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

Proceeding	85919298
Applicant	Vesture Group Inc.
Applied for Mark	PINKY LOS ANGELES
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Submission	Request to Amend Identification of Goods and Request for Remand
Attachments	Request to Amend Identification of Goods and Request for Remand - Appeal re PINKY.pdf(49340 bytes)
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Date	07/01/2015

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

In re Application of:

Vesture Group, Inc.

Serial No: 85919298

Filed: 4/30/2013

Trademark: PINKY LOS ANGELES

Lead Paralegal Specialist: Tyrone Craven

REQUEST TO AMEND IDENTIFICATION OF GOODS AND REQUEST FOR REMAND

I. Request to Amend Identification of Goods

Applicant Vesture Group, Inc. ("Applicant") hereby respectfully requests to amend the identification of goods in its Application for the mark PINKY LOS ANGELES, Application Serial No. 85919298 ("Applicant's Mark"), as follows:

Current Identification of Goods

IC 025. US 022 039. G & S: Apparel namely tank tops, cotton woven shirts, knit shirts, polo shirts, t-shirts, sweat shirts, crew neck shirt, sweatshirts, cotton jackets, leather jackets, denim jackets, outer jackets, hats, caps, visors, hoods, head bands, sweat bands, kerchiefs, scarves, bandannas, neckerchiefs, gloves, socks, shorts, pants and vests, men's, women's and children's underwear namely briefs, boxers, bikini underwear, one piece and two piece pajamas, nightgowns, nightshirts, skirts, dresses, overalls, short pants, capri pants, blouses and sweaters.

Proposed Amendment to Identification of Goods

IC 025. US 022 039. G & S: Apparel for babies, juveniles and toddlers, namely tank tops, cotton woven shirts, knit shirts, polo shirts, t-shirts, sweat shirts, crew neck shirt, sweatshirts, cotton jackets, leather jackets, denim jackets, outer jackets, hats, caps, visors, hoods, head bands, sweat bands, kerchiefs, scarves, bandannas, neckerchiefs, gloves, socks, shorts, pants and vests, baby's, juvenile's and toddler's underwear namely briefs, boxers,

bikini underwear, one piece and two piece pajamas, nightgowns, nightshirts, skirts, dresses, overalls, short pants, capri pants, blouses and sweaters.

Good cause exists for the proposed amendment to Applicant's Mark. In the most recent Office Action, dated December 24, 2013 ("December 2013 Office Action"), the Trademark Examining Attorney refused registration of the Application pursuant to Section 2(d) because of a likelihood of confusion with U.S. Registration No. 4232113 for the mark PINKY ("Cited Mark") owned by Pulse Creations, Inc. ("Pulse Creations"). The Cited Mark was the only remaining mark cited in the Section 2(d) refusal, with all other previously cited marks having been withdrawn.

The Cited Mark identifies the following goods:

IC 025. US 022 039. G & S: Blouses, Shirts, Pants, Shorts, Jackets, Dresses, Jumpsuits, Rompers, Loungewear, and Sleepwear **excluding baby, juvenile and toddler clothing and accessories.**

(emphasis added.) As a result of Applicant's proposed amendment, no likelihood of confusion exists between the Cited Mark and Applicant's Mark as amended since the Cited Mark expressly disclaims "baby, juvenile and toddler clothing and accessories."

In registering the Cited Mark, Pulse Creations affirmatively amended its identification of goods to specifically disclaim "baby, juvenile and toddler clothing and accessories" after registration was refused pursuant to Section 2(d) because of a likelihood of confusion with (1) U.S. Registration No. 2509206 for the mark PINKYWEAR owned by California Dream Co., Inc. for "retail shops featuring casual, trendy clothing, shoes, undergarments and accessories for teenage girls ages 13-18, namely, blouses, jackets, T-shirts, dresses, miniskirts, sarongs, shorts, jeans, overalls, lingerie, hose, pajamas, platform shoes, canvas shoes, sandals, hand bags, costume jewelry, sunglasses, cowboy hats, beach hats, hair pins and scrunchies" ("PINKYWEAR Mark"); and, (2) U.S. Registration No. 1475976 for the mark PINKY owned by Hamco, Inc. ("Hamco") for "babies' textile bibs" ("Hamco PINKY Mark"). Based on Pulse Creation's amendment disclaiming "baby, juvenile and toddler clothing and accessories," the Cited Mark eventually proceeded to registration on October 30, 2012.

Subsequently, the PINKYWEAR Mark was cancelled on June 19, 2012 for failure to file a Section 8 Declaration of Use. Thus, no likelihood of confusion exists between the PINKYWEAR Mark and Applicant's Mark as amended since the PINKYWEAR Mark is no longer active.

Additionally, although the Hamco PINKY Mark is still active and was initially cited in connection with the Application as a ground for refusal because of a likelihood of confusion between the Hamco PINKY Mark and Applicant's Mark, Applicant and Hamco entered into a Consent and Concurrent Use Agreement, dated May 1, 2009, relating to the Hamco PINKY Mark and Applicant's Mark ("Hamco Concurrent Use Agreement"). (Applicant's Office Action Response, dated November 13, 2013, at pp. 399-401.) Based on the Hamco Concurrent Use Agreement, the Trademark Examining Attorney withdrew her initial refusal in the Application relating to the Hamco PINKY Mark. Furthermore, Applicant agreed in the Hamco Concurrent Use agreement to restrict its potential field of use such that it will not produce, market or sell bibs, layette products, hooded towels, diaper covers, one-piece infant and toddler items or other products for infants, including burp cloths, bath items, washcloths, towels, bath wraps, and chaircovers. None of these items are included in Applicant's proposed amendment. As such, there is also no likelihood of confusion between the Hamco PINKY Mark and Applicant's Mark as amended.

Accordingly, Applicant respectfully submits that there is good cause for the proposed amendment and requests that the Application as amended proceed to registration.

II. Request for Remand

Based on Applicant's Request to Amend Identification of Goods, Applicant further respectfully requests that the Application be remanded to the Trademark Examining Attorney pursuant to TBMP §§ 1205.01 and 1209.04. Good cause exists for the requested remand for the reasons stated above, namely, that Applicant is amending the identification of goods in the Application in order to obviate the only remaining ground for refusal in the December 2013 Office Action.

It is therefore respectfully requested that the Application be remanded to the Trademark

Examining Attorney for further examination.

Respectfully submitted,

Dated: July 1, 2015

ROBINS KAPLAN LLP

By: _____

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