

## UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 79/045912

MARK: BRAVO

**\*79045912\***

## CORRESPONDENT ADDRESS:

Dr. Michael Konzett  
 Rechtsanwalt  
 Fohrenburgstrasse 4  
 A-6700 Bludenz  
 AUSTRIA

## RESPOND TO THIS ACTION:

<http://www.uspto.gov/teas/eTEASpageD.htm>

## GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Rauch Fruchtsäfte  
 Gesellschaft m.b.H.

CORRESPONDENT'S  
 REFERENCE/DOCKET NO:

N/A

CORRESPONDENT E-MAIL ADDRESS:

## OFFICE ACTION

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

ISSUE/MAILING DATE:

INTERNATIONAL REGISTRATION NO. 0526606.

This is a **PROVISIONAL FULL REFUSAL** of the trademark and/or service mark in the above-referenced U.S. application. *See* 15 U.S.C. §1141h(c).

## WHO IS PERMITTED TO RESPOND TO THIS PROVISIONAL FULL REFUSAL:

Applicant may respond directly to this provisional refusal Office action, or applicant's attorney may respond on applicant's behalf. However, **the only attorneys who can practice before the United States Patent and Trademark Office (USPTO)** in trademark matters are as follows:

- (1) **Attorneys in good standing with a bar of the highest court of any U.S. state, the District of Columbia, Puerto Rico, and other federal territories and possessions of the U.S.; and**
- (2) **Canadian attorneys who represent applicants residing in Canada and who have applied for and received reciprocal recognition by the USPTO under 37 C.F.R. §10.14(c).**

37 C.F.R. §10.14; TMEP §602.

Other than duly authorized Canadian attorneys, foreign attorneys cannot sign responses or otherwise represent applicants before the USPTO. *See* TMEP §602.06(b). Preparing a paper, authorizing an amendment to an application, or submitting legal arguments in response to a requirement or refusal constitutes representation of a party in a trademark matter. *A response signed by an unauthorized foreign attorney is considered an incomplete response.* TMEP §§602, 602.03, 603.04, 605.05(a).

## THE APPLICATION HAS BEEN PROVISIONALLY REFUSED AS FOLLOWS:

The assigned examining attorney has reviewed the referenced application and determined the following.

### LIKELIHOOD OF CONFUSION – SECTION 2(d)

The examining attorney refuses registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), because the applicant's mark, when used on or in connection with the identified goods, so resembles the mark in U.S. Registration No. 1170459 and 3227083 as to be likely to cause confusion, to cause mistake, or to deceive. TMEP section 1207. See the enclosed registration.

The examining attorney encloses information regarding pending Application Serial Nos. 78757215, 78227864, 77216964, 77066201, 77249207, 77000337, and 77024094. The filing dates of the referenced applications precede the applicant's filing date. There may be a likelihood of confusion between the applicant's mark and the referenced marks under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d). If one or more of the referenced applications matures into a registration, the examining attorney may refuse registration in this case under Section 2(d). 37 C.F.R. Section 2.83; TMEP section 1208.01.

The examining attorney must analyze each case in two steps to determine whether there is a likelihood of confusion. First, the examining attorney must look at the marks themselves for similarities in appearance, sound, connotation and commercial impression. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Second, the examining attorney must compare the goods or services to determine if they are related or if the activities surrounding their marketing are such that confusion as to origin is likely. *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re International Telephone and Telegraph Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Products Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978).

The applicant's mark is BRAVO for "non-alcoholic beverages, fruit juices, fruit juice beverages." The registrant's marks are BRAVO! For "meal replacement milk drinks" and BRAVO for "coffee."

When the applicant's mark is compared to a registered mark, "the points of similarity are of greater importance than the points of difference." *Esso Standard Oil Co. v. Sun Oil Co.*, 229 F.2d 37, 108 USPQ 161 (D.C. Cir.), *cert. denied*, 351 U.S. 973, 109 USPQ 517 (1956).

The marks share the identical dominant term BRAVO. If the marks of the respective parties are identical or highly similar, the examining attorney must consider the commercial relationship between the goods or services of the respective parties carefully to determine whether there is a likelihood of confusion. *In re Concordia International Forwarding Corp.*, 222 USPQ 355 (TTAB 1983).

The goods of the parties need not be identical or directly competitive to find a likelihood of confusion. They need only be related in some manner, or the conditions surrounding their marketing be such, that they could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the goods come from a common source. *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984); *Guardian Products Co., Inc. v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); *In re International Telephone & Telegraph Corp.*, 197 USPQ 910 (TTAB 1978). The goods of the parties are identical and/or highly related, namely, beverages and dietetic drinks.

The marks are virtually identical. The goods are very highly related. The similarities among the

marks and the goods are so great as to create a likelihood of confusion among consumers. The examining attorney must resolve any doubt regarding a likelihood of confusion in favor of the prior registrant. *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir., 1988).

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

## **INFORMALITIES**

If the applicant chooses to respond to the refusal to register, the applicant must also respond to the following informalities.

## **IDENTIFICATION OF GOODS**

The identification of goods is unacceptable as indefinite because the precise nature of the goods is unclear from the present wording. The applicant must amend the identification to specify the commercial name of the goods. If there is no common commercial name for the product, the applicant must describe the product and its intended uses. TMEP §1402.01.

The applicant may adopt the following identification, if accurate:

Class 32

**Non-alcoholic beverages, namely, \_\_\_\_\_ [applicant must specify the type of beverages, e.g., non-alcoholic cocktails, non-alcoholic beer]; fruit juices, non-alcoholic fruit juice beverages, in International Class 32.**

TMEP section 1402.

Applicant may wish to refer to the on-line identification manual on the PTO homepage for acceptable names of goods and services. The web page address is:

<http://www.uspto.gov/web/office/tac/doc/gsmmanual/>

Please note that, while an application may be amended to clarify or limit the identification, additions to the identification are not permitted. 37 C.F.R. §2.71(a); TMEP §1402.06. Therefore, the applicant may not amend to include any goods that are not within the scope of goods set forth in the present identification.

## **CLASSIFICATION FOR GOODS AND/OR SERVICES CANNOT BE CHANGED (Advisory)**

The international classification of goods and/or services in applications filed under Trademark Act Section 66(a) cannot be changed from the classification given to the goods and/or services by the International Bureau of the World Intellectual Property Organization in the corresponding international registration. TMEP §§1401.03(d), 1401.04 and 1904.02(b).

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

/Sharon A. Meier/

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Trademark Attorney  
Law Office 112  
(571) 272-9195 - phone  
(571) 273-9112 - fax

**RESPOND TO THIS ACTION:** If there are any questions about the Office action, please contact the assigned examining attorney. A response to this Office action should be filed using the form available at <http://www.uspto.gov/teas/eTEASpageD.htm>. If notification of this Office action was received via e-mail, no response using this form may be filed for 72 hours after receipt of the notification. **Do not attempt to respond by e-mail as the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

**STATUS CHECK:** Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

Print: Jan 14, 2008

73108539

**TYPED DRAWING**

**Serial Number**  
73108539

**Status**  
REGISTERED AND RENEWED

**Word Mark**  
BRAVO

**Standard Character Mark**  
No

**Registration Number**  
1170459

**Date Registered**  
1961/09/22

**Type of Mark**  
TRADEMARK

**Register**  
PRINCIPAL

**Mark Drawing Code**  
(1) TYPED DRAWING

**Owner**  
SARA LEE COFFEE AND TEA HELLAS VIMICHANIA KAFE KAI TSAGIOU ANONYMOS  
STAIRIA, SGA BRAVO S. A. LTD LIAB UT ST CO GREECE 100 KIFISSOU AVE.  
AEGALEO ATHENS GREECE

**Goods/Services**  
Class Status -- ACTIVE. IC 030. US 046. G & S: Coffee. First Use:  
1952/06/00. First Use In Commerce: 1969/11/13.

**Filing Date**  
1976/12/13

**Examining Attorney**  
UNKNOWN

**Attorney of Record**  
Mary Margaret Murray

Print: Jan 14, 2008

77000337

**DESIGN MARK**

**Serial Number**  
77000337

**Status**  
NOTICE OF ALLOWANCE - ISSUED

**Word Mark**  
BRAVO! BLENDERS

**Standard Character Mark**  
Yes

**Type of Mark**  
TRADEMARK

**Register**  
PRINCIPAL

**Mark Drawing Code**  
(4) STANDARD CHARACTER MARK

**Owner**  
BRAVO! BRANDS INC. CORPORATION DELAWARE 11300 U.S. HIGHWAY 1 SUITE 202  
NORTH PALM BEACH FLORIDA 33406

**Goods/Services**  
Class Status -- ACTIVE, IC 005. US 006 018 044 046 051 052. G & S:  
meal replacement milk drinks.

**Filing Date**  
2006/09/15

**Examining Attorney**  
POLZER, NATALIE

**Attorney of Record**  
George W. Neuner

BRAVO! BLENDERS

Print: Jan 14, 2008

77024084

**DESIGN MARK**

**Serial Number**  
77024084

**Status**  
REPORT COMPLETED SUSPENSION CHECK - CASE STILL SUSPENDED

**Word Mark**  
BRAVO! SHOOTERS

**Standard Character Mark**  
Yes

**Type of Mark**  
TRADEMARK

**Register**  
PRINCIPAL

**Mark Drawing Code**  
(4) STANDARD CHARACTER MARK

**Owner**  
BRAVO! BRANDS INC. CORPORATION DELAWARE 11300 U.S. HIGHWAY 1 SUITE 202  
NORTH PALM BEACH FLORIDA 33406

**Goods/Services**  
Class Status -- ACTIVE, IC 005, US 006 018 044 046 051 052, G & S:  
Nutritionally Fortified beverages.

**Filing Date**  
2006/10/18

**Examining Attorney**  
POLZER, NATALIE

**Attorney of Record**  
Patrick J. Concannon



BRAVO! SHOOTERS

Print: Jan 14, 2008

77066201

**DESIGN MARK**

**Serial Number**  
77066201

**Status**  
SUSPENSION LETTER - MAILED

**Word Mark**  
QUESO BRAVO

**Standard Character Mark**  
Yes

**Type of Mark**  
TRADEMARK

**Register**  
PRINCIPAL

**Mark Drawing Code**  
(4) STANDARD CHARACTER MARK

**Owner**  
Land O'Lakes, Inc. CORPORATION MINNESOTA 4001 Lexington Ave North, MS  
2500 Arden Hills MINNESOTA 55126

**Goods/Services**  
Class Status -- ACTIVE. IC 029. US 046. G & S: CHEESE; CHEESE  
SPREADS; CHEESE, NAMELY PROCESSED CHEESE.

**Disclaimer Statement**  
NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE 'QUESO' APART FROM THE  
MARK AS SHOWN.

**Translation Statement**  
The English translation of the word 'QUESO' in the mark is CHEESE.

**Filing Date**  
2006/12/18

**Examining Attorney**  
KEARNEY, COLLEEN

**Attorney of Record**  
Amber Stevens

QUESO BRAVO

Print: Jan 14, 2008

77216964

**DESIGN MARK**

**Serial Number**  
77216964

**Status**  
APPROVED FOR PUBLICATION

**Word Mark**  
CAFE BRAVO COFFEE ROASTING CO.

**Standard Character Mark**  
No

**Type of Mark**  
TRADEMARK

**Register**  
PRINCIPAL

**Mark Drawing Code**  
(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

**Owner**  
Cafe Bravo Coffee Roasting Company CORPORATION CALIFORNIA Suite 101  
41911 5th Street Temecula CALIFORNIA 92590

**Goods/Services**  
Class Status -- ACTIVE. IC 030. US 046. G & S: Coffee; Coffee beans; Coffee flavored syrup used in making food beverages; Coffee-based beverage containing milk; Ground coffee beans; Prepared coffee and coffee-based beverages; Roasted coffee beans; Mixes in the nature of concentrates, syrups or powders used in the preparation of tea based beverages; Tea; Tea bags; Cocoa mixes; Dry seasoning mixes for coffee based drinks. First Use: 2001/05/15. First Use In Commerce: 2002/01/05.

**Disclaimer Statement**  
NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "COFFEE ROASTING COMPANY" APART FROM THE MARK AS SHOWN.

**Description of Mark**  
The mark consists of the wording CAFE BRAVO appears in a stylized form with the word CAFE above the word BRAVO, and the wording COFFEE ROASTING CO. below the word BRAVO and framed with lines above and below.

**Colors Claimed**  
Color is not claimed as a feature of the mark.

**Filing Date**

Print: Jan 14, 2008

77216964

2007/06/27

**Examining Attorney**  
SISUN, SCOTT

**Attorney of Record**  
Michael Newcomb

CAFE  
**BRAVO**™  
COFFEE ROASTING CO.

Print: Jan 14, 2008

77248207

**DESIGN MARK**

**Serial Number**  
77248207

**Status**  
NON-FINAL ACTION - MAILED

**Word Mark**  
BRAVO SUPERMARKETS FOR SAVINGS

**Standard Character Mark**  
Yes

**Type of Mark**  
TRADEMARK

**Register**  
PRINCIPAL

**Mark Drawing Code**  
(4) STANDARD CHARACTER MARK

**Owner**  
Beta II Marketing Corp LTD LIAB CO DELAWARE 65 West Red Oak Lane White Plains NEW YORK 10604

**Goods/Services**  
Class Status -- ACTIVE. IC 030. US 046. G & S: (Based on Intent to Use) Salad dressings; Hot pepper powder; Hot sauce; Ketchup; Salsa; Tomato sauce; Alimentary paste; Bakery goods; Barbecue sauce; Biscuits; Honey; Bread crumbs; Burritos; Candy; Cakes; Cereal based snack foods; Coffee; Cookies; Corn chips; Custards; Tortilla chips; Crackers; Seasonings; Spices; Chocolate; Empanadas; Enchiladas; Extracts used as flavoring; Fajitas; Flavoring syrup; Flour; Frozen entrees consisting primarily of pasta or rice; Grain-based food beverages; Noodles; Picante sauce; Flavored, sweetened gelatin desserts; Food starch; Honey; Chili sauce; Cocoa; Puddings; Table syrup; Taco chips; Tamales; Pastries; Rice; Salt; Tapioca; Yeast; Prepared meals consisting primarily of pasta or rice; Treacle; Marinades; Corn meal; Frozen confections; Wine vinegar; Tortillas.

**Filing Date**  
2007/08/07

**Examining Attorney**  
WELLS, KELLEY

**Attorney of Record**  
Stephen L. Baker

BRAVO SUPERMARKETS FOR  
SAVINGS



Print: Jan 14, 2008

78227864

**TYPED DRAWING**

**Serial Number**  
78227864

**Status**  
REPORT COMPLETED SUSPENSION CHECK - CASE STILL SUSPENDED

**Word Mark**  
BRAVO GELATO

**Standard Character Mark**  
No

**Type of Mark**  
TRADEMARK

**Register**  
PRINCIPAL

**Mark Drawing Code**  
(1) TYPED DRAWING

**Owner**  
Hauck, Walter Christie CORPORATION TENNESSEE 230 Great Circle Road,  
Suite 200 Nashville TENNESSEE 37228

**Goods/Services**  
Class Status -- ACTIVE, IC 030, US 046, G & S: gelato Italian ice  
cream for wholesale and retail sales. First Use: 2002/01/01. First  
Use In Commerce: 2002/01/15.

**Filing Date**  
2003/03/20

**Examining Attorney**  
WOOD, CAROLINE

Print: Jan 14, 2008

78757202

**DESIGN MARK**

**Serial Number**  
78757202

**Status**  
REGISTERED

**Word Mark**  
BRAVO!

**Standard Character Mark**  
No

**Registration Number**  
3227093

**Date Registered**  
2007/04/10

**Type of Mark**  
TRADEMARK

**Register**  
PRINCIPAL

**Mark Drawing Code**  
(s) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

**Owner**  
BRAVO! BRANDS INC. CORPORATION DELAWARE 11300 U.S. HIGHWAY 1 SUITE 202  
NORTH PALM BEACH FLORIDA 33406

**Goods/Services**  
Class Status -- ACTIVE. IC 005. US 006 018 044 046 051 052. G & S:  
meal replacement mlk drinks. First Use: 2005/11/15. First Use In  
Commerce: 2005/11/15.

**Filing Date**  
2005/11/18

**Examining Attorney**  
ORNDORFF, LINDA

**Attorney of Record**  
George W. Neuner

*Bravo!*

Print: Jan 14, 2008

78757215

**DESIGN MARK**

**Serial Number**  
78757215

**Status**  
REPORT COMPLETED SUSPENSION CHECK - CASE STILL SUSPENDED

**Word Mark**  
BRAVO!

**Standard Character Mark**  
No

**Type of Mark**  
TRADEMARK

**Register**  
PRINCIPAL

**Mark Drawing Code**  
(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

**Owner**  
BRAVO! BRANDS INC. CORPORATION DELAWARE 11300 U.S. HIGHWAY 1 SUITE 202  
NORTH PALM BEACH FLORIDA 33406

**Goods/Services**  
Class Status -- ACTIVE. IC 030. US 046. G & S: tea drinks, namely, tea-based beverages with fruit flavoring, drinks made of soy, frozen confections, namely, reduced-fat, fortified and flavored ice milk bars on a stick; milk-containing juice bars on a stick; fortified milk shakes.

**Goods/Services**  
Class Status -- ACTIVE. IC 029. US 046. G & S: milk beverages, namely, fortified milk, flavored milk, low carbohydrate lactose-free milk, reduced-fat milk, protein-enriched milk and milk beverages containing juice.

**Goods/Services**  
Class Status -- ACTIVE. IC 032. US 045 046 048. G & S: sparkling water, fruit flavored water, smoothies; tea drinks, namely, non-alcoholic beverages with tea and coffee flavor.

**Goods/Services**  
Class Status -- ACTIVE. IC 005. US 006 018 044 046 051 052. G & S: Nutritionally fortified water.

**Filing Date**  
2005/11/18

Print: Jan 14, 2008

78757215

Examining Attorney  
ORNDORFF, LINDA

Attorney of Record  
George W. Neuner

*Bravo!*