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

Proceeding	85838968
Applicant	Celebrus, LLC dba ARIIX
Applied for Mark	RESTORIIX
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Submission	Applicants Request for Remand and Amendment
Attachments	2014-07-10 - Restoriix - Request for Remand.pdf(119601 bytes)
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Date	07/11/2014

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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In re Application of Celebrus, LLC dba ARIIX Mark: Restoriix Serial No. 85838968 Filed: February 1, 2013	Request for Remand and Amendment
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Applicant Celebrus, LLC doing business as ARIIX (“ARIIX”), through counsel, hereby requests that the Board suspend the present appeal and remand this matter back to the examining attorney to consider ARIIX’s proposed amendment of its identification of goods for its mark “Restoriix.”

An applicant in an ex parte appeal before the Trademark Trial and Appeal Board may request a remand in order to amend its application for good cause. The Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) notes the following:

Requests for remand are generally filed by applicants because they wish to make additional evidence of record, or because they wish to amend the application No matter what the purpose, the request for remand must include a showing of good cause. In determining whether good cause has been shown, the Board will consider both the reason given and the point in the appeal at which the request for remand is made.

TBMP § 1209.04. Good cause will generally be found when the amendment will obviate a ground for refusal. TBMP § 1205.01.

ARIIX requests this remand in order to amend its application to explicitly limit the channels of trade covered by the application. After careful research in preparing its appeal brief for the present appeal, ARIIX has come to understand that limiting the channels of trade on its application may obviate any likelihood of confusion with other marks, which was the ground for refusal by the examining attorney.

Limitations in the channels of trade of one party's goods typically do not preclude conflict between marks when there are no corresponding limitations in the other mark's trade channels, which would avoid overlap between the two marks.¹ But if one party's goods are restricted to sales through that party's own trade channel—a channel that is exclusive to that party—the trade channels will differ even though the other party's goods are unrestricted if such goods would not normally be sold through the first party's trade channels.²

ARIIX sells its Restoriix products directly to consumers through its exclusive network of independent ARIIX representatives. It is, therefore, impossible for consumers

¹ *Nat'l Serv. Indus., Inc. v. Sherwin-Williams Co.*, 6 U.S.P.Q. 2d 1655, 1656 (T.T.A.B. 1988); *In re Diet Ctr., Inc.*, 4 U.S.P.Q.2d 1975, 1976 (T.T.A.B. 1987); *In re Pierce Foods Corp.*, 230 U.S.P.Q. 307, 309 (T.T.A.B. 1986).

² *In re Shoe Works, Inc.*, 6 U.S.P.Q.2d 1890, 1891 (T.T.A.B. 1988).

to encounter ARIIX's goods in the same commercial setting as those goods covered by other marks. If remanded, ARIIX will amend the description of goods in its application to state "sold through applicant's exclusive direct sales force." ARIIX believes that by limiting the trade channels in its application it obviates the likelihood of confusion in this matter, and therefore, obviates the ground for refusal.

Neither party has yet submitted appeal briefs to the Board in this appeal, and thus, it is still very early in the appeal process. Allowing the remand and amendment now will potentially save the Board and the parties from needing to proceed with the appeal if the amendment to the application will resolve the ground for refusal.

WHEREFORE, ARIIX respectfully requests that the Board suspend the present appeal and remand this matter back to the examining attorney to consider ARIIX's proposed amendment of its identification of goods and its channels of trade for its mark "Restoriix."

Dated: July 11, 2014

/s/ Tyler B. Jones
Tyler B. Jones
Attorney for Applicant