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

Proceeding	77658158
Applicant	Trivita, Inc.
Applied for Mark	NOPALEA
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Submission	Appeal to CAFC
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Date	02/12/2014

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

TriVita, Inc.,

Appellant

v.

United States Patent and Trademark  
Office, Trademark Trial and Appeal Board,

Appellee

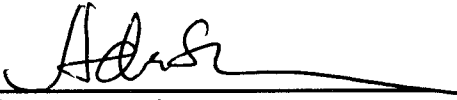
NOTICE OF APPEAL

Serial No. 77658158

Appellant, TriVita, Inc. hereby gives Notice of Appeal of the Order of the Trademark Trial and Appeal Board, in its entirety, refusing registration of NOPALEA in Class 5, Serial No. 77/658,158, entered on December 17, 2013 (the "Order"). The Appellant received the Order on December 17, 2013. A copy of the Order is attached hereto.

Respectfully submitted,

Dated this 12th of February, 2014

  
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Appeal has been served upon the Trademark Trial and Appeal Board electronically through ESTTA, with a duplicate copy sent via certified mail to the Office of the General Counsel, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450, on this 12th day of February, 2014.



Adam R. Stephenson, Esq.

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed:  
December 17, 2013

Hearing:  
November 13, 2013

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Trivita, Inc.

Serial No. 77658158

Adam R. Stephenson of Adam R. Stephenson Ltd., for Trivita, Inc.

Samuel Paquin, Trademark Examining Attorney, Law Office 111 (Ronald Sussman, Managing Attorney).<sup>1</sup>

Before Quinn, Wellington and Ritchie, Administrative Trademark Judges.

Opinion by Ritchie, Administrative Trademark Judge:

Trivita, Inc., applicant herein ("applicant"), seeks registration on the Principal Register of the mark

<sup>1</sup> Examining Attorney Erin Falk handled the prosecution of this application on behalf of the Office; however, subsequent to briefing of this appeal, Mr. Paquin was substituted as the assigned examining attorney and he represented the Office at oral argument.

Ser. No. 77658158

"NOPALEA,"<sup>2</sup> in standard character format, for goods identified as "Dietary and nutritional supplements sold exclusively through multi-level direct marketing; nutritional supplements sold exclusively through multi-level direct marketing; all of the foregoing containing, in whole or in substantial part, nopal juice," in International Class 5. The trademark examining attorney finally refused registration on the ground that applicant's proposed mark is merely descriptive of the identified goods under Trademark Act Section 2(e)(1), 15 U.S.C.

§ 1052(e)(1).

Both applicant and the examining attorney filed briefs, and applicant filed a reply brief. At applicant's request, a hearing was held and presided over by this panel on November 13, 2013.

#### **Descriptiveness**

A term is deemed to be merely descriptive of goods or services, within the meaning of Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. *See, In re Chamber of Commerce*

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<sup>2</sup> Serial No. 77658158, filed on January 28, 2009, amended to filing under Trademark Act Section 1(a) of the Trademark Act, 15 U.S.C. § 1052(a), with dates of first use and first use in commerce asserted from February 28, 2009, as filed with Statement of Use on April 9, 2011.

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