

U.S. Trademark Application Serial No. 88/432,030
Mark: HERITAGE
BRG Docket No.: 20038T

APPLICANT'S RESPONSE TO OFFICE ACTION

The following is the response of Applicant, Heritage Hemp, LLC, by Counsel, to the Office Action that Examining Attorney Emily Chuo sent via email June 11, 2020.

A telephone call was held with the Examiner on Thursday, July 16, 2020, during which aspects of the Non-Final Office Action and the present response were discussed.

By way of this response, the goods in this application have been amended to relate only to “*non-medicated salves containing CBD*, the CBD being solely derived from hemp with a delta-9-tetrahydrocannabinol (THC) concentration of not more than 0.3 % on a dry weight basis” and the class designation for these goods changed from IC 005 to IC 003.

Search Results

The Examiner has indicated that a search of the U.S. Patent and Trademark Office (USPTO) database for registered and pending marks found no conflicting marks that would bar registration.

Controlled Substances Act (CSA) Compliance Advisory

Under the 2018 Farm Bill, cannabidiol-containing items that are “solely derived from hemp with a delta-9-tetrahydrocannabinol (THC) concentration of not more than 0.3 % on a dry weight basis” are removed from the CSA.

As noted above, Applicant’s “salves containing CBD” are solely derived from hemp with a THC concentration of less than or equal to 0.3% on a dry weight basis. As such, these items have been removed from the CSA.

FDCA Refusal

The Examiner has refused registration because the applied-for mark is not in lawful use in commerce.

While the 2018 Farm Bill removed “hemp” from the CSA definition of “marijuana”, it preserved the right of the U.S. Food and Drug Administration (FDA) to regulate products containing CBD on a federal level. In accordance with its regulatory authority, the FDA has concluded that CBD may still raise lawful-use issues under the FDCA if used in foods, beverages, dietary supplements or pet treats.

Applicant’s “salves containing CBD” are applied to a part of the body and are not consumed. They do not fall under the categories of foods, beverages, dietary supplements or pet treats. As such, they do not raise “lawful-use” issues under the FDCA.

Identification and Classification of Goods

The goods description will be amended as follows:

~~Edible hemp oil with naturally occurring cannabidiol (CBD) for use as a dietary and nutritional supplement, for use as a nutritional food additive, and for use in beverages and foodstuffs;~~

~~Gummies containing CBD;~~

~~Capsules containing CBD;~~

Non-medicated salves ~~Salves containing CBD,~~ the CBD being solely derived from hemp with a delta-9-tetrahydrocannabinol (THC) concentration of not more than 0.3 % on a dry weight basis

~~Tinctures containing CBD~~

Further, the goods classification for the **non-medicated** salves will be amended from IC 005 to IC 003.

Information about the Goods Required

The Examiner has required a written statement indicating whether the goods identified in the application, namely, non-medicated salves containing CBD, comply with the CSA. As noted above, Applicant's "salves containing CBD" are solely derived from hemp with a THC concentration of less than or equal to 0.3% on a dry weight basis and as such have been removed from the CSA.

Two sell sheets and jar and lid labels for Applicant's non-medicated salves are attached hereto.

The product description and ingredient list is specified at:

<https://www.heritagecbd.com/collections/topicals/products/cbd-muscle-salve>, is set forth below:

PRODUCT DESCRIPTION

Reward your body with the plant powered goodness of CBD, the penetrating effect of menthol, and soothing scents of peppermint and eucalyptus to relax and reset the mind. Our CBD Muscle Salve is an all natural salve made from the highest quality ingredients. It has been formulated by a team of scientists to have ideal texture and to maintain its consistency over time.

INGREDIENTS

Coconut Oil, *Polyhydroxystearic Acid, Cocoa Butter, Jojoba Oil, Rice Bran Oil, Sunflower Wax, **Lauryl Laurate, Menthol, Essential Oil Blend (Wintergreen, Peppermint Eucalyptus, Camphor), Hemp Extract, Rosemary Extract. **Polyhydroxystearic Acid* is a natural emulsifying agent, which keeps your salve from separating. It may sound like a scary ingredient, but it isn't. [EWG](#) rates it as a level 1 skin care ingredient which is the lowest hazard rating they offer.

***Lauryl Laurate* is a natural stabilizer, which helps extend the shelf life of your salve. [EWG](#) rates it as a level 1 ingredient, which is the lowest hazard rating they offer.

The ingredients listed above for the non-medicated salves are added to a heated kettle, mixed and subjected to a heating and cooling protocol to generate the final product. The product's salient features are the hemp-derived CBD, the penetrating effect of menthol and the soothing scents of peppermint and eucalyptus. The prospective customers for this product are members of the general public and the product's channels of trade are distributors, retail, direct/internet and direct/catalog.

As noted above, the Examiner has also required a response to the following questions (if applicable):

- 1) If Applicant has any documentation relative to the CBD content of the oils, extracts or derivatives used or to be used in the goods, please provide them. **Answer: Attached hereto is a Certificate of Analysis dated March 10, 2020, for the T-Free Distillate used in Applicant's non-medicated salve product, which indicates a CBD content of 91.31%. Also attached hereto is a Certificate of Analysis dated July 14, 2020, for Applicant's non-medicated salve product, which indicates a delta 9 THC amount of 0.00%.**
- 2) Do or will Applicant's identified goods include CBD which is derived from, oils, extracts or ingredients from plants other than Cannabis sativa L (also known as hemp, marijuana or cannabis)? **Answer: No.**
- 3) Is Applicant currently seeking FDA approval of the marketing of the goods identified in the application? **Answer: No.**
- 4) If the answer to Question 3 is "yes," please provide a copy of such application. **Answer: N/A.**

Conclusion

Applicant has responded to all issues raised in the Office Action. If any further information or response is required, please contact Applicant's attorney. The attorney may be reached by telephone at 413-272-6286.

Respectfully Submitted,

/Mary R. Bonzagni/

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