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

Proceeding	78536106
Applicant	Spring Cafe Realty LLC
Applied for Mark	BARMACHE
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Submission	Reply Brief
Attachments	Barmarche Reply Brief on Appeal.pdf (3 pages)(692323 bytes)
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Signature	/Lisa A. Pieroni/
Date	08/02/2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re	Trademark Application of Spring Café Realty LLC
Serial No.	78/536,106
Filing Dt.	12/21/04
For	BARMARCHÉ
Examining Attorney	Tracy Fletcher
Law Office	115

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

New York, NY
August 2, 2007

REPLY BRIEF ON APPEAL

STATEMENT OF CASE

Applicant does not feel the need to add any facts to the Statement of the Case as presented in its Brief on Appeal.

ISSUE

The issue is whether the Preliminary Amendment submitted in January, nearly seven (7) months prior to the Office Action, should be accepted.

ARGUMENTS

Point 1: The Preliminary Amendment should be accepted since it does not constitute a "Material Alteration".

The Examiner contends that the Preliminary Amendment was not merely a correction of a typographical error but rather the correction resulted in a material alteration and as such is not acceptable. Under In re Who? Vision Systems, Inc., the modified mark "must create

the impression of being essentially the same mark." Clearly the near-identical visual impression of BARMACHE and BARMARCHE is unquestioned. The marks as a whole appear nearly identical and the consuming public would not distinguish between them.

Point 2: The request by the Examiner that a new specimen be submitted to match the drawing page is not capable of response.

Applicant's comments in its Brief on Appeal are equally applicable despite the Examiner's comments. Applicant simply cannot provide a specimen of a mark it is not using and admits that such request is not capable of response at present. However, if the amendment of the drawing page was accepted, then this request would be moot.

Point 3 - The request by the Examiner that the Applicant provide requested information.

Again, the Examiner is requesting information about a mark that is not the mark in use. Again, at present, the Applicant is not in a position to provide information about BARMACHE since it is not the mark in interest in the application. Again, if the amendment of the drawing page was accepted, this request would be moot.

CONCLUSION

It is respectfully submitted that in view of the timely filed Preliminary Amendment prior to examination, the submission of a specimen that bore the mark as used in commerce and the length of time between the Preliminary Amendment and the Office Action, that the Preliminary Amendment be accepted and the "Significance Inquiry", "Translation", "Mark in Drawing Differs

from Mark in Specimen" and "Drawing - Material Alteration" refusals be stricken from the August 2, 2005 and March 19, 2007 Office Actions and/or that the Office Actions be withdrawn and reissued based on the mark BARMARCHÉ.

Respectfully submitted,

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