

The Examining Attorney has noted a "Potential Section 2(d) Likelihood of Confusion Refusal" of the present mark "FLAMINGO ESTATE" in applied-for classes over application SN 87568579 ("FLAMINGO BLOOM") which is pending in Class 30 for coffee, tea, fruit-based tea, cocoa, bread, cakes, biscuits, pastries, doughnuts, cones, pies, cookies, candies, chocolates, ice cream, honey, mustard, sauces, pasta sauce, salad dressing and frozen yogurt, in Class 32 for non-alcoholic drinks namely, fruit beverages and fruit juices, fruit-flavored beverages, frozen fruit-based beverages, vegetable juice beverages, non-alcoholic honey-based beverages, aerated water, carbonated water, sparkling water, mineral water, and spring water, and in Class 43 for restaurant, cafe, and mobile cafe services for providing food and drink, providing of food and drink, bar services, canteen services, cafes, restaurants, snack-bar services, self-service restaurants, food and drink catering services. The applicant respectfully requests reconsideration of this potential 2(d) rejection for the following reasons.

First, it is respectfully submitted that FLAMINGO BLOOM is an application in Classes 30, 32, and 43 for the recited goods only and therefore, it is highly unlikely that there could be any likelihood of confusion between FLAMINGO BLOOM and FLAMINGO ESTATE for applicant's goods in Classes 1 (e.g., compost, plant soil, etc.), 4 (candles), 8 (gardening tools), class 21 (gardening gloves), 25 (gloves, hats, jackets, shirts, shorts, sweaters, t-shirts), 31 (agricultural grains for planting, fresh vegetables, etc.), 41 (entertainment services in the nature of an ongoing series related to gardening provided through television or the internet (as amended) and 44 (gardener and gardening services). Indeed, there is no evidence of any connection between applicant's goods and services in the listed classes and the goods and services of classes 30, 32 and 43 recited in the FLAMINGO BLOOM application. Thus, considering the differences in the applied-for mark in sight, sound, and meaning (as discussed in more detail below), and the differences in the goods being sold and their likely marketing channels and customers, there can be no likelihood of confusion with respect to those classes of goods. Accordingly, reconsideration of the specified "potential" of likelihood of confusion with respect to these classes is earnestly requested.

In addition, with respect to class 30, it is respectfully submitted that there are multiple other marks using the word "FLAMINGO" that are registered in class 30 and coexist side-by-side in the marketplace, and which predate FLAMINGO BLOOM, including FREAKIN' FLAMINGO (and design), Reg. #3973601, KARLIE FLAMINGO, Reg. #4753827, and RED FLAMINGO (and design), Reg. #4913115 (all of which are being introduced into evidence herewith). In addition, other staple food products using the word "FLAMINGO" are available in commerce. By way of example only, a quick internet search showed the availability for sale of PINK FLAMINGO tea and FLAMINGO FRESCA tea, FLAMINGO JUICE and FLAMINGO ORCHARD juice, and FLAMINGO WATER; see <https://twgtea.com/products/pink-flamingo-tea-3>, https://www.davidstea.com/us_en/tea/flamingo-fresca/10733US01VAR0050652.html, <https://untappd.com/b/flavourly-flamingo-juice/2328974>, <http://www.flamingoorchard.com/products/juice-boxes.php>, <http://floridaroyalspirits.com/catalogue/water/> all of which are all being introduced into evidence herewith.

Accordingly, the use of the word “FLAMINGO” in class 30 (staple foods) is considerably diluted, and consumers are clearly capable of distinguishing among the marks due to the additional word and/or design (FREAKIN’, KARLIE, RED, BLOOM, PINK, FRESCA, JUICE, ORCHARD, TEA, WATER) added to the name FLAMINGO. The word “ESTATE” being added by applicant, are similarly capable of distinguishing applicant’s mark from the FLAMINGO BLOOM and the other marks.

It should be appreciated that when FLAMINGO BLOOM and FLAMINGO ESTATE are compared in their entireties, they do not appear similar, they do not sound similar (as the word “estate” sounds different than the word “bloom”, and they provide different impressions and meanings. More particularly, while they share “FLAMINGO” in common, when combined with respective different second words (BLOOM and ESTATE) different meanings of the marks as a whole are emphasized.

Specifically, a bloom relates to a flower, while an estate relates to an extensive area of land in the country with a large home. Thus, FLAMINGO BLOOM evokes a flower that appears as a flamingo bird, while FLAMINGO ESTATE evokes a well-maintained private land and home. Thus, the two marks, as a whole, have very different meanings and impressions.

In sum, with reference to the potential rejection in class 30 of the present application, it is respectfully submitted that there is no likelihood of confusion between FLAMINGO BLOOM and FLAMINGO ESTATE in class 30 because: a) the word FLAMINGO is widely used in commerce for all sorts of goods in class 30 and accordingly the word FLAMINGO *by itself* is not strong; b) the marks FLAMINGO BLOOM and FLAMINGO ESTATE *when viewed in their entireties*, do not look alike, sound alike or have a similar meaning; and c) there are a relatively large number of similar marks (using the word “Flamingo” in use on similar goods.

Turning now to the Likelihood of Confusion refusal of the application in Class 4 only with respect to U.S. Registration No. 4964715 (FLAMINGO BAY), the applicant respectfully submits that the word “FLAMINGO” is commonly used alone or with additional words by multiple companies as the brand of their candles, including (but way of example only) (1) Michel’s FLAMINGO candle, (2) Bath and Body Works FLAMINGO BEACH candle, (3) Z Gallerie’s FLAMINGO candle, (4) Flamingo Candle’s line of FLAMINGO CANDLES (in numerous scents), (5) FLAMIN’ FLAMINGO Candles by Flamin’ Flamingo, (6) Cinder & Salt’s Flamingo Candle, (7) Avon’s FLAMINGO ISLAND candle, (8) Black Flamingo Candle Company’s BLACK FLAMINGO candles, (9) Maisson La Bougie’s MIAMI FLAMINGO CANDLE, and (10) My Ocean’s WILD FLAMINGO candles.

See, e.g., <https://candlefind.com/candle-reviews/top-candle-companies/bath-body-works-candle-reviews/flamingo-beach/>
https://www.amazon.com/Michel-Design-Works-Candle-Flamingo/dp/B07K9P4PJ4/ref=asc_df_B07K9P4PJ4/?tag=hyprod-20&linkCode=df0&hvadid=295593545911&hvpos=1o1&hvnetw=g&hvrnd=73177303


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hy=9003454&hvtargid=pla-649065051538&pssc=1](https://www.zgallerie.com/p-22804-flamingo-candle.aspx?gclid=Cj0KCQjw_absBRD1ARIsAO4_D3sgEp33a3FCQHUCz__llaBLIUt8LrLa-3Xs7m1pLBwOTrzCGWPXQ_QaAhRyEALw_wcB)
https://www.zgallerie.com/p-22804-flamingo-candle.aspx?gclid=Cj0KCQjw_absBRD1ARIsAO4_D3sgEp33a3FCQHUCz__llaBLIUt8LrLa-3Xs7m1pLBwOTrzCGWPXQ_QaAhRyEALw_wcB
<https://store.almanac.com/flamingo-candle-and-soap-gift-set/>
<https://www.flamingocandles.co.uk/scented-candles/classic-flamingo-candles/pink-lemonade-classic-square-jar-candle.html>
<https://www.facebook.com/pages/category/Aromatherapy-Service/Flamin-Flamingo-Candles-208447475872338/>
<https://www.cinderandsalt.com/products/copy-of-flamingo-candle-dark-pink>
<https://www.avon.com/product/flamingo-island-candle-67627>
<https://www.facebook.com/pages/category/Home-Decor/Black-Flamingo-Candle-Co-394677517675015/>
<https://www.candlelirium.com/maison-la-bougie-miami-flamingo-candle/>
<http://myocean.com/wild-flamingo-10-oz-glass-jar-candle-with-bahamian-straw-plait>

which are all introduced into evidence herewith. Accordingly, what sets FLAMINGO BAY apart from the numerous other FLAMINGO marks is the use of the additional word “BAY”. It is therefore respectfully submitted that there is no likelihood of confusion between FLAMINGO BAY and applicant’s FLAMINGO ESTATE mark in the sale of candles because: a) the word FLAMINGO is widely used in commerce as the brand name for candles and accordingly the word FLAMINGO *by itself* is not strong for candles; b) the marks FLAMINGO BAY and FLAMINGO ESTATE *when viewed in their entirities*, do not look alike, sound alike or have a similar meaning; and c) there are a relatively large number of similar marks (using the word “Flamingo”) in use on similar goods.

With respect to the likelihood of confusion rejection in Class 31 with respect to fresh fruit

in the light of U.S. Registration 1637053  (for grapes) , it is respectfully

submitted that  and FLAMINGO ESTATE are different in sight, sound, and meaning, and provide very different impressions. In addition, it is apparent from a

review of Grapeman Farms’ website, that the  mark is no longer in use in commerce. However, in order to expedite allowance of the application, applicant has without prejudice canceled “fresh fruit” from its list of intended uses of its mark thereby obviating this rejection.

The Examining Attorney has requested additional information regarding a foreign applicant with U.S. street address. In response, Applicant submits a permanent resident card (redacted) showing dates of issuance and expiration. Also, Applicant submits a mortgage interest statement (Form 1098, redacted) that shows the Applicant’s address of record.