

RESPONSE TO OFFICE ACTION
REGARDING SECTION 2(e)(1) REFUSAL

APPLICANT: OIC TOYS, LLC
MARK: GRAB BAG (standard characters)
SERIAL NO.: 88270307
INTNL CLASS: Class 22
EXAMINER: Andrea B. Cornwell
LAW OFFICE: 115

Applicant, OIC Toys, LLC (“Applicant”), submits the following response to the October 21, 2020 Office Action. The Examining Attorney has refused the registration of Application Serial No. 88270307 (“Applicant’s Application”) under Section 2(e)(1) of the Act finding that the mark is merely descriptive. Applicant respectfully disagrees with the Examining Attorney’s conclusions and requests that the examining attorney reconsider the refusal and Applicant’s Application be permitted to continue with the registration process.

The Examining Attorney states that "Applicant's mark merely describes a characteristic or purpose of Applicant's goods." Using a definition of “grab bag,” the Examining Attorney posits that, “GRAB BAG merely describes a characteristic or purpose of applicant’s goods, i.e., applicant’s cloth bags and Halloween bags are to be filled with articles, such as party gifts and candy, *to be drawn unseen* by partygoers and/or trick-or-treaters” (emphasis added).

Designation of Merely Descriptive Ignores the Surprise Element

The examining attorney has focused on the definition of the term “Grab Bag” as “a container filled with articles, such as party gifts, to be drawn unseen.” However, the focus of the product is not what’s inside the bag. This is a bag to be used for trick-or-treating. There is no surprise of what’s in the bag. Instead, this is a grab bag that surprises the person putting their hand in the bag because the person holding the bag can cause a monster or skeleton hand to pop out of the bag and “grab” them. The candy being put in the bag or drawn from the bag is secondary and not the focus of the bag. It is also not a surprise. Because the bag is to be used for Halloween, everyone knows there will be candy in the bag. That is the activity for kids on Halloween.

The examining attorney also mentions that the specimen showing an Amazon product page states “Adults – use the bag to give out candy and surprise the kids!” However, the surprise referred to on the packaging is not the candy in the bag. Again, the kids know there will be candy in the bag and they aren’t drawing that out unseen. The surprise is the monster hand popping out of the bag as the kids try to get the candy out of the bag.

Applicant respectfully requests that the Examining Attorney withdraw her current objections and approve Applicant's application for publication at the earliest date possible.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Terry L. Traveland". The signature is written in a cursive style with a large, looping initial "T".

Terry L. Traveland
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