

IN THE UNITED STATES PATENT & TRADEMARK OFFICE
BEFORE THE EXAMINING ATTORNEY OF TRADEMARKS

In re Application of	:	
	:	
BuzzFeed, Inc.	:	Examining Attorney:
	:	Benji Paradowelai
Serial No.: 88123709	:	
	:	Law Office 101
Filed: September 19, 2018	:	
	:	
Mark: TASTY	:	
	:	
Class: 33	:	

RESPONSE AND REQUEST FOR RECONSIDERATION

This is in response to the Office Action dated July 10, 2019, in which the Examining Attorney made FINAL the refusal to register Applicant’s TASTY mark (“Applicant’s Mark”) based on Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1). The Office has maintained the refusal on the ground that the TASTY mark, merely describes a feature and/or characteristic of the of Applicant’s goods. The Examining Attorney has cited additional instances of third-party registrations in Class 33 where the term TASTY is disclaimed or the marks are registered on the Supplemental Register or under Section 2(f). The Examining Attorney goes on to argue these third-party registrations are probative evidence on the issue of descriptiveness where the relevant word or term is disclaimed, registered under Trademark Act Section 2(f), or registered on the Supplemental Register, citing *In re Morinaga Nyugyo Kabushiki Kaisha*, 120 USPQ2d 1738, 1745 (TTAB 2016) (quoting *Inst. Nat’l des Appellations D’Origine v. Vintners Int’l Co.*, 958 F.2d 1574, 1581-82, 22 USPQ2d 1190, 1196 (Fed. Cir. 1992)) and *In re Box Solutions Corp.*, 79 USPQ2d 1953, 1955 (TTAB 2006). Below, Applicant will present numerous recent-published for opposition or allowed applications/recently-issued registrations for TASTY-formative marks

for food, drink and food and drink-related goods on the Principal Register—without a disclaimer, 2(f) claims, or placement on the Supplemental Register—as probative evidence of the inherent distinctiveness of Applicant’s mark.

While the question to be answered is whether the subject mark functions as a trademark on its own merits, it is nonetheless instructive to note that the Office has accepted dozens of “TASTY” marks in Classes 29, 30, 31, and 32 on the Principal Register, without a disclaimer, 2(f) claims, or placement on the Supplemental Register. Here, Applicant presents numerous recently-published for opposition, recently-allowed, or recently-registered marks, all of which were examined and approved by the United States Patent and Trademark Office *within the past year* (see attached Exhibit A for the application/registration particulars).

Ref. / Mark / Owner	Filing Details	Classes: Goods
US-1 TASTY. TENDER. EVERY TIME. HQM, LTD.	App 88519686 App 17-JUL-2019 Published for Opp. 19-NOV-2019	Class 29: PORK
US-2 HELLA TASTY OUTSTANDING FOODS, INC.	App 88500404 App 03-JUL-2019 Allowed 10-DEC-2019	Class 29: BEAN-BASED SNACK FOODS; VEGETABLE-BASED SNACK FOODS Class 30: RICE-BASED SNACK FOODS
US-3 TASTY AS HELL OUTSTANDING FOODS, INC.	App 88494268 App 28-JUN-2019 Allowed 10-DEC-2019	Class 29: BEAN-BASED SNACK FOODS Class 30: RICE-BASED SNACK FOODS

US-4 TASTY PUSSY DAVID C. HAWKES	App 88486933 App 24-JUN-2019 Allowed 31-DEC-2019	Class 32: BEER
US-5 TASTY & EASY Design RYC FOODS, LLC	App 88428035 App 13-MAY-2019 Allowed 05-NOV-2019	Class 29: BEEF; CHICKEN; PORK
US-6 TASTY WORMS NUTRITION TASTY WORMS NUTRITION INC.	App 88472821 App 13-JUN-2019 Reg 5949330 Reg 31-DEC-2019	Class 31: FOODSTUFFS FOR ANIMALS; PET FOOD; FOOD FOR ANIMALS; FOODSTUFFS FOR POULTRY; EDIBLE PET TREATS FOR EXOTIC PETS AND POULTRY
US-7 TASTY TYKES LAKES VENTURE, LLC	App 88341597 App 15-MAR-2019 Reg 5862798 Reg 17-SEP-2019	Class 30: CHEESE FLAVORED PUFFED CORN SNACKS; CORN-BASED SNACK FOODS; MULTIGRAIN-BASED SNACK FOODS; RICE-BASED SNACK FOOD Class 31: FRESH FRUITS
US-8 RICE & TASTY VEETEE RICE LIMITED (United Kingdom)	App 88282101 App 30-JAN-2019 Reg 5834105 Reg 13-AUG-2019	Class 30: RICE
US-9 THAT'S TASTY & Design SHENANDOAH GROWERS, INC.	App 88224251 App 11-DEC-2018 Allowed 09-JULY-2019	Class 30: ORGANIC HERB PUREES; DRIED ORGANIC HERBS

US-10 THAT'S TASTY SHENANDOAH GROWERS, INC.	App 88224256 App 11-DEC-2018 Reg 5799537 Reg 09-JUL-2019	Class 31: FRESH EDIBLE FLOWERS; FRESH HERBS; FRESH CULINARY HERBS
US-11 THAT'S TASTY SHENANDOAH GROWERS, INC.	App 88224260 App 11-DEC-2018 Allowed 18-JUNE-2019	Class 30: HERB PUREES; DRIED HERBS
US-12 TASTY CHEFS CORFU - TASTY GYROS, INC.	App 88166313 App 23-OCT-2018 Published for Opp. 03-DEC-2019	Class 29: GYROS IN THE NATURE OF THINLY-SLICED LAMB; GYRO PREPACKAGED KITS CONSISTING PRIMARILY OF GYROS IN THE NATURE OF THINLY-SLICED LAMB AND INCLUDING PITAS AND SAUCE; TZATZIKI; INT. CL. 30 COOKIES; CRACKERS; BISCOTTIS; GYROS IN THE NATURE OF SANDWICHES CONTAINING THINLY-SLICED LAMB;

As with Applicant's goods, for each of the above marks, potential customers are required to have more information than merely the mark in order to determine the nature, or any particular quality or characteristic of the goods. In other words, they must exercise imagination, thought, or perception. Simply because the mark TASTY hints at the possibility that the goods have a "pleasing flavor," does not make it merely descriptive.

Conclusion

For the reasons presented here, and as was argued in the first office action response, Applicant respectfully requests that the Examining Attorney withdraw the refusal to register under Section 2(e)(1) and approve the application for publication in the *Official Gazette*.