

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
KH Technology Corporation

Serial No.: 78/440,399

Filed: June 23, 2004

Mark: VINTAGE

Timothy Finnegan
Trademark Examining Attorney

Trademark Law Office 104

REQUEST FOR RECONSIDERATION

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

Dear Sir,

In connection with the Notice of Appeal enclosed herewith, Applicant respectfully files this Request for Reconsideration in response to, and within six (6) months of, the final Office Action mailed June 30, 2006. New facts have arisen since the date of the final Office Action which warrants this Request for Reconsideration.

If necessary, please charge any required fees or credit any overpayment to our Deposit Account No. 01-1960. An additional copy of this page is enclosed for that purpose.

REMARKS

The following remarks are responsive to the final Office Action mailed on June 30, 2006. In particular, new facts have arisen which materially affect the rejections found in the outstanding Office Action.

The mark is presently refused registration on two grounds:

- 1) likelihood of confusion over Registration No. 1,396,511 for VINTAGE (the "'511 Registration"); and
- 2) mere descriptiveness.

I. LIKELIHOOD OF CONFUSION**A. The '511 Registration Has Expired**

The '511 Registration for VINTAGE issued on June 10, 1986 to Sansui Electric Co., Ltd. Accordingly, a renewal was due on June 10, 2006 with a 6-month grace period extending to December 10, 2006. Sansui has not filed the required renewal, and the grace period has since lapsed. Accordingly, the '511 Registration is no longer live, but should be canceled in due course.

Since the '511 Registration was the sole mark with which likelihood of confusion was asserted in the outstanding Office Action, Applicant respectfully submits that the likelihood of confusion rejection should be withdrawn.

II. MERELY DESCRIPTIVE

The final Office Action states that the mark is refused registration because it describes a feature of applicant's goods. In response to Applicant's prior arguments of how other VINTAGE registrations were not considered merely

descriptive, the final Office Action states that third party registrations are not conclusive on the question of descriptiveness and that each application must be considered on its own merits.

While Applicant respectfully acknowledges that each application must be examined on its own merits, the positions taken by the examiner with respect to the instant mark shows that said mark is not descriptive.

In particular, the examining attorney has taken the position that the subject mark is identical to the cited VINTAGE registration. *June 30, 2006 Office Action*, p. 3, Paragraph 2 (“Here the marks are identical.”). The examining attorney also states that the goods in the cited registration, namely loudspeakers, is “very broad” and “encompasses all goods and/or services of type described, including those in the applicant’s more specific identification . . .”

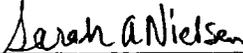
Thus, the validly issued registration of VINTAGE as directed to loudspeakers and other audio equipment has been properly regarded by the USPTO as not being merely descriptive. Up until the recent expiration of the registration due to the registrant’s failure to file a renewal, the VINTAGE registration was presumed valid under the law. Applicant’s mark is identical to the registered mark, according to the examining attorney, and includes goods which are merely a subset of the goods in the registered mark, also according to the examining attorney. Thus, Applicant’s VINTAGE mark is not and cannot be merely descriptive of guitar loudspeakers. Otherwise, to maintain that Applicant’s mark is merely descriptive of guitar loudspeakers necessarily requires a finding that the ‘511 Registration was entirely invalid since this identical mark would have been merely descriptive of loudspeakers.

Based on the foregoing remarks, Applicant respectfully submits that the application is now fully in condition for publication.

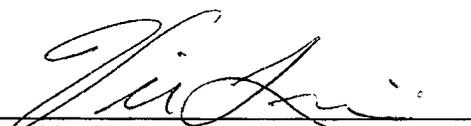
The Examining Attorney is invited to telephone the undersigned attorney if it appears that a phone conference would further this case in any way.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to :
Commissioner for Trademarks, P.O. Box 1451,
Alexandria, VA 22313-1451 on
December 21, 2006

By: Sarah A. Nielsen


Signature

Respectfully submitted,


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