

REQUEST FOR RECONSIDERATION

Applicant filed Application Serial No. 88/237,157 (“the Application”) for the mark SEASONS & Design for “Retail Kosher supermarket services; online retail Kosher supermarket services” in International Class 35 (“Applicant’s Mark”). On March 21, 2019, the Examining Attorney issued an Office Action with a Section 2(d) refusal, citing a likelihood of confusion between the Applicant’s Mark and Registration No. 4,252,606 for the mark SEASONS OLIVE OIL & VINEGAR TAPROOM owned by Aguibal Incorporated, dba TA Seasons Olive Oil & Vinegar Taproom (“Registrant”), for “Retail and on-line grocery store services featuring home delivery service; Retail grocery stores” in International Class 35 (“Cited Mark”).

On September 23, 2019, Applicant responded to the Office Action, respectfully submitting that there is no likelihood of confusion between Applicant’s Mark and the Cited Mark and requesting that the Section 2(d) refusal be withdrawn. On October 22, 2019, the Examining Attorney issued a Final Office Action maintaining the Section 2(d) refusal.

For the reasons below, Applicant respectfully repeats its requests that the Examining Attorney’s refusal be withdrawn and that the Application be approved for publication.

I. DISCUSSION

A. There is No Likelihood of Confusion Between Applicant’s Mark and the Cited Mark.

Applicant maintains its prior arguments that there is no likelihood of confusion between Applicant’s Mark and the Cited Mark because (1) the parties’ services differ meaningfully; (2) the parties’ services target different purchasers who exercise great care in purchasing, and are marketed and sold through distinct and different channels of trade; (3) the term “SEASONS” is weak for general, non-specialized grocery store services in Class 35; and (4) the differences in the parties’ marks sufficiently distinguish the marks in a relevant purchaser’s mind. Applicant

respectfully requests that the Examining Attorney withdraw the refusal and allow the Application to publish for oppositions by interested third parties.

1. Applicant's Mark Identifies and Covers Services Significantly Different From the Services Identified and Offered in Connection with the Cited Mark.

Applicant emphasizes that the Kosher supermarket services identified and offered in connection with Applicant's Mark differ significantly from the grocery store services identified and the olive oil and vinegar retail services offered in connection with the Cited Mark. As mentioned, *every ingredient in every single product* offered in Applicant's stores must meet the requirements set forth in Jewish dietary law that detail the types of food that an observant Jewish person may eat and the ways in which it may be prepared, and must be approved and supervised by nationally recognized Rabbinic Kashruth organizations, before it can be offered through the services provided in connection with Applicant's Mark. Every single product sold through Applicant's services must have on the product a stamp of a Rabbinic Kashruth symbol provided by a nationally recognized Rabbinic Kashruth organization to show that the product complies with the Kashruth laws and is approved and supervised Rabbinically. In addition to having the Kashruth stamps on all products sold, all the meat, chicken, and meat and chicken derived products offered through Applicant's services are double sealed—in fact, a Kosher observant person will not buy from a non-Kosher store any meat, chicken, or meat and chicken derived products that are not double sealed with stamps on even though the ingredients in the products are Kosher compliant.

On the other hand, the Cited Mark (1) identifies non-specialized grocery services that target general consumers and (2) is actually used in connection with a different kind of specialized and different niche of boutique retail services that feature olive oil, vinegar and

related derivative products and target the relevant customers who look for those products.¹ As shown in the specimen that Registrant provided on July 26, 2012 to support its use-based application for the Cited Mark that was filed on October 3, 2011, the retail services offered by Registrant focus on only olive oil, vinegar and related products. As shown in the exhibits attached to Applicant's prior response, today, Registrant is still providing such specialized services as shown on its website. Registrant's website shows that the services offered in connection with the Cited Mark feature oils, vinegars, jam, canned olives, salts and seasonings, pasta, and oil-based skincare products.²

The Examining Attorney stated that Applicant has improperly read the limitation "general" into Registrant's services. Applicant respectfully disagrees with this assessment and explains that Applicant simply wanted to point out the common assumption behind the words "retail grocery services." As one can imagine, store owners that offer general, non-Kosher grocery services are unlikely to specifically identify or describe their grocery services as non-Kosher (especially in a trademark application or registration), because the words "grocery services" are commonly assumed to mean general grocery services that the public consumes the most often, and specification will be added to the description "grocery services" only when the services differ from the general grocery services. By specifically identifying "Kosher supermarket services" in the Applicant, Applicant was making a conscious effort to make clear

¹ Applicant acknowledges that collateral attack on a cited registration is not relevant during ex parte prosecution and is not attempting to challenge the validity of the Cited Mark through its prior response or current Request for Reconsideration. Given the broad and undefined nature of the term "retail grocery services," Applicant provides extrinsic information simply to help the Examining Attorney understand Registrant's services, relevant purchasers and trade channels. *See* TMEP § 1207.01(a)(iii) ("In cases where the terminology in an identification is unclear or undefined, the Trademark Trial and Appeal Board has permitted an applicant to provide extrinsic evidence to show that the registrant's identification has a specific meaning to members of the trade.").

² While the products sold by Registrant may be available in general grocery stores, the retail services offered by Registrant are not as broad in nature as the identification of goods and services in the Cited Mark presents.

the specialized nature of its services and to distinguish its services from other types of grocery services.

2. The Parties' Services Target Different Purchasers Who Exercise Great Care in Purchasing and Travel Through Distinct Channels of Trade.

As mentioned above, every ingredient in every single product offered through Applicant's services must meet the requirements set forth in Jewish dietary law, and be approved and supervised by nationally recognized Rabbinic Kashruth organizations. Because of the effort that Applicant invests in assuring that every single ingredient in every single product in Applicant's store is Kosher certified, customers who come to Applicant's stores looking for Kosher certified food do not have to closely examine the label or advertisement of any product to determine whether the products meet the Kosher requirements—and Applicant makes this fact clear and obvious through its marketing and store decorations. The purpose of Applicant's services is to assist the relevant purchasers in this painstaking process of selecting Kosher compliant products, so that these purchasers can enjoy more convenience, ease, comfort and options in their Kosher practice. As a result, the majority of Applicant's customers are those who specifically seek Kosher products, many of whom are repeat customers who are highly familiar with Applicant's services and Applicant's Mark.

Additionally, as explained in the prior response, Applicant's Mark is used in connection with the services offered in six Kosher supermarkets located in only Orthodox Jewish neighborhoods in New York and New Jersey, and offered online services to people who live in such areas. In other words, Applicant identifies and offers only the kind of supermarket services that, while feature a wide range of products including fruits, vegetables, meat, fish, sushi, deli, baked goods, grocery products, dairy products, and frozen items, targets a very niche market that is comprised of a small, sophisticated and very discreet group of relevant purchasers in very

distinct neighborhoods. This very targeted market for Applicant's services, as applied for or as actually used, are customers who observe Kosher practice (generally or on occasions), purchase only products that are Rabbinically Kosher approved and supervised, and reside in the Orthodox Jewish neighborhoods where Applicant's supermarkets are located. They are a sophisticated and discreet group of consumers who use great care in making sure to purchase Kosher products from Kosher services, because of the fundamental importance of this practice to their religious belief and the strict and complicated rules that must be followed to insure that a grocery store meets the Kosher standard.

On the other hand, Registrant's services identified and offered in connection with the Cited Mark are not limited to offering Kosher certified products only. As such, a customer who looks for Kosher products will have to exercise extreme care in consuming Registrant's services, and accordingly, as one can imagine, the majority of Registrant's customers are unlikely those who seek out Kosher certified products. In addition, the Cited Mark is used in connection with services offered at four boutique stores located in Annapolis, MD, Bethlehem, PA, Lancaster, PA and Morristown, NJ. As stated by Registrant itself, the Registrant's business goal is to "educat[e] the public about the culinary and health benefits of fresh super premium extra virgin olive oil and balsamic condimento vinegars," and Registrant's vision is to sell "product[s] based on quality, objective testing and winning international awards," and partners with local restaurants or chef driven cooking demonstrations in its marketing. Therefore, the services actually offered by the Cited Mark target customers who look for niche products of high quality olive oil, vinegar and related products (and Registrant's advertisement and store decorations reflect that fact). These customers are also highly sophisticated customers who take great care in purchasing.

The Examining Attorney stated that Registrant's services contain no restrictions as to nature, type, trade channels or class of purchasers, and thus, even though Applicant's services are a special kind of supermarket services, the registered services are " 'presumed to travel in the same channels of trade to the same class of purchasers' as those specified in the application." Final Office Action Dated October 22, 2019 ("Final Office Action") (*quoting In re Viterra Inc.*, 671 F.3d 1358, 1362, (Fed. Cir. 2012)). The Examining Attorney also stated that grocers that may not be exclusively Kosher commonly provide Kosher supermarket services as well, and individuals in non-Orthodox communities also seek out Kosher food. Applicant respectfully disagrees with these assessments and conclusions.

According to TBMP § 1207.01(a)(iii), "[i]f the cited registration describes goods or services broadly, and there is no limitation as to their nature, type, channels of trade, or class of purchasers, it is presumed that the registration encompasses all goods or services of the type described, that they move in all normal channels of trade, and that they are available to all classes of purchasers." (Emphasis Added.) Assuming *arguendo* that by using the words "grocery store services", Registrant did not intend to simply describe general, non-Kosher grocery store services but did intend to be all inclusive and cover all types of grocery store services imaginable, including Applicant's Kosher supermarket services, the law does not presume that Registrant's services move in all channels of trade imaginable, but instead, simply "all normal channels of trade." *Id.* (emphasis added).

Unlike Registrant's services, the services identified in the Application are specialized and Kosher only, and thus, these services travel through trade channels that target purchasers of Kosher supermarket services. Applicant acknowledges that some common grocery stores sell Kosher supermarket services and some individuals who are not Orthodox Jewish also purchase

Kosher products. However, the difference between a supermarket that sells only Kosher products (e.g., Applicant) and a grocery store that sells some Kosher products is important and significant, as this difference substantially affects the nature of the relevant purchasers and trade channels. Consumers who seek out and shop at supermarkets that sell only Kosher products are generally those who cannot risk the possibility of consuming non-Kosher products. These consumers go through the painstaking process to be highly discriminating in their grocery purchasers usually because of their own religious practices or the religious practices of those to whom they provide food. It is possible that an individual who is not Orthodox Jewish and is not serving food to any Orthodox Jews may seek out a Kosher-only supermarket simply for curiosity. Nevertheless, as one can imagine, the population of such curious individuals is unlikely large enough to sustain a Kosher-only supermarket store (specifically, a Kosher supermarket chain like Applicant). Therefore, a Kosher-only supermarket store is likely to market and advertise its services primarily to the population that regularly consumes Kosher products or serves Kosher food to others (which accounts for the fact that Applicant's stores are located in only Orthodox Jewish neighborhoods). *See In re Trackmobile Inc.*, 15 USPQ2d 1152, 1154 (TTAB 1990) (when descriptions of certain terms "are somewhat vague to members of this Board who possess no special knowledge about such equipment," "it is improper to simply consider that description in a vacuum and attach all possible interpretations to it when the applicant has presented extrinsic evidence showing that the description of goods has a specific meaning to members of the trade.").

In *Viterra Inc.*, the Court agreed with the Board and presumed that the parties' goods traveled through the same trade channels because neither the application nor the cited registration contained restrictions. 671 F.3d at 1360,1362 ("[I]t is well established that, 'absent

restrictions in the application and registration, goods and services are presumed to travel in the same channels of trade to the same class of purchasers.” (quoting *Hewlett–Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1268 (Fed. Cir. 2002) (emphasis added)). Here, as the Examining Attorney acknowledged, Applicant’s services “contain a specification as to the nature of the supermarkets, namely, that they are ‘Kosher.’” Final Office Action. As explained, the trade channels through which Applicant’s services travel are specifically aimed towards the Orthodox Jewish community and so specialized that they can hardly be characterized as “normal” or ordinary, whereas Registrant’s services are presumed to travel through “normal channels of trade.” Therefore, Applicant maintains that the parties’ services target different purchasers and travel through distinct channels of trade.

Furthermore, as Applicant previously submitted, to the extent a limited group of customers do encounter both parties’ services, these customers are highly sophisticated consumers (given the nature of the products they are purchasing) who will easily be able to distinguish the parties’ marks from each other, particularly given the specialized nature of both parties’ services. As such, there is no likelihood of confusion between Applicant’s Mark and the Cited Mark.³ See *In re The W.W. Henry Company, L.P.*, 82 U.S.P.Q.2d 1213, 2007 WL 186661 (T.T.A.B. 2007) (No conflict between cited PATCH ‘N GO for chemical filler to repair polyolefin sold to plastic manufacturers and applicant's PATCH & GO for cement patch for drywall, concrete and the like, sold to do-it-yourselfers and contractors in hardware stores

³ In fact, there have been opportunities for confusion to occur for the narrow group of purchasers who may encounter both parties’ marks for an extended period of time, which demonstrates the lack of a likelihood of confusion, because the parties’ marks have coexisted in the marketplace since 2011. However, Applicant is not aware of any incidents of confusion, and Registrant has not reported any to Applicant. Accordingly, Applicant does not believe that registration of Applicant’s Mark now will create any confusion. See *Planet Hollywood (Region IV), Inc. v. Hollywood Casino Corp.*, 80 F. Supp. 2d 815, 883 (N.D. Ill. 1999), *opinion clarified*, 1999 WL 1186802 (N.D. Ill. 1999) (parties coexisted in the Chicago area for more than six years without a reported instance of confusion: “The court deems it very significant that over this extended period, Planet Hollywood has been unable to muster any evidence of actual confusion.”).

because the products would be sold “to different classes of purchasers through different channels of trade.”).

3. The Term “SEASONS” is Weak for General, Non-Specialized Grocery Store Services in Class 35.

As Applicant previously submitted, setting aside the fact that the Cited Mark does not accurately reflect Registrant’s services and considering only the broad general grocery services identified in connection with the Cited Mark, registration of Applicant’s Mark will cause no likelihood of confusion on the Principal Register because the term “SEASONS” is weak and entitled to only a narrow scope of protection on the Register for broadly defined general grocery services. There is a significant coexistence of registrations of marks containing “SEASONS” or “SEASON” in Class 35 on the Principal Register for vaguely worded “[r]etail grocery store[]” services, and many of them have coexisted for years. Applicant submits an updated sample of the “SEASONS” formative marks in Class 35 on the Principal Register as follows:

App./Reg. No.	Mark	Owner	Class 35 Services	First Use Date
5421751	PEAK SEASON PICKS	Save Mart Supermarkets	Retail grocery store services	March 2013 (no day listed)
5741368	FULL SEASON	Full Season AG Inc	Farmers' markets; retail and on-line grocery store services featuring home delivery service; wholesale food distributorship services.	April 28, 2018
5613202	IT’S ALWAYS THE SEASON TO EAT PEAK SEASON	Puget Consumers Co-Op DBA PCC Community Markets and PCC Natural Markets	Retail grocery stores	September 2017 (no day listed)

4761135	EAT WITH SEASONS	Puget Consumers Co Op	Retail grocery stores	January 1, 2014
4457919	SOUTHERN SEASON	Southern Season, Inc.	Mail order services featuring foods, specialty groceries, candy, beverages, coffee, wine, books, kitchen appliances, kitchen gadgets, housewares, kitchen accessories including cookware and utensils and gift items; retail and online store services featuring foods, beverages, books and gift items.	June 1, 2012
4252606	SEASONS OLIVE OIL & VINEGAR TAPROOM	Aguibal Incorporated TA Seasons Olive Oil & Vinegar Taproom	Retail and on-line grocery store services featuring home delivery service; Retail grocery stores	April 20, 2009
4004898	NEW SEASONS MARKET 	New Seasons Market LLC	Retail grocery stores	October 10, 2001
3112257	NEW SEASONS MARKET	New Seasons Market LLC	Retail grocery store services	October 10, 2001
3112256	NEW SEASONS	New Seasons Market LLC	Retail grocery store services	February 29, 2000
3483308	HY-VEE SEASONS 	Hy-Vee, Inc.	Online catalog in the field of family lifestyles featuring tips on the use of and offering products for seasonal indoor and outdoor furniture and furnishings, seasonal recipes and tips on preparation of the recipes, seasonal grocery items for indoor and outdoor cooking and offering tips for use of	November 24, 2006

			the grocery items in indoor and outdoor cooking, tips on the use of and offering products for seasonal floral and decorating ideas for the home both indoors and outdoors, tips on the use of and offering products for seasonal lawn and garden care, tips on the use of and offering products for seasonal cleaning for both the indoors and the outdoors, tips on the use of and offering products for seasonal home entertaining for use both indoors and outdoors, seasonal tips on the use of and offering products for planning vacation road trips, and seasonal tips on the use of and offering product for living a healthier lifestyle.	
88151282	THE SEASON'S BEST IS ALL HERE	Save Mart Supermarkets	retail grocery stores; on-line ordering services featuring grocery products	N/A

Applicant maintains that these third-party registrations of “SEASONS” or “SEASON” formative marks demonstrate that the USPTO has concluded marks containing “SEASONS” or “SEASON” may coexist with each other in Class 35 for general grocery services – and they are, in fact, coexisting -- without the likelihood of consumer confusion, and are evidence that that the word “SEASONS” is entitled to only a narrow scope of protection with respect to the general, non-specialized grocery store services identified in the Cited Mark. *See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1373 (Fed. Cir. 2015) (“Evidence of third-party use of similar marks on similar goods is relevant to show that a mark is relatively weak and entitled to only a narrow scope of protection.”). The peaceful coexistence of

“SEASONS” and “SEASON” formative marks is also evidence that the public are used to and experienced at distinguishing among various “SEASONS” formative marks for general grocery services. *See In re Hartz Hotel Services Inc.*, 102 U.S.P.Q.2d 1150, 1156 (T.T.A.B. 2012) (reversing a refusal to register GRAND HOTELS NYC for hotel services, holding that “consumers are able to distinguish between different GRAND HOTEL mark based on small differences in the marks, including the addition of a geographic term”). Particularly considering the specialized nature of Applicant’s services and the niche market in which Applicant’s Mark is used, there is no likelihood of confusion between Applicant’s Mark and the Cited Mark. *See In re Hartz Hotel Services Inc.*, 102 U.S.P.Q.2d 1150, 1156 (T.T.A.B. 2012) (reversing a refusal to register GRAND HOTELS NYC for hotel services based on third party coexistence of “GRAND HOTEL” marks for hotel services, finding that “in this case, the strength of weakness of the mark in the cited registration is the most important factor”).

Citing *In re I.AM.Symbolic, LLC*, 866 F.3d 1315, 1328-29 (Fed. Cir. 2017) and *AMF Inc. v. Am. Leisure Products, Inc.*, 474 F.2d 1403, 1406 (C.C.P.A. 1973), the Examining Attorney stated that “evidence comprising only a small number of third-party registrations for similar marks with similar goods and/or services, as in the present case, is generally entitled to little weight in determining the strength of a mark.” Final Office Action. Applicant respectfully disagrees with the Examining Attorney’s assessment of the strength of the third-party registrations listed by Applicant and submits that the cases cited do not necessarily support the Examining Attorney’s assessment. In *I.AM.Symbolic*, the application was filed in International Trademark Classes 3, 9 and 14, and the USPTO issued a Section 2(b) refusal on the ground of likelihood of confusion with previously registered I AM marks. *Id.* at 1319-20. The court held that “[the applicant’s] evidence of third-party use of I AM for the same or similar goods falls

short of ‘ubiquitous’ or ‘considerable’ use of the mark components,” after noting that for Classes 3 and 9 the applicant had pointed to only one third-party mark (which is also a mark over which the Bard concluded that there was a likelihood of confusion), and for Class 14 the applicant had pointed to only four third-party registrations (two of which were relied by the Board in its refusal). *Id.* at 1328-29. In other words, the evidence of third-party use offered by the applicant in I.AM.Symbolic consisted of one mark for Classes 3 and 9 and four marks for Class 14. Among these five marks, three have been determined as confusingly similar with the applicant’s mark.

Meanwhile, the Court of Customs and Patent Appeals in *AMF Inc.* was evaluating an opposition (instead of a USPTO refusal) against an application for sailboats for a mark comprised of a fish design and the word “GOLDFISH”. *Id.* at 1404-05. The appellant filed the opposition based on its ownership of registered marks for sailboats for the marks “SAILFISH SPORTABOUT and fish design”, “ALCORT SUNFISH”, “ALCORT CATFISH”, “FLYING FISH” and a fish design. *Id.* at 1405. The third-party use evidence offered consisted of seven registrations of marks that contain the word “fish” for sailboats and/or boats, and trade publications listing marks that contain the word “fish” and showing pictures of boats with fish designs on. *Id.* at 1406. Although these third-party uses did not eventually convince the court that the applied-for mark is weak for sailboats, the court made clear that it is not because the number of third-party registrations and uses cited was low, but because the court assigned more weight to the witness testimony and sales and marketing expenditures, which showed the strength of the applied-for mark, than the cited third-party registrations and uses. *Id.* at 1406-07.

Unlike the facts of the cases cited by the Examining Attorney, Applicant’s sample of third-party registrations consists of 11 third-party registrations of marks containing

“SEASONS”/“SEASON” for exactly “retail grocery services”, much more than the five marks cited in *I.AM.Symbolic* and the seven registrations cited in *AMF Inc.*⁴ Furthermore, unlike in *AMF Inc.*, there are currently no other kinds of evidence in this matter for the Examining Attorney to compare the third-party registrations with and weigh the evidentiary value against. Therefore, Applicant respectfully submits that it has provided sufficient number of third-party registrations to demonstrate the weakness of the “SEASONS” element with respect to “retail grocery services.”

In addition, the Examining Attorney stated that “[t]he marks listed by applicant combined expressions or have a distinctive adjective which modifies the wording SEASONS, and which significantly changes the commercial impression when the marks are viewed in their entirety,” and “[t]hus, these third-party registrations submitted by applicant are insufficient to establish that the wording SEASONS is weak or diluted.” Final Office Action. However, Applicant respectfully submits that the fact that the distinctive elements in these marks are able to significantly alter the commercial impression engendered by the term “SEASONS” does not fail to establish that “SEASONS” is weak or diluted with respect to grocery services. To the contrary, if anything, that fact supports an assessment that the wording “SEASONS” is weak with respect to grocery services, as it demonstrates that any distinctive element can easily and

⁴ As further evidence showing the coexistence of “SEASONS” formative marks for relevant goods and services, Applicant submits that on the Federal Register there are currently at least 141 active applications and registrations for marks containing “SEASONS”/“SEASON” in Class 35, where supermarket and grocery services fall, 62 active applications and registrations for “SEASONS”/“SEASON” formative marks in Class 29 (foodstuffs of animal origin, as well as vegetables and other horticultural comestible products prepared or preserved for consumption), 84 active applications and registrations for “SEASONS”/“SEASON” formative marks in Class 30 (foodstuffs of plant origin, except fruits and vegetables, prepared or preserved for consumption, as well as auxiliaries intended for the improvement of the flavor of food), and 33 active applications and registrations for “SEASONS”/“SEASON” formative marks in Class 31 (land and sea products not having been subjected to any form of preparation for consumption, live animals and plants, as well as foodstuffs for animals). As such, there are well over 100 marks that contain “SEASONS”/“SEASON” on the Federal Register in the relevant trademark classes. True and accurate copies of relevant TESS searches conducted by Applicant’s attorney on April 22, 2020 are attached as Exhibit A.

significantly modify the commercial impression created by the SEASONS element in these marks.

4. The Differences in the Parties' Marks Sufficiently Distinguish the Marks in a Relevant Purchaser's Mind.

Applicant maintains that the marks at issue are readily perceived to be different because of the design element in Applicant's Mark and additional words in the Cited Mark, particularly given that the term "SEASONS," although a weak term with respect to general grocery services, has gained significant market recognition and become a strong mark for Applicant's niche services. *See* 2 J. Thomas McCarthy, *McCarthy on Trademarks & Unfair Competition* § 11:77 (5th ed. 2019) (a mark can be weak in one market but strong in a different market).

As previously submitted, besides the word "SEASONS," Applicant's Mark and the Cited Mark share no similarities in appearance. The distinct design element in Applicant's Mark distinguishes it from the Cited Mark. Although the words "OLIVE OIL & VINEGAR TAPROOM" in the Cited Mark are disclaimed, they make the two marks look and sound differently. *See e.g., Colgate-Palmolive Co. v. Carter-Wallace, Inc.*, 167 U.S.P.Q. 529, 530 (C.C.P.A. 1970) (finding that "[t]he difference in appearance and sound of the marks [PEAK and PEAK PERIOD] is too obvious to render detailed discussion necessary. In their entirety, they neither look nor sound alike.").

Moreover, Applicant agrees with the Examining Attorney that "[t]he issue is not whether the marks have any differences; it is whether those differences will be perceived by a potential purchaser as distinguishing the source of the services," Final Office Action. The design element in Applicant's Mark and the non-SEASONS words in the Cited Mark make the two marks engender completely different commercial impressions, especially in the context of the different services offered by the parties, the different purchasers targeted and the different trade channels

through which the parties' services travel. The design element in Applicant's Mark consists of drawings of a fish, loaf of bread, cuts of meat and artichoke, which highlight the seafood, stables, meat and vegetables offered through Applicant's services. Meanwhile, the words "OLIVE OIL & VINEGAR TAPROOM" in the Cited Mark emphasize the olive oil and vinegar products provided through Registrant's services. Therefore, the two marks are readily perceived differently in relevant customers' minds.

Besides, as demonstrated in the exhibits attached to Applicant's prior response, while "SEASONS" is weak with respect to general grocery services, it is strong and well-recognized with respect to Applicant's specialized supermarket services. The fact that Applicant has managed to develop market distinction in "SEASONS" with respect to Applicant's Kosher supermarket services is further evidence that relevant purchasers perceive Applicant's Mark very differently from "SEASONS" formative marks used for non-Kosher retail grocery services.

Therefore, and considering the other important factors discussed above, there is no likelihood of confusion between the parties' marks. *See also, In re Hearst Corp.*, 25 U.S.P.Q. 2d 1238, 1239 (Fed. Cir. 1992) (reversing refusal to register VARGA GIRL ("GIRL" disclaimed) for calendars on the basis of prior mark VARGAS for calendars, and chastising the Board for "inappropriately chang[ing] the mark" by "stressing the portion 'varga' and diminishing the portion 'girl'" as "[t]he appearance, sound, sight, and commercial impression of VARGA GIRL derive significant contribution from the component 'girl'").

II. CONCLUSION

Based on the foregoing reasons, Applicant hereby submits that the Application is in condition for publication and respectfully requests action consistent therewith. Applicant requests that the Examining Attorney contact the Attorney of Record for Applicant if a telephone conference might be of assistance in resolving any remaining issues.