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

Proceeding	77928601
Applicant	Bar NND Ranches, LLC
Applied for Mark	UNGULATTE
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Bar NND Ranch, LLC

Trademark Attorney: Maureen Dall Lott

Mark: UNGULATTE and Design

Law Office: 105

Serial No.: 77/928,601

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Commissioner for Trademarks
P.O. Box 1451
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EX PARTE APPEAL

APPLICANT'S REPLY BRIEF

On page 4 of the Examining Attorney's Appeal Brief, the Examining Attorney attempts to mislead the Board by stating: "Applicant has repeatedly stated its intent to use the antler design shown in broken lines in the drawing as a placeholder for a changeable, phantom element." This statement by the Examining Attorney is untruthful. Applicant has never once stated that it intends to use the antler design as a phantom element. In fact, the point of this appeal is to show that the antlers do not constitute a phantom element because, as previously

shown and discussed, the antlers are separable from the rest of the mark and the antlers do not constitute an “integral portion” of the mark as would be required in order to support a claim that the antlers are a “phantom element” of the mark.

On page 6 of the Examining Attorney’s Appeal Brief, the Examining Attorney further tries to mislead the Board by asserting that “[t]he relevant question is whether the dotted lines in applicant’s drawings appear to be a placeholder for a changeable element. . .” This is not the proper standard for determining whether the antlers constitute a phantom element. As the board is surely aware, there are numerous registered marks which contain dashed lines to represent a changeable element in the drawing, a few such drawings have been identified in Applicant’s Amended Appeal Brief. The reason that such registrations exist is because the true question is not merely whether something acts as a placeholder for a changeable element, but whether that placeholder is also an “integral portion of the mark”. Even the Examining attorney, near the lower portion of page 3 of her appeal brief, asserts that “a phantom mark is one in which an **integral portion** of the mark may be represented in the drawing by a blank or dashed lines. . .” (emphasis added). It is thus unclear to the Applicant why the Examiner would then attempt to assert that merely having dashed lines for a place holder in a drawing would be enough to form a phantom element.

On page 7 of the Examining Attorney’s appeal brief, the Examining Attorney asserted that “Applicant essentially contends that because it may include broken lines in a drawing . . .” This is yet another false statement by the Examining Attorney. To be clear, Applicant does not have the option of placing the non-claimed antlers in solid lines. The use of a dashed line format

is forced upon Applicant because 37 C.F.R. §2.52(b)(4) requires “applicant **must** also use broken lines to show any other matter not claimed as part of the mark” (emphasis added). Thus, contrary to the Examining attorney’s statement, Applicant does not contend that it “may” include the broken lines in the drawing. Applicant contends that it “must” include the non-claimed antlers in broken lines.

For all the foregoing reasons, Applicant respectfully submits that the Trademark Attorney has failed to properly interpret the rules regarding broken-line drawing elements and requests that the Board grant this Ex Parte Appeal and allow the registration of Applicant’s mark UNGULATTE and Design on the Principal Register.

Respectfully submitted,

Peacock Myers, P.C.

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