

RESPONSE TO OFFICE ACTION

To Commissioner for Trademarks:

Mark: CLOSE YOUR RINGS

Serial No.: 88/451,808

RESPONSE TO OFFICE ACTION

The Examining Attorney issued an Office Action on July 23, 2019 concerning the following issues: (1) a Prior Pending Application, (2) Identification Amendments, and (3) the Specimen for Class 9 goods. Applicant respectfully submits the current response, statements and amendments in support of registration of the filed-for mark.

1. Prior Pending Application

The Examining Attorney identified **CLOSE A RING** (SN 88/239,490) as a prior pending application. This cited application has a filing date of **December 21, 2018**.

Applicant's application for CLOSE YOUR RINGS (SN 88/451,808) has a filing date of May 29, 2019, but claims a priority filing date of **November 30, 2018**. As such, the effective filing date under TMEP 1208.01 is November 30, 2018, a date which predates that of the cited application.

Applicant presumes that the Examining Attorney inadvertently missed Applicant's earlier effective filing date. Because the Applicant enjoys the earlier effective filing date it has priority between the two applications and as such the Examining Attorney erred in citing the filing for CLOSE A RING against Applicant's Application SN 88/451,808. Applicant respectfully requests that the Examining Attorney withdraw the citation of the pending application CLOSE A RING (SN 88/239,490) as a potential prior pending application.

2. Identification of Goods

Applicant has submitted as part of its response amendments to the identification of goods that are consistent with the Examining Attorney's recommendations. For reference, below are the goods as amended:

- CLASS 9: Computers; Computer hardware; -Mobile telephones; Smartphones; Wireless communication devices for the transmission of voice, data, images, audio, video, and multimedia content; Handheld digital electronic devices capable of providing access to the Internet and for the sending, receiving, and storing telephone calls, electronic mail, and other digital data; -Wearable computer hardware, namely, smart watches; Wearable digital electronic devices capable of providing access to the Internet, for sending, receiving and storing of telephone calls, electronic mail, and other digital data, namely, smart watches; Smartwatches; Wearable activity trackers; Wearable activity trackers in the nature of connected bracelets; Downloadable and recorded computer software for tracking, storing, viewing, monitoring, displaying, transmitting and managing user interaction data concerning exercise, physical activity, steps taken, distance walked or run, time standing or sitting, calories consumed, calories burned; Downloadable and recorded computer software for tracking, monitoring and managing information and goals regarding a health and fitness program; -Accelerometers; Distance measuring apparatus; Distance recording apparatus; Pedometers; Global positioning systems (GPS devices).

- 44: Wellness and health-related consulting services; Providing health and wellness related information; Health care services, namely, wellness programs; Providing a website with information on health and wellness.
3. Specimen Not in Use for Class 9 Goods

The Examining Attorney asserts that the specimen of record does not show use in connection with the Class 9 goods as filed. In the Office Action, the Examining Attorney states:

“Specifically, the specimens show the mark being used to connote source for the software, but not as any hardware of any goods in class 9.”

Applicant respectfully believes the Examining Attorney’s refusal is in error because:

- 1) Software is in the Identification of Goods: In the Office Action, the Examining Attorney observes that the specimen shows the mark being used to connote source for the software. As noted above, the identification of goods includes software. As such, Applicant respectfully submits the specimen of use is acceptable. Under TMEP 904.01, only one specimen is required for each class. Accordingly, since the specimen shows use on software, as confirmed directly by the Examining Attorney, the specimen is sufficient for all of the Class 9 goods, and the Examining Attorney may accept the specimen for Class 9 and approve the application for publication.
- 2) Specimen shows use with Class 9 hardware: Applicant also submits that the specimen of record shows the mark CLOSE YOUR RINGS used at an online point of sale display under TMEP 904.03(i). TMEP 904.03(i) observes that a web page display will suffice as a specimen of use for goods if it: (1) contains a picture or textual description of the identified goods; (2) shows the mark in association with the goods; and (3) provides a means for ordering the identified goods. Applicant respectfully submits all the requirements are present in the submitted specimen which contains: (1) both images and text referring to the identified goods, (2) the mark CLOSE YOUR RINGS is clearly and prominently displayed on the webpage in direct association with the goods, and (3) in the upper right hand corner there is a purchase option and cart for the goods. As such, the specimen also serves as an acceptable specimen for specific hardware goods in the identification.

For the above reasons, Applicant respectfully submits the Examining Attorney’s rejection of the specimen is in error and requests that this objection be withdrawn and the Application approved for publication.

With the above changes and response, Applicant respectfully submits that the Application is in the condition to be approved for publication.

Dated: January 23, 2020

Respectfully submitted,

Pamela Reid
Attorney of Record, Member of the California Bar
Apple Inc.