IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of	)	
	)	Examiner: Joanna E. H. Fiorelli
JÖRG HEINZ GMBH & CO. KG	)	
	)	Law Office: 105
Serial No. 79/142,611	)	
	)	
Filed: November 22, 2013	)	
	)	
For: JÖRG HEINZ (stylized)	)	

RESPONSE TO OFFICE ACTION MAILED OCTOBER 10, 2014 WITH REQUEST FOR RECONSIDERATION BASED IN PART UPON AMENDMENT AND NARROWING OF THE DESCRIPTION OF GOODS IN INTERNATIONAL CLASS 14

The Applicant herein responds to the Office Action mailed October 10, 2014 as follows:

The only issue pertains to the citation to the obstructing reference found in U.S. Reg. No. 4,004,329 based on an alleged likelihood of confusion under Section 2(d) of the Lanham Act. The Applicant herein incorporates its prior response and arguments to the earlier Office Action asserting that no likelihood of confusion exists between Applicant's mark and the registered mark cited by the Trademark Attorney Examiner. As previously explained in Applicant's September 11, 2014 response filing, Applicant respectfully requests that the question of likelihood of confusion be reconsidered in this case. Differences exist in the appearance, sound, meaning, and overall commercial impression of Applicant's mark and the cited registered mark. The goods covered by Applicant's mark differ considerably from the goods listed in the cited registration, and

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the parties' respective consumers differ as well. The relevant consumers of both Applicant and Registrant are sophisticated and knowledgeable, and informed, making source confusion even more unlikely in the marketplace. Additionally, Registrant's mark should be afforded only a narrow scope of protection in light of its surname significance and the multitude of HEINZ-formative marks already coexisting on the Register. Moreover, both Applicant and Registrant have used their respective marks concurrently for some time with no instances of marketplace confusion coming to light. For all of these reasons, no confusion is likely to arise in this case and the Applicant's mark should be approved for publication.

Furthermore, the Applicant herein offers to amend the description of goods in Class 14 to potentially delete or revise or further narrow, possibly with the addition of a negative limitation, the description of goods in the application which are considered as obstructed and potentially problematic.

Should the Trademark Attorney Examiner believe that such a narrower and more specific identification of goods for the application might be allowable, then the Applicant requests the Examiner to identify whether the cited reference would block all goods within Class 14 of the application or only certain goods or items covered within Class 14 of the application. If it is not considered blocking against all of the goods in Class 14 of the application, then upon being so advised the Applicant will wish to proceed with whatever goods and items which would be allowed

for registrability or with an amendment in the description of goods to allow for registrability. The Applicant has also filed a Notice of Appeal together with this response to the Office Action and the resolution and possible compromise on the items allowed for registrability by the Examiner could moot the appeal. For resolving this issue the Trademark Attorney Examiner is encouraged to contact the Applicant's counsel Burt Ehrlich at 312-427-1300.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class mail in an envelope addressed to: Assistant Commissioner for Trademarks, U.S. Trademark Office, P.O. Box 1451, Alexandria, VA 22313-1451, on April 10, 2015.

Boris Umansky