

ESTTA Tracking number: **ESTTA277392**

Filing date: **04/10/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91182171
Party	Defendant Etchegary Farms, LLC
Correspondence Address	D. Greg Durbin McCormick, Barstow, Sheppard, Wayte & Carruth LLP, 5 River Park Place East Fresno, CA 93720 UNITED STATES greg.durbin@mccormickbarstow.com
Submission	Other Motions/Papers
Filer's Name	Daniel S. Cho
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Signature	/Daniel S. Cho/
Date	04/10/2009
Attachments	notice of settlement [91182171].pdf (11 pages)(432308 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of:

Application Serial Nos.: 77005920, 77005921,
and 77005923

For the Mark: SUNMET

Publication Date: October 2, 2007,
September 25, 2007, and
September 25, 2007,
respectively

SUN-MAID GROWERS OF CALIFORNIA,

Opposer,

v.

ETCHEGARAY FARMS, LLC,

Applicant.

Opposition No. 91182171

NOTICE OF SETTLEMENT

NOTICE IS HEREBY GIVEN that the within Opposition has been settled or otherwise disposed of pursuant to and in accordance with the terms of the Settlement Agreement entered into between the parties, a true and correct copy of which is attached hereto as Exhibit "1" (the "Agreement").

As set forth in paragraphs 1 and 2 of the Agreement, Applicant ETCHEGARAY FARMS, LLC (the "Applicant") agrees to amend certain goods Applications as set forth in such paragraph 1 (the "Motion to Amend"), and Opposer SUN-MAID GROWERS OF CALIFORNIA (the "Opposer") consents to Applicant's registration upon the submission and subsequent approval of Applicant's Motion to Amend, and agrees to conditionally withdraw its within opposition coincident with the filing of Applicant's Motion to Amend.

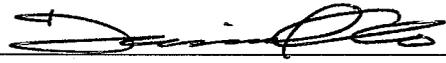
MOTION TO AMEND WITH CONSENT

With respect to the Application Serial Nos. 77005925, 77005926, and 77005927, that are subject to Opposition Nos. 91180558, 91180559 and 91180638, respectively, no amendment is required because the description of goods included in paragraph 1 of the Agreement is already the description of goods included in such applications.

With respect to the Application Serial Nos. 77005920, 77005921, and 77005923, that are subject to the within opposition, Applicant is this date filing the Motion to Amend, and upon the approval of the same, will file notice herein that the condition to Opposer's consent to registration of the Applications that are subject to the within opposition has been satisfied.

Respectfully submitted,

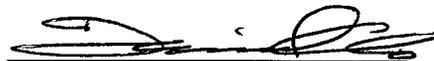
Dated: April 10, 2009

By: 

McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP
D. Greg Durbin, CA Bar No. 081749
Daniel S. Cho, CA Bar No. 260902
P.O. Box 28912
5 River Park Place East
Fresno, CA 93720-1501
Telephone: (559) 433-1300
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Attorneys for Applicant
ETCHEGARAY FARMS, LLC

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that the attached **NOTICE OF SETTLEMENT** was filed electronically with the Trademark Trial and Appeal Board on April 10, 2009.

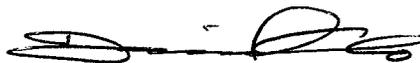


Daniel S. Cho

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **NOTICE OF SETTLEMENT** was served upon counsel for Opposer, Sun-Maid Growers of California, this April 10, 2009, by sending the same via First Class U.S. Mail, postage prepaid to:

Marc M. Gorelnik
TOWNSEND AND TOWNSEND AND CREW LLP
Two Embarcadero Center, 8th Floor
San Francisco, CA 94111
Attorney for Opposer
SUN-MAID GROWERS OF CALIFORNIA



Daniel S. Cho

EXHIBIT “1”

AGREEMENT

This AGREEMENT is made this _____ day of December, 2008, by and between Sun-Maid Growers of California, a California corporation, located and doing business at 13525 South Bethel Avenue, Kingsburg, California 93631 (hereinafter "Sun-Maid"), and Etchegaray Farms, LLC, a limited liability company, located and doing business at 5515 W. Goshen Avenue, Visalia, California 93291 (hereinafter "Etchegaray").

Sun-Maid owns U.S. Trademark Registration Nos. 252,224; 178,829; and 3,008,771 for the mark SUN-MAID (hereinafter collectively referred to as "Sun-Maid Registrations"). The Sun-Maid Registrations shall be referred to collectively as the Sun-Maid Mark, copies of which are attached as Exhibit A. These registrations are exemplary and not exhaustive.

The Sun-Maid Registrations are for "fresh grapes" in Class 31; "raisin syrup for food purposes, raisin-seed salad oil, mincemeat, dried fruits and raisins, raisins and nuts in their natural state, and canned raisins" in Class 29; and "raisins, dried cherries, mixed dried fruits, diced mixed dried fruits, dried figs, dried peaches, dried plums, dried prunes, dried apricots, dried apples, dried dates, chopped dates, dried cranberries, raisin paste, jams, jellies, fruit preserves, dried nectarines, dried pears, fruit butters, fruit spreads, and marmalades" in Class 29; "yogurt covered raisins, chocolate covered raisins, mixed raisins and coated nuts, raisin bran muffin mix, oatmeal raisin cookie mix, raisin bread, fruitcake, bagels with raisins, English muffins with raisins, raisin rice pudding; fruit syrup, candy bars, chocolate covered nuts, chocolate covered fruits, chocolate raisin clusters, candy coated raisins, cranberry bread" in Class 30; and "fruit juices and fruit juice concentrates" in Class 32.

Etchegaray owns Trademark Application Nos. 77/005,920, 77/005,921, 77/005,923, 77/005,925, 77/005,926 and 77/005,927 for SUNMET.

Sun-Maid has opposed Etchegaray's Applications in the Trademark Trial and Appeal Board, initiating Opposition Nos. 91180558, 91180559, 91180638, and 91182171 (the "Oppositions").

Sun-Maid wishes to cooperate with Etchegaray's registration efforts that are the subject of the SUNMET Applications on the basis of the following agreement of the parties:

1. As a condition of Sun-Maid's consent, Etchegaray agrees to amend its goods Applications as follows:

Application No.	Goods
77/005,925	Fresh fruit and nuts, namely apples, plums, cherries, kiwis, almonds, oranges, pistachio nuts, pomegranates, peaches, nectarines, and grapes in Class 31.
77/005,926	Fresh fruit and nuts, namely apples, plums, cherries, kiwis, almonds, oranges, pistachio nuts, pomegranates, peaches, nectarines, and grapes in Class 31.

77/005,927	Fresh fruit and nuts, namely apples, plums, cherries, kiwis, almonds, oranges, pistachio nuts, pomegranates, peaches, nectarines, and grapes in Class 31.
77/005,920	Processed fruits and nuts, namely, canned, bottled, frozen, dehydrated, vacuum-packed, aseptically-packaged, sliced and diced, almonds, apples, cherries, kiwi fruit, oranges, nectarines, peaches, pistachio nuts, plums, pomegranates, table grapes (excluding dehydrated grapes, apples, cherries, nectarines, plums and peaches), and wine grapes in Class 29. Light beverages, namely, juice concentrates and single-strength juices from fruits and vegetables (excluding those containing raisin, grape, or prune juice) in Class 32.
77/005,921	Processed fruits and nuts namely, canned, bottled, frozen, dehydrated, vacuum-packed, aseptically-packaged, sliced and diced, almonds, apples, cherries, kiwi fruit, oranges, nectarines, peaches, pistachio nuts, plums, pomegranates, table grapes (excluding dehydrated grapes, apples, cherries, nectarines, plums and peaches), and wine grapes in Class 29. Light beverages, namely, juice concentrates and single-strength juices from fruits and vegetables (excluding those containing raisin, grape, or prune juice) in Class 32.
77/005,923	Processed fruits and nuts, namely, canned, bottled, frozen, dehydrated, vacuum-packed, aseptically-packaged, sliced and diced, almonds, apples, cherries, kiwi fruit, oranges, nectarines, peaches, pistachio nuts, plums, pomegranates, table grapes (excluding dehydrated grapes, apples, cherries, nectarines, plums and peaches), and wine grapes in Class 29. Light beverages, namely, juice concentrates and single-strength juices from fruits and vegetables (excluding those containing raisin, grape, or prune juice) in Class 32.

2. Upon submission of Etchegaray's motion to amend and its subsequent approval, Sun-Maid hereby consents to Etchegaray's registration of the SUNMET mark set forth in Paragraph 1. Sun-Maid further agrees to conditionally withdraw the pending Oppositions coincident with the filing of Etchegaray's motion to amend.

3. Sun-Maid further represents that it will not object to Etchegaray's use of the SUNMET mark for oranges, lemons, grapefruits, limes, and blueberries. The parties mutually consent to registration of their respective marks, identified herein, for the goods listed in this Paragraph.

4. Etchegaray agrees that it will not use its SUNMET mark for the goods listed in Sun-Maid's registrations, for dried fruit or for nuts except as Sun-Maid has expressly consented herein.

5. Etchegaray agrees not to use SUNMET in any form in connection or in association with a representation of a female figure in any form for any product.

6. The undersigned certifies that he/she has authority to sign this consent on behalf of his/her respective company.

SUN-MAID GROWERS OF CALIFORNIA
a California Corporation

Dated: 1/30/09

By: [Signature]
Name: Cady H. Marshburn
Title: Secretary

ETCHEGARAY FARMS, LLC
a Limited Liability Company

Date: 12/31/08

By: [Signature]
Name: SAM ETCHEGARAY
Title: MEMBER

61537777 v2

Exhibit “A”

Registered Jan. 29, 1929.

Trade-Mark 252,224

Renewed, January 29, 1949 to Sun-Maid Raisin Growers of California, of Fresno, California.

Republished, under the Act of 1946, April 5, 1949, by Sun-Maid Raisin Growers of California, Fresno, Calif.

Affidavit under Section 8 accepted.

Affidavit under Section 15 received, May 17, 1954.

UNITED STATES PATENT OFFICE.

SUN-MAID RAISIN GROWERS OF CALIFORNIA, OF FRESNO, CALIFORNIA.

ACT OF FEBRUARY 20, 1905.

Application filed July 23, 1928. Serial No. 270,058.

SUN-MAID

STATEMENT.

Commissioner of Patents:

Sun-Maid Raisin Growers of California, a California cooperative association, having its principal place of business at Holland Building, Fresno, California, has adopted and used the trade-mark shown in the accompanying drawing, for FRESH GRAPES, in Class 46, Foods and ingredients of foods, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905, as amended. The trade-mark has been continuously used by applicant and an agent since July 27th, 1925. The trade-mark is applied or affixed to the goods or to the packages containing the same by placing

thereon a printed label on which the trade-mark is shown. Applicant is the owner of U. S. trade-mark registrations No. 111,183; No. 121,400; No. 121,592; and No. 178,829.

The undersigned hereby appoints Miller & Boyken, a firm composed of John H. Miller and A. W. Boyken, (register No. 12,147) of 723 Crocker Building, San Francisco, California, its attorneys, to prosecute this application for registration, with full powers of substitution and revocation, to make alterations and amendments therein, to receive the certificate and to transact all business in the Patent Office connected therewith.

[L. s.] SUN-MAID RAISIN-GROWERS
OF CALIFORNIA,

By JAY L. REED,
Assistant Secretary.

Registered Jan. 29, 1924.

Trade-Mark 178,829

UNITED STATES PATENT OFFICE.

SUN-MAID RAISIN GROWERS, OF FRESNO, CALIFORNIA, ASSIGNOR TO SUN-MAID RAISIN GROWERS OF CALIFORNIA, OF FRESNO, CALIFORNIA, A CO-OPERATIVE ASSOCIATION OF CALIFORNIA.

ACT OF FEBRUARY 20, 1905.

Application filed November 29, 1922. Serial No. 173,694.



SUN-MAID

STATEMENT.

To the Commissioner of Patents:

Sun-Maid Raisin Growers, a corporation duly organized and existing under the laws of the State of California, and located at Fresno, county of Fresno, State of California, and doing business at Holland Building, Fresno, California, has adopted and used the trade-mark shown in the accompanying drawing, for RAISIN SIRUP FOR FOOD PURPOSES, RAISIN-SEED SALAD OIL, MINCEMEAT, DRIED FRUITS AND RAISINS, RAISINS AND NUTS IN THEIR NATURAL STATE, AND CANNED RAISINS, in Class 46, Foods and ingredients of foods, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905, as amended.

The trade-mark has been continuously used and applied to said goods in applicant's business since November 1, 1922.

The trade-mark is applied or affixed to the goods or to the packages containing the same by printing it on said packages or placing thereon a printed label on which the trade-mark is shown.

Applicant is the present owner of trade-mark registrations No. 121,400, No. 121,592, and No. 111,183, the same having been obtained by applicant prior to its change of name to Sun Maid Raisin Growers.

The undersigned hereby appoints Miller, Henry & Boyken, (register No. 11256), a firm composed of John Henry Miller, George J. Henry and A. W. Boyken, its attorneys to prosecute this application for registration, with full powers of substitution and revocation, to make alterations and amendments therein, to receive the certificate and to transact all business in the Patent Office connected therewith.

[L. S.]

SUN-MAID RAISIN GROWERS,
By WYLIE M. GIFFEN,
President.

Int. Cls.: 29, 30 and 32

Prior U.S. Cls.: 45, 46 and 48

Reg. No. 3,008,771

United States Patent and Trademark Office

Registered Oct. 25, 2005

**TRADEMARK
PRINCIPAL REGISTER**

SUN-MAID

SUN-MAID GROWERS OF CALIFORNIA (CALI-
FORNIA CORPORATION)
13525 SOUTH BETHEL AVENUE
KINGSBURG, CA 936319232

FOR: RAISINS, DRIED CHERRIES, MIXED
DRIED FRUITS, DICED MIXED DRIED FRUITS,
DRIED FIGS, DRIED PEACHES, DRIED PLUMS,
DRIED PRUNES, DRIED APRICOTS, DRIED AP-
PLES, DRIED DATES, CHOPPED DATES, DRIED
CRANBERRIES, RAISIN PASTE, JAMS, JELLIES,
FRUIT PRESERVES, DRIED NECTARINES, DRIED
PEARS, FRUIT BUTTERS, FRUIT SPREADS, AND
MARMALADES, IN CLASS 29 (U.S. CL. 46).

FIRST USE 4-19-1915; IN COMMERCE 4-19-1915.

FOR: YOGURT COVERED RAISINS, CHOCO-
LATE COVERED RAISINS, MIXED RAISINS AND
COATED NUTS, RAISIN BRAN MUFFIN MIX,
OATMEAL RAISIN COOKIE MIX, RAISIN BREAD,
FRUITCAKE, BAGELS WITH RAISINS, ENGLISH
MUFFINS WITH RAISINS, RAISIN RICE PUDDING;
FRUIT SYRUP, CANDY BARS, CHOCOLATE COV-

ERED NUTS, CHOCOLATE COVERED FRUITS,
CHOCOLATE RAISIN CLUSTERS, CANDY
COATED RAISINS, CRANBERRY BREAD, IN
CLASS 30 (U.S. CL. 46).

FIRST USE 4-19-1915; IN COMMERCE 4-19-1915.

FOR: FRUIT JUICES AND FRUIT JUICE CON-
CENTRATES, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 1-16-1916; IN COMMERCE 1-16-1916.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 115,368, 178,829 AND
OTHERS.

SER. NO. 78-458,441, FILED 7-28-2004.

STEVEN JACKSON, EXAMINING ATTORNEY