

ESTTA Tracking number: **ESTTA412846**

Filing date: **06/06/2011**

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

Proceeding	76293326
Applicant	Prema Jyothi Light
Applied for Mark	SHIMMERING BALLERINAS & DANCERS
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Submission	(REFILED) REQUEST FOR RECONSIDERATION
Attachments	SHBD REFILED REQUEST4RECONSIDERATION 060611.pdf (5 pages) (16357 bytes)
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Date	06/06/2011

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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NAME OF APPLICANT: Prema Jyothi Light

NAME OF TRADEMARK: SHIMMERING BALLERINAS & DANCERS

SERIAL NUMBER: 76293326

FILING DATE OF APPLICATION: First filed July 9, 2001
Later refiled July 31, 2001

DATE OF FINAL OFFICE ACTION: June 15, 2009

DATE OF FIRST FILING THIS REQUEST FOR RECONSIDERATION VIA TEAS: December 15, 2009

DATE OF RESPONSE TO THIS REQUEST BY EXAMINING ATTORNEY: January 28, 2010

DATE THAT THE PDF FOR THIS REQUEST FOR RECONSIDERATION WENT MISSING FROM THE CASE FILES AT THE USPTO: Unknown

DATE THAT APPLICANT WAS INFORMED THAT THE PDF FOR THIS REQUEST WAS MISSING FROM THE CASE FILES: March 2, 2010 (over 14 months after this document was filed)

DATES OF MOST RECENT& RELEVANT TTAB ORDERS: March 2, 2011 & March 4, 2011

DATE OF RE-FILING THIS REQUEST FOR RECONSIDERATION: Monday, June 6, 2011

EXAMINING ATTORNEY: Paul F. Gast, Law Office 106

**(RE-FILED) REQUEST FOR RECONSIDERATION
FOR THE TRADEMARK SHIMMERING BALLERINAS & DANCERS,
IN RESPONSE TO TTAB ORDERS DATED MARCH 2, 2011 & MARCH 4, 2011**

1. Introduction.

In accord with TMEP §§ 714.05 and 715.03, Applicant filed this timely REQUEST FOR RECONSIDERATION on December 15, 2011, in response to Final Action dated June 15, 2009 with regard to her Trademark, SHIMMERING BALLERINAS & DANCERS. The pdf for this REQUEST FOR RECONSIDERATION was carefully and successfully attached to the TEAS filing, and it was responded to by the Examining Attorney for this case on January 28, 2010, with the document titled REQUEST FOR RECONSIDERATION DENIED. If the document with arguments had not been attached, how could the Examining Attorney have responded to it? He never said it was missing, and he responded to its contents. This REQUEST FOR RECONSIDERATION was attached in support of the Arguments section of the filing via ESTTA. The Examining Attorney, in his REQUEST FOR RECONSIDERATION DENIED stated, on January 28, 2010, that he did not think Applicant's arguments were "significant and compelling." He would have to have seen the arguments to state this.

However, in the TTAB Order dated March 2, 2011, over 14 months later, it was stated that "no such request appears in the file." When did the REQUEST FOR RECONSIDERATION for SHIMMERING BALLERINAS & DANCERS, filed on December 15, 2009, disappear from the USPTO case files? Or was it removed? If it had not been successfully attached, why wait over 14 months to let Applicant know? She had received confirmation during the online filing process that this document had been successfully attached. However, in accord with TTAB ORDERS dated March 2, 2011 and March 4, 2011, this (REFILED) REQUEST FOR RECONSIDERATION is hereby being refiled on Monday, June 6, 2011.

Please note that the pdf for this document is being carefully attached to its filing. Each stage of each filing is being image-captured by Applicant to document the step-by-step process for completing the ESTTA filing, including the successful attachment of the pdf referenced in the filing. These image-captures can serve as evidence of the successful attachment of the pdf in case of any future disputes in this regard.

2. Notice of Appeal was also filed on December 15, 2009, with the TTAB.

On December 15, 2009, Applicant also concurrently filed a timely NOTICE OF APPEAL to the Examining Attorney's Final Office action dated June 15, 2009, with the TTAB, in case this was needed in accordance with 15 USC §1062 (b), but she requested that the TTAB wait until after the Examining Attorney had a chance to respond to this REQUEST FOR RECONSIDERATION, and until after Applicant had a chance to respond to his response, in accord with TMEP § 715.04(b), before proceeding with the Appeal.

3. First New Issue.

This (REFILED) REQUEST FOR RECONSIDERATION includes an amendment that presents a new issue, namely, a claim of acquired distinctiveness, in the alternative, under 15 U.S.C. §1052(f).

In support whereof, Applicants states that this Mark has functioned as a Trademark, and has been in substantially exclusive and continuous use thereof as a Trademark by the Applicant in commerce for well over five years before December 15, 2009, and well over five years before this present filing date, upon which this claim of distinctiveness, in the alternative, under 15 U.S.C. §1052(f), is made.

In support of this new claim, new evidence as samples are to be submitted, showing this very distinctive Mark in use as a Trademark.

The new evidence to be submitted shows its visual distinctiveness, and claim is hereby made as to its acquired distinctiveness in the alternative, under 15 U.S.C. §1052(f).

This claim of acquired distinctiveness under 15 U.S.C. §1052(f) is made in the alternative, in accordance with TMEP §1212.02(c). Under this section, claiming acquired distinctiveness in the alternative, the alternative claim does not constitute a concession that the matter sought to be registered is not inherently distinctive.

This claim under 15 U.S.C. §1052(f) is also asserted in accordance with TMEP § 1212.02(h).

4. Second New Issue.

As a second issue, Applicant believes that the Final Action was premature, as delineated in TMEP § 714.06, and requests correction of this. In her RESPONSE TO OFFICE ACTION, she requested clarification on the issue regarding possible resubmission of the Mark in Standard Characters Format. She was extended an offer by the Examining Attorney, in his previous OFFICE ACTION, to resubmit the Mark in Standard Characters Format, albeit in an abbreviated form, and she therefore hoped that she could also offer resubmission of the entire Mark in Standard Characters Format, and had asked for clarification on this.

As she stated in her RESPONSE TO OFFICE ACTION, she was requesting clarification on this so that she could submit the best possible specimens in support of her position that her Trademark does, in fact, function as a Trademark.

Yet the Examining Attorney must have misunderstood her, and issued a Final Action without first clarifying the issue of resubmission in Standard Characters Format, and without thereby allowing her the opportunity to submit the relevant specimens which, as she stated, she thought were needed to show that her Trademark does, in fact function as a Trademark.

In all fairness, Applicant should be permitted to submit further evidence of samples showing that the Mark does in fact serve as a Trademark. This was at issue and she specifically requested this.

As stated in TMEP § 714.05(a), “Generally, an amendment that is unacceptable raises a new issue requiring a nonfinal action, unless the amendment is a direct response to a previous requirement.”

The second new issue was resubmission of the Mark in Standard Characters Format, not just in an abbreviated form, but for the entire Mark. The offered new drawing, or resubmission in Standard Characters Format, was “significantly different from material previously submitted”, within the meaning of TMEP § 714.05, and related to the Examining Attorney’s offer to allow Applicant to resubmit her Mark in Standard Characters Format, in an abbreviated form.

Therefore, a nonfinal Office Action should have been issued in response.

5. New Specimens and New Clearer Drawings Are To Be Submitted Separately.

Therefore, new specimens are to be submitted in support of this REQUEST FOR RECONSIDERATION, and when received, should be honestly and sincerely reviewed by the Examining Attorney, not only as evidence of acquired distinctiveness, but also as evidence that this Trademark does, in fact, function as a Trademark, as it does identify the source of Applicant’s goods to the public.

It was not Applicant’s fault that the USPTO bureaucracy lost or misplaced the specimens which she sent earlier and which were entrusted into the care of the USPTO, but which somehow were not properly conveyed to the Examining Attorney.

The samples that are to be submitted in support of acquired distinctiveness of the Mark, also simultaneously serve as evidence that the Mark is effectively in use as a Trademark. Applicant asks that the Examining Attorney withhold judgment on both of these issues until he has had a chance to review the new specimens.

However, Applicant’s safety and life have been threatened by some of the people who have been plagiarizing her creative work, and she needs to be able to move to safety. However, she has had difficulty finding an affordable place within the 3-month time limit set by the TTAB in its ORDER dated March 4, 2011, as detailed in the accompanying REQUEST FOR EXTENSION OF TIME. It is clear that her life is at risk if she proceeds with this Appeal without yet being able to move to safety first.

Even if she were able to successfully receive registration for her Trademarks, this would not help her much if she lost her life because of the violence of others who have been stealing her works, in the process. “The operation was a success but the patient died” is not ideal from the Applicant’s point of view!

5. Conclusions.

In conclusion, this Trademark has acquired distinctiveness, and does function is a Trademark. It may be larger than the usual trademark, and have more elements than the usual trademark, but it is, conclusively, and in its entirety, a Trademark.

In all honesty, this Trademark does function well as an identifying Trademark, and has done so for well over fifteen years, and this Trademark therefore qualifies for registration.

A REQUEST FOR RECONSIDERATION has also been previously filed for the sister Trademark, SHIMMERING RAINFOREST. A NOTICE OF APPEAL was also timely filed, for this sister Trademark, with the TTAB.

The Examining Attorney and TTAB should not lightly dismiss Trademarks which have been successfully and distinctively in use for many years, or these applications for registration which have been in progress for so many years. The desire to brush aside Trademarks which have been pending for registration for so long, possibly due to annoyance, should not be greater than an allegiance to honesty and fairness in business, in government, in creative work, and in accord with the shining high ideals of truth, justice, and protection of the innocent from the unscrupulous. Trademark protection can and should serve these high ideals and purposes, here in the United States of America, and hopefully will continue to do so in these Trademark cases. God bless the USA!

Dated: Monday, June 6, 2011

Very respectfully submitted,

/ Prema Jyothi Light /

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