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

Proceeding	77091459
Applicant	Tires, Tires, Tires, Inc.
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Submission	Appeal Brief
Attachments	TIRES TIRES TIRES_Appeal Brief.pdf (23 pages)(481342 bytes)
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Date	01/22/2009

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

IN RE: Tires, Tires, Tires, Inc.)	
)	
SERIAL NO: 77/091,459)	Appeal No. _____
)	
MARK: TIRES TIRES TIRES)	
)	
FILED: January 27, 2007)	
)	
LAW OFFICE: 104)	
)	

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

APPEAL BRIEF

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Dear Sir:

Please enter the following Appeal Brief into the record. It urges reversal of the Examining Attorney's final refusal to register the above-stated mark under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that the proposed mark is generic or, in the alternative, that the proposed mark is merely descriptive and Appellant has made an insufficient showing that its mark has acquired distinctiveness under Trademark Act Section 2(f), 15 U.S.C. § 1052(f).

I. INTRODUCTION

The Examining Attorney has refused registration of Appellant's mark on the basis that the proposed mark appears to be generic in connection with the identified goods. *See* Final Office Action, Page 1, 10/2/2008. Additionally, the Examining Attorney has refused registration alleging Appellant has made an insufficient showing of acquired distinctiveness. *Id.* For the reasons set forth below, Appellant's mark TIRES TIRES TIRES is not generic and Appellant has more than sufficiently shown Appellant's mark has acquired distinctiveness through its more than 20 years of use of its mark in commerce with the associated services; thus, the Examining Attorney's refusal to register Appellant's mark should be reversed.

II. PROCEDURAL BACKGROUND

Appellant filed a service mark application for its mark TIRES TIRES TIRES on January 25, 2007 seeking registration on the Principal Register for "retail tire store" in International Class 035. On May 15, 2007, the Examining Attorney issued an Office

Action refusing Appellant's mark under Trademark Act Section 2(e)(1) as merely descriptive. On July 10, 2007, Appellant responded to the aforementioned Office Action amending the application to pursue registration under Section 2(f) of the Trademark Act based on acquired distinctiveness, and submitted evidence supporting the use of the mark in commerce in association with the described services since at least as early as October 28, 1986.

On July 26, 2007, the Examining Attorney issued an Office Action without delineating the specific basis for the non-allowance and citing case law related to claiming distinctiveness for highly descriptive or generic designations. Appellant responded to the Office Action on January 28, 2008, supplementing its response on January 31, 2008, with additional evidence to support its claim of acquired distinctiveness to include declarations, substantiating the brand recognition for TIRES TIRES TIRES through significant advertising investment, and the use of diverse forms of media advertising in different channels of trade, to demonstrate that Appellant's mark had acquired distinctiveness and consumers associate the TIRES TIRES TIRES mark exclusively with Appellant. Appellant has attached these documents for the record.

On March 12, 2008, an Office Action was issued continuing the refusal to register under Section 2(e)(1) and noting the mark depicted on the drawing disagreed with the mark on the specimen.

Appellant responded to the Office Action submitting a substitute specimen. On June 15, 2008, the Examining Attorney issued an Office Action accepting the substitute specimen and continuing the refusal to register Appellant's mark as generic and incapable of serving as a source-identifier for the identified services, notwithstanding the claim of acquired distinctiveness under section 2(f). Appellant responded to the June 15, 2008

Office Action on August 18, 2008 arguing the Examining Attorney implemented the wrong legal analysis, Appellant's mark is not generic, and requesting this ground for rejection be withdrawn.

On October 2, 2008, the Examining Attorney issued a Final Office Action refusing registration of Appellant's mark under Section 2(e)(1)/GENERIC and 2(e)(1)/2(f) INSUFFICIENT. This Final Office Action is the basis for Appellant's Appeal.

II. LEGAL ARGUMENT

A. The Legal Standard Under Trademark Act Section 2(e)(1) (Generic)

The critical issue in genericness cases is whether members of the relevant public primarily use or understand the term sought to be protected to refer to the genus of goods or services in question. See *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 U.S.P.Q.2d 1807 (Fed. Cir. 2001), citing *H. Marvin Ginn Corp. v. Int'l Assoc. of Fire Chiefs, Inc.*, 782 F.2d 987, 228 U.S.P.Q. 528, 530 (Fed. Cir. 1986). The Federal Circuit went on to explain that "[d]etermining whether a mark is generic therefore involves a two-step inquiry: First, what is the genus of goods or services at issue? Second, is the term sought to be registered or retained on the register understood by the relevant public primarily to refer to that genus of goods or services? *H. Marvin Ginn Corp.*, 228 U.S.P.Q. at 530.

Further, in the *Dial-A-Mattress* case, supra, 18-888-M-A-T-R-E-S-S for "telephone shop-at-home retail services in the field of mattresses," 57 U.S.P.Q.2d at 1810, the court further clarified the test as follows:

Where a term is a "compound word" (such as SCREENWIPE"), the Director may satisfy his burden of proving it generic by producing

evidence that each of the constituent words is generic, and that "the separate words joined to form a compound have a meaning identical to the meaning common usage would ascribe to those words as a compound." *In re Gould Paper Corp.*, 834 F.2d 1017, 5 U.S.P.Q.2d 1110, 1110 (Fed. Cir. 1987). However, where the proposed mark is a phrase (such as "Society for Reproductive Medicine"), the board "cannot simply cite definitions and generic uses of the constituent terms of a mark"; it must conduct an inquiry into "the meaning of the disputed phrase as a whole." *In re The Am. Fertility Soc'y*, 188 F.3d at 1347, 51 U.S.P.Q.2d at 1837. The *In re Gould* test is applicable only to "compound terms formed by the union of words" where the public understands the individual terms to be generic for a genus of goods or services, and the joining of the individual terms to be generic for a genus of goods or services, and the joining of the individual terms into one compound word lends "no additional meaning to the term." *Id.* at 1348-49, 51 U.S.P.Q.2d at 1837.

The Examining Attorney has the burden of establishing by clear evidence that a mark is generic and thus unregistrable. *See In re Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 828 F.2d 1567, 4 U.S.P.Q.2d 1141, 1143 (Fed. Cir. 1987); *see also In re American Fertility Soc'y*, 188 F.3d 1341, 51 U.S.P.Q.2d 1832, 1835 (Fed. Cir. 1999) (quoting the TMEP as requiring a "substantial showing by the Examining Attorney that the matter is in fact generic . . . based on clear evidence of generic use."). Evidence of the relevant public's understanding of a term may be obtained from any competent source, including testimony, surveys, dictionaries, trade journals, newspapers, and other publications. *See In re Northland Aluminum Products, Inc.*, 777 F.2d 1556, 227 U.S.P.Q. 961 (Fed. Cir. 1985).

For the foregoing, reasons the Examining Attorney has not met the legal standard for refusing Appellant's mark as being a generic mark.

1. Refusal is Based on an Incorrect Legal Test

The Examining Attorney's refusal to register Appellant's mark is based on the incorrect legal test for an allegedly generic mark. The test used by the Examining Attorney was for a "compound" mark rather than a mark made up of a phrase. The

Courts have drawn a distinction between a "compound" mark and a mark consisting of a "phrase." Marks made up of compound terms formed by the union of words are analyzed using one test and marks made up of a phrase consisting of multiple terms use another test. *American Fertility*, 188 F.3d 1341, 51 U.S.P.Q. 2d 1832, 1837 (distinguishing *In re Gould* and the compound mark SCREENWIPE from the phrase of multiple terms SOCIETY FOR REPRODUCTIVE MEDICINE). For Appellant's mark, the Examining Attorney used the test for a compound mark. However, Appellant's mark TIRES TIRES TIRES is not made up of one or more compound terms formed by a union of words but rather is a phrase consisting of multiple terms. *See e.g., American Fertility*, 188 F.3d at 1837; *In re Nat'l Council for Therapeutic Recreation Cert., Inc.*, 2006 WL 2850881 (T.T.A.B. September 15, 2006); *In re Linholm Corp.*, 2008 WL 902874 (T.T.A.B. February 28, 2008). Thus, the correct legal test for Appellant's mark, which was not applied by the Examining Attorney, is as a phrase as a whole, for the whole may be greater than the sum of its parts. *American Fertility*, 188 F.3d at 1347, 51 U.S.P.Q.2d at 1837. Where the mark to be considered is a phrase, dictionary definitions alone cannot support a refusal to register the proposed mark. *Id.*, 188 F.3d at 1347, 51 U.S.P.Q.2d at 1836. In the case of an allegedly generic phrase as a mark, the test must go beyond simple definitions and web site downloads of a constituent element of the mark to the two-step analysis set forth in *Marvin Ginn* applied to the phrase as a whole. *Id.*, 188 F.3d at 1347, 51 U.S.P.Q.2d at 1837. This the Examining Attorney did not do and, thus, the refusal to register cannot stand.

2. Genus of Appellant's Services

Under *Marvin Ginn*, the first step as to whether a mark is generic is determining the genus of applicant's services. 228 U.S.P.Q. at 530. Appellant's services are identified

as "retail tire store." A retail tire store is the type or kind of service at issue and, thus, also constitutes the genus.

Instead of recognizing "retail tire store" as the genus, the Examining Attorney impermissibly tries to define the genus of the services more narrowly than the specified services. *See In re Nat'l Council for Therapeutic Recreation Certification, Inc.*, 2006 WL 2850881 at *14 (citing *Marvin Ginn* in finding no support to define the genus of goods more narrowly than the identification). Specifically, the Examining Attorney erred in defining the genus as simply a "tire." There is no justification here for defining the genus more narrowly than "retail tire store" where the identification adequately describes the services. In fact, the PTO recognizes "retail tire stores" as an acceptable class of service in International Class 035. *See Exhibit A.*¹ However, the identification for services of Appellant's mark TIRES TIRES TIRES is "retail tire store." Thus, the identification of services as written adequately describes the Appellant's services.

3. Understanding by Relevant Public

The Examining Attorney has offered no evidence that the relevant public would understand that TIRES TIRES TIRES to be generic for "retail tire store." In the Office Action dated June 15, 2008, the Examining Attorney offered several web prints allegedly showing the use of the wording "tires tires tires." *See Office Action, Page 3, 6/15/2008.* To the contrary, the web prints offered as evidence by the Examining Attorney do not show the use of the phrase TIRES TIRES TIRES, but show the use of the single word "tires" on some of the web prints and multiple use of the single word "tires" in a variety of locations on other web prints (i.e., "We specialize in many types of tires, including Motorcycle tires, ATV tires, and Specialty tires.") The Examining Attorney does not

¹ Exhibit A is an excerpt from the United States Patent and Trademark Office Acceptable Identification of Goods and Services Manual, LexisNexis™, 2005.

point to one piece of evidence that shows the use of the entire phrase TIRES TIRES TIRES on any of the web prints.

Further, the Examining Attorney admits in the Final Office Action that he failed to make of record any evidence whatsoever demonstrating that the unitary phrase TIRES TIRES TIRES had been used in a generic sense by the public. See Final Office Action, Page 2, 10/2/2008. He couches this lack of evidence by stating "[t]he mark TIRES TIRES TIRES would likely be generic for the applicant's services" *Id.* (emphasis added). This fails to satisfy the burden of proof of clear evidence which must be met by the Examining Attorney. *Dial-A-Mattress*, 240 F.3d 1341, 57 U.S.P.Q.2d at 1811.

As the Examining Attorney has failed on both steps of the two-step inquiry, Appellant's mark is not generic and the refusal to register on this basis should be reversed.

B. Legal Standard for Acquired Distinctiveness

The Federal Circuit has summarized the process of considering the issue of acquired distinctiveness as follows:

In determining whether secondary meaning has been acquired, the Board may examine copying, advertising expenditures, sales success, length and exclusivity of use, unsolicited media coverage, and consumer studies (linking name to source). *Cicena Ltd. v. Columbia Telecomms Group*, 900 F.2d 1546, 1551, 14 U.S.P.Q.2d 1401 (Fed. Cir. 1990). On this list, no single factor is determinative. A showing of secondary meaning need not consider each of these elements. Rather, the determination examines all of the circumstances involving the use of the mark. See *Thompson Med. Co., Inc. v. Pfizer Inc.*, 753 F.2d 208, 217, 225 U.S.P.Q. 124 (Fed. Cir. 1985). Finally, the applicant's burden of showing acquired distinctiveness increases with the level of descriptiveness; a more descriptive term requires more evidence of secondary meaning. *In re Bongrain Intern. (Am.) Corp.*, 894 F.2d 1316, 1317, 13 U.S.P.Q.2d 1727 (Fed. Cir. 1990).

In re Steelbuilding.com, 415 F.3d 1293, 75 U.S.P.Q.2d 1420, 1424 (Fed Cir. 2005).

Appellant has more than met the burden of showing acquired distinctiveness. Appellant submits evidence previously presented to the Examining Attorney to include, marked as Exhibit B, the Declaration of Daniel J. Nothdurft ("Nothdurft Decl."), President of Tires, Tires, Tires, Inc., attesting to the over twenty years use of the mark in commerce (Nothdurft Decl., para. 2) and the expansion of business over the years to now having three service centers in two different cities (Nothdurft Decl., para. 2). Attached as Exhibit 1 to the Declaration of Daniel J. Northdurft is the Declaration of Dennis J. Bullock ("Bullock Decl."). Mr. Bullock is the General Manager of Powell Broadcasting in Sioux City, Iowa and the surrounding area. (Bullock Decl., para.1). Mr. Bullock notes that he has assisted Appellant with its marketing and advertising for over twenty years. (Bullock Decl., para.2). Mr. Bullock states that Appellant has achieved substantial brand recognition for its business due to the substantial investment of approximately \$1 million made by Appellant in advertising its TIRES TIRES TIRES mark, and further due to the diverse forms of media through which the mark is advertised, including print, outdoor, electronic, and direct mail. (Bullock Decl., para. 3). Thus, in Mr. Bullock's opinion, the public (and he personally) associates TIRES TIRES TIRES as a symbol identifying the services of Appellant only, and not of any other company in the field (Bullock Decl., para. 4).

Attached as Exhibit 2 to the Declaration of Daniel J. Nothdurft is the declaration of Mary Ann Johnson ("Johnson Decl."), General Sales Manger for KMEG14, the CBS affiliate in Sioux City, Iowa, and the sister station Fox network affiliate KPTH Fox 44. (Johnson Decl., para. 1). Ms. Johnson has worked with Appellant and its advertising for the past three years, and verifies that Appellant has successfully branded its business with the TIRES TIRES TIRES mark throughout and beyond the Sioux City, Iowa community.

(Johnson Decl., para. 2-3). Ms. Johnson further confirms that Appellant has spent over \$75,000 with her stations advertising the TIRES TIRES TIRES mark. (Johnson Decl., para. 4).

Mr. Nothdurft further notes that Appellant has spent well over \$100,000 annually for the past six years (2002-2007) promoting the TIRES TIRES TIRES mark with Appellant's retail tire store, as detailed below:

<u>Year</u>	<u>Total Advertising Expenditures</u>
2002	\$106,666.23
2003	\$110,727.16
2004	\$107,432.00
2005	\$108,702.54
2006	\$121,961.32
2007	\$231,674.12

(Nothdurft Decl., para. 6). In addition, Mr. Nothdurft notes that Appellant's 2008 budget for promoting the TIRES TIRES TIRES mark is \$275,000, and that as the company enters an aggressive expansion phase throughout the Midwest, the budget is expected to increase annually. (Nothdurft Decl., para. 7).

Based upon the evidence of record of over 20 years of continuous use of the mark in commerce, testimony of advertising experts in the field vouching for the brand recognition accumulated through extensive advertising of Appellant's mark, and the expenditures for advertising of the mark for at least the last six years, Appellant asserts it has demonstrated that its mark has acquired distinctiveness and consumers associate the TIRES TIRES TIRES mark exclusively with Appellant.

III. ORAL ARGUMENT REQUEST

Appellant hereby requests oral argument in this case. It is not believed a fee is due with this request. However, if a fee is due, please consider this a request to debit Deposit Account No. 26-0084 accordingly.

IV. CONCLUSION

For the above-stated reasons, Appellant respectfully requests that the Examining Attorney's final refusal to register Appellant's mark TIRES TIRES TIRES be reversed and Appellant's mark be forwarded for publication in light of the evidence of acquired distinctiveness under Section 2(f) of the Trademark Act.

Respectfully submitted,

Janet E. Phipps Burkhead
McKEE, VOORHEES & SEASE, P.L.C.
Attorneys of Record

801 Grand Avenue - Suite 3200
Des Moines, Iowa 50309-2721
515-288-3667

TRADEMARK PROTECTION AND PRACTICE

UNITED STATES PATENT AND TRADEMARK OFFICE
ACCEPTABLE IDENTIFICATION
OF GOODS AND SERVICES MANUAL

Jerome Gilson
Anne Gilson LaLonde



LexisNexis

EXHIBIT

tabbles

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TRADEMARK PROTECTION and PRACTICE

United States Patent and Trademark Office
Acceptable Identification of Goods and Services Manual
Current Through October 15, 2005

The Official Cite of this
Manual is (<http://tess2.uspto.gov/netahtml/tidm.html>).

JEROME GILSON

*Shareholder in Brinks Hofer Gilson & Lione,
Member of the Illinois Bar and the
Bar of the Supreme Court of the United States*

ANNE GILSON LALONDE

*Member of the Illinois and District of Columbia Bars and the
Bar of the Supreme Court of the United States*

KARIN GREEN

*Assistant Editor
Member of the Maryland and District of Columbia Bars*

2005



LexisNexis™

SERVICES LISTED BY CLASS

Class 035

Class	Status	Date	Services
035	A	4/12/1999	Retail pharmacy services
035	A	4/12/1999	Retail services by direct solicitation by sales agents in the field of [indicate specific field]
035	A	4/2/1991	Retail shop window display arrangement services
035	M	1/2/1997	Retail shops featuring [indicate specific field, e.g. gifts, flowers, baked goods]
035	M	1/2/1997	Retail shop-at-home party services in the field of [indicate specific field]
035	M	1/2/1997	Retail sporting goods stores
035	M	1/2/1997	Retail store services, available through computer communications and interactive television, featuring [indicate specific field or type of goods]
035	A	1/2/1997	Retail store services featuring convenience store items and gasoline
035	A	6/1/2001	Retail store services featuring a wide variety of consumer goods of others
035	A	9/4/2001	Retail store services in the field of [indicate field of goods] featuring a bonus incentive program for customers
035	A	7/1/2004	Retail store services featuring telecommunications, electric and utility services of others
035	A	11/1/2004	Retail store services featuring telecommunications service plans and telecommunications service activation
035	M	1/2/1997	Retail stores featuring [indicate specific type or field, e.g. clothing, camera, department]
035	M	1/2/1997	Retail television stores
035	M	1/2/1997	Retail tire stores
035	M	1/2/1997	Retail variety stores
035	A	7/1/2004	Return management, namely, management of returned merchandise
035	A	7/20/2004	Sales demonstration [for others]
035	A	7/20/2004	Sales promotion for others provided through the distribution and the administration of privileged user cards
035	A	8/1/2005	Sales promotion services
035	A	4/2/1991	Sales volume tracking for others
035	A	4/2/1991	Sample distribution

TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: TIRES, TIRES, TIRES, INC.
MARK: TIRES, TIRES, TIRES

SUPPLEMENTAL DECLARATION OF DANIEL J. NOTHDURFT

To the Honorable Commissioner of Patents and Trademarks
ATTN: Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Dear Sir:

1. As set forth in my previous declaration, I am President of the applicant corporation, Tires, Tires, Tires, Inc. As such, I am familiar with the advertising and promotional activities of the corporation.

2. I understand that the Examining Attorney has continued to reject the "TIRES, TIRES, TIRES" mark as being merely descriptive even in view of my previous statement that the mark has been in use in commerce for a time period of over twenty (20) years, or since at least as early as October 28, 1986.

3. When the applicant corporation opened over twenty years, the business comprised only a one bay tire outlet. **Today, the business comprises three service centers in two different cities.**

4. In further support of the non-descriptiveness of the "TIRES, TIRES, TIRES" mark, attached as Exhibit 1 is the declaration of Dennis J. Bullock. Mr. Bullock is the General Manager of Powell Broadcasting in Sioux City, Iowa. (Decl. Dennis Bullock, para. 1). Powell Broadcasting owns and operates several radio stations in Sioux City, Iowa and the surrounding area. (Decl. D. Bullock, para. 1). Mr. Bullock notes that he has assisted applicant with its marketing and advertising for over 20 years. (Decl. D. Bullock, para. 2).



Mr. Bullock states that the applicant has achieved substantial brand recognition for its business due to the substantial investment of approximately \$1 million made by applicant in advertising its "TIRES, TIRES, TIRES" mark, and further due to the diverse forms of media through which the trademark is advertised, including through print, outdoor, electronic, and direct mail. (Decl. D. Bullock, para. 3). Thus, in Mr. Bullock's opinion, the public (and he personally) associates "TIRES, TIRES, TIRES" as a symbol identifying the services of the applicant only, and not of any other company in the field. (Decl. D. Bullock, para. 4).

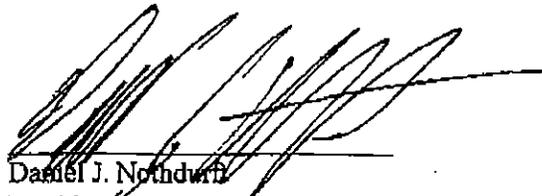
5. Attached as Exhibit 2 is the declaration of Mary Ann Johnson, General Sales Manager for KMEG 14, the CBS affiliate in Sioux City, Iowa, and the sister station Fox network affiliate KPTH Fox 44. (Decl. Mary Ann Johnson, para. 1). Ms. Johnson has worked with applicant and its advertising for the past three years, and verifies that applicant has successfully branded its business with the "TIRES, TIRES, TIRES" mark throughout and beyond the Sioux City, Iowa community. (Decl. M.A. Johnson, para. 2-3). Ms. Johnson further confirms that the applicant has spent over \$75,000 with her stations advertising the "TIRES, TIRES, TIRES" trademark. (Decl. M.A. Johnson, para. 4). Ms. Johnson also notes that, in her opinion, the public (and she personally) associates "TIRES, TIRES, TIRES" as a symbol identifying the services of the applicant only, and not of any other company in the field. (Decl. D. Bullock, para. 5).

6. In fact, the applicant has spent well over \$100,000 annually for the past six years (2002-2007) promoting the trademark "TIRES, TIRES, TIRES" with applicant's retail tire services, as detailed below:

<u>Year</u>	<u>Total Advertising Expenditures</u>
2002	\$106,666.23
2003	\$110,727.16
2004	\$107,432.00
2005	\$106,745.25 108 702.54
2006	\$120,410.14 121 961.32
2007	\$131,231.51 231 674.12

7. The applicant's current 2008 budget for promoting the "TIRES, TIRES, TIRES" mark is \$275,000. As our company is now entering an aggressive expansion phase throughout the upper Midwest, we expect this budget to continue to increase annually.

8. 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 may jeopardize the validity of the application or any resulting registration, declares that the facts set forth in the application are true; all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.



Daniel J. Nothdorn
President
TIRES, TIRES, TIRES, INC.

1-29-2008

Date

TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: TIRES, TIRES, TIRES, INC.
MARK: TIRES, TIRES, TIRES

DECLARATION OF DENNIS J. BULLOCK

To the Honorable Commissioner of Patents and Trademarks
ATTN: Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Dear Sir:

1. I am the General Manager of Powell Broadcasting in Sioux City, Iowa. Powell Broadcasting owns and operates several radio stations in Sioux City, Iowa and the surrounding area.
2. I have assisted Tires, Tires, Tires, Inc. with its marketing and advertising for over 20 years.
3. Tires, Tires, Tires, Inc. has achieved substantial brand recognition for its business due to its substantial investment of approximately \$1 million for advertising its "TIRES, TIRES, TIRES" mark, and further due to the diverse forms of media through which the trademark is advertised, including through print, outdoor, electronic, and direct mail.
4. In my opinion, the public associates "TIRES, TIRES, TIRES" as a symbol identifying the services of Tires, Tires, Tires, Inc. only, and not of any other company in the field. Also, in my personal opinion, "TIRES, TIRES, TIRES" is a symbol identifying the services of Tires, Tires, Tires, Inc. only, and not of any other company in the field.
5. 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 may jeopardize the validity of the application or any resulting registration, declares that the facts set forth in the application are true; all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.



Dennis J. Bullock
General Manager
Powell Broadcasting

1/29/08
Date

TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: TIRES, TIRES, TIRES, INC.
MARK: TIRES, TIRES, TIRES

DECLARATION OF MARY ANN JOHNSON

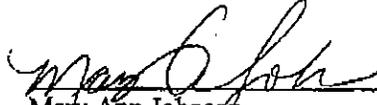
To the Honorable Commissioner of Patents and Trademarks
ATTN: Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Dear Sir:

1. I am the General Sales Manager for KMEG 14, the CBS affiliate in Sioux City, Iowa, and the sister station Fox network affiliate KPTH Fox 44.
2. I have worked with Tires, Tires, Tires, Inc. and its advertising for the past three years.
3. Tires, Tires, Tires, Inc. has successfully branded its business with the "TIRES, TIRES, TIRES" mark throughout and beyond the Sioux City, Iowa community.
4. Tires, Tires, Tires, Inc. has spent over \$75,000 with KMEG 14 and KPTH Fox 44 advertising its "TIRES, TIRES, TIRES" trademark.
5. In my opinion, the public associates "TIRES, TIRES, TIRES" as a symbol identifying the services of Tires, Tires, Tires, Inc. only, and not of any other company in the field. I personally also associate "TIRES, TIRES, TIRES" as a symbol identifying the services of Tires, Tires, Tires, Inc. only, and not of any other company in the field.
6. 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 may jeopardize the validity of the application or any resulting registration, declares that the facts set forth in the application are true; all statements



made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.



Mary Ann Johnson
General Manager
KMEG 14/KPTH Fox 44

1-29-08

Date