

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Date: June 19, 2019

In re Application of:
Dragonberry Produce, Inc.

Docket No.: DBY 403

Serial No. : 88/106,816

Trademark Examining Attorney:
John Hwang

Filed : March 6, 2019

For : GREEN DRAGON

Law Office: 114

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

REQUEST FOR RECONSIDERATION

Reconsideration of the Office action mailed on December 20, 2018 in connection with the present application is requested in view of the following remarks.

In the Office action, the Examining Attorney indicated that no conflicting marks were found that would bar registration under Section 2(d), but registration was refused under Sections 1, 2, and 45. The Office action also includes an information request.

I. Refusal Under Sections 1, 2, and 45

First, registration was refused on the grounds that the applied-for mark is a varietal name for the identified goods, and therefore does not serve as a trademark to indicate the source of Applicant's goods. Applicant respectfully disagrees.

To support the refusal, the Office action included print-outs from webpages that reference the GREEN DRAGON mark. Specifically, the Office action included print-outs from Applicant's website, as well as from websites identified as Melissa's and Frieda's and others. Applicant has updated its own website to make clear that the GREEN DRAGON mark is not a varietal name and has informed the

owners of the third party websites of their misleading use of Applicant’s GREEN DRAGON mark. More importantly, each of these websites have taken steps to correct the prior misleading use, and to identify Applicant’s applied-for mark as a trademark, where appropriate, as evidenced by the corresponding screenshots submitted herewith as Exhibits A–E. More specifically, the following table summarizes the current use of Applicant’s mark on the cited webpages.

| Webpage | Quote(s) |
|---|---|
| www.dragonberryproduce.com/green-dragon-apples | <p>“Green Dragon™ Apples”</p> <p>“The Green Dragon™ brand of the Washu 1984 apple...”</p> |
| www.melissas.com/Green-Dragon-Apples-p/281.htm | “Green Dragon™ Apples” |
| www.specialtyproduce.com/produce/green_dragon_apples_6700.php | <p>“Green Dragon™ Apples”</p> <p>“Green Dragon™ apples are a trademarked brand of high quality Washu 1984 apples belonging to the Rosaceae family.”</p> <p>“Green Dragon™ apples are a select, high-quality group of Washu 1984 apples....”</p> |
| www.friedas.com/products/green-dragon-apple/ | <p>“green dragon™ apple”</p> <p>“The Green Dragon™ brand of apple is also known as Washu 1984....”</p> |
| www.shockinglydelicious.com/introducing-green-dragon-apples-and-5-things-to-do-with-them/ | “Called Green Dragon™ brand....” |

By way of background, Applicant notes that it has found the fruit and fruit growing industry to not always understand the difference between branded fruits and the corresponding varietal names of the fruits, particularly when a single variety of fruit is sold under a single mark, as is the case here. That is, Applicant distributes only a single variety of apple under the GREEN DRAGON mark, and Applicant believes that it is the sole distributor of this variety in the U.S. For these reasons, it is not uncommon for third parties to refer to the apple by its branded name, as opposed to by its varietal name. In fact, all of the cited webpages are in fact referring to apples sourced from Applicant. The varietal name for the

apple is Washu 1984, and the following webpage provides more detailed information on the brand and variety name, a copy of which is submitted herewith as Exhibit F: greendragonapples.com.

In addition to the evidence discussed above, Applicant notes that the Wikipedia page listing apple cultivars (en.wikipedia.org/wiki/List_of_apple_cultivars), a copy of which is submitted herewith as Exhibit G, identifies Washu 1984 as a cultivar and does not identify "Green Dragon" as a cultivar.

The few select sources cited in the Office action do not represent the industry as a whole, and Applicant continues to police the misuse of its GREEN DRAGON mark.

For at least the reasons set forth herein, Applicant respectfully requests withdrawal of the refusal under Sections 1, 2, and 45.

II. Request for Information.

Next, the Office action requested indications regarding "(1) Whether GREEN DRAGON has ever been used or will be used as a varietal or cultivar name," and "(2) Whether GREEN DRAGON has ever been used or will be used in connection with a plant patent, utility patent, or certificate for plant-variety protection." Applicant believes that the discussion in Section I, above, addresses request (1) to the extent that third parties have in the past misused the GREEN DRAGON mark so that a reader may mistakenly conclude that the GREEN DRAGON mark also is the varietal or cultivar name, but Applicant continues to correct these third parties. Responsive to request (2), no plant patent, utility patent, or certificate for plant variety protection exists under the GREEN DRAGON name.

III. Conclusion.

Applicant believes that all of the issues raised in the Office action have been fully addressed. If there are any remaining issues or if the Examining Attorney has any questions or believes that it would be productive to discuss this matter, the Examining Attorney is invited to contact Applicant's attorney.

CERTIFICATE OF E-FILING

I hereby certify that this correspondence and the supporting evidence referenced herein are being transmitted electronically via the U.S. Patent and Trademark Office's Trademark Electronic Application System (TEAS) on June 19, 2019.



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Respectfully submitted,

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