ESTTA Tracking number: **ESTTA837198**

Filing date: **08/02/2017**

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

Petition for Cancellation

Notice is hereby given that the following party has filed a petition to cancel the registration indicated below.

Petitioner Information

Name	Tillamook County Creamery Association		
Entity	Corporation	Citizenship	Oregon
Address	4185 Highway 101 North Tillamook, OR 97141 UNITED STATES		

Attorney information	John M. McCormack Kolisch Hartwell, P.C. 520 SW Yamhill Street, Suite 200 Portland, OR 97204 UNITED STATES Email: docketing@khpatent.com, heidi@khpatent.com Phone: 5032246655

Registration Subject to Cancellation

Registration No.	4148108	Registration date	05/22/2012
Registrant	Finnegan Frost, Inc. Suite B 696 Gage Blvd Richland, WA 99352 UNITED STATES Email: tylerborders@gmail.com		

Goods/Services Subject to Cancellation

Class 035. First Use: 2011/10/15 First Use In Commerce: 2011/11/18
All goods and services in the class are subject to cancellation, namely: Self-serve frozen yogurt shop services

Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)

Attachments	20170802_Petition_for_Cancellation_TCA428CAN.pdf(1611035 bytes)

Signature	/John M. McCormack/
Name	John M. McCormack
Date	08/02/2017

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

TILLAMOOK COUNTY CREAMERY ASSOCIATION, Petitioner,	)	
v.	)	Cancellation No. _____
FINNEGAN FROST, INC., Registrant.	)	

PETITION FOR CANCELLATION OF REG. NO. 4,148,108

In the matter of trademark Reg. No. 4,148,108 for Farmstyle Frozen Yogurt for self-serve frozen yogurt shop services, registered on May 22, 2012 to Finnegan Frost, Inc. of Suite B, 696 Gage Blvd., Richland, Washington (registrant), Tillamook County Creamery Association, an Oregon corporation located and doing business at 4185 Highway 101 North, Tillamook, Oregon 97141, believes it will be damaged by Reg. No. 4,148,108, and hereby petitions for cancellation thereof.

The grounds for the cancellation are as follows:

1. On November 7, 2016, Tillamook County Creamery Association filed trademark application Serial No. 87/229,178 for the mark FARMSTYLE for cheese and yogurt. A copy of Tillamook County Creamery Association's application is attached as Exhibit 1.

2. On November 7, 2016, Tillamook County Creamery Association filed trademark application Serial No. 87/229,174 for the mark FARMSTYLE CUT for cheese. A copy of Tillamook County Creamery Association's application is attached as Exhibit 2.

3. By Office action dated February 2, 2017, Trademark Examining Attorney Marco Wright refused registration of Tillamook County Creamery Association's application on the ground that Tillamook County Creamery Association's mark FARMSTYLE, as applied to cheese and yogurt, so resembles the mark Farmstyle Frozen Yogurt, which is the subject of Reg. No. 4,148,108, as to be likely to cause confusion, or to cause mistake, or to deceive. A copy of the Office action is attached as Exhibit 3, and a copy of Reg. No. 4,148,108 is attached as Exhibit 4.

4. By Office action dated February 2, 2017, Trademark Examining Attorney Marco Wright also refused registration of Tillamook County Creamery Association's application on the ground that Tillamook County Creamery Association's mark FARMSTYLE CUT, as applied to cheese, so resembles the mark Farmstyle Frozen Yogurt, which is the subject of Reg. No. 4,148,108, as to be likely to cause confusion, or to cause mistake, or to deceive. A copy of the Office action is attached as Exhibit 5.

5. To the best of Tillamook County Creamery Association's knowledge, registrant is listed in the records of the PTO as the current owner of Reg. No. 4,148,108.

6. On information and belief, Tillamook County Creamery Association alleges that registrant is no longer using the mark Farmstyle Frozen Yogurt, and does not intend to resume use, and has, therefore, abandoned the mark.

7. The continued existence of Reg. No. 4,148,108 is inconsistent with the right Tillamook County Creamery Association possesses in its marks FARMSTYLE for cheese and yogurt and FARMSTYLE CUT for cheese, and therefore, Tillamook County Creamery Association is damaged by the continued presence of Reg. No. 4,148,108 with

the presumptions afforded registrant under the Lanham Act Section 7(b).

8. Tillamook County Creamery Association will be damaged by the continued registration of Reg. No. 4,148,108 because the registration prevents publication and registration of Tillamook County Creamery Association's marks FARMSTYLE and FARMSTYLE CUT.

WHEREFORE, Tillamook County Creamery Association prays that Reg. No. 4,148,108 be canceled, and that the Board grant such other relief as it deems applicable.

The petition fee of $400.00 is being paid via EFS-Web.

DATED this 2nd day of August, 2017.

Respectfully submitted,

KOLISCH HARTWELL, P.C.

_____/John M. McCormack/_____
John M. McCormack
Registration No. 26,948
of Attorneys for Petitioner
520 S.W. Yamhill Street, Suite 200
Portland, Oregon 97204
Telephone: (503) 224-6655
Facsimile: (503) 295-6679

CERTIFICATE OF ELECTRONIC SUBMISSION

I hereby certify that this correspondence, is being filed electronically with the United States Patent & Trademark Office Trademark Trial and Appeal Board on August 2, 2017.

_____/Heidi Dutro/_____
Heidi Dutro
Date of Signature: August 2, 2017

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PETITION FOR CANCELLATION was served on Registrant via first class mail, in an envelope addressed to:

Finnegan Frost, Inc.
696 Gage Blvd, Suite B
Richland, Washington

on August 2, 2017.

/John M. McCormack/
John M. McCormack, Reg. No. 26948
Attorney for Petitioner

Exhibit 1

Heidi Dutro

From: TEAS@uspto.gov
Sent: Monday, November 07, 2016 5:30 PM
To: Heidi Dutro
Subject: TCA428 Serial number 87229178: Received Your Trademark/Service Mark Application, Principal Register

1. **YOUR MARK:** FARMSTYLE (Standard Characters, mark.jpg)
   The literal element of the mark consists of FARMSTYLE.
   The mark consists of standard characters, without claim to any particular font, style, size, or color.

2. **YOUR SERIAL NUMBER:** We have received your U.S. Trademark Application and assigned serial number '87229178' to your submission. A summary of your application data is provided at the bottom of this message and serves as your official filing receipt. Please keep a copy of this information for your records. All correspondence concerning the application should reference your assigned serial number.

   Please read all of the important information below. Not every mark is registrable with the USPTO and we do not refund the application filing fee(s) if a registration does not ultimately issue.

3. **RECEIVING E-MAIL COMMUNICATIONS/FILING DOCUMENTS ON-LINE:** Because you have authorized receipt of correspondence by e-mail, please make sure that your server will accept USPTO e-mail and not treat it as SPAM. If you must submit correspondence to us, please use the Trademark Electronic Application System (TEAS) forms, available at http://www.uspto.gov/trademarks/teas/index.jsp. Applicants who filed their application online using the lower-fee TEAS RF application form must (1) continue to submit certain documents online using TEAS, including responses to Office actions (see http://www.uspto.gov/trademarks/teas/required_teas_filings.jsp for a complete list of these documents); (2) accept correspondence from the USPTO via e-mail throughout the examination process; and (3) maintain a valid e-mail address. TEAS RF applicants who do not meet these three requirements must submit an additional processing fee of $50 per international class of goods/services. However, in certain situations, authorizing an examiner's amendment by telephone will not incur this additional fee.

4. **KEEP YOUR ADDRESS CURRENT IN USPTO RECORDS:** We do not extend filing deadlines due to a failure to receive USPTO mailings/e-mailings. You must update the correspondence and/or owner's address if a postal address and/or e-mail address changes, using the form(s) available at http://www.uspto.gov/trademarks/teas/correspondence.jsp.

5. **WARNING ABOUT UNSOLICITED COMMUNICATIONS:** You may receive trademark-related communications from private companies not associated with the USPTO. These communications frequently display customer-specific information, including your USPTO serial number or registration number and owner name, and request fees for trademark-related services, such as monitoring, listings in international publications, and document filing. None of the companies offering these services are affiliated with the USPTO or any other federal agency. All official correspondence will be from the "United States Patent and Trademark Office" in Alexandria, VA, and if by e-mail, specifically from the domain "@uspto.gov." Please consult the "Warning" page on the Trademarks section of the USPTO's website for further information about unsolicited

communications and to view representative examples of them. For general information on filing and maintenance requirements for trademark applications and registrations, including fees required by law, please consult www.uspto.gov, contact the TrademarkAssistanceCenter@uspto.gov or telephone 1-800-786-9199.

6. **LEGAL EXAMINATION PROCESS:** Your application is now pending examination. In approximately 3 months, your application will be assigned to a USPTO examining attorney for review. The application cannot mature into a registration unless all legal requirements are met, and many applications never satisfy these requirements and therefore never register. The overall process can take up to 18 months.

7. **CHECK STATUS AND REVIEW DOCUMENTS OR YOUR APPLICATION MAY BE UNINTENTIONALLY ABANDONED:** You **must** check the status and review all documents associated with your application at least every 3-4 months using Trademark Status and Document Retrieval (TSDR), available at http://tsdr.uspto.gov/.

   Promptly e-mail the TrademarkAssistanceCenter@uspto.gov or telephone 1-800-786-9199 (select option #1) if an Office action (letter from the USPTO) or notice has issued for your application that you did not receive or do not understand. Failure to respond timely to any Office action or notice may result in the abandonment of your application, requiring you to pay an additional fee to have your application revived even if you did not receive the Office action or notice.

8. **FILING ERRORS:** If you discover an error in the application data, you must file a Voluntary Amendment at http://www.uspto.gov/trademarks/teas/miscellaneous.jsp. Do **not** submit any proposed amendment to TEAS@uspto.gov, because the TEAS technical support team may not make any data changes. Please wait approximately 7 days after the filing date of your application to submit a Voluntary Amendment in order to allow for initial upload of your application data into the USPTO database. The assigned examining attorney will determine the acceptability of any Voluntary Amendment during examination. Not all errors may be corrected. For example, if you submitted the wrong mark or if the proposed correction would be considered a material alteration to your original filing, it will not be accepted. In this situation, your only recourse would be to file a new application, with a new fee and no refund of your original filing fee.

9. **REQUEST FOR REFUND AND/OR CANCELLATION:** Since your application has already been assigned a serial number, please do not contact TEAS@uspto.gov to request a refund or to cancel the filing. We will only cancel the filing and refund the filing fee if the application does not meet minimum filing requirements. The fee is a processing fee that the USPTO does not refund, even if your mark does not proceed to registration.

   In the limited situation where you inadvertently filed identical applications, one immediately after the other, because no confirmation of the first filing was received, please provide both serial numbers to the technical support team at TEAS@uspto.gov.

10. **SelectUSA:** The United States represents the largest, most dynamic marketplace in the world and is an unparalleled location for business investment, innovation, and commercialization of new technologies. The U.S. offers tremendous resources and advantages for those who invest and manufacture goods here. Through SelectUSA, our nation works to promote and facilitate business investment. SelectUSA provides information assistance to the international investor community; serves as an ombudsman for existing and potential investors; advocates on behalf of U.S. cities, states, and regions competing for global investment; and counsels U.S. economic development organizations on investment attraction best practices. To learn more about why the United States is

the best country in the world to develop technology, manufacture products, deliver services, and grow your business, visit SelectUSA.gov or call +1-202-482-6800.

SUMMARY OF APPLICATION DATA FOLLOWS:

APPLICATION DATA: You have filed a **Trademark/Service Mark Application** for registration on the **Principal Register** using a **TEAS RF** application form.

The applicant, Tillamook County Creamery Association, a corporation of Oregon, having an address of
4185 Highway 101 North
Tillamook, Oregon 97141
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class _____: cheese and yogurt
Intent to Use: The applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the identified goods/services.

The applicant's current Attorney Information:
John M. McCormack and David P. Cooper; Pierre C. Van Rysselberghe; Charles H. DeVoe; James R. Abney; Edward B. Anderson; Shawn J. Kolitch; Owen W. Dukelow; Peter D. Sabido; Thomas J. Romano; David C. Bourgeau; Kimberly N. Fisher of Kolisch Hartwell, P.C. 520 SW Yamhill Street, Suite 200
Portland, Oregon 97204
United States
5032246655(phone)
5039729115(fax)
docketing@khpatent.com (authorized)
The attorney docket/reference number is TCA428.
The applicant's current Correspondence Information:
John M. McCormack
Kolisch Hartwell, P.C.
520 SW Yamhill Street, Suite 200
Portland, Oregon 97204
5032246655(phone)
5039729115(fax)
docketing@khpatent.com;heidi@khpatent.com (authorized)
E-mail Authorization: I authorize the USPTO to send e-mail correspondence concerning the application to the applicant or applicant's attorney at the e-mail address provided above. I understand that a valid e-mail address must be maintained and that the applicant or the applicant's attorney must file the relevant subsequent application-related submissions via the Trademark Electronic Application System (TEAS). Failure to do so will result in an additional processing fee of $50 per international class of goods/services.

A fee payment in the amount of $275 has been submitted with the application, representing payment for 1 class(es).

Declaration

The signatory believes that: if the applicant is filing the application under 15 U.S.C. § 1051(a), the applicant is the owner of the trademark/service mark sought to be registered; the applicant is using the mark in commerce on or in connection with the goods/services in the application; the specimen(s) shows the mark as used on or in connection with the goods/services in the application; and/or if the applicant filed an application under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e), the applicant is entitled to use the mark in commerce; the applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the goods/services in the application. The signatory believes that to the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Declaration Signature

Signature: /John M. McCormack/ Date: 11/07/2016
Signatory's Name: John M. McCormack
Signatory's Position: Attorney of record, California bar member

---

Thank you,

The TEAS support team
Mon Nov 07 20:29:55 EST 2016
STAMP: USPTO/BAS-75.150.34.209-20161107202955721739-87229178-570a168e6deadd6a7ff7d5cd803682619c6e03f66e7788d39eaf53a908bb5c8e4-CC-5240-20161107201918234939

Exhibit 2

Heidi Dutro

From: TEAS@uspto.gov
Sent: Monday, November 07, 2016 5:29 PM
To: Heidi Dutro
Subject: TCA442 Serial number 87229174: Received Your Trademark/Service Mark Application, Principal Register

1. **YOUR MARK:** FARMSTYLE CUT (Standard Characters, mark.jpg)
   The literal element of the mark consists of FARMSTYLE CUT.
   The mark consists of standard characters, without claim to any particular font, style, size, or color.

2. **YOUR SERIAL NUMBER:** We have received your U.S. Trademark Application and assigned serial number '87229174' to your submission. A summary of your application data is provided at the bottom of this message and serves as your official filing receipt. Please keep a copy of this information for your records. All correspondence concerning the application should reference your assigned serial number.

   Please read all of the important information below. Not every mark is registrable with the USPTO and we do not refund the application filing fee(s) if a registration does not ultimately issue.

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the best country in the world to develop technology, manufacture products, deliver services, and grow your business, visit SelectUSA.gov or call +1-202-482-6800.

SUMMARY OF APPLICATION DATA FOLLOWS:

APPLICATION DATA: You have filed a **Trademark/Service Mark Application** for registration on the **Principal Register** using a **TEAS RF** application form.

The applicant, Tillamook County Creamery Association, a corporation of Oregon, having an address of
4185 Highway 101 North
Tillamook, Oregon 97141
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class _____: cheese
Intent to Use: The applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the identified goods/services.

The applicant's current Attorney Information:
John M. McCormack and David P. Cooper; Pierre C. Van Rysselberghe; Charles H. DeVoe; James R. Abney; Edward B. Anderson; Shawn J. Kolitch; Owen W. Dukelow; Peter D. Sabido; Thomas J. Romano; David C. Bourgeau; Kimberly N. Fisher of Kolisch Hartwell, P.C. 520 SW Yamhill Street, Suite 200
Portland, Oregon 97204
United States
5032246655(phone)
5039729115(fax)
docketing@khpatent.com (authorized)
The attorney docket/reference number is TCA442.
The applicant's current Correspondence Information:
John M. McCormack
Kolisch Hartwell, P.C.
520 SW Yamhill Street, Suite 200
Portland, Oregon 97204
5032246655(phone)
5039729115(fax)
docketing@khpatent.com;heidi@khpatent.com (authorized)
E-mail Authorization: I authorize the USPTO to send e-mail correspondence concerning the application to the applicant or applicant's attorney at the e-mail address provided above. I understand that a valid e-mail address must be maintained and that the applicant or the applicant's attorney must file the relevant subsequent application-related submissions via the Trademark Electronic Application System (TEAS). Failure to do so will result in an additional processing fee of $50 per international class of goods/services.

A fee payment in the amount of $275 has been submitted with the application, representing payment for 1 class(es).

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The signatory believes that: if the applicant is filing the application under 15 U.S.C. § 1051(a), the applicant is the owner of the trademark/service mark sought to be registered; the applicant is using the mark in commerce on or in connection with the goods/services in the application; the specimen(s) shows the mark as used on or in connection with the goods/services in the application; and/or if the applicant filed an application under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e), the applicant is entitled to use the mark in commerce; the applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the goods/services in the application. The signatory believes that to the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Declaration Signature

Signature: /John M. McCormack/ Date: 11/07/2016
Signatory's Name: John M. McCormack
Signatory's Position: Attorney of record, California bar member

---

Thank you,

The TEAS support team
Mon Nov 07 20:28:37 EST 2016
STAMP: USPTO/BAS-75.150.34.209-20161107202837243756-87229174-5709dee147345db347876b9ca8c333cf9a8f5526f14fef4f93bc64aa6832f60c8-CC-5229-20161107201439987776

Exhibit 3

To:	Tillamook County Creamery Association (docketing@khpatent.com)
Subject:	U.S. TRADEMARK APPLICATION NO. 87229178 - FARMSTYLE - TCA428
Sent:	2/2/2017 5:51:03 PM
Sent As:	ECOM120@USPTO.GOV
Attachments:	Attachment - 1 Attachment - 2 Attachment - 3 Attachment - 4 Attachment - 5 Attachment - 6 Attachment - 7 Attachment - 8 Attachment - 9 Attachment - 10 Attachment - 11 Attachment - 12 Attachment - 13 Attachment - 14 Attachment - 15 Attachment - 16 Attachment - 17 Attachment - 18 Attachment - 19 Attachment - 20 Attachment - 21 Attachment - 22 Attachment - 23 Attachment - 24

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

U.S. APPLICATION SERIAL NO. 87229178

MARK: FARMSTYLE

87229178

CORRESPONDENT ADDRESS:
JOHN M. MCCORMACK
KOLISCH HARTWELL, P.C.
520 SW YAMHILL STREET, SUITE 200
PORTLAND, OR 97204

CLICK HERE TO RESPOND TO THIS LETTER:
http://www.uspto.gov/trademarks/teas/response_forms.jsp

VIEW YOUR APPLICATION FILE

APPLICANT: Tillamook County Creamery Association

CORRESPONDENT'S REFERENCE/DOCKET NO :
TCA428
CORRESPONDENT E-MAIL ADDRESS:
docketing@khpatent.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW. A RESPONSE TRANSMITTED THROUGH THE TRADEMARK ELECTRONIC APPLICATION SYSTEM (TEAS) MUST BE RECEIVED BEFORE MIDNIGHT **EASTERN TIME** OF THE LAST DAY OF THE RESPONSE PERIOD.

ISSUE/MAILING DATE: 2/2/2017

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issues below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

SUMMARY OF ISSUES

- Refusal under Trademark Act Section 2(d) – Likelihood of Confusion
- Refusal under Trademark Act Section 2(e)(1) – Merely Descriptive
- Requirement to Amend the Classification of Goods

SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION

Registration of the applied-for mark (**FARMSTYLE**) is refused because of a likelihood of confusion with the mark in U.S. Registration No. 4148108 (**FARMSTYLE FROZEN YOGURT**). Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the attached registration.

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely a potential consumer would be confused, mistaken, or deceived as to the source of the goods and/or services of the applicant and registrant. *See* 15 U.S.C. §1052(d). A determination of likelihood of confusion under Section 2(d) is made on a case-by-case basis and the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973) aid in this determination. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d 1344, 1349, 98 USPQ2d 1253, 1256 (Fed. Cir. 2011) (citing *On-Line Careline, Inc. v. Am. Online, Inc.*, 229 F.3d 1080, 1085, 56 USPQ2d 1471, 1474 (Fed. Cir. 2000)). Not all the *du Pont* factors, however, are necessarily relevant or of equal weight, and any one of the factors may control in a given case, depending upon the evidence of record. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d at 1355, 98 USPQ2d at 1260; *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); *see In re E. I. du Pont de Nemours & Co.*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity and nature of the goods and/or services, and similarity of the trade channels of the goods and/or services. *See In re Viterra Inc.*, 671 F.3d 1358, 1361-62, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Dakin's Miniatures Inc.* , 59 USPQ2d 1593, 1595-96 (TTAB 1999); TMEP §§1207.01 *et seq.*

Comparing the Marks

Marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1321, 110 USPQ2d 1157, 1160 (Fed. Cir. 2014) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1371, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005)); TMEP §1207.01(b)-(b)(v). "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014) (citing *In re 1st USA Realty Prof'ls, Inc.* , 84 USPQ2d 1581, 1586 (TTAB 2007)); *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988)); TMEP §1207.01(b).

In this case, the marks are confusingly similar because the marks share the dominant wording "FARMSTYLE". Applicant's mark is "**FARMSTYLE**" and registrant's mark is " **FARMSTYLE FROZEN YOGURT**". The word "FARMSTYLE" is the dominant wording in applicant mark because this wording comprises applicant's entire mark. The word "FARMSTYLE" is the dominant wording in registrant's mark because the other wording is generic. Additionally, the applied-for mark is created by deleting "frozen yogurt" from registrant's mark. However, the mere deletion of wording from a registered mark may not be sufficient to overcome a likelihood of confusion. *See In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257 (Fed. Cir. 2010); *In re Optica Int'l* , 196 USPQ 775, 778 (TTAB 1977); TMEP §1207.01(b)(ii)-(iii). Applicant's mark does not create a distinct commercial impression because it contains the same common wording as the registered mark, and there is no other wording to distinguish it from the registered mark. Accordingly, the marks are confusingly similar.

Comparing the Goods/Services

The goods and/or services of the parties need not be identical or even competitive to find a likelihood of confusion. *See On-line Careline Inc. v.*

Am. Online Inc., 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) ("[E]ven if the goods in question are different from, and thus not related to, one another in kind, the same goods can be related in the mind of the consuming public as to the origin of the goods."); TMEP §1207.01(a)(i).

The respective goods and/or services need only be "related in some manner and/or if the circumstances surrounding their marketing [be] such that they could give rise to the mistaken belief that [the goods and/or services] emanate from the same source." *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)); TMEP §1207.01(a)(i).

Generally, the greater degree of similarity between the applied-for mark and the registered mark, the lesser the degree of similarity between the goods and/or services of the parties is required to support a finding of likelihood of confusion. *In re C.H. Hanson Co.*, 116 USPQ2d 1351, 1353 (TTAB 2015) (citing *In re Opus One Inc.*, 60 USPQ2d 1812, 1815 (TTAB 2001)); *In re Thor Tech, Inc.*, 90 USPQ2d 1634, 1636 (TTAB 2009).

In this case, applicant's goods are " **cheese and yogurt**." The registrant's services are " **self-serve frozen yogurt shop services**" in International Class 35. The "self-service" aspect of registrant's services makes it akin to a retail store type of service because it involves the featuring of a product for purchase.

The attached Internet evidence consists of third-party entities that produce cheese and provide retail store services that feature frozen yogurt and other dairy products. *See* attached webpage screenshots featuring goods and services from Cobble Hill Cheese, PennState Berkey Creamery, Braum's, and Kemps. This evidence establishes that the same entity commonly produces and provides the relevant goods and services and markets the goods and services under the same mark. Therefore, applicant's goods and registrant's services are considered related for likelihood of confusion purposes. *See, e.g., In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202-04 (TTAB 2009); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1268-69, 1271-72 (TTAB 2009).

Conclusion

Applicant's and registrant's marks are confusingly similar and their goods/services are related. Accordingly, the applied-for mark, "FARMSTYLE", is refused for likelihood of confusion under Trademark Act Section 2(d).

Applicant should note the following additional ground for refusal.

SECTION 2(e)(1) REFUSAL - MERELY DESCRIPTIVE

Registration is refused because the applied-for mark merely describes a feature or characteristic of applicant's goods. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); *see* TMEP §§1209.01(b), 1209.03 *et seq.*

A mark is merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose, or use of an applicant's goods. TMEP §1209.01(b); *see, e.g., In re TriVita, Inc.*, 783 F.3d 872, 874, 114 USPQ2d 1574, 1575 (Fed. Cir. 2015) (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004)); *In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005) (citing *Estate of P.D. Beckwith, Inc. v. Comm'r of Patents* , 252 U.S. 538, 543 (1920)).

In this case, applicant's goods includes cheeses. The attached Internet evidence shows that the wording "FARMSTYLE" is merely descriptive of young, fresh, and unripened/slightly ripened cheese. *See* attached webpage screenshots:

- Nourishedkitchen.com, http://nourishedkitchen.com/farm-cheese-recipe/
- Homesteadlifestyle.com, http://homesteadlifestyle.com/homemade-farm-style-cheese-recipe/
- Dcicheeseco.com, http://www.dcicheeseco.com/ourcheese/product/saxon-creamery-brand/big-eds-gouda-farm-style-cheese
- Fiascofarm.com, https://fiascofarm.com/dairy/cottage.htm
- Sciencedirect.com, http://www.sciencedirect.com/science/article/pii/S074000200400098X
- Wacheese-gifts.com, http://www.wacheese-gifts.com/P/318/BigEds
- Harrisfarm.com, http://www.harrisfarm.com.au/products/brancourts-farm-style-cottage-cheese
- Quillisascut.com, http://quillisascut.com/about/
- Thegourmetgreek.com, http://www.thegourmetgreek.com/the-gourmet-greek-story
- Cheesemaking.com, http://www.cheesemaking.com/store/pg/563-Cheese-News-2013-October.html

Therefore, the applied-for mark merely describes a feature or characteristic of applicant's goods.

Conclusion

For the foregoing reasons, the applied-for mark, "FARMSTYLE", is refused because it is merely descriptive of the applicant's goods under Trademark Act Section 2(e)(1).

Although applicant's mark has been refused registration, applicant may respond to the refusals by submitting evidence and arguments in support of registration. However, if applicant responds to the refusals, applicant must also respond to the requirement set forth below.

REQUIREMENT TO AMEND THE CLASSIFICATION OF GOODS

Applicant did not designate in the application the required international class number for applicant's goods. Thus, the USPTO conducted a preliminary review of the specified goods and assigned an international class number. *See* TMEP §1401.03(b). However, in this case, the USPTO incorrectly classified the goods in International Class 30; the correct international class number is International Class 29. Therefore, applicant may respond by requesting that the USPTO amend the application to classify the goods in International Class 29. *See* 37 C.F.R. §§2.32(a)(7), 2.85; TMEP §§1401.02(a), 1401.03(b).

RESPONSE GUIDELINES

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §2.191; TMEP §§709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusals and/or requirement in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. *See* TMEP §§705.02, 709.06.

TEAS PLUS OR TEAS REDUCED FEE (TEAS RF) APPLICANTS – TO MAINTAIN LOWER FEE, ADDITIONAL REQUIREMENTS MUST BE MET, INCLUDING SUBMITTING DOCUMENTS ONLINE: Applicants who filed their application online using the lower-fee TEAS Plus or TEAS RF application form must (1) file certain documents online using TEAS, including responses to Office actions (see TMEP §§819.02(b), 820.02(b) for a complete list of these documents); (2) maintain a valid e-mail correspondence address; and (3) agree to receive correspondence from the USPTO by e-mail throughout the prosecution of the application. *See* 37 C.F.R. §§2.22(b), 2.23(b); TMEP §§819, 820. TEAS Plus or TEAS RF applicants who do not meet these requirements must submit an additional processing fee of $125 per class of goods. 37 C.F.R. §§2.6(a)(1)(v), 2.22(c), 2.23(c); TMEP §§819.04, 820.04. However, in certain situations, TEAS Plus or TEAS RF applicants may respond to an Office action by authorizing an examiner's amendment by telephone or e-mail without incurring this additional fee.

/Marco Wright/
Trademark Examining Attorney
Law Office 120
(571) 272-4918
marco.wright@uspto.gov

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at http://tsdr.uspto.gov/. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see http://www.uspto.gov/trademarks/process/status/.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at http://www.uspto.gov/trademarks/teas/correspondence.jsp.

Exhibit 4

United States of America
United States Patent and Trademark Office

Farmstyle Frozen Yogurt

Reg. No. 4,148,108

Registered May 22, 2012

Int. Cl.: 35

SERVICE MARK

SUPPLEMENTAL REGISTER

FINNEGAN FROST, INC. (WASHINGTON CORPORATION)
SUITE B
696 GAGE BLVD
RICHLAND, WA 99352

FOR: SELF-SERVE FROZEN YOGURT SHOP SERVICES, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 10-15-2011; IN COMMERCE 11-18-2011.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FROZEN YOGURT", APART FROM THE MARK AS SHOWN.

SER. NO. 85-485,473, FILED P.R. 12-2-2011; A.M. S.R. 3-16-2012.

FONG HSU, EXAMINING ATTORNEY

David J. Kappos

Director of the United States Patent and Trademark Office

Exhibit 5

To:	Tillamook County Creamery Association (docketing@khpatent.com)
Subject:	U.S. TRADEMARK APPLICATION NO. 87229174 - FARMSTYLE CUT - TCA442
Sent:	2/2/2017 5:50:47 PM
Sent As:	ECOM120@USPTO.GOV
Attachments:	Attachment - 1 Attachment - 2 Attachment - 3 Attachment - 4 Attachment - 5 Attachment - 6 Attachment - 7 Attachment - 8 Attachment - 9 Attachment - 10 Attachment - 11 Attachment - 12 Attachment - 13 Attachment - 14 Attachment - 15 Attachment - 16 Attachment - 17 Attachment - 18 Attachment - 19 Attachment - 20 Attachment - 21 Attachment - 22 Attachment - 23 Attachment - 24 Attachment - 25 Attachment - 26 Attachment - 27 Attachment - 28 Attachment - 29

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

U.S. APPLICATION SERIAL NO. 87229174

MARK: FARMSTYLE CUT

87229174

CORRESPONDENT ADDRESS:
JOHN M. MCCORMACK
KOLISCH HARTWELL, P.C.
520 SW YAMHILL STREET, SUITE 200
PORTLAND, OR 97204

CLICK HERE TO RESPOND TO THIS LETTER:
http://www.uspto.gov/trademarks/teas/response_forms.jsp

VIEW YOUR APPLICATION FILE

APPLICANT: Tillamook County Creamery Association

CORRESPONDENT'S REFERENCE/DOCKET NO :
TCA442
CORRESPONDENT E-MAIL ADDRESS:
docketing@khpatent.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW. A RESPONSE TRANSMITTED THROUGH THE TRADEMARK ELECTRONIC APPLICATION SYSTEM (TEAS) MUST BE RECEIVED BEFORE MIDNIGHT **EASTERN TIME** OF THE LAST DAY OF THE RESPONSE PERIOD.

ISSUE/MAILING DATE: 2/2/2017

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issues below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

SUMMARY OF ISSUES

- Refusal under Trademark Act Section 2(d) – Likelihood of Confusion
- Refusal under Trademark Act Section 2(e)(1) – Merely Descriptive

SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION

Registration of the applied-for mark (**FARMSTYLE CUT**) is refused because of a likelihood of confusion with the mark in U.S. Registration No. 4148108 (**FARMSTYLE FROZEN YOGURT**). Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the attached registration.

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely a potential consumer would be confused, mistaken, or deceived as to the source of the goods and/or services of the applicant and registrant. *See* 15 U.S.C. §1052(d). A determination of likelihood of confusion under Section 2(d) is made on a case-by-case basis and the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973) aid in this determination. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d 1344, 1349, 98 USPQ2d 1253, 1256 (Fed. Cir. 2011) (citing *On-Line Careline, Inc. v. Am. Online, Inc.*, 229 F.3d 1080, 1085, 56 USPQ2d 1471, 1474 (Fed. Cir. 2000)). Not all the *du Pont* factors, however, are necessarily relevant or of equal weight, and any one of the factors may control in a given case, depending upon the evidence of record. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d at 1355, 98 USPQ2d at 1260; *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); *see In re E. I. du Pont de Nemours & Co.*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity and nature of the goods and/or services, and similarity of the trade channels of the goods and/or services. *See In re Viterra Inc.*, 671 F.3d 1358, 1361-62, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Dakin's Miniatures Inc.* , 59 USPQ2d 1593, 1595-96 (TTAB 1999); TMEP §§1207.01 *et seq.*

Comparing the Marks

Marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1321, 110 USPQ2d 1157, 1160 (Fed. Cir. 2014) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1371, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005)); TMEP §1207.01(b)-(b)(v). "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014) (citing *In re 1st USA Realty Prof'ls, Inc.* , 84 USPQ2d 1581, 1586 (TTAB 2007)); *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988)); TMEP §1207.01(b).

In this case, the marks are confusingly similar. Applicant's mark is " **FARMSTYLE CUT**" and registrant's mark is " **FARMSTYLE FROZEN YOGURT**". First, both marks begin with the word "FARMSTYLE". The fact that the marks both begin with identical wording is significant because consumers are generally more inclined to focus on the first word, prefix, or syllable in any trademark or service mark. *See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1372, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005)

("VEUVE . . . remains a 'prominent feature' as the first word in the mark and the first word to appear on the label"); *In re Integrated Embedded*, 102 USPQ2d 1504, 1513 (TTAB 2016) ("[T]he dominance of BARR in [a]pplicant's mark BARR GROUP is reinforced by its location as the first word in the mark."); *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) ("it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered" when making purchasing decisions). Second, the marks share similar structures, i.e., the word "FARMSTYLE" plus descriptive/generic wording. Accordingly, the marks are confusingly similar.

Comparing the Goods/Services

The goods and/or services of the parties need not be identical or even competitive to find a likelihood of confusion. *See On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) ("[E]ven if the goods in question are different from, and thus not related to, one another in kind, the same goods can be related in the mind of the consuming public as to the origin of the goods."); TMEP §1207.01(a)(i).

The respective goods and/or services need only be "related in some manner and/or if the circumstances surrounding their marketing [be] such that they could give rise to the mistaken belief that [the goods and/or services] emanate from the same source." *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)); TMEP §1207.01(a)(i).

Generally, the greater degree of similarity between the applied-for mark and the registered mark, the lesser the degree of similarity between the goods and/or services of the parties is required to support a finding of likelihood of confusion. *In re C.H. Hanson Co.*, 116 USPQ2d 1351, 1353 (TTAB 2015) (citing *In re Opus One Inc.*, 60 USPQ2d 1812, 1815 (TTAB 2001)); *In re Thor Tech, Inc.*, 90 USPQ2d 1634, 1636 (TTAB 2009).

In this case, applicant's goods are cheeses. The registrant's services are " **self-serve frozen yogurt shop services**" in International Class 35. The "self-service" aspect of registrant's services makes it akin to a retail store type of service because it involves the featuring of a product for purchase.

The attached Internet evidence consists of third-party entities that produce cheese and provide retail store services that feature frozen yogurt and other dairy products. *See* attached webpage screenshots featuring goods and services from Cobble Hill Cheese, PennState Berkey Creamery, Braum's, and Kemps. This evidence establishes that the same entity commonly produces and provides the relevant goods and services and markets the goods and services under the same mark. Therefore, applicant's goods and registrant's services are considered related for likelihood of confusion purposes. *See, e.g., In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202-04 (TTAB 2009); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1268-69, 1271-72 (TTAB 2009).

Conclusion

Applicant's and registrant's marks are confusingly similar and their goods/services are related. Accordingly, the applied-for mark, "FARMSTYLE CUT", is refused for likelihood of confusion under Trademark Act Section 2(d).

Applicant should note the following additional ground for refusal.

SECTION 2(e)(1) REFUSAL - MERELY DESCRIPTIVE

Registration is refused because the applied-for mark merely describes a feature or characteristic of applicant's goods. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); *see* TMEP §§1209.01(b), 1209.03 *et seq.*

A mark is merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose, or use of an applicant's goods. TMEP §1209.01(b); *see, e.g., In re TriVita, Inc.*, 783 F.3d 872, 874, 114 USPQ2d 1574, 1575 (Fed. Cir. 2015) (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004)); *In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005) (citing *Estate of P.D. Beckwith, Inc. v. Comm'r of Patents* , 252 U.S. 538, 543 (1920)).

Generally, if the individual components of a mark retain their descriptive meaning in relation to the goods, the combination results in a composite mark that is itself descriptive and not registrable. *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1516 (TTAB 2016) (citing *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1317-18 (TTAB (2002)); TMEP §1209.03(d); *see, e.g., In re Cannon Safe, Inc.*, 116 USPQ2d 1348, 1351 (TTAB 2015) (holding SMART SERIES merely descriptive of metal gun safes, because "each component term retains its merely descriptive significance in relation to the goods, resulting in a mark that is also merely descriptive"); *In re King Koil Licensing Co.*, 79 USPQ2d 1048, 1052 (TTAB 2006) (holding THE BREATHABLE MATTRESS merely descriptive of beds, mattresses, box springs, and pillows where the evidence showed that the term "BREATHABLE" retained its ordinary dictionary meaning when combined with the term "MATTRESS" and the resulting combination was used in the relevant industry in a descriptive sense); *In re Associated Theatre Clubs Co.*, 9 USPQ2d 1660, 1663

(TTAB 1988) (holding GROUP SALES BOX OFFICE merely descriptive of theater ticket sales services, because such wording "is nothing more than a combination of the two common descriptive terms most applicable to applicant's services which in combination achieve no different status but remain a common descriptive compound expression").

Only where the combination of descriptive terms creates a unitary mark with a unique, incongruous, or otherwise nondescriptive meaning in relation to the goods is the combined mark registrable. *See In re Colonial Stores, Inc.*, 394 F.2d 549, 551, 157 USPQ 382, 384 (C.C.P.A. 1968); *In re Positec Grp. Ltd.*, 108 USPQ2d 1161, 1162-63 (TTAB 2013).

In this case, both the individual components and the composite result are descriptive of applicant's goods and do not create a unique, incongruous, or nondescriptive meaning in relation to the goods. Specifically, applicant's goods are cheeses. The attached Internet evidence shows that the wording "FARMSTYLE" is merely descriptive of young, fresh, and unripened/slightly ripened cheese. *See* attached webpage screenshots:

- Nourishedkitchen.com, http://nourishedkitchen.com/farm-cheese-recipe/
- Homesteadlifestyle.com, http://homesteadlifestyle.com/homemade-farm-style-cheese-recipe/
- Dcicheeseco.com, http://www.dcicheeseco.com/ourcheese/product/saxon-creamery-brand/big-eds-gouda-farm-style-cheese
- Fiascofarm.com, https://fiascofarm.com/dairy/cottage.htm
- Sciencedirect.com, http://www.sciencedirect.com/science/article/pii/S074000200400098X
- Wacheese-gifts.com, http://www.wacheese-gifts.com/P/318/BigEds
- Harrisfarm.com, http://www.harrisfarm.com.au/products/brancourts-farm-style-cottage-cheese
- Quillisascut.com, http://quillisascut.com/about/
- Thegourmetgreek.com, http://www.thegourmetgreek.com/the-gourmet-greek-story
- Cheesemaking.com, http://www.cheesemaking.com/store/pg/563-Cheese-News-2013-October.html

The word "CUT" means "to divide into segments" *Merriam-Webster Online Dictionary*, search of "cut" http://www.merriam-webster.com/dictionary/cut (Jan. 31, 2017) *see* Homelandstores.com, http://www.homelandstores.com/departments/deli/cut-deli-meat-cheese/ (Jan. 31, 2017); Thedelisource.com, http://www.thedelisource.com/services.html (Jan. 31, 2017); Heb.com, https://www.heb.com/category/shop/food-and-drinks/dairy/cheese/3060 (Jan. 31, 2017); Cellocheese.com, http://www.cellocheese.com/product/variety-pack/ (Jan. 31, 2017). Accordingly, the word "CUT" merely describes cheese that has been divided into segments.

In the context of applicant's goods, "FARMSTYLE CUT" merely describes a young, fresh, and unripened/slightly ripened cheese that has been divided into segments. Accordingly, the applied-for mark merely describes a feature or characteristic of applicant's goods.

Conclusion

For the foregoing reasons, the applied-for mark, "FARMSTYLE CUT", is refused because it is merely descriptive of the applicant's goods under Trademark Act Section 2(e)(1).

Although applicant's mark has been refused registration, applicant may respond to the refusals by submitting evidence and arguments in support of registration.

RESPONSE GUIDELINES

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §2.191; TMEP §§709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusals in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. *See* TMEP §§705.02, 709.06.

TEAS PLUS OR TEAS REDUCED FEE (TEAS RF) APPLICANTS – TO MAINTAIN LOWER FEE, ADDITIONAL REQUIREMENTS MUST BE MET, INCLUDING SUBMITTING DOCUMENTS ONLINE: Applicants who filed their application online using the lower-fee TEAS Plus or TEAS RF application form must (1) file certain documents online using TEAS, including responses to Office actions (see TMEP §§819.02(b), 820.02(b) for a complete list of these documents); (2) maintain a valid e-mail correspondence address; and (3) agree to receive correspondence from the USPTO by e-mail throughout the prosecution of the application. *See* 37 C.F.R. §§2.22(b), 2.23(b); TMEP §§819, 820. TEAS Plus or TEAS RF applicants who do not meet these requirements must submit an additional processing fee of $125 per class of goods. 37 C.F.R. §§2.6(a)(1)(v), 2.22(c), 2.23(c); TMEP §§819.04, 820.04. However, in certain situations, TEAS Plus or TEAS RF applicants may respond to an Office action by authorizing an examiner's amendment by telephone or e-mail without incurring this additional fee.

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TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at http://tsdr.uspto.gov/. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see http://www.uspto.gov/trademarks/process/status/.

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