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

Proceeding	86718038
Applicant	Sultana Distribution Services Inc.
Applied for Mark	SUMTHIN' SWEET
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**IN THE UNITED STATES PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Applicant/Appellant: Sultana Distribution Services Inc.
Serial No.: 86718038
Filing Date: 08/07/2015
Mark: SUMTHIN' SWEET
Law Office: 109
Examining Attorney: Black, Bianca

APPLICANT'S REPLY TO EXAMINING ATTORNEY'S APPEAL BRIEF

Commissioner for Trademarks
P.O. Box 1450
Alexandria, VA 22313-1450

Applicant/Appellant Sultana Distribution Services Inc. (hereinafter "Applicant) hereby submits its Reply to the Examining Attorney's Appeal Brief.

The primary issue before the Trademark Trial and Appeal Board is whether Applicant's application for "SUMTHIN' SWEET," for use in connection with "Candies; Candy" is likely to cause confusion with the mark "SOMETHING SWEET, INC." U.S. Registration No. 3985042 for "Wholesale bakery shop" (hereinafter "registered mark"). The Examining Attorney's main argument is that candies commonly emanate from wholesale bakery shops; therefore, there is a likelihood of confusion. The Examining Attorney's argument fails because wholesale bakery shops are not a source or manufacture of candy.

The basis of the Examining Attorney's argument is that a shop ("store") sells goods; therefore, if a particular good falls within a category of products that a shop could sell then the shop is a source, not merely just a retailer of that good. If this were true, then any convenience store, grocery store, or online retailer who owns a registered mark for the name of their store

would have exclusive rights to the mark for all the particular goods that could be sold in their store. For example, Amazon or Costco (assuming that the marks are not famous for dilution purposes) would have trademark rights for everything from bedsheets to tires under their respective marks (again assuming that the marks were not famous). Moreover, an owner of a nonfamous mark for a grocery store would be able to exclude others from using the mark from everything from coffee to gift cards- in fact, according to the Examining Attorney the grocery store owner would not even need to sell the particular good as other grocery stores could sell the good. Simply stated, a shop is not a provider, manufacture, or source of a good, but rather a service that allows for the purchase of certain goods. Consumers do not identify a shop as a source of a good, rather a seller of goods. This is one of the intrinsic errors in the Examiner Attorney's arguments. In this particular case, the registered mark is not any particular good but a service for the sale of baked goods to the wholesale market (i.e. the baked goods do not necessarily have to be the products or manufactured by the shop).

Furthermore, contrary to the Examining Attorney's argument, the evidence submitted by the Examining Attorney does not demonstrate wholesale bakery shops as the source of candy, the examples of the shops shown by the Examining Attorney are all for retail establishments. Though some establishments may provide retail and wholesale services, the registered mark in question is only for wholesale purposes. What the Examining Attorney is really arguing is that in some instances it is possible for candies to be sold at a retail bakery shop, and in turn, in some instances retail bakery shops can also provide wholesale bakery services; therefore, candies emanate from wholesale bakery shops.

The Examining Attorney also argues that the goods need not be identical. Applicant's argument is that they are mutually exclusive (though the registered mark is not for a particular

good but rather a service- compare candies with the service provided by a wholesale bakery shop). Simply stated as argued in Applicant's brief, by definition, a candy cannot be a baked good because candies cannot be baked. The Examining Attorney also references alleged wholesale bakery shops "stocked with gifts galore. Beautiful cake stands ... paper goods, cards, and candies!!!" Does the Examining Attorney advocate that wholesale bakery shops are also a source of paper goods and gifts; therefore, the mark would also cause confusion with paper goods and gifts? Moreover, in the examples referenced by the Examining Attorney, the mere fact that the websites mention candy aside from baked goods is further evidence that candy does not fall under baked goods (i.e. if candies did then it would not be necessary for the websites to identify candy separately from bakery items).

For these reasons and as further argued in Applicant's Appeal Brief, it is respectfully requested that the Refusal of Registration under Trademark Act Section 2(d) be reversed.

Date: March 28, 2017

Respectfully submitted,
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