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Sent: 11/19/2014 7:05:55 AM

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Subject: U.S. TRADEMARK APPLICATION NO. 85318060 - N/A - Request for Reconsideration Denied -
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Attachment Information:

Count: 15

Files: 01bose.jpg, 01b.jpg, 02sarahskeen.jpg, 02b.jpg, 02c.jpg, 02d.jpg, 03monsterdiesel.jpg, 03c.jpg,
03d.jpg, 04cordcruncher.jpg, 04b.jpg, 04c.jpg, 05beats.jpg, 05b.jpg, 85318060.doc

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

U.S. APPLICATION SERIAL NO. 85318060 MARK:	
CORRESPONDENT ADDRESS: David M. Kelly KELLY IP LLP SUITE 300 1330 CONNECTICUT AVE NW WASHINGTON DC 20036	GENERAL TRADEMARK INFORMATION: http://www.uspto.gov/trademarks/index.jsp VIEW YOUR APPLICATION FILE
APPLICANT: Monster Cable Products, Inc.	
CORRESPONDENT'S REFERENCE/DOCKET NO: N/A CORRESPONDENT E-MAIL ADDRESS: docketing@kelly-ip.com	

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 11/19/2014

The trademark examining attorney has carefully reviewed applicant's request for reconsideration and is denying the request for the reasons stated below. *See* 37 C.F.R. §2.64(b); TMEP §§715.03(a)(2)(B), (a)(2)(E), 715.04(a). The requirement and refusals made final in the Office action dated September 10, 2012, are maintained and continue to be final. *See* TMEP §§715.03(a)(2)(B), (a)(2)(E), 715.04(a).

In the present case, applicant's request has not resolved all the outstanding issues, nor does it raise a new issue or provide any new or compelling evidence with regard to the outstanding issues in the final Office action. In addition, applicant's analysis and arguments are not persuasive nor do they shed new light on the issues. Accordingly, the request is denied.

The applicant's request for remand does not reference the mark description requirement.

Lack of Good Cause

The applicant has claimed that remand was necessary to address the Examining Attorney's objection to evidence provided in support of the previous request for remand, specifically, objections to photos and a weblink on pages 13 and 14 of the previous request for remand. These photos and weblink corresponded to cables the applicant stated were sold under the following marks:

- Monster Diesel
- Zip Buds
- Sarah Skeen
- Cord Cruncher

The applicant's request for remand states the following "Applicant seeks to resubmit such evidence in a format that will satisfy the Examining Attorney's objection." Applicant's Request for Remand, at 1. On the basis of this statement, the Board found good cause and granted the remand.

However, the applicant's request for reconsideration does not provide any information to authenticate this previously provided/referenced evidence, and only includes new printouts (Exhibits 24-28) corresponding to one of the above marks, ZipBuds. Further, the Examining Attorney has now conducted

a search for these marks and found that Sarah Skeen is a mark for a blog, not headphones, and the previously attached printout from that site (see attached) was for a craft project involving headphones, not an example of headphones available for sale. Thus, the Examining Attorney objects to the finding that the applicant had established good cause for this remand.

Instead of providing authenticated versions of the previously submitted evidence, the applicant has used this request to “submit[] additional examples of various cable designs for the Examining Attorney to consider. Applicant’s Request for Remand, at 1.

The applicant has not asserted “good cause” for this new evidence nor has the applicant claimed that this evidence was unavailable earlier. See TBMP §1207.02. The applicant has provided photos of evidence from a Best Buy retail location, a Target retail location, and printouts from Best Buy’s on-line retail store, Amazon.com, and a variety of other websites, all of which was gathered between November 4, 2014, and November 12, 2014. This type of evidence was available before the filing of the notice of appeal and at the time of the applicant’s prior requests for remand. The applicant has not highlighted any particular examples of this evidence that were not available until this month.

Nevertheless, the Examining Attorney has considered the newly provided evidence and finds that it is insufficient to overcome either refusal.

Further, to avoid a subsequent request for remand regarding the unauthenticated evidence, the Examining Attorney has attached printouts showing both the Monster Diesel headphones and Cord Cruncher headphones referenced in the previous request for remand. This evidence also fails to overcome the refusals.

New Evidence

The has asserted that the new evidence submitted as Exhibit Nos. 1-76 are tangle-free or tangle-resistant, but do not fall within the scope of the applicant’s patented design or the design submitted in this trademark application. These designs appear to fall into the following categories:

- Circular/round in shape

- House of Marley Smile Jamaica (from bestbuy.com, Exhibit 6; from thehouseofmarley.com Exhibit 50)
 - Jabra – Vox Earset (from bestbuy.com, Exhibit 7)
 - MTX – StreetAudio (from bestbuy.com, Exhibit 9)
 - Urbanears – Medis In-ear Headphones (from bestbuy.com Exhibit 12)
 - X-1 Audio – Momentum (from bestbuy.com, Exhibit 14)
 - X-1 Audio – Momentum (from bestbuy.com, Exhibit 15)
 - Short Buds (from Amazon.com, Exhibit 20)
 - AKG K 326 (from akg.com, Exhibit 29)
 - AKG K328 (from akg.com, Exhibit 30)
 - AKG K376 (from akg.com, Exhibit 33)
 - ATH-CKP500 (from audio-technica.com, Exhibit 39-40)
 - Legend In-Ear Headphones (from thehouseofmarley.com Exhibit 47)
 - Redemption Song In-ear Headphones (from thehouseofmarley.com Exhibit 49)
 - Uplift In-ear Headphones (from thehouseofmarley.com Exhibit 51)
 - Zion In-ear Headphones (from thehouseofmarley.com Exhibit 52)
 - Klipsch S3m In-ear Headphones (from klipsch.com, Exhibit 56-57)
 - Plantronics MX 200S (from plantronics.com, Exhibit 63)
 - Polk Nue Voe & Nue Era (from polkaudio.com, Exhibit 64)
 - Shure SE 215 (from shure.com, Exhibit 68)
 - Sony EX Series Earbuds (from sony.com, Exhibit 69-70)
 - Relays2Button (from solrepublic.com, Exhibit 71)
 - Yurbuds Inspire 200 (from yurbuds.com, Exhibit 72)
-
- Zipper-style cables
 - DrHotDeal – Tangle-Free Zipper Earphones (from bestbuy.com, Exhibit 4)

- CRS Tangle-Free Zipper Earphone (from bestbuy.com, Exhibit 17)
- Metal Puller Non Tangle Earbuds Zipper (from amazon.com, Exhibit 21)
- Lycheers Never Tangle Metal Zipper (from amazon.com, Exhibit 22)
- Candy Color Cool Tangle-Free Zipper Earphones (from amazon.com, Exhibit 23)
- Zipbuds Juiced (from amazon.com, Exhibits 24-28)

- Other

- QFC – Shoelaces Earphones (from bestbuy.com, Exhibit 10)
- Wrappled Tangle Free Pineapple Earbuds (from amazon.com, Exhibit 19)
- Ultimate Ears (from ultimateears.com, Exhibit 61-62)

Contrary to the applicant's assertion, the applicant's evidence also includes examples that do appear to fall within the designs in the issued patent and trademark application. Specifically, the following:

- Audio-Technica – Core Bass In-Ear (from bestbuy.com, Exhibit 1)
- Audio-Technica – SonicSport In-Ear Headphones (from bestbuy.com, Exhibit 2)
- ClarityOne – Earbuds (from bestbuy.com, Exhibit 3)
- Ecko Unltd. (from bestbuy.com, Exhibit 5)
- Maxell – MaxMusic Earset (from bestbuy.com, Exhibit 8)
- SYBA Multimedia – Oblanc Earset (from bestbuy.com, Exhibit 11)
- Urbanears – Kransen Earset (from bestbuy.com, Exhibit 13)
- GGMM Hummingbird Earphones (from amazon.com, Exhibit 18)
- AKG K3003I (from akg.com, Exhibit 31)
- AKG K 375 (from akg.com, Exhibit 29)
- AKG K323 XS (from akg.com, Exhibit 32)
- AKG K391 NC (from akg.com, Exhibit 34)
- Ath-Cor150 In-Ear Headphones (from audio-technica.com, Exhibit 35-36)

- C5 Series 2 (from bowers-wilkins.com, Exhibit 44)
- Harman Kardon AE and NI models (from harmankardman.com, Exhibit 45-46)
- Klipsch X11i In-ear Headphones (from klipsch.com, Exhibit 54-55)
- Sennheiser CX 2.00 (from sennheiser.com, Exhibit 65)

The applicant has also provided the following examples of over-the-ear headphones, which are not relevant examples for the ear bud cables at issue here:

- Focal – Spirit One Advanced Over ear Headphones (from bestbuy.com, Exhibit 16)—because of nature of over-ear headphones, this example uses a single cable to one ear (with internal wiring through the headset to reach the other ear)
- Solid Bass Over-Ear Headphones (from audio-technica.com, Exhibit 37-38)
- ATH-M50X (from audio-technica.com, Exhibit 42)
- Form 21 (from beoplay.com, Exhibit 43)
- Liberate On-ear Headphones (from thehouseofmarley.com, Exhibit 48)
- Klipsch Status Over-ear Headphones (from klipsch.com, Exhibit 58-60)
- Momentum On-ear (from sennheiser.com, Exhibit 66-67)

And, the applicant has provided one example of wireless earbuds, which are also not relevant for the wired ear bud cables at issue here:

- Yurbuds Leap Wireless (from yurbuds.com, Exhibit 73); attached to this Office action is an example of wireless headphones sold under the Beats mark to demonstrate how the cable design differs for headphones marketed as “wireless”

The applicant has also submitted evidence from retail stores labelled Exhibit Nos. A-R. The applicant appears to intend this evidence to show that a variety of headphones are sold at Best Buy and Target, but has only highlighted only two examples at these stores:

- Skullcandy Hesh—detachable cable to eliminate cable tangle (Exhibits H-M). However, this example is for an over-the-ear headphone, not the type of earbud cable at issue in this application.

-Bose On-Ear Bluetooth® headphones (Exhibit R)—described as a detachable cable. However, the attached printout from bose.com demonstrates that these are primarily wireless headphones with an optional detachable cable. Even if these headphones are used with the cable, they do not fall within the scope of the goods in this application, which are cables for ear buds.

Functionality

These examples do not overcome the functionality refusal because the alternative designs do not have all of the advantages of the applicant's design. The round cords are more tangle-resistant than traditional small round cords, but are not as tangle-free as flat cords. The zipper designs may lay flat, but may also catch on a clothing in a way that the applicant's flat cable would not. The round (including the round cables sold under the Cord Cruncher mark), triangular, and zipper designs also do not appear to allow the interior cables to be arranged in parallel for improved sound quality.

Generic – Incapable of Acquiring Distinctiveness

The additional 17 examples of similar cables to applicant's design simply adds additional weight to the previous finding that the flat cable design is so commonly used in the industry, it is incapable of acquiring distinctiveness. *Stuart Spector Designs, Ltd. v. Fender Musical Instruments Corp.*, 94 USPQ2d 1549, 1555 (TTAB 2009). The fact that there happen to be other ear bud cable designs in the marketplace does not overcome that finding.

The Board will be notified to resume the appeal. *See* TMEP §715.04(a).

/Kim Teresa Moninghoff/

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Front view



Side view



Carrying case



Optional audio cable



USB cable

Dimensions

Headphones

Height: 7.1 in (18 cm)
Width: 5.5 in (14 cm)
Depth: 2.4 in (6 cm)
Weight: 5.4 oz (152.6 g)
Length of audio cable: 47.2 in (1.2 m)
Length of USB cable: 1.3 in (3.4 cm)

Carrying case

Height: 5 in (12.8 cm)
Width: 5 in (12.8 cm)
Depth: 2.3 in (5.8 cm)

Additional details

Wireless range: 30 ft (9.1 m)
Battery life: Up to 15 hours
Charging time: 1.5 hours for full charge
Quick charge: 15 minutes for 2 hours



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In our post about [The Science Behind Earbud Tangles](#), we showed you that making cords thicker is one of four ways to keep wires from knotting up in your pocket or purse. So we're not surprised to see that one Pinterest user figured out that a super-easy string-knotting technique keeps her 'buds from bunching up.



Sick of seeing tangled earbuds? Us too. Thankfully wire-wrapped nirvana is only a few threads away.

Pinterest user Ada() took to the virtual pinboard site to [show off her embroidery-floss wrapped Apple headphones](#). This technique not only makes her headphones more colorful, but it also cuts down on tangles.

It's a technique from the grade-school days of knotting up friendship bracelets. This particular knot is known as the Chinese Staircase. Even if you're not a fan of the colorful look Ada() went for, we think this would look great with solid black thread—you can pick up embroidery floss in nearly every color and hue from your local arts & crafts store.

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These instructions from WikiHow will teach you how to make a Chinese Staircase bracelet. It's easy enough to figure out—if you can tie a basic knot, you can tackle this project without problems.

It's recommended that you have enough string to cover three times the length you want to wrap, so measure your headphones' cords (don't forget both earbuds!) to get an accurate measure. For instance, standard Apple earbuds have around 6.5 inches of cord, so you'll want at least 3 1/2 yards of string to get 'em covered.

Ada(at Pinterest said it took her a day to finish the project. She also recommends coating the ends of the string with a little clear nail polish to ward off fraying.

[via Pinterest.com]



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The CordCruncher fans have spoken, and we have heeded their requests! We hope you will continue providing us with your invaluable support and feedback, now using our new CordCruncher Headphones with in-line microphone!

We have a limited set of pre-release headphones we are offering to those of you already familiar with the CordCruncher concept.

We have sent these new mic'd headphones to distributors and bloggers for initial review, and their enthusiasm has been infectious. Now we would like to offer them at a temporarily discounted introductory price in the hope that you too will be eager to try out this limited stock. As always, your feedback and response will guide us as we transition to mass production of these mic'd units.

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Thank you for being a part of our journey, and we look forward to hearing from you soon!

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