

PTO Form 1930 (Rev 9/2007)

OMB No. 0651-0050 (Exp. 4/30/2009)

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77190534
LAW OFFICE ASSIGNED	LAW OFFICE 101
MARK SECTION (no change)	
ARGUMENT(S)	
<p>I. Reconsideration Denied</p> <p>In the Reconsideration Letter dated October 4, 2008, the Examining Attorney indicates that the copy of the Consent Agreement was not attached to the Request for Reconsideration.</p>	
<p>II. Consent Agreement</p> <p>Applicant submits a copy of the executed Consent Agreement and again requests reconsideration of the refusal to register under Trademark Act Section 2(d) for the reasons set forth in the Request for Reconsideration dated September 19, 2008 and also based on the post-registration amendment of goods filed by the Registrant of the NITRO DIVER mark. Accordingly, Applicant also submits a copy of the Application for Amendment of Registered Mark for U.S. Trademark Registration No. 3,289,498 (NITRO DIVER), which the registrant had filed with the U.S. Patent and Trademark Office on Monday, October 6, 2008.</p> <p>Applicant is submitting these documents in order to make a complete record, in the event the Request for Reconsideration is denied and an appeal must be pursued. Accordingly, to reserve Applicant's rights, a Notice of Appeal will be timely filed, unless the Examining Attorney renders a favorable decision today.</p>	
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	http://tgate/PDF/RFR/2008/10/08/20081008120729125527-77190534-002_001/evi_68917668-114708247_._Fully_Executed_Consent_Agreement.pdf
CONVERTED PDF FILE(S) (3 pages)	\\TICRS\EXPORT3\IMAGEOUT3\771\905\77190534\xml4\RFR0002.JPG
	\\TICRS\EXPORT3\IMAGEOUT3\771\905\77190534\xml4\RFR0003.JPG
	\\TICRS\EXPORT3\IMAGEOUT3\771\905\77190534\xml4\RFR0004.JPG

ORIGINAL PDF FILE	http://tgate/PDF/RFR/2008/10/08/20081008120729125527-77190534-002_002/evi_68917668-114708247_._Application_for_Amendment.pdf
CONVERTED PDF FILE(S) (2 pages)	\\TICRS\EXPORT3\IMAGEOUT3\771\905\77190534\xml4\RFR0005.JPG
	\\TICRS\EXPORT3\IMAGEOUT3\771\905\77190534\xml4\RFR0006.JPG
DESCRIPTION OF EVIDENCE FILE	Fully executed consent agreement and Application for Amendment of Registered Mark for U.S. Trademark Registration No. 3,289,498 (NITRO DIVER).
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Dennis JM Donahue III/
SIGNATORY'S NAME	Dennis J.M. Donahue III
SIGNATORY'S POSITION	Attorney of Record, Missouri bar member
DATE SIGNED	10/08/2008
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMATION SECTION	
SUBMIT DATE	Wed Oct 08 12:07:29 EDT 2008
TEAS STAMP	USPTO/RFR-68.91.76.68-200 81008120729125527-7719053 4-4306e5f8522ddb49e562b4a e571ce46a4-N/A-N/A-200810 08114708247474

PTO Form 1930 (Rev 9/2007)

OMB No. 0651-0050 (Exp. 4/30/2009)

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. **77190534** has been amended as follows:

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

I. Reconsideration Denied

In the Reconsideration Letter dated October 4, 2008, the Examining Attorney indicates that the copy of the Consent Agreement was not attached to the Request for Reconsideration.

II. Consent Agreement

Applicant submits a copy of the executed Consent Agreement and again requests reconsideration of the refusal to register under Trademark Act Section 2(d) for the reasons set forth in the Request for Reconsideration dated September 19, 2008 and also based on the post-registration amendment of goods filed by the Registrant of the NITRO DIVER mark. Accordingly, Applicant also submits a copy of the Application for Amendment of Registered Mark for U.S. Trademark Registration No. 3,289,498 (NITRO DIVER), which the registrant had filed with the U.S. Patent and Trademark Office on Monday, October 6, 2008.

Applicant is submitting these documents in order to make a complete record, in the event the Request for Reconsideration is denied and an appeal must be pursued. Accordingly, to reserve Applicant's rights, a Notice of Appeal will be timely filed, unless the Examining Attorney renders a favorable decision today.

EVIDENCE

Evidence in the nature of Fully executed consent agreement and Application for Amendment of Registered Mark for U.S. Trademark Registration No. 3,289,498 (NITRO DIVER). has been attached.

Original PDF file:

http://tgate/PDF/RFR/2008/10/08/20081008120729125527-77190534-002_001/evi_68917668-114708247_._Fully_Executed_Consent_Agreement.pdf

Converted PDF file(s) (3 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

Original PDF file:

http://tgate/PDF/RFR/2008/10/08/20081008120729125527-77190534-002_002/evi_68917668-114708247_._Application_for_Amendment.pdf

Converted PDF file(s) (2 pages)

[Evidence-1](#)

[Evidence-2](#)

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Dennis JM Donahue III/ Date: 10/08/2008

Signatory's Name: Dennis J.M. Donahue III

Signatory's Position: Attorney of Record, Missouri bar member

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: 77190534

Internet Transmission Date: Wed Oct 08 12:07:29 EDT 2008

TEAS Stamp: USPTO/RFR-68.91.76.68-200810081207291255

27-77190534-4306e5f8522ddb49e562b4ae571c

e46a4-N/A-N/A-20081008114708247474

CONSENT AGREEMENT

This is an Agreement by and between Wright & McGill Co., a Colorado corporation, whose principal place of business is located at 4245 E. 46th Ave, Denver, Colorado 80216 ("Wright & McGill"), and Bass Pro Intellectual Property, L.L.C., a Missouri limited liability company, whose principal place of business is located at 2500 E. Kearney Street, Springfield, Missouri 65898 ("Bass Pro"). This Agreement shall become fully effective and binding upon complete execution of the signature blocks provided for below ("Effective Date").

WHEREAS, Wright & McGill is the owner of U.S. Trademark Registration No. 3,289,498 for the mark "NITRO DIVER" for "fishing lures; manually-operated depth control fishing devices; manually-operated depth control fishing devices with attractant; fish attractant; manually-operated fishing devices, namely, a trolling plane device; and manually operated fishing devices, namely, trolling planes towed behind a boat that dive into the water and control the depth of a lure or hook," in Class 28, and has been using said mark with such goods since July 2006;

WHEREAS, Bass Pro is the owner of U.S. Trademark Application Serial No. 77/190,534 for the mark "NITRO SHAD DANCER" for "fishing lures," in Class 28, filed as an intent to use application on May 25, 2007.

WHEREAS, an issue has arisen with respect to the use and registration of the parties respective marks, and wherein the parties would like to amicably resolve these issues pursuant to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement, the receipt of and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Bass Pro will not use the "NITRO SHAD DANCER" trademark or any other "NITRO" marks for artificial bait, fish attractants, or manually-operated depth control fishing devices.
2. Wright & McGill will not use the "NITRO DIVER" trademark or any other "NITRO" marks for fishing tackle, namely fishing lures, fishing rods, fishing reels or fishing line.
3. Within ten (10) business days following the receipt by Wright & McGill of a fully executed original copy of this Agreement, Wright & McGill shall amend the description of goods in Registration No. 3,289,498 by deleting "fishing lures," to read as follows:
manually-operated depth control fishing devices; manually-operated depth control fishing devices with attractant; fish attractant; manually-operated fishing devices, namely, a trolling plane device; and manually operated fishing devices, namely, trolling places towed behind a boat that dive into the water and control the depth of a lure or hook.

4. Wright & McGill will not object to Bass Pro's use or registration of "NITRO SHAD DANCER" or other "NITRO" marks in connection with fishing tackle, namely fishing lures, fishing rods, fishing reels, or fishing line.

5. Bass Pro will not object to Wright & McGill's use or registration of "NITRO DIVER" or other "NITRO" marks in connection with artificial bait, fish attractants, or manually-operated depth control fishing devices.

6. Wright & McGill hereby consents to Bass Pro's registration and use of the mark "NITRO SHAD DANCER" as represented in U.S. Trademark Application Serial No. 77/190,534 in connection with fishing lures in Class 28.

7. Wright & McGill agrees not to oppose or seek to cancel U.S. Trademark Application Serial No. 77/190,534, or object to Bass Pro's use of "NITRO SHAD DANCER" in connection with fishing lures.

8. Bass Pro agrees not to seek cancellation of U.S. Registration No. 3,289,498 for the goods identified in Paragraph 3 above, provided that the amendment in Paragraph 3 is accepted by the U.S. Patent and Trademark Office, and the U.S. Patent and Trademark Office withdraws the citation of U.S. Registration No. 3,289,498 in U.S. Trademark Application Serial No. 77/190,534 upon the submission of a copy of this Agreement.

9. If requested by Bass Pro, Wright & McGill will execute a letter of consent that Bass Pro can file with the U.S. Patent and Trademark Office to allow the registration of "NITRO" marks for fishing tackle, particularly including fishing lures, fishing rods, fishing reels, and fishing lines. In addition to identifying a particular application and reiterating the differences in the categories of products sold by Wright & McGill under its NITRO marks and Bass Pro under its NITRO marks, such letter may also refer to the absence of actual confusion despite the concurrent use of the marks by the parties to this Agreement for a number of years and other factors relevant to the lack of a likelihood of confusion.

10. If requested by Wright & McGill, Bass Pro will execute a letter of consent that Wright & McGill can file with the U.S. Patent and Trademark Office to allow the registration of "NITRO" marks for artificial bait, fish attractants, and manually-operated depth control fishing devices. In addition to identifying a particular application and reiterating the differences in the categories of products sold by Wright & McGill under its NITRO marks and Bass Pro under its NITRO marks, such letter may also refer to the absence of actual confusion despite the concurrent use of the marks by the parties to this Agreement for a number of years and other factors relevant to the lack of a likelihood of confusion.

11. The parties have carefully considered the possibilities of a likelihood of confusion arising from the use and registration of the parties' respective marks for their respective goods and have determined that a likelihood of confusion does not exist. In reaching this determination, the parties have carefully considered the differences in the

marks and the goods of the parties, the realities of the marketplace, the respective channels of trade, the sophistication of the relevant consumers and numerous other factors. The parties agree to work together to resolve any instances of confusion that may occur.

12. This Agreement shall constitute the entire Agreement between the parties with respect to the subject matter hereof; shall supersede all other previous negotiations, commitments and writings, except the Agreement dated May 1, 2004; and shall not be modified or altered in any manner except by a written instrument duly executed by the parties hereto.

13. This Agreement, to the extent possible, shall be construed so as to give validity to all the provisions hereof. Any provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating any other part of this Agreement.

14. Each party acknowledges that it is a sophisticated party and that it has made an independent investigation of the facts pertaining to this Agreement and all of the matters relating thereto as it deems necessary and that each party has received advice from counsel in connection with the advisability of entering into this Agreement.

15. This Agreement shall be binding upon by the parties and their respective successors and assigns; and it shall be the duty of each party to advise their successors and assigns of the provisions of this Agreement.

IN WITNESS WHEREOF, the parties have caused the execution of this Agreement by their duly authorized representatives.

WRIGHT & MCGILL CO.

BASS PRO INTELLECTUAL
PROPERTY, L.L.C.

By: 

By: 

Name: Don Schaidle

Name: Toni M. Miller

Title: CFO

Title: Vice President and CFO

Date: 9/9/08

Date: 9-23-08

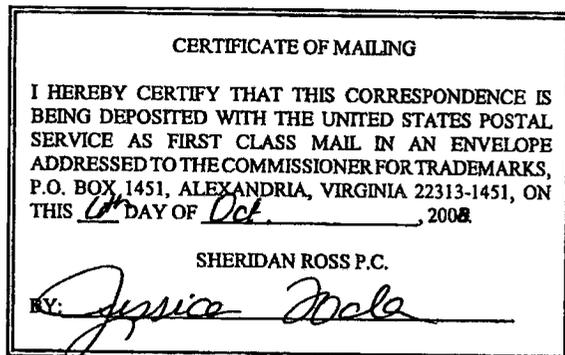
LW
9-22-08

TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Registration of:)
)
Wright & McGill)
)
Registration No.: 3,289,498)
)
Registration Date: September 11, 2007)
)
Mark: NITRO DIVER)
)
Atty. File No.: 1162-250)

T. M. Law Office: Post Registration
Examining Attorney: David C. Reihner



Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Dear Commissioner:

APPLICATION FOR AMENDMENT OF REGISTERED MARK UNDER § 7(e)

Wright & McGill Co., a Colorado Corporation, located and doing business at 4245 East 46th Avenue, Denver, Colorado 80216, hereby amends its identification of goods in U.S.

Trademark Registration No. 3,289,498 for the mark "NITRO DIVER". The goods currently listed in the registrar are:

fishing lures; manually-operated depth control fishing devices; manually-operated depth control fishing devices with fish attractant; fish attractant; manually-operated fishing devices, namely, a trolling plane device; and manually operated fishing devices, namely, trolling planes towed behind a boat that dive into the water and control the depth of a lure or hook," in Class 28.

Please amend the above-mentioned registration to the following:

"manually-operated depth control fishing devices; manually-operated depth control fishing devices with fish attractant; fish attractant; manually-operated fishing devices, namely, a trolling plane device; and manually operated fishing devices, namely, trolling planes towed behind a boat that dive into the water and control the depth of a lure or hook."

Registrant has good cause for this request in that the request is made to comply with the terms of a Consent Agreement with a third party.

This amendment is a restriction on the identification of goods that would not require republication and is thereby permitted by TMEP 1609.03.

The above-mentioned registrant requests that this registration be amended in accordance with Section 7(e) of the Act of July 5, 1946. A declaration is presented herewith in accordance to 37 C.F.R. §2.173(a), along with the fee of \$100 pursuant to 37 C.F.R. §2.6(a)(11).

I, Sabrina Stavish, declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true and further that these statements are made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this document and the registration to which it relates.

Respectfully Submitted,
SHERIDAN ROSS P.C.



By: Sabrina C. Stavish
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(303) 863-9700