

## **ARGUMENT IN SUPPORT OF AMENDMENT OF DRAWING FOR APP. NO. 86259505**

Applicant respectfully requests that its mark drawing be amended to delete color from the drawing, resulting in a black and white drawing that does not claim color as a feature of the mark. A mark in an application under §1(b) of the Trademark Act can be amended if the specimen filed with an amendment to allege use or statement of use supports the amendment, and the amendment does not materially alter the mark. 37 C.F.R. §2.72(b). The general test of whether an alteration is material is whether, if the mark in an application for registration had been published, the change would require republication in order to present the mark fairly for purposes of opposition. If republication would be required, the amendment is a material alteration.

An amendment of a mark is acceptable if the modified mark contains the essence of the original mark (i.e., the mark as originally applied for), and the mark as amended creates essentially the same impression as the original mark. *In re Umax Data Sys., Inc.*, 40 USPQ2d 1539 (Comm'r Pats. 1996). A material alteration exists if the old and new formats do not create the same general commercial impression. See J. Thomas McCarthy, 3 McCarthy on Trademarks and Unfair Competition §§19:58:50 and 19:133 (4th ed. 2007). In general, the addition, deletion, or amendment of color features in a word mark does not result in a material alteration of the mark. TMEP 807.14(e)(ii). The literal portions of word marks are likely to be the dominant portions that create the greatest commercial impression. See *Inter-State Oil Co. v. Questor Corp.*, 209 USPQ 583, 586 (TTAB 1980). In most cases, the color in the lettering is unlikely to have a significant impact on the commercial impression created by the mark.

Here, the mark consists of the term VOS in a stylized font in the colors blue, green and red. The colors blue, green and red are not integral to the mark and do not have a significant impact on the commercial impression created by the mark. Instead, the term VOS in its stylized font is the essence of the mark. Amendment of the mark to delete the color claim will therefore not be a material alteration of the mark, as the commercial impression of the mark is dependent on the term VOS and not on any color feature. See, *Paris Glove of Can., Ltd. v. SBC/Sporto Corp.*, 84 USPQ2d 1856, 1862 (TTAB 2007) (finding “AQUASTOP” depicted on one line in semicircular form not to be a material alteration of “AQUA STOP” depicted on two lines in rectangular form; the Board explained that “the commercial impression of the mark is dependent upon the literal terms AQUA STOP and not on the rectangular, semicircular or linear forms of display”). Here, amending the drawing to a black and white mark that does not claim color creates essentially the same impression as the original mark. Accordingly, amending the mark to delete the color claim will not require republication of the mark in order to present the mark fairly for purposes of opposition.

For the above reasons, Applicant respectfully requests that its request to amend the drawing of the mark from claiming color to a black and white mark be accepted. Applicant is simultaneously filing a statement of use with its request to amend the drawing of its mark.