

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark: BOTTLEKEEPER & Design
Applicant: CamCal Enterprises, LLC
U.S. Serial No.: 88/124,402
Filed: September 20, 2018
Examining Attorney: Wright, Laura M, Law Office 125

SECOND RESPONSE FOR RECONSIDERATION AFTER FINAL OFFICE ACTION

In the Reconsideration Letter dated October 29, 2019 the Examining Attorney refused registration of Applicant's BOTTLEKEEPER & Design mark in Class 25 on the grounds that the specimens it submitted appear to consist of digitally altered images or mock-ups of the mark on the goods. Applicant respectfully denies the Examining Attorney's claims.

ARGUMENTS

I. The Submitted Specimen Shows Actual Use of the Applied-For Mark in Commerce.

Pursuant to TMEP § 904.04, on October 3, 2019, Applicant submitted true and accurate photographs of its BOTTLEKEEPER & Design mark printed on a t-shirt that Applicant offers for sale as specimens. Applicant purposefully submitted several angles of the t-shirt in order to clearly show the mark as used on the applied-for goods. Applicant used a high-quality camera to take pictures of the goods. Thus, the color portion of the mark vividly stands out on the t-shirt. The Examining Attorney's claim that the specimens appear to be digitally altered have no merit and are not supported by facts or evidence. Further, the refusal of the specimens does not include a request for additional information pursuant to 37 C.F.R. §2.61(b) nor does it provide Applicant an opportunity to cure the alleged deficiency. As Applicant has shown actual use of the mark in commerce, it requests that the Examining Attorney withdraw the refusal.

In the alternative, if necessary, Applicant requests that the Examining Attorney review and accept its newly filed, substitute specimens, which show alternative angles of the applied for mark on the same t-shirt to clearly demonstrate that the photos were not previously digitally altered, nor are they currently.

CONCLUSION

In view of the foregoing, Applicant therefore respectfully requests that the refusal be withdrawn and its mark be given a publication date.

Dated: February 4, 2020

Respectfully submitted,

/s/ Omotara Akinwande
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