

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

<b>Applicant:</b> Tucker Milling, LLC	)	<b>Examining Atty:</b> Lourdes Ayala
	)	
<b>Application No.:</b> 87/377,290	)	<b>Law Office:</b> 106
	)	
<b>Filed:</b> February 3, 2017	)	
	)	
<b>Mark:</b> SOLUTION (Stylized)	)	<b>Atty. Dkt. No.:</b> 202888-301012

**ARGUMENTS**

Dear Examining Attorney Ayala:

These arguments are presented in response to the Office Action dated June 16, 2017, rejecting Applicant’s application on the grounds of a likelihood of confusion. Applicant respectfully requests reconsideration.

**I. APPLICANT’S MARK IS NOT LIKELY TO CAUSE CONFUSION**

Applicant has filed for the stylized mark SOLUTION (Applicant’s Mark), pictured below:



The Office Action contends that registration of Applicant’s Mark is likely to cause confusion with the mark in U.S. Registration Nos. 2,661,106 for “SOLUTIONS” (Stylized) for “nutritional products for livestock, namely, vitamins, minerals, vitamin-mineral premixes, electrolytes and amino acids; feed supplements, namely, fats, starches and milk replacers in Int. Class 5, and “non-medicated dry fat feed additive for calves; animal feed” in Int. Class

31, and 4,881,733 for “Solutions by Nature” for “dietary supplements for animals” in Int. Class 5. Applicant respectfully contends that Applicant’s Mark is not likely to cause confusion.

As an initial matter, Applicant would like to point out that Applicant’s application claims prior ownership of U.S. Registration No. 3,963,586 for “SOLUTION HORSE FEED” for “horse feed.” The trademark registration for SOLUTION HORSE FEED is referred to herein as “Applicant’s Prior Registration.” Applicant’s Prior Registration issued on May 17, 2011, and has a first use date of August 2008. The registration date, first use date, and filing date (June 2010) of Applicant’s Prior Registration predate those dates for U.S. 4,881,733 for “Solutions by Nature.” Therefore, Applicant has demonstrated rights senior to those of the “Solutions by Nature” trademark.

Further, Applicant’s Prior Registration demonstrates Applicant’s rights in general in the term “Solution” in connection with horse feed. Applicant has been using the term “SOLUTIONS” in connection with horse feed at least as early as 2008, and there have been no instances of actual confusion with U.S. 2,661,106 for “SOLUTIONS” (Stylized). It is true that the ‘106 registration has a first use date that appears to predate Applicant’s Prior Registration. However, Applicant’s Prior Registration has achieved incontestable status. Further, the mark that is the subject of the ‘106 registration is a stylized mark, pictured below:



***Solutions***

This mark is very different from Applicant’s Mark, which is in an outlined cursive font.

Confusion is also unlikely because the word shared by Applicant's Mark and the '106 Registration and the '733 Registration marks—SOLUTION—is commonly used by other registered marks. In addition to the '106 Registration and the '733 Registration, at least the following registered marks contain the term "SOLUTION" and are in use on arguably similar goods.<sup>1</sup>

1. HORSE SENSE SOLUTIONS, U.S. Reg. No. 4828888, for "food supplements for horses," in International Class 005.
2. VETERINARIAN RECOMMENDED SOLUTIONS, U.S. Reg. No. 5066069, for "Nutritional and dietary food supplements," in International class 005.
3. HEALTH SOLUTION PRIME (& Design), U.S. Reg. No. 4481181, for goods including "Dietary and nutritional supplements," in International Class 005.
4. NU-SOLUTIONS, U.S. Reg. No. 4013152, for "dietary supplements for animals," in International Class 005.
5. VET SOLUTIONS, U.S. Reg. No. 3091995, for "animal feed additives for use as nutritional supplements."

These numerous other uses of the term SOLUTION for arguably similar goods weigh against a likelihood of confusion between Applicant's Mark and the cited marks. *See Al-Site Corp. v. VSI Int'l Inc.*, 50 U.S.P.Q.2d 1161, 1176 (Fed. Cir. 1999) (finding no likelihood of confusion between the marks "MAGNIVISION" and "MAGNA X DOT" where there were multiple registered trademarks containing the terms "MAGNI" and "MAGNA" for eyeglasses and magnification lenses and noting that common usage of descriptive terms in marks "weighs strongly against a finding of likelihood of confusion"); *Sun Banks of Fla., Inc. v. Sun Fed. Sav. & Loan Assn.*, 651 F.2d 311, 316 (5th Cir 1981) ("We find the extensive third party use of the word 'Sun' impressive evidence that there would be no likelihood of confusion between Sun Banks and Sun Federal.").

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<sup>1</sup> Exhibit A contains copies of the registration certificates for the registrations cited in this Response.

Applicant respectfully suggests that the differences in the marks are sufficient enough, and that the large number of marks in the field using the term SOLUTION makes confusion unlikely. Applicant therefore respectfully requests reconsideration of the Office Action's rejection. Should the Examining Attorney have any further questions, the Applicant respectfully requests that the Examiner Attorney contact the undersigned attorney at (256) 517-5170.

Respectfully submitted,

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