

THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: LANKYBOX LLC

SERIAL NO: 97/105,559

FILED: November 2, 2021



MARK:

RESPONSE

This is a Response to the Office Actions dated August 19, 2022. The time period for Response extends to and includes February 21, 2023.

REFUSAL – NONDISTINCTIVE PRODUCT DESIGN

The Examining Attorney has initially refused registration alleging that: “the applied-for mark consists of a nondistinctive product design or nondistinctive features of a product design that is not registrable on the Principal Register without sufficient proof of acquired distinctiveness”. The Examiner has further indicated that “a product design can never be inherently distinctive as a matter of law”.

However, TMEP §904.03(c) provides that “a showing of the trademark on the normal commercial package for the particular goods is an acceptable specimen”. The submitted substitute specimen shows that this trademark is used on the commercial packaging of the applied-for Class 28 goods.

Applicant respectfully submits that for the reasons explained above, the substitute specimen is an acceptable specimen for the applied for mark, and the mark is therefore entitled to registration on the Principal Register.

All of the issues raised in the Office Action are believed to have been addressed. Favorable action is hereby requested.