

EXHIBITS

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

Applicant: : Supre, Inc.
Mark: : HEMPZ
Serial No. : 78/016,669
Filed : July 13, 2000
Class : 3
Examining Attorney : Irene Williams
Law Office : 112

Express Mail mailing label number EV 080398116 US
Date <u>March 20, 2002</u>
I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated and is addressed to:
Commissioner for Trademarks Box TTAB- NO FEE 2900 Crystal Drive Arlington, Virginia 22202-3513
<u>Karen A. Harris</u> Printed name of person mailing paper or fee
<i>Karen A. Harris</i> Signature of person mailing paper or fee

Commissioner for Trademarks
Box TTAB – NO FEE
2900 Crystal Drive
Arlington, VA 22202-3513



03-20-2002

U.S. Patent & TMOtc/TM Mail Rcpt Dt. #61

APPLICANT'S REPLY BRIEF

Through its counsel, Applicant respectfully submits this Reply Brief in response to the Examining Attorney's Appeal Brief dated February 28, 2002.

I. Statement of Facts

With regard to the statement of facts contained in the Examining Attorney's Appeal Brief, Applicant notes that dates referenced are inaccurate. The Examining Attorney refers to

Applicant's reply to the Office Action of December 12, 2000, stating that the response to this action was filed on February 21, 2000. In fact, the response was filed on February 20, 2001.

With regard to the date of Applicant's appeal, the Examining Attorney references December 21, 2001, when in fact Applicant's Notice of Appeal was filed on October 24, 2001.

II. Argument

Applicant first expresses confusion regarding the Examining Attorney's statement that "although the applicant's brief implies the examining attorney's dictionary references alone show the meaning of hemp, both the NEXIS and dictionary together references (sic) show the descriptive meaning." (Examining Attorney's Appeal Brief, p.2). It is unclear what argument the Examining Attorney is attempting to make in this regard, but Applicant's argument is that since the borderline between descriptive and suggestive marks is hardly a clear one, courts have used various tests for determining the difference. One of these tests examines the dictionary definition of a term. See *Zatarains, Inc. v. Oak Grove Smokehouse, Inc.*, 698 F.2d 786, 217 USPQ 988 (5th Cir. 1983). In the instant case, the mark HEMPZ has no well understood or recognized meaning, and the Examining Attorney has failed to demonstrate that such a meaning exists. Nowhere does the definition of hemp submitted by the Examining Attorney make reference to skin care preparations. Applicant maintains that the Examiner has relied upon a definition which would escape the knowledge and impressions of the average purchaser about "hemp" and thus exaggerates the mark's descriptive significance. See *In re Shutts*, 217 USPQ 363 (TTAB 1983). The incongruity of applying the mark HEMPZ to a tanning lotion invests it with a suggestive rather than a descriptive character. *Id.*, at 364. The term "hempz," as applied

to Applicant's tanning lotion, does not readily and immediately evoke an impression and understanding of Applicant's product as a tanning lotion.

The Examining Attorney also states that the Applicant has argued regarding other possible meanings of the terms "hempz" or "hemp's." (Examining Attorney's Appeal Brief, p.3). In fact, Applicant has made no such argument. Applicant clearly states on pages 3 and 4 of its Applicant's Appeal Brief that the mark HEMPZ is purely fanciful, and has no recognizable meaning. It would be impossible for the mark to be construed as having some connection to tanning preparations.

Additionally, the Examining Attorney states that "changes in form of a descriptive term does (sic) not keep it from being descriptive," and that "applicant's argument that the mark cannot show a possessive is misleading." (Examining Attorney's Appeal Brief, p.4). The Applicant is at a loss to understand how the argument that the term "hemp" does not have a possessive form can be termed misleading. The English word "hemp" is used to connote both singular and plural forms, never necessitating use of the letter "s" to denote a plural form. Therefore, the term "hemp" has no possessive form. The case law cited by the Examining Attorney in support of her contention, unfortunately, make reference to marks which are primarily merely surnames which are used in the possessive form. No allegation has been made here that the mark HEMPZ is a surname, or the phonetic equivalent of a surname, used in its possessive form.

The Examining Attorney states that "the applicant argues that this [term 'hempz' is] a form of plural not found in the dictionary." (Examining Attorney's Appeal Brief, p.5). This is a

mischaracterization of Applicant's argument. Applicant simply states that the term HEMPZ is completely arbitrary, and conveys no singular or possessive form. The Examining Attorney attempts to summarize Applicant's argument in this regard stating that the Applicant's argument is akin to urging that the marks COTTONS and WOOLS are not descriptive of cotton or wool shirts. The comparison of these particular marks with Applicant's mark seems to indicate that the Examining Attorney herself views the mark HEMPZ as akin to clothing made of hemp, with the term "hempz" serving as the phonetic equivalent of "hemps." This reference bolsters Applicant's position that the term HEMPZ is not readily recognizable, or commonly related to tanning products.

Finally, on page 5 of her brief, the Examining Attorney indicates that the third party registrations referenced on page 7 of Applicant's Request for Reconsideration and page 10 of Applicant's Appeal Brief either include a disclaimer of the word "hemp," or are registered on the Supplemental Register. Applicant hereby references attached Exhibits A through D, pages printed from the USPTO website which clearly indicate that all of the marks listed are registered on, or have applications pending on, the Principal Register.

III. Conclusion

For the foregoing reasons, Applicant submits that the Examining Attorney's refusal should be reversed and the application to register this mark should be passed to publication.

Mark: HEMPZ
Serial No.: 78/016,669
Attorney Docket No. 84433.35

IV. Change of Firm Name and Attorney Docket Number

Please be advised that attorneys for Applicant, Worsham Forsythe Wooldridge, LLP, have merged with and changed their name to Hunton & Williams. Applicant hereby requests that all future correspondence be addressed accordingly, making reference to new Attorney Docket Number 84433.35. Additionally, Applicant's electronic mail contact address has changed. Please forward all e-mail correspondence to fjames@hunton.com.

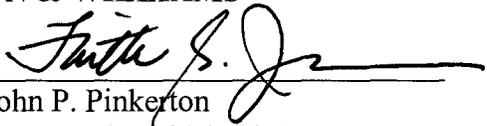
V. Authorization to Debit Deposit Account

Please debit any fees due and owing in connection with this filing, or the future prosecution of this application, from Deposit Account No. 23-3189 in the name of Hunton & Williams (Dallas).

Respectfully submitted,

HUNTON & WILLIAMS

By:


John P. Pinkerton
State Bar No. 01601670
Faith S. James
State Bar No. 10540200

Dated: _____

3/20/02

1601 Bryan Street, 30th Floor
Dallas, Texas 75201-3402
214.979.3000
214.880.0011 (fax)

ATTORNEYS FOR SUPRE, INC.

**HUNTON &
WILLIAMS**

ENERGY PLAZA
30TH FLOOR
1601 BRYAN STREET
DALLAS, TEXAS 75201-3402

TEL 214 • 979 • 3000
FAX 214 • 880 • 0011

FAITH S. JAMES
DIRECT DIAL: 214.979.3039
EMAIL: fjames@hunton.com

FILE NO: 84433.35

March 20, 2002

VIA EXPRESS MAIL

Commissioner for Trademarks
BOX TTAB – NO FEE
2900 Crystal Drive
Arlington, Virginia 22202-3515



03-20-2002

U.S. Patent & TMOfo/TM Mail Rcpt Dt. #61

Re: U.S. Intent-To-Use Trademark Application
Mark: HEMPZ
Serial No.: 78/016,669

Dear Sir or Madam:

Enclosed please find Applicant's Reply Brief for filing in connection with the above-referenced trademark application.

Please debit any fees associated with this filing from Deposit Account No. 23-3189 in the name of Hunton & Williams (Dallas). In addition, please stamp the enclosed postcard and return it to me as our receipt.

Thank you for your assistance.

Sincerely,

Faith S. James

FSJ:kh
Enclosures