



March 18, 2019

Ms. Catherine Cain
Office of the Deputy Commissioner for Trademark Examination Policy
United States Patent & Trademark Office (USPTO)
TMFRNotices@uspto.gov
James Madison Building – East Wing
600 Dulany Street
Alexandria, Virginia 22314

Re: Docket No. PTO-T-2018-0021

Dear Leadership at the U.S. Patent & Trademark Office:

We appreciate the opportunity to provide comments to the US Patent and Trademark Office (USPTO) on the proposed requirement of a U.S. licensed attorney for foreign trademark applicants and registrants. Target strongly supports the proposed requirement.

By way of background, Target is a U.S. based retailer that offers high quality, on-trend merchandise at discounted prices in more than 1,800 stores in all 50 states and through its digital channels. Target employs nearly 320,000 team members, 99 percent of whom are located in the U.S. From our headquarters in Minneapolis, Minnesota, Target has been moving with exceptional speed to bring a number of new owned brand lines to market. Several of these brands, individually, are valued at over \$1 billion. Some of Target's most well-known brands include Cat & Jack, Goodfellow & Co., Threshold, and Up & Up, Universal Thread and many more across apparel and home goods categories. In 2018, Target was the #1 trademark filer in the United States. For the past several years, Target has been one of the largest trademark filers in the world.

A number of divisions at Target are involved in bringing these brands to market, working approximately 18 months prior to the products being available in stores. Approximately 1000 team members across Merchandising, Marketing, Creative, Product Design & Development, Sourcing, Legal, and Stores are all involved in brand development at Target. When a consumer sees a brand for the first time, we have about 3 seconds to communicate to them what the brand is about and each brand's identity has to be intentional and easy for the guest to understand. For each brand, it takes hundreds, sometimes thousands of names to ultimately land on the right one. We consider dozens of factors, including how that name will resonate with our guests, and how likely it is that Target will be able to quickly secure a trademark. In many cases, you have to secure trademark rights before you can even start sourcing and manufacturing products. The process to create, develop and adopt a new owned brand is time-consuming and the related costs are significant.

Target strongly supports the proposed requirement for foreign trademark applicants to retain local counsel in the U.S. Target files trademark registrations in over 40 countries, many of which require us to retain local counsel. We believe it is important to apply the same rule for the U.S. in order to maintain the integrity of our trademark register. This harmonization with other industrialized markets puts the U.S. on par globally.

Target also supports the local counsel rule because it will provide some recourse for legitimate actors to pursue remedies against bad actors. In the course of conducting availability searches on trademarks Target has considered adopting, we regularly encounter trademark registrations and applications owned by foreign entities and individuals where the specimens of use are digitally altered or mocked up. In addition, we have not been able to identify the entity or individual who filed the trademark application nor find evidence the trademark is or has ever been in use in the U.S. Given the foreign filer is beyond the boundaries of U.S. law, the proposed rule will provide recourse where currently none exists.

The proposed rule asks if the USPTO should continue processing submitted applications not filed by local counsel. Target strongly believes that the USPTO should defer full examination of a foreign application until local counsel has been retained. Given the number of trademark applications filed and the continued expressed resource limitations by the USPTO, examiners should expend resources on only viable applications that have taken initial steps to comply with U.S. regulations. The USPTO should consider developing an automated response giving the applicant 30 days to retain local counsel and respond indicating that they have done so, with an additional specified time period for U.S. counsel to review the case. If the foreign applicant does not respond within this time period, the application should be rejected and the applicant should have to start the process over again.

While Target is supportive of the proposed local counsel rule, Target is aware of efforts already underway by bad faith applicants to undermine this proposed rule. For example, several law firms with which we work have been approached by foreign applicants requesting to use their address and other filing particulars for the purpose of appearing to use local counsel without actually creating an attorney-client relationship. We are also aware of at least one U.S. entity that was created to make it appear that foreign applicants are domiciled in the U.S. We encourage the USPTO to remain vigilant to these and other lines of attack and to continue looking for ways to address this problem.

In addition to providing comment on the proposed local counsel rule, Target believes that the USPTO has additional work to review and expunge, if needed, trademark applications and registrations that include suspicious or digitally altered specimens, or where the trademarks are not proven to be in use. Even today, we observe suspicious, pending applications that have elements that don't appear to be legitimate. We strongly believe that the USPTO has existing authority to address these pending and registered trademarks and encourage them to consider other options beyond the current tools in utilization.

Current opposition and cancellation proceedings can be costly and take too long for a business to utilize effectively in many cases. Procedure dictates the times during which certain actions can be initiated, which may cause months or years of delay. These are long delays on top of the three-

year average timeline for resolution of inter partes proceedings on the merits. In many cases, this timeline is simply too long and creates too much uncertainty, effectively forcing businesses like Target to move away from otherwise viable trademarks. For Target, we may simply choose another trademark, rather than filing an opposition or cancellation action because the USPTO process does not take into account timing pressures businesses face. Being forced to adopt a different mark because a first choice is blocked by a bad faith application or registration significantly adds to the cost of adopting a new trademark. The cost of delaying a brand launch for years pending the outcome of an opposition or cancellation action, however, is much greater and, in most cases, not feasible. The accelerated case resolution (ACR) program can shorten the duration of oppositions and now cancellations under the new expedited cancellation pilot program. The ACR, however, is not available in all instances and requires both parties to agree to the expedited timing, which we believe bad faith applicants and registrants are unlikely to do.

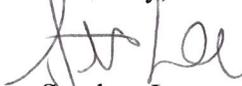
In addition, the USPTO has instituted a post-registration audit program and we ourselves have had one of our registrations selected for random audit. This is a good step in the right direction. It will be noteworthy to see the results of this program and how many illegitimate trademarks are ultimately expunged.

Finally, the Trademark Specimen Protests Email Pilot Program offers such limited grounds to challenge specimens that it is not available as a remedy in a majority of the cases Target has encountered. Specifically, the program requires submission of an identical third-party image that does not bear the trademark at issue. This is unavailable in cases where applicants are taking their own photos of products bearing mocked-up labels, physically placing labels over third-party trademarks or submitting as specimens wholly computer-generated images. It is also our understanding that only one examiner has been allocated to the program.

All of these programs implemented to remediate the trademark system and remove illegitimate or bad actors were executed without rulemaking and within the USPTO's existing authority. This signals to us that additional, expedited options may exist, and we strongly encourage the USPTO to develop alternatives that would expedite these actions in 30, 60, or 90 days, within the bounds of the law. It is imperative to maintain the integrity of our U.S. trademark system and not allow an overall handful of bad actors prevent legitimate actors from adopting trademarks in one of the largest markets in the world.

In closing, thank you for allowing public comment on this proposed rule. We want to reiterate our support for the rule and hope it will be implemented without excessive delay to maintain the integrity of the trademark registration process. In particular, we appreciate the partnership with the Trademark Office and plan to continue to work with them as well as USPTO leadership as concepts are considered. If you have additional questions, we would be glad to discuss this further.

Sincerely,



Stephen Lee

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Target Brands, Inc.