

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant:	Naked Whey, Inc.	)	Examiner:	Michelle E. Dubois
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Mark:	NAKED	)	Law Office:	107
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Serial No.:	88/677,802	)		
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Filed:	November 1, 2019	)		

On November 1, 2019, Applicant filed an application in the United States Patent and Trademark Office seeking to register its trademark in International Class 005 for “Liquid nutritional supplement; Liquid protein supplements; Liquid vitamin supplements; Nutritional supplements for boosting energy” and International Class 032 for “Energy drinks enhanced with vitamins and nutrients; Non-alcoholic drinks, namely, energy shots.” In an Office Action dated February 12, 2020, the Examiner rejected the applied-for mark under 15 U.S.C. § 1052(d) because of likelihood of confusion. Applicant now responds as follows.

**I. LIKELIHOOD OF CONFUSION BASED ON NAKED JUICE CO. REGISTRATIONS**

The examiner cites to twenty registrations owned by Naked Juice Co. (2280433 3316179 4159491 3836207 4466538 4466538 4789458 4789530 4789797 4816654 4918829 4952659 5009536 5079138 5882869 5882870 5882919 5882920 5889189 5889231). All registrations are for Class 32 goods. Generally speaking these registrations are for “fruit and vegetable juices, juice drinks and fruit-flavored waters.” *Applicant now amends its application to withdraw all Class 32 goods.*

**A. NAKED’S PREEXISTING MARKS**

Naked is the registered owner of the following registrations, hereinafter referred to “Naked Marks”:

<b>NAME:</b>	<b>REG. NUMBER:</b>	<b>REG. DATE:</b>	<b>GOODS/SERVICES: (CLASS 5)</b>
Naked	5900057	Nov. 5, 2019	Dietary and nutritional supplements.
Naked Nutrition	5304095	Oct. 10, 2017	Dietary and nutritional supplements.
Less Naked	5370138	Jan. 2, 2018	Dietary and nutritional supplements.
Naked Whey	5304094	Oct. 10, 2017	Protein dietary supplements containing whey; Protein supplements containing whey; Whey protein supplements.
Naked Casein	5304096	Oct. 10, 2017	Casein dietary supplements; Protein dietary supplements containing casein; Protein supplements containing casein.
Naked Pea	5020266	Aug. 16, 2016	Dietary and nutritional supplements containing pea; Protein dietary supplements containing pea; Protein supplements containing pea
Naked Egg	5204303	May 16, 2017	Dietary and nutritional supplements containing egg; Protein dietary supplements containing egg; Protein supplements containing egg.
Naked Goat	5204308	May 16, 2017	Dietary and nutritional supplements containing goat's milk; Protein dietary supplements containing goat's milk; Protein supplements containing goat's milk.
Naked Rice	5204309	May 16, 2017	Dietary and nutritional supplements containing rice; Protein dietary supplements containing rice; Protein supplements containing rice.
Naked PB	5369917	Jan. 2, 2018	Powdered nutritional supplement drink mix containing namely, plant-based protein powder; nutritional supplements, namely, high protein powder formulas to be mixed with water; dietary and nutritional supplements, namely, peanut butter powder.

Naked Glutamine	5378686	Jan. 16, 2018	Nutritional supplements consisting primarily of glutamine.
Naked Creatine	5384586	Jan. 23, 2018	Dietary and nutritional supplements containing creatine; Dietary supplements containing creatine; Nutritional supplements containing creatine; Nutritional drinks containing creatine.
Naked Mass	5500843	June 26, 2018	Dietary and nutritional supplements.
Naked Energy	5533423	August 7, 2018	Dietary and nutritional supplements.
Naked BCAAs	5579321	October 9, 2018	Dietary and nutritional supplements containing branched chain amino acids.
Naked Bar	5836288	April 16, 2019	Nutritional and dietary supplements formed and packaged as bars; Protein supplements formed and packaged as bars
Naked Meal	5741097	April 30, 2019	Dietary and nutritional supplements; Food supplements; Powdered nutritional supplement drink mix; Vitamin and mineral supplements
Naked Collagen	5849049	September 3, 2019	Dietary and nutritional supplements, namely, collagen peptide powder
Naked Protein	4914510	March 8, 2016	dietary supplements; food supplements; herbal supplements; nutritional supplements; vitamin supplements; mineral supplements; multi-vitamin and mineral supplements; all containing protein; sold as tablets, powders, capsules, 2-piece capsules, liquid soft-gel capsules; none of the foregoing to be sold in liquid beverage form
Naked Protein Weight Management	4909503	March 1, 2016	dietary supplements; food supplements; herbal supplements; nutritional supplements; vitamin

			supplements; mineral supplements; multi-vitamin and mineral supplements; all containing protein; sold as tablets, powders, capsules, 2-piece capsules, liquid soft-gel capsules; none of the foregoing to be sold in liquid beverage form
Naked One To One	6032168	April 14, 2020	Protein supplements; Protein dietary supplements; none of the foregoing being protein bars.

All registrations are on the Principal Register.

**B. NO CONFUSION**

Naked has established rights in Class 5 and an extensive family of marks. Naked believes there can be no likelihood of confusion as it relates to class 5, particularly in light of the already existing registration for the word NAKED for dietary and nutritional supplements (Reg. No. 5533423) and registration for NAKED ENERGY (Reg. No. 5533423).

**II. LIKELIHOOD OF CONFUSION BASED ON CITED APPLICATIONS**

The examiner also cites a series of pending applications, which she believes are likely to cause confusion. Applicant will address each below:

**A. NAKED AVENGER (88630815)**

As discussed above, this mark is also pending in class 32, for “Beer; Mineral water; Aerated water; Non-alcoholic drinks, namely, energy shots; Sports drinks.” Given Applicant’s amendment to delete Class 32, this is no longer a source of confusion.

**B. NAKED SUPPLY CO. (88625595)**

Naked Supply Co. has deleted its Class 5 good, following a refusal based on likelihood of confusion with Applicant’s registration for NAKED (5900057). The only remaining goods are in Class 34, for “Electronic cigarette liquid (e-liquid) comprised of flavorings in liquid form, other than essential oils, used to refill electronic cigarette cartridges.”

**C. NAKED CBD (88427463)**

This application is owned by Ajax Nutra, a licensee of Applicant.

**D. NAKED TONICS (88269595)**

This application has been rejected based on likelihood of confusion with our Applicant’s mark, NAKED (5900057), which has priority of use and senior rights.

### **III. CONCLUSION**

Based on the aforementioned response, Applicant respectfully requests that the refusal to register be withdrawn and the application be published for opposition.