

From: Lovelace, James B.

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To: TTAB EFiling

CC:

Subject: U.S. TRADEMARK APPLICATION NO. 86273794 - SENTENNIAL - 97046 - Request for  
Reconsideration Denied - Return to TTAB - Message 1 of 5

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Attachment Information:

Count: 37

Files: 71411066P001OF002.JPG, 71411066P002OF002.JPG, 71526245P001OF002.JPG,  
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86006899P002OF003.JPG, 86006899P003OF003.JPG, ExhibitA-1.jpg, ExhibitA-2.jpg, ExhibitA-3.jpg,  
ExhibitB-1.jpg, ExhibitB-2.jpg, ExhibitB-3.jpg, ExhibitB-4.jpg, ExhibitB-5.jpg, ExhibitC-1.jpg, ExhibitC-2.jpg,  
86273794.doc

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

**U.S. APPLICATION SERIAL NO.** 86273794

**MARK:** SENTENNIAL



**CORRESPONDENT ADDRESS:**

NANCY V. STEPHENS

FOSTER PEPPER PLLC

1111 3RD AVE STE 3400

SEATTLE, WA 98101-3264

**GENERAL TRADEMARK INFORMATION:**

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

[VIEW YOUR APPLICATION FILE](#)

**APPLICANT:** Summerland Varieties Corp.

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

97046

**CORRESPONDENT E-MAIL ADDRESS:**

stepn@foster.com

**REQUEST FOR RECONSIDERATION DENIED**

**ISSUE/MAILING DATE:** 11/12/2015

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 March

24, 2015 are maintained and continue to be final: Section 2(d) Refusal; Sections 1, 2 & 45 Varietal Refusal; Information Requirement. 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. In addition, applicant's analysis and arguments are not persuasive nor do they shed new light on the issues. Accordingly, the request is denied.

Applicant's request for reconsideration merely stated that "applicant reenters its argument filed with its prior Office Action Response and respectfully asks the Examining Attorney to reconsider the refusal." For the reasons stated in the Final Office Action issued on March 24, 2015, the applicant's arguments are unpersuasive. Applicant has not responded at any point to either the Sections 1, 2 & 45 Varietal Refusal or the requirement for additional information. Further, applicant's arguments regarding the Section 2(d) refusal are not persuasive because the marks are substantially similar and the goods are closely related.

With respect to the Section 2(d) refusal, the trademark examining attorney has attached additional evidence from the USPTO's X-Search database consisting of a number of third-party marks registered for use in connection with the same or similar goods and/or services as those of both applicant and registrant in this case. This evidence shows that the goods and/or services listed therein, namely, cherries or deciduous fruit and citrus fruit, or alternatively, fresh citrus and citrus trees or cherries and cherry trees, are of a kind that may emanate from a single source under a single mark. See *In re Aquamar, Inc.*, 115 USPQ2d 1122, 1126 n.5 (TTAB 2015) (citing *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988)); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); TMEP §1207.01(d)(iii).

In addition, the attached website evidence from <http://www.delmonte.com>, <http://www.halegroves.com>, <http://www.harryanddavid.com>, and <http://www.dole.com> further demonstrate that citrus fruit and cherries are sold by the same companies and marketed in the same trade channels.

The attached website evidence from <http://www.globalfruit.org/cherries/>, <http://jealousfruits.com/our-cherries/varieties/>, <https://bccherry.com/marketing/varieties/>, <http://stargrow.co.za/cultivar/cherries/sentennial.html>, <http://www.coralbeach.ca/ourcherries/cherry->

[varieties.html](#), <http://www.bccherry.ca>, also supports the position that the term “SENTENNIAL” is a recognized varietal name for a type of cherry.

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).

/Blake Lovelace/

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## Our Cherries

### Rainier

Available June 25-July 15

This blush cherry is renowned for high brix (sugar) content and has been called "The Dessert Cherry". This fragile cherry is packed carefully on special lines to preserve its delicate flesh.



### Lapin

Available July 7-21 and July 25- Aug 12

Our largest cherry, known for exceptional sweetness and a dark mahogany color. This variety put British Columbia on the world map as a premium supplier of Cherries.



### Skeena

Available July 7-12 and July 28-Aug 5

This robust cherry is known for its firmness, rich deep color and exceptional flavour. It is recognizable by its compact green stem.



#### **Sweetheart**

Available July 16-24 and Aug 14-22

Named for its heart shape and known for excellent firmness and balanced flavour, it's not surprising that this hardy variety has been called Canada's most famous cherry.



#### **Staccato**

Available July 25-29 and Aug 20-30

This long-stemmed cherry is firmer in texture to the Sweetheart, to which it owes its origins. Another BC success story from the Summerland Research Station, Cherry breeding program.



#### **Sentennial**

Available July 27-Aug 1 and Aug 25 to possibly Sept 1

One of the newest varieties to be developed in B.C., this long-stemmed cherry is very firm and smooth-tasting, similar to the Staccato and Sweetheart varieties. This is our latest cherry.





### Exporting

All of our Cherries are graded, sized and hydro-cooled immediately prior to packaging. The cold chain is critical for shipping cherries: we do everything in our power to ensure that the correct temperature remains consistent until the cherries arrive at market by using refrigerated transport professionals. We work to find the best freight forwarders in the business. All shipments are equipped with temperature recorders to ensure that this process is followed and documented.

All of our exports are subjected (when required) to a Phytosanitary inspection by the Canadian Food Inspection Agency as per the country of destination. All of our packaging meets Country Of Origin Labelling (COOL) standards.

We aim to deliver excellence every time, whether by land, air, or sea.



Local/International (250) 428-2320  
Toll-free North America (866) 428-2320  
Cellular (250) 428-1374  
Fax (250) 428-8877

[info@globalfruit.org](mailto:info@globalfruit.org)

site by @design + AWS

**jealous**  
fruits  
CANADIAN CHERRIES

CANADA'S FINEST CHERRIES DELIVERED FRESH WORLDWIDE. GET YOURS!



## Our splendid varieties

The Okanagan Valley is host to the world's most advanced Cherry Fruit Research facilities. Our firm has teamed up with the Summerland Research Station since the 1940's to continuously improve our fruit quality.

The Research Station produces new varieties the old fashioned way, by cross breeding. We are proud to state that we have absolutely no genetically modified (GMO) produce in our farmlands.

Some of the types of cherries that we grow include:

### Satin

Our earliest maturing variety. Satin is a large heart shaped cherry with a thick green stem. The fruit is very firm with a mild sweet flavour. Satin cherries have a niche following amongst cherry connoisseurs.

**Quick Facts:** matures July 14 to 20th



### Lapins

A highly suitable fruit for our northerly climate, Lapins are a sweet, firm textured, juicy cherry. They are a very large and broad shouldered. The cherry is named after Dr. Karl Lapins who pioneered the breeding work resulting in all the selections produced at Jealous Fruits.

**Quick Facts:** Lapins matures July 23rd to August 5th.



### Sweetheart

Considered by many customers to be our flagship variety. Our unique growing conditions produce a large Sweetheart. Other fine attributes are a thick green stem, a very firm flesh, balanced flavour, and a



bright pinstriped dark red over red finish.

**Quick Facts:** Sweetheart matures August 3rd to 12th.

### Staccato

A true winning variety. It has inherited the same firm crunchy texture as it's parent Sweetheart, along with Sweetheart's fine appearance and taste. Staccato is planted at various elevations of our farm. It is a patented variety that is mostly produced in British Columbia.

**Quick Facts:** Staccato matures August 12th to September 1st. This variety stores very well.

### Sovereign

Named and released from the Summerland breeding program in 2006, Sovereign is one of our most recent introductions. Jealous Fruits pioneered the first large test plantings of Sovereign and large-scale availability began in the 2007 season. Like Staccato, Sovereign is an offspring of Sweetheart. Sovereign has a very firm texture, with a long thick stem and more of a heart shape than either Sweetheart or Staccato.

**Quick Facts:** Sovereign matures as late as September 15th (approximately 1 week after Staccato). This variety ships very well.

### Sentennial

Sentennial is a very recent introduction, currently produced only in small volumes at Jealous Fruits. Early test market results have been very promising and larger scale plantings are now being developed. The cherry is broad shouldered like a Sweetheart, with an extremely firm, crunchy texture. Sentennial peaks on 9.5 row, and has similar flavour attributes to Staccato and Sweetheart.



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**Quick Facts:** Sentennial ripens slightly after Staccato.

#### Suite Note

Origin: Developed at Pacific Agri-Food Research Centre, Summerland. Parentage: 2S-36-36 x Summit. Picking Timing: Mid-July.

**Quick Facts:** A very large and firm cherry. Kidney to heart shaped with long stems. Dark red in colour.

#### Kordia

Origin: A chance seedling of unknown parentage, found in the Czech Republic. Also known as Atikka. Picking Timing: Approx July 15-25.

**Quick Facts:** Long-heart shaped with a long and thin stem. Dark red to black in colour, with very high sugar.

#### Skeena

Origin: Developed at Pacific Agri-Food Research Centre, Summerland. Picking Timing: Mid to late July (same as Lapin).

**Quick Facts:** Large and very firm with thick stems. Kidney shaped. Dark red to black in colour.

#### Rainier

Origin: Developed by H.W. Fogel at Washington State University. Named after Mount Rainier – the highest peak in Washington. Parentage: Bing x Van. Picking Timing: End of July – Early August.

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**Quick Facts:** Golden yellow cherry with red blush. Very sweet.  
Round-heart shaped (obovate).

### Regina

Origin: Esteburg-Fruit Research Station, Jork, Germany. Parentage:  
Schneiders späte knorpelische x Rube x 1957. Picking timing: Early  
August.

**Quick Facts:** Dark, Large & Firm. Low Acid Sweet flavour. Very long  
stem and heart-shaped. Stores exceptionally well.

**Jealous Fruits**  
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**Our Cherries**

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### Our Cherries

All our 'S' cherries were bred by the Agri-Food Research Centre (PARC) in Summerland, BC, Canada. They are specially suited to the pristine northern growing area of the Okanagan, Simikameen and Creston Valley in British Columbia. The hot dry summer days and crisp, cool nights provided by lake and mountain breezes produce excellent, large and very firm cherries, with excellent shipping and shelf-life characteristics – gaining a reputation for fine premium quality fruit in over 20 countries.

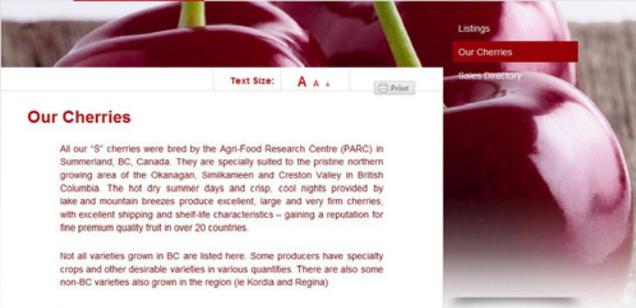
Not all varieties grown in BC are listed here. Some producers have specialty crops and other desirable varieties in various quantities. There are also some non-BC varieties also grown in the region (ie Kordia and Regina).

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**CRISTALINA:** *Christalina is an early season, heart shaped fruit. It has dark flesh and a large size.*

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**SATIN:** *A very beautiful early season, dark and large cherry that will extend the Okanagan season with quick start.*



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**SANTINA:** Beautiful heart shaped, Santina is an early fruit that picks well and packs nicely for a great product.

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**SUITE NOTE:** Picked at the right moment Suite Note is a dark, large, firm and delicious cherry. For early markets the potential is great however there is very limited production.

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**SONNET:** A very large early cherry – very “cheeky” but it gets the season started with a smile. The Sonnet has a light flesh colour and is very sweet.

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**SYLVIA:** Always a pleasant surprise, hiding under a very ically branch, the Sylvia is usually well protected from the weather and harvests as a very uniform size and shape that looks lovely in the box.

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**SKEENA:** A favourite of many buyers, Skeena is a dark and large cherry that has gained popularity in recent years. It is firm and easily sizes up. Pick it before the forecasted rain!

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**LAPINS:** A wonderful variety bred by Dr. Charles Lapins (at PARC), for whom it is named. Possibly the best flavored cherry in the orchard, the Lapin can be very large, and is always best when left to ripen on the tree until it is a rich dark red. Lapin season is mid July to early August.

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**SWEETHEART:** One of the best of the late cherries from the PARC breeding program, the Sweetheart is now widely grown around the world. The fruit is very firm, and moderately sweet with good flavour. Harvest follows directly after Lapin, through the first two weeks of August.