

ESTTA Tracking number: **ESTTA1130061**

Filing date: **04/28/2021**

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

Proceeding	88450998
Applicant	Kristin Smith
Applied for Mark	A PART
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Submission	Request for remand/amendment
Attachments	210428 Request for Remand.pdf(217052 bytes) SKMBT_C28421040915230.pdf(925923 bytes)
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Signature	/Oscar R. Trejo/
Date	04/28/2021

2. Now, Appellant respectfully requests the Board suspend the Appeal and remand the application for further examination. *See In re Juleigh Jeans Sportswear Inc.*, 24 USPQ2d 1694, 1696 (TTAB 1992); *In re Wells Fargo & Co.*, 231 USPQ 95, 101 n.24 (TTAB 1986); *In re Big Wrangler Steak House, Inc.*, 230 USPQ 634, 635 n.4 (TTAB 1986); *In re Bercut-Vandervoort & Co.*, 229 USPQ 783, 766 n.6 (TTAB 1986); *In re Chung, Jeanne & Kim Co.*, 226 USPQ 938, 940 n.6 (TTAB 1985); *In re Mayer-Beaton Corp.*, 223 USPQ 1347, 1348 (TTAB 1984); *In re Compagnie Internationale Pour L'Informatique-Cie Honeywell Bull*, 223 USPQ 363 n.3 (TTAB 1984); *In re Carvel Corp.*, 223 USPQ 65, 66 (TTAB 1984); *In re Jos. Schlitz Brewing Co.*, 223 USPQ 45, 46 n.1 (TTAB 1983); *In re Best Western Family Steak House, Inc.*, 222 USPQ 827 n.1 (TTAB 1984); *In re Jeep Corp.*, 222 USPQ 333, 336 n.3 (TTAB 1984); *In re Consolidated Foods Corp.*, 218 USPQ 184, 186 n.2 (TTAB 1983); *In re Royal Viking Line A/S*, 216 USPQ 795, 797 n.3 (TTAB 1982).

3. This request to suspend and remand for additional evidence is filed in a timely manner and prior to the rendering of the Board's final decision on the appeal, *See In re Johanna Farms, Inc.*, 223 USPQ 459, 460 (TTAB 1984); *In re Carvel Corp.*, 223 USPQ 65 (TTAB 1984).

4. Following the Examining Attorney's Section 2(d) refusal, Appellant entered into a consent agreement with Apart Fashion GMBH ("Registrant"), the owner of registration no. 1762096 ("Registration").

5. The Registration was the basis for Examining Attorney's Section 2(d) refusal. See March 9, 2020 Office Action.

6. A copy of the consent agreement between Appellant and Registrant is attached hereto.

7. The consent agreement between Appellant and Registrant removes the likelihood of confusion between the marks of Appellant and Registrant.

8. Accordingly, Appellant respectfully requests that this application be remanded to Examining Attorney so that it may be reconsidered in light of the consent agreement.

CONCLUSION

In view of the foregoing, Appellant respectfully requests suspension of the appeal and remand of jurisdiction for the introduction of additional evidence pursuant to 37 C.F.R. Section 2.142(d), TBMP § 1207.02.

Date: April 28, 2021

Respectfully Submitted,

/Oscar R. Trejo/
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Exhibits: Attached

THE IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Trademark for the mark "A | PART"

Applicant: Kristin Smith

LETTER OF CONSENT TO REGISTRATION

This letter confirms that Apart Fashion GMBH ("Registrant") is the owner of United States Trademark Registration Number 1762096 for the trademark "APART" covering "WOMEN'S SUITS, DRESSES, BLAZERS, SLACKS, SKIRTS, BLOUSES, OVERCOATS AND SHOES."

Registrant hereby consents to the use and registration of the trademark "A | PART" in association with the good and services of "T-shirts, jackets, hats, headbands, sweatshirts, pants, socks, sleeveless shirts and tank tops" and "online retail services featuring T-shirts, jackets, hats, headbands, sweatshirts, pants, socks, sleeveless shirts and tank tops" by Kristin Smith ("Applicant") for the following reasons:

- I. The trademarks present different commercial impressions to consumers such that when making their purchasing selection, those consumers will not be confused between the respective marks.
- II. The goods are not related in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source.
- III. The "A | PART" mark appears with a noticeable partition within the mark that distinguishes it from Registrant's mark and will not cause confusion.

In view of the foregoing, it is doubtful that customers presented with the respective trademarks would be likely to believe that the services identified thereby originate from the same source. Contemporary use and registration of the trademarks is therefore not likely to cause confusion.

Registrant and Applicant have mutually agreed that, if in the future, either party is made aware of any evidence of confusion with regard to their respective trademark, the party receiving such information will promptly make that information available to the other party. Thereafter, the parties, through their authorized officers, directors, representatives, or attorneys, shall confer for the purpose of jointly considering such evidence and shall jointly or individually take whatever steps are necessary to eliminate such confusion, including the possibility of altering lettering stylization, design elements, or coloration of the A | PART mark.

For these reasons, Registrant consents to the use and registration of the mark "A | PART" by Applicant for "T-shirts, jackets, hats, headbands, sweatshirts, pants, socks, sleeveless shirts and tank tops" and "online retail services featuring T-shirts, jackets, hats, headbands, sweatshirts, pants, socks, sleeveless shirts and tank tops."

Dated: 01.04.2021

Apart Fashion GMBH

BY: 

Name: Ksenia Lupeckina

Title: CEO

APART Fashion GmbH
Friedrich-Ebert-Damm 111a
22047 Hamburg

Dated: 4.12.21

Kristin Smith

BY: 

Name: Kristin Smith

Kristin Smith