

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/664911

MARK: HELICOPTERHELMET.COM

77664911

CORRESPONDENT ADDRESS:
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RESPOND TO THIS ACTION:
<http://www.uspto.gov/teas/eTEASpageD.htm>

GENERAL TRADEMARK INFORMATION:
<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Abbott, Ron

**CORRESPONDENT'S
REFERENCE/DOCKET NO:**
N/A
CORRESPONDENT E-MAIL ADDRESS:

OFFICE ACTION

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

ISSUE/MAILING DATE:

Serial No. 77664911

This letter responds to applicant's communication dated October 30, 2009.

Pertinent Procedural History

In the initial Office action dated May 4, 2009, the examining attorney (1) refused registration pursuant to Section 2(e)(1) of the Trademark Act; (2) requested amendment to the identification of services; and (3) requested that applicant set forth a filing basis.

In response, applicant (1) traversed the Section 2(e)(1) refusal to register; (2) amended its identification of services; and (3) set forth a proper filing basis with supporting specimens and various and conflicting dates of use.

Identification of Services

Applicant's amendment to the identification of services is acceptable.

Section 2(e)(1) Refusal to Register

The examining attorney has considered the applicant's arguments carefully but has found them unpersuasive. The examining attorney relies on the arguments and evidence previously made of record that are incorporated by reference herein. Accordingly, the refusal under Section 2(e)(1) is continued and maintained.

In addition, and in support of the refusal to register, the examining attorney relies upon applicant's specimens of record and other evidence submitted as Exhibit A to applicant's response of October 30, 2009.

See applicant's Exhibit A.

Moreover, the examining attorney argues that "A mark may be merely descriptive even if it does not describe the 'full scope and extent' of the applicant's goods or services." *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004) (citing *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 1346, 57 USPQ2d 1807, 1812 (Fed. Cir. 2001)); TMEP §1209.01(b). It is enough if the term describes only one significant function, attribute or property. *In re Oppedahl*, 373 F.3d at 1173, 71 USPQ2d at 1371; TMEP §1209.01(b).

In further support of the Section 2(e)(1) refusal to register, the examining attorney submits and relies upon applicant's web page wherein helicopter helmets are prominently displayed as items for sale by applicant.

See

<http://www.helicopterhelmet.com/>

The fact that applicant sells other products in addition to helicopter helmets is not controlling on the issue of descriptiveness. *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004) (citing *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 1346, 57 USPQ2d 1807, 1812 (Fed. Cir. 2001)); TMEP §1209.01(b).

Section 1(a) Filing Basis

Applicant has met all of the requirements with respect to a Section 1(a) filing basis with the exception of the following.

Clarification Required as to Dates of Use

Applicant, in its response of October 30, 2009 has set forth conflicting information regarding its dates of use. Applicant has essentially filed several responses to the initial Office action and in the first, applicant sets forth its dates of use as 4/1/02 for **Class 35**. However, in its affidavit supplied in support

of the Office action, applicant makes the statement that “the dates of use of the mark anywhere and in commerce in the initial application (the examining attorney assumes that applicant is referring to its response inasmuch as no dates of use were supplied in the initial application) apply to **Class 25** and are at least as early as the filing date of the application.”

In view thereof, and in view of the conflicting information provided in the response and supporting declaration, applicant must clarify its dates of use for the record.

Response

If applicant has questions about its application or needs assistance in responding to this Office action, please telephone the assigned trademark examining attorney.

/efalk/
Erin Falk
U.S. Patent & Trademark Office
Trademark Examining Attorney
Law Office 101
(571) 272-1110

RESPOND TO THIS ACTION: Applicant should file a response to this Office action online using the form at <http://www.uspto.gov/teas/eTEASpageD.htm>, waiting 48-72 hours if applicant received notification of the Office action via e-mail. For *technical* assistance with the form, please e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned examining attorney. **Do not respond to this Office action by e-mail; the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

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