In response to the Office Action dated November 4, 2015, Applicant hereby amends the above-referenced application as follows:

I. Likelihood of Confusion Under Trademark Act Section 2(d)

The Examiner has refused registration of Applicant's Mark AVANTI in light of the following existing U.S. trademark registration (collectively "Cited Registrations"):

Mark	Goods & Filing Date	Owner
Mark: AVANTI'S **Registration No.** 1333746	Class 043 –Restaurant services Filing Date: 12/09/1983	Avanti's of Peoria, Inc.
Mark: PASTA AVANTI ITALIAN EATERY **Registration No.** 4719571	Class 043 –Restaurant services featuring Italian food Filing Date: 08/12/2014	Pasta Avanti LLC

When a trademark is said to be "confusingly similar" to another mark, it is so similar to the other that, when it is used on products or services, the purchasing public is likely to be confused. In determining whether there is a "likelihood of confusion," an examiner must look at the marks' similarities in appearance, sound, connotation, and commercial impression. *In re E.I. Du Pont de Nemours & Co.*, 476 F. 2d 1357, 177 USPQ 563 (CCPA 1973). The examiner must also compare the goods or services to determine if they are related or if the channels in which they are marketed are such that consumer confusion is likely. *In Re International Telephone and Telegraph Corp.*, 197 USPQ 910 (TTAB 1978). The "likelihood of confusion" test is thus, not merely, whether the marks are similar in the abstract, but whether they are so similar that, when used on particular products or services sold through certain channels of trade, there would likely be confusion as to the source or sponsorship of the product or service.

No Actual Confusion

Evidence of actual confusion caused by a similar mark is not conclusive or required, but it is the best evidence of the likelihood of confusion. Applicant has no knowledge of any instances of actual confusion

But the absence of evidence of confusion does not mean that this factor is disregarded. Further examination as to whether there has been meaningful opportunity for actual confusion to have occurred is required. Applicant has used the mark AVANTI since at least as early as November 1, 1989, i.e. over 26 years. The Registrant for AVANTI'S has claimed first use as early as February 15, 1966, and thus there has been an overlap of over 26 years in which both marks have been in use in commerce. Further, the Registrant for PASTA AVANTI ITALIAN EATERY has claimed first use as early as February 15, 2014. The fact that no instances of actual confusion during all those years of concurrent use must weigh in favor of Applicant's claim that there is no

likelihood of confusion between Applicant's Mark and Registrants' Mark. The showing of no actual of actual confusion for over 16 years of concurrent use supports the conclusion that confusion at this point is unlikely.

Conditions of Concurrent Use

The length of time during and conditions under which there has been concurrent use without evidence of actual confusion is relevant evidence of the lack of a likelihood of confusion. *Old Tyme Foods, Inc. v. Roundy's, Inc.*, 961 F.2d 200, 204-205, 22 USPQ2d 1542, 1546 (Fed. Cir. 1992).

In the present application, Applicant's services and services represented by the AVANTI'S mark have co-existed in the business market for over 26 years. This fact thus favors Applicant. See, *Sports Authority Michigan, Inc. v. PC Authority, Inc.*, 63 USPQ2d 1782, 1799 (TTAB 2001) (concurrent operation of retail stores in same geographic area for five years without evidence of actual confusion favors Applicant); *Fruit of the Loom, Inc. v. Fruit of the Earth, Inc.*, 3 USPQ2d 1531, 1533 (TTAB 1987) (absence of instances of actual confusion despite concurrent advertising, sales of millions of dollars by both parties in the same channels of trade for over five years is evidence that confusion is not likely); *Brookfield Communications, Inc. v. West Coast Entertainment Corp.*, 174 F.3d 1036 (9th Cir. 1999).

Dissimilarity of Services

As the Examiner knows, the inquiry is whether the goods are related, not identical. The issue is not whether the goods will be confused with each other, but rather whether the public will be confused about their source. See *Safety-Kleen Corp. v. Dreser Indus., Inc.*, 418 F.2d 1399, 1404 (CCPA 1975); TMEP 1207.01(a)(1). If the goods or services in question are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source, then, even if the marks are identical, confusion is not likely. See, e.g., *Shen Manufacturing Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238 (Fed. Cir. 2004) (cooking classes and kitchen textiles not related); *Quartz Radiation Corp. v. Comm/Scope Co.*, 1 USPQ2d 1668 (TTAB 1986) (QR for coaxial cable held not confusingly similar to QR for various products (e.g., lamps, tubes) related to the photocopying field).

With regard to Applicant's Mark and the Cited Registrations, there is meaningful dissimilarity in the services represented by the respective marks. As discussed below, the services represented by these marks are associated with different products moving in different industries.

Applicant's Mark represents "Restaurant, bar and catering services." These services in the field of food services are classified in International Class 43.

On the other hand, the Cited Registrations represent services completely different from Applicant's services. The services represented by the AVANTI'S mark can ***only*** be viewed or found in Illinois, even though the restriction on trade channels cannot be found on the Registrant's ID. (See Exhibit A). Similarly, the services represented by the PASTA AVANTI ITALIAN EATERY mark can ***only*** be found Anchorage, Alaska. (See Exhibit B). Because of the limited

geography reached by these services, the services represented by each mark is different in terms of the geography of the consuming public. In light of these differences regarding the services, it is very unlikely, that Applicant's Mark and the Cited Registration would result in a likelihood of confusion because of the geographic disparity amongst the marks.

Conclusion

In summary, the difference in the spelling, pronunciation, appearance and commercial impression created by Applicant's mark AVANTI versus the Cited Registrations supports the conclusion that purchasers of the Registrants' services are not likely to mistakenly assume that such services originate from, are sponsored by, or are in some way associated with the services of Applicant. Additionally, the services represented by the "AVANTI" mark and the services marketed under the Cited Registrations are dissimilar and would not confuse consumers regarding the source of the services. Accordingly, there is no likelihood of confusion between Applicant's Mark and the Cited Registrations.

A review of the factors discussed above, as applied to the facts of this case, clearly manifests that the marks at issue are not "confusingly similar". Therefore, a "likelihood of confusion" between them under Trademark Act Section 2(d) does not exist.