

DAVID L. PRINCE
ATTORNEY AT LAW
1912 EAST VERNON AVENUE, SUITE 100
P. O. BOX 58003
LOS ANGELES, CALIFORNIA 90058

TELEPHONE (323) 234-2989
FAX (323) 234-2619

DAVID L. PRINCE
MILES L. PRINCE
EVAN A. CLARK

March 10, 2020

Mr. Dustin T. Bednarz
Trademark Examining Attorney
USPTO Law Office 121

Re: Trademark Application "Fitwell"
Serial Number: 88470340

Dear Mr. Bednarz,

I am counsel to MRC Creations, Inc., the owner of the above referenced trademark application, serial number 88470340 (hereinafter "Applicant"). A Nonfinal Office Action was issued against Applicant on September 11, 2019. The deadline to respond is six months thereafter. This response is timely.

Response to Office Action

This letter serves as Applicant's response to your Nonfinal Office Action. Although Applicant's mark description requirements were satisfied, the registration of the applied-for mark was refused because of a likelihood of confusion with Registration Number: 3059429 (hereinafter "Compared Registered Mark").

Applicant's mark for "Fitwell" includes the following goods: "bodysuits, bras, hosiery, leggings, lingerie, panties, shapewear, sleepwear, sports bras, undergarments, yoga pants, women's athletic tops with built-in bras". The Compared Registered Mark is "Fitzwell" for goods: "shoes and footwear".

Applicant disputes the claim as the basis for the Nonfinal Office Action that women's undergarments and/or leggings and shapewear are confusingly similar to shoes. Query: would a bra be confused with high heels? No.

A customer searching for "well fitting" undergarments would not be confused, mistaken, or deceived as to the commercial source of shoes with a somewhat similar name as those undergarments. The lingerie section of a department

store would not display shoes and footwear. Advertising, whether general or targeted, would not garner the same network of solicitations. An individual running a search for shapewear would not be funneled to shoes. The goods are applied to distinctively separate parts of the body: innerwear (made to be worn under other clothing) and outerwear (designed to protect your feet and touch the ground), respectively. The goods are not within the same trade channel; there is no plausible concern for consumer confusion as to the ownership, production, or distribution of the two kinds of goods.

As to the comparison of marks, Applicant's mark and the Compared Registered Mark are not the same word. "Fitzwell" and "Fitwell" are phonetically not the same. The Compared Registered Mark would need to be "Fitzwell" to achieve that similarity. Further, an alphabetical search would not bring up the composite mark, as they are spelled with distinction and not along the same lineage.

Additionally, while the cited companies used to support the Nonfinal Office Action are all large brands which sell the goods of both the Applicant and the Compared Registered Mark, they do not sell any goods with the mark "fitwell". None of the goods printed and attached as evidence to the Nonfinal Office Action use the brand "fitwell".

The Applicant's goods are now in production. See Exhibit "1" attached hereto, which will be used as specimens for further USPTO filings.

There can be no consumer confusion if the footwear and shapewear are distinctively different and no evidence of brand identity of the Compared Registered Mark is found.

Applicant requests your reconsideration.

I can be reached at (323) 234-2989 if you have any questions or would like to discuss this matter over the phone.

Sincerely,



DAVID L. PRINCE

DLP:ec

Enclosures

EXHIBIT "1"





