

To: Somerset Soup Works, Inc. (pecsenye@blankrome.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85034559 - SOUP SINGLES - 112936-00101
Sent: 5/8/2012 2:55:55 PM
Sent As: ECOM116@USPTO.GOV
Attachments:

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

APPLICATION SERIAL NO. 85034559

MARK: SOUP SINGLES

85034559

CORRESPONDENT ADDRESS:

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CLICK HERE TO RESPOND TO THIS LETTER:
http://www.uspto.gov/trademarks/teas/response_forms.jsp

APPLICANT: Somerset Soup Works, Inc.

CORRESPONDENT'S REFERENCE/DOCKET

NO:

112936-00101

CORRESPONDENT E-MAIL ADDRESS:

pecsenye@blankrome.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

ISSUE/MAILING DATE: 5/8/2012

THIS IS A FINAL ACTION.

On September 23, 2011, the Trademark Trial and Appeal Board (Board) suspended applicant's appeal and remanded the application to the trademark examining attorney to review applicant's request for reconsideration of the final Office action. Applicant presented a new issue in the request; therefore, the trademark examining attorney issued a new nonfinal Office action on October 18, 2011, addressing the new issue and maintaining all the issues in the final Office action. On April 18, 2012, applicant filed a

response addressing the new issue and the issues in the final Office action.

The trademark examining attorney has carefully reviewed applicant's most recent response. In the response, applicant addresses the new issue by providing additional evidence in support of the claim of acquired distinctiveness under Section 2(f). However, this does not resolve the new issue because the evidence is insufficient to establish acquired distinctiveness of the mark.

The declaration submitted with the response provides sales figures for applicant's products and applicant's previous declaration indicates that it has spent \$250,000 for advertising since the launch of its product line; however, such evidence is not dispositive of whether the proposed mark has acquired distinctiveness. Such extensive sales and promotion may demonstrate the commercial success of applicant's goods, but not that relevant consumers view the matter as a mark for such goods. *See In re Boston Beer Co.*, 198 F.3d 1370, 53 USPQ2d 1056 (Fed. Cir. 1999); *In re Busch Entm't Corp.*, 60 USPQ2d 1130, 1134 (TTAB 2000). Similarly, applicant's advertising expenditures are merely indicative of its efforts to develop distinctiveness; not evidence that the mark has acquired distinctiveness. *See In re Pennzoil Prods. Co.*, 20 USPQ2d 1753 (TTAB 1991).

The declaration also identifies the stores in which the products are sold and includes third party product reviews. The fact that applicant's product is sold through a number of stores and that its products have been reviewed by third parties does not establish that the consuming public would view the mark as a source indicator.

In addition, applicant's response does not resolve the other issues in final status because applicant has merely provided arguments and analysis that were raised previously. Therefore, all issues raised in the final Office action that issued on March 22, 2011, remain outstanding.

Because applicant's response does not resolve all outstanding refusals and requirements nor otherwise put the application in condition for publication or registration, the trademark examining attorney is holding all issues final, including the new issue raised in applicant's request for reconsideration. *See* 37 C.F.R. §§2.64(a)-(b), 2.142(d); TMEP §715.04(b).

The following issues are in final status:

1. Section 2(e)(1) refusal because applied-for mark merely describes a feature of applicant's goods. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); *see* TMEP §§1209.01(b), 1209.03 *et seq*;
2. Requirement for a disclaimer of the wording "SOUP." *See* 15 U.S.C. §1056(a); TMEP §1213.03(b); and
3. Insufficiency of claim of acquired distinctiveness in the alternative under Section 2(f).

The Board has been notified to resume the appeal. *See* TMEP §715.04(b).

/Kristina Morris/
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kristina.morris@uspto.gov (informal queries only)

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/ mailing date before using TEAS, to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at <http://tarr.uspto.gov/>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/teas/eTEASpageE.htm>.

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IMPORTANT NOTICE REGARDING YOUR U.S. TRADEMARK APPLICATION

USPTO OFFICE ACTION HAS ISSUED ON **5/8/2012** FOR
SERIAL NO. 85034559

Please follow the instructions below to continue the prosecution of your application:

TO READ OFFICE ACTION: Click on this [link](#) or go to <http://portal.uspto.gov/external/portal/tow> and enter the application serial number to [access](#) the Office action.

PLEASE NOTE: The Office action may not be immediately available but will be viewable within 24 hours of this e-mail notification.

RESPONSE IS REQUIRED: You should carefully review the Office action to determine (1) how to respond; and (2) the applicable [response time period](#). Your response deadline will be calculated from **5/8/2012** (or sooner if specified in the office action).

Do NOT hit "Reply" to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System [Response Form](#).

HELP: For *technical* assistance in accessing the Office action, please e-mail TDR@uspto.gov. Please contact the assigned examining attorney with questions about the Office action.

WARNING

Failure to file the required response by the applicable deadline will result in the [ABANDONMENT](#) of your application.