

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
)	
Bath & Body Works Brand Management, Inc.)	
)	James Griffin
Serial No. 88/296,579)	Trademark Attorney
)	Law Office 103
Filed: February 11, 2019)	
)	
Mark: SWEET PEA)	

Response

This responds to the Office Action issued April 23, 2019 for Application Serial No. 88/296,579 for the mark SWEET PEA, filed by Bath & Body Works Brand Management, Inc. (“Applicant”).

Remarks

The Examiner has initially refused registration under Section 2(e)(1), on the ground that SWEET PEA describes a feature of the applied-for goods, candles in Class 4. As shown below, registration is proper because, as a result of Applicant’s long use of, and registrations for, the same mark in connection with closely related goods, the mark has become distinctive, and that distinctiveness will transfer to candles when use commences.

SWEET PEA is Distinctive for Goods in Classes 3 and 5

Applicant has used the trademark SWEET PEA in connection with personal care and non-body fragrance products for nearly nineteen years. Applicant has used SWEET PEA in connection with skin soaps and hand sanitizer products for at least five years. This longstanding use is evidenced by Applicant’s ownership of active Registration Nos. 2,574,220, 5,850,122 and 5,850,125, covering the SWEET PEA mark in connection with a variety of goods in Classes 3 and 5 (copies attached as Exhibit A), including “fragrance emitting wicks for room fragrance, room fragrances, scented oils used to produce aromas when heated, and home fragrance oils.”

Applicant's SWEET PEA-branded room fragrances and scented oils are very closely related to the presently applied-for goods – candles – as they all share the same purpose of creating a pleasant fragrance in a room or other space.

The Distinctiveness of SWEET PEA Will Transfer to Candles

The Wikipedia entry for Applicant (under its former name: Bath & Body Works, LLC) notes that the company “specializes in shower gels, lotions, fragrance mists, perfumes, **candles, and home fragrances.**” *See* Exhibit B (emphasis added). Further, as shown in the USPTO records, Applicant frequently registers the same trademark for goods in Classes 3, 4, and/or 5, representing the product “collections” sold in its stores and online. *See* Exhibit C, containing a sample of Applicant's registrations for the same trademark covering goods in Classes 3, 4, and/or 5. As such, consumers are accustomed to recognizing Applicant as the source of home fragrances, candles and personal care products sold under the same brand.

Indeed, although the current application is based on intent to use, Applicant has in fact used SWEET PEA in connection with candles in the past, as shown below:



In this environment, Applicant submits that the established trademark function and distinctiveness of SWEET PEA will transfer from Applicant's registered goods to candles, a closely related product with a function that overlaps with home fragrance goods in particular. *See* TMEP §1212.09(a); *See, Kellogg Co. v. Gen. Mills Inc.*, 82 USPQ2d 1766, 1771 (TTAB 2007) (finding, for breakfast cereal and food bars derived from cereal, “that the close relationship between the goods is self-evident from the respective identifications of goods”); *see also, In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 1347, 57 USPQ2d 1807, 1812 (Fed. Cir.

2001) (distinctiveness of similar mark for “retail outlet” and “retail store” services transferred to “telephone shop at home services”).

For these reasons, Applicant respectfully requests that the applied-for mark be passed to publication.