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

Proceeding	91222878
Party	Plaintiff Wonderful Citrus LLC f/k/a Paramount Citrus LLC
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Date	05/05/2016
Attachments	Opp. to MSJ.pdf(188046 bytes) Decl of Vasseghi.pdf(31610 bytes) QF Decl Exhibit 1.pdf(2624679 bytes) QF Decl Exhibit 2.pdf(5053059 bytes)

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

WONDERFUL CITRUS LLC f/k/a
PARAMOUNT CITRUS LLC,

Opposer,

v.

QUALITY FRESH FARMS, INC.,

Applicant.

Opposition No. 91222878

Application Serial No. 86/375,060

Mark: Q + Design



**OPPOSER WONDERFUL CITRUS LLC'S
OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

Quality Fresh seeks a motion for summary judgment that is premised solely on two arguments: that the marks at issue are not similar and that there is no evidence of actual confusion between the two marks at issue. Quality Fresh's motion misses the mark for a number of reasons. First, it looks to the description provided to describe the two marks as evidence that they are not similar. However, while the similarity of marks as described in the registration may be one way to analyze similarity of the marks factor, for obvious reasons, it is not the proper test for similarity between two design marks. Rather in evaluating similarity of the marks, especially those containing designs, the Board employs an "eye ball test" that considers the "overall impression created by the mark as a whole rather than simply comparing individual features of the mark." Quality Fresh's approach to determining similarity between the marks is incorrect at worst and disingenuous at best.

Second, Quality Fresh contends that there is no evidence of actual confusion between the marks. While that may be true, absence of actual confusion is insufficient to grant summary judgment. There are thirteen *Dupont* factors and only one of them is whether there is actual confusion between the marks. Quality Fresh does not even analyze the *Dupont* factors, because doing so, creates triable issues of fact. Specifically, there is no dispute that the goods bearing the two marks at issue are related and that they are low cost goods which consumers do not give great time and consideration to prior to purchasing them.

Third, Quality Fresh filed the instant motion prior to responding to Opposer's timely discovery, designed to elicit additional evidence in support of likelihood of confusion factors set forth in *Dupont*. This is grounds for denial of Quality Fresh's motion. However, if the Board is inclined to grant Quality Fresh's motion, it must at a minimum postpone such a decision and allow Opposer to obtain the discovery it needs to effectively oppose the instant motion.

For these reasons and those set forth below, Quality Fresh's motion should be denied.

II. ARGUMENT

Attempting to show the absence of similarities between the marks at issue, Quality Fresh looks to parse out the differences noted in the USPTO records of the respective registrations to compare how the marks are described. (See Motion, pp 7-9; and proposed statements of undisputed facts, nos. 3,5,6,7,8 and 9 on page 4). Yet this is precisely how *not* to conduct a similarity of the marks analysis for purposes of determining likelihood of confusion when the marks are design marks.

When testing the similarity of marks under *In re E.I. DuPont de Nemours & Co.*, 177 U.S.P.Q. 563 (CCPA 1973), the Board tests the appearance of the marks to determine overall commercial impression and likelihood of confusion to consumers. "Similarity of appearance between marks is nothing more than an eyeball test." 4 McCarthy on Trademarks and Unfair

Competition § 23:23 (4th Edition); *see also Exxon Corp. v. Texas Motor Exchange, Inc.*, 628 F.2d 500 (5th Cir. 1980) (“The similarity of design is determined by considering the overall impression created by the mark as a whole rather than simply comparing individual features of the marks.”). For example in *General Foods Corp. v. Ito Yokado Co.*, 219 U.S.P.Q. 822 (T.T.A.B. 1983), the board followed its test that overall impression must be compared, “based on what must in the end come down to a subjective ‘eyeball’ reaction.” “There is no point in launching into a long analysis of the judicial pros and cons regarding visual similarity of marks. All one can say is ‘I know it when I see it.’” 4 *McCarthy on Trademarks and Unfair Competition* § 23:23 (4th Edition).

Although Quality Fresh points to the fact that the two marks are described differently in the USPTO records, this attempted analysis fails for several reasons.

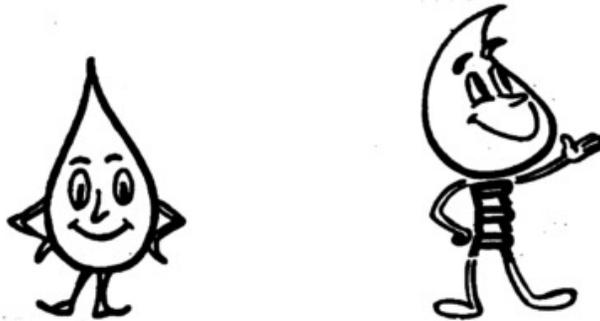
First, consumers don’t view the USPTO records and the descriptions of trademarks therein when they encounter them in the marketplace and that is why such an analysis is improper.

Second, when applying the proper analysis, it becomes clear that the overall design of the marks at issue are similar in that 1) both marks are circular in nature; 2) both marks utilize two leaves at the base of the image; 3) of the three basic design elements of the Quality Fresh image – namely land, sun/sky and leaves - two are identical to the Paramount Citrus design (the circle and leaves). Quality Fresh claims that it’s mark is really a “Q” design – in that it looks like the letter Q. While that may be Quality Fresh’s interpretation of its mark, by simply looking at the mark, which is how a consumer would view it, one would be hard pressed to see it as the letter Q with a design. Simply because Quality Fresh has described its mark in a non-obvious manner, does not lessen its close commercial impression with Opposer’s mark.

Furthermore, a side-by-side analysis of these marks is not the manner most consumers encounter the marks and that is why a side-by-side comparison is not the proper test. *Coach Services, Inc. v. Triumph Learning LLC*, 101 U.S.P.Q.2d 1713, 1721 (Fed. Cir. 2012); *see also Edom Laboratories Inc. v. Lichter*, 102 U.S.P.Q.2d 1546, 1551 (TTAB 2012). Instead, the test assumes some time lapse between encountering the marks. Considering that lapse in time, a consumer is likely to recall that both had a circular upper portion and leaves in the lower portion. How many other fruits and vegetables are branded, let alone branded with a mark that contains the same basic elements as the two marks at issue here? Opposer has discovered none, and it does not know what Quality Fresh has on this point since the motion was filed prior to the completion of discovery.

The “eye ball” subjective test does not require the two marks to be identical. It only requires them to have common design elements. Examples of such findings are depicted below:

PICTURE MARKS HELD CONFUSINGLY SIMILAR¹



¹ *In re Triple R Mfg. Corp.*, 168 U.S.P.Q. 447 (T.T.A.B. 1970).

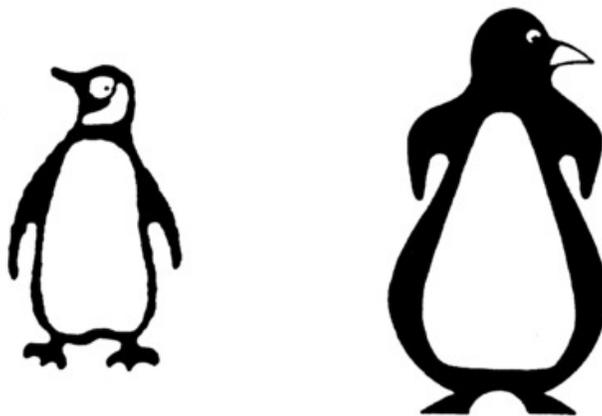
PICTURE MARKS HELD CONFUSINGLY SIMILAR-ANOTHER EXAMPLE²



BRITISH BOBBY PICTURE LOGOS HELD CONFUSINGLY SIMILAR³



PENGUIN PICTURE LOGOS HELD CONFUSINGLY SIMILAR⁴



² *In re Calgon Corp.*, 435 F.2d 596, 168 U.S.P.Q. 278 (C.C.P.A. 1971).

³ *Copy Cop v. Task Printing*, 908 F. Supp. 37, 38 U.S.P.Q.2d 1171 (D. Mass. 1995) (summary judgment granted for plaintiff on the issue of a likelihood of confusion).

⁴ *Penguin Books Ltd. v. Eberhard*, 48 U.S.P.Q. 1280 (T.T.A.B. 1998), app. dismissed, 178 F.3d 1306 (Fed. Cir. 1998).

LOGOS HELD CONFUSINGLY SIMILAR⁵



ROADRUNNER PICTURE LOGOS HELD CONFUSINGLY SIMILAR⁶



BOSS LOGO MARKS HELD CONFUSINGLY SIMILAR⁷



⁵ *Westinghouse Elec. Corp. v. PEK, Inc.*, 184 U.S.P.Q. 559 (T.T.A.B. 1974).

⁶ *Time Warner Entertainment Company*, 65 U.S.P.Q.2d 1650, 2002 WL 1628168 (T.T.A.B. 2002) (“The fact that applicant’s cartoon roadrunner may not be identical to opposer’s cartoon roadrunner in all details is less significant to our analysis than the basic similarity arising from the fact that both marks include a cartoon depiction of a roadrunner.”).

⁷ *Ava Enterprises, Inc. v. Audio Boss USA, Inc.*, 77 U.S.P.Q.2d 1783, 2006 WL 173465 (T.T.A.B. 2006) (both marks used for auto audio systems and components. Opposition sustained. “[I]n terms of appearance and commercial impression, we find that the marks are highly similar.”).

As evidenced by these examples, “absolute identity is not necessary for infringement; all that is necessary is enough similarity between the marks to confuse consumers.” *Washington Speakers Bureau, Inc. v. Leading Authorities, Inc.*, 33 F. Supp. 2d 488, 497, 49 U.S.P.Q.2d 1893 (E.D. Va. 1999) (“*Bridgestone Americas Tire Operations, LLC v. Federal Corp.*”, 673 F.3d 1330, 1337, 102 U.S.P.Q.2d 1061 (Fed. Cir. 2012) (“Exact identity is not necessary to generate confusion as to source of similarly-marked products.”). For each of the marks above held to be confusingly similar, there is an array of differences between the marks, however, they connote the same commercial impression, just like the marks at issue here.

1. Simply Because Opposer’s Mark contains “Paramount Citrus” As Part of the Mark, Does Not Militate Against Likelihood of Confusion.

Quality Fresh also makes much ado about the fact that Opposer’s mark has “Paramount Citrus” at the bottom of its mark, whereas Quality Fresh’s applied for mark does not identify its source or any information about the name of its processor/manufacturer. (See motion page 8). However the presence of Paramount’s name on the mark, is not in and of itself, grounds for a finding of dissimilarity. For example in *Copy Cop v. Task Printing*, 908 F. Supp. 37, 38 U.S.P.Q.2d 1171 (D. Mass. 1995), - the dispute between the two English police images (on page 5 above) the marks were considered confusingly similar even though one mark contained the business name – “Signal Graphics” while the other mark did not. Similarly, in the case dealing with the road runner marks (on page 6 above), one mark contains the business name, while the competing mark does not. *Time Warner Entertainment Company*, 65 U.S.P.Q.2d 1650, 2002 WL 1628168 (T.T.A.B. 2002).

B. Actual Confusion Is Not Necessary

Quality Fresh argues that no evidence of “actual confusion” exists. This, however, is not a dispositive factor. The requisite test is *likelihood* of confusion. Paramount Citrus does not need

to prove instances of actual confusion to obtain relief or succeed at the summary judgment stage. Furthermore, actual confusion has been found not to be required in order to find a likelihood of confusion. *See Eclipse Associated Ltd. v Data General Corp.*, 894 F. 2d 1114, (9th Cir. 1990) (finding that lack of evidence of actual confusion does not prevent a finding of likelihood of confusion); *Giant Food, Inc. v. Nation's Foodservice, Inc.*, 710 F.2d 1565, 1571, 218 U.S.P.Q. 390 (Fed. Cir. 1983) (“Moreover, it is unnecessary to show actual confusion in establishing likelihood of confusion.”); *Herbko Intern., Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 U.S.P.Q.2d 1375 (Fed. Cir. 2002) (“[A] showing of actual confusion is not necessary to establish a likelihood of confusion.”); *Weider Publications, LLC v. D & D Beauty Care Company, LLC*, 109 U.S.P.Q.2d 1347, 1360, 2014 WL 343269 (T.T.A.B. 2014) (It is not required that opposer show instances of factual confusion in order to prove a likelihood of confusion. Opposition sustained.) As such, the absence of confusion is insufficient to grant Quality Fresh’s motion.

C. Other *Dupont* Factors Favor Opposer

Aside from the similarity of the marks, both marks here are used on related goods, in the same trade channels (as presumed from the lack of specific trade channels noted in the identification of goods) and are low-cost, impulse purchases.

The marks at issue are used in connection with closely related, if not identical, products -- fresh fruits and vegetables -- and are presumed to travel in the ordinary trade channels for those goods. (*See In re Perez*, 21 U.S.P.Q.2d 1075, *1 (1991) (“there can be no real dispute that there is close relationship between “fresh vegetables” and “fresh citrus product” since both are “fresh produce”); *The Borden Co. v. Blue Goose Growers, Inc.*, 157 U.S.P.Q. 218 (TTAB 1968) (“fresh grapes and canned fruit and vegetables are closely related food products”); *In re Thomas H. Wilson*, 57 U.S.P.Q.2d 1863, *4 (January 19, 2001) (not TTAB precedent) (although “applicant’s

fresh citrus and registrant's canned fruit and vegetables are not precisely identical, are nonetheless similar under the second *du Pont* evidentiary factor.”))

Furthermore, the marks are used on low cost, impulse-driven purchasers (fruit and vegetables), rather than goods that lend themselves to sophisticated purchasers. (*See Sunkist Growers, Inc. v. Smile Factory, LLC*, 2009 WL4863347 (TTAB 2009) (not TTAB precedent) (“it is well settled that purchasers of casual, low cost ordinary consumer items such as cut or sliced fresh fruit are held to a lesser standard of purchasing care and are more likely to be confused as to the source of the goods.”); *In re Martinez*, 2013 WL 3191601 (TTAB 2013) (not TTAB precedent) (“fruit is a relatively inexpensive food item that is subject to frequent replacement and impulse purchase.”)). Even without the benefit of having conducted discovery, these two additional *DuPont* factors alone, create issues of material facts to whether likelihood of confusion exists.

D. Opposer Was Railroaded As Quality Fresh Filed the Instant Motion Prior to Replying to Opposer's Discovery Relevant to Establishing Likelihood of Confusion.

Opposer had not completed discovery when Quality Fresh filed the instant motion. An opposing party may request that a court deny a summary judgment decision if it cannot present facts essential to justify its opposition. F.R.C.P. 56(d). This prevents the opposing party from being “railroaded” by a premature motion for summary judgment. *Celotex Corp. v. Catrett* (1986) 477 US 317, 326, 106 S.Ct. 2548, 2554; *Rivera-Torres v. Rey-Hernández* (1st Cir. 2007) 502 F3d 7, 10 (rule provides useful safety valve “against judges swinging the summary judgment axe too hastily”).

Quality Fresh filed the instant motion prior to responding to Opposer's timely served, written discovery requests. (Declaration of Michael Vasseghi ¶ 2 and Ex. 1 thereto). That discovery attempts to elicit information from Quality Fresh relevant to establishing likelihood of

confusion. Specifically Opposer had sought facts pertaining to Quality Fresh including 1) channels of trade; 2) the manner in which the goods are advertised, 3) the geographic location where Quality Fresh's goods bearing the applied for mark are sold, 4) the length of time Quality Fresh has been using the applied for mark on its goods; 5) whether Quality Fresh is aware of other third parties who utilize marks similar to Opposer's mark. *See Id.*

Opposer had also propounded requests for production of documents, seeking information designed to gather evidence of confusion. (Declaration of Michael Vasseghi ¶ 3 and Ex. 2 thereto). The response to these interrogatories and document requests, would potentially reveal further evidence to support Opposer's likelihood of confusion claim. For example it is highly likely that given the nature of the goods, they are sold in direct or closely related channels, however, Opposer has not obtained that information yet.

III. CONCLUSION

For the foregoing reasons, Opposer respectfully requests that Quality Fresh's motion be denied. In the alternative, its motion should be deferred until discovery is complete.

DATED: May 5, 2016

WONDERFUL CITRUS LLC

By: /s/ Michael M. Vasseghi
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

WONDERFUL CITRUS LLC f/k/a
PARAMOUNT CITRUS LLC,

Opposer,

v.

QUALITY FRESH FARMS, INC.,

Applicant.

Opposition No. 91222878

Application Serial No. 86/375,060

Mark: Q + Design



**DECLARATION OF MICHAEL M. VASSEGGHI
IN SUPPORT OF OPPOSER WONDERFUL CITRUS LLC'S
OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

I, Michael M. Vasseghi, declare and state:

1. I am Senior Counsel at Roll Law Group PC and counsel for Wonderful Citrus LLC f/k/a Paramount Citrus LLC. I have personal knowledge of the facts set forth herein and, if called upon to testify, could and would competently testify thereto. I submit this declaration in support of Opposer's Opposition To Motion For Summary Judgment.

2. Attached hereto and made a part hereof as Exhibit 1 is Opposer's First Set of Interrogatories to Applicant Quality Fresh Farms, Inc. served March 28, 2016.

3. Attached hereto and made a part hereof as Exhibit 2 is Opposer's First Request for Production of Documents to Applicant Quality Fresh Farms, Inc. served March 28, 2016.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed in Los Angeles, California on May 5, 2016.

By: /s/ Micahel M. Vasseghi
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EXHIBIT 1

**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

**OPPOSER'S FIRST SET OF INTERROGATORIES
TO APPLICANT QUALITY FRESH FARMS, INC.**

In accordance with Rule 33 of the Federal Rules of Civil Procedure, and Rules 2.116 and 2.120 of the Trademark Rules of Practice, Opposer Wonderful Citrus LLC fka Paramount Citrus LLC ("Opposer"), requests that Applicant Quality Fresh Farms, Inc. ("Applicant") answer each of the interrogatories set forth below.

DEFINITIONS AND INSTRUCTIONS

As used herein, unless the context in which it appears clearly suggests otherwise, each of the following terms has the meaning set forth below:

1. "Opposer" means Wonderful Citrus LLC fka Paramount Citrus LLC and any and all predecessors, affiliates, parents, subsidiaries and divisions thereof, and all officers, directors, employees, agents, representatives, attorneys or other Persons acting, or who at any time acted or purported to act, on behalf of Wonderful Citrus LLC fka Paramount Citrus LLC or on behalf of any such predecessors, affiliates, parents, subsidiaries and divisions thereof.

2. "Applicant" means Quality Fresh Farms, Inc. and any and all predecessors, affiliates, parents, subsidiaries and divisions thereof, and all officers, directors, employees, agents, representatives, attorneys or other persons acting, or who at any time acted or purported

to act, on behalf of Quality Fresh Farms, Inc., or on behalf of any such predecessors, affiliates, parents, subsidiaries and divisions thereof.

3. The “Quality Fresh Circle Leaf Mark” shall mean the trademark and design mark Applicant applied for, which is the subject of Opposer’s Opposition.

4. The “Paramount Circle Leaf Mark” refers Opposer’s registered trademark which it claims the Quality Fresh Circle Leaf Mark is confusingly similar to, as stated and referenced in its Notice of Opposition.

5. The term “Applicant’s Goods” shall mean Applicant’s products alleged by Opposer to cause a likelihood of confusion, that is, products bearing the Quality Fresh Circle Leaf Mark.

6. The “Application” means the application for the Quality Fresh Circle Leaf Mark with the United States Patent and Trademark Office (“USPTO”).

7. The term “You” refers to the entity to whom this document request is directed, and who is responding to the document request.

8. “Person” means any natural person, firm, association, organization, partnership, joint venture, corporation, limited partnership, business, trust, limited liability corporation, limited liability partnership, government agency or other form of entity or governmental body.

9. The terms “Referring To”, “Relating To” or “Evidencing” shall mean reflecting, concerning, pertaining to, mentioning, discussing, summarizing, describing, regarding, containing, referring to, depicting, connected with, embodying, evidencing, constituting, reporting, or in any way connected to the matter discussed.

10. The term “Document” refers to any written or recorded matter as described in Rule 34 of the Federal Rules of Civil Procedure including but not limited to any and all writings, correspondence, books, memoranda, invoices, contracts, purchase orders, receipts, publications, studies, catalogs, periodicals, labels, packaging, displays, pamphlets, slides, videotapes, films, artwork, drawings, charts, sketches, photographs, illustrative materials, circulars, price lists, advertisements, layouts, tear sheets, magnetic recording tapes, microfilm and other storage

means by which information is retained in retrievable form, and all other materials whether printed, typewritten, handwritten, recorded, or reproduced by any process written or recorded matter, and shall include the original and every non identical copy, draft or reproduction in the possession, custody or control of Applicant. The definition also includes information stored or recorded by any electronic means, including, without limitation, in a computer, hard drive, compact disc, floppy disk, diskette, tape, record, cassette, electronic mail or voice mail, any other electronic recording or other data compilation from which information can be obtained or translated, or any matters defined in Rule 1001 of the Federal Rules of Evidence. Any such document bearing on any sheet (front or back), margin, attachment or enclosure thereof, any marks, such as, without limitation, initials, stamped initials, comments, or notations of any character, which are not part of the original text or reproduction thereof, is to be considered and produced as a separate document.

11. The terms “all” and “each” shall both be construed as all and each.

12. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope.

13. The use of the singular form of any word includes the plural and vice-versa.

14. The term “prosecution” shall mean proceedings before the USPTO, including any interviews, correspondence or other materials, whether or not included in the prosecution file history maintained at the USPTO.

15. “Thing” or “Things” means any tangible item, including without limitation models, prototypes and samples of any device, product or apparatus.

16. The terms “Identify” or “Identity” shall have the following meanings, as the context shall make appropriate:

(a) When used with respect to a person, Applicant shall state the name of the Person, describe the present or last known business address of that person or the present or last known residence address. If Applicant lacks such knowledge, state that Person’s present or last

known business, occupation, and employer, if any. Once a Person has been thus identified in answer to an Interrogatory, it shall be sufficient, when again identifying that Person, to state only his, her or its name.

(b) When used with respect to a Document, Applicant shall state the date of the Document, describe the general nature (e.g., letter, memorandum, photograph, computer printout, etc.) and subject matter of the Document and specify:

(1) The author or originator of the Document;

(2) Each Person indicated as an addressee or copy recipient, or known by Applicant to have received a copy of the Document; and

(3) If privilege is claimed by Applicant with respect thereto, state sufficient particulars to evaluate and contest the claim of privilege, including the date, author, addressee, recipients of copies and a statement of the subject matter contained in the Document.

(c) When used with respect to a communication, Applicant shall, even though it may claim privilege with respect thereto, state whether the communication was written or oral. If written, Applicant shall identify the Document or Documents in which the communication was made. If oral, Applicant shall state:

(1) The manner in which the communication was made (e.g., in person, by telephone, by radio, etc.);

(2) The identity of each Person who participated in or witnessed the communication;

(3) The present location of each Person who participated in or witnessed the communication; and

(4) The date and place of the communication.

17. If Applicant objects that a term or phrase is ambiguous or indefinite, then provide your understanding of the term or phrase and respond accordingly, as if that term or phrase has been so defined.

18. "State" or "Describe" mean to set forth a complete and detailed statement of all

information, circumstances and facts that refer to, relate to, reflect, comprise, or bear upon the matter concerning which information is requested.

19. The term "Likelihood of Confusion Analysis" means an analysis of the factors articulated by the Court of Customs and Patent Appeals for determining whether there is a likelihood of confusion between marks used by different parties, namely, the following eight *du Pont* factors: (1) the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression; (2) the relatedness of the goods or services as described in an application or registration or in connection with which a prior mark is in use; (3) the similarity or dissimilarity of established, likely-to-continue trade channels; (4) the conditions under which and buyers to whom sales are made, i.e. "impulse" vs. careful, sophisticated purchasing; and (5) the number and nature of similar marks in use on similar goods. *See In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361.

INTERROGATORIES

1. Describe in detail the facts underlying your creation, development of the Quality Fresh Circle Leaf Mark.
2. What was the actual first use date of the Quality Fresh Circle Leaf Mark.
3. Identify the Person(s) responsible for consideration, conception, creation, design, development, selection, and adoption of the Quality Fresh Circle Leaf Mark.
4. Identify any and all steps you took to ensure that the Quality Fresh Circle Leaf Mark was not confusingly similar to any trademark.
5. If you provided an answer to Interrogatory Number 3, Identify the Person(s) who was involved in the steps you outlined.
6. If You contend that the Quality Fresh Circle Leaf Mark does not create the same commercial impression as the Paramount Circle Leaf Mark, state all the reasons why You think so.
7. When did you become aware of the existence of the Paramount Circle Leaf Mark?
8. Describe in detail the facts Relating To Your actual or proposed advertising,

promotion, marketing and sales activities for Applicant's Goods bearing the Quality Fresh Circle Leaf Mark.

9. Describe the trade channels in which the goods bearing the Quality Fresh Circle Leaf Mark are sold.

10. What goods are the Quality Fresh Circle Leaf Mark used on?

11. In what states are goods bearing the Quality Fresh Circle Leaf Mark sold in?

12. What cities are goods bearing the Quality Fresh Circle Leaf Mark sold in?

13. Has there been a period since You started using the Quality Fresh Circle Leaf Mark until now, that you stopped using it?

14. If Your response to the above interrogatory was yes, stated the time period, by date, of non-use.

15. Explain how the Quality Fresh Circle Leaf Mark is found on or in connection with Applicant's goods.

16. If you contend that another third-party mark is similar to the Quality Fresh Circle Leaf Mark, identify the mark and the entity using such a mark.

17. If you contend that another third-party mark is similar to the Paramount Circle Leaf Mark, identify the mark and the entity using such a mark.

18. Identify the persons and entities that farm, manufacture, pack, and ship the Applicant's goods that are sold using the Quality Fresh Circle Leaf Mark.

DATED: March 28, 2016

Wonderful Citrus LLC fka Paramount Citrus LLC

By: 

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CERTIFICATE OF SERVICE

I, Susan Bryant, hereby certify that a copy of this **OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICATION QUALITY FRESH FARMS, INC.** has been served upon attorney for Applicant:

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by first class mail, postage prepaid, on this 28th day of March, 2016.



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EXHIBIT 2

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Wonderful Citrus LLC fka Paramount Citrus
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Quality Fresh Farms, Inc.,

Applicant.

Opposition No. 91222878

Application Serial No. 86375060

**OPPOSER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
TO APPLICANT QUALITY FRESH FARMS, INC.**

In accordance with Rule 34 of the Federal Rules of Civil Procedure, and Rules 2.116 and 2.120 of the Trademark Rules of Practice, Wonderful Citrus LLC fka Paramount Citrus LLC (“Opposer”), requests that Quality Fresh Farms, Inc. (“Applicant”) produce for inspection and copying the documents in the possession, custody or control of Applicant that are called for in the numbered requests set forth hereinafter. The documents are to be produced within thirty (30) days of the date of service hereof at the offices of Roll Law Group P.C. 11444 West Olympic Blvd., Los Angeles, California 90064.

DEFINITIONS AND INSTRUCTIONS

As used herein, unless the context in which it appears clearly suggests otherwise, each of the following terms has the meaning set forth below:

1. “Opposer” means Wonderful Citrus LLC fka Paramount Citrus LLC and any and all predecessors, affiliates, parents, subsidiaries and divisions thereof, and all officers, directors, employees, agents, representatives, attorneys or other Persons acting, or who at any time acted or purported to act, on behalf of Wonderful Citrus LLC fka Paramount Citrus LLC or on behalf of

any such predecessors, affiliates, parents, subsidiaries and divisions thereof.

2. “Applicant” means Quality Fresh Farms, Inc. and any and all predecessors, affiliates, parents, subsidiaries and divisions thereof, and all officers, directors, employees, agents, representatives, attorneys or other persons acting, or who at any time acted or purported to act, on behalf of Quality Fresh Farms, Inc., or on behalf of any such predecessors, affiliates, parents, subsidiaries and divisions thereof.

3. The “Quality Fresh Circle Leaf Mark” shall mean the trademark and design mark Applicant applied for, which is the subject of Opposer’s Opposition.

4. The “Paramount Circle Leaf Mark” refers to Opposer’s registered trademark which it claims the Quality Fresh Circle Leaf Mark is confusingly similar to, as stated and referenced in its Notice of Opposition. The “Quality Fresh Circle Leaf Mark Mark” shall mean the trademark asserted by Opposer in this action as referred to in the Notice of Opposition.

5. The term “Applicant’s Goods” shall mean Applicant’s product alleged by Opposer to cause a likelihood of confusion, that is, product bearing the Quality Fresh Circle Leaf Mark.

6. The term “You” refers to the entity to whom this document request is directed, and who is responding to the document request.

7. “Person” means any natural person, firm, association, organization, partnership, joint venture, corporation, limited partnership, business, trust, limited liability corporation, limited liability partnership, government agency or other form of entity or governmental body.

8. The terms “Referring To”, “Relating To” or “Evidencing” shall mean reflecting, concerning, pertaining to, mentioning, discussing, summarizing, describing, regarding, containing, referring to, depicting, connected with, embodying, evidencing, constituting, reporting, or in any way connected to the matter discussed.

9. The term “Document” refers to any written or recorded matter as described in Rule 34 of the Federal Rules of Civil Procedure including but not limited to any and all writings, correspondence, books, memoranda, invoices, contracts, purchase orders, receipts, publications,

studies, catalogs, periodicals, labels, packaging, displays, pamphlets, slides, videotapes, films, artwork, drawings, charts, sketches, photographs, illustrative materials, circulars, price lists, advertisements, layouts, tear sheets, magnetic recording tapes, microfilm and other storage means by which information is retained in retrievable form, and all other materials whether printed, typewritten, handwritten, recorded, or reproduced by any process written or recorded matter, and shall include the original and every non identical copy, draft or reproduction in the possession, custody or control of Applicant. The definition also includes information stored or recorded by any electronic means, including, without limitation, in a computer, hard drive, compact disc, floppy disk, diskette, tape, record, cassette, electronic mail or voice mail, any other electronic recording or other data compilation from which information can be obtained or translated, or any matters defined in Rule 1001 of the Federal Rules of Evidence. Any such document bearing on any sheet (front or back), margin, attachment or enclosure thereof, any marks, such as, without limitation, initials, stamped initials, comments, or notations of any character, which are not part of the original text or reproduction thereof, is to be considered and produced as a separate document.

10. The terms “all” and “each” shall both be construed as all and each.

11. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope.

12. The use of the singular form of any word includes the plural and vice-versa.

13. “Thing” or “Things” means any tangible item, including without limitation, models, prototypes and samples of any device, product or apparatus.

14. The term “Likelihood of Confusion” refers to the standard articulated by the Court of Customs and Patent Appeals for determining whether there is a likelihood of confusion between marks used by different parties, namely, the following eight *du Pont* factors: (1) the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression; (2) the relatedness of the goods or services as described in an

application or registration or in connection with which a prior mark is in use; (3) the similarity or dissimilarity of established, likely-to-continue trade channels; (4) the conditions under which and buyers to whom sales are made, *i.e.*, "impulse" vs. careful, sophisticated purchasing; and (5) the number and nature of similar marks in use on similar goods. *See In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (C.C.P.A. 1973).

15. The term "Communication" means any contact between two or more Persons and shall include, without limitation, inquiries, discussions, conversations, negotiations, agreements, understandings, meetings, telephone conversations, letters, emails, correspondence, notes or any other form of written contacts by such means as any document or oral contact by such means as face-to-face or in-person meetings, negotiations, telephone conversations, e-mail, or any other form of electronic contact.

16. The terms "Identify" or "Identity" shall have the following meanings, as the context shall make appropriate:

(a) When used with respect to a person, Applicant shall state the name of the Person, describe the present or last known business address of that person or the present or last known residence address. If Applicant lacks such knowledge, state that Person's present or last known business, occupation, and employer, if any. Once a Person has been thus identified in answer to an Interrogatory, it shall be sufficient, when again identifying that Person, to state only his, her or its name.

(b) When used with respect to a Document, Applicant shall state the date of the Document, describe the general nature (e.g., letter, memorandum, photograph, computer printout, etc.) and subject matter of the Document and specify:

- (1) The author or originator of the Document;
- (2) Each Person indicated as an addressee or copy recipient, or known by Applicant to have received a copy of the Document; and
- (3) If privilege is claimed by Applicant with respect thereto, state sufficient particulars to evaluate and contest the claim of privilege, including the date, author,

addressee, recipients of copies and a statement of the subject matter contained in the Document.

(c) When used with respect to a communication, Applicant shall, even though it may claim privilege with respect thereto, state whether the communication was written or oral. If written, Applicant shall identify the Document or Documents in which the communication was made. If oral, Applicant shall state:

(1) The manner in which the communication was made (*e.g.*, in person, by telephone, by radio, etc.);

(2) The identity of each Person who participated in or witnessed the communication;

(3) The present location of each Person who participated in or witnessed the communication; and

(4) The date and place of the communication.

17. If any otherwise responsive Document or Thing has been, but no longer is, in the possession, custody or control of Applicant, each such Document is to be identified by setting forth the following information to the extent known: (i) each addressor and addressee; (ii) the addresses of any indicated copies or blind copies; (iii) the date, subject matter, and number of pages of such Document; (iv) the identity of any attachment or appendices to such Document; (v) all Persons to whom such Document was distributed, shown or explained; (vi) its date of destruction or discard, manner of destruction or discard, and reasons for destruction or discard; and (vii) the Persons authorizing and carrying out such destruction or discard.

18. A schedule of Documents withheld from production by reason of any privilege, claim that it constitutes work product, or other immunity from discovery shall accompany the production. For each Document withheld, the schedule shall identify the following with respect to each:

(a) A description of the general type of Documents, *e.g.*, letter, memorandum, report, miscellaneous note, etc.;

(b) The number of pages comprising the Document;

(c) The date(s) on which the Document was prepared and distributed;

(d) The identity of the author;

(e) The organization, if any, with which the author was then connected and his title or job description;

(f) The identity of all addressees;

(g) The identity of all other distributees;

(h) The organization, if any, with which each addressee and distributee was then connected;

(i) A general summary of the subject matter of the Document;

(j) The grounds for refusing to produce the Document;

(k) Whether any portion of the Document is not privileged;

(l) If the Document reflects or refers to a meeting(s) or conversation(s), the name and address of all Persons who were present at or parties to the meeting(s) or conversation(s), and a description of who those Persons are; and

(m) Each withheld Document shall be given an index number for the simplification of identification. The schedule shall be sufficiently detailed to permit Applicant to determine whether to make a motion with respect thereto, and/or to serve a *subpoena duces tecum* with respect thereto.

19. The obligation to provide the information sought by these document requests is continuing within the terms of Rule 26(e) of the Federal Rules of Civil Procedure.

20. Applicant is requested to produce Documents as they are kept in the usual course of business or to organize and label them to correspond with the categories in the request as provided in Rule 34(b) of the Federal Rules of Civil Procedure.

21. In producing the requested Documents, Applicant is required to furnish all documents available to it including, by way of illustration only, and not limited to, Documents in the possession, custody or control, of Applicant, its attorneys or its consultants or investigators or in the possession of Applicant's consultants, advisors, agents or associates.

22. As to any portion of any request which refers to Documents that Applicant is aware of which were at one time within the possession, custody or control of Applicant but which are not now within or subject to the possession, custody or control of Applicant, identify such Documents in a manner sufficient to describe such for a *subpoena duces tecum* and give the name, telephone number and address of the Person last known by Applicant to have been in possession, custody or control of such Documents.

23. If Applicant objects that a term or phrase is ambiguous or indefinite, then provide your understanding of the term or phrase and respond accordingly, as if that term or phrase has been so defined.

24. If Applicant is aware that a Document or group of Documents responsive to these requests once existed, but has been destroyed or discarded, Applicant is directed to state when the Document or group of Documents was destroyed or discarded, why the Document or group of Documents was destroyed or discarded, the Person most knowledgeable about the content of the Document(s) and the circumstances under which the document or group of Documents was destroyed or discarded.

25. Color copies of Documents are to be produced where color is necessary to interpret or understand the contents.

26. If, after exercising reasonable diligence, Applicant is unable to determine the existence of any Documents or things falling within a production request, Applicant is requested to so state in any written response.

27. These requests for Documents and things are submitted for purposes of discovery only, and nothing contained herein shall be taken as an admission of relevance, or as a manner of any objections to the admissibility at trial, or of any evidence or information requested or furnished in response thereto.

REQUESTS

1. Documents sufficient to show all the various ways the Quality Fresh Circle Leaf Mark is used in commerce and seen by the consuming public.
2. Each and every Document Referring To the facts and circumstances surrounding when Applicant first came to know of the existence of the Applicant and its Paramount Circle Leaf Mark.
3. Each and every Document Referring To any determination or consideration by Applicant of whether or not Applicant's Goods are likely to cause confusion with Applicant's Paramount Circle Leaf Mark.
4. A sample of Each different label, tag, wrapping, package, package insert, advertisement, marketing or promotional material, and website page used or planned to be used in connection with Applicant's Goods or the Quality Fresh Circle Leaf Mark.
5. Documents sufficient to show the identity of any periodicals or other publications containing any articles, advertising or promotional material Evidencing Applicant's Goods.
6. Each and every Document upon which Applicant relies or has relied on in formulating the opinion that the Quality Fresh Circle Leaf Mark does not cause a Likelihood of Confusion with Applicant's Paramount Circle Leaf Mark, including, but not limited to, opinions of counsel, third-party uses, trademark applications or registrations, advertising brochures, manuals, photographs, physical specimen, drawings, or other materials Relating To Applicant's or third parties' products or trademark rights.
7. Each and every Document Relating To Communications between Applicant and Opposer.
8. Each Communication from customers or other third parties to this action that support or refute the claims in the Opposition.
9. Each Communication between Applicant and any third party to this action regarding Quality Fresh Circle Leaf Mark.
10. Documents sufficient to show Applicant's consideration, conception, creation,

design, development, selection, adoption and first use of the Quality Fresh Circle Leaf Mark Mark, including, but not limited to, searches, investigations, reports, and opinions.

11. Each and every Document sufficient to Identify Each Person involved in the consideration, conception, creation, design, development, selection, adoption and first use or planned first use of the Quality Fresh Circle Leaf Mark.

12. All written directives, manuals of instruction, or other Documents which set forth Applicant's procedures for adopting trademarks or service marks.

13. All Documents Relating to any assignment, license, or other transfer or grant of any rights to or from Applicant or any third party in the Quality Fresh Circle Mark.

14. All agreements or any other Documents between Applicant and any third party Relating To the Quality Fresh Circle Mark including but not limited to the marketing and sale of products under or in connection with the Quality Fresh Circle Mark.

15. Each and every Document Relating To any formal or informal research, including but not limited to, searches, investigations, surveys, tests, or studies of any kind, which Applicant has conducted, or has knowledge of, Relating to the quality or freshness of Applicant's Goods bearing the Quality Fresh Circle Mark.

16. All Documents Relating To Applicant's application to register the Quality Fresh Circle Mark with the United States Patent and Trademark Office, including but not limited to the Documents Relating To the Applications.

17. All Documents that support or refute Applicant's denial of any allegation in the Notice of Opposition.

18. All Documents Relating To any instances or possible instances of confusion, mistake, deception or association of any kind among members of the public or trade which have or may have occurred between Opposer's Paramount Circle Leaf Mark on the one hand, and Applicant's Quality Fresh Circle Mark on the other hand.

19. All Documents Relating to any court action or administrative proceeding filed by or against Applicant, and All written challenges or objections made by or directed to Applicant,

Relating To Applicant's use, or planned use of, or claimed rights in, the Quality Fresh Circle Mark.

20. All Documents concerning legal proceedings, whether inter partes or ex parte, in the United States or any foreign country, involving the Quality Fresh Circle Mark or any confusingly similar mark(s), including, but not limited to, pleadings, hearing transcripts, deposition transcripts, declarations, exhibits, briefs, and production documents.

21. All Documents Relating To any studies, investigation, surveys, opinions or reports, including but not limited to studies, opinions or reports of advertising and marketing agencies, and polling, public relations, market research and public opinion agencies, consulted or retained by Applicant, which refer to any advertising or promotional materials for Applicant's Goods.

22. All Documents Relating To studies or analyses performed comparing any of Opposer's products bearing the Mark to Applicant's Goods.

23. All Documents Relating To the general organization of Applicant and the organizational structure of Each department or group of Applicant responsible for conceiving, developing, manufacturing, distributing, or marketing Applicant's Goods.

24. All Documents Evidencing All entities and individuals who have an ownership interest in You.

25. All Documents Evidencing Applicant's date of first use or planned first use of the Quality Fresh Circle Mark anywhere and in interstate and/or intrastate commerce.

26. All Documents Evidencing the contentions made in the Answer to the Notice of Opposition.

27. All Documents necessary to Identify the outlets or stores through which Applicant's Goods have been, will be, or are being, sold.

28. A copy of All agreements between You and any distributor or sub-distributor for Applicant's Goods.

29. All Documents Evidencing Applicant's document retention or destruction policy.

30. All Documents Relating To the subject matter of Opposer's First Set of Interrogatories to Applicant that have not been produced in response to any other request herein.

DATED: March 28, 2016

Wonderful Citrus LLC fka Paramount Citrus LLC

By:


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CERTIFICATE OF SERVICE

I, Susan Bryant, hereby certify that a copy of this **OPPOSER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO APPLICANT QUALITY FRESH FARMS, INC.** has been served upon attorney for Applicant:

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by first class mail, postage prepaid, on this 28th day of March, 2016.



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