

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

In re Application of	:	
	:	
BuzzFeed, Inc.	:	Examining Attorney:
	:	Jenny Park
Serial No.: 88123618	:	
	:	Law Office 104
Filed: September 19, 2018	:	
	:	
Mark: TASTY Stylized	:	
	:	
Class: 30	:	

RESPONSE AND REQUEST FOR RECONSIDERATION

This is in response to the Office Action dated July 31, 2019, in which the Examining Attorney made FINAL the refusal to register Applicant’s TASTY Stylized mark (“Applicant’s Mark”) on the ground that the mark merely describes a characteristic of the goods, under Trademark Act Section 2(e)(1). Applicant respectfully submits that the subject mark is suggestive and not *merely* descriptive of the goods provided.

In the FINAL Office Action the Examining Attorney has cited additional instances of third-party registrations in Class 30 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. *E.g., 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)); *In re Box Solutions Corp.*, 79 USPQ2d 1953, 1955

(TTAB 2006). Under the same legal standard, Applicant will present very recently allowed applications and registrations for TASTY-formative marks for food, and food-related goods that have achieved registration 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 Class 30 on the Principal Register, without a disclaimer, 2(f) claims, or placement on the Supplemental Register. Although Applicant acknowledges those third-party registrations presented by the Examining Attorney, here we present seven (7) additional *recently* allowed or registered marks in Class 30, all of which were examined and approved by the Office *in the past year* (third-party registrations attached).

Ref. / Mark / Owner	Filing Details	Classes: Goods
US-1 HELLA TASTY OUTSTANDING FOODS, INC.	App 88500404 App 03-JUL-2019	Class 30: RICE-BASED SNACK FOODS
US-2 TASTY AS HELL OUTSTANDING FOODS, INC.	App 88494268 App 28-JUN-2019	Class 30: RICE-BASED SNACK FOODS
US-3 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

US-4 RICE & TASTY VEETEE RICE LIMITED	App 88282101 App 30-JAN-2019 Reg 5834105 Reg 13-AUG-2019	Class 30: RICE
US-5 THAT'S TASTY & Design SHENANDOAH GROWERS, INC.	App 88224251 App 11-DEC-2018	Class 30: ORGANIC HERB PUREES; DRIED ORGANIC HERBS
US-6 THAT'S TASTY SHENANDOAH GROWERS, INC.	App 88224260 App 11-DEC-2018	Class 30: HERB PUREES; DRIED HERBS
US-7 TASTY CHEFS CORFU - TASTY GYROS, INC.	App 88166313 App 23-OCT-2018	INT. CL. 30 COOKIES; CRACKERS; BISCOTTIS; GYROS IN THE NATURE OF SANDWICHES CONTAINING THINLY-SLICED LAMB;

With regard to the Examining Attorney's evidence, Applicant cannot account for why those third-parties elected *not* to challenge the disclaimer requirement put to them by the Office, or their placement on the Supplemental Register. However, it must be acknowledged that many third-parties do not have the resources or capacity to challenge these refusals, and instead take the path of least resistance. The third-party registrations presented by Applicant and the Examining Attorney—viewed in their totality—indicates Applicant's TASTY Stylized mark is at worst *suggestive* of the subject goods, and that consumers are capable of recognizing it as more than *merely* descriptive of its Class 30 goods.

Conclusion

For the reasons presented here, Applicant respectfully requests that the Examining Attorney withdraw the refusal to register the subject application, and move it on for publication in the *Official Gazette*.