

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

February 9, 2020

SUBMITTED VIA TEAS ONLINE

Martha L. Fromm
Trademark Examining Attorney
Law Office 106
United States Patent and Trademark Office

RE: Serial No: 88148686
Mark: **MICROSALT**
Applicant: Salarius Ltd.
Office Action of: August 9, 2019

APPLICANT'S RESPONSE TO OFFICE ACTION

Dear Atty. Fromm:

The following is the substantive response of trademark applicant, Salarius Ltd., (the "Applicant") by counsel, to the Office Action mailed on August 09, 2019, which maintains the rejection of Applicant's mark as merely descriptive first communicated in the Office Action of January 24, 2019.

TRADEMARK ACT SECTION 2(e)(1) REFUSAL AS MERELY DESCRIPTIVE

The Examining Attorney maintains the refusal to register of Applicant's mark arguing that because "applicant's goods are salts . . . comprised of extremely fine or small particles [the wording in the mark merely describes features, namely, the type and size of the goods." *See* OA of Aug. 9, 2019 (referring to OA of Jan. 24, 2019). The Applicant respectfully disagrees.

MICROSALT does not have a singular meaning because "MICRO" does not convey immediate knowledge of the qualities or characteristics in the context of bulk ingredients, such as Applicant's nutritional and other products (*e.g.*, industrial salt, table salt, condiments). Instead, the applied-for mark requires at least a modicum (and likely substantial) additional thought or imagination to understand the significance of the mark in relation to Applicant's products. Accordingly. Applicant submits that MICROSALT is suggestive because the prefix "MICRO" is ambiguous in this context and suggests multiple aspects of Applicant's goods to different consumers, and in different contexts.

A merely descriptive mark consists of words that describe the ingredients, qualities, or characteristics of the goods related to the mark with such a degree of particularity that the mark “immediately conveys ... knowledge of [those] ingredients, qualities, or characteristics.” *See, e.g., In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173 (Fed. Cir. 2004), *In re Gyulay*, 820 F.2d 1216, 1217 (Fed.Cir.1987). A mark is suggestive, and not merely descriptive, when a modicum of imagination, thought, and perception are required to arrive at the qualities or characteristics of the goods. *See, e.g., In re Steelbuilding.com*, 415 F.3d 1293, 1297 (Fed. Cir. 2005), *In re Nett Designs, Inc.*, 236 F.3d 1339, 1341 (Fed.Cir.2001); *see also Tap It Brewing Co., LLC*, No. 91208370, p. 16 (TTAB Nov. 4, 2016) (a mark is “suggestive rather than merely descriptive, [when] it requires a modicum of imagination or thought before one is able to determine the nature of applicant's product”) (quoting *BellSouth Corp. v. Planum Technology Corp.*, 14 USPQ2d 1555, 1556 (TTAB 1988)) (internal quotations omitted).

MICROSALT Does Not Describe Salt Composed of Small Particles

Fundamentally, MICROSALT is not descriptive because the prefix MICRO designates a small entity or product only when used with count nouns. *See, e.g., Ex. 1* at 2, 4 (Dictionary.com examples of “micro” or “micro-” meaning “small” *only* when with *count* nouns, *e.g.*, “microcassette,” “microorganism,” “microdissection,” “microgram,” “microsphere,” etc.). MICRO is never understood to directly refer to the small size of particles that constitute a larger, or bulk, product, *i.e.*, when as here it is used with noncount nouns. *See Id.* Accordingly, MICROSALT, and its analogs (*e.g.*, micro-ingredients, micro-sugar, micro-spices), do not immediately describe, or convey knowledge that salt (or similar bulk ingredients) consist of small particles or grains, in the absence of additional descriptive words or other context (adding, *e.g.*, “grain” for micro-grained-salt, “serving” for micro-serving-[of]-salt, etc.). Because the applied-for-mark does not provide such descriptive words or context, the consumer must use imagination to mentally add such words to comprehend the various meanings of the mark in relation to Applicant’s products. *See In re Oppedahl*, 373 F.3d at 1173. Applicant respectfully submits that MICROSALT does not immediately convey knowledge of Applicant’s goods and therefore is not merely descriptive when used with a bulk product, like salt.

MICROSALT Suggests Various Characteristics of Applicant's Products

MICROSALT is suggestive of multiple qualities and characteristics of Applicant's products because MICRO is ambiguous when combined with SALT (or other bulk ingredients, as discussed above) and can suggest different aspects of Applicant's products to different consumers and in different contexts. Some aspects of Applicant's products that MICROSALT may suggest include, smaller servings of added sodium, salts and condiments produced by a small company as opposed to large corporation (*e.g.*, Morton's Salt), special product quality (*e.g.*, produced by a patented process) analogous to the term microbrew, small salt grain size, and various others. *See, e.g.* **Ex. 6**; Resp. Off. Act (Jul. 19, 2019), Exs. 1, 2. Consumers must use at least a modicum (and likely substantial) imagination, thought, or perception to comprehend every one of those different qualities and characteristics of the product, as discussed below. *See In re Oppedahl*, 373 F.3d at 1173; *Tap It Brewing Co., LLC*, No. 91208370, p. 16 (TTAB).

For example, to some consumers MICROSALT suggests that Applicant's products require or contain a small, or smaller, serving of salt (*e.g.*, to add to a recipe, contained in a condiment), analogous to the term "micronutrient." *See, e.g.*, **Ex. 2** (Dictionary.com defines micronutrient as "a substance, such as a vitamin or mineral, that is essential in minute amounts..."). Such interpretation of MICROSALT is highly likely, given that "[s]alt is an essential nutrient", and the "decades of dietary advice to lower sodium intake." *See, e.g.*, **Ex. 3**, Johnson, C., Spice it Up to Reduce Sodium Intake, UC San Diego Health (Nov. 02, 2015); *see also*, **Ex. 4** at Abstract, Kaushik S., et al., Salt an Essential Nutrient, *J. Exp. Neurosci.*, Vol 12:1-12 (Nov. 21, 2018).

Moreover, MICROSALT suggests to consumers, similar to "microbrew," that Applicant's products are special and exclusive (*e.g.*, produced by a patented methods), and produced with more care by a small company, to contrast them with products from large corporation (*e.g.*, Morton's). This, or similar interpretations by today's consumers are also highly likely with the prevalence of "micro-production," "microbreweries," "micro-farming," "microfoods," and many others.

For some consumers, MICROSALT may suggest small salt particles. But to arrive at that interpretation of Applicant's mark requires imagination and thought to mentally insert missing words (*e.g.*, grain, particles) given the ambiguity of the prefix MICRO in the context of bulk

foods, nutrition, or ingredients, and the lack of singular or accepted meaning in this context. Accordingly, MICROSALT is suggestive of various aspects of Applicant's products.

The USPTO Accepts "MICRO" Marks as Not Merely Descriptive

That Applicant's mark is suggestive, and not merely descriptive, is also supported by various U.S. registered marks combining "MICRO" with a noun (even count nouns) to identify small, or smaller than usual, goods. A small sampling of such marks includes "MICROTALC" for "talc"; MICROSOY and "MICROSOY FLAKES" for "flour made from flaked soybeans;" MICROMINTS for "candies and mints;" and "MICRO CROISSANTS" for "Croissants." *See, e.g., Ex. 5.* (Reg. Nos. 3444617, 2749469, 2822529, 2569534, and 4111367)

ATTORNEY INFORMATION REQUIRED

In accordance with the new USPTO requirements the attorney of record has provided the necessary attorney information via TEAS ONLINE in the current Response to Office Action.

IDENTIFICATION AND CLASSIFICATION OF GOODS

The Applicant accepts the Examining Attorney's suggestions for amending the description of goods and has submitted proposed amendments via TEAS ONLINE in the current Response to Office Action.

MULTIPLE CLASS APPLICATION REQUIREMENTS

Applicant submits that the amendment to the description of goods and services to remove "salted butter" obviates the need for additional classes.

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The Applicant has responded to all issues raised in the Office Action. If any further amendment or responses to this application is believed necessary to advance prosecution and place this case in allowable form, the Examining Attorney is courteously solicited to contact the undersigned representative of the Applicant to discuss the same.

In view of the foregoing, it is respectfully submitted that this application is now placed in a condition for publication.

Respectfully Submitted,

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EXHIBIT LIST

- Exhibit 1** – Definition of Micro at Dictionary.com at <https://www.dictionary.com/browse/micro>.
- Exhibit 2** – Definition of Micronutrient at Dictionary.com at <https://www.dictionary.com/browse/micronutrient>.
- Exhibit 3** – Johnson, C., Spice it Up to Reduce Sodium Intake, UC San Diego Health (Nov. 02, 2015), available at <https://health.ucsd.edu/news/features/Pages/2015-11-2-salt-and-spices.aspx>
- Exhibit 4** – Excerpt of Kaushik S., et al, Salt an Essential Nutrient, J. Exp. Neurosci., Vol 12:1-12 (Nov. 21, 2018), full article available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6249657/>
- Exhibit 5** – Compilation of exemplary registered “Micro” marks from USPTO website.
- Exhibit 6** – Excerpt of Applicant’s Website at <https://salarius.co/product/>.