

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
E.G. Hill Company, Inc.

Serial No.: 86/135759

Filing date: December 5, 2013

Mark: ALERT

Law Office 105

Trademark Attorney

Kristin Carlson

REMARKS

This is in response to the first Office Action electronically mailed March 24, 2014.

RESPONSE

Office Action 1 has been received and its contents carefully noted.

MARK NOT THE VARIETAL NAME FOR IDENTIFIED GOODS

The Examining Attorney has refused registration based on the finding that "the applied-for mark is a varietal name for the identified goods and as such, does not function as a trademark to indicate the source of applicant's goods and to identify and distinguish them from others". Applicant respectfully submits that the evidence presented by the Examining Attorney has not been shown to relate to the Applicant's goods in any way. Further, the material submitted by the Examining Attorney is not under the management or control of Applicant, nor does it show any connection to the Applicant's goods.

The Examining Attorney did not present evidence pertaining to the Applicant, the applied-for Mark, or the particular product upon which Applicant's Mark will be fixed. There has been no link established to the Applicant's variety.

For Applicant's particular variety, the applied-for Mark is **not a varietal name**, and there has been no evidence presented that it is. The varietal name refusal cannot be lodged simply as against any plant life in any form. To the

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contrary, it must be shown by conclusive evidence to pertain to the Applicant's goods, the Applicant's variety.

REQUEST FOR INFORMATION

Applicant is not aware of any plant patent, utility patent, or certificate for plant variety protection showing ALERT is indeed the varietal name of Applicant's goods. In light of the foregoing, Applicant respectfully requests that the Examining Attorney reconsider her position and pass the application to publication.

CONCLUSION

In light of the foregoing, Applicant's mark is respectfully asserted to be registrable and Applicant therefore requests that the application be passed for publication.

Respectfully submitted,

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that the original of this Response to Office Action 1 is being submitted electronically via the TEAS system of the United States Patent and Trademark Office on the date of the electronic transmission hereof.

/JENNIFER L. WHITELAW/
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