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

Proceeding	77858375
Applicant	Nikolaos Mastorogiannakis
Applied for Mark	MY BIG FAT GREEK WINE
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Submission	Reply Brief
Attachments	Applicant's Brief in Reply to the Examining Attorney's Appeal Brief).pdf (4 pages) (78357 bytes)
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Date	09/21/2011

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

**APPLICANT'S BRIEF IN REPLY TO THE
EXAMINING ATTORNEY'S APPEAL BRIEF**

Applicant: Nikolaos Mastorogiannakis

Serial No.: 77/858,375

Filed: 10/27/2009

Mark: **MY BIG FAT GREEK WINE**

Attorney Docket No.: 1001.170.NM

Sir/Ma'am:

Please Find Enclosed Applicant's Brief in Reply to the Examining Attorney's Appeal Brief

I INTRODUCTION

Applicant Nikolaos Mastorogiannakis submitted a trademark application for the mark "MY BIG FAT GREEK WINE" on October 27, 2009. On November 23, 2010, the Examining Attorney issued a final refusal to registration of the above-referenced mark on the Principal Register pursuant to 15 U.S.C. Section 1052(d), holding that the above-referenced mark, when used on or in connection with its identified services, is confusingly similar to registered marks "MY BIG FAT GREEK RESTAURANT," Registration No. 3,202,521 for "restaurant services" in International Class 43. Applicant respectfully appeals this decision, arguing that a likelihood of confusion does not exist because the overall impression of the marks differ as applicant's mark, with additional terms and design, clearly serves a source identifying function.

II ARGUMENT

The refusal for likelihood of confusion should be reversed as the Examiner's requirement to disclaim the term GREEK WINE, and subsequent reliance on the term GREEK as a dominant, source-indicating element of the mark, illustrates that the true dominant, source-indicating elements of the respective marks are the entirety of each mark.

The Examining Attorney's Appeal Brief contained the following statement:

In the present case, as shown by applicant's identification of goods, the wording WINE in the applied-for mark is generic as applied to the relevant goods. Thus, this wording is less significant in terms of creating the mark's commercial impression, rendering the wording MY BIG FAT GREEK the dominant, source-indicating element of the mark.

Additionally, The Examining Attorney's Appeal Brief also contained the following statement:

Applicant must disclaim the descriptive wording "GREEK WINE" apart from the mark as shown because it merely describes a type of applicant's goods. See 15 U.S.C. §§1052(e)(1), 1056(a); *In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420,1421 (Fed. Cir. 2005); *In re Gyulay*, 820 F.2d 1216, 1217-18, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987); TMEP §§1213, 1213.03(a).

Although a disclaimed portion of a mark certainly cannot be ignored, and the marks must be compared in their entireties, one feature of a mark may be more significant in creating a commercial impression. Disclaimed matter is typically less significant or less dominant when comparing marks. See *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1060, 224 USPQ 749, 752 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii).

Thus the Examiner's requirement to disclaim the term GREEK WINE, while simultaneously stating that the term GREEK was a part of the dominant, source-indicating element of the mark, indicates that the true dominant, source-indicating elements of the respective marks must be the entirety of each mark. This is particularly true when taking into consideration the goods of the respective marks.

III CONCLUSION

Applicant respectfully requests that the refusal for likelihood of confusion be reversed and the application be moved to publication.

IV DISCLAIMER

Applicant submits the following disclaimer:

No claim is made to the exclusive right to use "GREEK WINE" apart from the mark as shown.

Dated: September 21, 2011

Respectfully submitted,

/Adam J. Bruno/
Adam J. Bruno

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