

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	77336400
LAW OFFICE ASSIGNED	LAW OFFICE 116
MARK SECTION (no change)	
ARGUMENT(S)	
<p>The Examining Attorney has finally refused registration Of ATTITUDE EYEWEAR (DESIGN) on the basis of a prior registration of ATTITUDE, U.S. Reg. No. 3082266, for eyeglass lenses. Applicant has distinguished its goods and the channels of trade for the respective goods in its earlier response to office action.</p> <p>The USPTO has registered other marks that include the term ATTITUDE for the goods identical to Applicant's goods. For example, MISS ATTITUDE, U.S. Reg. No. 2934000, is registered for sunglasses. The mark POSITIVE ATTITUDE, U.S. Ser. No. 77/646653, is pending for "eyeglasses, sunglasses, magnifying glasses; eyeglass frames and lenses, eyeglass accessories, namely, cases and chains" and has been approved for publications. Copies of the TESS records are submitted herewith. These marks indicate the willingness of the USPTO to register marks that include the term ATTITUDE for similar or related goods because U.S. consumers recognize the differences between the marks.</p> <p>Accordingly, Applicant respectfully urges that the final refusal be reconsidered and the candidate mark approved for publication.</p>	
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	\\TICRS\EXPORT7\IMAGEOUT7\773\364\77336400\xml1\RF R0002.JPG
	\\TICRS\EXPORT7\IMAGEOUT7\773\364\77336400\xml1\RF R0003.JPG
DESCRIPTION OF EVIDENCE FILE	TESS records
SIGNATURE SECTION	
RESPONSE SIGNATURE	/sherry flax/
SIGNATORY'S NAME	Sherry Flax
SIGNATORY'S POSITION	Attorney of record, Maryland bar member

DATE SIGNED	06/04/2009
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Thu Jun 04 17:40:51 EDT 2009
TEAS STAMP	USPTO/RFR-209.120.230.194 -20090604174051257711-773 36400-4303f94e8ccea6c6457 625d9ff4e6cdc0-N/A-N/A-20 090604173904813083

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. **77336400** has been amended as follows:

ARGUMENT(S)

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

The Examining Attorney has finally refused registration Of ATTITUDE EYEWEAR (DESIGN) on the basis of a prior registration of ATTITUDE, U.S. Reg. No. 3082266, for eyeglass lenses. Applicant has distinguished its goods and the channels of trade for the respective goods in its earlier response to office action.

The USPTO has registered other marks that include the term ATTITUDE for the goods identical to Applicant's goods. For example, MISS ATTITUDE, U.S. Reg. No. 2934000, is registered for sunglasses. The mark POSITIVE ATTITUDE, U.S. Ser. No. 77/646653, is pending for "eyeglasses, sunglasses, magnifying glasses; eyeglass frames and lenses, eyeglass accessories, namely, cases and chains" and has been approved for publications. Copies of the TESS records are submitted herewith. These marks indicate the willingness of the USPTO to register marks that include the term ATTITUDE for similar or related goods because U.S. consumers recognize the differences between the marks.

Accordingly, Applicant respectfully urges that the final refusal be reconsidered and the candidate mark approved for publication.

EVIDENCE

Evidence in the nature of TESS records has been attached.

Evidence-1

Evidence-2

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /sherry flax/ Date: 06/04/2009

Signatory's Name: Sherry Flax

Signatory's Position: Attorney of record, Maryland 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 filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 77336400

Internet Transmission Date: Thu Jun 04 17:40:51 EDT 2009

TEAS Stamp: USPTO/RFR-209.120.230.194-20090604174051

257711-77336400-4303f94e8ccea6c6457625d9

ff4e6cdc0-N/A-N/A-20090604173904813083

[TARR Status](#)[ASSIGN Status](#)[TDR](#)[TTAB Status](#)

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Typed Drawing

Word Mark MISS ATTITUDE
Goods and Services IC 009. US 021 023 026 036 038. G & S: Sunglasses. FIRST USE: 20040200. FIRST USE IN COMMERCE: 20040200
Mark Drawing Code (1) TYPED DRAWING
Serial Number 78191055
Filing Date December 4, 2002
Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition August 12, 2003
Registration Number 2934000
Registration Date March 15, 2005
Owner (REGISTRANT) McRae's, Inc. CORPORATION MISSISSIPPI 750 Lakeshore Parkway Birmingham ALABAMA 35211
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record Wendy L. Robertson
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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POSITIVE ATTITUDE

Word Mark POSITIVE ATTITUDE
Goods and Services IC 009, US 021 023 026 036 038: G & S: eyeglasses, sunglasses, magnifying **glasses**, eyeglass frames and lenses, eyeglass accessories, namely, cases and chains
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 77646653
Filing Date January 9, 2009
Current Filing Basis 1B
Original Filing Basis 1B
Published for Opposition April 14, 2009
Owner (APPLICANT) Positive Attitude, Inc. CORPORATION NEW YORK 4 Farm Hill Lane Muttontown NEW YORK 11732
Attorney of Record Larry Miller
Prior Registrations 1530965
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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