

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Serial No.: 79/104,050

Examining Attorney: Laura A. Hammel

Trademark: **MISCELLANEOUS DESIGN**

Law Office: 116

Applicant: The Crown in Right of the
Commonwealth of Australia

Action Dated: November 10, 2011

Filing Date: June 29, 2010

Attorney Ref. No.: 311687-4001

RESPONSE TO OFFICE ACTION

This Response answers the Office Action issued November 10, 2011 in connection with Application Ser. No. 79/104,050 for MISCELLANEOUS DESIGN covering goods and services in Classes 9, 16, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45.

AMENDED DRAWING

The Crown in Right of the Commonwealth of Australia (“Applicant”) submits a new drawing of the mark. *See* Exhibit 1. Accordingly, Applicant respectfully requests that the Examining Attorney withdraw her refusal to register and allow the mark to proceed to registration.

COLOR CLAIM

No claim of color is made with respect to International Registration No. 1094551, and Applicant submits a new drawing, attached as Exhibit 1, showing the mark in black and white.

DESCRIPTION OF MARK

The new mark drawing consists of the following: a chevron pointing to the left and a broken chevron pointing to the right.

REMARKS

The Examining Attorney has issued an initial refusal under Sections 2(b) of the Lanham Act, 15 U.S.C. §§ 1052(b).

A. New Drawing Is Substantially Exact Representation of International Registration

A new drawing of a mark must be a substantially exact representation of the mark as it appears in the international registration. 37 C.F.R. § 2.51(d). A mark in a Section 66(a) application may be amended to remove non-material informational matter that appears on the international registration. Trademark Manual of Examining Procedure (“TMEP”) § 807.13(b).

Here, the dominant portion of the mark consists of the two large chevrons, which are unchanged in both drawings. The sole difference between the drawings is that the coat of arms design (including “Australia Government”) is omitted. As the Examiner suggests, the “Australian Government” is a descriptive phrase that conveys merely information matter that does not function as a source identifier. The design element—the “Commonwealth Coat of Arms”—is the formal designation of the Commonwealth of Australia that symbolizes Commonwealth authority and ownership. Like the term “Australian Government,” the coat of arms imparts purely informational matter. Moreover, impact of the removal of the coat of arms is minimal, because the design is set-off to the lower-right in a substantially smaller font and size. Because the coat of arms design and the terms “Australian Government” impart purely non-material informational matter, these elements may be omitted from the drawing. *See* TMEP § 807.13(b).

Exhibit 1

