

ESTTA Tracking number: **ESTTA760071**

Filing date: **07/22/2016**

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

Proceeding	86534651
Applicant	Rugged & Dapper LLC
Applied for Mark	RUGGED & DAPPER
Correspondence Address	CHRISTINE B REDFIELD FENWICK & WEST LLP 801 CALIFORNIA STREET MOUNTAIN VIEW, CA 94041 UNITED STATES trademarks@fenwick.com, aolivas@fenwick.com, kali@fenwick.com
Submission	Supplemental Brief
Attachments	Supplemental_Brief.pdf(1068191 bytes )
Filer's Name	Christine B. Redfield
Filer's e-mail	trademarks@fenwick.com, jdueck@fenwick.com, credfield@fenwick.com
Signature	/christine redfield/
Date	07/22/2016

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

Serial No.: 86/534,651  
Mark: RUGGED & DAPPER  
Applicant: Rugged & Dapper LLC  
Examining Attorney: Keri H. Cantone

**EX PARTE APPEAL**  
**APPLICANT'S SUPPLEMENTAL BRIEF**

On May 17, 2016, the Examiner issued a final office action maintaining the refusal to register Applicant's RUGGED & DAPPER mark citing U.S. Trademark Registration Nos. 3,903,332, RUGGED (stylized) and 4,103,613, RUGGED FIX (stylized). On May 19, 2016, Applicant's Attorney, Christine Redfield, spoke with the Examiner who indicated that if a revised consent agreement with Coty Germany GmbH ("Coty"), the owner of Registration No. 3,903,332 for the RUGGED mark was submitted, together with an amendment to the application deleting hair care products, the refusal to register could be withdrawn.

Applicant submitted a Request for Reconsideration on July 20, 2016 under separate cover through TEAS, attaching a revised Consent and Coexistence Agreement between Applicant and Coty consenting to Applicant's registration of the RUGGED & DAPPER application and clearly indicating that the goods of Applicant and Coty travel in separate trade channels, that Applicant has agreed to restrict use of its mark if necessary and to take certain steps to avoid confusion. Regarding cited Registration No. 4,103,613 for RUGGED FIX, Applicant has amended its

application to delete hair care products in order to address the Examiner's concerns and avoid any possibility of confusion. (See print-out of Request for Reconsideration, attached as Exhibit A).

Concurrently with this Supplemental Brief, Applicant is filing a Request for Remand for Inclusion of Additional Evidence in the nature of the revised consent agreement with Coty and amendment of the Application and a Request to Suspend Proceedings pending the Board's decision on Request for Remand pursuant to Section 1205 of the Trademark Trial and Appeal Board Manual of Procedure.

### **CONCLUSION**

In light of the above revised consent agreement with Coty and the amendment to the Application, RUGGED & DAPPER is not confusingly similar to RUGGED and RUGGED FIX based on Trademark Act Section 2(d). Applicant respectfully requests that the Board reverse the Examining Attorney's refusal to register Applicant's mark.

FENWICK & WEST LLP

Dated: July 22, 2016

By:           /Christine B. Redfield/            
Christine B. Redfield, Esq.  
FENWICK & WEST LLP  
Silicon Valley Center  
801 California Street  
Mountain View, CA 94041  
(650) 988-8500

**EXHIBIT A**

## Request for Reconsideration after Final Action

**The table below presents the data as entered.**

Input Field	Entered
<b>SERIAL NUMBER</b>	86534651
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 104
<b>MARK SECTION</b>	
<b>MARK</b>	http://tmng-al.uspto.gov/resting2/api/img/86534651/large
<b>LITERAL ELEMENT</b>	RUGGED & DAPPER
<b>STANDARD CHARACTERS</b>	YES
<b>USPTO-GENERATED IMAGE</b>	YES
<b>MARK STATEMENT</b>	The mark consists of standard characters, without claim to any particular font style, size or color.
<b>EVIDENCE SECTION</b>	
<b>EVIDENCE FILE NAME(S)</b>	
<b>ORIGINAL PDF FILE</b>	<a href="#">evi_1-839136249-20160720211808150127_ . Rugged_Dapper.pdf</a>
<b>CONVERTED PDF FILE(S) (3 pages)</b>	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\865\346\86534651\xml14\RFR0002.JPG</a>
	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\865\346\86534651\xml14\RFR0003.JPG</a>
	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\865\346\86534651\xml14\RFR0004.JPG</a>
<b>DESCRIPTION OF EVIDENCE FILE</b>	Attached is a revised Consent and Coexistence Agreement between Applicant and the owner of Registration No. 3903332 which clearly indicates that the goods of applicant and registrant travel in separate trade channels, that Applicant has agreed to restrict use if necessary and take certain steps to avoid confusion. Regarding cited Registration No. 4103613, Applicant has amended its application in order to avoid any possibility of confusion. In view of the revised Consent and Coexistence Agreement and the amendments made herein, Applicant respectfully requests that the 2(d) likelihood of confusion refusal be withdrawn and the applicant approved.
<b>GOODS AND/OR SERVICES SECTION (current)</b>	
<b>INTERNATIONAL CLASS</b>	003
<b>DESCRIPTION</b>	
Men's Skincare, Grooming and Beauty products, namely, facial moisturizers, cleansers, oils for the face and hair, hand cream	
<b>FILING BASIS</b>	Section 1(a)
<b>FIRST USE ANYWHERE DATE</b>	At least as early as 08/01/2014
<b>FIRST USE IN COMMERCE DATE</b>	At least as early as 11/10/2014
<b>GOODS AND/OR SERVICES SECTION (proposed)</b>	
<b>INTERNATIONAL CLASS</b>	003
<b>TRACKED TEXT DESCRIPTION</b>	
<del>Men's Skincare, Grooming and Beauty products, namely, facial moisturizers, cleansers, oils for the face and hair, hand cream;</del> <a href="#">Men's skincare,</a>	

[grooming and beauty products, namely, facial moisturizers, cleansers, oils for the face, and hand cream; none of the foregoing relating to hair care preparations, namely, shampoos, hair conditioners and non-medicated hair scalp treatments](#)

<b>FINAL DESCRIPTION</b>	
Men's skincare, grooming and beauty products, namely, facial moisturizers, cleansers, oils for the face, and hand cream; none of the foregoing relating to hair care preparations, namely, shampoos, hair conditioners and non-medicated hair scalp treatments	
<b>FILING BASIS</b>	Section 1(a)
<b>FIRST USE ANYWHERE DATE</b>	At least as early as 08/01/2014
<b>FIRST USE IN COMMERCE DATE</b>	At least as early as 11/10/2014
<b>ADDITIONAL STATEMENTS SECTION</b>	
<b>MISCELLANEOUS STATEMENT</b>	In view of this Request for Reconsideration response, Applicant requests that the Appeal be suspended and the current deadline of July 22, 2016 to submit a supplemental appeal brief be extended.
<b>SIGNATURE SECTION</b>	
<b>RESPONSE SIGNATURE</b>	/christine redfield/
<b>SIGNATORY'S NAME</b>	Christine B. Redfield
<b>SIGNATORY'S POSITION</b>	Attorney of Record
<b>SIGNATORY'S PHONE NUMBER</b>	(650) 335-7947
<b>DATE SIGNED</b>	07/20/2016
<b>AUTHORIZED SIGNATORY</b>	YES
<b>CONCURRENT APPEAL NOTICE FILED</b>	NO
<b>FILING INFORMATION SECTION</b>	
<b>SUBMIT DATE</b>	Wed Jul 20 21:43:58 EDT 2016
<b>TEAS STAMP</b>	USPTO/RFR-X.XX.XXX.XXX-20 160720214358036398-865346 51-550a6fac7630d70b1b1dad 22ba5272093c7e5d6e4b814a8 9dbc2664bfa3d5f48-N/A-N/A -20160720211808150127

Under the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PTO Form 1960 (Rev 10/2011)

OMB No. 0651-0050 (Exp 07/31/2017)

### **Request for Reconsideration after Final Action**

#### **To the Commissioner for Trademarks:**

Application serial no. **86534651** RUGGED & DAPPER(Standard Characters, see <http://tmng-al.uspto.gov/resting2/api/img/86534651/large>) has been amended as follows:

#### **EVIDENCE**

Evidence in the nature of Attached is a revised Consent and Coexistence Agreement between Applicant and the owner of Registration No. 3903332 which clearly indicates that the goods of applicant and registrant travel in separate trade channels, that Applicant has agreed to restrict use if necessary and take certain steps to avoid confusion. Regarding cited Registration No. 4103613, Applicant has amended its application in order to avoid any possibility of confusion. In view of the revised Consent and Coexistence Agreement and the amendments made herein, Applicant respectfully requests that the 2(d) likelihood of confusion refusal be withdrawn and the applicant approved. has been attached.

**Original PDF file:**

Converted PDF file(s) ( 3 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

#### CLASSIFICATION AND LISTING OF GOODS/SERVICES

**Applicant proposes to amend the following class of goods/services in the application:**

**Current:** Class 003 for Men's Skincare, Grooming and Beauty products, namely, facial moisturizers, cleansers, oils for the face and hair, hand cream

Original Filing Basis:

**Filing Basis: Section 1(a), Use in Commerce:** The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 08/01/2014 and first used in commerce at least as early as 11/10/2014 , and is now in use in such commerce.

**Proposed:**

**Tracked Text Description:** ~~Men's Skincare, Grooming and Beauty products, namely, facial moisturizers, cleansers, oils for the face and hair, hand cream;~~ Men's skincare, grooming and beauty products, namely, facial moisturizers, cleansers, oils for the face, and hand cream; ~~none of the foregoing relating to hair care preparations, namely, shampoos, hair conditioners and non-medicated hair scalp treatments~~

Class 003 for Men's skincare, grooming and beauty products, namely, facial moisturizers, cleansers, oils for the face, and hand cream; none of the foregoing relating to hair care preparations, namely, shampoos, hair conditioners and non-medicated hair scalp treatments

**Filing Basis: Section 1(a), Use in Commerce:** The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 08/01/2014 and first used in commerce at least as early as 11/10/2014 , and is now in use in such commerce.

#### ADDITIONAL STATEMENTS

##### Miscellaneous Statement

In view of this Request for Reconsideration response, Applicant requests that the Appeal be suspended and the current deadline of July 22, 2016 to submit a supplemental appeal brief be extended.

#### SIGNATURE(S)

##### Request for Reconsideration Signature

Signature: /christine redfield/ Date: 07/20/2016

Signatory's Name: Christine B. Redfield

Signatory's Position: Attorney of Record

Signatory's Phone Number: (650) 335-7947

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the owner's/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the owner/holder in this matter: (1) the owner/holder has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 86534651

Internet Transmission Date: Wed Jul 20 21:43:58 EDT 2016

TEAS Stamp: USPTO/RFR-X.XX.XXX.XXX-20160720214358036

398-86534651-550a6fac7630d70b1b1dad22ba5

272093c7e5d6e4b814a89dbc2664bfa3d5f48-N/

A-N/A-20160720211808150127

## COEXISTENCE AND CONSENT AGREEMENT

This agreement constitutes Coty Germany GmbH's ("Coty") consent to Rugged & Dapper LLC's ("Rugged & Dapper") registration of the mark RUGGED & DAPPER, U.S. Application Serial No. 86534651 (the "Rugged & Dapper Application"). This agreement further constitutes Rugged & Dapper's consent to Coty's registration of the mark RUGGED, U.S. Application Serial No. 86903756 (the "Coty Application").

Coty is the owner of RUGGED U.S. Registration No. 3903332 for "Soaps, perfumery; essential oils; cosmetics; cosmetic hair lotions" (the "Coty Registration"). Coty is also the *owner* of the Coty Application for the same goods.

The U.S. Patent and Trademark Office has cited the Coty Registration against the Rugged & Dapper Application. Coty hereby consents to Rugged & Dapper's registration of RUGGED & DAPPER, U.S. Application Serial No. 86534651 for "Men's Skincare, Grooming and Beauty products, namely, facial moisturizers, cleansers, oils for the face and hair, hand cream."

The U.S. Patent and Trademark Office has cited the Rugged & Dapper Application against the Coty Application. Rugged & Dapper consents to Coty's registration of RUGGED for "Soaps, perfumery; essential oils; cosmetics; cosmetic hair lotions."

This mutual letter of consent is given because the parties agree that there is no likelihood of confusion in the U.S. resulting from the contemporaneous use of the RUGGED and RUGGED & DAPPER marks for their respective goods in view of the differences of the use and/or intended use of their trademarks, the manner in which the goods are sold and/or will be sold, and the different channels of distribution of the goods.

The applicant distributes its RUGGED & DAPPER products for men on amazon.com, through its website and plans to also distribute through a few small local shops which are

primarily beauty salons. The trade channels of the respective parties are different since Coty generally sells its male-oriented products through department stores and big box stores typically located in urban settings and not in the type of local beauty salons and other select boutiques that will sell the applicant's products. Consumers will not encounter the parties' respective products in the same settings and Rugged & Dapper will ensure that the trade channels do not overlap. In the event that, notwithstanding the foregoing, actual confusion develops in the marketplace, the Parties will cooperate and take all reasonable and immediate steps necessary to eliminate such confusion. Such steps may include, but are not limited to, Rugged & Dapper's agreement to provide disclaimers on its website, in promotional materials and on product packaging stating that the parties are not related, if necessary. Rugged & Dapper further agrees to avoid selling its products in any location that is in close proximity to locations where Coty's RUGGED products are sold if necessary so as to not cause confusion.

This mutual letter of consent may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

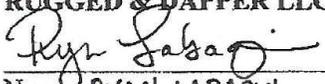
**COTY GERMANY GMBH**

  
Name: Eileen Josie  
Title: Proc. Inst.  
Date: 7/20/16

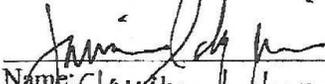
**COTY GERMANY GMBH**

  
Name: Joseph J. Cuklid  
Title: Proc. Inst.  
Date: 7/20/16

**RUGGED & DAPPER LLC**

  
Name: RYAN LABAQUI  
Title: CO-FOUNDER  
Date: 7/20/2016

**RUGGED & DAPPER LLC**

  
Name: Janine Labaqui  
Title: Co-Founder  
Date: 7/20/16