

CANNABEAUTY

Classes 3, 5, 29, 30, 31, 32, and 34

Application No. 88425732

Office Action Response

I. Amendment of Listed Goods

The Examiner requested amendment to the listed goods in within the Application. In response, Applicant has amended the goods recited in the Application, as set out herein.

Classes 3

Bath additives, namely, bath herbs, bath oils, bath oils for cosmetic purposes; beauty care cosmetics; beauty creams for body care; beauty gels; beauty lotions; body and beauty care cosmetics; body creams; body oils; cosmetic creams; cosmetic oils; cosmetics and make-up; face and body lotions; face and body milk; face lotion; hair care preparations; hair styling preparations; hand cream; hand lotions; non-medicated lip care preparations; lip conditioners; lip glosses; non-medicated liquid soaps; massage creams; massage oils; non-medicated bubble bath preparations; non-medicated preparations for the care of hair; non-medicated preparations for the care of skin; non-medicated preparations for the care of the scalp; non-medicated skin care preparations; oils for toiletry purposes; skin care preparations; skin creams; skin emollients; skin lotions; skin soap; soaps for body care, namely cream soaps, bath soaps, bar soaps, paper soaps; soaps for personal use namely, cream soaps, bath soaps, bar soaps, paper soaps; each of the foregoing containing permissible delta-9 THC concentrations as set forth in applicable federal legislation of the United States

Class 5

Hemp cannabidiol derived products, namely, oils, salves, concentrated pastes, topical tinctures; oils, salves, concentrated pastes, topical tinctures, each containing resins and oils derived from hemp or derivatives thereof and for medical use; topical skin creams, bar and liquid soaps, bath additives in the nature of bath melts, bath herbs, and bath oils; body creams, body oils, face and body lotions, face and body milk, face lotion, and skin care preparations for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, and as a sleep aid; personal sexual lubricants; transdermal patches for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; hemp cannabidiol or derivatives thereof for topical medicinal use; hemp cannabidiol derived product, namely, oils for topical medicinal use for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; oils derived from hemp for topical medicinal use for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; each of the foregoing containing permissible delta-9 THC concentrations as set forth in applicable federal legislation of the United States

Class 29

Oils and resins derived from hemp for use as comestibles; hemp or cannabidiol related product, namely, oils for use as comestibles; oils derived from hemp or cannabidiol for use as comestibles; food products

containing hemp, cannabidiol, resins and cannabidiol oils, namely, butter; each of the foregoing containing permissible delta-9 THC concentrations as set forth in applicable federal legislation of the United States

Class 30

Food products containing hemp, cannabidiol or derivatives thereof, namely, chocolates, cookies, brownies, candy and food energy bars; tea, namely, teas containing hemp, cannabidiol or derivatives thereof, and teas containing hemp, cannabidiol or derivatives thereof; each of the foregoing containing permissible delta-9 THC concentrations as set forth in applicable federal legislation of the United States

Class 31

Live hemp plants; hemp seeds; each of the foregoing containing permissible delta-9 THC concentrations as set forth in applicable federal legislation of the United States

Class 32

Smoothies, fruit beverages and fruit juices, carbonated soft drinks, and energy drinks each containing hemp, cannabidiol or derivatives thereof; each of the foregoing containing permissible delta-9 THC concentrations as set forth in applicable federal legislation of the United States

Class 34

Smokers' articles, namely, grinders for use with hemp; dried hemp; derivatives of hemp, namely, resins and oils, not for medical use; hemp cannabidiol and hemp for recreational use; smokers' articles, namely, smoking pipes, pouches for use with hemp, lighters for smokers, oral vaporizers for smokers, each of the foregoing for use with articles containing permissible delta-9 THC concentrations as set forth in applicable federal legislation of the United States

II. Controlled Substances Act / Cannabis Related Goods Refusal

The Examiner has refused registration on the basis that the Applicant cannot have a bona fide intent to lawfully use the applied-for mark in commerce with respect to the listed goods. Applicant respectfully asserts that this basis for refusal is moot in light of the amended recitations of goods adopted herein.

III. FDCA Refusal

The Examiner alleges that the Applicant does not have a bona fide intent to lawfully use the applied-for mark in commerce with relation to the goods identified in Classes 5, 29, 30 and 32 because pursuant to the FDCA it is unlawful to introduce food or beverages containing added CBD into interstate commerce or to market CBD as, or in, dietary and nutritional supplements, regardless of whether the substances are hemp-derived. However, applicant notes that it has a bona fide intent to lawfully use the applied-for mark in commerce because it is authorized to import products containing CBD into the United States in furtherance of one or more FDA-approved clinical trials.

IV. Drug Paraphernalia Refusal

The Examiner has refused registration for certain goods in Class 34 because Applicant allegedly does not have a bona fide intent to lawfully use the applied-for mark in commerce. However, Applicant respectfully asserts that this basis for refusal is moot in light of the amended recitations of goods adopted herein.

V. Request for Additional Information

The Examiner has requested additional information regarding the Applicant's applied for goods. Applicant submits the following responses to the posed questions.

1. Do or will any of applicant's identified goods include or contain marijuana or cannabis, marijuana-based preparations or cannabis-based preparations, extracts or derivatives from marijuana or cannabis, including tetrahydrocannabinol (THC), synthetic marijuana, or any other controlled substance under the CSA

None of the goods will have a THC content of more than the permissible delta-9 THC concentrations (or any other controlled substance under the CSA) as set forth in applicable federal legislation of the United States.

2. Do or will applicant's identified goods include any oils, extracts, ingredients or derivatives from the plant Cannabis sativa L (also known as cannabis, marijuana or hemp) or from synthetic marijuana?

None of the goods will have a THC content of more than the permissible delta-9 THC concentrations as set forth in applicable federal legislation of the United States

3. If the answer to Question 2 is "yes," does the hemp used or to be used in applicant's goods contain more than 0.3 percent delta-9 tetrahydrocannabinol (THC) on a dry weight basis?

None of the goods will have a THC content of more than the permissible delta-9 THC concentrations as set forth in applicable federal legislation of the United States.

4. Do or will the goods include cannabidiol (CBD)?

None of the listed goods identified in the application include cannabidiol (CBD), beyond any legally permissible level, as a component or ingredient, except those goods in Class 31 (which contain legally permissible levels).

5. If so, will there be more than a trace amount of CBD in the goods, e.g., more than 50 parts per million (PPM)?

None of the listed goods identified in the application include cannabidiol (CBD), beyond any legally permissible level.

6. If applicant has any documentation relative to the CBD content of the oils, extracts or derivatives used or to be used in the goods, please submit them with the response.

There is no current use of these goods in the United States.

7. Do or will any of applicant's identified goods include or contain hemp seed oil?

There is no current use of these goods in the United States.

8. Which part or parts of the hemp plant are used in obtaining the oils, extracts, ingredients or derivatives?

There is no current use of these goods in the United States.

9. Do or will applicant's identified goods include CBD which is derived from, oils, extracts or ingredients from plants other than Cannabis sativa L (also known as hemp, marijuana or cannabis)?

No.

10. Is applicant currently seeking FDA approval of the marketing of its goods identified in the application?

Applicant is not directly seeking FDA approval of the marketing of any of its goods identified in the application.

11. If the answer to Question 10 is "yes," please provide a copy of such application.

The answer to Question 10 was "no," therefore this question is moot

VI. Likelihood of Confusion Refusal

The Examining Attorney has refused the subject Application based upon a purported likelihood of confusion with U.S. Registration Nos. 4615445, 4677569, and 4677574.

Applicant respectfully disagrees with the Examiner's assertion, and believes that no likelihood of confusion exists in this case. Specifically, Applicant notes that CANNABEAUTY is a coined term comprising the root "CANNA-" which is suggestive of cannabis-related products, and "BEAUTY", a generic term when applied generally to goods in Classes 3 and 5. The cited registrations consist merely of the generic terms "CANNABIS" and "BEAUTY", or "CANNABIS", "BEAUTY", and "DEFINED", where "DEFINED" serves as a distinguishing element between the trademarks at issue. Notably, U.S. Registration No. 4615445 (CANNABIS BEAUTY) was allowed only on the Supplemental Register, and U.S. Registration Nos. 4677569, and 4677574 (CANNABIS BEAUTY DEFINED and CANNABIS BEAUTY DEFINED & Design) include disclaimers of the term "CANNABIS BEAUTY".

Thus, as the elements of the cited marks are individually highly diluted and descriptive of the underlying products in those cases, the scope of those registrations should be construed quite narrowly vis-à-vis other marks and the applied-for mark in the present case. Further, the facial differences between the applied-for mark and cited marks are sufficient such that there is no likelihood of actual confusion.

VII. Prior-Filed Application Advisory

Applicant elects not to submit arguments in connection with the prior pending application identified by the Examiner at this time but reserves the right to file arguments if the prior pending application matures into a registration and a likelihood of confusion refusal is issued.