UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/503324

MARK: DRUM MAJOR ACADEMY

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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: George N. Parks

CORRESPONDENT'S REFERENCE/DOCKET NO: N/A

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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: 4/22/2009

TEAS PLUS APPLICANTS MUST SUBMIT DOCUMENTS ELECTRONICALLY OR SUBMIT FEE: TEAS Plus applicants should submit the following documents using the Trademark Electronic Application System (TEAS) at http://www.uspto.gov/teas/index.html: (1) written responses to Office actions; (2) preliminary amendments; (3) changes of correspondence address; (4) changes of owner’s address; (5) appointments and revocations of attorney; (6) amendments to allege use; (7) statements of use; (8) requests for extension of time to file a statement of use, and (9) requests to delete a §1(b) basis. If any of these documents are filed on paper, they must be accompanied by a $50 per class fee. 37 C.F.R. §§2.6(a)(1)(iv) and 2.23(a)(i). Telephone responses will not incur an additional fee. NOTE: In addition to the above, applicant must also continue to accept correspondence from the Office via e-mail throughout the examination process in order to avoid the additional fee. 37 C.F.R. §2.23(a)(2).

This Office action is in response to applicant’s communication filed on March 27, 2009. Applicant’s claim under Section 2(f) is accepted as to Class 25 but not as to Classes 16 and 41 for the reasons stated below.

Response Review-2(f) Claim Not Accepted As To Classes 16 and 41

Applicant amended the application to assert acquired distinctiveness based on five years’ use in commerce. Applicant states in its response that it has used the mark for 31 years. However, because the applied-for mark is highly descriptive of applicant’s goods and/or services, the allegation of five years’ use is insufficient to show acquired distinctiveness. In re Kalmbach Publ’g Co., 14 USPQ2d 1490 (TTAB 1989); TMEP §1212.05(a). Additional evidence is needed.

Applicant’s evidence consists of copies of printed matter in the form of instruction booklets, programs, courses and certificates showing that the mark is in fact in use. However, this material does not establish that the proposed mark has become distinctive in terms of identifying to the
relevant purchasing public a particular source of the Applicant’s goods in Class 16 and services in Class 41 with the merely descriptive wording “Drum Major Academy” for an academy that features drum major education and/or instruction. Clearly, the proposed mark is merely descriptive as a whole. A dictionary definition of the term “academy” is attached to this office action that shows the meaning of this term is “a school for special instruction.” Applicant in fact offers a school for special instruction for drum majors. Therefore, the wording DRUM MAJOR ACADEMY as a whole in relation to Applicant’s goods in Class 16 and services in Class 41 is clearly merely descriptive since the subject matter and source of these specified goods and services are in fact a school that provides special instruction for drum majors.

Evidence of acquired distinctiveness may include specific dollar sales under the mark, advertising figures, samples of advertising, consumer or dealer statements of recognition of the mark as a source identifier, affidavits, and any other evidence that establishes the distinctiveness of the mark as an indicator of source. See 37 C.F.R. §2.41(a); In re Ideal Indus., Inc., 508 F.2d 1336, 184 USPQ 487 (C.C.P.A. 1975); In re Instant Transactions Corp., 201 USPQ 957 (TTAB 1979); TMEP §§1212.06 et seq. The Office will decide each case on its own merits.

If additional evidence is submitted, the following factors are generally considered when determining acquired distinctiveness: (1) length and exclusivity of use of the mark in the United States by applicant; (2) the type, expense and amount of advertising of the mark in the United States; and (3) applicant’s efforts in the United States to associate the mark with the source of the goods and/or services, such as unsolicited media coverage and consumer studies. See In re Steelbuilding.com, 415 F.3d 1293, 1300, 75 USPQ2d 1420, 1424 (Fed. Cir. 2005). A showing of acquired distinctiveness need not consider all of these factors, and no single factor is determinative. In re Steelbuilding.com, 415 F.3d at 1300, 75 USPQ2d at 1424; see TMEP §§1212 et seq.

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

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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.
 academy

SYLLABICATION: academy

Pronunciation: ak-uh-dee-uh

noun: Indefinite form, pl. academies

1. A school for special instruction.
2. A secondary or college-preparatory
Academy: Plato's school for advanced education and the first institutional school of philosophy.

Academy: A. Society of scholars, scientists, or artists.

ETYMOLOGY: Latin, Academia, the school where Plato taught, from Greek Academia.
IMPORTANT NOTICE

USPTO OFFICE ACTION HAS ISSUED ON 4/22/2009 FOR
APPLICATION SERIAL NO. 77503324

Please follow the instructions below to continue the prosecution of your application:

VIEW OFFICE ACTION: Click on this link http://tmportal.uspto.gov/external/portal/tow?DDA=Y&serial_number=77503324&doc_type=OOA&mail_date=20090422 (or copy and paste this URL into the address field of your browser), or visit http://tmportal.uspto.gov/external/portal/tow and enter the application serial number to access the Office action.

PLEASE NOTE: The Office action may not be immediately available but will be viewable within 24 hours of this notification.

RESPONSE MAY BE REQUIRED: You should carefully review the Office action to determine (1) if a response is required; (2) how to respond; and (3) the applicable response time period. Your response deadline will be calculated from 4/22/2009.

Do NOT hit “Reply” to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System response form at http://www.uspto.gov/teas/eTEASpageD.htm.

HELP: For technical assistance in accessing the Office action, please e-mail TDR@uspto.gov. Please contact the assigned examining attorney with questions about the Office action.

WARNING

1. The USPTO will NOT send a separate e-mail with the Office action attached.

2. Failure to file any required response by the applicable deadline will result in the ABANDONMENT of your application.