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

Proceeding	86360663
Applicant	Spy Optic Inc.
Applied for Mark	QUICK DRAW
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Submission	Reply Brief
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Date	04/13/2016

Attorney Docket: **SPYNO-480T**

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

Appellant:	Spy Optic Inc.	)	Law Office	110
Serial No.:	86/360,663	)		
Filed:	August 7, 2014	)	Examining Attorney:	Daniel F. Capshaw
For:	QUICK DRAW	)		

APPELLANT'S REPLY BRIEF ON EX PARTE APPEAL

Assistant Commissioner for Trademarks
Post Office Box 1451
Alexandria, Virginia 22313-1451

Dear Sir/Madam:

Appellant respectfully submits the following in response to the Examining Attorney's Appeal Brief and in support of registration of its mark.

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I. INTRODUCTION

The following remarks are responsive to the Examining Attorney's Appeal Brief dated March 29, 2016.

II. THE GOODS ARE UNRELATED

Appellant believes it is important to briefly comment on the Examining Attorney's discussion of the respective goods in the Examining Attorney's Appeal Brief, as the Examining Attorney appeared to focus on goods which are not listed in the present application or the cited registration.

Along these lines, the goods listed in Appellant's application include "sports google lens changing system consisting of goggle lenses, a case for holding goggle lenses and a hand tool for removing and inserting goggle lenses sold together as a unit." In other words, Appellant's goods generally include a system for changing goggle lenses for sports goggles.

In contrast, Registrant's goods relate to a "retainer for headband strap for protective goggles." In other words, Registrant's goods relate to a device for retaining or mounting a strap on protective goggles.

In the Examining Attorney's Appeal Brief, considerable discussion is devoted to illustrating a similarity between sports goggles and protective goggles. Indeed, after reading the Examining Attorney's Appeal Brief, one would assume that the Applicant's goods broadly include sports goggles, and the goods in the cited registration broadly include protective goggles, and that such broad characterizations of the respective goods results in an overlap or relatedness between the goods.

However, that is not the case.

Rather, it bears repeating that Applicant's goods are not sports goggles, and instead,

Appellant's goods are more specifically characterized as a sports goggle lens changing system including lenses, a case, and a tool for changing the lenses. Furthermore, Registrant's goods do not include protective goggles, or any other form of goggles. Instead, Registrant's goods include a retainer for a headband strap.

A sports goggle lens changing system differs significantly from a retainer for a headband strap. Indeed, the function of the lens changing system is to enable a user to quickly and easily interchange or swap one goggle lens for another goggle lens. As stated in Appellant's Appeal Brief, "Appellant's goods deal directly with the lens of a goggle, a way to change the lens of said goggle, the tools necessary to complete said change, and a case for holding the separate lenses. In contrast, the goods associated with the '053 registration are only concerned with the retaining of a headband strap for a protective goggle. There is no mention in the cited '053 registration of a tool for replacing lenses, of a case for storing the lenses." *(Appeal Brief, page 8)*. As also noted, "Appellant's goods are designed to be utilized in replacing or swapping a lens from a goggle when the goggles are not in use, as without a lens present, the goggles would not be used appropriately. In contrast, the goods associated with the '053 registration are designed to adjust the headband strap while the goggles are being worn on one's head." *Id.*

Appellant submits that the unrelatedness of the respective goods weighs significantly against there being a likelihood of confusion between Appellant's mark and the cited registration. Furthermore, the differences between the marks, the distinct channels of trade, and the large number of "quickdraw"-derivative marks adopted by third parties as discussed in more detail in Appellant's Appeal Brief further weigh against a likelihood of confusion finding.

III. CONCLUSION

Appellant respectfully submits that the Proposed Mark does not so resemble the Cited Mark such that there is a likelihood of confusion. As such, it is respectfully submitted that the Examining Attorney's refusal to register the Proposed Mark is inappropriate and cannot be sustained. Therefore, Appellant respectfully requests that the mark be passed to publication.

The Assistant Commissioner for Trademarks is hereby authorized to charge payment of any additional fees required or credit any overpayment of the same to Deposit Account No. 19-4330.

Respectfully submitted,

Date: 4/13/16

By: _____

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