

ESTTA Tracking number: **ESTTA1041947**

Filing date: **03/12/2020**

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

Proceeding	88002149
Applicant	Outer Aisle Gourmet, LLC
Applied for Mark	CAULITHINS
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Submission	Reply Brief
Attachments	T18B64 CAULITHINS Reply Brief filed 3-12-2020.pdf(76212 bytes )
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Appl. No. : 88/002,149  
Mark : CAULITHINS  
Applicant : Outer Aisle Gourmet, LLC  
Law Office : 113  
Examiner : Timothy Schimpf  
Docket No. : O218.T18B64

**Applicant's Reply Brief**

This Reply Brief is being timely filed within twenty days of the Examining Attorney's Appeal Brief filed February 21, 2020. In a Final Office action, the Examining Attorney refused Registration of the mark CAULITHINS on the grounds that it is merely descriptive under the United States Trademark act 15 U.S.C. § 1052(e). Applicant respectfully submits that this rejection should be reversed because the mark CAULITHINS is fanciful, arbitrary, or suggestive and not merely descriptive.

**Summary of Argument**

The Examining Attorney has not shown that the prefix "cauli" functions as an abbreviation or immediately suggests cauliflower. The Examining Attorney has also not shown that the composite mark CAULITHINS is not a suggestive mark.

A. The prefix cauli does not function as an abbreviation

Cauli is not an abbreviation because it is not substantially synonymous with the word cauliflower. "As a general rule, an acronym or initialism cannot be considered descriptive unless the wording it stands for is merely descriptive of the goods or services, and the acronym or initialism is readily understood by relevant purchasers to be 'substantially synonymous' with the merely descriptive wording it represents." TMEP 1209.03(h). In *Baroness Small Estates, Inc. v. Am. Wine Trade, Inc* the TTAB held that CMS was not substantially synonymous with the grape varieties cabernet, merlot, and syrah and therefore not merely descriptive for wine. 104 USPQ2d 1224, 1230-31 (TTAB 2012). The Examining Attorney points to the standard of determining whether a mark consisting of an abbreviation will be considered substantially synonymous, yet the standard is not met here. The standard is, (1) the applied-for mark is an abbreviation,

initialism, or acronym for specific wording; (2) the specific wording is merely descriptive of applicant's goods and/or services; and (3) a relevant consumer viewing the abbreviation, initialism, or acronym in connection with applicant's goods and/or services will recognize it as an abbreviation, initialism, or acronym of the merely descriptive wording that it represents. *See In re Thomas Nelson, Inc.*, 97 USPQ2d at 1715-16 (citing *In re Harco Corp.*, 220 USPQ 1075, 1076 (TTAB 1984)). The first factor here is not even met. The Examining Attorney has provided no evidence that the prefix "cauli" is an abbreviation for "cauliflower", let alone the fact that cauli combined with another term means cauliflower thins. In the Examiner Brief, the Examining Attorney argues that "[t]he evidence of record shows that 'cauli is used as an abbreviation for 'cauliflower' in the context of vegetable snack foods and prepared vegetable meals.'" (Examiner Brief page 4 emphasis added). But the evidence of record does not show cauli means cauliflower or functions as an abbreviation. At best the evidence shows that people have successfully used the prefix cauli combined with other words as a mark for an array of different products.

The Examining Attorney provides recent advertising and blog posts, none of which definitively establishes that "cauli" is an abbreviation for cauliflower. Furthermore, almost all the advertising and blog posts combine the prefix cauli with another term such as cauli and rice or cauli and Crispy Cauli Parm Chips. The fact that the prefix cauli must be combined with another term in order for the term cauli to make sense is exactly the "imagination, thought, or perception to reach a conclusion as to the nature of those goods or services" required when a mark is considered suggestive. *See* TMEP 1209.01(a).

**B. CAULITHINS is a suggestive mark not a descriptive one**

"The fact that a term is derived from individual generic words or even a listing of generic words does not necessarily make the derived term generic. Nor does the fact that one can figure out the derivation of a term by seeing it in the context of the generic words make that term generic." *Baroness Small Estates, Inc. v. Am. Wine Trade, Inc.*, 104 U.S.P.Q.2d 1224 (T.T.A.B. 2012). "[A] suggestive term differs from a descriptive term, which immediately tells something about the goods or services. *See In re George Weston Ltd.*, 228 USPQ 57 (TTAB 1985).

A mark must not only be descriptive but must be ‘merely’ descriptive of the goods or services to which it relates. See TMEP § 1209.01(b). The term Cauli is completely arbitrary. It does not serve as an abbreviation nor does it tell consumers what is in the goods. Furthermore, voluminous case law supports Applicant’s assertion. Rather than address case law cited by Applicant in its Appeal Brief, the Examining Attorney continues to cite advertising material that shows the prefix “Cauli” added to various foods has been used as a mark over the internet. To reiterate, the TTAB and Federal Circuit have routinely found that when an Applicant combines arguably descriptive words, a suggestive and protectable mark may be created. *See In re George Weston Ltd* 228 USPQ 57 (TTAB 1985) (SPEEDI BAKE only vaguely suggestive of a desirable characteristic of frozen dough); *In re Pennwalt Corp* 73 USPQ 317 (TTAB 1972) (DRI-FOOT as a mark was suggestive, not descriptive, of deodorant for feet in part); *In re Getz Found* 227 USPQ 571, 572 (TTAB 1985) (finding the mark MOUSE HOUSE not descriptive but fanciful for mice figurine displays). In short, Applicant is entitled to protection of its Trademark on the Principal Register. Applicant has combined words in a novel, uncharacteristic and suggestive way that entitles it to protection by the USPTO.

March 12, 2020

Respectfully submitted,

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