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

Proceeding	85886582
Applicant	C&C Jewelry Mfg., Inc.
Applied for Mark	GRAFFITI STEEL
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Submission	Applicants Request for Remand and Amendment
Attachments	Request for Remand; Consent Agmt (CCJW 0125 TMUS).pdf(1067995 bytes)
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Date	04/16/2015

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: C&C Jewelry Mfg., Inc. Serial No: 85/886,582 Filed: Mar. 26, 2013 Class: 014 Mark: GRAFFITI STEEL	Examining Attorney N. Gretchen Ulrich Law Office: 113 REQUEST TO SUSPEND APPEAL AND REMAND APPLICATION FOR FURTHER EXAMINATION IN LIGHT OF NEW CONSENT AGREEMENT
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Commissioner for Trademarks
Attn: TTAB
P.O. Box 1451
Alexandria, VA 22313-1451

Pursuant to 37 C.F.R. § 2.142(d) and TBMP §§ 1207.02 and 1209.04, Applicant C&C Jewelry Mfg., Inc. (“Applicant”) hereby requests that the Trademark Trial and Appeal Board (“the Board”) suspend Applicant’s appeal of the Examining Attorney’s refusal to register Applicant’s application and remand the application for further examination (“this Request”). Pursuant to TBMP § 1209.04, Applicant will not submit its appeal brief until this Request for remand has been decided by the Board. Applicant bases its request on a showing of good cause, that being for consideration of a newly obtained Consent Agreement (dated March 18, 2015) (attached hereto as **Exhibit I**).

I. APPLICANT HAS GOOD CAUSE FOR REQUESTING THAT THE BOARD REMAND ITS APPLICATION TO THE EXAMINING ATTORNEY GIVEN THAT A CONSENT AGREEMENT HAS RECENTLY BEEN OBTAINED [AND THE EXAMINING ATTORNEY CONSENTS]

Pursuant to TBMP § 1207.02, a request for remand is appropriate when an applicant desires to introduce additional evidence after an appeal has been filed. The request requires a showing of good cause. TBMP § 1207.02. Examples of good cause include: (1) where the evidence was not previously available; and (2) the applicant and examining attorney have agreed to the remand. *Id.* In addition, the TBMP expressly acknowledges that remand is appropriate in light of a newly obtained consent agreement:

In addition, because a consent agreement offered in response to a refusal to register . . . is inherently difficult and time-consuming to obtain, and may be highly persuasive of registrability, the Board will grant a request to suspend and remand for consideration of a consent agreement if the request, accompanied by the consent agreement, is filed at any time prior to the rendering of the Board's final decision on the appeal.

Id. (citing, e.g., *In re N.A.D. Inc.*, 754 F.2d 996, 224 USPQ 969, 970 (Fed. Cir. 1985); *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 568 (CCPA 1973)).

Here, Applicant's mark for GRAFFITI STEEL was refused registration because of a likelihood of confusion with the mark in U.S. Reg. No. 4172490 for GRAFFITI WATCH assigned to Mr. Anthony Samuel. *See* Office Action, Aug. 25, 2014, at 2. Applicant and Mr. Samuel recently reached agreement with respect to their respective marks, which is memorialized in the attached Consent Agreement (Exhibit I). Applicant makes this Request at the earliest stages of appeal, before the filing of its appeal brief.

Further, Applicant has spoken with the Examining Attorney and shared a draft copy of this Request with the Examining Attorney. And, the Examining Attorney has agreed to the remand.

Accordingly, good cause exists for granting this Request.

II. CONCLUSION

For these reasons, Applicant respectfully requests that the Board remand the application back to the Examining Attorney for consideration of Applicant's evidence of the consent

agreement. Applicant also respectfully requests that the Board suspend the appeal while it considers granting the instant request for remand.

DATED: April 16, 2015

Respectfully submitted,

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ATTORNEYS FOR C&C JEWELRY MFG., INC.

EXHIBIT I

(Consent Agreement)

C&C JEWELRY MFG., INC. / ANTHONY SAMUEL CONSENT AGREEMENT

WHEREAS, C&C Jewelry Mfg., Inc. (“C&C”), a California corporation, with an address at 323 W. 8th Street, 4th floor, Los Angeles, California, 90014, is the owner of U.S. Trademark Application Serial No. 85/886,582 for the mark GRAFFITI STEEL in International Class 014, for “non-chronometer jewelry consisting in whole or in part of stainless steel” (the “C&C Application”);

WHEREAS, Anthony Samuel (“Samuel”), a citizen of the United States of America, having an address at 910 South Los Angeles St., Los Angeles, California, 90015, is the owner of U.S. Trademark Registration No. 4,172,490 (Serial No. 85/233,948) for the mark GRAFFITI WATCH in International Class 014 for “watches and parts thereof” (the “Samuel Registration”);

WHEREAS, C&C represents and warrants that it intends to use the mark GRAFFITI STEEL in commerce in connection with “non-chronometer jewelry consisting in whole or in part of stainless steel” and that it neither has, nor intends to, use the mark GRAFFITI STEEL in connection with “watches and parts thereof” as covered in the Samuel Registration;

WHEREAS, Samuel represents and warrants that it has used the mark GRAFFITI WATCH in commerce limited in use in connection with “watches and parts thereof” since March 1, 2011 and that it neither has, nor intends to, use the mark GRAFFITI WATCH in connection with “non-chronometer jewelry consisting in whole or in part of stainless steel” as covered in the C&C Application;

WHEREAS, the U.S. Patent and Trademark Office issued an Office Action (“Office

Action”) citing the Samuel Registration as a bar to the registration of the C&C Application;

WHEREAS, C&C and Samuel are in agreement with regard to their respective marks and wish to reduce the terms of that agreement to writing.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, among other things, the receipt and sufficiency of which is hereby acknowledged, C&C and Samuel (collectively, the “Parties”) agree as follows:

1. The Parties represent that they are the persons or entities most familiar with use in the marketplace of their respective marks and related goods and are the Parties most interested in precluding confusion as to the source of their respective goods by use of their marks and similar marks thereto, in conjunction with goods offered by others.
2. The Parties represent that based upon, *inter alia*, the distinctions between the goods, channels of trade of their respective goods, and the sophistication of buyers of their goods, there is no likelihood of confusion that would be created by the registration of the mark GRAFFITI STEEL as presented in the C&C Application and marketing of goods marked thus so.
3. The Parties further represent that they are in the best position to evaluate the potential for likelihood of confusion by and through their participation in the marketing of goods identified by the marks hereinabove and similar goods; and the Parties further represent they that do not believe that any actual instances of consumer confusion would occur as to the source of their respective good by the registration of the mark GRAFFITI STEEL as presented in the C&C

Application and marketing of goods marked thus so.

4. The Parties agree that, due to the differences in their marks, the concurrent use and registration of their respective marks will not be likely to cause confusion as the source of their respective goods. In the event that any confusion arises in the future, the Parties agree that they will work together to eliminate any such confusion to consumers in the marketplace.
5. Samuel does hereby consent to C&C's use and registration of the mark GRAFFITI STEEL in the United States and elsewhere, including registration of U.S. Trademark Application Serial No. 85/886,582 in the United States with regard to the goods in Class 014 as set forth in the C&C Application.
6. Samuel acknowledges that C&C intends to file this agreement with the U.S. Patent and Trademark Office to overcome the refusal of registration relating to the C&C Application and consents to such a filing. If the U.S. Patent and Trademark Office does not accept the consent set forth in this agreement, the Parties agree to cooperate in negotiating an alternate consent agreement that will be acceptable and will allow the C&C Application to proceed to publication.
7. The terms of this agreement shall apply worldwide.
8. This instrument contains the entire agreement of the Parties or among the Parties hereto with respect to the transactions contemplated herein and may not be modified except by express written amendment signed and acknowledged by both Parties.

IN WITNESS WHEREOF, the Parties have caused this agreement to be executed effective as

of March 18, 2015.

C&C JEWELRY MFG., INC.

ANTHONY SAMUEL

By: 
Name: ROBERT G. CONNOLLY
Title: OWNER
Date: 4/9/15

By: 
Name: Anthony Samuel
Title: _____
Date: 4/7/15