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Sent: 10/26/2015 2:28:14 PM

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Subject: U.S. TRADEMARK APPLICATION NO. 78898558 - CAMPARI - MAS-22419/08 - Request for
Reconsideration Denied - Return to TTAB - Message 1 of 4

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ev1-01.jpg, ev1-02.jpg, ev1-03.jpg, ev1-04.jpg, ev1-05.jpg, 78898558.doc

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

U.S. APPLICATION SERIAL NO. 78898558

MARK: CAMPARI



CORRESPONDENT ADDRESS:

Mark D. Schneider

Gifford Krass Sprinkle Citkowski

2701 Troy Center Drive, Suite 330

Troy MI 48084

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/trademarks/index.jsp>

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APPLICANT: Mastronardi Produce Ltd.

CORRESPONDENT'S REFERENCE/DOCKET NO:

MAS-22419/08

CORRESPONDENT E-MAIL ADDRESS:

docket@patlaw.com

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 10/26/2015

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. §2.63(b)(3); TMEP §§715.03(a)(ii)(B), 715.04(a). The following refusal made final in the Office action dated March 25, 2015 is maintained and continues to be final: the Section 2(e)(1) refusal to register. See TMEP §§715.03(a)(ii)(B), 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 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.

The applicant should note that registration was not refused under Sections 1, 2 and 45 of the Trademark Act on the grounds that CAMPARI is a varietal name for tomatoes. Rather, registration was refused under Section 2(e)(1) because CAMPARI is merely descriptive of a feature of the applicant's salsa, hot sauce and picante sauce, because it immediately describes a feature or characteristic of the goods, namely, the variety or type of tomatoes featured in the salsa, hot sauce and picante sauce as a principal ingredient thereof. Thus, the evidentiary requirements relating to a varietal name refusal are not wholly relevant in this case. The examining attorney has submitted abundant evidence showing that CAMPARI is the name of a variety or type of tomato, including evidence about the applicant's salsa, showing that the salsa features this particular type of tomato.

If applicant has already filed a timely notice of appeal with the Trademark Trial and Appeal Board, the Board will be notified to resume the appeal. *See* TMEP §715.04(a).

If no appeal has been filed and time remains in the six-month response period to the final Office action, applicant has the remainder of the response period to (1) comply with and/or overcome any outstanding final requirement(s) and/or refusal(s), and/or (2) file a notice of appeal to the Board. TMEP §715.03(a)(ii)(B); *see* 37 C.F.R. §2.63(b)(1)-(3). The filing of a request for reconsideration does not stay or extend the time for filing an appeal. 37 C.F.R. §2.63(b)(3); *see* TMEP §§715.03, 715.03(a)(ii)(B), (c).

/Patty Evanko/

U.S. Patent and Trademark Office

Law Office 119

(571) 272-9404

patty.evanko@uspto.gov (informal questions only)

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TOMATOES

Legal battle intensifies over Campari tomato

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By **Ashley Bentley** May 17, 2011 | 11:35 pm EDT

COMMENTS

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(Oct. 31, 2:12 p.m.) A little tomato is causing a big stir in the greenhouse industry.

Despite recent claims by Mastronardi Produce Ltd., Kingsville, Ontario, that it has signed a long-term deal as exclusive North American grower and marketer of Campari cocktail tomatoes, the other marketers of the tomato, Eurofresh Farms, Willcox, Ariz., and Village Farms LP, Eatontown, N.J., plan to continue to carry the variety.

In early September, Mastronardi announced the exclusive agreement with the Dutch seed company that developed the campari seed in the mid-1990s, Enza Zaden.



TRENDING

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Mastronardi

Written by Food and Beverage Canada Staff Writer



While other companies simply respond to trends, Ontario-based Mastronardi Produce Ltd. is setting them. Executive Vice President Paul Mastronardi says the greenhouse company is a leader in the industry and takes a proactive approach to new products and packaging.

Founded more than 50 years ago by the Mastronardi family, the company today is one of the largest greenhouse companies in North America, specializing in a variety of tomatoes, cucumbers and peppers.

"We're known for setting a lot of trends," Mastronardi says. "In the last few years, we've refocused on the flavor of fruits and vegetables, rather than the size. In the past, people wanted the biggest tomato, for example. But that view is changing. We have developed products with a greater flavor profile."

He points to Mastronardi Produce's Campari tomato. Although the company marketed this tomato about 10 years ago, it has grown in popularity in the last three years. The Campari tomato is about the size of a golf ball, "and is very sweet, but has an excellent acid balance," Mastronardi explains. "It's the perfect ratio of sugar to acid."

The company receives about 1,000 e-mails each year from customers requesting the Campari tomato. "They say it's one of the best-tasting tomatoes they've ever had," Mastronardi continues. "It reminds them of the tomatoes in Europe, and it has been incredibly successful."

Because of the Campari's popularity, Mastronardi Produce has created spin-off products, such as Campari salsa, which is branded under the Sunset label. Launched in July, Campari salsa "has

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...vegetables business, ...market ... Mastronardi notes.

SPREADING THE WORD

To further promote the Campari tomato, Mastronardi Produce has joined with two other North American growers and shippers to market the product.

According to a June 2005 statement, Mastronardi Produce, BC Hothouse and Eurofresh Farms constitute the Campari Marketing Group. The three companies represent all the Campari tomato production in North America, which exceeds 50 million pounds annually.

To spread awareness of the Campari tomato, the Campari Marketing Group will initiate a set of activities to educate consumers about Campari's taste and uses. The group will also conduct tests to create a set of "best practices" for retailers about what set of store conditions is most effective to sell Campari, such as promotional activity and how to merchandise Campari within the overall tomato category.

According to the statement, national scan data shows sales of Campari tomatoes were up 6.6 percent in total pounds the first four months of 2005 compared to the same time period in 2004. Camparis have seen growth in dollars as well, up 20.7 percent in 2005 vs. the first four months of 2004.

Campari's growth is outpacing the total tomato category, which was up 1.0 percent in pounds and 6 percent in dollars the first four months of 2005 compared to 2004.

DOWNIZING

In addition to the Campari tomato, Mastronardi Produce has introduced a variety of new products to the market.

"Another big trend is miniature vegetables," Mastronardi says. "To approach that, we've launched a line of miniature tomatoes, peppers and cucumbers, which come in various-sized packages."

Splendid is Mastronardi Produce's answer to the field grape tomato. As the first commercial greenhouse grape tomato, the Splendid has the highest brix score available of any commercial grape tomato, Mastronardi says.

Brix is a measure of sugar, he explains, and Splendid ranks a 9 or 10 on the scale, "well above what a typical field grape scores."

Splendid was launched about three years ago and is matching the success of the Campari tomato.

Mastronardi Produce has created a tomato product geared to the younger generation.

Called Tomato Bites, Mastronardi Produce packages the Splendid tomato in a convenient 5-ounce package, so children can take the tomatoes to school in their lunch. A cartoon tomato is part of the package design to add greater appeal to a younger audience.

"We're trying to steer the younger generation away from snacks like chips and candy, and more toward healthier fruits and vegetables," Mastronardi says. "The labels and packaging on Tomato Bites makes eating fruits and vegetables appealing to consumers."

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In addition to Tomato Bites, Mastronardi Produce also offers Cucumber Bites, which are also packaged in a travel-size container with a cartoon character on the label. "Mini products are an emerging niche, not just with the younger crowd, but also with adults," Mastronardi says. "Many other greenhouse businesses that grow other vegetables are rolling out miniature fruits and vegetables."

Mastronardi Produce grows more than 50 varieties of tomatoes, cucumbers and peppers, and is always looking for "the next best product," Mastronardi says. "We have branched out into other vegetables, such as eggplant and lettuce. We may also begin growing strawberries in the future. We are an R&D leader in North America."

REFINED TASTES

For a more sophisticated palate, Mastronardi Produce has developed an heirloom tomato program that features a variety of tomatoes that have a lineage of more than 50 years.

There are four varieties of heirloom tomatoes:

- Commercial heirlooms – Open-pollinated varieties introduced before 1940
- Family heirlooms – Seeds that have been passed down for several generations through a family
- Created heirlooms – Crossing two known parents (either two heirlooms or an heirloom and a hybrid) and dehybridizing the resulting seeds for as long as necessary to eliminate the undesirable characteristics and stabilize the desired characteristics of the fruit
- Mystery heirlooms – Varieties that are a product of natural cross-pollination of other heirloom varieties

Mastronardi says heirloom tomatoes are used on TV cooking shows and in sophisticated recipes. Mastronardi Produce packaged its heirloom tomatoes in a ready-to-display box, which is an industry first, and sold out shortly after the product was introduced. "Because of the high demand, we're increasing our production of the heirloom tomato for this fall," he notes.

Heirloom tomatoes are so popular, they are celebrated at TomatoFest. Created by farmer and tomato-lover Gary Ibsen in 1990, TomatoFest is held annually in Carmel Valley, Calif. The Mastronardi Produce grows more than 50 varieties of tomatoes, cucumbers and peppers, and is always looking for "the next best product," Mastronardi says. "We have branched out into other vegetables, such as eggplant and lettuce. We may also begin growing strawberries in the future. We are an R&D leader in North America."

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The company says it has distinguished itself by applying its resources to address issues related to food safety and quality in the produce industry. Primus Labs provides a variety of services and technical expertise including pesticide residue testing, testing for microbiological organisms, providing third-party auditing of growing and handling operations for good agricultural practices or good manufacturing practices and development of data management systems designed to provide buyers and sellers an effective supply chain review of their entire safety and/or quality programs.

Mastronardi says the company is also in discussion in which it has the resources and

Mastronardi says the company is also an "innovator in packaging," which further promotes food safety measures. "Our boxes have traceable lot numbers and codes, so if a recall is necessary, we can trace back all the products," he explains. "We are also environmentally friendly. We've designed a new packaging that, instead of being made from petroleum, is made of a corn-based material. It's called PLA, and it's biodegradable. We call it a 'cornstainer,' and we're working on getting the trademark for it."

In addition, Mastronardi Produce belongs to the U.S. Department of Commerce International Trade Association and other international regulatory organizations, such as Blue Book and Red Book. Mastronardi Produce says it is recognized as a professional produce house.

INDUSTRY INSIGHTS

Mastronardi Produce sponsors educational programs to promote the benefits of healthy eating and the role fruits and vegetables play in a well-balanced diet. For example, the company provides local schools with mini tomatoes and cucumbers for snack time.

Additionally, Mastronardi Produce works with a program called Healthy Eating Active Living, or HEAL. Based in Canada, HEAL aims to mobilize businesses as a responsible partner for health and wellness in the marketplace, workplace and community. HEAL is a multi-sector, international initiative that provides opportunities for companies to promote good corporate health and wellness practices.

HEAL is supported by the International Business Leaders Forum (IBLF), an international non-profit organization supported by major global companies, as well as international health and development agencies. The IBLF promotes leadership in business social responsibility.

From efforts such as these, the consumption of fresh vegetables in North America has increased dramatically in the last decade, according to Mastronardi Produce. "As part of our quest to live longer, the national demand for greenhouse cucumbers and tomatoes has increased over 50 percent since 1989," the company notes. "This is a reflection of the taste, quality and value greenhouse producers deliver to their customers."

In response to consumer demand for high quality and year-round supplies, buyers continue to expand their supply base, Primus Labs says.

"Virtually any day of the year, the retailer is expected stock the 300 to 600 items typically displayed in their fresh produce departments," the company explains. "Over the past 10 years, foodservice has become much more aggressive in their efforts to deliver fresh fruits and vegetables."

"The expansion of fast-food restaurants' menus to include salads has had such a positive impact on their bottom lines that they are now entering a salad wars phase," it continues. "A foodservice firm's commitment to placing an item on a menu leaves less flexibility than the retailer's commitment to carry an item. The retailer can always reduce the shelf space and frequently adjust prices. Availability, freshness, quality and safety will be the market drivers for the produce industry."

BUSINESS RELATIONSHIPS

Part of Mastronardi Produce's success is related to the relationships it fosters with customers and various associations. The company has close relationships with all the major retailers in the United

among employees. The company has "deep relationships with all the major retailers in the United States, many of which have gone back for almost 50 years," Mastronardi says.

"We work with most of the major retailers east of the Mississippi," he notes. "We are very dominant on the East Coast, but have a lighter market penetration on the West Coast. Slowly, we are moving in that direction, though."

The company maintains its reach across North America through distribution facilities in Ontario, Michigan, Florida and Illinois.

This fall, Mastronardi says, the company will open a facility in Texas and a West Coast facility is planned for next year.

Mastronardi Produce is run by the third- and fourth-generation family members. Mastronardi says the company maintains close relationships with all employees within the company.

"I think that because we are open, we have much less bureaucracy than a public company," he explains. "Less bureaucracy also allows us to be agile for our customers. A lot of competitors can't respond as quickly because they are restricted by their corporate structure. We have quick turnaround time on our products and to meet customer demands. We're not held down by red tape."

Mastronardi says the company will continue moving west in the United States, as well as expand globally.

"We're looking at Europe and possibly Asia," he says. "We intend on providing the same quality of products and services abroad that we provide here."

"We are also expanding into prepared foods, such as salads," he continues. "Our food company may introduce a line of pants made with our tomatoes and other products along that line. We may even put our grandmother's mathalls out there."

"I would also like to add that we have started an organic greenhouse program and have started it first with our tomatoes and will start incorporating into our other products," Mastronardi continues. "I personally feel that you currently can't get any better than combining greenhouse and organic. I would also like to include a special thanks to all our loyal and hard working employees that help make Mastronardi Produce a visionary company."

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Healing Tomato

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5 TOMATO SALSA RECIPE

December 18, 2013 By Healing Tomato 0 Comments



I LOVE FOOD! I love cooking food, eating food and sharing a good meal with friends

and family. My recipes range from the heart smart meals, to the indulgently delicious and prepared from fresh



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Waiting is the biggest task of any day, for me. Every day, there happens to be a task that will require tons of waiting.

Some days, I am waiting for the mailman. Some days, I am waiting for the UPS or FedEx delivery to bring me my highly anticipated package.

There is always the ubiquitous waiting in lines. There is waiting in lines at the grocery store, at department stores, at the mall, at big retail stores (Target and Wal-Mart are the biggest line waiting retail stores) and waiting in line to buy the **Powerball** ticket.

Then, there is waiting for the Powerball numbers to be drawn, only to find that the ticket I am holding is not the winning ticket.

So, back to waiting I go!

Now, there is waiting for the carpet cleaners to come by to clean the carpets. There is the continued waiting for them because they are running late. When they get here, I have to wait for them to finish steaming the carpets in all the rooms which only takes ten minutes.

So, I waited 3 hours for them to come by and do a ten-minute job....

Of course, there is a wait for the carpet to dry....



Healing Tomato - A Vegeta...



When it comes to waiting, though, there is no bigger offender than the cable guy!

The cable company is "nice" enough to give me a four hour window for me to wait around for them. They are generous enough to come by later in the evening so as to accommodate my work schedule. So, I wait four hours and the cable guy shows up at the start of the final minute of their generous four hour window!



Swap! It takes him seven minutes to swap out the cable modem, I sign the paper and swoosh!

He is gone.



A screenshot of a Facebook post from the page "Healing Tomato". The post is titled "Sweet Potato Soup Recipe for #SundaySupper" and is dated "Yesterday at 7:32am". The text of the post describes the soup as hearty, delicious, and healthy, listing ingredients like apples, almond milk, hazelnut, and turnips. The post includes a "Like Page" button and a "Sign Up" button.



Yes, I was waiting for four hours for the cable man's to come by and finish his task in seven minutes!

Four hours and six minutes of waiting so that I can get online and post this blog entry.

Yes, I know that this deserves the infamous twitter hashtag of [#FirstWorldProblems](#).



I am grateful for all the waiting I have to do, because, I love my life.

Sometimes, though, all the waiting can be beneficial. I thought up this Salsa recipe (and other recipes) somewhere between all that waiting. It could have been while I was waiting in the cashier line at Walmart or while I was waiting to buy the lottery ticket.

Don't worry, I was also dreaming about what I would do with all the money that I would win from the Powerball lottery.

I think I would use the money to help outlaw waiting of any kind. In any country!

Bringing myself back to earth, let me tell you about this Salsa. There are five DIFFERENT types of tomatoes in this salsa. It includes the Roma tomato, Campari tomato, yellow tomato, tomatillo and the yellow grape cherry tomato.