

The Examining Attorney has refused registration of Applicant's mark based on allegations that the mark is a non-distinct product design, product packaging, or trade dress for services. Applicant respectfully disagrees and believes that the descriptions and evidence submitted with this response make clear that the mark is valid and registrable.

To facilitate an explanation of why the bases of refusal are not well-founded, Applicant begins by answering the request for information posed by the Examining Attorney.

Applicant submits with this response various product information showing the nature of Applicant's goods and services.

To summarize, Applicant uses a three-dimensional skull object as a source-indicating mark within Applicant's retail stores (adjacent to Applicant's goods in a manner that could properly be described as a "point of purchase display" for all of those goods), and also as a "hang-tag" or object affixed to goods, where this is a three-dimensional item rather than simply a paper tag or a label with a mark printed on it. The nature of Applicant's mark means that it cannot be "affixed" to goods in the traditional sense, but it is clearly linked to Applicant's goods and services in the minds of consumers by virtue of its omnipresent status on products, in retail spaces, and in online displays.

Applicant answers below the specific questions posted by the Examining Attorney:

How is applicant using the mark as an indicator of source for applicant's goods?

Applicant's mark is displayed as a large three-dimensional object within retail spaces where Applicant's goods are sold, and is attached to products or product packaging as a small three-dimensional object. Examples of each are submitted with this response.

Is applicant's mark the actual goods offered by the applicant?

No. Applicant does not sell these skull-shaped three-dimensional objects.

Is applicant's mark used as packaging for applicant's goods or the goods of others?

No. Applicant's packaging is separate from the mark. Applicant's packaging uses traditional boxes, bags, etc. But the mark is attached to the goods as a three-dimensional "tag" of sorts, and is displayed as a large three-dimensional "motif" in retail spaces where Applicant's goods are sold.

How is the mark used as an indicator of source for applicant's services?

Please see the attached photographs which show the mark displayed within Applicant's retail stores.

Photographs of various goods produced by client are submitted with this response. Applicant submits that the collection of products as a whole (and many others not submitted), along with the large, three-dimensional motif used in Applicant's retail stores around the world (including in Beverly Hills, California), demonstrate that the three-dimensional skull design comprising Applicant's mark is an unusual type of three-dimensional mark that is neither product packaging nor the product itself.

Accordingly, Applicant requests that the refusals be withdrawn and Applicant's mark passed for publication.