

Trademark Application No.: 88/675,535

Applicant: Shaklee Corporation

Mark: ME+

Filed: October 31, 2019

International Class: 5

This responds to the Office action dated January 14, 2020. A response to the Office action is due by July 14, 2020. Accordingly, this response is timely. The Office action:

1. Refuses the application over U.S. Registration No. 4,682,394 for ME-HAB for “Counseling in the field of personal development, namely, self-improvement, self-fulfillment, and interpersonal communication; Providing information in the field of personal development, namely, self-improvement, self-fulfillment, and interpersonal communication; Providing information in the field of self-improvement; Providing on-line information in the field of spirituality, self-help, and personal empowerment subject matters” in International Class 45; and U.S. Registration No. 5,196,181 for ME + MY for “Providing information on the fields of health, nutrition, nutritional, dietary, and food supplements, enzymes, and diet” in International Class 44, and “Nutritional supplements; dietary supplements; enzymes for medical purposes; enzyme food supplements; dietary and nutritional supplements containing enzymes” in International Class 5.
2. Alleges that Applicant’s goods and services should be reclassified to (bold noting the suggestions in the Office action):
  - a. International Class 5: dietary and nutritional supplements
  - b. (New class) International Class 44: health assessment services; providing information in the field of personal development, namely, **providing information on maintaining a healthy** lifestyle; providing information in the field of personal development, namely, **providing information in the field of** health, diet, health goals **in the nature of healthy living and lifestyle wellness**, and nutrition

- c. (New class) International Class 45: providing information in the field of personal development, namely, personal improvement; providing information in the field of personal development, namely, **information relating to different cultures and** lifestyles

#### Amendment

As an initial matter, concerning the identification of goods, Applicant requests amendment to (additions in underlining, deletions in strike through, for ease of reference):

- a. International Class 5: dietary and nutritional supplements; ~~providing information in the field of personal development, namely, personal improvement, lifestyle, health, diet, health goals, and nutrition; health assessment services~~
- b. International Class 44: health assessment services; providing information in the field of personal development, namely, providing information on maintaining a healthy lifestyle; providing information in the field of personal development, namely, providing information in the field of health, diet, health goals in the nature of healthy living and lifestyle wellness, and nutrition

#### Remarks

Applicant has amended the goods and services as suggested by the Examiner (with the exception of not adding Class 45). Accordingly, the revised identification of goods is believed to be acceptable.

With regard to the allegations of likelihood of confusion with the Cited Registration for ME-HAB in Class 45 (4,682,394), Applicant disagrees that there is any likelihood of confusion between its mark ME+ for its goods and services in Class 5 and 44, and ME-HAB for its identified Class 45 services.

As an initial matter, Applicants goods and services are in entirely different classes than the class 45 services identified in ME-HAB. While not determinative, that augers against a likelihood of confusion.

Further, there are so many ME formative marks in Classes 5, 44, and 45 that the scope of the Cited Registration for ME-HAB should be considered only to extend to virtually identical marks, so it would not extend to Applicant's different mark. In that regard, a search for live

registrations containing ME resulted in 655 registrations, some of which are noted below and attached:

<b>Mark</b>	<b>Reg. No.</b>	<b>Goods/Services</b>	<b>Listed Owner</b>
“ME” MONDAY	6054874	<i>Inter alia</i> , “[]online health care services, namely, transformational habit change wellness programs; personalized coaching services in the field of wellness support, accountability, and tools for clients to make decisions with clarity; ... providing personalized wellness services featuring personalized assessments....”	Itz Why LLC
ME TODAY	6045554	<i>Inter alia</i> , “[h]ealth and nutritional supplements”	The Good Brand Company
ME	6038071	<i>Inter alia</i> , “providing medical and health and wellness information to patients for monitoring, goal setting, and improving the outcomes of patients receiving prosthetics and orthotics”	Hanger, Inc.
GRACE OF ME	6023141	<i>Inter alia</i> , “medicated skin care preparations”	Grace Of Me, Inc.
SCULPTIFY ME	5597537	<i>Inter alia</i> , “Providing weight loss programs and cosmetic body care services in the nature of non-surgical body contouring”	CRW Ventures, LLC
THE ME SERIES	5740940	<i>Inter alia</i> , “Wellness	Catherine Horgan

		and health-related consulting services”	
DETOX ME	5335240	<i>Inter alia</i> , “Providing healthy lifestyle and nutrition services, namely, personal assessments, personalized routines, maintenance schedules, and counseling”	WWCC Ventures Ltd., LLP
HAPPY ME	5287169	<i>Inter alia</i> , “dietary and nutritional supplements”	PEY Beauty and Health, LLC
TUNE ME	5134034	<i>Inter alia</i> , “providing information in the fields of health and wellness”	Sean Wheeler
LIFE BY ME	3893102	“Providing a website featuring information, articles and excerpts in the field of self-improvement”	Life By ME Inc.
Q AND ME	4378551	“Providing a website featuring information and advice in the fields of health, healthcare, diet, weight loss, diet planning and lifestyle wellness”	Vivus, Inc.
MEHEALTH	4750297	<i>Inter alia</i> , “Providing medical health assessments using clinical decision support software applications”	Optimal Medicine Limited
A BETTER ME	4169249	“Providing a resource website providing information in the field of personal development”	You and Me Unlimited LLC
ME O	4132361	<i>Inter alia</i> , “[d]ietary and nutritional supplements”	Sage Pharmaceuticals, Inc.
SKINNY ME	4210257	“Herbal nutritional	Edom Laboratories,

		supplements”	Inc.
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The number of ME formative registrations shows that the presence of ME in the Cited Registration for ME-HAB is not sufficient to cause a likelihood of confusion with Applicant’s ME+.

Bearing in mind the constraint on the scope of ME-HAB, Applicant further reminds that the appearance, sound, connotation, and commercial impressions of Applicant’s mark and the Cited Registration, must also be taken into account.

In that regard, the appearance and sound of the marks under consideration in their entities must be considered. “That marks must be considered in their entirety in determining whether there is a likelihood of confusion or mistake is a basic rule in comparison of marks.” *Massey Junior College, Inc. v. Fashion Inst. of Tech.*, 492 F.2d 1399, 1402 (C.C.P.A. 1974). When considered in their entirety, the marks are substantially different.

In this case, the Cited Registration is for ME-HAB. It sounds like REHAB, which is much different from Applicant’s mark, that has no HAB portion and sounds nothing like REHAB. The presence of the HAB portion of the Cited Registration also makes the appearance of the mark much different. When the marks are considered in their entirety, as they must be, the marks do not look or sound alike.

Further, the commercial impressions of the two marks are much different. ME-HAB is an obvious play on REHAB and connotes some sort of rehabilitation, which makes sense given the psychological nature of the identified consultation services. Applicant’s mark conveys no similar commercial impression.

Since the scope of the Cited ME-HAB Registration is so constrained, the sound and appearance of the Cited Registration is much different from Applicant’s mark, and the commercial impressions are so obviously different, there is no likelihood of confusion. Applicant respectfully requests that the refusal be withdrawn.

Applicant further disagrees that the Cited ME + MY Registration is likely to cause confusion with Applicant's mark.

As with ME-HAB, this is a crowded field and the scope of ME + MY only extends to a virtually identical mark. In that regard, Applicant notes that ME + MY MATERNITY has been registered (a copy of the TSDR is attached). Though that registration is for different services (retail services), its registration illustrates that the Cited Registration's scope extends to only virtually identical marks, which Applicant's mark is not.

Moreover, the ME + portion of the Cited Registration is different from Applicant's ME+. In Applicant's mark, the + sign is immediately adjacent the ME portion, modifying the ME portion. In the Cited Registration, the + is separated by a space from ME and indicates that the mark is the ME portion "plus" the MY portion. These two different impressions result in much different marks, especially considering the number of ME formatives.

Along those lines, when the Cited Registration is considered in its entirety, as it must be, its sound and appearance is much different from Applicant's mark.

The commercial impressions from the marks are also different. The Cited Registration leaves an impression of the individual (ME) plus things that might be close to the individual (MY). Applicant's mark does not have that impression as it is just ME+

Further, the Cited ME + MY Registration includes two additional syllables not present in Applicant's mark. Namely, the mark of the Cited Registration additionally includes + MY (Applicant's mark is a unitary ME+). A consumer would see or hear these additional syllables when encountering the mark of the Cited Registration. The Third Circuit has found differing number of syllables important in determining that two marks have a different sight and sound. In that regard, in *A & H Sportswear*, the Court affirmed that MIRACLESUIT and MIRACLE BRA were not likely to cause confusion, in part because "although they share the term MIRACLE, there are different numbers of syllables...." *A & H Sportswear, Inc. v. Victoria's Secret Stores, Inc.*, 237 F.3d 198, 217 (3d Cir. 2000). That Court also found important that "Miraclesuit bleeds

two words together while The Miracle Bra consists of three discrete words.” *Id.* The same is true here, the Cited Registration is the separate sounds ME + MY, while Applicant’s mark bleeds together ME and + into ME+.

In view of the constrained scope of the Cited ME + MY Registration and the differences in appearance and sound and commercial impression, Applicant’s mark is not likely to cause confusion with the Cited ME + MY Registration. Applicant respectfully requests that the refusal be withdrawn.

In view of the foregoing amending of the application as suggested by the Examiner and explaining why there is no likelihood of confusion, Applicant believes this application is in condition for publication and respectfully requests that this application proceed to publication.