









3. Application Serial No. 88/237,157 seeks registration of the mark SEASONS & Design for “Retail Kosher supermarket services; online retail Kosher supermarket services,” in International Class 35. Similarly, the mark combines the above-noted word with a prominent, highly-stylized design element:



4. Petitioner’s Applications are still pending, but each stands finally refused under Section 2(d) of the Trademark Act (15 U.S.C. § 1052(d)), on the ground that Petitioner’s above-described design marks (“Petitioner’s Marks”) so resemble Registration No. 4,252,606 for the trademark SEASONS OLIVE OIL & VINEGAR TAPROOM as to be likely, when used in connection with the retail and online retail Kosher supermarket services in International Class 35 covered by Petitioner’s Applications, to cause confusion or mistake, or to deceive.
5. Registration No. 4,252,606 for the trademark SEASONS OLIVE OIL & VINEGAR TAPROOM (the “Registration”), cited against Petitioner’s Marks, issued on December 4, 2012, for “Retail and on-line grocery store services featuring home delivery service; Retail grocery stores,” in International Class 35 (“Registrant’s Mark”).
6. To the best of Petitioner’s knowledge and belief, the owner of Registrant’s Mark is Aguibal Incorporated, doing business as TA Seasons Olive Oil & Vinegar Taproom, of 3414 Park Place, Bethlehem, Pennsylvania, 18017 (“Registrant”).
7. On July 26, 2012, in response to a January 31, 2012 Office Action issued against the underlying application, Appl. Serial No. 85/438,280, for Registrant’s Mark, Registrant submitted a substitute specimen of use consisting of a screenshot of Registrant’s website, and a related news article. See Exhibit A hereto. The website screenshot shows use of

Registrant's Mark for a specialty store featuring olive oils and vinegars made available on tap (*"Seasons Olive Oil & Vinegar Taproom carries the largest collection of exclusive, fresh extra virgin olive oil and traditional balsamic vinegars – all on tap for you to taste before you buy"*), rather than the more broadly described retail grocery store services or retail grocery stores currently covered by the Registration. *See* Exh. A. Registrant executed a declaration attesting to the truth of the statements and information provided in the response. *Id.*

8. On December 4, 2018, Registrant submitted further evidence of its use of Registrant's Mark consisting of screenshots from Registrant's website showing an array of olive oils and vinegars available for online sale, the front façade of a retail specialty store location, and interior images of its specialty stores showing olive oils available on tap and a few other artisanal food products (*"Experience the world's finest olive oil and balsamic vinegar"*). *See* Exhibit B. Registrant executed a Combined Affidavit of Use and Incontestability under Sections 8 and 15 attesting to the truth of the statements and information provided in such Affidavit. *See* Exh. B.
9. Upon information and belief, including the evidence of use submitted by Registrant in support of registration of Registrant's Mark, information currently available at Registrant's URL at <https://seasonstaproom.com> (representative screenshots of which are attached as Exhibit C) and the descriptive meaning of the words "Olive Oil & Vinegar Tap Room" included as part of Registrant's Mark, use of such mark has been limited to specialty food store services featuring olive and other edible oils, vinegars, pour spouts for olive oils and vinegars, soaps and lotion made from olive oil, a small number of additional artisanal food products, salts and seasonings, and gift baskets containing one or more of the foregoing, rather than the more broadly described retail grocery store services and retail grocery stores covered by the Registration.
10. Accordingly, the current services description covered by the Registration is overly broad and does not reflect how Registrant is actually using the mark. The Registration is therefore

invalid and should be modified to more accurately identify the services actually and currently provided thereunder, namely, “*Retail and on-line specialty food store services featuring home delivery service and featuring olive and other edible oils, vinegars, artisanal food products, salts and seasonings, spouts for oils and vinegars, soaps and lotions made from olive oils, and gift baskets containing one or more of the foregoing; Retail specialty food services featuring olive and other edible oils, vinegars, artisanal food products, salts and seasonings, spouts for oils and vinegars, soaps and lotions made from olive oils, and gift baskets containing one or more of the foregoing,*” in International Class 35.

11. By limiting the scope of the services covered by Registrant’s Mark, so as to exclude those broader services for which Registrant is not actually using Registrant’s Mark, as proposed herein, a finding of likelihood of confusion would be avoided, and Petitioner’s Applications should proceed to publication and, subsequently, registration. In particular, the proposed narrowing of the type of food stores that Registrant offers, combined with the proposed narrowing of the types of foods that Registrant is selling through such specialty food stores, reflect that a likelihood of confusion can clearly be avoided with Petitioner’s Mark and services, as has been confirmed by the absence of actual confusion experienced by Petitioner to date.
12. Petitioner will suffer injury and be damaged by the continuance on the register of the Registration in its current unrestricted form, as Petitioner’s ability to obtain registrations for Petitioner’s Marks that are the subject of Petitioner’s Applications is being impaired.

WHEREFORE, Petitioner respectfully requests that Registration No. 4,252,606 be partially cancelled, or modified, as set forth herein.

Respectfully submitted,

SSNS Express LLC

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By: /smr/

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