

August 27, 2012

Mr. Paul Fahrenkopf  
Trademark Examining Attorney  
Law Office 101

Regarding: Application Serial Number 85560609 for mark "Wise Cracks"

Contact for Monument Foods, LLC: Don Bunnell [donb@monumentfoods.com](mailto:donb@monumentfoods.com) 502-226-6945

Dear Mr. Fahrenkopf :

This letter is in response to the Trademark Refusal notification received on June 14, 2012 for the use of the mark "Wise Cracks". We appreciate your response and the information you have provided. We would like to respectfully submit the following information and suggestions as a request for further consideration of the trademark.

We are aware of the existing trademark granted to Wise Foods, Inc. for "Wisecrackers". We would like to point out the differences in both the actual marks and the goods, channels of trade, and final consumer identification.

Similarity of Marks issue:

We feel that our request for the use of the trademark "Wise Cracks" is not similar to "Wisecrackers" for the following reasons:

1. We use the terms as two separate words, not as a single word, with the term "Cracks" being used more as an adjective rather than as the noun that is typically defined as a crispy baked bread product--a cracker.
2. Wise Foods, Inc. uses a comical and unusual font style for their trademark "Wisecrackers", we plan to use a font such as Franklin Gothic similar to that used on a wheat penny for the two separate words and to always keep the two words separate and both capitalized-"**Wise Cracks**".  
We would like to develop a logo that would have some of the same elements as a Wheat Penny design, with the Wise placed above the Cracks as the words One Cent are placed. This would be extremely different from the look and use of Wisecrackers.
3. Our intent in the use of the name is to infer that these are a wise choice of food, offering a crunchy alternative to nuts, seeds, and other salad toppings and snacks. Our product is

not related to nuts and we promote it to be an allergen-free alternative to nuts. We did not want to use a term like Wheat Nuts-that would be similar to Corn Nuts, but is misleading the public and incorrect since wheat and corn are not classified as nuts.

4. In using the term “Cracks” we are describing the real sounds- “pop”, “snap” or “crack” that the individual kernels of wheat make during the roasting process. The kernels of grain actually crack open and in some cases even explode during the process.

Similarity of Market Channels/Product Category issues:

Our whole grain product is simply intact grains steeped in water, then dried/roasted using a proprietary process. The finished product appears much like a roasted nut or seed, not at all like a cracker made from a dough consisting of flour, water, yeast, etc., then sheeted, cut and baked or fried. In fact one of our main marketing points is that our grain products are whole, intact grains minimally processed, using simple natural ingredients retaining and actually concentrating the protein, fiber, vitamins, and minerals in the grains. This unique process allows consumers to make a *wise* choice for healthier salad toppings, plus snacks-many who taste them say they would just eat them straight as a snack! To offer some points of distinction between our product and that of Wise Foods, Inc.:

1. Our roasted whole grain products will be marketed as unique salad toppings more similar and in the same channels as products such as nuts, sunflower and pumpkin seeds, and on shelves alongside other salad toppings such as dressings, croutons and bacon bits.
2. Our products would not be marketed to the same consumers or in the same channels as crackers, cookies, or even snack chips where we understand that Wise Foods, Inc. is promoting their product. As a snack product our grain products would be marketed in the same shelves and areas as nuts, sunflower seeds, trail mix, etc.
3. Our grain products would be unique and very different in appearance, texture, flavor, and packaging than crackers, the category listed in Wise Foods, Inc. registration for the trademark “Wisecrackers”.
4. Consumers will not identify the products as similar or the same due to the unique difference in appearance. When consumed, the roasted whole grain products have a totally different flavor, texture, and mouthfeel than a typical processed cracker product.

Lacking experience in this area of trademarks, we now understand that it would be better to limit the scope of our product category for the requested trademark of “Wise Cracks”. We were under the impression that we had to choose one of the listed goods/services areas when filling out the application. We offer the following information:

1. We will only be producing and marketing roasted individual whole grain products, lightly salted original using different varieties of grains, and then also different flavored products-just applying natural flavors to the surface of the individual whole grains either during the cooking/roasting process or after roasting.

2. We are willing to limit the application for the use of the term “Wise Cracks” to the category of “Roasted Individual Whole Grains” if that would allow us to improve our chances of a successful application for the proposed trademark of “Wise Cracks”.

We will be happy to provide more information to clarify these issues if you have any questions. We would like to narrow the goods/services, but would seek your guidance on the procedure to submit this modification to our application. We sincerely appreciate your consideration of our situation--we are committed to providing a unique, fun and healthy food that will appeal to consumers of all ages, but particularly to teenagers and children to promote healthier lifestyles.

Respectfully,

Carol Vlasin  
Treasurer and Board Member  
Monument Foods, LLC