IN THE UNITED STATES PATENT AND TRADEMARK OFFICE


Examining Attorney
William T. Verhosek
Law Office 114


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In the Matter of the Application of      :

DaimlerChrysler AG                       :

For the Registration of a                :

Trademark: UNLIMITED                     :

Serial No.:  76/447,043                  :

Filed: September 5, 2002                 :

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

### Request For Reconsideration And
### Withdrawal Of Final Refusal To Register


    Applicant respectfully requests Examining Attorney
William T. Verhosek to reconsider and withdraw his final refusal to
register Applicant's UNLIMITED trademark.


    Applicant's use of its UNLIMITED mark for motor vehicles
and their structural parts will not lead to confusion with the

cited service mark registration UNLIMITED USED CARS for "automobile dealerships", for the reasons discussed below.

(1) The registered service mark UNLIMITED USED CARS is inherently very weak. It directly informs the public that the dealer has an unlimited supply of used cars from which a purchaser may choose.

(2) The registered service mark is also very weak in the marketplace. There are a vast number of third party dealers of new and used cars of every description that are using the dictionary word "UNLIMITED" in their business names to inform potential purchasers of the dealer's "unlimited" auto inventory. Attached hereto as Exhibits A through E are printouts, retrieved from the internet, that show a collection of business names, of third party automobile dealers and other automotive entities in the United States, that include the word "UNLIMITED". The attached exhibits are merely representative. As indicated by the Google search results pages attached as Exhibit E, and by the attached affidavit of Orlando Rodriguez, there are thousands of "hits" for Web page titles that include "unlimited" and

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"cars," or "autos," etc.

(3) For the foregoing reasons, the cited service mark is entitled to only very narrow protection, i.e., against a virtually identical mark for virtually identical services. Applicant's mark and motor vehicles are plainly outside that narrow scope of protection.

(4) Applicant's UNLIMITED trademark is significantly different from the service mark UNLIMITED USED CARS. As mentioned, the latter mark directly informs the public that the dealer has an unlimited supply of used cars in inventory. This is the only message conveyed by the registered mark. By contrast, no such message is conveyed by Applicant's trademark UNLIMITED when applied as a brand name on a motor vehicle. Rather, Applicant's trademark suggests the boundless superior driving potential and other features of Applicant's motor vehicle. Hence, potential purchasers would readily distinguish between the marks in issue.

(5) Another factor precluding likelihood of confusion is the care with which consumers would buy a

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new or used car. These are expensive purchases which require careful consideration, visits to a dealer, test drives, and other pre-purchase actions that strongly militate against likely confusion. Surely, a potential purchaser of a new or used car would either know or inquire about the identity of the car's manufacturer.

For the foregoing reasons, it is difficult to imagine that a potential purchaser would mistakenly assume that Applicant's UNLIMITED motor vehicle is associated with a used car dealer promoting a service mark in its plain dictionary sense to inform that the dealer has an "Unlimited" supply of used cars.

Furthermore, the cited registered mark is probably no longer in use. Undersigned counsel have searched the internet and have not found any evidence of use of the registered mark. We point out also that the due date of the Declaration of Use for the cited registration is June 22, 2005 and the PTO's TESS database does not indicate that the Declaration has been filed.

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For all the foregoing reasons, Applicant respectfully requests that the final refusal to register be withdrawn, or in the

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alternative, that further prosecution of this application be suspended until the grace period for filing the Declaration of Use for the cited registration expires on December 22, 2005.

Applicant is concurrently filing a Notice of Appeal to the Trademark Trial and Appeal Board.

Respectfully submitted,

VON MALTITZ, DERENBERG, KUNIN, JANSSEN & GIORDANO

By

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May 12, 2005

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