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

Ex Parte Appeal - Serial No.	90742568
Appellant	Pen LLC
Applied for mark	BENNY'S ORIGINAL MEAT STRAWS
Correspondence address	JOHN W. GOLDSCHMIDT, JR. SMITH BUKOWSKI, LLC 1050 SPRING STREET SUITE 1 WYOMISSING, PA 19610 UNITED STATES Primary email: uspto@smithbukowski.com Secondary email(s): jgoldschmidt@smithbukowski.com 610-685-1600
Submission	Request for remand/amendment
Attachments	20250916_Motion_to_Remand_Design.pdf(2513774 bytes)
Filer's name	John W Goldschmidt Jr
Filer's email	uspto@smithbukowski.com, jgoldschmidt@smithbukowski.com
Signature	/John W Goldschmidt Jr/
Date	10/27/2025

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

In re Application of: PEN LLC	:	
Serial No: 90/742,568	:	**Proceeding No.** 90742568
Filed: May 28, 2021	:	
Mark: BENNY'S ORIGINAL MEAT STRAWS and Design	:	

REQUEST FOR CONTINUED SUSPENSON
AND REMAND OF
APPLICATION FOR FURTHER EXAMINATION

Pursuant to 37 C.F.R. §2.242(d)(1) and Trademark Trial and Appeal Board Manual of Procedure §1207.02, Applicant, by and through its counsel, hereby requests the continued suspension of the above-captioned Appeal of the refusal to register Applicant's mark (hereinafter "Applicant's Mark") which is the subject of United States Trademark Application Serial No. 90/742,568 (hereinafter "Applicant's Application"), and to remand Applicant's Application for further consideration in view of the additional evidence submitted herewith.

On February 26, 2024, the Examining Attorney denied Applicant's Request for Reconsideration of the final refusal to register Applicant's Mark under Section 2(d) of the Lanham Trademark Act, 15 U.S.C. §1052(d) in view of United States Trademark Registration No. 4,288,724 of the mark "BENNY'S BRAND" (hereinafter the "Cited Registration") owned by National Packing (hereinafter the "Registrant").

On April 30, 2024, Applicant instituted Cancellation No. 92085079 to cancel the

Cited Registration (hereinafter the "Cancellation"), and on May 2, 2024, the Trademark Trial and Appeal Board (hereinafter the "Board") suspended this Appeal pending the disposition of the Cancellation.

The parties to the Cancellation have come to an agreement to dismiss the Cancellation provided that the Examining Attorney, upon consideration of the Consent Agreement attached hereto as Exhibit A, withdraws the Cited Registration as a bar to the registration of Applicant's Mark.

Applicant respectfully submits that good cause is present in support of granting this request to continue the suspension of this Appeal and to remand the Application for further consideration by the Examining Attorney in view of the attached Consent Agreement. The Trademark Trial and Appeal Board Manual of Procedure provides that:

> Examples of circumstances that have been found to constitute good cause for a remand for additional evidence include the following:
>
> (1) The evidence was not previously available.
>
> ********
>
> In addition, because a consent agreement offered in response to a refusal to register under Trademark Act § 2(d), 15 U.S.C. § 1052(d), is inherently difficult and time-consuming to obtain, and may be highly persuasive of registrability, the Board will grant a request to suspend and remand for consideration of a consent agreement if the request, accompanied by the consent agreement, is filed at any time prior to the rendering of the Board's final decision on the appeal.

Trademark Trial and Appeal Board Manual of Procedure § 1207.02 (Note citations omitted).

Such is the case here where not only was the Consent Agreement not previously available for the Examining Attorney's consideration, but also that the Consent Agreement "may be highly persuasive of registrability." *Id.* Accordingly, Applicant respectfully requests that the Board grant Applicant's request.

This request is made in the interests of justice, not for the purposes of undue delay,

and granting Applicant's request should result in economies of time and expense to the Trademark Trial and Appeal Board as well as to the parties to the Cancellation.

WHEREFORE, for the foregoing reasons, Applicant respectfully requests that the Board continue the suspension of this Appeal and remand the Application for further consideration by the Examining Attorney in view of the Consent Agreement submitted herewith.

Respectfully submitted,

/John W. Goldschmidt Jr./
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Attorneys for Applicant
PEN LLC

Date: October 27, 2025

EXHIBIT A

TRADEMARK CONSENT AGREEMENT

This Trademark Consent Agreement (the "Consent Agreement"), effective as of the date of the last signature below (the "Effective Date"), is made by and between **PEN LLC**, a Pennsylvania Limited Liability Company, having a place of business at 121 Jalyn Drive, New Holland, Pennsylvania 17557 ("PEN"), and **National Packing Corp.**, a New York Corporation, having a place of business at 538 Craven Street, Bronx, New York 10474 ("National Packing"). The foregoing may be referred to each individually as a "Party" and collectively as the "Parties."

WHEREAS, National Packing is the owner of United States Trademark Registration No. 4,288,724 for "BENNY'S BRAND", for use in connection with blood sausage; preserved meats and sausages; uncooked sausages (the "National Packing Registration");

WHEREAS, on May 28, 2021, PEN filed United States Trademark Application Serial No. 90/742,528 for the mark "BENNY'S ORIGINAL MEAT STRAWS" for use in connection with meat based snack foods (the "PEN Word Mark Application");

WHEREAS, on May 28, 2021, PEN filed United States Trademark Application Serial No. 90/742,568 for the design mark

, consisting of the words "BENNY'S ORIGINAL MEAT STRAWS" and design for use in connection with meat based snack foods (the "PEN Design Mark Application");

WHEREAS, the PEN Word Mark Application and PEN Design Mark Application are collectively referred to herein as the "PEN Applications";

WHEREAS, the U.S. Patent and Trademark Office has refused registration of the PEN Applications based on a likelihood of confusion with the National Packing Registration; and

WHEREAS, after considering the marketplace realities, the Parties agree that there is no likelihood of confusion caused by the concurrent registration and use of their respective marks in connection with their respective goods and services, and desire to avoid any conflict with the other party's use and registrations of its marks;

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions set forth herein, the Parties agree as follows:

1. The Parties believe and agree that consumer confusion is unlikely to occur from the concurrent use and registration of their respective marks in accordance with the terms and conditions of this Consent Agreement. The Parties base this conclusion on the difference between the Parties' marks, the differences in the nature of the Parties' goods and/or services, the difference between the target consumers of the Parties' goods and/or services, and the past coexistence of the Parties without any instances of actual confusion. Therefore, National Packing consents to PEN's use and registration of the PEN Applications for PEN's applied-for goods and/or services as reflected in U.S. Trademark Applications Serial Nos. 90/742,528 and 90/742,568.

2. The Parties agree to work together to address and avoid any possible future consumer confusion. In the unlikely event that either Party becomes aware of any actual confusion, each Party agrees that it will notify the other Party in writing and agree on steps to eliminate or avoid such confusion.

3. The Parties agree to enter into and sign such further documents and agreements as may be necessary to effect and further the intent of this Consent Agreement.

4. This Consent Agreement shall inure to the benefit of and be binding upon and enforceable against each Party and its respective parents, subsidiaries, affiliates, successors and assignees.

5. This Consent Agreement constitutes the entire agreement, and no modification shall be effective unless in writing executed by both Parties. If any one or more of the clauses of this Consent Agreement is found to be invalid or unenforceable, the validity of the remaining clauses shall not be affected, and the Parties agree to replace the clauses with valid and enforceable clauses through mutual agreement in writing.

6. Each Party represents that the person signing on its behalf below is authorized to bind the Party and make this a binding and enforceable Consent Agreement.

IN WITNESS WHEREOF, the Parties hereto execute this Consent Agreement.

NATIONAL PACKING CORP.

By: _____

Name: Juan Echeverry

Title: President

PEN LLC

By: _____

Name: Travis C. Cunliff

Title: COO & Managing Member