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PTO Form 2194 (Rev 03/2012)
OMB No. 0651-0054 (Exp 12/31/2020)

Petition To Revive Abandoned Application - Failure To Respond Timely To Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	87428353
LAW OFFICE ASSIGNED	LAW OFFICE 122
DATE OF NOTICE OF ABANDONMENT	08/28/2018
PETITION	
NOTICE OF APPEAL OR PETITION TO DIRECTOR	I am separately filing a notice of appeal directly with the Trademark Trial and Appeal Board or a petition to Director. I understand that additional time to file either an appeal or petition to the Director will not be provided. Failure to file an appeal may result in my application being abandoned for an incomplete response even if this petition is granted. To file the appeal go to the Electronic System for Trademark Trials and Appeals (ESTTA). To file the petition go to the Petition to the Director under Trademark Rule 2.146 form.
PETITION STATEMENT	Applicant has firsthand knowledge that the failure to respond to the Office Action by the specified deadline was unintentional, and requests the USPTO to revive the abandoned application.
RESPONSE TO OFFICE ACTION	
MARK SECTION	
MARK	https://tmng-al.uspto.gov/resting2/api/img/87428353/large
LITERAL ELEMENT	SUPER NUTRIENT CHEWABLES
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.
ARGUMENT(S)	

Applicant hereby requests reconsideration in view of the Final Office Action dated January 30, 2018 and files a Notice of Appeal with this request for reconsideration. Applicant expresses thanks for the attention provided to this application. Applicant files this with a Petition to Revive, as the abandonment of this application was unintentional. The Office Action raised issues regarding Section 2(e)(1) descriptiveness refusal, identification of goods, and a disclaimer requirement. These issues have been addressed and resolved herein, as explained below.

Identification of Goods

In response to the requirement that the identification of goods be amended, applicant amends the goods with this request for reconsideration to the following:

therapeutics, namely weight control, appetite suppression, muscle relaxation, and sleep disorders; nutritional supplements.
Applicant believes this amendment to be definite as it describes the goods as regards to what kind of pharmaceuticals and therapeutics are being recited in this application. As such, Applicant respectfully requests that the identification of goods amendment request be withdrawn.

Disclaimer Requirement

In response to the requirement that the Applicant disclaim “CHEWABLES,” applicant respectfully submits the following. Applicant does not believe that CHEWABLES needs to be disclaimed and requests that the requirement be withdrawn.

The mere fact that the individual components of a mark have some relationship to the goods with which a mark is used is *not* conclusive on the issue of descriptiveness. In all nondescriptiveness determinations, the "commercial impression of a mark is derived from it as a whole, not from its elements separated and considered in detail. For this reason it should be considered in its entirety . . .." *Estate of P.D. Beckwith v. Commissioner*, 252 U.S. at 545-546 (1920). Moreover, in a nondescriptiveness analysis, any doubt under Section 2(e) about the merely descriptive nature of the mark should be resolved in favor of the applicant. *In re Conductive Systems, Inc.*, 220 U.S.P.Q. 84, 86

(T.T.A.B. 1983). Also, "[t]he proper test of descriptiveness of a word is its meaning to that class of buyers who are prospective purchasers, which may or may not be synonymous with its popular meaning." McCarthy, J.T., McCarthy on Trademarks § 11.06[2] at note 9 and accompanying text (Third Ed. 1996).

Applicant's Competitors Have Not Used and Do Not Need to Use the Portion of Applicant's Mark to Describe Their Goods/Services.

Determining whether "competing sellers would be likely to need to use the term in describing or advertising their goods" is indicative on the issue of descriptiveness. McCarthy at § 11.21[2] see also *Rodeo Collection Ltd. v. West Seventh*, 2 U.S.P.Q. 2d 1204, 1206 (9th Cir. 1987); *Miss World (UK) Ltd. v. Mrs. America Pageants*, 8 U.S.P.Q. 2d 1237, 1240 (9th Cir. 1988). In the present case, competitors of Applicant are able to use many different terms other than the portion of the present mark to describe their products. Based upon a search of Office records using TESS, "chewables" is at least a part of a mark in Office records 76 times (accessed October 29, 2018), but only disclaimed 47 times (*Id.*), at least three of which are live, active registered marks, indicating that third parties have many different terms which they can use to describe their goods. Certainly more Office records would include the pertinent uses of the term "chewables" in the recitation of goods/services if the mark were actually merely descriptive and not suggestive. This fact is indicative of the nondescriptiveness of "chewables" in connection with the present mark. McCarthy at § 11.21[3] see also *In re Dollar-A-Day Rent-A-Car Systems, Inc.*, 173 U.S.P.Q. 435 (T.T.A.B. 1972)("If the term is as highly descriptive as asserted by the examiner, one would suppose that there would be at least one descriptive use thereof by a competitor but none has been shown").

The Present Mark is not Merely Descriptive of Applicant's Goods

Applicant respectfully disagrees with the assertion made in the Office Action that the present mark is merely descriptive of the goods under the pertinent law and facts. Applicant urges that the registration of the present mark on the Principal Register is proper and requested for the reasons set forth below.

A. APPLICANT'S CUSTOMERS DO NOT RECOGNIZE THE MARK AS BEING DESCRIPTIVE OF APPLICANT'S GOODS.

Every descriptiveness determination must be decided on its own facts and the Office Action provides insufficient factual support for the assertion that the mark is merely descriptive under Section 2(e)(1), as explained below. In the present case, the mere fact that one or more individual components of the mark have some relationship to the goods at issue is not conclusive on the issue of descriptiveness. As explained below, Applicant's customers do not recognize the mark as merely describing the goods. Moreover, when Applicant's mark is considered as a whole by the Applicant's customers, the mark is not merely descriptive of the goods.

In all nondescriptiveness determinations, the "commercial impression of a mark is derived from it as a whole, not from its elements separated and considered in detail. For this reason it should be considered in its entirety..." *Estate of P.D. Beckwith v. Commissioner*, 252 U.S. 538, 545-546 (1920). Moreover, in a nondescriptiveness analysis, any doubt under Section 2(e) about the merely descriptive nature of the mark should be resolved in favor of the applicant. *In re Conductive Systems, Inc.*, 220 U.S.P.Q. 84, 86 (T.T.A.B. 1983). Also, "[t]he proper test of descriptiveness of a word is its meaning to that class of buyers who are prospective purchasers, which may or may not be synonymous with its popular meaning." McCarthy, J.T., McCarthy on Trademarks § 11.20 and accompanying notes (Fourth Ed. 1998). The Office Action states "that 'SUPER'means 'An article or a product of superior size, quality, or grade.'" This is only one possible definition of "SUPER." In fact, "SUPER" has many accepted definitions, some of which are reproduced below. See Merriam-Webster Online Dictionary, accessed October 29, 2018.

1a : of high grade or quality

b —used as a generalized term of approval

2 : very large or powerful

3 : exhibiting the characteristics of its type to an extreme or excessive degree

1 : VERY, EXTREMELY

2 : to an excessive degree

1a(1) : over and above : higher in quantity, quality, or degree than : more than

(2) : in addition : extra

b(1) : exceeding or so as to exceed a norm

(2) : in or to an extreme or excessive degree or intensity

c : surpassing all or most others of its kind

2a : situated or placed above, on, or at the top of

specifically : situated on the dorsal side of

b : next above or higher

3 : having the (specified) ingredient present in a large or unusually large proportion

4 : constituting a more inclusive category than that specified

5 : superior in status, title, or position

Furthermore, the terms "NUTRIENT" and "CHEWABLES" also do not readily equate with applicant's goods, namely:

therapeutics, namely weight control, appetite suppression, muscle relaxation, and sleep disorders; nutritional supplements.

“NUTRIENT” is not readily equated with weight control, muscle relaxation, or sleep disorder therapeutics. A nutrient is something that “provides nourishment,” not something that controls weight, relaxes muscles, or helps with sleep disorders. Therefore, SUPER NUTRIENT CHEWABLES is not merely descriptive of the goods, but is, at most, suggestive of any of applicant’s goods. This is further proof that the present mark is not seen by relevant consumers as merely descriptive. As NUTRIENT CHEWABLES is not merely descriptive of the goods recited in this application, the legal precedence for “super” as recited in the Office Action that states that “if the word ‘super’ is combined with a word that names the goods or services... then the composite term is considered merely descriptive of the goods or services,” Office Action, quoting *In re Phillips-Van Heusen Corp*., 63 USPQ2d 1047, 1052 (TTAB 2002), does not apply. Instead, SUPER has many possible meanings, as shown above, further proof that the mark as a whole is not merely descriptive of the goods recited in this application.

In the case of the present mark, and in view of the many “SUPER” beyond the one quoted in the Office Action, combined with the non-descriptive nature of “NUTRIENT CHEWABLES,” it is a matter of factual determination based upon the totality of the circumstances which reveals that when the prospective purchasers views the mark as a whole, the purchaser does *not* know what to expect in the way of goods. Thus, prospective purchasers see the present mark as primarily an indicator of source or origin and must use a some degree of imagination to arrive at any conclusion regarding the nature of the goods associated with the mark.

B. APPLICANT'S MARK IS NOT MERELY DESCRIPTIVE OF THE GOODS EVEN IF ONE OR MORE TERMS IN APPLICANT'S MARK ARE DEEMED DESCRIPTIVE.

It is accepted law that the combination of two terms which are descriptive "may result in a composite which is non-descriptive." See *In re Bright Crest, Ltd.* 204 U.S.P.Q. 591, 593 (T.T.A.B. 1979); McCarthy at 11.26 and cases cited therein. For example, the composite mark BIASTEEL for steel belted bias tires was held to be suggestive, not descriptive, by the Board. *Firestone Tire & Rubber Co. v. Goodyear Tire & Rubber Co.*, 186 U.S.P.Q. 557 (T.T.A.B. 1975). In an additional example, the composite mark MOUSE SEED for rodent exterminators was held to result in non-descriptive, merely suggestive, mark. *W.G. Reardon Laboratories, Inc. v. B & B Exterminators, Inc.*, 71 F.2d 515 (4th Cir. 1934). Thus, even if, *arguendo*, a term of the present mark, may be considered descriptive, Applicant's entire mark is suggestive and not merely descriptive of the pertinent goods. For example, even if the present mark creates a commercial impression of “super nutrient chewables” this impression does not describe or relate to applicant’s goods, namely:

therapeutics, namely weight control, appetite suppression, muscle relaxation, and sleep disorders; nutritional supplements.

Thus, a degree of "imagination, thought, or perception is required to reach a conclusion on the nature of the goods," and the mark is, at worst, suggestive of the relevant goods. *In re Gyulay*, 3 U.S.P.Q. 2d 1009 (Fed. Cir. 1987).

C. APPLICANT’S GOODS ARE SOUGHT AFTER BY SOPHISTICATED, CAREFUL PURCHASERS WHO RECOGNIZE THE MARK AS A DESIGNATION OF ORIGIN.

When referring to the pertinent goods, Applicant’s target market would consider the present mark to be a designation of origin, not merely a description of the goods. The relevant class of customers of the present goods are sophisticated and careful purchasers. Such class of customers of the pertinent goods, e.g. consumers of therapeutics and nutritional supplements, are well educated with relation to the relevant goods and make careful decisions about the products they purchase, use, and consume. Thus, the Applicant’s primary customers are sophisticated, careful consumers who perceive the present mark as being fanciful or suggestive, but not descriptive.

The sophisticated and careful prospective customers of Applicant's goods perceive the present mark as an indication of the source or origin and not just as a description of an "ingredient, quality, characteristic, function, feature, purpose or use of the relevant goods. *In re MetPath, Inc.*, 223 U.S.P.Q. 88 (T.T.A.B. 1984). The present mark is not "merely descriptive" under the Trademark Act since the mark "does not [clearly] tell the potential customer only what the goods are, their function, characteristics, use or ingredients . . .." McCarthy § 11.51 and note 5. Rather, at least some "imagination, thought, or perception is required [by the purchaser] to reach a conclusion on the nature of the goods [and services]." *In re Gyulay*, 3 U.S.P.Q. 2d 1009 (Fed. Cir. 1987). Thus, the present mark is at least suggestive and is registrable on the Principal Register.

D. IN SUMMARY, APPLICANT’S MARK IS NOT MERELY DESCRIPTIVE OF THE GOODS.

In view of the forgoing, Applicant respectfully submits that the present mark is not merely descriptive of the pertinent goods and registration on the Principal Register is appropriate and the same is respectfully requested.

Conclusion

In accordance with the foregoing, Applicant expresses thanks for the help provided in the present application. Applicant requests that reconsideration be granted in view of these changes to the application. The undersigned and the Applicant believe that, in light of the foregoing, registration on the Principal Register is appropriate, and the same is respectfully requested.

GOODS AND/OR SERVICES SECTION (current)	
INTERNATIONAL CLASS	005
DESCRIPTION	Pharmaceuticals and therapeutics; nutritional supplements
FILING BASIS	Section 1(b)

GOODS AND/OR SERVICES SECTION (proposed)	
INTERNATIONAL CLASS	005

TRACKED TEXT DESCRIPTION	
~~Pharmaceuticals and therapeutics~~; therapeutics, namely weight control, appetite suppression, muscle relaxation, and sleep disorders; nutritional supplements	
FINAL DESCRIPTION	
therapeutics, namely weight control, appetite suppression, muscle relaxation, and sleep disorders; nutritional supplements	
FILING BASIS	Section 1(b)
PAYMENT SECTION	
TOTAL AMOUNT	100
TOTAL FEES DUE	100
SIGNATURE SECTION	
PETITION SIGNATURE	/Grant R. Clayton/
SIGNATORY'S NAME	Grant R. Clayton
SIGNATORY'S POSITION	Attorney of record, Utah Bar Member
SIGNATORY'S PHONE NUMBER	801-255-5335
DATE SIGNED	10/29/2018
RESPONSE SIGNATURE	/Grant R. Clayton/
SIGNATORY'S NAME	Grant R. Clayton
SIGNATORY'S POSITION	Attorney of Record, Utah Bar Member
SIGNATORY'S PHONE NUMBER	801-255-5335
DATE SIGNED	10/29/2018
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Oct 29 21:22:32 EDT 2018
TEAS STAMP	USPTO/POA-XX.XXX.XXX.XXX-20181029212232823503-87428353-610b054bd7514e3e92855347ec719ac4aa6b31b35e34af4848c6abf8075d3ef885b-CC-7612-20181029211650017168

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PTO Form 2194 (Rev 03/2012)
OMB No. 0651-0054 (Exp 12/31/2020)

Petition To Revive Abandoned Application - Failure To Respond Timely To Office Action

To the Commissioner for Trademarks:

Application serial no. **87428353** SUPER NUTRIENT CHEWABLES(Standard Characters, see https://tmng-al.uspto.gov/resting2/api/img/87428353/large) has been amended as follows:

PETITION

NOTICE OF APPEAL OR PETITION TO DIRECTOR

I am separately filing a notice of appeal directly with the Trademark Trial and Appeal Board or a petition to Director. I understand that additional time to file either an appeal or petition to the Director will not be provided. Failure to file an appeal may result in my application being abandoned for an incomplete response even if this petition is granted. To file the appeal go to the Electronic System for Trademark Trials and Appeals (ESTTA). To file the petition go to the Petition to the Director under Trademark Rule 2.146 form.

Petition Statement
Applicant has firsthand knowledge that the failure to respond to the Office Action by the specified deadline was unintentional, and requests the USPTO to revive the abandoned application.

RESPONSE TO OFFICE ACTION

ARGUMENT(S)
In response to the substantive refusal(s), please note the following:

Applicant hereby requests reconsideration in view of the Final Office Action dated January 30, 2018 and files a Notice of Appeal with this request for reconsideration. Applicant expresses thanks for the attention provided to this application. Applicant files this with a Petition to Revive, as the abandonment of this application was unintentional. The Office Action raised issues regarding Section 2(e)(1) descriptiveness refusal, identification of goods, and a disclaimer requirement. These issues have been addressed and resolved herein, as explained below.

Identification of Goods

In response to the requirement that the identification of goods be amended, applicant amends the goods with this request for reconsideration to the following:

therapeutics, namely weight control, appetite suppression, muscle relaxation, and sleep disorders; nutritional supplements.
Applicant believes this amendment to be definite as it describes the goods as regards to what kind of pharmaceuticals and therapeutics are being recited in this application. As such, Applicant respectfully requests that the identification of goods amendment request be withdrawn.

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In response to the requirement that the Applicant disclaim "CHEWABLES," applicant respectfully submits the following. Applicant does not believe that CHEWABLES needs to be disclaimed and requests that the requirement be withdrawn.

The mere fact that the individual components of a mark have some relationship to the goods with which a mark is used is *not* conclusive on the issue of descriptiveness. In all nondescriptiveness determinations, the "commercial impression of a mark is derived from it as a whole, not from its elements separated and considered in detail. For this reason it should be considered in its entirety . . .." *Estate of P.D. Beckwith v. Commissioner*, 252 U.S. at 545-546 (1920). Moreover, in a nondescriptiveness analysis, any doubt under Section 2(e) about the merely descriptive nature of the mark should be resolved in favor of the applicant. *In re Conductive Systems, Inc.*, 220 U.S.P.Q. 84, 86 (T.T.A.B. 1983). Also, "[t]he proper test of descriptiveness of a word is its meaning to that class of buyers who are prospective purchasers, which may or may not be synonymous with its popular meaning." McCarthy, J.T., McCarthy on Trademarks § 11.06[2] at note 9 and accompanying text (Third Ed. 1996).

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The Present Mark is not Merely Descriptive of Applicant's Goods

Applicant respectfully disagrees with the assertion made in the Office Action that the present mark is merely descriptive of the goods under the pertinent law and facts. Applicant urges that the registration of the present mark on the Principal Register is proper and requested for the reasons set forth below.

A. APPLICANT'S CUSTOMERS DO NOT RECOGNIZE THE MARK AS BEING DESCRIPTIVE OF APPLICANT'S GOODS.

Every descriptiveness determination must be decided on its own facts and the Office Action provides insufficient factual support for the assertion that the mark is merely descriptive under Section 2(e)(1), as explained below. In the present case, the mere fact that one or more individual components of the mark have some relationship to the goods at issue is not conclusive on the issue of descriptiveness. As explained below, Applicant's customers do not recognize the mark as merely describing the goods. Moreover, when Applicant's mark is considered as a whole by the Applicant's customers, the mark is not merely descriptive of the goods.

In all nondescriptiveness determinations, the "commercial impression of a mark is derived from it as a whole, not from its elements separated and considered in detail. For this reason it should be considered in its entirety..." *Estate of P.D. Beckwith v. Commissioner*, 252 U.S. 538, 545-546 (1920). Moreover, in a nondescriptiveness analysis, any doubt under Section 2(e) about the merely descriptive nature of the mark should be resolved in favor of the applicant. *In re Conductive Systems, Inc.*, 220 U.S.P.Q. 84, 86 (T.T.A.B. 1983). Also, "[t]he proper test of

descriptiveness of a word is its meaning to that class of buyers who are prospective purchasers, which may or may not be synonymous with its popular meaning." McCarthy, J.T., McCarthy on Trademarks § 11.20 and accompanying notes (Fourth Ed. 1998). The Office Action states "that 'SUPER'means 'An article or a product of superior size, quality, or grade.'" This is only one possible definition of "SUPER." In fact, "SUPER" has many accepted definitions, some of which are reproduced below. See Merriam-Webster Online Dictionary, accessed October 29, 2018.

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5 : superior in status, title, or position

Furthermore, the terms "NUTRIENT" and "CHEWABLES" also do not readily equate with applicant's goods, namely:

therapeutics, namely weight control, appetite suppression, muscle relaxation, and sleep disorders; nutritional supplements.

"NUTRIENT" is not readily equated with weight control, muscle relaxation, or sleep disorder therapeutics. A nutrient is something that "provides nourishment," not something that controls weight, relaxes muscles, or helps with sleep disorders. Therefore, SUPER NUTRIENT CHEWABLES is not merely descriptive of the goods, but is, at most, suggestive of any of applicant's goods. This is further proof that the present mark is not seen by relevant consumers as merely descriptive. As NUTRIENT CHEWABLES is not merely descriptive of the goods recited in this application, the legal precedence for "super" as recited in the Office Action that states that "if the word 'super' is combined with a word that names the goods or services... then the composite term is considered merely descriptive of the goods or services," Office Action, quoting *In re Phillips-Van Heusen Corp.*, 63 USPQ2d 1047, 1052 (TTAB 2002), does not apply. Instead, SUPER has many possible meanings, as shown above, further proof that the mark as a whole is not merely descriptive of the goods recited in this application.

In the case of the present mark, and in view of the many "SUPER" beyond the one quoted in the Office Action, combined with the non-descriptive nature of "NUTRIENT CHEWABLES," it is a matter of factual determination based upon the totality of the circumstances which reveals that when the prospective purchasers views the mark as a whole, the purchaser does *not* know what to expect in the way of goods. Thus, prospective purchasers see the present mark as primarily an indicator of source or origin and must use a some degree of imagination to arrive at any conclusion regarding the nature of the goods associated with the mark.

B. APPLICANT'S MARK IS NOT MERELY DESCRIPTIVE OF THE GOODS EVEN IF ONE OR MORE TERMS IN APPLICANT'S MARK ARE DEEMED DESCRIPTIVE.

It is accepted law that the combination of two terms which are descriptive "may result in a composite which is non-descriptive." See *In re Bright Crest, Ltd.* 204 U.S.P.Q. 591, 593 (T.T.A.B. 1979); McCarthy at 11.26 and cases cited therein. For example, the composite mark BIASTEEL for steel belted bias tires was held to be suggestive, not descriptive, by the Board. *Firestone Tire & Rubber Co. v. Goodyear Tire & Rubber Co.*, 186 U.S.P.Q. 557 (T.T.A.B. 1975). In an additional example, the composite mark MOUSE SEED for rodent exterminators was held to result in non-descriptive, merely suggestive, mark. *W.G. Reardon Laboratories, Inc. v. B & B Exterminators, Inc.*, 71 F.2d 515 (4th Cir. 1934). Thus, even if, *arguendo*, a term of the present mark, may be considered descriptive, Applicant's entire mark is suggestive and not merely descriptive of the pertinent goods. For example, even if the present mark creates a commercial impression of "super nutrient chewables" this impression does not describe or relate to applicant's goods, namely:

therapeutics, namely weight control, appetite suppression, muscle relaxation, and sleep disorders; nutritional supplements.

Thus, a degree of "imagination, thought, or perception is required to reach a conclusion on the nature of the goods," and the mark is, at worst, suggestive of the relevant goods. *In re Gyulay*, 3 U.S.P.Q. 2d 1009 (Fed. Cir. 1987).

C. APPLICANT'S GOODS ARE SOUGHT AFTER BY SOPHISTICATED, CAREFUL PURCHASERS WHO RECOGNIZE THE MARK AS

A DESIGNATION OF ORIGIN.

When referring to the pertinent goods, Applicant's target market would consider the present mark to be a designation of origin, not merely a description of the goods. The relevant class of customers of the present goods are sophisticated and careful purchasers. Such class of customers of the pertinent goods, e.g. consumers of therapeutics and nutritional supplements, are well educated with relation to the relevant goods and make careful decisions about the products they purchase, use, and consume. Thus, the Applicant's primary customers are sophisticated, careful consumers who perceive the present mark as being fanciful or suggestive, but not descriptive.

The sophisticated and careful prospective customers of Applicant's goods perceive the present mark as an indication of the source or origin and not just as a description of an "ingredient, quality, characteristic, function, feature, purpose or use of the relevant goods. *In re MetPath, Inc.*, 223 U.S.P.Q. 88 (T.T.A.B. 1984). The present mark is not "merely descriptive" under the Trademark Act since the mark "does not [clearly] tell the potential customer only what the goods are, their function, characteristics, use or ingredients . . .." McCarthy § 11.51 and note 5. Rather, at least some "imagination, thought, or perception is required [by the purchaser] to reach a conclusion on the nature of the goods [and services]." *In re Gyulay*, 3 U.S.P.Q. 2d 1009 (Fed. Cir. 1987). Thus, the present mark is at least suggestive and is registrable on the Principal Register.

D. IN SUMMARY, APPLICANT'S MARK IS NOT MERELY DESCRIPTIVE OF THE GOODS.

In view of the forgoing, Applicant respectfully submits that the present mark is not merely descriptive of the pertinent goods and registration on the Principal Register is appropriate and the same is respectfully requested.

Conclusion

In accordance with the foregoing, Applicant expresses thanks for the help provided in the present application. Applicant requests that reconsideration be granted in view of these changes to the application. The undersigned and the Applicant believe that, in light of the foregoing, registration on the Principal Register is appropriate, and the same is respectfully requested.

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:
Current: Class 005 for Pharmaceuticals and therapeutics; nutritional supplements
Original Filing Basis:
Filing Basis: Section 1(b), Intent to Use: ***For a trademark or service mark application:*** As of the application filing date, the applicant had a bona fide intention, and was entitled, to use the mark in commerce on or in connection with the identified goods/services in the application. ***For a collective trademark, collective service mark, or collective membership mark application:*** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization. ***For a certification mark application:*** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users in connection with the identified goods/services, and the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

Proposed:
Tracked Text Description: ~~Pharmaceuticals and therapeutics~~; therapeutics, namely weight control, appetite suppression, muscle relaxation, and sleep disorders; nutritional supplements

Class 005 for therapeutics, namely weight control, appetite suppression, muscle relaxation, and sleep disorders; nutritional supplements
Filing Basis: Section 1(b), Intent to Use: ***For a trademark or service mark application:*** As of the application filing date, the applicant had a bona fide intention, and was entitled, to use the mark in commerce on or in connection with the identified goods/services in the application. ***For a collective trademark, collective service mark, or collective membership mark application:*** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization. ***For a certification mark application:*** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users in connection with the identified goods/services, and the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

FEE(S)
Fee(s) in the amount of $100 is being submitted.

SIGNATURE(S)

Signature: /Grant R. Clayton/ Date: 10/29/2018
Signatory's Name: Grant R. Clayton
Signatory's Position: Attorney of record, Utah Bar Member

Signatory's Phone Number: 801-255-5335

Response Signature
Signature: /Grant R. Clayton/ Date: 10/29/2018
Signatory's Name: Grant R. Clayton
Signatory's Position: Attorney of Record, Utah Bar Member

Signatory's Phone Number: 801-255-5335

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the owner/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the owner/holder has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner/holder's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

RAM Sale Number: 87428353
RAM Accounting Date: 10/30/2018

Serial Number: 87428353
Internet Transmission Date: Mon Oct 29 21:22:32 EDT 2018
TEAS Stamp: USPTO/POA-XX.XXX.XXX.XXX-201810292122328
23503-87428353-610b054bd7514e3e92855347e
c719ac4aa6b31b35e34af4848c6abf8075d3ef88
5b-CC-7612-20181029211650017168

RAM SALE NUMBER: 87428353
RAM ACCOUNTING DATE: 20181030

INTERNET TRANSMISSION DATE:
2018/10/29

SERIAL NUMBER:
87/428353

Description	Fee Code	Transaction	Total Fees Paid
POA	7005	2018/10/29	100