

**To:** QVC, Inc. ([trademark@cll.com](mailto:trademark@cll.com))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 86670074 - DENIM & CO. - 21324-000 - EXAMINER BRIEF  
**Sent:** 4/10/2019 6:05:34 PM  
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**Attachments:**

## UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

U.S. APPLICATION  
SERIAL NO. 86670074

MARK: DENIM & CO. \*86670074\*

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**GENERAL TRADEMARK INFORMATION:**

<http://www.uspto.gov/trademarks/index.jsp>

**TTAB INFORMATION:**

<http://www.uspto.gov/trademarks/process/appeal/index.jsp>

**APPLICANT:** QVC, Inc.

**CORRESPONDENT'S  
REFERENCE/DOCKET  
NO:**

21324-000

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### EXAMINING ATTORNEY'S APPEAL BRIEF

The applicant, QVC, Inc. (hereinafter "Applicant"), has appealed the final refusal to register DENIM & CO. for "women's clothing, namely, shirts, dresses, skirts, tops, bottoms, sweaters, shorts, pants, jackets, leggings, t-shirts made of materials other than denim all sold through interactive television and interactive online media wherein the clothing products offered for sale are modeled and whereby detailed information regarding such clothing products is provided including information as to the fabrics and materials from which such clothing products are made" on the grounds that the applied-for mark consists of or includes deceptive matter in relation to the identified goods under Trademark Act §2(a), 15 U.S.C. §1052(a) and the requirement to disclaim the term DENIM as misdescriptive of a feature of the applicant's goods pursuant to 15 U.S.C. §§1052(e)(1), 1056(a). The examining attorney respectfully requests that this refusal to register the mark be affirmed by the Trademark Trial and Appeal Board (the "Board").

#### I. STATEMENT OF FACTS

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On June 22, 2015, Applicant filed a use-based application for registration of the trademark DENIM & CO. on the Principal Register for “Women’s Clothing, namely, shirts, dresses, skirts, tops, bottoms, sweaters, shorts, pants, jackets, leggings, t-shirts” in International Class 25.

The examining attorney issued an initial Office action on September 26, 2015 refusing registration under Section 2(a) of the Trademark Act on the grounds that the mark consists of or includes deceptive matter in relation to the identified goods and refusing registration under Section 2(e)(1) of the Trademark Act on the grounds the mark is merely descriptive of a feature of the applicant’s goods.

On March 24, 2016 the Applicant submitted a Response to Office action in an attempt to overcome the Section 2(a) and Section 2(e)(1) refusals. Specifically, the applicant pointed to a prior registration where the terms “& CO” were allowed to carry their mark and attempted to claim that the term DENIM had acquired distinctiveness based on five years use.

On April 27, 2016 the examining attorney continued and maintained the Section 2(a) deceptive refusal and the Section 2(e)(1) descriptiveness refusal so the new issue raised by the section 2(f) claim of the term DENIM could be addressed.

On October 27, 2016 the applicant submitted a Response to Office action further arguing against the Section 2(a) deceptive refusal and the Section 2(e)(1) descriptiveness refusals and submitting additional evidence to support their claim that the term DENIM had acquired distinctiveness.

On January 10, 2017 the examining attorney continued and maintained the Section 2(a) deceptive refusal and the Section 2(e)(1) descriptiveness refusals and issued a generic refusal in response to the applicant’s claim that the term DENIM had acquired distinctiveness.

On July 10, 2017 the applicant submitted a Response to Office action with a claim of acquired distinctiveness as to the entire mark, based upon a prior registration and five years use.

On November 9, 2017 the examining attorney lifted the Section 2(e)(1) descriptiveness refusal, continued and maintained the Section 2(a) deceptive refusal and issued a disclaimer requirement for the term DENIM.

On January 31, 2018 the applicant submitted a Response to Office action that withdrew the section 2(f) claim, provided an amendment to the identification of goods, provided a partial disclaimer statement and provided further arguments against the Section 2(a) deceptive refusal.

On March 14, 2018 the trademark examining attorney continued and maintained the Section 2(a) deceptive refusal and issued a disclaimer requirement for the applicant’s amended identification of goods.

On July 19, 2018 the applicant further amended their identification of goods, presented arguments against the disclaimer requirement and presented arguments against the Section 2(a) deceptive refusal.

On August 13, 2018 the trademark examining attorney issued a final Office action maintaining the refusal under Section 2(a) and the disclaimer requirement. In response, the applicant filed Notice of Appeal on February 11, 2019. On February 14, 2019 the applicant’s appeal brief was forwarded to the examining attorney. The present appeal follows.

## **II. ISSUES ON APPEAL**

The issues on appeal are: 1) whether the proposed mark DENIM & CO is deceptive and should be refused registration under Trademark Act Section 2(a) when used in connection with “women's clothing, namely, shirts, dresses, skirts, tops, bottoms, sweaters, shorts, pants, jackets, leggings, t-shirts made of materials other than denim all sold through interactive television and interactive online media wherein the clothing products offered for sale are modeled and whereby detailed information regarding such clothing products is provided including information as to the fabrics and materials from which such clothing products are made” that do not contain denim materials and 2) whether the term DENIM

should be disclaimed for the aforementioned goods, in the alternative.

### **III. SUMMARY OF ARGUMENT**

Section 2(a) of the Trademark Act, 15 U.S.C. §1052(a), is an absolute bar to the registration of a mark that consists of or comprises deceptive matter on either the Principal Register or the Supplemental Register. The examining attorney refused registration because the applied-for mark DENIM & CO includes deceptive matter, namely, DENIM, in relation to the identified clothing goods. Trademark Act Section 2(a), 15 U.S.C. §1052(a); *See In re Shapely, Inc.*, 231 USPQ 72 (TTAB 1986) (holding SILKEASE deceptive as applied to clothing not made of silk); TMEP §1203.02.

A mark is deceptive if the following criteria are met:

- (1) The applied-for mark consists of or contains a term that misdescribes the character, quality, function, composition, or use of the goods.
- (2) Prospective purchasers are likely to believe that the misdescription actually describes the goods.
- (3) The misdescription is likely to affect a significant portion of the relevant consumers' decision to purchase the goods.

*See In re Budge*, 857 F.2d at 775, 8 USPQ2d at 1260; *In re White Jasmine LLC*, 106 USPQ2d 1385, 1391-92 (TTAB 2013); TMEP §1203.02(b); see also *In re Spirits Int'l, N.V.*, 563 F.3d 1347, 1353, 1356, 90 USPQ2d 1489, 1492-93, 1495 (Fed. Cir. 2009) (holding that the test for materiality incorporates a requirement that a "significant portion of the relevant consumers be deceived").

In this case, applicant's mark includes the wording DENIM, which indicates that the goods contain DENIM. This feature or ingredient is important to a significant portion of the relevant consumers' purchasing decision because consumers encountering the term DENIM in relation to the goods are likely to believe the goods are made in whole or in substantial part from DENIM. This belief, along with the understanding that denim clothing is desirable and of superior quality, would be material to a consumer's decision to purchase the goods.

The examining attorney supports these contentions with definitional evidence of the term denim and Internet/marketplace evidence touting the advantages of clothing containing denim and its likely effects on a consumer's decision to purchase the goods. The examining attorney maintains applicant's mark includes deceptive matter in relation to the identified goods and is, therefore, unregistrable on the Principal Register under section 2(a) of the Trademark Act.

In the alternative, if the Board finds that the term "DENIM" is not deceptive when used in relation to the applicant's claimed goods the term DENIM must be disclaimed as it merely describes an ingredient, quality, characteristic, function, feature, purpose, or use of applicant's goods that is both false and believable, and thus is an unregistrable component of the mark. *See* 15 U.S.C. §§1052(e)(1), 1056(a); *In re White Jasmine LLC*, 106 USPQ2d 1385, 1394-95 (TTAB 2013); TMEP §§1209.04, 1213.03(a).

### **IV. ARGUMENT**

#### **A. THE APPLIED-FOR MARK CONTAINS A TERM THAT MISDESCRIBES THE COMPOSITION OF THE GOODS.**

A deceptive mark may be comprised of a term or a portion of a term that alludes to a deceptive quality, characteristic, function, composition, or use. *In re Phillips-Van Heusen Corp.*, 63 USPQ2d 1047 (TTAB 2002) (holding SUPER SILK deceptive for "clothing, namely dress shirts and sport shirts made of silk-like fabric"). In relation to the applicant's mark, the question regarding the first prong of the test under Trademark Act Section 2(a) is whether the term DENIM in the applied-for mark is misdescriptive of the composition of the applicant's goods. Since applicant has stated unequivocally that the goods do not in fact contain actual denim, the examining attorney has no choice but to find the term DENIM is a term that misdescribes the composition of the goods and this finding is predicated on definitional and marketplace evidence that establishes that denim has a recognized meaning as it relates to clothing.

In the outgoing Office action dated September 26, 2015, the examining attorney supplied definitional evidence from the *MacMillan Dictionary*<sup>[1]</sup> establishing that the term “DENIM” is descriptive of a “thick cotton cloth that is usually blue and is used especially to make jeans.” This evidence, combined with general marketplace evidence from [www.wikipedia.com](http://www.wikipedia.com)<sup>[2]</sup>, details the commonly recognized interpretation of denim in context with textiles goods and clothing. Specifically, denim has a long history as a textile used in the manufacture of clothing. Therefore, the examining attorney’s position is that denim is a term that misdescribes the composition of the goods.

Applicant’s central argument that because their identification of goods includes the wording “made of materials other than denim all sold through interactive television and interactive online media wherein the clothing products offered for sale are modeled and whereby detailed information regarding such clothing products is provided including information as to the fabrics and materials from which such clothing products are made” there is no way that consumers could be deceived into believing that their goods contain denim.”<sup>[3]</sup> First, the relevant consumers that encounter the applicant’s goods in the marketplace are not aware of the limitations put into the applicant’s identification of goods. Second, applicant’s assertion that the term DENIM is not deceptive because the applicant provides detailed information about their products during the course of selling the goods is not persuasive. This argument is akin to the argument that applicant’s advertising would make consumers aware of the misdescription. As noted in *In re Budge Mfg. Co.* “explanatory statements in advertising or on labels which purchasers may or may not note and which may or may not always be provided” are of little value in the deceptiveness analysis.<sup>[4]</sup> Also deception can attach prior to seeing or encountering the goods on the applicant’s television and online ordering platforms.<sup>[5]</sup>

While the applicant may strive for the term DENIM in their mark to refer “to a comfortable, casual and relaxed life style”<sup>[6]</sup> rather than the material content of the applicant’s garments, the evidence clearly points to the fact that denim is a common material used in the manufacture of clothing. As a result of the prevalence of the use of denim material in the clothing industry, it is, in fact, more reasonable to assume that the average consumer, when encountering the term, in any capacity, would draw the conclusion that the goods are made from denim material. The likelihood that consumers would conjure the idea that the clothing brand relates to clothing for a comfortable, casual and relaxed lifestyle is simply not supported by the evidence of record. The applied-for mark contains the term DENIM and that term misdescribes the composition of the goods identified in this application. As such, the first prong of the test under Trademark Act Section 2(a) is met.

**B. PROSPECTIVE PURCHASERS ARE LIKELY TO BELIEVE THAT THE MISDESCRIPTION ACTUALLY DESCRIBES THE GOODS.**

Turning to the second prong of the test under Trademark Act Section 2(a), prospective purchasers are likely to believe that the misdescription actually describes the goods. The evidence relied upon by the examining attorney shows that denim is a recognized material sought after by consumers and valued for its durability, comfort and style. It is because of these advantages that denim is routinely incorporated into clothing and a consumer’s logical expectation when they encounter clothing bearing the term DENIM is that the clothing will indeed be made from denim.

For a term to misdescribe goods, the term must be merely descriptive of a significant aspect of the goods that the goods could plausibly possess but in fact do not. *In re White Jasmine LLC*, 106 USPQ2d 1385, 1392 (TTAB 2013) (citing *In re Phillips-Van Heusen Corp.*, 63 USPQ2d 1047, 1051 (TTAB 2002)). If goods similar to applicant’s goods can and do possess the quality, function, composition, or use that applicant’s mark misdescribes, it is reasonable to infer that purchasers will believe the misdescription. See *In re Budge Mfg. Co.*, 857 F.2d 773, 776-77, 8 USPQ2d 1259, 1261 (Fed. Cir. 1988).

Consumers are likely to believe this misdescription in the mark because it is common in applicant’s industry for clothing to be made from denim material. The third party internet evidence made of record shows that denim is a material commonly used to make clothing similar to the Applicant’s garments. In fact the applicant’s own identification of goods in this same application, which are not at issue in this appeal,

“women's clothing, namely, shirts, dresses, skirts, tops, bottoms, sweaters, shorts, pants, jackets, leggings, t-shirts made in whole or substantial part of denim” shows that it is common for shirts, dresses, skirts, tops, bottoms, sweaters, shorts, pants, jackets, leggings, t-shirts to be made from denim.

The evidence taken from <https://www.zappos.com/> shows denim being used by different entities in the manufacture of pants and bottoms.<sup>[7]</sup> The evidence taken from <https://www.ae.com.com/> shows the clothing brand American Eagle Outfitters making shirts and tops from denim.<sup>[8]</sup> The evidence taken from <https://us.asos.com/> shows various clothing manufacturers making dresses from denim.<sup>[9]</sup> The evidence taken from <https://www.anntaylor.com> shows the clothing brand Ann Taylor making bottoms and pants from denim.<sup>[10]</sup> The evidence taken from <https://www.bananarepublic.gap.com> shows the clothing brand Banana Republic making bottoms, pants, shirts, tops, jackets, skirts, shorts, dresses and t-shirts from denim.<sup>[11]</sup> The evidence taken from <https://www.vince.com> shows the clothing brand Vince making pants and bottoms from denim.<sup>[12]</sup> The evidence taken from <https://www.saksfifthavenue.com> shows various clothing brands making pants, jackets, shirts, tops and dresses from denim.<sup>[13]</sup> The evidence taken from <https://www.macys.com> shows various clothing brands making shorts, pants, skirts, and bottoms from denim material.<sup>[14]</sup> The evidence taken from <https://www.lulus.com> shows various clothing brands making shirts, pants and shorts from denim material.<sup>[15]</sup> The evidence taken from <https://www.gucci.com> shows the clothing manufacturer Gucci making jackets, shorts, and skirts from denim.<sup>[16]</sup> The evidence taken from <https://www.gap.com> shows the clothing brand GAP making jackets, pants, skirts, bottoms and shirts from denim.<sup>[17]</sup>

All of the forgoing evidence shows that consumers would likely believe the misdescription of denim in the mark because it is common in the clothing industry, from all price points, for goods related to the Applicant's goods to be made from denim. Furthermore, consumers have come to expect such material or component incorporated within their clothing items. In fact “48% of the world's trade in fabric is in cotton, from which denim is made.”<sup>[18]</sup> As a result, this evidence shows that clothes made from denim are common and popular.

It is therefore reasonable to infer that purchasers will believe the misdescription in the applied-for mark, thereby answering in the affirmative the question of whether or not prospective purchasers are likely to mistakenly believe that the misdescription actually describes the goods. See *In re Budge Mfg. Co.*, 857 F.2d 773, 776-77, 8 USPQ2d 1259, 1261 (Fed. Cir. 1988). The second prong of the test under Trademark Act Section 2(a) is met.

Applicant points to the Register to highlight registrations containing the word DENIM and JEANS in International Class 025 that do not limit their goods to those made in whole or substantial part of denim and those that contain two categories of goods, those made from denim and those made from other fabrications. First, the JEANS marks are irrelevant as the term at issue is DENIM not JEANS. Second, such registrations, even when made of record, do not control on the issue of deceptiveness, as neither the Trademark Examining Operation nor the Trademark Trial and Appeal Board are bound by past decisions of the Trademark Examining Operation. *In re Shapely, Inc.*, 231 USPQ 72, 75 (TTAB 1986). Each case must be decided on its own facts. The USPTO is not bound by the decisions of the examiners who examined the applications for the applicant's previously registered marks, based on different records. See *In re Omega SA*, 494 F.3d 1362, 83 USPQ2d 1541 (Fed. Cir. 2007)(upholding examining attorney's requirement for amendment of the term "chronographs" in the identification of goods, notwithstanding applicant's ownership of several registrations in which this term appears without further qualification in the identification); *In re Cordua Rests., Inc.*, 823 F.3d 594, 600, 118 USPQ2d 1632, 1635 (Fed. Cir. 2016) ("The PTO is required to examine all trademark applications for compliance with each and every eligibility requirement . . . even if the PTO earlier mistakenly registered a similar or identical mark suffering the same defect.").

**C. THE MISDESCRIPTION IS LIKELY TO AFFECT A SIGNIFICANT PORTION OF THE RELEVANT CONSUMERS' DECISION TO PURCHASE THE GOODS.**

To establish a prima facie case of deceptiveness, the examining attorney must provide sufficient evidence that the misdescribed quality or characteristic would be a material factor in the purchasing decision of a significant portion of the relevant consumers. As supported by the evidence of record, denim clothing is more desirable because of objective standards that provide an inducement to purchase the goods beyond that of mere personal preference.

Applicant asserts that the misdescription is unlikely to affect a significant portion of the relevant consumer's decision to purchase applicant's goods. A misdescriptive feature or characteristic, however, would be material to the purchasing decision of a significant portion of the relevant consumers when the evidence demonstrates that the misdescription would make the product or service more appealing or desirable to prospective purchasers. *In re White Jasmine LLC*, 106 USPQ2d at 1392 (citing *In re Juleigh Jeans Sportswear Inc.*, 24 USPQ2d 1694, 1698-99 (TTAB 1992)); TMEP §1203.02(d). Specifically, the evidence of record highlights and discusses that appeal and shows that clothing made from denim is strong and durable, easy to clean and comfortable. For example the article in <https://www.denverfabrics.com> states that denim is both durable and comfortable.<sup>[19]</sup> The article in <https://www.menshealth.com> states that denim lasts a long time.<sup>[20]</sup> The article from <http://hlmclothing.blogspot.com> states that denim jeans are highly durable and cost effective to wear and stylish at the same time.<sup>[21]</sup> The article from <https://www.bustle.com> explains how denim pants last longer than other pants and are durable and hide stains well.<sup>[22]</sup> The article on <https://prezi.com> explains how denim fabric lasts a long time, is easy to wash, is good to wear any time of the year, and is strong and durable.<sup>[23]</sup> The article from <https://www.textileschool.com> discusses how denim fabrics are both strong and durable.<sup>[24]</sup> The article appearing on <http://sensiblewriter.articlealley.com> states that denim is a long lasting fabric that is comfortable and stylish.<sup>[25]</sup> Finally the answer to "what are the advantages of denim fabric" appearing on <https://www.answers.com/> is denim is a strong fabric.<sup>[26]</sup>

It is the examining attorney's position that if a trademark for clothing indicates or implies that the goods contain denim, that description would affect a consumer's decision to purchase those goods. Here, as admitted by the applicant, applicant's goods will not contain denim. As such, the applied-for mark DENIM & CO will deceive the public as to a material factor in its purchasing decision. Thus, the third prong of the test under Trademark Act Section 2(a) is met.

**D. IN THE ALTERNATIVE, THE TERM DENIM MUST BE DISCLAIMED**

In the alternative, if the Board finds that the term DENIM is not deceptive under Trademark Act Section 2(a) applicant must disclaim the term DENIM because the term is deceptively misdescriptive under Trademark Act Section 2(e)(1). The term merely describes an ingredient, quality, characteristic, function, feature, purpose, or use of applicant's goods that is both false and believable, and thus is an unregistrable component of the mark. See 15 U.S.C. §§1052(e)(1), 1056(a); *In re White Jasmine LLC*, 106 USPQ2d 1385, 1394-95 (TTAB 2013); TMEP §§1209.04, 1213.03(a).

The test for determining whether a mark is deceptively misdescriptive has two parts: (1) whether the mark misdescribes the goods; and if so, (2) whether consumers are likely to believe the misrepresentation. See *In re White Jasmine LLC*, 106 USPQ2d 1385, 1394 (TTAB 2013) (citing *In re Quady Winery, Inc.*, 221 USPQ 1213, 1214 (TTAB 1984)); TMEP §1209.04.

Regarding the first part of the test, a mark, or portion thereof is misdescriptive when the mark merely describes a significant aspect of the goods that the goods could plausibly possess but in fact do not. *In re Hinton*, 116 USPQ2d 1051, 1052 (TTAB 2015); *In re Schniberg*, 79 USPQ2d 1309, 1312 (TTAB 2006); *In re Phillips-Van Heusen*, 63 USPQ2d 1047, 1048 (TTAB 2005); see TMEP §1209.04. To be merely descriptive, a mark must immediately convey knowledge of a quality, feature, function, or characteristic of an applicant's goods. *In re The Chamber of Commerce of the U.S.*, 675 F.3d 1297, 1300, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (quoting *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 963, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)); TMEP §1209.01(b).

The evidence shows that the term DENIM is commonly used in connection with applicant's goods to refer to a material composition thereof,

namely, that the goods are made, in whole or in part, from denim material. As stated previously, it is common in the clothing industry for clothing to be made from denim. *See* the previously discussed evidence in Section B of this brief. As Applicant conceded in its identification of goods, however, the specified goods are not made of denim. Therefore, the examining attorney has met the first prong of the aforementioned test.

Regarding the second prong, of the test, the Board has applied the reasonably prudent consumer test in assessing whether consumers are likely to believe the misrepresentation. *In re Hinton*, 116 USPQ2d 1051, 1052 (TTAB 2015) (citing *R. J. Reynolds Tobacco Co. v. Brown & Williamson Tobacco Corp.*, 226 USPQ 169, 179 (TTAB 1985)). Consumers would be likely to believe that the goods are made from denim because: 1) it is common for clothing to be made from this material and, 2) of the numerous positive attributes that denim clothing possess. *See* the previously discussed evidence in Sections B and C of this brief showing the common use of denim in clothing coupled with the various articles discussing the advantages of clothing made from denim material. Therefore, the examining attorney has also met the second prong of the aforementioned test.

The Applicant briefly addressed the disclaimer requirement in a footnote in its brief, stating “Applicant did not disclaim denim for such goods because it appears both unnecessary and an illogical means to overcome a “deceptiveness” refusal.” Applicant further states: “However, if the Board concludes that a disclaimer will eliminate any deceptiveness concerns, Applicant asks that the matter be remanded to provide Applicant the opportunity to consider such a resolution.” [\[27\]](#)

The Office agrees if the Board finds that the mark is not deceptive under Section 2(a), but that the term DENIM is deceptively misdescriptive, that the Board should remand solely for applicant to provide a disclaimer of the term DENIM.

#### **V. CONCLUSION**

The proposed mark DENIM & CO, in particular the wording DENIM, is commonly known to refer to DENIM fabric and DENIM fabric is known to have specific objective benefits that affect a consumer’s decision to purchase clothing made of this material. Thus, the use of the term DENIM is deemed deceptive in relation to clothing not actually containing DENIM, and the refusal for registration under Trademark Act Section 2(a), 15 U.S.C. §1052(a) should be affirmed. In the alternative if the Board finds that the term DENIM is not deceptive in relation to the applicant’s goods it is respectfully requested that the Board affirm the refusal to register applicant’s mark in the absence of a disclaimer of the term DENIM.

Respectfully submitted,

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- [1] See Outgoing Office Action dated September 26, 2015, pages 2-3.
- [2] See Outgoing Office Action dated September 26, 2015, pages 4-10.
- [3] See Applicant's Appeal Brief dated February 14, 2019, page 4.
- [4] See *In re Budge Mfg. Co.*, 857 F.2d 773, 775-76, 8 USPQ2d 1259, 1261 (Fed. Cir. 1988).
- [5] See *In re ALP of S. Beach, Inc.*, 79 USPQ2d 1009, 1014 (TTAB 2006).
- [6] See Applicant's Appeal Brief dated February 14, 2019, page 7.
- [7] See Outgoing Office Action dated September 26, 2015, pages 14-15.
- [8] See Outgoing Office Action dated September 26, 2015, pages 17-19.
- [9] See Outgoing Office Action dated September 26, 2015, pages 20-21.
- [10] See Outgoing Office Action dated April 27, 2016, pages 2-9.
- [11] See Outgoing Office Action dated April 27, 2016, pages 9-18, Outgoing Office Action dated January 10, 2017 pages 138-148, and Outgoing Office Action March 14, 2018 pages 2-21.
- [12] See Outgoing Office Action dated April 27, 2016, pages 19-20.
- [13] See Outgoing Office Action dated April 27, 2016, pages 21-29.
- [14] See Outgoing Office Action dated April 27, 2016, pages 30-41 and Outgoing Office Action dated January 10, 2017, pages 128-137.
- [15] See Outgoing Office Action dated January 10, 2017 pages 86-118.
- [16] See Outgoing Office Action dated January 10, 2017 pages 125-127.
- [17] See Outgoing Office Action dated March 14, 2018 pages 22-41.
- [18] See Outgoing Office Action dated September 26, 2015 page 22.
- [19] See Outgoing Office Action dated September 26, 2015 page 23.
- [20] See outgoing Office Action September 26, 2015 page 28.
- [21] See Outgoing Office Action dated March 14, 2018, pages 46-50.
- [22] See Outgoing Office Action dated March 14, 2018 pages 51-57.
- [23] See Outgoing Office Action dated August 13, 2018 pages 8-9.
- [24] See Outgoing Office Action dated August 13, 2018 pages 35-30.
- [25] See Outgoing Office Action dated August 13, 2018 pages 33-35.
- [26] See Outgoing Office Action dated August 13, 2018 page 36.
- [27] See Applicant's Appeal Brief dated February 14, 2019, pages 21-22.

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**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)**

**IMPORTANT NOTICE REGARDING YOUR  
U.S. TRADEMARK APPLICATION**

USPTO EXAMINING ATTORNEY'S APPEAL BRIEF  
HAS ISSUED ON **4/10/2019** FOR U.S. APPLICATION SERIAL NO. 86670074

Please follow the instructions below:

(1) **TO READ THE APPEAL BRIEF:** Click on this [link](#) or go to <http://tsdr.uspto.gov/>, enter the U.S. application serial number, and click on "Documents."

The Examining Attorney's Appeal Brief may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

(2) **FILING A REPLY BRIEF:** You *may* file a reply brief within twenty (20) days of **4/10/2019**, the date from which the Examining Attorney's Appeal Brief issued.

**Do NOT hit "Reply" to this e-mail notification, or otherwise e-mail a reply brief** because this mailbox is not monitored. Instead, the Trademark Trial and Appeal Board requires that you file a reply brief online using the Electronic System for Trademark Trials and Appeals (ESTTA) located at <http://estta.uspto.gov>. A reply brief transmitted through ESTTA must be received before midnight **Eastern Time** of the last day of the reply period.

(3) **QUESTIONS:** For *technical* assistance in accessing or viewing the appeal brief in the Trademark Status and Document Retrieval (TSDR) system, please e-mail [TSDR@uspto.gov](mailto:TSDR@uspto.gov).