

PTO Form 1960 (Rev 9/2007)

OMB No. xxx-xxxx (Exp. x/xxxx)

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered			
SERIAL NUMBER	77149025			
LAW OFFICE ASSIGNED	LAW OFFICE 108			
MARK SECTION (no change)				
ARGUMENT(S)				
<p>Applicant seeks registration in International Classes 006 and 012 for the mark YENKO. The Examining Attorney has refused registration in <i>both</i> Classes 006 and 012 on grounds of likelihood of confusion with U.S. Registration No. 2049857 for the mark YENKO for "toy cars" in International Class 028. Applicant respectfully contends that the stated refusal to Register in Classes 006 and 012 is not sustainable. Reconsideration is requested.</p> <p>The cited YENKO registration is for <u>toy cars</u> in Class 028. Applicant owns pre-existing registrations for <u>real cars</u> (i.e., "automobiles") in Class 012 as well as automotive parts and accessories in Class 012, mail order catalogue and wholesale distributorship services in Class 035 and as well as clothing and headwear in Class 025. Specifically, Applicant is the owner of the following pre-existing registrations for its YENKO trademark:</p>				
U.S Trademark Registration No.	Mark	Goods	Registration Date	International Class
3097652	YENKO	Automobiles and Automotive parts and accessories, namely, wheel caps, spoilers and emblems	May 30, 2006	012
2314585	YENKO	Mail order catalogue services featuring parts and accessories for the restoration of classic automobiles; wholesale distributorships featuring parts and accessories for the restoration of classic automobiles	February 1, 2000	035
3161668	YENKO	clothing and headwear accessories, namely shirts,	October 24, 2006	025

	jackets and caps	
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As presently amended, the present application seeks to register the YENKO trademark for the following goods:

Key chains and key fobs made of common metal; non-luminous and non-mechanical metal signs; plaques of common metal; hardware, namely buckles made of common metal and metal license plates in Class 006.

Motor land vehicles; motors for land vehicles, motor vehicle accessories, namely automobile body emblems, license plate frames, license plates, hood ornaments and shifter knobs, namely gear lever knobs in Class 012.

The goods recited in Class 006 are at least as closely related, if not more closely related, to *real* cars (for which Applicant holds pre-existing trademark registrations) as they are to *toy* cars. The record contains no evidence to indicate that any purveyor to sells only toy cars but not real cars (as is true of the owner of the cited registration) would be likely to also sell key chains, key fobs, metal signs plaques, buckles or license plates. Furthermore, the recited goods in Class 006 are not directly or indirectly competitive with toy cars. Moreover, because Applicant has for many years been selling a variety of automotive products under the YENKO mark, consumers would be most likely associate key chains, key fobs, metal signs plaques, buckles or license plates with Applicant, not with the owner of the cited registration. Moreover, the consumers who collect or restore YENKO automobiles are highly sophisticated classic car enthusiasts who are unlikely to be confused as to source and will have no difficulty distinguishing Applicant from the owner of the cited registration.

The goods recited in Class 012 are largely inclusive of goods in that class for which Application owns pre-existing registrations. Consumers will presume that Applicant, not the owner of the cited registration, is the source of motor land vehicles and accessories sold under the YENKO mark, as it is Applicant who has been the purveyor of various automotive goods (for real cars) under the YENKO mark for many years.

In conclusion, the goods recited in the present application are clearly more related to Applicant's own goods (for which Applicant owns pre-existing registrations) than to "toy cars" of the cited registration. The fact is that Applicant and the owner of the cited registration have co-existed in the market place for years without consumer confusion and allowance of the present application for registration in Classes 006 and 012 would not be likely to cause any consumer confusion.

A Notice of Appeal is being filed concurrently with this request for reconsideration.

GOODS AND/OR SERVICES SECTION (006)(current)	
INTERNATIONAL CLASS	006
DESCRIPTION	
key chains and key fobs made of common metal; non-luminous and non-mechanical metal signs; plaques of common metal and hardware, namely buckles made of common metal	

FILING BASIS	Section 1(b)
GOODS AND/OR SERVICES SECTION (006)(proposed)	
INTERNATIONAL CLASS	006
DESCRIPTION	
key chains and key fobs made of common metal; non-luminous and non-mechanical metal signs; plaques of common metal and hardware, namely buckles made of common metal; license plates	
FILING BASIS	Section 1(b)
GOODS AND/OR SERVICES SECTION (012)(current)	
INTERNATIONAL CLASS	012
DESCRIPTION	
Motor land vehicles; motors for land vehicles; motor vehicle assessories namely automobile body emblems, license plate frames, license plates, key chains, hood ornaments and shifter knobs	
FILING BASIS	Section 1(b)
GOODS AND/OR SERVICES SECTION (012)(proposed)	
INTERNATIONAL CLASS	012
DESCRIPTION	
Motor land vehicles; motors for land vehicles; motor vehicle assessories, namely, automobile body emblems, license plate frames, license plates, hood ornaments and shifter knobs, namely, gear lever knobs	
FILING BASIS	Section 1(b)
SIGNATURE SECTION	
DECLARATION SIGNATURE	The filing Attorney has elected not to submit the signed declaration, believing no supporting declaration is required under the <i>Trademark Rules of Practice</i> .
RESPONSE SIGNATURE	/Robert D. Buyan/
SIGNATORY'S NAME	Robert D. Buyan
SIGNATORY'S POSITION	Attorney
DATE SIGNED	07/28/2008
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Jul 28 18:43:01 EDT 2008
	USPTO/RFR-71.139.254.155-

TEAS STAMP	20080728184301126641-7714 9025-420c13e1715d7304e834 85f68fe52b32446-N/A-N/A-2 0080728183521933670
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PTO Form 1960 (Rev 9/2007)

OMB No. xxx-xxxx (Exp. x/xxxx)

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. 77149025 has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

Applicant seeks registration in International Classes 006 and 012 for the mark YENKO. The Examining Attorney has refused registration in *both* Classes 006 and 012 on grounds of likelihood of confusion with U.S. Registration No. 2049857 for the mark YENKO for "toy cars" in International Class 028. Applicant respectfully contends that the stated refusal to Register in Classes 006 and 012 is not sustainable. Reconsideration is requested.

The cited YENKO registration is for *toy* cars in Class 028. Applicant owns pre-existing registrations for *real* cars (i.e., "automobiles") in Class 012 as well as automotive parts and accessories in Class 012, mail order catalogue and wholesale distributorship services in Class 035 and as well as clothing and headwear in Class 025. Specifically, Applicant is the owner of the following pre-existing registrations for its YENKO trademark:

U.S Trademark Registration No.	Mark	Goods	Registration Date	International Class
3097652	YENKO	Automobiles and Automotive parts and accessories, namely, wheel caps, spoilers and emblems	May 30, 2006	012
2314585	YENKO	Mail order catalogue services featuring parts and accessories for the restoration of classic automobiles; wholesale distributorships featuring parts and accessories for the restoration of classic automobiles	February 1, 2000	035

3161668	YENKO	clothing and headwear accessories, namely shirts, jackets and caps	October 24, 2006	025
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As presently amended, the present application seeks to register the YENKO trademark for the following goods:

Key chains and key fobs made of common metal; non-luminous and non-mechanical metal signs; plaques of common metal; hardware, namely buckles made of common metal and metal license plates in Class 006.

Motor land vehicles; motors for land vehicles, motor vehicle accessories, namely automobile body emblems, license plate frames, license plates, hood ornaments and shifter knobs, namely gear lever knobs in Class 012.

The goods recited in Class 006 are at least as closely related, if not more closely related, to *real* cars (for which Applicant holds pre-existing trademark registrations) as they are to *toy* cars. The record contains no evidence to indicate that any purveyor to sells only toy cars but not real cars (as is true of the owner of the cited registration) would be likely to also sell key chains, key fobs, metal signs plaques, buckles or license plates. Furthermore, the recited goods in Class 006 are not directly or indirectly competitive with toy cars. Moreover, because Applicant has for many years been selling a variety of automotive products under the YENKO mark, consumers would be most likely associate key chains, key fobs, metal signs plaques, buckles or license plates with Applicant, not with the owner of the cited registration. Moreover, the consumers who collect or restore YENKO automobiles are highly sophisticated classic car enthusiasts who are unlikely to be confused as to source and will have no difficulty distinguishing Applicant from the owner of the cited registration.

The goods recited in Class 012 are largely inclusive of goods in that class for which Application owns pre-existing registrations. Consumers will presume that Applicant, not the owner of the cited registration, is the source of motor land vehicles and accessories sold under the YENKO mark, as it is Applicant who has been the purveyor of various automotive goods (for real cars) under the YENKO mark for many years.

In conclusion, the goods recited in the present application are clearly more related to Applicant's own goods (for which Applicant owns pre-existing registrations) than to "toy cars" of the cited registration. The fact is that Applicant and the owner of the cited registration have co-existed in the market place for years without consumer confusion and allowance of the present application for registration in Classes 006 and 012 would not be likely to cause any consumer confusion.

A Notice of Appeal is being filed concurrently with this request for reconsideration.

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 006 for key chains and key fobs made of common metal; non-luminous and non-mechanical metal signs; plaques of common metal and hardware, namely buckles made of common metal

Original Filing Basis:

Filing Basis: Section 1(b), Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

Proposed: Class 006 for key chains and key fobs made of common metal; non-luminous and non-mechanical metal signs; plaques of common metal and hardware, namely buckles made of common metal; license plates

Filing Basis: Section 1(b), Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 012 for Motor land vehicles; motors for land vehicles; motor vehicle accessories namely automobile body emblems, license plate frames, license plates, key chains, hood ornaments and shifter knobs

Original Filing Basis:

Filing Basis: Section 1(b), Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

Proposed: Class 012 for Motor land vehicles; motors for land vehicles; motor vehicle accessories, namely, automobile body emblems, license plate frames, license plates, hood ornaments and shifter knobs, namely, gear lever knobs

Filing Basis: Section 1(b), Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

SIGNATURE(S)**Declaration Signature**

I hereby elect to bypass the submission of a signed declaration, because I believe a declaration is not required by the rules of practice. I understand that the examining attorney could still, upon later review, require a signed declaration.

Request for Reconsideration Signature

Signature: /Robert D. Buyan/ Date: 07/28/2008

Signatory's Name: Robert D. Buyan

Signatory's Position: Attorney

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 77149025

Internet Transmission Date: Mon Jul 28 18:43:01 EDT 2008

TEAS Stamp: USPTO/RFR-71.139.254.155-200807281843011

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