

LIPMAN FAMILY FARMS and Design

S/N 86779265

This is in response to the Office Action issued January 9, 2016. In that action, The Examining Attorney refused registration of Applicant's mark due to the presence of Prior Registration No. 4156636 for the mark REFRESHINGLY DEPENDABLE LIPMAN and Design. In addition, the Examiner has requested a disclaimer of the terms FAMILY FARMS and has inquired whether LIPMAN serves as a varietal or cultivar name. Applicant responds as follows.

First, Applicant submits that the REFRESHINGLY DEPENDABLE LIPMAN registration should not be considered as a bar to registration in that mark is owned by an entity that is related to Applicant. Further, the owner of the REFRESHINGLY DEPENDABLE LIPMAN registration consents to use of LIPMAN by Applicant in the instant application. In support of this contention, Applicant submits the attached declaration of Toby Purse, who serves as a Vice President for both Applicant Six L's Packing Company and the owner of Registration No. 4156636, LFC Enterprises. See attached. Given this, it is clear that Applicant and Registrant are related companies and therefore the use of the common LIPMAN element will not lead to confusion as to source. Thus, the Section 2(d) refusal should be withdrawn.

In addition to the above, LFC Enterprises, as owner of Registration 4156636 clearly and unequivocally consents to Applicant's use of the instant mark. See attached. Given this clear and unequivocal consent, the likelihood of confusion concerns raised by the Examiner are moot. Thus, Applicant respectfully requests that the Examiner remove the Section 2(d) refusal in this matter and allow this application to proceed to publication

Second, the Examiner asks whether LIPMAN has ever been used as a varietal or cultivar name and whether any "plant patent, utility patent, or certificate for plant variety protection exists under such name." Applicant submits that LIPMAN has not been used as a varietal or cultivar name, but only as a mark to identify Applicant's goods. Responding further Applicant submits that no plant or utility patent or any certificate for plant variety protection exists under the LIPMAN name for these goods. Rather, as noted, LIPMAN serves as the mark that identifies Applicant's goods to the consumer.

Finally, Applicant herein requests the following disclaimer be entered.

No claim is made to the exclusive right to use "FAMILY FARMS" apart from the mark as shown.