

Serial Number: 87468232

Mark: Trade Dress

Applicant: Arctic Fisheries Ltd.

Examining Attorney: Deirdre G. Robertson, L.O. 111

**THE MARK HAS ACQUIRED DISTINCTIVENESS AS DEMONSTRATED BY  
APPLICANT'S SUBSTANTIALLY EXCLUSIVE AND CONTINUOUS USE AS WELL  
APPLICANT'S SUBSTANTIAL REVENUES GENERATED IN CONNECTION WITH  
THE USE OF THE MARK IN COMMERCE.**

In an office action dated June 8, 2017, the examining attorney issued an initial refusal asserting the applied-for trade dress is ornamental, and therefore unregistrable pursuant to Lanham Act §§ 1, 2, and 45, 15 U.S.C. §§ 1051-1052, 1127. However, as demonstrated herein, Applicant's mark has acquired distinctiveness through its long term use of the mark in commerce in connection with the goods, and Applicant's significant sales in connection with the goods.

**I. APPLICANT HAS CONTINUOUSLY AND EXCLUSIVELY USED THE MARK  
IN COMMERCE FOR 19 YEARS.**

Proof of substantially exclusive and continuous use of a mark for five years prior to the date on which a claim of distinctiveness is made is prima facie evidence that the mark has acquired distinctiveness. *See* Lanham Act § 2(f), 15 U.S.C. § 1052(f). Applicant has used the mark in commerce in connection with frozen seafood and processed seafood for human consumption since as early December 1, 1998. Applicant's use has been substantially continuous and exclusive for 19 years, and such use is prima facie evidence of the mark's acquired distinctiveness.

**II. APPLICANT HAS GENERATED OVER \$485 MILLION IN SALES THROUGH  
THE USE OF THE MARK IN COMMERCE.**

Further evidence of acquired distinctiveness may include advertising expenditures or sales success. *See In re Louisiana Fish Fry Products, Ltd.*, 797 F.3d 1332, 1336 (Fed.Cir. 2015). Applicant's use of the mark garnered significant sales success totaling in excess of \$485 million. Such sales success is demonstrative of the mark's acquired distinctiveness.

**CONCLUSION**

For the foregoing reasons, while the mark may be perceived as merely ornamental, Applicant's substantially continuous and exclusive use of the mark, combined with the

substantial revenues generated in connection with the mark, demonstrate the mark has acquired distinctiveness. As such, the mark is properly registrable on the principal register, and should proceed to publication in the Official Gazette.