

To: Suzann Moskowitz(suzann@themoskowitzfirm.com)
Subject: U.S. Trademark Application Serial No. 97120838 - PHYTO NECTARS - 160
Sent: August 24, 2022 10:24:02 AM EDT
Sent As: tmng.notices@uspto.gov

Attachments

[screenshot-www-lexico-com-en-definition-phyto-16612964466341](#)
[screenshot-www-merriam-webster-com-dictionary-nectars-16612965808191](#)

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

U.S. Application Serial No. 97120838

Mark: PHYTO NECTARS

Correspondence Address:

SUZANN MOSKOWITZ
THE MOSKOWITZ FIRM LLC
24870 FAIRMOUNT BLVD
BEACHWOOD OH 44122 UNITED STATES

Applicant: Phillips, Katia Narain

Reference/Docket No. 160

Correspondence Email Address: suzann@themoskowitzfirm.com

NONFINAL OFFICE ACTION

The USPTO must receive applicant's response to this letter within six months of the issue date below or the application will be abandoned. 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 24, 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(e)(1) Refusal-Mark is Merely Descriptive
- Identification of Goods

SEARCH OF OFFICE'S DATABASE

The trademark examining attorney has searched the USPTO's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; *see* 15 U.S.C. §1052.(d).

SECTION 2(e)(1) REFUSAL-MARK IS MERELY DESCRIPTIVE

Registration is refused because the applied-for mark merely describes a feature of applicant's goods. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); *see* TMEP §§1209.01(b), 1209.03 *et seq.*

A mark is merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose, or use of an applicant's goods. TMEP §1209.01(b); *see, e.g., In re TriVita, Inc.*, 783 F.3d 872, 874, 114 USPQ2d 1574, 1575 (Fed. Cir. 2015) (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004)); *In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005) (citing *Estate of P.D. Beckwith, Inc. v. Comm'r of Patents*, 252 U.S. 538, 543 (1920)).

Applicant has applied to register the mark PHYTO NECTARS for Dietary supplement and dietetic preparations; nutritional supplements; mineral supplements; vitamin supplements; protein supplements; probiotic supplements; multivitamins; nutraceutical preparations for therapeutic or medical purposes; nutraceutical preparations for use as a dietary supplement; dietary supplement drink mixes; dietary supplement drinks; dietary supplements in powder form; powdered nutritional supplement drink mix; food supplements for non-medical purposes; liquid nutritional supplements; liquid vitamin supplements; herbal supplements and herbal extracts; nutritional supplement energy bars; medicated candy; gummy vitamins; Non-alcoholic beverages; beverages containing vitamins; vitamin fortified non-alcoholic beverage; vitamin enriched water; vitamin enriched sparkling water; dilutable preparations for making beverages; syrups for beverages; powders for effervescing beverages; powders used in the preparation of fruit-based drinks; powders for the preparation of beverages. The wording "PHYTO" is defined as "of a plant; relating to plants." Consumers will recognize from this language that applicant's product is plant based. The wording "NECTARS" is the plural version of "NECTAR" which is defined as "a beverage of fruit juice and pulp." The applicant is specifically providing powders for the preparation of NECTARS or fruit-based drinks. See attached definitions. Accordingly, the mark as applied to the specified goods merely describes a feature of applicant's goods and registration is refused under Section 2(e)(1) of the Trademark Act.

Although applicant's mark has been refused registration, applicant may respond to the refusal by submitting evidence and arguments in support of registration.

If applicant responds to the refusal(s), applicant must also respond to the requirement(s) set forth below.

IDENTIFICATION OF GOODS

The identification of services is indefinite and must be clarified because it is too broad and could include services in other international classes. See TMEP §1402.01 §1402.03.

Applicant should note that the wording in **bold and/or bold ALL CAPS** below shows the changes being proposed for the identification of goods and services. Items with a ~~strike through~~ are to be deleted (e.g., ~~toilet~~). When making its amendments, applicant should enter them in standard font, **NOT** bold ALL CAPS or with a strike through.

Applicant may adopt the following identification and classification of services, if accurate:

International Class 005: Dietary supplementS; ~~and~~ dietetic preparations **ADAPTED FOR MEDICAL PURPOSES**; nutritional supplements; mineral supplements; vitamin supplements; protein supplements; probiotic supplements; multivitamins **PREPARATIONS**; nutraceutical preparations for therapeutic or medical purposes **FOR THE TREATMENT OF _____ [specify e.g., allergies]**; nutraceutical preparations for use as a dietary supplement **for therapeutic and or medical purposes**; dietary supplement drink mixes; **POWDERED FRUIT-FLAVORED** dietary supplement drinks **MIX**; dietary supplements in powder form; powdered nutritional supplement drink mix; food supplements for non-medical purposes; liquid nutritional supplements; liquid vitamin supplements; herbal supplements and herbal extracts **FOR MEDICAL PURPOSES**; nutritional supplement energy bars; medicated candy; gummy vitamins; **beverages containing vitamins FOR USE AS A NUTRITIONAL SUPPLEMENT**; **vitamin enriched water FOR MEDICAL PURPOSES**; **vitamin enriched sparkling water FOR MEDICAL PURPOSES**

International Class 032: Non-alcoholic **FRUIT JUICE** beverages; ~~beverages—containing vitamins~~; [move to International Class 005] vitamin fortified non-alcoholic beverageS, **NAMELY, ENERGY DRINKS**; ~~vitamin-enriched water~~; [move to International Class 005] vitamin enriched sparkling water[move to International Class 005]; dilutable preparations for making beverages, **NAMELY, SYRUPS FOR MAKING BEVERAGES**; syrups for **MAKING NON-ALCOHOLIC FRUIT JUICE** beverages; powders for effervescing beverages, **NAMELY, FOR MAKING NON-ALCOHOLIC CARBONATED BEVERAGES**; powders used in the preparation of fruit-based drinks; powders for the preparation of beverages **IN THE NATURE OF SOFT DRINKS**

Applicant's goods and/or services may be clarified or limited, but may not be expanded beyond those originally itemized in the application or as acceptably amended. See 37 C.F.R. §2.71(a); TMEP

§1402.06. Applicant may clarify or limit the identification by inserting qualifying language or deleting items to result in a more specific identification; however, applicant may not substitute different goods and/or services or add goods and/or services not found or encompassed by those in the original application or as acceptably amended. *See* TMEP §1402.06(a)-(b). The scope of the goods and/or services sets the outer limit for any changes to the identification and is generally determined by the ordinary meaning of the wording in the identification. TMEP §§1402.06(b), 1402.07(a)-(b). Any acceptable changes to the goods and/or services will further limit scope, and once goods and/or services are deleted, they are not permitted to be reinserted. 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.

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.](#)

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RESPONSE GUIDANCE

- **Missing the response deadline to this letter will cause the application to [abandon](#).** The response must be received by the USPTO before midnight **Eastern Time** of the last day of the response period. TEAS maintenance or [unforeseen circumstances](#) 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.



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US DICTIONARY



phyto-



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Home > US English > phyto-

Definition of phyto- in English:

phyto-



Of a plant; relating to plants.

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Pronunciation ?

phyto-

/ˈfɪdɒ/ /ˈfɑɪdɒ/



How To Fix Car Scratches



This car gadget magically removes scratches and scuffs from your car quickly and easily.



WORD OF THE DAY

jumbuck

/ˈdʒʌmbʌk/

Does English Have More Words Than Any Other Language?

LITTLE LAKE
LENDING

You're
**One Step
Away**
From Your Funds

Sign your loan
documents now
to get your funds!

Sign Now ▶

'Adverse' or 'Averse'?

Which of the following is correct?

- ☐ He's averse to visiting the US
- ☐ He's adverse to visiting the US

NEXT

0/10



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1. woven
2. poignantly
3. Herculean
4. imminence
5. guard of honour

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nectars

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nectar noun

Save
Word

nec-tar | \ 'nek-tər

Definition of *nectar*

- a** : the drink of the Greek and Roman gods

b : something delicious to drink

c : a beverage of fruit juice and pulp
// apricot *nectar*
- : a sweet liquid that is secreted by the *nectaries* of a plant and is the chief raw material of honey

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Other Words from *nectar*



nectarous \ 'nek-t(ə-)rəs \  *adjective*

Did you know?

Nectar is often mentioned in conjunction with *ambrosia*, the food of the Greek and Roman gods. For centuries, English speakers have used *ambrosia* to refer to something with an extremely pleasing taste or smell, and *nectar* to refer to a delicious drink, especially a fruit juice. To the ancient Greeks and Romans, however, the powers of nectar and ambrosia far exceeded those of any earthly fare; consuming nectar and ambrosia gave the gods their immortality. In Greek, the literal meanings of *ambrosia* and *nectar* are "immortality" and "overcoming death," respectively. *Nektar* is believed to be a compound of Greek *nek-* (probably akin to Latin *nec-*, meaning "death") and *-tar* (probably akin to Sanskrit *tarati*, meaning "he overcomes or crosses over").


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Examples of *nectar* in a Sentence

Recent Examples on the Web

// Perhaps our drought has reduced available food for the orioles, triggering an earlier departure? And don't worry about your *nectar* feeders going unused.

— Ernie Cowan, *San Diego Union-Tribune*, 20 Aug. 2022

// Bees, butterflies and birds are everywhere among the grasses and flowers, sipping *nectar* and collecting seeds.

— Beth Botts, *Chicago Tribune*, 20 Aug. 2022

// Delicious and versatile that could pair well with dover sole or poultry for anyone fortunate to drink a bottle of this *nectar*.

— Tom Mullen, *Forbes*, 31 July 2022

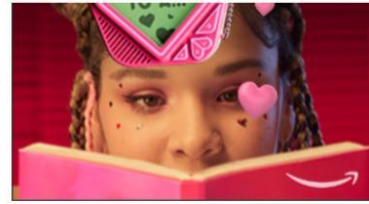


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First Known Use of *nectar*

1555, in the meaning defined at [sense 1a](#)



History and Etymology for *nectar*

Latin, from Greek *nektar*

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Time Traveler for *nectar*

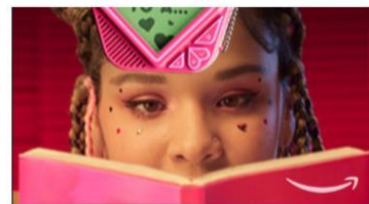
T The first known use of *nectar* was in 1555

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Look-up Popularity

Top 5% of words

Cite this Entry

"Nectar." *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/nectar>. Accessed 23 Aug. 2022.

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TimSilverstone · 15 June, 2011

...

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DebbieSmith079 · 3 February, 2012

...

I came across nectar as a verb and wanted to know if this was correct.

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AnthonyGrant036 · 25 October, 2014

...

is their such a word as nectaring?

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More Definitions for *nectar*

nectar noun

nec·tar | \ 'nek-tər  \

Kids Definition of *nectar*

: a sweet liquid produced by plants and used by bees in making honey



More from Merriam-Webster on *nectar*

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United States Patent and Trademark Office (USPTO)

USPTO OFFICIAL NOTICE

Office Action (Official Letter) has issued
on August 24, 2022 for
U.S. Trademark Application Serial No. 97120838

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 **[abandoned](#)**. See the Office action itself regarding how to respond.
- (3) **Direct general questions** about using USPTO electronic forms, the USPTO **[website](#)**, the application process, the status of your application, and whether there are outstanding deadlines to the **[Trademark Assistance Center \(TAC\)](#)**.

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

- **[Check the status](#) of your application periodically** in the **[Trademark Status & Document Retrieval \(TSDR\)](#)** database to avoid missing critical deadlines.
- **[Update your correspondence email address](#)** 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.