

Response to Office Action: U.S. Serial No. 88000040

To the Commissioner for Trademarks:

Applicant NuWave, LLC respectfully submits this response to the September 6, 2018 Office Action (the “Office Action”) regarding Application Serial No. 88000040 with the following arguments and remarks:

ARGUMENTS AND REMARKS IN RESPONSE TO OFFICE ACTION

As set forth in the Office Action, Applicant’s mark has been found to conflict with two registrations: Registration No. 4715731 (BRAVO) for “Charcoal, gas, electric and wood burning barbecue grills; Charcoal, gas, electric and wood burning smoker grills” in International Class 11 and Registration No. 4840295 (FORNO BRAVO) for “Baking ovens; Baking ovens; Cooking ovens; Fireplaces; Gas cooking ovens; Industrial cooking ovens; Wood burning cooking stoves” (amongst other goods) in International Class 11.

Registration No. 4840295

The application that matured into Registration No. 4840295 (FORNO BRAVO) for “Baking ovens; Baking ovens; Cooking ovens; Fireplaces; Gas cooking ovens; Industrial cooking ovens; Wood burning cooking stoves” in International Class 11 (as well as goods in IC 009 and IC 035 not cited in the Office Action) was filed on February 23, 2015 and registered on October 27, 2015.

Applicant respectfully requests reconsideration of the rejection based on the ‘295 Registration. Notably, the marks are distinct. The ‘295 Registration begins with the word “FORNO”. Although, according to the ‘295 Registration, “FORNO” means “oven” in Italian, to an English speaker it is meaningless and seems fanciful. By contrast, “BRAVO”, although also an Italian word, is frequently used by English speakers. Accordingly, “FORNO” is the much more salient portion of the ‘295 Registration and consumers will not be confused between Applicant’s mark and the ‘295 Registration. This further creates a distinctive impression in consumers’ minds – although “BRAVO” might be understood as an English word, “FORNO BRAVO” clearly creates an “Italian language” impression which is distinct from the impression of Applicant’s mark and, incidentally, is closely related to the goods of the ‘295 Registration.

Specifically, and furthermore, Applicant’s goods are completely different from those in the ‘295 Registration. Although both are in the realm of cooking, that is where the similarity ends. The goods described in the ‘295 Registration are specialized cooking ovens – specifically, pizza ovens (*i.e.* rustic Italian traditional pizza ovens). For example, the Specimen submitted during prosecution of the ‘295 Registration (on February 23, 2015) shows the ‘295 Registrant’s website. The headline of the website clearly states “FORNO BRAVO THE WORLD’S FINEST PIZZA OVENS”). The text of the page describes the ‘295 Registrant’s goods – “Fully Assembled” ovens and “Modular Oven Kits”. It references the requirements of the “homeowner,” indicating that these goods are actually considered fixtures of the property where they are installed. The ovens are described as working when you “light the fire” – clearly, these are fuel-based flame ovens. This comports with the ‘295 Registrants’ goods description, which includes “wood-burning cooking stoves,” “gas cooking ovens,” and “fireplaces.” Importantly, both the Specimen

and the '295 Registration's goods descriptions make no reference to electricity; by contrast, Applicant's claimed goods are "Electric cookware namely, electric toaster ovens, electric convection ovens, electric fryers, and electric broilers." Applicant respectfully submits that there is very little likelihood that consumers will be confused between a rustic Italian wood-burning outdoor pizza oven and an electric tabletop cooking appliance (such as a toaster oven), particularly given the differences in the marks themselves. Accordingly, Applicant respectfully requests withdrawal of the refusal based on the '295 Registration.

Registration No. 4715731

The application that matured into Registration No. 4715731 (BRAVO) for "Charcoal, gas, electric and wood burning barbecue grills; Charcoal, gas, electric and wood burning smoker grills" in International Class 11 was filed on August 21, 2014 (Section 1(a)) and registered on April 7, 2015.

Although the marks are identical, they are for very distinct goods which will prevent customer confusion. The '731 Registration is for "barbecue grills" and "smoker grills" while Applicant's goods are "Electric cookware namely, electric toaster ovens, electric convection ovens, electric fryers, and electric broilers".

First, the '731 Registration (BRAVO) was not cited against the '295 Application (FORNO BRAVO). Accordingly, Applicant submits that the same logic that found "BRAVO" for grills distinguishable from "FORNO BRAVO" for cooking ovens should apply here, and that this emphasizes that there is a difference between a grill and a cooking oven (and, as noted above, Applicant's goods are even further distinct from the "cooking ovens" of the '295 Registration). Accordingly, the '731 Registration should not prevent registration of Applicant's mark.

Aside from the '295 Registration, it is clear from the face of the '731 Registration that consumers are not likely to be confused between the goods of the '731 Registrant and Applicant. As noted above, Applicant's goods are electric countertop cooking appliances – inside the home. The '731 Registrant's goods are barbeque grills and smokers, which are large appliances that are kept outside. Generally, barbecue grills and indoor countertop cooking appliances do not emanate from the same source (for example, Weber® does not sell a toaster oven). Accordingly, Applicant submits that consumers will not be confused between the two and that the '731 Registration should not prevent registration of Applicant's mark.

CONCLUSION

Applicant respectfully requests allowance of its mark. Should any informal matters remain that can be resolved via telephone, Applicant requests that undersigned counsel be contacted to expedite registration.

DATED: March 6, 2019

Respectfully Submitted,

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