

ESTTA Tracking number: **ESTTA1009415**

Filing date: **10/17/2019**

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	Heritage Pork International, Inc.		
Entity	Corporation	Citizenship	Iowa
Address	204 First Street, Suite C3 Sergeant Bluff, IA 51054 UNITED STATES		

Attorney information	Tracy L. Deutmeyer Fredrikson & Byron, P.A. 505 E. Grand Avenue, Suite 200 Des Moines, IA 50309 UNITED STATES ip@fredlaw.com, tdeutmeyer@fredlaw.com, cmoyer@fredlaw.com, sbell@fredlaw.com 515-242-8923		
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Registration Subject to Cancellation

Registration No.	5568955	Registration date	09/25/2018
Registrant	Ohio Wagyu Beef, LLC 170 N Sunbury Rd Westerville, OH 43081 UNITED STATES		

Goods/Services Subject to Cancellation

Class 029. First Use: 2017/09/01 First Use In Commerce: 2017/09/01 All goods and services in the class are subject to cancellation, namely: Wagyu Beef; Packaged meats, namely, wagyu beef; Processed meat, namely, wagyu beef
Class 031. First Use: 2017/09/01 First Use In Commerce: 2017/09/01 All goods and services in the class are subject to cancellation, namely: Livestock, namely, wagyu cattle

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
False suggestion of a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute	Trademark Act Sections 14(3) and 2(a)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	87809054	Application Date	02/23/2018
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SAKURA PORK		
Design Mark			
Description of Mark	The mark consists of the wording "SAKURA PORK" in stylized font beneath Japanese characters within the depiction of a cherry blossom, all within a shaded circle with a lighter border.		
Goods/Services	Class 029. First use: First Use: 2015/04/30 First Use In Commerce: 2015/04/30 Pork		

Attachments	87809054#TMSN.png(bytes) Petition-Ohio-Wagyu.pdf(185283 bytes)
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Signature	/Tracy L. Deutmeyer/
Name	Tracy L. Deutmeyer
Date	10/17/2019

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

In the Matter of

U.S. Reg. No.: 5568955



For the Mark:

Date Registered: September 25, 2018

Heritage Pork International, Inc.,

Cancellation No. _____

Petitioner,

v.

Ohio Wagyu Beef, LLC, DBA Sakura Wagyu
Farms,

Registrant.

PETITION TO CANCEL

Petitioner, Heritage Pork International, Inc., believes that it is being and will continue to be damaged by Registration No. 5568955 (the “Registration”), and hereby petitions to cancel the same. The grounds for cancellation are as follows:

1. Petitioner is a corporation organized and existing under the laws of Iowa, with its principal place of business located at 204 First Street, Suite C3, Sergeant Bluff, Iowa 51054.
2. On information and belief, Registrant, Ohio Wagyu Beef, LLC, doing business as Sakura Wagyu Farms (“Registrant”) is a limited liability company organized under the laws of Ohio, with its principal place of business located at 170 N Sunbury Rd, Westerville, Ohio 43081.



3. Petitioner is the owner of common law trademarks, and the SAKURA PORK word mark (“Petitioner’s Marks”), for use in connection with the following goods, namely, “pork” (“Petitioner’s Goods”).

4. Since at least as early as April 30, 2015, Petitioner and any predecessors-in-interest of Petitioner continuously have used Petitioner’s Marks in commerce in the United States, and continue to use Petitioner’s Marks in connection with Petitioner’s Goods in commerce in the United States.

5. Petitioner is the owner of U.S. Application Serial No. 87809054 (“Petitioner’s



Application”), by which it seeks to register the mark for use in connection with “[p]ork.” Petitioner filed Petitioner’s Application with the Office on February 23, 2018. *See* Exhibit A, which is a current printout of information from the electronic database records of the Office showing the current status and title of Petitioner’s Application.

6. The USPTO examining attorney examining Petitioner’s Application has refused registration to the mark in Petitioner’s Application on grounds of a “likelihood of confusion” with the Registered Mark (defined below) under Section 2(d) of the Trademark Act.

7. On January 12, 2018, Registrant filed with the United States Patent and Trademark



Office (“USPTO”) a use-based application to register the mark, (“Registered Mark”), and the USPTO assigned such application Serial No. 87753044 (“the Application”).

8. In the Application, Registrant alleged a date of first use anywhere and a date of first use in commerce of the Registered Mark at least as early as September 1, 2017 for Classes 29 and 31.

9. According to USPTO on-line records, the USPTO registered the Registered Mark on September 25, 2018, in connection with the following goods (“Registrant’s Goods”):

International Class 29: Wagyu Beef; Packaged meats, namely, wagyu beef; Processed meat, namely, wagyu beef

International Class 31: Livestock, namely, wagyu cattle.

See Exhibit B, which is a current printout of information from the electronic database records of the Office showing the current status and title of the Registration.

10. There is no issue as to priority. Petitioner’s date of first use anywhere and date of first use in commerce of Petitioner’s Marks is long before any priority date on which Registrant can rely, whether actual or constructive.

11. Petitioner’s Marks are inherently distinctive and strong marks and should be accorded the broadest protection given to strong marks.

12. The Registered Mark is confusingly similar to Petitioner’s Marks, and as such, a likelihood of confusion exists between the Registered Mark and Petitioner’s Marks.

13. Registrant’s Goods are related to Petitioner’s Goods, and as such a likelihood of confusion exists between the Registered Mark and Petitioner’s Marks.

14. Use and continued registration by Registrant of the Registered Mark is likely to cause confusion, mistake, or deception as to the source of origin, sponsorship, or approval of Registrant’s Goods in that purchasers or others are likely to believe that Registrant’s Goods are Petitioner’s Goods, or are in some way legitimately connected with, licensed by, or approved by

Petitioner. Use by Registrant of the Registered Mark will continue to lessen the capacity of Petitioner's Mark to identify and distinguish Petitioner's Goods.

15. Use by Registrant of the Registered Mark is without Petitioner's consent or permission.

16. The Registered Mark is so similar to Petitioner's Marks as to be likely to falsely suggest a connection between Registrant and Petitioner.

17. If Registrant is allowed to maintain the Registration herein sought to be cancelled, Petitioner may be refused registration of its mark that is the subject of Petitioner's Application, thereby causing damage and injury to Petitioner. As a result, Petitioner has standing to file this Petition for Cancellation.

WHEREFORE, Petitioner believes that it will be damaged by the subject registration and prays that it be cancelled.

Please address all communications to Tracy L. Deutmeyer, Fredrikson & Byron, P.A.
505 E. Grand Avenue Suite 200, Des Moines, Iowa 50309.

Dated: October 17, 2019

RESPECTFULLY SUBMITTED,

Heritage Pork International, Inc., Petitioner

/Tracy L. Deutmeyer/
Tracy L. Deutmeyer
Cynthia A. Moyer
Fredrikson & Byron, P.A.
505 E. Grand Avenue, Suite 200
Des Moines, Iowa 50309-1977
515-242-8923 (phone)
ip@fredlaw.com
tdeutmeyer@fredlaw.com
cmoyer@fredlaw.com
ATTORNEYS FOR PETITIONER

Exhibit A

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Mark: SAKURA PORK



US Serial Number: 87809054

Application Filing Date: Feb. 23, 2018

Filed as TEAS Plus: Yes

Currently TEAS Plus: Yes

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor:



LIVE/APPLICATION/Under Examination

The trademark application has been accepted by the Office (has met the minimum filing requirements) and that this application has been assigned to an examiner.

Status: A non-final Office action has been sent (issued) to the applicant. This is a letter from the examining attorney requiring additional information and/or making an initial refusal. The applicant must respond to this Office action. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date: Apr. 18, 2019

Mark Information

Mark Literal Elements: SAKURA PORK

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of the wording "SAKURA PORK" in stylized font beneath Japanese characters within the depiction of a cherry blossom, all within a shaded circle with a lighter border.

Color(s) Claimed: Color is not claimed as a feature of the mark.

Disclaimer: "PORK"

Translation: The English translation of "SAKURA" in the mark is "CHERRY BLOSSOMS".

Transliteration: The non-Latin characters in the mark transliterate to "SAKURA" and this means "CHERRY BLOSSOMS" in English.

Design Search Code(s): 05.05.25 - Daffodils; Iris (flower); Other flowers

26.01.21 - Circles that are totally or partially shaded.

28.01.03 - Japanese and Chinese characters; Chinese characters; Japanese characters

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (..) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Pork

International Class(es): 029 - Primary Class

U.S Class(es): 046

Class Status: ACTIVE

Basis: 1(a)

First Use: Apr. 30, 2015

Use in Commerce: Apr. 30, 2015

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: HERITAGE PORK INTERNATIONAL, INC.

Owner Address: 204 FIRST STREET, SUITE C3
SERGEANT BLUFF, IOWA UNITED STATES 51054

Legal Entity Type: CORPORATION

State or Country IOWA
Where Organized:

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Tracy L. Deutmeyer

Attorney Primary ip@fredlaw.com
Email Address:

Attorney Email Yes
Authorized:

Correspondent

Correspondent Tracy L. Deutmeyer
Name/Address: FREDRIKSON & BYRON, P.A.
505 E. Grand Avenue, Suite 200
Des Moines, IOWA UNITED STATES 50309-1977

Phone: 515-242-8923

Correspondent e- ip@fredlaw.com TDeutmeyer@fredlaw.com sbell@fredlaw.com
mail:

Correspondent e- Yes
mail Authorized:

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Apr. 18, 2019	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Apr. 18, 2019	NON-FINAL ACTION E-MAILED	6325
Apr. 18, 2019	NON-FINAL ACTION WRITTEN	93409
Apr. 01, 2019	TEAS/EMAIL CORRESPONDENCE ENTERED	70138
Apr. 01, 2019	CORRESPONDENCE RECEIVED IN LAW OFFICE	70138
Mar. 28, 2019	ASSIGNED TO LIE	70138
Mar. 21, 2019	TEAS RESPONSE TO SUSPENSION INQUIRY RECEIVED	
Jan. 09, 2019	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Oct. 31, 2018	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Sep. 11, 2018	NOTIFICATION OF LETTER OF SUSPENSION E-MAILED	6332
Sep. 11, 2018	LETTER OF SUSPENSION E-MAILED	6332
Sep. 11, 2018	SUSPENSION LETTER WRITTEN	93409
Aug. 18, 2018	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Aug. 17, 2018	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Aug. 17, 2018	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Jun. 11, 2018	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Jun. 11, 2018	NON-FINAL ACTION E-MAILED	6325
Jun. 11, 2018	NON-FINAL ACTION WRITTEN	93409
Jun. 07, 2018	ASSIGNED TO EXAMINER	93409
Apr. 16, 2018	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Apr. 16, 2018	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Mar. 02, 2018	NOTICE OF DESIGN SEARCH CODE E-MAILED	
Mar. 01, 2018	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Feb. 27, 2018	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: BIACHE, AUBREY ANNE

Law Office: LAW OFFICE 123
Assigned:

File Location

Current Location: TMO LAW OFFICE 123 - EXAMINING
ATTORNEY ASSIGNED

Date in Location: Apr. 18, 2019

Assignment Abstract Of Title Information

Summary

Total Assignments: 2

Applicant: Heritage Pork International, L.L.C.

Assignment 1 of 2

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: [6463/0977](#)

Pages: 5

Date Recorded: Oct. 23, 2018

Supporting Documents: [assignment-tm-6463-0977.pdf](#)

Assignor

Name: [HERITAGE PORK INTERNATIONAL, L.L.C.](#)

Execution Date: Aug. 23, 2018

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country: IOWA
Where Organized:

Assignee

Name: [HWANG, ROBERT](#)

Legal Entity Type: INDIVIDUAL

Citizenship: UNITED STATES

Address: 450 BAY HILL CIRCLE
DAKOTA DUNES, SOUTH DAKOTA 57049

Correspondent

Correspondent Name: TRACY L. DEUTMEYER

Correspondent Address: 505 E. GRAND AVENUE, SUITE 200
DES MOINES, IA 50309

Domestic Representative - Not Found

Assignment 2 of 2

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: [6512/0017](#)

Pages: 5

Date Recorded: Oct. 23, 2018

Supporting Documents: [assignment-tm-6512-0017.pdf](#)

Assignor

Name: [HWANG, ROBERT](#)

Execution Date: Sep. 12, 2018

Legal Entity Type: INDIVIDUAL

Citizenship: UNITED STATES

Assignee

Name: [HERITAGE PORK INTERNATIONAL, INC.](#)

Legal Entity Type: CORPORATION

State or Country: IOWA
Where Organized:

Address: 204 FIRST STREET, SUITE C3
SERGEANT BLUFF, IOWA 51054

Correspondent

Correspondent Name: TRACY L. DEUTMEYER

Correspondent Address: 505 E. GRAND AVENUE, SUITE 200
DES MOINES, IA 50309

Domestic Representative - Not Found

Exhibit B

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Mark: SAKURA WAGYU FARMS



US Serial Number: 87753044

Application Filing Date: Jan. 12, 2018

US Registration Number: 5568955

Registration Date: Sep. 25, 2018

Filed as TEAS Plus: Yes

Currently TEAS Plus: Yes

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor:



LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office.

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Sep. 25, 2018

Publication Date: Jul. 10, 2018

Mark Information

Mark Literal Elements: SAKURA WAGYU FARMS

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of the black wording "SAKURA WAGYU FARMS". Extending from the "U" in "SAKURA" is a black circle. Inside the circle is a cherry tree with black bark and grey highlighting on the trunk. The tree has pink cherry blossoms with green leaves. A portion of the tree and cherry blossoms extend beyond the top of the circle. Next to the tree stands a black bull with grey highlights on its horns, face and front hooves. In the background are diagonal and wavy beige and sepia lines representing fields, trees, bushes and the sun.

Color Drawing: Yes

Color(s) Claimed: The color(s) black, grey, sepia, pink, green, and beige is/are claimed as a feature of the mark.

Disclaimer: "WAGYU FARMS"

Translation: The English translation of "Sakura" in the mark is "cherry blossom".

Design Search Code(s): 03.07.01 - Cattle; Steers; Oxen, cows, calves, bulls
03.07.24 - Stylized bovines, deer, antelopes, goats, sheep, pigs, cows, bulls, buffalo, moose
05.01.02 - Maple tree; Trees or bushes with a generally rounded shape, including deciduous trees
05.01.08 - Orange tree; Fruit tree; Trees or bushes bearing fruit; Apple tree
05.01.25 - Willow tree; Cypress tree; Other trees or bushes
05.03.08 - More than one leaf, including scattered leaves, bunches of leaves not attached to branches
05.03.25 - Other leaves; Leaf, single
06.09.05 - Other cultivated areas
26.01.21 - Circles that are totally or partially shaded.
26.17.02 - Bands, wavy; Bars, wavy; Lines, wavy; Wavy line(s), band(s) or bar(s)
26.17.06 - Lines, diagonal; Diagonal line(s), band(s) or bar(s); Bands, diagonal; Bars, diagonal

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (()) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Wagyu Beef; Packaged meats, namely, wagyu beef; Processed meat, namely, wagyu beef

International Class(es): 029 - Primary Class

U.S Class(es): 046

Class Status: ACTIVE

Basis: 1(a)

First Use: Sep. 01, 2017

Use in Commerce: Sep. 01, 2017

For: Livestock, namely, wagyu cattle

International Class(es): 031 - Primary Class

U.S Class(es): 001, 046

Class Status: ACTIVE

Basis: 1(a)

First Use: Sep. 01, 2017

Use in Commerce: Sep. 01, 2017

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Ohio Wagyu Beef, LLC

DBA, AKA, Formerly: DBA Sakura Wagyu Farms

Owner Address: 170 N Sunbury Rd
Westerville, OHIO UNITED STATES 43081

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: OHIO

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Elizabeth M. Kelly

Attorney Primary Email Address: bethk@olrblaw.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: ELIZABETH M. KELLY
ONDA LABUHN RANKIN & BOGGS CO. LPA
35 N. FOURTH STREET
SUITE 100
COLUMBUS, OHIO UNITED STATES 43215

Phone: 614-716-0505

Fax: 614-716-0511

Correspondent e-mail: bethk@olrblaw.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Sep. 25, 2018	REGISTERED-PRINCIPAL REGISTER	
Jul. 10, 2018	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Jul. 10, 2018	PUBLISHED FOR OPPOSITION	
Jun. 20, 2018	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Jun. 01, 2018	LAW OFFICE PUBLICATION REVIEW COMPLETED	70629
May 31, 2018	APPROVED FOR PUB - PRINCIPAL REGISTER	

May 31, 2018	EXAMINER'S AMENDMENT ENTERED	88888
May 31, 2018	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
May 31, 2018	EXAMINERS AMENDMENT E-MAILED	6328
May 31, 2018	EXAMINERS AMENDMENT -WRITTEN	90286
May 22, 2018	TEAS/EMAIL CORRESPONDENCE ENTERED	70629
May 22, 2018	CORRESPONDENCE RECEIVED IN LAW OFFICE	70629
May 18, 2018	ASSIGNED TO LIE	70629
May 10, 2018	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
May 01, 2018	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
May 01, 2018	NON-FINAL ACTION E-MAILED	6325
May 01, 2018	NON-FINAL ACTION WRITTEN	90286
Apr. 18, 2018	ASSIGNED TO EXAMINER	90286
Jan. 27, 2018	NOTICE OF DESIGN SEARCH CODE E-MAILED	
Jan. 26, 2018	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Jan. 16, 2018	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Sep. 25, 2018