

**Date: 12/05/2019**

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**Law Office 102**

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**The applicant's response to the examiner's Office Action, dated 12/03/2019, application serial #88678165 420Darts™, is as follows:**

**Specimens Do Not Show Use for Class 009 Software**

*“Registration is refused because the specimen does not show the applied-for mark in use in commerce in International Class(es) 009. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a). Specifically, the specimens show use of the mark in the context of providing online computer games in Class 041. Class 009 game software must either be downloadable software or software recorded on physical media.”*

**Applicant's response:**

**\* The applicant disagrees.**

**\* The original attached specimens do show use of the mark in Class #09.**

**\* There were **12** attached specimens filed with this present application in the “SPECIMEN FILE”.**

**> See **#1 specimen** attached.**

**\* In the **12** attached specimens there are numerous snipping's showing the applicants mark in use, on his website. All my present games are playable by clicking on the clickable LINK supplied.**

**\* The applicant's website has been updated since the original specimens were snipped.**

**\* In the future, my website will have further changes. The mark will always be in use.**

**\* The following is the link for the present application:**

**<https://www.420appgames.com/-7-420darts.html>**

**\* The game is playable on the applicant's website. The link can also be copied and pasted.**

**Identification of Goods– Broad/Indefinite Wording**

*“The identification for computer application game software in International Class 9 is indefinite and too broad and must be clarified to specify whether its format is downloadable, recorded, or online non-downloadable. See 37 C.F.R. §2.32(a)(6); TMEP §§1402.03(d), 1402.11(a). Downloadable and recorded goods are in International Class 9, whereas providing their temporary, online non-downloadable use is an entertainment service in International Class 41. See TMEP §1402.03(d).”*

**Applicant's response:**

**\* The applicant agrees with, and accepts, the examiners suggested Class #09 identification, as follows:**

**Downloadable and recorded Computer application software for computers, namely, software for playing a Marijuana themed dart computer game with the following features of 1 or more players against the police, where All GREEN areas in the game are the PLAYER and All RED areas are the POLICE, Players start with ZERO points and Each time a player throws a dart at a BEER can pop-up, a gulping sound is played, players that Hit any one of the GREEN animated revolving LEAF's with a dart will add 50 points to their score, players that Hit any one of the GREEN animated 420 numbers with a dart will ADD 100 point to their score, any players that Hit any RED area with a dart will DEDUCT 50 points from their score, any players that Hit the walking animated Marijuana leaf in the center with a dart will ADD 200 points to their score, The goal is to get a minimum of 420 points to WIN**

**NOTE:**

*"If applicant adopts the suggested amendment of the goods and/or services, then applicant must amend the classification to International Classes 009 and 041. See 37 C.F.R. §§2.32(a)(7), 2.85; TMEP §§805, 1401"*

**\* The applicant agrees to the goods amendment in Class #09. The applicant will not pursue Class #41.**

**Advisory: Ownership Claim of Non-Pertinent Registration**

*"Applicant's claim of ownership of U.S. Registration No. 5550912 will not be printed on any registration that may issue from this application because the marks are different. Only prior registrations of the same or similar marks are considered related registrations for purposes of an ownership claim. See 37 C.F.R. §2.36; TMEP §812."*

**\* The applicant agrees.**

**SUMMARY:**

**\* There are NO substitute specimens attached.**

**\* The 12 original attached specimens were in use in commerce on or in connection with the goods listed in the application at least as early as the filing date of the present application.**

**The applicant has filed 161 Federal Trade/Service Mark personal applications. He has also spent on a lot of time and money preparing all the 420AppGames® for the consumer to play. Presently, there are numerous playable app games, with additional app games being coding as I write. All of the app games on the applicant's website are played the same way. A clickable link is provided for the consumer to play any app game.**

**The applicant believes he has responded to all of the examiner's points. Therefore, the present application should be approved for Publication and approved for registered on the Principal register.**

**Thanks for your help with my application(s).**

**Kindest regards,**

**John D. Blue / applicant-owner**