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

Proceeding	92056497
Party	Defendant A. Sambado & Son, Inc.
Correspondence Address	THOMAS A DIRKSEN 4607 LAKEVIEW CANYON ROAD, SUITE 117 WESTLAKE VILLAGE, CA 91361 UNITED STATES trademarks@dirksenlaw.com
Submission	Answer and Counterclaim
Filer's Name	Thomas A. Dirksen
Filer's e-mail	trademarks@dirksenlaw.com
Signature	/thomas a dirksen/
Date	03/12/2014
Attachments	2014_0312_answer_X.pdf(297575 bytes )

Registration Subject to the filing

Registration No	1441378	Registration date	06/02/1987
Registrant	GERAWAN FARMING INC. 15749 E. Ventura Ave. Sanger, CA 93657 CANADA		
Grounds for filing	The registered mark has become the generic name for the goods. The registration was obtained fraudulently.		

Goods/Services Subject to the filing

<p>Class 031. First Use: 1970/00/00 First Use In Commerce: 1970/00/00 All goods and services in the class are requested, namely: FRESH FRUITS [AND VEGETABLES] NAMELY, TABLE GRAPES; PEACHES; PLUMS; NECTARINES;[ LETTUCE; CAULIFLOWER]; KIWIS; PERSIMMONS;] [RAPINI; BROCCOLI; BOK CHOY;] AND APRICOTS[; CANTALOUPE; ESCAROLE; HONEYDEW; CRENSHAW; RED LEAF; GREEN LEAF; BOSTON; RED CABBAGE; GREEN CABBAGE; AND NAPPA]</p>
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

GERAWAN FARMING, INC.	)	<b>Cancellation No.:</b> 92056497
Petitioner,	)	Registration No.: 3,334,633
	)	Issued: November 13, 2007
v.	)	Mark: PRIMA FRUTTA
	)	
A. SAMBADO & SON, INC.	)	
Registrant.	)	

**ANSWER AND COUNTERCLAIMS**

The following is the Answer and Counterclaim of Registrant, A. Sambado & Sons, Inc. (“Registrant”), owner of Registration No. 3,334,633 for the mark PRIMA FRUTTA, to the Petition for Cancellation (hereinafter the “Petition”) filed on November 19, 2012 by Gerawan Farming, Inc. (hereinafter “Petitioner”) and assigned Cancellation No. 92056497.

Registrant hereby responds, solely for the purpose of this proceeding, to each of the grounds set forth in the Petition, as follows:

1. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Petition. Since Registrant can neither admit nor deny the paragraph as written, Applicant must deny.
2. Admitted.
3. Denied.
4. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Petition. Since Registrant can neither admit nor deny the paragraph as written, Applicant must deny.

5. Denied.
6. Denied.
7. Denied.
8. Denied.
9. Denied.
10. Denied.
11. Denied.
12. Denied.
13. Denied.
14. Denied.

#### AFFIRMATIVE DEFENSES

15. The Petition fails, in whole or part, to state a claim upon which relief can be granted.

16. Petitioner's claims fail, in whole or in part, because Registrant is the senior user of the marks containing the term, "prima." On information and belief Registrant has used its PRIMA FRUTTA trademark in connection with cherries since as early as 1965.

17. Petitioner's claims fail, in whole or in part, because Petitioner's marks are not famous.

18. Petitioner's claims fail, in whole or in part, because Registrant's mark does not and cannot dilute Petitioner's marks.

19. Petitioner's claims fail, in whole or in part, because of the functionality of Petitioner's alleged PRIMA name as a variety designation for various fruits in plant patent

applications and issued plant patents for fruits that Petitioner characterizes as its “proprietary varieties.”

20. Petitioner’s claims fail, in whole or in part, because Petitioner’s alleged PRIMA marks with respect to fresh fruits are generic variety designations.

21. Petitioner’s claims fail, in whole or in part, due to Petitioner’s trademark conduct that violates the antitrust laws of the United States arising out of Petitioner’s efforts to restrict public use of a functional and generic PRIMA name.

22. Petitioner’s claims are barred, in whole or in part, by applicable statutes of limitation.

23. Petitioner’s claims are barred, in whole or in part, under the doctrines of laches, estoppel, acquiescence and/or waiver.

24. Petitioner’s claims are barred, in whole or in part, due to Petitioner’s trademark misuse supplied and under the doctrines of unclean hands.

25. Petitioner’s claims are barred, in whole or in part, by the doctrine of trademark abandonment.

26. Petitioner’s claims are barred, in whole or in part, by the doctrine of fair use.

27. Registrant reserves the right to amend this Answer and to assert additional defenses as may be warranted by discovery in this case.

#### COUNTERCLAIM ALLEGATIONS

28. Registration asserts the following counterclaims against Petitioner and alleges as follows:

29. A. Sambado & Sons, Inc. is a California corporation with its principal place of business in Linden, California.

30. Registrant owns trademark registrations for the mark, PRIMA FRUTTA for fresh cherries in Class 031, issued August 24, 1976 and PRIMA FRUTTA for fresh fruits; fresh vegetables in Class 031 issued on November 13, 2007. Copies are attached hereto as Exhibit A. Registrant first applied and received registration for its PRIMA FRUTTA mark at least 10 years before Petitioner obtained any trademark registration for any of its PRIMA marks.

31. Registrant first used the mark PRIMA FRUTTA in Class 031 for cherries and other fresh fruits and fresh vegetables since as early as 1965. Such date precedes the dates of first use claimed by Petitioner for marks containing the term, "prima."

32. Registrant has developed significant goodwill in its PRIMA FRUTTA trademarks by means of marketing its fresh fruits and fresh vegetables throughout the United States for over many decades. Through its related companies, Registrant has also developed good will in a family of marks containing the term, "prima" such as PRIMA NOCE, PRIMAVERA MARKETING as set forth in Exhibit B.

33. Gerawan Farming, Inc. is a California corporation with its principal place of business in Sanger, California. Gerawan's primary business is growing and distributing fresh peaches, plums, nectarines and table grapes.

34. Upon information and belief, Michael R. Gerawan is a principal of Gerawan.

35. Gerawan's website, [www.prima.com](http://www.prima.com) promotes its proprietary varieties of fruit, including, e.g., "Prima Diamond Nectarines," and "Prima Gattie Peaches." Michael R. Gerawan is the named inventor of various plant patents, including, but not limited to U.S. Plant Patent No. 12,011 ("Nectarine Tree Named 'Prima Diamond 19'"); U.S. Plant Patent No. 10,085 ("Prima Gattie' Peach Tree"); U.S. Plant Patent No. 8,068 ("Prima Black Plum 8-15"); U.S. Plant Patent No. 8067 ("Prima Black Plum 5-25"); and U.S. Plant Patent No. 8057 ("Prima Red Plum 9-1").

Upon information and belief, Gerawan is or has been licensed to grow fruits covered by the foregoing plant patents.

36. Under United States law, by virtue of Gerawan's use of the "PRIMA" name as a portion of the patent plant varietal name, the PRIMA name has become a functional and/or generic designation for Gerawan's fruit varieties and the PRIMA name therefore cannot be used as a trademark designation. Pursuant to the International Convention for the Protection of New Varieties of Plants (the "UPOV Convention"), to which the United States is a signatory, "The variety shall be designated by a denomination which will be its generic designation." Pursuant to 15 U.S.C. § 1065(4), "no incontestable right shall be acquired in a mark which is a generic name for the goods or services or a portion thereof, for which it is registered." Further, pursuant to 15 U.S.C. § 1052(e)(4), trademarks are not registrable if the mark "comprises any matter that, as a whole, is functional." In this regard, the patent name for a plant variety becomes its functional name as well as its generic designation.

37. In addition to use of the PRIMA name as a functional and/or generic name in plant patents that give rise to Gerawan's advertising and promotion of "proprietary varieties," the PRIMA name has become a generic varietal designation through public use and not a source-identifier for plaintiff's fruit produce.

38. Petitioner is currently pursuing Case No. CV F 10-2011 LJO JLT in the Eastern District of California which consists primarily of a legal malpractice claim in which Petitioner alleges that it suffered harm as a result of its trademarks having been rendered generic on substandard advice from counsel. Such a legal malpractice claim amounts to an admission by Petitioner that its PRIMA marks are generic.

REGISTRANT'S COUNTERCLAIM FOR CANCELLATION OF PETITIONER'S  
REGISTRATION NO. 1,441,378 DATED JUNE 02, 1987

39. Registrant incorporates by reference herein the allegations set forth in paragraphs 28 through 38 and its admissions, denials and affirmative defenses set forth in paragraphs 1 through 27 of its Answer.

40. Genericness. Petitioner's federal trademark registrations using the PRIMA mark for fresh fruits are subject to cancellation pursuant to 15 U.S.C. § 1064(3), which allows cancellation of a mark "At any time if the registered mark becomes the generic name for the goods and services, or a portion thereof, for which it is registered, or is functional, or has been abandoned...."

41. Fraud on the Office. Petitioner, on information and belief, was advised by Petitioner's own legal counsel as early as 2003, that the PRIMA mark for fresh fruits had become generic due to Petitioner's own actions in filing certain Patent Applications set forth in Paragraph 34 above. Petitioner disregarded such advice and continued to renew Registration No. 1,441,378 without any disclosure to the Office that the PRIMA marks was in fact generic.

REGISTRANT'S COUNTERCLAIM FOR CANCELLATION OF PETITIONER'S  
REGISTRATION NO. 3,592,505 DATED MARCH 17, 2009

42. Registrant incorporates by reference herein the allegations set forth in paragraphs 28 through 36 and its admissions, denials and affirmative defenses set forth in paragraphs 1 through 27 of its Answer.

43. Genericness. Petitioner's federal trademark registrations using the PRIMA & DESIGN mark for fresh fruit is subject to cancellation pursuant to 15 U.S.C. § 1064(3), which allows cancellation of a mark "At any time if the registered mark becomes the generic name for

the goods and services, or a portion thereof, for which it is registered, or is functional, or has been abandoned....”

44. The continued registration of the mark PRIMA & DESIGN would cause a likelihood of confusion, mistake, or deception as to the source, association, origin, affiliation, endorsement, or sponsorship of Petitioner’s goods with Registrant's PRIMA FRUTTA marks.

45. The PRIMA FRUTTA Marks are inherently distinctive and have acquired secondary meaning by extensive, continuous, and substantially exclusive use by Registrant. The PRIMA FRUTTA Marks are famous and distinctive within the meaning of the Federal Trademark Dilution Act. Petitioner began use of PRIMA & DESIGN after the PRIMA FRUTTA marks became famous, and filed its application to register PRIMA & DESIGN after the PRIMA FRUTTA marks became famous.

46. Fraud on the Office. Petitioner, on information and belief, was advised by Petitioner’s own legal counsel as early as 2003, that the PRIMA mark for fresh fruits had become generic due to Petitioner’s own actions in filing certain Patent Applications set forth in Paragraph 34 above. Petitioner disregarded such advice and continued to register Registration No. 3,592,505 without any disclosure to the Office that the PRIMA marks was in fact generic.

47. Abandonment. Petitioner does not use or intent to use its mark on all fresh fruits and is not entitled such a broad description of goods.

48. Cancellation under Section 18. Petitioner has obtained an unrestricted registration of PRIMA & DESIGN for "fresh fruits", when Petitioner only sells certain fruits under the mark. Petitioner’s unrestricted broad registration of PRIMA for "fresh fruits" covers the fresh fruit sold by Registrant under the PRIMA FRUTTA Marks, and Registrant has priority of use over Petitioner.

49. The continued registration of the mark PRIMA & DESIGN for fresh fruits arguably provides Petitioner with broader rights than Registrant, when Registrant is the senior user of the PRIMA FRUTTA Marks.

REGISTRANT’S COUNTERCLAIM FOR CANCELLATION OF PETITIONER’S  
REGISTRATION NO. 3,866,359 DATED OCTOBER 26, 2010

50. Registrant incorporates by reference herein the allegations set forth in paragraphs 28 through 36 and its admissions, denials and affirmative defenses set forth in paragraphs 1 through 27 of its Answer.

51. Genericness. Petitioner’s federal trademark registration using the PRIMA for fresh fruits is subject to cancellation pursuant to 15 U.S.C. § 1064(3), which allows cancellation of a mark “At any time if the registered mark becomes the generic name for the goods and services, or a portion thereof, for which it is registered, or is functional, or has been abandoned....”

52. The continued registration of the mark PRIMA would cause a likelihood of confusion, mistake, or deception as to the source, association, origin, affiliation, endorsement, or sponsorship of Petitioner’s goods with Registrant’s PRIMA FRUTTA marks.

53. The PRIMA FRUTTA Marks are inherently distinctive and have acquired secondary meaning by extensive, continuous, and substantially exclusive use by Registrant. The PRIMA FRUTTA Marks are famous and distinctive within the meaning of the Federal Trademark Dilution Act. Petitioner began use of PRIMA after the PRIMA FRUTTA marks became famous, and filed its application to register PRIMA after the PRIMA FRUTTA marks became famous.

54. Fraud on the Office. Petitioner, on information and belief, was advised by Petitioner's own legal counsel as early as 2003, that the PRIMA mark for fresh fruits had become generic due to Petitioner's own actions in filing certain Patent Applications set forth in Paragraph 34 above. Petitioner disregarded such advice and continued to renew Registration No. 3,866,359 without any disclosure to the Office that the PRIMA marks was in fact generic.

55. Abandonment. Petitioner does not use or intent to use its mark on all fresh fruits and is not entitled such a broad description of goods.

56. Cancellation under Section 18. Petitioner has obtained an unrestricted registration of PRIMA for "fresh fruits", when Registrant only sells certain fruits under the mark. Petitioner's unrestricted broad registration of PRIMA for "fresh fruits" covers the fresh fruit sold by Registrant under the PRIMA FRUTTA Marks, and Registrant has priority of use over Petitioner.

57. The continued registration of the mark PRIMA for fresh fruits arguably provides Petitioner with broader rights than Registrant, when Registrant is the senior user of the PRIMA FRUTTA Marks.

REGISTRANT'S COUNTERCLAIM FOR CANCELLATION OF PETITIONER'S  
REGISTRATION NO. 1,585,993 DATED MARCH 06, 1990

58. Registrant incorporates by reference herein the allegations set forth in paragraphs 28 through 36 and its admissions, denials and affirmative defenses set forth in paragraphs 1 through 27 of its Answer.

59. Genericness. Petitioner's federal trademark registration using the PRIMA SWEET PERSONALLY SELECTED mark for fresh grapes, peaches, nectarines, plums and apricots is subject to cancellation pursuant to 15 U.S.C. § 1064(3), which allows cancellation of a mark "At any time if the registered mark becomes the generic name for the goods and services, or a portion thereof, for which it is registered, or is functional, or has been abandoned...."

60. Fraud on the Office. Petitioner, on information and belief, was advised by Petitioner's own legal counsel as early as 2003, that the PRIMA mark for fresh fruits had become generic due to Petitioner's own actions in filing certain Patent Applications set forth in Paragraph 34 above. Petitioner disregarded such advice and continued to register and renew Registration No. 1,585,993 without any disclosure to the Office that the PRIMA marks was in fact generic.

REGISTRANT'S COUNTERCLAIM FOR CANCELLATION OF PETITIONER'S  
REGISTRATION NO. 3,871,978 DATED NOVEMBER 09, 2010

61. Registrant incorporates by reference herein the allegations set forth in paragraphs 28 through 36 and its admissions, denials and affirmative defenses set forth in paragraphs 1 through 27 of its Answer.

62. Genericness. Petitioner's federal trademark registration using the PRIMA SWEET mark for fresh fruits is subject to cancellation pursuant to 15 U.S.C. § 1064(3), which allows cancellation of a mark "At any time if the registered mark becomes the generic name for the goods and services, or a portion thereof, for which it is registered, or is functional, or has been abandoned...."

63. The continued registration of the mark PRIMA SWEET would cause a likelihood of confusion, mistake, or deception as to the source, association, origin, affiliation, endorsement, or sponsorship of Petitioner's goods with Registrant's PRIMA FRUTTA marks.

64. The PRIMA FRUTTA Marks are inherently distinctive and have acquired secondary meaning by extensive, continuous, and substantially exclusive use by Registrant. The PRIMA FRUTTA Marks are famous and distinctive within the meaning of the Federal Trademark Dilution Act. Petitioner began use of PRIMA SWEET after the PRIMA FRUTTA

marks became famous, and filed its application to register PRIMA SWEET after the PRIMA FRUTTA marks became famous.

65. Fraud on the Office. Petitioner, on information and belief, was advised by Petitioner's own legal counsel as early as 2003, that the PRIMA mark for fresh fruits had become generic due to Petitioner's own actions in filing certain Patent Applications set forth in Paragraph 34 above. Petitioner disregarded such advice and continued to register Registration No. 3,871,978 without any disclosure to the Office that the PRIMA marks was in fact generic.

66. Abandonment. Petitioner does not use or intent to use its mark on all fresh fruits and is not entitled such a broad description of goods.

67. Cancellation under Section 18. Petitioner has obtained an unrestricted registration of PRIMA SWEET for "fresh fruits", when Registrant only sells certain fruits under the mark. Petitioner's unrestricted broad registration of PRIMA SWEET for "fresh fruits" covers the fresh fruit sold by Registrant under the PRIMA FRUTTA Marks, and Registrant has priority of use over Petitioner.

68. The continued registration of the mark PRIMA SWEET for fresh fruits arguably provides Petitioner with broader rights than Registrant, when Registrant is the senior user of the PRIMA FRUTTA Marks.

REGISTRANT'S COUNTERCLAIM FOR CANCELLATION OF PETITIONER'S  
REGISTRATION NO. 3,833,518 DATED AUGUST 17, 2010

69. Registrant incorporates by reference herein the allegations set forth in paragraphs 28 through 36 and its admissions, denials and affirmative defenses set forth in paragraphs 1 through 27 of its Answer.

70. Genericness. Petitioner's federal trademark registrations using the PRIMAREADY READY TO EAT mark for fresh fruits are subject to cancellation pursuant to

15 U.S.C. § 1064(3), which allows cancellation of a mark “At any time if the registered mark becomes the generic name for the goods and services, or a portion thereof, for which it is registered, or is functional, or has been abandoned....”

71. The continued registration of the mark PRIMAREADY READY TO EAT would cause a likelihood of confusion, mistake, or deception as to the source, association, origin, affiliation, endorsement, or sponsorship of Petitioner’s goods with Registrant’s PRIMA FRUTTA marks.

72. The PRIMA FRUTTA Marks are inherently distinctive and have acquired secondary meaning by extensive, continuous, and substantially exclusive use by Registrant. The PRIMA FRUTTA Marks are famous and distinctive within the meaning of the Federal Trademark Dilution Act. Petitioner began use of PRIMAREADY READY TO EAT after the PRIMA FRUTTA marks became famous, and filed its application to register PRIMAREADY READY TO EAT after the PRIMA FRUTTA mark became famous.

73. Fraud on the Office. Petitioner, on information and belief, was advised by Petitioner’s own legal counsel as early as 2003, that the PRIMA mark for fresh fruits had become generic due to Petitioner’s own actions in filing certain Patent Applications set forth in Paragraph 34 above. Petitioner disregarded such advice and continued to renew Registration No. 1,441,378 without any disclosure to the Office that the PRIMA marks was in fact generic.

74. Abandonment. Petitioner does not use or intent to use its mark on all fresh fruits and is not entitled such a broad description of goods.

75. Cancellation under Section 18. Petitioner has obtained an unrestricted registration of PRIMAREADY READY TO EAT for "fresh fruits", when Registrant only sells certain fruits under the mark. Petitioner’s unrestricted broad registration of PRIMAREADY READY TO EAT

for "fresh fruits" covers the fresh fruit sold by Registrant under the PRIMA FRUTTA Marks, and Registrant has priority of use over Petitioner.

76. The continued registration of the mark PRIMAREADY READY TO EAT for fresh fruits arguably provides Petitioner with broader rights than Registrant, when Registrant is the senior user of the PRIMA FRUTTA Marks.

REGISTRANT'S COUNTERCLAIM FOR CANCELLATION OF PETITIONER'S  
REGISTRATION NO. 3,789,494 DATED MAY 18, 2010

77. Registrant incorporates by reference herein the allegations set forth in paragraphs 28 through 36 and its admissions, denials and affirmative defenses set forth in paragraphs 1 through 27 of its Answer.

78. The continued registration of the mark PRIMA would cause a likelihood of confusion, mistake, or deception as to the source, association, origin, affiliation, endorsement, or sponsorship of Petitioner's goods, namely non-metal pallets, used in connection with agricultural products, with Registrant's PRIMA FRUTTA marks.

79. The PRIMA FRUTTA Marks are inherently distinctive and have acquired secondary meaning by extensive, continuous, and substantially exclusive use by Registrant. The PRIMA FRUTTA Marks are famous and distinctive within the meaning of the Federal Trademark Dilution Act. Petitioner began use of PRIMA after the PRIMA FRUTTA marks became famous, and filed its application to register PRIMA after the PRIMA FRUTTA mark became famous.

80. The continued registration of the mark PRIMA is likely to dilute the PRIMA FRUTTA Marks.

REGISTRANT'S COUNTERCLAIM FOR CANCELLATION OF PETITIONER'S  
REGISTRATION NO. 3,789,495, DATED MAY 18, 2010

81. Registrant incorporates by reference herein the allegations set forth in paragraphs 28 through 36 and its admissions, denials and affirmative defenses set forth in paragraphs 1 through 27 of its Answer.

82. The continued registration of the mark PRIMA would cause a likelihood of confusion, mistake, or deception as to the source, association, origin, affiliation, endorsement, or sponsorship of Petitioner's goods, namely non-metal pallets, used in connection with agricultural products, with Registrant's PRIMA FRUTTA marks.

83. The PRIMA FRUTTA Marks are inherently distinctive and have acquired secondary meaning by extensive, continuous, and substantially exclusive use by Registrant. The PRIMA FRUTTA Marks are famous and distinctive within the meaning of the Federal Trademark Dilution Act. Petitioner began use of PRIMA after the PRIMA FRUTTA marks became famous, and filed its application to register PRIMA after the PRIMA FRUTTA mark became famous.

84. The continued registration of the mark PRIMA is likely to dilute the PRIMA FRUTTA Marks.

WHEREFORE, Registrant prays that the Trademark Trial and Appeal Board deny the Petition for Cancellation and grant the counterclaims for cancellation requested.

DATED this 12th day of February, 2014  
Westlake Village, California

**A. SAMBADO & SON, INC.**

By Thomas A. Dirksen

Thomas A. Dirksen, Attorney for Registrant  
4607 Lakeview Canyon Road, Suite 117  
Westlake Village, CA 91361  
(805) 370-9100  
[trademarks@dirksenlaw.com](mailto:trademarks@dirksenlaw.com)

EXHIBIT A

Int. Cl.: 31

Prior U.S. Cl.: 46

**United States Patent Office**

**Reg. No. 1,046,970**

**Registered Aug. 24, 1976**

**TRADEMARK**

**Principal Register**

*Prima Frutta*

A. Sambado & Sons (partnership)  
8421 N. Tully Road  
Linden, Calif. 95236

For: FRESH CHERRIES, in CLASS 31 (U.S. CL. 46).  
First use May 26, 1975; in commerce May 26, 1975.  
No claim is made to exclusive use of the word  
"Frutta" apart from the mark as shown.  
The trademark "Prima Frutta" may be translated to  
mean "first fruit."

Ser. No. 59,164, filed July 30, 1975.

R. M. ROSS, Examiner

**Int. Cl.: 31**

**Prior U.S. Cls.: 1 and 46**

**United States Patent and Trademark Office**

**Reg. No. 3,334,633**

Registered Nov. 13, 2007

**TRADEMARK  
PRINCIPAL REGISTER**

**PRIMA FRUTTA**

A. SAMBADO & SON, INC. (CALIFORNIA CORPORATION)  
8077 N. TULLY ROAD  
LINDEN, CA 95236

FOR: FRESH FRUITS; FRESH VEGETABLES, IN CLASS 31 (U.S. CLS. 1 AND 46).

FIRST USE 5-26-1975; IN COMMERCE 5-26-1975.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 1,046,970.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FRUTTA", APART FROM THE MARK AS SHOWN.

THE FOREIGN WORDING IN THE MARK TRANSLATES INTO ENGLISH AS FIRST FRUITS.

SER. NO. 78-800,307, FILED 1-26-2006.

WON TEAK OH, EXAMINING ATTORNEY

EXHIBIT B

**Int. Cl.: 29**

**Prior U.S. Cl.: 46**

**United States Patent and Trademark Office**

**Reg. No. 3,421,441**

**Registered May 6, 2008**

**TRADEMARK  
PRINCIPAL REGISTER**

**PRIMA NOCE**

PRIMA NOCE PACKING INC. (CALIFORNIA  
CORPORATION)  
16461 E. COMSTOCK RD.  
LINDEN, CA 95236

FOR: PREPARED WALNUTS, IN CLASS 29 (U.S.  
CL. 46).

FIRST USE 9-1-2004; IN COMMERCE 9-1-2004.

THE MARK CONSISTS OF STANDARD CHAR-  
ACTERS WITHOUT CLAIM TO ANY PARTICULAR  
FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "NOCE", APART FROM THE MARK  
AS SHOWN.

THE ENGLISH TRANSLATION OF "PRIMA  
NOCE" IS "FIRST NUT."

SER. NO. 77-101,297, FILED 2-7-2007.

LAURIE MAYES, EXAMINING ATTORNEY

Int. Cl.: 31

Prior U.S. Cls.: 1 and 46

United States Patent and Trademark Office

Reg. No. 1,995,158

Registered Aug. 20, 1996

TRADEMARK  
PRINCIPAL REGISTER



PRIMAVERA MARKETING, INC. (CALIFORNIA CORPORATION)  
P. O. BOX 419  
LINDEN, CA 95236

FIRST USE 2-23-1990; IN COMMERCE 2-23-1990.

SER. NO. 74-694,922, FILED 6-28-1995.

FOR: FRESH FRUITS AND VEGETABLES, NAMELY APPLES, GRAPES, CHERRIES, AND ASPARAGUS, IN CLASS 31 (U.S. CLS. 1 AND 46).

EVERETT FRUEHLING, EXAMINING ATTORNEY

Int. Cl.: 31

Prior U.S. Cls.: 1 and 46

**United States Patent and Trademark Office**      **Reg. No. 2,005,804**  
Registered Oct. 8, 1996

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**TRADEMARK  
PRINCIPAL REGISTER**

*Primavera*

PRIMAVERA MARKETING, INC. (UNITED  
STATES CORPORATION)  
16461 EAST COMSTOCK ROAD  
LINDEN, CA 95326

FIRST USE 2-23-1990; IN COMMERCE  
2-23-1990.

SER. NO. 74-694,923, FILED 6-28-1995.

FOR: FRESH FRUITS AND VEGETABLES,  
NAMELY APPLES, GRAPES, CHERRIES AND  
ASPARAGUS, IN CLASS 31 (U.S. CLS. 1 AND  
46).

EVERETT FRUEHLING, EXAMINING ATTOR-  
NEY

**Certificate of Service**

The undersigned hereby certifies that a true and accurate copy of the ANSWER AND COUNTERCLAIMS has been served on the following by delivering said copy on March 12, 2014, via First Class Mail, postage prepaid, to counsel for Petitioner at the following address:

JILL M. PIETRINI  
SHEPPARD MULLIN RICHTER & HAMPTON LLP  
1901 Avenue of the Stars, Suite 1600  
Los Angeles, CA 90067-6017  
(310) 228-3700

By: *Susan R. Levitt*  
Susan R. Levitt