

PACIFIC MERIDIAN GROUP, LLC

June 24, 2016

Application for Trademark Registration #86775004: Supplemental Information

To: U.S. Patent and Trademark Office
Attn: Ms. Andrea D. Saunders, Trademark Attorney, Law Office 117
Submitted Via USPTO Online

Applicant: Pacific Meridian Group, LLC
Previous Address: 222 Juana Avenue, San Leandro, CA 94577-4839
New Address: **60 Hegenberger Place, Oakland CA 94621**
Mark: **GOLD GARLIC**

This letter is in response to the USPTO Office Action dated January 22, 2016. We, Pacific Meridian Group LLC ('PMG'), dba Pacific Farms, hereby submit the following as supplemental information for the application. We understand that each case would be decided on its own facts and thank you for allowing us to explain further.

The three areas of concern identified by USPTO are:

- Section 2(d) Refusal – Likelihood of Confusion
- Identification of Goods – Duplicates
- Disclaimer Required

1. SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION

Existing trademarks are registered for

- "GARLIC GOLD" # 2828406
- "GOLDEN GARLIC" # 2555610

A. Similarity of Mark

There is no likelihood of confusion in existence between the **GOLD GARLIC** applied for trademark and the previously registered marks. The following evidence supports PMG's marks are dissimilar from other registered marks.

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The registered trademarks do not sound alike to our trademark, **GOLD GARLIC** when spoken. There is also not a visual similarity. **GOLD GARLIC** does not share the characteristics of two registered marks because it starts with the word "GOLD", not "Golden" or "Garlic". While there is no claim made on any font, size or color, **GOLD GARLIC** always appear in the same color black, font Arial and text size 24. The **GOLD GARLIC** mark as it usually appears on a label which is affixed to the outside of a carton (*See Exhibit 1*). This illustration actually used is demonstrated for the purpose of assisting a visualization of how the mark appears.

There is no similarity in commercial impression. As mentioned, the mark appears on a label which is affixed to the outside of a carton, as the **GOLD GARLIC** product is a bulk product sold at a commercial level, not a retail level.

B. Similarity of the Nature of Goods and/or Services

The nature of the registered goods and **GOLD GARLIC** are substantially different. The registered mark, Golden Garlic is a sauce for poultry (wings). The registered mark, Garlic Gold is a garlic in olive oil sauce. Both of the registered products are wet products (a sauce and an oil), whereas our product, **GOLD GARLIC**, is a dry product (a dry garlic product with no additives). The registered products contain multiple ingredients whereas our product, **GOLD GARLIC**, is 100% pure garlic with no additives. Upon our internal research of these two relatively unknown products but trademarked, their products are intended to be used as a condiment or sauce along with some other food. Our product, **GOLD GARLIC**, is an industrial food ingredient used solely by food manufacturers in their own formulas. Their products are both packaged and branded for consumer use at the retail level. As mentioned, our **GOLD GARLIC** products are bulk packed and only sold to industrial food manufacturers.

Therefore, there is simply no relatedness of the goods in question. There is no similarity in the packaging and there is no similarity in the marketing that could give rise to the mistaken belief that the goods emanate from the same source. When the mark and the usage is for different purposes, confusion is highly unlikely. The industry and trade concerned would know the difference.

C. Similarity of the trade channels of the goods and/or services

There is not a similarity of trade channels between the registered goods and **GOLD GARLIC**. Goods do not travel in the same channels of trade nor to the same class of purchasers. The trade channels are completely different and the buyers are completely different.

Both of the registered items are packaged and sold to end consumers (seemingly via small retail stores or on the internet). Our **GOLD GARLIC** products are not packaged or intended for use by

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end consumers. Again, our **GOLD GARLIC** products are bulk packed in either 50 lb. cartons or 1500 lb. totes. The **GOLD GARLIC** label is attached to the outside of the bulk carton or tote (*see Exhibit 2*). In fact, since we do not market towards consumers, we are not in compliance nor require to be in compliance with consumer packaging guidelines. **GOLD GARLIC** products always have been, and always will be, used solely by industrial customers as ingredients in their own formulas. They are never resold by industrial customers so the **GOLD GARLIC** mark is never re-used. The **GOLD GARLIC** trade channel is significantly different from the registered goods. Therefore, confusion would be near impossible. For example, one of our customers isn't going to accidentally purchase "Golden Garlic Poultry Sauce" for use in their applications (*see Exhibit 3 and Exhibit 4*), and likewise, no consumer would ever know that Pacific Farms **GOLD GARLIC** even exists since it is not marketed or available to them. A typical sale order of PMG's products to industrial food manufacturers who are often between 2200 lbs. – 40,000 lbs. per order. There are virtually no orders with PMG for less than 2200 lbs. which would be one full pallet. There is no market interface between **GOLD GARLIC** and the owner of the other two registered marks. Furthermore, based on the use, there is no competition between **GOLD GARLIC** and the other two marks. PMG's relevant market is not the public at-large. There has never been, nor would there ever be, a time or condition in which confusion would exist.

Purchasers of PMG's **GOLD GARLIC** product are "sophisticated" buyers and possess an expertise in the type of product they purchase. They are commercial buyers of bulk products and rely on the quality of industrial types of goods. They are not ordinary consumers purchasing at a retail level in the supermarket (*See Exhibit 4*). In such a market with extremely sophisticated buyers, the likelihood of consumer confusion would not be on the basis of any potential similarity in trade name, as there is a difference in the condition of sale and the type of buyers to whom the sales are made, i.e. "ordinary consumer" versus seasoned buyers of bulk product for commercial use.

In summary, the ultimate question for determining liability in trademark infringement action is whether there exists a likelihood that an appreciable number of ordinarily prudent purchasers will be misled, or indeed simply confused, as to the source of the goods in question. PMG believes that the answer to this question is that there is no likelihood of confusion for its trademark registration of **GOLD GARLIC**.

The basic goal of PMG's registration is to protect its **GOLD GARLIC** trademark, secure the good will of its business, and protect the public against spurious and falsely marked goods. It is an economic reasoning for the PMG to obtain and retain customers - the very purpose and function of the trademark registration to avoid and preclude confusion.

PMG is highly familiar with its **GOLD GARLIC** mark usage in the marketplace and does not want to cause confusion of its own and other products. The uncontroverted evidence as stated above should prevail against any assumption of confusion in the marketplace. If other registrants changed their product for sell to industrial markets instead of retail, it would be damaging to PMG. PMG is not a newcomer and its intent is not to confuse the buying public. PMG has no intent to profit from another's reputation, nor to copy, resemble or knockoff another party's product. PMG has no intent to benefit from any

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competitor's goodwill. PMG's product is markedly superior and PMG does not, and would not, rely on any undeserved sales. PMG wants to preserve its right to protect its investment with its exclusive and unique technology of enhancing garlic product to the "GOLD" flavor and color. PMG's suggestive mark of **GOLD GARLIC** since 1999 is meant to project a favorable and idealistic image of its inherently distinctive product.

2. IDENTIFICATION OF GOODS

Pursuant to TMEP Section 707.02, please amend the first under Class 029 to reflect PMG's new address since the initial application: 60 Hegenberger Place, Oakland CA 94621.

In addition, please delete all other pending applications for PMG.

3. DISCLAIMER REQUIRED

Please correct the Class 029 application with the following disclaimer:

No claim is made to the exclusive right to use "GARLIC" apart from the mark as shown.

Thank you for your consideration of PMG's trademark application. We would appreciate your preliminary response should you require additional information to be furnished in support of our explanations provided.

Sincerely,



Nate Offenberg
Chief Executive Officer
Pacific Meridian Group, LLC.

Exhibit 1: Mark as appearing on the label affixed to a carton of its product.

Exhibit 2: Photo of the two bulk sizes in GOLD GARLIC packaging.

Exhibit 3: Photo of Golden Garlic product for visual comparison purposes.

Exhibit 4: Photo of Garlic Gold product for visual comparison purposes.

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PACIFIC FARMS®
GOLD GARLIC MINCED

ITEM CODE: 318-368-1

LOT CODE: CS1454501 _ _ _ _

COUNT ____ of ____

NET WT. 50 LBS

PRODUCT OF CHINA

PACKED FOR PACIFIC FARMS®, a division of PACIFIC MERIDIAN GROUP, LLC
OAKLAND, CALIFORNIA, USA 94621



EXHIBIT 1

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

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Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.