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10-01-2001

U.S. Patent & TMO/TM Mail Receipt #71

10-01-01
TTAB

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Appellant: Anton/Bauer, Incorporated)	
Mark: MAXX)	Examining Attorney
Serial Number: 75/659877)	Joyner, Charles G., Jr.
Filed: 3/12/99)	Law Office 112

BOX TTAB
Assistant Commissioner of Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

MOTION FOR RECONSIDERATION
PURSUANT TO 37 CFR 2.144

On August 29, 2001 the Trademark Trial and Appeal Board affirmed the refusal of registration of the trademark MAXX for "batteries for use with portable video equipment," in International Class 9 under Section 2(d) of the Lanham Act on the basis of a likelihood of confusion with the weak mark "MAX" and design used in connection with "batteries" and illustrated in Registration No. 2,127,332.

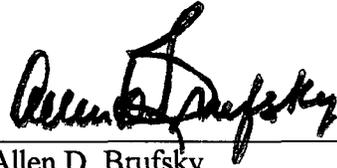
The Board centered its analysis on the similarity or relatedness of the goods "based on the identification in the involved application and registration" (Opinion, p. 3), and suggested that the result reached may have been different if the applicant's identification were restricted to "batteries used by professional video equipment operators", which would limit the goods for use by highly sophisticated users (Opinion,

MS

p. 3), who could clearly distinguish the source of the MAX and MAXX batteries. While MAX batteries could be read to include "batteries for use with home video equipment," such goods would not necessarily be operated by highly sophisticated users.

Accordingly, applicant has amended and limited its identification of goods to "batteries used by professional video equipment operators with portable video equipment" (see attached Amendment), and requests entry of the amendment in the appealed application and reconsideration of the refusal to register applicant's mark "MAXX" over the mark of the cited registration.

Respectfully submitted,



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CERTIFICATE OF MAILING

I hereby certify that the Motion for Consideration Pursuant to 37 CFR 2.144, and Amendment Pursuant to 37 CFR 2.133 are being sent via U.S. First Class Mail addressed to: BOX TTAB, Assistant Commissioner of Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513 this 26th day of September 2001.



Carolyn A. Kimes

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Appellant: Anton/Bauer, Incorporated)
Mark: MAXX) Examining Attorney
Serial Number: ~~75/659877~~) Joyner, Charles G., Jr.
Filed: 3/12/99) Law Office 112
For: Batteries for Portable Video Equipment

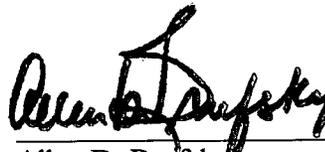
AMENDMENT PURSUANT TO 37 C.F.R. 2.133

Please amend the identification of goods to read: "batteries used by professional video equipment operators with portable video equipment."

REMARKS

Applicant requests that the above amendment be entered pursuant to the Trademark Trial and Appeal Board's suggestion and the application be allowed for publication.

Respectfully submitted,



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