

**To:** Salton, Inc. (cbeen@sonnenschein.com)  
**Subject:** TRADEMARK APPLICATION NO. 78197989 - BEYOND - 09741620-011  
**Sent:** 5/16/05 5:49:51 PM  
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**Attachments:**

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**SERIAL NO:** 78/197989

**APPLICANT:** Salton, Inc.

**CORRESPONDENT ADDRESS:**

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**RETURN ADDRESS:**  
 Commissioner for Trademarks  
 P.O. Box 1451  
 Alexandria, VA 22313-1451

If no fees are enclosed, the address should include the words "Box Responses - No Fee."

**MARK:** BEYOND

**CORRESPONDENT'S REFERENCE/DOCKET NO:** 09741620-011

**CORRESPONDENT EMAIL ADDRESS:**  
 cbeen@sonnenschein.com

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address..

Serial Number 78/197989

Applicant is requesting reconsideration of a final refusal dated February 10, 2004.

After careful consideration of the law and facts of the case, the examining attorney must deny the request for reconsideration and adhere to the final action as written since no new facts or reasons have been presented that are significant and compelling with regard to the point at issue.

Again, the marks of the parties are identical. Applicant's goods include electric household appliances and other pieces of equipment for home comfort or convenience. Registrant's services are identified as "retail store services in the field of line products, housewares, and home furnishings." The definition of furnishings is: **1.** A piece of equipment necessary or useful for comfort or convenience. **2. furnishings.** The furniture, appliances, and other movable articles in a home or other building.[]] The registrant's services clearly include the goods identified in the application. Applicant has not distinguished its goods from registrant's services in the identification. The nature and scope of a party's goods or services must be determined on the basis of the goods or services recited in the application or registration. See, e.g., *Hewlett-Packard Co. v Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687 1690 n. 4 (Fed. Cir. 1993); *J & J Snack Foods Corp. v. McDonald's Corp.*, 932 F.2d 1460, 18 USPQ2d 1889 (Fed. Cir. 1991); *Octocom Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1990); *Canadian*

*Imperial Bank of Commerce, N.A. v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987); *Paula Payne Products Co. v. Johnson Publishing Co.*, 473 F.2d 901, 177 USPQ 76 (C.C.P.A. 1973). TMEP Section 1207.01(a)(iii).

Accordingly, applicant's request for reconsideration is denied and the refusal is continued. 37 C.F.R. §2.64(b); TMEP §715.04.

The application file will be returned to the Trademark Trial and Appeal Board for resumption of the appeal.

#### **NOTICE: FEE CHANGE**

Effective January 31, 2005 and pursuant to the Consolidated Appropriations Act, 2005, Pub. L. 108-447, the following are the fees that will be charged for filing a trademark application:

- (1) \$325 per international class if filed electronically using the Trademark Electronic Application System (TEAS);  
or
- (2) \$375 per international class if filed on paper

These fees will be charged not only when a new application is filed, but also when payments are made to add classes to an existing application. If such payments are submitted with a TEAS response, the fee will be \$325 per class, and if such payments are made with a paper response, the fee will be \$375 per class.

The new fee requirements will apply to any fees filed on or after January 31, 2005.

#### **NOTICE: TRADEMARK OPERATION RELOCATION**

The Trademark Operation has relocated to Alexandria, Virginia. Effective October 4, 2004, all Trademark-related paper mail (except documents sent to the Assignment Services Division for recordation, certain documents filed under the Madrid Protocol, and requests for copies of trademark documents) must be sent to:

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

Applicants, attorneys and other Trademark customers are strongly encouraged to correspond with the USPTO online via the Trademark Electronic Application System (TEAS), at <http://www.uspto.gov/teas/index.html>.

If the applicant has any questions, please telephone the assigned examining attorney. Thank you.

/Michael Webster/

Michael Webster  
Examining Attorney  
USPTO Law Office 102  
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