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

Proceeding	85886579
Applicant	Inca Tea, LLC
Applied for Mark	INCA TEA ORIGINAL 100% ALL NATURAL INGREDIENTS
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Date	03/06/2017

TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Inca Tea, LLC  
For the Mark : **INCA TEA ORIGINAL 100% ALL  
NATURAL INGREDIENTS**



Serial No. : 85/886,579  
Filing Date : March 26, 2013  
Examining Attorney : Robert J. Struck  
Law Office : 109  
Last Office Action : January 3, 2017  
Attorney Docket No. : FLOR 5 00004US01  
Cleveland, OH 44115  
March 6, 2017

Attention: TTAB  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**BRIEF FOR APPLICANT**

## **BACKGROUND**

Applicant seeks to register INCA TEA ORIGINAL 100% ALL NATURAL

INGREDIENTS and design () on the Principal Register for:

Teas comprised of purple corn; tea blends comprise of purple corn in class 30.

This application was filed under Section 1(b) and received U.S. Trademark Application Serial No. 85/886,579 with a filing date of March 26, 2013. The application originally identified:

Teas; herbal and non-herbal tea; tea beverages; beverages made with a base of tea; iced tea; ready-to-drink tea; low calorie tea; diet tea; fruit flavored beverages; tea with fruit flavorings; tea related products and accessories; clothing; and clothing, namely t-shirts, hats, jackets and sweatshirts in class 30.


The Examining Attorney, Lindsey H. Ben, required Applicant to disclaim “INCA TEA,” “100% ALL NATURAL INGREDIENTS,” and “ORIGINAL” as allegedly descriptive wording. The Examining Attorney also required clarification of the identification of goods and additional information about the goods, namely, whether the goods identified in the application comply with the Controlled Substances Act. See Office Action mailing date April 15, 2013.

In Applicant’s response to the initial refusal to register filed on October 11, 2013, Applicant argued a disclaimer of “INCA” would be inappropriate, as “INCA” is not descriptive of Applicant’s goods. Applicant also responded that the identified goods do not relate to any illegal or controlled substance and provided numerous examples of INCA formatives. Further, Applicant addressed that individuals are accustomed to seeing the word INCA in connection with products that could be purchased in a grocery

store or restaurant and that none of the provided registrations disclaimed INCA. Applicant also amended the identification.

In her non-final Office Action of November 22, 2013, the Examining Attorney repeated her requirement that “INCA TEA” must be disclaimed, alleging that the goods were misdescribed, as the Applicant’s identification includes Inca tea, while Applicant asserted its goods do not include Inca tea.


In response thereto on May 21, 2014, Applicant traversed the alleged deceptively misdescriptive grounds for refusal and addressed the Controlled Substances Act

requirements. Applicant maintained that  is not descriptive but suggestive, as the ancient term INCA, when used in conjunction with the term TEA, evokes a natural product with roots or inspiration in ancient Andean civilizations and/or lands. The identification was amended to “teas comprised of purple corn; tea blends comprised of purple corn” in class 30 so as to clarify the nature of the product. Applicant further asserted that coca leaves are not part of the product, and further, coca tea (i.e. coca leaves) is not an equivalent to Inca tea, and “Inca tea.” The Examining Attorney was only able to locate one citation relating Inca tea to coca tea: a WebMD article suggesting the author’s view that “coca” may be known as “Inca tea.” The Examining Attorney provided no evidence of probative value to establish that consumers could find INCA or INCA TEA to be descriptive. Even assuming that “Inca tea” deceptively and directly describes tea with coca leaves, Applicant provided evidence that such deception would not be plausible, as consumers would more regularly encounter tea containing coca so that they might assume a trademark with the

word “coca” in it for tea describes an attribute of the tea, and no such attribution can be

made with .


On July 1, 2014, a new Examining Attorney, Robert J. Struck, issued another non-final Office Action, withdrawing the disclaimer requirement but refusing registration under Section 2(d) of the Lanham Act for the first time. The Examining Attorney alleged


that the mark is likely to be confused with the mark INCA’S FOOD and design (  ), the subject of U.S. Reg. No. 4,110,531 for:

Hot pepper sauces, carob syrup; processed dried herbs, spices, flours, wheat hominy, and white corn hominy; dried prepared wheat; laurel leaves; processed herbs, namely, mint, white rosemary; spices, namely, oregano, ground ginger, ground paprika, ground annatto, tumeric; teas, namely, linden and chamomile in class 30

because INCA is contained in Applicant’s mark and the goods are ostensibly related. The Examining Attorney reasoned that the differences in the marks are minor and do not change the commercial impression of the marks. Further, the Examining Attorney reasoned that Applicant’s goods are related because they all consist of tea.

Applicant responded on December 30, 2014 and argued that the Section 2(d) refusal should be withdrawn, as the initial and subsequent examinations were incomplete, and the Examining Attorney could not show clear error. Applicant further argued that the applied-for mark and cited registration are not confusingly similar.

Namely, Applicant argued that on its face, and in its entirety,  is blatantly different

from  in pronunciation, meaning, and commercial impression. Particularly, when compared side-by-side, Applicant’s mark includes concentric circles, with a landscape

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