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Subject: U.S. Trademark Application Serial No. 87929737 - ECOFARMA - 03352.0005 - Request for Reconsideration Denied - Return to TTAB

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United States Patent and Trademark Office (USPTO)
Office Action (Official Letter) About Applicant's Trademark Application

U.S. Application Serial No. 87929737

Mark: ECOFARMA

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Applicant: Eco-Farma Peru SAC

Reference/Docket No. 03352.0005

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REQUEST FOR RECONSIDERATION

AFTER FINAL ACTION

DENIED

Issue date: October 05, 2020

Applicant's request for reconsideration is denied. *See* 37 C.F.R. §2.63(b)(3). The trademark examining attorney has carefully reviewed applicant's request and determined the request did not: (1) raise a new issue, (2) resolve all the outstanding issue(s), (3) provide any new or compelling

evidence with regard to the outstanding issue(s), or (4) present analysis and arguments that were persuasive or shed new light on the outstanding issue(s). TMEP §§715.03(a)(ii)(B), 715.04(a).

Applicant deleted all consumable goods in its application, per the suggestion of examining attorney in the 03/04/2020 office action. However, this suggestion was made due to a misunderstanding of the FDCA by examining attorney. In fact, all hemp CBD medicinal goods are banned under this law, regardless of whether they are consumable or not. On June 25, 2018, the U.S. Food and Drug Administration (FDA) approved the first prescription pharmaceutical formulation of plant-derived CBD, Epidiolex®, for the treatment of two rare forms of epilepsy, Lennox-Gastaut syndrome and Dravet syndrome. The Drug Enforcement Administration (DEA) placed Epidiolex® on schedule V of the CSA on September 27, 2018. Nevertheless, marijuana and CBD derived from marijuana remain unlawful. No other cannabis-derived drug products have been approved by the FDA. Under the Food, Drug and Cosmetics Act (FDCA), any product intended to have a therapeutic or medical use, and any product (other than a food) that is intended to affect the structure or function of the body of humans or animals, is a drug. 21 U.S.C. § 321(g)(1) An unapproved new drug cannot be distributed or sold in interstate commerce unless it is the subject of an FDA-approved new drug application (NDA) or abbreviated new drug application (ANDA). 21 U.S.C. §§ 331(d) and 355(a), (b), & (j); *see also FDA Regulation of Cannabis and Cannabis-Derived Products: Questions and Answers* https://www.fda.gov/news-events/public-health-focus/fda-regulation-cannabis-and-cannabis-derived-products-questions-and-answers *copy previously attached.*

Therefore, applicant's amendment to the identification of goods does not obviate the FDCA Unlawful Use Refusal. The examining attorney apologizes for the inconvenience caused by this misunderstanding.

Accordingly, the following requirement(s) and/or refusal(s) made final in the Office action dated 03/04/2020 are **maintained and continued**:

- FDCA Unlawful Use Refusal

See TMEP §§715.03(a)(ii)(B), 715.04(a).

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

If applicant has not filed an appeal and time remains in the six-month response period, applicant has the remainder of that time to (1) file another request for reconsideration that complies with and/or overcomes any outstanding final requirement(s) and/or refusal(s), and/or (2) file a notice of appeal to

the Board. TMEP §715.03(a)(ii)(B). Filing a request for reconsideration does not stay or extend the time for filing an appeal. 37 C.F.R. §2.63(b)(3); *see* TMEP §715.03(c).

/Rachael Dickson/

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