

## GABRIOLA

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

Application No. 88425683

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 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.

2. 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.

3. Do or will applicant's identified goods in Classes 5, 29, 30 or 32 which include CBD have CBD derived from, oils, extracts or ingredients from plants other than *Cannabis sativa* L?

No.

4. Is applicant currently seeking FDA approval of the marketing of any 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.

5. If the answer to Question 4 is "yes," please provide a copy of such application.

The answer to Question 4 was "no," therefore this question is moot.

## VI. Descriptiveness and Varietal Name Refusal

Applicant respectfully submits that "GABRIOLA" is a coined term by the Applicant and does not refer to a varietal or cultivar name of a specific strain of *Cannabis sativa* L. Applicant notes that the evidence presented by the Examiner includes the Applicant's own website and third parties that refer directly to the Applicant's own product. No authority or scientific literature indicates the existence of a distinct varietal subspecies of *Cannabis Sativa* L. named "GABRIOLA". GABRIOLA has never been and never will be used as a varietal name. Additionally, GABRIOLA has never been used and never will be used in connection with a plant patent, utility patent, or certificate for plant-variety protection. Therefore, Applicant respectfully requests the refusals for Descriptiveness and Varietal Name be withdrawn from the application.