

RESPONSE TO OFFICE ACTION

To Commissioner for Trademarks:

Mark: FIRESTICK

Serial No.: 88/571,759

Our Ref. No.: T34455US00 (972852.00309)

RESPONSE TO OFFICE ACTION NO. 1

The Examiner issued an office action on September 18, 2020, objecting to registration based on that the specimen does not show the mark in the drawing in use in commerce.

The Examiner contends that the original specimen submitted with this application differs from the drawing because the picture displays the mark "FIRESTICK" as "FIRE" above the word "STICK." As discussed below, Applicant maintains that its original specimen is adequate, but also submits a substitute specimen simultaneously with this response.

Applicant respectfully reminds the Examining Attorney that the TMEP and trademark law only requires that the mark in the drawing be a "substantially exact" representation of the mark on the specimen. 37 C.F.R. §2.51(b); TMEP §807.12(a). Case laws provide that applicant may register "any portion of a composite mark if that portion presents a separate and distinct commercial impression." *In re Lorillard Licensing Co.*, 99 USPQ2d 1312, 1316 (TTAB 2011) (citing *In re 1175854 Ontario Ltd.*, 81 USPQ2d 1446 (TTAB 2006)).

In this case, the Applicant is seeking to register the mark "FIRESTICK" and submits that due to spacing, it is sometimes presented in a vertical format, but that the split two-line format is stacked closely on top of each other and is still seen by consumers as one mark. As such, Applicant submits that the specimen(s) all show use of "FIRESTICK" represent a unitary mark.

To avoid further doubt, Applicant is submitting substitute specimens that show the FIRESTICK in horizontal format. See attached Substitute Specimens 1-2. Applicant submits that these specimens also show images of the product packaging that was submitted in the original specimen, are available for purchase, and illustrate that consumers see the mark as FIRESTICK.

For the reason discussed above, Applicant respectfully requests that the Examining Attorney accept the Applicant's statement of use and approve the application for registration.

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Respectfully submitted on behalf of Applicant:

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Attorney of Record