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

Proceeding	87975187
Applicant	Green Roads of Florida, LLC
Applied for Mark	GREEN ROADS
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Submission	Applicants Request for Remand and Amendment
Attachments	RFR 2019.01.30 (87975187) Green Roads - Final.pdf(102208 bytes)
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application of Green Roads of Florida, LLC
Serial No.: 87975187
Filed: June 22, 2016
Trademark: Green Roads (word mark)

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REQUEST TO REMAND THE APPLICATION TO THE EXAMINER FOR FURTHER

CONSIDERATION

Applicant respectfully requests that the Trademark Trial and Appeal Board (the “Board”) remand the above referenced application for the GREEN ROADS mark to the Examiner for further consideration. Pursuant to Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) 1209.04, This Request is proper because Applicant shows good cause for the Remand.

The subject appeal was filed on October 10, 2018 as a result of a “Section 1 and 45 Refusal” based on “not in lawful use in commerce”. The position of the Examiner is that certain parts of the hemp plant were illegal under the Controlled Substance Act (21 U.S.C. 801 et seq.)

(“CSA”). Specifically, extract from the flower of the hemp plant, as opposed to “the mature stalks of such plant, oil or cake made from the seed of such plant”, is defined as “marijuana” and therefore illegal under the CSA. (See the Final Action attached hereto). The Applicant disagreed with the Examiner’s position. Over the course of the prosecution of the Application, Applicant and the Examiner were not able to resolve the interpretation issues, as such an appeal was necessary. However, in December of 2018, after the Applicant filed the Notice of Appeal, Congress acted to clarify the national interpretation dispute over the legality of hemp. On December 22, 2018, the Agriculture Improvement Act of 2018¹ (a.k.a the “2018 Farm Bill”) was signed into law.

The 2018 Farm Bill expressly provides:

“SEC. 297A. DEFINITIONS. “In this subtitle: “(1) HEMP.—The term ‘hemp’ means the plant *Cannabis sativa* L. and **any part of that plant**, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis. (*emphasis added*).

This provisions clearly states that “any part of the (hemp) plant” is covered by the 2018 Farm Bill, not just the stalk and seed.

¹ The full text of the Agriculture Improvement Act of 2018 (a.k.a. the “2018 Farm Bill”) can be found at: <https://www.congress.gov/bill/115th-congress/house-bill/2/text>

Of particular importance to the USPTO’s decision in allowing trademark applications covering hemp, Congress has implicitly authorized the interstate commerce of hemp.

SEC. 10114. INTERSTATE COMMERCE. (a) RULE OF CONSTRUCTION.— **Nothing in this title or an amendment made by this title prohibits the interstate commerce of hemp** (as defined in section 297A of the Agricultural Marketing Act of 1946 (as added by section 10113)) or hemp products. (b) TRANSPORTATION OF HEMP AND HEMP PRODUCTS.—No State or Indian Tribe shall prohibit the transportation or shipment of hemp or hemp products produced in accordance with subtitle G of the Agricultural Marketing Act of 1946 (as added by section 10113) through the State or the territory of the Indian Tribe, as applicable.*(emphasis added)*.

The Constitutional authority for the USPTO to act is provided by the Commerce Clause.

The authority of Congress to provide for the registration of marks which are used in commerce stems from the power of Congress under the commerce clause of the Constitution of the United States to regulate commerce. (TMEP, Introduction, Constitutional Bases).

As such, Congress has authorized the USPTO to issue registrations for “hemp” products that are legal under the 2018 Farm Bill. Applicant’s claimed goods are legal under the 2018 Farm Bill, as described they contain industrial hemp and not marijuana.

Moreover, the 2018 Farm Bill specifically modified Schedule I of the CSA, and provided an exception for tetrahydrocannabinols in hemp, thereby removing hemp from the CSA.

SEC. 12619. CONFORMING CHANGES TO CONTROLLED SUBSTANCES ACT. (b) Tetrahydrocannabinol — Schedule I, as set forth in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)), is amended in subsection (c)(17) by inserting after “Tetrahydrocannabinols” the following: “, except for tetrahydrocannabinols in hemp (as defined under Section 297A of the Agricultural Marketing Act of 1946)”.

Applicant requests that the Examiner consider the following amendments in Bold to

Applicants' goods.

Class 005 - Medicated lotion for skin, hair, sunburn, face, and body; herbal topical creams, salves, and ointments for the relief of aches and pain; all of the foregoing containing hemp oil; all of the foregoing containing hemp and only naturally occurring amounts of CBD; **all the forgoing derived from industrial hemp with a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent on a dry weight basis.**

Class 034 - Electronic cigarettes; electronic cigarette cartridges; Electronic cigarettes atomizers; Electronic cigarette liquid (e-liquid) comprised of vegetable glycerin; Flavorings, other than essential oils, for use in electronic cigarettes; Cartridges sold filled with chemical flavorings in liquid form for electronic cigarettes; all of the foregoing containing hemp and only naturally occurring amounts of CBD; **all the forgoing derived from industrial hemp with a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent on a dry weight basis.**

Class 35 - Online retail store services in the field of hemp-based products, namely, hemp-based personal care products, anti-aging products, food and nutritional supplements, beverages, edible oils, candles, candies, chocolate, coffee, confectionery, and vaporizers; all of the foregoing containing hemp and only naturally occurring amounts of CBD; **all the forgoing derived from industrial hemp with a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent on a dry weight basis.**

Applicant asserts that the proposed amendments to the description of goods in the subject application, overcome any refusal based on unlawful use in commerce as they mirror the definition of "hemp" in the 2018 Farm Bill.

In summary, Applicant has shown good cause for a remand because at the time of filing the subject appeal there was uncertainty in the legality of extract from "any part" of the hemp plant. As of December 22, 2018, this uncertainty has been resolved in favor of the Applicant. The

Applicant requests that the Board remand the subject application to the Examiner for

reconsideration. In the alternative, the Applicant requests that the Board grant the Applicant time to file an appeal brief on this issue.

Respectfully Submitted,

Date: January 30, 2019

By /s/ Grace R. Neibaron
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