

S/N 79/005455
E/A GEARIN, Amy
L/O 115

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Trademark Application of: ic! berlin Brillen GmbH
Serial No.: 79/005455
Filing Date: July 7, 2004
Mark: Miscellaneous Design (spectacles earpiece)
Class: INT. 9

Docket: HHSTM102US

Commissioner for Trademarks
PO Box 1451
Alexandria VA 22313-1451

AMENDMENT C AND REQUEST FOR RECONSIDERATION

This Amendment is being filed in response to the Official Action dated May 12, 2006.

Please amend the above identified application as follows:

Please add the following description of the mark to the Application:

--The mark consists of a configuration of an earpiece for frames for sunglasses and spectacles which comprises three "fingers" at the end near the hinge connecting the earpiece with the lens-enclosing portion of the frame. The three "fingers" are separated by openings that create two distinct lines. The upper line of the earpiece is straight and the bottom line is angled upward toward the portion that rests on the wearer's ears. The entire configuration resembles an asymmetrical fork. There exists a hinge at the point where the configuration joins the lens-enclosing portion of the spectacle or sunglasses frame, but the hinge feature is not claimed as a part of the configuration. The broken or dotted lines show the mark's position on the goods.--



11-13-2006

U.S. Patent & TMO/TM Mail Rpt Dt #32

REMARKS

Applicant has submitted a description of the mark as required by the Examining Attorney.

Applicant notes that the refusal to register based on lack of distinctiveness or acquired distinctiveness under Section 2(f) has been continued and made final. Applicant maintains its position that the subject mark has acquired distinctiveness based on the evidence and arguments previously made of record, and also provides the following in further support.

Applicant's U.S. sales of product comprising the subject trademark, between 2001 to the present now comprise nearly 40,000 units including over 15,000 so far in 2006 alone. In addition to the marketing expenditures previously submitted, Applicant has spent nearly \$115,000 in U.S. marketing and advertising for product bearing the subject trademark in 2006 and has continued to exhibit its goods at key trade shows attended by thousands of buyers. Enclosed is a further Declaration in support of submission of these additional sales, advertising expenditures and marketing at trade shows. Applicant submits that this combination of now five years of sales (since 2001), advertising and product placement which show the shape of the earpiece of the spectacles and sunglasses, has created an indication of the source of the product in the minds of consumers.

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In view of the foregoing, Applicant submits that its trademark has acquired distinctiveness and should be accepted for registration on the Principal Register under Section 2(f) of the Trademark Act.

In conclusion, Applicant requests that the Examining Attorney reconsider the final refusal of registration and that the Application be accepted for publication.

Please charge any additional fees or credit any overpayment to our Deposit Account No. 50-2121.

Respectfully submitted,



Teresa C. Tucker

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CERTIFICATE OF MAILING

I hereby certify that a copy of this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Trademarks, PO Box 1451, Alexandria VA 22313-1451 on November 9, 2006 at Manchester, New Hampshire.

By: 