

KJAM
TRADEMARK

File No. 1133/51000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Kafko International, Ltd.))	Examining Attorney
Serial No.:	76/455745)	Elizabeth J. Winter
Filed:	October 4, 2002)	Law Office 113
Mark:	50° BELOW)	

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

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514 on: May 28, 2004.

Charles T. Riggs, Jr. 5-28-04
 Charles T. Riggs, Jr. Date
 Reg. No. 37,430

AMENDMENT, REQUEST FOR RECONSIDERATION AND NOTICE OF APPEAL

This Amendment is in response to the final Office Action mailed on March 14, 2003.

Please amend the application by substituting the attached drawing page for the previously submitted drawing.

Remarks

I. Identification of the Goods and Meaning of the Mark

Applicant gratefully acknowledges the Trademark Examining Attorney's determinations that the identification of the goods is acceptable and that Applicant's prior response concerning the meaning of the mark is also acceptable.

06/04/2004 GTHOMAS2 00000007 76455745
01 FC:6403 100.00 OP



06-01-2004
U.S. Patent & TMO/TM Mail Rcpt Dt. #39

II. Request for Reconsideration and Notice of Appeal

The Trademark Examining Attorney has finally refused registration of the mark on the basis that the mark shown in the drawing is inconsistent with the mark shown on the specimen of use. For the following reasons, the Examining Attorney is respectfully requested to reconsider and remove the refusal to register. For the reasons set forth in the sections below, the Examiner's Refusal is respectfully traversed.

III. Specimen of Use

The Examining Attorney has maintained a determination that the specimen submitted is inconsistent with the mark shown on the drawing. The Examining Attorney has also maintained and made final a requirement that Applicant submit a new specimen of use showing use of the mark as shown on the drawing page.

Accordingly, Applicant has submitted new specimens showing use of the mark as shown on the drawing page. A Declaration for Substitute Specimens is also enclosed. Specifically, the mark as shown on bottle item #35367 on the specimens does not raise the issues cited by the Examining Attorney concerning whether the thermometer design is part of a unitary design with the number "50°" and the word "BELOW".

As can be seen from the substituted specimens, the mark as shown on bottle item #35367 does not include a thermometer design between number "50°" and the word "BELOW". With respect

to the mark showing the thermometer design between the number "50°" and the word "BELOW", the Examining Attorney has stated that the wording does not form a separate and distinct commercial impression from the design elements of the mark shown on the specimen of use because the word elements are not more prominent than the thermometer design element. Furthermore, the Examining Attorney stated "...unlike the mark shown the bottle item #35367 in the brochure, where the word "Below" is underneath the "50°" and the thermometer is off to the right side of "50° Below", the present mark shows the "50°" on one side of a tilted thermometer and "Below" intersecting the other side, thus the thermometer is equally as prominent in the mark as the other elements."

The substituted specimens displaying bottle item #35367 show use of the mark in which no thermometer design element appears between the number "50°" and the word "BELOW". Thus, in the mark as shown on bottle item #35367 of the specimen, as indicated by the Examining Attorney, the wording forms a separate and distinct commercial impression from any design element shown on the specimen of use because the word elements are more prominent than the thermometer design element.

Thus, it is respectfully submitted that the substituted specimens show use of the mark that is consistent with the mark as shown on the drawing.

IV. Drawing

The Examining Attorney has stated that the Applicant may not amend the drawing to include the thermometer design because it would constitute an impermissible material alteration.

Alternatively, or in addition to the presently submitted substitute specimens discussed above, if the substitute specimens submitted are found by the Examining Attorney to be inconsistent with the mark shown in the drawing, Applicant has herein amended the drawing to conform to the use of the mark shown on the substitute specimen displaying bottle item #35367. Specifically, the drawing has been amended such that the word "BELOW" appears below the number "50°". As this drawing does not incorporate a new design element, it is respectfully submitted that the amendment is not an impermissible material alteration to the mark. As the Examining Attorney indicated in her remarks, the thermometer design is not as equally prominent as the number "50°" and the word "BELOW" in the mark as shown on bottle item #35367 in the substituted specimens. For the Examining Attorney's convenience, a comparison of the amended drawing and the mark as shown on bottle item #35367 in the substituted specimens is shown below, demonstrating that the amended drawing is consistent with the mark shown on bottle item #35367 in the substituted specimens.



Drawing



Specimen

As an aside, although the Examining Attorney has maintained the requirement for substitute specimens, Applicant notes that in a prior application, Serial No. 75/886032, for the same mark, a previous Examining Attorney in an Office Action dated January 9, 2001 required a stylized form of the mark, without the thermometer design, instead of a word mark in the drawing to conform to the same or similar specimens. The Examining Attorney in that application stated, "The examining attorney has determined that the picture of the thermometer can be separated from the specimens and does not pose an issue."

For the above-stated reasons, the mark displayed on the drawing or the amended drawing the present application is a substantially exact representation of the mark as displayed on the specimens or substitute specimens. Thus, registration of the proposed mark would not effectuate a mutilation of the matter shown on the specimen.

Conclusion

Therefore, upon the amendments, substitute specimens and remarks hereto, it is submitted that the present application is in condition for allowance. Furthermore, since the Office

records have been searched and no similar registered mark which would bar registration has been found, publication of this application is respectfully requested. Accordingly, for the aforementioned reasons, as well as remarks previously made in this Application, Applicant's mark should be afforded registration. Nothing contained herein should be construed as a waiver or acquiescence of any objection or arguments Applicant may have, all of which are expressly reserved. If the Trademark Examining Attorney has any questions, she is encouraged to contact the undersigned at (312) 201-8220.

Further enclosed, please find an amended drawing page, Declaration for Substitute Specimens, and Credit Card Payment Form.

Notice of Appeal

Applicant hereby appeals to the Trademark Trial and Appeal Board from the decision of the Examining Attorney's final refusal of the mark on the basis that the mark shown on the drawing is inconsistent with the mark shown on the specimen for the above identified goods in International Class 1. Applicant requests that the Appeal, once instituted, be suspended in view of the requested Examining Attorney's reconsideration of the refusal. Applicant further requests that the due date for the appeal brief run from the date of an Office Action notifying Applicant of the Examining Attorney's decision on the instant Amendment and Request for Reconsideration, and after notice of resumption of the appeal.

A Credit Card Payment Form PTO-2038 for the appeal fee is enclosed in the amount of \$100.00. If the credit card payment is deficient, or additional fees are required, the Commissioner is authorized to charge and additional fee that be necessary to Deposit Account No. 16-0657.

Declaration for Substitute Specimens

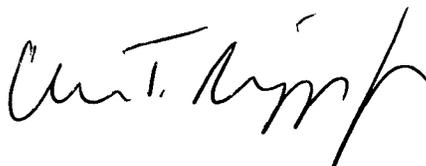
The undersigned declares that he is authorized to execute this declaration on behalf of Kafko International, Inc., the applicant herein, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18, United States Code, and that such willful false statements may jeopardize the validity of this application or any registration issuing therefrom, and declares: the substitute specimens submitted herewith have been in use in commerce and in existence at least as early as the date of filing of this application and that he believes said corporation to be the owner of the mark sought to be registered; that to the best of his knowledge and belief no other person, firm, corporation or association has the right to use said mark in commerce, either in the identical form in such near resemblance thereto as may be likely, when applied to the goods or services of such other person, to cause confusion, or to cause mistake, or to deceive; that the facts set forth in this application are true; and that all statements made of his own knowledge are true, and that all statements made on information and belief are believed to be true.

Also enclosed is:

A postcard evidencing receipt of the above-named documents.

Respectfully submitted,

KAFKO INTERNATIONAL, LTD.



Charles T. Riggs, Jr.
Reg. No. 37,430
Attorney for Applicant

PATULA & ASSOCIATES, P.C.
116 S. Michigan Avenue
14th Floor
Chicago, IL 60603
(312) 201-8220

1P666

Kafko International, Ltd.
3555 W. Howard Street
Skokie, IL 60076

Date of First Use: June 23, 1987

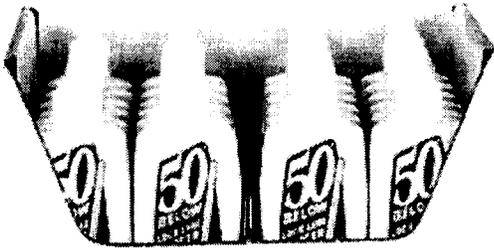
Date of First Use
In Commerce: June 23, 1987

Goods: De-icing products, namely, chemical liquids
and preparations for de-icing automotive locks, wiper fluids,
windshields, mirrors and windows. (International Class 1).





THAWS FROZEN LOCKS



LOCK DE-ICER

KAFKO LINE ART

50% Below 50% Below

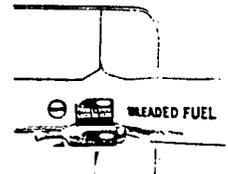
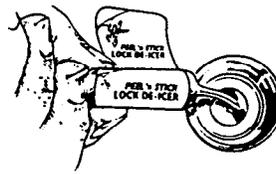
EMERGENCY LOCK DE-ICER

EMERGENCY LOCK DE-ICER

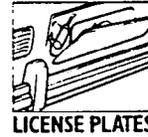
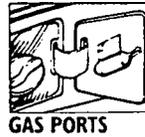
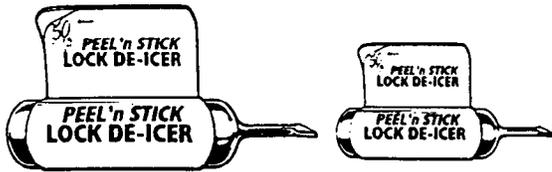
Stick one outside your car

Stick one outside your car

NEVER BE FROZEN OUT! NEVER BE FROZEN OUT!



Sticks outside your car!



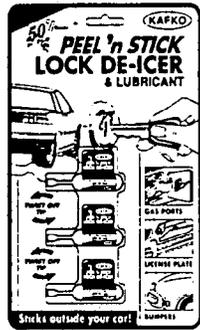
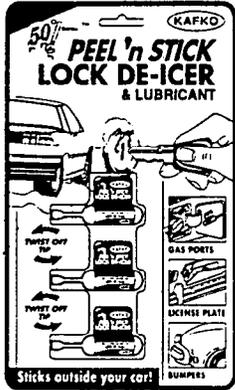
3 PEEL n' STICK LOCK DE-ICERS

3 PACK # 35359

PEEL 'n' STICK LOCK DE-ICER # 35363



KEY HOLDER and LOCK DE-ICER # 35358



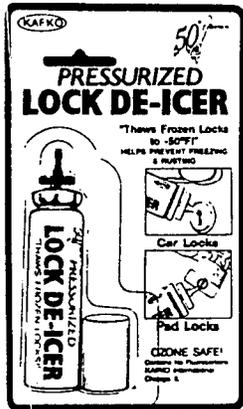
KAFKO

KAFKO

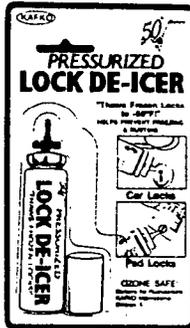
CONVENIENT AEROSOL

ECONOMY SIZE

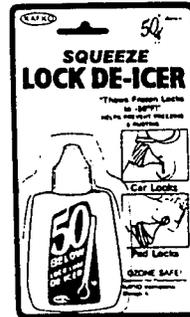
35367



35366



Works to 50° Below

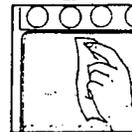


35364

1 1/2 oz. bottle



WINDSHIELDS



MIRRORS



EYEGLASSES



35386



REUSABLE CLOTH STORES IN BAG Cleans & stops fog in one wipe!



PRESSURIZED PEEL 'n' STICK LOCK DE-ICER BONUS PACK

ANTI-FOG GLASS CLEANER/PROTECTOR

A GREAT VALUE! REPELS RAIN PREVENTS FOGGING FOR SAFER DRIVING # 35400

35370