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

Ex Parte Appeal - Serial No.	98054433
Appellant	Blaine Laboratories, Inc.
Applied for mark	HEELS
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Submission	Appeal brief
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Appealed class	Class 005. First Use: Dec 3, 2022 First Use In Commerce: Dec 3, 2022 All goods and services in the class are appealed, namely: MEDICATED SKIN CARE CREAM
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Date	12/13/2024

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

In re Trademark Application of Blaine Laboratories, Inc.
Serial No.: 98054433
Filing Date: June 22, 2023
Mark: HEELS
Intl. Class: 5

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

APPLICANT’S APPEAL BRIEF

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I. INTRODUCTION

Blaine Laboratories, Inc. (“Applicant”) applied to register the mark, HEELS, on June 22, 2023, giving rise to Application Serial No. 98/054,433 (the “Application”). The trademark examining attorney assigned to the Application (hereinafter, “Examining Attorney”) refuses registration of Applicant’s mark on the basis that HEELS is generic. Applicant respectfully submits that the applied-for mark is not generic within the meaning contemplated by the Lanham Act or as espoused in the relevant caselaw and should thus be entitled to registration on the Supplemental Register.

II. DESCRIPTION OF THE RECORD

The evidence properly on record in this ex parte appeal comprises of the follow evidence listed below:

- A. The Registrations enumerated in the Evidence Appendix attached to Applicant’s February 14, 2024 Response to Non-Final Office Action.
- B. The Pending Applications enumerated in the Evidence Appendix attached to Applicant’s February 14, 2024 Response to Non-Final Office Action.
- C. The Merriam-Webster Dictionary definition for the word “Heel”.
- D. Third-party webpages submitted by the Examining Attorney.

III. STATEMENT OF THE ISSUES

Whether Applicant’s HEELS trademark is generic where (1) there is no record evidence that it is the name for the applied-for goods, namely, medicated skin care cream, (2) dictionary evidence does not define the applied-for mark, or the word “heel” as medicated skin care cream or a related good, (3) and third-party use of the “heel” and “heels” is used descriptively?

IV. BACKGROUND FACTS

On June 22, 2023, Applicant filed the Application at issue in order to register the mark, HEELS, for use with the identified goods, namely, medicated skin care cream.

Thereafter, a non-final office action was issued against the Application on November 14, 2023 (“First Office Action”). (November 14, 2024 Office Action).¹ The First Office Action raised objections to registration on the basis of: (1) likelihood of confusion with U.S. Registration No. 1,462,471 covering “-HEEL” for use with homeopathic pharmaceutical preparations, namely, anti-inflammatory, analgesic preparations and (2) that the applied-for mark merely describes the associated goods. The First Office Action also contained a request for information related to Applicant’s goods and an advisory that the mark may be generic.

After Applicant submitted its February 14, 2024 response, a final office action was issued on February 29, 2024 (“First Final Office Action”). (February 29, 2024 Office Action). The First Final Office Action withdrew the likelihood of confusion objection and maintained refusal with respect to descriptiveness and request for information. The First Final Office Action further contained a continued advisory of genericness.

On April 4, 2024, Applicant filed a request for reconsideration which included an amendment to seek registration on the Supplemental Register. (April 4, 2024 Request for Reconsideration after Final Action). The amendment was accepted² and a new, non-final office

¹ Pursuant to TBMP § 1203.02 (e), Applicant is not herein submitting any supporting materials to the Appeal Brief. All citations refer to the documents submitted in connection with the filings in Application Serial No. 87647045 in the online database of the United States Patent and Trademark Office’s (“USPTO’s”) Trademark Status & Document Retrieval (“TSDR”) system.

² (April 6, 2024 Amendment).

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