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

Proceeding	76293326
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Applied for Mark	SHIMMERING BALLERINAS & DANCERS
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE

TRADEMARK TRIAL AND APPEAL BOARD (TTAB)

NAME OF APPLICANT: Prema Jyothi Light
NAME OF TRADEMARK: SHIMMERING BALLERINAS & DANCERS
SERIAL NUMBER: 76293326
FILING DATE OF APPLICATION: First filed July 9, 2001
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EXAMINING ATTORNEY: Paul F. Gast, Law Office 106

APPEAL BRIEF

Note: Applicant is representing herself *In propria persona*, rather than being represented by an attorney in these proceedings.

1. Introduction.

Appellant is appealing the Final Refusal to register her trademark, and hopes to persuade the TTAB to grant registration for her very worthy and excellent Trademark.

2. Trademarks acquire distinctive character over time.

The following is held true by 87 CJS (Corpus Juris Secundum) §165:

“Certain marks not otherwise registrable may become registrable if they have been used by the applicant and have become distinctive of the applicant’s goods in commerce; and five years’ exclusive and continuous use may be accepted as prima facie evidence of the distinctiveness required.”

This Trademark, in its entirety, was first used in interstate commerce in 2000, as stated in the original application form, and was in use for intrastate purposes long before that. It has been in use in interstate commerce for almost six years. The trademark is in use as a trademark, and is distinctive and recognizable at a glance, as a trademark. It has acquired distinctiveness, and should be registrable.

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3. Delays in processing this application have been due to injuries from two automobile crashes.

After the submission of her three Trademark registration applications, I was seriously injured in a car crash in April 2002. In this accident, my left foot was crushed, and my right foot was badly sprained, and I could not walk or drive. I had to be confined to a wheelchair for many months.

My right wrist was also broken, so I could not write, draw, or paint. A lung was deflated by a broken rib, and had to be reinflated. My neck and back were also injured, so I was in an Aspen collar. It was difficult for me to sit up, move, or even breathe, for many months. The recovery from this accident has been a long and difficult process. Then I had the misfortune to be in a second car crash, while awaiting a second surgery for injuries from the first accident.

As I was unable to work, or pay her rent, I was forced to change my place of residence, more than once, while in an injured condition, and my paperwork got jumbled in the packing and moving processes. This interfered with my ability to meet PTO deadlines in a timely way.

I am currently still in recovery from these accidents, on crutches from the injuries to my left foot.

4. My thanks to the Examining Attorney for this case, Paul Gast, for his kindness to me, and his assistance in extending deadlines, as I tried to recover from these auto crashes.

I would like to take a moment to thank my Examining Attorney, Paul Gast, for helping me over hurdles and obstacles during the trademark review process, related to my difficulties in meeting deadlines due to injuries from the two car crashes.

I have had three related trademarks under simultaneous review by the PTO. The Examining Attorney and I have disagreed about how the Trademarks should be handled, and whether the Trademarks should be approved of, as submitted. But, any conflict is solely on the issues – there is no personal animosity whatsoever, on my part.

I wish to honor the kindness of the Examining Attorney, in allowing me needed time extensions, so that I could at least present my views in responses to Office Actions. Thank you, Paul, for your kindness in a time of need.

5. This Trademark is one of three related Trademarks.

All three were submitted for Trademark approval at the same time. The three related Trademarks were: SHIMMERING BREEZES, SHIMMERING RAINFORESTS, and SHIMMERING BALLERINAS & DANCERS. All were assigned to the same Examining Attorney.

When I realized that the Examining Attorney was going to refuse registration to all three of my Trademarks unless I stripped them of all secondary elements, I agreed to let one of them, SHIMMERING BREEZES, go through, shorn of all of its secondary elements, so that at least one would go through.

Another factor is that SHIMMERING BREEZES is the title of a comic strip, and this title is often used in its short form, so I thought it would still be useful to have Trademark registration for its short form, as a two-word Trademark. Therefore, the registration for SHIMMERING BREEZES did proceed through to registration, and was granted Trademark registration on July 19, 2005.

However, the SHIMMERING BREEZES Trademark has also been in use in fuller form, with secondary elements. I would like to resubmit this Trademark for approval later, in a fuller form also, if the other two related Trademarks can receive approval for Trademark registration in their entirety.

The two remaining related trademarks, SHIMMERING RAINFOREST and SHIMMERING BALLERINAS & DANCERS, were refused on the same grounds, and are now being simultaneously appealed before the TTAB. The two APPEAL BRIEFS are similar, but differ in discussions of the particular content of each unique Trademark. Please kindly note these differences in the Briefs.

6. RESPONSES TO THE THREE ISSUES IN THE FINAL REFUSAL.

7. Issue No. 1: Substitute Drawing. The first issue involves the Substitute Drawing which was offered in response to the Examining Attorney's earlier objections to the Trademark. He states:

“[A]pplicant has added a design element that is considered to be a material alteration of the mark that is not permitted.”

8. Responses to Issue No. 1:

A. Substitute Drawing meets all requirements for a permissible Substitute Drawing.

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Applicant offered a Substitute Drawing, which contains all of the original elements of the Trademark as submitted, but just in a different arrangement. This version has been in intermittent use as a Trademark, as an alternate version. As far as Applicant is aware, this Drawing is in accord with TMEP requirements for a permissible Substitute Drawing, meeting all requirements for remaining within this application, in accordance with TMEP §807.15. It could be deemed to be an acceptable Substitute Drawing. This is not the same thing as an application “that includes two or more drawings displaying materially different marks”, as described in the Final Refusal quoting TMEP §807.03.

1. According to TMEP §807.15:

“When requiring a substitute drawing, the examining attorney must inform the applicant of the specific reason for rejecting the existing drawing and explain what type of amendment is needed to comply with the rules.”

Examining Attorney was rejecting my Original Drawing, claiming that it seemed to him like “lists”. So, I offered a version of the Trademark, also in use, which I thought might be more acceptable, as the secondary elements are raying out from the central element, in a radial way. In this way, they are more clearly a design element. I was trying to correct a reservation he had about my design.

2. According to TMEP §807.14:

“The general test of whether an alteration is material is whether the mark would have to be republished after the alteration in order to fairly present the mark for purposes of opposition.” And further, “As a general rule, the addition of any element that would require a further search will constitute a material alteration.”

As the words in both versions are the same, they would probably be much the same for purposes of opposition. And, no further search would be necessary, from Original to Substitute Drawing.

3. According to TMEP, §807.14(a):

“In some circumstances, descriptive or other types of nondistinctive matter may be deleted if the overall commercial impression is not altered.”

However, the secondary elements of this Trademark are fanciful, not merely descriptive, and they are distinctive, not “nondistinctive”. Removal of these elements could alter the

commercial impression of the Trademark.

- B. **Both the Original Drawing and the Substitute Drawing have the same calligraphy, and the same words, just in different arrangement or designs.** I would like to stress that the columnar or flag design, or the radial design, are both just that: designs. Whether you like them, or whether you don't, these are just different kinds of designs. Both designs are in use, and both contain identical elements. The only difference is in the visual arrangement of the elements.
- C. **Advantages of the columnar or flag design (Original Drawing).** In its columnar design, the Trademark has an effect like a flag with stripes. This does create a uniform commercial impression. Please see the color Exhibits for this Brief, sent under separate cover. The flag-like impression is very clearly seen in color.
1. **The American flag needs both the Stars & Stripes!** Think of the American flag, our blessed Stars & Stripes. What if our government wanted to trademark the American flag. Would the TTAB require all the stripes to be removed? And just allow the government to have the square with the stars? Would this be a fair ruling? "Sorry – you cannot have both the Stars & Stripes. You can only have the Stars. The Stripes must go!" Think of how disappointed the American people would be! Old Glory, with just the stars! My Trademark needs all of its little stripes, too!
 2. **Columnar designs are valid as designs.** The columnar design has a certain beauty, in my opinion, just as buildings with columnar designs have a certain beauty. For example, there is the Parthenon, a building in Greece, famed for its columnar design. No one objects to the columnar design of the Parthenon! Columnar is simply one type of design.
 3. **The columnar or flag design is easy to read.** It is easy to read the columnar design, both in black-and-white and in color.
 4. **This Trademark, in its columnar or flag design, is art.** It creates a uniform commercial impression, recognizable at a glance.

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- D. **Advantages of the radial design (Substitute Drawing).** The radial design is like a flower, with a starlike effect, or like fireworks. The Trademark's function as an "indication of origin" for all of its secondary elements is easily perceived, in this arrangement of elements, as they ray out from the central calligraphy. This is also like streets leading into a central downtown district!
1. **For the radial design to be effective, the secondary elements are needed, as a flower needs its petals.** A flower is not a flower, if it is shorn of all of its petals. If someone offers you a beautiful flower, wouldn't you prefer to receive it with all of its petals on? Also, a flower is more distinctive with its petals, than without them. If you just see the bare center of the flower, it could be a rose, or a daisy, or a peony. The petals help make the flower what it is, distinctive and beautiful. Even your sweetheart would rather receive flowers from you with all of their beautiful petals still on them!
 2. **The radial version is also like a little spider, which needs all of its slender little legs.** Why insist on surgery for the poor little fellow? Of course, he needs his little legs. Consider where he is going. He is going out into the world! He needs everything he's got! This Trademark also needs all of the elements which ray out from the center.
 3. **The radial design is also readable.** It is easy to read, if you turn it as you read it. The radial design is a little more dramatic than the columnar version, and yet still can be read.
 4. **This Trademark, in its radial design, is art.** It creates a uniform commercial impression, recognizable at a glance.
- E. **Applicant would be happy if Trademark registration can be granted to either version of this Trademark, though she prefers the radial version.** I hope it would be possible for registration to be granted to the radial version. I am presently using both versions. If I had to choose, I lean in favor of the radial version, as it is more dramatic. But, I would be happy with a ruling granting Trademark registration to either version of this Trademark!
9. **Issue No. 2: Specimens.** The second issue involves specimens showing the Substitute Drawing in

use. Examining Attorney stated in the Final Refusal: “[T]he proposed drawing does not agree with the presentation of the material shown in the specimens of record.”

10. Responses to Issue No. 2:

A. **Additional specimens were sent in to the PTO by surface mail, before the Final Refusal was issued.** These may still be floating around in the PTO mailroom, as they don’t seem to have made it onto the desk of the Examining Attorney. I don’t know what happened to the specimens which were sent in, or why they seem to have disappeared.

B. **I am re-sending the specimens, and asking that these additional specimens be accepted to show the use of the Trademarks.** I do not consider the specimens to be “new evidence”, as I know I sent them before. I am not familiar with the internal procedures in the PTO, and do not know why the specimens sent did not reach the Examining Attorney. These are the grounds for “good cause” in needing to re-send them now. I hope these will be accepted. I think it would be helpful for the TTAB to see these specimens.

C. **These specimens could be deemed to be “stipulated into the record” for consideration.** The TTAB Manual of Procedure, §1203.02(e), **Material Submitted with Briefs**, states that the record should be complete prior to the filing of an appeal. However:

“... if the examining attorney, in his or her brief, discusses the exhibits attached to the applicant’s brief without objecting to them they will be deemed to have been stipulated into the record and will be considered.”

D. **In the alternative, if the specimens are deemed to be additional evidence, I am hereby asking that the appeal proceedings be suspended so that the application can be remanded to the Examining Attorney for review of the specimens.** This is in accordance with the TTAB Manual of Procedure, §1207.02, **Request to Remand for Additional Evidence**, which states:

“If an applicant or trademark examining attorney wishes to introduce additional evidence after an appeal has been filed, the applicant or examining attorney may file a written request with the Board to suspend the appeal and remand the application for further examination.”

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- E. **Which way to go?** One way to decide whether the appeal should be suspended and remanded for further examination, or whether to accept these specimens as stipulated into the record, would be whether the Examining Attorney feels that further examination would change his stand. If not, and he feels confident of his case, he may wish to waive the remand, and allow the stipulation.
- F. **What the specimens add.** These specimens show additional examples of how the Trademark is in use for cartoons, and decals for coffee mugs and T-shirts. The specimens also show how the Trademark looks in the radial version as well as the flag or columnar version. I feel it helps to see how the Trademark is being used, to see the Trademark in action. This does no harm.

11. Issue No. 3: Is Trademark as presented a Single Mark.

Examining Attorney states in the Final Refusal:

“Although applicant has attempted to present a host of reasons for permitting the format desired, there is one overriding reason that it will not be permitted. Quite simply, only one mark is permitted per application. ... Quite clearly, applicant’s material listing a host of characters is at best a listing of multiple marks for which individual applications would have to be filed and at worst not registrable at all even were separate applications filed if it simply identifies a list of book characters.”

12. Responses to Issue No. 3:

- A. **This Trademark is a single mark, not many marks.** It is one Trademark with a uniform commercial impression. If it were a hundred marks, it could never fit easily and neatly as a single, easily recognizable unit on anything. This Trademark is distinctive and unique. It serves to identify and distinguish Applicant’s products, and identify their source.
- B. **The secondary elements are not simply a list of book characters.** This Trademark is for a character collection, and for items which they appear in and upon. These appear in books, comic strips, cartoons, posters, and greeting cards, and other printed works. They appear as decals for coffee mugs and T-shirts, and other items.
- C. **Each character is a part of a larger unified collection.** The Trademark represents the collection, and identifies the source of the items the characters appear in and upon. It is important

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to the products to show that each of them is a part of the greater whole. This is similar to a state, like Colorado, being a part of the United States. The USA could be portrayed with all of its named states, and still be distinctive.. As a whole, the Trademark functions as a single, unified trademark.

- D. **Words can be used as “word art”.** In both versions of this Trademark, the secondary elements are not just words, but also design elements. Words as calligraphy are clearly an art form. But any words, even in simpler fonts, can be considered as “word art” if their placement on the page affects the visual impact of the whole. I have written poems where the words are arranged like vegetables on a plate. The words represent vegetables, and the visual impact of the poem is – art. The secondary elements should be seen as part of the overall design of the Trademark.
- E. **Complex designs are just as valid as simple designs.** Why reject a mark because the design is too complex? This mark represents a wide variety of characters, and contains tiny references to all of them. Why reject the mark because of this? There is no trademark regulation which specifically prohibits this.
- F. **This Trademark is like a pretty flowering tree.** Why trademark each tiny blossom on a flowering tree separately? Have you ever seen a pretty tree, flowering with orange blossoms? There may be many tiny blossoms, but they all produce the single, unified effect of one great, big, beautiful, distinctive, and fragrantly flowering tree.
- G. **There is no possibility of my trademarking each tiny element individually.** It would be easier for me to collect a basketful of stars, than put together the funds to separately trademark each tiny element alone. And, as it so happens, all the stars in the sky together make a beautiful shining sky. The impact they make together is different than seeing each star as a single star. A skyful of shining stars has a unified impression all its own. This is another example.
- H. **A Trademark can be a one beautiful rose, or a big bouquet of roses.** Either way, the Trademark is distinctive. You would not toss out a Trademark that was a bouquet of roses, just

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because it contains more than one rose. A bouquet, too, can be singular in its impression.

I. **How about Snap, Crackle, and Pop?** Three little fellows called Snap, Crackle and Pop, all together, were part of a famous ad campaign for Rice Krispies. Snap by himself, or Crackle all alone, or Pop wandering down the road by himself, with his hands in his pockets, would never have conveyed the same effect as the three of them together, smiling happily around the rim of a cereal bowl. Snap, Crackle and Pop joined forces, and millions of bowls of cereal were sold! I don't know exactly how the trademarking was handled for this, but neither Snap, nor Crackle, nor Pop were alone in the world! And, Snap, Crackle and Pop were not really "ingredients" of the cereal, in the generic sense of ingredients.

J. **All elements of this Trademark are fanciful and distinctive, not merely descriptive.** As noted in *Corpus Juris Secundum*, 87 CJS §160, **Arbitrary or fanciful words:**

"Arbitrary or fanciful words or devices are subject to registration."

This section goes on to explain that fanciful terms "are those that are 'coined'". This is true of all of the secondary elements of this Trademark. The secondary elements are all fanciful. None of them are merely descriptive. None are merely generic terms, such as carrots, celery, or other soup ingredients. They all contribute towards the distinctiveness of this very unusual Trademark.

K. **Please also note reasons given in my RESPONSE TO PRIORITY OFFICE ACTION,** dated February 27, 2003, as to why this is a single Mark, rather than a multiple Mark.

L. **All of the characters in the Trademark comprise SHIMMERING BALLERINAS & DANCERS.** SHIMMERING BALLERINAS & DANCERS is not just another dance troupe. It is twirling with a glittering cast of dancers and others, leaping through the air and tossing flowers, who together make it highly unusual, fanciful and unique.

All together, they are SHIMMERING BALLERINAS & DANCERS. Without them, it would just be an empty dance hall, with lonely echoes bouncing off of shining wooden floors.

Yet they all have something in common. They all need the protection of the same

umbrella, and that is the SHIMMERING BALLERINAS & DANCERS trademark, as it stands.

Otherwise, they may be “picked off” by unscrupulous people who wrongfully want to try to snatch them. Some of attempts at this have already taken place.

The “TM” in the Trademark in use needs to be replaced with an ®.

M. Cites given in Final Refusal do not apply to this particular Trademark case.

With all due respect, Applicant feels that the three cites presented by the Examining Attorney, in the Final Refusal, do not apply to the present Trademark case, for the following reasons.

- 1) *In re Scholastic Inc.*, 223 USPQ 431, (TTAB 1984) re THE LITTLES. In this case, registration was refused because THE LITTLES was the title or portion of title of a series of books, and did not function as a trademark. In contradistinction, my Trademark clearly functions as a trademark, and identifies the source of the products.

Further, in my Trademark, the secondary elements are not simply characters which appear within the covers of a single book. They exist outside of any single book as characters which can appear in comic strips, cartoons, illustrations, posters, and other works. They appear as decals for coffee cups and T-shirts. They are not just portions of book titles. So, they are not like THE LITTLES, a phrase in a book title that did not function as a trademark.

- 2) *In re Caserta*, 46 USPQ2d 1088, (TTAB 1998). In this case, FURR-BALL FURCANIA was a single character in one book, and the Mark did not function as a trademark. In my case, my Trademark does function as a trademark, to identify and distinguish Applicant’s goods from those of others. My Trademark is used as a trademark, and perceived as a trademark.

My Trademark is not a single character. FURR-BALL FURCANIA is a single character. My characters exist outside of any single work. They appear on many other items. This cite is in regard to a character in a book title which is not used as a trademark. I do not feel it applies in my case.

- 3) *In re Frederick Warne & Co. Inc.*, 218 USPQ 345, (TTAB 1983). In this case, the court was

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considering whether a frog illustration, used on the cover of a single book, functioned as an illustration of the book's contents, or as a trademark. The author and illustrator of the book, Beatrice Potter, was no longer living, and her work had fallen into the public domain.

The publisher was arguing that her illustration had been on the cover of their original editions of this single book, and had therefore acquired secondary meaning as a trademark, through its usage on the cover of this single work. The court was considering whether the illustration had acquired this secondary meaning as a trademark, and concluded that it had not.

This cite does not apply in the present case. My Trademark is not an illustration used on the cover of a single book which may have acquired some kind of secondary meaning as a trademark. My Trademark has been a Trademark all along. It was developed as a trademark, and it has been used as a trademark. It was created for this purpose. It functions as a Trademark, by identifying and distinguishing Applicant's products and identifying their source.

13. This Trademark meets all qualifications for a Trademark.

- 1) It is in perfect conformance with all known requirements. It can be reduced in size to fit within a four-inch square (the requirement at the time of my trademark application), fulfilling all requirements in place at the time that I applied, as an acceptable Trademark to be published in the Gazette.
- 2) The entire Trademark fits neatly into the prescribed space. This space can be filled in thousands of ways. Thousands of marks have been registered which fit in this space, each of them unique and different.
- 3) If a successful Trademark is a unique, conveys a unified commercial impression, and fits in the prescribed space, why not grant registration to the whole trademark?
- 4) This Trademark presents a very clear, uniform, commercial impression.
- 5) The Trademark is distinctive, unique, and immediately identifiable. It may be unusual, but unusual is good, where trademarks are concerned! There is no other Trademark like it, except the

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other two related Trademarks!

- 6) This Trademark works well for the products upon which it appears. It is harmonious with the products. It has been tailored to represent the works on which it appears.
- 7) This Trademark has been successfully in use, as a Trademark, for over six years.
- 8) The largest elements of the Trademark are represented in unique and hand-done calligraphy. The other elements are fanciful and registrable.
- 9) The secondary elements do not compete with the primary elements of the Trademark, but enhance the Trademark in a special and needed way.
- 10) The Trademark represents a beautifully integrated set, an integral whole. It is the sincere desire of the applicant to present the products on which it appears, as a part of this integrated whole.
- 11) The Trademark, as it is currently represented, with all of its elements, enhances the presentation of everything which it appears on.
- 12) This Trademark should be registered in its entirety. The central calligraphy words can appear alone on a tiny tag, or where space is extremely tight, or as a reference in text, or as a heading on a page, or a banner reference, but where there is room for the full Trademark, the secondary elements are important to the Trademark. On some items, it appears in short, on the front of the page, and in full on the back of the page.
- 13) And most importantly, this Trademark is clearly in use as a trademark, for identifying and distinguishing applicant's products, and identifying their source.

14. It has been a long road. This Trademark application has been through a lot, since its first submission to the PTO on July 9, 2001. I have been through hoops with this, as has the Examining Attorney.

Due to injuries from two car crashes, and reverberating effects, I have had to ask for extensions of time, most recently the Petition for Revival, as the deadline for appeal slid past me. But, I have stuck with this Trademark application, through thick and thin, and through all these years, because I believe in

Trademark: SHIMMERING BALLERINAS & DANCERS

this Trademark, and because this Trademark, as it is in its entirety, represents exactly what I want it to represent, for the works on which it appears. I sincerely believe in the worth of the entire Trademark, as presented. I did pay the application fee, in good faith, hoping that this Trademark could be registered.

I never imagined that it would be in process for, amazingly, almost SIX BIG YEARS. Wow. After steadfastly sticking with this Trademark application all this time, come what may, you can see why I would be greatly disappointed to let it just slide into the trash heap of marks rejected by the PTO. I have put in a lot of time on this Trademark application, because I sincerely believe in it.

15. If Trademark registration is denied, Applicant will have to seek further review in the U.S. District Court, Federal Circuit. This is because Applicant earnestly and sincerely believes in the value and registrability of her Trademarks.

16. The PTO does not need to worry about losing money, if this Trademark is approved.

These Trademarks may have been denied due to concerns about the time it might take to process them. On the contrary, the PTO would lose money by NOT granting registration! The PTO would then lose the revenue that would otherwise be generated by these marks, and their subsequent additions of classes, as the Trademarks are developed. As I am able to afford to add more classes, I will eagerly do so. I would love to add classes to all three Trademarks, later, for peripheral, spinoff products, like dolls and toys!

17. High ideals and the noble purposes of Trademark Registration. High ideals have made America great. Standing brightly in the world, like our star-spangled banner rippling in the breeze, is our stand, as a country, for freedom, justice and truth. America lights up a world that is otherwise dark with wars, injustice and oppression. In this country, we have orderly procedures and laws, which protect us all. It is a privilege to live in America.

The orderly protection of creative works, by way of copyrights, trademarks, and patents, allow creative works to flower without colliding, and bloom with uniqueness, all contributing to the whole of free enterprise in a country bursting with creative initiatives.

Part of this process involves protecting the honest creators of creative works from theft by

Trademark: SHIMMERING BALLERINAS & DANCERS

unscrupulous persons. The creative processes in this country largely rely on people being honorable, people doing the right thing, people basically respecting one another and one another's work. It is a shock to me that there are so many people willing to act in total disregard for these principles.

Providing an orderly way for registering and safeguarding trademarks and creative works helps to stop the wrongful use of one person's work by another. Registration is needed for this purpose here.

18. Protection needed from unscrupulous persons. My Trademarks need prompt approval, for their protection. There are some unscrupulous individuals who have been deliberately and methodically plagiarizing my creative works. I will need legal help to achieve genuine truth and justice in court.

Trademarks with the protection of registration are safer in the marketplace, are less likely to be deliberately smashed, and more likely to survive such a smash if someone decides to slam into them.

19. While I have been in recovery from these auto accidents, some larger, faster-moving, unethical groups of people have caught sight of the work I have done, seen the commercial potential of the work, and are trying to run me off the road. They are rushing to press before I have been able to, falsely backdating their versions of my work, and trying to pass off my work as if it were their own. There is nothing at all accidental about this, and nothing even faintly ethical about this.

Legal resolution is needed, if truth and justice are to prevail in these circumstances. This is why the actual filing date for these Trademark applications is needed. While I am still trying to walk down the road on crutches, in recovery from auto accidents, these unscrupulous individuals are racing to market my work under their own names, just to grab the profits. They are willing to harm me, just to wrongfully grab commercial gain for themselves. This is deliberate theft and wrongdoing. This is not a fair exercise of free enterprise. It is also not accidental plagiarism on their part.

These people have even tried to steal music which I have composed. (I am a harpist and pianist.) They have gone after everything which is not nailed down, and even everything which IS nailed down! They have been taking even my previously copyrighted works, backdating their plagiarized versions, and rushing to market their versions of my works, before I have been able to recover from the accidents.

They have been dishonestly cashing in on my work, while I struggle to find a way to pay for medical care.

They have tried to rip off ENTIRE BOOKS which I have written and illustrated.

My finances have been scarce, as I struggle to try to walk again, with a foot that has been slow to heal. I have not yet had the financial resources to combat this bewildering onslaught in court.

But I do believe in God, truth, and justice, and the prevailing nature of genuine goodness.

I cannot even afford an attorney to present this case before the TTAB, but I have an abundance of integrity, faith and high ideals. In this way, I am quite rich!

Court challenges need to take place, in the future. Legal intervention is needed to keep these distressing people from doing whatever they feel like, and whatever they think they can get away with.

20. Some of these people probably thought I would die from the crash injuries before being able to challenge their wrongful activities. They probably hoped that I would die from the injuries, and never challenge what they have done. But, by the grace of God, I have lived to be recovering. The whole thing needs to come before a fair and just court. When this happens, I think the real truth will be clear.

Despite the length of time it has been taking me to recover, I have been getting well, and as I gradually find out what the others have been doing during my recovery, I am shocked. The wrongdoing shocks me, the slander shocks me, the threats shock me. The number of people who have rushed to plunder my work while I have been down, shocks me. Their willingness to tell baldfaced lies, apparently without any conscience at all, shocks me. Who would ever have guessed that this would happen?

Some of these people are neighbors of mine, both people I have met, and people I have never met. Yet they have had no hesitation about grabbing my work, and wrongfully taking credit for it.

This was happening while I lay in bed as an accident victim, barely alive, suffering with multiple broken bones and bruises. They knew I had been badly injured, and might not survive. Yet they got together to do these things when I was not even able to stand, or sit up, and was scarcely able to breathe. They plundered my work while I was wheelchair-bound, while I was undergoing surgeries, while I was unable to work, pay my rent, or even pay my medical bills. Apparently this is in retaliation for my

speaking out against questionable “psychic” practices, which these people are all involved in.

21. My physical safety has even been threatened. Not satisfied with stealing my work, they have threatened me with further harm or violence if I try to get my work back from them. This has spilled over into police matters. Then they falsely accuse me of threatening them, which I have never, ever done. Some of them have called the police to make wild accusations against me, to try to get me arrested so that I cannot sue them for their theft of my creative works. Some of them falsely accuse me of being a “Satanist”, because “spirits” tell them so, and then they say they are out to “drive the Satanist down”, because spirits tell them to do this too! Of course, I am not a Satanist at all! I have never been involved with anything even faintly dark-sidey. These accusations are all a lot of malarkey.!

I have no idea what motivates people like this to be so harsh, and so dishonest, with someone they don’t even know, someone who has never done anything to them, and someone whose work is so beautiful that they want to steal it, and wear it, as if it were their own work.

One can only pray that they will someday see the supreme importance of being totally ethical, and only profiting if you can do so honestly, cleanly, and without doing anything wrong to anyone.

I had to confer with a police chief in my city to ask for protection against these people. But copyright and trademark infringement are civil matters. So, these need civil resolution. These people are deliberately trying to wreck my career, with false accusations, plagiarism, and threats of violence against me. It shows the danger of the “psychic” practices which they are involved in. But the work which I have done has been a labor of love, over many years. I need to stand up for the truth.

I still feel there is a place for genuine truth in our world. This could be seen as either courageous, or completely foolhardy. They are ganging up on me in a bad way. Still, they should not get away with this. I believe in living by high ideals, and trying to achieve truth and justice, even in difficult circumstances. This is one beauty of living in the USA.

22. “Rainforest Rescue”, spangled with jewels, has been plundered. Many years ago, I wrote and illustrated a children’s book, *Rainforest Rescue: An Amazing, Fantastic Rescue In A Treasure of*

Emeralds, Diamonds and Rubies. This was abundantly illustrated and self-published in small press runs.

I had no idea that this book would later be plundered by people who figured that if it wasn't published by a national publisher, it was up for grabs. It was published with proper copyright notice.

I now find myself in need of an amazing, fantastic rescue, due to the number of distressingly unethical people who have been plundering the jewels of my creative work, and passing them out amongst themselves, in the mistaken assumption that they will be able to get away with this indefinitely.

Many of the characters in my Trademarks first appeared in the *Rainforest Rescue* book.

22. The theft of my work has been combined with false slander. Some of the people doing this have slandered me, even while wearing the garlands of my work, and asking to be admired for it. It's odd that they would swipe beautiful poetry that I wrote to the blessed God, while falsely accusing me of being a Satanist! I think this is bizarre. If I were a terrible person, my writing and artwork would reflect this. Yet, they find my writing and artwork beautiful enough to steal. There is no truth to any of their slander, whatsoever. They are trying to trash my reputation along with my career. Why?

23. Wrongful gain seems to be one motive of the people who have tried to take my work. They thought they could get away with it. It is a tragic misjudgment on their part. They wanted to seize the temporary benefit, and grab some profits for themselves, without regard for whether they were doing right by a fellow human being, a neighbor, and someone who is still recovering from car accidents.

25. The grace of God means more than money. Personally, I feel that the grace of God is worth more than any amount of money. To violate ethics, just to seize some temporary monetary gain, or to take wrongful credit for someone else's work, would be to toss away the truest jewels. I have never done this. I could never have offered my work at my Guru's feet, if I had. The real diamonds, emeralds and rubies, the true treasures, are a clear and clean conscience, honest goodness, reverence for God, allegiance to all known ethical principles, and a genuine respect for your fellow persons, whomsoever they might be.

No matter what others have done to me, my conscience is clean, clear and peaceful. My evening prayers shine. My actions are honest and good, so my creative work shines. This is better than any other

gain that this world can offer.

I believe that we are all in the presence of God, at all times. Just because these people do not get an immediate reaction from God, just because no one is immediately stopping them, doesn't mean that they actually are getting away with all of their wrongdoing. My Guru's teachings are that income should only be received from ethical activities. I would never accept any income received in any other way.

No one ever really gets away with anything, in the long run.

26. A quick bio of Applicant. I am a nonviolent person who would never harm anyone. I have been a total vegetarian for about thirty years, out of kindness to animals. I have never knowingly hurt, harmed, or threatened to harm, anyone in my life. I pray and meditate daily, and have gentle hobbies like making flower garlands, and crocheting afghans. And, I am a creative and prolific writer, artist, photographer and musician. I am a graduate of the University of Colorado in Boulder, with a BFA (Bachelor of Fine Arts) in Creative Arts.

Also, I am a longtime devotee and disciple of a beautiful Guru from India, the widely known, peaceful, and very beloved Sri Swami Satchidananda, whom I have followed for the past 30 years. I have loved him from the first moment I saw him. Much of my poetry is written to honor him. He gave me my names (Prema means Divine Love, and Jyothi means Divine Light or Radiance, now my legal names). I simply adore him. And, I have steadfastly and faithfully followed his teachings, which include *ahimsa* (nonviolence), *asteya* (non-stealing), and *satya* (truthfulness). I am also a past president of his organization in Los Angeles. This was an elected office.

He inspired the stunning LOTUS (Light Of Truth Universal Shrine) in Buckingham, Virginia, a lovely multi-faith shrine adorned with waterfalls and fountains, dedicated to peace among people of different religions. It is dedicated to the Light of love, the Light of peace, the Light of faith in God, and dedicated to encouraging interfaith cooperation and understanding.

27. Registration of this Trademark would be in the best interests of truth and justice.

Approval of these Trademarks would help to achieve truth and justice. This will help assure that

genuine goodness and honesty, and genuine truth, have a chance to prevail over deliberate wrongdoing on the part of others. I believe that the winds of God's blessings are with the genuine, honest truth. Ideally, wrongdoing motivated by greed and dishonesty, should not prevail in the world. This is God's world.

Thank heaven I live in the United States of America! There is always the chance that high ideals and genuine truth will prevail over injustice or dishonesty. It is my sincere prayer that the blessings of God will shine brightly on this situation, and that genuine truth to prevail. It is also my sincere hope that these people won't kill me, take the money and run!

28. Requesting that the filing date be corrected by the PTO to the actual original filing date for this application for Trademark registration. While the TTAB is reviewing my Trademark application, I am asking that the filing date be corrected to the actual original filing date for these applications.

I personally delivered all three applications (SHIMMERING RAINFOREST, SHIMMERING BALLERINAS & DANCERS, and SHIMMERING BREEZES) in person to the PTO filing window, on 2011 Clark in Alexandria, on July 9, 2001.

There they were carefully checked for completeness and accuracy by at least three PTO representatives. They did carefully check each check which was attached to each application (a separate check for each application). And, they checked for the proper application forms, properly filled out, and proper specimens. All of my applications passed their review. Nothing was missing, inaccurate, or out of order. They removed the applications from envelopes and rubber-banded them instead.

They said all was in order for the applications, and stamped the postcards which I handed them with the filing date of July 9, 2001. (Please see attached Exhibit 1.) (The postage stamps were not cancelled, as the postcards were date-stamped at the filing window.)

The postcard for this application states, "The Trademark Application and check for the Trademark Shimmering Ballerinas & Dancers was received on the date stamped below by the PTO." Please note that the postcards they date-stamped do include mention of the check!

Everything passed muster, and received an official PTO stamp, approving the applications for a

file date of July 9, 2001. I was grateful for this, as I had made a long and tiring six-hour drive in to Alexandria from Buckingham, Virginia, including getting lost in D.C. after dark, especially to get the filings submitted as of this particular date. This was because of harassment by the vengeful “psychics”. By the time I reached Alexandria, it was evening, and I was grateful to have the filings accepted on July 9, 2001, as of that date, rather than even the next day.

The PTO representatives who helped me seemed to be pleasant, efficient, and thorough.

Except for one thing. Weeks later, I was surprised to receive three envelopes in the mail from the PTO, returning my materials with “Notices of Incomplete Trademark Application”. These were postmarked July 18, 2001, but I did not receive them until July 26, 2001. This was seventeen (17) days after I thought that my applications were successfully filed at the PTO filing window, on July 9, 2001.

What was the problem? The fee had gone up. I had used forms from the PTO which stated, in a box titled “INSTRUCTIONS AND INFORMATION FOR APPLICANT”, that “the prescribed fee of \$245.00” should be attached. So I had inadvertently attached the wrong amounts. If I had been informed at the window that the fee had gone up to \$325.00, I would have instantly corrected this, on the spot!

My specimens, which were being returned to me, were all stamped and barcoded with July 9, 2001. (Please see Exhibits 2 and 3, attached, for samples of this.)

This situation is not just one where an applicant sent in a check for too low an amount, so the application was returned. The applications were delivered in-person at the window, and the checks were carefully reviewed, approved, and accepted by three PTO representatives, before I left the window.

They should have caught this error at the window, and called it to my attention. This was part of their job. This is why the PTO has people checking over the applications at the window. It is not just a mail-receiving window. They take everything out of the envelopes, and check it over, before accepting it.

In good faith, I relied upon their review and acceptance of my applications.

This problem was partly due to an error on the part of PTO staff. Please don't penalize me for this! I would gladly have corrected any error immediately. This would have preserved my filing date! I

was totally willing to attach checks of any amount, and I was standing right there at the PTO window, ready and willing to do it.

The PTO has a responsibility to the public. I am asking that the PTO take responsibility for this error on the part of their staff, and kindly restore the original filing date for this application.

The proper fees have since been paid in full. But, instead of the actual filing date of July 9, 2001, I was assigned a filing date of July 31, 2001, which was 22 days after the actual original filing date.

Could you please kindly review this decision? I am hoping you may be able to restore the actual filing date of July 9, 2001, for this Trademark application.

29. To Judges: Please ask to see color Exhibits for this brief, which are being sent by separate cover. I feel that these additional specimens would help you to see how the entire Trademark is in use, as a Trademark. The TTAB office informed me, by phone, that the color exhibits sent by surface mail will be stored separately, and not automatically forwarded to the Judges unless the Judges ask for them. So, please ask to see the color versions of the Exhibits, which are being sent under separate cover, to assist you in making a good decision. I feel it would be helpful for you to see these.

30. Conclusion. There is no real reason to deny registration of this Trademark, or the related Trademark, SHIMMERING RAINFOREST.

Many other Marks, possibly with less going for them, have been granted Trademark registration. Hundreds of marks, for everything from automobile tires to shampoo, are granted registration every year.

Why throw these out? It would be like throwing lovely flowers out onto the pavement. And, if you do so, unfortunately, there are some gangs of unscrupulous people just waiting to seize them, rip the petals off, and try to get something for themselves by stealing my work. These flowers are greatly in need of the blessed protection of Trademark registration.

I am just a humble artist and writer, with hopes, dreams, and cherished creations. Like a courtly soldier, formal Trademark registration could stop unscrupulous bandits from running over these creations, or over their creator! Unprotected, both might otherwise fall.

Trademark: SHIMMERING BALLERINAS & DANCERS

I am glad that these Trademarks are now coming under review by the TTAB. No two people see anything in exactly the same way. Like sunlight slanting in on a situation, each mind may have a different slant. In this way, hopefully, many sides of a multi-faceted situation can be seen, and the best and truest possible decision can be achieved.

Shimmering Ballerinas and Dancers are twirling together in a shimmering sparkle of fun, and each one complements the others. All together they are an impressive troupe!

And, all three Trademarks, SHIMMERING RAINFOREST, SHIMMERING BALLERINAS & DANCERS, and SHIMMERING BREEZES, are finely and artistically coordinated together.

It is my hope that the TTAB will grant Trademark protection to this Trademark, which is greatly in need of Trademark protection. Nothing but good could come of this.

Thank you for kindly reviewing this case at the present time.

Dated this 28th day of May, 2006.

Respectfully submitted,

/ Prema Jyothi Light /

Prema Jyothi Light,
Appellant, *In propria persona*
6834 S. University Blvd. #176
Centennial, CO 80122
phone: 303-367-1335
godsbleessedchild@excite.com

Exhibits:

(Exhibit 1 attached, rest are being sent by surface mail, as apparently ESTTA converts everything into black-and-white, so even grayscale images would not come out well! Also, if maximum file size is 10 MB, and images should be 300 dpi, even one image plus the Brief would be all that would fit PTO phone reps said it would be fine to send the exhibits separately by surface mail..)

1. Postcard date-stamped July 9, 2001, for acceptance of Trademark application by PTO. (attached)
2. Specimens showing PTO barcode & dated July 9, 2001. (being sent by surface mail)
3. Color specimens showing Trademark in use. (being sent by surface mail)

(Note: Please call me if you receive any questionable communications that seem to be from me, about this case. I have been the victim of a vendetta by "psychics" who may try to tamper with this case online. If someone tries to do something odd, like cancel the case, please don't accept it without verifying it with me directly.)

Appeal Brief, Exhibit 1

Serial Number 76293326



"Truth is One, Paths Are Many"

LIGHT OF TRUTH UNIVERSAL SHRINE

The LOTUS is a Temple for meditation and healing dedicated to the Light of all faiths and to world peace, located on the banks of the James River at Satchidananda Ashram—Yogaville in Buckingham, VA, USA.

The Trademark Application and check for the Trademark Shimmering Ballerinas & Dancers was received on the date stamped below by the PTO:



Prema Jyothi Light

9947 Hull St. Rd #303

Richmond, VA 23236

CERTIFICATE OF TRANSMISSION

I hereby certify that this APPEAL BRIEF is being transmitted electronically, to the TTAB, through ESTTA, to the United States Patent and Trademark Office, on Tuesday, May 30, 2006. (Yesterday, Monday, May 29, 2006, was a federal holiday, Memorial Day, and May 28, 2006, fell on a Sunday.)

Typed or printed name of person signing this certificate:

____PREMA JYOTHI LIGHT_____

Signature:

/ Prema Jyothi Light /

Trademark: SHIMMERING BALLERINAS & DANCERS

Serial Number: 76293326