

ESTTA Tracking number: **ESTTA266966**

Filing date: **02/17/2009**

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

Proceeding	77112917
Applicant	JOEKEL, Kenneth
Applied for Mark	HELP IS ON THE WAY!
Correspondence Address	WALTER R. BROOKHART SHOOK, HARDY & BACON, L.L.P. 600 TRAVISSUITE 1600 HOUSTON, TX 77002-2911 UNITED STATES wbrookhart@shb.com, akelly@shb.com
Submission	Applicants Request for Remand and Amendment
Attachments	TTAB Request for Remand to Examining Attorney 02 17 09.pdf (2 pages) (55871 bytes) Consent Agreement signed by Joekel 02 13 09.pdf (2 pages)(124280 bytes) Consent Agreement signed by Marmco 02 13 09.pdf (2 pages)(56833 bytes)
Filer's Name	Amy C. Kelly
Filer's e-mail	akelly@shb.com, hmcgovern@shb.com
Signature	/amyckelly/
Date	02/17/2009

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

Applicant:	Kenneth Joekel)	
Mark:	HELP IS ON THE WAY)	
Serial No.	77-112,917)	Appeal of Final Refusal
Examining Attorney	Sara N. Thomas)	

REQUEST FOR SUSPENSION OF TIME TO FILE APPEAL BRIEF
AND FOR
REMAND TO EXAMINING ATTORNEY FOR CONSIDERATION OF CONSENT AGREEMENT

The Applicant, Kenneth Joekel, through counsel, respectfully requests that the Trademark Trial and Appeal Board (Board) grants his Request for Suspension of Time to File Appeal Brief and for Remand to Examining Attorney for Consideration of Consent Agreement in this matter. The grounds for this Request are as follows:

On 21 February 2008, applicant filed Trademark Application Serial No. 77-112,917 for the mark HELP IS ON THE WAY. After the course of examination, the examining attorney issued a final refusal of Serial No. 77-112,917 based on Trademark Act Section 2(d), 15 U.S.C. 1052(d), due to the existence of Registration No. 3,178,099 for the mark HILP IS ON THE WAY.

On 22 October 2008, applicant filed a Notice of Appeal with the Trademark Trial and Appeal Board.

On 19 December 2008, the Board granted applicant's request for an extension of time to file appeal brief for the purposes of concluding a consent agreement, ordering that on or before 19 February 2009, applicant must either file a request for remand accompanied by the consent agreement or file applicant's appeal brief.

Accordingly, applicant hereby files this request for remand accompanied by the executed consent agreement. Applicant has provided his e-mail address so that any order on this Request may be issued electronically by the Board.

Therefore, pursuant to 37 CFR § 2.142(d) and TBMP § 1207.02, and for the reasons set forth above, applicant respectfully requests that his Request for Suspension of Time to File Appeal Brief and for Remand to Examining Attorney for Consideration of Consent Agreement be granted.

Respectfully submitted,

Kenneth Joekel, APPLICANT

SHOOK HARDY & BACON LLP

Dated: 17 February 2009

By: _____



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ATTORNEYS FOR APPLICANT

Attorney Docket No. PSPS.142310

CONSENT AGREEMENT

This Consent Agreement, executed as of the date of signing set forth below, is entered into by and between Kenneth Joekel, ("Mr. Joekel") a U.S. citizen, with an address of P.O. Box 2146, Houston, Texas, 77252, and Marmco Properties, L.L.C., ("Marmco"), organized under the laws of the state of Arizona, with an address of 12079 N. 133rd Way, Scottsdale, Arizona, 85259.

WHEREAS, Marmco owns United States Trademark Registration No. 3,178,099 for the mark HILP IS ON THE WAY for Class 35 services, to wit: "Arranging for contractual home improvement and interior design services with third parties; real estate advertising and marketing services; real estate sales management," which registration was secured by an Intent to Use application filed on December 13, 2004, and asserting first use dates of March 31, 2005;

WHEREAS, Mr. Joekel is the owner of Application Serial No. 77-112917 in the U.S. Patent and Trademark Office to register the mark HELP IS ON THE WAY for Class 35 services, to wit: "Temporary help services, namely, furnishing of employees on a contract basis to persons or places of business requiring part-time or temporary help, including skilled and unskilled industrial and construction workers, office and factory workers, skilled technical personnel, general laborers and others," filed on February 21, 2007, on the basis of Use in commerce, and asserting first use in commerce since at least as early as March, 2002;

WHEREAS, the U.S. Patent and Trademark Office has cited Marmco's HILP IS ON THE WAY registration as a block to the registration by Mr. Joekel of his HELP IS ON THE WAY trademark on the grounds that the marks are confusingly similar;

WHEREAS, the parties are unaware of any instances of actual confusion arising from the simultaneous use of their respective marks in commerce;

WHEREAS, the parties hereto recognize the validity of each other's use and intended registration of their respective marks in connection with their respective services, and wish to avoid any conflict with the other's use and/or registration of its mark; and

WHEREAS, due to differences in the parties' respective marks, channels of trade, and marketing, the parties hereto have concluded that at this time, confusion is not likely to arise from each party's use and registration of their respective marks in connection with their respective services.

NOW, THEREFORE, in consideration of the mutual promises set forth herein and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Marmco and Mr. Joekel note a significant difference in their respective marks, that the two marks do not share the same meaning, and that the jocular HILP IS ON THE WAY connotes a very different commercial impression than the candid HELP IS ON THE WAY.
2. Marmco hereby consents to the use and registration of the HELP IS ON THEY WAY mark by Mr. Joekel, and Marmco further agrees that it will not take any action to interfere with or prevent the use or registration of the mark HELP IS ON THE WAY by Mr. Joekel in connection with the aforesaid services and will, if requested and at Mr. Joekel's expense, provide those documents or declarations that will assist Mr. Joekel in this process. Marmco expressly agrees that Mr. Joekel can provide this Consent Agreement to the U.S. Patent and Trademark Office in connection with Mr. Joekel's efforts to register his HELP IS ON THE WAY trademark.
3. Mr. Joekel agrees that it will not take any action to interfere with the continued use and registration of Marmco's HILP IS ON THE WAY mark at this time.

4. The parties agree to continue to take reasonable action to prevent any confusion due to the coexistence and registration of their respective marks, and to notify each other immediately of any instances of confusion. The parties further agree to take reasonable action to immediately resolve any instances of confusion or of likely confusion that may arise.

5. The parties agree that notwithstanding the foregoing, nothing in this Consent Agreement shall prevent either party from pursuing any and all rights and remedies to which either party may be entitled at law or in equity, in the event that, despite the parties' best efforts, there occurs or exists any conflict between the parties' respective marks, and/or in the event that confusion occurs or becomes likely to occur, and the parties are unable to amicably resolve any such conflicts or confusion issues between them.

6. This Consent Agreement contains the entire agreement between the parties and may only be amended or supplemented in a writing signed by both parties.

7. The parties agree to execute any documents necessary to effectuate this Consent Agreement.

8. This Consent Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document.

9. This Consent Agreement applies worldwide and is binding upon both parties' successors, assigns and affiliated companies.

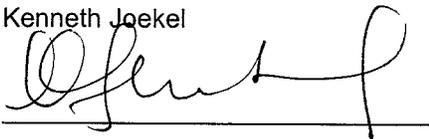
10. This Consent Agreement shall remain in force and effect as long as both parties, or their successors or assigns, are using, or have a bona fide intent to use, their respective trademarks.

11. This Consent Agreement will be construed under the laws of the State of Texas without regard to conflict of law provisions of Texas or any other jurisdictions.

12. In consideration of this Consent Agreement, the parties have agreed that Mr. Joekel shall cause the amount of \$2,000.00 (Two Thousand Dollars) to be paid to Marmco within Twenty-One (21) days of full execution of this Consent Agreement.

IN WITNESS WHEREOF, the parties hereto enter into this Consent Agreement on the last date set forth below.

Kenneth Joekel



Marmco Properties, L.L.C.

Title

2-13-09

Date

Date

HILP
Damon Boyd

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WHEREAS, due to differences in the parties' respective marks, channels of trade, and marketing, the parties hereto have concluded that at this time, confusion is not likely to arise from each party's use and registration of their respective marks in connection with their respective services.

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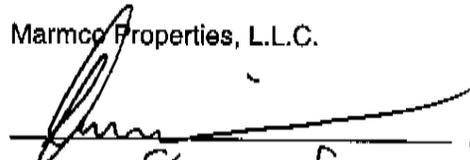
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Kenneth Joekel

Date

Marmco Properties, L.L.C.


Steve Siverson
Managing Member

Title

2-13-09

Date