

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 | 77665184 |
| LAW OFFICE ASSIGNED | LAW OFFICE 112 |
| MARK SECTION (no change) | |
| EVIDENCE SECTION | |
| EVIDENCE FILE NAME(S) | |
| ORIGINAL PDF FILE | http://tgate/PDF/RFR/2009/12/16/20091216152029754216-77665184-002_001/evi_7410243226-151709076_.50481.T13001_Argument_for_Reply_to_6.17.09_OA.pdf |
| CONVERTED PDF FILE(S) (3 pages) | \\TICRS\EXPORT8\IMAGEOUT8\776\651\77665184\xml1\RFR0002.JPG |
| | \\TICRS\EXPORT8\IMAGEOUT8\776\651\77665184\xml1\RFR0003.JPG |
| | \\TICRS\EXPORT8\IMAGEOUT8\776\651\77665184\xml1\RFR0004.JPG |
| ORIGINAL PDF FILE | http://tgate/PDF/RFR/2009/12/16/20091216152029754216-77665184-002_002/evi_7410243226-151709076_.50481.T13001_Printout_for_ProFollica_Website.pdf |
| CONVERTED PDF FILE(S) (3 pages) | \\TICRS\EXPORT8\IMAGEOUT8\776\651\77665184\xml1\RFR0005.JPG |
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| DESCRIPTION OF EVIDENCE FILE | An argument in response to the likelihood of confusion rejection and a printout from the ProFollica website showing how Registrant's mark is being used. |
| SIGNATURE SECTION | |

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|---------------------------------------|--|
| RESPONSE SIGNATURE | /Jan N. Tittel/ |
| SIGNATORY'S NAME | Jan N. Tittel |
| SIGNATORY'S POSITION | Attorney of record, Massachusetts bar member |
| DATE SIGNED | 12/16/2009 |
| AUTHORIZED SIGNATORY | YES |
| CONCURRENT APPEAL NOTICE FILED | YES |
| FILING INFORMATION SECTION | |
| SUBMIT DATE | Wed Dec 16 15:20:29 EST 2009 |
| TEAS STAMP | USPTO/RFR-74.10.243.226-2 0091216152029754216-77665 184-4603261d1cca945a26512 d9957d51abddf9-N/A-N/A-20 091216151709076185 |

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. **77665184** has been amended as follows:

EVIDENCE

Evidence in the nature of An argument in response to the likelihood of confusion rejection and a printout from the ProFollica website showing how Registrant's mark is being used. has been attached.

Original PDF file:

http://tgate/PDF/RFR/2009/12/16/20091216152029754216-77665184-002_001/evi_7410243226-151709076_50481.T13001_Argument_for_Reply_to_6.17.09_OA.pdf

Converted PDF file(s) (3 pages)

Evidence-1

Evidence-2

Evidence-3

Original PDF file:

http://tgate/PDF/RFR/2009/12/16/20091216152029754216-77665184-002_002/evi_7410243226-151709076_50481.T13001_Printout_for_ProFollica_Website.pdf

Converted PDF file(s) (3 pages)

Evidence-1

Evidence-2

Evidence-3

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Jan N. Tittel/ **Date:** 12/16/2009

Signatory's Name: Jan N. Tittel

Signatory's Position: Attorney of record, Massachusetts 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: 77665184

Internet Transmission Date: Wed Dec 16 15:20:29 EST 2009

TEAS Stamp: USPTO/RFR-74.10.243.226-2009121615202975

4216-77665184-4603261d1cca945a26512d9957

d51abddf9-N/A-N/A-20091216151709076185

The Office refuses registration of Applicant's mark based on an asserted likelihood of confusion with the mark of U.S. Registration No. 3453331. As explained below, Applicant submits that there is no likelihood of confusion between Applicant's mark in connection with the goods in Class 5 and the mark of the cited registration.

The below table summarizes the cited registration.

| | |
|------------------|--|
| Registration No. | 3453331 |
| Mark | ProFollica |
| Class | 3 |
| Goods/ Services | Shampoos; Hair care kits comprising non-medicated hair care preparations, namely, a shampoo and activator gel; Hair gel. |

Similarity of the Goods and the Trade Channels for the Goods

Applicant's goods in Class 5 are "Pharmaceutical preparations for hair growth treatments." The Office asserts:

[T]he registrant's goods, shampoos; hair care kits comprising non-medicated hair care preparations, namely, a shampoo and activator gel; hair gel, and applicant's goods, pharmaceutical preparations for hair growth treatments, travel in the same channels of trade because both are used in the care of hair.

The Office also provides copies of printouts from a USPTO database search showing third party registrations of marks used in connection with goods that are the same or similar to those of Applicant and Registrant in the present case. The Office states:

These printouts have probative value to the extent that they serve to suggest that the goods and/or services listed therein, namely shampoos, activator gel, hair gel and pharmaceutical preparations for hair growth treatments, are of a kind that may emanate from a single source.

Applicant respectfully traverses this basis for rejection.

Whether the type of goods covered by Applicant's intended use and Registrant's registration *may* theoretically emanate from a single source is not central to the analysis in the present case. Here, importantly, Registrant's own use of the mark makes it clear to

a potential consumer that Registrant's mark is not being used in connection with pharmaceutical preparations. A printout from Registrant's website on which the ProFollica products are sold was enclosed with Applicant's last reply. The website states that ProFollica "lets you break free of surgery and prescription drugs for your hair loss needs," that "ProFollicaTM is the natural choice for those who want an alternative to the pharmaceutical approach for hair re-growth" (emphasis added), and that "[t]his product is not intended to diagnose, cure, or prevent any disease."¹ Accordingly, Registrant's own website tells a potential purchaser that the ProFollica mark is not being used in connection with pharmaceutical preparations. Instead, ProFollica is being used on products that are advertised as being *an alternative to pharmaceuticals*. A potential consumer reading these statements would not be confused into believing that a ProFollica product and a pharmaceutical preparation bearing the FOLLICA mark come from the same source.

Moreover, in view of Registrant's statements on the website, it is clear that Registrant is unlikely to expand into the field of pharmaceuticals using the ProFollica mark. Registrant advertises ProFollica products as alternatives to pharmaceuticals. The conditions surrounding the marketing of the ProFollica products are such that the products are distinguished from pharmaceutical preparations. A potential purchaser would, therefore, be advised that Applicant's and Registrant's goods are distinct and are unlikely to come from a common source.

Applicant further submits that a purchaser of pharmaceutical preparations is highly sophisticated. Such goods are not purchased at the spur of the moment, but rather after considerable contemplation. Also, such goods normally are not purchased by the general public without professional guidance by a physician or pharmacist. The sophistication of the purchaser of the goods further mitigates any likelihood of confusion.

Similarity of the Marks

The Office states:

¹ Enclosed is another printout from Registrant's website where the cited phrases are marked.

The registrant's mark, ProFollica, and applicant's mark, FOLLICA, create a similar commercial impression because the dominant portion of registrant's mark is the word FOLLICA which is identical to applicant's mark.

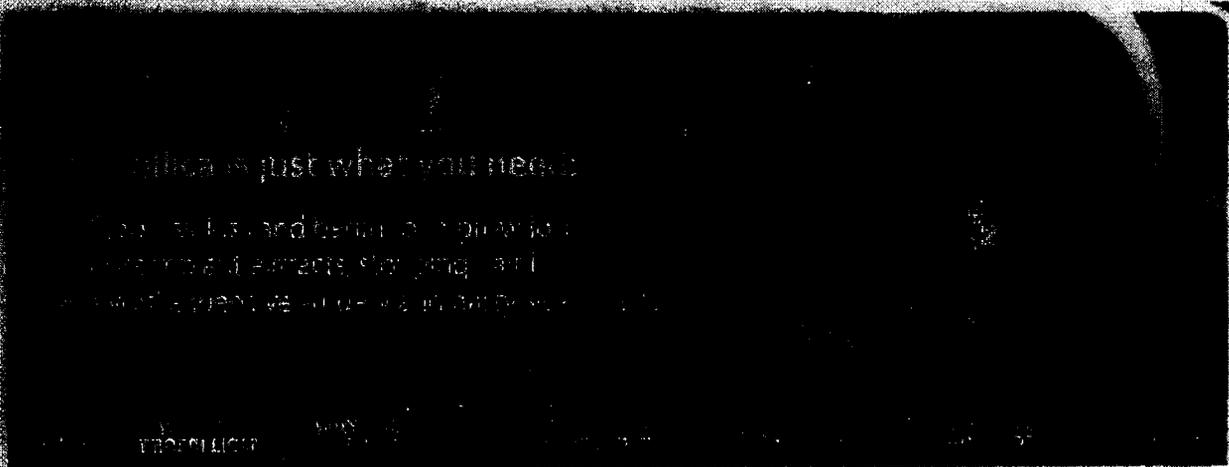
The Office further states:

The first syllable of registrant's mark is PRO which is the abbreviation of the word "professional". Upon seeing the marks, purchasers would reasonably assume that registrant's goods are merely the professional line of applicant's goods.

As an initial matter, as explained in detail above, Registrant's use of the ProFollica mark clearly advises the potential purchaser that Registrant's goods are not pharmaceuticals and, on this basis alone, Applicant submits that there is no likelihood of confusion.

In addition, Applicant again submits that inclusion of the prefix "Pro" in Registrant's mark results in a different appearance and adds a syllable to the pronunciation of the mark, both of which result in a different commercial impression. In view of these differences in the marks, Applicant submits there would be no likelihood of confusion as to the source of the goods intended to be sold under the respective marks. The likelihood of confusion refusal should be withdrawn.

What is Profollica? | Why does hair fall out? | Can hair loss be stopped? | What is DHT? | Why don't women go bald? | Order



Click here to order now

"I first started losing my hair when I was 19. Of course, all my friends thought that it would be great fun to tease me about my bald spot. Eventually I got sick and tired of losing my hair and decided I had to do something about it. So I talked to my doctor. He prescribed me Rogaine™. To my disappointment, I didn't get any results from using it. Then I heard about Profollica™. I used it, and within 3 weeks I started seeing new hair."

Charlie, Bakersfield, CA

THE ONLY HAIR GROWTH SYSTEM YOU'LL EVER NEED

INTRODUCING THE ALL NEW ALL NATURAL SOLUTION TO HAIR LOSS, PROFOLICA -- TO HELP YOU STOP HAIR LOSS AND EVEN BEGIN TO RE-GROW PREVIOUSLY LOST HAIR! THIS REVOLUTIONARY NEW SYSTEM RELIES ON THE ANTI-DHT PROPERTIES OF SEVERAL POWERFUL PLANT EXTRACTS. RESULTING IN STOPPED HAIR LOSS AND EVEN HAIR RE-GROWTH WITHOUT THE SIDE EFFECTS! BUT THE REAL REASON WHY MORE AND MORE CUSTOMERS ARE TURNING TO PROFOLICA IS SIMPLY BECAUSE IT WORKS:

"With my hair coming back, I look years younger!"

"I was planning on having a hair transplant. Unfortunately my doctor told me that due to the fineness of my hair, I wasn't a good candidate for a hair transplant. I was devastated. I was really looking forward to seeing real hair growing in my bald spot. Then, a few years later I saw an ad for Profollica™. Since it has a money back guarantee, I figured I couldn't lose. Now I'm glad I didn't have a transplant. I saved thousands of dollars."

James, KY

TAKE A LOOK AT THE ADVANTAGES THAT ONLY PROFOLICA™ CAN OFFER.

- It's safe and all-natural
- It uses a proven, unique formula which can't be duplicated
- It works for men and women
- There are no side effects
- It's safe for colored, or permed hair
- There's no prescription necessary
- It's easy to use.
- It lets you break free of surgery and prescription drugs for your hair loss needs

And finally, it comes with our "You Must See Visible Hair Re-growth Or Your Money Back Guarantee." We challenge you to find any other hair re-growth system that comes close to what we offer. You simply won't find it.

Now, you might be wondering...

WHY IS PROFOLICA™ SO EFFECTIVE IN RE-GROWING HAIR?

Profollica™ uses a three part strategy for giving your hair follicles the best chances for

I used to wear a baseball cap everywhere I went. I wouldn't even take a shower without it. I'm now seeing significant amounts of hair re-growing. Thank you Profollica™. You've given me back my life."

Michael, Salt Lake City, UT

I decided to try Profollica™ because it contained all natural ingredients and didn't have any nasty side effects. I'd tried another hair loss remedy before and had to stop because of the side effects. I'm increasing my hair growing back in and I don't have any side effects."

Jonathan, Toronto, ONT

hair recovery. These parts include a shampoo, a gel, and a nutritional supplement.

Profollica™ is specially formulated, using the latest hair loss research information available. The exact formulation of Profollica™ was developed from years of research by highly trained professionals. The ingredients, and their exact proportion, were chosen based on their ability to block DHT, increase blood circulation, and to revitalize hair follicles. These compounds have their first visible effects within weeks of starting use. Within 6 months, you'll see substantial new growth!

Here are just some of the ingredients in the Profollica™ Gel, one of the three system components:

- Kigelia Africana Extract (blocks enzyme)
- Ginkgo Biloba Extract (stimulates microcirculation in the scalp)
- Cinnamomum Zeylanicum Extract (irrigates DHT and bacteria from scalp)
- Salvia Sclarea Extract (stimulates and attaches to DHT)
- Panax Ginseng Root Extract (scalp stimulation for increasing hair depth)

Profollica™ is the natural choice for those who want an alternative to the pharmaceutical approach to hair re-growth. ←

CAN PROPER HAIR CARE RE-GROW HAIR?

The answer, surprisingly, is yes.

There is a catch though. The products used on the hair must interact with hair follicles in a precise manner.

In order to achieve hair growth, the following three things must occur. The excess sebum that is clogging the hair follicles must be removed. Whatever is applied on the head, must reduce DHT levels. Finally, the hair follicles must be revitalized with increased blood circulation.

Fortunately, there is a product that does all three - it's called Profollica™. Using Profollica™ you can prevent and reverse hair loss. Profollica™ offers a natural and safe alternative to the costly prescription medicines currently used to treat baldness. And, unlike many other shampoos it contains no harsh chemicals.

PROFOLLICA™ IS GUARANTEED!

When you use Profollica™, you won't need to use hair re-growth solutions that come with dangerous and unpleasant side effects. Profollica™ is all natural. There are no harmful ingredients. There are no toxic chemicals. It's inexpensive. And there are no side effects except great looking hair.

Don't you owe it to yourself to turn back the clock and look your best? Use Profollica™, and don't be surprised when you look in the mirror after just a few weeks to see yourself looking years younger as a result. Still unconvinced?

We're so confident that you'll be impressed with the results that Profollica™ comes with a 100% satisfaction money back guarantee. No questions asked! We guarantee that within 60 days you'll see new, visible hair growth. If you're not 100% satisfied, simply return your empty bottles for a fast and courteous refund.

What Is Profollica™? | Why does hair fall out? | Can hair loss be stopped? | What is DHT? | Why don't women go bald?
Contact Us | Guarantee | Webmasters | Order Profollica™ | Sitemap

Hair loss treatment products like Profollica helps promote hair growth and hair restoration with their unique hair treatment program and all natural formula with no toxic chemicals. Revitalize hair follicles with the Profollica hair re-growth system scientifically designed to rejuvenate hair with a three part strategy which includes a shampoo, a gel, and a nutritional supplement.

Stop hair loss and begin to prevent hair loss with a safe hair loss treatment designed to help stimulate the scalp without expensive hair replacement surgery or prescription drugs. To start seeing results buy Profollica today.

These statements have not been evaluated by the Food and Drug Administration.

This product is not intended to diagnose, treat, cure, or prevent any disease.

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