

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of : TRADEMARK/SERVICE MARK  
IP BRANDS LLC : APPLICATION  
Serial No. 77/751,505 : **BING**  
Filed June 3, 2009 :

**RESPONSE TO OFFICE ACTION**

Pittsburgh, Pennsylvania 15222

February 1, 2010

Commissioner for Trademarks  
P. O. Box 1451  
Alexandria, VA 22313-1451

Sir:

Applicant respectfully responds to the Office Action dated July 30, 2009 in the above-captioned matter.

## REMARKS

The Examining Attorney is currently refusing registration on the Principal Register because of a likelihood of confusion with respect to United States Trademark Registration 3,562,803, “BING” for “Energy drinks, fruit drinks, soft drinks, sports drinks, non-alcoholic beverages containing fruit juices, and fruit beverages”. The Examining Attorney states that Applicant’s goods and/or services (“Ready to drink milk-based beverages containing coffee” and “packaged coffee; ready to drink coffee-based beverages”) are related to the Registrant’s goods and services because both are likely to emanate from a single source. The Examining Attorney provides copies of printouts from the USPTO X-Search database and suggests that they illustrate that the goods and services listed therein are of a kind that may emanate from a single source.

In response, Applicant provides to the Examining Attorney the results of a preliminary search of the word mark “BING” in the United States Patent and Trademark Office Trademark Electronic Search System (TESS). This simple search provides nine registered marks utilizing the phrase BING in part or whole. These registrations are as follows:

“BING BING”, Registration No. 1601170, for “Rice Crackers and biscuits”;

“BINGQUAN”, Registration No. 2855929, for “Soybean milk, namely, soybean food beverage used as a milk substitute”;

“BING QUAN”, Registration No. 2808675, for “Tea, herbal drink and processed herbs”;

“BING HAN”; Registration No. 2944764, for “Milk powder, milk, bean curd, cooking animal oils, cooking vegetable oils, fruit jellies, fruit jellies powder, meats, meat products, namely, luncheon meat and bologna, marine products, namely, seafood, processed marine products, namely, tuna and crabmeat, eggs, essence of chicken”; and

“Tea leaves; tea; coffee; cocoa; chocolate; drinks made from tea leaves, coffee, cocoa, and chocolate; ice; ice products, namely, flavored ices and ice cubes; seasoning ingredients in general type; sugar; honey; bread; toast; puddings; glutinous rice cake; processed grain powder, namely, rice mix and flour mix; noodles; quickly cooking noodles; processed grain deserts, namely, ricecakes; dumplings; rice; and cooked rice”; and

“Fresh fruits and vegetables; live animals; fresh marine products, namely, seafood; living plants; live flowering plants; live flowers; flower seeds; agricultural seeds; agricultural grains for planting; and unprocessed grains for eating”; and

“Beer; soda water; fruit juice; mineral water; and sports drinks cola”;

“TWIN BING”, Registration No. 2429555, for “Candy”;

“KING BING”, Registration No. 2371326, for “Candy”;

“BING GRÉ”, Registration No. 1535536, for “Processed oriental vegetables”;

“PALMER’S BING”, Registration No. 0942888, for “Candy”; and

“BING QUAN”, Registration No. 2800292, for “Soybean milk, soybean drink, namely, soy-based food beverage used as a milk substitute.”

This search clearly illustrates that the term “BING” is used in a variety of food goods, ranging from crackers and candy to soy milk and other beverages. Applicant respectfully submits that the mark is in use in the crowded field of food items, where a reasonable consumer already has the ability to distinguish between these entities without confusion. These results indicate that a potential customer would not be mistaken or deceived as to the source of the goods of the Applicant or Registrant. The consumer clearly has the ability to distinguish this source from any other source providing the same or similar goods. The word “BING” has not become associated in the mind of the public with a particular source, and that therefore use of the mark by Applicant will not lead to confusion.

The Examining Attorney has also required clarification of the significance of the word “BING”. In response, Applicant respectfully asserts that the term has no significance in the beverage trade or industry or as applied to the goods or services described in the application.

Applicant submits that the application is now in condition for allowance. Reconsideration of the refusal of registration is respectfully requested. Applicant believes that no fee is due in connection with this Response. The Applicant authorizes the Commissioner to charge any fees that are required to Deposit Account No. 50-0525.

Respectfully submitted,

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