

## Request for Reconsideration after Final Action

**The table below presents the data as entered.**

Input Field	Entered
<b>SERIAL NUMBER</b>	77816672
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 101
<b>MARK SECTION</b>	
<b>MARK FILE NAME</b>	<a href="http://tmng-al.uspto.gov/resting2/api/img/77816672/large">http://tmng-al.uspto.gov/resting2/api/img/77816672/large</a>
<b>LITERAL ELEMENT</b>	MARCEL'S
<b>STANDARD CHARACTERS</b>	NO
<b>USPTO-GENERATED IMAGE</b>	NO
<b>COLOR(S) CLAIMED (If applicable)</b>	Color is not claimed as a feature of the mark.
<b>DESCRIPTION OF THE MARK (and Color Location, if applicable)</b>	The mark consists of the word "Marcel's" contained in a horizontal banner design with a wreath that intersects the banner.
<b>ADDITIONAL STATEMENTS SECTION</b>	
<b>MISCELLANEOUS STATEMENT</b>	<p>The examining attorney has refused registration of US trademark application (Serial No. 77816672) for the mark MARCEL'S &amp; DESIGN in Classes 029 &amp; 030. The May 01, 2015 final office action citing David A. Shalleck's mark MARCEL'S (Reg. No. 4522147 issued April 29, 2014) is for "salad dressings, salad sauces, vinaigrettes, dipping sauces, ready-made sauces, sauces" in Class 030. Applicant's Attorney conducted a telephone conversation with USPTO examiner Saima Makhdoom on April 19th and May 1st regarding the likelihood of confusion refusal. Examining attorney Makhdoom represented to Applicant's Attorney in the telephone conversations and in the referenced final office action that the cited registrant's wording "dipping sauces, ready-made sauces, sauces" was broad enough to include sweet dessert based sauces that would be confusingly similar to our client's "ice cream, ice cream drinks; ices; milkshakes". She further indicated that if the registrant would limit the specification to exclude "sweet dessert based sauces", she would withdraw the Section 2(d) refusal. Please be advised that our in-use investigation did not uncover any current use</p>

	of your client's mark MARCEL'S for an dessert based sauces. In fact, we only uncovered use of the mark for a Dijon dressing which could be used as a salad dressing, dipping sauce or salad sauce. See <a href="http://marcelsfoods.myshopify.com/products/marcel-s-spoonable-dijon-dressing">http://marcelsfoods.myshopify.com/products/marcel-s-spoonable-dijon-dressing</a> For the foregoing reasons, Applicant requests that the likelihood of confusion refusal be withdrawn and the application passed to publication.
<b>SIGNATURE SECTION</b>	
RESPONSE SIGNATURE	/jas/
SIGNATORY'S NAME	Jeffrey A. Smith
SIGNATORY'S POSITION	Applicant's Attorney
SIGNATORY'S PHONE NUMBER	(703) 465-5355
DATE SIGNED	10/29/2015
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
<b>FILING INFORMATION SECTION</b>	
SUBMIT DATE	Thu Oct 29 20:13:08 EDT 2015
TEAS STAMP	USPTO/RFR-209.183.206.18-20151029201308638441-77816672-540da63eb7ecd36d15f7eeb55a3987e682c83899fee0ddade0af7bc690b8c6d5-N/A-N/A-20151029200606530390

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

Application serial no. **77816672** MARCEL'S (Stylized and/or with Design, see <http://tmng-al.uspto.gov/resting2/api/img/77816672/large>) has been amended as follows:

**ADDITIONAL STATEMENTS**

**Miscellaneous Statement**

The examining attorney has refused registration of US trademark application (Serial No. 77816672) for the mark MARCEL'S & DESIGN in Classes 029 & 030. The May 01, 2015 final office action citing David A. Shalleck's mark MARCEL'S (Reg. No. 4522147 issued April 29, 2014) is for "salad dressings,

salad sauces, vinaigrettes, dipping sauces, ready-made sauces, sauces" in Class 030. Applicant's Attorney conducted a telephone conversation with USPTO examiner Saima Makhdoom on April 19th and May 1st regarding the likelihood of confusion refusal. Examining attorney Makhdoom represented to Applicant's Attorney in the telephone conversations and in the referenced final office action that the cited registrant's wording "dipping sauces, ready-made sauces, sauces" was broad enough to include sweet dessert based sauces that would be confusingly similar to our client's "ice cream, ice cream drinks; ices; milkshakes". She further indicated that if the registrant would limit the specification to exclude "sweet dessert based sauces", she would withdraw the Section 2(d) refusal. Please be advised that our in-use investigation did not uncover any current use of your client's mark MARCEL'S for an dessert based sauces. In fact, we only uncovered use of the mark for a Dijon dressing which could be used as a salad dressing, dipping sauce or salad sauce. See <http://marcelfoods.myshopify.com/products/marcel-s-spoonable-dijon-dressing> For the foregoing reasons, Applicant requests that the likelihood of confusion refusal be withdrawn and the application passed to publication.

## **SIGNATURE(S)**

### **Request for Reconsideration Signature**

Signature: /jas/ Date: 10/29/2015

Signatory's Name: Jeffrey A. Smith

Signatory's Position: Applicant's Attorney

Signatory's Phone Number: (703) 465-5355

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 owner's/holder'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 owner/holder in this matter: (1) the owner/holder 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 owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder'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: 77816672

Internet Transmission Date: Thu Oct 29 20:13:08 EDT 2015

TEAS Stamp: USPTO/RFR-209.183.206.18-201510292013086

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