

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: **M. Dercio Grabin**
Serial Number: **79268694**
Mark: **VITALFORCE**

Trademark Examining Attorney: **Michael Eisnach**
Trademark Law Office: **104**

I. Likelihood of Confusion with Mark in U.S. Registration No. 4,442,799

In his office action, Trademark Examining Attorney refused registration of Applicant's mark under §2(d) on the basis that it is likely to cause confusion with the mark in U.S. Registration No. 4,442,799. Specifically, Trademark Examining Attorney states that "crystals for wellness are often used as massage apparatus."

As part of his office action response, Applicant has amended his identification of goods to "electric massage apparatus." Applicant believes this amendment obviates the likelihood of confusion refusal because the products in Applicant's amended identification are clearly dissimilar to the products recited in Registration No. 4,442,799.

First, it should be noted that the cited registration is for "crystals used for therapeutic balance and wellness," and does not specifically state that its crystals are used for massage purposes. Although Applicant's initial identification of "massage apparatus, physical rehabilitation apparatus for medical use" was so broad as to include massage crystals, there is no relatedness between "electric massage apparatus" and Registrant's therapeutic crystals. While crystals may be employed as an apparatus for massage, they are not powered by electricity.

Moreover, crystal massagers are a form of alternative medicine, and users and advocates of such products emphasize their *natural* healing power. On the other hand, Applicant's electric massage apparatus operate in direct contradiction to the values held by users and advocates of Registrant's products.

Finally, the evidence provided by Trademark Examining Attorney does not establish any connection between crystals for therapeutic purposes (nor massage, for that matter) and electric massage apparatus. The screenshots do not show crystals being sold in connection with or emanating from the same source as any electric products at all, or any products used for massage that are not minerals, crystals, or crystal-based.

In view of the above, Applicant respectfully requests that Trademark Examining Attorney withdraw his §2(d) refusal and approve Applicant's mark for publication.