

TRADEMARK/SERVICE MARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re U.S. Trademark/Service Mark Application of:

LANDIG + LAVA GMBH & CO. KG

Serial No.: 88/488,752

Int. Class No(s): 011

Filed: June 25, 2019

Trademark Exam. Attorney:

Obieze Mmeje, Esq.

Law Office: 122

For: DRYAGER

March 27, 2020

* * * * *

AMENDMENT

Honorable Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Sir:

Responsive to the Office Action issued September 28, 2019 which time for response expires March 28, 2020 please recognize the undersigned attorney in accordance with the appended Power Of Attorney and Designation Of Domestic Representative, accept the appended specimen for Int. Cl. 009, delete the goods in Int. Cl 006, 016, 020 and 024 and amend the description of goods by adding International Class 009 and amend the description of goods in International Class 011 as follows:

In International Class 009

Please amend Int. Cl. 009 to read: -

Electronic control panels for controlling temperature, humidity and moisture content of foods, namely, nuts,

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fruits, vegetables and meats; electronic numeric displays for displaying, temperature, humidity and moisture content of foods, namely, nuts, fruits, vegetables and meats, in Int. Cl. 009. --.

In International Class 011

Please amend Int. Cl. 011 to read: -

Food processor cabinets namely, cabinets used to display and control temperature, humidity and moisture content of foods, namely, nuts, fruits, vegetables and meats; sterilization devices, namely, sterilizers not for medical purposes; air temperature control devices namely, air conditioners, air handlers and air conditioning units for edible products; humidity control devices namely desiccating units for producing edible foods; air filtering installations, namely active carbon filters, air filters; refrigerator shelving; UVC light bulbs and ultraviolet lamps in International Class 011. --.

R E M A R K S

Please recognize the undersigned attorney and enter the designation of domestic representative in accordance with the appended Power of Attorney and Designation of Domestic Representative.

The diligent and detailed Office Action and suggestions for a response are appreciated. Also appreciated is the indication the search of the Office's database of registered and pending marks did not uncover conflicting marks that would bar registration under Trademark Action Section 2(d) TMEP § 704.02 15

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U.S.C. § 1052(d).

The issues remaining are:

- (1) Identification of Services Requirement;
- (2) Identification of Number of Classes;
- (3) Multiple Class Application Requirements Advisory;
- (4) Clarification of Legal Entity Requirement; and
- (5) Merely Descriptive Section 2(e) Refusal.

Items (1) - (3)

In compliance with the identification of services requirement, number of classes and multiple class application requirement items (1)-(3) above Applicant has amended the description of the goods by substantially adopting the definition of goods proposed for Int. Cl. 009 and 011 as identified in the Office Action. The goods in Int. Cl. 006, 016, 020 and 024 have been deleted. The date of first use for the goods in Int. Cl. 009 is the same as the date of first use of the goods in Int. Cl. 011 which is at least as early as September 30, 2019. The additional specimen for the goods in Int. Cl. 009 is appended. Also tendered with this response is the Reduced Fee (RF) application fee of \$275 for the additional Class.

(4) Clarification of Legal Entity

The Applicant entity is a "GmbH & Co. KG" formed under the laws of Germany. Appendix D of the TMEP defines this entity as a, "Limited partnership in which typically the sole general

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partner is a limited liability company." (Emphasis added). In the present case the sole general partner is a limited liability company.

German counsel advises that a, "GmbH & Co. KG" is like a partnership under U.S. law but unlike the U.S. law the executing authority is not a natural person but is instead a limited liability company. This type of entity is not known under U.S. law as it is both a partnership and a limited liability company.

As a result since the executing authority is a limited liability company with limited liability it is believed the designation, "limited liability company" is a better description of the applicant legal entity than partnership.

Reconsideration of this issue is respectfully requested.

(5) Section 2(e)(1) Refusal

Registration was refused under Trademark Act Section 2(e)(1) 15 U.S.C. § 1052(e)(q) TMEP §§ 1209.01(b), 1209 et seq. More particularly registration was refused on the grounds the mark is merely descriptive as "merely describes the purpose of applicant's goods."

In this analysis Applicant's unitary or compound "DRYAGER" mark was broken into a "dry" and "ager" components that have different meanings supported by additional evidence that dry-aging is a process in which, "moisture is drawn out of the meat."

A proper analysis of the distinctiveness - or on the other hand the descriptiveness - of a mark must be done in relation to

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specific goods or services. See *Remington Products, Inc. v. N. Am. Phillips Corp.*, 892 F.2d 1576, 1580, 13 USPQ 2d 1444, 1448 (Fed. Cir. 1990) and TMEP § 1209.01. This analysis involves two different classes of goods each of which must be considered separately.

International Class 009 Goods

The DRYAGER mark when analyzed in relation to the electronic control panels and electronic numeric displays in Int. Cl. 009 is definitely arbitrary and fanciful just the same as the APPLE designation or trademark is to computers. The DRYAGER mark like the APPLE mark applied to computers is arbitrary and fanciful as it uses a known word or words in an uncommon way. Arbitrary marks were defined in *Nautilus Grp., Inc. v. Icon Health & Fitness, Inc.* 372 F.3d 1330, 1340, 71 USPQ 2d 1173, 1180 (Fed. Cir. 2004) as the use of, "a known word in an unexpected or uncommon way." As cited from TMEP § 1209.01(a).

For the foregoing reasons the DRYAGER mark is registerable in Int. Cl. 009 as it is not merely descriptive but is instead arbitrary and fanciful. Reconsideration and allowance is respectfully requested.

International Class 011 Goods

The Office Action claims the DRYAGER mark is merely descriptive as it "merely describes the purpose of applicant's goods." Citing TMEP § 1209((b) and cases cited therein.

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As previously discussed the DRYAGER mark is a unitary mark or is a compound mark formed by the union of two terms that do not include the word "process" or "processing" or specifically include "dry aging." Moreover the goods food processor cabinets are not specifically tied to meat and a process in which "moisture is drawn out of the meat."

The DRYAGER mark is therefore more similar to the *In re Noble* and *In re Steel building* cases cited in Section 1209.01(a) of the TMEP. The DRYAGER mark when applied to goods in Int. Cl. 009 is not descriptive as it does not immediately convey knowledge of the process as it does not include the word "process" and the process is not limited to meat. Like the *In re Steelbuilding.com*, 415 F.3d 1293, 1299, 75 USPQ 2d 1420, 1423 (Fed. Cir. 2005) the entire mark must be considered as a whole including the TLD indicator (here the ager) expanded the meaning of the mark to include goods and services beyond the mere sale of steel buildings (here meat).

A suggestive mark as defined in TMEP § 1209.01(a) is a mark that when applied to goods or services requires imagination, thought, or perception to reach a conclusion as to the nature of the goods or services. This is particularly true where the mark vaguely suggests a desirable characteristic of the goods (here food processing cabinets). In this case as recognized by the Office Action the mark vaguely suggests the process of dry aging or a desirable characteristic purpose or feature of Applicant's food processor cabinets. This same vague suggestion to the

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process of baking is found in the decision of *In re George Weston Ltd.* 228 USPQ 57 (TTAB 1985) where the mark SPEEDI BAKE was registerable as a suggestive mark because it only vaguely suggested a desirable characteristic of frozen dough, namely, that it quickly and easily could be baked or processed into bread. See also *In re Noble*, 225 USPQ 57 (TTAB 985) where NO BURST was registerable as suggestive mark for liquid antifreeze as it suggested a desired result from using the product rather than immediately informing the purchaser of a characteristic feature, function or attribute or process. See also *Colgate Palmolive Co. v. House for Men Inc.*, 143 USPQ 159 (TTAB 1964) RAPID-SHAVE for shaving cream where the mark suggests but does not describe the process of shaving.

For the foregoing reason the DRYAGER mark is registerable in Int. Cl. 011 as it is not merely descriptive but is instead suggestive.

Conclusion

It is believed the Applicant has complied with: (1) the identification of services requirement; (2) the clarification of number of classes requirement; (3) the multiple class application requirements issue; (4) the clarification of the legal entity requirement; and (5) demonstrated the Applicant's mark is not "merely descriptive".

Applicant respectfully requests reconsideration and

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allowance.

Respectfully submitted,

BRENEMAN & GEORGES

By: William D. Breneman

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TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Filed: June 25, 2019

Examiner:

Law Office:

For: DRYAGER

* * * * *

POWER OF ATTORNEY
AND
DESIGNATION OF DOMESTIC REPRESENTATIVE

Applicant, **LANDIG + LAVA GMBH & CO. KG**, hereby ratifies the action taken by William D. Breneman, Esq. in appearing as attorney of record and appoints William D. Breneman, Esq. and **BRENEMAN & GEORGES**, Attorneys at Law whose address is 3150 Commonwealth Avenue, Alexandria, Virginia 22305, to prosecute this application to register and transact all business with the United States Patent And Trademark Office in connection therewith and to receive the Certificate of Registration for the Applicant. William D. Breneman, Esq. of **BRENEMAN & GEORGES** and every Attorney at Law associated with that law firm having been admitted to the District of Columbia Bar and the U.S. Patent And

Trademark Office is hereby authorized to sign any paper, and conduct any business on behalf of the Applicant in this case.

LANDIG + LAVA GMBH & CO. KG

By: _____
CHRISTIAN LANDIG
-Managing Director-



Date: 29. July 2019

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www.la-va.com
www.dry-ager.com

DESIGNATION OF DOMESTIC REPRESENTATIVE

Applicant, LANDIG + LAVA GMBH & CO. KG, hereby designates William D. Breneman, Esq. of BRENEMAN & GEORGES, Attorneys at Law whose postal address is 3150 Commonwealth Avenue, Alexandria, Virginia 22305 as Applicant's representative upon whom notices or process in proceedings affecting the mark may be served.

LANDIG + LAVA GMBH & CO. KG

By: _____
CHRISTIAN LANDIG
-Managing Director-



Date: 29. July 2019

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FROM:
Landig+Lava GmbH & Co. KG
DryAger Manufacture
88348 Bad Saulgau
Valentinstraße 35-1

TO:



QUANTITY:

1

HANDLING CODE:

A6-987

PREFERENCE:

G1155

PART NUMBER:

DryAger DX1000

PART NUMBER:



GER88348DX01000

SHIPMENT DATE:

10FEB2016

CONTAINER TYPE:

KLT3214

GROSS WEIGHT

120 KG



Don't drop - Nicht stürzen - Ne pas jeter



DRYAGER

BUILT FOR BEEF

Landig + Lava GmbH & Co. KG
DryAger Manufaktur

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DRYAGER DX 1000
Service-No.: 0929459-05

FLEISCHREIFESCHRANK
DRY-AGING FRIDGE

| | | | |
|-------------------------------|-----------------------------------|---|--|
| Klasse/Class Classe/Classe | Ap-Typ/AP-Type AP-Type/Ap-Tipo | Bruttoinhalt/Gross Capacity Volume Brut/Volume Lordo | Gefriervermoege/Freezing Capacity Pouvoir de Congel/Capac. del. Congel. |
| SN | 2 6220 4 | 478 l | |

| | | | | | |
|---------------|-------|----|-------|-----|--------|
| Nutzhalt | Ges | /K | /G | /KE | /KALT |
| Net. Capacity | Tot | /R | /F | /CE | /CHILL |
| Volume Utile | Tot | /R | /C | /CA | /CHILL |
| Volume Util | Tot | /F | /C | /CA | /CHILL |
| | 435 l | / | 435 l | | |

R 600a: 45g
1.5 A 220-240 V ~ 50 Hz

Serial-Nr.

Insulation (Pentan)
511

MADE IN GERMANY





EST. 2014
DRY AGER
BUILT FOR BEEF
DRYAGER - THE NO.1 WORLDWIDE

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Steuer-Nr. 85096/01542 - Persönlich haftende Gesellschafterin: Landig Verwaltungs GmbH - Sitz Bad Saulgau - Registergericht Ulm - HRB 728
Raiba Bad Saulgau: BIC GENODES1SAG - IBAN DE41 6506 3086 0010 5990 29 | Sparkasse Sigmaringen: BIC SOLADES1S1G - IBAN DE72 6535 1050 00
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