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# UNITED STATES PATENT AND TRADEMARK OFFICE

**SERIAL NO:** 78/877323

**MARK:** BONOBO BREW



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**GENERAL TRADEMARK INFORMATION:**

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

**TTAB INFORMATION:**

<http://www.uspto.gov/web/offices/dcom/ttab/index.html>

**CORRESPONDENT'S REFERENCE/DOCKET NO:**

BON-07-1093

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## EXAMINING ATTORNEY'S APPEAL BRIEF

### FACTS

The applicant, Sally J. Coxe (“applicant”), seeks registration of the standard character mark “BOBOBO BREW” for the following goods:

- Class 30: Coffee;
- Class 32: Beer.

The examiner refused registration of the applicant’s mark under Trademark Act §2(d) as being likely to cause confusion with the typed drawing mark “BONOBO’S” in U.S. Registration No. 3000676. The owner of the cited registered mark, Bonobo’s LLC (“registrant”), uses its mark on the following goods and services:

- Class 29: Naturally grown and organic foods, namely dried and frozen fruits and vegetables; edible oils, namely coconut oil, olive oil and nut and seed oils; nut and seed butters; nut and seed crisps;
- Class 30: Crackers, cookies, cakes and ice-cream;
- Class 31: Naturally grown and organic agricultural products, namely fresh fruits, vegetables, nuts and seeds;
- Class 43: Restaurant services.

In challenging the refusal, the applicant has amended its goods to the current identifications, but the remaining goods are still related to the registrant's goods and services such that, when bearing similar marks, consumers are likely to encounter the parties' marks in the same channels of trade and be confused as to the underlying sources of the goods and services. The examining attorney respectfully requests that the Board affirm the refusal.

### **ARGUMENT**

THE APPLICANT'S MARK CREATES A CONFUSINGLY SIMILAR COMMERCIAL IMPRESSION TO THE REGISTERED MARK, AND THE PARTIES' GOODS AND SERVICES ARE CLOSELY RELATED, SUCH THAT THERE EXISTS A LIKELIHOOD OF CONFUSION OR MISTAKE UNDER SECTION 2(D) OF THE TRADEMARK ACT, 15 U.S.C. SECTION 1052(D); TMEP §§1207.01 *ET SEQ.*

Trademark Act Section 2(d) bars registration where an applied-for mark so resembles a registered mark that it is likely, when applied to the goods and/or services, to cause confusion, mistake or to deceive the potential consumer as to the source of the goods and/or services. TMEP §1207.01. The Court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973), listed the principal factors to consider in determining whether there is a likelihood of confusion. Among these factors are the similarity of the marks as to appearance, sound, meaning and commercial impression, and the relatedness of the goods and/or services. The overriding concern is to prevent buyer confusion as to the source of the goods and/or services. *In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt as to the existence of a likelihood of confusion must be resolved in favor of the registrant. *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988).

#### Similarity of the Parties' Marks

The applicant seeks registration of the mark "BONOBO BREW" in standard characters, and the applicant has disclaimed exclusive rights to use "BREW" as the term is merely descriptive of the applicant's coffee and beer, which are commonly brewed goods. The cited registered mark is a typed drawing mark for the word "BONOBO'S."

The applicant's mark has similar appearance, sound, and meaning to the registered mark, especially as to the inherently distinctive portion of the applicant's mark, the term "bonobo." The examiner explained in the Office Actions that, in finding the parties' marks similar, emphasis was placed on the distinctive term "bonobo" in the applicant's

mark, as that term does more to create the overall commercial impression. Consumers are less likely to distinguish marks based on merely descriptive terms like “brew,” as it could apply to the goods, and marks, of many other entities. The Trademark Trial and Appeal Board has recognized that disclaimed matter is typically less significant or less dominant when comparing marks. *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

The term “bonobo” in the marks also deserves significant attention when comparing the marks because it is an arbitrary term in the context of the parties’ goods and services, meaning that it is inherently very distinctive. Whether or not consumers are aware that a bonobo is a type of primate very similar to common chimpanzees, the term is uncommon in daily use and uncommon on the Trademark Office Registry. At the time the Final Refusal was issued in the instant case, there was only one mark containing the term “bonobo” pending or registered with the USPTO, aside from the applicant and registrant’s marks.<sup>1</sup> Searching XSearch for \*BONOB\*[bi,ti] revealed only one application not owned by the applicant or registrant in this case. However, U.S. Registration No. 2996357 is for clothing goods in Class 25, which are very different from the goods in this case. The paucity of “bonobo” marks in front of the USPTO, reinforces the strong distinctiveness of the registrant’s mark.

Finally, because the term “bonobo” comes first in the applicant’s mark, it is more likely to strike consumers as the dominant portion of the applicant’s mark. The

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<sup>1</sup> The examiner notes that Application Serial No. 77372978, featuring the mark “BONOBOS” for Class 25 goods (“pants” and “belts”) was filed January 16, 2008, after the issuance of the Final Refusal in the instant case.

Trademark Trial and Appeal Board has held that the first word, prefix, or syllable in a mark is typically the dominant portion. *Presto Products v. Nice-Pak Products, Inc.*, 9 USPQ2d 1895 (TTAB 1988) (“[I]t is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered”).

For these reasons, the examiner rightfully places greater emphasis on the term “bonobo” in the applicant’s “BONOBO BREW” mark when comparing it with the registered mark “BONOBO’S.” While marks are compared in their entireties under a Section 2(d) analysis, one feature of a mark may be recognized as more significant in creating a commercial impression. Greater weight is given to that dominant feature in determining whether there is a likelihood of confusion. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985); TMEP §1207.01(b)(viii).

The term “bonobo” in the applicant’s mark is nearly identical to the registrant’s entire mark “BONOBO’S.” The only difference between the marks’ uses of these terms is the very insignificant presence of the possessive “S” in the registered mark. Consumers are likely to overlook this slight grammatical difference and focus on the strong overall similarities in sound, meaning, and appearance of the dominant terms in the marks.

Because the dominant terms in the applicant and registrant’s marks are nearly identical, the marks are very likely to confuse consumers that encounter the marks in the same channels of commerce as to the source of the underlying goods. Moreover, consumers familiar with the registered mark are likely to believe the applicant’s mark

merely adds the word “brew” to the registered mark to describe brewed goods. Federal Courts and the Trademark Trial and Appeal Board have held that the mere addition of a term to a registered mark does not obviate the similarity between the marks nor overcome a likelihood of confusion under Section 2(d). *In re Chatam International Inc.*, 380 F.3d 1340, 71 USPQ2d 1944 (Fed. Cir. 2004) (“GASPAR’S ALE and “JOSE GASPAR GOLD”); TMEP §1207.01(b)(iii).

The applicant makes several arguments contesting the similarity of the marks, but the arguments are not persuasive. “BONOBO BREW” is confusingly similar to “BONOBO’S.”

First, the applicant counts the syllables in the two marks to demonstrate minute differences in sounds between the two. This line of argument is not persuasive because the marks create significantly similar overall impressions. The test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison. The question is whether the marks create the same overall impression. *Recot, Inc. v. M.C. Becton*, 214 F.2d 1322, 54 USPQ2d 1894, 1890 (Fed. Cir. 2000). The focus is on the recollection of the average purchaser who normally retains a general rather than specific impression of trademarks. *Chemetron Corp. v. Morris Coupling & Clamp Co.*, 203 USPQ 537 (TTAB 1979); TMEP §1207.01(b).

Consumers would not subject the marks at issue to the degree of scrutiny employed by the applicant, but would rather form the same general impression of the marks

deriving from their common feature “bonobo.” Furthermore, the nearly identical use of this term in the marks does not differ in syllables. Finally, as explained above, the use of possessive grammar similarly fails to sufficiently distinguish the marks, which are dominated by such uncommon, inherently distinctive terms. Only in a market flooded with the use of “bonobo” would consumers likely parse marks so closely.

As the examiner has also explained, the presence of “brew” in the applicant’s mark does not sufficiently alter the commercial impression of that mark given the distinctiveness of the term “bonobo.” The examiner does not wholly disregard the term “brew” in evaluating the overall impression, but has explained why the term would not serve a dominant role in creating the impression. The term “brew” is descriptive and could apply to both parties’ goods, appears second in the applicant’s mark, and would likely be seen by consumers as a mere addition to the registered mark. For these reasons, the slight syllabic changes created by the presence of “brew” in the applicant’s mark are downplayed in comparing the overall impressions of the parties’ marks.

The applicant next argues that the registrant’s mark is merely descriptive and not deserving of wide protection. The applicant thus seeks to collaterally attack the registered mark without following the formal procedure afforded under the Office’s Cancellation procedures. This is improper. Section 7(b) of the Trademark Act, 15 U.S.C. §1057(b), provides that a certificate of registration on the Principal Register shall be *prima facie* evidence of the validity of the registration, of the registrant’s ownership of the mark and of the registrant’s exclusive right to use the mark in commerce in

connection with the goods or services specified in the certificate. During *ex parte* prosecution, an applicant will not be heard on matters that constitute a collateral attack on the cited registration such as a registrant's nonuse of the mark. See *In re Dixie Restaurants*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997); TMEP §1207.01(d)(iv).

For these reasons, it is very unlikely that consumers would be able to distinguish between the applicant and registrant's marks when used for related goods and services.

#### Relatedness of the Parties' Goods/Services

The applicant's goods are identified as "coffee" in Class 30 and "beer" in Class 32. The registrant provides various natural and processed foods in Classes 29, 30, and 31, and provides restaurant services in Class 43. The parties' goods and services serve related purposes and likely appear in the same channels of commerce such that consumers are likely to encounter the parties' separate marks in the same contexts. The examiner previously attached Internet evidence showing the goods and services provided by the prior registrant and their trademark.

The parties' products serve the same general human needs for nourishment and human desire for culinary enjoyment. For these reasons alone the parties' goods could be expected to appear in the same market channels of grocery stores and restaurants, and appeal to the same consumers. However, the parties' products are also related by the fact that the applicant's goods are within the reasonable field of expansion typically accorded registrants. The Trademark Trial and Appeal Board has held that any goods or services

in the registrant's normal fields of expansion must also be considered in order to determine whether the registrant's goods or services are related to the applicant's identified goods or services for purposes of analysis under Section 2(d). *In re General Motors Corp.*, 196 USPQ 574 (TTAB 1977). The test is whether purchasers would believe the product or service is within the registrant's logical zone of expansion. *CPG Prods. Corp. v. Perceptual Play, Inc.*, 221 USPQ 88 (TTAB 1983); TMEP §1207.01(a)(v).

In this case, the registrant produces a wide variety of foods and operates restaurants. Consumers would expect that an entity providing whole lines of foods could easily expand their product lines to include additional foods or beverages. The registrant's goods appear to focus on natural and organic ingredients, and the registrant could extend this product philosophy to beverages like coffee and beer as well. By affording the registrant a logical zone of expansion, the relationship between the registrant and applicant's goods becomes clearer.

The evidence also demonstrates that the registrant's restaurants serve beverages, which could include coffee or beer. Even if beverages are not specifically identified in the cited registration, consumers are likely to expect restaurants like the registrant's to serve beverages, including coffee and beer, other brewed drinks like tea, or other such products akin to the applicant's goods. Consumers' common experiences bear this out,

as do the common commercial usages of the terms in the identifications.<sup>2</sup> “Restaurant” is commonly defined to include the service of “drinks,” “beverages,” or “refreshments” along with food. “Beer” and “coffee” are often defined as “beverages” or “drinks.” Given that the scope of the term “restaurant” includes beverages, it is reasonable that the registrant serves, or could come to serve, beverages like the applicant’s coffee and beer in its course of business. Therefore, the registrant’s restaurant services, like its goods, are also related to the applicant’s goods. Food products and food-related services have been considered related goods and services under Section 2(d). *In re Opus One Inc.*, 60 USPQ2d 1812 (TTAB 2001) (likelihood of confusion between OPUS ONE for restaurant services and the identical mark for wine).

For these reasons, consumers familiar with the registrant’s goods and restaurants would not likely be surprised to find brewed beverages such as beer and coffee appearing on the market and bearing the registrant’s mark. Such products would be described accurately as “BONOBO’S” brews. This case presents nearly this exact scenario, except that the applicant’s mark and products would occupy the reasonable place of the registrant’s should the applicant be allowed registration. In this way, this case presents a clear concern of reverse confusion, especially among consumers having difficulty distinguishing the similar marks or those altogether unfamiliar with the registrant’s goods and services.

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<sup>2</sup> The examining attorney respectfully requests the TTAB take judicial notice of the attached dictionary definitions of the terms in the applicant and registrant’s identifications. *See, e.g., In re Deutsche Airbus*, 224 USPQ 611 (TTAB 1984).

To illustrate, one can imagine consumers that first become familiar with the applicant's beer and coffee goods, and, for whatever reason, develop a low opinion of those products. These consumers would presumably avoid the registrant's food products that bear very similar marks, as the consumers would likely assume that the registrant's foods originate from the same source in the applicant and expect them to be similarly disappointing. This would be a case of reverse confusion, where the junior user applicant could be mistaken as the source of the registrant's goods and services. The applicant's arguments concerning the discrimination exercised by the registrant's clientele would not apply in cases of reverse confusion. The Trademark Act not only guards against the misimpression that the senior user is the source of the junior user's goods or services, but it also protects against "reverse confusion," that is, that the junior user is the source of the senior user's goods or services. *In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993).

The applicant disputes the relatedness of the registrant's goods and services to its own goods. First, the applicant amended its identifications to eliminate goods more closely related to the registrant's goods and services. Second, the applicant also makes several arguments to contest the relatedness of the goods and services in this case. However, none of the applicant's arguments eliminates the concern that consumers will encounter the parties' goods and services, bearing the similar marks, in the same channels of commerce for related products. Therefore, the arguments do not obviate the likelihood of confusion.

The applicant argues that its coffee and beer beverages are not closely related to the registrant's foods. *Applicant's Appeal* at 2. The applicant cites case law in support of the position that food and beverages are not necessarily closely related simply because they may be consumed. While this is true, it is not dispositive in this case for two key reasons. First, the registrant also uses its mark for restaurant services, which are broader and encompass both foods and beverages. Both beer and coffee are commonly served in restaurants. This fact undercuts the relevance of the referenced case law because the relatedness inquiry here concerns more than simply the pure relationship between beverages and foods. Second, there is a close relationship between the parties' goods and services because the applicant's beverages are within a reasonable range of expansion of the registrant's products. To contrast, the case of *In re Mars* cited by the applicant concerned fresh citrus fruits and candy bars. 741 F.2d 395, 396 (Fed. Cir. 1984). Those two types of foods are much farther apart than the goods in this case, in part because they are less likely to occupy the other party's reasonable realm of expansion. Natural fruits are far different than junk food and candy. It is also highly relevant that the record in that *ex parte* case lacked evidence of relatedness in support of likely confusion. *Id.* at 396.

The applicant also argues that its beer is not closely related to non-alcoholic beverages, let alone foods. *Applicant's Appeal* at 2. The applicant cites *Swedish Beer Export Co. Aktiebolag v. Canada Dry Corp.*, 469 F.2d 1096 (C.C.P.A. 1972), to argue that since confusion was not found in that case, where both parties' goods were beverages, confusion should not be found here where the registration does not mention beverages. *Applicant's Appeal* at 2. This line of argument is not persuasive because the

facts of that case and this one differ regarding the goods at issue. The applicant produces coffee in addition to beer, and coffee is not an alcoholic drink. Coffee is more closely related to foods, soft drinks, and restaurant services generally. Coffee could be very much within the reasonable zone of expansion afforded the registrant. As explained above, the registrant's restaurant serves beverages, and could choose to produce its own natural or organic coffee under its mark. The relevance of the *Swedish Beer* case further diminished because that case included evidence of a consent agreement suggesting that confusion was not likely.

The applicant argues that food and beverage goods are generally found to be related only if they are known to be "complementary," giving the example of wine and cheese. *Applicant's Appeal* at 3. This argument is not persuasive either. The registrant's restaurants offer both food and beverages and could serve coffee or beer. These facts demonstrate that the registrant's services are related to or encompass the applicant's goods.

The applicant argues that the examiner has not met the Trademark Office's burden of demonstrating sufficient relationship between the registrant's restaurant services and the applicant's goods, saying that "something more" is required beyond the mere possibility that the registrant could provide the applicant's type of goods at its restaurants. *Applicant's Appeal* at 3. This argument is not particularly relevant in this case. The registrant produces goods beyond simply providing restaurant services. This fact affords the registrant the opportunity to expand its products into related fields. At the same time,

the presence of goods in the registration causes the relatedness analysis in this case to concern more than merely the applicant's goods and the services provided by the registrant. Finally, the fact that the registrant's restaurants provide brewed beverages establishes the "something more" requirement to which the applicant refers. As the applicant notes, "'something more' than a mere conflict between a use on food and a use on restaurant services is needed, *such as use on a food product of the type likely to be marketed by a restaurant.*" *Id.* [Emphasis added.] This case presents the "something more" in two ways. The registrant also produces goods, and those goods are related to the applicant's. And the applicant's coffee and beer are goods *of the type likely to be marketed by the registrant's restaurants.*

The applicant cites *In re Coors Brewing Co.*, 343 F.3d 1340 (Fed. Cir. 2003), for the proposition that "something more" is required to find restaurant services related to beer. The facts of that case do not sufficiently match those presented here. First, the applicant also provides coffee. Coffee is often sold in all classes of restaurants, and often without clear branding (e.g., "house coffee"), as opposed to beer, which is typically branded no matter where it is sold. Therefore, the fact that the applicant also seeks registration for coffee means it is much more likely to create source confusion in the marketplace, where common practice for coffee leaves consumers ignorant of brand or underlying source.

Second, the facts of *In re Coors* are different from this case because the registrant from that case, owner of U.S. Registration Nos. 1770568 and 2695837, does not produce its own house label food or beverage goods, as the registrant does in this case. The

difference here is that the cited registrant already produces goods under a house label, and is therefore entitled to reasonable expansion for goods related to its identified goods or of the type it would serve in its restaurants. The court in *In re Coors* evaluated what percentage of restaurants were also brew houses in order to determine whether the prior registrant in that case would be likely to or expected to market its own house label beer. *Id.* at 1346. Here, the issue is the rather simpler one of whether it is likely that the registrant would reasonably expand its existing house label for goods to coffee or beer goods.

The applicant argues that coffee and beer are not in the normal fields of expansion that could be accorded to the registrant. *Applicant's Appeal* at 4. In support of this, the applicant draws on the registrant's website in characterizing the registrant's restaurant and fare. However, the applicant hyperbolizes in saying that the registrant "sells only raw food." The evidence supports no such broad claim or the notion that coffee or beer would lie outside the scope of the registrant's mission philosophy. Only the bonobo diet, the inspiration for the registrant's philosophy, is completely raw, according to the registrant's website. While the registrant calls its fare "eco-friendly", some of its menu options are heated or treated, but with limitations, and are certainly not entirely raw.

For example, the registrant sells chai and tea through the restaurant that is heated and brewed, but using only warm rather than hot brewing. Chai and tea are similar to coffee because they also often contain caffeine and are brewed and served warm as beverages. The applicant also describes the process of making beer to support its argument, but the

applicant's own statements and evidence do not demonstrate that the applicant's goods would lie beyond the registrant's cooking practices. As the applicant notes, the registrant's website notes that its foods and beverages are not subjected to very hot temperatures (118°F in the case of soup). But, as the applicant also notes, beer can be prepared within this temperature range, especially if the registrant did so without pasteurizing the beer.

Taken together, these points indicate there is a good possibility that the registrant may market beverages under its mark. The evidence shows that it would be a common practice for the registrant to do so, especially where the registrant has a foothold across several classes of goods in furtherance of its clear market vision of providing natural and organic foods. In other words, the registrant's natural and organic focus makes it more likely that it would expand their goods to all of the kinds of foods and beverages served in their restaurant. Such an expansion supports the registrant's presumed profit motive because it would be selling only its own goods, rather than those of other entities. At the same time, expanding would provide control and allow the registrant to be confident that all restaurant fare meets their business philosophy. If the registrant made the reasonable attempt to include beverages among its products, coffee or beer would be ideal products, as these are commonly served in restaurants.

The applicant next argues that because of the natural focus of the registrant's business, the relevant consumers are discriminating. *Applicant's Appeal* at 5. The examiner is not persuaded that the culinary discrimination exercised by the registrant's

customers sufficiently eliminates the likelihood of confusion. First, the fact that purchasers are sophisticated or knowledgeable in a particular field does not necessarily mean that they are sophisticated or knowledgeable in the field of trademarks or immune from source confusion. *See In re Decombe*, 9 USPQ2d 1812 (TTAB 1988); TMEP §1207.01(d)(vii). In this case, there may even be a special sensitivity among the registrant's consumers that would require heightened care to avoid confusion. Many consumers may seek out the registrant precisely because they have special dietary needs that are served only by natural, organic, or vegetarian foods like the kind provided by the registrant. If these consumers were to encounter the applicant's goods in everyday stores, they could still be mistaken as to the source of goods bearing a very similar mark to the registrant's and potentially suffer great harm if the applicant's products do not meet those dietary needs. As the case law cited above suggests, just because these consumers pay careful attention to the nature of the registrant's foods, this care does not necessarily extend to attention to trademark use. The opposite could just as easily be true in that special consumers could place even greater reliance on their familiarity with the registrant's "BONOBO'S" mark and be confused by the applicant's mark.

The applicant's arguments concerning consumer sophistication are also unpersuasive because the relevant consumer is more than merely the current patrons of the registrant's business. Because the products in this case are foods, every person is a potential consumer.

For the foregoing reasons, the examiner maintains that the applicant's beer and coffee are related to the registrant's foods and restaurant services. Both parties' goods are likely to appear in the same channels of commerce, such as grocery stores and restaurants. The goods are also likely to be marketed in similar fashion and appeal to overlapping consumer bases because they serve related general purposes. Many entities produce foods from both the applicant's identification and from the registrant's identification. Finally, the applicant's goods are within the registrant's reasonable field of expansion.

#### Other Issues for Consideration

The applicant also argues that other "bonobo" marks exist on the Principal Register for food-related goods, citing Application Ser. No. 76647660. *Applicant's Appeal* at 7. The applicant is incorrect. First, the referenced application is dead, having been abandoned after publication but before registration, in December 2007. Second, the goods in the referenced application were not foods, like the applicant and registrant's goods. Rather, that application concerned the much less closely related "totes" used to transport mealtime accessories and protect children's clothing during mealtime. The lack of potential confusion between that application and the applicant's or registrant's presumably derives from the much starker differences in the underlying goods.

The applicant's arguments concerning other animal marks for foods that are pending or registered before the USPTO (*Applicant's Appeal* at 7) are not relevant in this case. The other referenced marks are nowhere near as similar to the "bonobo" marks at issue in this case.

Finally, the applicant claims its mark is an outgrowth of its trade name “Bonobo Conservation Initiative,” which has been used since 1998. *Applicant’s Appeal* at 8. The examiner is not persuaded by this argument. First, the applicant is identified as Sally J. Coxe, an individual, not Bonobo Conservation Initiative, a not-for-profit corporation. Second, the services associated with the Bonobo Conservation Initiative have nothing to do with food or restaurant services. The examiner does not understand how such alleged use undermines the cited registration.

#### Conclusion

The applicant’s mark, “BONOBO BREW,” creates a very similar commercial impression to the cited registered mark, “BONOBO’S.” The applicant produces beverage goods that are closely related to the registrant’s foods and restaurant services. Consumers are likely to encounter the parties’ goods and services in the same channels of commerce, bearing confusingly similar marks. Consumers are further likely to confuse the underlying sources of such similar marks when used on related goods and services. The examiner refuses registration to prevent such source confusion.

#### SUMMARY

For the foregoing reasons, the examiner respectfully requests that the Board uphold the refusal based on the likelihood that the applicant’s mark, when used on the goods identified in its application, will cause confusion with the mark in U.S. Registration No. 3000676.

Respectfully submitted,

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