

Attorney Ref. No. 27471.008

TRADEMARK LAW OFFICE 101
Serial No. 78/934,642
Mark: CARMINE'S (Stylized)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Application of :
Carmine's Broadway Feast Inc. :
Serial No. 78/934,642 :
Filed: July 21, 2006 :
For Mark: CARMINE'S (stylized) :
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**RESPONSE TO FINAL OFFICE
ACTION DATED OCTOBER 3, 2008**

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

Attention: Benji Paradowelai, Trademark Attorney, Law Office 101

This is a response to the FINAL Office Action dated October 3, 2008 in connection with the above-identified service mark application.

04-06-2009

U.S. Patent & TMO/TM Mail Rpt. Qt. #72

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as First Class Mail in an envelope addressed to Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451 on April 3, 2009 Phyllis Buchalter
(Date of Deposit) (Print name)
(Signature) Phyllis Buchalter

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REMARKS

The Examining Attorney has withdrawn the likelihood of confusion citation regarding Registration No. 2,403,390 for the mark CARMINE CALZONE & Design. However, she has maintained the refusal to register Applicant's mark, CARMINE'S (stylized), on the ground of likelihood of confusion with two registered marks, namely, (a) CARMINE'S (stylized), Registration No. 1,444,609, for restaurant services, owned by Carmine's Family Restaurant; and (b) CARMINE'S RESTAURANT & Design, Registration No. 2,864,349, for restaurant services, owned by Calgin, Inc (collectively "Cited Marks").

Applicant respectfully requests the Examining Attorney to reconsider her refusal. Applicant reiterates that any likelihood of confusion is obviated owing to the differences between its mark and the Cited Marks. These differences are especially relevant in a case like this where Carmine/Carmine's is part of registrations owned by different parties for the same/identical services, including the Cited Marks. The fact that all of these marks coexist demonstrates that slight differences between marks that incorporate Carmine/Carmine's are sufficient to distinguish them.

Here, Applicant is seeking to register CARMINE'S in the particular stylization shown below.



By contrast, the Cited Marks are as follows:



Clearly, Applicant's Mark the Cited Marks must be considered to be more than merely the word CARMINE/CARMINE'S. *In re Electrolyte Laboratories, Inc.*, 16 U.S.P.Q.2d 1239, 1240 (Fed. Cir. 1990) (stylized marks are different from word marks because they "partake of both visual and oral indicia."). Thus, the Examining Attorney cannot ignore the differences in the stylizations of Applicant's Mark and the Cited Marks in making a determination of likelihood of confusion, especially because of the coexistence of

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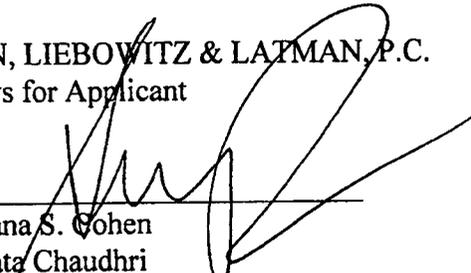
the Cited Marks as well as the mark in Registration No. 2,403,390 for the mark CARMINE CALZONE & Design. Given the apparent differences between Applicant's Mark and the Cited Marks, there is no likelihood of confusion in this case.

CONCLUSION

Based on the foregoing amendment and remarks, Applicant believes that it has satisfied all of the Examining Attorney's requirements. Accordingly, Applicant requests that Applicant's application for the instant mark be passed to publication.

Dated: April 3, 2009
New York, New York

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