

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Matter of:

PURITY FOODS, INC.

Trademark Examining Attorney

Application Serial No. 76/604067

Colleen Kearney

Filed: July 26, 2004

Law Office 113

Mark: PURITY FOODS

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

Sir:

Applicant's counsel acknowledges receipt of the Notice of Suspension issued August 14, 2008.

After careful consideration of its contents and correspondence with Applicant, counsel responds as follows.

AMENDMENT

Please delete the identification of goods in its entirety and insert the following in lieu thereof:

ORGANIC FOOD PRODUCTS CONTAINING SPELT, NAMELY, PASTAS, PRETZELS, COOKIES, GRAIN-BASED SNACKS, NAMELY, PRETZELS, SESAME AND RICE STICKS AND FLAT CHIPS, EXCLUDING BABY FOOD OR FOOD FOR INFANTS, ALL OF WHICH ARE TARGETED TO CONSUMERS OF TWO YEARS OF AGE OR YOUNGER, in International Class 30.

REMARKS

By the amendment requested herein, Applicant has limited the nature of its use of the mark.

By the Notice of Suspension issued August 14, 2008, further action in the instant application has been suspended pending the disposition of Application Serial No. 78/166,571. Submitted herewith is a Consent to Use and Register agreement executed on behalf of the prior filed applicant, Tiger Food Brands Intellectual Property Holding Company (Proprietary) Limited.

The attached Consent to Use and Register agreement clearly sets forth that Tiger Food Brands confirms that it is the owner of the application noted by the Examining Attorney as a potential bar, Serial No. 78/166,571, and that it consents to the use and registration by applicant herein, Purity Foods, Inc. for the mark PURITY FOODS for the goods set forth in the instant application, as amended herein, namely, “organic food products containing spelt, namely, pastas, pretzels, cookies, grain-based snacks, namely, pretzels, sesame and rice sticks and flat chips, excluding baby food or food for infants, all of which are targeted to consumers of two years of age or younger” in International Class 30.

It is clear that the goods for which Applicant uses its mark are not in any way related to the “baby foods” noted in the prior filed application. Similarly, the executed Consent to Use and Register agreement sets forth that the basis for the consent is that the parties believe there are distinct differences in the goods and the targeted consumers, and that the channels of trade are unrelated. The parties have also agreed to take necessary steps to avoid and eliminate any potential confusion or instances of confusion that come to the attention of the parties in the future.

Applicant respectfully submits that the Consent to Use and Register Agreement should serve as a basis to obviate the potential Section 2(d) refusal referenced in the Notice of Suspension, so that Notice of Suspension should be removed and the instant application approved for publication at the earliest possible date. Prompt action in that regard is earnestly solicited.

If further information is required, the Examining Attorney is encouraged to contact undersigned counsel by telephone to facilitate the prompt prosecution of this case.

Respectfully submitted,

PURITY FOODS, INC.

By:


Kevin G. Smith

SUGHRUE MION, PLLC
2100 Pennsylvania Ave., N.W.
Washington, D.C. 20037
Telephone (202) 293-7060
Attorney of Record for Applicant

Dated: November 25, 2008.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the matter of

Purity Foods, Inc.

U.S. Serial No.: 76/604,067

Filed: July 26, 2004

Mark: PURITY FOODS

CONSENT TO USE AND REGISTER

Tiger Food Brands Intellectual Property Holding Company (Proprietary) Limited (hereinafter referred to as "Tiger Food"), confirms that it is the owner of the following application pending in the U.S. Patent and Trademark Office: Serial No. 78/166,571 for the mark PURITY BABY FOODS. in International Class 30 for "vegetable and fruit purees or liquidized baby foods; 1st, 2nd, and 3rd stage baby foods; baby cereals; organic fruits and vegetables for babies, all of which are targeted to consumers of two years of age or younger."

Tiger Food hereby consents to the use and registration by Purity Foods, Inc. (hereinafter referred to as "Purity Foods") of the mark PURITY FOODS for the goods in International Class 30 set forth in Purity Foods' Application Serial No. 76/604,067, namely, "organic food products containing spelt, namely, pastas, pretzels, cookies, grain-based snacks, namely, pretzels, sesame and rice sticks and flat chips, excluding baby food or food for infants, all of which are targeted to consumers of two years of age or younger."

It is understood that Purity Foods' Application has been suspended pending final disposition of Tiger Food's Application Serial No. 78/166,571. Applicant Tiger Food hereby gives its consent to the use and registration of the mark PURITY and PURITY FOODS for "organic food products containing spelt, namely, pastas, pretzels, cookies, grain-based snacks,

3860600_1.DOC

namely, pretzels, sesame and rice sticks and flat chips, excluding baby food or food for infants, all of which are targeted to consumers of two years of age or younger" (hereinafter "PURITY Marks") because the parties believe there is no likelihood of confusion arising from the use of PURITY BABY FOODS. for "vegetable and fruit purees or liquidized baby foods; 1st, 2nd, and 3rd stage baby foods; baby cereals; organic fruits and vegetables for babies, all of which are targeted to consumers of two years of age or younger" and Purity Foods' use of its PURITY Marks for "organic food products containing spelt, namely, pastas, pretzels, cookies, grain-based snacks, namely, pretzels, sesame and rice sticks and flat chips, excluding baby food or food for infants, all of which are targeted to consumers of two years of age or younger." This belief is based upon the distinct differences in the parties' goods, the targeted consumers, and the unrelated channels of trade. While Tiger Food uses its mark in association with baby foods, Purity Foods uses its marks in association with organic food products containing spelt, namely, pastas, pretzels, cookies, grain-based snacks, namely, pretzels, sesame and rice sticks and flat chips, excluding baby food or food for infants, all of which are targeted to consumers of two years of age or younger."

The parties have agreed to take steps necessary to avoid and eliminate any potential confusion or instances of confusion if such instance comes to the attention of either party.

Respectfully submitted,

Tiger Food Brands Intellectual Property
Holding Company (Proprietary) Limited

By: Jon Nilsen Martin Isdale

Name: Jon Nilsen Martin Isdale

Title: DIRECTOR and COMPANY SECRETARY

Date 20 November 2008