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

Proceeding	86423079
Applicant	Justin's, LLC
Applied for Mark	JUSTIN'S
Correspondence Address	MARGARITA WALLACH MCCARTER & ENGLISH LLP 245 PARK AVENUE, 27TH FLOOR NEW YORK, NY 10167 UNITED STATES mwallach@mccarter.com, ihurtado@mccarter.com, dlynch@mccarter.com
Submission	Applicants Request for Remand and Amendment
Attachments	Justins Request for Remand and for Suspension of Appeal Serial No. 86423079.pdf(149609 bytes)
Filer's Name	Margarita Wallach, Esq.
Filer's e-mail	mwallach@mccarter.com, ihurtado@mccarter.com, dlynch@mccarter.com
Signature	/mw/
Date	04/24/2017

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

Application Serial No.: 86/423,079



Mark:

Applicant: Justin's, LLC

REQUEST FOR REMAND AND FOR SUSPENSION OF APPEAL

Applicant Justin's, LLC ("Applicant") hereby respectfully requests that the Trademark Trial and Appeal Board remand Application Serial No. 86/423,079 (the "Application") to the Examining Attorney at the Trademark Office to allow the Examining Attorney to consider Applicant's evidence concerning partial acquired distinctiveness with respect to the peanut butter cup design within Applicant's trademark. Applicant previously argued, in the alternative, that the peanut butter cup design within its mark had acquired distinctiveness. In support of this argument, Applicant submitted a declaration in support of its claim of acquired distinctiveness on February 1, 2017. Applicant has since decided that it would like to proceed with amending its Application to claim acquired distinctiveness, in part, as to the design of the peanut butter cup included within Applicant's trademark. Applicant also requests that the Board suspend all

deadlines in the appeal proceeding until this Request for Remand has been decided by the Board and (if applicable) until this amendment has been considered by the Examining Attorney. Briefs have not yet been filed in this ex parte appeal proceeding.

The present appeal is based on the requirement of the Trademark Office that Applicant disclaim the peanut butter cup design within Applicant's mark. Applicant's amendment to claim acquired distinctiveness as to the peanut butter cup design within Applicant's mark presents a new issue for consideration by the Examining Attorney. Applicant respectfully submits that this amendment resolves all outstanding issues, obviating the ground for refusal and the need for the appeal, and that the Application should be published for opposition upon review and acceptance of Applicant's evidence of acquired distinctiveness by the Examining Attorney.

A request to remand an application from the TTAB requires a showing of good cause. "Good cause will be found, for example, when the amendment is an attempt to comply with a requirement, such as an amendment to the identification of goods in response to a requirement for an acceptable identification." Trademark Board Manual of Procedure, 2017-01 ed., §1205.01. Good cause exists because Applicant's proposed amendment is an attempt to comply with the Examining Attorney's requirement for a disclaimer of the peanut butter cup design within Applicant's mark.

Therefore Applicant respectfully requests that the Board grant Applicant's request for remand, "suspend proceedings with respect to the appeal, and remand the application to the examining attorney for consideration of the amendment[s]." Id. Applicant also respectfully requests that the Application be amended to claim acquired distinctiveness as to the design of the peanut butter cup within Applicant's mark, and that the Examining Attorney accept the

Applicant's evidence of acquired distinctiveness as to the design of the peanut butter cup within Applicant's mark and allow the Application to proceed to publication.

Date: April 24, 2017

Respectfully submitted,

McCarter & English, LLP

By: /Margarita Wallach/
Margarita Wallach

Attorneys for Applicant
Justin's, LLC
245 Park Ave, 27th Floor
New York, NY 10167
Tel: (212) 609-6800
Fax: (212) 609-6921