IN THE U.S. PATENT AND TRADEMARK OFFICE

Mark:	CANNAPAN
Serial No.	88162400
Filing Date:	2018-08-19
Examining Attorney:	Joanna E. H. Fiorelli

Response to Office Action Dated March 6, 2020

Refusal – No Bona Fide Intent to Lawfully Use the Mark in Commerce

Applicant again submits that the FDCA requires that a drug product can only be marketed after FDA approval, but there is no requirement that at filing date of a trademark application for a drug product based on "intent-to-use" the drug product has already been approved or that documents for the drug product for FDA approval have already been prepared or submitted to the FDA.

The Examiner asserted "[T]here is a heightened question of fact with regard to CBD products given that these products may not themselves be lawful under current federal law," and drew distinction between the instant application and the many intent-to-use based trademark applications identifying pharmaceutical preparations referred to in Applicant's previous response, stating that the pharmaceuticals in those applications involve ingredients that are not themselves unlawful. However, as of the revised filing date of the Application, CBD satisfying the condition as recited in the revised identification of goods **is not unlawful**, except that it would need approval by the FDA. The enactment of the amendments to the AMA on December 20, 2018 effectively made CBD as eligible for FDA approval just like other pharmaceuticals that are not unlawful themselves. The Examiner seems to cite FDCA to refuse the Application, but in substance refused the Application still based on the CSA *prior to* the enactment of the amendments to the AMA. Therefore, the refusal should be withdrawn.

Request for Information

Applicant responds to the Examiner's questions in the request for information as follows:

What type of category of drug is identified in the application?
Answer: Oral antiepileptic, and topical analgesics.

Will the goods be sold and/or marketed as over the counter drugs?
Answer: Yes.

What necessary measures, if any, are being undertaken to pursue FDA approval?
Answer: Applicant has been sourcing raw materials for manufacturing these goods and conducting analytical tests with an eye toward compiling necessary data and documentation to submit to the FDA for approval of the products.

Respectfully submitted,

Date: September 8, 2020

/Yong Chen/

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