

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
OFFICE OF THE COMMISSIONER FOR TRADEMARKS

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In re Trademark Registration

Application No.: 86021236  
Applicant: Board of Trustees of the University of Arkansas  
Filed: July 26, 2013  
Mark: Sensory Mark

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

Attention: Heather Biddulph, Examining Attorney  
Law Office 114

**Response To Office Action**

This is in response to the Office Action dated October 11, 2013 (“Office Action”) with respect to the above-referenced application to register a Sensory Mark (the “Application”). Applicant, through its attorneys, hereby addresses the issues raised in such action.

**REMARKS**

**I. Failure to Function as a Service Mark**

Registration was refused on the grounds that “the applied-for mark, as used on the specimen of record, does not function as a service mark to identify and distinguish applicant’s services from those of others and to indicate the source of applicant’s services.” Specifically, the trademark examiner determined that the specimen submitted with the Application shows the mark being chanted by a crowd at a sports event and does not show Applicant’s use of the mark.

In response, Applicant submits a substitute specimen which consists of a video of former University of Arkansas Athletic Director and coach Frank Broyles leading University of Arkansas Chancellor David Gearhart, current Athletic Director Jeff Long, members of the University of Arkansas Board of Trustees, other University officials, and University employees and students, including cheerleaders, leading a crowd in the “Calling of the Hogs” (“The Hog Call”) at the dedication of the statue of Coach Broyles in front of the Frank Broyles Athletic Complex on the campus of the University of Arkansas, Fayetteville, on November 23, 2012. The video is being submitted via e-mail to [TEAS@uspto.gov](mailto:TEAS@uspto.gov) and is incorporated herein by reference.

Additionally, Applicant claims acquired distinctiveness under Trademark Act Section 2(f) and, as evidence of such acquired distinctiveness, is providing copies of newspaper articles over the last twenty years, a Wikipedia entry, and other public

information that support Applicant's position that The Hog Call has been exclusively identified with the University of Arkansas for at least such 20-year period of time. The copies of the articles are attached hereto as Exhibit A and incorporated herein by reference.

## **II. Specimen – Fails to Show Applicant's Use in Commerce**

In response to the examiner's determination that "[t]he specimen is not acceptable because it does not show applicant's use of the applied-for mark in use in commerce," Applicant is submitting a substitute specimen via e-mail to [TEAS@uspto.gov](mailto:TEAS@uspto.gov) which is incorporated herein by reference. By the undersigned on behalf of Applicant, it is declared under 37 C.F.R. § 2.20 that the substitute specimen was in use in commerce at least as early as the filing date of the application.

## **III. Description**

The examining attorney in the Office Action required Applicant to submit a more detailed written description of the mark. Applicant accepts the examiner's suggested language and submits the following:

The mark is a sound. The mark consists of a crowd cheering the following words "Wooooooooo. Pig. Sooie! Wooooooooo. Pig. Sooie! Wooooooooo. Pig. Sooie! Razorbacks!"

## **IV. Prior Registrations**

Applicant is the owner of U.S. Registration Nos. 4459297, 1590197 and others.

## **Conclusion**

In view of the foregoing remarks, Applicant respectfully requests that the Application be registered.

Respectfully submitted,

WILLIAMS & ANDERSON PLC  
111 Center Street, 22<sup>nd</sup> Floor  
Little Rock, Arkansas 72201  
Telephone: (501) 396-8461  
Fax: (501) 396-8561

  
HAROLD J. EVANS (AR Bar #78214)

Date: January 27, 2014