

OFFICE ACTION RESPONSE
U.S. Serial No. 88214493 for HYPER FROZEN

In the Office Action mailed March 4, 2019, the examiner has refused applicant's application to register the mark HYPER FROZEN, Application Serial No. 88214493, asserting that the applied-for mark merely describes a feature, characteristic, purpose, or function of applicant's goods. As detailed below, applicant respectfully disagrees with the examiner's refusal.

I. The Applied-for Mark is Suggestive

The examining attorney has refused registration on the Principal Register on the grounds that the applied-for mark merely describes a feature or characteristic of applicant's goods. Applicant respectfully disagrees that the applied-for mark is merely descriptive and instead asserts that the applied-for mark is suggestive.

The examining attorney's rejection of the applied-for mark is founded on the assertion that the mark is primarily merely descriptive of seafood that has been preserved by being made extremely colder than usual and stored at a very low temperature. However, in reaching this conclusion, the examiner misperceives the applied-for mark. Specifically, the rejection is based on the following incorrect assertion: "[t]he word "HYPER" is a prefix defined as "more than usual or normal." See Office Action at 2. The examining attorney's evidence extends this incorrect assertion by depicting the use of "hyper" as a prefix, not an adjective.

The applied-for mark is HYPER FROZEN *and not* HYPERFROZEN or HYPER-FROZEN. As such, the applied-for mark juxtaposes two contrary adjectives: HYPER and FROZEN. The term "hyper" when used as an adjective means, "behaving in an excited and nervous way." See Exhibit A. In addition, while the examining attorney is not incorrect to state that the term "frozen" can mean, "preserved by being made extremely cold and stored at a very low temperature," the term is also defined as, "unable to move because of fear or surprise." See Office Action at Attachment 2, definition 4.

The juxtaposition of HYPER and FROZEN in the applied-for mark creates an oxymoron (*i.e.*, acting in an excited way, yet unable to move) that requires an exercise of imagination, cogitation, mental processing or gathering of further information in order for consumers to readily perceive the significance of the applied-for mark as it relates to the goods recited in the application. Such an exercise of imagination, thought or perception to reach a conclusion as to the product or services, is the definition of a mark that is suggestive, not descriptive. *In re Nobile Co.*, 225 U.S.P.Q. 749, 750 (TTAB 1985) (NOBURST held suggestive as opposed to merely descriptive for a product that reduces the likelihood that pipes of a water system in which it is used will burst since the Board did not "believe this conclusion is readily arrived at by merely observing the mark on the goods but that it requires interpretation by the viewer.').

Accordingly, because the applied-for mark is suggestive when used in connection with the goods recited in the application, applicant respectfully requests that the examiner's refusal of the mark under Section 2(e)(1) be withdrawn.

III. Conclusion

Because HYPER FROZEN is suggestive when used in connection with applicant's recited goods, applicant submits that the mark is inherently distinctive, and the application is in condition for allowance. Accordingly, applicant respectfully requests that the examiner approve the application for publication.