

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 87/025,340
Attorney Docket No.: 101404.T022
Applicant : ELECTRIC MIRROR, LLC
Filed : May 04, 2016
Mark : CAMEO
IC Class : [020]
Law Office : 130
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Commissioner for Trademarks
PO Box 1451
Alexandria, VA 22313-1451

RESPONSE TO OFFICE ACTION

Sir:

Applicant submits this Response to the Office Action Mail Date August 18, 2020, hereinafter "The Office Action." This Response addresses the SPECIMEN REFUSAL.

SPECIMEN REFUSAL

In the Office Action, the Office refused Applicant's specimen and stated the following:

“A webpage or catalog display specimen (1) must show use of the mark directly associated with the goods and (2) such use must be of a point-of-sale nature. 37 C.F.R. §2.56(b)(1). This means that this type of display specimen must include the following:

- (1) **A picture or sufficient textual description of the goods;**
- (2) **The mark associated with the goods;** and
- (3) **A means for ordering the goods** such as a “shopping cart” button/link, an order form, or a telephone number for placing orders.

See In re Sones, 590 F.3d 1282, 1286-89, 93 USPQ2d 1118, 1122-24 (Fed. Cir. 2009); *In re Azteca Sys., Inc.*, 102 USPQ2d 1955, 1957-58 (TTAB 2012); *In re Dell Inc.*, 71 USPQ2d 1725, 1727 (TTAB 2004); *Lands' End v. Manbeck*, 797 F. Supp. 511, 514, 24 USPQ2d 1314, 1316 92); TMEP §904.03(h), (i)-.03(i)(D).

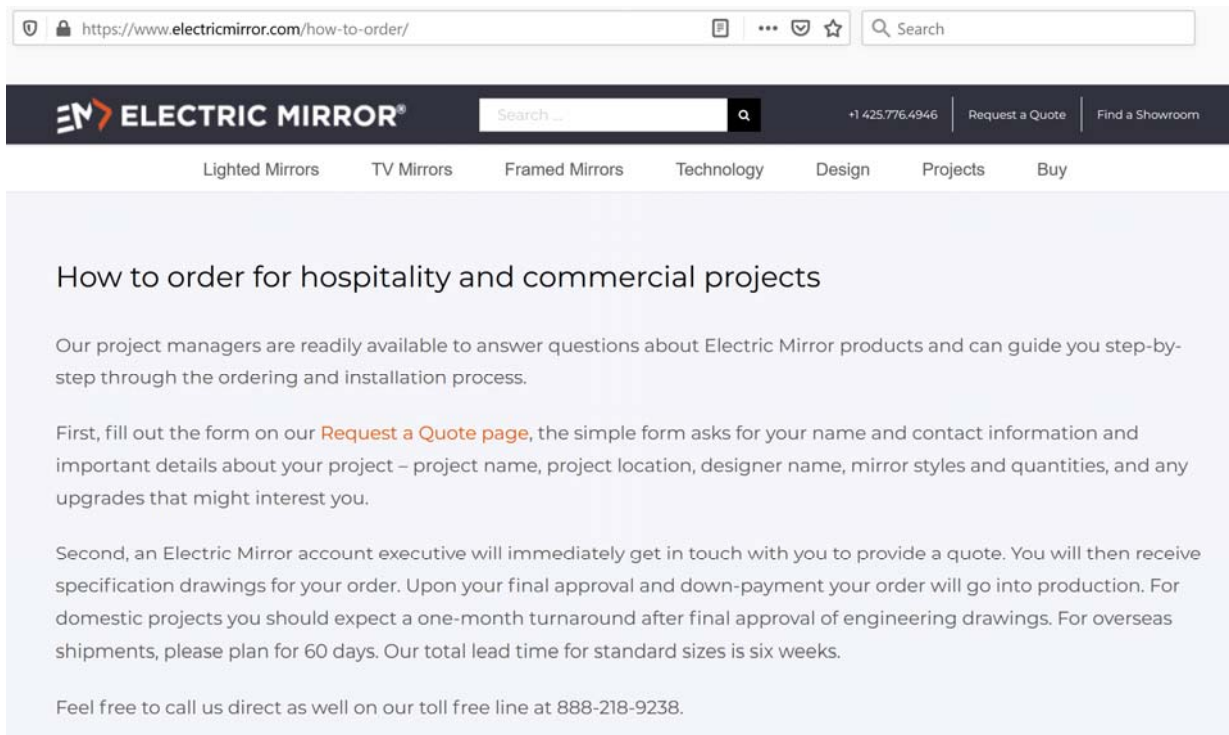
In this case, the specimen does not show sufficient means for ordering the goods.

Specifically, although applicant's specimen description claims “This webpage is where the purchase is triggered by clicking on the button “buy,”” the “buy” button does not allow consumers to purchase directly from the page displaying the goods bearing the mark. Furthermore, the website attached confirms that the “buy” button merely provides a quote, not the ability to actually purchase the goods. As such, the specimen does not include the information necessary for ordering the goods.

Accordingly, such material is mere advertising, which is not acceptable as a specimen for goods. *See In re Siny Corp.*, 920 F.3d 1331, 1336, 2019 USPQ2d 127099, at *2-3 (Fed. Cir. 2019) (citing *Powermatics, Inc. v. Globe Roofing Prods. Co.*, 341 F.2d 127, 130, 144 USPQ 430, 432 (C.C.P.A. 1965)); *see also Avakoff v. S. Pac. Co.*, 765 F.2d 1097, 1098, 226 USPQ 435, 436 (Fed. Cir. 1985); TMEP §904.04(b), (c). (emphasis added)”

APPLICANT'S RESPONSE TO SPECIMEN REFUSAL

Applicant supplies products to the luxury hospitality marketplace through its website. Because of the complexity of Applicant's products (different upgrades are available), it is necessary for the customer to communicate with one of Applicant's project managers during the ordering process. This ordering process is illustrated below in an excerpt from Applicant's "how to order" link. The "how to order" instructions accessed through the "how to order" link provide two options for ordering products: (1) instructions for how a customer uses the "Request a Quote" page for ordering products as well as, (2) a telephone number for ordering products, i.e., "888-218-9238." The "how to order" webpage (shown below) was in existence on August 10, 2020 and was accessible by link from the webpage submitted as Applicant's specimen.



Excerpt from Electric Mirror "how to order" webpage.

Note also that Applicant's "Request a Quote" webpage provides a phone number "425-776-4946" which can be used for ordering products.

Applicant's "Request a Quote" webpage was filed by the Office on August 18, 2020, as attachments to Office Action and is the same "Request a Quote" webpage that existed when Applicant filed the Statement of Use with specimen on August 10, 2020.

The current "Request a Quote" webpage is provided below as supplemental evidence to accompany the original specimen. This supplemental evidence was in existence when Applicant filed the Statement of Use on August 10, 2020.

[Lighted Mirrors](#) [TV Mirrors](#) [Framed Mirrors](#) [Technology](#) [Design](#) [Projects](#) [Buy](#)

Search ...

Find a Showroom

Request a Quote

Can we help with your project? For hospitality and commercial orders, please use this form. For residential orders go to our [showroom locator](#) and find a dealer near you!

NOTE: If you prefer, we can also be reached by email, sales@electricmirror.com, or call us directly at: [425.776.4946](tel:425.776.4946).

Name *

First

Last

Title *

0 of 100 max characters

Company *

0 of 100 max characters

Phone *

Email *

Supplemental Evidence "Request a Quote" Page 1 of 4

Lighted Mirrors TV Mirrors Framed Mirrors Technology Design Projects Buy

0 of 250 max characters

City *

0 of 100 max characters

State *

0 of 100 max characters

Zip/Postal Code *

0 of 30 max characters

Country *

Business Category *

Project Name *

0 of 255 max characters

Project Location

0 of 255 max characters

Designer Name

0 of 255 max characters

Need-by Date

- [Lighted Mirrors](#)
- [TV Mirrors](#)
- [Framed Mirrors](#)
- [Technology](#)
- [Design](#)
- [Projects](#)
- [Buy](#)

Upgrade Options

0 of 255 max characters

Mirror Style, Size, and Quantity

0 of 2000 max characters

Notes

0 of 2000 max characters

CAPTCHA

I'm not a robot

reCAPTCHA
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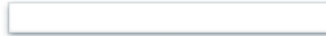
Facebook

Request a Quote | Electric Mirror®

<https://www.electricmirror.com/request-a-quote/>

Lighted Mirrors	TV Mirrors	Framed Mirrors	Technology	Design	Projects	Buy
Everett, WA 98203 USA t: 425 776-4946 f: 425 491-8200	Non-Profit Support Media Room Careers Privacy Policy	Safety Intellectual Property	Training Photometric & IES Dealer Registration Rep Registration Login Log out	Quote Find a Showroom Become a Dealer How to Order Earn CEU Credits	LinkedIn YouTube	

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Thus, Applicant's webpages previously filed with the Statement Of Use comply with number (3) below whereby Applicant's version of an "order form" is provided through the "request a quote" link or, in the alternative, a telephone number is provided for placing orders. See below:

"A webpage or catalog display specimen (1) must show use of the mark directly associated with the goods and (2) such use must be of a point-of-sale nature. 37 C.F.R. §2.56(b)(1). This means that this type of display specimen must include the following:

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In light of the foregoing discussion and explanation of Applicant's product ordering process, Applicant asserts that Applicant has submitted a proper specimen and requests the removal of the Specimen Refusal.

CONCLUSION

For the foregoing reasons, it is submitted that the application is in condition for issuance, and such action is respectfully requested.

Respectfully submitted,
PELOQUIN, PLLC

February 18, 2021
Date

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