

Request for Reconsideration after Final Action

The table below presents the data as entered.

| Input Field | Entered |
|---|--|
| SERIAL NUMBER | 77753502 |
| LAW OFFICE ASSIGNED | LAW OFFICE 110 |
| MARK SECTION (no change) | |
| ARGUMENT(S) | |
| Please see the actual argument text attached within the Evidence section. | |
| EVIDENCE SECTION | |
| EVIDENCE FILE NAME(S) | |
| ORIGINAL PDF FILE | <u>evi_17322612397-133534443 . BUFFALO Request for Reconsid 062211.pdf</u> |
| CONVERTED PDF FILE(S) (2 pages) | <u>\\TICRS\EXPORT11\IMAGEOUT11\777\535\77753502\xml4\RFR0002.JPG</u> |
| | <u>\\TICRS\EXPORT11\IMAGEOUT11\777\535\77753502\xml4\RFR0003.JPG</u> |
| DESCRIPTION OF EVIDENCE FILE | The Argument |
| ADDITIONAL STATEMENTS SECTION | |
| SECTION 2(f) | The mark has become distinctive of the goods/services as evidenced by the ownership on the Principal Register for the same mark for related goods or services of U.S. Registration No(s). 3279483. |
| SECTION 2(f) | The mark has become distinctive of the goods/services through the applicant's substantially exclusive and continuous use in commerce that the U.S. Congress may lawfully regulate for at least the five years immediately before the date of this statement. |
| SIGNATURE SECTION | |
| DECLARATION SIGNATURE | /Lauren Krupka/ |
| SIGNATORY'S NAME | Lauren Krupka |
| SIGNATORY'S POSITION | Associate Counsel - IP |

| | |
|-----------------------------------|--|
| DATE SIGNED | 06/22/2011 |
| RESPONSE SIGNATURE | /Lauren Krupka/ |
| SIGNATORY'S NAME | Lauren Krupka |
| SIGNATORY'S POSITION | Associate Counsel - IP |
| DATE SIGNED | 06/22/2011 |
| AUTHORIZED SIGNATORY | YES |
| CONCURRENT APPEAL NOTICE FILED | YES |
| FILING INFORMATION SECTION | |
| SUBMIT DATE | Wed Jun 22 14:02:44 EDT 2011 |
| TEAS STAMP | USPTO/RFR-173.226.123.97- 20110622140244464336-7775 3502-48019537f6ff38c74ef9 3116e239135284-N/A-N/A-20 110622133534443365 |

PTO Form (Rev 4/2000)
OMB No. 0651- (Exp. 08/31/2004)

**Request for Reconsideration after Final Action
To the Commissioner for Trademarks:**

Application serial no. **77753502** has been amended as follows:

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

Please see the actual argument text attached within the Evidence section.

EVIDENCE
Evidence in the nature of The Argument has been attached.
Original PDF file:
[evi_17322612397-133534443_BUFFALO Request for Reconsid 062211.pdf](#)
Converted PDF file(s) (2 pages)
[Evidence-1](#)
[Evidence-2](#)

ADDITIONAL STATEMENTS

Section 2(f), based on Prior Registration(s)

The mark has become distinctive of the goods/services as evidenced by the ownership on the Principal Register for the same mark for related goods or services of U.S. Registration No(s). 3279483.

Section 2(f), based on Use

The mark has become distinctive of the goods/services through the applicant's substantially exclusive and continuous use in commerce that the U.S. Congress may lawfully regulate for at least the five years immediately before the date of this statement.

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 and/or services listed in the application as of the application filing date or as of the date of any submitted allegation of use. 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. 2.44. 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. Section 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. Section 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: /Lauren Krupka/ Date: 06/22/2011

Signatory's Name: Lauren Krupka

Signatory's Position: Associate Counsel - IP

Request for Reconsideration Signature

Signature: /Lauren Krupka/ Date: 06/22/2011

Signatory's Name: Lauren Krupka

Signatory's Position: Associate Counsel - IP

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: 77753502

Internet Transmission Date: Wed Jun 22 14:02:44 EDT 2011

TEAS Stamp: USPTO/RFR-173.226.123.97-201106221402444

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239135284-N/A-N/A-20110622133534443365

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
Aristocrat Technologies Australia Pty Ltd.)
) Law Office 110
Serial No.: 77753502)
) Examining Attorney
Filed: June 5, 2009) CASTRO GIANCARLO
)
Mark: BUFFALO)
)
International Class: 9)

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

REQUEST FOR RECONSIDERATION

To Whom It May Concern:

This request for reconsideration is submitted in response to the Office Action mailed on December 22, 2010 for the mark "BUFFALO," serial number 77753502 ("Applicant's Mark"). Applicant hereby respectfully submits a request for reconsideration based on the below.

REMARKS

Applicant respectfully requests an amendment to the application for Applicant's Mark, adding a section 2(f) claim of acquired distinctiveness based on use as well as on prior registration 3279483 for BUFFALO MOUNTAIN, also owned by Applicant.

As asserted in the original application for Applicant's mark, filed June 5, 2009, Applicant has been using Applicant's Mark in commerce at least as early as November 6, 2003. Accordingly, pursuant to section 2(f) of the Lanham Act, which allows registration of a mark that has become distinctive due to continuous use in commerce for five years, Applicant wishes to additionally make a claim under 2(f) as Applicant's Mark has been used in commerce continuously for close to eight years.

Additionally, in the first Office Action in reference to Applicant's Mark, issued September 9, 2009, the Examining Attorney requested that Applicant claim ownership over the mark, BUFFALO MOUNTAIN, registration number 3279483 ("Prior Registration"), with a registration date of August 14, 2007. Applicant inadvertently failed to claim such ownership in further correspondence but Applicant hereby claims ownership of the Prior Registration for

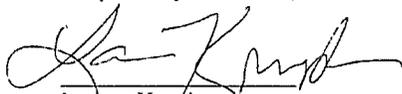
BUFFALO MOUNTAIN 3279483, with a foreign filing date of November 18, 2005. The Prior Registration, which is just an extension of the brand created under Applicant's Mark, has been in use for close to six consecutive years, thus meeting the statutory guideline of 2(f) and contributing to the distinctiveness acquired in Applicant's Mark over years of use.

Applicant's Mark and the Prior Registration have created a brand with which consumers identify Applicant's products. Applicant's Mark has acquired a distinctiveness that is specific to Applicant as a manufacturer and source of goods and consumers have come to expect superior "Buffalo"-themed game products from Applicant because of years of playing these games in the casinos. The game associated with Applicant's Mark has created an extensive fan base over the last eight years of use, only to be supplemented and enriched by the game associated with the Prior Registration. Accordingly, Applicant asserts that the brand recognition associated with both Applicant's Mark and the Prior Registration, built up over at least eight years of use, would defuse any potential likelihood of confusion.

CONCLUSION

Applicant submits this Request for Reconsideration and believes it has now sufficiently addressed the Examining Attorney's point of objection. Applicant respectfully requests passage of its mark to publication.

Respectfully submitted,



Lauren Krupka
Associate Counsel, Intellectual Property
Aristocrat Technologies, Inc.
7230 Amigo Street
Las Vegas, NV 89119

June 22, 2011