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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Law Office:	105
Application Serial No.:	76053926
Application Filing Date:	May 22, 2000
Mark:	MONACRYL
Applicant:	RPM BELGIUM, N.V.
Examining Attorney:	L. Case
Responds to Action Dated:	June 27, 2003
Attorney's Reference:	MONAC21USA/REF



12-29-2003
U.S. Patent & TMO/TM Mail Rcpt Dt. #66

NOTICE OF APPEAL

Mail Stop TTAB
FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

RECEIVED
DEC 29 10 35
U.S. PATENT & TRADEMARK OFFICE

Sir:

1. This notice of appeal applies to Int. Class **2, 6, 19 and 27**.
2. The Office Action comprises a FINAL refusal of registration, which applicant hereby appeals from. All requirements made by the examiner and not the subject of appeal have been complied with, as required by 37 CFR §2.142(c). The BRIEF OF APPELLANT will be filed within sixty (60) days hereof, as required by 37 CFR §2.142(b).
3. A check in the amount of **\$400.00** is submitted herewith to cover the \$100.00 per class U.S. government fee. The Commissioner is hereby authorized to charge to deposit account no. 02-0200, any fees that are authorized by the undersigned, and any fees that are required to prevent abandonment of the application. A duplicate copy of this page is attached.

BACON & THOMAS, PLLC
625 Slaters Lane, Fourth Floor
Alexandria, Virginia 22314-1176
Phone: (703) 683-0500

Date: December 29, 2003

Respectfully submitted,

Richard E. Fichter
Attorney of Record

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cc: Main Docketing; Trademark Docketing

12/30/2003 EPINR1 00000015 76053926

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AMENDMENT

Mail Stop RESPONSES

NO FEE

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

Madam:

Applicant maintains that the identification of goods is in full compliance with the statute and regulations, but in order to expedite the application, please amend the identification of goods in **Classes 2, 6, 19 and 27** to read as follows:

Class 2: CEMENT AND BITUMINOUS COATINGS FOR FLOORS; COATINGS FOR BUILDING FLOORS; AND POLYURETHANE PRODUCTS, NAMELY COATINGS FOR BUILDING FLOORS.

Class 6: FLOORS OF SYNTHETIC MATERIAL, NAMELY METAL FLOORS WITH A HIGH CHEMICAL RESISTANCE.

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Class 19: FLOORS OF SYNTHETIC MATERIAL, NAMELY WOOD TILE FLOORS WITH A HIGH CHEMICAL RESISTANCE; INDUSTRIAL PAVING STONES, BLOCKS, TILES, NOT MADE OF METAL; SEAMLESS CEMENT FLOORS; BITUMEN FOR USE IN PAVING; FLOOR COVERINGS, NOT OF METAL, NAMELY CEMENT; MORTAR FOR BUILDING, AND MORTAR AND CEMENT WITH A SYNTHETIC RESIN BASE FOR FLOORS.

Class 27: FLOORS OF SYNTHETIC MATERIAL, NAMELY LINOLEUM FLOORS WITH A HIGH CHEMICAL RESISTANCE; HARD SURFACE FLOOR COVERINGS; HARD SURFACE INSULATING FLOOR COVERINGS; AND HARD SURFACE INDUSTRIAL FLOOR COVERINGS.

Applicant makes the foregoing amendment of the identification of goods without surrendering any of the scope of the previous identification of goods. Thus, if any further amendments are required in order to obtain approval, then Applicant is entitled to the full scope of the previous identification of goods. At the time that the application is approved, Applicant surrenders the scope of the previous identification of goods to the extent that it exceeds the approved identification of goods.

Applicant has carefully considered the refusal based upon likelihood of confusion with respect to the registered marks MONACRYL and MINACRYL. Applicant wishes to emphasize the difference in the goods with respect to the various classes involved and that the issues are not the same with respect to the identification of goods, especially with respect to the goods in classes 2 and 27.

As previously noted by Applicant, the final syllable CRYL and the final syllables ACRYL are relatively common and nondistinctive in the relevant art because the term "acrylic" is generic for

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some of the components of the relevant goods. Just as purchases of goods sold under the registered mark MONACRYL and the registered mark MINACRYL are not likely to be confused between these two marks, such purchasers and potential purchasers are not likely to be confused between these two registered marks and the present mark MONACRYL.

The MINACRYL mark relates to building materials not made of metal, namely, artificial stone made from inorganic fillers combined with resin, polymeric concrete or concrete made of reactive resin; molds made of artificial stone in particular as a substitute for metal molds for tool-making equipment. Thus, the ordinary purchaser would be well aware of the cement and bituminous coatings for floors, coatings for building floors and polyurethane products being distinctly different from the building materials and molds with respect to the MINACRYL registration. Clearly, the floors of a synthetic material, namely metal floors with a high chemical resistance for the present mark would not be considered confusing in origin with building materials not made of metal for the MINACRYL registration.

This is similarly true with respect to the registration MONACRYL for clear acrylic finish for walls and floors. This in no way is suggestive of the goods for the present mark and there is no likelihood of confusion to exist as to the source of the divergent materials, namely, metal floors with a high chemical resistance and cement in bituminous coatings for floors in class 2. Accordingly, it is most respectfully requested that the refusal based upon the likelihood of confusion be withdrawn.

BACON & THOMAS, PLLC
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Phone: (703) 683-0500
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Respectfully submitted,



Richard E. Fichter
Attorney of Record