

Response to non-final Office Action

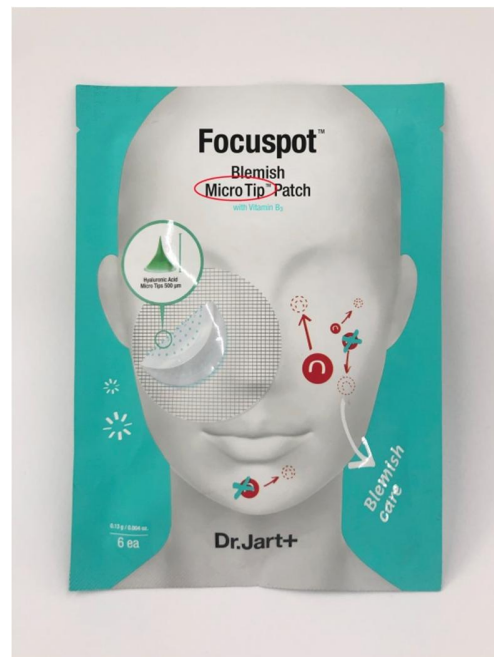
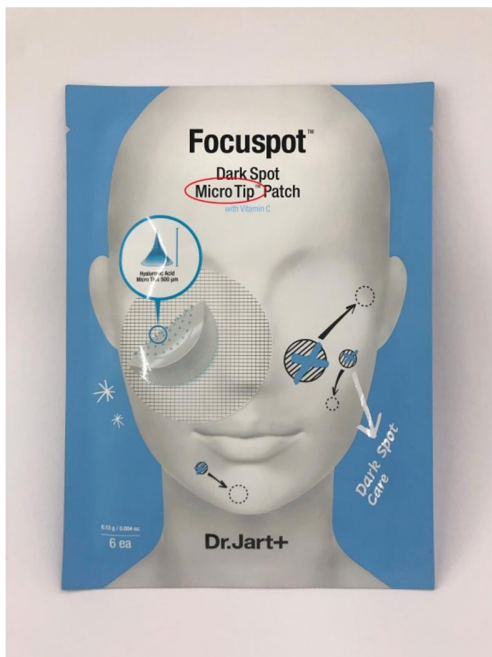
- App. No. 88215494 (Mark: Micro Tip)

Applicant, Have&Be Co., Ltd., respectfully submits this Response to the Office Action that issued on January 2, 2020, with respect to U.S. Trademark Application Serial No. 88215494.

Examining Attorney indicated in the Office Action that the specimens previously submitted by Applicant are unacceptable because the specimen does not show the applied-for mark in use in commerce in International Class 3. Specifically, the mark as depicted in the specimen of record does not represent acceptable trademark usage. In particular, the applied-for mark, MICRO TIP, is presented under the mark FOCUSPOT, as part of the phrase “Dark Circle Micro Tip Patch”, and thus appears as descriptor of the goods, in the middle of a phrase, and thus is unlikely to be relied on by consumers as source-identifying.

New and different specimen

In accordance with the Examining Attorney’s suggestions, Applicant submits herewith the following specimens to show the applied-for mark in use in commerce in International Class 3.



Unlike the previously submitted specimens, the newly submitted specimens show the applied-for mark, MICRO TIPTM, spaced apart from the mark FOCUSPOT as well as from the descriptor of the goods, Dark Circle” as shown above. These products are to be used for dark circle care, blemish care, or etc.

Obviously, more than one mark can be used for the same item of goods under the trademark laws. In this case, Applicant uses at least three trademarks together and separately from one another, namely Dr.Jart+[®], FOCUSPOT[®], and Micro TipTM, for the same item of the goods. Unlike the descriptor (function) of the Applicant’s goods, such as “Dark Circle”, “Dark Spot”, “Blemish”, “Line & Winkle”, or etc., the applied-for mark, MICRO TIP, appears as a separate mark above such descriptor of the goods, and thus it likely to be relied on by consumers as source-identifying.

Applicant also submits herewith webpages associated with the actual goods at the point of sale (online sale) to show the substitute specimen has been in actual use in commerce.

Conclusion

In view of the foregoing, Applicant respectfully requests that the Examining Attorney accepts the substitute specimens to show the applied-for mark in use in commerce in International Class 3.