

ESTTA Tracking number: **ESTTA1170517**

Filing date: **11/04/2021**

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	Squirrel's Nut Butter, LLC		
Entity	limited liability company	Citizenship	ARIZONA
Address	55 PINE DEL DRIVE FLAGSTAFF, AZ 86005 UNITED STATES		

Attorney information	ERYN Y. TRUONG LOZA & LOZA, LLP 305 N. SECOND AVE., #127 UPLAND, CA 91786 UNITED STATES Primary Email: erynt-pto@lozaip.com (917) 672-3712		
Docket Number	AIPA-454		

Registration Subject to Cancellation

Registration No.	5558569	Registration date	09/11/2018
International Registration No.	NONE	International Registration Date	NONE
Registrant	SQUIRREL INTERNATIONAL LIMITED 3RD FLOOR 207 REGENT STREET LONDON, W1B3HH UNITED KINGDOM		


Goods/Services Subject to Cancellation

Class 003. First Use: 0 First Use In Commerce: 0 All goods and services in the class are subject to cancellation, namely: Perfumery; Essential oils for personal use; Cosmetics and make-up; Eye make-up; Eyeliners; Blushers; Lipsticks; Hair lotions; Non-medicated soaps for hands, face and body

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
Abandonment	Trademark Act Section 14(3)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	88887518	Application Date	04/25/2020
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SQUIRREL'S NUT BUTTER		
Design Mark			
Description of Mark	The mark consists of an image of a squirrel running. To the right of the image is the word "SQUIRREL'S" in a stylized font. Directly beneath is the wording "NUT BUTTER" in a stylized font.		
Goods/Services	<p>Class 003. First use: First Use: 2015/07/20 First Use In Commerce: 2015/07/20 Non-medicated balms for use on skin; non-medicated skin care preparations, namely, anti-chafing salve; skin care preparations namely, body balm; all of the foregoing relating to anti-chafing and skinrestoration</p> <p>Class 035. First use: First Use: 2016/02/01 First Use In Commerce: 2016/02/01 On-line retail store services featuringnon-medicated balms for use on skin, non-medicated skin care preparations, namely, anti-chafing salve and skin care preparations namely, body balm; all of the foregoing relating to anti-chafing and skin restoration</p>		

Attachments	88887518#TMSN.png(bytes) AIPA-454_Petition_for_Cancellation.pdf(48255 bytes) Exhibit A - SNB Website.pdf(625551 bytes) Exhibit B - SQUIRRELS NUT BUTTER - status 88887518.pdf(65355 bytes) Exhibit C - OA.pdf(60704 bytes) Exhibit D - SQUIRREL - reg cert.status - 87500099.pdf(95392 bytes) Exhibit E- Internet Archive.pdf(3132489 bytes)
-------------	--

Signature	/Eryn Y. Truong/
Name	Eryn Y. Truong
Date	11/04/2021

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

In the Matter of Registration No. 5,558,569
 For the mark: SQUIRREL
 Registered: September 11, 2018

-----X
 SQUIRREL’S NUT BUTTER LLC, :
 : Cancellation No. _____
 Petitioner, :
 v. :
 :
 SQUIRREL INTERNATIONAL LIMITED, :
 :
 Respondent. :
 -----X

PETITION FOR CANCELLATION

Squirrel’s Nut Butter, LLC ("Petitioner"), a limited liability company organized and existing under the laws of Arizona with a principal place of business at 55 Pine Del Drive, Flagstaff, Arizona 86005, believes that it will be damaged by Squirrel International Limited's ("Respondent") continued registration of U.S. Trademark Registration No. 5,558,569 for the mark SQUIRREL in connection with “Perfumery; Essential oils for personal use; Cosmetics and make-up; Eye make-up; Eyeliners; Blushers; Lipsticks; Hair lotions; Non-medicated soaps for hands, face and body” in International Class 3 (the "Respondent Registration"), and hereby petitions for cancellation pursuant to Section 14(1) of the Lanham Trademark Act of 1946 ("Lanham Act"), 15 U.S.C. § 1064. As grounds for cancellation, Petitioner alleges as follows:

1. Petitioner has been in the business of offering, selling and distributing various skin care products since at least 2015.

2. Petitioner has used the mark SQUIRREL'S NUT BUTTER in U.S. commerce in connection with its sale, offering for sale, marketing, advertising, promotion, and distribution of its skin care products since at least as early as July 20, 2015, and in connection with its online retail store featuring skin care products since at least as early as February 1, 2016. Attached as Exhibit "A" are screenshot of Petitioner's website showing use of the SQUIRREL'S NUT BUTTER mark on its goods and services.

3. Petitioner has expended substantial time, money, and resources marketing, advertising, and promoting its skin care products offered under the SQUIRREL NUT BUTTER mark.

4. As a result of its widespread, continuous and exclusive use of the SQUIRREL NUT BUTTER mark, consumers in the United States have come to associate the SQUIRREL'S NUT BUTTER mark, as used in connection with skin care products and online retail services featuring skin care products, with Petitioner.

5. Petitioner therefore is the owner of common law rights in the SQUIRREL'S NUT BUTTER mark in connection with its skin care products and online retail services featuring skin care products.

6. Petitioner has filed Application Serial No. 88/887,518 (the "Petitioner Application") for the SQUIRREL'S NUT BUTTER mark in connection with "Non-medicated balms for use on skin; non-medicated skin care preparations, namely, anti-chafing salve; skin care preparations namely, body balm; all of the foregoing relating to anti-chafing and skin restoration" in International Class 3 and "On-line retail store services featuring non-medicated balms for use on skin, non-medicated skin care preparations, namely, anti-chafing salve and skin care preparations namely, body balm; all of the foregoing relating to anti-chafing and skin

restoration” in International Class 35. The Petitioner Application is pending. Attached hereto as Exhibit “B” is a true and correct printout from the United States Patent and Trademark Office ("USPTO") electronic database reflecting the pending Petitioner Application.

7. In a final office action dated May 6, 2021 (the "Office Action"), the USPTO cited the Respondent Registration against the Petitioner Application, asserting its position that registration of the SQUIRREL’S NUT BUTTER mark is likely to cause confusion with the SQUIRREL mark, thereby interfering with the Petitioner Application and causing harm to Petitioner. Petitioner therefore has a real interest in seeking cancellation of the Respondent Registration and the entitlement to a statutory cause of action to bring this action. Attached hereto as Exhibit “C” is a true and correct copy of the Office Action.

8. Respondent, with an address of 207 Regent Street, 3rd Floor, London W1B3HH, is the current listed owner of the Respondent Registration.

9. On June 21, 2017, Respondent filed Application Serial No. 87/500,099 (the "Respondent Application") to register the SQUIRREL mark in, *inter alia*, International Class 3 in connection with “Perfumery; essential oils; cosmetics; make-up; eye make-up; eyeliners; blushers; lipsticks; hair lotions; soaps”, which was later amended on March 27, 2018, in response to an office action to “Perfumery; Essential oils for personal use; Cosmetics and make-up; Eye make-up; Eyeliners; Blushers; Lipsticks; Hair lotions; Non-medicated soaps for hands, face and body”.

10. The Respondent Application was based on Respondent’s foreign trademark application pursuant to Section 44(d) of the Lanham Act, 15 U.S.C. § 1126(d).

11. In the Respondent Application on May 27, 2018, Respondent submitted a copy of Respondent's trademark registration issued in the United Kingdom under Section 44(e) of the

Lanham Act, 15 U.S.C. § 1126(e), which became the basis for the Respondent Registration at issue in this proceeding. Attached hereto as Exhibit “D” is a true and correct copy of the Respondent Registration and printout from the USPTO electronic database reflecting the status of the Respondent Registration.

12. Petitioner’s SQUIRREL NUT BUTTER mark has priority over Respondent’s SQUIRREL mark because Petitioner’s first use date for the SQUIRREL NUT BUTTER mark predates the filing date of the Respondent Application, and it predates the foreign filing date claimed in Respondent’s Application.

13. Petitioner’s priority dates back to at least July 20, 2015.

14. The Internet Archive has documented Petitioner’s use of the SQUIRREL NUT BUTTER mark on Petitioner’s goods and services as early as August 3, 2016. Attached hereto as Exhibit “E” is a true and correct printout of the earliest documentation from the Internet Archive.

15. The Respondent Application was filed with the USPTO on June 21, 2017, and the foreign application’s filing date was December 21, 2016. Both dates are after Petitioner’s first use date. *See* Exhibit “D” printout from the USPTO electronic database showing information details of the Respondent Registration.

16. Respondent’s SQUIRREL mark resembles Petitioner’s SQUIRREL NUT BUTTER mark.

17. The goods covered by the Respondent Registration are similar to the goods offered by Petitioner under the SQUIRREL NUT BUTTER mark.

18. Respondent's registration should be cancelled because it consists of or comprises a mark which so resembles Petitioner's previously used SQUIRREL NUT BUTTER mark as to

be likely, when used in connection with Respondent's goods, to cause confusion, mistake, or deception within the meaning of 15 U.S.C. § 1052(d), and to cause damage to Petitioner thereby.

19. As a further basis for cancellation, on information and belief, as of today, Respondent has not used the SQUIRREL mark in connection with any of the goods identified in International Class 3, namely, “Perfumery; Essential oils for personal use; Cosmetics and make-up; Eye make-up; Eyeliners; Blushers; Lipsticks; Hair lotions; Non-medicated soaps for hands, face and body”.

20. Upon information, Respondent has no intent to use the SQUIRREL mark in connection with any of the goods identified in International Class 3, namely, “Perfumery; Essential oils for personal use; Cosmetics and make-up; Eye make-up; Eyeliners; Blushers; Lipsticks; Hair lotions; Non-medicated soaps for hands, face and body”.

21. Nonuse of a mark for three consecutive years is prima face evidence of abandonment. 15 U.S.C. § 1127.

22. Respondent has abandoned the SQUIRREL mark, as depicted in the Respondent Registration, within the meaning of Section 45 of the Lanham Act, 15 U.S.C. § 1127, because of Respondent’s non-use of the SQUIRREL mark in connection with “Perfumery; Essential oils for personal use; Cosmetics and make-up; Eye make-up; Eyeliners; Blushers; Lipsticks; Hair lotions; Non-medicated soaps for hands, face and body” with no intention to use the SQUIRREL mark on such goods as depicted in the Respondent Registration.

23. Because Respondent has abandoned the SQUIRREL mark, the Respondent Registration is subject to cancellation under Section 14 of the Lanham Act, 15 U.S.C. § 1064.

24. Based on the foregoing, the Respondent Registration in International Class 3 should be cancelled in its entirety.

25. Petitioner has been and will continue to be harmed by the Respondent Registration because it is preventing Petitioner from obtaining a registration for its SQUIRREL NUT BUTTER mark.

WHEREFORE, Petitioner respectfully prays that its cancellation be sustained and that Respondent's Registration No. 5,558,569 in International Class 3 be cancelled in its entirety.

Dated this 4th day of November, 2021.

Respectfully submitted,
LOZA & LOZA, LLP

By: 
Eryn Y. Truong, Esq.
305 North Second Avenue, #127
Upland, CA 91786
Tel/Fax: (917) 672-3712
Email: Eryn.Truong@lozaip.com
ErynT-pto@lozip.com

Attorneys for Petitioner

CERTIFICATE OF TRANSMISSION

I hereby certify that this Petition for Cancellation is being transmitted to the United States Patent and Trademark Office via ESTTA with fees paid on the date shown.

Pursuant to 37 C.F.R. § 2.113, the Trademark Trial and Appeal Board shall effect service of foregoing upon the Respondent.

A handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to read "Angela King".

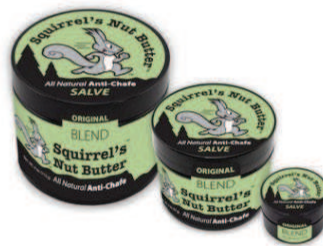
EXHIBIT “A”

Our Products

Our all natural anti chafing and skin restoration salves protect your skin from damage like chafing and blisters, and repair and restore dry or damaged skin. Our sticks and tubs are used by athletes to avoid chafing and blisters, and by anyone, anywhere to improve skin health.



Anti-Chafe Sticks
FROM \$7.45



Anti-Chafe Tubs
FROM \$2.75



Happie Toes Foot Salve
FROM \$2.75



Vegan Anti-Chafe Salve
FROM \$12.95



Saddle Butter Cycling Salve
FROM \$2.75

Stay In Touch

Let's stop chafing and painful skin damage for good, together. Join our newsletter to get the latest deals, product updates, and athlete insights.

@squirrelsnutbut

We are stoked to be a sponsor for the plant-abulous, Team @veganpoweredath for 2022!

Remember if you're a Vegan powered athlete, we have a salve for you!

Welcome to the family, Team VPA! 🌱 #sponsor#teamVPA

POSTED ON NOV 3, 2021

MAIN MENU

[HOME](#)

[SHOP](#)

[ABOUT US](#)

[HANDY STUFF](#)

FOOTER MENU

[Search](#)

[SNB Africa](#)

[SNB Australasia](#)

[SNB Canada](#)

[SNB UK & Ireland](#)

[SNB Netherlands](#)

SOCIAL

[Facebook](#)

[Twitter](#)

[Instagram](#)

PHOTOGRAPHY & LOCATION

Myke Hermsmeijer's photographs have appeared in print at *Outside*, *Ultrarunning*, *Runner's World* and *Bicycling*. Some of his photos appear on this site.

Visit us any weekday: 506 N Grant Street, Suite N, Flagstaff, Arizona 86004 USA.

© 2021. All rights reserved. Launch Theme by Pixel Union. Powered by Shopify.



EXHIBIT “B”

Generated on: This page was generated by TSDR on 2021-11-04 16:09:50 EDT

Mark: SQUIRREL'S NUT BUTTER



US Serial Number: 88887518

Application Filing Date: Apr. 25, 2020

Register: Principal

Mark Type: Trademark, Service Mark

TM5 Common Status Descriptor:



LIVE/APPLICATION/Under Examination

The trademark application has been accepted by the Office (has met the minimum filing requirements) and that this application has been assigned to an examiner.

Status: A final Office action refusing registration has been sent (issued) because the applicant neither satisfied nor overcame all requirements and/or refusals previously raised. The applicant may respond by filing (1) a request for reconsideration; and/or (2) an appeal to the Trademark Trial and Appeal Board. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date: May 06, 2021

Mark Information

Mark Literal Elements: SQUIRREL'S NUT BUTTER

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of an image of a squirrel running. To the right of the image is the word "SQUIRREL'S" in a stylized font. Directly beneath is the wording "NUT BUTTER" in a stylized font.

Color(s) Claimed: Color is not claimed as a feature of the mark.

Disclaimer: "BUTTER"

Design Search Code(s): 03.09.02 - Woodchuck; Wolverines; Badgers; Beavers; Chipmunks; Ferrets; Groundhogs; Weasels; Squirrels, chipmunks, skunks, raccoons, badgers, woodchucks, beavers, sables, minks and the like; Squirrels; Skunks; Sables; Raccoons; Possums; Otters; Opossums; Mongoose; Minks
03.09.26 - Costumed small mammals, rodents, kangaroos, wallabies
26.17.07 - Propulsion, lines depicting; Speed, lines depicting; Wind, lines depicting; Lines depicting speed, propulsion, heat or wind; Heat, lines depicting

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (()) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Non-medicated balms for use on skin; non-medicated skin care preparations, namely, anti-chafing salve; skin care preparations namely, body balm; all of the foregoing relating to anti-chafing and skin restoration

International Class(es): 003 - Primary Class

U.S Class(es): 001, 004, 006, 050, 051, 052

Class Status: ACTIVE

Basis: 1(a)

First Use: Jul. 20, 2015

Use in Commerce: Jul. 20, 2015

For: On-line retail store services featuring non-medicated balms for use on skin, non-medicated skin care preparations, namely, anti-chafing salve and skin care preparations namely, body balm; all of the foregoing relating to anti-chafing and skin restoration

International Class(es): 035 - Primary Class

U.S Class(es): 100, 101, 102

Class Status: ACTIVE

Basis: 1(a)

First Use: Feb. 01, 2016

Use in Commerce: Feb. 01, 2016

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Squirrel's Nut Butter LLC

Owner Address: 55 Pine Del Drive
Flagstaff, ARIZONA UNITED STATES 86005

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: ARIZONA

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Eryn Y. Truong

Docket Number: AIPA-6226A

Attorney Primary Email Address: erynt-pt@lozaip.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: Eryn Y. Truong
LOZA & LOZA, LLP
305 North 2nd Avenue #127
Upland, CALIFORNIA UNITED STATES 91786

Phone: 917-672-3712

Fax: 917-672-3712

Correspondent e-mail: erynt-pt@lozaip.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Oct. 27, 2021	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Oct. 27, 2021	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Oct. 27, 2021	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Oct. 27, 2021	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Oct. 27, 2021	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
May 06, 2021	NOTIFICATION OF FINAL REFUSAL EMAILED	
May 06, 2021	FINAL REFUSAL E-MAILED	
May 06, 2021	FINAL REFUSAL WRITTEN	92985
May 05, 2021	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
May 04, 2021	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
May 04, 2021	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Dec. 17, 2020	ASSIGNED TO EXAMINER	92985
Dec. 17, 2020	NOTIFICATION OF PRIORITY ACTION E-MAILED	6326
Dec. 17, 2020	PRIORITY ACTION E-MAILED	6326
Dec. 17, 2020	PRIORITY ACTION WRITTEN	77656
Dec. 17, 2020	ASSIGNED TO EXAMINER	77656
Jul. 21, 2020	NOTIFICATION OF NON-FINAL ACTION E-MAILED	

Jul. 21, 2020	NON-FINAL ACTION E-MAILED	
Jul. 21, 2020	NON-FINAL ACTION WRITTEN	92985
Jul. 20, 2020	ASSIGNED TO EXAMINER	92985
May 07, 2020	NOTICE OF DESIGN SEARCH CODE E-MAILED	
May 06, 2020	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Apr. 29, 2020	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: TORRES, ELIANA ANDREA

Law Office Assigned: LAW OFFICE 110

File Location

Current Location: TMO LAW OFFICE 110 - EXAMINING ATTORNEY ASSIGNED

Date in Location: May 06, 2021

EXHIBIT “C”

To: Janet C. Moreira(janet@mavenip.com)
Subject: U.S. Trademark Application Serial No. 88887518 - SQUIRREL'S NUT BUTTER
Sent: May 06, 2021 02:32:57 PM EDT
Sent As: tmng.notices@uspto.gov

Attachments

87500099
[screenshot-www-hiki-com-products-anti-chafe-16203227389151](#)
[screenshot-www-hiki-com-bundles-body-kit-16203227597201](#)
[screenshot-www-monistat-com-vaginal-complete-care-products-chafing-relief-powder-gel-16203228685081](#)
[screenshot-www-bodyglide-com-product-face-16203229366541](#)
[screenshot-www-bodyglide-com-product-body-16203230228581](#)
[screenshot-www-monistat-com-vaginal-complete-care-products-feminine-cleanser-16203230428561](#)
[screenshot-www-soapandglory-com-bath-body-care-no-woman-no-dry-16203231308051](#)
[screenshot-www-soapandglory-com-products-16203231560041](#)
[screenshot-megababebeauty-com-collections-all-products-16203232658561](#)
[screenshot-www-beautybay-com-p-beyou-anti-chafing-cream-16203233187441](#)
[screenshot-www-beautybay-com-p-beyou-anti-chafing-cream-16203233573751](#)
[screenshot-oldspice-com-below-deck-anti-chafe-stick-16203234314461](#)
[screenshot-oldspice-com-below-deck-anti-chafe-stick-16203234675191](#)
[screenshot-oldspice-com-bundles-16203234884551](#)
[screenshot-www-urbanoutfitters-com-shop-queen-v-rub-me-the-right-way-chafe-stick-16203237658861](#)
[screenshot-www-urbanoutfitters-com-beauty-products-16203238126851](#)
88439834
88935001
88112025
88112048
87442964
87873624
87875408
87101560
87527957
86448533
86832946
86448533
86832946
86633744
85026846
88818861
87450382
86948806

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

U.S. Application Serial No. 88887518

Mark: SQUIRREL'S NUT BUTTER

Correspondence Address:

Janet C. Moreira
MAVEN IP
9480 NE 2ND AVENUE
SUITE 65
MIAMI SHORES FL 33138 UNITED STATES

Applicant: Squirrel's Nut Butter LLC

Reference/Docket No. N/A

Correspondence Email Address: janet@mavenip.com

FINAL OFFICE ACTION

The USPTO must receive applicant's response to this letter within six months of the issue date below or the application will be [abandoned](#). Respond using the Trademark Electronic Application System (TEAS) and/or Electronic System for Trademark Trials and Appeals (ESTTA). A link to the appropriate TEAS response form and/or to ESTTA for an appeal appears at the end of this Office action.

Issue date: May 06, 2021

THIS IS A FINAL ACTION.

Introduction:

This Final action is in response to applicant's communication filed on 05/04/2021.

In a previous Office action(s) dated 12/21/2020, the trademark examining attorney maintained and continued refused registration of the applied-for mark based on the following: Registration Refusal-Likelihood of Confusion. In addition, applicant was required to satisfy the following requirement(s): Disclaimer Required and Information of Goods Required.

Based on applicant's response, the trademark examining attorney notes that the following requirement(s) have been satisfied: Disclaimer and Information about Goods provided. *See* TMEP

§§713.02, 714.04.

Applicant's arguments have been considered and found unpersuasive. Thus, the trademark examining attorney maintains and now makes FINAL the refusal(s) and/or requirement(s) in the summary of issues below. *See* 37 C.F.R. §2.63(b); TMEP §714.04.

SUMMARY OF FINAL ISSUES:

Controlled Substances Act Compliance Refusal
Refusal under Trademark Act Section 1 and 45 - FDCA Refusal

Registration Refusal- Likelihood of Confusion:

Registration of the applied-for mark is refused and made FINAL because of a likelihood of confusion with the mark in U.S. Registration No. **5558569**. Trademark Act Section 2(d), 15 U.S.C. §1052(d); see TMEP §§1207.01 et seq. See the attached registration.

The registered mark is **SQUIRREL** in standard characters for goods and services including "Perfumery; Essential oils for personal use; Cosmetics and make-up; Eye make-up; Eyeliners; Blushers; Lipsticks; Hair lotions; Non-medicated soaps for hands, face and body."

The applied-for mark is **SQUIRREL'S NUT BUTTER** with a design for " Non-medicated balms for use on skin; non-medicated skin care preparations, namely, anti-chafing salve; skin care preparations namely, body balm; all of the foregoing relating to anti-chafing and skin restoration" in Class 03; and

"On-line retail store services featuring non-medicated balms for use on skin, non-medicated skin care preparations, namely, anti-chafing salve and skin care preparations namely, body balm; all of the foregoing relating to anti-chafing and skin restoration" in Class 35.

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely a potential consumer would be confused, mistaken, or deceived as to the source of the goods and/or services of the applicant and registrant. See 15 U.S.C. §1052(d). A determination of likelihood of confusion under Section 2(d) is made on a case-by case basis and the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973) aid in this determination. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d 1344, 1349, 98 USPQ2d 1253, 1256 (Fed. Cir. 2011) (citing *On-Line Careline, Inc. v. Am. Online, Inc.*, 229 F.3d 1080, 1085, 56 USPQ2d 1471, 1474 (Fed. Cir. 2000)). Not all the du Pont factors, however, are necessarily relevant or of equal weight, and any one of the factors may control in a given case, depending upon the evidence of record. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d at 1355, 98 USPQ2d at 1260; *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); see *In re E. I. du Pont de Nemours & Co.*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity and nature of the goods and/or services, and similarity of the trade channels of the goods and/or services. See *In re Viterra Inc.*, 671 F.3d 1358, 1361-62, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593, 1595-96 (TTAB 1999); TMEP §§1207.01 et seq.

Comparison of the Marks:

The applicant's mark is **SQUIRREL'S NUT BUTTER** with a design. The registered mark is **SQUIRREL** in standard character form. These marks are highly similar in sound, appearance and commercial impression. The two marks use the same terms **SQUIRREL** as the dominant element the marks.

When comparing marks, the test is not whether the marks can be distinguished in a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods and/or services offered under the respective marks is likely to result. *Midwestern Pet Foods, Inc. v. Societe des Produits Nestle S.A.*, 685 F.3d 1046, 1053, 103 USPQ2d 1435, 1440 (Fed. Cir. 2012); *In re Bay State Brewing Co.*, 117 USPQ2d 1958, 1960 (TTAB 2016) (quoting *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1368, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012)); TMEP §1207.01(b). The proper focus is on the recollection of the average purchaser, who retains a general rather than specific impression of trademarks. *In re Bay State Brewing Co.*, 117 USPQ2d at 1960 (citing *Spoons Rests., Inc., v. Morrison, Inc.*, 23 USPQ2d 1735, 1741 (TTAB 1991), *aff'd per curiam*, 972 F.2d 1353 (Fed. Cir. 1992)); *In re C.H. Hanson Co.*, 116 USPQ2d 1351, 1353 (TTAB 2015) (citing *Joel Gott Wines LLC v. Rehoboth Von Gott Inc.*, 107 USPQ2d 1424, 1430 (TTAB 2013)); TMEP §1207.01(b).

The two marks use the same term **SQUIRREL** as the first wording in the mark, which is significant because consumers are generally more inclined to focus on the first word, prefix, or syllable in any trademark or service mark. *See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1372, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005) (“VEUVE . . . remains a ‘prominent feature’ as the first word in the mark and the first word to appear on the label”); *In re Integrated Embedded*, 120 USPQ2d 1504, 1513 (TTAB 2016) (“[T]he dominance of BARR in [a]pplicant’s mark BARR GROUP is reinforced by its location as the first word in the mark.”); *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) (“it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered” when making purchasing decisions).

The wording **SQUIRREL** is the dominant element in the marks because the applicant’s additional wording “**BUTTER**” is descriptive for the applicant’s goods and services identified in the application. *See disclaimer section in application.*

Although marks are compared in their entireties, one feature of a mark may be more significant or dominant in creating a commercial impression. *See In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Nat’l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 751 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii). Matter that is descriptive of or generic for a party’s goods and/or services is typically less significant or less dominant in relation to other wording in a mark. *See Anheuser-Busch, LLC v. Innvopak Sys. Pty Ltd.*, 115 USPQ2d 1816, 1824-25 (TTAB 2015) (citing *In re Chatam Int’l Inc.*, 380 F.3d 1340, 1342-43, 71 USPQ2d 1944, 1946 (Fed. Cir. 2004)).

Further, disclaimed matter that is descriptive of or generic for a party’s goods and/or services is typically less significant or less dominant when comparing marks. *See In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997); *In re Nat’l Data Corp.*, 753 F.2d at 1060, 224 USPQ at 752; TMEP §1207.01(b)(viii), (c)(ii).

The applicant's use of the similar terms or phrases as the registrant is enough to establish that the marks evoke a highly similar commercial impression.

Marks may be confusingly similar in appearance where similar terms or phrases or similar parts of terms or phrases appear in the compared marks and create a similar overall commercial impression. *See Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689, 690-91 (TTAB 1986), *aff'd sub nom. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat'l Ass'n*, 811 F.2d 1490, 1495, 1 USPQ2d 1813, 1817 (Fed. Cir. 1987) (finding COMMCASH and COMMICASH confusingly similar); *In re Corning Glass Works*, 229 USPQ 65, 66 (TTAB 1985) (finding CONFIRM and CONFIRMCELLS confusingly similar); *In re Pellerin Milnor Corp.*, 221 USPQ 558, 560 (TTAB 1983) (finding MILTRON and MILLTRONICS confusingly similar); TMEP §1207.01(b)(ii)-(iii).

Additionally, the applicant's design or highly stylization used in the mark is not distinctive enough to alter the similar commercial impression created by the marks.

When evaluating a composite mark containing both words and designs, the word portion is more likely to indicate the origin of the goods and/or services because it is that portion of the mark that consumers use when referring to or requesting the goods and/or services. *Bond v. Taylor*, 119 USPQ2d 1049, 1055 (TTAB 2016) (citing *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908, 1911 (Fed. Cir. 2012)); TMEP §1207.01(c)(ii). Thus, although marks must be compared in their entireties, the word portion is often considered the dominant feature and is accorded greater weight in determining whether marks are confusingly similar, even where the word portion has been disclaimed. *In re Viterra Inc.*, 671 F.3d at 1366-67, 101 USPQ2d at 1911 (citing *Giant Food, Inc. v. Nation's Foodservice, Inc.*, 710 F.2d 1565, 1570-71, 218 USPQ2d 390, 395 (Fed. Cir. 1983)).

In sum, given the highly similar appearance and sound of the two marks, it follows that the marks create the same commercial impression.

Relatedness of the Goods and Services:

The registered mark is **SQUIRREL** identifies IN RELEVANT PART "Perfumery; Essential oils for personal use; Cosmetics and make-up; Eye make-up; Eyeliners; Blushers; Lipsticks; Hair lotions; Non-medicated soaps for hands, face and body."

The applied-for mark is **SQUIRREL'S NUT BUTTER** identifies "Non-medicated balms for use on skin; non-medicated skin care preparations, namely, anti-chafing salve; skin care preparations namely, body balm; all of the foregoing relating to anti-chafing and skin restoration" in Class 03; and

"On-line retail store services featuring non-medicated balms for use on skin, non-medicated skin care preparations, namely, anti-chafing salve and skin care preparations namely, body balm; all of the foregoing relating to anti-chafing and skin restoration" in Class 35.

The applicant and the registrant identify goods and services featuring the identified goods which are commonly offered by the same entity and marketed under the same mark. Thus, applicant's and registrant's goods and/or services are considered related for likelihood of confusion purposes. *See, e.g.,*

In re Davey Prods. Pty Ltd., 92 USPQ2d 1198, 1202-04 (TTAB 2009); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1268-69, 1271-72 (TTAB 2009). See for example, <https://www.getbeast.com/products/tame-the-beast-nutt-butter-8-oz-multipurpose-lotion-cream-for-men>, <https://www.loveorganically.in/products/hydrating-pampering-pure-honey-nut-butter-body-lotion>, and <https://camerareadycosmetics.com/products/dr-pawpaw-shea-butter-balm>.

Further, the use of similar marks on or in connection with both products and retail-store services has been held likely to cause confusion where the evidence showed that the retail-store services featured the same type of products. See *In re Detroit Athletic Co.*, 903 F.3d 1297, 1307, 128 USPQ2d 1047, 1051 (Fed. Cir. 2018) (holding the use of similar marks for various clothing items, including athletic uniforms, and for retail shops featuring sports team related clothing and apparel likely to cause confusion); *In re Country Oven, Inc.*, 2019 USPQ2d 443903, at *12 (TTAB 2019) (holding the use of identical marks for bread buns and retail bakery stores and shops likely to cause confusion); *In re House Beer, LLC*, 114 USPQ2d 1073, 1078 (TTAB 2015) (holding the use of identical marks for beer and for retail store services featuring beer likely to cause confusion); TMEP §1207.01(a)(ii).

Applicant's Unpersuasive Arguments:

Applicant argues that the mere inclusion of common wording does not automatically create a likelihood of confusion. However, marks may be confusingly similar in appearance where similar terms or phrases or similar parts of terms or phrases appear in the compared marks and create a similar overall commercial impression. See *Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689, 690-91 (TTAB 1986), *aff'd sub nom. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat'l Ass'n*, 811 F.2d 1490, 1495, 1 USPQ2d 1813, 1817 (Fed. Cir. 1987) (finding COMMCASH and COMMUNICASH confusingly similar); *In re Corning Glass Works*, 229 USPQ 65, 66 (TTAB 1985) (finding CONFIRM and CONFIRMCELLS confusingly similar); *In re Pellerin Milnor Corp.*, 221 USPQ 558, 560 (TTAB 1983) (finding MILTRON and MILLTRONICS confusingly similar); TMEP §1207.01(b)(ii)-(iii). In this case the use of the SQUIRREL give the marks the same commercial impression.

Applicant relies in cases such as *In re Hearst Corp.*, 982 F.2d 493, 1992 U.S. App. LEXIS 33270, 25 U.S.P.Q.2D (BNA) 1238, 92 Daily Journal DAR 17570. However, here,

Here, each mark places the arbitrary word SQUIRREL at its forefront, where it is most likely to be noticed and remembered. And there are no additional terms in the Registrant's mark, while the applicant mark disclaims the wording BUTTER. Although the disclaimed words are still part of each mark, and cannot be completely discounted, *Ricardo Media v. Inventive Software*, 2019 USPQ2d 311355, at *5-6, they are commonplace terms in the beauty and body care industry and the term NUT BUTTER is commonly understood as an ingredient and/or feature of the goods that present a "smooth" texture. Thus, the terms are decidedly less distinctive than SQUIRREL, the prominent, dominant part of each mark. See *In re Society of Health and Physical Educators*, 127 USPQ2d 1584, 1587 (TTAB 2018). That distinguishes this case from *Hearst*, on which Applicant relies. There, the word "GIRL" in VARGA GIRL was neither disclaimed nor descriptive, the Court found, stating: "When GIRL is given fair weight, along with VARGA, confusion with VARGAS becomes less likely." *In re Hearst*, 25 USPQ2d at 1239.

Furthermore, applicant argues, that the examining attorney provided no evidence to show that consumer's are more likely to focus on the first wording in a mark. However, it seems logical that the

only plausible way to read wording is from left to right and it seems common sense that the first wording is the first part of a mark read by a consumer. Thus, it follows that the first wording SQUIRREL is the dominant element in both marks.

The applicant also argues the "S" in the applicant's mark is discounted in the analysis. However, this addition to the applicant's mark has little or no trademark significance, and as such, the textual portion of the marks are constructively identical. The use of the apostrophe "s" within the mark as a whole does not alter the commercial impression of the mark in any appreciable manner, and the slight difference in sound and appearance are insignificant. The only practical difference between the textual portions of the marks is a minor visual one, and it is insufficient to overcome a likelihood of confusion.

It is the position of the Office that typical consumers will not take the time to analyze the slight differences in meaning created by the inclusion of the apostrophe "s". Such an analytical task would require a purchaser to parse the meaning of the terms. While not necessarily complicated, this type of analytical reasoning is unlikely to be undertaken by a consumer of beauty and body care products.

Further, the relevant inquiry regarding likelihood of confusion is not whether the marks can be distinguished from one another. Marks must be more than merely distinguishable to be registrable. The issue is whether the marks create the same overall impression. *Visual Information Institute, Inc. v. Vicon Industries Inc.*, 209 USPQ 179 (TTAB 1980). The focus is on the recollection of the average purchaser who normally retains a general rather than specific impression of trademarks. *Chemetron Corp. v. Morris Coupling & Clamp Co.*, 203 USPQ 537 (TTAB 1979); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975); TMEP section 1207.01(b). The two marks at issue create the same general impression, and as such, the marks themselves are confusingly similar.

Applicant further argues again, in redundancy, that the case is similar to *Hearst* and spends a large portion comparing the two marks in a side-by-side analysis. This argument is again without merit.

The applicant suggests that there must be a detailed analysis of all the features of both marks in considering a likelihood of confusion between the marks. Regarding the issue of likelihood of confusion, the question is not whether people will confuse the marks, but whether the marks will confuse people into believing that the goods they identify come from the same source. In *re West Point-Pepperell, Inc.*, 468 F.2d 200, 175 USPQ 558 (C.C.P.A. 1972). For that reason, the test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison. The question is whether the marks create the same overall impression. *Recot, Inc. v. M.C. Becton*, 214 F.2d 1322, 54 USPQ2d 1894, 1890 (Fed. Cir. 2000); *Visual Information Inst., Inc. v. Vicon Indus. Inc.*, 209 USPQ 179 (TTAB 1980). The focus is on the recollection of the average purchaser who normally retains a general rather than specific impression of trademarks. *Chemetron Corp. v. Morris Coupling & Clamp Co.*, 203 USPQ 537 (TTAB 1979); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975); TMEP §1207.01(b). Here, the average purchase would retain the identical general impression of the wording in both marks: the wording SQUIRREL.

As stated previously herein, the word portion of the mark, and not the design feature, is more likely to be impressed upon a consumers' mind. The applicant argues that the design features is significant

While it is true that the different designs serve to alter the commercial impressions, it is not a significant enough difference to overcome the nearly identical appearance of the textual portions of the marks. When a mark consists of a word portion and a design portion, the word portion is more likely to

be impressed upon a purchaser's memory and to be used in calling for the goods or services. The Trademark Manual for Examining Procedure states that:

“If a mark comprises both a word and a design, greater weight is often given to the word, because it is the word that purchasers would use to refer to or request the goods or services. In re Appetito Provisions Co. Inc., 3 USPQ2d 1553, 1554 (TTAB 1987)”, and “ The comparison of composite marks must be done on a case-by-case basis without reliance on mechanical rules of construction. See, e.g., Specialty Brands, Inc. v. Coffee Bean Distributors, Inc. , 748 F.2d 669, 223 USPQ 1281 (Fed. Cir. 1984) (finding a likelihood of confusion between SPICE VALLEY and SPICE ISLANDS, both for tea); Spice Islands, Inc. v. The Frank Tea & Spice Co. , 505 F.2d 1293, 184 USPQ 35 (C.C.P.A. 1974) (SPICE TREE and tree design held not confusingly similar to SPICE ISLANDS and tree design, both for spices); In re Sun Supermarkets, Inc. , 228 USPQ 693 (TTAB 1986) (SUN SUPERMARKETS and design of sun held likely to be confused with SUNSHINE and design of sun and SUNRISE and design of sun, all for retail grocery store services).”

TMEP Section 1207.01(c)(ii). It is clear when simply comparing the marks, taking into consideration the different designs, that the common use of the arbitrary term “SQUIRREL” creates the overriding commercial impression. The addition of the design element does not obviate the similarity between the marks. Coca-Cola Bottling Co. v. Joseph E. Seagram & Sons, Inc. , 526 F.2d 556, 188 USPQ 105 (CCPA 1975).

After comparing the marks, the relevant inquiry is the degree of similarity between the goods. If the goods of the respective parties are identical or closely related, the degree of similarity between marks required to support a finding of likelihood of confusion is not as great as would apply with diverse goods or services. ECI Division of E Systems, Inc. v. Environmental Communications Inc. , 207 USPQ 443 (TTAB 1980).

Applicant goes on to argue the significance of the terms in the mark, namely, Squirrel. Applicant intends to persuade by arguing that the wording in the applicant's mark evokes a commercial impression for which athletes and sports enthusiast can assume the goods are in the nature of skin preparations. This argument is joyful at last, it follows the definition used by applicant being that of "rodents" and "testicles and argues consumers will be able to differentiate its products from those of the Registrant. Argument follows to differentiate the meaning in Registrant's mark by providing a meaning for the term SQUIRREL in a trademark Registration applicant does not even own and without evidence of proving the use of this mark as the definition provided. Applicant fails to understand that the marks are compared as they appear in the drawing of the application and in the registration; the USPTO does not consider how an applicant and registrant actually use their marks in the marketplace. In re Aquitaine Wine USA, LLC, 126 USPQ2d 1181, 1186 (TTAB 2018) (citing In re i.am.symbolic, llc, 866 F.3d 1315, 1324, 123 USPQ2d 1744, 1749 (Fed. Cir. 2017)).

Applicant then goes on to argue the difference between the goods. Applicant's argument relies on the uses for the identified goods and the use for the Registrant's mark. The fact that the goods and/or services of the parties differ is not controlling in determining likelihood of confusion. The issue is not likelihood of confusion between particular goods and/or services, but likelihood of confusion as to the source or sponsorship of those goods and/or services. In re Majestic Distilling Co., 315 F.3d 1311, 1316, 65 USPQ2d 1201, 1205 (Fed. Cir. 2003); In re Shell Oil Co., 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993); TMEP §1207.01.

The applicant's goods, according to the applicant, are medical in purpose and for medical use.

However, this recitation is not provided by the applicant. Applicant places the goods in Class 03 as "non-medical". Thus, applicant contradicts herself.

In regards to the applicant's need for more evidence to substantiate the relatedness of the relevant goods in the Registrant's mark and the applicant's goods, the examining attorney is providing additional excerpts from third-party websites that show the goods are of the kind offered by the same entity and marketed under the same mark.

Further, the applicant spends a significant part of its argument stating the use of the goods being for athletes and the difference between applicant and registrant's channels of trade. However, this difference is insignificant since the applicant does not limit the identification of goods to the uses of athletes OR any of the other uses they allege to market to. Determining likelihood of confusion is based on the description of the goods and/or services stated in the application and registration at issue, not on extrinsic evidence of actual use. See *In re Detroit Athletic Co.*, 903 F.3d 1297, 1307, 128 USPQ2d 1047, 1052 (Fed. Cir. 2018) (citing *In re i.am.symbolic, llc*, 866 F.3d 1315, 1325, 123 USPQ2d 1744, 1749 (Fed. Cir. 2017)).

The goods and/or services of the parties have no restrictions as to nature, type, channels of trade, or classes of purchasers and are "presumed to travel in the same channels of trade to the same class of purchasers." *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1268, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002)). Thus, applicant's and registrant's goods and/or services are related.

The consumers of applicant's or registrant's products are not the type of consumers in a specific field. Neither are they differentiated by gender like applicant intends to analogize with the citing of *In re Sydel Lingerie Co., Inc.*, 197 USPQ 629. (TTAB 1977). There, the difference lied in the gender differences of the goods, namely, clothes for men and clothes for women. Here, the difference in consumers is not one of gender. Any type of consumer is able to purchase and use the goods. Further, applicant's cited cases are not precedent of the Board.

Even assuming *arguendo* that consumers were sophisticated and knowledgeable about goods for anti-chafing, the fact that purchasers are sophisticated or knowledgeable in a particular field does not necessarily mean that they are sophisticated or knowledgeable in the field of trademarks or immune from source confusion. TMEP §1207.01(d)(vii); see, e.g., *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1325, 110 USPQ2d 1157, 1163-64 (Fed. Cir. 2014); *Top Tobacco LP v. N. Atl. Operating Co.*, 101 USPQ2d 1163, 1170 (TTAB 2011). Further, where the purchasers consist of both professionals and the public, the standard of care for purchasing the goods is that of the least sophisticated potential purchaser. *In re FCA US LLC*, 126 USPQ2d 1214, 1222 (TTAB 2018) (citing *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d at 1325, 110 USPQ2d at 1163), *aff'd per curiam*, 777 F. App'x 516, 2019 BL 375518 (Fed. Cir. 2019).

Lastly, the trademark examining attorney has attached evidence from the USPTO's X-Search database consisting of a number of third-party marks registered for use in connection with the same or similar goods and/or services as those of both applicant and registrant in this case. This evidence shows that the goods and/or services listed therein, are of a kind that may emanate from a single source under a single mark. See *In re I-Coat Co.*, 126 USPQ2d 1730, 1737 (TTAB 2018) (citing *In re Infinity Broad. Corp.*, 60 USPQ2d 1214, 1217-18 (TTAB 2001); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988)); TMEP §1207.01(d)(iii).

Conclusion

The overriding concern is not only to prevent buyer confusion as to the source of the goods and/or services, but to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. See *In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt regarding a likelihood of confusion determination is resolved in favor of the registrant. TMEP §1207.01(d)(i); see *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1025 (Fed. Cir. 1988).

In view of the foregoing, the refusal to register under Section 2(d) of the Trademark Act is continued and made final.

How to respond. [Click to file a response to this final Office action](#) and/or [appeal it to the Trademark Trial and Appeal Board \(TTAB\)](#).

/Eliana Torres/
Eliana Torres
Trademark Examining Attorney
Law Office 110
(571) 272-6907
eliana.torres@uspto.gov

RESPONSE GUIDANCE

- **Missing the response deadline to this letter will cause the application to [abandon](#).** A response or notice of appeal must be received by the USPTO before midnight **Eastern Time** of the last day of the response period. TEAS and ESTTA maintenance or [unforeseen circumstances](#) could affect an applicant's ability to timely respond.
- **[Responses signed by an unauthorized party](#)** are not accepted and can **cause the application to [abandon](#)**. If applicant does not have an attorney, the response must be signed by the individual applicant, all joint applicants, or someone with [legal authority to bind a juristic applicant](#). If applicant has an attorney, the response must be signed by the attorney.
- If needed, **find [contact information for the supervisor](#)** of the office or unit listed in the signature block.

EXHIBIT “D”

United States of America

United States Patent and Trademark Office

SQUIRREL

Reg. No. 5,558,569

Registered Sep. 11, 2018

Int. Cl.: 3, 14, 26, 38

Service Mark

Trademark

Principal Register

SQUIRREL INTERNATIONAL LIMITED (UNITED KINGDOM private limited company)

3rd Floor
207 Regent Street
London, UNITED KINGDOM W1B3HH

CLASS 3: Perfumery; Essential oils for personal use; Cosmetics and make-up; Eye make-up; Eyeliners; Blushers; Lipsticks; Hair lotions; Non-medicated soaps for hands, face and body

CLASS 14: Precious metals; jewellery; precious stones; chronometric instruments

CLASS 26: Lace; Embroidery; ribbons; braids; buttons; hooks and eyes; pins, namely, sewing pins, hat pins, curling pins, safety pins, bobby pins, marking pins, ornamental novelty pins; needles; artificial flowers

CLASS 38: Telecommunication services, namely, telecommunication access services, digital network telecommunications services, transmission of webcasts and podcasts, providing electronic message alerts via the internet, personal communication services and, providing multiple-user access to a global computer network, transmission of voice, data, graphics, images, audio and video by means of telecommunications networks, wireless communication networks, and the Internet; communication services, namely, electronic transmission of voices, transmission of voice, audio, visual images and data by telecommunications networks, wireless communication networks, the Internet, information services networks and data networks, electronic transmission of data and documents among users of computers; electronic transmission of images, photographs, graphic images and illustrations over a global computer network; transmission of data, audio, video and multimedia files by telecommunications networks, wireless communication networks, the Internet, information services networks and data networks; television programme broadcasting; simulcasting broadcast television over global communication networks, the Internet and wireless networks; provision of telecommunication access to video and audio content provided via an online video-on-demand service; satellite communication services; telecommunications gateway services

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

PRIORITY CLAIMED UNDER SEC. 44(D) ON UNITED KINGDOM APPLICATION NO. UK0003203478, FILED 12-21-2016, REG. NO. UK0003203478, DATED 04-21-2017, EXPIRES 12-21-2026

SER. NO. 87-500,099, FILED 06-21-2017



Andrei Iancu

Director of the United States
Patent and Trademark Office

Generated on: This page was generated by TSDR on 2021-11-04 15:59:47 EDT

Mark: SQUIRREL

SQUIRREL

US Serial Number: 87500099

Application Filing Date: Jun. 21, 2017

US Registration Number: 5558569

Registration Date: Sep. 11, 2018

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Trademark, Service Mark

TM5 Common Status Descriptor:



LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office.

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Sep. 11, 2018

Publication Date: Jun. 26, 2018

Mark Information

Mark Literal Elements: SQUIRREL

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Foreign Information

Priority Claimed: Yes

Foreign Application Number: UK0003203478

Foreign Application Filing Date: Dec. 21, 2016

Foreign Registration Number: UK0003203478

Foreign Registration Date: Apr. 21, 2017

Foreign Application/Registration Country: UNITED KINGDOM

Foreign Expiration Date: Dec. 21, 2026

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (()) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Perfumery; Essential oils for personal use; Cosmetics and make-up; Eye make-up; Eyeliners; Blushers; Lipsticks; Hair lotions; Non-medicated soaps for hands, face and body

International Class(es): 003 - Primary Class

U.S Class(es): 001, 004, 006, 050, 051, 052

Class Status: ACTIVE

Basis: 44(e)

For: Precious metals; jewellery; precious stones; chronometric instruments

International Class(es): 014 - Primary Class

U.S Class(es): 002, 027, 028, 050

Class Status: ACTIVE

Basis: 44(e)

For: Lace; Embroidery; ribbons; braids; buttons; hooks and eyes; pins, namely, sewing pins, hat pins, curling pins, safety pins, bobby pins, marking pins, ornamental novelty pins; needles; artificial flowers

International Class(es): 026 - Primary Class

U.S Class(es): 037, 039, 040, 042, 050

Class Status: ACTIVE

Basis: 44(e)

For: Telecommunication services, namely, telecommunication access services, digital network telecommunications services, transmission of webcasts and podcasts, providing electronic message alerts via the internet, personal communication services and, providing multiple-user access to a global computer network, transmission of voice, data, graphics, images, audio and video by means of telecommunications networks, wireless communication networks, and the Internet; communication services, namely, electronic transmission of voices, transmission of voice, audio, visual images and data by telecommunications networks, wireless communication networks, the Internet, information services networks and data networks, electronic transmission of data and documents among users of computers; electronic transmission of images, photographs, graphic images and illustrations over a global computer network; transmission of data, audio, video and multimedia files by telecommunications networks, wireless communication networks, the Internet, information services networks and data networks; television programme broadcasting; simulcasting broadcast television over global communication networks, the Internet and wireless networks; provision of telecommunication access to video and audio content provided via an online video-on-demand service; satellite communication services; telecommunications gateway services

International Class(es): 038 - Primary Class

U.S Class(es): 100, 101, 104

Class Status: ACTIVE

Basis: 44(e)

Basis Information (Case Level)

Filed Use: No

Currently Use: No

Filed ITU: No

Currently ITU: No

Filed 44D: Yes

Currently 44E: Yes

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: SQUIRREL INTERNATIONAL LIMITED

Owner Address: 3rd Floor
207 Regent Street
London UNITED KINGDOM W1B3HH

Legal Entity Type: private limited company

State or Country Where Organized: UNITED KINGDOM

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Jonathan G. Morton

Attorney Primary Email Address: trademarks@moas.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: JONATHAN G. MORTON
MORTON & ASSOCIATES LLP
246 WEST BROADWAY
NEW YORK, NEW YORK UNITED STATES 10013

Phone: (212) 666-5000

Fax: (212) 504-0888

Correspondent e-mail: trademarks@moas.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Sep. 11, 2018	REGISTERED-PRINCIPAL REGISTER	
Jun. 26, 2018	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Jun. 26, 2018	PUBLISHED FOR OPPOSITION	
Jun. 06, 2018	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
May 20, 2018	APPROVED FOR PUB - PRINCIPAL REGISTER	
Apr. 10, 2018	TEAS/EMAIL CORRESPONDENCE ENTERED	68123
Apr. 10, 2018	CORRESPONDENCE RECEIVED IN LAW OFFICE	68123
Apr. 09, 2018	ASSIGNED TO LIE	68123
Apr. 09, 2018	ASSIGNED TO LIE	78756
Mar. 27, 2018	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Mar. 23, 2018	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Sep. 27, 2017	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Sep. 27, 2017	NON-FINAL ACTION E-MAILED	6325
Sep. 27, 2017	NON-FINAL ACTION WRITTEN	74284
Sep. 19, 2017	ASSIGNED TO EXAMINER	74284
Jun. 28, 2017	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Jun. 24, 2017	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Sep. 11, 2018

EXHIBIT “E”



Home Purchase Locations Contact Us About Us

Squirrel's Nut Butter

All Natural Anti-chafe and Restorative Skin Salve

All Natural Anti-chafe and Restorative Skin Salve

We make salve that prevents chafing and allows you to get the most out of your adventures.



Pete Kostelnick

"SNB was a big help during my 24 hour Desert Solstice Track Race, where I applied it to a number of upper and lower body areas that I've had chafing, skin discomfort, and blistering issues in the past."

[Read more](#)

What is Squirrel's Nut Butter?

Let us tell you.

This is a multi purpose salve that works extremely well for **preventing chafing** and **preventing blisters on feet**, as well as **skin restoration on eczema**, cracked/dry hands, feet, and face.

Some current uses/activities of this product include ultra runners, marathoners, mountain bikers, road cyclists, triathletes, hikers/backpackers, endurance horse riders, nurses, river runners, fire fighters, chronic eczema sufferers, diaper rash, massage therapists, paws and noses on dogs and cats, mushroom hunters



Natural Ingredients include: Coconut oil, cocoa butter, bees wax, vitamin E oil and essential oils: lemon, orange, jasmine, sandalwood and ylang ylang.

Where have you taken your SNB?

Email Chris and Stacy a photo of where you have taken your SNB to be featured in their gallery.

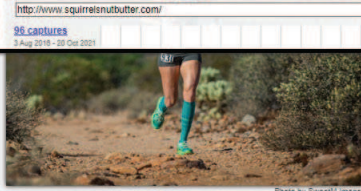


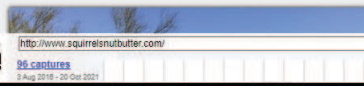
Photo by SweetM Images

Customer Testimonials

Squirrel's Nut Butter cares about what our customers think. Click



Photo by SweetM Images



- 15k - <http://www.trailrunner.com>
- Jan 9 - San Tan 50k Arizona
- Jan 23 - Cold Water Rumble 100 Mile Arizona
- Feb 13 - Black Canyon 100k Arizona
- Feb 20 - Elephant Mountain 50k Arizona
- Mar 12 - Mesquite Canyon 50k Arizona
- Apr 2 - Crown King Scramble 50k Arizona
- Apr 9 - Lake Sonoma 50 Mile California
- Apr 16 - Whisky Basin Trail Runs Arizona
- Apr 23 - Zane Grey 50 Mile Arizona
- Apr 24 - Dam Good Run 40k Arizona
- Apr 30 - Sinister Night Trail Runs 54k Arizona
- May 7 - The Canyons 100k California
- May 14 - Adrenalin Night Trail Runs 54k Arizona
- June 3 - San Diego 100 Mile California
- June 11 - FLOX Big Pine Trail Runs Arizona
- June 19-25 Rob Krar Ultra Camp Arizona
- June 26 - Hypnosis Night 64k Arizona



- Sep 24 - Flagstaff to Grand Canyon Stagecoach Line 100 Mile Arizona
- Sep 30 - Flagstaff Sky Race 55k Arizona
- Oct 15 - Overlook Endurance Runs California
- Oct 15 - Cave Creek Thriller 60k Arizona
- Oct 15 - Thrasher Night Runs 30k Arizona
- Oct 29 - Javelina Jundred 100 Mile Arizona
- Nov 12 - Pass Mountain 50k Arizona
- Nov 12 - Punisher Night Runs 30k Arizona
- Dec 3 - McDowell Mountain Frenzy 50 Mile Arizona
- Dec 19 - Desert Solstice 24 Hour Track Arizona

Special thanks to [SweetM Images](#) for the beautiful photos above!
Please visit their website for more information and to see event photos.