
To: HerbalScience Group, LLC (usptomail@whitelawfirm.com)

Subject: U.S. TRADEMARK APPLICATION NO. 77519313 - MINDPOWER - N/A

Sent: 11/17/2009 4:26:15 PM

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UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/519313

MARK: MINDPOWER



CORRESPONDENT ADDRESS:
JENNIFER L. WHITELAW
WHITELAW LEGAL GROUP
3838 TAMiami TrL N FL 3
NAPLES, FL 34103-3590

GENERAL TRADEMARK INFORMATION:
<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: HerbalScience Group,
LLC

**CORRESPONDENT'S
REFERENCE/DOCKET NO:**
N/A

CORRESPONDENT E-MAIL ADDRESS:
usptomail@whitelawfirm.com

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 11/17/2009

Applicant is requesting reconsideration of a final refusal issued/mailed May 4, 2009.

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*. As applicant has already filed a timely notice of appeal, the application will be forwarded to the Trademark Trial and Appeal Board (TTAB).

As indicated by voicemail, the identification amendments have been accepted and entered into the record.

Attached are copies of printouts from the USPTO X-Search database, which show third-party registrations of marks used in connection with the same or similar goods and/or services as those of applicant and registrant in this case. These printouts have probative value to the extent that they serve to suggest that the goods and/or services listed therein, namely supplements and applicant's amended extract goods, are of a kind that may emanate from a single source. *In re Infinity Broad. Corp. of Dallas*, 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).

Material obtained from the Internet is generally accepted as competent evidence in examination and ex parte proceedings. See *In re Rodale Inc.*, 80 USPQ2d 1696, 1700 (TTAB 2006) (Internet evidence accepted by the Board to show genericness); *In re White*, 80 USPQ2d 1654, 1662 (TTAB 2006) (Internet evidence accepted by the Board to show false connection); *In re Joint-Stock Co. "Baik"*, 80 USPQ2d 1305, 1308-09 (TTAB 2006) (Internet evidence accepted by the Board to show geographic significance); *Fram Trak Indus. v. WireTracks LLC*, 77 USPQ2d 2000, 2006 (TTAB 2006) (**Internet evidence accepted by the Board to show relatedness of goods**); *In re Consol. Specialty Rest. Inc.*, 71 USPQ2d 1921, 1927-29 (TTAB 2004) (Internet evidence accepted by the Board to show that geographic location is well-known for particular goods); *In re Gregory*, 70 USPQ2d 1792, 1793 (TTAB 2004) (Internet evidence accepted by the Board to show surname significance); *In re Fitch IBCA Inc.*, 64 USPQ2d 1058, 1060 (TTAB 2002) (Internet evidence accepted by the Board to show descriptiveness); TBMP §1208.03; TMEP §710.01(b). Despite applicant's amendment of its identification, the Internet evidence attached herein and to past office actions in this case show relatedness of applicant's and registrant's goods.

Tina M. Kuan
/Tina M. Kuan/
Trademark Examining Attorney
Law Office 108
Phone Number: 571-272-4110
Fax Number: 571-273-4110

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

Print: Nov 17, 2009

77143026

DESIGN MARK

Serial Number

77143026

Status

REGISTERED

Word Mark

PHYTORELAXIN

Standard Character Mark

Yes

Registration Number

3680225

Date Registered

2009/09/08

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Active Organics, LP LIMITED PARTNERSHIP TEXAS 1097 Yates Street
Lewisville TEXAS 75057

Goods/Services

Class Status -- ACTIVE. IC 001. US 001 005 006 010 026 046. G & S:
chemical compositions containing botanical extracts for use in the
manufacture of cosmetic, cosmeceutical, dermatologic, pharmaceutical
and nutritional products. First Use: 2009/05/05. First Use In
Commerce: 2009/05/05.

Goods/Services

Class Status -- ACTIVE. IC 003. US 001 004 006 050 051 052. G & S:
non-medicated skincare preparations containing botanical extracts,
namely, lotions, creams, gels and serums. First Use: 2009/05/05.
First Use In Commerce: 2009/05/05.

Goods/Services

Class Status -- ACTIVE. IC 005. US 006 018 044 046 051 052. G & S:
nutritional supplements. First Use: 2009/05/05. First Use In
Commerce: 2009/05/05.

Print: Nov 17, 2009

77143026

Filing Date
2007/03/28

Examining Attorney
CONNOLLY, KATHERINE

Attorney of Record
Edwin Flores

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