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May 10, 2005

VIA MESSENGER

Assistant Commissioner for Trademarks
United States Patent and Trademark Office
2900 Crystal Drive
Arlington, VA 22202-3513

Re: U.S. Trademark Application No. 76/549,666
Applicant: North American Airlines, Inc.
Mark: **NORTH AMERICAN A& Design**
Our Ref.: 85440.0003

Dear Sirs:

We enclose the following for filing in the Patent and Trademark Office:

- Response
- Notice of Appeal
- Claim of Acquired Distinctiveness.

Also enclosed is a check in the amount of \$100.00 for the total filing fee. If any additional fees are required in connection with the filing of this application, please charge Deposit Account No. 50-20-36.

With best regards,
BAKER & HOSTETLER LLP


Ellen K. Burke

EKB/jp
Enclosures



05-10-2005
U.S. Patent & TMOtc/TM Mail Rcpt Dt. #72

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Trademark Application of	:	Trademark Examining Operations
	:	
North American Airlines, Inc.	:	Examining Attorney
	:	William T. Verhosek
Serial No.: 76/549,666	:	
	:	Law Office: 114
Filed: October 3, 2003	:	
	:	
Mark: NORTH AMERICAN & Design	:	
	:	
Atty. Dkt. No.: 85440-0003	:	

RESPONSE

Response – No Fee
Hon. Assistant Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Sir:

This is in response to the office action dated November 17, 2004 concerning the above-referenced trademark application.

The examining attorney has issued an office action making final a requirement to disclaim NORTH AMERICAN apart from the mark as shown. In response, applicant respectfully requests that the application be amended to seek registration on the Principal Register under Trademark Act Section 2(f), 15 U.S.C. §1052(f), based on acquired distinctiveness as to NORTH AMERICAN.

As the examiner is aware, in order to be eligible for the Principal Register, an applicant “need not conclusively establish distinctiveness but, rather, only a *prima facie* case” in order to pass the application to publication under section 2(f). See *Yamaha International Corp. v. Hoshino Gakki Co., Ltd.*, 840 F.2d 1572, 1576, 6 U.S.P.Q.2d 1001, 1004 (Fed. Cir. 1988).

It is also well established that the length of time that an applicant uses a mark bears directly on whether a mark has attained secondary meaning. In the present case, applicant has been using the subject trademark for over fifteen years; ten years longer than the statutory five

years used as *prima facie* evidence that a mark has become distinctive. *Stuart Hall Co. v. Ampad Corp.*, 51 F.3d 780, 34 U.S.P.Q.2d 1428, 1435 (8th Cir. 1995); *Sunbeam Prods. Inc. v. West Bend Co.*, 123 F.3d 246, 44 U.S.P.Q.2d 1161 (5th Cir. 1997) (evidence of over five years use is *prima facie* evidence of secondary meaning.) While it is recognized that the five-year presumption of the Lanham Act is an arbitrary measure of time, it was selected on the assumption that five years of use is sufficient for a mark to become distinctive for federal registration purpose. *McCarthy on Trademarks and Unfair Competition*, section 15:54 (Fourth Edition 2001).

Therefore, without waiving any rights in the subject mark, applicant submits the attached statement in accordance with 37 C.F.R. §2.41(b) and signed declaration in accordance with 37 C.F.R. §2.20.

As applicant has responded to all outstanding requirements issued by the examining attorney, applicant requests that the application be approved for publication. If further clarification is needed or if a telephone conference would be useful in resolving any issues related to this application, please contact the undersigned.

In addition, please charge any fees due in connection with this matter to Charge Deposit Account No. 50-20-36.

POWER OF ATTORNEY

Applicant hereby appoints **John H. Weber** and the following attorneys of the law firm of BAKER & HOSTETLER LLP, as its attorneys with full powers of substitution and revocation, to prosecute this application to register, to transact all business in the Patent and Trademark Office in connection therewith, and to receive the certificate of registration. All powers of attorney heretofore granted in connection therewith are hereby revoked:

Kenneth J. Sheehan
Leo J. Jennings
Burman Y. Mathis
Dana Christensen
Erdal R. Dervis

Gary Rinkerman
William C. Bergmann
Phong Nguyen
M. Scott Alprin
Hermes M. Soyez

Dennis Cawley
Stephen S. Fabry
Ellen K. Burke
Rabiya Kader
P. Jay Hines

Alan Larson
Jonathan Kidney
Ari Indik
Todd A. Hardy

Please direct all correspondence to John H. Weber, BAKER & HOSTETLER LLP,
Washington Square, Suite 1100, 1050 Connecticut Avenue, N.W., Washington, D.C. 20036-
5304.

Respectfully Submitted,

NORTH AMERICAN AIRLINES, INC.

Date: May 10, 2005

By: 
Ellen K. Burke
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EKB/TH

Application No. 76/549,666

CLAIM OF ACQUIRED DISTINCTIVENESS

In accordance with §2(f), 15 U.S.C. §1052(f), applicant hereby submits the following:

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that NORTH AMERICAN has become distinctive of the services through applicant's substantially exclusive and continuous use of the mark in commerce for at least five years immediately preceding the date of this statement; and that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

Date: May 4, 2005

By: 