

From: Rossman, Mary

Sent: 10/12/2015 9:02:54 PM

To: TTAB E Filing

CC:

Subject: U.S. TRADEMARK APPLICATION NO. 86234074 - THE RUSTIC KITCHEN · BACKYARD · BAR - RSTC-37647-U - Request for Reconsideration Denied - Return to TTAB - Message 1 of 2

Attachment Information:

Count: 13

Files: apphome.jpg, appmohegan-1.jpg, appmohegan-2.jpg, appmohegan-3.jpg, appface-01.jpg, appface-02.jpg, appface-03.jpg, appface-04.jpg, appface-05.jpg, appface-06.jpg, appface-07.jpg, appface-08.jpg, 86234074.doc

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

U.S. APPLICATION SERIAL NO. 86234074

MARK: THE RUSTIC KITCHEN · BACKYARD · BAR



CORRESPONDENT ADDRESS:

ELISABETH A. EVERT

HITCHCOCK EVERT LLP

PO BOX 131709

DALLAS, TX 75313-1709

GENERAL TRADEMARK INFORMATION:

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

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APPLICANT: Free Range Presents Dallas, LLC

CORRESPONDENT'S REFERENCE/DOCKET NO:

RSTC-37647-U

CORRESPONDENT E-MAIL ADDRESS:

docket@hitchcockevert.com

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 10/12/2015

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 requirement(s) and/or refusal(s) made final in the Office action dated February 23, 2015 are maintained and continue to be final: refusal under Trademark Act Section 2(d) based on a

likelihood of confusion with the mark in U.S. Reg. No. 4253386 RUSTIC KITCHEN. 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(s) in the final Office action. With the request for reconsideration, applicant submitted evidence showing use of RUSTIC and RUSTICO for various establishments that serve food including restaurants, a bakery, a tavern, pubs. However, none of the evidence submitted by applicant shows use of RUSTIC adjacent to KITCHEN. The only uses of RUSTIC immediately followed by KITCHEN are those uses by applicant and registrant. The following attached websites show registrant's use of RUSTIC KITCHEN:

<http://www.rustickitchen.biz/>

<https://mohegansunpocono.com/poi/dining/rustic-kitchen.html>

https://twitter.com/rustic_kitchen

In *Anthony's Pizza & Pasta International Inc. v. Anthony's Pizza Holding Co.*, 95 USPQ2d 1271 (TTAB 2009), the Trademark Trial and Appeal Board sustained first registrant for ANTHONY'S PIZZA & PASTA, for restaurant services, opposition to an application and granted a petition to cancel the registration by second user for ANTHONY'S COAL FIRED PIZZA (with and without a design) for restaurant services, notwithstanding evidence of third party registrations and uses of ANTHONY without PIZZA for restaurant services. The TTAB decision was affirmed by the Court of Appeals for the Federal Circuit, see *Anthony's Pizza Holding Company, Inc. v. Anthony's Pizza & Pasta International, Inc.*, Appeal No. 2010-1191 (Fed. Cir. November 18, 2010). [not precedential] (see attached from <http://thettablog.blogspot.com/2010/11/cafc-affirms-ttabs-decision-in-anthonys.html>). In addition, applicant's analysis and arguments are not persuasive nor do they shed new light on the issues.

Accordingly, the request is denied.

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).

/Mary J. Rossman/

Trademark Examining Attorney

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Rustic Kitchen

BISTRO & BAR

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Chef-driven, Seasonally Inspired, New American Cuisine

BOSTON
© Park Square
210 Stuart Street
Boston MA 02116
(617) 423.5700
Reservations

HINGHAM
© Derby Street Shoppes
94 Derby Street
Hingham MA 02043
(781) 749.2700
Reservations

WILKES-BARRE
© Mohegan Sun Pocono
1280 Highway 315
Wilkes-Barre, PA 18702
(570) 824.6600
Reservations

MEXICO CITY
© Valle Dorado
© La Condesa
© Santa Fe

Dining - Rustic Kitchen

RUSTIC KITCHEN



While every restaurant seeks to be unique, the 260-seat Tuscan villa-themed Rustic Kitchen Bistro & Bar actually earns the distinction.

This new Bistro & Bar with an Italian Mediterranean-influenced menu features a Bar Café, main dining room and wine cellar for private events. The authentic interior displays handcrafted relics & artifacts representing a Tuscan villa which allows guests the option of an intimate dining experience in one of the main dining room's private booths or a quick pizza from its wood-burning oven in the Bar Café. Rustic Kitchen has received

HOURS

-BAR-

Sunday - Tuesday
11:30am - 9:00pm

Wednesday - Saturday
11:30am - Midnight

-LUNCH-

Monday - Saturday
11:30am - 4:00pm

-DINNER-

Sunday
11:30am - 9:00pm

Monday & Tuesday
4:00pm - 9:00pm

Wednesday - Saturday
4:00pm - 11:00pm

☎ 570.824.6600

private booths or a quick pizza from its wood-burning oven in the bar lane. Rustic Kitchen has received numerous honors, including recognition as Boston Magazine's "Best of Boston" and designation of the "Award of Excellence" by Wine Spectator for the last three years.

Its most innovative component is a state-of-the-art, broadcast-ready television studio kitchen that is located in the main dining room. This area serves as the setting for "In The Kitchen," a weekly cooking show starring celebrity chef Kim McLondon. Guests of the show will enjoy a truly memorable and unique experience that features delicious food, exclusive cooking tips and plenty of fun. Reservations can be made by calling Rustic Kitchen.

[Website](#) | [Online Reservations](#)

[LUNCH MENU](#)

[DINNER MENU](#)

SPECIALS AT RUSTIC KITCHEN

Happy Hour	Mondays - Saturdays	4:00pm - 6:00pm, at the bar only
Wednesdays	4:00pm - 11:00pm	All you can eat pasta for \$11.95
In The Kitchen	Live Cooking Show, Fridays & Saturdays, at 7:00pm	Learn more >

To make reservations for our live cooking show, please call 570.824.6600

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- Mohegan Sun Arena at Casey Plaza
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Mohegan Sun Pocono
1280 Highway 315
Wilkes-Barre, PA 18702
General Information and Hotel Reservations:
1.888.WIN.IN.PA

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TWEETS **224** FOLLOWING **245** FOLLOWERS **467** FAVORITES **23** LISTS **4**

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Rustic Kitchen

@rustic_kitchen
 Rustic Kitchen is a lively, award-winning restaurant, featuring seasonal New American cuisine. Home of @TheCookingShow.

Boston, Hingham, Wilkes-Barre
 rustickitchen.biz
 Joined January 2010



Tweets Tweets & replies Photos & videos

Rustic Kitchen Retweeted
Derby Street Snoppes @DerbySchoppes Jun 7
 Ending the weekend with mimosas & friends is the perfect way to start a new week! @Rustic_Kitchen #derbyst



Rustic Kitchen Retweeted
 The Cooking Show @TheCookingShow May 25

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You may also like - Reveal

- UBurger Boston** @UBURGER
- GEM Boston** @GEMBoston
- Scampo** @ScampoLiberty
- Warehouse Bar&Grille** @WarehouseBoston
- Tosca Restaurant** @ToscaHingham



JJ Foley's Cafe
@JJFoleysCafe

Trends

- #Yes2You
Promoted by Kohl's
- #AskJack2
Game 5
- #ZaynWeAreReadyForYourMusic
- Kris Bryant
- Deadspin
- #VoiceBattles
- Steve Sarkisian
- Wacha
- Carlos Correa
- #ampealumpwonder

3 4

Rustic Kitchen Retweeted
Derby Street Shoppes (@DerbyStShoppes - 12 Oct 2014)
End the weekend right, with a savory dinner from [@rustic_kitchen](#) [ow.ly/i7BooqC](#)

1

Rustic Kitchen (@Rustic_Kitchen - 11 Oct 2014)
Our **#Hingham** location turns 10 on Wednesday. Join us there for a complimentary glass of champagne!!!

2

Rustic Kitchen Retweeted
The Cooking Show (@TheCookingShow - 4 Oct 2014)
Check out the new studio in **#Boston**



1 2

Rustic Kitchen Retweeted
BostonChefs.com (@BostonChefsNews - 25 Jul 2014)
Be part of the (lights, camera) action [@TheCookingShow](#) [@Rustic_Kitchen](#) [bit.ly/1rDKnV](#) [#ReadyForMyCloseUp](#)

2 2 [View summary](#)

Rustic Kitchen Retweeted
RestaurantWeekBoston (@RestWeekBoston - 25 Jul 2014)
Snag tickets to [@TheCookingShow](#) [@Rustic_Kitchen](#) and watch Chef Liz Bramwell ready that duck breast for it's close up! [bit.ly/1rDKnV](#)

2 2 [View summary](#)

Rustic Kitchen (@Rustic_Kitchen - 27 Feb 2014)
Check out this new Halibut dish being featured [@TheCookingShow](#) It will also be a special at the restaurant soon!

be a special at the restaurant soon!



Rustic Kitchen Retweeted

Tim Kelchner @TimKelchner · 27 Nov 2013
This morning on #Daybreak @JasmineBrooks28 is with the guys from @Rustic_Kitchen showing you what to do with those Thanksgiving leftovers.

1

Rustic Kitchen followed Tribeca Shortlist, Cambria Wines and La Crema Winery



Tribeca Shortlist

@TribecaSL

Discover cinematic gems hand-picked by #influencers in #film & #popculture. Movies worth watching from @longgatemovies & @Tribeca ...

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Cambria Wines

@CambriaWines

By following this page you represent you are over the age of 21. Please enjoy our wines responsibly. © 2002-2015 Cambria Winery, Santa Maria, CA

Follow

Rustic Kitchen Retweeted

Northshore Magazine @northshoremag · 17 Nov 2013
Thank you @Rustic_Kitchen for the amazing pasta! Loved chatting with Liz and posing with the Emmy! :D ow.ly/i3KNkq

1

1



Rustic Kitchen @Rustic_Kitchen · 11 Nov 2013

Chef Michael Kelly has unleashed some new Pan Seared Diver Scallops in #Boston and #Hingham. Yum

#Boston and #Hingham. Yum.



Rustic Kitchen (@Rustic_Kitchen · 11 Nov 2013)
This new Sweet Ginger Glazed Salmon with Pumpkin Arancini is a hit - come check it out!



Rustic Kitchen (@Rustic_Kitchen · 11 Nov 2013)
Halloween may be over, but you can still enjoy a spooky good Pumpkin Pie Martini
#Boston #Hingham #Fall #Drinks



Rustic Kitchen @Rustic_Kitchen · 11 Nov 2013
Looking for something new and healthy? Try our Heirloom Beet Salad!
#Boston #Hingham #Fall



Rustic Kitchen @Rustic_Kitchen · 11 Nov 2013
The Slow Braised Beef Short Rib is one of the best items on the new
#Fall menu!



Rustic Kitchen @Rustic_Kitchen · 11 Nov 2013
Unwind and warm up after work with a
new @BulleitUSA Manhattan!





1



Rustic Kitchen @Rustic_Kitchen · 11 Oct 2013
New fall menus from Executive Chef Michael Kelly! Highlights to be posted soon! #boston #hingham #fall

Rustic Kitchen Retweeted



Rustic Kitchen @RustickitchenMX · 24 Sep 2013
Son casi las 2PM ¿y no sabes dónde comer? En @RustickitchenMX tenemos una amplia variedad de pastas hechas a mano



1

Rustic Kitchen Retweeted



David Duran @metavidduran · 26 Aug 2013
Had yet another insanely amazing meal at @Rustic_Kitchen last night. Congrats to @TheCookingShow for their Emmy win!



3

2

Rustic Kitchen Retweeted



Runway For Recovery @Runway4Recovery · 29 Jun 2013
So excited to have @Rustic_Kitchen as a sponsor for this year's show! They won an @NewEnglandEmmy for The Cooking Show—filmed in Boston!

DU5URH

2

Rustic Kitchen Retweeted

 **Hingham MA Patch** @HinghamPatch · 19 Jun 2013
Hingham Restaurant Owners Win Emmy for Cooking Show
div. #3XLNCq

3

 **Rustic Kitchen** @Rustic_Kitchen · 16 Jun 2013
Happy Father's Day!

 **Rustic Kitchen** @Rustic_Kitchen · 12 Jun 2013
Thanks @MarlaCimini for this great piece about Rustic Kitchen in
#Boston in @TheCityTraveler thecitytraveler.com/2013/06/boston...

Rustic Kitchen Retweeted

 **The Cooking Show** @TheCookingShow · 11 Jun 2013
Thanks @BostonGlobe for this great article about "The Cooking
Show"!! b globe.com/11Fu05P

1

[View summary](#)

Rustic Kitchen Retweeted

 **The CIA** @CIAculinary · 6 Jun 2013
A BIG congrats to Alumna Chef Liz Bramwell host of
@TheCookingShow! The show was honored with a
@newenglandemmy!



3

Rustic Kitchen Retweeted

 **carol beggy** @carolbeggy · 2 Jun 2013
@Rustic_Kitchen wins an @NewEnglandEmmy for The Cooking Show
filmed at the Boston location! Congrats to Chef Liz Bramwell and the
team!

3

Rustic Kitchen Retweeted