

87/932,083 for ORANGE

Section 2(d) Refusal

The Office Action has alleged that Registration no. 4,636,574 for ORANGE would be likely to cause confusion with Applicant's mark. Applicant has carefully reviewed the cited application and its use in commerce, and submits that there is no chance of any confusion.

As discussed in further detail below in this response, Applicant intends to use the ORANGE mark on coffee cups, particularly unadorned (Spartan) ceramic coffee cups, as a word mark for sale principally into specialty coffee stores for the benefit of extremely dedicated and sophisticated high-end coffee equipment enthusiasts. The most mainstream location for sale of such goods might be Starbucks, or that kind of venue. The target consumer would be coffee aficionados.

On the other hand, the mark associated with registration no. 4,636,574 is actually descriptive, and entitled to a correspondingly narrow scope of protection. The subject registration is owned by Charles Viancin (<http://www.charlesviancin.com/us/>), which sells products that have the actual appearance of fruits or vegetables as container lids, bottle stoppers, drink covers, and the like.

Applicant has reviewed the specimen for the ORANGE registration 4,636,574 that was cited, copied below:



One would hardly think that their products, based on this Specimen would actually contain a product that looks like an ORANGE.

But, it seems that this is what Charles Viancin has done with many of its trademark registrations (all reviewed so far by Applicant’s Counsel) for different products sold under the name FLORAL, LIME, GRAPE, etc. on which registrant has obtained trademark registrations. An example of goods of the registrant on www.amazon.com can easily be found for ORANGE by searching “Charles Viancin ORANGE” resulting in the below goods:



Charles Viancin Citrus Stacking Lid - Orange Large 11"
by Charles Viancin
★★★★☆ 6 customer reviews

Price: \$17.73 ✓prime
FREE Shipping on orders over \$25—or get FREE Two-Day Shipping with Amazon Prime

- 4201 Citrus Stacking Lid in Orange, Large, 11 Inch
- Stacking lids allow more storage space in your cabinet and refrigerator
- Unique design fits on any smooth rimmed bowl
- Microwave, Oven and Dishwasher safe
- Eco friendly

Compare with similar items
New (8) from \$16.95 & FREE shipping.

FMAB
Spill Stopper Lid Cover
Shop now



Spill Stopper Lid Cover
\$16.99 ✓prime

Ad feedback

It appears that Charles Viancin is using both CITRUS and ORANGE as “trademarks” with respect to the sale of this product. Applicant was unable to find any other goods sold by registrant online. The cited registration should have been relegated to the Supplemental Register because it is descriptive. Accordingly, the cited registration is entitled to only a narrow scope of protection.

in notable contrast, an example of Applicant’s goods is presented below in the form of a ceramic coffee cup bearing the COCOA trademark:



Applicant fully expects its anticipated cup bearing the ORANGE mark to be similar in overall appearance, but likely of a noticeably different shape. These products would be sold in specialty coffee shops to

coffee enthusiasts. There really is no chance of the channels of commerce for Applicant's goods and Charles Viancin's goods to overlap.

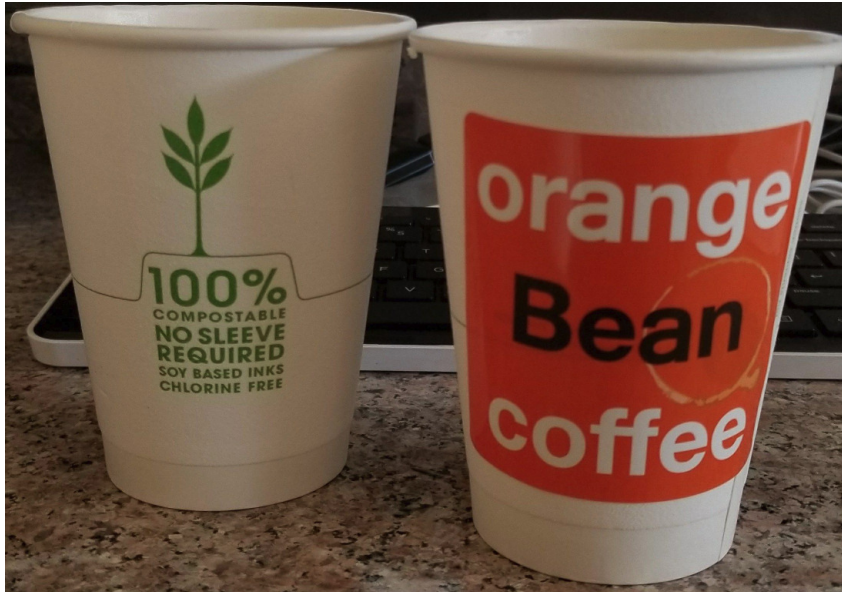
Applicant submits that there is no way that any consumer would have a reason to expect that Applicant's Spartan ceramic coffee cup, and Charles Viancin's orange-slice shaped plastic products, would share a common source. The goods themselves are very different, and the channels of commerce are completely separate. The fact that the registrant's mark is and apparently always has been descriptive of the goods entitles it only to a very narrow scope of protection, assuming that it is valid.

Registration 4,269,351 is for a logo mark for Orange Sippr. The specimen for this mark appears below:



While the logo mark is on the primary register, it is manifestly clear that this mark should not be granted a broad scope of protection since it is descriptive if it were broadened to cover the word mark equivalent of an "orange sipper". Indeed, that is exactly what it is. It is also clear that this type of product will never be visible in a Starbucks or similar establishment, and the goods themselves bear no resemblance to the Applicant's goods. Accordingly, it is respectfully submitted that there is no chance of confusion between goods covered by the cited registration and those covered by Applicant's trademark.

Registration 5,371,078 for Design mark for orange bean coffee:



The specimen for this registration is set forth above. The mark is orange, large, and includes orange bean coffee on it in large letters. On a paper cup. The overall commercial impression of these goods is very different from Applicant's goods. The words themselves, also, "orange bean coffee" is just not likely to be confused with Applicant's ceramic coffee cups set forth above. Paper cups are disposable, and Applicant's are not. Accordingly, it is respectfully submitted that there is not likelihood of confusion.

Accordingly, for at least these reasons, Applicant submits that there is no likelihood of confusion between Applicant's mark and the cited application.

Section 2(e)(1) Refusal

Applicant has deleted herein the portion of its description of goods that relates specifically to tasting cups, although notes that the remainder of the description of goods would nonetheless be sufficiently broad to encompass such goods. Specifically, Applicant modifies its description of goods to recited only coffee cups and coffee mugs. It is Applicant's understanding that this amendment will successfully address the Section 2(e)(1) Refusal. Applicant therefore respectfully requests withdrawal of the Section 2(e)(1) Refusal.

Response to Request for Information

A physical specimen of a cup that Applicant intends to sell bearing the ORANGE mark is not yet available. However, Applicant submits similar documentation for goods of the same type in the form of

the attached professional photograph of a cup intended to be sold by Applicant bearing the mark COCOA on its bottom (also depicted above). Applicant expects that the cup it eventually sells bearing the ORANGE mark will be depicted in essentially the same manner, as a word mark with some accompanying similar logos, and on the bottom of the cup. As with the example image, other than the writing on the bottom of the cup, the cup would not include other writing or ornamentation. The cup itself may have a different ornamental shape as compared to the depicted cup, but it is unknown whether any such change in shape would lead to a change in function. As to channels of trade, the cup is principally intended for sale in coffee shops and are directed to consumers that have a sophisticated knowledge of coffees and coffee related equipment.

Espro, Inc., the Applicant, plans to use the ORANGE mark as a source indicator for a coffee cup similar to the illustrated coffee cup. ORANGE is known as a flavor note, as set forth in the SCAA flavor wheel appended to the Office Action that can be detected in certain coffees, depending on how the coffee is roasted and brewed. However, the actual cup sold by Applicant that is pictured, or any other cup that Applicant would plan to sell bearing the ORANGE mark, to Applicant's knowledge, would not physically function to enhance ORANGE flavor notes in coffees.