

REDDYP 10.1-033/327  
Mark: HEALTHCARE AISLE Design  
Serial No. 88/626697

Due Date: 6/27/20  
PHK

This amendment is being filed in response to the Office Action dated December 27, 2019.

Please amend the identification of goods by deleting the present identification of goods and substituting therefore the following:

-- Diverse line of Over-The-Counter medicines, namely, allergy relief medications, analgesics, antacids, antihistamines, decongestant capsules and tablets; decongestant nasal sprays; medicinal gastrointestinal preparations; medicated smoking cessation patches, gums and lozenges. --

Please amend the application to include the following disclaimer:

-- No claim is made to the exclusive right to use "HEALTHCARE" apart from the mark as shown. --

Reconsideration and allowance of the present application is respectfully requested.

### **REMARKS**

The Trademark Examining Attorney has initially objected to Applicant's description of goods in that in the Trademark Examining Attorney's opinion, the identification of goods is indefinite and must be amended to delete the term "to include, but not limited to," and substitute a definite term such as "namely." In that regard, Applicant has adopted the identification of goods set forth by the Trademark Examining Attorney in the most recent Office Action. Based upon the adoption of the Trademark Examining Attorney's description of goods, Applicant respectfully requests that the objection to Applicant's identification of goods be withdrawn.

The Trademark Examining Attorney has requested Applicant to disclaim the word "healthcare" apart from its mark because it is not inherently distinctive and describes an ingredient, quality, characteristic, function, feature, purpose, or use of Applicant's goods. In this regard, Applicant has amended the application to include the appropriate disclaimer, and accordingly, respectfully submits that Applicant has complied with the Trademark Examining Attorney's request.

Finally, the Trademark Examining Attorney has specifically indicated, following a search of the Trademark Office records, no similar registered mark has been found that would bar registration of Applicant's mark under Trademark Act Section 2(d). However, as set forth by the Trademark Examining Attorney, there is presently a pending application, which in the Trademark Examining Attorney's opinion, may present a bar to registration if a registration issues with respect to that cited application. Specifically, the Trademark Examining Attorney has identified Application Serial No. 88/258,600 for the mark AISLE used in connection with "sanitary preparations for personal hygiene, particularly, menstruation and incontinencies, namely, disposable and washable menstrual pad, incontinence pads, sanitary pads, sanitary panty liners,

sanitary tampons, menstruation tampons, sanitary napkin, sanitary towels, sanitary panties, sanitary knickers, menstruation knickers, and sanitary pants, adult diapers, and infant cloth diapers.”

Applicant respectfully submits that even if the mark subject to the pending application issues as a registration, registration of Applicant’s mark should be allowed since there will not be a likelihood of confusion between the two marks in violation of Section 2(d) of the Trademark Act. The basis for this position is the overall difference in the marks both in terms of appearance and sound, and further, because the type of goods sold under each mark are so distinctly different.

In particular, as to sound and appearance, these are critical factors distinguishing each of the marks. As to appearance, Applicant’s mark is the word “healthcare” combined with a pictured physical element, a cart, and finally, the word “aisle.” This must be contrasted in appearance with merely the word “aisle” of the cited application. Clearly, a consumer seeking Applicant’s products would recognize that products sold under the trademark AISLE do not arise from the same source when seeing products bearing the mark HEALTHCARE (CART) AISLE. This becomes even more apparent when considering the type of goods sold under each mark.

Secondly, in terms of sound of the mark, here again, the marks are completely different and would not be confused. One asking for an AISLE product would recognize that a product called HEALTHCARE (CART) AISLE is from a different company and not be confused. As “healthcare” is the dominant portion of Applicant’s mark, this clearly distinguishes the HEALTHCARE (CART) AISLE from the AISLE trademark.

Just as important in distinguishing the two marks is the products on which the marks are used. Based upon these product differences, a consumer looking for personal hygiene products under the AISLE trademark is knowledgeable enough not to confuse pharmaceutical and medicinal preparation products sold under the HEALTHCARE (CART) AISLE trademark.

As can be seen, the goods associated with the AISLE trademark relate solely to sanitary preparations for personal hygiene dealing with menstruation and incontinence. Nowhere in the description of goods of the cited application for AISLE are there medicinal and pharmaceutical preparations, such as allergy relief medications, analgesics, antacids, antihistamines, decongestants, gastrointestinal preparations and/or pharmaceutical preparations dealing with smoking cessation. Therefore, a person looking for sanitary protection with respect to personal hygiene for menstruation or incontinence, is a customer seeking to purchase an off the shelf bulk product as opposed to a pharmaceutical or medicinal preparation such as pills or capsules. Clearly, that consumer would not be mistaken or be confused seeing the mark HEALTHCARE (CART) AISLE with a cart versus the mark AISLE on clearly different products. That individual would realize that the products emanate from different sources. One seeking medication for allergies or antacid or decongestants as sophisticated enough not to be confused in thinking that the company that offers such products under HEALTHCARE (CART) AISLE, would be the same company offering products such as disposable and washable menstrual pads or incontinence pads or sanitary pads with such products under the AISLE trademark.

Accordingly, based upon the primary difference with respect to the mark in terms of its appearance and sound, and further, that the goods are so dissimilar, that being medical preparations versus sanitary hygiene products, Applicant submits no customer would be likely to be confused into thinking that the goods arise from the same source. Therefore, Applicant submits that its mark should be allowed whether or not a registration issues for the mark that is subject of the cited application.

Based upon the foregoing arguments and amendments and based upon the fact that there was no registered trademark which would block registration under Section 2(d) of the Trademark Act, Applicant respectfully requests that its mark be passed to publication. If for any reason the Trademark Examining Attorney wants to discuss this response, the Trademark Examining Attorney is requested to contact Applicant's counsel. Reconsideration and allowance of the present application is respectfully requested.