

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86715749
LAW OFFICE ASSIGNED	LAW OFFICE 116
MARK SECTION	
MARK	https://tmng-al.uspto.gov/resting2/api/img/86715749/large
LITERAL ELEMENT	LIGHTHOUSE KETTLE CHIPS
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_73056166-20161203124942142141_.Lighthouse_Reconsideration.pdf
CONVERTED PDF FILE(S) (7 pages)	\\TICRS\EXPORT17\IMAGEOUT17\867\157\86715749\xml1\RFR0002.JPG
	\\TICRS\EXPORT17\IMAGEOUT17\867\157\86715749\xml1\RFR0003.JPG
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DESCRIPTION OF EVIDENCE FILE	ARGUMENTS AND EXHIBITS
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Maria Parjus/
SIGNATORY'S NAME	Maria Parjus
SIGNATORY'S POSITION	Attorney of record, FL bar member
SIGNATORY'S PHONE NUMBER	9542185909
DATE SIGNED	12/03/2016
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMATION SECTION	
SUBMIT DATE	Sat Dec 03 12:58:55 EST 2016
	USPTO/RFR-XX.X.XX.XXX-201

TEAS STAMP

61203125855930545-8671574
9-570df75d9fee032efaabd82
87d465ce5e1bce6d93a5d4c61
2aac88159f0e7-N/A-N/A-201
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PTO Form 1960 (Rev 10/2011)

OMB No. 0651-0050 (Exp 07/31/2017)

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. **86715749** LIGHTHOUSE KETTLE CHIPS(Standard Characters, see <https://tmng-al.uspto.gov/resting2/api/img/86715749/large>) has been amended as follows:

EVIDENCE

Evidence in the nature of ARGUMENTS AND EXHIBITS has been attached.

Original PDF file:

[evi_73056166-20161203124942142141_.. Lighthouse Reconsideration.pdf](#)

Converted PDF file(s) (7 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

[Evidence-7](#)

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Maria Parjus/ Date: 12/03/2016

Signatory's Name: Maria Parjus

Signatory's Position: Attorney of record, FL bar member

Signatory's Phone Number: 9542185909

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the owner's/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the owner/holder in this matter: (1) the owner/holder has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 86715749

Internet Transmission Date: Sat Dec 03 12:58:55 EST 2016

TEAS Stamp: USPTO/RFR-XX.X.XX.XXX-201612031258559305

45-86715749-570df75d9fee032efaabd8287d46

5ce5e1bce6d93a5d4c612aac88159f0e7-N/A-N/

A-20161203124942142141

The Examiner attorney has determined that Applicant's mark, **LIGHTHOUSE KETTLE CHIPS**, should be refused registration because of a likelihood of confusion with the marks **LITEHOUSE** (Registration No. 1862633), **LITEHOUSE** (Registration No. 1861925), **LITEHOUSE FOODS** (Registration No. 3493786) and **LITEHOUSE** (Registration No. 3412858). Applicant respectfully submits this response to indicate that the Applicant's mark should be granted registration.

a. Previous Registered Trademark

The Applicant is owner of registered mark No. 4782948 **"Lighthouse Kettle Company"** under the international class No. 029 for French fried potatoes; fried potatoes; fruit chips; instant potatoes; plantain chips; potato chips; potato chips made from natural potato; potato crisps; potato crisps and chips; potato flakes; potato fries; potato puffs; potato skins; potato sticks; potato-based gnocchi; potato-based snack foods; processed potatoes; processed sweet potatoes; shrimp chips; soy chips; vegetable chips; and yucca chips, that have been on the market since May 1st, 2014.

If this Office has already accepted the registration of the Applicant's previous mark **"Lighthouse Kettle Company"** (Registration No. 4782948) without advancing any Office Action related with the similarity or likelihood of confusion with **LITEHOUSE** (Registration No. 1862633), **LITEHOUSE** (Registration No. 1861925), **LITEHOUSE FOODS** (Registration No. 3493786) and **LITEHOUSE** (Registration No. 3412858), it raises the question of the probability that actual harm will come to the general consumer as to being confused with the registration of Applicant's mark.

During the publication process of mark No. 4782948, the Applicant did not receive any opposition from the owner of marks **LITEHOUSE** (Registration No. 1862633), **LITEHOUSE** (Registration No. 1861925), **LITEHOUSE FOODS** (Registration No. 3493786) and **LITEHOUSE** (Registration No. 3412858). To this day, the owner of the aforementioned marks has not ever contacted the Applicant or filed an opposition or mark infringement lawsuit.

b. The marks differ in appearance and commercial impression

To determine if two marks are likely to be confused by the consumer, the Examiner attorney must look to the appearance, sound, connotation and commercial impression of the marks in question. In this case, the Examiner attorney has established that one feature of the Applicant's mark (the word "lighthouse") may be more significant or dominant in creating a commercial impression, and that the similar sound is sufficient to support its likeliness to the registered marks.

However, in order to evaluate if similarity between the marks exists, one should not dissect the mark into parts. See, e.g., J. Thomas McCarthy, *Trademarks and Unfair Competition* Section 23.41 (4th ed): "A mark should not be dissected or split up into its component parts and each part then compared with corresponding parts of the conflicting

mark to determine the likelihood of confusion. It is the impression that the mark as a whole creates on the average reasonably prudent buyer and not the parts thereof, that is important”. On *Shen Mfg. Co. v. Ritz Hotel, Ltd.*, 393 F.3d 1238, 1243 (Fed. Cir. 2004) it was stated that “the disclaimed elements of a mark, however, are relevant to the assessment of similarity. This is so because confusion is evaluated from the perspective of the purchasing public, which is not aware that certain words or phrases have been disclaimed.”

On *Juice Generation, Inc. v. GS Enterprises LLC*, 794 F. 3d 1334 (Fed. Cir. July 20, 2015) “The Board declared that “PEACE LOVE” is the “dominant” portion of that combination, compared that portion to GS’s “PEACE & LOVE” phrase, found that they are “virtually identical,” and then simply added that “the additional disclaimed word ‘JUICE’ . . . do[es] not serve to sufficiently distinguish” Juice Generation’s mark from GS’s marks. GS Enters., 2014 WL 2997639, at *5–6. That analysis is inadequate. It does not display any consideration of how the three-word phrase in Juice Generation’s mark conveys a distinct meaning or connotation in consumers’ minds from the two-word phrase used by GS. In this sense, in the Applicant’s mark — even when the words “Kettle Chips” have been disclaimed— they should not be disregarded and it should not be assumed that a customer would only be impressed by the word “Lighthouse”. On the contrary, the words “Kettle Chips” show the buyer the kind of product the Applicant is advertising and the means of how it was cooked. Therefore, the Applicant’s mark, considered as a three-word combination and not the word Lighthouse isolated, is what will give the potential buyers the commercial impression of the product advertised.

Moreover, the mere presence of a same term in the Applicant’s mark and in the registered marks is not sufficient to create a likelihood of confusion. See *Tektronix, Inc. v. Daktronics, Inc.*, 189 USPQ 693 (CCPA 1976); *In re Bed & Breakfast Registry*, 229 USPQ 818 (Fed. Cir. 1986); *Colgate-Palmolive Co. v. Carter-Wallace, Inc.*, 167 USPQ 529 (CCPA 1970), *In re Ferrero*, 178 USPQ 167,168 (CCPA 1973). There is no absolute rule that an applicant cannot register a mark which incorporates the entirety of a previously registered mark. See *In re Merchandising Motivation, Inc.*, 184 USPQ 364 (TTAB 1974). In the Applicant’s case, it is not even the exact same term that is being used, as the intentional misspelling of the word “lighthouse” in the registered marks creates sufficient distinctiveness for the buyer to know they are not made by the same companies.

The sound resemblance of the words “lighthouse” and “litehouse” used in the Applicant’s mark and the registered marks, respectively, is not sufficient to establish their similarity. When comparing marks, one should consider not only the similarities but the dissimilarities between them. See *In re Electrolyte Laboratories, Inc.*, 16 USPQ 2d 1239 (Fed. Cir. 1990). As proven above, the consumers’ commercial impression does not come out of comparing side by side portions of the marks, but comparing the marks as a whole, including the assessment of all words, logos, colors, and even spelling. Therefore, when comparing the dissimilarities of these marks, one should find that they are even more pronounced and unique than the similarities between them, establishing their distinctiveness and not their likelihood in appearance.

c. Relatedness of Goods and Trade Channel too wide and generic.

The Examiner attorney has established that the goods listed in the Applicant's mark and the registered marks are related because the trade channel is similar and has obtained evidence that same entities commonly produce the relevant goods and market the goods under the same mark. However, this is not sufficient to establish likelihood of confusion.

First, when dealing with goods listed under international class 029, the trade channel will always be similar, as the general and most common place to market this kind of goods are supermarkets and grocery stores. On *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) the court stated that "A wide variety of products, not only from different manufacturers within an industry but also from diverse industries have been brought together in the modern supermarket for the convenience of the consumer. The mere existence of such an environment should not foreclose further inquiry into the likelihood of confusion arising from the use of similar marks on any goods so displayed". In fact, the variety of goods, labels, and brands throughout a supermarket is now so extensive that the general public is more than aware that simply the fact that they are being sold in the same retail establishments does not indicate that the goods are generated from the same producer. See *Interstate Brands Corp. v. Celestial Seasonings, Inc.* 576 F.2d 926, 928, 198, USPQ 151, 152-153 (CCPA 1978); *Morgan Creek Prods. Inc v. Foria Int'l Inc.* 91 USPQ2d 1134, 1142 (TTAB 2009); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1330 54 USPQ2d 1894, 1899-1900 (Fed. Circ. 2000).

Supermarkets and grocery stores is the most common place to find confusingly similar packages and brands for same products, and their prices is the major distinctiveness that differentiate the generic brands for the commercial brands. To asses if actual confusion is likely to happen, *we do not ask whether the most ignorant member of society would be confused, but rather whether a typical buyer would be confused.* See Eugene R. Quinn, Jr. Trademark Infringement – Likelihood of Confusion (www.sans.edu) August, 2007. So, a typical buyer that commonly goes to the supermarket is aware of likelihood and similarities between marks and packaging, and should not be confused between the registered marks and the Applicant's mark in which its dissimilarities overcome their similarity in pronunciation.

Furthermore, the Applicant's goods and the goods related with the registered marks are not to be found in the same aisles of a supermarket or grocery store, unlike the goods showed by the Examiner Attorney, which are often displayed next to each other or in the same aisle. The registered marks' goods must be kept refrigerated (See Exhibit "A") at all times, so they must be displayed in the store's refrigerators, making it even more unlikely to cause confusion among customers.

d. Real Intent

As mentioned before the Applicant is owner of registered mark No. 4782948 "Lighthouse Kettle Company" for which it has been commercializing its bags of potato chips, without

intending to infringe or presume any right or advantage that the owner of registered marks LITEHOUSE (Registration No. 1862633), LITEHOUSE (Registration No. 1861925), LITEHOUSE FOODS (Registration No. 3493786) and LITEHOUSE (Registration No. 3412858) may have over the current market. This same intention will be used when commercializing the intending mark “Lighthouse Kettle Chips”.

In no scenario is the Applicant’s intention to deceive or confused the general public making them believe the products are from the same source. On the contrary, the Applicant’s marketing target is aimed to single and individual size potato chips bags that are not usually paired with dips and salsas, but consumed by themselves.

CONCLUSION

Given that (a) the Applicant already has a mark registered and in commerce similar to the intending mark and it proceed without any refusal from this Office (b) the actual differences in appearance and commercial impression between the marks, (c) the trade channel for this kind of goods is too wide and generic to presume likelihood, (d) the general consumer subject to these products are aware of the similarities between brands (e) the intention of the Applicant is not to deceive the public but to commercialize single, individual size potato chips bags; the Applicant therefore respectfully submits that the rejection be overturned and that the present application be approved for publication.

EXHIBIT "A"

OUR BRANDS

OUR PRODUCTS

OFFERS



RECIPES



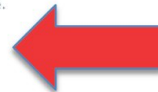
Avocado Dip

★★★★★ [0 REVIEWS](#) [WRITE A REVIEW](#)

WHERE TO BUY

This thick and creamy dip is the perfect blend of real avocado, sour cream, lime juice, spices and a little kick from chopped jalapenos. It is a great dip for chips, and a natural complement for Mexican food, or to spread on a BLT instead of mayonnaise.

Gluten Free **Keep Refrigerated**



INGREDIENTS

CANOLA OIL, SOUR CREAM (CULTURED MILK & CREAM, WHEY, SKIM MILK POWDER, MODIFIED CORN STARCH, MALTODEXTRIN, SODIUM PHOSPHATE, SODIUM CITRATE, GUAR GUM, CARRAGEENAN GUM, CALCIUM SULFATE, LOCUST BEAN GUM, ENZYMES), WATER, AVOCADO PULP, EGG YOLK, SUGAR, JALAPENO PEPPERS, DISTILLED VINEGAR, SALT, DRIED ONION, GARLIC, CIDER VINEGAR, SPICES, LIME JUICE CONCENTRATE, MALTODEXTRIN, CULTURED DEXTROSE, NATURAL FLAVOR, XANTHAN GUM, GUAR GUM, RED PEPPER, MUSTARD FLOUR, YELLOW 6, YELLOW 5, BLUE 1, CALCIUM DISODIUM EDTA (ADDED TO PROTECT QUALITY). Contains Egg, Milk. * The nutrition information and ingredients contained in this list are based on our current available data and may change from time to time. Please refer to the product package for the most accurate information.

OUR BRANDS

OUR PRODUCTS

OFFERS



RECIPES

DIPS



French Onion Dip

★★★★★ [0 REVIEWS](#) [WRITE A REVIEW](#)

WHERE TO BUY

This dip is full of robust, oven-roasted onion flavor with the perfect balance of natural sweetness. Perfect for adding a fresh twist to potato chips or veggies!

Gluten Free **Keep Refrigerated**



INGREDIENTS

CANOLA OIL, CULTURED BUTTERMILK, SOUR CREAM (CULTURED MILK & CREAM, WHEY, SKIM MILK POWDER, MODIFIED CORN STARCH, MALTODEXTRIN, SODIUM PHOSPHATE, SODIUM CITRATE, GUAR GUM, CARRAGEENAN GUM, CALCIUM SULFATE, LOCUST BEAN GUM, ENZYMES), WATER, ROASTED ONION, EGG YOLK, DRIED TOASTED ONION, DISTILLED VINEGAR, SALT, SUGAR, NATURAL FLAVOR, DRIED GREEN ONION, XANTHAN GUM, GUAR GUM, MODIFIED CORN STARCH, LACTIC ACID, CARAMEL COLOR. Contains Egg, Milk. * The nutrition information and ingredients contained in this list are based on our current available data and may change from time to time. Please refer to the product package for the most accurate information.

OUR BRANDS

OUR PRODUCTS

OFFERS



RECIPES

DIPS



Ranch Dip

★★★★★ [0 REVIEWS](#) [WRITE A REVIEW](#)

WHERE TO BUY

Just the right mix of sour cream, buttermilk, garlic and onion. Add a savory kick to your chips and veggies!

Keep Refrigerated Gluten Free

INGREDIENTS

CANOLA OIL, CULTURED BUTTERMILK, WATER, SOUR CREAM (CULTURED MILK & CREAM, WHEY, SKIM MILK POWDER, MODIFIED CORN STARCH, MALTODEXTRIN, SODIUM PHOSPHATE, SODIUM CITRATE, GUAR GUM, CARRAGEENAN GUM, CALCIUM SULFATE, LOCUST BEAN GUM, ENZYMES), EGG YOLK, SUGAR, DISTILLED VINEGAR, SALT, DRIED ONION, NATURAL FLAVOR, GARLIC, DRIED CARROTS, MODIFIED CORN STARCH, DRIED GARLIC, SPICES, XANTHAN GUM, GUAR GUM, DRIED GREEN ONION, LACTIC ACID. Contains, egg, milk. * The nutrition information and ingredients contained in this list are based on our current available data and may change from time to time. Please refer to the product package for the most accurate information.

OUR BRANDS

OUR PRODUCTS

OFFERS



RECIPES

DIPS



Salsa

★★★★★ [0 REVIEWS](#) [WRITE A REVIEW](#)

WHERE TO BUY

Delicious, fresh made salsa with just the right mix of spices and heat. This dip is perfect as a dip or an ingredient for tasty Mexican dishes! This item contains a medium heat.

Gluten Free Low Carb Keep Refrigerated

INGREDIENTS

TOMATOES, WATER, TOMATO PASTE, ONIONS, DISTILLED VINEGAR, SUGAR, JALAPENO PEPPERS, SALT, LEMON JUICE CONCENTRATE, SPICES, XANTHAN GUM, GUAR GUM, DRIED BELL PEPPERS, MALTODEXTRIN, CULTURED DEXTROSE, CHILI PEPPERS, GARLIC. * The nutrition information and ingredients contained in this list are based on our current available data and may change from time to time. Please refer to the product package for the most accurate information.

OUR BRANDS

OUR PRODUCTS

OFFERS



RECIPES

DIPS




Spinach Parmesan Dip

★★★★★ [0 REVIEWS](#) [WRITE A REVIEW](#)

WHERE TO BUY

Our Spinach Parmesan is an excellent deli-style dip with just the right amount of spinach and a smooth cheese taste. Try this treat on veggies, chips or as a sandwich spread!

 Keep Refrigerated



INGREDIENTS

CANOLA OIL, WATER, CULTURED BUTTERMILK, SOUR CREAM (CULTURED MILK & CREAM, WHEY, SKIM MILK POWDER, MODIFIED CORN STARCH, MALTODEXTRIN, SODIUM PHOSPHATE, SODIUM CITRATE, GUAR GUM, CARRAGEENAN GUM, CALCIUM SULFATE, LOCUST BEAN GUM, ENZYMES), EGG YOLK, PARMESAN CHEESE (MILK, CULTURE, SALT, ENZYMES), SPINACH, MODIFIED CORN STARCH, NATURAL FLAVOR (WATER, SKIM MILK POWDER, ANHYDROUS MILKFAT, SALT, CULTURED WHEY, SUGAR, SODIUM PHOSPHATE, NATURAL FLAVORS, XANTHAN GUM), SALT, SPICES, SUGAR, DRIED GARLIC, LACTIC ACID, DISTILLED VINEGAR, MALTODEXTRIN, CULTURED DEXTROSE, DRIED ONION, SOY SALICE (WATER, WHEAT, SOYBEANS, SALT, LACTIC ACID), XANTHAN GUM, CARRAGEENAN GUM, CELERY SALT. Contains Egg, Milk, Soy, Wheat. * The nutrition information and ingredients contained in this list are based on our current available data and may change from time to time. Please refer to the product package for the most accurate information.