

156,891

SERVICE MARK
Attorney Docket: T53705US0

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT:	The New Sioux City Iron Company	CLASS:	035
SERIAL NO:	78/116,332	EXAMINER:	J. Watson
FILED:	March 20, 2002	LAW OFFICE:	104
MARK:	THE TOOL DEPOT & Design		

CORRECTED APPLICATION TO AMEND TRADEMARK APPLICATION SERIAL NO. 78/116,332 UNDER 37 C.F.R. § 2.72(a)(2) AND TMEP § 1505.01(c)

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Dear Commissioner:

Pursuant to Trademark Manual of Examining Procedure ("TMEP"), § 1505.01(c) and 37 C.F.R. § 2.72(a)(2), applicant respectfully requests that its trademark be amended from THE TOOL DEPOT & Design to TOOL DEPOT & Design, removing the word "THIE".

It is submitted that the change in the mark does not constitute a material alteration of the original trademark. The new form of the trademark creates the impression that the marks are essentially the same. Specifically, the only difference in the marks is that the amended mark

CERTIFICATE OF MAILING (37 C.F.R. § 1.8(a))

I hereby certify that this document and the documents referred to as enclosed therein are being deposited with the United States Postal Service as First Class mail in an envelope addressed to: Box RESPONSES - NO FEE, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3514, on this 7th of April, 2004.



04-12-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #72

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does not include the word "THE". This is a minor change and does not alter the commercial impression. As stated in TMEP §1505.01(c):

"If the applicant proposes to amend the mark after publication, the amendment is not a material alteration of the mark and the specimens of record support use of the mark as amended, the office will approve the amendment and will not republish the mark."

(Internal citations omitted). See also *In re Vienna Sausage Mfg. Co.*, 16 U.S.P.Q. 2d (BNA) 2044, 2047 (T.T.A.B. 1990) ("What is considered a material alteration has been addressed in several cases, all of which agree, in essence, the new and old form of the mark must create the same general commercial impression or create the impression of being essentially the same mark.") Here the deletion of the word "THE" at the beginning of the mark creates a mark which conveys the same commercial impression to consumers. Indeed, many consumers will automatically delete the word the in their oral recitation of the mark and the appearance of the revised mark is virtually identical to the original mark.

Applicant further requests that the recitation of services in this application be amended from "retail store services for tools, hardware, construction supplies and home improvement supplies" to "retail store services for power and hand tools, for construction supplies and for craft industries."

It is therefore respectfully requested that this amendment to application no. 78/116,332 be accepted.

Filing fee: The United States Patent and Trademark Office is authorized to charge any filing fee for the amendment to application to Deposit Account 26-0084. The duplicate copy of this document is being provided for that purpose.

Respectfully submitted,



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