

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77928601
LAW OFFICE ASSIGNED	LAW OFFICE 117
MARK SECTION (current)	
STANDARD CHARACTERS	NO
USPTO-GENERATED IMAGE	NO
LITERAL ELEMENT	UNGULATTE
COLOR(S) CLAIMED (If applicable)	Color is not claimed as a feature of the mark.
DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of the design of a fanciful deer holding a coffee mug, which has the word "UNGULATTE" thereon
MARK SECTION (proposed)	
MARK FILE NAME	\\TICRS\EXPORT16\IMAGEOUT 16\779\286\77928601\xml7\RFR0002.JPG
STANDARD CHARACTERS	NO
USPTO-GENERATED IMAGE	NO
LITERAL ELEMENT	UNGULATTE
COLOR MARK	NO
DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of a two dimensional fanciful deer design; the deer is holding a coffee mug which has the words UNGULATTE; the matter shown by the dashed lines in the drawing show placement of the mark; the matter shown by the dashed lines in the drawing is a "non-claimed" feature of the mark and serves to show the position of the mark.
PIXEL COUNT ACCEPTABLE	YES

ARGUMENT(S)**AMENDMENT**

Commissioner for Trademarks
P. O. Box 1451
Alexandria, Virginia 22313-1451

Dear Madam:

This paper is in response to the Examiner's Action of January 7, 2013.

Amendment to the Drawing

Applicant requests that the drawing of the mark be amended to that as originally filed. Namely, with the incorporation of the dashed lines on top of the deer's head as shown in the enclosed drawing of mark.

Please replace the current drawing of the mark with the enclosed replacement drawing. Applicant notes that this replacement drawing is the identical drawing as was originally filed in the application.

Amendment to the Description of the Mark

Please amend the description of the mark to read as follows:

-- The mark consists of a two dimensional fanciful deer design; the deer is holding a coffee mug which has the words UNGULATTE; the matter shown by the dashed lines in the drawing show placement of the mark; the matter shown by the dashed lines in the drawing is a "non-claimed" feature of the mark and serves to show the position of the mark. —

Remarks

The current status of the Section 1(b) mark is the Notice of Allowance was issued February 15, 2011 and the Trademark Statement of Use was filed August 15, 2012. The Examiner's Final Action was issued January 7, 2013.

The application was originally filed with a drawing showing the antlered portion of the deer in dashed lines. The Trademark Attorney instructed Applicant to remove the dashed lines from the drawing. Applicant thus complied with that request. The Application was then allowed and Applicant was invited to file a Statement Of Use. Applicant thus filed a Statement of Use which showed a mark wherein antlers were disposed against the head portion of the mark. Applicant's specimen also described to consumers the separate commercial meaning of the antlers (i.e. to identify whether the coffee is caffeinated or not, and to describe how strong the coffee is).

The Trademark Attorney, however, maintains that the mark does not have a separate commercial impression from the antlers and thus rejected the specimen. Applicant disagrees and will proceed with a formal appeal. Thus, Applicant's counsel telephoned the Examiner on March 5, 2013 and asked the Examiner if the drawing of the mark could be amended back to that which was originally filed in order to clean up the record for the appeal. The Examiner agreed that the best course of action was to file the instant response to the outstanding Office Action, which amends the drawing back to that which was originally filed. Applicant's attorney thanked the Trademark Attorney and thus prepared the instant response and drawing amendment in accordance with the Trademark Attorney's instruction.

Below is a depiction of the drawing originally filed:

SEE EVIDENCE SECTION

As can be seen, the drawing originally included dashed lines at the location of antlers on the head of the animal. The application as originally filed also stated "[t]he dashed lines in the design show a 'non-claimed' feature of the mark".

The examining attorney's first Office Action of May 10, 2010, the examining attorney stated:

Please note that broken lines are often used in drawings for three-dimensional configuration marks and product packaging trade dress configurations to show the placement of marks. See TMEP §1202.02(c). However, the mark in the present application appears to be a design mark. Therefore, the use of broken lines and a claim that they are not part of the mark is not proper. If the antlers shown in broken lines in the mark are not part of the mark, then applicant may delete them from the drawing.

In response to that office action, Applicant's response of October 29, 2010 stated "the trademark attorney provisionally refused registration as to the dashed lines showing 'non-claimed' features of the mark. Per the Trademark Attorney's assertion that such is not necessary and that the dashed lines should simply be removed, Applicant has thus amended the drawing to delete the "non-claimed" material feature of the mark." Thus, per the examining attorney's recommendation, the antlers were deleted from the mark, as well as the statement in the description relating to them. As "non-claimed" material, the amendment is not an impermissible material alteration of the mark (TMEP §807.14).

Applicant has continually maintained that the dashed lines for the antlers were a non-claimed feature of the mark and separable element of the mark which is disclaimed by the Applicant and is contrary to the Examiner's allegation and statement that the antlers are integral subject matter missing from the drawing based on the filed specimen of use. Applicant respectfully disagrees that

disclaimed matter and “non-claimed features” of the mark are identified by the Trademark Attorney as integral subject matter.

The Applicant for the mark sets forth the character and description of the mark and identifies the claimed, separable and non-claimed elements of the mark by a drawing of the mark and description of the mark. Applicant has continually maintained that the dashed lines for the antlers are separable and are not a claimed feature of the mark and it is unusual that a specimen containing such non-claimed features showing placement of the mark, as reflected in the current amendment to the description of the mark, should have any material importance regarding the claimed portion of the mark of the instant application.

Applicant’s amended description of the mark and election not to claim a portion of the mark by illustrating that portion in dashed lines is well within the established practices of the Trademark Office, but it is specifically mandated by the guiding Federal Regulation (see 37 C.F.R. § 2.52(b)(4) “. . . The applicant must also use broken lines to show any other matter not claimed as part of the mark” (emphasis added)).

As “non-claimed” material, the amendment to the drawing is not an impermissible material alteration of the mark (TMEP §807.14). Further, because this amendment is not a material alteration of the mark, the mark thus need not be re-published (TMEP § 1505.02).

Entry of the drawing amendment and the foregoing amendment to the drawing description are thus respectfully requested.

EVIDENCE SECTION

EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_1-20766122-172613009_._Evidence.pdf
CONVERTED PDF FILE(S) (5 pages)	\\TICRS\EXPORT16\IMAGEOUT16\779\286\77928601\xml7\RFR0003.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\779\286\77928601\xml7\RFR0004.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\779\286\77928601\xml7\RFR0005.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\779\286\77928601\xml7\RFR0006.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\779\286\77928601\xml7\RFR0007.JPG
ORIGINAL PDF FILE	evi_1-20766122-172613009_._77928601_DRW.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT16\IMAGEOUT16\779\286\77928601\xml7\RFR0008.JPG

DESCRIPTION OF EVIDENCE FILE	Remarks with a depiction of the drawing originally filed and replacement drawing
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Justin R. Jackson/
SIGNATORY'S NAME	Justin R. Jackson
SIGNATORY'S POSITION	Attorney of Record, NM bar member
SIGNATORY'S PHONE NUMBER	505 998-1500
DATE SIGNED	06/20/2013
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMATION SECTION	
SUBMIT DATE	Thu Jun 20 18:06:22 EDT 2013
TEAS STAMP	USPTO/RFR-207.66.12.2-201 30620180622177137-7792860 1-500a1e5282997e5402f324e d0a0443ae329fc2f2030bb4c5 b3f56a4b9b19794392-N/A-N/ A-20130620172613009602

Request for Reconsideration after Final Action To the Commissioner for Trademarks:

Application serial no. **77928601** has been amended as follows:

MARK

Applicant proposes to amend the mark as follows:

Current: UNGULATTE (Stylized and/or with Design)

Color is not claimed as a feature of the mark.

The mark consists of the design of a fanciful deer holding a coffee mug, which has the word "UNGULATTE" thereon

Proposed: UNGULATTE (Stylized and/or with Design, see [mark](#))

The applicant is not claiming color as a feature of the mark.

The mark consists of a two dimensional fanciful deer design; the deer is holding a coffee mug which has the words UNGULATTE; the matter shown by the dashed lines in the drawing show placement of the mark; the matter shown by the dashed lines in the drawing is a "non-claimed" feature of the mark and serves to show the position of the mark.

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

AMENDMENT

Commissioner for Trademarks
P. O. Box 1451
Alexandria, Virginia 22313-1451

Dear Madam:

This paper is in response to the Examiner's Action of January 7, 2013.

Amendment to the Drawing

Applicant requests that the drawing of the mark be amended to that as originally filed. Namely, with the incorporation of the dashed lines on top of the deer's head as shown in the enclosed drawing of mark.

Please replace the current drawing of the mark with the enclosed replacement drawing.

Applicant notes that this replacement drawing is the identical drawing as was originally filed in the application.

Amendment to the Description of the Mark

Please amend the description of the mark to read as follows:

-- The mark consists of a two dimensional fanciful deer design; the deer is holding a coffee mug which has the words UNGULATTE; the matter shown by the dashed lines in the drawing show placement of the mark; the matter shown by the dashed lines in the drawing is a "non-claimed" feature of the mark and serves to show the position of the mark. —

Remarks

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was invited to file a Statement Of Use. Applicant thus filed a Statement of Use which showed a mark wherein antlers were disposed against the head portion of the mark. Applicant's specimen also described to consumers the separate commercial meaning of the antlers (i.e. to identify whether the coffee is caffeinated or not, and to describe how strong the coffee is).

The Trademark Attorney, however, maintains that the mark does not have a separate commercial impression from the antlers and thus rejected the specimen. Applicant disagrees and will proceed with a formal appeal. Thus, Applicant's counsel telephoned the Examiner on March 5, 2013 and asked the Examiner if the drawing of the mark could be amended back to that which was originally filed in order to clean up the record for the appeal. The Examiner agreed that the best course of action was to file the instant response to the outstanding Office Action, which amends the drawing back to that which was originally filed. Applicant's attorney thanked the Trademark Attorney and thus prepared the instant response and drawing amendment in accordance with the Trademark Attorney's instruction.

Below is a depiction of the drawing originally filed:

SEE EVIDENCE SECTION

As can be seen, the drawing originally included dashed lines at the location of antlers on the head of the animal. The application as originally filed also stated "[t]he dashed lines in the design show a 'non-claimed' feature of the mark".

The examining attorney's first Office Action of May 10, 2010, the examining attorney stated:

Please note that broken lines are often used in drawings for three-dimensional configuration marks and product packaging trade dress configurations to show the placement of marks. See TMEP §1202.02(c). However, the mark in the present application appears to be a design mark. Therefore, the use of broken lines and a claim that they are not part of the mark is not proper. If the antlers shown in broken lines in the mark are not part of the mark, then applicant may delete them from the drawing.

In response to that office action, Applicant's response of October 29, 2010 stated "the trademark attorney provisionally refused registration as to the dashed lines showing 'non-claimed' features of the mark. Per the Trademark Attorney's assertion that such is not necessary and that the dashed lines should simply be removed, Applicant has thus amended the drawing to delete the "non-claimed" material feature of the mark." Thus, per the examining attorney's recommendation, the antlers were deleted from the mark, as well as the statement in the description relating to them. As "non-claimed" material, the amendment is not an impermissible material alteration of the mark (TMEP § 807.14).

Applicant has continually maintained that the dashed lines for the antlers were a non-claimed

feature of the mark and separable element of the mark which is disclaimed by the Applicant and is contrary to the Examiner's allegation and statement that the antlers are integral subject matter missing from the drawing based on the filed specimen of use. Applicant respectfully disagrees that disclaimed matter and "non-claimed features" of the mark are identified by the Trademark Attorney as integral subject matter.

The Applicant for the mark sets forth the character and description of the mark and identifies the claimed, separable and non-claimed elements of the mark by a drawing of the mark and description of the mark. Applicant has continually maintained that the dashed lines for the antlers are separable and are not a claimed feature of the mark and it is unusual that a specimen containing such non-claimed features showing placement of the mark, as reflected in the current amendment to the description of the mark, should have any material importance regarding the claimed portion of the mark of the instant application.

Applicant's amended description of the mark and election not to claim a portion of the mark by illustrating that portion in dashed lines is well within the established practices of the Trademark Office, but it is specifically mandated by the guiding Federal Regulation (see 37 C.F.R. § 2.52(b)(4) ". . . The applicant must also use broken lines to show any other matter not claimed as part of the mark" (emphasis added)).

As "non-claimed" material, the amendment to the drawing is not an impermissible material alteration of the mark (TMEP §807.14). Further, because this amendment is not a material alteration of the mark, the mark thus need not be re-published (TMEP § 1505.02).

Entry of the drawing amendment and the foregoing amendment to the drawing description are thus respectfully requested.

EVIDENCE

Evidence in the nature of Remarks with a depiction of the drawing originally filed and replacement drawing has been attached.

Original PDF file:

[evi_1-20766122-172613009_ . Evidence.pdf](#)

Converted PDF file(s) (5 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

Original PDF file:

[evi_1-20766122-172613009_77928601_DRW.pdf](#)

Converted PDF file(s) (1 page)

[Evidence-1](#)

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Justin R. Jackson/ Date: 06/20/2013

Signatory's Name: Justin R. Jackson

Signatory's Position: Attorney of Record, NM bar member

Signatory's Phone Number: 505 998-1500

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 77928601

Internet Transmission Date: Thu Jun 20 18:06:22 EDT 2013

TEAS Stamp: USPTO/RFR-207.66.12.2-201306201806221771

37-77928601-500a1e5282997e5402f324ed0a04

43ae329fc2f2030bb4c5b3f56a4b9b19794392-N

/A-N/A-20130620172613009602



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Bar NND Ranch, LLC	:	
Serial No.:	77/928,601	:	Trademark Law Office: 117
Filed:	February 4, 2010	:	Trademark
		:	Attorney: Maureen Dall Lott



Mark: UNGULATTE and Antlerless Design:

AMENDMENT

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P. O. Box 1451
Alexandria, Virginia 22313-1451

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Trademark Law Office: 117
Serial No. 77/928,601
Mark: UNGULATTE and Antlerless Design

REPLACEMENT DRAWING WITH AMENDMENT

