

Serial Number: 76687815
Mark: Backyard Bratwurst
Applicant: Klements Sausage
Attorney: Dezmona J. Mizelle-Howard
Law Office 110

Response to Office Action

Mark is Merely Descriptive: Applicant respectfully disagrees with examining attorney's claim that Backyard Bratwurst is merely descriptive and continues to pursue registration on the principal register. Applicant's reasons are listed below.

1. After an in-depth search of the major sausage and bratwurst manufacturers' product offerings, applicant has found no evidence that any major American manufacturer offers a Backyard Bratwurst as part of their product line. Applicant feels that if a Backyard Bratwurst were a type of bratwurst like a Cheddar Bratwurst or a Beer Bratwurst at least one major manufacturer would offer this type of product. Lack of this offering shows that a Backyard Bratwurst is not a type of bratwurst and not a common industry offering. Major manufacturers included in the search were Johnsonville, Bob Evans, Premio, among others. Please see attached references and product lists.
2. After reviewing the examining attorney's evidence that Backyard Bratwurst is a type of bratwurst, the applicant noticed that one of the references presented was pulled from a website in Switzerland which lies outside the United States. This evidence does not seem admissible due to the fact that the reference is made outside of the United States, the country in which the applicant is seeking registration.

In addition, the evidence presented for the Elks Club of Arkansas does not prove that a Backyard Bratwurst is a type of bratwurst. The reference may simply refer to a prepared dish called Backyard Bratwurst which may be a club favorite or a regional specialty.

Please see the attached recipes for Backyard Bratwurst all of which are prepared with different types of bratwurst, including fresh, un-smoked, etc. None of the attached recipes call for a specific type of bratwurst named a Backyard Bratwurst.

In light of the above evidence, applicant would ask the examining attorney to continue with registration on the principal register.

Declaration - The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

James T. Klement CO-pres.
Signature/Title

JAMES T. KLEMENT
Name

4-20-09
Date

04-30-2009

Johnsonville Bratwurst Product List

<http://www.johnsonville.com/home/products/brats.html>

Original Bratwurst

Beer 'n Bratwurst Links

Cheddar Bratwurst Links

Hot 'n Spicy Bratwurst

Irish O'Garlic Links

Johnsonville Grilling Chorizo

Brat Patties

Heat & Serve Brats

Smoked Brats

Stadium Style Brats

Butcher Shop Style Cooked Bratwurst

Beef Brats

Beer Brats

Premio Bratwurst Products

<http://www.premiofoods.com/ecommerce/productDetailsAction.do?productID=5>



Beer Bratwurst

Traditional German style, but with a slightly smoother flavor.

16 oz \$ 3.99

[Add Selection to Cart](#)

[View Nutrition Information](#)

[Back to Product Main Menu](#)

[View Recipe Library](#)



Fresh Bratwurst

A taste of the old country with traditional German spices and flavor.

16 oz \$ 3.99

[Add Selection to Cart](#)

[View Nutrition Information](#)

[Back to Product Main Menu](#)

[View Recipe Library](#)

Bob Evans

<http://www.bobevansfoods.com/products/default.aspx?groupid=5>

Bob Evans specializes in bringing farm fresh food to our customers. From the variety of our flavored sausages to our mashed potatoes, home fries and bacon (just to name a few), we've got the ingredients you'll need for a memorable meal.

And when time is running short, we even have a variety of frozen homestyle recipe entrees and convenient, microwaveable sandwiches. Take a moment to browse our products — and enjoy the fresh quality of Bob Evans food products in your own home every day.

Grilling



Beer Bratwurst

Our Beer Bratwurst adds a unique flavor that everybody loves. Available in packages of 5.

[Product Details](#)



Cheddar Smoked Sausage

Both kids and adults will love the cheesiness of our fully-cooked Cheddar Smoked Sausage. And because it's ready to heat and eat, it's great for families on the go.

[Product Details](#)



Country Smoked Sausage

Your family will enjoy the traditional down-home flavor of our fully-cooked Country Smoked Sausage. And you'll love how easy it is to heat and eat, and the convenience of its resealable package.

[Product Details](#)



Hot Bratwurst

Our "hot brats" really spice up the grill. Available in packages of 5.

[Product Details](#)



Hot Italian Sausage

This will truly set your grill on "fire." For those who like a little heat, our Hot Italian Sausage will provide just the kick you want! Available in packages of 5.

[Product Details](#)



Jalapeno Hotz Smoked Sausage

Spice up any meal with our Jalapeno HOTS Smoked Sausage. It's fully cooked, so you can heat and eat. And its convenient resealable package allows you to make just as much as you need.

[Product Details](#)



Kielbasa

Our kielbasa is perfect by itself, on the grill or to complement any side dish.

[Product Details](#)



Original Bratwurst

A favorite at picnics and cookouts, our Original Bratwurst is also great in your favorite recipes! Available in packages of 5.

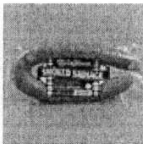
[Product Details](#)



Smoked Bratwurst

For a quick meal any day of the week, try our fully-cooked Smoked Bratwurst. It's ready to heat and eat and comes in a convenient resealable package.

[Product Details](#)



Smoked Dinner Sausage Link

Our Smoked Dinner Sausage is perfect on the grill, by itself or to complement a side dish.

[Product Details](#)



Smoked Kielbasa

Whether by itself or in a recipe, our fully-cooked Smoked Kielbasa makes for a quick and easy meal. Look for this heat-and-eat solution in our convenient resealable package.

[Product Details](#)

Recipes for Backyard Brats

Backyard Brats

CDKitchen <http://www.cdKitchen.com>

Category: Bratwurst aka Brats

Serves/Makes: 6 | **Difficulty Level:** 3 | **Ready In:** < 30 minutes

Ingredients:

1 tablespoon butter or margarine
1/2 cup chopped green sweet pepper
1 small onion, chopped
2 tablespoons brown sugar
1 teaspoon prepared mustard
1/2 teaspoon caraway seed
1 cup drained sauerkraut
6 fresh bratwurst
6 hoagie buns, split

Directions:

Melt the butter or margarine in a small skillet over medium heat. Add the pepper and onion. Cook over medium heat about 5 minutes or until vegetables are tender. Stir in the brown sugar, mustard, and caraway seed. Add the drained sauerkraut and toss to mix.

Fold a 36x18-inch piece of heavy foil in half to make an 18-inch square. Place the sauerkraut mixture in the center of the foil square. Bring up opposite foil edges and seal with a double fold. Fold in the remaining foil edges to completely enclose the sauerkraut mixture, leaving some space in the packet for steam to build.

Prick bratwurst in several places with a fork or tip of a sharp knife.

For a charcoal grill, arrange medium-hot coals around a drip pan in a grill that has a cover. Test for medium heat above the drip pan. Place the bratwurst and the foil packet with sauerkraut mixture on the grill rack over the drip pan. Cover and grill for 20 to 25 minutes or until bratwurst juices run clear, turning once.

For a gas grill, preheat grill. Reduce heat to medium. Adjust for indirect cooking. Place bratwurst and foil packet on grill rack; cover and grill as directed above. Serve brats in the buns and top with the sauerkraut mixture.

Nutritional facts per serving: calories: 763, total fat: 39g, saturated fat: 13g, cholesterol: 62mg, sodium: 1648mg, carbohydrate: 80g, fiber: 5g, protein: 23g, vitamin C: 28%, calcium: 16%, iron: 32%

Recipe Location: <http://www.cdKitchen.com/recipes/recs/116/BackyardBrats69347.shtml>

Recipe ID: 40128

Don't forget to stop back at CDKitchen and write a review or upload a picture of this recipe!

This recipe is from CDKitchen <http://www.cdKitchen.com>

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Backyard Bratwurst In Beer For A Crowd

INGREDIENTS

2 dozen unsmoked bratwurst
2 to 3 cans beer
1 tablespoon Worcestershire sauce
2 dozen frankfurter-style buns
Spicy mustard

In a large pot, place bratwurst, enough beer just to cover, and Worcestershire sauce. Heat to boiling. Reduce heat, cover, and simmer 15 minutes.

Let bratwurst stand in beer about 1 hour.

Remove bratwurst from beer. Place on grill over hot coals. Grill just until browned. Serve in buns. Add mustard.

Makes 24 servings

NOTE - Sauerkraut may also be served alongside or in buns with bratwurst. Rinse and drain 5 pounds sauerkraut. Simmer, uncovered, in some of the beer used for cooking the bratwurst, stirring occasionally, until most of the beer has evaporated. If desired, add 1 tablespoon caraway seed.

Backyard Brat and Relish

Prep time: 20 min

Cook time: 20 min

1 package any flavor Bob Evans Bratwurst
1 1/2 cups diced fresh ripe tomatoes
2/3 cup diced celery
1/2 cup diced red or yellow onions
2-3 rounded tbsp. ketchup
2 rounded tbsp. yellow mustard
1/4 tsp. celery salt to taste
Black pepper to taste
2-3 dashes favorite hot sauce to taste
1 package hoagie rolls

Prepare any flavor of Bob Evans Bratwurst according to package directions. On a clean cutting board, prepare and dice tomatoes, celery and onions separately. Drain tomatoes of excess liquid if possible. Add diced vegetables into medium size bowl. Add ketchup, mustard, seasonings and hot sauce. Stir until well combined. Adjust seasoning if desired. Serve on top of grilled bratwurst and split hoagie roll. Refrigerate leftovers.

Makes 5 to 6 servings

Recipes shown are in no way related to the recipes used to make items in our restaurants.