

I. Introduction

In the Office Action, the Examining Attorney has refused registration on the Principal Register of Applicant's HIGH ELEVATION SIMULATION mark on the ground that the allegation of five years' use is insufficient to show acquired distinctiveness because the applied-for mark is highly descriptive of applicant's goods. In addition to Applicant's use of the HIGH ELEVATION SIMULATION mark for five years, Applicant respectfully submits that its HIGH ELEVATION SIMULATION mark has acquired distinctiveness for the following reasons.

II. Section 2(f) Acquired Distinctiveness

Applicant respectfully submits its mark HIGH ELEVATION SIMULATION has acquired distinctiveness under Section 2(f) of the Lanham Act, 15 U.S.C. § 1052(f). In support, Applicant hereby submits the attached Declaration of Casey Danford.

"Acquired distinctiveness can be shown by direct evidence such as actual testimony, declarations or surveys of consumers as to their state of mind; and/or circumstantial evidence from which consumer association might be inferred, such as length and exclusivity of use, extensive sales and advertising expenditures, unsolicited media coverage, consumer studies and any similar evidence showing wide exposure of the mark to consumers." *Bd. of Trs. of Univ. of Ala. v. Pitts, Jr.*, 107 USPQ2d 2001, 2016 (TTAB 2013) (citing *In re Steelbuilding.com*, 415 F.3d 1293, 1300, 75 USPQ2d 1420, 1424 (Fed. Cir. 2005)).

The submitted evidence proves that the HIGH ELEVATION SIMULATION mark has acquired distinctiveness. In particular, Applicant's advertising of its products under the HIGH ELEVATION SIMULATION mark, which has totaled to over \$3,000,000 in expenditures, has resulted in widespread recognition of the HIGH ELEVATION SIMULATION mark and contributed to Applicant's revenue of over \$30,000,000 from the sales of products bearing the

HIGH ELEVATION SIMULATION mark. (Declaration of Casey Danford, ¶¶ 3 and 5.) Applicant and its authorized distributors have sold over 1 million units to date. (Declaration of Casey Danford, ¶4) Units sold displays the Mark on its packaging. Id. Applicant also has pages on the following social networks: Facebook, Instagram, Twitter, reddit, VKontakte, YouTube, Pinterest, GoldenLine, Tumblr, and Disqus, on which the products under the Mark have been extensively advertised and reach many consumers. For example, as of October 10, 2019, Applicant's Facebook page has over 1,000,000 followers and over 1,100,000 likes; Applicant's Twitter page has over 23,000 followers; and Applicant's Instagram page has over 130,000 followers. (Declaration of Casey Danford, ¶¶6 and 7)

Accordingly, Applicant respectfully requests that its HIGH ELEVATION SIMULATION mark be published for opposition for registration on the Principal Register. If, however, such action cannot be taken, the Examining Attorney is cordially invited to contact Applicant's attorney at his telephone number in order that any outstanding issue may be resolved without the issuance of a further Office Action.