

To: Coco Gelato, Corp. (steve@corpcreations.com)
Subject: TRADEMARK APPLICATION NO. 78189503 - FENOGLIO - N/A
Sent: 6/6/03 11:10:12 AM
Sent As: ECom102
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/189503

APPLICANT: Coco Gelato, Corp.

CORRESPONDENT ADDRESS:
Stephen Samuel
Corporate Creations P.A.
6001 W. Parmer Lane, Suite 370-157
Austin TX 78727

RETURN ADDRESS:
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514
ecom102@uspto.gov

MARK: FENOGLIO

CORRESPONDENT'S REFERENCE/DOCKET NO : N/A

CORRESPONDENT EMAIL ADDRESS:
steve@corpcreations.com

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

TO AVOID ABANDONMENT, WE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF OUR MAILING OR E-MAILING DATE.

Serial Number 78/189503

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

SURNAME REFUSAL

The examining attorney refuses registration on the Principal Register because the mark is primarily merely a surname. Trademark Act Section 2(e)(4), 15 U.S.C. §1052(e)(4); TMEP §1211. The examining attorney must consider the primary significance of the mark to the purchasing public to determine whether a term is primarily merely a surname. *In re Kahan & Weisz Jewelry Mfg. Corp.*, 508 F.2d 831, 184 USPQ 421 (C.C.P.A. 1975). Please see the attached evidence from POWERFINDER, establishing the surname significance of the mark (247 Residential listings). Moreover, the examining attorney refers to the excerpted articles from the LEXIS/NEXIS® Research database in which the surname, FENOGLIO appeared in 912 stories. Enclosed is a sampling of those stories.

REGISTER SURNAME UNDER SECTION 2(f)

An applicant may register a surname under Trademark Act Section 2(f), 15 U.S.C. §1052(f), by establishing acquired distinctiveness. The applicant may present any of the following to establish distinctiveness. TMEP §§1211 and 1212.02(a).

- (1) The applicant may rely on a claim of ownership of one or more prior registrations on the Principal Register for a mark which is the same as the mark in this application for the same or related goods. 37 C.F.R. §2.41(b); TMEP §§1212.04 *et seq.*
- (2) The applicant may provide a statement that the mark has become distinctive of the applicant's goods/services by reason of substantially exclusive and continuous use in commerce by the applicant for the five years next preceding the date of the statement. The applicant must verify this statement with an affidavit or a declaration under 37 C.F.R. §2.20. 37 C.F.R. §2.41(b); TMEP §§1212.05 *et*

seq.

(3) The applicant may submit actual evidence of acquired distinctiveness. 37 C.F.R. §2.41(a); TMEP §§1212.06 *et seq.*

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

IDENTIFICATION OF GOODS/RECITATION OF SERVICES

The identification of goods/recitation of services is unacceptable as indefinite because as worded, it is unclear as to whether the applicant is providing goods or services or both. The applicant may adopt any or all of the following identifications/recitations, if accurate:

“Chocolate and candy,” in International Class 30.

“Retail store services featuring chocolate and candy,” in International Class 35.

TMEP Sections 1402.01 and 1402.11.

Please note that, while an application may be amended to clarify or limit the identification/recitation, additions to the identification are not permitted. 37 C.F.R. §2.71(a)-(b); TMEP Sections 804.09 and 1402.06. Therefore, the applicant may not amend to include any goods/services that are not within the scope of goods/services set forth in the present identification/recitation.

REQUIREMENTS FOR COMBINED APPLICATIONS

As indicated above, the application identifies goods and services in two International Classes, however, the applicant has submitted a fee sufficient for only one International Class. If the applicant prosecutes this application as a combined, or multiple-class application, the applicant must comply with each of the following.

(1) The applicant must list the goods/services by international class with the classes listed in ascending numerical order. TMEP §1403.01.

(2) The applicant must submit a filing fee for each international class of goods/services not covered by the fee already paid. 37 C.F.R. §§2.6(a)(1) and 2.86(a); TMEP §§810.01 and 1403.01. Effective January 1, 2003, the fee for filing an application for trademark registration will be increased to **\$335.00** per International Class. The fee for amending an existing application to add an additional class or classes of goods/services will be \$335.00 per class [for classes added on or after January 1, 2003](#).

HOW TO RESPOND TO THIS OFFICE ACTION

No set form is required for response to this Office action. The applicant must respond to each point raised. The applicant should simply set forth the required changes or statements and request that the Office enter them. The applicant must sign the response. In addition to the identifying information required at the beginning of this letter, the applicant should provide a telephone number to speed up further processing.

To expedite processing, the Office encourages parties to file documents through the Trademark Electronic Application System, at <http://www.uspto.gov/teas/index.html>, wherever possible.

Effective May 1, 2003, the mailing addresses for filing trademark-related documents on paper has changed. See notices at [68 FR 19371](#) (April 21, 2003) and [68 FR 14332](#) (March 25, 2003).

All trademark-related correspondence filed by mail, except for documents sent to the Assignment Services Division for recordation and requests for copies of trademark documents, should be addressed to:

Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3514

The mailbox designations previously listed in TMEP §305.01 are no longer in use.

Requests to record documents in the Assignment Services Division can be filed electronically at <http://etas.uspto.gov/>. Paper documents and cover sheets to be recorded in the Assignment Services Division should be sent to:

Mail Stop Assignment Recordation Services
Director of the United States Patent and Trademark Office

P. O. Box 1450
Alexandria VA 22313-1450

Copies of trademark documents can be ordered through the Office's website at <http://www.uspto.gov>. Requests for certified or uncertified copies of trademark documents filed on paper should be sent, with an authorization to charge the fee to a credit card or USPTO deposit account, to:

Mail Stop Document Services
Director of the United States Patent and Trademark Office
P. O. Box 1450, Alexandria VA 22313-1450

To respond formally via E-mail, visit <http://www.uspto.gov/web/trademarks/tmelecresp.htm> and follow the instructions.

To respond formally via regular mail, your response should be sent to the mailing Return Address listed above and include the serial number, law office and examining attorney's name on the upper right corner of each page of your response.

To avoid lateness due to mail delay, the applicant should add the following certificate to the response to the Office action, retaining a photocopy of the response with the completed certificate in case the response becomes lost.

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513, on

(Date)

(Signature)

(Typed or printed name of the person signing the certificate)

The certificate-of-mailing procedure does **not** apply to the filing of certain documents, such as trademark applications, statements of use, requests for extensions of time to file statements of use, amendments to allege use, affidavits under Sections 8, 12(c) or 15 of the Trademark Act, renewal applications and petitions to cancel registrations.

To check the status of your application at any time, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov/>

For general and other useful information about trademarks, you are encouraged to visit the Office's web site at <http://www.uspto.gov/main/trademarks.htm>

NO CONFLICTING MARKS NOTED

The examining attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d). TMEP §704.02.

PLEASE NOTE: Because it delays processing, submission of duplicate papers is discouraged. Unless specifically requested to do so by the Office, parties should not mail follow up copies of documents transmitted by fax. *Cf. ITC Entertainment Group Ltd. V. Nintendo of America Inc.* 45 USPQ2d 2021 (TTAB 1998).

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY.

*****IMPORTANT NOTICE*****

Changes in Procedures for Filing Trademark Documents By Express Mail

Effective June 24, 2002, 37 C.F.R. §1.10(a) has been amended. The Express Mail procedure provided in 37 C.F.R. §1.10 no longer applies to the following trademark documents:

- Trademark/Service Mark Application under §1 or §44 of the Trademark Act, 15 U.S.C. §1051 or §1126
- Statement of Use under §1(d) of the Trademark Act, 15 U.S.C. §1051(d)
- Amendment to Allege Use under §1(c) of the Trademark Act, 15 U.S.C. §1051(c)
- Request for Extension of Time to File a Statement of Use under §1(d) of the Trademark Act, 15 U.S.C. §1051(d)
- Affidavit or Declaration of Continued Use under Section 8 of the Trademark Act, 15 U.S.C. §1058
- Renewal Request under Section 9 of the Trademark Act, 15 U.S.C. §1059
- Combined Filing under Sections 8 and 9 of the Trademark Act, 15 U.S.C. §§1058 and 1059
- Combined Affidavit or Declaration under Sections 8 and 15 of the Trademark Act, 15 U.S.C. §§1058 and 1065
- Request to Change or Correct Address

If the documents listed above are filed by Express Mail, they will receive a filing date as of the date of receipt in the Office and *not* the date of deposit with the USPS. See notice at 67 Fed. Reg. 36099 (May 23, 2002), available at <http://www.uspto.gov/web/offices/com/sol/notices/expmailrule2.pdf>.

FEE INCREASE EFFECTIVE JANUARY 1, 2003

Effective January 1, 2003, the fee for filing an application for trademark registration will be increased to **\$335.00** per International Class. The USPTO will not accord a filing date to applications that are filed on or after that date that are not accompanied by a minimum of \$335.00.

Additionally, the fee for amending an existing application to add an additional class or classes of goods/services will be \$335.00 per class **for classes added on or after January 1, 2003.**

Howard Smiga /HS/
 Trademark Examining Attorney
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SEARCH TERM: **Fenoglio**

TOTAL NUMBER of residential listings in PowerFinder: **247**

The evidence below includes either the entire listing from names with fewer than 100 matches or only the first 100 matches as representative of the entire listings from the disc.

FENOGLIO, AARON BUDDY LEONA, TX 75850 903-344-2009
FENOGLIO, ALBERT H MONTAGUE, TX 76251 940-894-6292
FENOGLIO, ALFRED JR 2811 6TH ST PERU, IL 61354-2417 815-223-9013
FENOGLIO, ALVIN 3565 WOSLEY DR FORT WORTH, TX 76133-2167 817-292-2878
FENOGLIO, ANDREW 3481 TASSEFLOWER CT BONITA SPRINGS, FL 34134-7972 941-992-3949
FENOGLIO, ANDREW 1059 WALNUT ST CLINTON, IN 47842-1136 765-832-3609
FENOGLIO, ANDREW 1141 STONEGATE RD ALGONQUIN, IL 60102-5968
FENOGLIO, ANDREW 515 W MCKAY ST FRONTENAC, KS 66763-2150 316-231-3819
FENOGLIO, ANDREW M 935 E DIVISION ST LOCKPORT, IL 60441-4587 630-838-6151
FENOGLIO, ANDY 1124 W 2ND ST PITTSBURG, KS 66762-4622 316-232-2329
FENOGLIO, ANDY 8713 BROWNE ST OMAHA, NE 68134-2819 402-571-8185
FENOGLIO, B J 4214 CHEYENNE DR ROWLETT, TX 75088-5117 972-463-1679
FENOGLIO, B L 808 CAMPBELL LN DENTON, TX 76209-4652 940-484-0878
FENOGLIO, BARBARA 211 E FRANCIS RD NEW LENOX, IL 60451-1215 815-485-0952
FENOGLIO, BARNEY 709 N CAYUGA ST FRONTENAC, KS 66763-2072 316-231-7743
FENOGLIO, BENJAMIN 219 W 4TH ST TONGANOXIE, KS 66086-3056 913-369-3061
FENOGLIO, BERT 701 W MADISON ST KNOXVILLE, IA 50138-2930 641-828-7809
FENOGLIO, BETTI JANE 2896 W RIVERWALK CIR LITTLETON, CO 80123-8929 720-283-4276
FENOGLIO, BILL 1301 SUNSET DR FORT WAYNE, IN 46807-2951 219-745-8277
FENOGLIO, BILL 2627 SUTTON CT HOUSTON, TX 77027-5246 713-627-2185
FENOGLIO, BILL 11673 MANILA DR CYPRESS, CA 90630-5527 714-894-8457
FENOGLIO, BILLY JOE HIGHWAY 148 N HENRIETTA, TX 76365 940-538-6124
FENOGLIO, BRADY MONTAGUE, TX 76251 940-894-6883
FENOGLIO, BRETT SAN DIEGO, CA 92122 858-452-5622
FENOGLIO, BRIGID 8713 BROWNE ST OMAHA, NE 68134-2819 402-571-8185
FENOGLIO, BRUNO 34 EUSTIS AVE LEHIGH ACRES, FL 33936-6453 941-369-5468
FENOGLIO, C 1803 POTOMAC PL COLLEGE STATION, TX 77840-4949 979-696-8766
FENOGLIO, C J 2608 W CHELSEA DR MUNCIE, IN 47304-1229 765-282-2849
FENOGLIO, C J 1807 SHADYWOOD CT CHESTERFIELD, MO 63017-5440 636-532-6119
FENOGLIO, C J BYERS, TX 76357 940-529-6323
FENOGLIO, C R 1782 CARRIAGE LN ALLIANCE, OH 44601-5724 330-821-4577
FENOGLIO, CARLO 930 N 8TH ST CLINTON, IN 47842-1315 765-832-3249
FENOGLIO, CECIL R 808 E HIGHWAY 82 NOCONA, TX 76255-2923 940-825-6714
FENOGLIO, CECIL R WICHITA FALLS, TX 76308 940-691-9977
FENOGLIO, CHAD 111 E CHALMERS ST CHAMPAIGN, IL 61820-6067 217-367-2703
FENOGLIO, CHARLES 1107 HIDDEN MEADOW DR MONTGOMERY, AL 36117-4561 334-277-4315
FENOGLIO, CHARLES MONTAGUE, TX 76251 940-894-3130
FENOGLIO, CHARLES 175 DUCK CREEK RD SANGER, TX 76266 940-458-4253
FENOGLIO, CHARLES 1283 EUCLID AVE BEAUMONT, CA 92223-1532 909-845-3658
FENOGLIO, CHARLES E 6690 7 MILE RD SOUTH LYON, MI 48178-7003 248-437-1063
FENOGLIO, CHARLES L LAS VEGAS, NV 89121 702-433-2046
FENOGLIO, CHASE NOCONA, TX 76255 940-825-6567
FENOGLIO, CHRIS 713 WAGON DR NASHVILLE, TN 37221-1914 615-646-7097
FENOGLIO, CHRIS 4233 N RIO CANCION TUCSON, AZ 85718-7145 520-529-3543
FENOGLIO, CLAYTON 807 E CLAY ST BOWIE, TX 76230-5702 940-872-5369
FENOGLIO, COREY 4900 MORRIS AVE ADDISON, TX 75001-6611 972-385-7469
FENOGLIO, D 4201 CEDAR ELM LN WICHITA FALLS, TX 76308-3000 940-689-8869
FENOGLIO, DAN 113 S DICK PRICE RD KENNEDALE, TX 76060-3815 817-478-9605
FENOGLIO, DANICA 1201 VERDE DR #D BRYAN, TX 77801-1769
FENOGLIO, DARREN 2110 E CRAFTON ST HENRIETTA, TX 76365-2515 940-538-6967
FENOGLIO, DAVID 1235 S BLOOMINGTON ST GREENCASTLE, IN 46135-2205 765-653-7479
FENOGLIO, DAVID 829 E EVERGREEN ST WHEATON, IL 60187-5675 630-653-4525
FENOGLIO, DAVID A 205 LAMAR ST NOCONA, TX 76255-2209 940-825-4487
FENOGLIO, DAVID J DVM 4840 W 71ST ST INDIANAPOLIS, IN 46268-2101 317-291-4553
FENOGLIO, DEAN 1432 N VIEW DR KNOXVILLE, IA 50138-8889 641-828-6203
FENOGLIO, DOMENIC L 731 GRAHAM DR CHESTERTON, IN 46304-1619 219-926-6482
FENOGLIO, DOMENICK 378 WHITESIDE DR JOLIET, IL 60435-9401 815-725-3277
FENOGLIO, DONNIE HIGHWAY 103 NOCONA, TX 76255 940-825-3907
FENOGLIO, DUWAYNE E BLUEMOUND RD NOCONA, TX 76255 940-825-6567
FENOGLIO, E 10 RIVER COURT PKWY NW ATLANTA, GA 30328-1102 678-443-0742

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