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

Proceeding	86367112
Applicant	V Sky, LLC
Applied for Mark	SO FETCH!
Correspondence Address	JOSEPH SUTTON LAW OFFICES OF EZRA SUTTON P A 900 ROUTE 9 N , STE 201 WOODBIDGE, NJ 07095-1024 UNITED STATES
Submission	Appeal Brief
Attachments	Appeal Brief- So FETCH!.pdf(84814 bytes ) Exhibit A- Appeal Brief SO FETCH !.pdf(96673 bytes )
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Date	12/30/2015



On August 24, 2015, Applicant filed a Notice of appeal from the final refusal issued on February 24, 2015.

### Argument

Applicant argued that there were 167 live marks on the Register in Class 25 and coordinated (related) classes which include the word **FETCH**. The word **FETCH** is part of a crowded field, and in such cases, this group of 167 marks, including the cited marks, are entitled to a narrower scope of protection. Such widespread third-party use shows that the common portions of the marks are actually weak. *In re Broadway Chicken, Inc.*, 38 U.S.P.Q.2d 1559, 1565-1566 (T.T.A.B. 1996); *Fortunoff Silver Sales, Inc. v. Norman Press, Inc.*, 225 U.S.P.Q. 863, 867-869 (T.T.A.B. 1985); *Con-Stan Industries, Inc. v. Nutra System Weight Loss Medical Centers of America, Inc.*, 212 U.S.P.Q. 953, 955-957 (T.T.A.B. 1981). Examples of these marks include **FETCH THE DAY** in class 25 (Reg. No. 4199544); **FETCH LIFE** in class 25 (Reg. No. 3440111); **GET YOUR FETCH ON** (Reg. No. 4387746); and **FARFETCH.COM** (Reg. No. 4284607). Official copies of these third party registrations were made part of the record.

Importantly, prior to the cited marks being filed by the registrant, there is a registration which the USPTO approved and issued to a third party for the mark **SO FETCH** in Class 25, which was filed in March 2010 (Reg. No. 3955822, hereinafter, the '822 mark). This means that the PTO approved the cited registrations of **FETCH**, and **FETCh** (with design) filed in **May 2010**, subsequent to the earlier application in March 2010 for **SO FETCH**. Thus, the Trademark Office already has determined that the marks **SO FETCH** and **FETCH** are sufficiently different for purposes of whether there is a

likelihood of confusion. Therefore, in this case, Applicant maintains that **SO FETCH!** can co-exist with the cited **FETCH** and **FETCH (and design)** marks. If the PTO is to be consistent, Applicant's mark **SO FETCH!** should be approved as being distinguishable from the earlier cited marks. Further, the word **SO** and the **exclamation point** in Applicant's mark form a composite that is quite arbitrary and makes a different commercial impression. In fact, the '822 registered mark for **SO FETCH** did not have the exclamation point, and was allowed to co -exist with the other **FETCH** marks (the '822 registered mark is no longer live).

Applicant's mark as a whole gives an unusual commercial impression, and this is an additional reason that the mark would not be confused with the source of the goods being sold under the cited marks **FETCH** and **FETCH (and design)**. Evidence of widespread third-party use in a particular field, obtained from sources such as registrations of marks containing a shared term, are competent to suggest that purchasers have been conditioned to look to the other elements of the marks as a means of distinguishing the source of goods in the field. *In re Dayco Products - Eaglemotive Inc.*, 9 U.S.P.Q.2d 1910, 1911-1912 (T.T.A.B. 1988). Such diluted marks are accorded narrower protection. In the case of weak and diluted marks, even slight differences between the marks may be deemed sufficient to avoid a finding that confusion is likely. *In re Dayco Products - Eaglemotive Inc.*, 9 U.S.P.Q.2d 1910, 1912 (T.T.A.B. 1988) ("As such, we find the term to be a relatively weak mark and we agree with applicant that the scope of protection afforded such a mark is considerably narrower than that afforded a more arbitrary designation."). *See also In re Copytele Inc.*, 31 U.S.P.Q.2d 1540, 1542 (T.T.A.B.1994). In view of the foregoing, it is

respectfully requested that these two Section 2(d) citations owned by the same party be withdrawn. Any doubt is properly resolved by publishing the mark for opposition by the registrant. *In Re Bel Pease Sales Co.*, 1 U.S.P.Q. 2d 1233, 1235 (T.T.A.B. 1986).

Respectfully submitted,  
Law Offices,  
**EZRA SUTTON, P.A.**

By:    /JS/   \_\_\_\_\_  
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Enclosure (Exhibit A)

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

United States Patent and Trademark Office

Reg. No. 3,440,111

Registered June 3, 2008

TRADEMARK  
PRINCIPAL REGISTER

# Fetch Life

FETCH LIFE, LLC (CONNECTICUT LTD LIAB  
CO)  
16 PAUGUSSETT ROAD  
SANDY HOOK, CT 06482

FOR: KNIT SHIRTS; LONG-SLEEVED SHIRTS;  
POLO SHIRTS; SHORT-SLEEVED OR LONG-  
SLEEVED T-SHIRTS; SHORT-SLEEVED SHIRTS;  
SWEAT SHIRTS; T-SHIRTS; FLEECE PULLOVERS;  
FLEECE VESTS; JACKETS; MEN AND WOMEN  
JACKETS, COATS, TROUSERS, VESTS; WIND-  
JACKETS; BASEBALL CAPS; CAPS; KNITTED CAPS;  
SKULL CAPS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 3-5-2007; IN COMMERCE 3-5-2007.

THE MARK CONSISTS OF STANDARD CHAR-  
ACTERS WITHOUT CLAIM TO ANY PARTICULAR  
FONT, STYLE, SIZE, OR COLOR.

SER. NO. 77-292,354, FILED 9-30-2007.

DAVID H. STINE, EXAMINING ATTORNEY



# United States of America

United States Patent and Trademark Office

## FARFETCH.COM

Reg. No. 4,284,607

Registered Feb. 5, 2013

Int. Cls.: 25, 35, 42 and 45

TRADEMARK

SERVICE MARK

PRINCIPAL REGISTER

FARFETCH.COM LIMITED (ISLE OF MAN LIMITED LIABILITY COMPANY)  
22 ATHOL STREET  
DOUGLAS, ISLE OF MAN IM11JA

FOR: CLOTHING, NAMELY, BELTS FOR CLOTHING, ARM WARMERS, CORSETS, GLOVES, HOODS, JACKETS, MUFFLERS, TIES, TOPS, BOTTOMS, SHIRTS, DRESSES, SKIRTS, BLOUSES, SHORTS, PANTS, SKIRTS, SOCKS, PANTS; INFANT AND TODDLER ONE PIECE CLOTHING; CLOTHING FOR ATHLETIC USE, NAMELY, PADDED SHORTS, PADDED PANTS, PADDED SHIRTS, PADDED ELBOW COMPRESSION SLEEVES BEING PART OF AN ATHLETIC GARMENT; CLOTHING FOR WEAR IN JUDO PRACTICES; CLOTHING FOR WEAR IN WRESTLING GAMES; MATERNITY CLOTHING, NAMELY, MATERNITY SHIRTS, PANTS, SHORTS, SKIRTS AND DRESSES; FOOTWEAR; HEADGEAR, NAMELY, HATS, CAPS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FOR: ADVERTISING SERVICES; ADVERTISING AGENCIES; ADVERTISING BY TRANSMISSION OF ON-LINE PUBLICITY FOR THIRD PARTIES THROUGH ELECTRONIC COMMUNICATIONS NETWORKS; DISSEMINATION OF ADVERTISING FOR OTHERS VIA THE INTERNET; ONLINE ADVERTISING ON A COMPUTER NETWORK; SALES PROMOTION FOR OTHERS; MARKET RESEARCH SERVICES; PUBLIC OPINION POLLING; COLLATING AND PROVIDING STATISTICAL INFORMATION RELATING TO BUSINESS EFFICACY, ADVERTISING, CONSUMER TRENDS AND INTERNET USAGE; BUSINESS COMPARISON SERVICES, NAMELY, PRICE COMPARISON SERVICES, COMPARISON SHOPPING SERVICES, PROVIDING HOTEL RATE COMPARISON INFORMATION; BUSINESS NETWORKING SERVICES; BUSINESS NETWORKING, NAMELY, BUSINESS INTRODUCTION SERVICES; BUSINESS MANAGEMENT; BUSINESS ADMINISTRATION; RETAIL AND WHOLESALE STORE SERVICES FEATURING HAIR CARE PRODUCTS, GROOMING PRODUCTS, PERFUMERY, COSMETICS, SPECTACLES, SUNGLASSES, WATCHES, CLOCKS, BAGS, CASES, PURSES, CLOTHING, FOOTWEAR AND HEADGEAR VIA A RETAIL STORE, VIA GLOBAL COMMUNICATIONS NETWORKS OR THROUGH A MAIL-ORDER CATALOGUE; IMPORT AND EXPORT AGENCY SERVICES IN THE FIELD OF HAIR CARE PRODUCTS, GROOMING PRODUCTS, PERFUMERY, COSMETICS, SPECTACLES, SUNGLASSES, WATCHES, CLOCKS, BAGS, CASES, PURSES, CLOTHING, FOOTWEAR AND HEADGEAR; THE BRINGING TOGETHER FOR THE BENEFIT OF OTHERS, VIA THE INTERNET, OF A VARIETY OF RETAILERS THROUGH A VIRTUAL SHOPPING MALL, ENABLING CUSTOMERS TO CONVENIENTLY VIEW AND PURCHASE GOODS BY MEANS OF TELECOMMUNICATIONS; BUSINESS CONSULTATION; ADVERTISING AND BUSINESS MANAGEMENT CONSULTANCY; COMMERCIAL CONSULTANCY;



*Sean Street*  
Acting Director of the United States Patent and Trademark Office

**Reg. No. 4,284,607** ADVISORY SERVICES RELATING TO BUSINESS MANAGEMENT AND BUSINESS OPERATIONS; INFORMATION, ADVISORY AND CONSULTANCY SERVICES RELATING TO BUSINESS AND MANAGEMENT OR BUSINESS ADMINISTRATION, INCLUDING SUCH SERVICES PROVIDED ONLINE OR VIA THE INTERNET; COMMERCIAL INFORMATION SERVICES, VIA THE INTERNET, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FOR: DESIGN FOR OTHERS IN THE FIELDS OF CLOTHING AND FASHION DESIGN; RESEARCH TO DEVELOP NEW PRODUCTS, ALL IN THE FIELD OF CLOTHING FOOTWEAR AND HEADGEAR; DESIGN SERVICES RELATING TO PACKAGING, IN CLASS 42 (U.S. CLS. 100 AND 101).

FOR: FASHION INFORMATION, IN CLASS 45 (U.S. CLS. 100 AND 101).

OWNER OF UNITED KINGDOM REG. NO. 2577269, DATED 7-29-2011, EXPIRES 4-1-2021.

THE COLOR(S) BLACK, RED AND BEIGE IS/ARE CLAIMED AS A FEATURE OF THE MARK.

OWNER OF U.S. REG. NO. 3,780,124.

THE MARK CONSISTS OF THE STYLIZED WORDING "FARFETCH.COM" PRIMARILY IN THE COLOR BLACK. RED APPEARS IN A SMALL PORTION OF THE TWO LETTERS "F", IN THE "R", IN THE FIRST "C", IN THE "O" AND IN THE "M". THE COLOR BEIGE APPEARS IN A SMALL PORTION OF THE LETTERS "A" AND IN THE SECOND "C".

SER. NO. 85-284,673, FILED 4-3-2011.

JENNIFER MARTIN, EXAMINING ATTORNEY

# United States of America

United States Patent and Trademark Office

## FETCH THE DAY

**Reg. No. 4,199,544**

**Registered Aug. 28, 2012**

**Int. Cls.: 9 and 25**

**TRADEMARK**

**PRINCIPAL REGISTER**

GIORDANO, ANNE (UNITED STATES INDIVIDUAL)  
406 GREEN VILLAGE ROAD  
GREEN VILLAGE, NJ 07935

FOR: CAR MAGNET, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 4-29-2012; IN COMMERCE 4-29-2012.

FOR: APPAREL, NAMELY, TEE SHIRT, BALL CAPS, WOOL CAPS, SOCKS, HOODED SWEATSHIRTS, SLEEPWEAR, SLIPPERS, FLIP FLOPS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 4-29-2012; IN COMMERCE 4-29-2012.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 85-314,755 **FILED 5-6-2011.**

SUSAN BILLHEIMER, EXAMINING ATTORNEY



*David J. Kappas*

Director of the United States Patent and Trademark Office

# United States of America

United States Patent and Trademark Office

## GET YOUR FETCH ON

Reg. No. 4,387,746

Registered Aug. 20, 2013

Int. Cl.: 25

TRADEMARK

PRINCIPAL REGISTER

GIORDANO, ANNE (UNITED STATES INDIVIDUAL)  
406 GREEN VILLAGE ROAD  
GREEN VILLAGE, NJ 07935

FOR: APPAREL, NAMELY TEE SHIRTS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 4-29-2012; IN COMMERCE 4-29-2012.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 85-819,814 (FILED 1-10-2013).

B. PARADEWELAI, EXAMINING ATTORNEY



*Leea Stewart Lee*  
Acting Director of the United States Patent and Trademark Office