



United States Patent and Trademark Office

Office of the General Counsel
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VIA ECF

March 14, 2019

Col. Peter R. Marksteiner, USAF, Ret.
Circuit Executive and Clerk of Court
United States Court of Appeals for the Federal Circuit
717 Madison Place NW, Room 401
Washington, DC 20439

Re: *In re Siny*, No. 18-1077 (Fed. Cir. Jan 14, 2019)

Dear Colonel Marksteiner:

Pursuant to Fed. Cir. R. 32.1(e), the Director of the United States Patent and Trademark Office (USPTO) respectfully requests that the Court reissue its nonprecedential opinion in *In re Siny*, No. 18-1077, slip op. (Fed. Cir. Jan. 14, 2019), as a precedential opinion. This request is made within 60 days after the nonprecedential opinion was issued. The USPTO is not aware of any pending case that would be determined or affected by reissuance of *Siny* as precedential.

A trademark applicant who seeks registration under 15 U.S.C. § 1051 must, before registration, provide the USPTO with specimens of the mark as used in commerce. Similarly, under 15 U.S.C. § 1058, trademark registrants must provide to the USPTO specimens of use at statutorily defined times. The USPTO examines an applicant's or registrant's specimen of use to determine whether it meets the statutory criteria to show use in commerce of the applied-for or registered mark in connection with the goods listed in the application. In *Siny*, this Court interpreted the statutory definition of use in commerce as it relates to specimens of use under 15 U.S.C. §§ 1051 and 1127. Specifically, the Court confirmed the USPTO's interpretation of what constitutes "displays associated []with" goods in § 1127. Slip op. at 7-8.

Reissuing *Siny* as precedential will not change any future decision by the USPTO because *Siny* is consistent with the USPTO's interpretation of the statutory language and past practice with respect to "displays associated" with

goods. Rather, it will provide certainty to future applicants regarding what satisfies the statutory requirements for “displays associated” with goods. Moreover, reissuing *Siny* as precedential will reduce the probability of subsequent litigation over the very same question of statutory construction concerning displays associated with goods. Because all trademark applicants have a right of review of a registration decision by appealing to this Court, the USPTO follows this Court’s precedents.

For the foregoing reasons, the Director respectfully requests that the Court reissue *Siny* as a precedential opinion.

Respectfully submitted,

/s/ Mary Beth Walker
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CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2019 I electronically filed the foregoing with the Court's CM/ECF filing system, which constitutes service, pursuant to Fed. R. App. P. 25(c) and Fed. Cir. R. 25(e).

/s/ Mary Beth Walker

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CERTIFICATE OF COMPLIANCE

I hereby certify pursuant to Fed. R. App. P. 32(g)(1) that the foregoing complies with the type-volume limitation required by the Court's rule. The total number of words in the foregoing motion, excluding case caption, title of the document, signature block, declaration and proof of service, is 328 words as calculated using the Microsoft Word® software program.

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