

Response to the Office Action

The Examining Attorney has refused registration of applied for mark oleander(No.88238118 & 88243454) for goods in International Class 3 and 21 based on similarity with earlier registrations for the marks OLEANDRX(No.85867970) in class 5 and OLEANDER(No.87118870) in class 25. We respectfully request a reconsideration of the USPTO's refusal of the above-referenced trademark application.

In this case, both the pending marks and the cited marks take same image of "oleander" to convey their brand impressions. The owner of registered mark "OLEADRX"(No.85867970) is an institute studying on medical used personal care products, which contains oleand ingredient. For OLEANDRX, it indicates two things to their clients, one is that OLEANDRX product's is made of OLEAND, the other is OLEANDRX is safe and purely natural. Besides, "OLEANDER" in class 25 goods of clothing just simply to convey a literal meaning of "oleander". Finally, the pending mark "oleander" in class 3 and 21 indicates that the brand owner's wish for every user who is as beautiful and charming as the blossom of oleander. Although all these four marks are related with "oleand", the meanings of each brand is different because the goods are different.

By comparison with "oleander" in class 25, the applicant holds that "OLEANDER" is not so famous that consumers will think OLEANDER clothing is related with OLEANDER cosmetic tools in class21 or cosmetic cleaners in class 3. Since OLEANDER is not a well-known brand in clothing or cosmetic related field, the applicant insists that no one would compare his brand with the registered mark "OLEANDER" clothing related brand.

For OLEANDRX in class 5, the cited mark OLEANDRX sales medicated skin care creams which is medical used while the applied for mark "oleander" focuses on non-medical cosmetics. It should be noticed that medicated creams are mostly sold in chemist's shop and for those people who need medical treatment. Further more, the registered mark "OLEANDRX" is printed on the package in "OLEAND" and "RX", "ORX". RX means prescription in medical field. However, the applied for mark is a brand for cosmetic tools and non-medical cosmetics, the brand conveys a wish of blossom beauty of oleander flowers. Therefore, we can lean that the registered mark "OLEAD-RX" and pending mark "OLEANDER" are printed on the different products in different ways. People remember the registered mark as "oleand-RX" or "ORX" while the pending mark "OLEANDER" with Japanese below. And Japanese culture background might come to their mind when they think of this brand. Moreover, the citing website and citing goods are about acne cleaning and wrinkle repairing, which is aimed for beauty, not related with any medicated purpose. From the website of OLEANDRX, It shows that the company "has focused research and product development on the anti-cancer, anti-viral, immune-stimulating, and the dermal properties of natural botanical compounds". Thus, OLEANDRX's goods are for medical purpose, which will not cause any confusion with the applied for mark in the market.

For the reasons set forth above, there is no likelihood of confusion among clients. Applicant respectfully requests the trademark be granted and the refusal withdrawn.

Nerium... Real Science



Nerium Biotechnology, Inc., (NBI)

is a biotechnology research company with its USA corporate business and research office located in San Antonio, Texas.

NBI Divisions and Subsidiaries

Nerium Farms™ a USA-based commercial farming operation that provides resources reserved exclusively for biotechnology research, product development and production.

Nerium Skin Care, Inc.® a USA-based subsidiary that develops, formulates, and manufactures natural skin care products.

The Salud Integral Group™ includes four (4) Latin American corporations that provides manufacturing and product distribution.

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Research & Development

NBI is an international R&D (research and development) company dedicated to science based product development. NBI, in concert with leading medical research institutions, has focused research and product development on the anti-cancer, anti-viral, immune-stimulating, and the dermal properties of natural botanical compounds.

From this research, NBI has rediscovered, identified, and pursues the further development of well-defined constituents from the Nerium oleander plant. Utilizing proprietary technologies; NBI has been able to isolate and extract the core ingredients in a way that preserves the unique components and beneficial properties this plant has to offer.

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Nerium Oleander

Owner of OLEANDRX(No.85867970):Nerium Biotechnology, Inc.

NATURAL SKIN REPAIR CREAM
OleandRx



Natural Skin Repair Cream for
Blemished and Sun-Damaged Skin

30 ml/1 fl.oz.