

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	77438891
LAW OFFICE ASSIGNED	LAW OFFICE 108
MARK SECTION (no change)	
ARGUMENT(S)	
<p>This is in response to the Office Action of February 27, 2009. In that Office Action, the Examining Attorney finally rejected Applicant's application for registration of the mark, "SHIVA NATA." The Examining Attorney refused registration on the grounds that the mark was merely descriptive of the goods and services. The Examining Attorney states that because "SHIVA NATA" translates to "Dance of Shiva," it is merely descriptive of Applicant's yoga instruction and yoga technique. The Examining Attorney seems to be equating yoga with dancing in that both are defined "as including a series of motions and steps usually performed to music." The Examining Attorney also notes that yoga and dance are often taught in conjunction with one another and are likely to emanate from a single source.</p> <p>While it may be true that yoga and dance are sometimes taught in conjunction with each other, to yoga practitioners, instructors and students, yoga is much more than merely a series of motions and steps and is not necessarily or even usually performed to music. Thus, the Examining Attorney's statement cannot serve as a basis for asserting that Applicant's "SHIVA NATA" mark is merely descriptive. As noted in the Office Action "whether a mark is merely descriptive is considered in relation to the identified goods and/or services, not in the abstract. <i>In re Abcor Dev. Corp.</i>, 588 F.2d 811, 814, 200 USPQ 215, 185 (C.C.P.A. 1778); TMEP §1209.01(b). Thus, in this instance, the mark "SHIVA NATA" must be considered (1) in relation to the Applicant's services, namely, "providing instruction in the field of yoga and yoga techniques," and (2) as it would be by the relevant public. While both yoga and dance invoke movement, as practitioners of yoga will attest, in yoga, the meditative and mental aspects of yoga generally and the "SHIVA NATA" in particular, in combination with the physical, are often cited as leading to spiritual and physical well-being. Applicant has successfully coined the term, "SHIVA NATA", to describe his unique and very particular yoga instruction technique which has been recognized by others in the field (see the attachments discussed below) and goes well-beyond mere "dance."</p> <p>As applicants have noted, Applicant has previously registered the mark "DANCE OF SHIVA." The Examining Attorney has noted that the "DANCE OF SHIVA" mark included a "Section 2(f) claim of acquired distinctiveness." Similarly, as demonstrated by the attached website printouts, yoga practitioners likewise associate the mark "SHIVA NATA" with</p>	

Applicant and Applicant's distinct and unique teachings and instruction. See for example, the website www.shivanata.com as one example. See also www.jamielindsay.com as another example. Pages from both websites are attached. These pages demonstrate that, in the world of yoga, Applicant's "SHIVA NATA" has likewise acquired a distinctiveness.

In addition to the foregoing, Applicants hereby submit a substitute specimen showing the use of the mark for the services specified in the application. The specimen is a brochure/website printout from September 2007 and relates to a workshop provided by the Applicant. The specimen was in use in commerce at least as early as the filing date of the application.

The Office Action also requires an English translation of the mark. The English translation of "NATA" is "DANCE."

Finally, out of an abundance of caution, Applicants simultaneously are filing a Notice of Appeal with the Trademark Trial and Appeal Board. Applicants respectfully request that the Examining Attorney reconsider the rejections previously made and that the "SHIVA NATA" mark be accepted for registration.

EVIDENCE SECTION

EVIDENCE FILE NAME(S)

ORIGINAL
PDF FILE

http://tgate/PDF/RFR/2009/08/26/20090826174238475211-77438891-002_001/evi_6427135106-170210931_._WEBSITES.pdf

CONVERTED
PDF FILE(S)
(4 pages)

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\\TICRS\EXPORT7\IMAGEOUT7\774\388\77438891\xml1\RFR004.JPG

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DESCRIPTION OF EVIDENCE FILE

Pages from websites showing distinctiveness of SHIVA NATA mark

GOODS AND/OR SERVICES SECTION (current)

INTERNATIONAL CLASS

041

DESCRIPTION

Providing instruction in the field of yoga and yoga techniques

FILING BASIS

Section 1(a)

FIRST USE ANYWHERE DATE

At least as early as 12/31/2000

FIRST USE IN COMMERCE DATE	At least as early as 12/31/2005
GOODS AND/OR SERVICES SECTION (proposed)	
INTERNATIONAL CLASS	041
DESCRIPTION	
Providing instruction in the field of yoga and yoga techniques	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 12/31/2000
FIRST USE IN COMMERCE DATE	At least as early as 12/31/2005
STATEMENT TYPE	"The substitute specimen(s) was in use in commerce at least as early as the filing date of the application."
SPECIMEN FILE NAME(S)	
ORIGINAL PDF FILE	http://tgate/PDF/RFR/2009/08/26/20090826174238475211-77438891-002_002/SPU0-1-6427135106-170210931_._SUBSTITUTE.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT\IMAGEOUT\774\388\77438891\xml1\RFR0006.JPG
SPECIMEN DESCRIPTION	a substitute specimen
SIGNATURE SECTION	
DECLARATION SIGNATURE	/Andrew G. Kolomayets/
SIGNATORY'S NAME	Andrew G. Kolomayets
SIGNATORY'S POSITION	Attorney
DATE SIGNED	08/26/2009
RESPONSE SIGNATURE	/Andrew G. Kolomayets/
SIGNATORY'S NAME	Andrew G. Kolomayets
SIGNATORY'S POSITION	Attorney
DATE SIGNED	08/26/2009
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMATION SECTION	
SUBMIT DATE	Wed Aug 26 17:42:38 EDT 2009
	USPTO/RFR-64.27.135.106-2 0090826174238475211-77438

TEAS STAMP

891-4303ad432d61dff835662
4581c3336c3a-N/A-N/A-2009
0826170210931996

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. 77438891 has been amended as follows:

ARGUMENT(S)

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

This is in response to the Office Action of February 27, 2009. In that Office Action, the Examining Attorney finally rejected Applicant's application for registration of the mark, "SHIVA NATA." The Examining Attorney refused registration on the grounds that the mark was merely descriptive of the goods and services. The Examining Attorney states that because "SHIVA NATA" translates to "Dance of Shiva," it is merely descriptive of Applicant's yoga instruction and yoga technique. The Examining Attorney seems to be equating yoga with dancing in that both are defined "as including a series of motions and steps usually performed to music." The Examining Attorney also notes that yoga and dance are often taught in conjunction with one another and are likely to emanate from a single source.

While it may be true that yoga and dance are sometimes taught in conjunction with each other, to yoga practitioners, instructors and students, yoga is much more than merely a series of motions and steps and is not necessarily or even usually performed to music. Thus, the Examining Attorney's statement cannot serve as a basis for asserting that Applicant's "SHIVA NATA" mark is merely descriptive. As noted in the Office Action "whether a mark is merely descriptive is considered in relation to the identified goods and/or services, not in the abstract. *In re Abcor Dev. Corp.*, 588 F.2d 811, 814, 200 USPQ 215, 185 (C.C.P.A. 1778); TMEP §1209.01(b). Thus, in this instance, the mark "SHIVA NATA" must be considered (1) in relation to the Applicant's services, namely, "providing instruction in the field of yoga and yoga techniques," and (2) as it would be by the relevant public. While both yoga and dance invoke movement, as practitioners of yoga will attest, in yoga, the meditative and mental aspects of yoga generally and the "SHIVA NATA" in particular, in combination with the physical, are often cited as leading to spiritual and physical well-being. Applicant has successfully coined the term, "SHIVA NATA", to describe his unique and very particular yoga instruction technique which has been recognized by others in the field (see the attachments discussed below) and goes well-beyond mere "dance."

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website printouts, yoga practitioners likewise associate the mark "SHIVA NATA" with Applicant and Applicant's distinct and unique teachings and instruction. See for example, the website www.shivanata.com as one example. See also www.jamielindsay.com as another example. Pages from both websites are attached. These pages demonstrate that, in the world of yoga, Applicant's "SHIVA NATA" has likewise acquired a distinctiveness.

In addition to the foregoing, Applicants hereby submit a substitute specimen showing the use of the mark for the services specified in the application. The specimen is a brochure/website printout from September 2007 and relates to a workshop provided by the Applicant. The specimen was in use in commerce at least as early as the filing date of the application.

The Office Action also requires an English translation of the mark. The English translation of "NATA" is "DANCE."

Finally, out of an abundance of caution, Applicants simultaneously are filing a Notice of Appeal with the Trademark Trial and Appeal Board. Applicants respectfully request that the Examining Attorney reconsider the rejections previously made and that the "SHIVA NATA" mark be accepted for registration.

EVIDENCE

Evidence in the nature of Pages from websites showing distinctiveness of SHIVA NATA mark has been attached.

Original PDF file:

http://tgate/PDF/RFR/2009/08/26/20090826174238475211-77438891-002_001/evi_6427135106-170210931_._WEBSITES.pdf

Converted PDF file(s) (4 pages)

Evidence-1

Evidence-2

Evidence-3

Evidence-4

CLASSIFICATION AND LISTING OF GOODS/SERVICES

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

Current: Class 041 for Providing instruction in the field of yoga and yoga techniques

Original Filing Basis:

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 12/31/2000 and first used in commerce at least as early as 12/31/2005, and is now in use in such commerce.

Proposed: Class 041 for Providing instruction in the field of yoga and yoga techniques

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 12/31/2000 and first used in commerce at least as early as 12/31/2005, and is now in use in such commerce.

Applicant hereby submits a new specimen for Class 041. The specimen(s) submitted consists of a substitute specimen.

For an application based on 1(a), Use in Commerce, "The substitute specimen(s) was in use in

commerce as of the filing date of the application."

Original PDF file:

http://tgate/PDF/RFR/2009/08/26/20090826174238475211-77438891-002_002/SPU0-1-6427135106-170210931_._SUBSTITUTE.pdf

Converted PDF file(s) (1 page)

Specimen File1

SIGNATURE(S)

Declaration Signature

If the applicant is seeking registration under Section 1(b) and/or Section 44 of the Trademark Act, the applicant has had 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. 37 C.F.R. Secs. 2.34(a)(2)(i); 2.34 (a)(3)(i); and 2.34(a)(4)(ii); and/or the applicant has had a bona fide intention to exercise legitimate control over the use of the mark in commerce by its members. 37 C.F. R. Sec. 2.44. If the applicant is seeking registration under Section 1(a) of the Trademark Act, the mark was in use in commerce on or in connection with the goods or services listed in the application as of the application filing date. 37 C.F.R. Secs. 2.34(a)(1)(i); and/or the applicant has exercised legitimate control over the use of the mark in commerce by its members. 37 C.F.R. Sec. 244. 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. §1001, and that such willful false statements 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. §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; that if the original application was submitted unsigned, that all statements in the original application and this submission made of the declaration signer's knowledge are true; and all statements in the original application and this submission made on information and belief are believed to be true.

Signature: /Andrew G. Kolomayets/ Date: 08/26/2009

Signatory's Name: Andrew G. Kolomayets

Signatory's Position: Attorney

Request for Reconsideration Signature

Signature: /Andrew G. Kolomayets/ Date: 08/26/2009

Signatory's Name: Andrew G. Kolomayets

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.

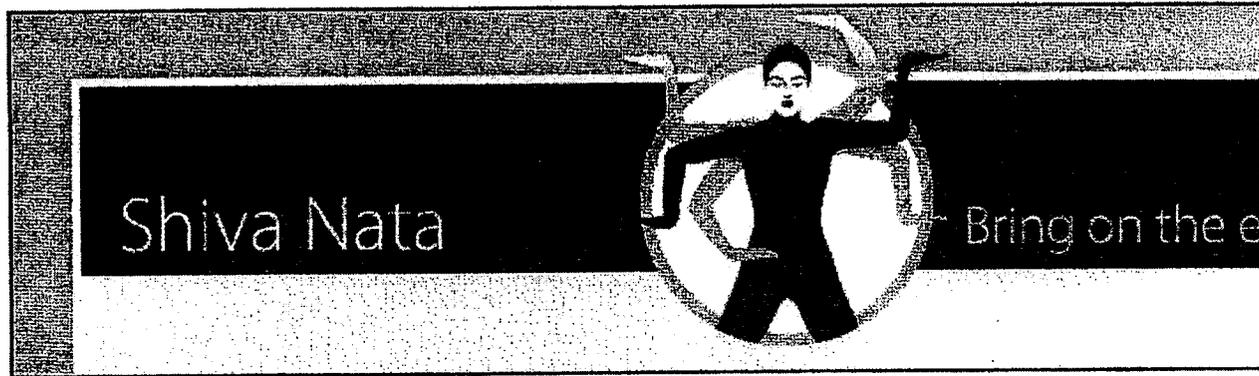
Serial Number: 77438891

Internet Transmission Date: Wed Aug 26 17:42:38 EDT 2009

TEAS Stamp: USPTO/RFR-64.27.135.106-2009082617423847

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About Shiva Nata: the Dance of Shiva

Hot buttered insights: where do I start?

Andrey Lappa's Dance of Shiva™ — is a unique (and visually stunning), flowing yoga-based movement form that actually *restructures neural connections* in your brain.

Cool, but *why* would someone want to do that? Because creating more connections in the brain means you are inviting more light bulb moments into your life. "Light bulb moments", "hot buttered insights" or "moments of bing" — it doesn't matter what you call them. You know them when they show up.

Even better, when you practice regularly, you can access these moments whenever you need them. In a safe, systematic and supportive way. My students have big, crazy breakthroughs all the time, almost always within 24 hours after practice. I want you to have them too. Welcome!

Bios are boring, what are ya gonna do?



I'm Havi Brooks. That's me to the left with my photogenic co-teacher Selma (I'm the one that isn't a duck).

Together we have taught Dance of Shiva to **thousands of people** around the world. We are also Boggle fiends. Well, one of us is.

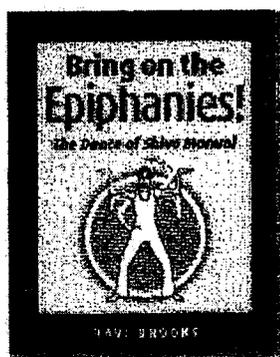
My main interest in life is helping smart, creative people feel safe sharing their wonderful, crazy gifts with the world. That informs the work I do as a **coach and writer**, and it also explains why I'm so obsessed with the Dance of Shiva — because it's the perfect tool to help people take apart their old, dusty, stuck patterns and rewrite them.

When it comes to teaching Dance of Shiva, I consider myself an **educator** rather than a teacher, which means that I care about the how and why of yoga. The fairy dust. The practical applications to real life so that you can change your patterns and live yoga every second of the day.

I also firmly believe that you grow best when you are being intellectually and creatively challenged, which is why I never repeat a class — to make sure that I am challenging myself as vigorously as I am challenging you.

Credentials?

I don't want to bore you with a one of those awful lists of which certificate came from where. Put it this way: there's only one person in the entire world who knows more about Shiva Nata than I do, and that's my teacher, Ukrainian yoga master Andrey Lappa. And he's off in retreat in a monastery in the Himalayas half the year.



In fact, I am one of only two practitioners in the world to have ever mastered the famed and dreaded Level 7. My Dance of Shiva Starter Kit is the best way to learn the dance, hands down.

And now that my manual “**Bring on the Epiphanies**” is scheduled for publication, I'll finally be able to say I wrote the book on it!

But the main thing is that I have personally experienced the ridiculously cool and bizarrely wonderful results of this practice. Not long after beginning to work with the dance — having no idea it could change my brain — I finally managed to stop smoking, change my eating habits, teach myself German and stop biting my nails all in a matter of a couple of months. Now my students have breakthroughs all the time, and I'm still in awe of the process.

I owe so much to Andrey Lappa who has been mentoring me for years ever since I took a year-long teacher training with him in Israel (where I'm from). Andrey has really provided me with a solid intellectual foundation in yoga and beyond, and is a source of endless mental, emotional and spiritual support and guidance.

More?

Feel like you're up to making some changes? Join our community of yoga practitioners, yoga professionals and yoga-minded or yoga-curious people who are all excited about being engaged in an ongoing self-work process. I sincerely hope that we will meet someday!

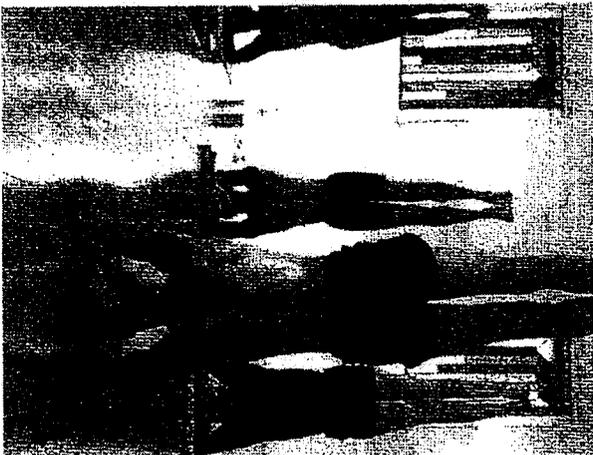
- » Come hang out on the blog (and get invitations to free teleclasses)!
- » [Get the Dance of Shiva Starter Kit](#)

© 2005 – 2009 Havi Brooks | 3527 NE 15th Street #220, Portland, OR 97212 | (971) 533-7623

JAMIE LINDSAY YOGA

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Yoga Retreat at Kalani, on the Big Island, May 29 thru June 7, 2010



UNIVERSAL FREESTYLE VINYASA YOGA II-III:

In this Universal Freestyle Vinyasa Yoga class, taught entirely by **donation**, we work with the sequencing principles of **Andrey Lappa**. Recently (2/6/07), we have be focussing specifically on his notion of balancing of **mobilities** of the joints, stretching evenly through the possible ranges of movement of hips, knees, ankles, shoulders, elbows, and wrists, and the lumbar, thoracic, and cervical spine. Most weeks, we start practice with a short exploration of the **Dance of Shiva**, or Shiva Nata, to begin to warm the body and open the peripheral channels. Shiva Nata is particularly good for the balancing of consciousness and the releasing of addictive patterns. If you find that you particularly like Shiva Nata, **Havi Brooks** is the only San Francisco-based Shiva Nata instructor of which I am aware who has studied with **Andrey** intensively, so check her out, and **Mark** and **Ian** of **Pranamaya** produced the only available **Dance of Shiva DVD**. Practice continues with progressively more complex **mandala**-like sequences of postures arranged in three-**dimensional** space on two crossed yoga mats in a way that is unique to **Andrey's** teaching,

organized to create a powerful **psycho-energetic effect**. Practice usually concludes with **Inversions**, and occasionally with **Pranayama**. If you've never tried Andrey's practice before, you are liable to encounter many poses that you've never seen before, so come with an open mind, ready to try something new. Even if you've been doing yoga for decades, you're going to stretch muscles you didn't even know you had! Though one of the foci of practice is creating freedom in all of the joints, this is an extremely vigorous and sweaty practice, and the complexity of the sequencing helps to sharpen the mind, opening up new possibilities of meditative focus. There is no minimum **donation** for this class!

Class is entirely by **donation**. Class is held Thursdays 6-8pm, at James Howell Studio, located in the **Castro**, in **San Francisco**, 66 Sanchez at 14th Street, a block from the Church and Market MUNI

Krishnamacharya Yoga Practice Film 1938

Iyengar Yoga Practice Film 1938

Andrey Lappa Photography Collection

CONTACT

email at jamie@jamielindsay.com

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:: September 2007 Volume 6/Number 7

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OCTOBER

5-10 Andrey Lappa, Ukrainian yoga master, will be at TruYoga in Santa Monica, teaching the principals of Universal Yoga and the ancient tradition of Shiva Nata. Info: www.truyogaLA.com

5 Friday, 7 - 9 P.M Open the Throat Chakra Workshop with Nelly in Yoga West LA. Live music by Kirtan Singh. Don't miss this magical evening of Kundalini Yoga and Meditation as taught by Yogi Bhajan. Open your throat chakra and enter into the space of your highest truth and creativity. More information at www.HappyYogi.net

6 & 7 Larisa Stow & Shakti Tribe energizes the Inland Empire at Yoga Within & Healing Arts Center Riverside. Saturday P.M. Concert. Sunday, Chakra Yoga & Mantra playshop. Ticket, registration; info: (951) 787 - 6210; www.healthyyoga.net

6 Saturday 8 - 11 P.M. uniTree: Benefit for Tree People. Reid deFever (tabla/taiko drums), Hemalaya Behl (Odissi dance), Andrew Soliz (Lakota