To: LEE SACKS(sacksapclaw@aol.com)

Subject: U.S. Trademark Application Serial No. 97120793 - SUPERLIFE - LES 0002

Sent: August 23, 2022 10:36:50 PM EDT

Sent As: tmng.notices@uspto.gov

Attachments

5732989

SNAG-1503.jpg

SNAG-1504.jpg

SNAG-1505.jpg

United States Patent and Trademark Office (USPTO) Office Action (Official Letter) About Applicant's Trademark Application

U.S. Application Serial No. 97120793

Mark: SUPERLIFE

Correspondence Address:

LEE SACKS LAW OFFICES OF LEE SACKS, APC 324 SOUTH BEVERLY DRIVE, SUITE 496 BEVERLY HILLS CA 90212 UNITED STATES

Applicant: Darin's Naturals, LLC

Reference/Docket No. LES 0002

Correspondence Email Address: sacksapclaw@aol.com

NONFINAL OFFICE ACTION

The USPTO must receive applicant's response to this letter within <u>six months</u> of the issue date below or the application will be <u>abandoned</u>. Respond using the Trademark Electronic Application System (TEAS). A link to the appropriate TEAS response form appears at the end of this Office action.

Issue date: August 23, 2022

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant

must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

SUMMARY OF ISSUES:

- Section 2(d) Partial Refusal Likelihood of Confusion
- Requirement: Identification of Goods and Services
- Advisory: Partial Abandonment

SECTION 2(d) REFUSAL - LIKELIHOOD OF CONFUSION

The stated refusal refers to International Class 16 only and does not bar registration in the other class.

Applicant seeks to register SUPERLIFE for, in relevant part:

International Class 016: Printed pamphlets, brochures, manuals, books, booklets, leaflets, informational flyers, informational sheets and newsletters, adhesive backed stickers, and kits comprised solely of one or more of the foregoing materials in the field of health, wellness and nutrition

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark SUPER LIFE SECRET CODES in U.S. Registration Nos. 5732989. Trademark Act Section 2(d), 15 U.S.C. §1052(d); see TMEP §§1207.01 et seq. See the attached registration.

Trademark Act Section 2(d) bars registration of an applied-for mark that is so similar to a registered mark that it is likely consumers would be confused, mistaken, or deceived as to the commercial source of the goods and/or services of the parties. See 15 U.S.C. §1052(d). Likelihood of confusion is determined on a case-by-case basis by applying the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973) (called the "du Pont factors"). *In re i.am.symbolic, llc*, 866 F.3d 1315, 1322, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017). Any evidence of record related to those factors need be considered; however, "not all of the *DuPont* factors are relevant or of similar weight in every case." *In re Guild Mortg. Co.*, 912 F.3d 1376, 1379, 129 USPQ2d 1160, 1162 (Fed. Cir. 2019) (quoting *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1406, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997)).

Although not all *du Pont* factors may be relevant, there are generally two key considerations in any likelihood of confusion analysis: (1) the similarities between the compared marks and (2) the relatedness of the compared goods and/or services. *See In re i.am.symbolic, llc*, 866 F.3d at 1322, 123 USPQ2d at 1747 (quoting *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103, 192 USPQ 24, 29 (C.C.P.A. 1976) ("The fundamental inquiry mandated by [Section] 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks."); TMEP §1207.01.

SIMILARITY OF THE MARKS

Marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1321, 110 USPQ2d 1157, 1160 (Fed. Cir. 2014) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1371, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005)); TMEP §1207.01(b)-(b)(v). "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *In re Inn at St. John's, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) (citing *In re*

Davia, 110 USPQ2d 1810, 1812 (TTAB 2014)), aff'd per curiam, 777 F. App'x 516, 2019 BL 343921 (Fed. Cir. 2019); TMEP §1207.01(b).

When comparing marks, "[t]he proper test is not a side-by-side comparison of the marks, but instead whether the marks are sufficiently similar in terms of their commercial impression such that [consumers] who encounter the marks would be likely to assume a connection between the parties." Cai v. Diamond Hong, Inc., 901 F.3d 1367, 1373, 127 USPQ2d 1797, 1801 (Fed. Cir. 2018) (quoting Coach Servs., Inc. v. Triumph Learning LLC, 668 F.3d 1356, 1368, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012)); TMEP §1207.01(b). The proper focus is on the recollection of the average purchaser, who retains a general rather than specific impression of trademarks. In re Ox Paperboard, LLC, 2020 USPQ2d 10878, at *4 (TTAB 2020) (citing In re Bay State Brewing Co., 117 USPQ2d 1958, 1960 (TTAB 2016)); In re Inn at St. John's, LLC, 126 USPQ2d 1742, 1746 (TTAB 2018); TMEP §1207.01(b); see In re St. Helena Hosp., 774 F.3d 747, 750-51, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014).

Applicant has applied for the standard character mark SUPERLIFE and the cited registration is the standard character mark SUPER LIFE SECRET CODES. The marks are identical except applicant deletes the space and the last two words, resulting in marks that retain a highly similar appearance, sound, and connotation. This results in marks with an overall similar commercial impression.

Consumers are generally more inclined to focus on the first word, prefix, or syllable in any trademark or service mark. See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772, 396 F.3d 1369, 1372, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005) (finding similarity between VEUVE ROYALE and two VEUVE CLICQUOT marks in part because "VEUVE . . . remains a 'prominent feature' as the first word in the mark and the first word to appear on the label"); Century 21 Real Estate Corp. v. Century Life of Am., 970 F.2d 874, 876, 23 USPQ2d 1698, 1700 (Fed Cir. 1992) (finding similarity between CENTURY 21 and CENTURY LIFE OF AMERICA in part because "consumers must first notice th[e] identical lead word"); see also In re Detroit Athletic Co., 903 F.3d 1297, 1303, 128 USPQ2d 1047, 1049 (Fed. Cir. 2018) (finding "the identity of the marks' two initial words is particularly significant because consumers typically notice those words first"). Here the marks being with the same wording.

In addition, although applicant's mark does not contain the entirety of the registered mark, applicant's mark is likely to appear to prospective purchasers as a shortened form of registrant's mark. See In re Mighty Leaf Tea, 601 F.3d 1342, 1348, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010) (quoting United States Shoe Corp., 229 USPQ 707, 709 (TTAB 1985)). Thus, merely omitting some of the wording from a registered mark may not overcome a likelihood of confusion. See In re Mighty Leaf Tea, 601 F.3d 1342, 94 USPQ2d 1257; In re Optica Int'l, 196 USPQ 775, 778 (TTAB 1977); TMEP §1207.01(b)(ii)-(iii). In this case, applicant's mark does not create a distinct commercial impression from the registered mark because it contains some of the wording in the registered mark and does not add any wording that would distinguish it from that mark.

Because the marks are similar in appearance, sound, connotation and commercial impression, the marks are confusingly similar.

RELATEDNESS OF THE GOODS

The applicant identifies the following goods:

International Class 016: Printed pamphlets, brochures, manuals, books, booklets, leaflets, informational flyers, informational sheets and newsletters, adhesive backed stickers, and kits comprised solely of one or more of the foregoing materials in the field of health, wellness and nutrition

Registrant identifies the following goods:

International Class 016: books on the subject of self help for personal and financial success in life

The compared goods need not be identical or even competitive to find a likelihood of confusion. *See On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000); TMEP §1207.01(a)(i). They need only be "related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that [the goods and/or services] emanate from the same source." *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)); TMEP §1207.01(a)(i).

The attached Internet evidence, consisting of third parties that provide printed books in the field of health, nutrition, wellness and personal success in life, establishes that the same entity commonly manufactures, produces, or provides the relevant goods and markets the goods under the same mark, the relevant goods are sold or provided through the same trade channels and used by the same classes of consumers in the same fields of use, and the goods are similar or complementary in terms of purpose or function.

Thus, applicant's and registrant's goods are considered related for likelihood of confusion purposes. *See, e.g., In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202-04 (TTAB 2009); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1268-69, 1271-72 (TTAB 2009).

Because the marks are confusingly similar and the goods are related, there is a likelihood of confusion to relevant consumers, and therefore registration is refused.

Although applicant's mark has been refused registration, applicant may respond to the refusal by submitting evidence and arguments in support of registration. However, if applicant responds to the refusal, applicant must also respond to the requirement set forth below.

REQUIREMENT: IDENTIFICATION OF GOODS AND SERVICES

Applicant must clarify the wording "kits comprised solely of one or more of the foregoing materials" in the identification of goods in International Class 16 because the use of "one or more" results in an indefinite identification. Applicant must also clarify the wording "Entertainment services, namely, an ongoing series featuring the subject of health, wellness and nutrition provided through production and distribution of an ongoing television series" in the identification of goods in International Class 41 because the use of "one or more" results in an indefinite identification applicant is ambiguous as to whether it is providing an ongoing series or providing a production and distribution service.

See 37 C.F.R. §2.32(a)(6); TMEP §§1402.01, 1402.03.

Applicant may substitute the following wording, if accurate (additions are shown in bold, deletions are

in strike-through):

International Class 016: Printed pamphlets, brochures, manuals, books, booklets, leaflets, informational flyers, informational sheets and newsletters in the field of health, wellness and nutrition; adhesive backed stickers; in the field of health, wellness and nutrition; kits comprised solely of printed pamphlets, brochures, manuals, books, booklets, leaflets, informational flyers, informational sheets and newsletters in the field of health, wellness and nutrition <u>and</u> adhesive backed stickers

International Class 041: Entertainment services, namely, an ongoing series featuring the subject of health, wellness and nutrition provided through_television; Entertainment services, namely, production and distribution of an ongoing television series featuring the subject of health, wellness and nutrition

International Class 044: Providing a website featuring information about health, wellness and nutrition

Applicant may amend the identification to clarify or limit the goods and/or services, but not to broaden or expand the goods and/or services beyond those in the original application or as acceptably amended. *See* 37 C.F.R. §2.71(a); TMEP §1402.06. Generally, any deleted goods and/or services may not later be reinserted. *See* TMEP §1402.07(e).

For assistance with identifying and classifying goods and services in trademark applications, please see the USPTO's online searchable *U.S. Acceptable Identification of Goods and Services Manual. See* TMEP §1402.04.

ADVISORY: PARTIAL ABANDONMENT

Response guidelines. For this application to proceed, applicant must explicitly address each refusal and/or requirement in this Office action. For a refusal, applicant may provide written arguments and evidence against the refusal, and may have other response options if specified above. For a requirement, applicant should set forth the changes or statements. Please see "Responding to Office Actions" and the informational video "Response to Office Action" for more information and tips on responding.

If applicant does not timely respond to this Office action, <u>Classes 16 and 41</u> will be deleted from the application. *See* 37 C.F.R. §2.65(a); TMEP §718.02(a).

In such case, the application will then proceed with Class 44 only. See TMEP §718.02(a).

Assistance available. Please call or email the assigned trademark examining attorney with questions about this Office action. Although an examining attorney cannot provide legal advice, the examining attorney can provide additional explanation about the refusal(s) and/or requirement(s) in this Office action. *See* TMEP §§705.02, 709.06.

The USPTO does not accept emails as responses to Office actions; however, emails can be used for informal communications and are included in the application record. *See* 37 C.F.R. §§2.62(c), 2.191; TMEP §§304.01-.02, 709.04-.05.

How to respond. Click to file a response to this nonfinal Office action.

/Benjamin Rosen/ Benjamin Rosen (571) 272-8425 benjamin.rosen@uspto.gov

RESPONSE GUIDANCE

- Missing the response deadline to this letter will cause the application to <u>abandon</u>. The response must be received by the USPTO before midnight **Eastern Time** of the last day of the response period. TEAS maintenance or <u>unforeseen circumstances</u> could affect an applicant's ability to timely respond.
- Responses signed by an unauthorized party are not accepted and can cause the application to abandon. If applicant does not have an attorney, the response must be signed by the individual applicant, all joint applicants, or someone with legal authority to bind a juristic applicant. If applicant has an attorney, the response must be signed by the attorney.
- If needed, **find contact information for the supervisor** of the office or unit listed in the signature block.

Print: Tue Aug 23 2022 88115865

(4) STANDARD CHARACTER MARK

SUPER LIFE SECRET CODES

Mark Punctuated

SUPER LIFE SECRET CODES

Translation

Goods/Services

- IC 016. US 002 005 022 023 029 037 038 050.G & S: books on the subject of self help for personal and financial success in life. FIRST USE: 20120131. FIRST USE IN COMMERCE: 20120131
- IC 041. US 100 101 107.G & S: seminars and workshops on the subject of self help for personal and financial success in life. FIRST USE: 20120131. FIRST USE IN COMMERCE: 20180228

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Design Code

Serial Number

88115865

Filing Date

20180913

Current Filing Basis

1A

Original Filing Basis

1**A**

Publication for Opposition Date

20190205

Registration Number

5732989

Date Registered

20190423

Owner

(REGISTRANT) Richest Life USA, Inc. CORPORATION NEVADA 1180 N. Town Center Drive, Suite 100 Las Vegas NEVADA 89144

Priority Date

Disclaimer Statement

Description of Mark

Type of Mark

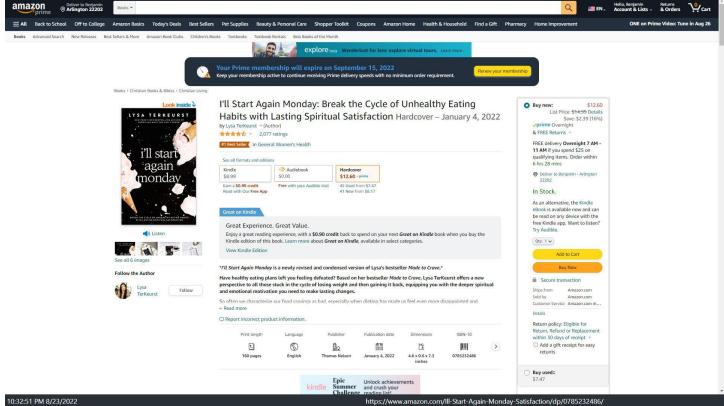
TRADEMARK. SERVICE MARK

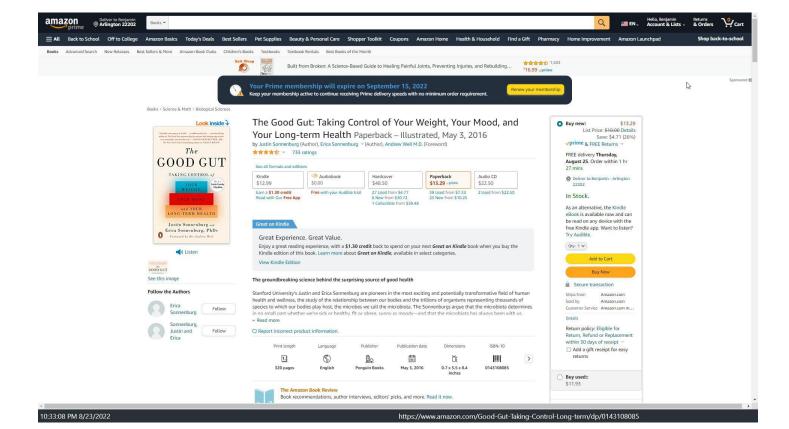
Register PRINCIPAL

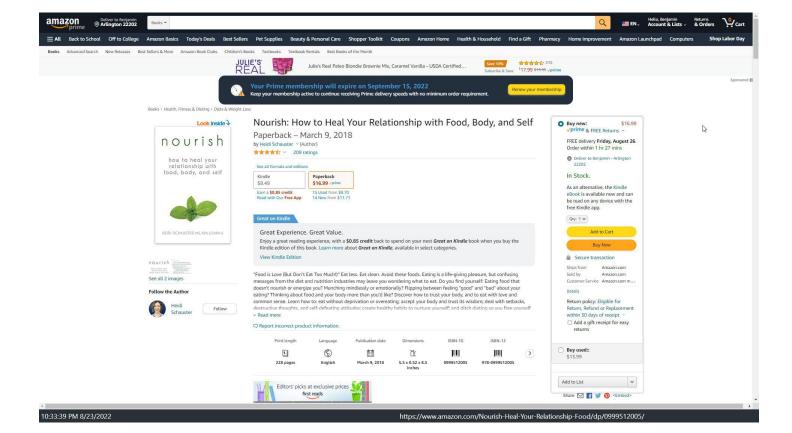
Live Dead Indicator

LIVE

Attorney of Record







United States Patent and Trademark Office (USPTO)

USPTO OFFICIAL NOTICE

Office Action (Official Letter) has issued on August 23, 2022 for U.S. Trademark Application Serial No. 97120793

A USPTO examining attorney has reviewed your trademark application and issued an Office action. You must respond to this Office action in order to avoid your application abandoning. Follow the steps below.

- (1) Read the Office action. This email is NOT the Office action.
- (2) **Respond to the Office action by the deadline** using the Trademark Electronic Application System (TEAS). Your response must be received by the USPTO on or before 11:59 p.m. **Eastern Time** of the last day of the response period. Otherwise, your application will be <u>abandoned</u>. See the Office action itself regarding how to respond.
- (3) **Direct general questions** about using USPTO electronic forms, the USPTO <u>website</u>, the application process, the status of your application, and whether there are outstanding deadlines to the <u>Trademark Assistance Center (TAC)</u>.

After reading the Office action, address any question(s) regarding the specific content to the USPTO examining attorney identified in the Office action.

GENERAL GUIDANCE

- <u>Check the status</u> of your application periodically in the <u>Trademark Status & Document Retrieval (TSDR)</u> database to avoid missing critical deadlines.
- <u>Update your correspondence email address</u> to ensure you receive important USPTO notices about your application.
- Beware of trademark-related scams. Protect yourself from people and companies that may try to take financial advantage of you. Private companies may call you and pretend to be the USPTO or may send you communications that resemble official USPTO documents to trick you. We will never request your credit card number or social security number over the phone. And all official USPTO correspondence will only be emailed from the domain "@uspto.gov." Verify the correspondence originated from us by using your Serial Number in our database, TSDR, to confirm that it appears under the "Documents" tab, or contact the Trademark Assistance Center.

• Hiring a U.S.-licensed attorney. If you do not have an attorney and are not required to have one under the trademark rules, we encourage you to hire a U.S.-licensed attorney specializing in trademark law to help guide you through the registration process. The USPTO examining attorney is not your attorney and cannot give you legal advice, but rather works for and represents the USPTO in trademark matters.

User: Benjamin Rosen

Statistics for Case 97120793						
#	Search	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/Search Duration
1	*superlife*[bi,ti] and live[ld]	4	0	4	4	0:01
2	$ \begin{tabular}{ll} $*s{"uo"1:2}{"w"0:1}{"p"1:2}{v}{"r"1:2}{"l"} \\ 1:2}{"iy"}f*[bi,ti] and live[ld] \end{tabular} $	12	0	12	12	0:01
3	*s{"uo"1:2}{"w"0:1}{"p"1:2}{v0:1}{"r"1:2}{ v0:1}{"l"1:2}{"iy"}f*[bi,ti] and live[ld]	13	0	13	13	0:01
4	*s{"uo"1:2}{"w"0:1}{"p"1:2}{v0:1}{"r"1:2}{ v0:1}{"l"1:2}{"iy"}v*[bi,ti] and live[ld]	2	0	2	2	0:01
5	*s{"uo"1:2}{"w"0:1}{"p"1:2}{v0:1}{"r"1:2}{ v0:1}{"l"1:2}{"iy"}ph*[bi,ti] and live[ld]	0	0	0	0	0:00
6	(*super* and *l{"iy"}f*)[bi,ti] and live[ld]	88	0	88	88	0:01
7	(*super* and *l{"iy"}ph*)[bi,ti] and live[ld]	1	0	1	1	0:00
8	(*super* and *l{"iy"}v*)[bi,ti] and live[ld]	42	0	42	42	0:01
9	(*{"sc"}{"ou"1:2}{"w"0:1}{"p"1:2}{v}r* and *1{"iy"}f*)[bi,ti] and live[ld]	212	0	212	212	0:02
10	(*{"sc"}{"ou"1:2}{"w"0:1}{"p"1:2}{v}r* and *1{"iy"}v*)[bi,ti] and live[ld]	86	0	86	86	0:02
11	(*{"sc"}{"ou"1:2}{"w"0:1}{"p"1:2}{v}r* and *l{"iy"}ph*)[bi,ti] and live[ld]	1	0	1	1	0:01
12	1 2 3 4 5 6 7 8 9 10 11	296	0	296	296	0:05

Session started 08/23/2022 9:49 pm Session ended 08/23/2022 9:56 pm Total search duration 16.00 Session duration 6 minutes 34 seconds Adjacency Level 1 Near Level 1