

ESTTA Tracking number: **ESTTA93486**

Filing date: **08/07/2006**

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

Proceeding	76567881
Applicant	Focus Property Group, LLC
Applied for Mark	FOCUS PROPERTY GROUP
Correspondence Address	LAURI S. THOMPSON GREENBERG TRAURIG LLP 3773 HOWARD HUGHES PKWY STE 500N Las Vegas, NV 89109 UNITED STATES lvpto@gtlaw.com
Submission	Supplemental Brief
Attachments	FOCUS PROPERTY GROUP cl 37 Supplemental Brief.pdf (4 pages)(16211 bytes)
Filer's Name	Laurie S. Thompson
Filer's e-mail	thompsonl@gtlaw.com, whiteheads@gtlaw.com, daryl@gtlaw.com
Signature	/Laurie S. Thompson/
Date	08/07/2006

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

In re Application of:)	
FOCUS PROPERTY GROUP)	Law Office 114
Serial No. 76/567881)	
Filed: December 31, 2003)	Trademark Attorney
Trademark: FOCUS PROPERTY GROUP)	Vivian M. First
)	
)	

SUPPLEMENTAL BRIEF FOR APPELLANT

INTRODUCTION

Applicant (hereinafter "Appellant") hereby submits this Supplemental Brief as part of its appeal from Examiner's final refusal to register the above identified trademark, dated August 5, 2005 and continued on June 2, 2006, and respectfully requests that the Trademark Trial and Appeal Board reverse Examiner's decision rejecting the subject mark as being confusingly similar to U.S. Registration No. 2,359,956 for the mark FOCUS DEVELOPMENT in International Classes 036 and 037 for "real estate management and real estate brokerage; real estate development, construction, residential and commercial building and general contracting."

APPELLANT'S TRADEMARK

Appellant seeks registration on the Principal Register of its mark FOCUS PROPERTY GROUP for "land development and construction services; namely, planning, development and construction of residential communities, custom lot programs and commercial projects" in International Class 037.

ARGUMENT

This communication is meant to supplement Appellant's Appeal Brief, submitted to the Board for consideration on April 4, 2006. Appellant continues to rely on the arguments as made in its Appeal Brief, and respectfully submits the following response offering supplemental arguments in support of registration.

I. BACKGROUND

Appellant is the owner of a real estate development company working with a variety of builders to create master planned residential communities and commercial properties in the retail, business, and gaming industries. Appellant's mark FOCUS PROPERTY GROUP has been in use in commerce to identify its land development and construction services since June 10, 2002.

II. APPELLANT'S REGISTRATION SHOULD BE ALLOWED CONCURRENT USE

Throughout the entire prosecution of this application, Appellant has argued that its mark should be allowed to coexist with the prior registrants' marks, due in part to the dissimilar nature of the marks and the different commercial impressions conveyed by each (among other arguments). In the first Office Action written by Examiner, the 2(d) refusal was based on two prior registrations; specifically, FOCUS DEVELOPMENT and FOCUS 2000 (Registrations Nos. 2,359,956 and 2,372,203, respectively), both for similar services. Appellant argued that because both of these marks were allowed to register, consumers are unlikely to be confused by the addition of a third mark using the word "FOCUS" as part of the mark FOCUS PROPERTY GROUP because of the dissimilarities of the marks when considered in their entireties.

Examiner has repeatedly rejected this argument, however, based on the contention that the “FOCUS” portion of each mark is dominant and therefore consumer confusion is likely to result. Nevertheless, the refusal of Appellant’s mark based on the FOCUS 2000 mark was eventually withdrawn (leaving the 2(d) refusal based only on FOCUS DEVELOPMENT), and in the Office Action dated May 31, 2005, Examiner gave an explanation for withdrawing this refusal. Essentially, Examiner reasons that the addition of the “2000” portion of the “FOCUS” mark sufficiently modifies the entire mark so as to convey a dissimilar commercial impression; specifically, Examiner stated “the 2000 portion of the FOCUS 2000 mark modifies the meaning of FOCUS so that the mark suggests a modern focus, as in a focus for the current millennium.”

Through this reasoning, Examiner clearly admits that it is possible for two multi-word marks, both using the dominant term “FOCUS” for similar services, to coexist without likelihood of consumer confusion (i.e., FOCUS DEVELOPMENT Reg. No. 2,359,956 and FOCUS 2000 Reg. No. 2,372,203). As such, Appellant contends that its multi-word mark, also utilizing the term “FOCUS,” should be allowed to register based on the dissimilarities in sight, sound, meaning and commercial impression in the overall marks as used in commerce.

In the alternative, Appellant respectfully requests that should the Board not be convinced by its arguments for registration in this Supplemental Brief and the main Appeal Brief (submitted April 4, 2006), Appellant be allowed leave to amend its application for concurrent use. Appellant submits in this alternative argument that allowing leave to amend its application for further modification of its mark, specifically modifying the geographic scope of its claim, will significantly distinguish its FOCUS PROPERTY GROUP

Mark: FOCUS PROPERTY GROUP
Serial No.: 76/567881

mark from the Registrant's FOCUS DEVELOPMENT mark. As such, both marks will be able to coexist without any likelihood of consumer confusion.

III. CONCLUSION

Appellant respectfully requests that Examiner's 2(d) refusal be removed and the Board allow registration of Appellant's mark. In the alternative, Appellant requests leave to amend its application for concurrent use. Accordingly, Appellant respectfully submits that this application is in condition for publication and favorable action is requested.

Respectfully submitted,

GREENBERG TRAURIG, LLC

Dated: August 7, 2006

By: Lauri S. Thompson, Esq./
Lauri S. Thompson, Esq.
3773 Howard Hughes Parkway
Suite 500 North
Las Vegas, Nevada 89109
(702) 792-3773