

TTAB

TRADEMARK
01888-T0004A GSW/KGB

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

Applicant	Anubis Enterprises, Inc., d/b/a Cookie Bloomers
Serial No. 76/220,397	Filing Date: March 5, 2001
Trademark	COOKIE BLOOMERS
Law Office: 103	Trademark Attorney: Joanna M. Dukovcic

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



11-25-2002
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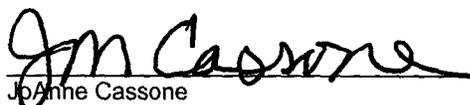
APPLICANT'S APPEAL BRIEF

Dear Sir:

Applicant, Anubis Enterprises, Inc., d/b/a Cookie Bloomers, has appealed the Trademark Examining Attorney's refusal to accept the specimens as filed claiming that the specimens do not show use of the mark, COOKIE BLOOMERS on the goods, i.e., cookies and cookies formed to simulate flowers in Class 30.

Certificate of Mailing: I hereby certify that this correspondence is today being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.

November 22, 2002


JoAnne Cassone

FACTS

Applicant filed its application for protection of the mark COOKIE BLOOMERS on March 5, 2001 under §1(a), claiming a date of first use of November 1997, for cookies and cookies formed to simulate flowers. The Examining Attorney, Joanna M. Dukovcic issued an Office Action, which was mailed on June 14, 2001 refusing registration because the drawing and specimen do not match and the rejecting the specimen as being unacceptable and not showing trademark use.

Applicant's Response, due December 14, 2001, was filed on July 6, 2001 arguing that, notwithstanding the fact that the mark appears in a stylized form on the specimens, Applicant is not claiming any design but merely the typed version of the mark s the stylization is a non-issue. A request for reconsideration was made in that Response in view of Applicant's claim that no design was being claimed.

On October 17, 2001, Ms. Dukovcic mailed another Office Action maintaining her refusal to register because the drawing and specimen do not match, and maintaining her position that the specimen was being unacceptable and not showing trademark use, and now requiring a disclaimer of "cookie" apart from the mark as a whole.

On January 28, 2002, Applicant responded to the Office Action with an amendment to the dates of first use to November 1990, with a supporting Declaration, and a Declaration New Specimens in support of substitute specimens which were also submitted. Finally, Applicant also inserted a disclaimer of "cookie" into the application. The

Response requested passage to publication in view of the amendment and additional submissions.

On March 19, 2002, Examiner Dukovcic issued another Office Action making the requirement for proper specimens Final.

Since no resolution was forthcoming, Applicant's sole remedy was to Appeal the Examiner's refusal. Applicant filed its Notice of Appeal herein on September 19, 2002.

ARGUMENT

Applicant's Specimens are Appropriate and Show Proper Trademark Usage

Pursuant to §904 of the TMEP, "specimens provide part of the basis for examination because they *show the manner in which the mark is seen by the public.*" [emphasis supplied] Attention is drawn to the specimens submitted which include photographs of the packaging for the goods. Clearly, in the pictures, the mark is used in conjunction with the goods and is the manner in which the mark is seen by the public. Since bulky specimens are not accepted, Applicant deemed that the best available specimens for the Examiner were the ones appearing on its website which shows the *goods* and the packaging therefor. Applicant believes that the Examiner may have mistakenly believed that Applicant was submitting the web pages to show use, which Applicant knows is not acceptable.

A trademark specimen should be a label, tag, or container for the goods, or a display associated with the goods. 37 C.F.R. §2.56(b)(1). A photocopy or other reproduction of a specimen of the mark as actually used on or in connection with the goods is acceptable. 37 C.F.R. §2.56(c). (TMEP §904.04) Applicant submitted the "other reproduction" for the Examiner.

Applicant's specimens as filed are in compliance with the requirements of the TMEP and have all the supporting Declarations, where appropriate.

CONCLUSION

For the foregoing reasons, Applicant respectfully requests that the Trademark Trial and Appeal Board overrule the Examining Attorney's refusal to register Applicant's trademark COOKIE BLOOMERS, accept the specimens as filed, and pass said application to publication.

Respectfully submitted,

A handwritten signature in cursive script, reading "Kathryn Grant Belleau". The signature is written in black ink and is positioned above a horizontal line.

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