

This is in response to the Office Action issued on August 7, 2019. Applicant submits with this response an amendment to the identification of goods. The goods as amended are as follows:

- Class 29 protein-based meat substitutes; food spreads of mushroom-based meat substitutes, food spreads of soybean-based meat substitutes, food spreads of vegetable-based meat substitutes, food spreads of bean-based meat substitutes; prepared meals consisting mainly of soy bean-based meat substitutes; Prepared meals consisting mainly of meat substitutes prepared from mushroom; Prepared meals consisting mainly of meat substitutes prepared from soybean; Prepared meals consisting mainly of meat substitutes prepared from beans; Prepared meals consisting mainly of meat substitutes prepared from vegetables; vegetarian foods for consumption based on vegetables, namely, vegetarian sausages, vegetable-based meat substitutes; soy bean-based meat substitute; vegetarian foods for consumption based on soybeans, namely, meat substitutes; vegetarian foods for consumption based on beans, namely, meat substitutes; Meat substitutes based on vegetables, Meat substitutes based on mushrooms, Meat substitutes based on beans; protein prepared from milk for human consumption, namely, protein milk;
- Class 30 Frozen, prepared, and packaged starters mainly made from pasta; Frozen, prepared, and packaged starters mainly prepared from cereals; starters mainly prepared from flour, namely, bread, dough, pizza; starters mainly prepared from tapioca, namely, tapioca bread, tapioca fritters, savory tapioca; Pasta; dipping sauces, namely, chocolate dips, cocoa dips, honey dips; dressing for salads; Foods prepared from cereal protein, namely, grain-based meat substitutes; grain-based snack foods, namely, food spreads prepared from grain protein;

Applicant respectfully submits that the goods, as amended, are not similar to and do not overlap with the goods in Registration Nos. 5347365, 5083214, 3555914, or 2691849. The goods, as amended, are primarily goods based on or containing meat substitutes and thus are more similar to and are an expansion of the goods of the business reflected in Registration Nos. 1615879 and 1615028. Registration Nos. 1615879 and 1615028 share a unity of control with the Application, which is described below. Furthermore, Registration Nos. 1615879 and 1615028 predate and thus have been coexisting with Registration Nos. 5347365, 5083214, 3555914, and 2691849, suggesting that there is no likelihood of confusion between Applicant's mark, GARDEN GOURMET, and the marks GARDEN FRESH GOURMET, GOURMET GARDENS

and GOURMET GARDEN. Furthermore, all of these marks are similar in appearance, have different ownership, and are coexisting for comparatively narrow food goods. Each of the registrations thus conveys a limited scope of rights in their respective marks for goods identical to those identified in the registrations and against identical marks. Applicant therefore respectfully requests that the citation of Registration Nos. 5347365, 5083214, 3555914, and 2691849 be withdrawn as moot in light of the amendment to the goods in the Application and because Applicant's mark differs in appearance and commercial impression from these cited registrations.

Regarding Registration Nos. 1615879 and 1615028, the owner of the registrations, Tivall (1993) Ltd. ("Tivall") is related to Applicant, and consumers are not likely to be confused as to the source of the goods. The "source" of goods encompasses more than simply the "legal entity." *See In re Wella A.G.*, 787 F.2d 1549, 1552 (Fed. Cir. 1986). Applicant respectfully submits that there is a unity of control over Tivall's marks and Applicant's marks that would negate a likelihood of confusion as to the source of Applicant's goods.

The sole shareholder of Tivall is Osem Investments Ltd. Osem Investments Ltd. is 100% owned by Nestlé S.A. Applicant, Société des Produits Nestlé S.A. is an IP holding company entity of the Nestlé Group and is also a wholly owned subsidiary of Nestlé S.A. Applicant's trademarks are used in the United States by Applicant's affiliated companies and licensees. With respect to the GARDEN GOURMET trademarks, Tivall is such an affiliated company, and Tivall is responsible for the manufacture of the products sold under the GARDEN GOURMET brand, pursuant to Nestlé's quality standards. Due to the relationship between the parties and their common ownership, Tivall and Applicant constitute a single source. *See* TMEP 1201.07(a).

Applicant therefore respectfully requests that the refusal under Section 2(d) be withdrawn and that the Application be approved for publication.

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