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April 28, 2020

VIA ELECTRONICALLY (TEAS)

Commissioner For Trademarks
U.S. Patent and Trademark Office
Examining Attorney Daniel Donegan
Law Office 104

RE: Response to Office Action Filing Date: August 17, 2019
Serial No. 88150092
Mark: *ALTAR BRAND*
Applicant: Will & Baumer Candle Company, L.L.C.

Dear Mr. Donegan:

This letter is in response to your Office Action Letter (“Action Letter”) with a mailing date of August 17, 2019 refusing registration of Applicant’s mark on the ground that the mark is generic or merely descriptive of the following goods in Class 4: Candles; Candles comprised primarily of beeswax. Applicant respectfully submits that the mark is not generic nor merely descriptive and may be suggestive of Applicant’s goods as used in the Christian and church communities but still entitled to registration on the Principal Register. Examining Attorney has not met its burden for refusing registration of Applicant’s Mark.

Generic

The Examining Attorney has taken the position that the mark is generic. Generic trademarks are marks that the relevant purchasing public understands primarily as the common name for the goods or services the mark represents. “A mark is generic if its primary significance to the relevant public is the class or category of goods or services on or in connection with which it is used.” TMEP §1209.01(c)(i) (citing *H. Marvin Ginn Corp. v. Int’l Ass’n of Fire Chiefs, Inc.*, 782 F.2d at 989-90, 228 USPQ at 530; *In re ActiveVideo Networks, Inc.*, 111 USPQ2d 1581, 1600 (TTAB 2014)). Determining whether a mark is generic requires a two-step inquiry: (1) What is the genus of goods and/or services at issue? and (2) Does the relevant public understand the designation primarily to refer to that genus of goods and/or services?

The genus of the goods is “candles”. It is a stretch to argue that the relevant purchasing public would find that the term “Altar Brand” or “Altar” identifies “candles”. Devotional candles are used by Christians and church communities at various places throughout the church and even at home not just at an altar. Candles are used at various locations and times throughout the mass or sacrament to remind one of different things in the celebration and allow a person to

draw a deeper devotion to God. The use of “Altar” in the mark to the average consumer of devotional candles would not agree that “Altar Brand” or “Altar” is the common name for candles used by churches at the altar during the mass or any other ceremony.

Merely Descriptive

The Examining Attorney has also taken the position that the mark is merely descriptive of Applicant’s candles because it merely describes a characteristic, purpose, or use of applicant’s goods. Applicant respectfully disagrees with the Examining Attorney’s position and argues that Applicant’s mark at a minimum is highly suggestive and not merely descriptive of the goods, candles, offered under the mark. Therefore, the mark is registrable on the Principal Register.

There are many items used by the church community on, at or near the altar. The use of Applicant’s mark for “candles” that are used for devotional purposes may be suggestive but not merely descriptive given the numerous items used and the fact that candles are used at numerous places throughout the church and other places of worship. As previously stated, devotional candles are used throughout the church, homes and other places of worship as a symbol of the celebration or sacrament and bring a deeper devotion to God. Registration of Applicant’s mark should not be refused as merely descriptive because one of the numerous places devotional candles are found are at the altar. In re Shutts, 217 U.S.P.Q. (BNA) 363, 364–65 (T.T.A.B. 1983) (SNO-RAKE held not merely descriptive of a snow-removal hand tool); see also In re John H. Breck, Inc., 150 U.S.P.Q. (BNA) 397, 398 (T.T.A.B. 1966) (finding TINT TONE suggestive for hair coloring where the words overlapped in significance and their combination was somewhat incongruous or redundant and did not immediately convey the nature of the product).

Acquired Distinctiveness

Lastly, as previously stated, Applicant respectfully believes that the applied-for mark *ALTAR BRAND* is in entitled to registration because it has acquired distinctiveness and is known by its consumers as the products sold by Applicant. The prior registration that was noted in Applicant’s previous response to Examining Attorney’s Office Action was not a third-party expired registration. The prior registration, Registration No. 71009167, registered May 7, 1907 (“Prior Registration”) in IC 4 for wax candles was owned by Applicant as noted in the assignment recorded with the USPTO on May 11, 2008. Applicant has used and continues to use the applied-for mark *ALTAR BRAND* since it was acquired from the previous owner on or about January 31, 2008. Applicant inadvertently failed to file the required Section 8 Affidavit and proceeded to file the current trademark application for the applied-for mark to correct its error and re-registered the mark *ALTAR BRAND* to protect its intellectual property. Annual revenues for the products sold by Applicant under this mark total \$150,000.

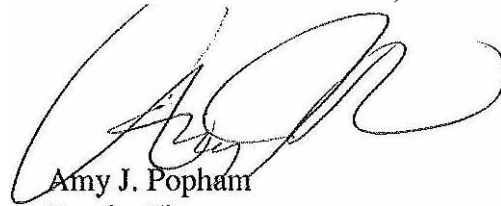
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For the foregoing reasons, Applicant respectfully requests that the refusal be withdrawn, and its mark be passed on to publication.

If, after reviewing this response to your Action Letter, you have additional questions or comments, please contact the undersigned at (623) 444-9791.

Sincerely,

POPHAM LAW GROUP, P.L.C.

A handwritten signature in black ink, appearing to read 'AJP', is written over the printed name of Amy J. Popham.

Amy J. Popham
For the Firm

AJP