

87/932,015 for BLUEBERRY

Section 2(d) Refusal

The Office Action has alleged that goods sold bearing THE BLUEBERRY STORE in association with registration No. 1,733,786 would be likely to cause confusion with Applicant's goods. Applicant has carefully reviewed the cited application and its use in commerce, and submits that there is no likely chance of any confusion.

As discussed in further detail below in this response, Applicant intends to use the BLUEBERRY mark on coffee cups, particularly unadorned ceramic coffee cups, as a word mark for sale principally into specialty coffee stores or Starbucks, for example, for the benefit of extremely dedicated and sophisticated high-end coffee equipment enthusiasts. The target consumer is coffee aficionados.

On the other hand, goods bearing THE BLUEBERRY STORE mark are sold, apparently, directly by registrant to the public through its website (<https://www.theblueberrystore.com/>) and at its brick and mortar location in Grand Junction, Michigan. While registrant does sell cups, these cups are very ornate and are arguably visually stunning, as in the below screenshot from registrant's website:

White Harbor Mug with Blueberries





Price: **\$9.99**
SKU: 769817
Rating: ★★★★★ (3 product reviews)
Availability: Usually ships within 24 hours
Shipping: Calculated at checkout
Quantity: [ADD TO CART](#)

[Click to enlarge](#)

Product Description

In rather stark contrast, an example of Applicant's intentionally unadorned and Spartan goods is presented below in the form of a ceramic coffee cup bearing the COCOA trademark:



Applicant fully expects its anticipated cup bearing the BLUEBERRY mark to be similar in overall appearance (unadorned), but likely of a noticeably different shape. These products would be sold in specialty coffee shops to coffee enthusiasts. There really is no chance of the channels of commerce for Applicant's goods (e.g., via Starbucks) and registrant's goods (e.g., via registrant's website) to overlap. Applicant has further revised its description of goods, furthering the distinction.

Accordingly, for at least these reasons, Applicant submits that there is no likelihood of confusion between Applicant's mark and the cited application.

Section 2(e)(1) Refusal

Applicant has deleted herein the portion of its description of goods that relates specifically to tasting cups, although notes that the remainder of the description of goods would nonetheless be sufficiently broad to encompass such goods. It is Applicant's understanding that this amendment will successfully address the Section 2(e)(1) Refusal. Applicant therefore respectfully requests withdrawal of the Section 2(e)(1) Refusal.

Response to Request for Information

A physical specimen of a cup that Applicant intends to sell bearing the BLUEBERRY mark is not yet available. However, Applicant submits similar documentation for goods of the same type in the form of the attached professional photograph of a cup intended to be sold by Applicant bearing the mark COCOA on its bottom (also depicted above). Applicant expects that the cup it eventually sells bearing the BLUEBERRY mark will be depicted in essentially the same manner, as a word mark with some accompanying similar logos, and on the bottom of the cup. As with the example image, other than the writing on the bottom of the cup, the cup would not include other writing or ornamentation. The cup itself may have a different ornamental shape as compared to the depicted cup, but it is unknown whether any such change in shape would lead to a change in function. As to channels of trade, the cup is principally intended for sale in coffee shops and are directed to consumers that have a sophisticated knowledge of coffees and coffee related equipment.

Espro, Inc., the Applicant, plans to use the BLUEBERRY mark as a source indicator for a coffee cup similar to the illustrated coffee cup. BLUEBERRY is known as a flavor note, as set forth in the SCAA flavor wheel appended to the Office Action that can be detected in certain coffees, depending on how the coffee is roasted and brewed. However, the actual cup sold by Applicant that is pictured, or any other cup that Applicant would plan to sell bearing the BLUEBERRY mark, to Applicant's knowledge, would not physically function to enhance BLUEBERRY flavor notes in coffees.

Prior Filed Applications

Applicant reserves its right to address any issues relating the prior filed applications at a later time.

Ornamental Refusal Possible - Advisory

Applicant plans to use the applied for mark in a manner similar to the attached photograph. It is believed that because of this, the BLUEBERRY trademark acts as a source indicator, and not “merely a decorative or ornamental feature of the goods.”