


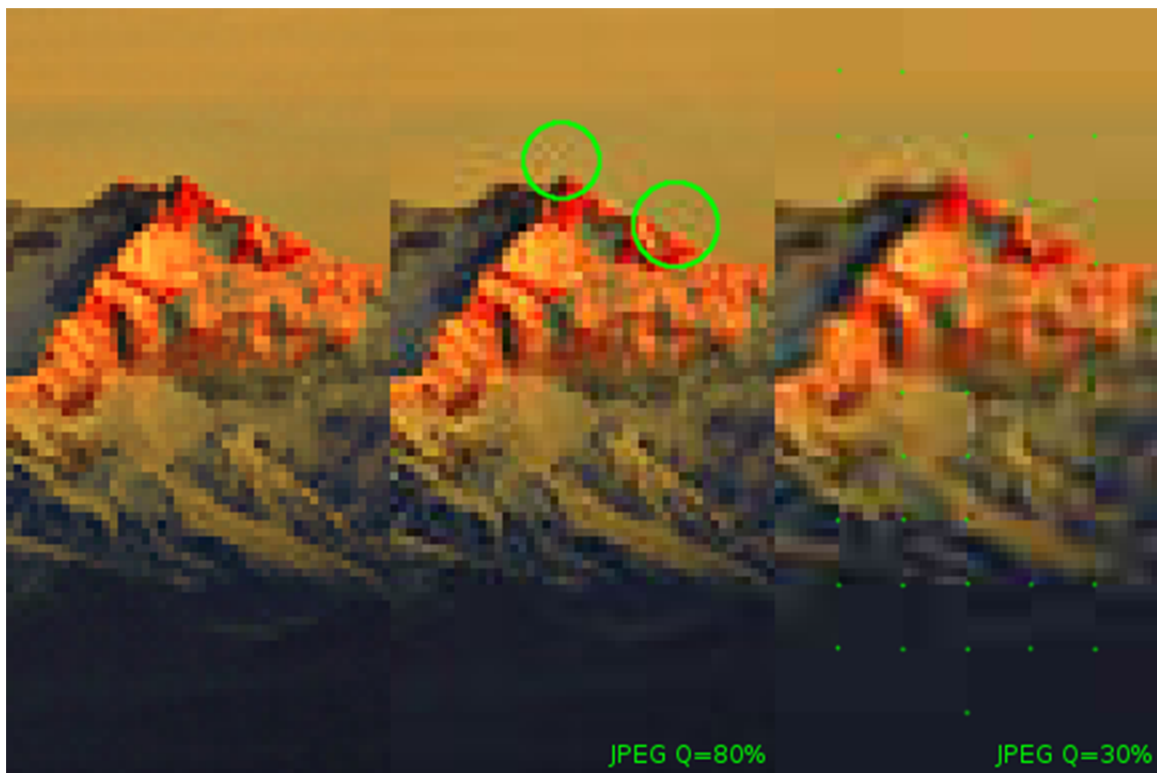
Mark: 
Serial No. 88237293

Argument

Registration was refused on the stated ground that the specimen appears to consist of a digitally altered image or mock-up and does not show the applied-for mark in actual use in commerce.

However, the specimen consisted of a photo of a box and a vial for the goods as actually used in commerce. The digital dots in the image are a natural artifact of JPEG compression, and do not reflect any manipulation of the image. (On the contrary, digital manipulation could easily have removed the dots.) Note that similar artifacts appear in the high-contrast areas of the vial label in the photograph.

See also the accompanying article from the StackExchange website describing JPEG artifacts, particularly the example of “halos” circled in green on Page 2:



According to the article, JPEG compression tends to introduce “general loss of sharpness and oscillations around high-contrast edges: these are due to approximating intensity transitions with smooth functions (cosines); you see them as small "dots" or "halos" around the edges; they are particularly easy to see in the images of text of hand-drawings.”

In addition, see the accompanying article on the Microstock Insider web site, especially the following image at the top of Page 2 illustrating JPEG artifacts, “seen characteristically ‘around the edges’ and not on the edges themselves”:



The vial label reveals writing which is visible through the white portion of the label because the label is a “720-degree label” which includes enough content that it is wrapped around the vial twice, and can be unwrapped by the user to see the additional product information. Applicant confirms that this is the label which was in use in commerce as of the filing of the Statement of Use. An additional photo is submitted herewith showing the beginning portion of the mark on the vial.

Furthermore, the identical specimen was previously deemed acceptable in support of applicant’s companion application Serial No. 87784738 for GIVLAARI (now Registration No. 5985026).

Pursuant to the USPTO’s Consistency Initiative, “An applicant may bring to the attention of the Office situations where, in applicant's opinion, the Office has acted inconsistently in its treatment of applicant's pending applications/recent registration(s).” The present inconsistency meets the criteria for a request that the matter be reviewed.

As stated in TMEP §702.03(a)(iii): “If the applicant previously filed a companion application that has matured into a registration, the examining attorney should not transfer his or her application to the prior examining attorney. Generally, in the later application, the examining attorney should act consistently with the registration, unless it would be clear error (see TMEP §706.01) to act consistently.”

In view of the foregoing, applicant submits that the previously submitted specimen should be acceptable, that the requested information and documentation is therefore not necessary, and that this application is now in condition for registration.