

**To:** DiMarzio, Inc. ([michael@dimarzio.com](mailto:michael@dimarzio.com))  
**Subject:** TRADEMARK APPLICATION NO. 78582551 - N/A  
**Sent:** 10/4/05 1:04:01 PM  
**Sent As:** ECOM107@USPTO.GOV  
**Attachments:**

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**SERIAL NO:** 78/582551

**APPLICANT:** DiMarzio, Inc.

**CORRESPONDENT ADDRESS:**  
DIMARZIO, INC.  
PO BOX 100387  
STATEN ISLAND, NY 10310-0387

**\*78582551\***

**RETURN ADDRESS:**  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**MARK:**

**CORRESPONDENT'S REFERENCE/DOCKET NO :** N/A

**CORRESPONDENT EMAIL ADDRESS:**  
[michael@dimarzio.com](mailto:michael@dimarzio.com)

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

**OFFICE ACTION**

**RESPONSE TIME LIMIT:** TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE MAILING OR E-MAILING DATE.

Serial Number 78/582551

The assigned trademark examining attorney has reviewed the referenced application and has determined the following:

The Office records have been searched and no similar registered or pending mark has been found that would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d). TMEP §704.02.

### **Configuration / functionality / distinctiveness refusal**

Registration is refused because the proposed three-dimensional configuration mark appears to be functional for the identified goods. Trademark Act Section 2(e)(5), 15 U.S.C. §1052(e)(5). That is, the proposed mark comprises the configuration of a design feature of the identified goods that serves a utilitarian purpose. *TraFFix Devices, Inc. v. Marketing Displays, Inc.*, 532 U.S. 23, 58 USPQ2d 1001 (2001); *Valu Engineering, Inc. v. Rexnord Corp.*, 61 USPQ2d 1422 (Fed. Cir. 2002); *In re Bose Corp.*, 772 F.2d 866, 227 USPQ 1 (Fed. Cir. 1985); *In re R.M. Smith, Inc.*, 734 F.2d 1482, 222 USPQ 1 (Fed. Cir. 1984); TMEP §§1202.02(a) *et seq.*

The proposed mark is the mirrored surface of electronic sound pickups for guitars and basses, and the goods are electronic sound pickup for guitars and basses. The particular features of this proposed mark, namely, the mirrored surface, are functional for the goods because goods of this nature often have a stainless steel or mirrored surface.

A feature is functional as a matter of law if it is “essential to the use or purpose of the [product] or if it affects the cost or quality of the [product].” *Inwood Labs., Inc. v. Ives Labs., Inc.*, 456 U.S. 844, 851 n.10, 214 USPQ 1, 4 n.10 (1982), *quoted in TraFFix Devices, Inc. v. Marketing Displays, Inc.*, 532 U.S. 23, 58 USPQ2d 1001, 1006 (2001).

A mark comprising the configuration of goods or their packaging is held functional, and thus unregistrable, where the evidence shows that the product design or product packaging design provides identifiable utilitarian advantages to the user – i.e., where the product or container “has a particular shape because it works better in that shape.” *Valu Eng’g, Inc. v. Rexnord Corp.*, 61 USPQ2d 1422, 1425 (Fed. Cir. 2002) (internal citation omitted); *see In re R.M. Smith, Inc.*, 734 F.2d 1482, 222 USPQ 1, 3 (Fed. Cir. 1984); *see In re Virshup*, 42 USPQ2d 1403, 1405 (TTAB 1997); *In re Cabot Corp.*, 15 USPQ2d 1224, 1227 (TTAB 1990).

In order for a proposed mark to be held functional, the evidence need not establish that the configuration at issue is the very best design for the particular product or product packaging. Rather, a finding of functionality is proper where the evidence indicates that the configuration at issue provides specific utilitarian advantages that make it one of a few superior designs available. *See, e.g., In re Bose Corp.*, 772 F.2d 866, 227 USPQ 1 (Fed. Cir. 1985); *In re American National Can Co.*, 41 USPQ2d 1841 (TTAB 1997); *In re Lincoln Diagnostics Inc.*, 30 USPQ2d 1817 (TTAB 1994); *In re Bio-Medicus Inc.*, 31 USPQ2d 1254 (TTAB 1993); *In re Cabot Corp.*, 15 USPQ2d 1224 (TTAB 1990); *In re Peters*, 6 USPQ2d 1390 (TTAB 1988).

On the other hand, where the evidence shows that the specific product or container configuration at issue provides no real utilitarian advantages to the user, but rather is simply one of many equally feasible, efficient and competitive designs, then the mark may be registrable. *In re Morton-Norwich Products, Inc.*, 671 F.2d 1332, 213 USPQ 9 (C.C.P.A. 1982); TMEP §§1202.02(a)(v) *et seq.* However, a product configuration is not inherently distinctive, and therefore cannot be registered on the Principal Register without a showing of acquired distinctiveness under §2(f). *Wal-Mart Stores, Inc. v. Samara Brothers, Inc.*, 529 U.S. 205, 54 USPQ2d 1065 (2000).

Applicant must provide the following information and documentation in order to permit proper examination of the application. 37 C.F.R. §2.61(b):

- (1) A written statement as to whether the proposed mark is or has been the subject of either a design or utility patent, including existing and/or expired patents. Applicant must also state whether the proposed mark is or has been the subject of a patent application for either a design or

utility patent, including both pending and abandoned patent applications. For any of the above for which a positive response is provided, the applicant must provide copies of the patent(s) or pending or abandoned patent application(s).

(2) Any available advertising, promotional and/or explanatory materials concerning the configuration for which registration is sought, particularly any materials specifically related to the design feature(s) embodied in the proposed mark.

(3) A written explanation and any relevant evidence as to whether alternative designs are available for the feature(s) embodied in the proposed mark, as well as whether the alternative designs are equally efficient and/or competitive. Applicant must also include a written explanation and any available information concerning designs used by competitors.

(4) A written statement as to whether the product design or product packaging design at issue results from a comparatively simple or inexpensive method of manufacture in relation to alternative designs for the product/container. If applicant has any relevant information regarding the method and/or cost of manufacture, that information must also be provided.

Applicant may also furnish any other evidence that applicant considers relevant to the registrability of the proposed configuration mark.

With regard to the above requested information, it is noted that the Board and courts have recognized that relevant technical information is usually more readily available to an applicant, and that the applicant will thus normally be the source of most of the evidence pertaining to the functionality issue. *In re Teledyne Industries Inc.*, 696 F.2d 968, 971, 217 USPQ 9, 11 (Fed. Cir. 1982); *In re Witco Corp.*, 14 USPQ2d 1557, 1560 (TTAB 1989); *In re Babies Beat Inc.*, 13 USPQ2d 1729, 1731 (TTAB 1990) (registration properly refused where applicant failed to comply with trademark examining attorney's request for copies of patent applications and other patent information); *See* TMEP §§1202.02(a)(v) *et seq.*

In functionality cases, the trademark examining attorney must establish a *prima facie* case that the trade dress sought to be registered is functional. The burden then shifts to applicant to present sufficient evidence to rebut the trademark examining attorney's *prima facie* case of functionality. *In re R.M. Smith, Inc.*, 734 F.2d 1482, 222 USPQ 1, 3 (Fed. Cir. 1984); *In re Bio-Medicus Inc.*, 31 USPQ2d 1254, 1257 n.5 (TTAB 1993).

The functionality determination is a question of fact, and depends on the totality of the evidence presented in each particular case. *Valu Engineering, Inc. v. Rexnord Corp.*, 61 USPQ2d 1422 (Fed. Cir. 2002); *In re Caterpillar Inc.*, 43 USPQ2d 1335, 1339 (TTAB 1997).

The determination that a proposed mark is functional constitutes an absolute bar to registration either on the Principal Register or the Supplemental Register, regardless of evidence showing that the proposed mark has acquired distinctiveness. Trademark Act §§2(e)(5) and 23(c), 15 U.S.C. §§1052(e)(5) and 1091(c); *See Traffix Devices, Inc. v. Marketing Displays, Inc.*, 532 U.S. 23, 58 USPQ2d 1001, 1006 (2001); *Valu Engineering, Inc. v. Rexnord Corp.*, 61 USPQ2d 1422 (Fed. Cir. 2002); *In re Controls Corp. of America*, 46 USPQ2d 1308, 1311 (TTAB 1998).

Evidence in functionality cases normally involves consideration of the following four factors, commonly known as the "*Morton-Norwich* factors," in reference to the Federal Circuit decision in which they were first articulated:

- (1) the existence of a utility patent that discloses the utilitarian advantages of the design sought to be registered;
- (2) advertising by the applicant that touts the utilitarian advantages of the design;
- (3) facts pertaining to the availability of alternative designs; and
- (4) facts pertaining to whether the design results from a comparatively simple or inexpensive method of manufacture.

*In re Morton*—*Norwich Products, Inc.* 671 F.2d 1332, 213 USPQ 9, 15-16 (C.C.P.A. 1982).

Registration is refused because the proposed mark comprises a configuration of the goods that is not inherently distinctive and would not be perceived as a mark. Trademark Act Sections 1, 2 and 45, 15 U.S.C. §§1051, 1052 and 1127. The United States Supreme Court has held that a configuration of a product can never be inherently distinctive, and is registrable on the Principal Register only with a showing of acquired distinctiveness. *Wal-Mart Stores, Inc. v. Samara Brothers, Inc.*, 529 U.S. 205, 54 USPQ2d 1065 (2000). See also *Textron, Inc. v. U.S. International Trade Commission*, 753 F.2d 1019, 224 USPQ 625 (Fed. Cir. 1985); *In re Craigmyle*, 224 USPQ 791 (TTAB 1984); TMEP §1202.02(b)(i).

In response to this refusal, applicant may present evidence that the proposed mark has acquired distinctiveness by submitting examples of advertising and promotional materials that specifically promote the proposed mark *as a trademark* in the United States, dollar figures for advertising devoted to such promotion, dealer and consumer statements of recognition of the proposed mark as a trademark and any other evidence that establishes recognition of the matter as a mark for the goods. The evidence must relate to the promotion and recognition of the specific configuration embodied in the proposed mark and not to the goods in general. *Wal-Mart*, 529 U.S. at 211, 54 USPQ2d at 1068; See TMEP §§1212.06 *et seq.* regarding evidence of acquired distinctiveness.

To determine whether the proposed mark has acquired distinctiveness, the trademark examining attorney will consider the following factors: (1) how long applicant has used the mark in the United States; (2) the type and amount of advertising of the mark in the United States; and (3) applicant's efforts in the United States to associate the mark with the goods or services identified in the application. See *Ralston Purina Co. v. Thomas J. Lipton, Inc.*, 341 F. Supp. 129, 173 USPQ 820 (S.D.N.Y. 1972); *In re Packaging Specialists, Inc.*, 221 USPQ 917 (TTAB 1984); 37 C.F.R. §2.41; TMEP §§1212, 1212.01 and 1212.06 *et seq.*

Applicant may not rely on use other than use in commerce that may be regulated by the United States Congress in establishing acquired distinctiveness. Use solely in a foreign country is not evidence of acquired distinctiveness in the United States. *In re Rogers*, 53 USPQ2d 1741 (TTAB 1999); TMEP §§1010 and 1212.08.

In the alternative to submitting evidence of acquired distinctiveness, applicant may amend to the Supplemental Register.

In an application for trade dress, distinctiveness and functionality are two separate issues. TMEP §1202.02(c).

“[A] mark is inherently distinctive if [its] intrinsic nature serves to identify a particular source.” *Wal-*

*Mart Stores, Inc. v. Samara Brothers, Inc.*, 529 U.S. 205, 210, 54 USPQ2d 1065, 1068 (2000) (alteration, in part, in original) (quoting *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 768, 23 USPQ2d 1081 (1992)); TMEP 1202.02(b)(ii).

The burden of proving that a mark has acquired distinctiveness is on applicant. See *Yamaha Int'l Corp. v. Hoshino Gakki Co. Ltd.*, 840 F.2d 1572, 1578-79, 6 USPQ2d 1001, 1006 (Fed. Cir. 1988); *In re Meyer & Wenthe, Inc.*, 267 F.2d 945, 122 USPQ 372 (C.C.P.A. 1959).

Applicant may present any competent evidence to establish that a mark has acquired distinctiveness. The amount and character of evidence required to establish acquired distinctiveness depends on the facts of each case and particularly on the nature of the mark sought to be registered. See *Roux Laboratories, Inc. v. Clairol Inc.*, 427 F.2d 823, 166 USPQ 34 (C.C.P.A. 1970); *In re Hehr Mfg. Co.*, 279 F.2d 526, 126 USPQ 381 (C.C.P.A. 1960); *In re Gammon Reel, Inc.*, 227 USPQ 729 (TTAB 1985).

There are three basic types of evidence that may be used to establish acquired distinctiveness under §2(f):

- (1) A claim of ownership of one or more prior registrations on the Principal Register of the same mark for goods or services that are the same as or related to those named in the pending application (See 37 C.F.R. §2.41(b); TMEP §§1212.04 *et seq.*);
- (2) A statement verified by applicant that the mark has become distinctive of applicant's goods or services by reason of substantially exclusive and continuous use in commerce by the applicant for the five years before the date when the claim of distinctiveness is made (See 37 C.F.R. §2.41(b); TMEP §§1212.05 *et seq.*);
- (3) Actual evidence of acquired distinctiveness (See 37 C.F.R. §2.41(a); TMEP §§1212.06 *et seq.*).

Applicant may submit one or any combination of these types of evidence. Depending on the mark and the facts in the record, a claim of ownership of a prior registration(s) or a claim of five years' substantially exclusive and continuous use in commerce may be insufficient to establish a *prima facie* case of acquired distinctiveness. Actual evidence of acquired distinctiveness may be submitted regardless of the length of time the mark has been used. *Ex parte Fox River Paper Corp.*, 99 USPQ 173 (Comm'r Pats. 1953).

Under Trademark Rule 2.41(a), 37 C.F.R. §2.41(a), an applicant may, in support of registrability, submit affidavits, declarations under 37 C.F.R. §2.20, depositions or other appropriate evidence showing the duration, extent and nature of the applicant's use of a mark in commerce that may lawfully be regulated by Congress, advertising expenditures in connection with such use, letters or statements from the trade and/or public, or other appropriate evidence tending to show that the mark distinguishes the goods or services.

Establishing acquired distinctiveness by actual evidence was explained as follows in *In re Owens-Corning Fiberglas Corp.*, 774 F.2d 1116, 1125, 227 USPQ 417, 422 (Fed. Cir. 1985):

An evidentiary showing of secondary meaning, adequate to show that a mark has acquired distinctiveness indicating the origin of the goods, includes evidence of the trademark owner's method of using the mark, supplemented by evidence of the effectiveness of such use to cause the purchasing public to identify the mark with the source of the product.

The kind and amount of evidence necessary to establish that a mark has acquired distinctiveness in relation to goods or services necessarily depends on the nature of the mark and the circumstances surrounding the use of the mark in each case. *Yamaha Int'l Corp. v. Hoshino Gakki Co. Ltd.*, 840 F.2d 1572, 6 USPQ2d 1001 (Fed. Cir. 1988); *Roux Laboratories, Inc. v. Clairol Inc.*, 427 F.2d 823, 166 USPQ 34 (C.C.P.A. 1970); *In re Hehr Mfg. Co.*, 279 F.2d 526, 126 USPQ 381 (C.C.P.A. 1960); *In re Capital Formation Counselors*, 219 USPQ 916 (TTAB 1983).

In considering a claim of acquired distinctiveness, the issue is whether acquired distinctiveness of the mark in relation to the goods or services has in fact been established in the minds of the purchasing public, not whether the mark is capable of becoming distinctive. *In re Redken Laboratories, Inc.*, 170 USPQ 526 (TTAB 1971); *In re Fleet-Wing Corp.*, 122 USPQ 335 (TTAB 1959).

### **Drawing requirements for configuration marks**

If applicant is seeking to register a configuration of the goods or their packaging or a specific design feature of the goods or packaging, then applicant should note the following additional requirements concerning the drawing for such cases. The drawing should present a single three-dimensional view of the goods or packaging showing in solid lines those features which applicant claims as its mark and the remainder of the drawing in broken or dotted lines. *In re Water Gremlin Co.*, 635 F.2d 841, 208 USPQ 89 (C.C.P.A. 1980); *In re Famous Foods, Inc.*, 217 USPQ 177 (TTAB 1983); 37 C.F.R. §2.52(b)(2) and (b)(4); TMEP §§807.08 and 807.10. In addition to these drawing requirements, a clear and concise description of the features claimed as the mark should also be included in such an application. 37 C.F.R. §2.37; TMEP §§807.08, 807.10 and 1202.02(d).

Applicant must depict the mark on the drawing using broken or dotted lines to show the mark's position on the goods or container. Applicant must show the mark itself using solid lines. 37 C.F.R. §2.52(b)(4); TMEP §807.08.

If the applicant has any question regarding the action or would like to expedite the process through an examiner's amendment if possible, please feel free to call the examiner.

To reach the assigned attorney by telephone, please call (571) 272 - 9273.

Thank you,  
/sean w. dwyer/

Sean W. Dwyer  
United States Patent Trademark Office  
Trademark Examiner  
Law Office 107  
571-272-9273

### **HOW TO RESPOND TO THIS OFFICE ACTION:**

- **ONLINE RESPONSE:** You may respond formally using the Office's Trademark Electronic Application System (TEAS) Response to Office Action form (visit <http://www.uspto.gov/teas/index.html> and follow the instructions, but if the Office Action has been issued via email, you must wait 72 hours after receipt of the Office Action to respond via TEAS).
- **REGULAR MAIL RESPONSE:** To respond by regular mail, your response should be sent to the mailing return address above and include the serial number, law office number and examining

attorney's name in your response.

**STATUS OF APPLICATION:** To check the status of your application, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov>.

**VIEW APPLICATION DOCUMENTS ONLINE:** Documents in the electronic file for pending applications can be viewed and downloaded online at <http://portal.uspto.gov/external/portal/tow>.

**GENERAL TRADEMARK INFORMATION:** For general information about trademarks, please visit the Office's website at <http://www.uspto.gov/main/trademarks.htm>

**FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY SPECIFIED ABOVE.**

\*\*\* User:sdwyer \*\*\*

| #  | Total<br>Marks | Dead<br>Marks | Live<br>Viewed<br>Docs | Live<br>Viewed<br>Images | Status/<br>Search<br>Duration | Search       |
|----|----------------|---------------|------------------------|--------------------------|-------------------------------|--------------|
| 01 | 1              | 0             | 1                      | 1                        | 0:01                          | 78582551[SN] |
| 02 | 999            | 549           | 2                      | 450                      | 0:02                          | 220125       |

Session started 10/4/05 12:42:12 PM

Session finished 10/4/05 12:43:40 PM

Total search duration 0 minutes 3 seconds

Session duration 1 minutes 28 seconds

Default NEAR limit=1ADJ limit=1

Sent to TICRS as Serial Number: 78582551

# Trademark/Service Mark Application, Principal Register

**Serial Number: 78582551**

**Filing Date: 03/08/2005**

**The table below presents the data as entered.**

| Input Field  | Entered  |
|--|--|
| <b>MARK SECTION</b>  |  |
| MARK FILE NAME   | <a href="#">\\TICRS\EXPORT11\IMAGEOUT11\785\825\78582551\xml1\ APP0002.JPG</a>   |
| STANDARD CHARACTERS  | NO   |
| USPTO-GENERATED IMAGE  | NO   |
| COLOR MARK   | NO   |
| DESCRIPTION OF THE MARK<br>(and Color Location, if applicable) | The mark consists of The double design representation of an electronic sound pickup for guitars, lined in this graphic to represent a mirrored surface.. |
| PIXEL COUNT ACCEPTABLE   | YES  |
| PIXEL COUNT  | 640 x 383  |
| <b>OWNER SECTION</b>   |  |
| NAME   | DiMarzio, Inc.   |
| STREET   | 1388 Richmond Terrace P.O. Box 100387  |
| CITY   | Staten Island  |
| STATE  | New York   |
| ZIP/POSTAL CODE  | 10310  |
| COUNTRY  | United States  |
| PHONE  | 718-981-9286   |
| FAX  | 718-720-5296   |
| EMAIL  | michael@dimarzio.com   |
| AUTHORIZED EMAIL COMMUNICATION                                 | Yes  |

| <b>LEGAL ENTITY SECTION</b>          |   |
|--------------------------------------|---|
| TYPE                                 | CORPORATION   |
| STATE/COUNTRY OF INCORPORATION       | New York  |
| <b>GOODS AND/OR SERVICES SECTION</b> |   |
| INTERNATIONAL CLASS                  | 015   |
| DESCRIPTION                          | Electronic sound pickup for guitars and basses  |
| FILING BASIS                         | Section 1(a)  |
| FIRST USE ANYWHERE DATE              | At least as early as 01/11/1996   |
| FIRST USE IN COMMERCE DATE           | At least as early as 02/27/1996   |
| SPECIMEN FILE NAME(S)                | <a href="\\TICRS\EXPORT11\IMAGEOUT11\785\825\78582551\xml1\ APP0003.JPG">\\TICRS\EXPORT11\IMAGEOUT11\785\825\78582551\xml1\ APP0003.JPG</a>                             |
| SPECIMEN DESCRIPTION                 | A double coil guitar pickup with a mirrored surface shown in retail packaging.  |
| <b>ADDITIONAL STATEMENTS SECTION</b> |   |
| DISCLAIMER                           | No claim is made to the exclusive right to use the double design of an electronic sound pickup for guitars apart from the mark as shown.                                |
| PRIOR REGISTRATION(S)                | Applicant claims ownership of U.S. Registration Number(s) 1169205.  |
| MISCELLANEOUS STATEMENT              | This mark is identical to our mark 1,169,205 for the color "cream" except that the present mark is for a "mirrored" surface instead of a surface of a particular color. |
| <b>SIGNATURE SECTION</b>             |   |
| SIGNATURE                            | /Michael T. Altilio/  |
| SIGNATORY NAME                       | Michael T. Altilio  |
| SIGNATORY DATE                       | 03/08/2005  |
| SIGNATORY POSITION                   | Manager   |
| <b>PAYMENT SECTION</b>               |   |
| NUMBER OF CLASSES                    | 1   |
| NUMBER OF CLASSES PAID               | 1   |
| SUBTOTAL AMOUNT                      | 325   |
|                                      |   |

|                                |  |
|--------------------------------|--|
| TOTAL AMOUNT                   | 325  |
| <b>CORRESPONDENCE SECTION</b>  |  |
| NAME                           | DiMarzio, Inc.   |
| STREET                         | 1388 Richmond Terrace P.O. Box 100387  |
| CITY                           | Staten Island  |
| STATE                          | New York   |
| ZIP/POSTAL CODE                | 10310  |
| COUNTRY                        | United States  |
| EMAIL                          | michael@dimarzio.com   |
| AUTHORIZED EMAIL COMMUNICATION | Yes  |
| <b>FILING INFORMATION</b>      |  |
| SUBMIT DATE                    | Tue Mar 08 14:01:32 EST 2005   |
| TEAS STAMP                     | USPTO/BAS-24136124177-200<br>50308140132466320-7858255<br>1-200b126aa6fc9367d3a3b55<br>9bb1da197423-CC-1568-2005<br>0308135330372173 |

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## Trademark/Service Mark Application, Principal Register

**Serial Number: 78582551**

**Filing Date: 03/08/2005**

### To the Commissioner for Trademarks:

**MARK:** (Stylized and/or Design, see [mark](#))

The mark consists of The double design representation of an electronic sound pickup for guitars, lined in this graphic to represent a mirrored surface..

The applicant, DiMarzio, Inc., a corporation of New York, residing at 1388 Richmond Terrace P.O. Box 100387, Staten Island, New York, United States, 10310, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

The applicant, or the applicant's related company or licensee, is using the mark in commerce, and lists below the dates of use by the applicant, or the applicant's related company, licensee, or predecessor in interest, of the mark on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

International Class 015: Electronic sound pickup for guitars and basses

In International Class 015, the mark was first used at least as early as 01/11/1996, and first used in commerce at least as early as 02/27/1996, and is now in use in such commerce. The applicant is submitting or will submit one specimen for *each class* showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) A double coil guitar pickup with a mirrored surface shown in retail packaging..

#### [Specimen - 1](#)

No claim is made to the exclusive right to use the double design of an electronic sound pickup for guitars apart from the mark as shown.

Applicant claims ownership of U.S. Registration Number(s) 1169205.

This mark is identical to our mark 1,169,205 for the color "cream" except that the present mark is for a "mirrored" surface instead of a surface of a particular color.

The USPTO is authorized to communicate with the applicant or its representative at the following email address: michael@dimarzio.com.

A fee payment in the amount of \$325 will be submitted with the application, representing payment for 1 class(es).

## Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Michael T. Altilio/ Date: 03/08/2005

Signatory's Name: Michael T. Altilio

Signatory's Position: Manager

Mailing Address:

DiMarzio, Inc.

1388 Richmond Terrace P.O. Box 100387

Staten Island, New York 10310

RAM Sale Number: 1568

RAM Accounting Date: 03/08/2005

Serial Number: 78582551

Internet Transmission Date: Tue Mar 08 14:01:32 EST 2005

TEAS Stamp: USPTO/BAS-24136124177-200503081401324663

20-78582551-200b126aa6fc9367d3a3b559bb1d

a197423-CC-1568-20050308135330372173







