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

Proceeding	78761852
Applicant	Davies Gate LLC
Applied for Mark	DAVIES GATE SUGAR PLUM
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Submission	Reply Brief
Attachments	DAVIES GATE SUGAR PLUM Reply Brief 9-20-07.pdf (2 pages)(59850 bytes)
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TRADEMARK TRIAL AND APPEAL BOARD

Mark: DAVIES GATE SUGAR PLUM) Examining Attorney: Mrs. A.D. Saunders
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Applicant: DAVIES GATE LLC) Law Office: 109
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Serial No.: 78/751,852)
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Filed: November 28, 2005)
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Class: 03)
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REPLY BRIEF

This reply is in response to the Examining Attorney's Appeal Brief dated August 2, 2007.

- SUGAR PLUM is a unitary phrase with a well-known dictionary meaning and a unique commercial impression; thus it must be considered in its entirety rather than dissected into its component parts.
- SUGAR PLUM, defined as a candy, is not descriptive of Applicant's soaps, lotions and related bath products, *regardless* of whether or not the candy is made "with various flavoring and coloring ingredients." as urged by the Examining Attorney. The fact that a SUGAR PLUM is capable of being flavored and colored with a variety of flavorings and colors does not mean that it is descriptive of Applicant's bath products.
- A SUGAR PLUM candy does not have a known scent or color. Therefore the wording SUGAR PLUM is incapable of describing Applicant's goods with particularity. The wording must be at most suggestive since it requires a degree of imagination, as conceded by the Examining Attorney: "the wording in the mark evokes a sense of smell, color and taste *to the user's imagination*" (emphasis added).

- Applicant has shown that the Examining Attorney's purported evidence of third party use of SUGAR PLUM as a descriptor of cosmetics and other products is instead legitimate trademark use and/or suggestive use, not descriptive use.¹
- Contrary to the statements in the Examining Attorney's Appeal Brief, Applicant is neither "of the opinion that the mark must describe every aspect of the goods to be descriptive." nor has Applicant argued "that the wording...does not describe a 'small candy.'" It is unclear why the Examining Attorney included these statements.
- Applicant respectfully submits this Application is in condition for prompt publication and respectfully requests favorable action.

¹ Please note that the paragraph in Section 2 of Applicant's Appeal Brief submitted on June 4, 2007 should read "Although the Examining Attorney has put into the record evidence of third party use of the wording "SUGAR PLUM" in connection with cosmetics, Applicant has shown that the vast majority of these third party uses were not descriptive use to explain the scent or color of the product. They were legitimate trademark use with initial capitalization or title case and/or were suggestive use meant to elicit in the consumer a certain feel about the products.