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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	77615946
Applicant	MPA Media, Inc.
Applied for Mark	HAVE YOU HAD YOUR MASSAGE TODAY
Correspondence Address	TIRZAH ABÄ# LOWE KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN ST FL 14 IRVINE, CA 92614-7216 UNITED STATES efiling@kmob.com
Submission	Applicants Request for Remand and Amendment
Attachments	APIS.023T - MOTION TO SUSPEND AND REMAND.pdf ( 41 pages )(3431627 bytes )
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Date	07/13/2011

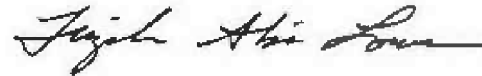
**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Applicant : MPA Media, Inc. )  
Serial No. : 77/615,946 )  
Filed : November 17, 2008 )  
Mark : HAVE YOU HAD YOUR )  
          MESSAGE TODAY )  
Examining )  
Attorney : Brian P. Callaghan )  
Law Office : 108 )

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July 13, 2011

(Date)



Tirzah Abé Lowe

**APPLICANT’S MOTION TO SUSPEND AND REMAND**

Pursuant to TBMP §§ 1205.01 and 1209.04, Applicant, MPA Media, Inc. (“Applicant”) hereby requests that the Trademark Trial and Appeal Board (“Board”) suspend the appeal in connection with the above-referenced application and remand the application to the Examining Attorney for consideration of an amendment under Section 2(f) of the Trademark Act and the corresponding evidence that the applied-for mark has become distinctive of Applicant’s goods in commerce.

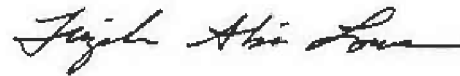
Applicant has good cause for requesting a remand. Under T.B.M.P. Section 1205.01, an amendment constitutes good cause when such an amendment will obviate a ground for refusal. In the present case, issue on appeal is whether Applicant’s mark is merely a decorative or ornamental feature of Applicant’s goods. The attached Request for Reconsideration, filed concurrently with the U.S. Patent and Trademark Office’s TEAS system, amends the application to assert a Trademark Act § 2(f) claim (15 U.S.C. § 1052(f)) and provides evidence supporting Applicant’s claim of acquired distinctiveness. If the Examining Attorney is persuaded by the evidence set forth in the Request for Reconsideration and, accordingly, withdraws the merely

ornamental refusal and accepts the Section 2(f) amendment, this appeal will be rendered moot. Hence, remanding the application to the Examining Attorney and suspending the appeal will save the Board's time and resources.

In view of the above, Applicant respectfully requests the Board to grant this Request to Remand and suspend the appeal proceedings while the Examining Attorney considers the Request for Request for Reconsideration and the attached evidence.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP



Dated: July 13, 2011

By: \_\_\_\_\_

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## Your Request for Reconsideration after Final Action Was Submitted Successfully

**Success!**

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TEAS Support Team

**STAMP:** USPTO/RFR-63.139.240.150-20110713111813875998-77615946-480b5c65b6630313479b1cf51a2724e2cb5-N/A-N/A-20110713104221563505



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PTO Form 1930 (Rev 9/2007)

OMB No. 0651-0050 (Exp. 4/30/2009)

## Request for Reconsideration after Final Action

### To the Commissioner for Trademarks:

Application serial no. **77615946** (HAVE YOU HAD YOUR MASSAGE TODAY , see [mark](#) has been amended as follows:

### ARGUMENT(S)

**In response to the substantive refusal(s), please note the following:**

#### REQUEST FOR RECONSIDERATION

The following request for reconsideration is submitted in response to the Final Office Action issued September 17, 2010 in the matter of U.S. Application Serial No. 77/615,946. Applicant has concurrently filed a Request for Remand with the Trademark Trial and Appeal Board in connection with this application, and requests that the Appeal be suspended pending the Examining Attorney's reconsideration of evidence that the applied-for mark has become distinctive of Applicant's goods in commerce under Section 2(f) of the Trademark Act.

#### AMENDMENTS

Please amend the application to include the following statements:

-- Applicant seeks registration of its mark pursuant to Section 2(f) of the Trademark Act.-

-

-- The mark has become distinctive of the goods/services through the applicant's substantially exclusive and continuous use in commerce that the U.S. Congress may lawfully regulate for at least the five years immediately before the date of this statement.-

-

--The mark has become distinctive of the goods/services, as demonstrated by the attached evidence.--

#### REMARKS

The Examining Attorney has refused registration of U.S. Application Serial No. 77/615,946 for the mark HAVE YOU HAD YOUR MASSAGE TODAY ("Applicant's Mark") on the ground that the mark shown in the subject application is merely a decorative or ornamental feature of Applicant's clothing. For the reasons previously argued, and those set forth below, Applicant respectfully submits that the mark is not merely a decorative or ornamental feature of the goods identified in the Application. Applicant's mark HAVE YOU HAD YOUR MASSAGE TODAY has become distinctive of Applicant's clothing and hats through Applicant's substantially exclusive and continuous use in commerce. In this Request for Reconsideration, Applicant submits ample evidence to show that the applied-for mark has become distinctive of Applicant's goods in commerce under Section 2(f) of the Trademark Act, including a Declaration of Donald Petersen regarding Applicant's promotional efforts and information regarding hundreds of Applicant's consumers who recognize HAVE YOU HAD YOUR MASSAGE

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