

TTAB

**JANVEY, GORDON, HERLANDS,  
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ATTORNEYS AT LAW

August 2, 2006

U.S. Patent And Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Re: Application Serial No.: 76/581,981  
Applicant: Coogi Partners, LLC  
Filed: March 17, 2004

Dear Madam or Sir:

We are counsel to the applicant with respect to the referenced application. On July 13, 2006, the TTAB issued an order dismissing the application due to applicant's alleged failure to file an appeal brief. However, the brief was timely filed. A copy of the brief including a certificate of mailing is attached hereto.

Please reinstate the appeal accordingly.

Sincerely,



Peter J. Vranum

08-07-2006

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

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

**Applicant:** Coogi Partners, LLC  
**Trademark:** MISCELLANEOUS DESIGN  
**Serial No.** 76/581,981  
**Filed:** March 17, 2004  
**Trademark Div.:** 106  
**TM Attorney:** Paul F. Gast

**APPLICANT'S APPEAL BRIEF**

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**Applicant:** Coogi Partners, LLC

**Trademark:** MISCELLANEOUS DESIGN

**Serial No.** 76/581981

**Filed:** March 17, 2004

**Trademark Div.:** 106

**TM Attorney:** Paul F. Gast

**BEFORE THE  
TRADEMARK TRIAL  
AND  
APPEAL BOARD  
ON APPEAL**

**APPLICANT'S APPEAL BRIEF**

The Applicant is appealing the trademark examining attorney's refusal to register the MISCELLANEOUS DESIGN trademark on the ground that under Trademark Act Sections 1, 2 and 45, 15 U.S.C. §§1051, 1052 and 1127 the mark is merely ornamental.

**FACTS**

Procedural History:

On March 17, 2004, the Applicant filed an application to register the subject trademark for "watches and jewelry" in International Class 14; for "bed sheets, pillowcases, bed ruffles, pillow shams, comforters, bedspreads and curtains" in International Class 24; and for "clothing, namely, shirts, vests, sweaters, shoes, caps, bandannas, shorts, sweat shirts, pants, belts for clothing, socks, swimwear, jackets, rainwear, blouses, dresses, footwear, hosiery, scarves, hats, head bands, pajamas and sleepwear" in International Class 25. In an Office Action dated October 25, 2004, the Trademark Examining Attorney refused to register the Applicant's mark on the ground that under Trademark Act Sections 1, 2 and 45, 15 U.S.C. §§1051, 1052 and 1127 the term mark as it will be used on the Applicant's goods is merely ornamental. Applicant filed a

response dated April 25, 2005. The Examining Attorney then issued a Final Office Action dated June 7, 2005, making the refusal final.

## ARGUMENT

### APPLICANT'S MARK IS NOT MERELY ORNAMENTAL

The Applicant's mark consists of a distinctive rectangle with a unique pattern and of contrasting horizontal bands of color. While the Applicant's mark may to certain sensibilities have an ornamental quality, it acts as a source indicator, and the ornamental quality is merely incidental. In such a case, the trademark is registrable. In re Penthouse Int'l, 195 USPQ 698 (CCPA 1977). In the matter, In re Watkins Glen International, Inc., 227 USPQ 727 (TTAB 1985), it was held that an "ornamental matter which may additionally perform a source-indicating function is registrable if it is found to be a trademark of applicant." See also, In re Astro-Gods, Inc., 23 USPQ 621 (TTAB 1984); In re Application of Paramount Pictures Corp., 217 USPQ 292 (TTAB 1983); In re Olin Corp., 181 USPQ 182 (TTAB 1973). The Watkins Glen case, as in this case, concerned use of the trademark on shirts and hats. In both the Watkins Glen case and this case, the marks both indicate the source of the goods and serve an aesthetic function. The fact that the mark is aesthetic does not negate the fact that the mark presents a unique combination, shape and pattern of colors that indicates the source of the goods

A purchaser will purchase such goods because they bear the mark of, in the Watkins Glen case, a race track which they like, or in this case, a brand of clothing and other merchandise which they like. In both cases, there is an association between the goods and the source of such goods in the minds of the consumers. As such, Applicant's mark is registrable.

## CONCLUSION

The subject mark is not merely ornamental and as such is registrable. For the foregoing reasons, the refusal to register on the basis of Trademark Act Sections 1, 2 and 45, 15 U.S.C. §§1051, 1052 and 1127 should be withdrawn and the requirement of a disclaimer should be reversed, and the Applicant's mark should be published for opposition.

Respectfully submitted,



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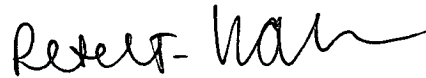
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**Certificate of Mailing**

I hereby certify that this Appeal Brief - 76/581981 is being deposited with the United States Postal Service with sufficient postage as first-class mail in an envelope addressed to:

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

on May 8, 2006.



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Peter J. Vranum