

TRADEMARK TRIAL AND APPEAL BOARD TRANSMITTAL LETTER

Applicant:	InVue Security Products	Examiner: Michael Baird
Serial No.:	77/006,342	Trademark Attorney
Mark:	PUCK	Law Office 116
Docket:	2441035US1AT	

Trademark Trial and Appeal Board  
 Commissioner for Trademarks  
 P.O. Box 1451  
 Alexandria, VA 22313-1451

Enclosed are the following:

Reply Brief

Postcard

Oct 6, 2008  
 Date

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Respectfully Submitted,

Laura L. Beoglos  
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I hereby certify that this correspondence and all correspondence identified as accompanying this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, VA 22313-1451 on Oct 6, 2008.

Pamela S. Grapes  
 Pamela S. Grapes



10-14-2008

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

In re Application of

InVue Security Products Inc.

Serial No. 77/006,342

Filed: September 25, 2006

Mark: PUCK

Michael Baird

Trademark Attorney

Law Office 116

**Reply Brief**

Applicant respectfully disagrees with the Examining Attorney's argument set in his Brief of September 15, 2008.

Applicant did supply information from Applicant's website, [www.alphaworld.com](http://www.alphaworld.com), upon the request of the Examiner. Nowhere within the documents provided does Applicant use the mark PUCK in a descriptive sense. Applicant's goods are not disc-shaped, nor are they described as being "pucks." This is borne by the documents that are part of the record. Applicant uses the mark PUCK to suggest a characteristic of the goods, not to describe them.

The reference to the "Non-Alarming Puck" is used in the trademark sense, not a descriptive sense. Applicant respectfully points out that the Examiner incorrectly indicates that "the unit consists of a generally round device." While the device may be 2 inches in diameter, it is not round like a hockey puck; it is oblong.

The idea of the PUCK is that the goods are highly durable, which is exactly what is needed when customers are looking at high-cost merchandise and the merchandiser needs to ensure that the goods are not stolen.

Further, the reference to other kinds of products offered under the mark does not demonstrate that the mark is merely descriptive. The intention of the Examiner is inserting the table formatted material is unclear to Applicant. Applicant's counsel is uncertain as to what the Examiner claims is "buried" in the list.

The Board can certainly see that the form or shape of the product is not that of a hockey puck. Accordingly, Section 2(e)(1) of the Trademark Act is not invoked by Applicant's product.

Applicant respectfully submits that the cases cited by the Examiner are not applicable to the facts of this case inasmuch as the shape of the product at issue is not in the shape of a hockey puck. For example in *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982), the goods at issue were bathroom and kitchen fixtures in the shape of tubes where the mark at issue was TOOBS. In *In re Ideal Industries, Inc.*, 134 USPQ 416 (TTAB 1962), the goods at issue were electrical connectors formed in the shape of wing nuts, where the mark was WING NUT.

The remaining cases cited by the Examiner also follow along similar lines. For instance, the Examiner cited the case of *Scanwell Laboratories, Inc. v. Department of Transp., Federal Aviation Administration*, 181 F.2d 1385, 179 USPQ2d 238 (CCPA 1986) for the proposition that the mark V-RING was determined to be merely descriptive of directional antennas, the primary components of which were shaped in the form of a "v" and a "ring". The Examiner also cited *In re Walker Manufacturing Co.*, 359 F.2d 474,

149 USPQ 528 (CCPA 1966) for the proposition that the mark CHAMBERED PIPE was determined to be merely descriptive of an exhaust system consisting of a series of small tuning chambers. Another case cited was *J. Kohnstam, Ltd. v. Louis Marx & Co.*, 280 F.2d 547, 126 USPQ 362 (CCPA 1960) for the proposition that the mark MATCHBOX SERIES was determined to be merely descriptive of toys sold in boxes having the size and appearance of matchboxes. Finally, the Examiner cited *In re Zephyr American Corp.*, 124 USPQ 464 (TTAB 1960) for the mark V-FILE that was determined to be merely descriptive of card filing device in which the opening between the cards is in the form of a "v".

Applicant agrees that the determination of whether a mark is merely descriptive is considered in relation to the identified goods, not in the abstract. *In re Abcor Dev. Corp.*, 588 F.2d 811, 814, 200 USPQ 215, 218 (C.C.P.A. 1978); TMEP §1209.01(b). When the Board views the mark with the claimed goods, the mark PUCK certainly does not describe any salient feature of the goods. That is, the goods are not puck-shaped.

Contrary to the assertions of the Examiner, Applicant did not submit a "double entendre" argument. Applicant respectfully submitted that the mark PUCK causes consumers to pause a moment in an attempt to relate the goods with the mark.

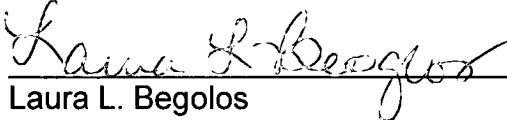
The Examiner has not demonstrated that competitors have a "need" for use of the mark. Applicant submits that the references brought up by the Examiner is akin to someone comparing sizes, as in "bigger than a bread box" or "the size of a grapefruit." There is no evidence that Applicant's use of the mark PUCK would hinder competitors.

The mark PUCK is, at a minimum, suggestive of the goods. It requires thought to determine attributes of the product. Certainly, the product has nothing to do with sports.

It requires a leap of imagination when applied to theft deterrent devices. The "strong and durable" nature is an attribute which one must know before the consumer can be any determination as to the word and the characteristics of the good. Theft deterrent devices would not be sought after if they were not capable of protecting the high price point products from thievery.

In conclusion, Applicant respectfully submits PUCK is a suggestive, if not arbitrary, mark which is not merely descriptive. Accordingly, Applicant respectfully requests that the mark be allowed and publication of the application is hereby earnestly requested.

Respectfully submitted,

  
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