

**Response to Suspension Inquiry— U.S. Serial No. 88/584,476 – REBEL(Stylized)**

**CITATION OF PRIOR PENDING APPLICATIONS**

The Examining Attorney has provisionally refused registration of Applicant’s mark REBEL(Stylized) (the “Subject Mark”) which is the subject of U.S. Application Serial No. 88/584,476 (the “Subject Application”) under Section 2(d) of the Trademark Act based on a possible likelihood of confusion with the marks listed below:

<b>MARK</b>	<b>APP. NO.</b>	<b>GOODS/SERVICES</b>	<b>OWNER</b>
REBBL	86/626,999	Cl. 29: Coconut-based beverage used as a milk substitute; nut-based milk for use as a milk substitute; soy-based food beverage used as a milk substitute  Cl. 30: Coffee-based beverages  Cl. 32: Coconut-based beverages not being milk substitutes; aromatized beverages based on fruit, protein, cordial, sugar and other fluid nutrients, namely, carbohydrates drinks for use as food fillers; aromatized beverages based on fruit, protein, cordial, sugar and other fluid nutrients, namely, protein drinks for use as food fillers and not for use as meal replacements; flavored waters; flavored enhanced water; energy drinks; non-alcoholic drinks, namely, energy shots	Rebbl, Inc. 530 Divisadero St. #308 San Francisco, CA 94117
REBBL CULTURE	87/546,103	Cl. 29: Yogurt; yogurt drinks; plant-based yogurt; plant-based yogurt drinks; nut milk-based yogurt; nut milk-based yogurt drinks; coconut milk-based yogurt; coconut milk-based yogurt drinks; non-dairy milk-based yogurts, namely, hemp milk-based yogurt, seed milk-based yogurt, grain milk-based yogurt, legume milk-based yogurt; non-dairy milk-based yogurt drinks, namely, hemp milk-based yogurt drinks, seed milk-based yogurt drinks, grain milk-based yogurt drinks, legume milk-based yogurt drinks	Rebbl, Inc. 530 Divisadero St. #308 San Francisco, CA 94117
REBBL	87/546,121	Cl. 29: Yogurt; yogurt drinks; plant-based yogurt; plant-based yogurt drinks; nut milk-based yogurt; nut milk-based yogurt drinks; coconut milk-based yogurt; coconut milk-based yogurt drinks; non-dairy milk-based yogurts, namely, hemp milk-based yogurt, seed milk-based yogurt, grain milk-based yogurt, legume milk-based yogurt; non-dairy milk-based yogurt drinks, namely, hemp milk-based yogurt drinks, seed milk-based yogurt drinks, grain milk-based yogurt drinks, legume milk-based yogurt drinks; coconut milk-based meal replacement drinks; nut milk-based meal replacement drinks; plant milk-based meal replacement drinks; non-dairy milk-based beverages, namely, hemp milk-based beverages, seed milk-based beverages, grain milk-based beverages	Rebbl, Inc. 530 Divisadero St. #308 San Francisco, CA 94117
REBEL STORES	87/162,265	Cl. 35: Retail convenience stores; Retail store services featuring convenience store items and gasoline; Retail grocery stores	AK, Inc. 1450 North Benson Ave. Upland, CA 91786

		Cl. 43: Restaurant services, including sit-down service of food and take-out restaurant services; Restaurant services, namely, providing of food and beverages for consumption on and off the premises; Serving food and drinks; Fast-food restaurant services	
REBEL OIL	87/176,151	Cl. 35: Retail convenience stores; Retail store services featuring convenience store items and gasoline  Cl. 37: Automobile service station services; Vehicle service stations  Cl. 39: Fuel delivery services; Transportation and storage of fuels  Cl. 43: Restaurant services; Restaurant services, including sit-down service of food and take-out restaurant services; Restaurant services, namely, providing of food and beverages for consumption on and off the premises; Serving food and drinks; Fast-food restaurant services	AK, Inc. 1450 North Benson Ave. Upland, CA 91786
REBEL CHEESE	88/214,087	Cl. 29: Cheese substitutes; Meat substitutes; Nut cheese, namely, cheese-type product made from nuts; Raw, non-dairy cheese made from fermented cashews; Vegetable-based meat substitutes	Rebel Ventures, Inc. PO Box #8381 Philadelphia, PA 19101

Applicant respectfully disagrees with the Examining Attorney and contends that confusion is not likely between the Subject Mark and the above-referenced marks for the reasons set forth below.

**PRIOR-PENDING APPLCIATION SERIAL NOS. 86/626,999, 87/546,103, AND 87/546,121**

The Examining Attorney has cited Application Serial Nos. 86/626,999, 87/546,103, and 87/546,121 for the marks REBBL, REBBL CULTURE, and REBBL, respectively (collectively the REBBL Marks”) as prior-pending applications that may serve as the basis for refusing registration of the Subject Application due to a possible likelihood of confusion.

There are several factors considered when assessing whether a likelihood of confusion exists between two marks. *In re E. I. DuPont DeNemours & Co.*, 476 F.2d 1357, 1361, 177 U.S.P.Q. 563, 567 (CCPA 1973). Collectively, these factors are referred to as the “DuPont Test.” The most relevant factors in this case include:

1. The similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression;
2. The similarity or dissimilarity and nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use; and
3. The number and nature of similar marks in use on similar goods. *Id.*

When evaluating whether a likelihood of confusion exists, all facts and information that are pertinent to the above-referenced categories should be considered and this determination should be made on a case-by-case basis. *Id.*

While the Examining Attorney has not made any specific assertions regarding a likelihood of confusion between the Subject Mark and Rebl Marks, Applicant maintains that when all pertinent facts and information are considered, including the differences in the appearances of the Subject Mark and the Rebl Marks, the fact that several different parties are using similar marks in connection with similar goods, and the differences in the nature of the goods at issue, it is unlikely consumers would be confused as to the source of the parties' respective goods.

### **The Subject Mark and the Rebl Marks Are Different In Appearance and Convey Different Commercial Impressions**

A crucial consideration when performing a likelihood of confusion analysis is the similarity or dissimilarity of the marks in their entireties as to appearance, sound, and meaning. *In re E. I. DuPont DeNemours & Co.*, 476 F.2d 1357, 1361, 177 U.S.P.Q. 563, 567 (CCPA 1973). Applicant maintains that there is no likelihood of confusion between the Subject Mark and the Rebl Marks as the marks are visually distinct. These differences create different overall commercial impressions that dispel any potential confusion between the Subject Mark and the Cited Marks.

When comparing two marks to determine if there is confusing similarity between them, it is well settled that they must be considered in their entireties and not dissected into their constituent parts. *See Massey Junior College v. Fashion Inst. of Tech.*, 181 U.S.P.Q. 399 (C.C.P.A. 1971); and *Food Tech., Inc. v. Sucrest Corp.*, 196 U.S.P.Q. 134 (T.T.A.B. 1977). The question of confusing similarity must be judged on the appearance, sound, connotation and commercial impression of the marks in their entireties. The Subject Mark is a stylized version of the term REBEL while the Rebl Marks are comprised of the term REBBL or the phrase REBBL CULTURE. By replacing the second "E" and substituting it with the letter "B" completely changes the visual impact on consumers. Moreover, the term REBBL is an acronym for "Roots Extracts Berries Bark Leaves." *See Exhibit A*, which shows the specimen filed in support of U.S. Registration No. 4,739,380, along with a copy of the certificate of registration and screenshot of the current status. This unusual spelling of REBBL is clearly meant to evoke the idea that REBBL products are created with natural ingredients and create an association in the minds of consumers with REBBL's distinctive commercial impression. In contrast, Applicant incorporates the traditional spelling of the term REBEL along with a highly stylized font that creates a unique commercial impression that is considerably different from the Rebl Marks.

These differences in appearance significantly change the connotation and overall commercial impression of each mark. The commercial impressions of the Rebl Marks are not applicable to the use of the Subject Mark with milk, yogurt, cow's milk or retail services featuring dairy products, particularly, as discussed below, REBBL products do not contain dairy. Therefore, when all elements and the meaning of each mark are considered together, the commercial impression conveyed by each mark is distinct and, as a result, any potential confusion is eliminated.

### **The Goods and Services at Issue Are Sufficiently Different to Avoid a Likelihood of Confusion**

When considering whether a likelihood of confusion may exist between two or more marks, it is important to consider the similarity or dissimilarity and nature of the goods or services. *In re E. I. DuPont DeNemours & Co.*, 476 F.2d 1357, 1361, 177 U.S.P.Q. 563, 567 (CCPA 1973). Even where two marks are identical, the goods or services and channels of trade must be sufficiently related so that the use of highly similar marks thereon would be likely to generate confusion, mistake, or deception as to the source of those goods and services. *See, e.g., In re Shipp*, 4 U.S.P.Q.2d 1174, 1176 (T.T.A.B. 1987) (no confusion likely where identical mark “PURITAN” used on laundry and dry cleaning services and on commercial dry cleaning filters); *In re Fesco, Inc.*, 219 U.S.P.Q. 437 (T.T.A.B. 1983) (no likelihood of confusion where identical “FESCO” mark used on distributorship services in the field of farm equipment and on fertilizer, oil mill, crushed stone, clay, coal, concrete block, and foundry processing equipment and machinery); *Chase Brass & Copper Co. v. Special Springs, Inc.*, 199 U.S.P.Q. 243 (T.T.A.B. 1978) (no confusion likely where identical “BLUE DOT” mark used on springs for engine distributors and on brass rods used in auto manufacturing); *Autac, Inc. v. Walco Sys., Inc.*, 195 U.S.P.Q. 11, 15 (T.T.A.B. 1977) (no confusion likely where identical “AUTAC” mark used on temperature regulators and on wire retractile cords in the wire manufacturing industry); *Alliance Mfg. Co. v. Chicago Musical Instrument Co.*, 184 U.S.P.Q. 118, 121 (T.T.A.B. 1974) (no confusion likely where GENIE used on electronic organs and on various small electrical appliances); *Canada Dry Corp. v. American Home Prods. Corp.*, 175 U.S.P.Q. 557 (C.C.P.A. 1972) (no confusion likely where identical HI-SPOT mark used on laundry detergent and on soft drinks). In this case, the goods and services offered by each party in connection with its respective marks are so different that confusion is not likely.

The Subject Application covers “milk; yogurt; Cow’s milk,” in Class 29 and “retail store services, featuring dairy products; on-line retail store services featuring dairy products,” in Class 35. Application Nos. 87/546,103 and 87/546,121 cover yogurt and yogurt drinks. However, as shown in Exhibit A, the owner of the Rebl Marks emphatically states their products do not contain any dairy. Furthermore, the rest of the beverages covered by these applications are dairy free or contain dairy alternatives. This is a very important distinction as one of the main selling points of Applicant’s goods is they feature full fat dairy. *See* Exhibit B which are screenshots from Applicant’s website. Additionally, the domain name associated with Applicant’s website is rebelcreamery.com, immediately conveying the fact that Applicant’s products, not only contain dairy, but prominently feature dairy. As for Application Serial No. 86/626,999, the beverages covered by this application specifically indicate they are milk substitutes, substantially distancing itself from Applicant’s dairy products.

While the Subject Mark and the Rebl Marks all cover food, beverages, or related services, this should not automatically lead to a finding that the goods and services offered by each party are related. The mere fact that two products may move in somewhat related channels of trade to the same class of purchasers does not *ipso facto* prove that there is a definite relationship between the goods or services. *Canada Dry Corp. v. American Home Prods. Corp.*, 175 U.S.P.Q. 556 (C.C.P.A. 1972) (no confusion likely where identical HI-SPOT mark used on laundry detergent and on soft drinks), *Alliance Mfg. Co., v. Chicago Musical Instrument Co.*, 184 U.S.P.Q. 118, 121 (T.T.A.B. 1975) (no confusion likely where GENIE used on electronic organs and on various small electrical appliances), *Autac, Inc. v. Walco Sys., Inc.*, 195 U.S.P.Q. 11, 15 (T.T.A.B. 1977) (no confusion likely where identical “AUTAC” mark used on temperature regulators and on wire

retractile cords in the wire manufacturing industry). The goods and services at issue differ significantly in utility and purpose. People seeking dairy-free products will specifically avoid Applicant's goods. Thus, a consumer is not likely to seek the goods covered by the Rebl Marks and mistakenly assume that goods and services offered by Applicant comes from the same company. The determinative issue is whether the consumer would likely believe that the goods and services emanate from the same source and not whether the goods are in some way remotely related. Thus, confusion between the Subject Mark and the Rebl Marks is unlikely.

### **The Term REBEL is Used Extensively by Different Parties to Identify Food/Beverage Products**

Applicant notes that multiple different parties have registered or have been permitted to register the term REBEL (or the phonetic equivalent REBBL) for use in connection with various types of food and beverage products, such as:

- BLUE REBEL is registered to Bazooka Candy Brands Properties, LLC for use in conjunction with candy in Class 30.
- HAPPY REBEL is registered to Lovechock B.V. for use in connection with various food and beverage products in Classes 29 and 30
- REBEL FISH is registered to Mowi Usa, LLC for use in connection with seasoning and spice rubs in Class 30.
- REBEL KITCHEN is registered to Rebel Kitchen LLC for use in connection with cheesecake; cookies; hot sauce; and marinades in Class 30.

A chart showing all the relevant registrations is attached and marked as "Exhibit C." Applicant's use and registration of REBEL(Stylized) are part of a crowded field in the food and beverage industry. Moreover, several of these registrations cover identical goods. For example, GR GREEN REBEL(Stylized), HAPPY REBEL, and REBEL COFFEE all cover coffee. HAPPY REBEL, REBBL and REBEL RASPBERRY all cover tea. STAR WARS REBELS covers bakery goods, while REBEL KITCHEN covers cheesecake and cookies and REBEL CRUMBLES covers cakes. Thus, REBEL cannot function as a strong identifier of source when considered in connection with food and beverages. Applicant contends that if the marks that are listed in Exhibit C are permitted to coexist with the Rebl Marks, the Subject Mark should also be permitted to proceed to registration.

### **Conclusion**

In view of the foregoing, Applicant submits that confusion will not result from registration of the Subject Mark, because the Subject Mark creates a commercial impression that is wholly unlike the commercial impressions created by the Rebl Marks; the Subject Mark will be used and are used in connection with goods and services that differ greatly than the goods that are offered in connection with the Rebl Marks; and marks that are similar to both the Subject Mark and the Rebl Marks have been permitted to coexist on the Federal Register for similar and related goods. Therefore, Applicant respectfully requests that the Examining Attorney withdraw the refusal to register, as well as the provisional refusal to register, and approve the Subject Mark for publication.

## **PRIOR-PENDING APPLCIATION SERIAL NOS. 87/162,265 AND 87/176,151**

The Examining Attorney has also provisionally refused registration of the Subject Mark on the basis of a possible likelihood of confusion with U.S. Application Serial Nos. 87/162,265 (the “265 Application”) for the mark REBEL STORES and 87/176,151 (the “151 Application”) for the mark REBEL OIL, both in the name of AK, Inc. (collectively the “AK Marks”). Applicant respectfully disagrees with the Examining Attorney and contends that confusion is not likely between the Subject Mark and the AK Marks for the reasons set forth below.

There are several factors considered when assessing whether a likelihood of confusion exists between two marks. *In re E. I. DuPont DeNemours & Co.*, 476 F.2d 1357, 1361, 177 U.S.P.Q. 563, 567 (CCPA 1973). Collectively, these factors are referred to as the “DuPont Test.” The most relevant factors in this case include:

1. The similarity or dissimilarity and nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use;
2. The number and nature of similar marks in use on similar goods; and
3. The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. *Id.*

When evaluating whether a likelihood of confusion exists, all facts and information that are pertinent to the above-referenced categories should be considered and this determination should be made on a case-by-case basis. *Id.*

While the Examining Attorney has not made any specific assertions regarding a likelihood of confusion between the Subject Mark and AK Marks, Applicant maintains that when all pertinent facts and information are considered, including the differences in the nature of the goods at issue, the fact that several different parties are using similar marks in connection with similar goods, and the differences in the appearances of the Subject Mark and the AK Marks, it is unlikely consumers would be confused as to the source of the parties’ respective goods and services.

### **The Goods and Services at Issue Are Sufficiently Different to Avoid a Likelihood of Confusion**

When considering whether a likelihood of confusion may exist between two or more marks, it is important to consider the similarity or dissimilarity and nature of the goods or services. *In re E. I. DuPont DeNemours & Co.*, 476 F.2d 1357, 1361, 177 U.S.P.Q. 563, 567 (CCPA 1973). Even where two marks are identical, the goods or services and channels of trade must be sufficiently related so that the use of highly similar marks thereon would be likely to generate confusion, mistake, or deception as to the source of those goods and services. *See, e.g., In re Shipp*, 4 U.S.P.Q.2d 1174, 1176 (T.T.A.B. 1987) (no confusion likely where identical mark “PURITAN” used on laundry and dry cleaning services and on commercial dry cleaning filters); *In re Fesco, Inc.*, 219 U.S.P.Q. 437 (T.T.A.B. 1983) (no likelihood of confusion where identical “FESCO” mark used on distributorship services in the field of farm equipment and on fertilizer, oil mill, crushed stone, clay, coal, concrete block, and foundry processing equipment and machinery); *Chase Brass & Copper Co. v. Special Springs, Inc.*, 199 U.S.P.Q. 243 (T.T.A.B. 1978) (no confusion likely where identical “BLUE DOT” mark used on springs for engine distributors and

on brass rods used in auto manufacturing); *Autac, Inc. v. Walco Sys., Inc.*, 195 U.S.P.Q. 11, 15 (T.T.A.B. 1977) (no confusion likely where identical “AUTAC” mark used on temperature regulators and on wire retractile cords in the wire manufacturing industry); *Alliance Mfg. Co. v. Chicago Musical Instrument Co.*, 184 U.S.P.Q. 118, 121 (T.T.A.B. 1974) (no confusion likely where GENIE used on electronic organs and on various small electrical appliances); *Canada Dry Corp. v. American Home Prods. Corp.*, 175 U.S.P.Q. 557 (C.C.P.A. 1972) (no confusion likely where identical HI-SPOT mark used on laundry detergent and on soft drinks). The goods and services offered by each party in connection with its respective marks in this instance are so different that confusion is not likely.

The Subject Application covers “milk; yogurt; Cow’s milk,” in Class 29 and “retail store services, featuring dairy products; on-line retail store services featuring dairy products,” in Class 35. The AK Marks do not cover any goods at all, and, relevant to this discussion, cover “Retail convenience stores; Retail store services featuring convenience store items and gasoline; Retail grocery stores,” in Class 35 and “Restaurant services, including sit-down service of food and take-out restaurant services; Restaurant services, namely, providing of food and beverages for consumption on and off the premises; Serving food and drinks; Fast-food restaurant services,” in Class 43.

While the Subject Mark and the AK Marks all cover food, beverages, or related services, this should not automatically lead to a finding that the goods and services offered by each party are related. The mere fact that two products may move in somewhat related channels of trade to the same class of purchasers does not *ipso facto* prove that there is a definite relationship between the goods or services. *Canada Dry Corp. v. American Home Prods. Corp.*, 175 U.S.P.Q. 556 (C.C.P.A. 1972) (no confusion likely where identical HI-SPOT mark used on laundry detergent and on soft drinks), *Alliance Mfg. Co., v. Chicago Musical Instrument Co.*, 184 U.S.P.Q. 118, 121 (T.T.A.B. 1975) (no confusion likely where GENIE used on electronic organs and on various small electrical appliances), *Autac, Inc. v. Walco Sys., Inc.*, 195 U.S.P.Q. 11, 15 (T.T.A.B. 1977) (no confusion likely where identical “AUTAC” mark used on temperature regulators and on wire retractile cords in the wire manufacturing industry). Applicant’s main business is selling foods that feature full fat dairy, specifically items that are friendly to consumers seeking low carb and/or keto diet friendly foods. See Exhibit B. Moreover, the domain name associated with Applicant’s website is rebelcreamery.com, immediately conveying the fact that Applicant’s products prominently feature dairy. The convenience store services covered by the AK Marks are, at best, marginally related to Applicant’s products. Consumers are not likely to believe that the owner of the AK Marks, which provide convenience store services similar to establishments like Wawa or 7-Eleven also produces a specialty food item like Applicant’s low carb and/or keto diet friendly foods.

Additionally, there is no *per se* rule that a likelihood of confusion exists where similar marks are used in connection with both food or beverage products and restaurant services. *Lloyd’s Food Prods., Inc. v. Eli’s, Inc.*, 987 F.2d 766, 768, 25 USPQ2d 2027, 2030 (Fed. Cir. 1993); *In re Opus One Inc.*, 60 USPQ2d 1812, 1813 (TTAB 2001). TMEP § 1207.01(a)(ii)(A). In order to find that beverage products and restaurant services are related in such a manner that a likelihood of confusion may result, the evidence of record must show something more than similar or even identical marks are used for food products and restaurant services. *In re Giovanni Food Co.*, 97 USPQ2d 1990, 1991 (TTAB 2011). Applicant submits that no such evidence exists and, in fact,

the evidence of record disputes the possibility that Applicant's products are related to the restaurant services covered by the AK Marks. Thus, Applicant's full fat dairy products can be distinguished from the services covered by the AK Marks.

Finally, Application Serial No. 87/176,151 covers "Automobile services station services; Vehicle service stations," in Class 37 and "Fuel delivery services; Transportation and storage of fuels," in Class 39. Obviously, these services are completely unrelated to Applicant's goods. In addition, the fact that the AK Marks cover services related to cars and gas stations mean that the AK Marks are perceived in conjunction with trades of channel that do not overlap with Applicant's goods. The goods and services at issue are non-competitive and differ significantly in utility and purpose. A consumer is not likely to seek a REBEL STORE or REBEL OIL and mistakenly assume that products sold and services offered by Applicant comes from the same company that owns REBEL STORES or REBEL OIL. The determinative issue is whether the consumer would likely believe that the goods and services come from the same source and not whether the goods and services are in some way remotely related. Thus, confusion between the Subject Mark and the AK Marks is unlikely.

#### **The Term REBEL is Used Extensively by Different Parties to Identify Food/Beverage Products**

Applicant notes that multiple different parties have registered or have been permitted to register the term REBEL (or the phonetic equivalent REBBL) for use in connection with various types of food and beverage products, such as:

- BLUE REBEL is registered to Bazooka Candy Brands Properties, LLC for use in conjunction with candy in Class 30.
- HAPPY REBEL is registered to Lovechuck B.V. for use in connection with various food and beverage products in Classes 29 and 30
- REBEL FISH is registered to Mowi Usa, LLC for use in connection with seasoning and spice rubs in Class 30.
- REBEL KITCHEN is registered to Rebel Kitchen LLC for use in connection with cheesecake; cookies; hot sauce; and marinades in Class 30.

A chart showing all the relevant registrations is attached and marked as "Exhibit C." Applicant's use and registration of REBEL(Stylized) are part of a crowded field in the food and beverage industry. Moreover, several of these registrations cover identical goods. For example, GR GREEN REBEL(Stylized), HAPPY REBEL, and REBEL COFFEE all cover coffee. HAPPY REBEL, REBBL and REBEL RASPBERRY all cover tea. STAR WARS REBELS covers bakery goods, while REBEL KITCHEN covers cheesecake and cookies and REBEL CRUMBLES covers cakes. Thus, REBEL cannot function as a strong identifier of source when considered in connection with food and beverages or the retail sale of the same. Applicant contends that if the marks that are listed in Exhibit C are permitted to coexist with the AK Marks, the Subject Mark should also be permitted to proceed to registration.



**The Subject Mark and the Cited Marks Are Different In Appearance  
and Convey Different Commercial Impressions**

A crucial consideration when performing a likelihood of confusion analysis is the similarity or dissimilarity of the marks in their entireties as to appearance, sound, and meaning. *In re E. I. DuPont DeNemours & Co.*, 476 F.2d 1357, 1361, 177 U.S.P.Q. 563, 567 (CCPA 1973). Applicant maintains that there is no likelihood of confusion between the Subject Mark and the Cited Marks as the marks are visually distinct. These differences create different overall commercial impressions that dispel any potential confusion between the Subject Mark and the Cited Marks.

When comparing two marks to determine if there is confusing similarity between them, it is well settled that they must be considered in their entireties and not dissected into their constituent parts. *See Massey Junior College v. Fashion Inst. of Tech.*, 181 U.S.P.Q. 399 (C.C.P.A. 1971); and *Food Tech., Inc. v. Sucrest Corp.*, 196 U.S.P.Q. 134 (T.T.A.B. 1977). The question of confusing similarity must be judged on the appearance, sound, connotation and commercial impression of the marks in their entireties. The Subject Mark is a stylized version of the term REBEL while the mark covered by the '265 Application is REBEL STORES. The addition of the term STORES to the REBEL STORES mark makes a significant impact on consumers by evoking the fact that this mark will be the name of the owner's convenience stores. Conversely, the stylization used in the Subject Mark creates a completely distinct impression that does not convey anything relating to convenience stores or restaurants. In addition to the considerable visual differences of the marks, the cadence of each mark is substantially dissimilar. The Subject Mark is one syllable while the mark covered by the '265 Application is two syllables.

With respect to the REBEL OIL mark that is the subject of the '151 Application, the term OIL functions to appreciably distinguish it from the Subject Mark. The use of the term OIL in the REBEL OIL mark clearly conveys the nature of the owner's intended business which is meant to be gas stations, automobile repair stations and convenience stores/restaurants that are clearly meant to be an extension of the owner's gas stations. REBEL OIL creates an overall commercial impression that is unique and considerably different from the Subject Mark.

These differences in appearance and pronunciation significantly changes the connotation and overall commercial impression of each mark. The commercial impressions of the AK Marks are not applicable to the use of the Subject Mark with "milk; yogurt; Cow's milk," in Class 29 and "retail store services, featuring dairy products; on-line retail store services featuring dairy products," in Class 35. Therefore, when all elements and the meaning of each mark are considered together, the commercial impression conveyed by each mark is distinct and, as a result, any potential confusion is eliminated.

**Conclusion**

In view of the foregoing, Applicant submits that confusion will not result from registration of the Subject Mark, because the Subject Mark will be used in connection with goods and services that differ greatly than the goods and services that are offered in connection with the AK Marks; marks that are similar to both the Subject Mark and the AK Marks have been permitted to coexist on the Federal Register for similar and related goods; and the Subject Mark creates a commercial

impression that is wholly unlike the commercial impressions created by the AK Marks. Therefore, Applicant respectfully requests that the Examining Attorney withdraw the the provisional refusal to register, remove the Subject Application from suspension, and approve the Subject Mark for publication.

### **PRIOR-PENDING APPLCIATION SERIAL NO. 88/214,087**

The Examining Attorney has also provisionally refused registration of the Subject Mark on the basis of a possible likelihood of confusion with U.S. Application Serial Nos. 88/214,087 for the mark REBEL CHEESE. Applicant respectfully disagrees with the Examining Attorney and contends that confusion is not likely between the Subject Mark and the REBEL CHEESE mark for the reasons set forth below.

There are several factors considered when assessing whether a likelihood of confusion exists between two marks. *In re E. I. DuPont DeNemours & Co.*, 476 F.2d 1357, 1361, 177 U.S.P.Q. 563, 567 (CCPA 1973). Collectively, these factors are referred to as the “DuPont Test.” The most relevant factors in this case include:

1. The similarity or dissimilarity and nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use;
2. The number and nature of similar marks in use on similar goods; and
3. The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. *Id.*

When evaluating whether a likelihood of confusion exists, all facts and information that are pertinent to the above-referenced categories should be considered and this determination should be made on a case-by-case basis. *Id.*

While the Examining Attorney has not made any specific assertions regarding a likelihood of confusion between the Subject Mark and the REBEL CHEESE mark, Applicant maintains that when all pertinent facts and information are considered, including the differences in the nature of the goods at issue, the fact that several different parties are using similar marks in connection with similar goods, and the differences in the appearances of the Subject Mark and the AK Marks, it is unlikely consumers would be confused as to the source of the parties’ respective goods and services.

### **The Goods and Services at Issue Are Sufficiently Different to Avoid a Likelihood of Confusion**

When considering whether a likelihood of confusion may exist between two or more marks, it is important to consider the similarity or dissimilarity and nature of the goods or services. *In re E. I. DuPont DeNemours & Co.*, 476 F.2d 1357, 1361, 177 U.S.P.Q. 563, 567 (CCPA 1973). Even where two marks are identical, the goods or services and channels of trade must be sufficiently related so that the use of highly similar marks thereon would be likely to generate confusion, mistake, or deception as to the source of those goods and services. *See, e.g., In re Shipp*, 4 U.S.P.Q.2d 1174, 1176 (T.T.A.B. 1987) (no confusion likely where identical mark “PURITAN” used on laundry and dry cleaning services and on commercial dry cleaning filters); *In re Fesco*,

*Inc.*, 219 U.S.P.Q. 437 (T.T.A.B. 1983) (no likelihood of confusion where identical “FESCO” mark used on distributorship services in the field of farm equipment and on fertilizer, oil mill, crushed stone, clay, coal, concrete block, and foundry processing equipment and machinery); *Chase Brass & Copper Co. v. Special Springs, Inc.*, 199 U.S.P.Q. 243 (T.T.A.B. 1978) (no confusion likely where identical “BLUE DOT” mark used on springs for engine distributors and on brass rods used in auto manufacturing); *Autac, Inc. v. Walco Sys., Inc.*, 195 U.S.P.Q. 11, 15 (T.T.A.B. 1977) (no confusion likely where identical “AUTAC” mark used on temperature regulators and on wire retractile cords in the wire manufacturing industry); *Alliance Mfg. Co. v. Chicago Musical Instrument Co.*, 184 U.S.P.Q. 118, 121 (T.T.A.B. 1974) (no confusion likely where GENIE used on electronic organs and on various small electrical appliances); *Canada Dry Corp. v. American Home Prods. Corp.*, 175 U.S.P.Q. 557 (C.C.P.A. 1972) (no confusion likely where identical HI-SPOT mark used on laundry detergent and on soft drinks). The goods and services offered by each party in connection with its respective marks in this instance are so different that confusion is not likely.

The Subject Application covers “milk; yogurt; Cow’s milk,” in Class 29 and “retail store services, featuring dairy products; on-line retail store services featuring dairy products,” in Class 35. The application for REBEL CHEESE explicitly covers cheese and meat substitutes, including non-dairy cheese. In fact, the specimen submitted in support of the REBEL CHEESE application (marked as Exhibit D and incorporated into this response) shows labels displaying the REBEL CHEESE mark in conjunction with the phrase “uncreamery.” This is a marked statement about the fact the REBEL CHEESE products do not contain any dairy. This is a very important distinction as one of the main selling points of Applicant’s goods is they feature full fat dairy. *See* Exhibit B. Additionally, the domain name associated with Applicant’s website is rebelcreamery.com, immediately conveying the fact that Applicant’s products, not only contain dairy, but prominently feature dairy. Applicant’s use of “creamery” is in stark contrast to the dairy substitutes sold in connection with the REBEL CHEESE brand.

While the Subject Mark and the REBEL CHEESE mark are used in connection with food, beverages, or related services, this should not automatically lead to a finding that the goods and services offered by each party are related. The mere fact that two products may move in somewhat related channels of trade to the same class of purchasers does not *ipso facto* prove that there is a definite relationship between the goods or services. *Canada Dry Corp. v. American Home Prods. Corp.*, 175 U.S.P.Q. 556 (C.C.P.A. 1972) (no confusion likely where identical HI-SPOT mark used on laundry detergent and on soft drinks), *Alliance Mfg. Co., v. Chicago Musical Instrument Co.*, 184 U.S.P.Q. 118, 121 (T.T.A.B. 1975) (no confusion likely where GENIE used on electronic organs and on various small electrical appliances), *Autac, Inc. v. Walco Sys., Inc.*, 195 U.S.P.Q. 11, 15 (T.T.A.B. 1977) (no confusion likely where identical “AUTAC” mark used on temperature regulators and on wire retractile cords in the wire manufacturing industry). Applicant’s main business is selling foods that feature full fat dairy, specifically items that are friendly to consumers seeking low carb and/or keto diet friendly foods. *See* Exhibit B. Moreover, the domain name associated with Applicant’s website is rebelcreamery.com, immediately conveying the fact that Applicant’s products prominently feature dairy. Conversely, the owner of the REBEL CHEESE mark specifically sells products that are dairy substitutes. Consumers are not likely to believe that the owner of the REBEL CHEESE which sells dairy free products also produces a specialty food item like Applicant’s full fat dairy products and retail sales of the same.

The goods and services at issue are non-competitive and differ significantly in utility and purpose. A consumer is not likely to seek REBEL CHEESE and mistakenly assume that products sold and services offered by Applicant comes from the same company that owns REBEL CHEESE. The determinative issue is whether the consumer would likely believe that the goods and services come from the same source and not whether the goods and services are in some way remotely related. Thus, confusion between the Subject Mark and the REBEL CHEESE mark is unlikely.

### **The Term REBEL is Used Extensively by Different Parties to Identify Food/Beverage Products**

Applicant notes that multiple different parties have registered or have been permitted to register the term REBEL (or the phonetic equivalent REBBL) for use in connection with various types of food and beverage products, such as:

- BLUE REBEL is registered to Bazooka Candy Brands Properties, LLC for use in conjunction with candy in Class 30.
- HAPPY REBEL is registered to Lovechock B.V. for use in connection with various food and beverage products in Classes 29 and 30
- REBEL FISH is registered to Mowi Usa, LLC for use in connection with seasoning and spice rubs in Class 30.
- REBEL KITCHEN is registered to Rebel Kitchen LLC for use in connection with cheesecake; cookies; hot sauce; and marinades in Class 30.

A chart showing all the relevant registrations is attached and marked as “Exhibit C.” Applicant’s use and registration of REBEL(Stylized) are part of a crowded field in the food and beverage industry. Moreover, several of these registrations cover identical goods. For example, GR GREEN REBEL(Stylized), HAPPY REBEL, and REBEL COFFEE all cover coffee. HAPPY REBEL, REBBL and REBEL RASPBERRY all cover tea. STAR WARS REBELS covers bakery goods, while REBEL KITCHEN covers cheesecake and cookies and REBEL CRUMBLES covers cakes. Thus, REBEL cannot function as a strong identifier of source when considered in connection with food and beverages or the retail sale of the same. Applicant contends that if the marks that are listed in Exhibit C are permitted to coexist with the REBEL CHEESE mark, the Subject Mark should also be permitted to proceed to registration.

### **The Subject Mark and the Cited Marks Are Different In Appearance and Convey Different Commercial Impressions**

A crucial consideration when performing a likelihood of confusion analysis is the similarity or dissimilarity of the marks in their entirety as to appearance, sound, and meaning. *In re E. I. DuPont DeNemours & Co.*, 476 F.2d 1357, 1361, 177 U.S.P.Q. 563, 567 (CCPA 1973). Applicant maintains that there is no likelihood of confusion between the Subject Mark and the Cited Marks as the marks are visually distinct. These differences create different overall commercial impressions that dispel any potential confusion between the Subject Mark and the Cited Marks.

When comparing two marks to determine if there is confusing similarity between them, it is well settled that they must be considered in their entirety and not dissected into their constituent parts. See *Massey Junior College v. Fashion Inst. of Tech.*, 181 U.S.P.Q. 399 (C.C.P.A. 1971); and *Food Tech., Inc. v. Sucrest Corp.*, 196 U.S.P.Q. 134 (T.T.A.B. 1977). The question of confusing similarity must be judged on the appearance, sound, connotation and commercial impression of the marks in their entirety. The Subject Mark is a stylized version of the term REBEL while the mark covered by Application Serial No. 88/214,087 is REBEL CHEESE. It is important to consider the REBEL CHEESE mark as a whole because the notion of “rebel cheese” is cheese that is untraditional or a “rebel.” Cheese is traditionally considered a dairy product, so to produce and sell a dairy free cheese is contrary or rebellious. This makes a significant impression on consumers who are seeking to avoid dairy. Conversely, the stylization used in the Subject Mark creates a completely distinct impression that does not convey anything relating to dairy free foods and aspires to convey the opposite. In addition to the considerable visual differences of the marks, the cadence of each mark is substantially dissimilar. The Subject Mark is one syllable while the REBEL CHEESE mark is two syllables.

These differences in appearance and pronunciation significantly changes the connotation and overall commercial impression of each mark. The commercial impression of the REBEL CHEESE mark is not applicable to the use of the Subject Mark with “milk; yogurt; Cow’s milk,” in Class 29 and “retail store services, featuring dairy products; on-line retail store services featuring dairy products,” in Class 35. Therefore, when all elements and the meaning of each mark are considered together, the commercial impression conveyed by each mark is distinct and, as a result, any potential confusion is eliminated.

### **Conclusion**

In view of the foregoing, Applicant submits that confusion will not result from registration of the Subject Mark, because the Subject Mark will be used in connection with goods and services that differ greatly than the goods that are offered in connection with the REBEL CHEESE mark; marks that are similar to both the Subject Mark and the REBEL CHEESE mark have been permitted to coexist on the Federal Register for similar and related goods; and the Subject Mark creates a commercial impression that is wholly unlike the commercial impression created by the REBEL CHEESE Mark. Therefore, Applicant respectfully requests that the Examining Attorney withdraw the provisional refusal to register, remove the Subject Application from suspension, and approve the Subject Mark for publication.