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U.S. Patent & TMO/TM Mail Rcpt Dt. #70

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December 30, 2002

VIA FIRST CLASS MAIL

Assistant Commissioner
for Trademarks
Trademark Trial And Appeal Board
2900 Crystal Drive
Arlington, VA 22202-3513
BOX TTAB – NO FEE

RE: Amendment After Appeal and Request for Remand to October 17, 2002 Action Continuing Final on Application of Lifeguard Licensing Corp. to Register the mark LIFEGUARD, Appl. Serial No. 75/980,145

Dear Sir or Madam:

In response to the Action Continuing Final issued on October 17, 2002, Applicant respectfully requests that the above-referenced Application be *remanded* to the Examining Attorney for further consideration in light of the Amendment affected herein.

AMENDMENT AFTER APPEAL

Please delete the identification of record in cl. 3 *only*, and insert in its place the following revised description of goods:¹

--“cleaning preparations, namely, carpet shampoo and laundry detergent” in cl. 3.

¹ All other classes and associated goods remain herein.

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REMARKS IN SUPPORT OF REQUEST FOR REMAND

In an Action Continuing Final issued on October 17, 2002 (hereinafter the "Continuing Action"), the Examining Attorney maintained the §2(d) objection previously issued on March 22, 2001 based upon the existence of Reg, No. 1,584,226 for which the subject mark is LIFEGUARD *with Design* for "sunscreen for use in tanning" in cl. 3 (hereinafter the "§2(d) objection"). Applicant notes however that the Examining Attorney withdrew citation of Reg. No. 2,017,832 for which the subject mark is LIFE GUARD for "disposable gloves for medical use" in cl. 10 as a basis for refusal.

The Examiner opined that despite Applicant's previous deletion of goods identified as "sun block and sun tanning preparations" in cl. 3, Applicant's continued inclusion of its various cosmetics products and cleaning preparations in cl. 3 still conflicts with Registrant's sunscreen product. In particular, the Examining Attorney alleged that because "[i]t is very common for a single manufacturer or retailer to produce or sell sun screening products as well as other lotions, gels, fragrances, hair care items, balms and cosmetics," the Examiner argued that "[s]uch goods [would therefore be] marketed to and purchased by the same consumers in the same channels of trade". Based upon this assertion, the Examiner concluded that a likelihood of confusion amongst consumers would be created.

While Applicant continues to maintain its earlier position in support of registration, *without prejudice nor* waiver of any or all of Applicant's rights in and to the LIFEGUARD designation, Applicant has amended its cl. 3 goods description such that the wording "cosmetics,

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namely, after-shave lotion, anti-perspirants and deodorants, baby and bath oil, baby, body and bath powder, baby and hair shampoo, colognes and perfumes, cotton swabs, puffs and sticks for cosmetic purposes, skin soap for hands, face and body, bath gel, shower gel and tooth gel, toothpaste, non-medicated lip balm, skin moisturizer, night cream, shaving cream and shaving gel, skin clarifier, skin cleansing lotion, skin cream, lipstick, blush, hair gel and styling mousse” has been deleted therefrom (hereinafter the “Amendment”). Applicant however expressly retains herein the remainder of goods in cl. 3 which are the following: “cleaning preparations, namely, carpet shampoo and laundry detergent”.

Applicant notes for the record that pursuant to a telephone conversation that took place on November 14, 2002 between the Examining Attorney and the undersigned, the Examiner assured Applicant that the foregoing Amendment would effectively dissipate any and all likelihood of confusion concerns raised by the Examiner such that the §2(d) objection would be officially withdrawn. Applicant appreciates the courtesies extended by the Examining Attorney during the aforementioned telephone discussion.

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CONCLUSION

Given that the instant Application requires further reconsideration by the Examining Attorney (in light of the Amendment affected herein), Applicant hereby requests that the Trademark Trial And Appeal Board (hereinafter the "Board") remand the instant Application to the Examiner for further review. Applicant simultaneously requests that the Board suspend action on the Appeal that was previously instituted pending further consideration by the Examining Attorney.

In the event that the Examiner deems the Amendment an insufficient basis for withdrawal of the §2(d) objection, Applicant expressly reserves the right to submit its Appeal Brief in support of registration at a subsequent time.

Respectfully submitted,

By: _____

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CERTIFICATE OF MAILING BY FIRST CLASS MAIL

I, Joanna Elkin, hereby certify that this correspondence is being deposited with the United States Postal Service as "First Class Mail" in an envelope addressed to: Commissioner for Trademarks, Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington, VA 22202-3513, on the date indicated below.

Date: _____

December 30, 2002

Signed: _____

Joanna Elkin

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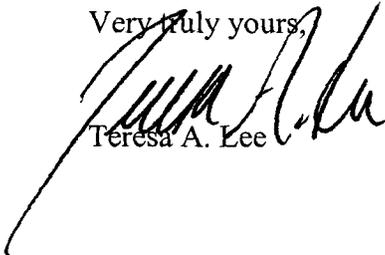
Dear Sir or Madam:

On behalf of our client, Lifeguard Licensing Corp., enclosed herewith for filing are the following particulars with respect to the above-referenced Trademark Application.

1. An Amendment After Appeal And Request For Remand.
2. A return post card.

Should you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,


Teresa A. Lee

TAL:je
Encls.

DD