

To: MAREK KRIZKA(office@tramatm.com)
Subject: U.S. Trademark Application Serial No. 98052004 - LAW OF NATURE
Sent: October 17, 2024 03:50:22 PM EDT
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Attachments

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[screencapture-osmosisbeauty-com-collections-makeup-17291888149021](#)
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United States Patent and Trademark Office (USPTO)
Office Action (Official Letter) About Applicant's Trademark Application

U.S. Application Serial No. 98052004

Mark: LAW OF NATURE

Correspondence Address:

MAREK KRIZKA
SPARRING LEGAL LLP
477 MADISON AVENUE, 6TH FLOOR
NEW YORK NY 10022

UNITED STATES

Applicant: Law Of Nature LLC

Reference/Docket No. N/A

Correspondence Email Address: office@tramatm.com

REQUEST FOR RECONSIDERATION AFTER FINAL ACTION DENIED

Issue date: October 17, 2024

Introduction

Applicant's request for reconsideration is denied. *See* 37 C.F.R. §2.63(b)(3). The trademark examining attorney has carefully reviewed applicant's request and determined the request did not: (1) raise a new issue, (2) resolve all the outstanding issue(s), (3) provide any new or compelling evidence with regard to the outstanding issue(s), or (4) present analysis and arguments that were persuasive or shed new light on the outstanding issue(s). TMEP §§715.03(a)(ii)(B), 715.04(a).

Accordingly, the Section 2(d) refusal made final in the Office action dated April 23, 2024 is maintained and continued. *See* TMEP §§715.03(a)(ii)(B), 715.04(a).

Summary of Issues

- Section 2(d) - Likelihood of Confusion Refusal

Section 2(d) - Likelihood of Confusion Refusal

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 5112850. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.*

Trademark Act Section 2(d) bars registration of an applied-for mark that is so similar to a registered mark that it is likely consumers would be confused, mistaken, or deceived as to the commercial source of the goods and/or services of the parties. *See* 15 U.S.C. §1052(d). Likelihood of confusion is determined on a case-by-case basis by applying the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973) (called the “*du Pont* factors”). *In re i.am.symbolic, llc*, 866 F.3d 1315, 1322, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017). Any evidence of record related to those factors need be considered; however, “not all of the *DuPont* factors are relevant or of similar weight in every case.” *In re Guild Mortg. Co.*, 912 F.3d 1376, 1379, 129 USPQ2d 1160, 1162 (Fed. Cir. 2019) (quoting *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1406, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997)).

Although not all *du Pont* factors may be relevant, there are generally two key considerations in any likelihood of confusion analysis: (1) the similarities between the compared marks and (2) the relatedness of the compared goods and/or services. *See In re i.am.symbolic, llc*, 866 F.3d at 1322, 123

USPQ2d at 1747 (quoting *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103, 192 USPQ 24, 29 (C.C.P.A. 1976) (“The fundamental inquiry mandated by [Section] 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks.”); TMEP §1207.01.

Applicant has applied to register the mark LAW OF NATURE in stylized text for “Dietary and nutritional supplements for promoting digestion; Dietary supplements for humans; Food supplements; Health food supplements; Natural dietary supplements; Nutritional supplements; Vitamin and mineral supplements; Weight management supplements” in International Class 005.

Registrant’s mark is LAWS OF NATURE COSMETICS in stylized text with a design for “Cosmetics” in International Class 003.

Similarity of the Marks

Marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *In re Charger Ventures LLC*, 64 F.4th 1375, 1380, 2023 USPQ2d 451, at *3 (Fed. Cir. 2023) (citing *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1368, 101 USPQ2d 1713, 1720 (Fed. Cir. 2012); *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1371-72, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005)); TMEP §1207.01(b)-(b)(v). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) (citing *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)), *aff’d per curiam*, 777 F. App’x 516, 2019 BL 343921 (Fed. Cir. 2019); TMEP §1207.01(b).

Here, applicant’s mark, LAW OF NATURE, is confusingly similar to the registered mark, LAWS OF NATURE COSMETICS. Although marks are compared in their entireties, one feature of a mark may be more significant or dominant in creating a commercial impression. *See In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Nat’l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 751 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii). Disclaimed matter that is descriptive of or generic for a party’s goods and/or services is typically less significant or less dominant when comparing marks. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 1305, 128 USPQ2d 1047, 1050 (Fed. Cir. 2018) (citing *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997)); *Made in Nature, LLC v. Pharmavite LLC*, 2022 USPQ2d 557, at *41 (TTAB 2022); TMEP §1207.01(b)(viii), (c)(ii). In the registered mark, the term COSMETICS is disclaimed, leaving LAWS OF NATURE as the dominant element of the mark.

Further, the pluralization of LAWS in the registered mark does not obviate the similarity between the marks. An applied-for mark that is the singular or plural form of a registered mark is essentially identical in sound, appearance, meaning, and commercial impression, and thus the marks are confusingly similar. *Swiss Grill Ltd., v. Wolf Steel Ltd.*, 115 USPQ2d 2001, 2011 n.17 (TTAB 2015) (holding “it is obvious that the virtually identical marks [the singular and plural of SWISS GRILL] are confusingly similar”); *Weider Publ’ns, LLC v. D & D Beauty Care Co.*, 109 USPQ2d 1347, 1355 (TTAB 2014) (finding the singular and plural forms of SHAPE to be essentially the same mark) (citing *Wilson v. Delaunay*, 245 F.2d 877, 878, 114 USPQ 339, 341 (C.C.P.A. 1957) (finding no material difference between the singular and plural forms of ZOMBIE such that the marks were considered the same mark). Thus, the phrases LAW OF NATURE and LAWS OF NATURE are confusingly similar.

Finally, the differing designs are not enough to make the two marks distinct from one another. When evaluating a composite mark consisting of words and a design, the word portion is normally accorded greater weight because it is likely to make a greater impression upon purchasers, be remembered by them, and be used by them to refer to or request the goods and/or services. *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *CBS Inc. v. Morrow*, 708 F.2d 1579, 1581-82, 218 USPQ 198, 200 (Fed. Cir. 1983)); *Made in Nature, LLC v. Pharmavite LLC*, 2022 USPQ2d 557, at *41 (TTAB 2022) (quoting *Sabhnani v. Mirage Brands, LLC*, 2021 USPQ2d 1241, at *31 (TTAB 2021)); TMEP §1207.01(c)(ii). Thus, although marks must be compared in their entirety, the word portion is often considered the dominant feature and is accorded greater weight in determining whether marks are confusingly similar, even where the word portion has been disclaimed. *In re Viterra Inc.*, 671 F.3d at 1366-67, 101 USPQ2d at 1911 (citing *Giant Food, Inc. v. Nation's Foodservice, Inc.*, 710 F.2d 1565, 1570-71, 218 USPQ2d 390, 395 (Fed. Cir. 1983)). Because the wording is confusingly similar, the marks as a whole are confusingly similar.

In the April 8, 2024 Response, applicant argued that the distinctive design of each mark makes the marks distinguishable to consumers. *See* Response, p. 3. However, as mentioned above, the word portions of the marks are nearly identical in appearance, sound, connotation, and commercial impression; therefore, the addition of a design element does not obviate the similarity of the marks in this case. *See In re Shell Oil Co.*, 992 F.2d 1204, 1206, 26 USPQ2d 1687, 1688 (Fed. Cir. 1993); TMEP §1207.01(c)(ii). Therefore, this argument is not persuasive.

Applicant also argued that the term COSMETICS, though disclaimed, adds something to the commercial impression of the registered mark. *See* Response, p. 4. However, in this case, because COSMETICS is generic for registrant's goods, consumers would likely see registrant's mark as merely the cosmetics line of the larger LAWS OF NATURE brand. *See Anheuser-Busch, LLC v. Innvopak Sys. Pty Ltd.*, 115 USPQ2d 1816, 1824-25 (TTAB 2015) (citing *In re Chatam Int'l Inc.*, 380 F.3d 1340, 1342-43, 71 USPQ2d 1944, 1946 (Fed. Cir. 2004)). Thus, even if the word changes the commercial impression of registrant's mark in the eyes of consumers, it would only be to understand what goods registrant is offering. Thus, this argument is not persuasive.

In the October 9, 2024 Request for Reconsideration, applicant argues that the wording of the marks is weak, meaning that consumers would "pay special attention" to the other elements of the marks, such as the design. Request for Reconsideration, p. 3. Applicant asserts that the marks are comprised of a commonly used phrase that is suggestive of the quality of the products. *See* Request for Reconsideration, p. 3. However, Trademark Act Section 7(b) provides that a certificate of registration on the Principal Register is prima facie evidence of the validity of a registered mark. 15 U.S.C. §1057(b); *see SoClean, Inc. v. Sunset Healthcare Sols., Inc.*, 52 F.4th 1363, 1369, 2022 USPQ2d 1067, at *3 (Fed. Cir. 2022) ("The presumption of validity is not conditional; the statute provides that a certificate of registration 'shall' result in the presumption, without specifying any exceptions."). The validity of a cited registration "cannot be challenged in an ex parte proceeding." *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1517 (TTAB 2016). Thus, applicant's argument is not being considered because to do so would fail to give the cited registered mark the validity to which it is entitled. *In re Fat Boys Water Sports LLC*, 118 USPQ2d at 1517 (citing *In re Fiesta Palms LLC*, 85 USPQ2d 1360, 1363 (TTAB 2007)). Thus, this argument is not persuasive.

Applicant again argues the dissimilarity of the visual characteristics of the marks, saying that the marks are both highly stylized in distinct ways. *See* Request for Reconsideration, p. 4. Applicant asserts that the marks must be compared in their entirety to determine whether consumers are likely to confuse

them, which includes taking into account the stylization and the disclaimed matter. *See* Request for Reconsideration, pp. 4-5. However, a trademark examining attorney may weigh the individual components of a mark to determine its overall commercial impression. *In re Detroit Athletic Co.*, 903 F.3d 1297, 1305, 128 USPQ2d 1047, 1050 (Fed. Cir. 2018) (“[Regarding the issue of confusion,] there is nothing improper in stating that . . . more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entirety.” (quoting *In re Nat’l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 751 (Fed. Cir. 1985))). In this case, the close similarity in the wording between the marks outweighs any stylistic differences.

Thus, because the marks look and sound similar and create the same commercial impression, the marks are considered similar for likelihood of confusion purposes.

Relatedness of the Goods

The goods and/or services are compared to determine whether they are similar, commercially related, or travel in the same trade channels. *See Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369-71, 101 USPQ2d 1713, 1722-23 (Fed. Cir. 2012); *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1165, 64 USPQ2d 1375, 1381 (Fed. Cir. 2002); TMEP §§1207.01, 1207.01(a)(vi).

The compared goods and/or services need not be identical or even competitive to find a likelihood of confusion. *See On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000); TMEP §1207.01(a)(i). They need only be “related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that [the goods and/or services] emanate from the same source.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)); TMEP §1207.01(a)(i); *see Made in Nature, LLC v. Pharmavite LLC*, 2022 USPQ2d 557, at *44 (TTAB 2022) (quoting *In re Jump Designs LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006)).

Here, applicant’s goods, “Dietary and nutritional supplements for promoting digestion; Dietary supplements for humans; Food supplements; Health food supplements; Natural dietary supplements; Nutritional supplements; Vitamin and mineral supplements; Weight management supplements,” are closely related to registrant’s goods, “cosmetics.”

The attached third party Internet evidence from Osmosis, Tula, Perricone MD, and Grande Cosmetics, and the previously attached third party Internet evidence from Jane Iredale, Honest, and Beauty Pie establish that the same entity commonly manufactures, produces, or provides the relevant goods and markets the goods under the same mark. Here, health and beauty companies commonly make supplements as well as various cosmetic products. Thus, applicant’s and registrant’s goods are considered related for likelihood of confusion purposes. *See, e.g., In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202-04 (TTAB 2009); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1268-69, 1271-72 (TTAB 2009).

Further, the trademark examining attorney's currently attached and previously attached evidence from the USPTO’s XSearch database, consisting of a number of third-party marks registered for use in connection with the same or similar goods as those of both applicant and registrant in this case, shows that the goods listed therein, namely cosmetics and supplements, are of a kind that may emanate from a single source under a single mark. *See In re I-Coat Co.*, 126 USPQ2d 1730, 1737 (TTAB 2018) (citing

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