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

Proceeding	87408691
Applicant	Three Twins Organic, Inc.
Applied for Mark	MAXINE'S BY THREE TWINS ICE CREAM
Correspondence Address	EUGENE M PAK WENDEL ROSEN BLACK & DEAN LLP 1111 BROADWAY 24TH FL OAKLAND, CA 94607 UNITED STATES tmdocket@wendel.com, epak@wendel.com 510-834-6600
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Attachments	Request for Consolidation and Extension.pdf(175981 bytes )
Filer's Name	Eugene M. Pak
Filer's email	tmdocket@wendel.com, epak@wendel.com
Signature	/Eugene M. Pak/
Date	10/28/2018

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEALS BOARD**

In re Trademark Application of  
Three Twins Organic, Inc.  
  
Applicant

EX PARTE APPEAL

Trademarks: 1) MAXINE'S; and 2)  
MAXINE'S BY THREE TWINS ICE  
CREAM and Design

Serial Nos. 87386324 and 87408691

Filed: March 27, 2017 and April 12, 2017

**APPLICANT'S REQUEST FOR CONSOLIDATION OF APPEALS  
AND EXTENSION OF TIME TO FILE BRIEF<sup>1</sup>**

**I. INTRODUCTION**

Pursuant to Sections 1214 and 1203.02(d), Applicant Three Twins Organic, Inc. dba Three Twins Ice Cream (hereafter "Applicant" or "Three Twins") respectfully requests the following:

- 1) Consolidation: that the two appeals for its marks **MAXINE'S** (Serial No. 87386324) and **MAXINE'S BY THREE TWINS ICE CREAM & Design** (Serial No. 87408691) be consolidated into a single appeal with the same briefing schedule, and
- 2) Extension: a first 60-day extension of time to file its appeal brief to and including January 8, 2019.

As explained in more detail below, good cause exists for these requests because the appeals involve similar issues and Applicant needs additional time to seek and negotiate a trademark consent agreement, among other reasons.

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<sup>1</sup> Although the appeals are not yet consolidated, of course, Applicant has included in the caption both marks and both Serial Numbers. Applicant is filing this identical Request in both appeals.

## II. BACKGROUND

Applicant Three Twins Ice Cream is a maker of ice cream based in Petaluma, California. Three Twins was founded in 2005 by Neal Gottlieb. At the time, Neal, his twin brother Carl, and Carl's wife Liz, who is also a twin, were sharing an apartment, hence the name of the company.

A graphic of the three twins is shown below, which is part of one of the marks on appeal, and is the subject of its own federal registration THREE TWINS ICE CREAM and Design (Reg. No. 3408923). This logo is on every ice cream product made by the Three Twins.



Three Twins began selling its organic ice cream at local stores and farmers' markets, and it quickly became popular. The company grew and now sells its ice cream in grocery stores and ice cream stores.

In or about 2017, Three Twins decided to create a new family-size ice cream brand, which would be priced economically for families and sold in large 1.5 quart sizes. Mr. Gottlieb named this line of family-friendly ice creams after his mother, Maxine Gottlieb. On March 27 and April 12, 2017, respectively, Three Twins filed intent-to-use applications to register two marks: 1) MAXINE'S in standard characters (Serial No. 87386324) and 2) MAXINE'S BY THREE TWINS ICE CREAM and Design which featured a graphic image of Ms. Gottlieb and also incorporated Three Twin's name and the three twins logo (Serial No. 87408691), shown

below. Both applications were for a single product, namely, “ice cream.” Three Twins only makes ice cream products.



The USPTO issued Office Actions against both of Three Twins’ “MAXINE’S” applications, refusing registration of the marks under Section 2(d) of the Lanham Act. The USPTO cited the registered mark MAXINE’S (Reg. No. 4219905) owned by **Hi Performance Health Pty. Ltd.** (hereafter “Hi Performance Health”). Hi Performance Health is an Australian company that makes nutritional and dietary products. The cited MAXINE’S registration covers the following goods:

Class 5:

- Dietetic foods and beverages adapted for medical use and meal replacement substances, namely, cookies, bars and drinks;
- sports nutrition products, namely, dietary and nutritional supplements for endurance sports, and electrolyte replacement solutions;
- food supplements; medicated and pharmaceutical sweets;
- food and nutritional supplements being muscle-building food supplements;
- protein, vitamin and mineral supplements in powder or liquid form;
- dietetic preparations for muscle-building, namely, dietetic cookies, bars, meal replacement drinks and high protein drinks adapted for medical use

Class 29: [Milk; soya milk]

Class 30: Chocolates; cookies; sweets; granola-based snack bars

Notably, these goods do *not* include ice cream. In addition, the class 29 goods (milk and soya milk) were deleted from the registration in August 2018.

Nonetheless, the USPTO continued to refuse registration and issued a Final Office Action against the applications earlier this year. Applicant filed Notices of Appeal as to both applications as well as Requests for Reconsideration which were denied last month by the USPTO Examining Attorney, and the appeals resumed.

### **III. ARGUMENT**

Pursuant to TBMP Section 1214, Applicant respectfully requests that its two appeals be consolidated for the purpose of briefing and final decision because the appeals involve common issues of law and fact. Both of the marks which are the subjects of the appeals contain the term “MAXINE’S” and are for “ice cream.” Also, the mark cited against both marks is the same, namely, Hi Performance Health’s MAXINE’S registered mark.

In addition, the current deadlines to file Applicant’s briefs in the appeals are November 4, 2018 and November 9, 2018, respectively. Pursuant to TBMP Section 1203.02(d), Applicant respectfully requests that these dates be consolidated to November 9 and then extended for sixty (60) days from that date, to and including **January 8, 2019**.

Good cause exists for an initial 60 day extension, rather than a 30 day extension, for the following reasons. First, Applicant has contacted Hi Performance Health about this matter and is attempting to enter into a trademark consent agreement with Hi Performance Health. Second, Hi Performance Health is an Australian company located in the State of Victoria, Australia, and Applicant anticipates that it will take time to negotiate and finalize a consent due the time difference (18 hours) and possible need to involve Australian counsel. Third, Applicant and its counsel have been and/or are currently busy with other matters as Mr. Gottlieb recently returned

