

From: Charlon, Barney

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Subject: U.S. TRADEMARK APPLICATION NO. 77871860 - SIMPLY POTATOES
STEAMABLES - 13992.00151 - Request for Reconsideration Denied - Return to TTAB

Attachment Information:

Count: 2

Files: steam.jpg, 77871860.doc

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

APPLICATION SERIAL NO. 77871860

MARK: SIMPLY POTATOES STEAMABLES



CORRESPONDENT ADDRESS:

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GENERAL TRADEMARK INFORMATION:
<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Michael Foods of Delaware, Inc.

CORRESPONDENT'S REFERENCE/DOCKET NO:

13992.00151

CORRESPONDENT E-MAIL ADDRESS:

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REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 10/5/2011

The trademark examining attorney has carefully reviewed applicant's request for reconsideration and is denying the request for the reasons stated below. *See* 37 C.F.R. §2.64(b); TMEP §§715.03(a), 715.04(a). The requirement(s) and/or refusal(s) made final in the Office action dated September 13, 2011, are maintained and continue to be final. *See* TMEP §§715.03(a), 715.04(a).

In the present case, applicant's request has not resolved all the outstanding issue(s), nor does it raise a new issue or provide any new or compelling evidence with regard to the outstanding issue(s) in the final Office action. In addition, applicant's analysis and arguments are not persuasive nor do they shed new light on the issues. Accordingly, the request is denied.

In its request for reconsideration, applicant argues that its mark SIMPLY POTATOES STEAMABLES and registrant's mark STEAM'ABLES are distinguished by the addition to applicant's mark of its "distinctive house mark, SIMPLY POTATOES."

When marks are otherwise virtually the same, however, the addition of a house mark is more likely to add to the likelihood of confusion than to distinguish the marks; it is likely that the two products sold under such marks would be attributed to the same source. *In re Dennison Mfg. Co.*, 229 USPQ 141, 144 (TTAB 1986) (holding GLUE STIC for general

purpose adhesive in stick form likely to be confused with UHU GLU STIC for adhesives for paper and stationery); *Key West Fragrance & Cosmetic Factory, Inc. v. Mennen Co.*, 216 USPQ 168, 170 (TTAB 1982) (holding SKIN SAVERS for face and throat lotion likely to be confused with MENNEN SKIN SAVER for hand and body lotion); *see Hamermill Paper Co. v. Gulf States Paper Corp.*, 337 F.2d 662, 663, 143 USPQ 237, 238 (C.C.P.A. 1964) (holding HAMMERMILL E-Z CARRY PAK and E-Z PAPER PAK for carrying cases or boxes for typewriter or duplicator paper likely to be confused with E-Z PAK and E-Z CARI for paper bags); TMEP §1207.01(b)(iii).

In addition, applicant asserts that “[t]he mere fact that both companies’ products are food products does not inexorably lead to a conclusion of likelihood of confusion between the two marks.” Contrary to applicant’s position, however, applicant’s and registrant’s goods are related in that they both include frozen food items. Furthermore, confusion as to the source of the goods at issue is likely due to the fact that registrant, like applicant, offers frozen foods featuring potatoes. See the enclosed Internet printout from registrant’s website.

The filing of a request for reconsideration does not extend the time for filing a proper response to a final Office action or an appeal with the Trademark Trial and Appeal Board (Board), which runs from the date the final Office action was issued/mailed. *See* 37 C.F.R. §2.64(b); TMEP §§715.03, 715.03(a), (c).

If time remains in the six-month response period to the final Office action, applicant has the remainder of the response period to comply with and/or overcome any outstanding final requirement(s) and/or refusal(s) and/or to file an appeal with the Board. TMEP §715.03(a), (c). However, if applicant has already filed a timely notice of appeal with the Board, the Board will be notified to resume the appeal when the time for responding to the final Office action has expired. *See* TMEP §715.04(a).

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at the Farm

Select by Product

Harvest Vegetables with Roasted

Search by Keyword:

Display Product Type

<input type="checkbox"/> Deluxe	<input type="checkbox"/> Deluxe Sides
<input type="checkbox"/> All Natural	<input type="checkbox"/> Steamables
<input type="checkbox"/> Seasoned	<input type="checkbox"/> Recipe Helpers
<input type="checkbox"/> Stir-Fry	<input type="checkbox"/> Cream Corn
<input type="checkbox"/> Breaded	<input type="checkbox"/> Soup & Stew



Harvest Vegetables with Roasted Red Potatoes and Herb and Garlic Seasoning

The rustle of leaves, chilly evenings and a good walk in the woods. It's harvest time, and we've brought together sugar snap peas, carrots and robust roasted red potatoes – great vegetables of early fall to steam up for a burst of real stick-to-the-ribs flavor.

Nutrition Facts

10 oz (283g)
Total Fat 10g
Total Crap 10g
Total Sugar 10g
Total Protein 10g

[Click to expand](#)

Available Sizes

10 oz/Steam Bag

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