

ESTTA Tracking number: **ESTTA611670**

Filing date: **06/24/2014**

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

Proceeding	91213825
Party	Defendant Wonderfully Raw Gourmet Delights, LLC
Correspondence Address	WENDY PETERSON NOT JUST PATENTS PO BOX 18716 MINNEAPOLIS, MN 55418 UNITED STATES wsp@NJPLS.com
Submission	Answer
Filer's Name	Wendy Peterson
Filer's e-mail	wsp@NJPLS.com
Signature	/Wendy Peterson/
Date	06/24/2014
Attachments	Answer and Affirmative Defenses.pdf(251022 bytes)

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

Opposition Proceeding 91213825

In the matter of Trademark Application No. 85898315

For the mark: WONDERFULLY RAW

Publication Date: Oct. 22, 2013

Paramount Farms International LLC, Opposer

v.

Wonderfully Raw Gourmet Delights, LLC, Applicant

ANSWER AND AFFIRMATIVE DEFENSES

Applicant denies all salient claims.

1. Applicant denies that the Opposer's WONDERFUL marks are distinctive marks, asserts that the WONDERFUL marks are weak, laudatory marks, and is otherwise without knowledge or information sufficient to form a belief as to the truth of the averment.
2. Denied that Opposer's marks constitute a family of marks under *Marion Labs. Inc. v. Biochemical/Diagnostics Inc.*, 6 USPQ2d 1215, 1219 (TTAB 1988) because WONDERFUL is laudatory and weak and commonly used in the trade.
3. Denied, no registrations were properly pleaded into the record.

4. Denied as to relevance. Opposer, Paramount Farms, was already the world's largest supplier of pistachios and almonds before starting to use the WONDERFUL brand name. See Exhibit A. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averment and asserts that the sales figures may be only showing the popularity of nuts and not that the relevant consumers of such products have come to view WONDERFUL as a famous or distinctive brand name. *H & H Industries v. Ltg, Ltd.* (TTAB 2008).
5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averment and the relevance of the information.
6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averment and the relevance of the information.
7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averment.
8. Denied. Applicant has applied for the goods in IC 29 *Raw vegetable-based snack foods excluding nuts except as ingredient; excluding fruit except as ingredient* and IC 30 *Dehydrated raw cookies excluding nuts except as ingredient; excluding fruit except as ingredient*.
9. Admitted.
10. Admitted.
11. Admitted.
12. Denied.
13. No admission or denial is merited.

14. Denied.
15. Denied.
16. Denied.
17. Denied.
18. No admission or denial is merited.
19. Denied.
20. Denied.
21. Denied.
22. Denied.

AFFIRMATIVE DEFENSES AND AMPLIFICATIONS

1. Opposer, Paramount Farms, was already the world's largest supplier of pistachios and almonds in 2008 before starting to use the WONDERFUL brand name according to their own press release at http://www.paramountfarms.com/press/WP_Announcement.pdf (Exhibit A).
2. Paramount Farms will continue to be the world's largest supplier of pistachios and almonds despite any action or registration from Applicant.
3. WONDERFUL was not distinctive or famous or worthy of more than narrow protection in 2010 when Applicant started using their mark. Opposer's WONDERFUL marks were not famous separately and distinctively for purposes of fame or dilution from "Get Crackin'" when Applicant began using its mark in 2010.

4. Opposer's GET CRACKIN' campaign is responsible for market success, not WONDERFUL. "The unprecedented effort of the "Get Crackin'" campaign, one unheard of for pistachios just three short years ago, allows us to effectively use marketing and public relations to create demand for the pistachio category far beyond that of a typical commodity." "Quickly becoming the centerpiece of our brand identity is our award-winning "Get Crackin'" advertising."
http://www.paramountfarms.com/buyers/PFI_SalesBrochure.pdf (2011). (Exhibit B)
5. Opposer's success in pistachios is related to the educated the public on the health benefits of nuts: "Paramount Farms understands the consumer's desire for healthy, nutritious offerings and we know that California pistachios meet this need as a healthy snack option. Our success has been in relaying this message to consumers and other influencers to help spread the word — dietitians, fitness experts, personal trainers, nurse practitioners and doctors. These health professionals are essential to our outreach, taking sound science and communicating it in a way that encourages consumer belief and behavioral change."
http://www.paramountfarms.com/buyers/PFI_SalesBrochure.pdf (Exhibit B)
6. Paramount Farms recognizes the value of their NONBRANDED message: "And our non-branded website, PistachioHealth.com, continues to advance our effort — communicating the goodness of pistachios to nutritional experts and consumers and offering tools and resources including the Health Nut blog, Ask the Expert and printable handouts. As a leading pistachio health resource, PistachioHealth.com reaches a global audience of health professionals and consumers, and is available in

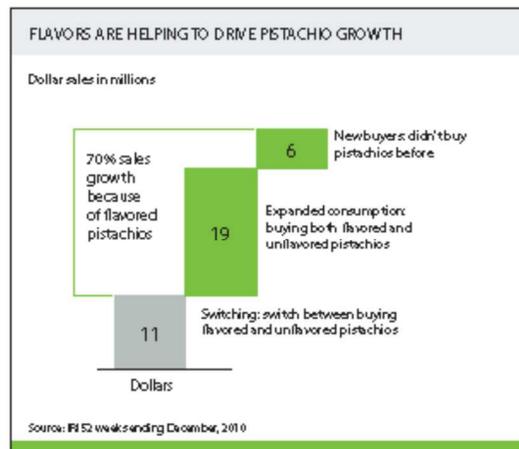
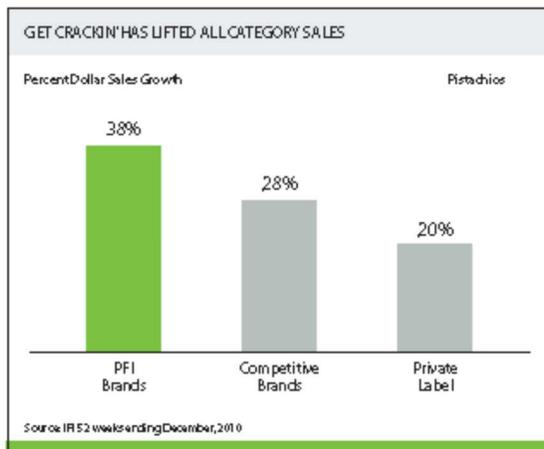
12 languages.” http://www.paramountfarms.com/buyers/PFI_SalesBrochure.pdf.

(Exhibit B).

7. The number of health studies regarding pistachios has been steadily growing. (from Exhibit B)



8. Paramount Farms credits “Get Crackin’” and flavored pistachios for their sales growth (70% sales growth because of flavored pistachios). (from Exhibit B)



9. Paramount Farms identified their own factors for success in OUR POINTS OF DIFFERENCE (Exhibit B), as of 2011, and does not even list the WONDERFUL mark as being a factor in their success but does list “GET CRACKIN’” as a factor amongst Quality, Sustainability, Dedicated Processing, Retail Savvy, Verified Excellence, etc.
10. Opposer’s mark WONDERFUL had not acquired distinctiveness as a relevant brand in 2010 even internally with Paramount Farms when Applicant began using its mark or in 2011. Opposer’s 2011 published sales brochure FROM OUR TREES TO YOUR HEARTS (Exhibit B), which has every reason to be self-serving and laudatory about their own success, only refers to WONDERFUL once in the entire Paramount Farms document on p. 16 and this is as a title on a chart.
11. Opposer’s WONDERFUL marks are not even given a broad scope of recognition within Paramount Farms’ own self-serving documents.
12. Opposer’s WONDERFUL marks are weak and laudatory and should only be given a narrow scope of protection.
13. Opposer’s and Applicant’s marks are not identical or substantially similar and dilution does not apply.

Submitted By: /Wendy Peterson/

Date: June 24, 2014

Wendy Peterson, Attorney for Applicant, Wonderfully Raw Gourmet Delights, LLC

CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2014, the foregoing was served upon Opposer's attorney by first class mail to:

Michael Vasseghi, Esq.
Paramount Farms International LLC
11444 W. Olympic Blvd.
Los Angeles, CA 90064

By: /Wendy Peterson/

Date: June 24, 2014

Wendy Peterson, Attorney for Applicant, Wonderfully Raw Gourmet Delights, LLC