ESTTA Tracking number: **ESTTA682725**
Filing date: **07/09/2015**

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

Proceeding	79130243
Applicant	Nicoventures Limited
Applied for Mark	VOKE
Correspondence Address	TIMOTHY J KELLY FITZPATRICK CELLA HARPER & SCINTO 1290 AVENUE OF THE AMERICAS NEW YORK, NY 10104-3800 UNITED STATES tkelly@fchs.com, docketing@fchs.com, epagan@fchs.com
Submission	Applicants Request for Remand and Amendment
Attachments	Amendment & Request for Remand.pdf(239590 bytes)
Filer's Name	Timothy J. Kelly
Filer's e-mail	tkelly@fchs.com, epagan@fchs.com, docketing@fchs.com
Signature	/tjk/
Date	07/09/2015

TRADEMARK LAW OFFICE: 104
Serial No.: 79/130,243
Mark: VOKE

04213.008005 TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	:	Nicoventures Limited
Serial No.	:	79/130243
Filing Date	:	May 13, 2013
Trademark	:	**VOKE**
Trademark Attorney	:	Donald Johnson
Law Office	:	104

BOX RESPONSE/NO FEE
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

AMENDMENT TO APPLICATION AND
REQUEST TO REMAND FOR GOOD CAUSE

Applicant Nicoventures Limited herein submits an amendment to the recitation of goods set forth in the above-referenced application and respectfully requests that the Board remand the application to the Trademark Examining Attorney for review of the proposed amendment which Applicant believes will put the application in condition for allowance. Applicant submits that good cause exists for request to remand.

An *ex parte* appeal in connection with the instant application was instituted on February 18, 2015. Concurrently with its filing of the Notice of Appeal, Applicant filed a

Request for Reconsideration of the issues raised in the Office Action of August 19, 2014. The Board thereafter suspended the appeal in order to permit the Trademark Examining Attorney to consider the points raised in Applicant's Request for Reconsideration. On May 11, 2015, the Trademark Examining Attorney denied Applicant's Request for Reconsideration and the Board thereafter, on May 13, 2015, resumed the Appeal. Applicant's appeal brief is due on July 12, 2015.

The application currently includes goods in International Classes 5, 10, and 34. In refusing registration of the Applicant's VOKE mark, the Trademark Examining Attorney has made clear that the refusal register pertains only to the goods in International Class 5. *See*, Office Action dated August 19, 2014, at 1 ("Trademark Act Section 2(d) Refusal – Partial – Class 5 Only"). In its Request for Reconsideration of the refusal set out in the August 19, 2014 Office Action, Applicant argued that its Class 5 goods were sufficiently different from the goods of the cited registration such that confusion was not likely; the Trademark Examining Attorney was not persuaded. While Applicant continues to maintain its position that confusion is not likely, in an effort to move the application forward without the need to burden the Trademark Examining Attorney or the Board with an appeal, Applicant herein amends the application to delete the Class 5 goods therefrom. In addition, Applicant makes a further, limiting amendment to the Class 34 goods. Specifically, Applicant respectfully requests that recitation of goods set forth in the application be amended as follows:

International Class 5: This class may be **deleted** from the application;

International Class 10: **no changes**; and

International Class 34: This class should be **amended** to read as follows:

-- Tobacco substitutes, cigarettes containing tobacco substitutes, cigarettes containing nicotine, not for medical purposes --

Applicant submits that good cause is shown here in that that amendments contained herein are consistent with the indications from the Trademark Examining Attorney that the issue preventing the application from moving forward to publication was the inclusion of the Class 5 goods. Class 5 has now been withdrawn from the application. Moreover, the instant Request for Remand is made prior to due date for filing any of the briefs associated with the appeal, and has not been unduly delayed.

CONCLUSION

In view of the foregoing, Applicant believes that the amendments set forth herein will resolve all outstanding issues raised by the Trademark Examining Attorney. As such, Applicant submits that upon entry of the amendments proposed herein the appeal will be moot. Applicant respectfully requests that the Board remand the application to the Trademark Examining Attorney to enter the amendments set forth herein and to thereafter pass the application on to publication. Applicant further requests that pending the remand and the

Trademark Examining Attorney's review of the amendments contained herein, that the Appeal be suspended.

Respectfully submitted,

Date: July 9, 2015

By: _____

Timothy J. Kelly
FITZPATRICK, CELLA, HARPER & SCINTO
1290 Avenue of the Americas
New York, NY 10112
Tel: (212) 218-2100
e-mail: tkelly@fchs.com

Attorney of Record for Applicant
Nicoventures Limited,
New York State Bar Member