

## Request for Reconsideration after Final Action

**The table below presents the data as entered.**

Input Field	Entered
<b>SERIAL NUMBER</b>	85742823
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 115
<b>MARK SECTION</b>	
<b>MARK</b>	http://tmng-al.uspto.gov/resting2/api/img/85742823/large
<b>LITERAL ELEMENT</b>	SNAKE FRUIT
<b>STANDARD CHARACTERS</b>	YES
<b>USPTO-GENERATED IMAGE</b>	YES
<b>MARK STATEMENT</b>	The mark consists of standard characters, without claim to any particular font style, size or color.
<b>ARGUMENT(S)</b>	
Please see the attached Response contained within the Evidence section of the response.	
<b>EVIDENCE SECTION</b>	
<b>EVIDENCE FILE NAME(S)</b>	
<b>ORIGINAL PDF FILE</b>	<a href="#">evi_38104121250-20150911172729807640_.SnakeFruit091115.pdf</a>
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<b>ORIGINAL PDF FILE</b>	<a href="#">evi_38104121250-20150911172729807640_.SnakeFruitExhibit.pdf</a>
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<b>DESCRIPTION OF EVIDENCE FILE</b>	Evidence 1 is Applicant's Response to the Final Office Action presenting arguments in regard to the various rejections. Evidence 2 is identified as Exhibit 1 in Applicant's Response which describes Salak.
<b>SIGNATURE SECTION</b>	
<b>RESPONSE SIGNATURE</b>	/Michael A. Miller/
<b>SIGNATORY'S NAME</b>	Michael A. Miller
<b>SIGNATORY'S POSITION</b>	Attorney of record, PA bar member
<b>SIGNATORY'S PHONE NUMBER</b>	412-454-5000
<b>DATE SIGNED</b>	09/11/2015
<b>AUTHORIZED SIGNATORY</b>	YES
<b>CONCURRENT APPEAL NOTICE FILED</b>	YES
<b>FILING INFORMATION SECTION</b>	
<b>SUBMIT DATE</b>	Fri Sep 11 17:41:45 EDT 2015
<b>TEAS STAMP</b>	USPTO/RFR-38.104.121.250-20150911174145014840-85742823-5403d73c1e482c6f58cdf2ac9d347d9a2d5ff32c896d6ada2bb8113d0723850e9-N/A-N/A-20150911172729807640

**Request for Reconsideration after Final Action  
To the Commissioner for Trademarks:**

Application serial no. **85742823** SNAKE FRUIT(Standard Characters, see <http://tmng-al.uspto.gov/resting2/api/img/85742823/large>) has been amended as follows:

## **ARGUMENT(S)**

**In response to the substantive refusal(s), please note the following:**

Please see the attached Response contained within the Evidence section of the response.

## **EVIDENCE**

Evidence in the nature of Evidence 1 is Applicant's Response to the Final Office Action presenting arguments in regard to the various rejections. Evidence 2 is identified as Exhibit 1 in Applicant's Response which describes Salak. has been attached.

### **Original PDF file:**

[evi\\_38104121250-20150911172729807640\\_.SnakeFruit091115.pdf](#)

**Converted PDF file(s)** ( 4 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

### **Original PDF file:**

[evi\\_38104121250-20150911172729807640\\_.SnakeFruitExhibit.pdf](#)

**Converted PDF file(s)** ( 4 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

## **SIGNATURE(S)**

### **Request for Reconsideration Signature**

Signature: /Michael A. Miller/ Date: 09/11/2015

Signatory's Name: Michael A. Miller

Signatory's Position: Attorney of record, PA bar member

Signatory's Phone Number: 412-454-5000

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the owner's/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the owner/holder in this matter: (1) the owner/holder has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 85742823

Internet Transmission Date: Fri Sep 11 17:41:45 EDT 2015

TEAS Stamp: USPTO/RFR-38.104.121.250-201509111741450

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of  
Promera Health, LLC

For: SNAKE FRUIT

Serial No.: 85/742,823

Filed: October 1, 2012

Trademark Law Office 115  
(571) 270-1528

Examining Attorney:

Katherine Chang

**RESPONSE TO OFFICE ACTION**

**TO COMMISSIONER FOR TRADEMARKS:**

Promera Health, LLC (“Applicant”), by and through its undersigned counsel, hereby responds to the Office Action, emailed March 11, 2015, in the above-captioned trademark application.

**REMARKS**

The Examining Attorney has refused registration of the above-identified mark under Section 2(a) for allegedly containing deceptive matter in relation to the identified goods. Further, the Examining Attorney has refused registration of the instant mark for allegedly being deceptively misdescriptive under Section 2(e)(1). Applicant respectfully disagrees with the Examining Attorney’s position. Reconsideration of the Office Action dated March 11, 2015 is respectfully requested.

First, the Examining Attorney refused registration of the instant mark for allegedly being deceptive in association with the goods in Class 5 related to dietary supplements containing a citrus flavoring. For the reasons set forth below, the Applicant’s mark is not deceptive.

The Examining Attorney argues that the Applicant’s SNAKE FRUIT mark indicates that the goods associated therewith contain snake fruit, but the actual goods do not contain snake fruit. Further, the Examining Attorney argues that the alleged misdescription is likely to affect a consumer’s decision to purchase the goods. The test for determining whether a mark is deceptive includes the following inquiries: i) is the term misdescriptive of the character, quality,

function, composition or use of the goods; ii) if so, are prospective purchasers likely to believe that the misdescription actually describes the goods; and iii) if so, is the misdescription likely to affect a significant portion of the relevant consumers' decision to purchase? With regard to i) above, Applicants do not believe that the mark is misdescriptive of the goods. First, it is noted that the Class 5 goods description recites dietary supplements containing citrus flavoring. The mark SNAKE FRUIT, as used in connection with the goods, suggests a citrus flavoring related to dietary supplements. As noted in the attached Exhibit 1, snake fruit, commonly known as salak, is described as having hints of pineapple, citrus, honey and other flavors. *See* Exhibit 1. Thus, use of the mark SNAKE FRUIT would suggest to a consumer that the supplement contains a citrus flavoring resembling that of the salak fruit. Since the goods description refers to citrus flavoring, and salak is, in fact, described as having a citrus flavoring, the mark SNAKE FRUIT is not misdescriptive of the character, quality, function, composition, or use of the goods to which it relates.

Because the term SNAKE FRUIT is not misdescriptive, inquiry ii) is not necessary. However, the Applicants believe that prospective consumers would not be likely to believe that SNAKE FRUIT actually describes the goods. It is noted that "snake fruit" is a nickname for salak, which is a fruit common to southeast Asia. Although salak is readily found in southeast Asia and Australia, is not commonly found in the U.S. *See* Exhibit 1. Therefore, most consumers in the U.S. likely have never heard of salak or that it is sometimes referred to as snake fruit. Thus, prospective purchasers would not be likely to believe that SNAKE FRUIT actually describes the goods. Such purchasers are more likely to believe that SNAKE FRUIT is suggestive of the citrus flavoring recited in the goods description.

Further, Applicants do not believe that the SNAKE FRUIT mark is misdescriptive or that use of the mark would likely affect a significant portion of the relevant consumers' decision to purchase. The Examining Attorney's position is that salak contains beta-carotene, vitamin C, flavonoids, vitamin B, and other nutrients, and that a significant portion of the relevant consumers' decision to purchase the goods would be affected by use of the mark. Applicants respectfully disagree. As stated above, salak is not commonly available in the U.S. The evidence proffered by the Examining Attorney mostly concerns purchase or consumption of salak outside of the U.S. The undersigned performed multiple searches on the availability of salak in the U.S., but not such evidence was readily available. Therefore, it is quite clear that

salak is not a common fruit in the U.S., and a significant portion of the consumers in the U.S. would not be informed of the salak fruit, including its nickname “snake fruit.” Therefore, a significant portion of the relevant consumers’ decision would be affected by the mark. It is submitted that the significant portion of relevant consumers are those interested in bodybuilding supplements containing creatine HCl, and such consumers would not be affected by the use of SNAKE FRUIT in connection with such goods. Such consumers would be more concerned about the creatine HCl portion of the product than about the name of the flavoring. Thus, the SNAKE FRUIT mark would not affect a significant portion of the relevant consumers’ decision to purchase goods bearing said mark.

In view of the foregoing, the mark SNAKE FRUIT is not deceptive. Reconsideration and withdrawal of the refusal to register is hereby requested.

Second, the Examining Attorney has refused registration of the instant mark under Section 2(e)(1) as allegedly being deceptively misdescriptive. Applicants respectfully disagree. In order to establish that a mark is deceptively misdescriptive, the Examining Attorney must show that the mark is in fact misdescriptive as applied to the goods, and that the mark is deceptive, i.e., that anyone is likely to believe the misrepresentation. TMEP 1209.04. As argued above, Applicants do not believe the mark is misdescriptive as applied to the goods. The term snake fruit is a nickname for the salak fruit, which is only found in Southeast Asia with very little evidence of availability in the U.S. Further, salak is described as having a citrus-like taste. The instant goods description relates to dietary supplements containing a citrus flavoring. Therefore, the mark SNAKE FRUIT, as used in connection with the goods, describes a supplement with a citrus flavor. Thus, SNAKE FRUIT is suggestive of the flavor of the supplement. Even if the Examining Attorney takes the position that the mark is misdescriptive of the goods, such a determination does not bar registration unless the mark is deceptively misdescriptive, which it is not.

Further, persons who encounter the mark, as used in connection with the goods, are unlikely to believe the proposed misrepresentation that the products includes salak. As set forth above in the submission, the salak fruit is not readily available in the U.S.. Thus, U.S. consumers would not believe that a sports supplement having creatine HCl would also include salak, even if such consumers were aware of the existence of salak. Further, these same consumers would have to be aware of the nickname for the salak fruit, i.e., snake fruit. Such a

proposition is highly unlikely, and a vast majority of the consumers purchasing a sports supplement would be virtually unaware of both the existence of salak fruit and its “snake fruit” nickname. As such, Applicants believe that consumers would not perceive an alleged misrepresentation even if the instant mark is found to be misdescriptive, and that the instant mark is not deceptively misdescriptive. Withdrawal of the refusal under Section 2(e)(1) is respectfully requested.

**CONCLUSION**

This submission is believed to address the objections and informalities raised by the Examiner. From the record, the Office Action does not indicate that any prior registered or pending mark which would bar registration of the Applicant’s mark on the grounds of likelihood of confusion. In view of the foregoing remarks, it is respectfully submitted that the instant application be allowed.

Respectfully submitted,

/Michael A. Miller/

Michael A. Miller  
Registration No. 50,732

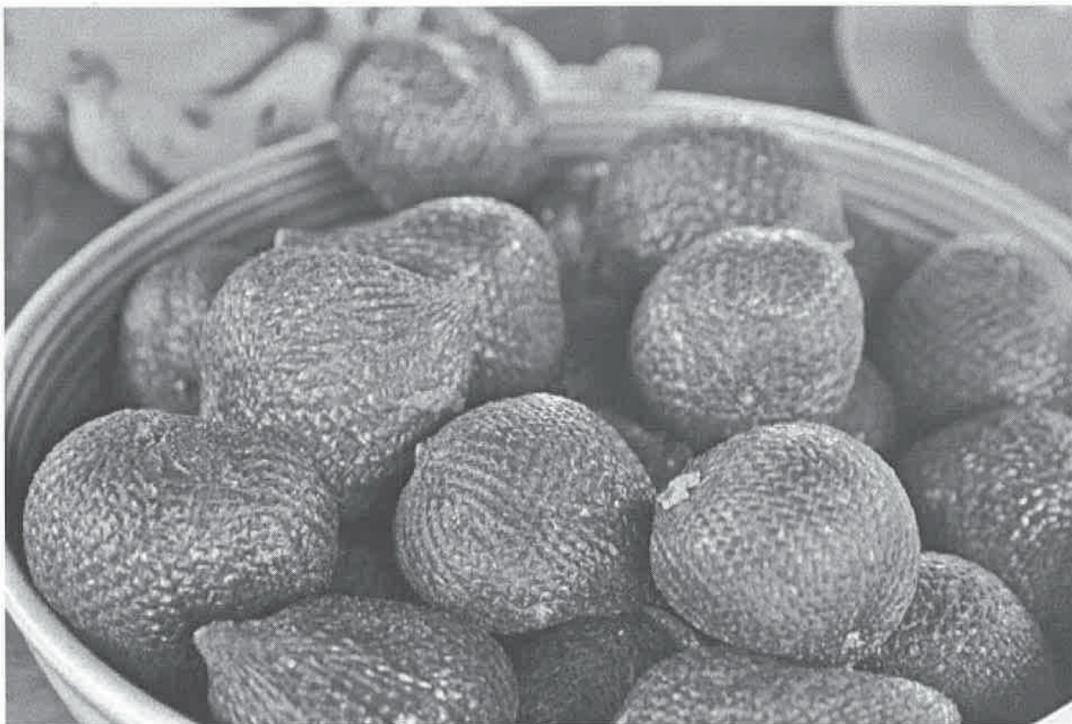
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Date: September 11, 2015

**Smithsonian.com**

## **Meet the Salak, the Ubiquitous Indonesian Fruit You've Never Heard Of**

**It may not be the biggest or brightest of southeast Asian fruits, but the snakefruit is the locals snack of choice**

By Rachel Nuwer  
smithsonian.com  
November 9, 2012



A bowl of gleaming snakefruit beckon tourists to indulge at a hotel in Bali. Photo by Rachel Nuwer

At a morning market in Bali, the usual gaudy suspects – papayas, mangos, dragon fruit and heaps of rancid-smelling durians - are on display. For Western visitors seeking culinary novelty, however, the most enticing fruit likely will not be the biggest or the brightest, but a humble, shiny brown offering called the salak. For the uninitiated, this fleshy, spongy morsel offers a perfumed cocktail of bright flavors, with hints of pineapple, citrus, honey and possibly even soap.

In Indonesia, salaks are as common as apples or oranges in the U.S. Also called snakefruit, this strawberry-sized, fig-shaped fruit comes encased in vivid, nutty-brown scales, not unlike that of a cobra or python. Heaps of salaks turn up daily at countless local markets, while touristy hotels offer them up in breakfast buffet lines as examples of typical island fare. The odd but ubiquitous morsels can be boiled with sugar into a sweet spread, pickled, vacuum dried and fried into chips or paired with other fruits and nuts, but locals prefer them best raw and straight off the tree.

At the daily market in Padang Bai, a sleepy backpacker haunt on Bali's southeastern coast, Tutu Aldi Wan, a friendly local who works as a chef at the Bloo Lagoon Ecotourism Village, gives a salak-eating tutorial soon after dawn. "Sorry, I just woke up," he yawns. "It was a big party last night." He leads us past the stalls of those less intriguing papayas and mangoes, stopping in front of a woman sitting amidst baskets brimming with salaks. Her name is Monsaro, she says, and she comes each day to the market to sell her salaks from a farm about three miles away.

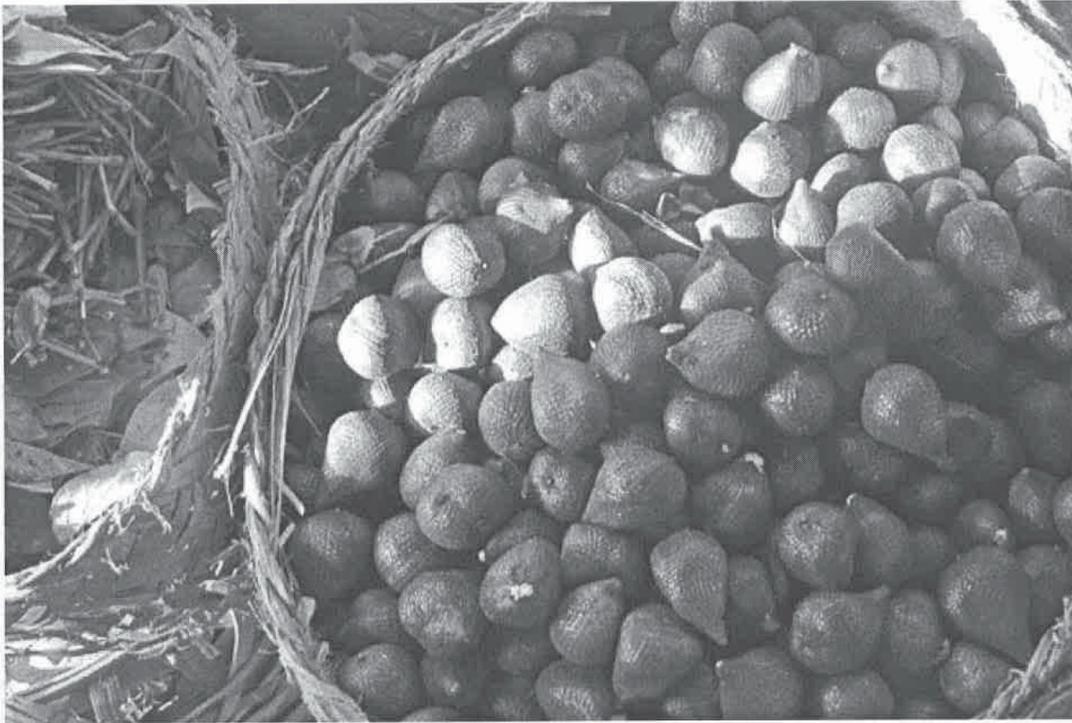


Monsaro, a Balinese salak vendor, waits for customers amidst her fruity fares. Photo by Rachel Nuwer.

"First you open the snake skin," he says, plucking up one of Monsaro's salaks and making quick work of its covering. Inside, lobes of garlic-like meaty fruit await. "Then, clean off the little skin," he instructs, indicating a thin, film-like coating encasing each segment of the yellowish white fruit, like that found on a boiled egg. "The white salaks are the best," he shrugs, handing us the more-yellow-than-white fruit. We pucker up at the salak's unfamiliar acidity and spongy texture, which leaves our mouths seemingly both dry and full of citrusy juices at the same time. Within each lobe, a few more nibbles expose a large, dull seed in the same shade of brown as the snakefruit's exterior.

Salaks grow in bundles on palm-like plants with vicious spiked leaves and stems, and Indonesians often surround their yards with the primordial bushes, which double as purveyors of tasty treats and deterrents to would-be trespassers. On Java, traditional dancers whip themselves into a trance in the "Kuda Lumpung" dance, then stomp upon or lick salak leaves to show their immunity to pain.

Around 30 types of snakefruits grow throughout their native Indonesia, but the islands of Bali and Java vie for the best salak around. Naturally, locals tend to swear by their own island fruit's superiority, but for foreigners all bets are off, and preference is simply a matter of taste. The Javanese variety, or *salak pondoh*, is the more obnoxiously aromatic of the two varieties. This intense fruit walks a fine line of ripeness that is so volatile that it will often become overripe and sweaty even before it reaches maturation.



Monsaro's snakefruit, freshly plucked from a nearby village. Photo by Rachel Nuwer

In Bali, *salak bali* delivers a crunchy, starchy experience that conjures associations with watery pineapple and lemon. One strain of extra small, extra sweet *salak bali* called *gula pasir* ("sand sugar"), fetches the highest price on the island, ranging from 75 cents to \$1.50 per pound, depending on the season. These little morsels also ferment into salak wine, a sweet, dry concoction of honey-gold that contains 13.5 percent alcohol. Family-owned wineries chop the mature fruits and pack them into containers to brew with sugars and yeast for two weeks. From there, they press the wine to remove sediments, a process that takes about six months. Around 9 pounds of fruit make one bottle of wine that sells for \$10, so salak farmers who stick to the bottle are able to spin a better profit than those like Monsaro who sell their fruits fresh off the bush.

While salak is readily found around Southeast Asia and Australia, procuring it in the U.S. is tricky. Until Whole Foods catches on to the charms of snakefruit, curious fruit fans' best bet may be to source salaks from online suppliers.

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**About Rachel Nuwer**



Rachel Nuwer writes for Smart News and is a contributing writer in science for Smithsonian.com. She is a freelance science writer based in Brooklyn.