

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Ser. No. 97088631

Ex. Attny: Shari B. Gadson

Trademark:



Law Office: 120

Applicant: The North Face Apparel Corp.

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Ref. No. 590.408.11

PETITION TO DIRECTOR

In accordance with Trademark Rule § 2.146(a)(5) and TMEP § 807.10, Applicant hereby respectfully petitions to the Director of the United States Patent and Trademark Office to waive the single rendition requirement and permit the Applicant to utilize a drawing featuring a front and back view of the three-dimensional mark that is the subject of the application captioned above. The waiver will enable Applicant to show all elements that compose the mark and will serve both its own interest in seeking protection of its mark and the public interest in fully displaying the mark.

Applicant seeks to register the configuration of a garment as a mark for goods in International Class 25. Specifically, the description of the mark as filed reads as follows:

The mark consists of a three-dimensional configuration of a garment featuring a combination of the following elements that are alike in color and contrast with the main color of the rest of the garment, namely: (a) a high-necked collar; (b) a section beginning on the upper back, continuing over the top of the shoulders, and terminating at the midsection with vertical outer seams at the seams of the arm-holes; (c) the literal element "The North Face" and a half-dome logo design in a contrasting

color placed above the left breast and on the back of the right shoulder; and (d) a section beginning at the wrist and continuing up the back of the forearm, terminating above the elbow. The elements shown in broken lines are intended solely to indicate the positioning of the mark and are not part of the mark.

Applicant is seeking to register the configuration of a garment, consisting of elements that are only apparent when both a front and back view of the garment are depicted. The Examining Attorney has rejected the mark drawing as unacceptable insofar as it contains multiple renditions of the mark. The Examining Attorney noted that when, as here, the mark cannot be adequately depicted in a single rendition, Applicant must file a petition with the Director seeking waiver of the requirement. In conjunction with the filing of this petition, Applicant is filing a response to the office action addressing the other matters raised by the Examining Attorney.

Applicant submits that, due to the nature of the mark, the mark cannot be depicted in a single rendition. Although the features are readily and immediately apparent to consumers upon encountering Applicant's goods, a single rendition is unable to capture all the elements that compose the mark. Several elements are only visible from the front, while others are only visible from behind the garment. Applicant submits that this petition parallels the circumstances presented to the Director in connection with petitions to waive the single rendition requirement in connection with Registration Nos. 5102866, 6004409, 6604811, and 5730752, in which the applicant sought to register the configuration of a garment, addressing elements that are only apparent when two or more views of the garment are depicted. While Applicant acknowledges that each case must be decided on its own facts, Applicant submits that the waivers granted in these prior applications demonstrate that, where elements that compose a mark transverse an entire garment, a waiver of the rule is warranted.

Applicant therefore respectfully requests that the Director waive the single rendition requirement and accept the drawing of the mark that depicts the configuration in multiple views. Specifically, Applicant requests that the waiver be applied to both the original and revised drawings

depicted below, as the minor revisions made to address the Examining Attorney's requirements do not bear on Applicant's assertions supporting this request.



Original Drawing

Revised Drawing