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Filing date: **06/25/2018**

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

Proceeding	87332393
Applicant	Wright, Jill J.
Applied for Mark	EXECUTIVE SHINE
Correspondence Address	JULIE L. BERNARD BERNARD IP LAW, LLC 11076 MAPLE RD. LAFAYETTE, CO 80026 UNITED STATES Email: Julie@BernardIPLaw.com
Submission	Applicant's Motion to Suspend
Attachments	JJW002TM - Suspend Appeal-Request for Remand.pdf(269434 bytes) Co-Existence Agreement Wright - Executive Cleaners EXHIBIT A.pdf(545783 bytes)
Filer's Name	Julie L. Bernard
Filer's email	Julie@BernardIPLaw.com
Signature	/Julie L. Bernard/
Date	06/25/2018

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

Serial No: 87332393
Examining Attorney: Rebecca T. Caysido, Law Office 123
Mark: EXECUTIVE SHINE
Filing Date: 10 February 2017
Applicant: Jill J. Wright
Docket No: JJW002TM

REQUEST TO SUSPEND AND REMAND

Pursuant to 37 C.F.R. §2.142(d), Appellant/Applicant, hereby requests that action on this Appeal be suspended and that the Application be remanded to Examining Attorney for further examination and consideration of additional evidence.

Appellant/Applicant asserts that the additional evidence, attached to this Request as Exhibit A, is not cumulative. The additional evidence submitted in response to a refusal to register under Trademark Act § 2(d) comprises an executed Consent and Co-existence Agreement which was not available at the time Appellant/Applicant filed the Notice of Appeal.

In light of the probative nature of the evidence, Appellant/Applicant hereby requests Appeal suspension and remand back to Examining Attorney.

Respectfully Submitted,

Date: 25 June 2018

By: /Julie L. Bernard/
Julie L. Bernard
Attorney for Appellant/Applicant

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EXHIBIT A

DocuSign Envelope ID: 91D8BD5A-53ED-4728-B7D3-BDFAC34D07BE

CONSENT AND CO-EXISTENCE AGREEMENT

This Consent and Co-existence Agreement ("Agreement") is made and entered into as of the last of the dates shown in the signature block below (the "Effective Date"), and is between Executive Cleaners, Inc., a Connecticut corporation have an address of 351 Boston Post Rd., Milford, CT, 06460, US ("Cleaners") and Jill J. Wright, an individual, residing at 2548 Savage Rd., Elizabeth, CO 80107, US ("Wright") (each, individually, a "Party" and collectively, the "Parties").

WHEREAS, Cleaners is the owner of U.S. Trademark Registration No. 3076171 for the mark "EXECUTIVE" issued on April 4, 2006 and renewed on March 28, 2016, consisting of a shield divided into four quarters, with the word EXECUTIVE positioned above the four quarters, and a button design in the top left quarter, and swirl design in the bottom left quarter, a coat hanger design in the top right quarter, and a droplet design in the bottom right quarter ("Registration") for the following goods and services and in International Class 037 (hereinafter, "Executive Services"):

Dry cleaning and laundry services for clothing and textiles; shoe repair; and cleaning services for wedding gowns, household items, suede, leather, and area rugs.

WHEREAS, Wright has adopted and used in interstate commerce the mark "EXECUTIVE SHINE" since at least February 1, 1987 and applied for registration at the United States Patent and Trademark Office (the "USPTO") of the mark "EXECUTIVE SHINE" identified in Serial No. 87332393 ("Applied-for-Mark") for the following goods and services in International Class 037 (hereinafter, "Wright Services"):

Shoe polishing services; and shoe shining services, namely, personal, on-demand, and in-place services provided in an airport; all of the forgoing excluding dry cleaning, laundry, leather repair, and shoe repair services.

WHEREAS, on May 9, 2017, the USPTO issued an office action ("Office Action") in which it refused registration of Wright's trademark application, citing as a substantive reason therefor a likelihood of confusion between the Registration and the Applied-for-Mark, and maintained the refusal in a final office action ("Final Office Action") dated December 5, 2017;

WHEREAS, the Parties have been simultaneously using their respective marks;

WHEREAS, the Parties believe that their respective marks as used are not likely to be confused as to source, sponsorship, affiliation, or association;

WHEREAS, the Parties wish to avoid consumer confusion;

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WHEREAS, the Parties anticipate that this Agreement will be accepted by the USPTO and the USPTO will allow the Applied-for-Mark to be registered;

NOW, THEREFORE, in consideration of the mutual terms and covenants set forth in this Agreement and the payment of fifteen-hundred dollars (\$1,500.00) from Wright to Cleaners, the receipt and sufficiency of such consideration is hereby acknowledged, the Parties agree as follows:

1. Non-Material Alterations

a. The Registration includes any Non-Material Alterations of the trademark that do not otherwise conflict with the express provisions of this Agreement, and other alterations to such trademark permitted under this Agreement.

b. The Applied-for-Mark includes any Non-Material Alterations of the Applied-for-Mark that do not otherwise conflict with the express provisions of this Agreement, and other alterations to such mark permitted under this Agreement.

2. Cleaners consents to Wright's registration and use of the Applied-for-Mark and agrees not to take any action, for example, contest, oppose, object to, seek to limit, seek to cancel, or commence a proceeding against, or otherwise challenge use or registration of the Applied-for-Mark or assist others in contesting, objecting to, opposing, seeking to cancel, commencing a proceeding against, or otherwise challenging Wright's rights to use the Applied-for-Mark in connection with the sale, promotion, and advertisement of Wright's Services, provided that Wright is not in breach of this Agreement and Wright's use of the Applied-for-Mark is limited as set forth below:

a. does not use the word "Executive" and a shield design in connection with the Applied-for-Mark; or

b. does not use the Applied-for-Mark in the New England area, the State of New York, or the State of New Jersey; or

c. does not use the Applied-for-Mark with the designs currently being used by Cleaners and/or any designs that are substantially similar to the designs used by Cleaners; or

d. does not advertise or promote goods and services, including the Wright's Services, under the Applied-for-Mark in such a way as to imply any affiliation or connection with the Registration, Cleaners, or Cleaner's Services; or

e. does not defame, disparage, encourage others to defame or

disparage, and/or otherwise make misrepresentations in connection with the Registration or Cleaners.

Under these conditions, Cleaners consents to the registration of Wright's application for registration of the EXECUTIVE SHINE Applied-for-Mark for the Wright's Services.

3. Wright agrees not to contest, oppose, object to, seek to limit, commence a proceeding against, or otherwise challenge use of the Registration by Cleaners, or assist others in contesting, objecting to, opposing, seeking to cancel, commencing a proceeding against, or otherwise challenging, Cleaners' rights to the Registration in connection with the sale or advertisement of the Executive Services, provided that Cleaners are not in breach of this Agreement.

4. The Parties have been using their respective marks simultaneously, have determined that their respective uses are not likely to cause confusion, mistake, or deception as to the source or sponsorship of each Party's goods/services, and neither Party is aware of any instance of actual or apparent confusion. The Parties do not offer the same services, offer services in the same way, or offer services in similar channels of commerce. Nevertheless, in the event that any confusion arises, the Parties shall make good faith efforts to resolve all future situations involving actual or apparent consumer confusion arising as a result of their respective marks. The Parties agree to cooperate and find ways to eliminate or minimize any potential confusion; for example, if either Party has reason to believe any person has mistakenly contacted it, intending to have contacted the other Party, such mistakenly contacted Party will notify the mistaken customer of the error and furnish notice of the address of the proper Party, as provided for herein.

5. The scope of this Agreement shall be limited to the United States and shall be binding on and inure to the benefit of the Parties, their affiliates, and the respective successors and assigns of the Parties, including without limitation to any assignee of either Party's marks identified herein. The Parties each agree to execute and deliver to the other Party any and all reasonably requested consent agreements or other documents that are needed to effectuate the intent and purpose of this Agreement.

6. If either Party asserts a breach of this Agreement, such Party shall give the other Party at least sixty (60) days prior written notice of the existence and the nature of such breach before taking further action and shall give the Party purportedly in breach of this Agreement the opportunity to correct such breach during the sixty (60) day period.

7. Neither Party may assign its rights or delegate its duties under this Agreement, whether by operation of law or otherwise, without the prior written consent of the other Party, unless such assignment or delegation is made in conjunction with the assignment or licensing of that Party's respective mark.

8. The Parties anticipate that this Agreement will be accepted by the USPTO and the USPTO will allow the Applied-for-Mark to be registered. If this consent agreement is not accepted by the USPTO, Wright and Cleaners shall instead negotiate in good faith until a revised consent agreement is accepted by the USPTO and the Applied-for-Mark is allowed to register for Wright's services.

9. This Agreement constitutes the entire Agreement and understanding between the Parties with respect to the subject matter hereof, and supersedes all other agreements, understandings and negotiations, written or oral, between the Parties. Amendments, modifications, or supplements to this Agreement shall be valid only if made in writing and signed by both Parties.

10. No Party shall be deemed to have waived the protection of any provision hereof, nor such Party's right to enforce the same upon a breach or subsequent breach thereof, unless such waiver shall be in writing and executed by both Parties. No waiver of any breach shall be construed as a continuing waiver of the same or similar breaches.

11. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Connecticut without regard to conflict of laws principles. Any legal action or proceeding relating to any dispute, controversy or claim arising under, out of, or relating to this Agreement and any subsequent amendments of this Agreement including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be instituted exclusively in state or federal courts in Connecticut. Each Party hereby unconditionally and irrevocably submits to personal jurisdiction of the state and federal courts located in the State of Connecticut.

12. If any provision or portion of any provision of this Agreement is adjudicated as invalid, illegal, or unenforceable in any jurisdiction; such invalidity, illegality, or unenforceability shall not affect any other provision or portion thereof of this Agreement or otherwise invalidate or render the provision or portion unenforceable in any other jurisdiction. Upon the determination that any provision or portion thereof is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to effect the original intent of the Parties.

13. Each Party hereto shall be solely responsible for its own legal expenses and costs in connection with this Agreement, including the negotiation, execution, and performance of this Agreement. The prevailing party in any lawsuit between the parties is entitled to receive reasonable attorneys' fees.

14. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors, assigns, affiliates, subsidiaries, divisions, related companies, agents, officers, directors and employees, including any permitted successors or assigns of the Trademarks, or any applications for registration or registration therefor,

as contemplated by this Agreement. The Parties acknowledge that in the event (i) this Agreement is acquired; or (ii) the Trademarks are acquired by operation of law or otherwise, the acquiring party shall be bound by all of the terms of this Agreement.

15. Any notice or other communication relating to the subject matter of this Agreement shall be deemed sufficiently given if sent by courier service or by registered or certified mail, postage prepaid, return receipt requested, addressed to the Party and address set forth hereinabove, or as the Parties may direct in a notice from time to time.

16. This Agreement may be executed in counterparts, and an electronically transmitted copy shall be deemed valid. When each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one agreement that shall be binding upon and effective as to both Parties.

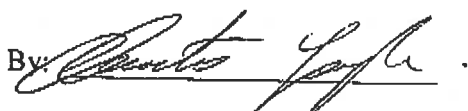
17. By executing this Agreement, each signatory affirms, represents, and warrants that the signatory owns its mark and has the requisite power and authority to execute this Agreement on behalf of its respective Party(ies). Each signatory further affirms, represents, and warrants that the Party(ies) upon whose behalf he/she has signed has the authority to, and will, perform under and be bound by, the terms of this Agreement.


18. Each Party acknowledges that it has had the opportunity to consult with and receive advice of an attorney. Being mutually drafted, this Agreement is not to be construed against the drafter.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the respective dates shown in the signature block below:

Executive Cleaners, Inc.

Jill J. Wright

By: 
Clentina Yazdani, Secretary

By: 
Jill J. Wright

Date:

Date: 6/4/2018 1:39:37 PM PDT