

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

APPLICANT: USCANTEEN INC.

MARK: USCANTEEN (In Special Form)

SERIAL NO.: 76/695,792

FILED: February 13, 2009

EXAMINER John E. Michos, Trademark Attorney, Law Office 105  
Thomas G. Howell, Managing Attorney, Law Office 105

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

Applicant basically stands on its main brief, but must briefly respond to statements in the EXAMINING ATTORNEY'S APPEAL BRIEF lest it be assumed that there is merit to those statements.

The additional evidence introduced by the Examining Attorney was not in rebuttal to the evidence of the applicant's request for consideration, but was an enlargement of the record that did not follow the protocol of requesting a remand of the record to make the enlargement and allowing the applicant to make an objection thereto.

The Examining Attorney's arguments concerning the purchasing by SOPHISTICATED PURCHASERS misses the point. It is not the purchasers per se that is relevant, but rather the retailer's knowledge of sophisticated purchasers and the assignment of shelf space for the products displayed for purchase. As known from common experience, sophisticated purchasers read labels, and especially involving a health issue. Thus a retailer would not commingle non-leaching metal water bottles with plastic leaching water bottles.



11-06-2009

Applicant thus believes it has established no likelihood of confusion based on product diversity and relies on TMEP 1207.01(a)(i) which, in pertinent part, provides:

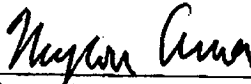
"If the goods or services in question are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source, then, even if the marks are identical, confusion is not likely. (Citing *Local Trademarks, Inc. v. Handy Boys Inc.*, 16 USPQ2d 1156 (TTAB 1990), *Quartz Radiation Corp. v. Comm/Scope Co.*, 1 USPQ2d 1668 (TTAB 1986)."

Applicant's position is that on the record, it has not been established that the respective goods are marketed in a way that they would be encountered in a situation that would create the incorrect assumption that they originate from the same source (underlining added).

For the foregoing reasons, we again respectfully request that this application be approved for publication for opposition.

Respectfully submitted,

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Dated: November 4, 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 November 4, 2009.

Signed:   
Susan Capellini