UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 76/059333

APPLICANT: Sno-Wizard Manufacturing, Inc.

AUG 14 2003

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MARK: SNOBALL

CORRESPONDENT'S REFERENCE/DOCKET NO: 12589

CORRESPONDENT EMAIL ADDRESS:

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

RE: Serial Number 76/059333

The applicant has filed a notice of appeal to the Trademark Trial and Appeal Board and has requested reconsideration on the examining attorney of the final refusal. The request is denied, the application will be forwarded to the Trademark Trial and Appeal Board for handling consistent with applicant's appeal.

A final refusal under Trademark Act Section 1, 2, 2(e)(1), 2(f) and 45 was issued on November 19, 2002 because applicants' mark SNOBALL was deemed generic and the apt descriptive name of applicant's snow ball making machines. Also, the acquired distinctiveness evidence was rejected as insufficient and because generic terms may not register under Trademark Act Section 2(f). In it its request for reconsideration, applicant has traversed the refusal and submitted various items supporting its views. As can be discerned, applicant's argument centers on the proposition that many others in the industry do not use applicant's proposed mark because they know the term identifies applicant. Applicant's main argument is a negative inference of acquired distinctiveness. Nevertheless, this argument does not overcome the stated refusal. Other arguments advanced by applicant concerning the registrability of the mark fail to persuade that the proposed mark functions as one.

The mark is refused registration under Trademark Act Section 1, 2, 2(e)(1), 2(f) and 45 because SNOWBALL, and its phonetic equivalent SNOBALL, is the apt descriptive and generic name for snowball machines and incapable of acquiring distinctiveness. Moreover, apart from the generic refusal, the proposed mark, as shown in the specimens of record does not function as one. Trademark Act Section 1 and 45. The way the mark is presented in the specimens of record does not create a trademark impression.

The file is forwarded to the TTAB for handling consistent with applicant's appeal.

/Raul Cordova/
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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 EXAMINING ATTORNEY.