

ESTTA Tracking number: **ESTTA849381**

Filing date: **09/29/2017**

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 has filed a petition to cancel the registration indicated below.

Petitioner Information

Name	Axcentria		
Entity	LLC	Citizenship	Delaware
Address	306 Keystone Drive Telford, PA 18969 UNITED STATES		

Attorney information	Frances M. Jagla and Lane Powell PC LANE POWELL PC 601 S.W. SECOND AVENUE, SUITE 2100 PORTLAND, OR 97204 UNITED STATES Email: trademarks@lanepowell.com, jaglaf@lanepowell.com, ConnorsT@LanePowell.com Phone: 206 223-7267
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Registration Subject to Cancellation

Registration No.	5189751	Registration date	04/25/2017
Registrant	Kalipso Blue LLC P.O. Box 1286 Aiea, HI 96701 UNITED STATES		

Goods/Services Subject to Cancellation


Class 005. First Use: 2016/06/08 First Use In Commerce: 2016/06/08 All goods and services in the class are subject to cancellation, namely: Dietary supplements and food oil supplements

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
Fraud on the USPTO	Trademark Act Section 14(3); In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	5125728	Application Date	02/11/2016
Registration Date	01/17/2017	Foreign Priority Date	NONE

Word Mark	ELEVATE
Design Mark	
Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 2016/06/22 First Use In Commerce: 2016/06/22 smokeless vaporizer inhalers sold filled with essential oils, not for medical or therapeutic use; essential oils not for medical or therapeutic use

Attachments	86905492#TMSN.png(bytes) ELEVATE Cancellation Action.pdf(556077 bytes)
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Signature	/Tiffany Scott Connors/
Name	Tiffany Scott Connors
Date	09/29/2017

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

In the Matter of Trademark Registration No. 5,189,751
For the Mark ELEVATE & Design (stylized)
Date Registered April 25, 2017

<p>Axcentria Pharmaceuticals, LLC, a Delaware limited liability company,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>Kalipso Blue LLC, d/b/a/ Ozia Originals, a Hawaii limited liability company,</p> <p style="text-align: center;">Registrant.</p>	<p>Cancellation No. _____</p> <p style="text-align: center;">PETITION TO CANCEL</p>
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INTRODUCTION AND PARTIES

1. **Axcentria Pharmaceuticals** (“Axcentria”) is a Delaware limited liability company, with its principal place of business at 306 Keystone Drive, Telford, PA 18969. Axcentria is an FDA registered, contract manufacturer of products serving the pharmaceutical, dental, and veterinary products industries.

2. Some of Axcentria’s products are marketed and sold under the trademark ELEVATE. On February 11, 2016, Axcentria filed in the United States Patent and Trademark Office (“PTO”), an application based on intent to use the mark ELEVATE in International Class 03 for “smokeless vaporizer inhalers sold filled with essential oils, not for medical or therapeutic use; essential oils not for medical or therapeutic use.” On January 17, 2017, based on use in commerce commencing at least by June 22, 2016, the PTO granted registration to the ELEVATE mark, and assigned to the mark U.S. Registration No. 5,125,728. Attached hereto Exhibit 1 is a true and correct copy of the registration certificate for Axcentria’s ELEVATE mark.

3. Axcentria’s ELEVATE mark is symbolic of the goodwill established by Axcentria, has acquired a high degree of recognition through continued use for over a year, and expenditures

of time, effort, and money in promotion, and serves as a unique identified of the goods offered by Axcentria.

4. **Kalipso Blue LLC, d/b/a Ozia Originals** (“Ozia”), a Hawaii limited liability company, obtained a registration for the mark ELEVATE (the “Registered Mark”) in International Class 5 for “Dietary supplements and food oil supplements” claiming a first use in commerce as June 8, 2016. The registration issued on April 25, 2017 under Registration No. 5,189,751 (the “Registration”). A true and correct copy of the Registration is attached hereto as Exhibit 2.

5. Axcentria recently learned of Ozia’s Registration for the identical mark ELEVATE. Axcentria believes that it has been and will continue to be damaged by the Registration given that Ozia’s Registration covers similar goods sold through the same marketing channels to the same customers as Axcentria’s goods bearing the ELEVATE trademark. Axcentria believes that Ozia’s use of an identical word mark on similar goods may cause confusion, mistake, and deception.

6. Axcentria hereby petitions to cancel Ozia’s Registration on the grounds that Ozia committed fraud in the procurement of its Registration and during the prosecution of its application for registration and on the ground that Ozia’s Registration is likely to cause confusion, mistake, and deception of Axcentria’s ELEVATE trademark. *See* 15 U.S.C. § 1064; *see also Liberty Trousers Co. v. Liberty & Co.*, 222 USPQ 357, 358 (TTAB 1983) (claim of likelihood of confusion accepted as proper allegation of petitioner’s standing with respect to pleaded grounds of fraud and abandonment).

CANCELLATION BASED ON FRAUD

7. During the prosecution of its application, the PTO sent Ozia a Priority Action on December 19, 2016. A true and correct copy of this Action is attached hereto as Exhibit 3. Among other questions, the Action requested more information about Ozia’s potential “marijuana-related goods.” Specifically, the Action referenced the Controlled Substances Act (“CSA”), 21 U.S.C. §§801-971. *See* 37 C.F.R. §2.69; TMEP §907, which prohibits, among other things, manufacturing, distributing, dispensing, or possessing certain controlled substances, including

marijuana and marijuana-based preparations. 21 U.S.C. §§812, 841(a)(1), 844(a); *see also* 21 U.S.C. §802(16) (defining “[marijuana]”). The CSA also makes it unlawful to sell, offer for sale, or use any facility of interstate commerce to transport drug paraphernalia, i.e., “any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, possession of which is unlawful under [the CSA].” 21 U.S.C. §863. The PTO required Ozia to provide answers to the following questions:

1. Do applicant’s identified goods contain marijuana, cannabis, hemp, marijuana-based, cannabis-based or hemp-based preparations, or marijuana, cannabis or hemp-based extracts or derivatives, synthetic marijuana, or any other illegal controlled substances?
2. Is the hemp in the applied-for goods industrial hemp or is it derived from marijuana?
3. **To the best of the applicant’s knowledge and belief, are the goods on which the mark is used compliant with the federal Controlled Substances Act as outlined above?**

Ex. 3 (emphasis in original).

8. In response to this Action, Ozia responded as follows:

Applicant unequivocally states: 1. The products of the application contain a hemp-based extract which is derived from Industrial Hemp and is NOT derived from cannabis or marijuana. The Industrial Hemp is certified by the Colorado Department of Agriculture and is protected by the 2014 Farm Bill. 2. Kalipso Blue LLC is Industrial Hemp certified by the Colorado Department of Agriculture. 3. The Industrial Hemp used by Applicant is compliant with the CSA and is also Farm Bill compliant.

A true and correct copy of Ozia’s response is attached hereto as Exhibit 4 (formatting in original).

9. Upon information and belief, Ozia derives the goods it sells under the ELEVATE mark from a domestic, whole-plant extract in violation of the CSA. On August 31, 2016, one day after Ozia filed its application for ELEVATE, Ozia stated on its website that:

[w]e have genetically bred together two ridiculously famous cannabis strains (Charlotte’s Web + ACDC) with one top-notch Cannabis sativa hemp plant. The result: A unique and powerful new Industrial Hemp strain was born with complete levels of phyto-nutrients not seen anywhere else!

[and]

Even though our plants are classified as “Industrial Hemp”, they have big buds like typical marijuana plants and are much shorter than their taller hemp cousin. Our PCR Hemp bottles contains the full spectrum of plant terpenes and other benefits found naturally in the plant itself.

See <https://web.archive.org/web/20160825182134/http://kavakavacandy.com/elevate-cbd-oil-by-ozia-originals-ultra-hemp-extract-with-terpenes-and-cannabinoid/> (A true and correct copy of Ozia’s website from August 31, 2016 is attached hereto as Exhibit 5). The website further stated that Ozia’s ELEVATE oils contain “250mg of Pure Full Spectrum CBD [cannabidiol] oil.” *Id.* Ozia also stated a large “Made in USA” graphic again referencing the domestic nature of the goods.

10. Ozia’s website boasted that its goods are derived from cannabis strains and referenced the “marijuana plant”-type qualities of the goods in direct contradiction to Ozia’s response to the PTO’s Action.

11. Ozia’s goods appear to violate the CSA. Under the CSA, there is an exception for cannabidiol (“CBD”) that meets certain criteria. In the 2005 case of *Hemp Industries Association v. Drug Enforcement Administration*, the Ninth Circuit ruled that the Drug Enforcement Administration (“DEA”) cannot regulate naturally-occurring CBD not contained within or derived from marijuana *i.e.*, non-psychoactive hemp products, because non-psychoactive hemp is not included in Schedule I of the CSA. *Hemp Industries Ass’n v. Drug Enforcement Admin.* 357 F.3d 1087 (9th Cir. 2004). As a result, **imported** CBD products derived from processed hemp stalks and seeds may be sold in the U.S. because non-psychoactive hemp “fits within the plainly stated exception to the CSA definition of marijuana,” as it is “derived from the ‘mature stalks.’” *Id.* at 1088.

However, the DEA *can* enforce the CSA against entities that *either* derive CBD from domestically sourced hemp, *or* use more than the stalks and seeds of the plant. By extracting CBD from domestic whole-plant sources, Ozia appears to be operating in violation of the CSA.

12. Therefore, upon information and belief, Ozia submitted a fraudulent statement to the PTO in the procurement of its registration.

CANCELLATION BASED ON LIKELIHOOD OF CONFUSION

13. Axcentria sells “smokeless vaporizer inhalers sold filled with essential oils, not for medical or therapeutic use; [and] essential oils not for medical or therapeutic use” under its ELEVATE mark. Although Ozia described its products to the PTO as “dietary supplements and food oil supplements,” a review of Ozia’s website shows that Ozia really sells essential oils that are nearly the same product as Axcentria’s product. *See* Ex. 5. Though unrelated to the likelihood of confusion analysis, a crucial difference between the products is their legality. Axcentria’s products follow current Good Manufacturing Practices and are produced in a Food & Drug Administration (FDA)-registered facility. Unlike Ozia’s “made in the USA” products, Axcentria’s products are derived exclusively from international agricultural hemp stalks and seeds, thereby making the products compliant with the CSA. In all respects, Axcentria’s CBD products comply with state and federal law.

14. Importantly, the key dates to consider are Axcentria’s application filing date of February 11, 2016, and Ozia’s claimed first use in commerce date of June 8, 2016. (Ozia did not apply for its ELEVATE mark until August 30, 2016.) Axcentria has priority over Ozia with respect to the ELEVATE mark, and Ozia should have been on notice of Axcentria’s application for the *identical* trademark for nearly identical goods. *See e.g., Zirco Corp.*, 21 U.S.P.Q.2d 1542 (T.T.A.B. Nov. 5, 1991) (“it is readily apparent that the constructive use provision was intended to foster the filing of intent-to-use applications, to give an intent-to-use applicant a superior right over anyone adopting a mark after applicant’s filing date (providing the applicant’s mark is ultimately used and registered)”); *Compagnie Gervais Danone*, 89 U.S.P.Q.2d 1251 (T.T.A.B. Jan. 5, 2009) (“A party that has filed an intent-to-use application may rely on the filing date of its application to establish priority.”).

15. In addition to the sight, sound, and meaning of the trademarks and the goods being nearly identical, other likelihood of confusion factors indicate that Ozia's Registration is likely to cause, confusion, mistake, and deception with regard to Axcentria's ELEVATE mark. *See In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). For example, the channels of trade and classes of purchasers for the goods are the same: both Axcentria and Ozia sell their goods online to the same types of consumers. Further, given the relatively low price point for the products, consumers would not be expected to exercise a large degree of care in terms of distinguishing their suppliers.

16. Therefore, Pursuant to Trademark Act § 2(d), 15 U.S.C. § 1052(d), Axcentria asserts that Ozia's Registration, as applied to its goods, so resembles Axcentria's trademark as to be likely to cause confusion, mistake, or deception.

RELIEF REQUESTED

WHEREFORE, Axcentria prays that the Registration be canceled and that this Petition to Cancel be sustained in favor of Axcentria

DATED: September 19, 2017

RESPECTFULLY SUBMITTED,

LANE POWELL PC

By /s/Gregory Wesner

Gregory Wesner
Frances M. Jagla

United States of America

United States Patent and Trademark Office

ELEVATE

Reg. No. 5,125,728

Axcentria Pharmaceuticals, LLC (DELAWARE LIMITED LIABILITY COMPANY)
306 Keystone Drive
Telford, PA 18969

Registered Jan. 17, 2017

Int. Cl.: 3

CLASS 3: smokeless vaporizer inhalers sold filled with essential oils, not for medical or therapeutic use; essential oils not for medical or therapeutic use

Trademark

FIRST USE 6-22-2016; IN COMMERCE 6-22-2016

Principal Register

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

SER. NO. 86-905,492, FILED 02-11-2016
LINDSEY HEATHER BEN, EXAMINING ATTORNEY



Michelle K. Lee

Director of the United States
Patent and Trademark Office

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years*

What and When to File:

- **First Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.
- **Second Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

- You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at <http://www.uspto.gov>.

United States of America

United States Patent and Trademark Office

44/10111

Reg. No. 5,189,751

Registered Apr. 25, 2017

Int. Cl.: 5

Trademark

Principal Register

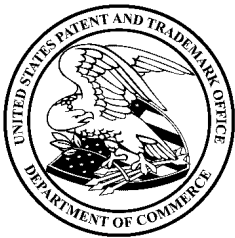
Kalipso Blue LLC (HAWAII LIMITED LIABILITY COMPANY), DBA Ozia ,
P.O. Box 1286
Aiea, HI 96701

CLASS 5: Dietary supplements and food oil supplements

FIRST USE 6-8-2016; IN COMMERCE 6-8-2016

The mark consists of the word "ELEVATE" with an enlarged "V" and an enlarged "A" without the center line.

SER. NO. 87-155,060, FILED 08-30-2016
LINDSEY HEATHER BEN, EXAMINING ATTORNEY



Michelle K. Lee

Director of the United States
Patent and Trademark Office

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

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Requirements in Successive Ten-Year Periods*

What and When to File:

- You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

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To: Kalipso Blue LLC (jameswray@jcwray.com)
Subject: U.S. TRADEMARK APPLICATION NO. 87155060 - ELEVATE - N/A
Sent: 12/19/2016 9:05:41 AM
Sent As: ECOM108@USPTO.GOV
Attachments:

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 87155060

MARK: ELEVATE

87155060

CORRESPONDENT ADDRESS:

JAMES C. WRAY

JAMES C. WRAY

1497 CHAIN BRIDGE ROAD, SUITE 204

MCLEAN, VA 22101

CLICK HERE TO RESPOND TO THIS LETTER:

http://www.uspto.gov/trademarks/teas/response_forms.jsp

[VIEW YOUR APPLICATION FILE](#)

APPLICANT: Kalipso Blue LLC

CORRESPONDENT'S REFERENCE/DOCKET NO :

N/A

CORRESPONDENT E-MAIL ADDRESS:

jameswray@jcwray.com

PRIORITY ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 12/19/2016

DATABASE SEARCH: The trademark examining attorney has searched the USPTO's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; *see* 15 U.S.C. §1052(d).

ISSUES APPLICANT MUST ADDRESS: On December 19, 2016, the trademark examining attorney contacted James C. Wray about the issues below. Applicant must timely respond to these issues. *See* 15 U.S.C. §1062(b); 37 C.F.R. §2.62(a); TMEP §§708, 711.

REQUIREMENT FOR ADDITIONAL INFORMATION – MARIJUANA-RELATED GOODS

To permit proper examination of the application, applicant must submit additional information about the goods. *See* 37 C.F.R. §2.61(b); TMEP §814. The requested information should include fact sheets, brochures, advertisements, and/or similar materials relating to the goods. If such materials are not available, applicant must provide a detailed factual description of the goods. Any information submitted in response to this requirement must clearly and accurately indicate the nature of the goods identified in the application.

In addition, applicant must submit a written statement indicating whether the goods identified in the application comply with the Controlled Substances Act (CSA), 21 U.S.C. §§801-971. *See* 37 C.F.R. §2.69; TMEP §907. The CSA prohibits, among other things, manufacturing, distributing, dispensing, or possessing certain controlled substances, including marijuana and marijuana-based preparations. 21 U.S.C. §§812, 841(a)(1), 844(a); *see also* 21 U.S.C. §802(16) (defining “[marijuana]”). The CSA also makes it unlawful to sell, offer for sale, or use any facility of interstate commerce to transport drug paraphernalia, i.e., “any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, possession of which is unlawful under [the CSA].” 21 U.S.C. §863.

Finally, applicant must provide written responses to the following questions:

1. Do applicant’s identified goods contain marijuana, cannabis, hemp, marijuana-based, cannabis-based or hemp-based preparations, or marijuana, cannabis or hemp-based extracts or derivatives, synthetic marijuana, or any other illegal controlled substances?
2. Is the hemp in the applied-for goods industrial hemp or is it derived from marijuana?
3. **To the best of the applicant’s knowledge and belief, are the goods on which the mark is used compliant with the federal Controlled Substances Act as outlined above?**

Failure to satisfactorily respond to a requirement for information is a ground for refusing registration. *See In re Cheezwhse.com, Inc.*, 85 USPQ2d 1917, 1919 (TTAB 2008); *In re Garden of Eatin’ Inc.*, 216 USPQ 355, 357 (TTAB 1982); TMEP §814.

Please note that merely stating that information about the goods is available on applicant’s website is an inappropriate response to the above requirement and is insufficient to make the relevant information properly of record. *See In re Planalytics, Inc.*, 70 USPQ2d 1453, 1457-58 (TTAB 2004).

Applicant is advised that, upon consideration of the information provided by applicant in response to the above requirement, registration of the applied-for mark may be refused on the ground that the mark, as used/intended to be used in connection with the identified goods, is not lawful use in commerce. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127. Use of a mark in commerce must be lawful use to be the basis for federal registration of the mark. *Gray v. Daffy Dan’s Bargaintown*, 823 F.2d 522, 526, 3 USPQ2d 1306, 1308 (Fed. Cir. 1987); *see* 15 U.S.C. §§1051, 1127; 37 C.F.R. §2.69; *In re Midwest Tennis & Track Co.*, 29 USPQ2d 1386, 1386 n.2 (TTAB 1993); *In re Stellar Int’l, Inc.*, 159 USPQ 48, 50-51 (TTAB 1968); TMEP §907.

IDENTIFICATION AND CLASSIFICATION OF GOODS

Identification of Goods

The identification of goods is indefinite and must be clarified to specify the type of “food oils,” e.g., “essential oils for food flavorings” in Class 3, “olive oil for food” in Class 29. *See* 37 C.F.R. §2.32(a)(6); TMEP §1402.01.

Applicant may adopt the following identification, if accurate. The wording that appears in **bold** and/or *italics* below represents the suggested changes. Any wording that is crossed out represents matter that must be deleted from the identification.

International Class 3: Essential oils for food flavorings

International Class 5: Dietary supplement

International Class 29: Olive oil for food

Applicant’s goods may be clarified or limited, but may not be expanded beyond those originally itemized in the application or as acceptably amended. *See* 37 C.F.R. §2.71(a); TMEP §1402.06. Applicant may clarify or limit the identification by inserting qualifying language or deleting items to result in a more specific identification; however, applicant may not substitute different goods or add goods not found or encompassed by those in the original application or as acceptably amended. *See* TMEP §1402.06(a)-(b). The scope of the goods sets the outer limit for any changes to the identification and is generally determined by the ordinary meaning of the wording in the identification. TMEP §§1402.06(b), 1402.07(a)-(b). Any acceptable changes to the goods will further limit scope, and once goods are deleted, they are not permitted to be reinserted. TMEP §1402.07(e).

For assistance with identifying and classifying goods in trademark applications, please see the USPTO's online searchable [U.S. Acceptable Identification of Goods and Services Manual](#). See TMEP §1402.04.

Classification of Goods

If applicant adopts the suggested amendment of the goods, then applicant must amend the classification to International Classes 3, 5, and/or 29. See 37 C.F.R. §§2.32(a)(7), 2.85; TMEP §§805, 1401.

Additional Filing Fee(s) Needed if Adopting Additional International Class(es)

The fee for adding classes to a TEAS Reduced Fee (RF) application is \$275 per class. See 37 C.F.R. §§2.6(a)(1)(iii), 2.23(a). For information regarding the requirements for maintaining the lower TEAS RF fee and, if these requirements are not satisfied, for adding classes at a higher fee by TEAS and in a paper submission, please go to <http://www.uspto.gov/trademark/laws-regulations/how-satisfy-requirements-multiple-class-trademark-electronic-application>.

RESPONSE GUIDELINES

For this application to proceed further, applicant must explicitly address each refusal and/or requirement raised in this Office action. If the action includes a refusal, applicant may provide arguments and/or evidence as to why the refusal should be withdrawn and the mark should register. Applicant may also have other options for responding to a refusal and should consider such options carefully. To respond to requirements and certain refusal response options, applicant should set forth in writing the required changes or statements. For more information and general tips on responding to USPTO Office actions, response options, and how to file a response online, see “[Responding to Office Actions](#)” on the USPTO's website.

If applicant does not respond to this Office action within six months of the issue/ mailing date, or responds by expressly abandoning the application, the application process will end and the trademark will fail to register. See 15 U.S.C. §1062(b); 37 C.F.R. §§2.65(a), 2.68(a); TMEP §§718.01, 718.02. Additionally, the USPTO will not refund the application filing fee, which is a required processing fee. See 37 C.F.R. §§2.6(a)(1)(i)-(iv), 2.209(a); TMEP §405.04.

Where the application has been abandoned for failure to respond to an Office action, applicant's only option would be to file a timely petition to revive the application, which, if granted, would allow the application to return to active status. See 37 C.F.R. §2.66; TMEP §1714. There is a \$100 fee for such petitions. See 37 C.F.R. §§2.6, 2.66(b)(1).

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. See 37 C.F.R. §§2.62(c), 2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. See TMEP §§705.02, 709.06.

TEAS PLUS OR TEAS REDUCED FEE (TEAS RF) APPLICANTS – TO MAINTAIN LOWER FEE, ADDITIONAL REQUIREMENTS MUST BE MET, INCLUDING SUBMITTING DOCUMENTS ONLINE: Applicants who filed their application online using the lower-fee TEAS Plus or TEAS RF application form must (1) file certain documents online using TEAS, including responses to Office actions (see TMEP §§819.02(b), 820.02(b) for a complete list of these documents); (2) maintain a valid e-mail correspondence address; and (3) agree to receive correspondence from the USPTO by e-mail throughout the prosecution of the application. See 37 C.F.R. §§2.22(b), 2.23(b); TMEP §§819, 820. TEAS Plus or TEAS RF applicants who do not meet these requirements must submit an additional processing fee of \$50 per international class of goods. 37 C.F.R. §§2.6(a)(1)(v), 2.22(c), 2.23(c); TMEP §§819.04, 820.04. However, in certain situations, TEAS Plus or TEAS RF applicants may respond to an Office action by authorizing an examiner's amendment by telephone or e-mail without incurring this additional fee.

/Lindsey H. Ben/

Lindsey H. Ben
Trademark Examining Attorney
Law Office 108
(571) 272-4239
Lindsey.Ben@uspto.gov

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/ mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

To: Kalipso Blue LLC (jameswray@jcwray.com)
Subject: U.S. TRADEMARK APPLICATION NO. 87155060 - ELEVATE - N/A
Sent: 12/19/2016 9:05:45 AM
Sent As: ECOM108@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

**IMPORTANT NOTICE REGARDING YOUR
U.S. TRADEMARK APPLICATION**

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED
ON **12/19/2016** FOR U.S. APPLICATION SERIAL NO. 87155060

Please follow the instructions below:

(1) TO READ THE LETTER: Click on this [link](#) or go to <http://tsdr.uspto.gov>, enter the U.S. application serial number, and click on "Documents."

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

(2) TIMELY RESPONSE IS REQUIRED: Please carefully review the Office action to determine (1) how to respond, and (2) the applicable response time period. Your response deadline will be calculated from **12/19/2016** (or sooner if specified in the Office action). For information regarding response time periods, see <http://www.uspto.gov/trademarks/process/status/responsetime.jsp>.

Do NOT hit "Reply" to this e-mail notification, or otherwise e-mail your response because the USPTO does NOT accept e-mails as responses to Office actions. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System (TEAS) response form located at http://www.uspto.gov/trademarks/teas/response_forms.jsp.

(3) QUESTIONS: For questions about the contents of the Office action itself, please contact the assigned trademark examining attorney. For *technical* assistance in accessing or viewing the Office action in the Trademark Status and Document Retrieval (TSDR) system, please e-mail TSDR@uspto.gov.

WARNING

Failure to file the required response by the applicable response deadline will result in the ABANDONMENT of your application. For more information regarding abandonment, see <http://www.uspto.gov/trademarks/basics/abandon.jsp>.

PRIVATE COMPANY SOLICITATIONS REGARDING YOUR APPLICATION: Private companies **not** associated with the USPTO are using information provided in trademark applications to mail or e-mail trademark-related solicitations. These companies often use names that closely resemble the USPTO and their solicitations may look like an official government document. Many solicitations require that you pay

“fees.”

Please carefully review all correspondence you receive regarding this application to make sure that you are responding to an official document from the USPTO rather than a private company solicitation. All official USPTO correspondence will be mailed only from the “United States Patent and Trademark Office” in Alexandria, VA; or sent by e-mail from the domain “@uspto.gov.” For more information on how to handle private company solicitations, see http://www.uspto.gov/trademarks/solicitation_warnings.jsp.

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	87155060
LAW OFFICE ASSIGNED	LAW OFFICE 108
MARK SECTION	
MARK FILE NAME	https://tmng-al.uspto.gov/resting2/api/img/87155060/large
LITERAL ELEMENT	ELEVATE
STANDARD CHARACTERS	NO
USPTO-GENERATED IMAGE	NO
ARGUMENT(S)	
<p>IN THE UNITED STATES PATENT AND TRADEMARK OFFICE In re Application of Kalipso Blue LLC Serial No. 87/155,060 Lindsey H. Ben Trademark Attorney Filed: August 30, 2016 Law Office 108 Mark: ELEVATE RESPONSE In response to the office action dated December 19, 2016, kindly change the identification of goods to read: Dietary supplements and food oil supplements in International Class 3. Applicant unequivocally states: 1. The products of the application contain a hemp-based extract which is derived from Industrial Hemp and is NOT derived from cannabis or marijuana. The Industrial Hemp is certified by the Colorado Department of Agriculture and is protected by the 2014 Farm Bill. 2. Kalipso Blue LLC is Industrial Hemp certified by the Colorado Department of Agriculture. 3. The Industrial Hemp used by Applicant is compliant with the CSA and is also Farm Bill compliant. Applicant's goods are made and manufactured in the USA. This completes all requirements for allowance and publication. CONCLUSION Reconsideration, allowance and publication are requested. Respectfully, /James C. Wray/ James C. Wray, VA Bar No. 08,188 1497 Chain Bridge Road Suite 204 McLean, Virginia 22101 Tel: (703) 442-4800 Fax: (703) 448-7397 December 23, 2016</p>	
GOODS AND/OR SERVICES SECTION (current)	
INTERNATIONAL CLASS	005
DESCRIPTION	Dietary supplement and food oils
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 06/08/2016
FIRST USE IN COMMERCE DATE	At least as early as 06/08/2016
GOODS AND/OR SERVICES SECTION (proposed)	
INTERNATIONAL CLASS	005
TRACKED TEXT DESCRIPTION	
Dietary supplement and food oils ; Dietary supplements and food oil supplements	
FINAL DESCRIPTION	Dietary supplements and food oil supplements
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 06/08/2016
FIRST USE IN COMMERCE DATE	At least as early as 06/08/2016
SIGNATURE SECTION	
RESPONSE SIGNATURE	/James C. Wray/

SIGNATORY'S NAME	James C. Wray
SIGNATORY'S POSITION	Attorney of Record
SIGNATORY'S PHONE NUMBER	7034424800
DATE SIGNED	12/23/2016
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Fri Dec 23 08:48:28 EST 2016
TEAS STAMP	USPTO/ROA-XXX.XX.XX.XXX-2 0161223084828022695-87155 060-5704bd862f58d4de2638f 2c073d1456efeb2d3982d7714 e1572dc62b868d148b1-N/A-N /A-20161223084532192678

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PTO Form 1957 (Rev 10/2011)

OMB No. 0651-0050 (Exp 07/31/2017)

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. **87155060** ELEVATE (Stylized and/or with Design, see <https://tmng-al.uspto.gov/resting2/api/img/87155060/large>) has been amended as follows:

ARGUMENT(S)

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

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE In re Application of Kalipso Blue LLC Serial No. 87/155,060 Lindsey H. Ben Trademark Attorney Filed: August 30, 2016 Law Office 108 Mark: ELEVATE RESPONSE In response to the office action dated December 19, 2016, kindly change the identification of goods to read: Dietary supplements and food oil supplements in International Class 3. Applicant unequivocally states: 1. The products of the application contain a hemp-based extract which is derived from Industrial Hemp and is NOT derived from cannabis or marijuana. The Industrial Hemp is certified by the Colorado Department of Agriculture and is protected by the 2014 Farm Bill. 2. Kalipso Blue LLC is Industrial Hemp certified by the Colorado Department of Agriculture. 3. The Industrial Hemp used by Applicant is compliant with the CSA and is also Farm Bill compliant. Applicant's goods are made and manufactured in the USA. This completes all requirements for allowance and publication. CONCLUSION Reconsideration, allowance and publication are requested. Respectfully, /James C. Wray/ James C. Wray, VA Bar No. 08,188 1497 Chain Bridge Road Suite 204 McLean, Virginia 22101 Tel: (703) 442-4800 Fax: (703) 448-7397 December 23, 2016

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 005 for Dietary supplement and food oils

Original Filing Basis:

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 06/08/2016 and first used in commerce at least as early as 06/08/2016 , and is now in use in such commerce.

Proposed:

Tracked Text Description: ~~Dietary supplement and food oils~~; [Dietary supplements and food oil supplements](#)

Class 005 for Dietary supplements and food oil supplements

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 06/08/2016 and first used in commerce at least as early as 06/08/2016 , and is now in use in such commerce.

SIGNATURE(S)

Response Signature

Signature: /James C. Wray/ Date: 12/23/2016

Signatory's Name: James C. Wray

Signatory's Position: Attorney of Record

Signatory's Phone Number: 7034424800

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's/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 owner/holder 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's/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.

Serial Number: 87155060

Internet Transmission Date: Fri Dec 23 08:48:28 EST 2016

TEAS Stamp: USPTO/ROA-XXX.XX.XX.XXX-2016122308482802

2695-87155060-5704bd862f58d4de2638f2c073

d1456efeb2d3982d7714e1572dc62b868d148b1-

N/A-N/A-20161223084532192678

A better Hemp Oil

Charlotte's Web + ACDC



We are not just another CBD Oil ~ In fact, we are a Phytocannabinoid Rich Hemp Oil
With over 5 years of development, we have genetically bred together two ridiculously famous cannabis strains (Charlotte's Web + ACDC) with one top-notch Cannabis sativa hemp plant. The result: A unique and powerful new plant strain was born with massive amounts of full-profile

...a unique and powerful new plant strain was born with massive amounts of their primary cannabinoids (where Cannabidiol is dominant), terpenes and Omegas with a refinement process that is second to none in the industry. Did we mention there is no THC!



EleVate me

*Let's Go
I'm ready to EleVate*

Industrial Hemp with a Cannabis profile & big buds.

How'd we do it?

A **CHARLOTTE'S WEB**
This potent CBD strain was made famous for greatly limiting Charlotte's (a little girl) grand mal seizures.

B **ACDC**
this unique strain has MASSIVE amounts of full-spectrum cannabidiol, terpenes and Omegas.

ELEVATE
Ultra Premium Hemp Oil



Charlotte's Web
Up to 20% CBD
and just 0.5% THC

ACDC
Up to 24% CBD
and just 1% THC

Cannabis Saliva
one of our little
genetic secrets

A New Strain is born!
Get all the benefits from a full-spectrum
profile typically found from top cannabis
plants. Our cutting-edge extraction
process takes out the remaining THC
making our product **THC-FREE**.

FEEL THE DIFFERENCE!

Industrial Hemp with a complete "Full-Spectrum" and Big Buds.

Even though our plants are classified as "Industrial Hemp", they have big buds like typical marijuana plants and are much shorter than their taller hemp





cousin. Our Phytocannabinoid Rich Hemp Oil is CBD dominant in our EleVAte bottles but our oil contains the full spectrum of plant terpenes and other cannabinoids found naturally.



Shop now

*Ahhh
I'm ready to EleVAte*

Our Formula
Top of the game!

Optimized for

Full Spectrum CBD

Our formula is optimized to manage inflammation and pain relief naturally through

Each bottle contains 250mg of Pure Full Spectrum CBD oil derived from a proprietary

Our formula is optimized to manage inflammation and pain relief naturally through CBD (Cannabidiol), terpenes, essential fatty acids (Omega 3,6,9) as well as phytochemicals for stress and anxiety relief.

Made in USA

100% Colorado grown Hemp. Made and bottled in USA (no untrustworthy oversea supplier)

Quality assurance

Quality assurance testing is done in-house and verified through independent, third-party labs using HPLC which ensures a consistent product verified for potency and purity in each and every bottle.

Each bottle contains 250mg of Pure Full Spectrum CBD oil derived from a proprietary CO2 (supercritical) extraction process

Our awesome tribe has spoken! See full Amazon reviews here

Valerie: Much better than other CBD oils

I'm a big fan of Ozia Original's Kava Candy, so very excited to try this new product from the same company. I've used the oil twice a day for three days in total. With one minor blip in between when I sampled a specific oil from another company which made me feel kinda bad! When those effects wore off, I gave Elevate another try and it really did help alleviate some of the anxiety from this "other product". Thank goodness this product does not contain THC!

I've tried CBD oils from other companies and not really had any success so I wasn't entirely hopeful that this product would be any different. BUT it is. I think the sciatic pain from piriformis syndrome is a little less than it was yesterday and it's been constantly the same level of ache for 3-4 weeks. I consider that a definite improvement. Still hoping it will help with fascia pain in my neck and shoulders but I think that will take several more days.

The taste is surprisingly good. You still get that syrupy tarry feel right at the beginning but almost immediately the peppermint takes over and I can hold the oil under my tongue for quite some time before swallowing. I do feel a little dizziness about 10 minutes in, but that soon dissipates and it has lessened each time I've taken the oil.

Because I'm so sensitive to anything I put in my body I have actually halved the dose - half a dropper rather than one dropper, but eventually I'll give the full dropperful a try. I think the fact that this product is extracted from distillate, THCa from hemp, rather than from the hemp seed, is a plus. Oh, and the not having any THC in the product is a definite plus.