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Filing date: **04/04/2016**

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

Proceeding	91222878
Party	Defendant Quality Fresh Farms, Inc.
Correspondence Address	SHERRIE M FLYNN COLEMAN & HOROWITT LLP 499 WEST SHAW AVENUE, STE 114SUITE 116 FRESNO, CA 93704 UNITED STATES sflynn@ch-law.com, nalshikhaiti@ch-law.com
Submission	Motion for Summary Judgment
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Signature	/Sherrie M. Flynn/
Date	04/04/2016
Attachments	MSJ_smf.pdf(139313 bytes) BillanDec_Signed2.pdf(465447 bytes) MSJ_smfDecrev.pdf(4378974 bytes) RJN ISO MSJ.pdf(1579220 bytes)

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

WONDERFUL CITRUS LLC f/k/a)
 PARAMOUNT CITRUS LLC;)
)
 Opposer,)
)
 v.)
)
 QUALITY FRESH FARMS, INC.;)
)
 Applicant.)
 _____)

Opposition No. 91222878
 Serial No. 86/375,060
 Mark: Q + Design



QUALITY FRESH FARMS, INC.’S MOTION FOR SUMMARY JUDGMENT

Applicant, Quality Fresh Farms, Inc. (“Applicant”), respectfully moves the Board for summary judgment under Federal Rules of Civil Procedure, Rule 56, and requests that the proceeding be suspended pursuant to 37 Code of Federal Regulations, section 2.127(d).

I. INTRODUCTION.

Applicant is a California corporation and a grower, packer, distributor, importer and exporter of fresh, non-citrus fruits and vegetables. (Declaration of Gurdeep S. Billan [“Billan Dec.”], filed concurrently herewith, ¶ 4.) Opposer is a grower and packer of fresh citrus fruits. (Declaration of Sherrie M. Flynn [“Flynn Dec.”], filed concurrently herewith, Ex. E, Response to Requests for Admissions [“RFA”] Nos. 1 &2.) Applicant does not sell, package or ship fresh citrus fruits. By its Notice of Opposition (“Opposition”), Opposer seeks to prevent the registration of Applicant’s “Q” design mark, which has almost no similarities to Opposer’s “Paramount Citrus” design mark.

II. PROCEDURAL HISTORY.

By the filing of Application Serial No. 86/375,060 (the “060 Application”) on August 22, 2014, Applicant seeks to register the following design trademark (the “Quality Fresh Mark”) in Class 31 for “fresh fruits and vegetables” and in Class 39 for “warehousing services, namely, storage, distribution, pick-up, packing, and shipping of fresh fruit and vegetables”. (See Request for Judicial Notice [“RJN,”], filed concurrently herewith, Ex. 1.)



Opposer filed its Notice of Opposition on July 17, 2015 (“Opposition”), on the ground that there is a likelihood of confusion between the Quality Fresh Mark and the following design trademark (the “Paramount Mark”), registered in Class 31, for “fresh citrus fruits.” (RJN, Ex. 2; Flynn Dec., Ex. A.)



The Opposition alleges that prior to Applicant’s first use of the Quality Fresh Mark, Opposer has been offering for sale and marketing its goods and services in connection with its Paramount Mark, and has built “valuable goodwill associated with, and symbolized by” its Paramount Mark. (Opposition, ¶ 4, RJN, Ex. 2.) Additionally, the Opposition alleges that Applicant’s use of the

Quality Fresh Mark on Applicant’s Goods and Services is likely to “cause confusion, mistake, or deception in that consumers are likely to believe Applicant’s Goods and Services are Opposer’s Goods and Services or the goods and services of a person or company that is sponsored, authorized, or licensed by, or in some other way legitimately connected with or affiliated with, Opposer.” (Id. at ¶ 8.)

On or about August 24, 2015, Applicant filed its answer to the Opposition (“Answer”), denying that there is a likelihood of confusion between the two trademarks, and stating affirmative defenses. (See Answer, p. 2, ¶ 8, RJN, Ex. 3.) Applicant contends that the Opposition is groundless, and there is no likelihood of confusion because the Quality Fresh Mark and Paramount Mark are significantly different. (Id. pp. 2-3.)

On November 6, 2015, Applicant propounded discovery requests on Opposer, including Requests for Admissions (RFA); (Flynn Dec., Ex. D), and on December 24, 2015, Opposer served its responses (Flynn Dec., Ex. E).

III. STATEMENT OF UNDISPUTED FACTS.

The following are the undisputed material facts (“UMF”):

<p><u>UMF No. 1:</u> Applicant’s trademark at issue in this proceeding is the mark shown in U.S. Application Serial No. 86/375,060 (the “060 Application”), filed August 22, 2014 (the “Quality Fresh Mark”).</p>	<p>RJN, Ex. 1.</p>
<p><u>UMF No. 2:</u> Opposer’s trademark, on which it bases its Opposition, is as shown in its Notice of Opposition and Registration No. 3,934,863 (the “863 Registration”), issued March 22, 2011 (the “Paramount Mark”).</p>	<p>RJN, Ex. 2; Flynn Dec., Ex. A</p>

<p><u>UMF No. 3:</u> The Paramount Mark, is described in U.S. Application Serial No. 77/611,305 (the “305 Application”) and issued ‘863 Registration, as “an orange growing between two leaves with the stylized wording ‘Paramount Citrus’ beneath the design element.”</p>	<p>Flynn Dec., Exs. A and E (RFA No. 12).</p>
<p><u>UMF No. 4:</u> Opposer always uses the Paramount Mark in commerce with the words “Paramount Citrus.”</p>	<p>Flynn Dec., Ex. E (RFA No. 26).</p>
<p><u>UMF No. 5:</u> The Quality Fresh Farms Mark is described in the ‘060 Application as a stylized letter “Q” that encompasses a sun, sky, and farm field.</p>	<p>RJN, Ex. 1.</p>
<p><u>UMF No. 6:</u> The Paramount Mark does not include the letter “Q.”</p>	<p>Flynn Dec., Exs. A & E, (RFA No. 17).</p>
<p><u>UMF No. 7:</u> The Paramount Mark does not include a sky.</p>	<p>Flynn Dec., Exs. A & E, (RFA No. 14).</p>
<p><u>UMF No. 8:</u> The Paramount Mark does not include a farm field.</p>	<p>Flynn Dec., Exs. A & E, (RFA No. 15).</p>
<p><u>UMF No. 9:</u> Opposer does not describe the circular portion of its mark as a sun.</p>	<p>Flynn Dec., Ex. A & E (RFA No. 13).</p>
<p><u>UMF No. 10:</u> Neither Applicant nor Opposer knows of any instances of actual consumer confusion caused by the use in commerce of Applicant’s Quality Fresh Mark.</p>	<p>Flynn Dec., Ex. E, RFA 19; Billan Dec., ¶ 8.</p>

III. SUMMARY JUDGMENT STANDARD.

Federal Rules of Civil Procedure, Rule 56(a) provides the following: “The [Board] shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and

the movant is entitled to judgment as a matter of law.” The Federal Circuit has stated that, “[t]he basic purpose of summary judgment procedure is . . . to save the time and expense of a full trial when it is unnecessary because the essential facts necessary to decision of the issue can be adequately developed by less costly procedures . . .” (*Pure Gold, Inc. v. Syntex (U.S.A.), Inc.*, 222 USPQ 741 (Fed. Cir. 1984). A genuine dispute with respect to a material fact exists if sufficient evidence is presented that a reasonable fact finder could decide the question in favor of the non-moving party. (See *Opryland USA Inc. v. Great American Music Show, Inc.*, 23 USPQ2d 1471 (Fed. Cir. 1992.)

Likelihood of confusion is “unquestionably” an issue appropriate for summary judgment. (*Sweats Fashions Inc. v. Pannill Knitting Co.*, 4 USPQ2d 1793 (Fed. Cir. 1987). This is especially true when the differences between the marks are simply too great for confusion to occur. (*Odom’s Tennessee Pride Sausage, Inc. v. FF Acquisition, LLC*, 93 USPQ2d 2030 (Fed. Cir. 2010); *Keebler Co. v. Murray Bakery Products*, 9 USPQ2d 1736 (Fed. Cir. 1989); *Sears Mortgage Corp. v. Northeast Savings, F. A.*, 24 USPQ2d 1227 (TTAB 1992); *cf. Ava Enterprises, Inc. v. P.A.C. Trading Group, Inc.*, 86 USPQ2d 1659 (TTAB 2008) (granting judgment as a matter of law under FRCP, Rule 12(c)).

In this case, there are no genuine factual disputes that would preclude awarding summary judgment to Applicant. There is no dispute that the Paramount Mark is a valid trademark and has priority. The only dispute pertains to whether the marks identified in Applicant’s application and Opposer’s registration are confusingly similar and, more specifically, whether Applicant’s use of the Quality Fresh Mark on its goods and services is likely to cause confusion, mistake, or deception in

that consumers are likely to believe Applicant's goods and services are Opposer's (or any person or company affiliated or connected with Opposer) goods and services. (Opposition, ¶ 8.)

While various factors are considered in determining whether consumer confusion is likely, in the present case, "the single *DuPont* factor of the dissimilarity of the marks in their entireties substantially outweighs any other relevant facts and is dispositive . . ." (*Missiontrek Ltd. Co. v. Onfolio, Inc.*, 80 USPQ2d 1382 (TTAB 2005); *Kellogg Co. v. Pack'Em Enterprises, Inc.*, 21 USPQ2d 1142 (Fed. Cir. 1991) (there is no reason why a single *DuPont* factor may not be dispositive); *Champagne Louis Roederer, S.A. v. Delicato Vineyards*, 47 USPQ2d 1459 (Fed. Cir. 1998) ("one *DuPont* factor may be dispositive in a likelihood of confusion analysis, especially when that single factor is the dissimilarity of the marks"); *Truescents LLC v. Ride Skin Care, LLC*, 81 USPQ2d 1334 (TTAB 2006) (simply put, the dissimilarity between the marks is dispositive in this case").

IV. SUMMARY JUDGMENT SHOULD BE GRANTED BECAUSE THE MARKS ARE NOT CONFUSINGLY SIMILAR.

The Board should attend to the "appearance, sound, connotation and commercial impression" of the parties' marks. (*In re E.I. DuPont de Nemours & Co.*, 177 USPQ 563 (CCPA 1973). The marks should be compared in their entireties. (*Ibid.*) However, "one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature . . ." (*Truescents LLC v. Ride Skin Care LLC*, 81 USPQ 2d 1334 (TTAB 2006); see also *Bass Pro Trademarks, LLC v. Sportsman's Warehouse, Inc.*, 89 USPQ 2d 1844 (TTAB 2008).

Here, summary judgment should be granted because the undisputed facts show the Paramount Mark and Quality Fresh Mark are not confusingly similar. Further, there has been no

actual consumer confusion regarding the source and/or sponsorship of Applicant's goods.

1. **There Is No Likelihood of Consumer Confusion Because the Dissimilarities of the Marks Are Too Great for Confusion to Occur.**

The Paramount Mark and Quality Fresh Mark are conspicuously **dissimilar**. First, Applicant's Mark contains the letter "Q," (UMF Nos. 1, 5), which is representative of the first letter in its name, Quality Fresh Produce. The "Q" encompasses a sun, a sky and a farm field. (UMF No. 5.) Other than the "Q," the Quality Fresh Farms Mark does not contain any other words or literal elements. (UMF No. 1.) **The Paramount Mark does not contain a letter "Q"** (UMF No. 6), **includes the words "Paramount Citrus"** (UMF Nos. 2, 4) and **does not include, at minimum, a sky or farm field**. (UMF Nos. 7, 8).

As to the circle portion of Opposer's mark, Opposer does not describe the circular portion of its mark as a sun. (UMF No. 9.) Instead, the '305 Application and the issued '863 Registration describe Opposer's mark, in part, as consisting of "an orange growing between two leaves" (UMF Nos. 2-3), which is representative of its sale of fresh citrus fruit. It is clear that the circle is intended to be an orange or other type of citrus fruit, because there are leaves just below the circle, and the word "Citrus" appears below the word "Paramount." However, in response to a Request for Admission asking Opposer to admit that its Paramount Mark does not include a sun, Opposer evades a direct answer, saying, "Responder admits that while it's (sic) description does not refer to the circular portion of the design as a sun, visually, an orange has the same color and same shape of a sun..." (Flynn Dec., Ex. E (RFA No. 13).) Color is not claimed as a feature of either the Paramount Mark or the Quality Fresh Mark. (UMF Nos. 1, 2.)

In any case, in a Response to an Office Action its '305 Application, initially denying

registration of Opposer's Paramount Mark based, in part, on a likelihood of confusion with other registered "Paramount" marks (Flynn Dec, Ex. B), Opposer argues that "The additional elements [in its Paramount Mark] include the depiction of citrus fruit created by a semi-circle set above a large leaf and a small leaf depicted above the word PARAMOUNT in bold, capitalized and spaced out letters, and below that, the word CITRUS in a handwritten stylized font with a capitalized first letter." Opposer also argues in the same Response that "In sight, sound and meaning [the Paramount Mark]... is highly distinguishable from the Cited Marks... [the Paramount Mark], [] includes stylized fonts, and the additional design elements of a fresh citrus fruit and leaves, creating a commercial impression that clearly creates an association between... [the Paramount Mark] and citrus fruits." (RJN, Ex. B, Argument(s), sect. II.A., 3rd para.) Registration of Opposer's Paramount Mark was subsequently allowed. Opposer cannot now argue, when it suits its purpose, that the design element does not include a fresh citrus fruit, or that the words "Paramount Citrus" should be ignored. In fact, Opposer's Paramount Mark is much closer in appearance, sound, connotation and commercial impression to the previously registered and cited "Paramount" marks in the '305 Application, than it is to Applicant's Quality Fresh Mark.

Moreover, the following **additional** differences between the marks are notable:

1. The sun in Quality Fresh's mark is not precisely a circular arc, and contains rays extending to the outer part of the mark, which is very distinct from the circular orange in Paramount's Mark that does not have any rays.
2. The large leaf in the Paramount's Mark extends upward to the left and beyond the outer edge of the citrus fruit, whereas the large leaf in the Quality Fresh Mark extends upward to the right and is contained within the circular part of the letter "Q."

3. The base of the small leaf in the Paramount Mark is offset from the bottom center of the orange, whereas the base of the small leaf in the Quality Fresh Mark is approximately centered on the circular part of the “Q” and forms the tail of the “Q.”
4. The base of the two leaves in the Quality Fresh Mark meet at a point on the edge of the circular part of the “Q,” whereas the bases of the two leaves in the Paramount Mark are offset from each other and slightly outside the circular portion of the fruit.
5. The leaves in the Paramount Mark extend outward in opposite directions, whereas the leaves in the Quality Fresh Mark extend in roughly the same direction.

About the only thing in common between the two marks is that they each contain two leaves and some parts of both marks have circular arcs. The individual aspects and visual distinctions between the marks create unquestionably different connotations and commercial impressions, thereby precluding any likelihood of confusion among consumers.

2. There Is No Evidence of Actual Consumer Confusion as a Result of Use of the Quality Fresh Mark and Paramount Mark.

In addition, the undisputed material facts show that neither Applicant nor Opposer is aware of any instances in which Applicant’s use in commerce of its mark has resulted in actual confusion as to the source or sponsorship of Applicant’s goods. (UMF No. 10.)

V. CONCLUSION

In summary, the differences between Applicant’s mark and Opposer’s mark are simply too great for confusion to occur. Further proceedings would waste the Board’s and the parties’ resources. Applicant therefore requests summary judgment in its favor and dismissal of the opposition with prejudice.

Dated: April 4, 2016

Respectfully submitted,

By: /Sherrie M. Flynn/
SHERRIE M. FLYNN
COLEMAN & HOROWITT, LLP
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Fresno, California 93704
(559) 248-4820
sflynn@ch-law.com
*Attorneys for QUALIFY FRESH
FARMS, INC.*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Quality Fresh Farms, Inc.'s Motion for Summary Judgment to Application Serial No. 86/375,060, in re: Quality Fresh Farms, Inc.'s Q + Design mark, was forwarded by First Class Mail delivery, by depositing the same with the United States Postal Service on this 4th day of April, 2016, to the attorney for Applicant at the following address:

Michael M. Vasseghi, Esq.
Darya P. Laufer, Esq.
Danielle M. Criona, Esq.
Roll Law Group, P.C.
11444 W. Olympic Blvd, Floor 7
Los Angeles, CA 90064

/Naji Alshikhaiti/
NAJI ALSHIKHAITI

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this Quality Fresh Farms, Inc.'s Motion for Summary Judgment to registration of the mark in Application, Serial No. 86/375,060 is being filed electronically today, April 4, 2016, on the Electronic System for Trademark Trials and Appeals for the United States Patent and Trademark Office.

/Sherrie M. Flynn/
SHERRIE M. FLYNN

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

WONDERFUL CITRUS LLC f/k/a)	Opposition No. 91222878
PARAMOUNT CITRUS LLC;)	Serial No. 86/375,060
)	Mark: Q + Design
Opposer,)	
)	
v.)	
)	
QUALITY FRESH FARMS, INC.;)	
)	
Applicant.)	
_____)	



DECLARATION OF GURDEEP S. BILLAN IN SUPPORT OF QUALITY FRESH FARMS, INC.’S MOTION FOR SUMMARY JUDGMENT

I, GURDEEP S. BILLAN, declare:

1. I am the President and Chief Executive Officer (“CEO”) of Applicant, QUALITY FRESH FARMS, INC. ("Applicant").
2. I have personal knowledge of the facts contained herein and if called upon as a witness, I could and would testify competently thereto.
3. This Declaration is filed in support of Applicant’s Motion for Summary Judgment.
4. Applicant is a California corporation and a grower, packer, distributor, importer, and exporter of quality grown, fresh, non-citrus fruits and vegetables.
5. Applicant does not sell, package or ship fresh citrus fruits, including but not limited to, Navel oranges, Valencia oranges, lemons, limes, minneolas, or grapefruits.
6. On or about August 22, 2014, Applicant sought to register the following “Q” design mark (the “Quality Fresh Mark”) in Class 31 for “fresh fruit and vegetables,” and in Class 39 for

“warehousing services, namely, storage, distribution, pick-up, packing, and shipping of fresh fruit and vegetables” by filing Application Serial No. 86/375,060 (the “Application”):



7. The Quality Fresh Mark is used in connection with fresh, non-citrus fruits and vegetables, and for storage, distribution, pick-up, packing, and shipping of fresh, non-citrus fruits and vegetables.

8. In my capacity as President and CEO, I know of no instances in which Applicant’s use of the Quality Fresh Mark in commerce has caused actual consumer confusion as to source or sponsorship of Applicant’s goods and/or services with the following trademark identified in U.S. Trademark Registration No. 3934863 (the “Paramount Mark”), registered for “fresh citrus fruits”:



I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 4th day of April, 2016, at Fresno, California.

A handwritten signature in black ink, appearing to read "Gurdeep S. Billan", written over a horizontal line.

GURDEEP S. BILLAN

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Declaration of Gurdeep S. Billan in Support of Quality Fresh Farms, Inc.'s Motion for Summary Judgment to Application Serial No. 86/375,060, in re: Quality Fresh Farms, Inc.'s Q + Design mark, was forwarded by First Class Mail delivery, by depositing the same with the United States Postal Service on this 4th day of April, 2016, to the attorney for Applicant at the following address:

Michael M. Vasseghi, Esq.
Darya P. Laufer, Esq.
Danielle M. Criona, Esq.
Roll Law Group, P.C.
11444 W. Olympic Blvd, Floor 7
Los Angeles, CA 90064

/Naji Alshikhaiti/
NAJI ALSHIKHAITI

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I hereby certify that this Declaration of Gurdeep S. Billan in Support of Quality Fresh Farms, Inc.'s Motion for Summary Judgment to registration of the mark in Application, Serial No. 86/375,060 is being filed electronically today, April 4, 2016, on the Electronic System for Trademark Trials and Appeals for the United States Patent and Trademark Office.

/Sherrie M. Flynn/
SHERRIE M. FLYNN

of a printout from the USPTO's Trademark Status & Document Retrieval ("TSDR") system showing status and title of Opposer's '863 Registration is attached hereto as **Exhibit A**.

5. According to USPTO records, on February 14, 2009, an Office Action was issued in Opposer's '305 Application (the "Office Action"), initially denying registration based on a likelihood of confusion with two previously-registered marks, each containing the literal element "PARAMOUNT." A true and correct copy of a printout of the Office Action (minus exhibits) from the USPTO's TSDR system is attached hereto as **Exhibit B**.

6. According to USPTO records, a Response to Office Action was submitted by Opposer on August 17, 2009 ("Response"), wherein Opposer argued, in part, that there was no likelihood of confusion between its PARAMOUNT CITRUS design mark and the cited marks because its mark contains several additional elements, including "the depiction of citrus fruit created by a semi-circle set above a large leaf and small leaf depicted above the word PARAMOUNT in bold, capitalized and spaced out letters, and below that the word CITRUS in a handwritten stylized font with a capitalized first letter." A true and correct copy of a printout of Opposer's Response (minus Exhibit B) from the USPTO's TSDR system is attached hereto as **Exhibit C**.

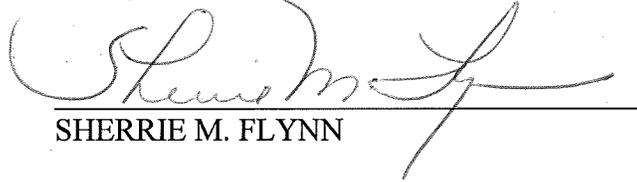
7. On November 6, 2015, I caused Requests for Admissions, Set One, to be served on counsel for Opposer. A true and correct copy of said Requests for Admissions is attached hereto as **Exhibit D**.

8. On December 24, 2015, Opponent served on C&H its response to the Requests for Admissions, Set One. A true and correct copy of said Response to Requests for Admissions, Set

One, as received by C&H, is attached hereto as **Exhibit E**.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

Executed this 4th day of April, 2016, at Fresno, California.



SHERRIE M. FLYNN

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Declaration of Sherrie M. Flynn in Support of Quality Fresh Farms, Inc.'s Motion for Summary Judgment to Application Serial No. 86/375,060, in re: Quality Fresh Farms, Inc.'s Q + Design mark, was forwarded by First Class Mail delivery, by depositing the same with the United States Postal Service on this 4th day of April, 2016, to the attorney for Applicant at the following address:

Michael M. Vasseghi, Esq.
Darya P. Laufer, Esq.
Danielle M. Criona, Esq.
Roll Law Group, P.C.
11444 W. Olympic Blvd, Floor 7
Los Angeles, CA 90064

/Naji Alshikhaiti/
NAJI ALSHIKHAITI

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/Sherrie M. Flynn/
SHERRIE M. FLYNN

EXHIBIT A

Generated on: This page was generated by TSDR on 2016-03-31 14:10:34 EDT

Mark: PARAMOUNT CITRUS



US Serial Number: 77611305

Application Filing Date: Nov. 10, 2008

US Registration Number: 3934863

Registration Date: Mar. 22, 2011

Register: Principal

Mark Type: Trademark

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Mar. 22, 2011

Publication Date: Oct. 20, 2009

Notice of Allowance Date: Jan. 12, 2010

Mark Information

Mark Literal Elements: PARAMOUNT CITRUS

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of an orange growing between two leaves with the stylized wording "PARAMOUNT CITRUS" beneath the design element.

Color(s) Claimed: Color is not claimed as a feature of the mark.

Disclaimer: "CITRUS"

Design Search Code(s): 05.03.08 - More than one leaf, including scattered leaves, bunches of leaves not attached to branches
05.03.25 - Leaf, single; Other leaves
05.09.03 - Oranges, tangerines and the like; grapefruit

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *...* identify additional (new) wording in the goods/services.

For: Fresh citrus fruits

International Class(es): 031 - Primary Class

U.S Class(es): 001, 046

Class Status: ACTIVE

Basis: 1(a)

First Use: Jun. 01, 2008

Use in Commerce: Jun. 01, 2008

Basis Information (Case Level)

Filed Use: No

Currently Use: Yes

Amended Use: No

Filed ITU: Yes

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

Current Owner(s) Information

Owner Name: WONDERFUL CITRUS LLC

Owner Address: 11444 WEST OLYMPIC BLVD., 10TH FLOOR
LOS ANGELES, CALIFORNIA 90064
UNITED STATES

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record - None

Correspondent

Correspondent Name/Address: LATUNDA POWELL, TRADEMARK ADMINISTRATOR
Roll Law Group P.C.
11444 WEST OLYMPIC BLVD., 7TH FLOOR
LOS ANGELES, CALIFORNIA 90064
UNITED STATES

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Mar. 23, 2016	TEAS SECTION 8 & 15 RECEIVED	
Mar. 23, 2016	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Jul. 01, 2015	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Mar. 22, 2011	REGISTERED-PRINCIPAL REGISTER	
Feb. 12, 2011	NOTICE OF ACCEPTANCE OF STATEMENT OF USE MAILED	
Feb. 11, 2011	LAW OFFICE REGISTRATION REVIEW COMPLETED	68123
Feb. 08, 2011	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Feb. 07, 2011	STATEMENT OF USE PROCESSING COMPLETE	76985
Jan. 27, 2011	USE AMENDMENT FILED	76985
Jan. 27, 2011	TEAS STATEMENT OF USE RECEIVED	
Jan. 19, 2011	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Jan. 15, 2011	NOTICE OF APPROVAL OF EXTENSION REQUEST MAILED	
Jan. 14, 2011	EXTENSION 2 GRANTED	76985
Jan. 12, 2011	EXTENSION 2 FILED	76985
Jan. 12, 2011	TEAS EXTENSION RECEIVED	
Aug. 26, 2010	NOTICE OF APPROVAL OF EXTENSION REQUEST MAILED	
Aug. 25, 2010	EXTENSION 1 GRANTED	76985
Jul. 12, 2010	EXTENSION 1 FILED	76985
Aug. 25, 2010	CASE ASSIGNED TO INTENT TO USE PARALEGAL	76985
Jul. 14, 2010	EXTENSION RECEIVED WITH TEAS PETITION	
Jul. 14, 2010	PETITION TO REVIVE-GRANTED	88889
Jul. 14, 2010	TEAS PETITION TO REVIVE RECEIVED	
Jan. 12, 2010	NOA MAILED - SOU REQUIRED FROM APPLICANT	
Oct. 20, 2009	PUBLISHED FOR OPPOSITION	
Sep. 30, 2009	NOTICE OF PUBLICATION	
Sep. 15, 2009	LAW OFFICE PUBLICATION REVIEW COMPLETED	68123
Sep. 15, 2009	ASSIGNED TO LIE	68123
Sep. 08, 2009	APPROVED FOR PUB - PRINCIPAL REGISTER	
Aug. 18, 2009	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Aug. 17, 2009	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Aug. 17, 2009	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Feb. 17, 2009	NON-FINAL ACTION MAILED	

Feb. 14, 2009 NON-FINAL ACTION WRITTEN
Feb. 09, 2009 ASSIGNED TO EXAMINER
Nov. 14, 2008 NOTICE OF DESIGN SEARCH CODE MAILED
Nov. 13, 2008 NEW APPLICATION ENTERED IN TRAM

82437
82437

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Feb. 11, 2011

Assignment Abstract Of Title Information

Summary

Total Assignments: 2

Registrant: PARAMOUNT CITRUS LLC

Assignment 1 of 2

Conveyance: CONVERSION

Reel/Frame: 4452/0793

Pages: 4

Date Recorded: Jan. 13, 2011

Supporting Documents: assignment-tm-4452-0793.pdf

Assignor

Name: PARAMOUNT CITRUS ASSOCIATION

Execution Date: Dec. 21, 2010

Legal Entity Type: GENERAL PARTNERSHIP

State or Country: CALIFORNIA
Where Organized:

Assignee

Name: PARAMOUNT CITRUS LLC

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country: DELAWARE
Where Organized:

Address: 11444 W. OLYMPIC BLVD., 10TH FLOOR
LOS ANGELES, CALIFORNIA 90064

Correspondent

Correspondent Name: LATUNDA POWELL

Correspondent Address: 11444 W. OLYMPIC BLVD., 10TH FLOOR
LOS ANGELES, CA 90064

Domestic Representative - Not Found

Assignment 2 of 2

Conveyance: CHANGE OF NAME

Reel/Frame: 5557/0862

Pages: 5

Date Recorded: Jun. 22, 2015

Supporting Documents: assignment-tm-5557-0862.pdf

Assignor

Name: PARAMOUNT CITRUS LLC

Execution Date: Jun. 01, 2015

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country: DELAWARE
Where Organized:

Assignee

Name: WONDERFUL CITRUS LLC

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country: DELAWARE
Where Organized:

Address: 11444 WEST OLYMPIC BLVD., 10TH FLOOR
LOS ANGELES, CALIFORNIA 90064

Correspondent

Correspondent Name: LATUNDA POWELL

Correspondent 11444 WEST OLYMPIC BLVD., 7TH FLOOR
Address: LOS ANGELES, CA 90064

Domestic Representative - Not Found

Proceedings

Summary

Number of
Proceedings: 2

Type of Proceeding: Opposition

Proceeding Number: 91222878

Filing Date: Jul 17, 2015

Status: Pending

Status Date: Jul 21, 2015

Interlocutory Attorney: BENJAMIN U OKEKE

Defendant

Name: Quality Fresh Farms, Inc.

Correspondent SHERRIE M FLYNN
Address: COLEMAN & HOROWITT LLP
499 WEST SHAW AVENUE, STE 114SUITE 116
FRESNO CA , 93704
UNITED STATES

Correspondent e-mail: sflynn@ch-law.com , nalshikhaiti@ch-law.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
Q	Opposition Pending	<u>86375060</u>	
	Plaintiff(s)		

Name: Wonderful Citrus LLC f/k/a Paramount Citrus LLC

Correspondent DARYA P LAUFER
Address: 11444 W OLYMPIC BLVD 7TH FLOOR
LOS ANGELES CA , 90064
UNITED STATES

Correspondent e-mail: dcrona@roll.com , mriviera@roll.com , dlauffer@roll.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
PARAMOUNT CITRUS	Registered	<u>77611305</u>	<u>3934863</u>

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Jul 17, 2015	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Jul 21, 2015	Aug 30, 2015
3	PENDING, INSTITUTED	Jul 21, 2015	
4	ANSWER	Aug 24, 2015	

Type of Proceeding: Opposition

Proceeding Number: 91218876

Filing Date: Oct 16, 2014

Status: Terminated

Status Date: Dec 28, 2015

Interlocutory Attorney: ELIZABETH WINTER

Defendant

Name: Manuelita S.A.

Correspondent LONI J SHERWIN
Address: ARENT FOX LLP
1717 K STREET NW
WASHINGTON DC , 20006
UNITED STATES

Correspondent e-mail: loni.sherwin@arentfox.com , ricardo.fischer@arentfox.com , jimeelah.berryman@arentfox.com , tmockett@arentfox.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
MANUELITA	Notice of Allowance - Issued	<u>86090069</u>	
MANUELITA	Notice of Allowance - Issued	<u>86090072</u>	
MANUELITA	Notice of Allowance - Issued	<u>86151389</u>	

Plaintiff(s)

Name: Paramount Citrus LLC

Correspondent Address: Danielle M. Criona, Esq.
11444 W. Olympic Blvd. 7th Floor
WEST HOLLYWOOD CA , 90064
UNITED STATES

Correspondent e-mail: danielle.criona@roll.com , michael.vasseghi@roll.com , darya.laufer@roll.com , mark.rivera@roll.com , susan.bryant@roll.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
PARAMOUNT CITRUS	Registered	<u>77611305</u>	<u>3934863</u>

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Oct 16, 2014	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Oct 16, 2014	Nov 25, 2014
3	PENDING, INSTITUTED	Oct 16, 2014	
4	D CHANGE OF CORRESP ADDRESS	Nov 25, 2014	
5	ANSWER	Nov 25, 2014	
6	D MOT FOR EXT W/ CONSENT	Dec 15, 2014	
7	EXTENSION OF TIME GRANTED	Dec 15, 2014	
8	D MOT FOR EXT W/ CONSENT	Mar 06, 2015	
9	EXTENSION OF TIME GRANTED	Mar 06, 2015	
10	D MOT FOR EXT W/ CONSENT	Apr 17, 2015	
11	EXTENSION OF TIME GRANTED	Apr 17, 2015	
12	D MOT FOR EXT W/ CONSENT	May 20, 2015	
13	EXTENSION OF TIME GRANTED	May 20, 2015	
14	P MOT TO SUSP W/ CONSENT PEND SETTL NEGOTIATIONS	Jun 11, 2015	
15	SUSPENDED	Jun 11, 2015	
16	MOT TO AMEND APPLICATION	Sep 08, 2015	
17	W/DRAW OF OPPOSITION	Sep 10, 2015	
18	CHANGE OF CORRESP ADDRESS	Sep 11, 2015	
19	BD DECISION: DISMISSED W/ PREJ	Dec 28, 2015	
20	TERMINATED	Dec 28, 2015	

EXHIBIT B

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/611305

MARK: PARAMOUNT CITRUS

77611305

CORRESPONDENT ADDRESS:

LATUNDA POWELL, TRADEMARK
ADMINISTRATOR
ROLL INTERNATIONAL CORPORATION
11444 W OLYMPIC BLVD FL 10
LOS ANGELES, CA 90064-1557

RESPOND TO THIS ACTION:

<http://www.uspto.gov/teas/eTEASpageD.htm>

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Paramount Citrus Association

CORRESPONDENT'S

REFERENCE/DOCKET NO:

N/A

CORRESPONDENT E-MAIL ADDRESS:

OFFICE ACTION

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

ISSUE/MAILING DATE:

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, 2.65(a); TMEP §§711, 718.03.

Section 2(d) - Likelihood of Confusion Refusal

Registration of the applied-for mark is refused because of a likelihood of confusion with the marks in U.S. Registration Nos. 1980921 and 2300608. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the previously enclosed registrations.

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.*

The applicant has applied to register the mark **PARAMOUNT CITRUS**, including a design element, for “fresh citrus fruits.”

The registered marks are:

PARAMOUNT for “live plants and flower seeds;” and

PARAMOUNT for “rootstocks for cherry trees.”

A. Comparison of the Marks

Marks may be confusingly similar in appearance where there are similar terms or phrases or similar parts of terms or phrases appearing in both applicant's and registrant's mark. See *Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689 (TTAB 1986), *aff'd sub nom. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat'l Ass'n*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987) (COMMCASH and COMMUNICASH); *In re Phillips-Van Heusen Corp.*, 228 USPQ 949 (TTAB 1986) (21 CLUB and “21” CLUB (stylized)); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985) (CONFIRM and CONFIRMCELLS); *In re Collegian Sportswear Inc.*, 224 USPQ 174 (TTAB 1984) (COLLEGIAN OF CALIFORNIA and COLLEGIENNE); *In re Pellerin Milnor Corp.*, 221 USPQ 558 (TTAB 1983) (MILTRON and MILL TRONICS); *In re BASF A.G.*, 189 USPQ 424 (TTAB 1975) (LUTEXAL and LUTEX); TMEP §1207.01(b)(ii)-(iii).

Additionally, when a mark consists of a word portion and a design portion, the word portion is more likely to be impressed upon a purchaser's memory and to be used in calling for the goods and/or services. Therefore, the word portion is normally accorded greater weight in determining likelihood of confusion. *In re Dakin's Miniatures, Inc.*, 59 USPQ2d 1593, 1596 (TTAB 1999); *In re Appetito Provisions Co.*, 3 USPQ2d 1553, 1554 (TTAB 1987); *Amoco Oil Co. v. Amerco, Inc.*, 192 USPQ 729, 735 (TTAB 1976); TMEP §1207.01(c)(ii).

Further, the mere addition of a term to a registered mark generally does not obviate the similarity between the marks nor does it overcome a likelihood of confusion under Trademark Act Section 2(d). See *In re Chatam Int'l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944 (Fed. Cir. 2004) (GASPAR'S ALE and JOSE GASPAR GOLD); *Coca-Cola Bottling Co. v. Jos. E. Seagram & Sons, Inc.*, 526 F.2d 556, 188 USPQ 105 (C.C.P.A. 1975) (BENGAL and BENGAL LANCER); *Lilly Pulitzer, Inc. v. Lilli Ann Corp.*, 376 F.2d 324, 153 USPQ 406 (C.C.P.A. 1967) (THE LILLY and LILLI ANN); *In re El Torito Rests., Inc.*, 9 USPQ2d 2002 (TTAB 1988) (MACHO and MACHO COMBOS); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985) (CONFIRM and CONFIRMCELLS); *In re U.S. Shoe Corp.*, 229 USPQ 707 (TTAB 1985) (CAREER IMAGE and CREST CAREER IMAGES); *In re Riddle*, 225 USPQ 630 (TTAB 1985) (ACCUTUNE and RICHARD PETTY'S ACCU TUNE); *In re Cosvetic Labs., Inc.*, 202 USPQ 842 (TTAB 1979) (HEAD START and HEAD START COSVETIC); TMEP §1207.01(b)(iii).

The mark **PARAMOUNT CITRUS**, with its design portion, is highly similar in sound, appearance, connotation, and commercial impression to the **PARAMOUNT** marks.

The only differences between applicant's mark and the registered mark are the design element in applicant's mark and the addition of the highly descriptive term CITRUS. However, as discussed above, these differences have very little material effect on the factors concerning likelihood of confusion and particularly not on the overall commercial impression. The term "PARAMOUNT" appears in all the marks. Although the term "CITRUS" cannot be ignored it is merely descriptive of the type of applicant's goods as explained further below in the "**Disclaimer**" section of this Office Action. Please reference the attached online dictionary evidence.

As stated, although a disclaimed portion of a mark certainly cannot be ignored, and the marks must be compared in their entireties, one feature of a mark may be more significant in creating a commercial impression. Disclaimed matter is typically less significant or less dominant when comparing marks. *See In re Dixie Rests. Inc.*, 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1060, 224 USPQ 749, 752 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii).

Moreover, consumers are generally more inclined to focus on the first word, prefix or syllable in any trademark or service mark. *See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1372, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005); *see also Mattel Inc. v. Funline Merch. Co.*, 81 USPQ2d 1372, 1374-75 (TTAB 2006); *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) ("it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered" when making purchasing decisions).

Thus, it is the term "PARAMOUNT" that will create the commercial impression for consumers. Therefore, in this particular case the term "PARAMOUNT" is the dominant portion of all the marks, and in fact the only element of registrants' marks. The marks are compared in their entireties under a Trademark Act Section 2(d) analysis. *See* TMEP §1207.01(b). Nevertheless, one feature of a mark may be recognized as more significant in creating a commercial impression. Greater weight is given to that dominant feature in determining whether there is a likelihood of confusion. *In re Nat'l Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985); *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693 (C.C.P.A. 1976); *In re J.M. Originals Inc.*, 6 USPQ2d 1393 (TTAB 1987); *see* TMEP §1207.01(b)(viii), (c)(ii).

B. Comparison of the 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, they need only be related in some manner, 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).

Any goods or services in the registrant's normal fields of expansion should be considered when determining whether the registrant's goods and/or services are related to the applicant's goods and/or services. TMEP §1207.01(a)(v); *see In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581 1584 (TTAB 2007). Evidence that third parties offer the goods and/or services of both the registrant and applicant suggest that it is likely that the registrant would expand their business to include applicant's goods and/or

services. In that event, customers are likely to believe the goods and/or services at issue come from or, are in some way connected with, the same source. *In re 1st USA Realty Prof'ls*, 84 USPQ2d at 1584 n.4; *see* TMEP §1207.01(a)(v).

Here, applicant and the registrants' goods are closely related. All the marks are used to identify plants of various sorts. The goods listed by registrant and applicant overlap in each other's normal field of expansion. Attached are fifteen 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 and/or services 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 and/or services listed therein, namely fresh fruits and live plants, flower seeds and rootstocks, are of a kind that may emanate from a single source. *In re Infinity Broad. Corp.*, 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).

The similarities between the marks and the goods are so great as to create a likelihood of confusion. The overriding concern is not only to prevent buyer confusion as to the source of the goods and/or services, but to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. *See In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt regarding a likelihood of confusion determination is resolved in favor of the registrant. TMEP §1207.01(d)(i); *see Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1025 (Fed. Cir. 1988).

Accordingly, registration on the Principal Register is refused.

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

Applicant must respond to the requirement(s) set forth below.

Mark Description

Applicant must submit a concise description of the mark. 37 C.F.R. §2.37; *see* TMEP §§808 *et seq.* The following is suggested:

**The mark consists of an orange growing between two leaves with the stylized wording
PARAMOUNT CITRUS beneath the design element.**

Disclaimers

Applicant has applied to register the mark PARAMOUNT CITRUS, including a design element, for "fresh citrus fruits."

Applicant must disclaim the descriptive wording "CITRUS" apart from the mark as shown because it merely describes the goods themselves. *See* 15 U.S.C. §1056(a); TMEP §§1213, 1213.03(a).

Please refer to the attached evidence from Dictionary.com defining the term CITRUS as "the tart-to-sweet, pulpy fruit of any of these trees or shrubs, having a characteristically smooth, shiny, stippled

skin.” As stated, CITRUS appears to be merely a definition for applicant’s goods. Thus, the term CITRUS is generic as applied to fresh *citrus* fruits. Applicant should note that the term CITRUS is used in its identification of goods. Use of a term in an identification of goods is further evidence of its high level of descriptiveness. Therefore, applicant must disclaim the merely descriptive term CITRUS in its mark.

The Trademark Trial and Appeal Board has held that materials obtained through computerized text searching are competent evidence to show the descriptive use of terms under Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1). *In re National Data Corp.*, 222 USPQ 515, 517 n.3 (TTAB 1984); TMEP §710.01(a).

The computerized printing format for the Office’s *Trademark Official Gazette* requires a standardized format for a disclaimer. TMEP §1213.08(a)(i). The following is the standard format used by the Office:

No claim is made to the exclusive right to use “CITRUS” apart from the mark as shown.

TMEP §1213.08(a)(i); *see In re Owatonna Tool Co.*, 231 USPQ 493 (Comm’r Pats. 1983).

The Office can require an applicant to disclaim an unregistrable part of a mark consisting of particular wording, symbols, numbers, design elements or combinations thereof. 15 U.S.C. §1056(a). Under Trademark Act Section 2(e), the Office can refuse registration of an entire mark if the entire mark is merely descriptive, deceptively misdescriptive, or primarily geographically descriptive of the goods. 15 U.S.C. §1052(e). Thus, the Office may require an applicant to disclaim a portion of a mark that, when used in connection with the goods or services, is merely descriptive, deceptively misdescriptive, primarily geographically descriptive, or otherwise unregistrable (e.g., generic). *See* TMEP §§1213, 1213.03.

Failure to comply with a disclaimer requirement can result in a refusal to register the entire mark. TMEP §1213.01(b).

A “disclaimer” is a statement that applicant does not claim exclusive rights to an unregistrable component of a mark. TMEP §1213. A disclaimer does not affect the appearance of the applied-for mark. *See* TMEP §1213.10.

A disclaimer does *not* physically remove the disclaimed matter from the mark, but rather is a written statement that applicant does not claim exclusive rights to the disclaimed wording and/or design separate and apart from the mark as shown in the drawing. TMEP §§1213, 1213.10.

Pro Se Response Guidelines

Applicant may wish to hire an attorney to assist in prosecuting this application because of the legal technicalities involved. The Office, however, cannot aid in the selection of an attorney. 37 C.F.R. §2.11. Applicant may wish to consult a local telephone directory for a listing of attorneys specializing in trademark or intellectual property law, or seek guidance from a local bar association attorney-referral service.

There is no required format or form for responding to an Office action. The Office recommends applicants use the Trademark Electronic Application System (TEAS) to respond to Office actions online at <http://www.uspto.gov/teas/index.html>. However, if applicant responds on paper via regular mail, the response should include the title “Response to Office Action” and the following information: (1) the

name and law office number of the examining attorney, (2) the serial number and filing date of the application, (3) the mailing date of this Office action, (4) applicant's name, address, telephone number and e-mail address (if applicable), and (5) the mark. 37 C.F.R. §2.194(b)(1); TMEP §302.03(a).

The response should address each refusal and/or requirement raised in the Office action. If a refusal has issued, applicant can argue against the refusal; i.e., applicant can submit arguments and evidence as to why the refusal should be withdrawn and the mark should register. To respond to requirements, applicant should set forth in writing the required changes or statements and request that the Office enter them into the application record.

The response must be personally signed or the electronic signature manually entered by applicant or someone with legal authority to bind applicant (i.e., a corporate officer of a corporate applicant, the equivalent of an officer for unincorporated organizations or limited liability company applicants, a general partner of a partnership applicant, each applicant for applications with multiple individual applicants). TMEP §§605.02, 712.

/Benjamin U. Okeke/
United States Patent & Trademark Office
Law Office 112
600 Dulany St., Alexandria, VA 22314
(571) 270-1524 P
(571) 270-2524 F

RESPOND TO THIS ACTION: Applicant should file a response to this Office action online using the form at <http://www.uspto.gov/teas/eTEASpageD.htm>, waiting 48-72 hours if applicant received notification of the Office action via e-mail. For *technical* assistance with the form, please e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned examining attorney. **Do not respond to this Office action by e-mail; the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

EXHIBIT C

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77611305
LAW OFFICE ASSIGNED	LAW OFFICE 112
MARK SECTION (no change)	
ARGUMENT(S)	
Please see the actual argument text attached within the Evidence section.	
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_6524153125-145439850_PCA_Design_Serial No. 77611305_Argument to SECTION2_d.pdf
CONVERTED PDF FILE(S) (16 pages)	\\TICRS\EXPORT7\IMAGEOUT7\776\113\77611305\xml1\ROA0002.JPG
	\\TICRS\EXPORT7\IMAGEOUT7\776\113\77611305\xml1\ROA0003.JPG
	\\TICRS\EXPORT7\IMAGEOUT7\776\113\77611305\xml1\ROA0004.JPG
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	\\TICRS\EXPORT7\IMAGEOUT7\776\113\77611305\xml1\ROA0016.JPG
	\\TICRS\EXPORT7\IMAGEOUT7\776\113\77611305\xml1\ROA0017.JPG
ADDITIONAL STATEMENTS SECTION	
DISCLAIMER	No claim is made to the exclusive right to use CITRUS apart from the mark as shown.
DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of an orange growing between two leaves with the stylized wording PARAMOUNT CITRUS beneath the design element.
SIGNATURE SECTION	
DECLARATION SIGNATURE	/craig cooper/
SIGNATORY'S NAME	Craig B. Cooper

SIGNATORY'S POSITION	Sr. Vice President
DATE SIGNED	08/17/2009
RESPONSE SIGNATURE	/craig cooper/
SIGNATORY'S NAME	Craig B. Cooper
SIGNATORY'S POSITION	Sr. Vice President
DATE SIGNED	08/17/2009
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Aug 17 15:31:22 EDT 2009
TEAS STAMP	USPTO/ROA-XX.XXX.XX.XXX-2 0090817153122902195-77611 305-430cf24cdd72b6f2aa0db 9d1971c159ae51-N/A-N/A-20 090817145439850842

PTO Form 1957 (Rev 9/2006)
OMB No. 0951-0080 (Exp. 04/30/2011)

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. **77611305** has been amended as follows:

ARGUMENT(S)

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

Please see the actual argument text attached within the Evidence section.

EVIDENCE

Original PDF file:

[evi_6524153125-145439850_PCA_Design_Serial No. 77611305_Argument to SECTION2 d .pdf](#)

Converted PDF file(s) (16 pages)

- [Evidence-1](#)
- [Evidence-2](#)
- [Evidence-3](#)
- [Evidence-4](#)
- [Evidence-5](#)
- [Evidence-6](#)
- [Evidence-7](#)
- [Evidence-8](#)
- [Evidence-9](#)
- [Evidence-10](#)
- [Evidence-11](#)
- [Evidence-12](#)
- [Evidence-13](#)
- [Evidence-14](#)
- [Evidence-15](#)
- [Evidence-16](#)

ADDITIONAL STATEMENTS

Disclaimer

No claim is made to the exclusive right to use CITRUS apart from the mark as shown.

Description of mark

The mark consists of an orange growing between two leaves with the stylized wording PARAMOUNT CITRUS beneath the design element.

SIGNATURE(S)**Declaration Signature**

If the applicant is seeking registration under Section 1(b) and/or Section 44 of the Trademark Act, the applicant has had a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. 37 C.F.R. Secs. 2.34(a)(2)(i); 2.34 (a)(3)(i); and 2.34(a)(4)(ii); and/or the applicant has had a bona fide intention to exercise legitimate control over the use of the mark in commerce by its members. 37 C.F. R. Sec. 2.44. If the applicant is seeking registration under Section 1(a) of the Trademark Act, the mark was in use in commerce on or in connection with the goods or services listed in the application as of the application filing date. 37 C.F.R. Secs. 2.34(a)(1)(i); and/or the applicant has exercised legitimate control over the use of the mark in commerce by its members. 37 C.F.R. Sec. 244. 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. §1001, and that such willful false statements 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. §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; that if the original application was submitted unsigned, that all statements in the original application and this submission made of the declaration signer's knowledge are true; and all statements in the original application and this submission made on information and belief are believed to be true.

Signature: /craig cooper/ Date: 08/17/2009

Signatory's Name: Craig B. Cooper

Signatory's Position: Sr. Vice President

Response Signature

Signature: /craig cooper/ Date: 08/17/2009

Signatory's Name: Craig B. Cooper

Signatory's Position: Sr. Vice President

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.

Serial Number: 77611305

Internet Transmission Date: Mon Aug 17 15:31:22 EDT 2009

TEAS Stamp: USPTO/ROA-XX.XXX.XX.XXX-2009081715312290

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Response to Office Action

SERIAL NUMBER 77611305

LAW OFFICE ASSIGNED LAW OFFICE 112

ARGUMENT(S)

I. INTRODUCTION

The Examining Attorney has initially refused registration of Applicant's PARAMOUNT CITRUS & Orange Design mark ("Applicant's Design Mark") under Section 2(d) of the Trademark Act, raising concerns that it is likely to be confused with the already co-existing registrations for the word marks (i) PARAMOUNT, Reg. No. 1,980,921 for "live plants and flower seeds" and (ii) PARAMOUNT, Reg. No. 2,300,608 for "rootstocks for cherry trees" (the "Cited Marks").

As more fully discussed below, Applicant submits that there is no likelihood of confusion between Applicant's Design Mark and the Cited Marks because the parties' marks are different and the parties' goods are distinct, sold in different channels of trade, purchased by different consumers, and because the Cited Marks, which share the common PARAMOUNT element, already co-exist in Class 31, for goods that are even more similar to each other than they are to the goods covered by Applicant's Design Mark, without confusion. Therefore, Applicant respectfully requests that the Examining Attorney withdraw the refusal and pass this mark to publication.

II. ANALYSIS

Even though Applicant's Design Mark and the Cited Marks share the PARAMOUNT element and cover agricultural goods in Class 31, there is no likelihood of confusion between them because Applicant's Design Mark contains additional elements that distinguishes it from the Cite Marks in sight, sound, meaning and overall commercial impression. Applicant's Design Mark also differs from the Cited Marks in the goods it is used with and the trade channels and consumers of those goods. Furthermore, despite sharing the common PARAMOUNT element, the Cited Marks already co-exist without confusion, and Applicant's Design Mark can likewise co-exist without confusion.

A. Confusion Between Applicant's Design Mark and the Cited Marks is Unlikely Because of The Dissimilarity of the Marks

To determine whether there is a likelihood of confusion between Applicant's Design Mark and the Cited Marks, the similarity of the marks compared in their entireties is an important consideration. See *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357 (C.C.P.A. 1973). Furthermore, all components of the marks must be given appropriate weight. *In re Hearst Corp.*, 25 U.S.P.Q.2d1238, 1239 (Fed. Cir. 1992). "Similarity of the marks in one respect – sight, sound, or meaning – will not automatically result in a finding of likelihood of confusion even if the goods are identical or closely related." T.M.E.P. § 1207.01(b)(1).

Despite sharing a common element, Applicant's Design Mark contains several additional elements that the Cited Marks do not, as shown in the drawing attached hereto in Exhibit A. The additional elements include the depiction of a citrus fruit created by a semi-circle set above a large leaf and small leaf depicted above the word PARAMOUNT in bold, capitalized and spaced out letters, and below that, the word CITRUS in a handwritten stylized font with a capitalized first letter.

In sight, sound and meaning, Applicant's Design Mark is distinguishable from the Cited Marks. The Cited Marks each are the word mark PARAMOUNT with no design element, which is highly distinguishable from Applicant's PARAMOUNT CITRUS Design Mark, which includes stylized fonts, and the additional design elements of a fresh citrus fruit and leaves, creating an overall commercial impression that clearly creates an association between Applicant's Design Mark and citrus fruits.

Even marks that share common elements have been found not confusingly similar where additional elements, like the additional word and design elements in Applicant's Design Mark, are distinct from the Cited Marks. Thus, in *Omaha Nat'l Bank*, the court held that defendant's BANK IN A WALLET word mark was not likely to be confused with plaintiff's composite design and word mark consisting of the words BANK IN A BILLFOLD with the design of a dollar bill and the disclaimed words "The Omaha National Bank." See *Omaha Nat'l Bank v. Citibank, N.A.*, 633 F. Supp. 231, 233 (D. Neb. 1986). The Court explained its decision, stating: "Defendant's designations are mere words while plaintiff's composite mark is a combination of words and design." *Id.* And in *In re Jack Klein Trust Partnership*, the Board found no likelihood of confusion between DELTA KING & Steamboat Design and DELTA KING, both for goods in Class 31. 1999 WL 597313, *1 (T.T.A.B. 1999). Here, Applicant's Design Mark is likewise a combination of words and design, and although the marks share a single word element,

Applicant's Design Mark's design elements and additional wording clearly distinguish it from the Cited Marks.

Furthermore, even if "citrus" in Applicant's Mark is disclaimed, a disclaimed word is still relevant to the similarity of the marks analysis where Applicant's Design Mark, in its entirety, is dissimilar to the Cited Marks. *See, e.g., In re Farm Fresh Catfish Co.*, 231 USPQ 495 (TTAB 1986) (CATFISH BOBBERS, with "CATFISH" disclaimed, for fish held not likely to be confused with BOBBER for restaurant services); *In re Shawnee Milling Co.*, 225 USPQ 747 (TTAB 1985) (GOLDEN CRUST for flour held not likely to be confused with ADOLPH'S GOLD'N CRUST and design, with "GOLD'N CRUST" disclaimed, for coating and seasoning for food items); *In re S.D. Fabrics, Inc.*, 223 USPQ 54 (TTAB 1984) (stylized DESIGNERS/FABRIC for retail fabric store services held not likely to be confused with DAN RIVER DESIGNER FABRICS and design for textile fabrics).

Moreover, even if marks cover identical or related goods, which in this case they do not, the differences in the marks in sight, sound, meaning or overall commercial impression can eliminate a likelihood of confusion. Thus, the Court of Customs and Patent Appeals held that PEAK PERIOD was not confusingly similar to PEAK, even though both marks were used for "toilet preparations." *Colgate-Palmolive Co. v. Carter-Wallace, Inc.*, 167 U.S.P.Q. 529, 530 (C.C.P.A. 1970). Likewise, in *In re Coca-Cola*, the Board found no likelihood of confusion between QUENCH and SPRITE QUENCH for identical goods. *In re Coca-ColaCo.*, 2007 WL 3320310, *6 (T.T.A.B. 2007). In *ConAgra, Inc.*, the Board held TAPATIO and PATIO not confusingly similar when used in connection with "complementary, closely related food products." *ConAgra, Inc. v. Saavedra*, 4 U.S.P.Q.2d 1245, 1247 (T.T.A.B. 1987).

Moreover, the Federal Circuit recently affirmed the Board's finding of no likelihood of confusion between TORRE MUGA and TORRES, both for "wine," even though the marks contained the virtually identical "TORRE" portions. *Miguel Torres, S.A. v. Bodegas Muga S.A.*, 2005 WL 1463864, *5 (T.T.A.B. 1997), *aff'd*, 176 Fed.Appx. 124 (Fed. Cir. 2006). The Federal Circuit affirmed the Board's holding that despite the similarity of that word and of the goods, the parties' marks made different overall commercial impressions, thereby eliminating a likelihood of confusion. *Id.*

Thus, comparing Applicant's Design Mark to the Cited Marks in their entireties, as the Examining Attorney must do, the marks are dissimilar in sight, sound, meaning and overall commercial impression, eliminating any likelihood of confusion.

B. The Goods, Trade Channels and Purchasers of Applicant's Goods and the Goods Used With The Cited Marks Are Dissimilar

In addition to the fact that Applicant's Design Mark is distinct from the Cited Marks, Applicant's goods and the goods differ significantly, further diffusing any likelihood of confusion. Applicant's goods are fresh citrus fruits offered for sale and sold to the general consuming public at the retail level, such as in the produce aisle of grocery stores. Moreover, Applicant's goods are fresh citrus fruits intended for human consumption. In stark contrast, the Cited Marks cover agricultural produces, namely, "live plants and flower seeds" (Reg. No. 1,980,921) and "rootstocks for cherry trees" (Reg. No. 2,300,608), which appear to be wholesale products and/or products intended for farming or gardening. See Exhibit B, attached hereto, of specimens of use on file with the PTO for the Cited Marks. Even if these goods were to be sold at the retail level, they would likely be sold at nurseries and garden centers and not in grocery stores. Further, the Cited Marks are used in connection with plants, flowers and tree rootstocks which are not intended for human consumption. In a similar case involving marks that shared a common element for goods in Class 31, the PTO allowed the registration of the mark DELTA KING & Ship Design for "fresh vegetables" in Class 31, finding that there was no likelihood of confusion with the mark DELTA KING for "seeds for agricultural purposes, namely, corn, cotton, grain sorghum (milo), oats, rice rye, soybeans, wheat" in Class 31. *In re Jack Klein Trust Partnership*, 1999 WL 597313 at *1 (T.T.A.B. 1999) ("[T]here are significant differences between applicant's goods (fresh vegetables) and registrant's goods (grain seeds sold for agricultural purposes.>"). Likewise, there are significant differences between Applicant's fresh citrus fruits and the agricultural goods covered by the Cited Marks, eliminating any likelihood of confusion.

C. The Cited Marks Already Co-Exist Without Confusion

The Cited Mark PARAMOUNT, Reg. No. 1,980,921, for "live plants and flower seeds" in Class 31 claims a date of first use in commerce of May 16, 1986 and the Cited Mark PARAMOUNT, Reg. No. 2,300,608, for "rootstocks for cherry trees" in Class 31 claims of first date of use in commerce of August 31, 1999. Therefore, the Cited Marks have been co-existing

on the Principal Register and in the marketplace without confusion for at least ten years. Moreover, the Cited Marks both cover related agricultural goods, namely, “rootstocks for cherry trees” and “live plants and flower seeds” – goods which are often sold in identical channels of trade and to identical purchasers.

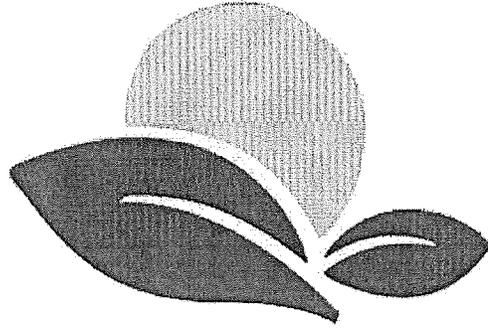
In contrast, Applicant’s goods are consumable fresh citrus fruits sold at retail, including in grocery stores, to the general consuming public. Certainly the goods covered by the Cited Marks are more similar to each other than they are to Applicant’s goods, and yet they co-exist on the Principal Register and in the marketplace without confusion. Thus, Applicant’s Design Mark can likewise co-exist on the Principal Register without confusion.

III. CONCLUSION

For the reasons discussed above, there is no likelihood of confusion between Applicant’s Design Mark and the Cited Marks. Applicant’s Design Mark is distinct from the Cited Marks in sight, sound, meaning and overall commercial impression despite sharing a common element. Moreover, Applicant’s Design Mark is used with different goods in different trade channels and sold to different consumers, eliminating any chance of confusion.

As such, Applicant respectfully requests that the Examining Attorney withdraw the refusal and pass this mark to publication.

EXHIBIT A



PARAMOUNT

Citrus

EXHIBIT D

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

WONDERFUL CITRUS LLC f/k/a)
 PARAMOUNT CITRUS LLC;)
)
 Opposer,)
)
 v.)
)
 QUALITY FRESH FARMS, INC.;)
)
 Applicant.)

Opposition No. 91222878
 Serial No. 86/375,060
 Mark: Q + Design



QUALITY FRESH FARMS, INC.'S
 REQUESTS FOR ADMISSIONS TO
 WONDERFUL CITRUS LLC f/k/a
 PARAMOUNT CITRUS LLC

PROPOUNDING PARTY: QUALITY FRESH FARMS, INC.

RESPONDING PARTY: WONDERFUL CITRUS LLC f/k/a PARAMOUNT CITRUS LLC

SET NO: ONE

Applicant, QUALITY FRESH FARMS, INC., hereby requests that you admit under oath, pursuant to Rule 36 of the Federal Rules of Civil Procedure section, 37 C.F.R section 2.120 and Trademark Trial and Appeal Board Manual of Procedure Chapter 407, the truth of the following matters of fact and the genuineness of the following documents for the purposes of this action within thirty (30) days from the date of service of this request upon you.

DEFINITIONS

A. As used in this request, the term "DOCUMENT(S)" shall mean and include all "writings" as defined in Federal Rules of Evidence, Rule 1001, and shall further include, without limitation, the following items, whether printed or recorded or reproduced by computer or by any other electronic or mechanical process, or written or produced by hand: financial statements;

journal entries; ledger sheets; repair, remodeling or replacement invoices; agreements; communications; correspondence; telegrams; microfilms; memoranda; summaries or records of telephone conversations; summaries or records of personal conversations or interviews; diaries; notebooks; plans; drawings; summaries or records of meetings or conferences; summaries or reports of investigations or conversations; opinions or reports of consultants; photographs; motion picture films; brochures; pamphlets; computer programs; data contained in computers, including computer software, compilations, and e-mail; all other writings, figures or symbols of any kind; and tape recordings. Any document which contains any comment, notation, addition, or marking which is not part of the original document is to be considered a separate document.

B. As used herein, "YOU" and "YOUR" shall refer to WONDERFUL CITRUS LLC f/k/a PARAMOUNT CITRUS LLC and its agents, employees, officers, attorneys, accountants, investigators, or anyone else acting on it's behalf.

C. As used herein, "QFF" shall refer to QUALITY FRESH FARMS, INC.

D. As used herein, the "QFF MARK" shall refer to the "Q" mark (U.S. Trademark Registration Application Serial No. 86/375,060).

E. As used herein, "PARAMOUNT ORANGE MARK" shall refer to WONDERFUL CITRUS LLC f/k/a PARAMOUNT CITRUS LLC's U.S. Trademark Registration No. 3934863.

F. As used in herein, the terms "PERSON" or "PERSONS" shall include all natural persons and entities, including, without limitation, individuals, firms, sole proprietorships, associates, companies, partnerships, joint ventures, corporations, trusts and estates, trustees, executors, government entities, agencies and political subdivisions.

G. As used in herein, the term "citrus" shall include, but not be limited to, varieties of lemons, limes, oranges, grapefruits and tangerines.

FACTS, THE TRUTH OF WHICH IS TO BE ADMITTED

Please admit the truth of the following facts:

REQUEST NO. 1.:

Admit YOU grow fresh citrus fruits.

REQUEST NO. 2.:

Admit that YOU package fresh citrus fruits.

REQUEST NO. 3.:

Admit that YOU do not grow fresh vegetables.

REQUEST NO. 4.:

Admit that YOU do not package fresh vegetables.

REQUEST NO. 5.:

Admit YOU do not grow non-citrus fruits.

REQUEST NO. 6.:

Admit YOU do not package non-citrus fruits.

REQUEST NO. 7.:

Admit YOU do not sell non-citrus fruits.

REQUEST NO. 8.:

Admit YOU do not sell non-citrus fruits in association with the PARAMOUNT
ORANGE MARK.

REQUEST NO. 9.:

Admit that the PARAMOUNT ORANGE MARK is registered in International Class 031.

REQUEST NO. 10.:

Admit that the PARAMOUNT ORANGE MARK is registered for “fresh citrus fruits.”

REQUEST NO. 11.:

Admit that the PARAMOUNT ORANGE MARK is not registered in International Class 039.

REQUEST NO. 12.:

Admit that in YOUR application to register the PARAMOUNT ORANGE MARK YOU described the mark as consisting of “an orange growing between two leaves with the stylized wording ‘PARAMOUNT CITRUS’ beneath the design element.”

REQUEST NO. 13.:

Admit the PARAMOUNT ORANGE MARK does not include a sun.

REQUEST NO. 14.:

Admit the PARAMOUNT ORANGE MARK does not include a sky.

REQUEST NO. 15.:

Admit the PARAMOUNT ORANGE MARK does not include a farm field.

REQUEST NO. 16.:

Admit the PARAMOUNT ORANGE MARK includes the words “Paramount Citrus” in stylized letters.

REQUEST NO. 17.:

Admit the PARAMOUNT ORANGE MARK does not include the letter “Q.”

REQUEST NO. 18.:

Admit the PARAMOUNT ORANGE MARK is suggestive of the goods and services for which the PARAMOUNT ORANGE MARK is USED IN COMMERCE (For purposes of this request the term “suggestive” is defined as “tending to suggest, hinting at or evoking something”).

REQUEST NO. 19.:

Admit YOU do not know of any instances in which Applicant’s USE IN COMMERCE of QFF’s Mark has led to actual confusion.

REQUEST NO. 20.:

Admit YOU do not know of any consumers who have suffered actual confusion between the PARAMOUNT ORANGE MARK and the QFF MARK.

REQUEST NO. 21.:

Admit that, as of the date these Requests were served, YOU do not intend to expand YOUR product line to include fresh vegetables. (For purposes of these Requests for Admissions, the phrase “product line” is defined to mean fresh citrus fruits.)

REQUEST NO. 22.:

Admit that, as of the date these Requests were served, YOU do not intend to expand YOUR product line to include non-citrus fruits.

REQUEST NO. 23.:

Admit that, as of the date these Requests were served, YOU do not intend to USE IN COMMERCE the PARAMOUNT ORANGE MARK on non-citrus fruits.

REQUEST NO. 24.:

Admit that, as of the date these Requests were served, YOU do not intend to USE IN COMMERCE the PARAMOUNT ORANGE MARK on fresh vegetables.

REQUEST NO. 25.:

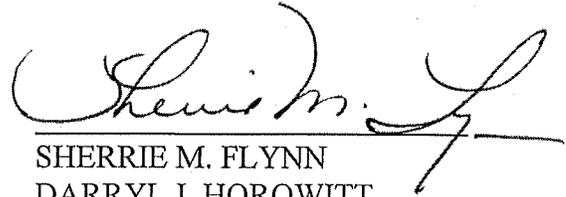
Admit that, as of the date these Requests were served, YOU do not USE IN COMMERCE the PARAMOUNT ORANGE MARK in association with citrus fruits.

REQUEST NO. 26.:

Admit that YOU do not USE IN COMMERCE the PARAMOUNT ORANGE MARK without the words, "Paramount Citrus."

Dated: November 6, 2015

By:

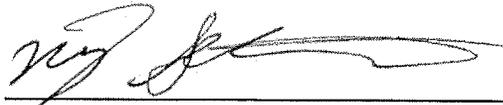


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FARMS, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of QUALITY FRESH FARMS, INC.'S REQUESTS FOR ADMISSIONS TO WONDERFUL CITRUS LLC f/k/a PARAMOUNT CITRUS LLC, was forwarded by First Class Mail delivery, by depositing the same with the United States Postal Service on this 6th day of November, 2015, to the attorney for Applicant at the following address:

Michael M. Vasseghi, Esq.
Darya P. Laufer, Esq.
Danielle M. Criona, Esq.
Roll Law Group, P.C.
11444 W. Olympic Blvd, Floor 7
Los Angeles, CA 90064



NAJI ALSHIKHAITI

EXHIBIT E

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

Wonderful Citrus LLC fka Paramount Citrus
LLC,

Opposer,

v.

Quality Fresh Farms, Inc.,

Applicant.

Opposition No. 91222878

Application Serial No. 86375060

**RESPONSE TO QUALITY FRESH
FARMS, INC.'S REQUESTS FOR
ADMISSIONS TO WONDERFUL
CITRUS LLC f/k/a PARAMOUNT
CITRUS LLC**

PROPOUNDING PARTY: QUALITY FRESH FARMS, INC.

RESPONDING PARTY: WONDERFUL CITRUS LLC f/k/a PARAMOUNT CITRUS LLC

SET NO: ONE

Pursuant to Rule 36 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer, Wonderful Citrus LLC fka Paramount Citrus LLC, ("Opposer" or "WONDERFUL") provides the following responses and objections to Applicant Quality Fresh Farms, Inc.'s ("Applicant" or "QFF") Request for Admissions to Opposer, Set One (the "Requests") as set forth below. The following responses are made without waiving, or intending to waive, any objection as to relevancy, privilege, or admissibility of any information provided in a response to these requests, and any subsequent proceeding or at the trial of this opposition or any other action. A partial answer to any request which has been objected to, in whole or in part, is not intended to be a waiver of the objection.

Opposer has made reasonable inquiries and investigations concerning information currently available to it and its responses are based on that information. Because Opposer's investigations are continuing, Opposer provides these responses without prejudice to its right

to amend or supplement responses based upon facts discovered during the course of this opposition proceeding.

PRELIMINARY STATEMENT AND GENERAL OBJECTIONS

WONDERFUL asserts the following general objections to the First Set of Requests for Admissions (the "General Objections"), each of which is incorporated by reference into the response to the individual requests below. From time to time, and for purpose of emphasis, WONDERFUL may restate one or more of the General Objections as specific objections to individual requests. Such restatement, or the failure to restate, should not waive any General Objection not restated.

1. Opposer objects to Applicant's First Set of Requests for Admissions to the extent that it seeks to impose obligations on Opposer beyond, or inconsistent with, those set forth in the Federal Rules of Civil Procedure or the Trademark Rules of Practice.

2. Opposer objects and responds to the requests on the basis of facts and circumstances as they are presently known to Opposer. This action is in the early stages. Opposer has not completed its preparation for this case. Accordingly, all of the following objections and responses are provided without prejudice to Opposer's right to introduce at trial any evidence that it subsequently discovers or is made aware of. Opposer reserves the right to supplement its objections and responses to the requests based upon newly-discovered evidence or information of which Opposer is not aware as of the present date.

3. Opposer objects to the requests insofar as they seek information or documents that are privileged by and/or protected from disclosure by the attorney-client privilege, the work-product doctrine, the privacy or trade secret privileges, or any other privilege or immunity, and

refuses to provide any such information. Opposer does not intend by these responses or objections to waive any claim of privilege or immunity. Opposer's objections and responses are conditioned specifically on the understanding that the production of information or documents for which any claim of privilege is applicable shall be deemed inadvertent and not a waiver of the claim of privilege.

4. Opposer objects to the requests to the extent that they call for information that is protected by its and/or other's rights of confidentiality and/or privacy, as provided by contract or other agreement, the California and United States Constitutions and/or any other statute or legal authority.

5. Opposer objects to the requests to the extent that they call for the production of trade secrets, confidential information and proprietary information regarding Opposer's business activities and/or business operations or confidential information of third parties, the disclosure of which could result in substantial competitive injury to Opposer or a breach by Opposer of an obligation to a third party to maintain such information as confidential. Opposer will disclose, as appropriate, relevant and responsive information in accordance with the Protective Order entered in this matter.

6. Opposer objects to the requests to the extent they seek information that is neither relevant to the claims and defenses in this action nor reasonably calculated to lead to the discovery of admissible evidence.

7. Opposer objects to the requests on the ground that certain of the requests are premature and unduly burdensome at this stage in the proceedings.

8. Opposer objects to the requests to the extent they are compound, vague, ambiguous, unduly burdensome and/or harassing.

9. By providing these responses, Opposer does not make any incidental or implied admissions regarding these responses. No response or objection to any individual request herein should be taken as an admission of any facts set forth in or assumed by the request, or an admission that such response or objection constitutes admissible evidence.

10. No response to an individual request is intended, nor shall any response be construed, as a waiver by Opposer of all or any part of any objection to any other request.

11. No response to an individual request is intended, nor shall any response be construed, to waive any issue or right that Opposer may assert on appeal.

12. WONDERFUL's objections are made subject to inadvertent or undiscovered errors, and are based upon and therefore necessarily limited by records and information still in existence, presently recollected and thus far discovered in the course of preparing these objections. Consequently, WONDERFUL reserves the right (but assumes no obligation) to make any changes in any individual response if it appears at any time that inadvertent errors or omissions have been made or additional or more accurate information becomes available.

13. WONDERFUL reserves the right not to respond to those portions of the requests that request information that is not relevant to the subject matter of this action, is not reasonably calculated to lead to the discovery of admissible evidence, is privileged or is otherwise protected from disclosure.

14. It should not be inferred from the form or substance of any objection or response herein that information responsive to any particular request exists.

15. WONDERFUL objects to the omission of any definitions and instructions in the requests, and to the requests themselves, to the extent that they impose obligations on WONDERFUL beyond those permitted by Rule 36 of the Federal Rules of Civil Procedure, the

parties' agreements, local rules, applicable case law or any other limitation of WONDERFUL's obligations. WONDERFUL will interpret each request and respond pursuant to, and in light of, the requirements of the applicable authorities, agreements and circumstances.

The above Preliminary Statement and General Objections are incorporated into the following responses, which are made without waiving these preliminary comments and objections, or any additional objections or comments set forth in the individual responses below.

REQUESTS AND RESPONSES

REQUEST NO. 1:

Admit YOU grow fresh citrus fruits.

RESPONSE TO REQUEST NO. 1:

Admit.

REQUEST NO. 2:

Admit that YOU package fresh citrus fruits.

RESPONSE TO REQUEST NO. 2:

Admit.

REQUEST NO. 3:

Admit that YOU do not grow fresh vegetables.

RESPONSE TO REQUEST NO. 3:

Admit.

REQUEST NO. 4:

Admit that YOU do not package fresh vegetables.

RESPONSE TO REQUEST NO. 4:

Admit.

REQUEST NO. 5:

Admit YOU do not grow non-citrus fruits.

RESPONSE TO REQUEST NO. 5:

Admit.

REQUEST NO. 6:

Admit YOU do not package non-citrus fruits.

RESPONSE TO REQUEST NO. 6:

Admit.

REQUEST NO. 7:

Admit YOU do not sell non-citrus fruits.

RESPONSE TO REQUEST NO. 7:

Admit.

REQUEST NO. 8:

Admit YOU do not sell non-citrus fruits in association with the PARAMOUNT
ORANGE MARK.

RESPONSE TO REQUEST NO. 8:

Admit.

REQUEST NO. 9:

Admit that the PARAMOUNT ORANGE MARK is registered in International Class 031.

RESPONSE TO REQUEST NO. 9:

Admit.

REQUEST NO. 10:

Admit that the PARAMOUNT ORANGE MARK is registered for "fresh citrus fruits."

RESPONSE TO REQUEST NO. 10:

Admit.

REQUEST NO. 11:

Admit that the PARAMOUNT ORANGE MARK is not registered in International Class
039.

RESPONSE TO REQUEST NO. 11:

Admit.

REQUEST NO. 12:

Admit that in YOUR application to register the PARAMOUNT ORANGE MARK YOU described the mark as consisting of "an orange growing between two leaves with the stylized wording 'PARAMOUNT CITRUS' beneath the design element."

RESPONSE TO REQUEST NO. 12:

Admit.

REQUEST NO. 13:

Admit the PARAMOUNT ORANGE MARK does not include a sun.

RESPONSE TO REQUEST NO. 13:

Responder admits that while it's description does not refer to the circular portion of the design as a sun, visually, an orange has the same color and same shape of a sun, and therefore could be construed by consumer as a sun.

REQUEST NO. 14:

Admit the PARAMOUNT ORANGE MARK does not include a sky.

RESPONSE TO REQUEST NO. 14:

Admit.

REQUEST NO. 15:

Admit the PARAMOUNT ORANGE MARK does not include a farm field.

RESPONSE TO REQUEST NO. 15:

Admit.

REQUEST NO. 16:

Admit the PARAMOUNT ORANGE MARK includes the words "Paramount Citrus" in stylized letters.

RESPONSE TO REQUEST NO. 16:

Admit.

REQUEST NO. 17:

Admit the PARAMOUNT ORANGE MARK does not include the letter "Q."

RESPONSE TO REQUEST NO. 17:

Admit.

REQUEST NO. 18:

Admit the PARAMOUNT ORANGE MARK is suggestive of the goods and services for which the PARAMOUNT ORANGE MARK is USED IN COMMERCE. (For purposes of this request the term "suggestive" is defined as "tending to suggest, hinting at or evoking something").

RESPONSE TO REQUEST NO. 18:

Objection. This request is vague, ambiguous and unintelligible, and cannot be responded to and on that basis is denied.

REQUEST NO. 19:

Admit YOU do not know of any instances in which Applicant's USE IN COMMERCE of QFF's Mark has led to actual confusion.

RESPONSE TO REQUEST NO. 19:

Admit.

REQUEST NO. 20:

Admit YOU do not know of any consumers who have suffered actual confusion between the PARAMOUNT ORANGE MARK and the QFF MARK.

RESPONSE TO REQUEST NO. 20:

Admit.

REQUEST NO. 21:

Admit that, as of the date these Requests were served, YOU do not intend to expand YOUR product line to include fresh vegetables. (For purposes of these Requests for Admissions, the phrase "product line" is defined to mean fresh citrus fruits.)

RESPONSE TO REQUEST NO. 21:

Admit.

REQUEST NO. 22:

Admit that, as of the date these Requests were served, YOU do not intend to expand YOUR product line to include non-citrus fruits.

RESPONSE TO REQUEST NO. 22:

Admit.

REQUEST NO. 23:

Admit that, as of the date these Requests were served, YOU do not intend to USE IN COMMERCE the PARAMOUNT ORANGE MARK on non-citrus fruits.

RESPONSE TO REQUEST NO. 23:

Admit.

REQUEST NO. 24:

Admit that, as of the date these Requests were served, YOU do not intend to USE IN COMMERCE the PARAMOUNT ORANGE MARK on fresh vegetables.

RESPONSE TO REQUEST NO. 24:

Admit.

REQUEST NO. 25:

Admit that, as of the date these Requests were served, YOU do not USE IN COMMERCE the PARAMOUNT ORANGE MARK in association with citrus fruits.

RESPONSE TO REQUEST NO. 25:

Deny.

REQUEST NO. 26:

Admit that YOU do not USE IN COMMERCE the PARAMOUNT ORANGE MARK without the words, "Paramount Citrus."

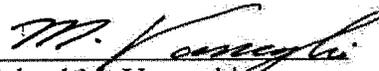
RESPONSE TO REQUEST NO. 26:

Admit.

Date: December 24, 2015

Respectfully submitted,

Wonderful Citrus LLC f/k/a Paramount Citrus
LLC



Michael M. Vasseghi

Darya P. Laufer

Danielle M. Criona

ROLL LAW GROUP PC

11444 West Olympic Boulevard

Los Angeles, California 90064-1557

Telephone: (310) 966-8400

Facsimile: (310) 966-8810

michael.vasseghi@roll.com

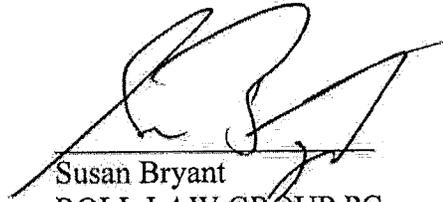
Attorneys for Opposer

CERTIFICATE OF SERVICE

I, Susan Bryant, hereby certify that a copy of this **RESPONSE TO QUALITY FRESH FARMS, INC.'S REQUESTS FOR ADMISSIONS TO WONDERFUL CITRUS LLC f/k/a PARAMOUNT CITRUS LLC** has been served upon attorney for Applicant:

SHERRIE M. FLYNN
DARRYL J. HOROWITT
COLEMAN & HOROWITT, LLP
499 West Shaw Avenue, Suite 116
Fresno, California 93704
(559) 248-4820
sflynn@ch-law.com
dhorowitt@ch-law.com

by first class mail, postage prepaid, on this 24th day of December, 2015.



Susan Bryant
ROLL LAW GROUP PC
11444 West Olympic Boulevard
Los Angeles, California 90064-1557
Telephone: (310) 966-8400
Facsimile: (310) 966-8810

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

WONDERFUL CITRUS LLC f/k/a)
 PARAMOUNT CITRUS LLC;)
)
 Opposer,)
)
 v.)
)
 QUALITY FRESH FARMS, INC.;)
)
 Applicant.)
 _____)

Opposition No. 91222878
 Serial No. 86/375,060
 Mark: Q + Design



QUALITY FRESH FARMS, INC.’S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

TO THE TRADEMARK TRIAL AND APPEAL BOARD AND TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Applicant, QUALITY FRESH FARMS, INC. (“Applicant”) hereby respectfully requests, pursuant to Federal Rule of Evidence 201(b), that the Trademark Trial and Appeal Board take judicial notice of the following documents, filed concurrently with Applicant's Motion for Summary Judgment:

1. A printout from U.S. Patent and Trademark Office’s (USPTO) Trademark Status and Document Retrieval (“TSDR) system showing status and title of U.S. Trademark Application No. 86/375,060 (the ‘060 Application), filed by Applicant on August 22, 2014, a true and correct copy of which is attached hereto as **Exhibit 1**.
2. The Notice of Opposition filed by WONDERFUL CITRUS LLC f/k/a

PARAMOUNT CITRUS LLC (“Opposer”) on July 17, 2015, a true and complete copy of which is attached hereto as **Exhibit 2**.

3. The Answer filed by Applicant dated August 24, 2015, a true and complete copy of which is attached hereto as **Exhibit 3**.

Respectfully submitted,

Dated: April 4, 2016

By: /Sherrie M. Flynn/
SHERRIE M. FLYNN
COLEMAN & HOROWITT, LLP
499 West Shaw Avenue, Suite 116
Fresno, California 93704
(559) 248-4820
sflynn@ch-law.com
*Attorneys for QUALIFY FRESH
FARMS, INC.*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Quality Fresh Farms, Inc.'s Request for Judicial Notice in Support of Motion for Summary Judgment in Application Serial No. 86/375,060, in re: Quality Fresh Farms, Inc.'s Q + Design mark, was forwarded by First Class Mail delivery, by depositing the same with the United States Postal Service on this 4th day of April, 2016, to the attorney for Applicant at the following address:

Michael M. Vasseghi, Esq.
Darya P. Laufer, Esq.
Danielle M. Criona, Esq.
Roll Law Group, P.C.
11444 W. Olympic Blvd, Floor 7
Los Angeles, CA 90064

/Naji Alshikhaiti/
NAJI ALSHIKHAITI

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that Quality Fresh Farms, Inc.'s Request for Judicial Notice in Support of Motion for Summary Judgment in Application, Serial No. 86/375,060 is being filed electronically today, April 4, 2016, on the Electronic System for Trademark Trials and Appeals for the United States Patent and Trademark Office.

/Sherrie M. Flynn/
SHERRIE M. FLYNN

EXHIBIT 1

Generated on: This page was generated by TSDR on 2016-03-31 14:01:01 EDT

Mark: Q



US Serial Number: 86375060

Application Filing Date: Aug. 22, 2014

Filed as TEAS Yes
Plus:

Currently TEAS Yes
Plus:

Register: Principal

Mark Type: Trademark, Service Mark

Status: An opposition after publication is pending at the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.

Status Date: Jul. 21, 2015

Publication Date: Jan. 20, 2015

Mark Information

Mark Literal Q
Elements:

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of a stylized letter "Q" that encompasses a sun, sky, and farm field.

Color(s) Claimed: Color is not claimed as a feature of the mark.

Design Search Code(s): 01.05.25 - Sun, other representations of the sun
05.03.25 - Leaf, single; Other leaves
06.09.05 - Other cultivated areas
27.03.05 - Objects forming letters or numerals

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Fresh fruit and vegetables

International Class(es): 031 - Primary Class

U.S Class(es): 001, 046

Class Status: ACTIVE

Basis: 1(a)

First Use: Sep. 12, 2012

Use in Commerce: Sep. 17, 2012

For: Warehousing services, namely, storage, distribution, pick-up, packing, and shipping of fresh fruit and vegetables

International Class(es): 039 - Primary Class

U.S Class(es): 100, 105

Class Status: ACTIVE

Basis: 1(a)

First Use: Sep. 12, 2012

Use in Commerce: Sep. 17, 2012

Basis Information (Case Level)

Filed Use: Yes	Currently Use: Yes	Amended Use: No
Filed ITU: No	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: Quality Fresh Farms, Inc.

Owner Address: Suite 114
2416 W. Shaw Ave.
Fresno, CALIFORNIA 93711
UNITED STATES

Legal Entity Type: CORPORATION

State or Country Where Organized: CALIFORNIA

Attorney/Correspondence Information

Attorney of Record - None
Correspondent

Correspondent Name/Address: SHERRIE M FLYNN
COLEMAN & HOROWITT LLP
499 WEST SHAW AVENUE
STE 114SUITE 116
FRESNO, CALIFORNIA 93704
UNITED STATES

Phone: 5594476788

Fax: 5594731491

Correspondent e-mail: qbillan@qualityfreshfarms.net

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Jul. 21, 2015	OPPOSITION INSTITUTED NO. 999999	222878
Feb. 03, 2015	EXTENSION OF TIME TO OPPOSE RECEIVED	
Jan. 20, 2015	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Jan. 20, 2015	PUBLISHED FOR OPPOSITION	
Dec. 31, 2014	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Dec. 09, 2014	APPROVED FOR PUB - PRINCIPAL REGISTER	
Dec. 08, 2014	ASSIGNED TO EXAMINER	67512
Sep. 06, 2014	NOTICE OF DESIGN SEARCH CODE AND PSEUDO MARK E-MAILED	
Sep. 05, 2014	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Aug. 26, 2014	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: BELENKER, ESTHER ANN

Law Office Assigned: LAW OFFICE 111

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Dec. 12, 2014

Proceedings

Summary

Number of Proceedings: 2

Type of Proceeding: Opposition

Proceeding Number: 91222878

Filing Date: Jul 17, 2015

Status: Pending

Status Date: Jul 21, 2015

Interlocutory Attorney: BENJAMIN U OKEKE

Defendant

Name: Quality Fresh Farms, Inc.

Correspondent Address: SHERRIE M FLYNN
COLEMAN & HOROWITT LLP
499 WEST SHAW AVENUE, STE 114SUITE 116
FRESNO CA , 93704
UNITED STATES

Correspondent e-mail: sflynn@ch-law.com , nalshikhaiti@ch-law.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
Q	Opposition Pending	<u>86375060</u>	

Plaintiff(s)

Name: Wonderful Citrus LLC f/k/a Paramount Citrus LLC

Correspondent Address: DARYA P LAUFER
11444 W OLYMPIC BLVD 7TH FLOOR
LOS ANGELES CA , 90064
UNITED STATES

Correspondent e-mail: dcrona@roll.com , mrivera@roll.com , dlauffer@roll.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
PARAMOUNT CITRUS	Registered	<u>77611305</u>	<u>3934863</u>

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Jul 17, 2015	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Jul 21, 2015	Aug 30, 2015
3	PENDING, INSTITUTED	Jul 21, 2015	
4	ANSWER	Aug 24, 2015	

Type of Proceeding: Extension of Time

Proceeding Number: 86375060

Filing Date: Feb 03, 2015

Status: Terminated

Status Date: Jul 21, 2015

Interlocutory Attorney:

Defendant

Name: Quality Fresh Farms, Inc.

Correspondent Address: QUALITY FRESH FARMS, INC.
2416 W SHAW AVE STE 114
FRESNO CA , 93711-3303

Associated marks

Mark	Application Status	Serial Number	Registration Number
Q	Opposition Pending	<u>86375060</u>	

Potential Opposer(s)

Name: Paramount Citrus LLC

Correspondent Address: Darya P. Laufer
11444 W. Olympic Blvd. 7th Floor

Los Angeles CA , 90064
UNITED STATES

Correspondent e-mail: dcriona@roll.com , mriviera@roll.com , diaufer@roll.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
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Prosecution History

Entry Number	History Text	Date	Due Date
1	INCOMING - EXT TIME TO OPPOSE FILED	Feb 03, 2015	
2	EXTENSION OF TIME GRANTED	Feb 03, 2015	
3	INCOMING - EXT TIME TO OPPOSE FILED	May 20, 2015	
4	EXTENSION OF TIME GRANTED	May 20, 2015	

EXHIBIT 2

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	Wonderful Citrus LLC fka Paramount Citrus LLC
Granted to Date of previous extension	07/19/2015
Address	11444 W. Olympic Blvd. 7th Floor Los Angeles, CA 90064 UNITED STATES
Party who filed Extension of time to oppose	Paramount Citrus LLC
Relationship to party who filed Extension of time to oppose	company name change

Attorney information	Darya P. Laufer 11444 W. Olympic Blvd. 7th Floor Los Angeles, CA 90064 UNITED STATES danielle.criona@roll.com, mark.rivera@roll.com, darya.laufer@roll.com
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Applicant Information

Application No	86375060	Publication date	01/20/2015
Opposition Filing Date	07/17/2015	Opposition Period Ends	07/19/2015
Applicant	Quality Fresh Farms, Inc. Suite 114 Fresno, CA 93711 UNITED STATES		

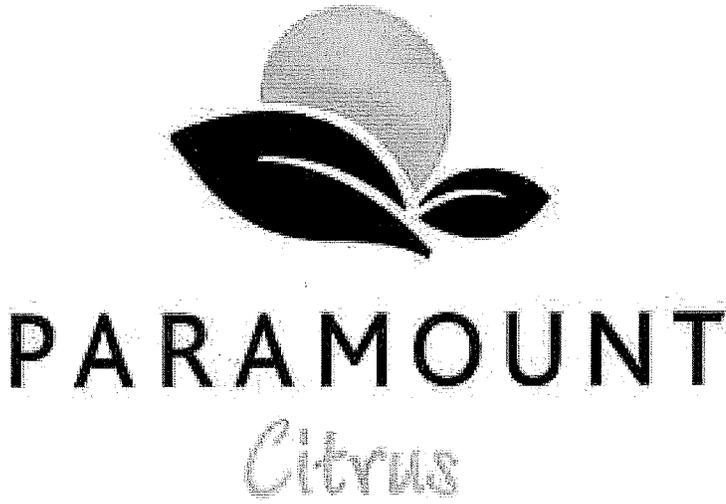
Goods/Services Affected by Opposition

Class 031. First Use: 2012/09/12 First Use In Commerce: 2012/09/17 All goods and services in the class are opposed, namely: Fresh fruit and vegetables
Class 039. First Use: 2012/09/12 First Use In Commerce: 2012/09/17 All goods and services in the class are opposed, namely: Warehousing services, namely, storage, distribution, pick-up, packing, and shipping of fresh fruit and vegetables

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3934863	Application Date	11/10/2008
Registration Date	03/22/2011	Foreign Priority Date	NONE
Word Mark	PARAMOUNT CITRUS		
Design Mark			
Description of Mark	The mark consists of an orange growing between two leaves with the stylized wording "PARAMOUNT CITRUS" beneath the design element.		
Goods/Services	Class 031. First use: First Use: 2008/06/01 First Use In Commerce: 2008/06/01 Fresh citrus fruits		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	paramount citrus & design		
Goods/Services	storage, distribution, pick-up, packing, and shipping of fresh citrus fruit		

Attachments	77611305#TMSN.png(bytes) Quality Fresh Opp.pdf(91720 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	/Darya P. Laufer/
Name	Darya P. Laufer
Date	07/17/2015

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

Wonderful Citrus LLC f/k/a Paramount
Citrus LLC

Opposer,

v.

Quality Fresh Farms, Inc.

Applicant.

) Opposition No.: _____

) Mark: Q + design



) Application Ser. No.:
) 86/375,060

) Published in the *Official Gazette* of
) January 20, 2015

) **NOTICE OF OPPOSITION**

Wonderful Citrus LLC, formerly known as Paramount Citrus LLC, a Delaware limited liability company located and doing business at 11444 W. Olympic Blvd., Los Angeles, CA 90064 (“Opposer”), believes it will be damaged by the registration of the Quality Fresh Farms, Inc. design trademark in Class 31 for “fresh fruits and vegetables” and Class 39 for “warehousing services, namely, storage, distribution, pick-up, packing, and shipping of fresh fruit and vegetables” in Application Serial No. 86/375,060 (the “Application” or the “Quality Fresh Circle Leaf Mark”), filed by Quality Fresh Farms, Inc., located at 2416 W Shaw Ave., Fresno, California, 93711-3303 (“Applicant”), and hereby opposes the same.

As grounds for this Opposition, Opposer alleges:

1. Opposer is the largest grower and processor of citrus fruits in the United States offering fresh citrus fruit and storage, distribution, pick-up, packing, and shipping of fresh citrus fruit, among other services. (“Opposer’s Goods and Services”).

2. Opposer owns United States trademark registration number 3934863 for “fresh citrus fruits”, shown below, with a priority date of June 1, 2008, which it uses in connection with Opposer’s Goods and Services (the “Paramount Circle Leaf Mark”). This registration is valid and subsisting.



3. Applicant filed for the Quality Fresh Circle Leaf Mark shown below with the United States Patent and Trademark Office (“USPTO”) on August 22, 2014 in International Class 31 for “fresh fruits and vegetables” and in International Class 39 for “warehousing services, namely, storage, distribution, pick-up, packing, and shipping of fresh fruit and vegetables” (“Applicant’s Goods and Services”), claiming a date of first use in interstate commerce September 12, 2012 for all of Applicant’s Goods and Services.



4. Since long before Applicant’s September 12, 2012 claimed first use date, Opposer has

been offering for sale, selling and marketing Opposer's Goods and Services in connection with its Paramount Circle Leaf Mark and has built valuable goodwill associated with, and symbolized by, its Paramount Circle Leaf Design Mark.

5. Applicant's use of the Quality Fresh Circle Leaf Mark for Applicant's Goods in International Class 31 and Class 32 is without Opposer's consent or permission.

6. Upon information and belief, neither Applicant nor any predecessor or related company of Applicant had made actual use of the Quality Fresh Circle Leaf Mark in the United States prior to the September 12, 2012 first use date set forth in the Application.

COUNT I - LIKELIHOOD OF CONFUSION

7. Opposer incorporates the allegations of Paragraphs 1 through 6 herein by reference.

8. Applicant's use of the Quality Fresh Circle Leaf Mark on Applicant's Goods and Services is likely to cause confusion, mistake, or deception in that consumers are likely to believe Applicant's Goods and Services are Opposer's Goods and Services or the goods and services of a person or company that is sponsored, authorized, or licensed by, or in some other way legitimately connected with or affiliated with, Opposer.

WHEREFORE, Opposer respectfully requests that this Opposition be sustained and that Application Serial No. 86/375,060 be denied registration.

Please debit our Deposit Account No. 502934 for the \$300 filing fee per Class and for any additional necessary fees.

//

//

//

//

Please address all correspondence to Darya P. Laufer, Esq., Intellectual Property Counsel at Roll Law Group P.C., 11444 West Olympic Boulevard, 7th Floor, Los Angeles, CA 90064.

Respectfully Submitted,

Date: July 17, 2015

Wonderful Citrus LLC f/k/a Paramount Citrus
LLC

By: /s/ Darya P. Laufer /s/

Darya P. Laufer, Esq.
Danielle M. Criona, Esq.
ROLL LAW GROUP P.C.
11444 West Olympic Blvd.
Los Angeles, California 90064
Tel. (310) 966-8824
Fax (310) 966-8810
Email darya.laufer@roll.com
Attorney for Opposer

CERTIFICATE OF SERVICE

I, Darya Laufer, hereby certify that a copy of this **NOTICE OF OPPOSITION** has been served upon Applicant:

QUALITY FRESH FARMS, INC.
2416 W SHAW AVE. STE 114
FRESNO, CALIFORNIA 93711-3303

by first class mail, postage prepaid, with a courtesy copy to the email addresses on file with the USPTO, gbillan@qualityfreshfarms.net, on this 17th day of July, 2015.

By: /s/ Darya Laufer /s/

Darya Laufer
Roll Law Group P.C.
11444 West Olympic Blvd.
Los Angeles, CA 90064
Tel. (310) 966-8400
Fax (310) 966-8810

EXHIBIT 3

Paragraph 2, and basing its denial on that ground, generally and specifically denies each and every remaining allegation contained therein.

3. Answering the allegations of Paragraph 3, Applicant admits that it filed an application for registration (“Application”) of a design mark comprising the word mark “Q” (inappropriately characterized by Opposer as the “Quality Fresh Circle Leaf Mark”) on August 22, 2014, in International Class 31 for “Fresh fruits and vegetables,” and in International Class 39 for “Warehousing services, namely, storage, distribution, pick-up, packing, and shipping of fresh fruits and vegetables” (serial number 86/375,060; the “Quality Fresh Mark”), with a date of first use as early as September 12, 2012, and a date of first use in interstate commerce at least as early as September 17, 2012.

4. Answering the allegations of Paragraph 4, Applicant lacks sufficient information or belief to answer the allegations of Paragraph 4 of the Opposition, and basing its denial on that ground, generally and specifically denies each and every allegation contained therein.

5. Answering the allegations of Paragraph 5, Applicant denies it is using the Quality Fresh Mark in Class 32. Applicant lacks sufficient information or belief to answer the remaining allegations of Paragraph 5 of the Opposition, and basing its denial on that ground, generally and specifically denies each and every allegation contained therein.

6. Answering the allegations of Paragraph 6, Applicant admits that it used the Quality Fresh Mark at least as early as the September 12, 2012 first use date set forth in the Application. Applicant lacks sufficient information or belief to answer the remaining allegations of Paragraph 6 of the Opposition, and basing its denial on that ground, generally and specifically denies each and

every allegation contained therein.

7. Answering the allegations of Paragraph 7, Applicant contends that Paragraph 7 does not contain any averments of facts to which an answer is required, but insofar as an answer may be required, Applicant generally and specifically denies each and every allegation contained therein.

8. Answering the allegations of Paragraph 8, Applicant generally and specifically denies each and every allegation contained therein.

AFFIRMATIVE DEFENSES

1. As for a first affirmative defense, the Opposition, and each and every grounds therein, is barred by the doctrine of laches.

2. As for a second affirmative defense, Opposer is estopped by its own conduct from obtaining any relief.

3. As for a third affirmative defense, the Opposition, and each and every grounds therein, is barred by the doctrine of waiver.

4. As for a fourth affirmative defense, the Opposition, and each and every grounds therein, is barred by the doctrine of acquiescence.

Applicant reserves the right to amend, add or strike affirmative defenses as discovery ensues or due to any inadvertence. Defendant further reserves the right to raise affirmative defenses and admit such as a defense at trial, which are subsequently discovered through the discovery process.

RELIEF REQUESTED

In view of the foregoing, Applicant contends that this Opposition is groundless and that Opposer cannot show it will be, or is likely to be, damaged by the registration of Applicant's

trademark. There is no likelihood of confusion, mistake or deception because of the significant differences in Applicant's mark and the pleaded mark of Opposer.

WHEREFORE, Applicant prays judgment as follows:

1. Opposer take nothing by way of its Opposition;
2. The Board deny Opposer's Opposition in its entirety;
3. Applicants registration application for the "Q" design mark, Serial No. 86/375,060, be allowed; and
4. For such other and further relief as the Board may deem just and proper.

Respectfully submitted,

Dated: August 24, 2015

By: /Sherrie M. Flynn/
SHERRIE M. FLYNN
COLEMAN & HOROWITT, LLP
499 West Shaw Avenue, Suite 116
Fresno, California 93704
(559) 248-4820
sflynn@ch-law.com
*Attorneys for QUALIFY FRESH
FARMS, INC.*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Answer to Opposition to Application Serial No. 86/375,060, in re: Quality Fresh Farms, Inc.'s Q + Design mark, was forwarded by First Class Mail delivery, by depositing the same with the United States Postal Service on this 24th day of August, 2015, to the attorney for Applicant at the following address:

Darya P. Laufer, Esq.
Roll Law Group, P.C.
11444 W. Olympic Blvd, Floor 7
Los Angeles, CA 90064

/Naji Alshikhaiti/
NAJI ALSHIKHAITI

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this Answer to Opposition to registration of the mark in Application, Serial No. 86/375,060 is being filed electronically today, August 24, 2015, on the Electronic System for Trademark Trials and Appeals for the United States Patent and Trademark Office.

/Sherrie M. Flynn/
SHERRIE M. FLYNN