

UNITED STATES PATENT AND TRADEMARK OFFICE

FEB 13 2003

SERIAL NO: 76/261324

APPLICANT: Yakima Chief, Inc.

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If no fees are enclosed, the address should include the words "Box Responses - No Fee."

MARK: ALPHARICH

CORRESPONDENT'S REFERENCE/DOCKET NO: YC1.T08

CORRESPONDENT EMAIL ADDRESS:

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

RE: Serial Number 76/261324

Applicant is requesting reconsideration of a final refusal dated May 27, 2003.

After careful consideration of the law and facts of the case, the examining attorney must deny the request for reconsideration and adhere to the final action as written since no new facts or reasons have been presented that are significant and compelling with regard to the point at issue.

Accordingly, applicant's request for reconsideration is *denied*. 37 C.F.R. Section 2.64(b); TMEP Section 715.04. The application file will be returned to the Trademark Trial and Appeal Board for resumption of the appeal.

The requirement for a definite identification of goods and the refusal under Section 2(d) are both MAINTAINED. The applicant must specify the field of use for the hops extracts.

Despite applicant's assertion that "[a]pplicant's customers and registrant's customers will under no circumstances enter the same channels of trade" and "applicant's and registrant's products are not even available in the same locations," it is well settled that the issue of likelihood of confusion between marks must be determined on the basis of the goods or services as they are identified in the application and the registration. *Canadian Imperial Bank of Commerce v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987); *Paula Payne Products Co. v. Johnson Publishing Co., Inc.*, 473 F.2d 901, 177 USPQ 76 (CCPA 1973). Since the identification of the registrant's and applicant's goods is very broad and does not limit the channels of trade, it is presumed that the registration and the application encompasses all goods of the type described and that they move in

211 USPQ 639, 640 (TTAB 1981). Please see the attached X-Search evidence which illustrates that the same marks are used to identify both beer and hops or hops extracts.

Despite applicant's assertion that its customers are sophisticated, 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. See *In re Decombe*, 9 USPQ2d 1812 (TTAB 1988); *In re Pellerin Milnor Corp.*, 221 USPQ 558 (TTAB 1983).

Accordingly, the refusal is MAINTAINED.

/Carol Spils/
Carol Spils
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Mark

N

Translation

The non-Latin character(s) in the mark transliterates into SEIFUN, and this means manufacturing flour in English. The Japanese characters are transliterated as NISSHIN, which has no meaning; SEIFUN, which means manufacturing flour, and GROUP.

Goods and Services

IC 031. US 001 046. G & S: Raw whole grains, namely, foxtail millet, Chinese millet, sesame, buckwheat, corn, deccan grass millet, wheat, barley, oats, unhulled rice, sorghum, seeds of urushi, copra, malt and hops; rough cork, palm tree leaves, live fish and shellfish for food, unprocessed seaweed, live animals and live fish not for food, live birds, live insects, silkworm eggs, cocoons for egg production, eggs for hatching, animal feed, fishing bait, fresh fruit and vegetables, plants for sugar production, seeds and bulbs; live trees, grasses and turf; dried flowers, seedlings, saplings, flowers, hay, bonsai trees, wreaths of natural flowers, protein for animal consumption

IC 029. US 046. G & S: Meats, fish and processed seafood, hamburgers, hot dogs, pulses, processed and frozen vegetables, processed and frozen fruits, eggs and processed eggs; milk products excluding ice cream, ice milk and frozen yogurt; edible oils and fats; mixes for soup; fermented edible soybean paste; ochazuke-nori, namely dried laver for flavoring boiled rice with green tea; fried soybean curd; soybean curd frozen and then dried; jelly made from devil's tongue root; soybean milk, tofu, fermented soybeans, edible protein extracted from wheat or soybean, whey-based food beverages

IC 030. US 046. G & S: Pasta sauces, mixes for curry and stew, coffee, coffee beans, cocoa, tea, seasonings and spices, furikake, aromatic preparations for use as a food additive other than essential oils, rice, husked oats, husked barley, flour for food, gluten for food, processed cereal, dumplings stuffed with minced meat and vegetables, sandwiches, steamed meat dumpling, sushi, grilled dumplings with bits of octopus, steamed bun stuffed with meat, hamburger sandwiches, pizza, ready-made boxed lunches containing a flour or rice base, hot dog sandwiches, meat pies, ravioli; Japanese confectionery, namely, Shirk--a sweet red bean soup with pounded rice cake, and instant Shiruko, Zenzai; candy, ice cream, bread, crackers, biscuits, buns, cakes, pies, cookies, instant ice cream mixes, instant pudding mixes, instant bavarois mixes, instant almond jelly mixes, instant cheese cake mixes, ice cream, sorbet and sherbet; almond paste, yeast powder; koji, namely, fermented rice

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baking powder; ice; binding agents for ice cream; meat tenderizers; sake cake; mixes for making cakes

IC 032. US 045 046 048. G & S: Beer, soft drinks, fruit juices, vegetable juices, extracts of hops for making beer

IC 005. US 006 018 044 046 051 052. G & S: Nutritional supplements containing Mary thistle extract, nutritional supplements containing bread yeast extract, nutritional supplements containing mushroom fungus extract, nutritional supplements containing psyllium, nutritional supplements containing ginkgo tree leaf extract; nutritional supplements containing vitamins E, B, C, beta-carotene and calcium; nutritional supplements containing lecithin, nutritional supplements containing wheat embryo oil

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Code

260121 261321 280103

Serial Number

76308156

Filing Date

August 31, 2001

Current Filing Basis

44E

Original Filing Basis

1B;44D

Publication for Opposition Date

October 14, 2003

Registration Number

2801752

Registration Date

January 6, 2004

Owner Name and Address

(REGISTRANT) KABUSHIKI KAISHA NISSHIN SEIFUN GROUP HONSHA TA NISSHIN SEIFUN GROUP INC. CORPORATION JAPAN 25, Kanda-Nishiki-cho 1-chome, Chiyoda-ku Tokyo JAPAN

Priority Date

March 2, 2001

Prior Registration(s)

0194562;0225744

Disclaimer Statement

*** User: cspils *** Serial Number: 76308156 ***

Type of Mark
TRADEMARK

Register
PRINCIPAL

Live Dead Indicator
LIVE

Attorney of Record
Lawrence E. Abelman

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