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Proceeding	79171734
Applicant	Lidl Stiftung & Co. KG
Applied for Mark	CHEF SELECT TO GO
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**TABLE OF CONTENTS**

	<b>Page</b>
I. Introduction .....	4
II. Procedural History.....	5
III. There Is No Likelihood of Confusion Between Applicant’s Mark and The Cited Mark.....	6
A. The Cited Mark Should Be Accorded A Very Narrow Scope of Protection .....	6
B. The Marks Are Dissimilar When Compared in Their Entireties.....	13
IV. Conclusion.....	15

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>Coach/Braunsdorf Affinity, Inc. v. 12 Interactive, LLC</i> , 110 USPQ2d 1458 (TTAB 2014) .....	12, 13
<i>In re E. I. du Pont de Nemours &amp; Co.</i> , 476 F.2d 1357, 177 USPQ 563 (CCPA 1973) .....	6
<i>In re Hamilton Bank</i> , 222 USPQ 174 (TTAB 1984) .....	13, 14
<i>In re Hartz Hotel Services, Inc.</i> , 102 USPQ2d 1150 (TTAB 2012) .....	13, 14
<i>In re Huncke &amp; Jochheim</i> , 185 USPQ 188 (TTAB 1975) .....	13
<i>Juice Generation, Inc. v. GS Enters. LLC</i> , 794 F.3d 1334, 115 USPQ2d 1671 (Fed. Cir. 2015) .....	12, 13, 14
<i>Kellogg Co. v. Pack'em Enters. Inc.</i> , 951 F.2d 330, 21 USPQ2d 1142 (Fed. Cir. 1991) .....	6
<i>Plus Products v. Natural Organics, Inc.</i> , 204 USPQ 773 (TTAB 1979) .....	13
<i>Sure-Fit Products Company v. Saltzson Drapery Company</i> , 254 F.2d 158, 117 USPQ 295 (CCPA 1958) .....	13
<b>Statutes and Rules</b>	
Trademark Act Section 2(d), 15 U.S.C. §1052(d) .....	4, 5, 6
<b>Treatises</b>	
4 J. Thomas McCarthy, <i>Trademarks and Unfair Competition</i> , § 23:48 (5th ed. 2018) .....	12

## APPLICANT'S APPEAL BRIEF

### I. Introduction

Applicant's mark is the following, in connection with "sushi" in Class 30:



(the words "To Go" and "Select" have been disclaimed).

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), based on Reg. No. 3873838 for the mark "CHEF SELECT" (in standard characters), also in connection with "sushi" in Class 30. The record shows that the term "Chef Select" is commonly used and understood to indicate that the contents of sushi products offered by many parties have been carefully or preferentially selected by the preparer. This extensive use of "Chef Select" specifically in connection with sushi establishes that said term is highly suggestive with regard to sushi and, therefore, the cited mark, consisting solely of this term in connection with "sushi", should be accorded a very narrow scope of protection.

In view of the very narrow scope of protection to be accorded to the mark "Chef Select", Applicant's mark in its entirety, including its additional word and design elements, makes a substantially different commercial impression and is not likely to cause confusion with a mark consisting of the term "Chef Select" *per se*. Particularly, in Applicant's mark the words "to go", even if descriptive, are completely unlike anything in the cited mark and significantly add to the meaning of Applicant's mark; and the eye-catching stylization and design elements in and surrounding "to go" (a) draw attention to said term, (b) make an impact on the overall impression

of Applicant's mark such that the word element of the mark could just as easily be perceived as "chef to go select" as "chef select to go", and (c) also incorporates a "play-button" arrow design within the letter "o" in "go" which adds yet another connotation to the commercial impression of Applicant's mark not found in the cited mark.

## II. **Procedural History**

Applicant filed the subject application for the mark set out above in connection with a variety of food products in Classes 29, 30 and 31. Registration was initially partially refused under Section 2(d), in connection with various items of goods which were then in the subject application, based on the following four separately owned registrations:

- Reg. No. 3769435 for CHEFS SELECT (standard characters) for "egg product; processed eggs; pre-mixed eggs; pre-mixed eggs for use in the food service industry; pre-pasteurized eggs for use in the food service industry" in International Class 29.
- Reg. No. 3873838 for CHEF SELECT (standard characters) for "sushi" in International Class 30.
- Reg. No. 4156570 for CHEF'S SELECT (standard characters) for "spices and seasonings" in International Class 30.
- Reg. No. 4282252 for CHEF SELECT (standard characters) for "beef" in International Class 29

The partial refusals based on the other three cited registrations were eventually withdrawn, but the Examining Attorney has maintained a final refusal, with respect to the item of goods "sushi" in the subject application, based on Reg. No. 3873838. Applicant has divided all of the other goods except "sushi" into a divisional application, Serial No. 79975390, which has been approved for publication.<sup>1</sup>

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<sup>1</sup> The goods covered by divisional application Serial No. 79975390 are as follows:  
Class 29: Meat, sausage, not live fish, poultry and game; meat products, namely, fish burger patties and turkey burger patties, hamburger, unroasted hamburger patties, bacon, ham, corned beef, smoked pork

### III. There Is No Likelihood of Confusion Between Applicant's Mark and The Cited Mark

#### A. The Cited Mark Should Be Accorded A Very Narrow Scope of Protection

The determination of likelihood of confusion under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). In a given case, any of the *du Pont* factors may play a more prominent, and even dispositive, role in the analysis. *Kellogg Co.v. Pack'em Enters. Inc.*, 951 F.2d 330, 21 USPQ2d 1142, 1145 (Fed. Cir. 1991). Here, the absence of a likelihood of confusion between the two marks is evident from a consideration of the dissimilarity of the marks, when considered in conjunction with the proven commercial and conceptual weakness of the cited mark.

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chop, minced meat, meatballs, savory spreads consisting of meat, meat preserves, beef brawn, luncheon meats, roast beef, beef steak, meat loaf, Leberkäse being sausage product made from combinations of ham, pork, veal and liver, cold cuts of roast beef, cold cuts of roast pork, turkey breast; sausage products, namely, chorizo, salami, cold cuts of salami, sausage preserves, bologna-type sausage, sausage and meat salad, pastrami, fried sausage, liver sausage, black pudding; fish preserves; chicken products, namely, chicken breast filets, chicken wings, chicken roast, chicken legs, chicken sticks, chicken nuggets, savory spreads consisting of chicken, cold cuts of roast chicken; game products, namely, salami from deer, ham from wild boar, salami from wild boar game goulash, game preserve; eggs; milk products excluding ice cream, ice milk and frozen yoghurt; preserved, frozen, dried, cooked and processed fruits and vegetables; sandwich fillings consisting primarily of meat, sausage, fish, poultry, game, sea food, potatoes, eggs, preserved, frozen, dried, cooked and processed fruits or vegetables and/or cheese, included in this class; delicatessen salads consisting primarily of meat, not live fish, poultry, game, sausage, sea food, potatoes, eggs, preserved, frozen, dried, cooked and processed fruits or vegetables and/or cheese, included in this class; semi-prepared meals, ready-to-eat meals and frozen food, in particular consisting solely or essentially of meat, fish, poultry, game, seafood, potatoes, prepared fruit, vegetables and/or cheese, included in this class; fresh fruits and vegetables, in chopped form or in the form of prepared salads.

Class 30: Farinaceous food pastes for human consumption; rice; cereal products, namely, breakfast cereals, processed cereals; sauces for use as condiments; spices; delicatessen salads, consisting essentially of farinaceous food pastes, rice and cereals, including with added processed fruit and/or vegetables; semi-prepared meals and ready-to-eat meals, in particular consisting solely or essentially of pasta and/or rice and/or wholemeal products and/or baked goods and/or confectionery, included in this class; frozen food, in particular consisting solely or essentially of pasta and/or rice and/or wholemeal products and/or baked goods and/or confectionery, included in this class; pasties being pastries; pizzas; pizza products, namely, pizza sauce, pizza dough, pizza crust mixes, pizza crusts, pizza flour, pizza spices, prepared pizza meals, topped pizza, frozen pizza, small pizza pastries; farinaceous food pastes, including being ready-to-serve and/or frozen, for human consumption; snacks made from cereals; muesli snacks; edible sandwiches; hot dog sandwiches; turnovers; sandwiches; filled rolls, namely, sandwich wraps; filled baguettes.

Class 31: Fresh fruits and vegetables; fresh leaf lettuces.

The record shows that the word “Chef” is defined as a cook, and “Select” means chosen in preference over others, or carefully chosen. *See* dictionary.com definitions attached to March 15, 2016 Response to Office Action as Exhibits 1 and 2 (TSDR pp. 9 and 13). Therefore, in connection with sushi, which is defined as “a Japanese dish consisting of small balls or rolls of vinegar-flavored cold cooked rice served with a garnish of raw fish, vegetables or egg” (see the entry from the Oxford dictionary of US English attached to January 8, 2018 Request for Reconsideration, Exhibit 1; TSDR p. 14 ), “Chef Select” means that the contents of the sushi dish were carefully or preferentially chosen by a cook or preparer.

Moreover, the record shows that the phrase “Chef Select” is widely used in connection with sushi. Applicant has made of record extensive third-party use of the term “Chef Select” and/or “Chef’s Select” specifically in connection with sushi. These third party uses, appearing in both product designations and product descriptions, indicate widespread usage and understanding of “Chef Select” as indicating that the contents of these sushi products of numerous parties have been carefully or preferentially selected by the preparer. Specifically, the following third-party uses are of record:

### **Uses in Connection With Sushi**

January 8, 2018 Request for Reconsideration, Exhibit 2; TSDR pp. 15 – 42

1. “Chef’s Select sushi rolls” -- provided by Aqua Blue, Atlanta, Georgia.
2. “Chef’s Select Sushi With Roll” – provided by Kiriba Sushi, Seattle, WA; [www.zmenu.com](http://www.zmenu.com)
3. “Chef Select Sushi” – name of one of the Sushi Platters provided by Megu Midtown, New York, NY; <http://ordering.orders2.me>
4. “Chef’s Select Sushi” – name for a group of sushi choices on the menu of Shiro Sushi, Plano, Texas; [www.doordash.com](http://www.doordash.com)

5. “Chef select sushi of today’s catch” – provided by Noodle Café Zen, New York, NY; [www.delivery.com](http://www.delivery.com)
6. “chef select 5 pieces of assorted sushi” – provided by Kabuki Fashion Sushi & Grill, Knoxville, TN; [www.beyondmenu.com](http://www.beyondmenu.com)
7. “two chef’s select veggie rolls” – provided by Kemuri, Little Rock, Arkansas; [www.bitesquad.com](http://www.bitesquad.com)
8. “5 pcs of fresh chef’s select assorted sushi” – provided by Sumo Japanese Restaurant, Wenatchee, Washington; [www.sumowen.com](http://www.sumowen.com)
9. “eight pieces of chef select sushi” – provided by Suma Sushi, New York, NY; [www.seamless.com](http://www.seamless.com)
10. Sushi Deluxe “of chef’s select” – provided by Sumo Japanese Steak House & Sushi Bar, Virginia Beach, VA; [www.sumosteakhouse.com](http://www.sumosteakhouse.com)
11. Sushi Sampler: “Four pieces of chef select nigari sushi” – provided by Takara Japanese Restaurant, Medfield, MA; [www.takarajapaneserestaurant.com](http://www.takarajapaneserestaurant.com)
12. lunch special combining a special or premium roll “with 5 pieces of chef select sushi” – provided by Crazy Rock’N Sushi, Los Angeles, CA; <http://vivalafoodies.com>
13. Sushi Combo: “Six pieces of nigari and a cucumber roll. Chef’s select served with miso soup” – provided by Kyoto Sushi, Winnetka, IL; [www.grubhub.com](http://www.grubhub.com)

April 2, 2018 Request for Suspension, Remand and Reconsideration, Exhibits 1 and 2; 7 TTABVUE 11 – 55

14. Sushi Mori: “8 Pieces Chef Select Nigiri” – provided by 8 At Luk Fu, Hanover, Maryland.
15. “8 pcs of chef select sushi” – provided by Jade Palace, Farmingdale, New York; <https://eat24hours.com>
16. Sushi Sample: “Sakura Chef Select” – provided by Sakura Café, Annapolis, Maryland; <https://apps.wixrestaurants.com>
17. “Chef Select Platters”, including nigiri platter – provided by Oceans Sushi & Raw Bar, Oceans at Arthurs, Little Rock, Arkansas.
18. “chef select roll” – provided by Saisake Asian Bistro and Sushi Bar, Newport News, Virginia; <http://saisakiasianbistro.com>
19. Sushi Entree: “2 chef select roll” – provided by Over Seas Asian Bistro, Suffern, New York; <https://menuwithprice.com>

20. “Chef Select – Tuna, yellow tail, salmon, [etc.]” -- provided by Kabuki Romanza Japanese Steakhouse & Sushi Bar, Amarillo, Texas; [www.facebook.com/KabukiRomanza](http://www.facebook.com/KabukiRomanza)
21. Sushi Entree: “Our Chef select...” – provided by Beijing Hunan, Pottstown, Pennsylvania; [www.beijingshunanpottstown.com](http://www.beijingshunanpottstown.com)
22. Kashi Sushi: “10 pcs. of chef’s select sushi...” -- provided by Kashi Japanese, Rockville Centre, New York.
23. Sushi and Sashimi Deluxe: “7 pieces of chef select sushi...” -- provided by Nosoo Hibachi Sushi Sake, Allen, Texas; [www.krave24.com](http://www.krave24.com)
24. Sushi Boat: “assorted mix of chef’s select nigiri...” -- provided by Koreana Asian Grill & Sushi, Toledo, Ohio; [www.koreanatoledo.com](http://www.koreanatoledo.com)
25. Sushi Dinner: “9 pcs. & 1 special roll (chef’s select)” – provided by Noda Hibachi & Sushi, White Plains, New York.
26. Sushi Sample: “4 pcs. assorted chef’s select sushi” -- provided by Rainbow King, Bel Air, Maryland; <http://eat24hrs.com>
27. Chirashi Don: “”Chef select of assorted sashimi and vegetable over sushi rice” -- provided by Shari Sushi Bar, Chicago, Illinois; [www.amazon.com](http://www.amazon.com)
28. Regular Sushi Combination: “6 pcs. assortment of chef’s select raw and cooked sushi” - - provided by Koibito Sushi, Olympia, Washington; [www.menuwithprice.com](http://www.menuwithprice.com)
29. Sushi Dinner: “All of fish are chef’s select” – Yang Ming, Salem, New Hampshire; [www.i-want-sushi.com](http://www.i-want-sushi.com)
30. Waraii Boat: From the sushi bar: “chef’s select the freshest fishes of the day!” -- provided by Waraii Sushi, Oceanside, California; [www.waraiisushi.com](http://www.waraiisushi.com)

The record also shows third-party use and active, separately owned registrations of “Chef Select” and/or “Chef’s Select” in connection with other food products, as follows:

### **Registrations for Food Products**

April 14, 2017 Response to Letter of Suspension, Exhibit 1; TSDR pp. 17 - 30

CHEF SELECT – Reg. No. 4282252 for “beef” in Class 29.

CHEFS SELECT – Reg. No. 3769435 for egg products in Class 29.

CHEF’S SELECT – Reg. No. 4156570 for “spices and seasonings” in Class 30.

CHEF'S SELECTION – Reg. No. 2196641 for “rice” in Class 30.

QUORN CHEF'S SELECTION – Reg. No. 5139376 for numerous food products in Classes 29 and 30 including meat substitutes, egg substitutes, seasoning mixes for sauces, and cooking sauces.

J.T.M. CHEF'S SELECTION – Reg. No. 4542285 for cheese sauces in Class 30.

OLIVARI CHEF'S SELECTION – Reg. No. 5050375 for “edible oils for use in the commercial food service industry” in Class 29.

BUTTERBALL EVERY DAY CHEF SELECTS --- Reg. No. 4464017 for various food products including meats and poultry products in Class 29.

PREGEL 5-STAR CHEF PASTRY SELECT – Reg. No. 4597905 for various food products in Classes 29 and 30 including fillings and pastes made of egg for use in making pastries.

LA SELECTION DU CHEF and Design – Reg. No. 42284429 for goods including grain seeds in Class 31.

#### **Uses in Connection with Food Products**

April 14, 2017 Response to Letter of Suspension, Exhibit 2; TSDR pp. 31 – 79

Chef's Select cinnamon sticks – website listing for product of Gel Spice Co., Inc., Bayonne, NJ, owner of Reg. No. 4156570 above; [www.amazon.com](http://www.amazon.com)

Chef's Selection sashimi – website listing for sashimi items offered by Yonaka Modern Japanese Restaurant, Las Vegas, NV; [www.yonakajapaneserestaurant.com](http://www.yonakajapaneserestaurant.com)

Chef Select catfish fillets and loins – website listing for fish product of Consolidated Catfish Producers, LLC, Isola, MS; [www.countryselect.com](http://www.countryselect.com)

Chef's Selection rice – website listing for rice product from C&F Gold product line of C&F Foods Inc., City of Industry, CA, owner of Reg. No. 2196641 above.

Chef's Selections cheese dips and sauces – online press release for products of JTM Food Group, Harrison, OH, owner of Reg. No. 4542285 above.

Chef Selects turkey breast & gravy – website listing for product of Butterball LLC, owner of Reg. No. 4464017 above.

Pregel 5 Star Chef Pastry Select coconut flavor product – website listing for product of PreGel America, owner of Reg. No. 4597905 above.

Botticelli Chef Select blended oil – website listing for products of Botticelli Foods, Hauppauge, NY; [www.botellicellifoods.com](http://www.botellicellifoods.com)

Chef Select soy sauce – website listing for product of Lum Kum Kee of City of Industry, CA; <http://us.lkk.com>

Chef Select lemons – website listing for product of Limoniera Company, Santa Paula, CA; [www.limoneiralifestyles.com](http://www.limoneiralifestyles.com)

Mesclun Chef's Select salad greens – website listing for a product of Satur Farms; [www.saturfarms.com](http://www.saturfarms.com)

Chef Select natural flavors – website listing for products of Savoury Systems International, Inc. of Branchburg, NJ; <http://savourysystems.com>

Chef Select food store – website listing for store in Halethorpe, MD; [www.mapquest.com](http://www.mapquest.com)

Chef Select 5 Day Plan prepared meals – website listing for prepared meals provided by Taste Haven, Long Island, NY; [www.tastehaven.com](http://www.tastehaven.com)

Healthy Chef Select prepared meals -- website listing for prepared meals provided by Healthy Chef Creations, Winter Park, FL; [www.healthychefcreations.com](http://www.healthychefcreations.com)

Chef's Select Meals prepared meals -- website listing for prepared meals provided by Homemade Healthy Meals, San Luis Obispo, CA; <http://homemadehealthymeals.com>

Chef Select Packages prepared meals – website listing for prepared meals provided by Green Turtle Market, Indian Harbour Beach, FL.

Chef Select Menu – prepared food items offered at Lockkeepers restaurant, Valley View, OH; [www.lockkeepers.com](http://www.lockkeepers.com)

Chef Select oysters – oyster item offered at The Oceanaire Seafood Room restaurant; [www.facebook.com/OceanaireSeafoodRoom](http://www.facebook.com/OceanaireSeafoodRoom)

Chef Select dessert assortment – menu items offered at Bandar Restaurant, San Diego, CA; [www.tripadvisor.com](http://www.tripadvisor.com)

January 8, 2018 Request for Reconsideration, Exhibit 3; TSDR pp. 43 – 60

Chef Select Blends – a product line of flavor blends, such as Szechwan type flavor -- provided by Savoury Systems International, Inc., Branchburg, NJ; <https://savourysystems.com>

Baby back pork ribs “with our chef’s select spices” – provided by The Gateway Restaurant and Lodge, Three Rivers, California; <http://places.singleplatform.com>

Pork tenderloin medallions “with the chef’s select seasonings” – provided by The Cellar Creekside Restaurant, Gravette, Arkansas; <https://restaurantguru.com>

Pit-beef Black Angus eye round of beef rubbed with “Chef’s select seasonings and grilled” -- provided by Chefs2Go Corporate Catering, Baltimore, MD; [www.chefs2gocatering.com](http://www.chefs2gocatering.com)

Aloo palak “simmered in chef’s select spices” – provided by Diva Indian Bistro, Somerville, Massachusetts; [www.doordash.com](http://www.doordash.com)

Crab Mac “N Cheese “baked with aged white cheddar béchamel and chef select spices” – provided by Pratt Street Ale House, Baltimore, Maryland; [www.doordash.com](http://www.doordash.com)

Aloo gobhi “quicktossed with chef select spices” – provided by Dosa Factory, Cambridge, Massachusetts; [www.dosa-factory.com](http://www.dosa-factory.com)

Chef carved Marinated tenderloin “marinated in the chef’s select seasonings” – provided by The Catering Company, Green Bay, Wisconsin.

Chicken pocket “blended with...the chef’s select choice of tempting seasonings” – provided by Master Wok, Lee’s Summit and Independence, Missouri; [www.kcmasterwok.com](http://www.kcmasterwok.com)

These third-party uses and registrations of “Chef Select” in connection with food products, and especially the uses of said term in connection with the product designations and descriptions of third-party sushi products, makes it abundantly clear that “Chef Select” in connection with sushi is very weak both conceptually and commercially. Such evidence of third-party use in connection with the same goods is “powerful on its face” when assessing the strength or weakness of a given term as a trademark. *See Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1674 (Fed. Cir. 2015). *See also* 4 J. Thomas McCarthy, *Trademarks and Unfair Competition*, § 23:48 at 23-269 (5th ed. 2018) (“A portion of a mark may be ‘weak’ in the sense that such portion is descriptive, highly suggestive, or is in common use by many sellers in the market”).

Where, as in the present case, the evidence shows that a given term is highly suggestive and frequently used by numerous parties with respect to a given type of product, and therefore very weak as a trademark for such goods, the mark is only entitled to a very limited scope of protection. *See Coach/Braunsdorf Affinity, Inc. v. 12 Interactive, LLC*, 110 USPQ2d 1458 (TTAB 2014):

It seems both logical and obvious to us that where a party chooses a trademark which is inherently weak, he will not enjoy the wide latitude of protection afforded the owners of strong trademarks. Where a party uses a weak mark, his competitors may come closer to his mark than would be the case with a strong mark without violating his rights. The essence of all we have said is that in the former case there is not the possibility of confusion that exists in the latter case.

110 USPQ2d at 1478, *quoting Sure-Fit Products Company v. Saltzson Drapery Company*, 254 F.2d 158, 117 USPQ 295, 297 (CCPA 1958). *See also In re Huncke & Jochheim*, 185 USPQ 188, 189 (TTAB 1975):

[U]nlike in the case of an arbitrary or unique designation, the addition of other matter to a highly suggestive or descriptive designation, whether such matter be equally suggestive or even descriptive, or possibly nothing more than a variant of the term, may be sufficient to distinguish between them so as to avoid confusion in trade.

Moreover, when the evidence shows that a given mark is very weak with respect to a particular type of product or service, that mark has a limited scope of protection with respect to marks that add significant other matter to the weak term for use in connection with the identical type of product or service. *See Juice Generation, supra* (PEACE & LOVE for restaurant services and PEACE LOVE AND JUICE and Design for juice bar services); *Coach/Braunsdorf, supra* (PERKS and PERKSPOT both for discount buying services); *Plus Products v. Natural Organics, Inc.*, 204 USPQ 773 (TTAB 1979) (PLUS and NATURE'S PLUS both for vitamins); *In re Hartz Hotel Services, Inc.*, 102 USPQ2d 1150 (TTAB 2012) (GRAND HOTEL and GRAND HOTELS NYC, both for hotel services); *In re Hamilton Bank*, 222 USPQ 174 (TTAB 1984) (KEY (stylized) and KEYCHECK, both for banking services).

**B. The Marks Are Dissimilar When Compared in Their Entireties**

In view of the proven weakness of “Chef Select” in connection with sushi, and the narrow scope of protection to which said term is entitled in connection with such goods, the differences between Applicant’s stylized, composite mark:



and “Chef Select” are clearly sufficient to avoid likelihood of confusion in this case. These differences include the following:

Applicant’s mark also includes the phrase “To Go”. Even if this phrase is descriptive of the goods, it still adds a connotation to the commercial impression of applicant’s mark that is not found in the cited marks. *See Juice Generation*, supra at 1676 (holding that the ruling below paid insufficient heed to the differing connotations of three-word phrase “PEACE LOVE AND JUICE” for juice bar services, and two-word phrase “PEACE AND LOVE” for restaurant services, in view of the evidence of third-party use and registrations of “PEACE AND LOVE” marks in the restaurant field). *See also Hartz Hotel*, supra (no likelihood of confusion between GRAND HOTEL and GRAND HOTELS NYC, both for hotel services).

Moreover, in the present case, Applicant’s mark is a stylized design mark, which further distinguishes the mark in ways that are, again, particularly significant given the highly suggestive nature of the shared term “Chef Select”. *See In re Hamilton Bank*, 222 USPQ 174 (TTAB 1984) (given the weak nature of “Key” for banking and financial services, “[t]he design element of applicant's mark further reduces the chances of reasonable purchasers being confused into thinking these two marks identify services emanating from the same source.”) (no likelihood of confusion between “KEY (stylized)” as follows: **KEY** , and “KEYCHECK”, both for banking services).

Here, in Applicant’s stylized design mark, the stylized “to go”, which appears in relatively eye-catching bright green, is visually interposed between “chef” and “select”, i.e. “to go” immediately follows to the right of “chef” on the same line, with “select” on a separate line below. The impression of the stylized “to go” appearing after “chef” and before “select” is

further reinforced by the curved gray lines that surround the term “to go” and which open up at the left side of said term where the word “chef” appears. In view of this aspect of Applicant’s word-and-design mark, the word element of Applicant’s mark could just as easily be perceived as “chef to go select” as “chef select to go”, which further distinguishes the mark from the cited mark “Chef Select” *per se*.

Additionally, Applicant’s mark also includes a white arrow or triangle in the middle of the letter “o” in “Go”, resembling a stylized version of a “play button”, itself a well-known cultural symbol connoting music, and digital music in particular. *See e.g.*, the Wikipedia article on media control symbols that is of record (April 14, 2017 Response to Letter of Suspension, Exhibit 3; TSDR pp. 80 – 84), which illustrates the “play” symbol on page 3 (TSDR p. 82) and notes, on page 4 (TSDR p. 83), that “[i]n popular culture, the play triangle is arguably the most widely used of the media control symbols. In many ways, the symbol has become synonymous with music culture and more broadly the digital download era.” Therefore, the inclusion of the play-button symbol adds yet another connotation to applicant’s mark that is completely absent from the cited mark consisting of the words “Chef Select” *per se*.

#### IV. **Conclusion**

Given the very weak nature of “Chef Select” for sushi and the very narrow scope of protection to which it is entitled, Applicant’s mark makes a substantially different commercial impression and is not likely to cause confusion with the mark “Chef Select” *per se*. Applicant therefore respectfully submits that the refusal should be reversed and that the subject application be passed for publication.

Dated: July 2, 2018

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