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Mailed: June 15, 2007

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Naturally Scientific, Inc.

Serial No. 76097189

Serial No. 76130605

Evelyn M. Sommer for Naturally Scientific, Inc.

Brian D. Brown, Trademark Examining Attorney, Law Office 105  
(Thomas G. Howell, Managing Attorney).

Before Bucher, Grendel<sup>1</sup> and Holtzman, Administrative Trademark  
Judges.

Opinion by Holtzman, Administrative Trademark Judge:

Request for Reconsideration

The Board, in a decision dated June 30, 2004, affirmed the refusal to register in these consolidated cases under Section 2(d) of the Trademark Act on the ground that applicant's marks, STRESS MENDER and SLEEP MENDER, when applied to applicant's "nutritional and dietary supplements," so resemble the registered mark MOOD MENDER for "health and performance foods, namely, ready-to-eat food

<sup>1</sup> Formerly known as Bottorff.



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bars, chewing gum and tea-based beverages" as to be likely to cause confusion.

Applicant filed a request for reconsideration of this decision on August 18, 2004. It has come to the Board's attention that a decision on the request for reconsideration was never issued. We wish to apologize for the very long delay in acting on this matter.

Trademark Rule 2.144 provides that any request for reconsideration "must be filed within one month from the date of the decision." Applicant's request for reconsideration is stamped with a date of receipt in the Office of August 18, 2004, more than one month after the June 30, 2004 decision, making the request untimely. The request includes a certificate of mailing with a clear notation of the day of mailing as the 15th, but the handwritten entry for the month is very small and scribbled and it is impossible to decipher. Therefore, the certificate of mailing cannot be relied on to determine the timeliness of applicant's filing. Moreover, we note that the date typed at the top of the request for reconsideration is August 6, 2004, and it is reasonable to assume that the month written in the certificate is no earlier than the month typed on the request. Under the circumstances, even if we were to give effect to the certificate of mailing, the request for reconsideration would not be considered timely.

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Decision: The request for reconsideration is denied.<sup>2</sup>

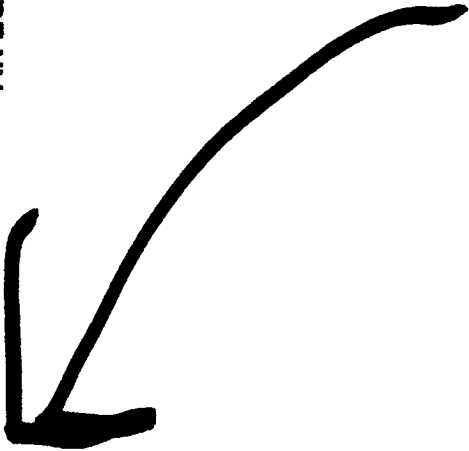
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<sup>2</sup> A copy of this decision is being sent to applicant's counsel, Evelyn M. Sommer, at both the correspondence address of record and her current address, 750 Lexington Avenue, 17<sup>th</sup> Floor, New York, NY 10022. Office records will be changed to reflect the new address upon written request by applicant or its counsel. See Trademark Rule 2.18.

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