

Application Serial No.: 88380494



Mark:

Applicant: Hungry Greek Enterprises, LLC

To be filed electronically

The Office has refused registration of the instant application on the grounds that the mark is likely to cause confusion with a third party registration for HG (design), reg. no. 4986623, and has also cited prior pending application serial no. 88111320. Applicant notes that the Office also cited reg. no. 4986623 against app. no. 88111320, but recently issued a Notice of Publication, dated July 24, 2019, acknowledging that app. no. 88111320 “appears to be entitled to register on the Principal Register.” In effect, such Notice of Publication is an acknowledgement by the Office that the marks shown in reg. no. 4986623 and app. no. 88111320 are not likely to cause confusion, one with the other. These two marks are shown below:



Reg. no. 4986623



App. no. 88111320

Applicant’s mark is at least as dissimilar to the cited registration as app. no. 88111320 is, as shown by a visual comparison above and detailed in the lists of differences below.

Lack of similarity with reg. no. 4986623 and app.no. 88111320

Applicant respectfully disagrees that there is confusing similarity between its mark, as shown at the top of this page, and each of the marks shown immediately above, as cited by the Office, reg. no. 4986623 and app. no. 88111320.

The Office has noted the one common element in the marks (the initials “HG”) and claims that “the additional design elements do not distinguish the marks.” The Office further states “the word portion is often considered the dominant feature and is accorded greater weight in determining whether marks are confusingly similar.” Applicant notes that the Federal Circuit has made it clear that “there is no general rule as to whether letters or design will dominate in composite marks... No element of a mark is ignored

simply because it is less dominant, or would not have trademark significance if used alone.” See In re Electrolyte Laboratories, Inc., 913 F.2d 930, 16 U.S.P.Q.2d 1239 (Fed. Cir. 1990), corrected, 929 F.2d 645 (Fed. Cir. 1990). In this case of both cited marks, the stylistic differences between each mark and Applicant’s mark are significant and far outnumber the one similarity of the two letters. The differences between each are listed in turn below:

<u>App. no. 88380494</u>	<u>Reg. no. 4986623</u>
Blue and white colors	No color claim, but even a blue version would be just a thin outline with little color impact
Thick, Greek key border	Thin, plain border
Highly stylized letters in Greek key style	Very plain, sans-serif style of letters
Upper case letters	Lower case letters
HG clearly an abbreviation for Hungry Greek (applicant’s name)	HG clearly an abbreviation for Honeygrow (registrant’s name)

In relation to HG being abbreviations for very different terms, Applicant notes The Christian Broadcasting Network, Inc. v. ABS-CBN International, 84 U.S.P.Q.2d 1560, 2007 WL 2253483 (T.T.A.B. 2007), finding that evidence of public awareness of the underlying derivation of initials is needed. See Exhibit 1 for evidence of public awareness of the underlying derivation of each party’s HG, as shown in the juxtaposition of each party’s name on their respective websites.

As the Office notes, “marks are compared in their entirety.” Here the overwhelming overall impression of Applicant’s mark is the Greek design, through the coloring in the Greek national colors, the Greek key border, and the Greek key-style lettering. In stark contrast, the overall impression of reg. no. 4986623 is of two letters in a circle. Even the sole point of claimed similarity (the initials “HG”) is in fact a point of difference in the mind of a consumer who will be aware of the underlying derivation of the letters. These two marks are therefore not confusingly similar.

<u>App. no. 88380494</u>	<u>App. no. 88111320</u>
Blue and white colors	No color claim, but the palm tree brings to mind green and brown, if anything
Thick, Greek key border	No border
Highly stylized letters in Greek key style	Very plain, sans-serif style of letters
Circular shape	No shape
No images of a tree or other flora	Prominent palm tree
HG clearly an abbreviation for Hungry Greek	HG clearly an abbreviation for Havana Grill (as shown in Exhibit 1)

For these two marks, the overwhelming overall impression of Applicant's mark remains the Greek design, through the coloring in the Greek national colors, the Greek key border, and the Greek key-style lettering. In stark contrast, the overall impression of app. no. 88111320 is of the palm tree, the tropics, beaches and the like. Even the sole point of claimed similarity (the initials "HG") is in fact a point of difference in the mind of a consumer who will be aware of the underlying derivation of the letters. These two marks are therefore not similar.

Coexistence of marks incorporating "HG"

Even if the respective marks were to be considered to be similar, the presence of a number of preexisting registrations shows "that customers have become so conditioned by a plethora of such similar marks that customers 'have been educated to distinguish between different [such] marks on the bases of minute distinctions.'" (*Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1694 (Fed. Cir. 2005) (quoting Board opinion). In addition to cited registration and the cited, approved application, copies of the following registrations are attached at Exhibit 2:

HG HOLY GRAIL TAVERN & GRILLE (design), reg. no. 3571073

HG2, reg. no. 3724127 (covered restaurant services at registration)

HG HAMILTON GRAND ST ANDREWS (design), reg. no. 4739322

HG SPLY CO., reg. no. 4707783

All of the above registrations, and the cited registration and cited application, cover "restaurant services," so the differences in the marks, which all contain "HG" are telling. The coexistence of all these marks clearly indicates that Applicant's mark, with its distinct features, can also be distinguished by consumers.

Conclusion

In conclusion, in light of the dissimilarity of the marks, and the ability of consumers to distinguish between marks containing HG, and the Office's acknowledgement, through its approval for publication of app. no. 88111320, that another mark containing HG is not likely to cause confusion with reg. no. 4986623, Applicant respectfully requests that the Office withdraw the Section 2(d) refusal and allow the application to proceed to publication.