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Filing date: **04/28/2005**

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

Proceeding	91163331
Party	Defendant ARCTICSHIELD, INC. ARCTICSHIELD, INC. 905 S. 9th, Suite D Broken Arrow, OK 74012
Correspondence Address	FRANK J. CATALANO GABLE & GOTWALS 100 W. 5TH STREET 10 FL TULSA, OK 74103-4217
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Date	04/28/2005
Attachments	ArcticShield.pdf (21 pages)

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

Saramar, L.L.C.,)	
)	
Opposer,)	
)	Opposition No. 91163307
v.)	
)	Opposition No. 91163331
ArcticShield, Inc.,)	
)	
Applicant.)	

**APPLICANT’S RESPONSE TO
OPPOSER’S MOTION FOR SUMMARY JUDGMENT**

Applicant ArcticShield, Inc. (“ArcticShield”), hereby responds to the Motion for Summary Judgment filed herein by Opposer Saramar, L.L.C., as follows:¹

I. UNDISPUTED FACTS

1. Saramar is the owner of U.S. Trademark Application Serial No. 78/110,238 for the mark “EX-SCENT” for “thermal underwear, tops and bottoms, shirts, t-shirts, pants, turtlenecks, mock turtlenecks, [and] underwear” in International Class 25.
2. The PTO issued Notice of Allowance of the PTO document bearing the date of June 17, 2003. *See* Exhibit 2 to Opposer’s Motion for Summary Judgment.
3. As of December 18, 2003, due to failure to timely file a Statement of Use or a Request for Extension of Time to File a Statement of Use, Opposer’s application was abandoned.

¹ Opposer has filed a Motion to Consolidate Opposition Nos. 91163307 and 91163331, which Applicant has not opposed, and Opposer filed its Motion for Summary Judgment as applicable to both proceedings. Accordingly, Applicant files this combined response in anticipation of the consolidation of Opposition Nos. 91163307 and 91163331.

4. On December 18, 2003, Opposer filed a Request for Extension of Time to File a Statement of Use asserting a mailing date of June 24, 2003 for the Notice of Allowance. *See* Exhibit 1.
5. On March 27, 2004, the USPTO provided Opposer with Notice of Late Received Document specifically stating that Opposer's Request for Extension of Time to File a Statement of Use was due on December 17, 2004. *See* Exhibit 2.
6. The USPTO entered Notice of Abandonment of Opposer's application 78/110,238 on April 6, 2004. *See* Exhibit 4 to Opposer's Motion for Summary Judgment.
7. Opposer's Petition to Revive its abandoned application, filed on or about May 20, 2004, asserts that the due date for Opposer's Request for Extension of Time was December 24, 2003.
8. Applicant is the owner of U.S. Trademark Application Serial No. 76/509,381 for the mark "X SCENT" and U.S. Trademark Application Serial No. 76/509,382 for the mark "X SCENT and design" for "clothing, namely, gloves, mittens, footwear, socks, neckwear, muffs, bib overalls, jackets and coveralls," in International Class 25.
9. On April 12, 2004, the USPTO advised Applicant that Opposer's application was abandoned and that consideration of Opposer's application 78/110,238 as a potential bar to registration of Applicant's mark was withdrawn.
10. Subsequent to the abandonment of Opposer's application, the PTO approved and published Applicant's applications Serial Nos. 76/509,381 and 76/509,382, on August 3, 2004, and July 27, 2004, respectively.
11. Applicant's first use of the mark "X SCENT" occurred in August 2003, and Applicant has continuously used the mark "X SCENT" since the date of first use.

II. LEGAL STANDARDS

For Opposer to prevail on its motion for summary judgment, Opposer, as the moving party, must demonstrate the absence of any genuine issue of material fact, and that it is entitled to summary judgment as a matter of law. *See* Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). The evidence of record and any inferences that may be drawn from the underlying undisputed facts must be viewed in the light most favorable to the non-moving party. *See Olde Tyme Foods, Inc. v. Roundy's, Inc.*, 961 F.2d 200, 22 USPQ2d 1542 (Fed. Cir. 1992). In deciding a motion for summary judgment, the Board may not resolve an issue of fact against the non-moving party; it may only determine whether a genuine issue of material fact exists. *See Meyers v. Brooks Shoe, Inc.*, 912 F.2d 1459, 16 USPQ2d 1055 (Fed. Cir. 1990); *Litton Indus., Inc. v. Litronix, Inc.*, 577 F.2d 709, 198 USPQ 280 (C.C.P.A. 1978). Summary judgment may be entered only when the record taken as a whole could not lead a rational trier of fact to find for Applicant. *See Opryland USA Inc. v. Great Am. Music Show Inc.*, 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992); *Olde Tyme Foods*, 961 F.2d 200.

III. ARGUMENT

Opposer moves for judgment as a matter of law on the basis of two allegedly “indisputable” facts, both of which are very much in dispute and both of which raise genuine issues of material fact. Accordingly, Opposer Saramar’s Combined Motion for Summary Judgment should be denied, and the Board should compel Opposer Saramar to respond to Applicant’s discovery requests.

A. The Issue of Priority Raises Genuine Issues of Material Fact.

Opposer asserts in its Motion for Summary Judgment that it is the owner of a federal trademark registration that has priority over both of Applicant’s subject applications. Opposer

cannot establish facts sufficient to support its allegations; therefore judgment as a matter of law is inappropriate.

Opposer asserts that its alleged trademark has been granted and registered by the Patent and Trademark Office. However, Opposer has not pleaded that it is the owner of a registered trademark. Opposer should not be permitted to plead an application, avoid a petition for cancellation, and then assert an un-pleaded registration in its motions before this Board. While it is true that Opposer did not have a registered trademark at the time this Opposition was filed, Opposer should not be allowed to assert a registered trademark absent an amendment of its pleadings.

Opposer further asserts that its un-pleaded and un-alleged registration has priority over both of Applicant's applications. Opposer's assertions require this Board to ignore the fact that Opposer abandoned its application for trademark registration and that Applicant is senior in both use of the subject marks and in effective filing date.

The Patent and Trademark Office approved Applicant's marks for publication, and the marks were published on July 27, 2004, and August 3, 2004. It is undisputed that at the time Applicant's marks were published, the Applicant was both the senior user of the marks in question and the holder of the earliest-filed un-abandoned applications regarding the marks in question. Opposer abandoned its application for trademark registration on December 18, 2003. At that point in the process, Applicant, with an effective filing date of April 25, 2003, had the status of senior applicant. Furthermore, Applicant was the senior user, with a first use date of August 2003. Based upon Applicant's status as both senior applicant and senior user, the Patent and Trademark Office approved applications 76/509,381 and 76/509,382 for publication and notified Applicant of its seniority status.

Opposer alleges that it properly filed a Petition to Revive the application that it had earlier abandoned. Opposer's assertions of revival raise significant and genuine issues of material fact as to the abandonment and alleged revival of its application. A petition for revival of an abandoned application requires "[a] statement, signed by someone with firsthand knowledge of the facts, that the delay in filing the response on or before the due date was unintentional." 37 C.F.R. § 2.66(b)(2). The issue of whether Opposer's abandonment of its trademark application was intentional or unintentional raises genuine issues of material fact that preclude judgment as a matter of law.

Opposer asserts in its December 18, 2003 Request for Extension of Time that the Notice of Allowance was mailed on June 24, 2003, while the Notice of Allowance was actually mailed on June 17, 2003. Opposer continues to assert this incorrect date in its Petition to Revive (which would be unnecessary if the asserted date were correct). This assertion raises many factual issues, such as whether delay in filing the response was unintentional, when Opposer had actual knowledge of when its application was abandoned, whether Opposer's Petition to Revive was timely in the face of its actual knowledge of abandonment, when Opposer first became aware of Applicant's trademark applications, and what part knowledge of Applicant's applications, if any, played in Opposer's decision to proceed with its trademark application.

Opposer's Motion for Summary Judgment also relies heavily upon Opposer's alleged effective filing date of February 21, 2002. Even a cursory reading of Trademark Rule 2.83(b) and TMEP Section 1208 makes it clear that "effective filing date" is a term of art that recognizes that some applications are deemed filed on a date other than the date they arrive in the Patent and Trademark Office's mailroom or in the Patent and Trademark Office's queue of electronically-filed applications. Opposer's abandonment of its trademark application and the Patent and Trademark Office's subsequent treatment of Applicant's applications may very well impact the

effective filing date of Opposer's allegedly revived application. The effective filing date of Opposer's allegedly revived application itself raises further issues of material fact that preclude judgment as a matter of law.

Opposer's Motion for Summary Judgment also ignores the many issues of fact that surround the Patent and Trademark Office's treatment of Applicant's applications 76/509,381 and 76/509,382. Applicant's first use of the mark "X SCENT" occurred in August 2003, and Applicant has continuously used the mark "X SCENT" since the date of first use. Accordingly, the PTO on July 7 and 14, 2004, correctly passed Applicant's applications 76/509,382 and 76/509,381, respectively, on for publication because the Applicant was both the senior user and the senior applicant. Pursuant to 37 C.F.R. § 2.83(a) and TMEP §§ 206 and 1208.01, a mark will be published for opposition only if it has the earliest effective filing date. The Patent and Trademark Office allowed the publication of Applicant's applications, indicating that Applicant's applications had the earliest effective filing date. Opposer's assertions to the contrary at the very least raise genuine issues of material fact as to the effective filing date to be accorded to Opposer's allegedly revived application.

B. The Issue of Likelihood of Confusion Raises Genuine Issues of Material Fact.

Opposer correctly recognizes that the issue of “[w]hether likelihood of confusion exists is a question of law, *based on underlying factual determinations.*” *Han Beauty, Inc. v. Alberto-Culver Co.*, 236 F.3d 1333, 1336 (Fed. Cir. 2001) (emphasis added). The determination of likelihood of confusion requires a case-by-case analysis and careful consideration of the factual circumstances surrounding each of the factors identified in *In re E.I. DuPont DeNemours & Co.*, 476 F.2d 1357 (C.C.P.A. 1973). *See Han Beaut.*, 236 F.3d at 1336. The factors identified in *In re DuPont* include:

- (1) The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression;
- (2) The similarity or dissimilarity and nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use;
- (3) The similarity or dissimilarity of established, likely-to-continue trade channels;
- (4) The conditions under which and buyers to whom sales are made;
- (5) The fame of the prior mark;
- (6) The number and nature of similar marks in use on similar goods;
- (7) The nature and extent of any actual confusion;
- (8) The length of time during and conditions under which there has been concurrent use without evidence of actual confusion;
- (9) The variety of goods on which a mark is or is not used;
- (10) The market interface between applicant and the owner of a prior mark:
 - (a) A mere “consent” to register or use;

- (b) Agreement provisions designed to preclude confusion;
 - (c) Assignment of mark, application, registration and good will of the related business;
 - (d) Laches and estoppel attributable to owner of prior mark and indicative of lack of confusion;
- (11) The extent to which applicant has a right to exclude others from use of its mark on its goods;
- (12) The extent of potential confusion;
- (13) Any other established fact probative of the effect of use.

476 F.2d at 1361.

The Board must consider each of the factors listed above and must make the factual determinations relevant to each of the factors. The very act of considering the multiple factors identified in *In re DuPont*, 476 F.2d 1333, raises a host of issues of material fact. Accordingly, a determination as to likelihood of confusion is inappropriate at this stage of the proceedings. Opposer has failed to respond to any of Applicant's discovery requests, including multiple requests regarding the factors identified in *In re DuPont*, 476 F.2d 1333. Discovery is inherently necessary for the Board to be able to determine the issue of likelihood of confusion, and therefore, judgment as a matter of law is not appropriate.

C. Applicant's Affirmative Defenses Raise Genuine Issues of Material Fact.

Opposer has attempted to ignore the multiple defenses that Applicant has pleaded, each of which raises genuine issues of material fact that preclude summary judgment. Applicant has raised the affirmative defenses of laches, acquiescence and/or estoppel, prior innocent adoption, and absence of likely confusion.

Applicant's affirmative defense of absence of likely confusion raises multiple issues of fact, each of which is a bar to judgment as a matter of law. As addressed previously in Part

III.B., *supra*, the determination of likelihood of confusion requires inquiry by the Board into the factual circumstances surrounding Applicant's marks and Opposer's alleged marks, none of which can be determined at this stage of the proceedings.

Applicant has also asserted a defense based upon estoppel. When an applicant has detrimentally relied upon the conduct or statements of a party, that party may be estopped from acting contrary to its prior conduct or making assertions contrary to its prior statements. *See Nat'l Cable Tel. Ass'n v. Am. Cinema Editors Inc.*, 937 F.2d 1572, 19 USPQ2d 1424, 1432 (Fed. Cir. 1991); *Wendt v. Granger*, 125 USPQ 20, 21 (T.T.A.B. 1960). Applicant detrimentally relied upon Opposer's abandonment of its trademark registration and has alleged that Opposer should be estopped from asserting any revival of the application based upon such detrimental reliance.

Applicant also detrimentally relied upon the assertions by the Patent and Trademark Office that Opposer had abandoned its application and that Applicant was entitled to seniority status for its applications. It would be inequitable to preclude the registrations sought by Applicant that were pursued based upon the representations of the Patent and Trademark Office.

D. Opposer Should Not Be Allowed to Avoid Counterclaims and Factual Issues Related to Descriptiveness.

As discussed previously, Opposer's opposition pleads only its application, not that it is the owner of a registered trademark. Applicant has answered the Opposition accordingly. Applicant now urges a registration to the Board. If Opposer wishes to rely upon a registration, it should plead such registration. Applicant would have an opportunity to file counterclaims for cancellation of any registered trademark held by Opposer. A counterclaim for cancellation of any registered trademark held by Opposer would necessarily raise genuine issues of material fact as to the descriptiveness of Opposer's trademark and the circumstances surrounding the abandonment and revival of Opposer's trademark.

Opposer should not be permitted to strategically avoid pleading a registered trademark, to avoid counterclaims, and then assert an un-pleaded registration in its motions before this Board. If Opposer wishes to amend its pleadings to assert that it is the holder of a registered mark, Applicant has no objection to such amendment provided Applicant is afforded the opportunity to counterclaim for cancellation of any such registered mark.

CONCLUSION

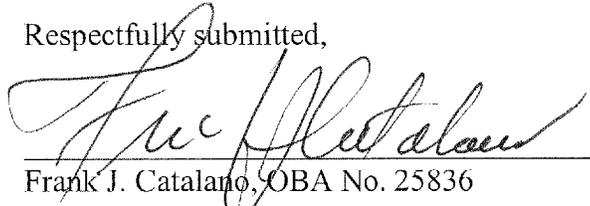
Opposer has failed to demonstrate the absence of any genuine issue of material fact. In addition to the many factual issues identified above, the conduct of Opposer in its own trademark application and in this Opposition indicate that Opposer may be utilizing this Motion for Summary Judgment to avoid discovery on the underlying issues. The U.S. Trademark Rules of Practice require that a Statement of Use or Request for Extension of Time to File a Statement of Use be filed within six months of Notice of Allowance. Opposer did not comply with this rule. Therefore, Opposer's application was abandoned on December 18, 2003. The rules permit a Petition for Revival to be filed after abandonment. Opposer chose to belatedly file a Request for

Extension of Time to File a Statement of Use asserting to the Patent and Trademark Office that the cutoff date was December 24, 2003, contrary to the date on the Notice of Allowance. The rules require submission of discovery responses within 30 days of service of the interrogatories and document requests. Sixty days after service of Applicant's discovery requests, Opposer has still not responded to the discovery requests. Instead, Opposer filed this Motion for Summary Judgment.

Opposer's repeated disregard for the U.S. Trademark Rules of Practice and Federal Discovery Rules raises many factual issues including whether its delay in filing any response to the Notice of Allowance was unintentional, when Opposer had actual knowledge that its application was abandoned, whether Opposer's Petition to Revive was timely in the face of its actual knowledge of abandonment, when Opposer first became aware of Applicant's trademark applications, and what part knowledge of Applicant's applications, if any, played in Opposer's decision to proceed with its trademark application. Opposer's effort to circumvent the need to respond to discovery requests should be rejected by this Board, and Opposer Saramar's Combined Motion for Summary Judgment should be denied.

Furthermore, and more importantly Opposer has failed to establish any entitlement to judgment as a matter of law. In order for Opposer to prevail on its motion for summary judgment, Opposer, as the moving party, must demonstrate the absence of any genuine issue of material fact and that it is entitled to summary judgment as a matter of law. When viewed in the light most favorable to Applicant, Applicant's answer and affirmative defenses raise multiple factual issues regarding the priority of Opposer's asserted trademark and the likelihood of confusion regarding Opposer's asserted trademark. These are factual issues that should be given full consideration and determination by the Board before any final order is entered.

Respectfully submitted,



Frank J. Catalano, OBA No. 25836

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100 West Fifth Street

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(918) 595-4800

(918) 595-4990 (fax)

Attorneys for Applicant ArcticShield, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of April, 2005, a true, correct and exact copy of the above and foregoing document was served by placing same in the United States mail, with proper postage thereon duly prepaid, to those parties as listed below:

Nicholas J. Valenziano, Jr.
1000 East Hanes Mill Road
Winston-Salem, NC 27105

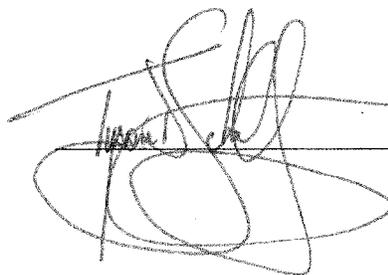
 for Frank Catolano

EXHIBIT 1

PTO Form 1581 (Rev 4/2000)

OMB Control #0851-0008 (Exp. 06/30/2005)

Extension Statement of Use Filing

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	78110238
LAW OFFICE ASSIGNED	LAW OFFICE 110
MARK SECTION	
MARK	EX-SCENT
OWNER SECTION (current)	
NAME	Samar, L.L.C.
STREET	125 South Wacker Drive, Suite 300
CITY	Chicago
STATE	IL
ZIP/POSTAL CODE	60606
COUNTRY	US
OWNER SECTION (proposed)	
NAME	Samar, L.L.C.
STREET	10 South Riverside Plaza
CITY	Chicago
STATE	IL
ZIP/POSTAL CODE	60606
COUNTRY	US
PHONE	336-519-7407
FAX	336-519-7312
GOODS AND/OR SERVICES SECTION	
INTERNATIONAL CLASS	025
KEEP EXISTING GOODS AND/OR SERVICES	YES

EXTENSION SECTION	
EXTENSION NUMBER	1
ALLOWANCE MAIL DATE	06/24/2003
STATEMENT OF USE	NO
PAYMENT SECTION	
NUMBER OF CLASSES	1
SUBTOTAL AMOUNT	150
TOTAL AMOUNT	150
SIGNATURE SECTION	
SIGNATURE	/crystal m. pettitt/
SIGNATORY NAME	Chrystal M. Pettitt
SIGNATORY DATE	12/18/2003
SIGNATORY POSITION	Trademark Application Specialist
FILING INFORMATION	
SUBMIT DATE	Thu Dec 18 12:02:21 EST 2003
TEAS STAMP	USPTO/ESU-172.30.230.5-20 031218120221078070-781102 38-200bd3b5a8cd1df0657b96 8f4088b38cDA965-200312181 20136966102

PTO Form 1581 (Rev 4/2000)

OMB Control #0651-0009 (Exp. 06/30/2005)

**Trademark/Service Mark Extension for Filing a Statement of Use
(15 U.S.C. Section 1051(d))**

To the Commissioner for Trademarks:

MARK: EX-SCENT

SERIAL NUMBER: 78110238

The applicant, Saramar, L.L.C., residing at 10 South Riverside Plaza, Chicago, IL US 60606, requests a six-month extension of time to file the Statement of Use under 37 C.F.R. Section 2.89 in this application. The Notice of Allowance mailing date was 06/24/2003.

For International Class: 025, the applicant has a continued bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with all of the goods and/or services listed in the Notice of Allowance, or as subsequently modified.

This is the first extension request.

A fee payment in the amount of \$150 will be submitted with the form, representing payment for 1 class.

Declaration

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

Signature: /chrystal m. pettitt/ Date: 12/18/2003

Signatory's Name: Chrystal M. Pettitt

Signatory's Position: Trademark Application Specialist

RAM Sale Number: 965

RAM Accounting Date: 12/18/2003

Serial Number: 78110238

Internet Transmission Date: Thu Dec 18 12:02:21 EST 2003

TEAS Stamp: USPTO/ESU-172.30.230.5-20031218120221078

070-78110238-200bd3b5a8cd1df0657b968f408

8b38cDA965-20031218120136966102

[Go Back](#)

Serial/Registration Number: **7810037** Date: **1.15.04**
 Requested by: _____ Office: **ITU**
 Signature: **Deborah M. Sale** Phone: **308-9550 150 145**

FEE CODE	REFUND AMOUNT	Classes or Quantity	DESCRIPTION of TRADEMARK PROCESSING FEES	FEE Amount
361	\$		Application for Registration, per class	\$245
362	\$		Amendment to Allege Use under §1(c), per class	\$100
363	\$		Statement of Use under §1(d)(1), per class	\$100
364	\$		Extension of Time to file a Statement of Use under §1(d)(1), per class	\$100
365	\$		Application for Renewal under §9, per class	\$300
366	\$		Additional Fee for late Renewal under §9, per class	\$100
367	\$		Publication of mark under §12c, per class	\$100
368	\$		Issuing a New Certificate of Registration, per class	\$100
369	\$		Certificate of Correction, per registration	\$100
370	\$		Disclaimer to Registration, per registration	\$100
371	\$		Amendment to Registration, per registration	\$100
372	\$		Section 8 Affidavit, per class	\$100
373	\$		Section 15 Affidavit, per class	\$100
374	\$		Section 8 & 15 Affidavit combined request, per class	\$200
375	\$		Petition to Commissioner	\$100
376	\$		Petition for Cancellation, per class	\$200
377	\$		Notice of Opposition, per class	\$200
378	\$		Ex Parte Appeal, per class	\$100
379	\$		Request to Divide an Application, per new application file created	\$100
FEE CODE	REFUND AMOUNT	Quantity	FASTENER QUALITY ACT RECORDAL FEES	FEE Amount
650	\$		Application fee for recordal of insignia, per request	\$20
651	\$		Renewal of insignia recordal, per request	\$20
652	\$		Surcharge for late renewal of insignia recordal, per request	\$20

\$ **150** Total Amount to be Refunded/Credited

Explanation for Refund/Correction:

Incomplete Application/Request
 Overpayment
 Fee is not Required

Early/Late Filed Request
 Duplicate Payment
 Change Fee Code to Fee Code

Refund to be processed by Treasury Check to:
 (Correspondence Address)

Arthur J. Debaugh
1000 E. Hanes Mill Rd
Winston Salem, NC 27105-1374

Refund to be credited to Deposit Account No:

Refund Processed by: Enter Name Here

Date:

EXHIBIT 2

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/110238

APPLICANT: Saramar, L.L.C.

March 27, 2004

CORRESPONDENT ADDRESS:
ARTHUR J. DEBAUGH
1000 E HANES MILL RD
WINSTON SALEM NC 27105-1384

RETURN ADDRESS:
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

MARK: EX-SCENT

CORRESPONDENT'S REFERENCE/DOCKET NO: 0210029 / J.

CORRESPONDENT EMAIL ADDRESS:
cpettitt@saralee.com

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examiner's name and "Intent to Use Section".
4. Your telephone number and e-mail address.

INTENT TO USE OFFICE ACTION

RE: Serial Number 78/110238

NOTICE OF LATE RECEIVED DOCUMENT

This letter is to advise you that your document(s) identified below was received late.

Statement of Use
 Extension Request
 Statement of Use and Extension Request

A Statement of Use or Request for Extensions of Time to File a Statement of Use must be filed within six months following the issuance of a Notice of Allowance or during an existing extension period. 37 C.F.R. §§2.88(a) and 2.89(a). The deadline expired on December 17, 2003. The document identified above was received on December 18, 2003. Accordingly, the document is late and will not be accepted. The application will be abandoned in due course and any fees submitted with the document will be refunded.

If the delay in filing the document was unintentional, Applicant can file a Petition to Revive. 37 CFR §2.66. The petition must be filed within two months from the mailing date of the Notice of Abandonment. It must include a \$100 petition fee, a statement, signed by someone with firsthand knowledge of the facts that the delay in filing the extension request or Statement of Use was unintentional. In addition, the petition should include an extension request or Statement of Use that meets the requirements of 37 CFR §2.89, including the filing fee, plus the fees for any extension

request that would have been due if the application never abandoned. For additional information on filing a Petition to Revive, please contact the Office of the Commissioner for Trademarks at 703-308-8900.

If you file a Petition to Revive, please note that you must file a Statement of Use or request for a further extension of time when it becomes due, even though the application has been abandoned. 37 CFR §2.89(g).

Desmond Sahr

Desmond Sahr
Legal Instrument Examiner
ITU/Divisional Unit
703-308-9550, ext 145
703-872-9251 (fax)

How to respond to this Office Action:

To respond formally using the Office's Trademark Electronic Application System (TEAS), visit <http://www.uspto.gov/teas/index.html> and follow the instructions.

To respond formally via regular mail, your response should be sent to the mailing Return Address listed above and include the serial number, the words "Intent to Use" and the examiner's name on the upper right corner of each page of your response.

To check the status of your application at any time, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov/>

For general and other useful information about trademarks, you are encouraged to visit the Office's web site at <http://www.uspto.gov/main/trademarks.htm>

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXMINER.