

The Applicant's mark has been refused registration under Section 2(e)(4) on the basis that the Examiner believes HIRT FITNESS is primarily merely a surname. Please note that simultaneous with submitting this explanation, and at the suggestion of the Examiner, Applicant has amended the application to remove FITNESS from the drawing.

Accordingly, Applicant respectfully submits the following explanation and argument to the Examiner in favor of registration of the Applicant's mark.

The Applicant's core mark "HIRT" is not primarily merely a surname, but rather a unique acronym coined by the Applicant in relation to a novel and innovative type of fitness training created and taught by the Applicant. HIRT, an acronym for "High Intensity Repetition Training", is a distinct trademark that the Applicant uses prevalently in connection with the Applicant's fitness training and related services.

The Applicant has used HIRT in connection with his training services since January of 2010 and has widely become known to offer fitness training under the HIRT mark, including branding his actual fitness center as HIRT.

Prior to the Applicant coining the term HIRT and using it as a trademark to identify his training services and fitness center, the mark was not used by third parties in connection with fitness training. While Al Hirt chose to protect his name as a musician by registering it in connection with recordings of his musical performances, Applicant's prevalent use of HIRT in connection with fitness services has created strong secondary meaning and has made HIRT distinctive to consumers in the fitness community.

The Applicant conducts fitness-oriented training seminars as HIRT, creates fitness videos under the acronym HIRT, circulates shirts and marketing materials featuring the HIRT mark, and has recently created a website around the HIRT brand. By using the HIRT mark so extensively in connection with his fitness services, the Applicant has created a distinct meaning and connection with his brand to the consumer and fitness community.

Based on the foregoing, Applicant respectfully requests that the Examiner withdraw her refusal and allow the application to progress to publication.

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