

ESTTA Tracking number: **ESTTA543265**

Filing date: **06/15/2013**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Bloomsberry, Inc.
Granted to Date of previous extension	06/15/2013
Address	92 Jackson Street Salem, MA 01970 UNITED STATES
Party who filed Extension of time to oppose	Praim, LLC
Relationship to party who filed Extension of time to oppose	Bloomsberry, Inc. is filing this Notice of Opposition as a party in privity with Praim LLC. Bloomsberry, Inc. and Praim LLC are related companies as defined by 15 U.S.C. Â§1055 and 15 U.S.C. Â§1127. All shares of Bloomsberry, Inc. and Praim LLC are owned by a Mr. Paul Pruett. Bloomsberry, Inc. and Praim LLC share the same physical address of 92 Jackson Street in Salem, Massachusetts 01970. Mr. Pruett is also the sole director of Bloomsberry, Inc. and Praim LLC. All uses of Bloomsberry, Inc.'s trademarks are controlled by the same sole shareholder and director as Praim LLC.

Attorney information	Daniel N. Smith New England Patent & Trademark 1 Salem Green, Suite 405 Salem, MA 01970 UNITED STATES smith@patentstrademarklaw.com Phone:978-882-0160
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Applicant Information

Application No	85341131	Publication date	04/16/2013
Opposition Filing Date	06/15/2013	Opposition Period Ends	06/15/2013
International Registration No.	NONE	International Registration Date	NONE
Applicant	VPG Limited P.O. Box 353 Christchurch, NEW ZEALAND		

Goods/Services Affected by Opposition

Class 030. First Use: 2005/09/12 First Use In Commerce: 2005/09/12
All goods and services in the class are opposed, namely: Chocolate, chocolates, non-medicated candy

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Other	No Use As A Mark under Trademark Act Â§1(a); Misuse of the federal registration symbol with intent to deceive the purchasing public or others in the trade into believing that the mark is registered; Applicant has not established a commercial presence in the European Community from which its underlying foreign registration issued where such foreign registration forms the basis of the U.S. application for registration under Trademark Act Â§44(e)

Mark Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	BLOOMSBERRY & CO.		
Goods/Services	chocolate and chocolates, chocolate bars, and chocolate confections.		

Attachments	Notice of Opposition.pdf(231610 bytes) Exhibit 1.pdf(494003 bytes) Exhibit 2.pdf(114002 bytes) Exhibit 3.pdf(42655 bytes) Exhibit 4.pdf(191944 bytes) Exhibit 5.pdf(21055 bytes) Exhibit 6.pdf(21369 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Daniel N. Smith/
Name	Daniel N. Smith
Date	06/15/2013

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

In the Matter of Application Serial No. 85/341,131
International Class: 030
Filed: June 8, 2011
Mark: **BLOOMSBERRY**

Bloomsberry, Inc.)	
)	
)	
Opposer)	NOTICE OF OPPOSITION
)	In Re Serial. No. 85/341,131
v.)	Mark: BLOOMSBERRY
)	International Class: 030
VPG Limited)	Filed: June 8, 2011
)	Opposition No.: _____
Applicant)	
)	

Commissioner for Trademarks
P.O. Box 1451
Arlington, VA 22313-1451

NOTICE OF OPPOSITION

Opposer Bloomsberry, Inc. (hereinafter referred to as “Bloomsberry,” or “Opposer”) having an address of 92 Jackson Street, Salem, Massachusetts 01970, believes that it will be damaged by the registration of Application Serial No. 85/341,131 for the trademark BLOOMSBERRY, filed June 8, 2011 by VPG Limited (hereinafter referred to as “VPG” or “Applicant”), and hereby opposes the same.

As grounds for opposition, Opposer alleges that:

Background

1. On June 8, 2011, Applicant, a corporation organized under the laws of New Zealand with an address of P.O. Box 353, Christchurch, New Zealand filed Application Serial No. 85/341,131 for the mark BLOOMSBERRY for use on “chocolate, chocolates, non-medicated candy” (hereinafter referred to “Applicant’s Mark” or “Serial. No. 85/341,131”).

2. Serial No. 85/341,131 was published for opposition on April 16, 2013.

3. Prait LLC filed a 30-day extension to oppose Application Serial No. 85/341,131 on May 14, 2013 until June 15, 2013.

4. Opposer is filing this Notice of Opposition as a party in privity with Prait LLC.

5. Opposer and Prait LLC are related companies as defined by 15 U.S.C. §1055 and 15 U.S.C. §1127. All shares of Opposer and Prait LLC are owned by a Mr. Paul Pruett (hereinafter referred to as “Mr. Pruett”). Opposer and Prait LLC share the same physical address of 92 Jackson Street in Salem, Massachusetts 01970. Mr. Pruett is also the sole director of Opposer and Prait LLC. All uses of Opposer’s trademarks are controlled by the same sole shareholder and director as Prait LLC.

6. On or about March 2005, Mr. Pruett formed the corporate entity Bloomsberry LLC, the predecessor-in-interest to Opposer.

7. On or about July 2005, Bloomsberry LLC began marketing and distributing chocolate and chocolates, chocolate bars, and chocolate confections in interstate commerce under the BLOOMSBERRY & CO. trademark.

8. On or about September 2005, Mr. Pruett dissolved Bloomsberry LLC and formed the Opposer in the State of Delaware.

9. Since on or about September 2005, Opposer has marketed and distributed chocolate and

chocolates, chocolate bars, and chocolate confections in interstate commerce under the BLOOMSBERRY & CO. trademark.

10. Opposer is the applicant of U.S. Application Serial No. 85/960,139 for the trademark BLOOMSBERRY & CO. for use in connection with “chocolate and chocolates, chocolate bars, and chocolate confections.”

11. On information and belief, Applicant is a New Zealand corporate entity that was originally owned by a Mr. Giles Barker (hereinafter referred to as “Mr. Barker”), and a Ms. Vanessa Kettelwell (hereinafter referred to as “Ms. Kettelwell”).

12. On or about December 2006, Opposer and Applicant entered into a License Agreement.

13. Under the License Agreement between Opposer and Applicant, 25% of Opposer’s shares were transferred to a Mr. Barker; 25% of Opposer’s shares were transferred to a Ms. Kettelwell; and 50% of Applicant’s shares were transferred to Mr. Pruett.

14. From on or about December 2006, until on or about December 2009, Opposer marketed and distributed chocolate bars in the United States in interstate commerce under trademarks licensed from Applicant under the License agreement.

15. On or about December 2009, a dispute arose between Opposer and Applicant regarding the License Agreement.

16. On or about December 2009, a Settlement Agreement was reached between Opposer and Applicant.

17. Under the Settlement Agreement, Mr. Barker transferred his 25% of Opposer’s shares to Mr. Pruett and Ms. Kettelwell transferred her 25% of Opposer’s shares to Mr. Pruett. Accordingly, under the terms of the Settlement Agreement, Mr. Pruett has owned 100% of

Opposer since on or about December 2009.

18. The BLOOMSBERRY & CO. trademark was not subject to the License Agreement or the Settlement Agreement between Opposer and Applicant.

19. On information and belief, Applicant did not own any U.S. registered trademark for BLOOMSBERRY during the License Agreement or the Settlement Agreement.

20. A company named Out of the Blue Limited owned U.S. Registration No. 2,858,757 for the mark BLOOMSBERRY for chocolate. U.S. Registration No. 2,858,757 issued on June 29, 2004.

21. U.S. Registration No. 2,858,757 was canceled by the U.S. Patent and Trademark Office on February 4, 2011.

22. No assignments of U.S. Registration No. 2,858,757 were recorded at the U.S. Patent and Trademark Office prior to the trademark's cancellation date of February 4, 2011.

23. On information and belief, Applicant has never marketed and distributed chocolate bars in interstate commerce under the mark BLOOMSBERRY.

24. Opposer has used and continued to use the trademark BLOOMSBERRY & CO. in interstate commerce in connection with chocolate and chocolates, chocolate bars, and chocolate confections since on or about July 2005.

25. Opposer will be damaged by the registration of Serial. No. 85/341,131, in that Applicant has claimed exclusive rights to the trademark BLOOMSBERRY, which is very similar to the mark BLOOMSBERRY & CO. used by Opposer in connection with goods that are identical to and/or related to the goods listed in Serial. No. 85/341,131.

COUNT I

Likelihood of Confusion

26. Opposer incorporates by reference the allegations contained in paragraphs 1-25.

27. Applicant's mark BLOOMSBERRY, Serial. No. 85/341,131, is identical to Opposer's BLOOMSBERRY & CO. trademark.

28. Applicant's mark BLOOMSBERRY, Serial. No. 85/341,131, is substantially similar in appearance, sound, and connotation to Opposer's BLOOMSBERRY & CO. trademark, and engenders the same commercial impression. Accordingly, the purchasing public is likely to falsely associate Applicant's products with Opposer, or will erroneously believe that such products are sponsored, licensed, or otherwise authorized by Opposer, to the harm and damage to the goodwill and reputation of Opposer. This likelihood of harm and damage is increased where, as here, Opposer will have no control over the quality of Applicant's products and commercial activities in selling and marketing its BLOOMSBERRY branded products.

29. The products identified by Applicant's mark (chocolate, chocolates, non-medicated candy) and Opposer's mark (chocolate and chocolates, chocolate bars, and chocolate confections) are very similar, if not identical.

30. Applicant's mark, Serial. No. 85/341,131, for BLOOMSBERRY for chocolate, chocolates, non-medicated candy thereof so closely resembles Opposer's BLOOMSBERRY & CO. trademark for chocolate and chocolates, chocolate bars, and chocolate confections, as to be likely to cause confusion, or to cause mistake, or to deceive. Accordingly, Applicant's mark, Serial. No. 85/341,131, should not be allowed to register under Section 2(d) of the Lanham Act.

COUNT II

Fraudulent Procurement

31. Opposer incorporates by reference the allegations contained in paragraphs 1-30.

32. On June 8, 2011, Applicant submitted a Specimen of Use to the United States Patent and Trademark Office (hereinafter referred to as "USPTO") in which Applicant represented to the USPTO that it was using the BLOOMSBERRY mark in interstate commerce in connection with chocolate, chocolates, non-medicated candy.

33. Applicant made this representation to induce the USPTO to issue a registration for Serial No. 85/341,131. A copy of this representation included in Applicant's Specimen attached as **Exhibit 1**.

34. On information and belief, as of June 2012, a year after Applicant represented to the USPTO that it had used the BLOOMSBERRY mark in interstate commerce in connection with chocolate, chocolates, non-medicated candy, Applicant, in fact, had never offered, advertised, or sold any chocolate, chocolates, non-medicated candy under the BLOOMSBERRY mark in the United States.

35. On information and belief, the representations Applicant made to the USPTO on June 8, 2011 were false.

36. On information and belief, Applicant knew that the representations were false and made those representations with the intent to deceive the USPTO.

37. On information and belief, Applicant knowingly made material misrepresentations to the USPTO to procure a registration for Serial No. 85/341,131.

38. The USPTO relied on the representations in allowing Serial No. 85/341,131 to pass to allowance.

39. The USPTO would not have allowed Serial No. 85/341,131 to pass to allowance but for Applicant's false representations.

40. Applicant's actions in the procurement of a registration for Serial No. 85/341,131 constitute fraud, thereby invalidating any registration for Serial No. 85/341,131. Accordingly, registration for Serial No. 85/341,131 should be denied in its entirety.

COUNT III

No Use As A Mark

41. Opposer incorporates by reference the allegations contained in paragraphs 1-40.

42. On information and belief, Applicant had no bona fide use of the BLOOMSBERRY mark in interstate commerce on any of the goods for which it seeks registration prior to the filing of the use-based application, Serial No. 85/341,131, under Trademark Act § 1(a), 15 U.S.C. § 1051(a) on June 8, 2011.

43. On information and belief, Applicant had not sold, offered for sale, or advertised any chocolate under the BLOOMSBERRY mark as of the filing date of Serial No. 85/341,131.

44. On information and belief, Applicant was not using the BLOOMSBERRY mark in commerce in connection with chocolates as of the filing date of Serial No. 85/341,131.

45. For an application under Section 1(a), a mark must be in use in commerce as of the filing date of the application to be entitled to registration.

46. Applicant should not be entitled to obtain a registration for the mark, Serial No. 85/341,131, because the application falsely indicated that the mark was in use in commerce when it was not.

47. Serial No. 85/341,131 should be denied registration because the mark BLOOMSBERRY was not used by Applicant as a mark as of the filing date of Serial No. 85/341,131.

COUNT IV

Applicant has misused the federal registration symbol with intent to deceive the purchasing public or others in the trade into believing that the mark is registered.

48. Opposer incorporates by reference the allegations contained in paragraphs 1-47.

49. Opposer attaches a screenshot from Applicant's website www.bloomsberry.com as **Exhibit 2**.

50. Applicant's website displays the BLOOMSBERRY mark with the federal registration symbol in close proximity.

51. Opposer attaches a copy of Applicant's Specimen submitted to the USPTO on June 8, 2011 in connection with Serial No. 85/341,131 as **Exhibit 3**.

52. Applicant's specimen displays the BLOOMSBERRY mark with the federal registration symbol in close proximity.

53. On information and belief, on April 26, 2013, part-owner of Applicant, Mr. Barker, contacted the company Groupon by e-mail. A copy of this April 26, 2013 e-mail is attached as **Exhibit 4**.

54. Mr. Barker's April 26, 2013 e-mail alleged that the Opposer was infringing Mr. Barker's alleged trademark "Bloomsberry" with a Groupon deal being offered on-line.

55. Mr. Barker's April 26, 2013 e-mail displays the BLOOMSBERRY mark with the federal registration symbol in close proximity.

56. On information and belief, Groupon imposed restrictions on Opposer's on-line deal in response to Mr. Barker's April 26, 2013 e-mail.

57. Applicant's BLOOMSBERRY trademark application, Serial No. 85/341,131, is not yet registered.

58. On information and belief, Applicant is misusing the federal registration symbol with intent to deceive the purchasing public into believing the mark is registered.

COUNT V

Applicant has not established a commercial presence in the European Community from which its underlying foreign registration issued where such foreign registration forms the basis of the U.S. registration or application for registration.

59. Opposer incorporates by reference the allegations contained in paragraphs 1-58.

60. Applicant's application to register the mark BLOOMSBERRY, Serial No. 85/341,131, was filed on a 44(e) basis on June 8, 2011 with the European Community listed as the applicant's country of origin. Applicant's application for Serial No. 85/341,131 is attached as **Exhibit 1**.

61. On information and belief, Applicant's country of origin is New Zealand.

62. On information and belief, Applicant's country of origin is not the European Community.

63. On information and belief, Applicant does not have a bona fide and effective industrial or commercial establishment in a country or state that is a member of the European Community.

64. During the prosecution of Serial No. 85/341,131, Applicant provided the USPTO with a copy of a foreign registration from the European Community.

65. During the prosecution of Serial No. 85/341,131, the USPTO issued an Office Action dated September 22, 2011 refusing registration of Serial No. 85/341,131 because Applicant did not appear to be the owner of a valid registration in Applicant's country of origin. The record of Serial No. 85/341,131 showed the Applicant to be domiciled in New Zealand, but submitted a foreign registration from the European Community. A copy of the September 22, 2011 Office Action is attached as **Exhibit 5**.

66. On information and belief, on December 30, 2011, Applicant falsely claimed that it had a bona fide and effective industrial or commercial establishment in a country or state that is a member of the European Community to overcome the September 22, 2011 Office Action rejection. A copy of Applicant's December 30, 2011 response is attached as **Exhibit 6**.

67. On information and belief, Applicant does not have a bona fide and effective industrial or commercial establishment in a country or state that is a member of the European Community.

68. On information and belief, on December 30, 2011, the date Applicant made the materially false statement regarding its country of origin, Applicant did not have a bona fide and effective industrial or commercial establishment in a country or state that is a member of the European Union.

69. On information and belief, Applicant made this representation to induce the USPTO to issue a registration for Serial No. 85/341,131.

70. On information and belief, Applicant knew that the representations were false and made those representations with the intent to deceive the USPTO.

71. On information and belief, Applicant knowingly made material misrepresentations to the USPTO to procure a registration for Serial No. 85/341,131.

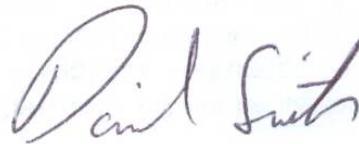
72. The USPTO relied on the representations in allowing Serial No. 85/341,131 to pass to allowance.

73. The USPTO would not have allowed Serial No. 85/341,131 to pass to allowance but for Applicant's false representations. Accordingly, registration for Serial No. 85/341,131 should be denied in its entirety.

WHEREFORE, Opposer Bloomsberry Inc. prays that this Notice of Opposition be sustained for the reasons set forth above, and that the Registration be denied.

DATED this 15th day of June 2013.

Respectfully submitted,



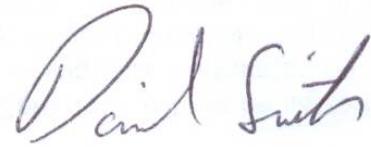
Daniel N. Smith, Esq.
New England Patent & Trademark
One Salem Green, Suite 500
Salem, MA 01970
Telephone: 978-882-0160
Facsimile: 978-882-0161
E-Mail:
smith@PatentsTrademarkLaw.com

CERTIFICATE OF SERVICE

Under 37 C.F.R. § 2.119, the undersigned hereby certifies that a true and correct copy of the foregoing **NOTICE OF OPPOSITION** was served on Opposer's attorney of record at the correspondence address of record in the United States Patent and Trademark Office by mailing a true copy thereof, by First Class Mail; postage prepaid this 15th day of June, 2013, in an envelope addressed as follows:

Mary Catherine Merz
Merz & Associates, P.C.
1010 Lake Street, Suite 400
Oak Park, ILLINOIS 60301-1135
UNITED STATES

Date: June 15, 2013

A handwritten signature in black ink, appearing to read "Daniel N. Smith", written over a light blue horizontal line.

Daniel N. Smith
Counsel for Bloomsberry, Inc.

Trademark/Service Mark Application, Principal Register

Serial Number: 85341131

Filing Date: 06/08/2011

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85341131
MARK INFORMATION	
*MARK	BLOOMSBERRY
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	BLOOMSBERRY
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	VPG Limited
*STREET	P.O. Box 353
*CITY	Christchurch
*COUNTRY	New Zealand
LEGAL ENTITY INFORMATION	
TYPE	corporation
STATE/COUNTRY OF INCORPORATION	New Zealand
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	030

* IDENTIFICATION	Chocolate, chocolates, non-medicated candy
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 09/12/2005
FIRST USE IN COMMERCE DATE	At least as early as 09/12/2005
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT11\IMAGEOUT 11\853\411\85341131\xml1\APP0008.JPG
	\\TICRS\EXPORT11\IMAGEOUT 11\853\411\85341131\xml1\APP0009.JPG
SPECIMEN DESCRIPTION	photographs of the mark in use on the subject goods
FILING BASIS	SECTION 44(e)
FOREIGN REGISTRATION NUMBER	009573304
FOREIGN REGISTRATION COUNTRY	European Community
FOREIGN REGISTRATION DATE	05/13/2011
FOREIGN REGISTRATION EXPIRATION DATE	12/03/2020
FOREIGN REGISTRATION FILE NAME(S)	
ORIGINAL PDF FILE	reg-1691301914-144509677 . 2011-06-07 Bloomsberry CTM reg cert 10878549 1.pdf
CONVERTED PDF FILE(S) (5 pages)	\\TICRS\EXPORT11\IMAGEOUT11\853\411\85341131\xml1\APP0003.JPG
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STANDARD CHARACTERS OR	YES

EQUIVALENT	
ADDITIONAL STATEMENTS SECTION	
PRIOR REGISTRATION(S)	The applicant claims ownership of U.S. Registration Number(s) 2858757.
ATTORNEY INFORMATION	
NAME	Robert J. Kenney
ATTORNEY DOCKET NUMBER	6094-0105US1
FIRM NAME	BIRCH, STEWART, KOLASCH & BIRCH, LLP
STREET	P.O. Box 747
CITY	Falls Church
STATE	Virginia
COUNTRY	United States
ZIP/POSTAL CODE	22040-0747
PHONE	703-205-8000
FAX	703-205-8050
EMAIL ADDRESS	mailroom@bskb.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
OTHER APPOINTED ATTORNEY	James M. Slattery (Reg. No. 28,380), Michael K. Mutter (Reg. No. 29,680), Charles Gorenstein (Reg. No. 29,271), Paul C. Lewis (Reg. No. 43,368), Terrell C. Birch (Reg. No. 19,382), Raymond C. Stewart (Reg. No. 21,066), Joseph A. Kolasch (Reg. No. 22,463) and Leonard R. Svensson (Reg. No. 30,330).
DOMESTIC REPRESENTATIVE INFORMATION	
NAME	BIRCH, STEWART, KOLASCH & BIRCH, LLP
STREET	P.O. Box 747
CITY	Falls Church
STATE	Virginia
COUNTRY	United States
ZIP CODE	22040-0747
PHONE	703-205-8000
FAX	703-205-8050

EMAIL ADDRESS	mailroom@bskb.com
CORRESPONDENCE INFORMATION	
NAME	Robert J. Kenney
FIRM NAME	BIRCH, STEWART, KOLASCH & BIRCH, LLP
STREET	P.O. Box 747
CITY	Falls Church
STATE	Virginia
COUNTRY	United States
ZIP/POSTAL CODE	22040-0747
PHONE	703-205-8000
FAX	703-205-8050
EMAIL ADDRESS	mailroom@bskb.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	/Robert J. Kenney/
SIGNATORY'S NAME	Robert J. Kenney
SIGNATORY'S POSITION	Attorney of record, Virginia bar member
DATE SIGNED	06/08/2011

Trademark/Service Mark Application, Principal Register

Serial Number: 85341131

Filing Date: 06/08/2011

To the Commissioner for Trademarks:

MARK: BLOOMSBERRY (Standard Characters, see [mark](#))

The literal element of the mark consists of BLOOMSBERRY.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, VPG Limited, a corporation of New Zealand, having an address of

P.O. Box 353

Christchurch

New Zealand

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 030: Chocolate, chocolates, non-medicated candy

In International Class 030, the mark was first used at least as early as 09/12/2005, and first used in commerce at least as early as 09/12/2005, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) photograph(s) of the mark in use on the subject goods.

[Specimen File1](#)

[Specimen File2](#)

Based on Foreign Registration: Applicant has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and submits a copy of European Community registration number 009573304, registered 05/13/2011 with a renewal date of _____ and an expiration date of 12/03/2020, and translation thereof, if appropriate. 15 U. S.C. Section 1126(e), as amended.

Original PDF file:

[reg-1691301914-144509677_. 2011-06-07_Bloomsberry_CTM_reg_cert_10878549_1.pdf](#)

Converted PDF file(s) (5 pages)

[Foreign Registration-1](#)

[Foreign Registration-2](#)

[Foreign Registration-3](#)

[Foreign Registration-4](#)

[Foreign Registration-5](#)

The foreign registration that is the basis of the U.S. application under Section 44(e) of the Trademark Act (15 U.S.C. Section 1126(e)) includes a claim of standard characters or the country of origin's standard

character equivalent.

The applicant claims ownership of U.S. Registration Number(s) 2858757.

The applicant's current Attorney Information:

Robert J. Kenney and James M. Slattery (Reg. No. 28,380), Michael K. Mutter (Reg. No. 29,680), Charles Gorenstein (Reg. No. 29,271), Paul C. Lewis (Reg. No. 43,368), Terrell C. Birch (Reg. No. 19,382), Raymond C. Stewart (Reg. No. 21,066), Joseph A. Kolasch (Reg. No. 22,463) and Leonard R. Svensson (Reg. No. 30,330). of BIRCH, STEWART, KOLASCH & BIRCH, LLP

P.O. Box 747

Falls Church, Virginia 22040-0747

United States

The attorney docket/reference number is 6094-0105US1.

The applicant hereby appoints BIRCH, STEWART, KOLASCH & BIRCH, LLP

P.O. Box 747

Falls Church Virginia 22040-0747

United States

as applicant's representative upon whom notice or process in the proceedings affecting the mark may be served.

The applicant's current Correspondence Information:

Robert J. Kenney

BIRCH, STEWART, KOLASCH & BIRCH, LLP

P.O. Box 747

Falls Church, Virginia 22040-0747

703-205-8000(phone)

703-205-8050(fax)

mailroom@bskb.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Robert J. Kenney/ Date Signed: 06/08/2011
Signatory's Name: Robert J. Kenney
Signatory's Position: Attorney of record, Virginia bar member

RAM Sale Number: 1434
RAM Accounting Date: 06/09/2011

Serial Number: 85341131
Internet Transmission Date: Wed Jun 08 15:04:04 EDT 2011
TEAS Stamp: USPTO/BAS-169.130.19.14-2011060815040490
7658-85341131-48031bf8b47558cc8711c78dd1
17b7a84e-DA-1434-20110608144509677995

BLOOMSBERRY



Registered / Enregistré 13/05/2011

No 009573304

**OHIM – OFFICE FOR HARMONIZATION IN THE
INTERNAL MARKET
TRADE MARKS AND DESIGNS**

CERTIFICATE OF REGISTRATION

This Certificate of Registration is hereby issued for the Community Trade Mark identified below. The corresponding entries have been recorded in the Register of Community Trade Marks.

**OHMI – OFFICE DE L'HARMONISATION DANS LE
MARCHÉ INTÉRIEUR
MARQUES, DESSINS ET MODÈLES**

CERTIFICAT D'ENREGISTREMENT

Le présent Certificat d'Enregistrement est délivré pour la marque communautaire identifiée ci-joint. Les mentions et les renseignements qui s'y rapportent ont été inscrits au Registre des Marques Communautaires.

BLOOMSBERRY

The President / Le Président

António Campinos



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541	BLOOMSBERRY		
521	0		
732	VPG Limited P.O. Box 353 Christchurch NZ		
740	SPEECHLY BIRCHAM LLP 6 New Street Square London EC4A 3LX GB		
270	EN FR		
511	BG - 30 Доставка на шоколад; Шоколадови сладкарски изделия; Пралини (захаросани сладкарски изделия, предимно ядки); Сладкарски изделия - замразени, Сладолед; Напитки на шоколадова основа и напитки с вкус на шоколад; Шоколадови яйца; Сладкиши (торти, кексове, пасти), Бисквити; Шоколадови сосове; Какаови продукти; Кафе; Екстракти от кафе; Приготвяне на напитки на основата на кафе. BG - 35 Събирането на едно място в полза на трети лица на разнообразни стоки, което дава възможност на клиентите да имат удобен поглед и да закупят шоколад, шоколадови бонбонки, захаросани ядки, замразени сладкарски изделия, сладолед, напитки с шоколадов аромат и шоколасови напитки, шоколадови яйца, торти, бисквити, шоколадови сосове, какаови продукти, кафе, екстракти от кафе, и продукти от кафе и напитки от магазини на дребно, чрез поръчка по пощата или бази данни и данни, получавани по интернет. BG - 43 Услуги по снабдяване с храната и течности; Услуги на ресторанти, кафенета, ресторанти за бързо хранене и кетъринг услуги. ES - 30 Surtimiento de chocolate; Confitería de chocolate; Pralinés; Productos de pastelería congelados; Helados; Bebidas con una base de chocolate y con sabor a chocolate; Huevos de chocolate; Pastel; Galletas; Salsas de chocolate; Productos de cacao; Café; Extractos de café; Preparados y bebidas con una base de café. ES - 35 Recopilación, en beneficio de terceros, de una variedad de productos, para que los consumidores puedan ver y adquirir cómodamente chocolate, confitería de chocolate, garrapiñadas, confitería congelada, helados, bebidas con una base de chocolate y con sabor a chocolate, huevos de chocolate, pasteles, bizcochos, salsas de chocolate, productos de cacao, café, extractos de café y preparaciones y bebidas con una base de café, de una tienda de venta minorista, mediante pedidos por correo o a través de Internet. ES - 43 Servicios de restauración (alimentación); Servicios de restaurante, café, bar de aperitivos, cafetería, asador y catering. CS - 30		
			Čokoládový sortiment; Čokoládové cukroví; Pralinky; Mražené cukrovinky; Zmrzlina; Nápoje s příchutí čokolády a na bázi čokolády; Čokoládová vejce; Koláče; Sušenky; Čokoláda, polevy; Výrobky z kakaá; Káva; Kávové výtažky; Přípravky a nápoje na bázi kávy. CS - 35 Sjednocení různého zboží v zájmu druhých tak, aby si zákazníci mohli pohodlně prohlédnout a koupit čokoládu, čokoládové cukrovinky, pralinky, mražené sladkosti, zmrzlinu, nápoje s příchutí čokolády a na bázi čokolády, čokoládová vejce, zákusky, sušenky, čokoládové polevy, výrobky z kakaá, kávu, kávové náhražky a přípravky a nápoje na bázi kávy, a to v maloobchodní prodejně, poštovní objednávkou nebo prostřednictvím internetu. CS - 43 Služby zajišťující stravování a nápoje; Služby restaurací, kaváren, bufetů, kavárenských barů, pivnic a dodávání pokrmů na určené místo. DA - 30 Levering af chokolade; Chokoladekonfekt; Pralineer; Frosne konfekturvarer; Iscreme; Drikke med chokoladesmag og drikke fremstillet på basis af chokolade; Chokoladeæg; Kager; Biskuitter; Chokolade, saucer; Kakaoprodukter; Kaffe; Kaffeekstrakter; Præparater og drikke fremstillet på basis af kaffe. DA - 35 Sammensætning, til fordel for andre, af en række varer, hvilket gør det muligt for kunder at se og købe chokolade, chokoladekonfekt, pralinéer, frosne konfekturvarer, iscreme, drikke med chokoladesmag og drikke fremstillet på basis af chokolade, chokoladeæg, kager, biskuitter, chokolade, saucer, kakaoprodukter, kaffe, kaffeekstrakter samt præparater og drikke fremstillet på basis af kaffe i en detailforretning, via postordre eller via internettet. DA - 43 Tilvejebringelse af mad og drikke; Restauranter, caféer, snackbarer, kaffebarer, brasserier og cateringvirksomhed. DE - 30 Schokoladensortiment; Schokoladenkonfekt; Pralinen; Tiefgekühlte Konditorwaren; Eiscreme; Getränke mit Schokoladengeschmack und auf Schokoladenbasis; Schokoladeneier; Kuchen; Biskuits; Schokoladensoßen; Kakaoprodukte; Kaffee; Kaffee-Extrakte; Zubereitungen und Getränke auf Kaffeebasis. DE - 35 Zusammenstellung verschiedener Waren für Dritte, um dem Verbraucher eine bequeme Ansicht und den Erwerb von Schokolade, Schokoladenkonfekt, Pralinen, gefrorenen Süßwaren, Eiscreme, Getränken mit Schokoladengeschmack und auf Schokoladenbasis, Schokoladeneiern, Kuchen, Keksen, Schokoladensoßen, Kakaerzeugnissen, Kaffee, Kaffeeextrakten und Zubereitungen und Getränken auf Kaffeebasis aus einem Einzelhandelsgeschäft, über Versandhandel oder über das Internet. DE - 43 Verpflegung und Beherbergung von Gästen; Dienstleistungen von Restaurants, Cafés, Imbissstuben, Kaffeebars und Brasserien und Cateringdienste. ET - 30 Valikšokolaad; Šokolaadiga maiustused; Pralineed; Külmutatud maiustused; Jäätis; Šokolaadimaitselised joogid ja šokolaadijoogid; Šokolaadimunad; Koogid, keeksid, tordid; Biskviidid; Šokolaad, kastmed; Kakaootooted; Kohv; Kohviekstraktid; Kohvipõhised preparaadid ja joogid. ET - 35 Teiste kasu eesmärgil järgmiste toodete koondamine, võimaldamaks klientidel mugavalt vaadelda ja osta neid tooteid; šokolaad, šokolaadimaustused, pralineed, külmutatud



maiusused, jäälis, šokolaadimaitseised joogid ja šokolaadi-joogid, šokolaadimunad, koogid, biskviidid, šokolaadikastmed, kakaotooted, kohv, kohviekstraktid ja kohvipõhised tooted ja joogid, jaekauplustest, postitellimuse või Interneti teel.

ET - 43

Toitlustusteenused; Restorani-, kohviku-, einebaari-, kohvibaari-, õllebaari- ja toitlustusteenused.

EL - 30

Ποικιλίες από σοκολάτες. Ζαχαρώδη με βάση τη σοκολάτα. Πραλίνες. Κατεψυγμένα είδη ζαχαροπλαστικής. Παγωτά-Ποτά με γεύση σοκολάτας και με βάση τη σοκολάτα. Σοκολατένια αβγά. Κέικ. Μπισκότα. Γαρνιτούρες σοκολάτας. Προϊόντα από κακάο. Καφές. Εκχυλίσματα καφέ. Παρασκευάσματα και ροφήματα με βάση τον καφέ.

EL - 35

Συγκέντρωση, προς εξυπηρέτηση τρίτων, ποικιλίας ειδών όπου περιλαμβάνεται σοκολάτα, ζαχαρώδη με βάση τη σοκολάτα, πραλίνες, παγωμένα γλυκίσματα, παγωτά, ποτά με γεύση σοκολάτας και με βάση της σοκολάτα, σοκολατένια αβγά, κέικ, μπισκότα, σιρόπια σοκολάτας, προϊόντα κακάου, καφές, εκχυλίσματα καφέ, και παρασκευάσματα και ποτά με βάση τον καφέ, γεγονός που παρέχει στους πελάτες τη δυνατότητα να βλέπουν και να αγοράζουν με άνεση τα είδη αυτά από κατάστημα λιανικής πώλησης, μέσω ταχυδρομικών παραγγελιών ή μέσω του Διαδικτύου.

EL - 43

Υπηρεσίες παροχής διατροφής και ποτών-Υπηρεσίες εστιατορίου, καφέ, εστιατορίου για μικρογεύματα, καφέ-μπαρ, ζυθισσατορίου και τροφοδοσίας.

EN - 30

Chocolate; chocolate confectionery; pralines; frozen confectionery; ice cream; chocolate flavoured and chocolate-based drinks; chocolate eggs; cakes; biscuits; chocolate sauces; cocoa products; coffee; coffee extracts; coffee-based preparations and beverages.

EN - 35

The bringing together, for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase chocolate, chocolate confectionery, pralines, frozen confectionery, ice cream, chocolate flavoured and chocolate-based drinks, chocolate eggs, cakes, biscuits, chocolate sauces, cocoa products, coffee, coffee extracts, and coffee-based preparations and beverages from a retail store, by mail order or via the Internet.

EN - 43

Services for providing food and drink; restaurant, cafe, snack bar, coffee bar, brasserie and catering services.

FR - 30

Assortiment de chocolats; Confiserie chocolatée; Pralines; Produits de confiserie surgelés; Crèmes glacées; Boissons à base de chocolat et aromatisées au chocolat; Oeufs en chocolat; Gâteaux; Biscuits; Sauces à base de chocolat; Produits cacaotés; Café; Extraits de café; Préparations et boissons à base de café.

FR - 35

Le rassemblement, pour des tiers, d'une variété de produits, afin de permettre aux clients de visualiser et d'acheter facilement du chocolat, de la confiserie au chocolat, des pralines, de la confiserie glacée, de la crème glacée, des boissons à base de chocolat et aromatisées au chocolat, des oeufs en chocolat, des gâteaux, des biscuits, des sauces au chocolat, des produits au cacao, du café, des extraits de café, et des boissons et préparations à base de café dans un magasin de détail, par correspondance ou via l'internet.

FR - 43

Services de restauration (alimentation); Services de restaurants, cafés, snack-bars, cafés-bars, brasseries et traiteurs.

IT - 30

Assortimento di cioccolato; Confeetteria a base di cioccolato; Praline; Confeetteria surgelata; Gelati; Bevande a base di cioccolato e al gusto di cioccolato; Uova di cioccolato; Dolci; Biscotti; Salse a base di cioccolato; Prodotti di cacao; Caffè; Estratti di caffè; Preparati e bevande a base di caffè.

IT - 35

Raccolta, a beneficio di terzi, d'una varietà di prodotti, per consentire ai clienti la comoda visione ed acquisto di cioccolato, confetteria a base di cioccolato, praline, confetteria surgelata, gelati, bevande al gusto di cioccolato e a base di cioccolato, uova di cioccolato, dolci, biscotti, salse a base di cioccolato, prodotti di cacao, caffè, estratti di caffè e preparati di bevande a base di caffè in un negozio, per corrispondenza o via Internet.

IT - 43

Ristorazione (alimentazione); Servizi di ristoranti, bar-ristoranti, snack-bar, caffetterie, birrerie e catering.

LV - 30

Šokolādes sortiments; Šokolādes konditorejas izstrādājumi; Pralinē, Saldēta saldumu konditoreja; Saldējums; Dzērieni ar šokolādes garšu un no šokolādes pagatavoti dzērieni; Šokolādes olas; Kūkas; Biskvīti; Šokolāde, mērces; Kakao produkti; Kafija; Kafijas ekstrakti; No kafijas pagatavoti dzērieni.

LV - 35

Dažādu preču apkopošana citu vajadzībām, proti, šokolāde, šokolādes konditorejas izstrādājumi, pralinē, saldēti konditorejas izstrādājumi, saldējums, dzērieni ar šokolādes garšu un no šokolādes pagatavoti dzērieni, šokolādes olas, kūkas, cepumi, šokolāde, mērces, kakao produkti, kafija, kafijas ekstrakti un kafijas izstrādājumi, kā arī dzērieni, ļaujot klientiem ērti aplūkot un iegādāties šīs preces mazumtirzniecības veikalā, pasūtot pa pastu vai ar interneta starpniecību.

LV - 43

Apgāde ar uzturu; Restorānu, kafējnicu, uzkodu bāru, kafetēriju, nelielu restorānu, kā arī pārtikas un dzērienu piegādes pakalpojumi.

LT - 30

Šokolado tiekimas; Šokoladiniai konditerijos gaminiai; Pralinė (trinti riešutai su cukrumi); Šaldyti konditerijos gaminiai; Ledai; Šokolado skonio ir šokoladiniai gėrimai; Šokoladiniai kiaušiniai; Kepiniai; Biskvitai; Šokoladas, tyrės; Kakavos produktai; Kava; Kavos ekstraktai; Kavos preparatai ir gėrimai.

LT - 35

Asortimento sudarymas kitų labui iš įvairių prekių, leidžiantis klientams patogiai apžiūrėti šokoladą, šokoladinius konditerijos gaminius, pralinė, šaldytus konditerijos gaminius, ledus, šokolado skonio ir šokoladinius gėrimus, šokoladinius kiaušinius, tortus, sausainius, šokolado padažus, kakavos produktus, kavą, kavos ekstraktus, kavos ruošinius ir gėrimus bei jų įsigyti mažmeninėje parduotuvėje, užsakyti paštu arba internetu.

LT - 43

Maisto ir gėrimų parūpinimo paslaugos; Restorano, kavinės, užkandinės, kavos baro, alinės ir viešojo maitinimo paslaugos.

HU - 30

Különböző csokoládék; Csokoláde édességek; Pralinék; Hűtött cukrászárak; Fagyalt, jégkrém; Csokoládé ízesítésű és csokoládé alapú italok; Csokoládétojások; Piskóták/torták; Sütemények/kekszek; Csokoládék, szószok; Kakaótermékek; Kávé; Kávékivonatok; Kávéalapú készítmények és italok.

HU - 35

Mások megbízásából többféle áru egy helyre gyűjtése, lehetővé téve a vásárlók számára az alábbi áruk kényelmes megtekintését és megvásárlását egy kiskereskedelmi üzletből,



postai rendelés útján vagy az interneten keresztül; csokoládé, csokoládé édességek, pralinék, fagyalt édességek, jégkrém, csokoládé ízesítésű és csokoládé alapú italok, csokoládétojások, cukrászsütemények, kekszek, csokoládé, szőszok, kakaós termékek, kávé, kávékivonatok, és kávéalapú készítmények és italok.

HU - 43

Vendéglátási (élelmezési) szolgáltatások; Éttermekben, kávézóknak, snack bárokban, kávézóknak, pékségekben és vendéglátó-ipari egységekben nyújtott szolgáltatások.

MT - 30

Provvista ta' ċikkulata; Flewwiet taċ-ċikkulata; Pralini; Prodotti tal-għagina; Gelat; Xarbiet b'toghma ta' ċikkulata u bbażati fuq iċ-ċikkulata; Bajd taċ-ċikkulata; Torti; Biskuttini; Ċikkulata, zlazi; Prodotti tal-kawkaw; Kafé; Estratt tal-kafé; Preparazzjonijiet u xarbiet ibbażati fuq il-kafé.

MT - 35

Il-gabra flimkien, għall-benefiċċju ta' oħrajn, ta' varjetà ta' oggettji, li tippermetti li l-klijenti jaraw u jixtru bil-kumdità iċ-ċikkulata, flewwiet taċ-ċikkulata, pralini, gelat tal-fielu, gelat, xarbiet b'toghma ta' ċikkulata u ibbażati fuq iċ-ċikkulata, bajd taċ-ċikkulata, kejkijiet, biskuttini, zlazi taċ-ċikkulata, prodotti tal-kawkaw, kafé, estratti tal-kafé, u preparazzjonijiet u xarbiet ibbażati fuq il-kafé permezz ta' hanut li jbiegħ bi-Internet, permezz tal-ordni bil-posta jew permezz tal-Internet.

MT - 43

Servizzi għall-provvista ta' ikeġ u xorb; Servizzi ta' ristoranti, kafé, snekkbar, hanut tal-kafé, brasserie u kejtjeri.

NL - 30

Sortering van chocolade; Suikergoed op basis van chocolade; Pralines; Bevroren suikerbakkerswaren; Roomijs; Dranken met chocoladesmaak en op basis van chocolade; Chocolade-eieren; Gebakjes; Koekjes; Chocoladesausen; Cacaoprodukten; Koffie; Koffie-extracten; Preparaten en dranken op basis van koffie.

NL - 35

Het samenbrengen, ten bate van derden, van een breed scala aan goederen om de klant in staat te stellen chocolade, chocoladesuikerbakkerswaren, pralines, bevroren suikerbakkerswaren, roomijs, dranken met chocoladesmaak en op basis van chocolade, chocolade-eieren, taarten, koekjes, chocoladesausen, cacaoprodukten, koffie, koffie-extracten en preparaten en dranken op basis van koffie op zijn gemak te bekijken en te kopen vanuit een winkel, per postorder of via internet.

NL - 43

Restauratie (het verstrekken van voedsel en dranken); Diensten van restaurants, café-restaurants, snackbars, koffiebars en bierhuizen, en levensmiddelenvoorziening.

PL - 30

Dostawa czekolady; Wyroby z czekolady; Pralinki; Wyroby cukierniczemrożone; Lody; Napoje o smaku czekoladowym i na bazie czekolady; Jajka czekoladowe; Ciasta; Biszkopty; Czekolada, sosy; Kakao (wyroby z -); Kawa; Wyciąg z ziarenek kawy; Preparaty i napoje na bazie kawy.

PL - 35

Gromadzenie na rzecz osób trzecich różnorodnych towarów, w celu umożliwienia klientom wygodnego oglądania i kupowania czekolady, czekoladowych wyrobów cukierniczych, pralinek, mrożonych wyrobów cukierniczych, lodów, napojów o smaku czekoladowym i na bazie czekolady, jajeczek czekoladowych, ciastek, herbatników, sosów czekoladowych, wyrobów z kakao, kawy, wyciągów z kawy oraz preparatów i napojów na bazie kawy w sklepie detalicznym, poprzez sprzedaż wysyłkową lub za pośrednictwem internetu.

PL - 43

Uslugi zaopatrzenia w żywność i napoje; Uslugi restauracji, kawiarni, barów szybkiej obsługi, barów kawowych, piwiarni i cateringowe.

PT - 30

Sortidos de chocolate; Confeitaria de chocolate; Pralines; Produtos de confeitaria congelados; Cremes gelados; Bebidas com aroma de chocolate e à base de chocolate; Ovos de chocolate; Bolos; Bolachas; Molhos de chocolate; Produtos de cacau; Café; Extractos de café; Produtos e bebidas à base de café.

PT - 35

Reunião, em benefício de terceiros, de diversos produtos, para permitir aos clientes ver e comprar comodamente chocolate, confeitaria de chocolate, pralinas, confeitaria congelada, gelados, bebidas com aroma de chocolate e à base de chocolate, ovos de chocolate, bolos, biscoitos, molhos de chocolate, produtos de cacau, café, extractos de café, bem como preparações e bebidas à base de café, numa loja do comércio a retalho, por encomenda postal ou através da Internet.

PT - 43

Serviços de restauração (alimentação); Serviços de restaurante, café-restaurante, snack-bar, bar de café, cervejaria e de restauração ("catering").

RO - 30

Furnizare de ciocolata; Produse de cofetărie din ciocolată; Praline; Produse de cofetărie congelate; Înghețată; Băuturi cu aromă de ciocolată și băuturi pe bază de ciocolată; Oua de ciocolata; Prăjituri; Biscuiți; Sosuri de ciocolata; Produse de cacao; Cafea; Extracte de cafea; Produse pe bază de cafea și băuturi.

RO - 35

Regruparea, în beneficiul terților, a unei varietăți de dulciuri, permițând clienților să vadă și să cumpere comod ciocolată, dulciuri cu ciocolată, praline, dulciuri înghețate, înghețată, băuturi cu aromă de ciocolată și băuturi pe bază de ciocolată, ouă de ciocolată, prăjituri, biscuiți, sosuri cu ciocolată, produse din cacao, cafea, extracte de cafea și preparate și băuturi pe bază de cafea, dintr-un magazin de comercializare cu amănuntul, prin comandă poștală sau prin internet.

RO - 43

Servicii de aprovizionare cu alimente și bauturi; Servicii de restaurant, cafenele, baruri cu gustări rapide, cafenele, braserii și catering.

SK - 30

Zásobovanie čokoládou; Čokoládové cukrovinky; Pralinky; Cukrárske výrobky mražené; Zmrzliny; Nápoje s čokoládovou príchuťou a čokoládové nápoje; Čokoládové vajlička; Zákusky, kolače; Sušienky, sucháre, keksy, biskvity; Čokoláda, polevy; Výrobky z kakaa; Káva; Kávové výťažky-extrakty; Kávové prípravky a nápoje.

SK - 35

Zhromažďovanie rôznych tovarov, umožňujúc tak zákazníkovi pohodlne prezerať a zakúpiť čokoládu, čokoládové cukrovinky, pralinky, zmrzlinárske sladkosti, zmrzliny, nápoje s čokoládovou príchuťou a čokoládové nápoje, čokoládové vajlička, zákusky, sušienky, sucháre, keksy, biskvity, čokoláda, polevy, výrobky z kakaa, káva, kávové výťažky a kávové výrobky a nápoje v maloobchodnej predajni, na dobierku alebo prostredníctvom internetu.

SK - 43

Služby súvisiace s poskytovaním jedla a nápojov; Reštauračné, kaviarenské, bufetové a stravovacie služby.

SL - 30

Preskrba s čokolado; Čokoladne slaščice; Praline, Zamrzljene slaščice; Sladoled; Pijače z okusom čokolade in na osnovi



čokolade; Čokoladna jajčka; Torte; Drobnopivo (piškoti); Čokolada, omake; Kakavovi izdelki; Kava; Kavni izvlečki/ekstrakti; Pripravki in pijače na osnovi kave.

SL - 35

Združevanje različnega blaga v korist drugih, kar strankam omogoča udoben ogled in nakup blaga, kot so čokolada, čokoladne slaščice, praline, zamrznjene slaščice, sladolei, pijače z okusom čokolade in na osnovi čokolade, čokoladna jajčka, torte, piškoti, čokoladne omake, kakavovi izdelki, kava, kavni ekstrakti ter pripravki in pijače na osnovi kave, v prodajalni na drobno, z naročilom po pošti ali po internetu.

SL - 43

Nudenje hrane in pijače; Storitve restavracij, kavarn, okrepevalnic, kavnih barov, pivnice in gostinske storitve.

FI - 30

Suklaakonehtilajitelmat; Suklaamakeiset; Konvehtien täyte; Pakastetut konditoriatuotteet; Jäätelö; Suklaanmakuiset ja suklaapohjaiset juomat; Suklaamunat; Kakut; Keksit; Suklaakastikkeet; Kaakaotuotteet; Kahvi; Kahviuutteet; Kahvipohjaiset valmisteet ja juomat.

FI - 35

Seuraavien erilaisten tavaroiden kokoaminen muiden hyödyksi niin, että asiakkaat voivat vaivattomasti katsella ja ostaa niitä vähittäismyymälästä, postimyynnin tai Internetin välityksellä: suklaa, suklaamakeiset, konvehdit, pakastetut makeiset ja leivonnaiset, jäätelö, suklaanmakuiset ja suklaapohjaiset juomat, suklaamunat, kakut, keksit, suklaakastikkeet, kaakaotuotteet, kahvi, kahviuutteet ja kahvipohjaiset valmisteet ja juomat.

FI - 43

Ravitseminen; Ravintola-, kahvila-, välipalabaari-, kahvibaari-, olutravintola- ja ateriapalvelut.

SV - 30

Chokladsortiment; Godsaker av choklad; Praliner; Frysta konditorivaror; Glass; Chokladsmaksatta och -baserade drycker; Chokladägg; Mjuka kakor; Kex och skorpor; Chokladsäser; Kakaoprodukter; Kaffe; Kaffeextrakt; Kaffebaserade preparat och drycker.

SV - 35

Sammanförande, till fördel för andra, av olika varor, och därigenom möjliggöra för kunder att bekvämt se och köpa choklad, godsaker av choklad, praliner, frusna godsaker, glass, chokladsmaksatta och -baserade drycker, chokladägg, mjuka kakor, kex, chokladsäser, kakaoprodukter, kaffe, kaffeextrakt, och kaffebaserade preparat och drycker från en detaljhandelsbutik, via postorder eller via Internet.

SV - 43

Utskänkning av mat och dryck; Restaurang-, kafé-, snackbars-, kaffebars-, brasserie- och cateringtjänster.





Weapons of Mass Seduction

Bloomsberry

THINK CHOCOLATE

ALL PRICES ARE U.S DOLLARS

LOG IN

CART

CHECKOUT

Home

Shop

Wholesale

Our Story

Cancer Support

Corporate Chocolate

Competitions

Contact Us

Contact Us

Contact us!

We love hearing feedback from our customers. If you would like to stock our products in your store contact as well.

Ph: +64 (09) 379 6360

Fax: +64 (09) 269 5465

Email: Giles@bloomsberry.com

Bloomsberry & Co Ltd

Sales and Marketing: 1 Gibraltar Crescent, Parnell,

Auckland 1052 New Zealand

Administration: 12 St Albans St Merivale Christchurch PO Box 353

Christchurch 8140 New Zealand

Catagories

Christmas

Core Range

Easter Range

New Zealand Tourist Range

Search



EMERGENCY CHOCOLATE



EMERGENCY CHOCOLATE

BLOOMSBERRY & CO.
BLOOMSBERRY & CO.
BLOOMSBERRY & CO.

BLOOMSBERRY & CO.
CHOCOLATE ARTISTRY

Bloomsberry Facts

Nutrition Facts	
Total Fat	10g
Calories	200
Net Weight	1.76oz (50g)



Daniel Smith <smith@patentstrademarklaw.com>

Fwd: Issue with deal for Bloomberry Chocolate.

1 message

Daniel Smith <smith@patentstrademarklaw.com>
To: Daniel Smith <smith@patentstrademarklaw.com>

Thu, May 2, 2013 at 12:26 PM

From: GILES BARKER [giles@bloomsberry.com]**Sent:** Friday, April 26, 2013 5:55 PM**To:** Hinkle, Daniel M.**Subject:** Re: Your email to Groupon

Hi Daniel

On the page. <http://www.groupon.com/deals/gg-bloomsberry-co-mothers-day-chocolate-bundle> our trademark **Bloomsberry** (USPTO Serial Number [85341131](#)) registered in major markets around the world and sold in the US since 2005 is being used without our permission to sell a completely different product. Can you please take our brand Bloomsberry off the page. It is clear from the images of the products that they have a different brand name on the packaging.

Thank you for your assistance

Kindest regards

Giles Barker
Bloomsberry & Co. LimitedMobile: [+64 021 02891198](tel:+642102891198)

Skype: GilesBarker

New Zealand:

Auckland Office/ Sales /Creative

1 Gibraltar Crescent Parnell Auckland 1052 New Zealand

Phone [+64 9 379 6360](tel:+6493796360) (After Hours [+64 9 445 2407](tel:+6494452407))

Christchurch Office/Administration

12 St Albans Street, Merivale, Christchurch
P O Box 353, Christchurch, 8140, New Zealand

Web: www.bloomsberry.com

Facebook: [Facebook.com/bloomsberry](https://www.facebook.com/bloomsberry)

Twitter: [@Bloomsberrylabs](https://twitter.com/Bloomsberrylabs)

Pinterest: <http://pinterest.com/bloomsberry/>



To: VPG Limited (mailroom@bskb.com)

Subject: U.S. TRADEMARK APPLICATION NO. 85341131 - BLOOMSBERRY - 6094-0105US1

Sent: 9/22/2011 1:45:13 PM

Sent As: ECOM115@USPTO.GOV

Attachments: [Attachment - 1](#)
[Attachment - 2](#)
[Attachment - 3](#)
[Attachment - 4](#)
[Attachment - 5](#)
[Attachment - 6](#)
[Attachment - 7](#)
[Attachment - 8](#)
[Attachment - 9](#)
[Attachment - 10](#)
[Attachment - 11](#)
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[Attachment - 25](#)
[Attachment - 26](#)

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

APPLICATION SERIAL NO. 85341131

MARK: BLOOMSBERRY

85341131

CORRESPONDENT ADDRESS:

ROBERT J. KENNEY
BIRCH, STEWART, KOLASCH & BIRCH, LLP

CLICK HERE TO RESPOND TO THIS LETTER:

http://www.uspto.gov/trademarks/teas/response_forms.jsp

PO BOX 747
FALLS CHURCH, VA 22040-0747

APPLICANT: VPG Limited

CORRESPONDENT'S REFERENCE/DOCKET

NO:

6094-0105US1

CORRESPONDENT E-MAIL ADDRESS:

mailroom@bskb.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 9/22/2011

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

Section 2(d) Refusal—Likelihood of Confusion

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 3933928. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the enclosed registration.

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely that a potential consumer would be confused or mistaken or deceived as to the source of the goods and/or services of the applicant and registrant. *See* 15 U.S.C. §1052(d). The court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) listed the principal factors to be considered when determining whether there is a likelihood of confusion under Section 2(d). *See* TMEP §1207.01. However, not all of the factors are necessarily relevant or of equal weight, and any one factor may be dominant in a given case, depending upon the evidence of record. *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); *see In re E. I. du Pont*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity of the goods and/or services, and similarity of trade channels of the goods and/or services. *See In re Opus One, Inc.*, 60 USPQ2d 1812 (TTAB 2001); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593 (TTAB 1999); *In re Azteca Rest. Enters., Inc.*, 50 USPQ2d 1209 (TTAB 1999); TMEP §§1207.01 *et seq.*

Similar Marks

In a likelihood of confusion determination, the marks are compared for similarities in their appearance, sound, meaning or connotation and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973); TMEP §1207.01(b). Similarity in any one of these elements may be sufficient to find a likelihood of confusion. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1043 (TTAB 1987); *see* TMEP §1207.01(b).

Applicant's proposed mark is "BLOOMSBERRY" in standard characters. Registrant's mark is "BLOOMBERRY".

The marks are highly similar, each combining the terms BLOOM/BLOOMS + BERRY in a standard character mark. The sole difference between the marks is applicant's plural form of "bloom". The addition of the "s" within registrant's mark does not change the commercial impression of the mark. Both marks impart the commercial impression of flowering berries.

Related Goods

The goods and/or services of the parties need not be identical or directly competitive to find a likelihood of confusion. *See Safety-Kleen Corp. v. Dresser Indus., Inc.*, 518 F.2d 1399, 1404, 186 USPQ 476, 480 (C.C.P.A. 1975); TMEP §1207.01(a)(i). Rather, it is sufficient that the goods and/or services are related in some manner and/or the conditions surrounding their marketing are such that they would be encountered by the same purchasers under circumstances that would give rise to the mistaken belief that the goods and/or services come from a common source. *In re Total Quality Group, Inc.*, 51 USPQ2d 1474, 1476 (TTAB 1999); TMEP §1207.01(a)(i); *see, e.g., On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086-87, 56 USPQ2d 1471, 1475-76 (Fed. Cir. 2000); *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1566-68, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

Applicant's goods are chocolate, chocolates, non-medicated candy. Registrant's goods are frozen yogurt and frozen yogurt based desserts combined with fruit, berries, nuts and toppings.

The goods are related chocolate and candy products because both are sweet food items consumers purchase as treats or desserts. Further, consumers are accustomed to encountering a single mark used both on candy/chocolate and frozen confections. Enclosed are examples from the internet showing use of a single mark on both types of items.

Attached are copies of printouts from the USPTO X-Search database, which show third-party registrations of marks used in connection with the same or similar goods as those of applicant and registrant in this case. These printouts have probative value to the extent that they serve to suggest that the goods listed therein, namely chocolate and frozen yogurt, are of a kind that may emanate from a single source. *In re Infinity Broad. Corp. of Dallas*, 60 USPQ2d 1214, 1217-18 (TTAB 2001); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988); TMEP §1207.01(d)(iii).

Conclusion

Since the marks are similar and the goods are related, there is a likelihood of confusion as to the source of applicant's goods. Therefore, applicant's mark is not entitled to registration.

Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

Please note the following potential refusal.

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

Earlier-Filed Application

The filing date of pending Application Serial No. 85255991 precedes applicant's filing date. See attached referenced application. If the mark in the referenced application registers, applicant's mark may be refused registration under Trademark Act Section 2(d) because of a likelihood of confusion between the two marks. See 15 U.S.C. §1052(d); 37 C.F.R. §2.83; TMEP §§1208 *et seq.* Therefore, upon receipt of applicant's response to this Office action, action on this application may be suspended pending final disposition of the earlier-filed referenced application.

In response to this Office action, applicant may present arguments in support of registration by addressing the issue of the potential conflict between applicant's mark and the mark in the referenced application. Applicant's election not to submit arguments at this time in no way limits applicant's right to address this issue later if a refusal under Section 2(d) issues.

Additionally, applicant must respond to the requirement(s) set forth below.

Foreign Registration/Country of Origin

Registration is refused because applicant does not appear to be the owner of a valid registration in applicant's country of origin. See 15 U.S.C. §1126(e); 37 C.F.R. §2.34(a)(3)(ii). The application record shows that applicant has a domicile in New Zealand, but has submitted a foreign registration from the European Community as a basis for registration under Trademark Act Section 44(e) in the United States.

To have a valid basis for registration, applicant must have a bona fide and effective industrial or commercial establishment in the European Community. See 15 U.S.C. §1126(c), TMEP §1002.04. If applicant provides a written statement that applicant has a bona fide and effective industrial or commercial establishment in European Community, this refusal will be withdrawn. See 15 U.S.C. §1126(c); TMEP §§1002.01, 1002.04.

If applicant cannot assert that European Community is a country of origin, applicant must amend the application to delete the Section 44(e) basis and rely solely on Section 1(a) as a basis. See 15 U.S.C. §§1051(a); 1126(e); 37 C.F.R. §2.35(b); TMEP §806.04.

Advisory: Claim of Prior Registration

Applicant's claim of ownership of U.S. Registration No. 2858757 will not be printed on any registration which may issue from this application because Office records show that the claimed registration is cancelled. Only claims of ownership of active registrations are printed. See 37 C.F.R. §2.36; TMEP §812.

Response Guidelines

If applicant has questions regarding this Office action after careful review of its content, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §2.191; TMEP §§709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. *See* TMEP §§705.02, 709.06.

For this application to proceed toward registration, applicant must explicitly address each refusal and/or requirement raised in this Office action. If the action includes a refusal, applicant may provide arguments and/or evidence as to why the refusal should be withdrawn and the mark should register. Applicant may also have other options for responding to a refusal and should consider such options carefully. To respond to requirements and certain refusal response options, applicant should set forth in writing the required changes or statements.

If applicant does not respond to this Office action within six months of the issue/ mailing date, or responds by expressly abandoning the application, the application process will end, the trademark will fail to register, and the application fee will not be refunded. *See* 15 U.S.C. §1062(b); 37 C.F.R. §§2.65(a), 2.68(a), 2.209(a); TMEP §§405.04, 718.01, 718.02. Where the application has been abandoned for failure to respond to an Office action, applicant's only option would be to file a timely petition to revive the application, which, if granted, would allow the application to return to live status. *See* 37 C.F.R. §2.66; TMEP §1714. There is a \$100 fee for such petitions. *See* 37 C.F.R. §§2.6, 2.66(b)(1).

/Rebecca J. Povarchuk/
Trademark Examining Attorney
Law Office 115
Rebecca.Povarchuk@uspto.gov
571-270-1529

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/ mailing date before using TEAS, to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at <http://tarr.uspto.gov/>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85341131
LAW OFFICE ASSIGNED	LAW OFFICE 115
MARK SECTION (no change)	
ARGUMENT(S)	
<p>Applicant thanks the Examining Attorney for the thorough consideration given the present application. Applicant respectfully requests that the Examining Attorney reconsider the refusal based on the amendment and remarks herein.</p>	
<p>The Examining Attorney stated that the mark is likely to cause confusion with the registered mark in U.S. Registration No. 3,933,928 for the mark: "BLOOMBERRY." For the reasons set forth below, Applicant respectfully disagrees.</p>	
<p>When determining whether marks are likely to be confused, the various courts analyze different lists of factors. The United States Court of Appeals for the Federal Circuit uses the factors set forth in <i>In re E.I. DuPont de Nemours & Co.</i>, 476 F.2d 1357, 177 U.S.P.Q. 563 (C.C.P.A. 1973). Those factors are:</p>	
<ol style="list-style-type: none">(1) the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression;(2) the similarity or dissimilarity and nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use;(3) the similarity or dissimilarity of established, likely-to-continue trade channels;(4) the conditions under which and buyers to whom sales are made, i.e., "impulse" vs. careful, sophisticated purchasing;(5) the fame of the prior mark (sales, advertising, length of use);(6) the number and nature of similar marks in use on similar goods;(7) the nature and extent of any actual confusion;	

- (8) the length of time during and conditions under which there has been concurrent use without evidence of actual confusion
- (9) the variety of goods on which a mark is or is not used (house mark, “family” mark, product mark);
- (10) the market interface between applicant and the owner of a prior mark:
 - (a) a mere “consent” to register or use;
 - (b) agreement provisions designed to preclude confusion, i.e., limitations on continued use of the marks by each party;
 - (c) assignment of mark, application, registration and good will of the related business;
 - (d) laches and estoppel attributable to owner of prior mark and indicative of lack of confusion;
- (11) the extent to which applicant has a right to exclude others from use of its mark on its goods;
- (12) the extent of potential confusion, i.e., whether de minimis or substantial; and
- (13) any other established fact probative of the effect of use.

Among these factors, the Examining Attorney has focused on the similarity of the marks and the similarity of the goods and their trade channels.

First, with regard to the similarity of the goods and trade channels, the Applicant submits that the goods of each party would be encountered by consumers in very different ways eliminating any likelihood of confusion as to source. As shown in the specimens provided by the prior registrant, the goods “Frozen yogurt and frozen yogurt based desserts combined with fruit, berries, nuts and toppings” are sold in a self-serve station. Consumers of the registrant’s goods would encounter them in a setting in which they are meant to serve themselves, add toppings and be eaten at the time of purchase. Further, the channels of trade of the registrant’s goods require a setting that can accommodate the additional refrigeration and dispensing equipment necessary to serve those goods.

By contrast the goods of the Applicant are pre-packaged, do not need to be kept frozen or eaten when purchased, do not utilize additional equipment originating with the Applicant, and would be sold in a variety of consumer settings, which would not accommodate the self-serve and eat-in nature of the registrant’s goods. As a result, the fact the goods are in the general category of sweets is not enough to create a likelihood of confusion where the typical channels of trade necessitate that they will be encountered in highly different manners that do not give rise to confusion as to source.

With regard to the marks themselves, where the goods are not encountered in a scenario that creates a likelihood, not just a possibility, of confusion, the difference in the spelling will further eliminate any potential for confusion as to source or affiliation.

Thus, the distinct commercial impressions of the two marks as encountered by consumers in connection with the parties' respective goods are not likely to be confused. For all of these reasons, Applicant submits that the refusal under Section 2(d) should be withdrawn.

With regard to the prior pending application under US Application No. 85255991, the Applicant reserves its right to respond at a later date should this mark be registered and a refusal issued.

ADDITIONAL STATEMENTS SECTION

MISCELLANEOUS STATEMENT	In addition to the arguments submitted herein, the Applicant submits that it has a bona fide and effective industrial or commercial establishment in the European Community. Applicant believes that all requirements have now been satisfied. Applicant understands that the application will be suspended pending the outcome of prior pending Application No. 85255991. Please charge any fees or credit any overpayment pursuant to 37 CFR § 2.6 to Deposit Account No. 02-2448. If the Examiner has any questions concerning this application, the Examiner is requested to contact Robert J. Kenney at (703) 205-8000 in the Washington, D.C. area.
--------------------------------	---

SIGNATURE SECTION

RESPONSE SIGNATURE	/Robert J. Kenney/
SIGNATORY'S NAME	Robert J. Kenney
SIGNATORY'S POSITION	Attorney of record, VA bar member
SIGNATORY'S PHONE NUMBER	703-205-8000
DATE SIGNED	12/30/2011
AUTHORIZED SIGNATORY	YES

FILING INFORMATION SECTION

SUBMIT DATE	Fri Dec 30 11:03:02 EST 2011
TEAS STAMP	USPTO/ROA-169.130.19.14-2 0111230110302176743-85341 131-490cbf3e5b773d7768071 d312fff9ec32-N/A-N/A-2011 1230103317029866

Response to Office Action To the Commissioner for Trademarks:

Application serial no. **85341131** has been amended as follows:

ARGUMENT(S)

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

Applicant thanks the Examining Attorney for the thorough consideration given the present application. Applicant respectfully requests that the Examining Attorney reconsider the refusal based on the amendment and remarks herein.

The Examining Attorney stated that the mark is likely to cause confusion with the registered mark in U.S. Registration No. **3,933,928** for the mark: "BLOOMBERRY." For the reasons set forth below, Applicant respectfully disagrees.

When determining whether marks are likely to be confused, the various courts analyze different lists of factors. The United States Court of Appeals for the Federal Circuit uses the factors set forth in *In re E.I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 U.S.P.Q. 563 (C.C.P.A. 1973). Those factors are:

- (1) the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression;
- (2) the similarity or dissimilarity and nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use;
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- (5) the fame of the prior mark (sales, advertising, length of use);
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- (7) the nature and extent of any actual confusion;
- (8) the length of time during and conditions under which there has been concurrent use without evidence of actual confusion
- (9) the variety of goods on which a mark is or is not used (house mark, "family" mark, product mark);
- (10) the market interface between applicant and the owner of a prior mark:

- (a) a mere “consent” to register or use;
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 - (c) assignment of mark, application, registration and good will of the related business;
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- (11) the extent to which applicant has a right to exclude others from use of its mark on its goods;
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 - (13) any other established fact probative of the effect of use.

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With regard to the prior pending application under US Application No. 85255991, the Applicant reserves its right to respond at a later date should this mark be registered and a refusal issued.

ADDITIONAL STATEMENTS

Miscellaneous Statement

In addition to the arguments submitted herein, the Applicant submits that it has a bona fide and effective industrial or commercial establishment in the European Community. Applicant believes that all requirements have now been satisfied. Applicant understands that the application will be suspended pending the outcome of prior pending Application No. 85255991. Please charge any fees or credit any overpayment pursuant to 37 CFR § 2.6 to Deposit Account No. 02-2448. If the Examiner has any questions concerning this application, the Examiner is requested to contact Robert J. Kenney at (703) 205-8000 in the Washington, D.C. area.

SIGNATURE(S)

Response Signature

Signature: /Robert J. Kenney/ Date: 12/30/2011

Signatory's Name: Robert J. Kenney

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

Signatory's Phone Number: 703-205-8000

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 applicant'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 applicant in this matter: (1) the applicant 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 applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant'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.

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