



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

Application No. 88427078

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. Mark Significance Inquiry

Applicant respectfully submits that FIND YOUR MOMENT or MOMENT has never been and never will be used as a varietal or cultivar name. Additionally, FIND YOUR MOMENT or MOMENT has never been and never will be used in connection with a plant patent, utility patent, or certificate for plant-variety protection.

V. Likelihood of Confusion Refusal

The Examining Attorney has initially refused to register the applied-for RIFF (Stylized & Design) mark (the "Mark") alleging that it is likely to be confused with the following marks (the "Cited Registrations" or "Cited Marks")

| Mark | Services |
|--|-------------------|
| RIFF AN: 87242695 RN: 5228052 | 30: Coffee |
|  AN: 87645024 RN: 5469446 | 30: Coffee |

Applicant respectfully submits that the applied-for mark and the Cited Marks are not likely to be confused and as such the likelihood of confusion refusal should be withdrawn.

❖ The marks are dissimilar in appearance and overall commercial impression

When considering the similarity of the marks, all relevant facts pertaining to the appearance, sound, meaning, and commercial impression must be considered. TMEP § 1207.01. See *Recot, Inc. v. M.C. Becton*, 214 F.3d 1322, 1329 (Fed. Cir. 2000). In evaluating the similarities between marks, the emphasis must be on the recollection of the average purchaser who normally retains a general, rather than specific, impression of the marks. *Id.* See *Sealed Air Corp. v. Scott Paper Co.*, 190 U.S.P.Q. 106, 108 (T.T.A.B. 1975).

Applicant's mark is significantly visually different from the Cited Marks such that confusion is not likely to occur. In particular, the Mark incorporates a distinctive design element, which is the dominant portion of the composite mark and thus clearly differentiates the Mark from the Cited Marks. Further, the separated special arrangement of the "RI" and "FF" letters in the Mark further serve to distinguish it from the Cited Marks, which do not incorporate this unique arrangement.

In light of Applicant's amendment to the goods in the application and the differences in appearance between Applicant's mark and the Cited Marks, Applicant respectfully asserts that no likelihood of confusion exists. As such, Applicant respectfully requests that the Examining Attorney withdraw the Likelihood of confusion refusal and allow the Application to proceed to publication.

VI. 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.