleburg Heights OHIO 44130

Goods/Services

Class Status -- ACTIVE. IC 005. US 006 018 044 046 051 052. G & S: dietary and nutritional supplements, vitamin and mineral supplements, homeopathic supplements, mixed vitamin preparations, dietary supplements for humans, vitamins and minerals formed and packaged as bars; meal replacement bars; powdered nutritional supplement drink mixes. First Use: 2006/03/22. First Use In Commerce: 2006/03/22.

Filing Date

2006/03/24

Examining Attorney

BOAGNI, MARY

Attorney of Record

Catherine B. Martineau

Crusadian

Print: Apr 23, 2007

78847066

DESIGN MARK

Serial Number

78847066

Status

REGISTERED

Word Mark

PEARLCIUM

Standard Character Mark

Yes

Registration Number

3203874

Date Registered

2007/01/30

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Pharm East, Inc. CORPORATION HAWAII 14-4814 La Malo'o Street, PO Box 1270 Pahoia HAWAII 96778

Goods/Services

Class Status -- ACTIVE. IC 005. US 006 018 044 046 051 052. G & S:
Animal feed additive for use as a nutritional supplement; Animal feed supplements; Bee pollen for use as a dietary food supplement; Biscuits, bread, bread rolls, cakes, cereal products, confectionery, crackers, noodles, fish sauce, relish, sauces, cereal-based snack-foods and prepared dietary items that are gluten-free to accommodate special medical and health conditions; Calcium supplements; Dietary and nutritional supplements; Dietary food supplements; Dietary supplemental drinks; Dietary supplements; Dietary supplements for animals; Dietary supplements for human consumption; Feed supplements for health and well-being; Fish, pickles, preserved olives and dietary foods and food-items that are gluten-free to accommodate special medical and health conditions; Food supplements; Food supplements, namely, anti-oxidants; Gluten-free food to accommodate special medical and health conditions; Ground flaxseed fiber for use as a dietary supplement; Herbal supplements; Homeopathic supplements; Lecithin for use as a dietary supplement; Meal

Print: Apr 23, 2007

78847066

replacement and dietary supplement drink mixes; Mineral nutritional supplements; Mineral supplements; Nutraceuticals for use as a dietary supplement; Nutritional additives for use in foods and dietary supplements for human consumption; Nutritional supplements; Nutritional supplements in lotion form sold as a component of nutritional skin care products; Powdered nutritional supplement drink mix; Vitamin and mineral supplements; Vitamin supplement in tablet form for use in making an effervescent beverage when added to water; Vitamin supplements; Wheat for use as a dietary supplement. First Use: 2006/03/22. First Use In Commerce: 2006/03/22.

Filing Date

2006/03/27

Examining Attorney

SMITH, BRIDGETT

PEARLCIUM

Print: Apr 23, 2007

78854762

DESIGN MARK

Serial Number

78854762

Status

REGISTERED

Word Mark

MYODRATE 90:90

Standard Character Mark

Yes

Registration Number

3208442

Date Registered

2007/02/13

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Rise Above Nutrition, Inc. CORPORATION ILLINOIS 337 W. 75th Street
Willowbrook ILLINOIS 60527

Goods/Services

Class Status -- ACTIVE. IC 005. US 006 018 044 046 051 052. G & S:
Amino acids for medical or veterinary purposes; Dietary and
nutritional supplements; Dietary drink mix for use as a meal
replacement; Dietary supplemental drinks; Dietary supplements for
human consumption; Meal replacement and dietary supplement drink
mixes; Meal replacement drinks; Meal replacement powders; Meal
replacement shakes; Mineral nutritional supplements; Mineral
supplements; Mixed vitamin preparations; Multi-vitamin preparations;
Nutritional drink mix for use as a meal replacement; Nutritional
shakes for use as a meal substitute; Nutritional supplements; Powdered
nutritional supplement drink mix; Vitamin and mineral formed and
packaged as bars; Vitamin and mineral preparations for medical use;
Vitamin and mineral preparations for use as ingredients in the food
and pharmaceutical industry; Vitamin and mineral supplements; Vitamin
B preparations; Vitamin C preparations; Vitamin D preparations;
Vitamin enriched water; Vitamin fortified beverages; Vitamin
preparations; Vitamin supplement in tablet form for use in making an

Print: Apr 23, 2007

78854762

effervescent beverage when added to water; Vitamin supplements;
Vitamin tablets; Vitamins. First Use: 2006/04/05. First Use In
Commerce: 2006/04/05.

Filing Date

2006/04/05

Examining Attorney

MALIK, ATTIYA

Attorney of Record

Justin Lampel

Myodrate 90:90

Print: Apr 23, 2007

78899988

DESIGN MARK

Serial Number

78899988

Status

REGISTERED

Word Mark

FUZZY PEACH NECTAR

Standard Character Mark

Yes

Registration Number

3222899

Date Registered

2007/03/27

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Protica, Inc. CORPORATION DELAWARE 331 Maple Ave Horsham PENNSYLVANIA
19044

Goods/Services

Class Status -- ACTIVE. IC 005. US 006 018 044 046 051 052. G & S:
Dietary and nutritional supplements; Dietary food supplements; Dietary
supplemental drinks; Dietary supplements; Dietary supplements for
human consumption; Food supplements; Herbal supplements; Meal
replacement and dietary supplement drink mixes; Mineral nutritional
supplements; Nutraceuticals for use as a dietary supplement;
Nutritional additives for use in foods and dietary supplements for
human consumption; Nutritional supplements; Powdered nutritional
supplement drink mix; Vitamin and mineral supplements; Vitamin
supplements. First Use: 2006/05/01. First Use In Commerce:
2006/05/01.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "PEACH NECTAR" APART
FROM THE MARK AS SHOWN.

Filing Date

Print: Apr 23, 2007

78899988

2006/06/04

Examining Attorney
LEWIS, MICHAEL

FUZZY PEACH NECTAR

Print: Apr 23, 2007

76478967

DESIGN MARK

Serial Number

76478967

Status

REGISTERED

Word Mark

LEAN FOR LIFE

Standard Character Mark

No

Registration Number

3228958

Date Registered

2007/04/17

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

LINDORA, INC. CORPORATION CALIFORNIA 3505 CADILLAC AVENUE SUITE N-2
COSTA MESA CALIFORNIA 92626

Goods/Services

Class Status -- ACTIVE. IC 005. US 006 018 044 046 051 052. G & S:
Dietetic substances, namely, multi-vitamins, ketosis sticks for
determining fat burning status; and meal replacement powder drink in
various flavors to be used in connection with medical clinics oriented
to weight management and weight loss. First Use: 1994/00/00. First
Use In Commerce: 1994/00/00.

Goods/Services

Class Status -- ACTIVE. IC 030. US 046. G & S: Meal replacement,
namely, puddings, hot chocolate and pudding mixes in various flavors
to be used in connection with medical clinics oriented to weight
management and weight loss. First Use: 1994/00/00. First Use In
Commerce: 1994/00/00.

Goods/Services

Class Status -- ACTIVE. IC 029. US 046. G & S: Meal replacement,
namely, chocolate drink in the nature of vegetable-based chocolate

Print: Apr 23, 2007

76478967

food beverages, snacks, namely, protein based nutrient-dense snack bars, soy nuts and soups. First Use: 1994/00/00. First Use In Commerce: 1994/00/00.

Prior Registration(s)

0747810;0999359;1868744;2295704;2484443;AND OTHERS

Filing Date

2002/12/13

Examining Attorney

BELL, MARLENE

Attorney of Record

Thomas A. Zeigler

LEAN FOR LIFE

Exhibit 3

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Riowell, LLC
Serial No.: 76/626479
Filed: December 29, 2004
Mark: LEANLIFE

Trademark Law Office No. 116
Examining Attorney: Susan Kastriner Lawrence

**Applicant's Request for Express
Abandonment (Withdrawal) of Application Without Prejudice**

Now comes Applicant, by and through its attorney Rakesh Amin of Amin Hallihan, LLC, and requests that its application having serial number 76/626479 be expressly abandoned (withdrawn) without prejudice to Applicant's right to re-file and without prejudice to Applicant's rights to the LEANLIFE trademark. Applicant properly makes its request pursuant to the Trademark Trial and Appeal Board Manual of Procedure ("TBMP") § 1211 and 37 C.F.R. § 2.68. Applicant believes this request to be timely in that it is made on or before the due date of Applicant's Appeal Brief in connection with this Appeal. In light of such abandonment (withdrawal) of the subject application, Applicant respectfully requests dismissal of the instant Appeal without prejudice and without a final judgment or ruling from the Board.

WHEREFORE, Applicant respectfully requests that its application having serial number 76/626479 be expressly abandoned (withdrawn) without prejudice to Applicant's right to re-file and without prejudice to its rights to the LEANLIFE trademark, and the instant Appeal be dismissed without prejudice and without a final judgment or ruling from the Board.

Respectfully submitted,

Date: September 10, 2008

/s/ Rakesh M. Amin

Rakesh M. Amin
Attorney for Applicant
Amin Hallihan, LLC
444 N. Orleans Street, Suite 400
Chicago, IL 60654
Phone: (312) 327-3382
Fax: (312) 223-1515
trademark@aminhallihan.com



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TTABVUE. Trademark Trial and Appeal Board Inquiry System

v1.5

Exparte Appeal**Number:** 76626479**Filing Date:** 05/07/2008**Status:** Terminated**Status Date:** 09/10/2008**Plaintiff****Name:** [Riowell, LLC](#)**Correspondence:** [Rakesh M. Amin](#)
Amin Hallihan
444 N. Orleans Street, Suite 400
Chicago, IL 60610
UNITED STATES
trademark@aminhallihan.com**Serial #:** [76626479](#)[Application File](#)**Application Status:** Abandoned - After Ex Parte Appeal**Mark:** LEANLIFE**Prosecution History**

#	Date	History Text
13	09/10/2008	TERMINATED
12	09/10/2008	TERMINATED
11	09/10/2008	BOARD'S DECISION: DISMISSED
10	09/10/2008	WITHDRAWAL OF APPLICATION
9	08/12/2008	BRIEF DUE
8	08/12/2008	BRIEF DUE
7	08/08/2008	APPLICANTS REQUEST TO EXTEND
6	06/10/2008	PROCEEDINGS RESUMED
5	05/30/2008	RECONSIDERATION DENIED
4	05/07/2008	REQUEST FOR RECONSIDERATION
3	05/07/2008	INSTITUTED
2	05/07/2008	APPEAL ACKNOWLEDGED; CASE REMANDED
1	05/07/2008	APPEAL TO BOARD

Results as of 05/05/2010 06:09 PM

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Exhibit 4

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 76/626479

APPLICANT: Riowell, LLC

CORRESPONDENT ADDRESS:

RAKESH M. AMIN
AMIN LAW, LLC
217 N JEFFERSON ST STE 500
CHICAGO, IL 60661-1143

76626479

RETURN ADDRESS:

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

MARK: LEANLIFE

CORRESPONDENT'S REFERENCE/DOCKET NO: N/A

CORRESPONDENT EMAIL ADDRESS:

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

RESPONSE TIME LIMIT: TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE MAILING OR E-MAILING DATE.

Serial Number 76/626479

The assigned examining attorney has reviewed the referenced application and determined the following.

Search of Office Records -- Pending Application

Although the examining attorney has searched the Office records and has found no similar *registered* mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), the examining attorney encloses information regarding pending Application Serial No.76/478967. 37 C.F.R. Section 2.83.

There may be a likelihood of confusion between the applicant's mark and the mark in the above noted application under Section 2(d) of the Act. The filing date of the referenced application precedes the applicant's filing date. If the earlier filed application matures into a registration, the examining attorney may refuse registration under Section 2(d).

Standard Character Drawing

-

Applicant must submit the following standard character claim: "The mark is presented in standard characters without claim to any particular font style, size, or color." 37 C.F.R. §2.52(a).

Identification of Goods

The identification of goods is unacceptable as indefinite. Accordingly, the applicant must amend the wording of the identification of goods as indicated. TMEP sections 1402.01.

Dietary food supplements of vitamins, minerals and herbs – The applicant must amend the wording to clarify the nature of the goods.

For example, the either of the following would be acceptable:

- dietary food supplements containing vitamins, minerals and herbs.
- dietary food supplements in the nature of vitamins, mineral supplements, herbal dietary supplements.

In the identification, the applicant must use the common commercial names for the goods, be as complete and specific as possible and avoid the use of indefinite words and phrases. If the applicant chooses to use indefinite terms, such as "accessories," "components," "devices," "equipment," "materials," "parts," "systems" and "products," then those words must be followed by the word "namely" and the goods listed by their common commercial names. TMEP sections 1402.01 and 1402.03(a).

Please note that, while an application may be amended to clarify or limit the identification, additions to the identification are not permitted. 37 C.F.R. Section 2.71(a); TMEP section 1402.06. Therefore, the applicant may not amend to include any goods that are not within the scope of goods set forth in the present identification.

Responding to This Office Action

No set form is required for response to this Office action. The applicant must respond to each point raised. The applicant should simply set forth the required changes or statements and request that the Office enter them.

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

/Susan Kastriner Lawrence/
Trademark Examining Attorney
Law Office 116
(571) 272-9186

HOW TO RESPOND TO THIS OFFICE ACTION:

- **ONLINE RESPONSE:** You may respond formally using the Office's Trademark Electronic Application System (TEAS) Response to Office Action form (visit <http://www.uspto.gov/teas/index.html> and follow the instructions, but if the Office Action has been issued via email, you must wait 72 hours after receipt of the Office Action to respond via TEAS).
- **REGULAR MAIL RESPONSE:** To respond by regular mail, your response should be sent to the mailing return address above and include the serial number, law office number and examining attorney's name in your response.

STATUS OF APPLICATION: To check the status of your application, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov>.

VIEW APPLICATION DOCUMENTS ONLINE: Documents in the electronic file for pending applications can be viewed and downloaded online at <http://portal.uspto.gov/external/portal/tow>.

GENERAL TRADEMARK INFORMATION: For general information about trademarks, please visit the Office's website at <http://www.uspto.gov/main/trademarks.htm>

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY SPECIFIED ABOVE.

DESIGN MARK

Serial Number

76478967

Status

PUBLICATION/ISSUE REVIEW COMPLETE

Word Mark

LEAN FOR LIFE

Standard Character Mark

No

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

LINDORA, INC. CORPORATION CALIFORNIA 3505 CADILLAC AVENUE SUITE N-2
COSTA MESA CALIFORNIA 92626

Goods/Services

Class Status -- ACTIVE. IC 005. US 006 018 044 046 051 052. G & S: Dietetic substances, namely, multi-vitamins, ketosis sticks for determining fat burning status; and meal replacement powder drink in various flavors to be used in connection with medical clinics oriented to weight management and weight loss. First Use: 1994/00/00. First Use In Commerce: 1994/00/00.

Goods/Services

Class Status -- ACTIVE. IC 030. US 046. G & S: Meal replacement, namely, puddings, hot chocolate and pudding mixes in various flavors to be used in connection with medical clinics oriented to weight management and weight loss. First Use: 1994/00/00. First Use In Commerce: 1994/00/00.

Goods/Services

Class Status -- ACTIVE. IC 029. US 046. G & S: Meal replacement, namely, chocolate drink in the nature of vegetable-based chocolate food beverages, snacks, namely, protein based nutrient-dense snack bars, soy nuts and soups. First Use: 1994/00/00. First Use In Commerce: 1994/00/00.

Prior Registration(s)

0747810;0999359;1868744;2295704;2484443;AND OTHERS

Print: Aug 4, 2005

76478967

Issue: Aug 16, 2005

Filing Date

2002/12/13

Examining Attorney

BELL, MARLENE

Attorney of Record

DANIEL M. CISLO

LEAN FOR LIFE

Exhibit 5

ESTTA Tracking number: **ESTTA269682**

Filing date: **03/03/2009**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Riowell		
Entity	LLC	Citizenship	Texas
Address	13105 Northwest Freeway Suite 1200 Houston, TX 77040 UNITED STATES		

Attorney information	Rakesh M. Amin AMIN HALLIHAN, LLC 444 N. Orleans St. Suite 400 Chicago, IL 60654 UNITED STATES rakesh@aminhallihan.com, ryan@aminhallihan.com, bianca@aminhallihan.com Phone:312-327-3328		
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Registration Subject to Cancellation

Registration No	3228958	Registration date	04/17/2007
Registrant	LINDORA, INC. 3505 CADILLAC AVENUE SUITE N-2 COSTA MESA, CA 92626 UNITED STATES		

Goods/Services Subject to Cancellation

<p>Class 005. First Use: 1994/00/00 First Use In Commerce: 1994/00/00 All goods and services in the class are cancelled, namely: Dietetic substances, namely, multi-vitamins, ketosis sticks for determining fat burning status; and meal replacement powder drink in various flavors to be used in connection with medical clinics oriented to weight management and weight loss</p>
<p>Class 029. First Use: 1994/00/00 First Use In Commerce: 1994/00/00 All goods and services in the class are cancelled, namely: Meal replacement, namely, chocolate drink in the nature of vegetable-based chocolate food beverages, snacks, namely, protein based nutrient-dense snack bars, soy nuts and soups</p>
<p>Class 030. First Use: 1994/00/00 First Use In Commerce: 1994/00/00 All goods and services in the class are cancelled, namely: Meal replacement, namely, puddings, hot chocolate and pudding mixes in various flavors to be used in connection with medical clinics oriented to weight management and weight loss</p>

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	77679688	Application Date	02/27/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	LEANLIFE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1992/12/10 First Use In Commerce: 1992/12/10 Dietary supplements		

Attachments	Lean For Life Cancellation.pdf (4 pages)(27938 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Rakesh M. Amin/
Name	Rakesh M. Amin
Date	03/03/2009

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

In the Matter of Trademark Registration No.: 3,228,958
For the Mark: LEAN FOR LIFE
Date Registered: April 17, 2007

Riowell, LLC)	
)	
Petitioner,)	
)	
V.)	Cancellation No.
)	
Lindora, Inc.)	
)	
Registrant.)	
)	

PETITION FOR CANCELLATION

Petitioner Riowell, LLC, is a Limited Liability Corporation organized and existing under the laws of the state of Texas, with a principal place of business at 13105 Northwest Freeway, Suite 1200, Houston, TX 77040. To the best of the Petitioner's knowledge, the current owner of the subject Registration (Serial No. 3,228,958) is Lindora, Inc. ("Registrant"), having an address of 3505 Cadillac Avenue, Suite N-2, Costa Mesa, California 92626. Petitioner believes it will be damaged by Registration No. 3,228,958 for the mark LEAN FOR LIFE and hereby petitions to cancel the same. The grounds for cancellation are as follows:

1. Petitioner is the owner of the pending application having serial number 77/679,688 (hereafter "Petitioner's Application") for the "LEANLIFE" mark (hereafter "Petitioner's Mark").
2. Petitioner's Application was filed on February 27, 2009.

3. The goods identified in Petitioner's Application include "dietary supplements" in international class 005.
4. Petitioner and its predecessor-in-interest owned Federal Trademark Registration Number 1,827,182 for the "LEANLIFE" mark.
5. Petitioner filed its application for registration of the '182 mark on June 14, 1993. Registration was subsequently granted on March 22, 1994 based on a date of first use in commerce of December 10, 1992. Registration of the '182 mark was inadvertently cancelled on December 25, 2004.
6. On December 29, 2004, Petitioner filed a new application to re-register its LEANLIFE mark.
7. Petitioner's December 29, 2004 application was refused because the examiner determined that LEANLIFE was likely to cause confusion with Registrant's "LEAN FOR LIFE" mark, Registration No. 3,228,958 (hereafter "Registrant's Mark").
8. Registrant's filed an application for registration of Registrant's Mark on December 13, 2002, and obtained registration thereof on April 17, 2007. Registrant's claimed date of first use is listed as simply "1994".
9. Registrant's Mark, as applied to the goods identified in Registration No. 3,228,958, is likely to cause confusion and mistake and to deceive, and to mislead consumers and/or the trade into believing that such goods are in some way sponsored by, affiliated with and/or connected to Petitioner, with consequent injury to Petitioner and the consuming public, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d). Specifically, the goods identified in Registration No. 3,228,958, and complained of in this petition (hereafter "Registrant's Goods") are: "dietetic substances, namely, multi-vitamins,

ketosis sticks for determining fat burning status; and meal replacement powder drink in various flavors to be used in connection with medical clinics oriented to weight management and weight loss” in international class 005; “meal replacement, namely, puddings, hot chocolate and pudding mixes in various flavors to be used in connection with medical clinics oriented to weight management and weight loss” in international class 030; and “meal replacement, namely, chocolate drink in the nature of vegetable-based chocolate food beverages, snacks, namely, protein based nutrient-dense snack bars, soy nuts and soups” in international class 029.

10. Petitioner (through its predecessor(s)-in-interest) has continuously used Petitioner’s Mark in interstate commerce since at least as early as December 10, 1992.
11. Petitioner has priority based on prior continuous use in commerce of the substantially similar mark “LEANLIFE” in connection with dietary supplements as set forth in Petitioner’s Application.
12. Petitioner has spent a considerable amount of money marketing and promoting its products bearing Petitioner’s Mark. As a result of this investment, Petitioner has developed substantial goodwill and widespread recognition as the source of products sold under the “LEANLIFE” name. This goodwill and recognition has occurred since prior to Registrant’s December 13, 2002 filing date and claimed “1994” date of first use.
13. Petitioner will be damaged by Registration No. 3,228,958 because such registration will support and assist Registrant in misleading the public and will give the color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

WHEREFORE, Petitioner believes that it will be damaged by Registration No. 3,228,958 and prays that this Petition for Cancellation of that Registration, in its entirety, be granted.

Please recognize as attorneys for Petitioner in this proceeding, Rakesh M. Amin, Ryan M. Kaiser and Bianca A. Thomae (Reg. No. 61606), members of the Bar of the State of Illinois, whose address is: Amin Hallihan, LLC, 444 N. Orleans St., Suite 400, Chicago, IL 60654. Please direct all correspondence to Ryan M Kaiser at the foregoing address.

Dated: March 3, 2009

Attorneys for Petitioner:

/Rakesh M. Amin/

Rakesh M. Amin

Bianca A. Thomae (Reg. No. 61606)

Ryan M. Kaiser

AMIN HALLIHAN, LLC

444 N. Orleans St.

Suite 400

Chicago, Illinois 60654

Telephone: (312) 327-3382

Facsimile: (312) 223-1515

Exhibit 6

All evidentiary objections shall be reserved for the time of trial and no waiver of any objection is to be implied from this Response or any production made pursuant hereto. By this Response and the ensuing production, Responding Party is not making any writing admissible at the time of trial which would otherwise be inadmissible.

To the extent that this Response or any production pursuant hereto might waive, whether implicitly or explicitly, any otherwise assertable objection to discovery, such waiver shall be limited to this Response and to the ensuing production only, and shall not extend to any further requests for production or to any discovery proceedings or to any requests or subpoenas for the production of any such writings at the time of trial.

To the extent that all or any of the requests seek information and/or documents subject to the attorney-client privilege then the Responding Party asserts the attorney-client and/or work product privileges to each of such requests as appropriate and to the extent necessary to avoid a waiver of such privileges.

Responding Party responds to each and every discovery request subject to the foregoing, and each of the foregoing statements and objections are incorporated by reference into each of the following responses.

INTERROGATORY NO.1:

Identify each mark, symbol, device and/or designation used by Registrant which includes the "LEAN FOR LIFE" or variants, including the product and services on which the mark was or is being used, the date of first use, date Registrant ceased use of the same, if any, or variants and any application to register each mark, symbol, device, and/or designation used by Registrant which includes "LEAN FOR LIFE".

RESPONSE TO INTERROGATORY NO. 1:

Objection. The interrogatory is vague, ambiguous, overbroad, compound and contains numerous subparts. Without waiving said objections and subject to them, Registrant responds as follows:

Registrant is the owner of the mark LEAN FOR LIFE (U.S. No. 76,478,967) and the owner of the service mark LEAN FOR LIFE! (U.S. No. 2,484,443). LEAN FOR LIFE! has been in continuous use in interstate commerce by Registrant since at least as early as May 3, 1995 by use of the Mark on advertising for services, in promotional and informational literature, in the sale of the services, and in other ways customary in the trade. LEAN FOR LIFE has been in continuous use in interstate commerce by Registrant since at least as early as 1989 by use of the Mark on advertising services, in promotional and informational literature, in the sale of goods including protein drinks and beverages, protein snacks, puddings, and hot chocolates.

INTERROGATORY NO.2:

A. Identify all products and services offered for sale by Registrant bearing Registrant's Mark.

B. For each product identified in response to Paragraph A hereof, state the date Registrant's Mark was first used in United States commerce on or in connection with the products or services, and if discontinued, the date Registrant discontinued using Registrant's Mark on or in connection with the products or services.

C. For the products and services identified in response to Paragraph A hereof, state the yearly volume of sales in dollars and units since first use.

RESPONSE TO INTERROGATORY NO. 2:

Objection. The interrogatory is vague, ambiguous, overbroad, compound and contains numerous subparts. The interrogatory further seeks information that is confidential and trade secret and will not be turned over without a protective order in place. Subpart "A" is further vague and ambiguous as to time period. Registrant has been utilizing the Mark for approximately two decades. Subpart "B" is also overbroad and unduly burdensome and further vague and ambiguous as to time period. Registrant has been utilizing the Mark for approximately two decades. Further, Registrant currently has over sixty products that it offers for sale bearing the Mark and notes that new products are constantly being added and therefore

reserves the right to supplement this response. Subpart "C" seeks trade secret information and is overbroad, unduly burdensome, and vague and ambiguous as to time.

Without waiving said objections and subject to them, and responding only as to services and products currently bearing the Mark, Registrant responds as follows:

A. Registrant offers medical weight management and weight loss services in connection with diet planning and supervision services. Registrant also offers physical fitness consultation as well as physiological consultation, medical and laboratory screening, nutritional counseling, behavior modification, medical clinics, and medical research. Registrant has used its Mark in connection with these services since as early as 1995.

Registrant currently has the following products that it offers for sale bearing its Mark: in the beverages and puddings category, Registrant's Mark is on the Creamy Chocolate Shake, Strawberry Kiwi Fruit Drink, Mocha Ready to Drink Box, Cheesecake, Wildberry Passion, Berry Crème Smoothie, Creamy Vanilla Shake, Mixed Fruit Fiber Drink, Double Chocolate Instant Pudding, Mocha Shake and Pudding Mix, Custard Crème Pudding with Toffee Bits, Lemon Chiffon Instant Pudding, Strawberry Crème Smoothie, Chocolate Royale On the Go, Peach Mango Drink Mix, Mint Chocolate Shake and Pudding Mix, Dulce de Leche, Fiber Iced Tea with Lemon, Island Fruit Smoothie, Mixed Berry Energy Drink Stix, Orange Drink Mix, Strawberry Passion on the Go Drink, Chocolate Drink or Pudding Mix, Fiber Cherry Gelatin, Pineapple Apricot Drink Mix, Strawberry Drink or Pudding Mix, Variety Pack Powders, Apple Custard Crunch, Orange Energy Drink Stix, and Vanilla Drink or Pudding Mix, Chocolate Mousse Pudding, Vanilla Ready to Drink Box. In the Protein bars and snacks category, Registrant's Mark is on the Chocolate Peanut Crunch Bar, Peanut Butter Crunch Bar, Caramel Nut Bar, Peanut Butter Bar, Caramel Delight Bar, Double Chocolate Bar, Oatmeal Cinnamon Raisin Bar, Smokey BBQ Soy Nuts, Cocoa Crisps and Oats Bar, Coconut Almond Bar, Yogurt Peanut Crunch Bar, Chocolate Mint Bar, Crunchy BBQ Soy Puffs, Double Chocolate Crunch Bar, Honey Nut and Oat Bar, Lindora Oriental Salad Dressing, Chili Lime Soy Puffs, Sour Cream & Onion Soy Puffs, Garlic & Onion Soy Nuts, Fudge Divine Bar and Cinnamon Crisp

Bar. In the Hot 'n Hearty Proteins category, Registrant's Mark is on the Creamy Hot Cocoa, Vegetable Chili, Vegetable Spaghetti, Oatmeal with Apples and Cinnamon, Chicken Noodle Soup, Hot Chocolate, Cream of Tomato Soup, Raspberry Hot Cocoa, Cappuccino, Chicken w/ Vegetable Soup, Minestrone Soup, Corn Chowder, Vegetarian Sloppy Joe, Mint Hot Cocoa, Cream of Chicken Soup, Chicken Bouillon Soup, and Cream of Mushroom Soup. In the Vitamins and Supplements categories, Registrant's Mark is on the Multi-Vitamins, Mixed Fruit Fiber Drink, Fiber Iced Tea With Lemon, Potassium, Fiber Cherry Gelatin, and Omega 3. Additional products bearing Registrant's Mark include Butter Pecan Bar, Cookies & Cream Bar, Crisp n Crunch Double Berry Breakfast Bar, Crisp n Crunch Cinnamon Bar, Crisp n Crunch Fudge Graham Bar, Fettucini Alfredo, Macaroni & Cheese, and Nacho Cheese Pasta.

B. LEAN FOR LIFE! has been in continuous use in interstate commerce by Registrant since at least as early as May 3, 1995 by use of the Mark on advertising for services, in promotional and informational literature, in the sale of the services, and in other ways customary in the trade. LEAN FOR LIFE has been in continuous use in interstate commerce by Registrant since at least as early as 1989 by use of the Mark on advertising services, in promotional and informational literature, in the sale of goods including protein drinks and beverages, protein snacks, puddings, and hot chocolates.

C. The interrogatory is overbroad, unduly burdensome and seeks information that is confidential and trade secret and will not be turned over without a protective order in place.

INTERROGATORY NO.3:

A. Identify all channels of trade through which products and services bearing Registrant's Mark are marketed, distributed, offered for sale or sold.

B. Identify Registrant's ten (10) largest retail store accounts through which products bearing Registrant's Mark are distributed, offered for sale or sold in the United States.

RESPONSE TO INTERROGATORY NO. 3:

Objection. The interrogatory seeks information that is confidential and trade secret and will not be turned over without a protective order in place. Notwithstanding said objections, and subject to them, Registrant responds as follows:

A. Registrant's products and services can be obtained through walk-in clinics, at certain retail RITE AID locations, and through Lindora's online program and store.

B. The interrogatory seeks information that is confidential and trade secret and will not be turned over without a protective order in place.

INTERROGATORY NO.4:

A. Identify the officers of Registrant most knowledgeable with respect to Registrant's creation, selection, and/or adoption of Registrant's Mark.

B. Identify the employees and/or agents of Registrant most knowledgeable with respect to Registrant's creation, selection and/or adoption of Registrant's Mark.

RESPONSE TO INTERROGATORY NO. 4:

A. Cynthia Stamper Graff, President of Lindora, who can be reached c/o Adorno, Yoss, Alvarado & Smith, a Professional Corporation, 1 MacArthur Place, Suite 200, Santa Ana, California 92707, (714) 852-6800. Robert Steven Stamper, Vice President of Lindora, who can be reached c/o Adorno, Yoss, Alvarado & Smith, a Professional Corporation, 1 MacArthur Place, Suite 200, Santa Ana, California 92707, (714) 852-6800. Marshall Bernard Stamper, who can be reached c/o Adorno, Yoss, Alvarado & Smith, a Professional Corporation, 1 MacArthur Place, Suite 200, Santa Ana, California 92707, (714) 852-6800.

B. Cynthia Stamper Graff, President of Lindora, who can be reached c/o Adorno, Yoss, Alvarado & Smith, a Professional Corporation, 1 MacArthur Place, Suite 200, Santa Ana, California 92707, (714) 852-6800. Robert Steven Stamper, Vice President of Lindora, who can be reached c/o Adorno, Yoss, Alvarado & Smith, a Professional Corporation, 1 MacArthur Place, Suite 200, Santa Ana, California 92707, (714) 852-6800. Marshall Bernard Stamper, who can be

reached c/o Adorno, Yoss, Alvarado & Smith, a Professional Corporation, 1 MacArthur Place, Suite 200, Santa Ana, California 92707, (714) 852-6800.

INTERROGATORY NO.5:

A. Identify officers of Registrant most knowledgeable with respect to the (i) sales, (ii) marketing, (iii) advertising, and (iv) promotion of products bearing Registrant's Mark.

B. Identify employees of Registrant most knowledgeable with respect to the (i) sales, (ii) marketing, (iii) advertising, and (iv) promotion of products bearing Registrant's Mark.

RESPONSE TO INTERROGATORY NO. 5:

A. Cynthia Stamper Graff, President of Lindora, who can be reached c/o Adorno, Yoss, Alvarado & Smith, a Professional Corporation, 1 MacArthur Place, Suite 200, Santa Ana, California 92707, (714) 852-6800. Robert Steven Stamper, Vice President of Lindora, who can be reached c/o Adorno, Yoss, Alvarado & Smith, a Professional Corporation, 1 MacArthur Place, Suite 200, Santa Ana, California 92707, (714) 852-6800. Marshall Bernard Stamper, who can be reached c/o Adorno, Yoss, Alvarado & Smith, a Professional Corporation, 1 MacArthur Place, Suite 200, Santa Ana, California 92707, (714) 852-6800.

B. Cynthia Stamper Graff, President of Lindora, who can be reached c/o Adorno, Yoss, Alvarado & Smith, a Professional Corporation, 1 MacArthur Place, Suite 200, Santa Ana, California 92707, (714) 852-6800. Robert Steven Stamper, Vice President of Lindora, who can be reached c/o Adorno, Yoss, Alvarado & Smith, a Professional Corporation, 1 MacArthur Place, Suite 200, Santa Ana, California 92707, (714) 852-6800. Marshall Bernard Stamper, who can be reached c/o Adorno, Yoss, Alvarado & Smith, a Professional Corporation, 1 MacArthur Place, Suite 200, Santa Ana, California 92707, (714) 852-6800.

INTERROGATORY NO.6:

Describe the commercial impression, connotation, meaning and/or message intended by Registrant through its use of Registrant's Mark.

RESPONSE TO INTERROGATORY NO. 6:

The Mark is intended to connote and promote the impression of healthy weight loss and long-term management through the use of Registrant's dietary programs, services, and products.

INTERROGATORY NO.7:

Describe all manners in which products bearing Registrant's Mark are promoted, advertised, marketed or otherwise brought to the attention of potential customers of Registrant or consumers.

RESPONSE TO INTERROGATORY NO.7:

Objection. The request, as phrased, is vague and ambiguous as to time and what "manners" refers to. Registrant has been utilizing the Mark for over two decades. Further, Registrant objects to the request to the extent it seeks trade secret and confidential information. Notwithstanding said objections and subject to them, and assuming "manners" means modes or media, Registrant responds as follows:

Registrant has promoted, advertised, and marketed through various media channels including newspaper, the internet and television including but not limited to Woman's World, Discovery Health, First, People, Montel, Today, Extra, Maury, NBC, The New York Times, and Los Angeles Times.

INTERROGATORY NO.8:

A. Identify officers of Registrant most knowledgeable with respect to Registrant's Mark and/or business.

B. Identify employees of Registrant most knowledgeable with respect to Registrant's Mark and/or business.

RESPONSE TO INTERROGATORY NO.8:

Objection. The request, as phrased, is ambiguous as to what aspects it seeks officers and employees to be "most knowledgeable" about. Registrant refers to its responses to interrogatory numbers 4 and 5 which provide persons most knowledgeable about specific categories related to the Mark.

INTERROGATORY NO.9:

Identify the person(s) employed by Registrant who is/are most knowledgeable with respect to Registrant's denial of the allegations in the Notice of Opposition in this matter.

RESPONSE TO INTERROGATORY NO.9:

Objection. The request is overbroad, vague, and ambiguous as it does not identify what specific allegations it is referring to. Because the request has not identified which allegations it is referring to, Registrant is unable to respond.

INTERROGATORY NO.10:

A. Identify all licensees of Registrant's Mark.

B. Identify the products on which each licensee identified in part A hereof is authorized to use Registrant's Mark.

RESPONSE TO INTERROGATORY NO.10:

A. None.

B. N/A

INTERROGATORY NO.11:

State whether Registrant has ever promoted or advertised or has plans to promote or advertise Registrant's Mark on or in connection with products identified in its U.S. Registration No. 3,228,958, and if so state:

i. the form or intended form of media promotion or advertising and its identity;

ii. the inclusive dates and geographic areas of promotion or advertisement;

iii. the amount spent or intended to be spent each year by Registrant on each form of promotion or advertising for products bearing Registrant's Mark from the time of first use to the present, including:

a. dietetic substances, namely multi-vitamins, ketosis sticks for determining fat burning status, and protein drinks in various flavors to be used in connection with medical clinics specializing in weight management and weight loss;

b. Protein supplements, namely, chocolate drink in the nature of vegetable-based chocolate food beverages, snacks, namely protein based nutrient-dense snack bars, soy nuts and soups;

c. Protein supplements, namely, puddings, hot chocolate and pudding mixes in various flavors to be used in connection with medical clinics specializing in weight management and weight loss.

iv. the name(s) and address(es) of all the advertising agency(ies) used or intended to be used by Registrant with respect to products bearing Registrant's Mark.

RESPONSE TO INTERROGATORY NO.11:

Objection. The request is overbroad, vague, ambiguous, compound and contains numerous subparts. Registrant has been using the Mark for two decades and objects to the extent the request seeks information that is irrelevant and unduly burdensome. Further, the request seeks information that is privileged, confidential and trade secret. Confidential and trade secret information will not be revealed without a protective order in place and subject to reasonable limitations. Notwithstanding said objections and subject to them, Registrant refers Petitioner to Registrant's response to interrogatory number 7.

INTERROGATORY NO.12:

Identify all witnesses Registrant intends to call to testify at trial in this proceeding.

RESPONSE TO INTERROGATORY NO.12:

Registrant objects to the extent that this request is premature as discovery is still continuing. Registrant therefore reserves the right to supplement this response. Notwithstanding said objections and subject to them, Registrant responds as follows:

Cynthia Stamper Graff, President of Lindora, who can be reached c/o Adorno, Yoss, Alvarado & Smith, a Professional Corporation, 1 MacArthur Place, Suite 200, Santa Ana, California 92707, (714) 852-6800. Robert Steven Stamper, Vice President of Lindora, who can be reached c/o Adorno, Yoss, Alvarado & Smith, a Professional Corporation, 1 MacArthur Place, Suite 200, Santa Ana, California 92707, (714) 852-6800. Marshall Bernard Stamper, who can be

reached c/o Adorno, Yoss, Alvarado & Smith, a Professional Corporation, 1 MacArthur Place, Suite 200, Santa Ana, California 92707, (714) 852-6800. The person(s) most knowledgeable at Petitioner as to the date of first use of Petitioner's cancelled mark, the scope of use, sales and marketing of the cancelled mark, and the products bearing the cancelled mark.

INTERROGATORY NO.13:

State the identity of each person who provided information for the preparation of the answers to these interrogatories and/or the Answer to the Notice of Opposition in the above captioned matter.

RESPONSE TO INTERROGATORY NO.13:

Janet Schmitt, NP, JD, Director of Risk Management & Compliance and Cynthia Stamper Graff, President of Lindora. Both can be reached c/o Adorno, Yoss, Alvarado & Smith, a Professional Corporation, 1 MacArthur Place, Suite 200, Santa Ana, California 92707, (714) 852-6800.

INTERROGATORY NO.14:

State the identity of any person who has, claims to have or whom Registrant believes may have knowledge or information pertinent to any fact alleged in the Notice of Opposition in this proceeding or any fact underlying the subject matter of this proceeding.

RESPONSE TO INTERROGATORY NO.14:

Objection. The interrogatory is overbroad, vague, ambiguous, and appears duplicative to interrogatory numbers 4, 5, 8, and 9. Further, the request is premature as discovery and investigation are continuing. Therefore, Registrant reserves the right to supplement this response. Notwithstanding said objections, and subject to them, Registrant identifies the following individuals with information relevant to the subject matter of this proceeding: Cynthia Stamper Graff, President of Lindora, who can be reached c/o Adorno, Yoss, Alvarado & Smith, a Professional Corporation, 1 MacArthur Place, Suite 200, Santa Ana, California 92707, (714) 852-6800. Robert Steven Stamper, Vice President of Lindora, who can be reached c/o Adorno, Yoss, Alvarado & Smith, a Professional Corporation, 1 MacArthur Place, Suite 200,

Santa Ana, California 92707, (714) 852-6800. Marshall Bernard Stamper, who can be reached c/o Adorno, Yoss, Alvarado & Smith, a Professional Corporation, 1 MacArthur Place, Suite 200, Santa Ana, California 92707, (714) 852-6800. The person(s) most knowledgeable at Petitioner as to the date of first use of Petitioner's cancelled mark, the scope of use, sales and marketing of the cancelled mark, and the products bearing the cancelled mark.

INTERROGATORY NO.15:

State the specific nature and substance of the knowledge that Registrant believes the person(s) identified in its response to the foregoing interrogatory may have.

RESPONSE TO INTERROGATORY NO.15:

Objection. The request is overbroad, unduly burdensome, vague and ambiguous as it seeks "specific nature and substance" of knowledge but does not identify any period of time. Registrant has been around for over two decades. Notwithstanding said objections, and subject to them, and providing the general categories of knowledge that the individuals have knowledge regarding, Registrant responds as follows:

Cynthia Stamper Graff, President of Lindora, Robert Steven Stamper, Vice President of Lindora, and Marshall Bernard Stamper, founder of Lindora who can be reached c/o Adorno, Yoss, Alvarado & Smith, a Professional Corporation, 1 MacArthur Place, Suite 200, Santa Ana, California 92707, (714) 852-6800. All three individuals have knowledge regarding the creation, selection and adoption of Registrant's Mark and the sales, marketing, advertising and promotion of products bearing the Mark.

INTERROGATORY NO.16:

State: whether (a) Registrant conducted a full trademark search before filing its application to register the mark LEAN FOR LIFE and variation(s); and (b) whether Registrant obtained an opinion from a lawyer concerning the availability of Registrant's Mark for Use and registration in the United States.

RESPONSE TO INTERROGATORY NO.16:

Objection. The request seeks information that is protected by the attorney client privilege and attorney work product doctrine.

INTERROGATORY NO.17:

Describe any and all instances of confusion arising from Registrant's alleged use of Registrant's Mark.

RESPONSE TO INTERROGATORY NO.17:

Objection. The request as phrased is vague, ambiguous, overbroad and unlimited as to time. Registrant has been around and using the Mark for over two decades. The request seeks information regarding "instances of confusion arising from" the use of the Mark – but does not identify whether the "confusion" is consumer confusion, vendor confusion, competitor confusion or Registrant's confusion.

INTERROGATORY NO.18:

State each date in which use of Registrant's Mark in the United States commerce ceased or was interrupted and fully describe the reasons why such cessation or interruption occurred.

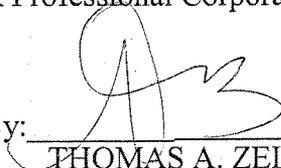
RESPONSE TO INTERROGATORY NO.18:

No cessation or interruption has occurred.

SIGNED AS TO OBJECTIONS ONLY:

DATED: October 16, 2009

ADORNO YOSS ALVARADO & SMITH
A Professional Corporation

By: 

THOMAS A. ZEIGLER
AILEEN M. BANELLIS
Attorneys for Registrant,
LINDORA, INC.

Certificate of Service

I hereby certify that on this 16th day of October, 2009, the foregoing **REGISTRANT'S RESPONSES TO PETITIONER'S FIRST SET OF INTERROGATORIES** was served, by mailing same by overnight mail, on the following correspondent as set forth in the records of the U.S. Patent and Trademark Office:

Rakesh M. Amin
Ryan M. Kaiser
AMIN TALATI, LLC
444 N. Orleans St., Suite 400
Chicago, Illinois 60654



Thomas A. Zeigler

VERIFICATION

I have read the foregoing **REGISTRANT'S RESPONSES TO PETITIONER'S FIRST SET OF INTERROGATORIES** and know its contents.

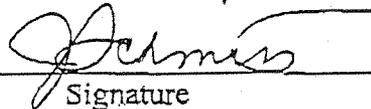
- I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and to those matters I believe them to be true.
- I am an officer a partner _____ of **LINDORA, INC.**, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason.
- I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.
- The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.
- I am one of the attorneys for _____, a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on Oct 15, 2009, at Costa Mesa, CA 92626

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

JANET SCHMITT

Type or Print Name



Signature