

Attorney Docket No. 398067US35

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK EXAMINING OPERATIONS

In re the Application of:

Toyota Jidosha Kabushiki Kaisha,
t/a Toyota Motor Corporation

Examining Attorney

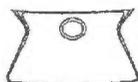
Application Serial No. 85/609,282

Sharon A. Meier

Filed: April 26, 2012

Law Office 112

Mark: MISCELLANEOUS DESIGN (SHAPE OF A SPINDLE GRILLE)



DECLARATION UNDER SECTION 2(f) IN
SUPPORT OF ACQUIRED DISTINCTIVENESS

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, hereby declares that all statements made herein of his own knowledge are true and all statements made on information and belief are believed to be true, and he hereby declares that:

1. I am General Manager, Corporate IP Dept., Intellectual Property Division of Applicant, Toyota Jidosha Kabushiki Kaisha, t/a Toyota Motor Corporation ("Applicant" or "Toyota").
2. Applicant believes that its mark, as shown in Application Serial No. 85/609282, has acquired distinctiveness pursuant to Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f), in connection with its automobiles.

3. There are currently 232 LEXUS dealerships in the United States. The distinctive "Spindle Grille" design is displayed at each dealership on almost every LEXUS model.
4. One of our goals in designing cars is to present a "face" to a car that will be recognized from far away. This can be achieved in many ways. From the front of the car, this "face" is the grille design. A decision was made to create a uniform "face" for most LEXUS models, consisting of the "Spindle Grille" design.
5. No other automobile, past or present, of which I am aware, has a similar grille design.
6. Although the grille design could be referred to in different ways, Toyota named it the "Spindle Grille" design so consumers would instantly make the association with the shape and LEXUS vehicles.
7. Through extensive promotion, advertising and media attention, the "Spindle Grille" has been brought to the public's attention, and it is associated with LEXUS even though the "Spindle Grille" design is relatively new in the marketplace.
8. Applicant first sold its automobiles with the distinctive "Spindle Grille" design in February 2012.
9. Since the launch of Applicant's automobiles with the "Spindle Grille" design, Applicant has sold over 190,000 such automobiles in the United States during approximately the first year and a half since launch (from February 2012 through mid-June 2013). Because the "Spindle Grille" is now displayed on almost all LEXUS models sold in the U.S., including the all-new 2013 IS sedan launched in July 2013, Toyota expects that the number of vehicles sold with the "Spindle Grille" will increase until it is the vast majority of Toyota's entire annual United States LEXUS sales volume. Toyota sold 244,155

LEXUS vehicles in the United States during the 2012 sales year and expects sales to increase for the 2013 sales year.

10. The dollar amount of retail sales of LEXUS automobiles with the “Spindle Grille” sold in the United States through mid-June 2013 is well over five billion U.S. dollars.
11. Applicant launched its “Spindle Grille” design in January 2012 at the Detroit North American International Auto Show with the first airing of the “Spindle Grille Reveal Video.” The storyboard for this video shows Applicant’s “Spindle Grille” design and it refers to “The Bold New Face of LEXUS.” **Exhibit 1.**
12. The advertising and promotion of the mark has been extensive from the beginning and includes such nationwide advertisements as the following examples in **Exhibit 2**: (i) a 2012 Super Bowl television commercial titled “The Beast” (attached is a screen shot from the television commercial, a press release, and storyboards from the launch of the 2013 GS “Beast” and 2013 GS “Beast 2” Super Bowl commercials); and (ii) a 2012 promotion with and advertisement in “Sports Illustrated” featuring the LEXUS “Spindle Grille” and “Sports Illustrated” swimsuit model Tori Praver (attached is a press release and a print of the single page advertisement).
13. Toyota identifies the “Spindle Grille” as a separate feature of its automobiles. For example, Applicant’s website has included “The Spindle Grille Story Part I” and “The Spindle Grille Story Part II” at www.lexus-global.com/about_lexus/index.html discussing Applicant’s new and unique groundbreaking “‘Spindle Grille’ design.” The Lexus International News website (www.lexus-int.com/news) includes the January 10, 2013 press release “First Official Photos of the Next Generation IS” and states: “The all-new IS features the new Lexus spindle grille frontal design, awarding the compact sedan a

combination of aggressive elegance, a more powerful road presence and a stronger brand identity.” **Exhibit 3.**

14. Numerous additional television and print advertisements and promotional photos of Applicant’s automobiles emphasize the “Spindle Grille” design through the placement of the automobile, as well as overt references to the grille. For example, Applicant notes the following LEXUS automobile television advertisement storyboards (copies attached as **Exhibit 4**):

- The IS – “Crowd”
- The IS – “Color Shift”
- The IS – “This is Your Move”
- The ES – “Split World”
- The ES – “Infinite Glances”
- The ES – “Make Your Mark”
- The ES – “Make of Pride”
- The 2013 LS Launch – “Flashbulbs”
- The 2013 GS Launch – “Resistance Safety”
- The 2013 GS Sustaining – “Synchronized”
- The MSE – Command Performance 2013 – “Slalom”
- The MSE – Command Performance 2013 – “Split World”
- The DSE 2013 – “Friends”
- The ASE 2013 – “Vanishing Point”
- The ASE 2013 – “Journey Continues”

and the following LEXUS automobile print advertisements (copies attached as **Exhibit 5**):

- The GS Launch – “A Trigger”
- The GS Launch – “It’s A Dare”
- The GS Launch – Hispanic
- The GS Sustain – “The GS F Sport”
- The LS Launch – “Arrive Fashionably” and “Memorable Performance”
- The LS Launch – “Think Again”
- The LS Launch – “You Cast Your Own”
- The LS Launch – “The Driven”
- The IS Launch – “This Is Ambition”
- The IS Launch – “Change Lanes”
- The IS Launch – “Get Found In The Crowd”

The IS Launch – “It’s Your Move”
 The IS Launch – “This Is Your Move”
 The IS Launch – Hispanic “Irresistible”
 The ES Launch – “Two Acts”
 The ES Launch – “A Stunning Work”
 The ES Launch – “Impression”
 The ES Launch – Hispanic
 The MY13 RX Launch – “Blazing”
 The MY13 RX – “Very Quickly”
 The MY13 RX – “The Answer”
 The RX Sustain – “RX Never Lose Your Edge”
 The DSE – “Happy Holidays”
 The MSE – “Unlimited Exhilaration”
 The ASE – “Golden Opportunity”
 The CPO Spring Sales Event – “It’s Your Turn”

15. Toyota’s advertising and promotional expenditures relating to the “Spindle Grille” design mark for its LEXUS automobiles in the United States are in the hundreds of millions of dollars for the representative time period from February 2012 through mid-June 2013.
16. There is substantial evidence of media recognition and coverage referring to Applicant’s LEXUS “Spindle Grille” design, including the following examples:
 - (i) “Lexus ES Makes a Play for Sustained Segment Dominance,” by Jonathan Schultz, April 4, 2012 -- the article includes the following statement: “How’s it look? ... More polarizing to the Lexus faithful may be the spindle grille, the new corporate face first worn in production by the 2012 GS sedan. ...” <http://wheels.blogsnytimes.com>;
 - (ii) “For Lexus, high-profile nose job brings new attitude,” by Hans Greimel, April 16, 2012 -- including the following statements: “...Lexus is rolling out what executives hope will be a breakthrough look: the Lexus ‘spindle grille.’ ... In production form, the spindle grille was toned down and launched in the GS sedan that hit U.S. showrooms in February. But executives say its spindle outline will gravitate toward the bold styling of the concept as it spreads across the lineup.” Photographs of the “Spindle Grille” on the

Lexus GS and the LF-LC Concept cars are included in the article.
www.autonews.com/apps/pbsc.dll/article; and

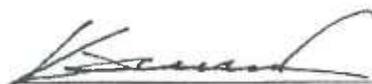
(iii) "Lexus Takes the IS Sedan to a Distinctive New Place," by Paul Stenquist, January 15, 2013 -- the article includes a photograph of the car clearly showing the "Spindle Grille" and captioned "The Lexus IS 350 F Sport was introduced in Detroit on Tuesday," and the following statements: "What they said: 'When you see one of our cars in your rear view mirror, you know it's a Lexus,' said Mark Templin, Lexus group vice president. Mr. Templin said that the fascia design, which Lexus calls a spindle grille, makes the brand's cars distinctive. He's correct." <http://wheels.blogsnytimes.com;>

Exhibits 6-8.

17. Applicant believes its "Spindle Grille" design mark is recognized in the trade and by consumers and purchasers of Applicant's goods as a trademark identifying Applicant as the source of the involved automobiles.

Toyota Jidosha Kabushiki Kaisha,
t/a Toyota Motor Corporation

Signature:



Name:

Kazuhiro Nagashima

Title/Position:

General Manager
Corporate IP Dept.
Intellectual Property Division

Date:

September 3, 2013

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