Mailed:
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Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Joanne Slokevage

Serial No. 75602873

Request for Reconsideration

Joanne Slokevage, *pro se*.

Douglas M. Lee, Trademark Examining Attorney, Law Office 108 (David Shallant, Managing Attorney).

Before Seeherman, Quinn and Bucher, Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

The Board, in a final decision dated November 10, 2004, affirmed the refusal to register the applied-for matter (the designation FLASH DARE! and design) pursuant to Sections 1, 2 and 45 of the Trademark Act, inasmuch as it constitutes a configuration of the goods that is not inherently distinctive and thus would not be perceived as a trademark. Nonetheless, in accordance with Trademark Rule 2.142(g), the Board determined that this decision would be set aside and applicant's applied-for matter would be

published for opposition if applicant, no later than thirty days from the mailing date of that decision, submitted an appropriate disclaimer "of the holes and flaps portion" of the applied-for matter.

 [1]

On December 10, 2004, applicant timely submitted a disclaimer that was not in the format indicated in the Board's November 10 decision.[2] She accompanied this paper with a request for an extension of time in the event the Board should deem the proffered disclaimer unacceptable. Prior to the Board's having had an opportunity to review this paper, applicant telephoned the author of this opinion and was told that there was some question about whether her proposed disclaimer would be acceptable as written.

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[1] Application Serial No. 75602873 was filed on December 4, 1998, based upon applicant's allegation of first use of the mark in commerce at least as early as December 18, 1997. The goods were identified in the application as filed, as "pants, overalls, shorts, culottes, dresses, skirts," in International Class 25.

[2] "No claim is made to the exclusive right to use *the U.S. Pat. Des. 410,689* holes and flaps feature, apart from the mark as shown."

Accordingly, on January 6, 2005, applicant withdrew this disclaimer and sought to substitute a more limited disclaimer.[3] Applicant, on January 10, 2005, also requested reconsideration of the Board's decision of November 10, 2004, pointing out what she alleges are misstatements, errors and oversights by the Board.

Applicant's arguments constitute nothing but reargument of the points made during prosecution of this application and appeal of the final refusal. The Board considered these arguments in rendering our final decision, and finds no error in that decision – with the exeption of a typographical error in a citation to the Trademark Manual of Examining Procedure (TMEP).[4] Therefore, we remain of the view that the holes and flaps portion of the applied-for matter[5] constitutes a product design which is not inherently distinctive, and would not, without evidence of acquired

[3] "No claim is made to the exclusive right to use the flaps feature, apart from the mark as shown."

[4] In the third and fourth lines of p. 6 of our decision of November 10, 2004, a citation intending to reference TMEP §1213.05 and §1213.05(f) contained incorrect numbers for that TMEP Section.

[5] It was not material to our decision of November 10 whether or not applicant's alleged source indicators in the earlier registration and/or the current application reflect a "seat pocket button" or whether the hole exposes the wearer's skin, thong or shirt, etc.

distinctiveness, be perceived as a trademark. Accordingly, the request for reconsideration is denied.

In accordance with 37 C.F.R. §2.145(d)(1), applicant's time for filing an appeal or commencing a civil action shall expire two months from the date of this decision.

Decision: The final decision dated November 10, 2004 stands. Applicant's request for reconsideration is hereby denied.