

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: X-FIGHT LLC
MARK: X-FIGHT
SERIAL NO.: 76/680,512
FILED: August 9, 2007
EXAMINER Midge F. Butler, Trademark Attorney, Law Office 107

**REPLY TO
EXAMINING ATTORNEY'S APPEAL BRIEF**

At issue is whether “footwear for sports, not including golf shoes with spikes” exceeds the scope of “athletic apparel, namely, sweatshirts and sweatpants, except T-shirts, sportswear and footwear for sports” (underlining added).

If the Board rules that “footwear for sports, not including golf shoes with spikes” is not an impermissible extension, then the Trademark Attorney has waived the right to argue on the Section 2(d) refusal as set forth in ARGUMENTS I., pages 3-8 inclusive.

ARGUMENT

The Trademark Attorney's Section 2(d) refusal is based on Registration No. 3,543,747 for goods including, in pertinent part, at brief page 6, line 14, “excluding orthopedic footwear”.

Undeniably of record therefore is the practice of TMEP §1402.06 “**Amendments Permitted to clarify or limit identification**” which provides:



10-02-2009

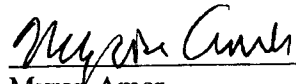
—Trademark Rule 2.71(a), 37 C.F.R. §2.71(a), restricts amendments to the identification of goods or services as follows, “The applicant may amend the application to clarify or limit, but not to broaden, the identification of goods and/or services.” This rule applies to all applications.—

Applicant is entitled to the same amendment practice that was accorded to the registrant of Registration No. 3,543,747, notwithstanding the arguments of appeal brief page 8, lines 8-20, and page 9, lines 1-20.

For the foregoing reasons, it is respectfully requested that the Board overrule the refusal under Trademark Act Section 2(d).

Respectfully submitted,


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Dated: September 30, 2009

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, on September 30, 2009.

Signed: 
Susan Capellini