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

Proceeding	91202219
Party	Plaintiff Eat Right Foods Ltd.
Correspondence Address	SIMONE M KATZ ONEILL SHARTISIS FRIESE LLP ONE MARITIME PLAZA, 18TH FLOOR SAN FRANCISCO, CA 94111 UNITED STATES skatz@sflaw.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Jospeph V. Mauch
Filer's e-mail	jmartin@sflaw.com, jmauch@sflaw.com, calendar@sflaw.com
Signature	/s/ Joseph V. Mauch
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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EAT RIGHT FOODS LTD.,

Opposer,

v.

KEVIN LEVILLE,

Applicant.

Opp. No.: 91202219

Ser. No.: 77/868,068

Date of Publication:
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OPPOSER EAT RIGHT FOODS LTD.'S
NOTICE OF RELIANCE NO. 20

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, pursuant to 37 C.F.R. § 2.122(e) and 704.08(b) of the Trademark Trial and Appeal Board Manual of Practice and Procedure, Opposer Eat Right Foods Ltd. provides Notice of Reliance on material published on the Internet at <http://www.eatrightamerica.com/erni-superfoods/>, accessed and publicly available on September 24, 2012, submitted herewith. The material being offered is relevant to applicant Kevin Leville's use of the applied-for mark in commerce, the goods and services on which Applicant uses his mark, the channels of trade in which Applicant markets and sells such goods and services, and the likelihood of confusion between Applicant's applied-for mark and Opposer's registered marks.

Dated: September 25, 2012.

Respectfully Submitted,
SHARTSIS FRIESE LLP

By: _____


JOSEPH V. MAUCH

Attorneys for Opposer
EAT RIGHT FOODS LTD.

ERNI Superfoods

As a nutritionist, it's important to know the nutrient density of your food. Not merely vitamins and minerals, but adequate consumption of phytochemicals are essential for a normal immune system and to enable our body's detoxification and cellular repair mechanisms that protect us from cancer and other diseases.

Nutritional science in the last twenty years has demonstrated that colorful plant foods contain a huge assortment of protective compounds, mostly unnamed at this point. Only by eating an assortment of natural foods that are nutrient-rich, can we access these compounds and protect ourselves from the common diseases that afflict Americans. Our modern, low-nutrient eating style leads to an overweight population with common diseases of nutritional ignorance and medical costs spiraling out of control. We need to flip our traditional thinking upside down, and begin eating a diet rich in vegetables, fruits, nuts, seeds, and grains.

In order to measure nutrient density, Eat Right America created rankings of foods according to the nutrients they pack. Because phytochemicals are largely unnamed and unmeasured, these rankings underestimate the healthful properties of colorful natural plant foods compared to processed foods and animal products. One thing we do know is that the foods that contain the highest amount of known nutrients are the same foods that contain the most unknown nutrients too. So even though these rankings may not consider the phytochemical number sufficiently they are still a reasonable measurement of their content.

A Sample of Eat Right America's ERNI Nutrient Density Scores

<i>Kale</i>	100	<i>Kidney Beans</i>	10	<i>Walnuts</i>	3
<i>Collards</i>	100	<i>Sweet Potato</i>	8	<i>Grapes</i>	3
<i>Bok Choy</i>	82	<i>Sunflower Seeds</i>	8	<i>White Potato</i>	3
<i>Spinach</i>	74	<i>Peach</i>	7	<i>Banana</i>	3
<i>Brussel Sprouts</i>	67	<i>Apple</i>	7	<i>Chicken Breast</i>	3
<i>Arugula</i>	56	<i>Green Peas</i>	7	<i>Eggs</i>	3
<i>Cabbage</i>	48	<i>Cherries</i>	7	<i>Peanut Butter</i>	3
<i>Romaine</i>	39	<i>Flax Seeds</i>	6	<i>Whole Wheat Bread</i>	2
<i>Broccoli</i>	37	<i>Sesame Seeds</i>	6	<i>Low Fat Yogurt</i>	2
<i>Cauliflower</i>	29	<i>Pineapple</i>	6	<i>Feta Cheese</i>	2
<i>Green Pepper</i>	26	<i>Edamame</i>	6	<i>Whole Milk</i>	2
<i>Artichoke</i>	24	<i>Oatmeal</i>	5	<i>Ground Beef</i>	2
<i>Carrots</i>	24	<i>Mango</i>	5	<i>White Pasta</i>	2
<i>Asparagus</i>	23	<i>Cucumber</i>	5	<i>White Bread</i>	2
<i>Strawberry</i>	21	<i>Pistachio Nuts</i>	5	<i>Apple Juice</i>	2
<i>Pomeg. Juice</i>	19	<i>Corn</i>	4	<i>Swiss Cheese</i>	2
<i>Tomato</i>	16	<i>Salmon</i>	4	<i>Potato Chips</i>	1
<i>Blueberries</i>	13	<i>Almonds</i>	4	<i>Cheddar Cheese</i>	1
<i>Iceberg</i>	11	<i>Shrimp</i>	4	<i>Vanilla Ice Cream</i>	1
<i>Orange</i>	10	<i>Tofu</i>	4	<i>Olive Oil</i>	1
<i>Lentils</i>	10	<i>Avocado</i>	4	<i>French Fries</i>	1
<i>Cantaloupe</i>	19	<i>Skim Milk</i>	4	<i>Cola</i>	0

Keep in mind that nutrient density scoring is not the only factor that determines good health. For example, if we only ate foods with a high nutrient density score our diet would be too low in fat. So we have to pick some foods with lower nutrient density scores (but preferably the ones with the healthier fats) to include in our high nutrient diet. Additionally, if a thin person or highly physically active individual ate only the highest nutrient foods they would become so full from all of the fiber and nutrients that would keep them from meeting their caloric needs and they would eventually become too thin. This of course gives you a hint at the secret to permanent weight control.

Eat Right America's Nutrient Density Scoring System

To determine the scores above almost all vitamins and minerals were considered and added in. Nutrient Data from Nutritionist Pro software for an equal caloric amount of each food item was obtained. We included the following nutrients in the evaluation: Calcium, Carotenoids: Beta Carotene, Alpha Carotene, Lutein & Zeaxanthin, Lycopene, Fiber, Folate, Glucosinolates, Iron, Magnesium, Niacin, Selenium, Vitamin B1 (Thiamin) Vitamin B2 (Riboflavin), Vitamin B6, Vitamin B12, Vitamin C, Vitamin E, Zinc, plus ORAC score X 2 (Oxygen Radical Absorbance Capacity is a method of measuring the antioxidant or radical scavenging capacity of foods).

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Nutrient quantities, which are normally in many different measurements (mg, mcg, IU) were converted to a percentage of their RDI so that a common value could be considered for each nutrient. Since there is currently no RDI for Carotenoids, Glucosinolates, or ORAC score, goals were established based on available research and current understanding of the benefits of these factors. (limited references below). The % RDI or Goal for each nutrient which the USDA publishes a value for was added together to give a total. All nutrients were weighted equally with a factor of one except for the foods ORAC score. The ORAC score was given a factor 2 (as if it were two nutrients) due to the importance of antioxidant nutrients so that measurement of unnamed anti-oxidant phytochemicals were represented in the scoring. The sum of the food's total nutrient value was then multiplied by a fraction to make the highest number equal 100 so that all foods could be considered on a numerical scale of 1 to 100.

NOTE

Eat Right America's nutrient density food rankings, scoring system, and point determinations of foods is a patent-pending process.

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