ESTTA Tracking number: **ESTTA994424**

Filing date: **08/12/2019**

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

Proceeding	85984162
Applicant	Clear Image, Inc.
Applied for Mark	CLEARBAGS
Correspondence Address	GRANT R CLAYTON CLAYTON HOWARTH & CANNON PC PO BOX 1909 SANDY, UT 84091-1909 UNITED STATES docketclerk@chcpat.com 801-255-5335
Submission	Statement of Withdrawal of Application Without Prejudice
Attachments	Statement of Withdrawal of Application.pdf(53777 bytes)
Filer's Name	Grant R. Clayton
Filer's email	docketclerk@clayhow.com, gclayton@clayhow.com, ecall@clayhow.com
Signature	/Grant R. Clayton/
Date	08/12/2019

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

APPLICANT:	Clear Image, Inc.	)	
		)	
MARK:	CLEARBAGS	)	
		)	
SERIAL NO.:	85/984,162	)	STATEMENT OF WITHDRAWAL
		)	OF APPLICATION
FILED:	July 1, 2013	)	WITHOUT PREJUDICE
		)	
EXAMINING		)	
ATTORNEY:	Jason P. Blair	)	
		)	
PARALEGAL:	Monique Hill-Tyson	)	

STATEMENT OF WITHDRAWAL OF APPLICATION WITHOUT PREJUDICE

Pursuant to 37 C. F. R. § 2.68 and Trademark Trial and Appeal Board Manual of Procedure 1211, applicant, Clear Image, Inc., by and through its counsel, hereby withdraws the application, no. 85/984,162 CLEARBAGS, without prejudice. Pursuant to section (b) of 37 C.F.R. § 2.68, applicant asserts it retains all rights it has in the mark set forth in the application in any and all proceedings in the USPTO and emphasizes that in no way are applicant's rights to the mark affected by this withdrawal.

REMARKS

As an indication of the rights to the mark maintained in this withdrawal, Applicant provides the following remarks as regards the refusals, and any potential refusals, in this application.

The CLEARBAGS Mark is Not Descriptive.

Applicant maintains that the mark CLEARBAGS is not descriptive under Section 2(e)(1). As stated in the November 30, 2017 Response to Office Action (and previous responses), CLEARBAGS has double entendre, or double meaning, and is therefore not descriptive. "CLEAR" means first "easy to perceive, understand, or interpret," and then "transparent." *Google Dictionary*, accessed August 12, 2019, https://www.google.com/search?q=clear+definition&rlz=1C1GCEU_enUS823US826 &oq=clear+definition&aqs=chrome..69i57j0l5.2676j1j7&sourceid=chrome&ie=UTF-8. Thus goods asssoicated with the CLEARBAGS mark are easily perceived as an indicator of origin for consumers of the recited goods.

The CLEARBAGS Mark Has Acquired Distinctiveness.

Furthermore, applicant reiterates that the CLEARBAGS mark has acquired distinctiveness under Section 2(f) as shown by the evidence submitted over four years ago in the September 25, 2015 Response to Office Action, including declarations of consumers, competitors and industry experts, who, in addition to declaring that the mark has been substantially exclusively and continuously used for well more than five years in commerce, collectively all find that the mark is distinctive of all of the goods known by consumers and potential consumers as a mark for the brand and not as a merely descriptive term.

The CLEARBAGS Mark Is Not Generic.

The mark is not generic of the goods. The term "CLEARBAGS" does not refer to a class or category of goods in connection with the goods recited. It instead references a brand known by

consumers and potential consumers. Indeed, expert witness declarations presented in the September 25, 2015 Response to the Office Action declare that the term is not generic and is not perceived as generic by those in the relevant market, showing it is not perceived as such in the marketplace. In addition, the evidence submitted in various Office Actions to assert genericness is insufficient to do so given the rule that "a strong showing is required when the Office seeks to establish that a term is generic." In re K-T Zoe Furniture Inc., 16 F.3d 390, 29 USPQ2d 1787, 1788 (Fed. Cir. 1994). Moreover, any doubt whatsoever on the issue of genericness must be resolved in favor of the applicant. In re Waverly Inc., 27 USPQ2d 1620, 1624 (TTAB 1993). At a minimum the doubt standard has been met in the previous responses to office actions, applicant has submitted evidence refuting the generic nature of the mark, and applicant maintains that the mark is not generic.

The Opposition to Remand Was Arbitrary and Capricious.

Applicant submits that it was arbitrary and capricious, after several successful and worthwhile requests for remand, to refuse to remand the appeal at this time. There is no limit on remands placed by the TBMP, and the request to remand was the same as had been done before, said previous requests all resulting in useful and valuable registrations for CLEARBAGS, each reciting different goods. Applicant's most recent amendments were given as further specifying, and not broadening, the recitation of the goods recited following a division of the application, and several successful, registrations for the mark on the Principal Register have been achieved from prior remands and subsequent divisions of the application. There was no prior indication that this request would result in an inconsistent and different reaction and decision, and to refuse

this and all future requests for remand was unexpected and inconsistent given the previous successful requests and requisite progress in obtaining trademark registration and protection for the mark. Applicant asserts that it has a right to divide the application while maintaining applicant's rights to the original goods recitation, and such was the attempt of the last remand that was arbitrarily and capriciously opposed by Examining Attorney Wilke and arbitrarily and capriciously refused by the Board, especially given the lack of limit of remands in the TBMP and the previous successful and beneficial requests prior to the present request that resulted in an order banning all future requests from being granted. Applicant has, however, at this time decided to withdraw the application instead of furthering the appeals process at this time.

CONCLUSION

Applicant expresses thanks for the attention provided to this Statement of Withdrawal Without Prejudice. Any questions regarding this withdrawal can be directed to the undersigned.

Respectfully submitted this 12th day of August, 2019.

CLAYTON HOWARTH, P.C.

/Grant R. Clayton/

Grant R. Clayton
Attorney for Applicant, Clear Image, Inc.
P.O. Box 1909
Sandy, Utah 84091
Telephone (801) 255-5335

S:\CHC Files\T12--\T120--\T12003\A\DIV\TTAB Withdrawal 08122019 grc edits.wpd