

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86213992
LAW OFFICE ASSIGNED	LAW OFFICE 119
MARK SECTION (no change)	
ARGUMENT(S)	
<p>Promera Health, LLC (“Applicant”), by and through its undersigned counsel, hereby responds to the Final Office Action, emailed December 1, 2014, for this trademark application.</p> <p style="text-align: center;"><u>REMARKS</u></p> <p><u>Disclaimer Requirement:</u></p> <p>The Examiner has maintained the disclaimer requirement for the GLUTA portion of the mark as a shown. The Examiner argues that GLUTA is a commonly understood descriptive meaning in relation to vitamins, minerals and supplements that contain glutamine. Thus, the Examiner argues that the term GLUTA is descriptive of the Applicant’s goods, which contain glutamine. Applicants respectfully disagree with the Examiner’s position.</p> <p>Applicant submits that the term GLUTA is not a descriptive term for glutamine and can carry multiple meanings. A simple internet search for the term GLUTA shows that GLUTA also refers to the compound glutathione. The first five pages and page ten of the search result is attached hereto as Exhibit A. It is submitted that glutathione is not glutamine. Glutathione is an antioxidant, whereas glutamine is an amino acid. The search result shows multiple hits for glutathione, the first hit of a product having glutamine appears on page four of the search results. The Applicants product GLUTA-TREN appears on page five of the search; however, these two isolated hits to products having glutamine is very small compared to the number of hits of products having glutathione. In one example, products sold under the registered trademark GLUTA-C for dietary and nutritional supplements, relates to formulations having glutathione and vitamin C. However, GLUTA-C does not relate to glutamine, as the Examiner’s argument would suggest. Therefore, one presented with the mark GLUTA BLAST would not find this descriptive of a product having glutamine as the term “gluta” is also associated with glutathione, contrary to the Examiner’s position. Thus, purchasers would not immediately identify goods sold under a name containing GLUTA to include glutamine in the product. Purchasers may alternatively believe the product contains glutathione. Therefore, the term GLUTA is suggestive of glutamine and does not descriptively describe products containing glutamine, and any doubts as to whether a marks is suggestive or descriptive are to be resolved in favor of the Applicant. <u>In re Pennwalt Corp.</u>, 173 USPQ 317 (TTAB 1972). Based on the evidence presented above, GLUTA should be resolved as suggestive and not, as the Examiner argues, descriptive of glutamine.</p> <p>The Examiner further argues that marks containing “GLUTA” do not have disclaimers, only because they are unitary marks that are combined with other descriptive wording in a way that makes the disclaimer unnecessary. Applicants respectfully disagree. Attached as Exhibit B is a search report for</p>	

marks containing the term GLUTA. It is noted that the marks GLUTA LEAN (Reg. No. 2931628) for nutritional supplements, did not require a disclaimer. This mark, similar to the Applicants mark, is two words, and not joined by any punctuation. Further, the registered mark GLUTA/ASCORBS (Reg. No. 12788622) for dietary supplement, including amino acids, did not require a disclaimer. Although the mark includes a slash, the slash does not indicate a joining of the two words, but, rather, signifies a substitute for “or” indicating a choice between two options. In contrast, a hyphen is used to join two words. Thus, the mark GLUTA/ASCORBS is to be looked at as a choice between two words, GLUTA or ASCORBS, and this mark did not require a disclaimer for the term GLUTA. In another example, the mark GLUTA PURE (Serial No.: 78135082) did not require a disclaimer for the term GLUTA and was allowed, but abandoned due to no Statement of Use being filed. Therefore, the Examiner position that marks containing GLUTA are unitary marks is inconsistent with the USPTO records. In fact, the Office has issued marks containing GLUTA without connection to other words without requiring a disclaimer to the same.

Finally, the Examiner states that that Applicant may not claim exclusive rights to use the term GLUTA, because to do so would deny others the right to use the word to describe their goods containing glutamine, and the Examiner provides examples of GLUTA-containing marks. However, researching the marks found that GLUTA WHITE, GLUTA MCPLUS, GLUTA FROSTA, and GLUTA POWER all refer to products containing glutathione, not glutamine. A further showing that GLUTA not only refers to glutamine, but to glutathione, making the mark, at best, suggestive of glutamine.

Applicant’s use of the term GLUTA does not meet the established criteria to require a disclaimer. GLUTA is suggestive of the goods, and is not merely descriptive of the goods on which the mark is used. As such, it is respectfully requested that the requirement of a disclaimer for the term GLUTA be withdrawn.

CONCLUSION

This submission is believed to address the objections and informalities raised by the Examiner. From the record, the Examiner has found no prior registered or pending mark which would bar registration of the Applicant’s mark on the grounds of likelihood of confusion. In view of the foregoing remarks, it is respectfully submitted that the instant application be allowed.

EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_38104121250-20150601152436367792_ . ExhibitA.pdf
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SIGNATURE SECTION	
RESPONSE SIGNATURE	/Michael A. Miller/
SIGNATORY'S NAME	Michael A. Miller, Registration No. 50,732
SIGNATORY'S POSITION	Attorney for Applicant
SIGNATORY'S PHONE NUMBER	(412) 454-5000
DATE SIGNED	06/01/2015
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Jun 01 15:42:28 EDT 2015
TEAS STAMP	USPTO/RFR-38.104.121.250-20150601154228193257-86213992-530f7cd2a40a75096abc6ece8e8f049829cd34dcb496366544d5dfe39431157863e-N/

Request for Reconsideration after Final Action To the Commissioner for Trademarks:

Application serial no. **86213992** has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

Promera Health, LLC (“Applicant”), by and through its undersigned counsel, hereby responds to the Final Office Action, emailed December 1, 2014, for this trademark application.

REMARKS

Disclaimer Requirement:

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EVIDENCE

Original PDF file:

[evi_38104121250-20150601152436367792_..ExhibitA.pdf](#)

Converted PDF file(s) (12 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

[Evidence-7](#)

[Evidence-8](#)

[Evidence-9](#)

[Evidence-10](#)

[Evidence-11](#)

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