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

Proceeding	86406361
Applicant	Sears Brands, LLC
Applied for Mark	CAT & CO.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Application of:

Sears Brands LLC.

Serial No. 86/406,354

Mark: **CAT & CO.**

Thomas M. Minor
Trademark Examining Attorney

Law Office 110

RESPONSE TO THE EXAMINING ATTORNEY'S APPEAL BRIEF

I. INTRODUCTION

Applicant Sears Brands LLC hereby files its Reply to the Examining Attorney's June 29, 2016 Appeal Brief ("EA's Brief").¹ In the EA's Brief, the Examining Attorney argues (1) serial numbers 86/406352 and 86/406354 for CAT & CO. (Unstylized) should be refused for being merely descriptive of their products and (2) Applicant should be required to disclaim the terms "CAT" and "& CO." for serial numbers 86/406361 and 86/406370 related to the CAT & CO. & Design marks.

II. ARGUMENT

Initially, Applicant respectfully submits that the Examining Attorney's arguments are fatally flawed and should be rejected because they fail to acknowledge that Applicant has previously disclaimed the term CAT in all four applications. Contrary to the arguments in the EA Brief, Applicant is only claiming exclusive rights in the terms "& CO." in connection with the related goods. Because all of the Examining Attorney's

¹ Applicant incorporates and continues to rely upon the arguments it set forth in its four April 29, 2016 Appeal Briefs.

arguments include this pivotal misunderstanding, the Examining Attorney's arguments assume facts that are not accurate, which result in arguments that fail to address the actual facts regarding the registerability of these four applications.

Further, and assuming the Examining Attorney's arguments are not deemed *per se* flawed, Applicant believes the Examining Attorney's arguments should not be the basis for denying registration for Applicant's four applications. Specifically, the term "& CO." has untold number of possible meanings, none of which are related to cat products.

However, assuming *arguendo* that "& CO." is deemed not suggestive, but descriptive; it still does not follow that "& CO." must be disclaimed. Here, TMEP1213.03(d) supports Applicant's claim that it need not disclaim the term "& CO." because Applicant uses the "& CO." term in an arbitrary way. "& CO." does not indicate a corporate entity as contemplated by TMEP1213.03(d). Indeed, there is no such legal entity affiliated with Applicant that includes the term "& CO." that sells cat products. Simply stated, the term "& CO" is simply part of a made up name.

It is believed that this Reply Brief meets the Examining Attorney's actions. Applicant respectfully requests that said mark be registered in the United States Patent and Trademark Office on the Principal Register.

III CONCLUSION

For at least the foregoing reasons, Applicant's trademark is not descriptive of the relevant goods and the disclaimer requirement for the terms "& CO." is not appropriate. Accordingly, Applicant respectfully requests that Examining Attorney's refusal to register Applicant's mark be removed and the Board allow registration of Applicant's mark.

Applicant respectfully submits that its application is in condition for publication and favorable action is requested.

Respectfully submitted,
McAndrews, Held & Malloy, Ltd.

/s/ Joshua A. Aldort
Attorney of record