

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	Lustenberger + Dürst SA
Serial No. 88/505,242	Filing Date: 7/9/2019
Trademark	HEALTHY BY NATURE

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

Response to Official Action

Dear Sir:

In response to the Office Action mailed on October 1, 2019, Applicant responds as follows.

Refusal Based On Likelihood Of Confusion

The Examining Attorney refuses registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d), on the grounds that Applicant's mark, when used on the identified goods, is likely to be confused with the following registered mark:

HEALTHY BY NATURE – Reg. No. 4343711 for “vitamin fortified beverages” in class 5 owned by Vital Rood Holding Ltd.

Applicant respectfully disagrees. 1) The cited mark HEALTHY BY NATURE Reg. No. 4343711 has already coexisted on the Federal Register alongside Applicant's identical Mark HEALTHY BY NATURE for cheese under U.S. Registration No. 4269238 for six (6) years and therefore the U.S. Trademark Office has already deemed that the cited trademark as applied to vitamin fortified beverages is distinguishable from Applicant's mark HEALTHY BY NATURE as applied to applicant's goods, namely, cheese. 2) The Cited Mark already coexists with third party records for HEALTHY BY NATURE for similar goods.

1) The USPTO already held Applicant's and Registrant's Marks to be distinguishable as applied to their respective goods.

The cited mark HEALTHY BY NATURE Reg. No. 4343711 has already coexisted on the Federal Register alongside Applicant's identical Mark HEALTHY BY NATURE for cheese under U.S. Registration No. 4269238 for a period of six (6) years and therefore the U.S. Trademark Office

has already deemed that the cited trademark as applied to vitamin fortified beverages is distinguishable from Applicant's mark HEALTHY BY NATURE as applied to applicant's goods, namely, cheese.


Although the decisions of prior examining attorneys are not binding in subsequent applications, consistency in examination has been recognized as a goal of the Office. *In re Nett Designs*, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001); *In re Rodale, Inc.*, 80 USPQ2d 1696 (TTAB 2006). Thus, Applicant respectfully requests that the Examining Attorney treat this application consistently with the Office's prior practice in treating HEALTHY BY NATURE for cheese and HEALTHY BY NATURE for vitamin fortified beverages to be distinguishable.

B. THIRD PARTY RECORDS.

There are third party registrations for marks that are similar to the Cited Mark in the relevant field, which are relevant to show that the mark is suggestive. Evidence of third-party use falls under the sixth du Pont factor - the "number and nature of similar marks in use on similar goods." *In Re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1362, 177 USPQ 563, 567 (CCPA 1973). See the attached TARR printouts of US registrations for marks containing "HEALTHY BY NATURE" in the relevant field for goods that are more similar to the goods of the Cited record than Applicant's goods.

If the Cited Mark can coexist with Applicant's prior registration for the identical Mark HEALTHY BY NATURE for cheese under U.S. Registration No. 4269238 as well as Registration Nos. 4963436 and 4037853, **then Applicant's Mark can also coexist with the Cited Mark.** Applicant's mark is no more likely to cause confusion with the Cited Mark and cited registration than the following registrations:

U.S. Trademark/ Registration No.	Status/Dates	Goods/Services	Owner
<u>MAIKA HEALTHY BY NATURE and Design</u>	Registered May 24, 2016 Int'l Class: 29 First Use: January 1, 2015 Filed: September 9, 2015	(Int'l Class: 29) frozen meals consisting primarily of vegetables	Maika Foods (California Limited Liability Company) 3831 Oakfield Dr Sherman Oaks California 91423

U.S. Trademark/ Registration No.	Status/Dates	Goods/Services	Owner
 RN: 4963436			
HEALTHY BY NATURE RN: 4037853	Registered 8 & 15 October 12, 2017 Int'l Class: 44 First Use: February 1, 2011 Filed: February 18, 2011 Registered: October 11, 2011	(Int'l Class: 44) medical clinics; medical services; naturopathic medical services; naturopathic medical clinics; providing integrative, alternative and holistic medical services	Kupperman, Stacey D, Dba Healthy by Nature Naturopathic Medicine (United States Citizen) 535 N Hayworth St, 303 Los Angeles California 90048

EVIDENCE

Evidence in the nature of TARR records are attached.

It is respectfully submitted that the foregoing Amendment and Remarks responds to the issues raised in the Office Action. It is accordingly requested that the present application be approved for publication.

Respectfully submitted,



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