

Michael Engel  
Trademark Examining Attorney  
Law Office 107  
United States Patent and Trademark Office

**RE:** Serial No: 88256475  
Mark: **FRUIT & VEGGIE BLENDERS FOREVER YOUNG**  
Applicant: Matosantos Commercial Corp.  
Office Action of: February 6, 2019

---

## APPLICANT'S RESPONSE TO OFFICE ACTION

### I. INTRODUCTION

The following is Applicant's, Matosantos Commercial Corp. (hereinafter Applicant), response by Counsel to the Office Action issued on February 6, 2019, by Examining Attorney Michael Engel. Registration of the proposed trademark "**FRUIT & VEGGIE BLENDERS FOREVER YOUNG**" was refused pursuant to Trademark Act Sections 1 and 45, 15 U.S.C. §1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §807.01, on the grounds that allegedly Applicant seeks registration of more than one mark. This, since according to the Examining Officer the elements of the mark, as shown in the filed specimen, appear spatially separated that they seem to be separate and distinct marks.

Nevertheless, after carefully considering the particular circumstances of this case, Applicant respectfully submits that the mark, as shown in the specimen, does not create the impression of two different marks. On the contrary, as used in commerce, the mark "**FRUIT & VEGGIE BLENDERS FOREVER YOUNG**" is seen as a unitary mark

and this is how consumers perceive it. As such, Applicant very respectfully requests the Examining Attorney to reconsider his refusal and approve the mark for registration.

## II. GENERAL ARGUMENT IN FAVOR OF REGISTRATION

### ***THE MARK “FRUIT & VEGGIE BLENDERS FOREVER YOUNG” AS USED IN COMMERCE CREATES ONE SINGLE COMMERCIAL IMPRESSION AND AS SUCH THIS IS HOW CONSUMERS WILL PERCEIVE IT***

In this case, the Examining Attorney alleges that according to the submitted specimen, Applicant seeks registration for more than one mark. This, since according to the Examining Attorney the elements “FRUIT & VEGGIE BLENDERS” and “FOREVER YOUNG”, as shown in the submitted specimen, are separated to such a degree that they appear to be separate and distinct marks.

In support of this conclusion, the Examining Attorney cites several cases, all of which differ from Applicant’s case. For example, in In Re Hayes, 62 U.S.P.Q. 2d 1443, the applicant in said case wished to register a mark that was designed to vary in patterns and colors and the description of the mark reflected said variations. As such, in said case the decision was based on applicant’s description of the mark since it described more than one mark.

Further, said case cites In Re International Flavors & Fragrances, Inc., 183 F.3d 1361, which was also cited by the Examining Attorney as basis for the refusal. In this particular case, applicant sought to register the mark “LIVING XXXX FLAVOR”, in which the “XXXX” were to be substituted by different designations, such as “MINT”, “FLOWERS”, “RASBERRY”, among others. Therefore, this case analyzed what are considered “phantom: marks and if said type of marks violate the “one mark per

registration” requirement under the Lanham Act. As such, in this case it was also clear that applicant intended to register more than one mark in its application

However, this is not the case for Applicant. Here, Applicant intends to register only one mark, the word mark “FRUIT & VEGGIE BLENDER FOREVER YOUNG”, in which its description does not allow for any other variation of it.

As expressed by the Examining Attorney, a mark combining separate elements is registrable only if it is a single unitary mark and engenders a unique and distinct commercial impression. Applicant’s mark is composed of the unitary mark “FRUIT & VEGGIE BLENDERS FOREVER YOUNG”, and when consumers see Applicant’s products in commerce, the mark engenders a unique a distinct commercial impression.

Different from this, are the cases cited by the Examining Attorney in the Office Action. For example, in In Re Supreme Steel Framing Sys. Ass’n Inc., 105 USPQ2d 1385, the court found that applicant’s mark was composed of two different marks. Here, the court considered several factors, from the fact that the terms, as shown in the specimen, were written in different fonts, contained different colors, and had other terms that intervened between the applied for mark. Namely, the court analyzed the fact that the term “SSFSA” appeared along with other wording encapsulate inside of a blue and grey design, while the phrase “CERTIFIED CODE COMPLIANT” appeared in a much larger size in the middle of the specimen inside of a gold circle, and with the term “CODE” inside a red-bordered white ribbon across the center. As such, in this case, the court analyzed many elements and not just the spacing between the term in order to conclude that the mark, as shown in the specimen, appeared to be two different marks.

Contrary to what is alleged by the Examining Attorney in the Office Action, courts have established that the position of a symbol or word in a package does not determine, by itself, whether it functions or not as a mark. See Véase Johnston Foods, Inc. v. Carnation Co., 159 U.S.P.Q. 624 (T.T.A.B. 1968). As such, in this case, Applicant very respectfully considers that in this case, the terms “FRUIT & VEGGIE BLENDERS” and “FOREVER YOUNG” appear sufficiently in close proximity to each other in the package shown, and as such it can be concluded that they make up one unitary commercial impression. For example, in this case, both phrases appear on the top part of the packaging, have similar font and are not encapsulated inside any shapes. As such, they do not have different commercial impressions, but rather make up one commercial impression.

In conclusion, when evaluating the particular circumstances of this case, it must be concluded that the cited case law differs from the case at hand and as such, should not be considered. Further, in none of the cited case law does the Board or the Court conclude that the mere fact that two terms appear separated by some space automatically mean that they constitute more than one mark. On the contrary, there are several more elements that should be considered.

In that sense, Applicant very respectfully submits that the filed specimen in this case should be acceptable since both terms, appear in sufficient proximity to each other as to create a single unique commercial impression.

### **III. CONCLUSION**

The preceding analysis and summary of legal precedent strongly indicates that Applicant is not intending to register two different marks, but rather one unitary mark composed of the terms “FRUIT & VEGGIE BLENDERS FOREVER YOUNG”. Further, in

this case Applicant believes that the terms “FRUIT & VEGGIE BLENDERS” and “FOREVER YOUNG” appear in sufficient proximity to each other, as to create one unitary distinct commercial impression.

Wherefore, in light of the foregoing circumstances, Applicant respectfully requests the Examining Attorney to approve the mark for registration.

Respectfully submitted,

/Adriana T. Amadeo/  
Adriana T. Amadeo  
Samuel F. Pamias  
Hoglund & Pamias, P.S.C.  
256 Eleanor Roosevelt  
San Juan, PR 00918  
Tel. (787)772-9200  
E-mail: [adriana@hhoglund.com](mailto:adriana@hhoglund.com)