

Serial No.: 77/566,132
Trademark Law Office: 111
Attorney: T. Whittaker-Brown

UNITED STATES DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

In re Application of: Amazon Herb Co.

Serial No.: 77/566,132

Filed: September 9, 2008

Mark: THE CAMU PEOPLE

Class 005

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) Trademark Law Office: 111
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) Attorney: Tracy L. Whittaker-Brown
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Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

LETTER UNDER 37 C.F.R. § 2.64(b)

Dear Examining Attorney Whittaker-Brown:

This letter is in response to the Office Action of July 2, 2009, finally refusing registration of applicant's THE CAMU PEOPLE trademark on the principal register on the ground of confusing similarity to the trademark shown in U.S. Registration No. 1127749 for the words "CAMU PLUS." Reconsideration is respectfully requested.

10/01/2010 10:00 AM

01-04-2010

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Amazon Herb Co. seeks to register the mark "THE CAMU PEOPLE" for dietary supplements. It is applicant's contention that the mark "Camu Plus," and perhaps both marks are highly suggestive and therefore weak as applied to the goods involved here. In light of the weakness of the marks, the total impression given by applicant's mark as opposed to registrant's mark is sufficiently different that confusion is not likely. Applicant respectfully believes that the Examining Attorney has placed entirely too much emphasis on a side by side comparison of the marks, while ignoring the differences in appearance, connotation, commercial impression, and other significant factors such as strength of the marks.

Notwithstanding the evidence submitted by the Applicant in connection with its first Response to Office Action, which is incorporated herein by reference, you have failed to recognize that the term "camu" is extremely weak from a trademark standpoint. Where a party uses a weak mark, other marketers may come closer to his mark than would be the case with a strong mark without causing consumer confusion. It has been widely held that where a party chooses a trademark which is inherently weak, that party will not enjoy the wide latitude of protection afforded the owners of strong trademarks; therefore, competitors may come closer to a weak mark than would be the case with a strong mark without violating the owner's rights. Kenner Parker Toys Inc. v. Rose Art Industries Inc., 22 U.S.P.Q.2d 1453, 1456 (Fed. Cir. 1992).

Further evidence submitted herewith shows that "camu" is highly suggestive. Attached is Internet evidence indicating that "camu" is commonly used in connection with dietary supplements containing camu camu or *Myrciaria dubia*. Evidence in the form of web screenshots from ebay and other websites show marketers selling Camu-Camu health products under the names "Camu-C," "Camu Camu," "Camu Power" and "Royal Camu." (Exhibit A.) Also attached are excerpts from articles taken from a Lexis Nexis search showing that Camu

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Camu is popular as an ingredient in dietary supplement products and beverages due to its high vitamin C content, and its antioxidant properties. It is often referred to as a "Superfruit." Some of the articles also show that demand for Camu Camu is increasing. (Exhibit B.)

It is clear from the evidence submitted with the first Response to Office Action and with this Response that the term "camu camu" is generic as the common name of the berry that is processed to form a high vitamin C supplement ingredient, and the plant from which the camu camu berry is harvested. "Camu" is an obvious shortening of the full name of the ingredient that is highly suggestive of the main ingredient of both the Registrant's and Applicant's products. (See the specimen submitted with Registrant's application). As such, the term has very little source identifying significance. The remaining matter of both marks sufficiently differentiates the two marks.

The only common element of the two marks is the word "camu." Where the common element of two marks is "weak" because it is generic, descriptive or highly suggestive of the named goods or services, consumers typically will be able to avoid confusion unless the overall combinations have other common features." See, e.g., In re Bed & Breakfast Registry, 791 F.2d 157, 229 USPQ 818 (Fed. Cir. 1986) (Bed & Breakfast Registry for making lodging reservations for others in private homes held not likely to be confused with Bed & Breakfast International for room booking agency services); The U.S. Shoe Corp. v. Chapman, 229 USPQ 74 (TTAB 1985) (Cobbler's Outlet for shoes held not likely to be confused with California Cobblers for shoes); In re Istituto Sieroterapico E Vaccinogeno, Toscano "SCLAVO" S.p.A., 226 USPQ 1035 (TTAB 1985) (Aso Quantum (with Aso disclaimed) for diagnostic laboratory reagents held not likely to be confused with Quantum I for laboratory instrument for analyzing body fluids).

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In the present case, and because the "camu" portion of the mark is commonly used in the names of products containing camu camu, the distinguishing aspect of Registrant's mark is "Plus" and the distinguishing feature of Applicant's mark is "People". In the present case the differences in these weak marks are significant in the minds of consumers.

Applicant's mark contains "the" and a different last word and becomes a distinctive mark, "THE CAMU PEOPLE." It substantially alters the commercial impression of the mark when compared to the cited mark. It is not permissible to attach more weight to the "Camu" portion of applicant's and the cited marks, in that "Camu" is so highly suggestive of the ingredients, qualities or characteristics of the goods involved, that "Camu" is therefore extremely weak from a trademark standpoint.

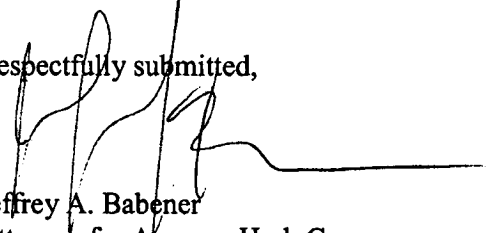
As Applicant has established, Camu Camu (*Myrciaria dubia*) is a species in the genus Myrciaria, a subtropical shrub found in the Amazon rain forest region of Peru and Brazil, which bears a red/purple cherry sized fruit that contains the highest natural source of vitamin C in the world. Camu Camu is the main ingredient and the focus of products to be marketed under the applicant's mark, and under the cited mark. This makes the obvious shortening of the name highly suggestive, and the fact that the registrant was able to gain registration in 1979 when Camu Camu products were not so well known should not imbue the term with increased source-identifying significance in the present marketplace. Cf., In re National Shooting Sports Foundation, Inc., 219 USPQ 1018, 1020 (TTAB 1983). Each case should be decided upon its own facts and in the present, and not based upon what was known of Amazon bionutrients in 1979.

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A likelihood of confusion determination is a balancing process. Given the weakness of the marks, the differences in the marks, the possibility of confusion between Applicant's and the cited registrant's goods is remote.

In light of the foregoing, applicant respectfully requests reconsideration of the refusal to register based on likelihood of confusion with U.S. Registration No. 1127749. Favorable action is therefore requested. If you have any questions or comments regarding this application, please do not hesitate to call me.

Respectfully submitted,


Jeffrey A. Babener
Attorney for Amazon Herb Co.

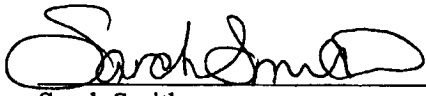
12/28/09
Date

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CERTIFICATE OF MAILING UNDER 37 C.F.R. §2.197(a)

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, on December 28, 2009.

December 28, 2009
Date


Sarah Smith

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