ESTTA Tracking number: **ESTTA293050**
Filing date: **07/01/2009**

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

Proceeding	77248231
Applicant	White Rock Distilleries, Inc.
Applied for Mark	TARLETON
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Submission	Reply Brief
Attachments	77248231ReplyBrief.pdf (4 pages)(104194 bytes)
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Date	07/01/2009

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

In re Application of:	)	
White Rock Distilleries, Inc.	)	Law Office 109
Serial No.: 77/248,231	)	
Filed: August 6, 2007	)	Examining Attorney:
Trademark: TARLETON	)	Gina M. Fink
	)	

APPLICANT'S REPLY BRIEF

INTRODUCTION

Applicant hereby responds to the Examining Attorney's Brief filed with the Board on June 11, 2009. Applicant respectfully submits that the Examining Attorney in her Brief has chosen to selectively ignore substantial evidence of record bearing on the issue of the public's exposure to the term "Tarleton" as a given name rather than a surname. When properly considered, the evidence of record makes it clear that, at the very least, there is ample doubt as to whether consumers would be likely to perceive the mark TARLETON as "primarily merely a surname" within the meaning of Section 2(e)(4). Consequently, a reversal of the refusal to register is appropriate in this case.

ARGUMENT

The Examining Attorney's Brief Fails to Address the 200 News Articles Written By or Referring to Tarleton Gillespie as Well as Other Evidence of Record Showing "Given Name" Significance of TARLETON

The Examining Attorney's Brief refers to the previously-assigned Examiner's submission of 80 references to "Tarleton" as a surname in news stories culled from Lexis-Nexis databases, as well as "website/Internet evidence." The Examining Attorney's Brief later states in passing that the "focus" of Applicant's evidence is Tarleton Gillespie "whose fame outside of the educational arena has not been shown."

This last statement is manifestly wrong as a factual matter. The Examining Attorney conveniently neglects to mention that the evidence of record includes **more than 200 news article excerpts from newspapers of general circulation -- not academic publications** -- all of which either refer to Tarleton Gillespie and his work or were reviews of popular musical recordings and performances written by Mr. Gillespie as a music reviewer prior to his career in

academia. The argument that this significant evidence of public exposure to "Tarleton" as a given name rather than a surname is somehow less worthy of attention because it refers to one person is without any support in authority and misses the larger point -- *i.e.*, that the general public has seen "Tarleton" as a given name more often that the Examining Attorney cares to acknowledge.

Further, the Examining Attorney ignores completely Internet evidence of record regarding notable United States Air Force Brigadier General Tarleton H. Watkins as well as a MySpace page of a similarly-named individual named Tarleton H. Watkins II.

Finally, the Examining Attorney summarily dismisses the P-FIND database search results made of record by Applicant showing hundreds of people throughout the United States having the given name "Tarleton" on the grounds that individuals appearing in the listings are not also listed in news articles. This critique of the evidence is not well taken as there is obviously no requirement to correlate telephone listings with news articles. The Examining Attorney further complains that the P-FIND telephone listing database generated duplicate entries. While it is true that the database generated duplicate results in some instances, all such duplicates are inherent in the database and in any event there are still hundreds of relevant given-name listings nationwide.

The authority previously cited in Applicant's Appeal Brief is clear that any doubt as to whether a mark is "primarily merely a surname" must be resolved in Applicant's favor. However, notwithstanding evidence of record that is more than sufficient to raise such doubt, the Examining Attorney has instead chosen to defend doggedly the refusal to register under Section 2(e)(4). For the reasons previously explained in its Appeal Brief, Applicant respectfully submits that this position is contrary to the policy and purpose underlying Section 2(e)(4) as well as an unfortunate waste of the Office's resources.

In light of the foregoing, Applicant respectfully requests that the Board reverse the Examining Attorney's refusal to register Applicant's Mark under Section 2(e)(4) .

Respectfully submitted,

Dated: July 1, 2009

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