

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77850277
LAW OFFICE ASSIGNED	LAW OFFICE 103
MARK SECTION (no change)	
ARGUMENT(S)	

SECTION 2(d) REFUSAL

The examining attorney has refused registration pursuant to Trademark Act Section 2(d) because of alleged likelihood of confusion with the mark shown in U.S. Reg. Nos. 3,478,961. Applicant acknowledges, for purposes of this response only, that the services identified to the respective marks are related. Applicant respectfully submits, however, that the marks are more than sufficiently different in sight, sound, meaning, and overall commercial impression to avoid any likelihood of consumer confusion.

Applicant's mark is QUALITY CHOICE FREEDOM. Registrant's mark is FREEDOM CHOICE. The first and most obvious difference between the marks is Applicant's addition of the word QUALITY. (The Examining Attorney incorrectly states that Applicant's additional word is "freedom.") Not only does QUALITY word not appear in Registrant's mark, but it is the first, and therefore the most prominent, word in Applicant's mark. The Examining Attorney cites several cases for the proposition that confusion may arise when there are "similar terms or phrases or similar parts of terms or phrases appearing in both applicant's and registrant's mark." In all of the cited cases, the similar terms, phrases, or fragments occurred at the beginning of the respective marks – and in all but one instance, the similar term constituted the *entirety* of both marks. In none of these cases does the applicant's mark include – whether at the beginning of the mark or anywhere else – a term that is distinctly different from anything in the registrant's mark. Here, nothing in Registrant's mark is similar in any respect to Applicant's QUALITY.

Second, the two words that the marks have in common, FREEDOM and CHOICE, appear in reverse order in Applicant's mark. Moreover, Applicant's mark is in a distinctive stylized form. The Examining Attorney states that "The mere deletion of wording from a registered mark may not be sufficient to overcome a likelihood of confusion." But Applicant's mark does not "delete" wording from Registrant's mark, it *adds* a term that is not present in Registrant's mark – and adds it at the beginning of the mark, where it is especially prominent.

The Examining Attorney concludes her analysis by stating that "Applicant's mark does not create a distinct commercial impression because it contains the same common wording as registrant's mark, and there is no other wording to distinguish it from registrant's mark." But as previously noted, Applicant's mark *does* include additional wording to distinguish it from Registrant's mark, namely the word QUALITY.

Applicant respectfully submits that its inclusion of the word QUALITY, which appears nowhere in

Registrant's mark; its placement of the distinguishing word QUALITY at the beginning of its mark, making it especially prominent, and its reversal of the order of the two words CHOICE and FREEDOM, creates a distinctively different overall commercial impression that eliminates any likelihood of consumer confusion.

SIGNATURE SECTION

RESPONSE SIGNATURE	/john c blattner/
SIGNATORY'S NAME	John C. Blattner
SIGNATORY'S POSITION	Attorney for Applicant / State Bar of Michigan
DATE SIGNED	01/28/2011
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO

FILING INFORMATION SECTION

SUBMIT DATE	Fri Jan 28 14:39:55 EST 2011
TEAS STAMP	USPTO/RFR-68.40.10.233-20 110128143955356929-778502 77-4808a1e73349742a934f08 16ff2c671ec-N/A-N/A-20110 128141503708955

PTO Form (Rev 4/2000)
OMB No. 0651-0047 (Exp. 08/31/2004)

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

Application serial no. **77850277** has been amended as follows:

ARGUMENT(S)

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

SECTION 2(d) REFUSAL

The examining attorney has refused registration pursuant to Trademark Act Section 2(d) because of alleged likelihood of confusion with the mark shown in U.S. Reg. Nos. 3,478,961. Applicant acknowledges, for purposes of this response only, that the services identified to the respective marks are related. Applicant respectfully submits, however, that the marks are more than sufficiently different in sight, sound, meaning, and overall commercial impression to avoid any likelihood of consumer confusion. Applicant's mark is QUALITY CHOICE FREEDOM. Registrant's mark is FREEDOM CHOICE.

The first and most obvious difference between the marks is Applicant's addition of the word QUALITY. (The Examining Attorney incorrectly states that Applicant's additional word is "freedom.") Not only does QUALITY word not appear in Registrant's mark, but it is the first, and therefore the most prominent, word in Applicant's mark. The Examining Attorney cites several cases for the proposition that confusion may arise when there are "similar terms or phrases or similar parts of terms or phrases appearing in both applicant's and registrant's mark." In all of the cited cases, the similar terms, phrases, or fragments occurred at the beginning of the respective marks – and in all but one instance, the similar term constituted the *entirety* of both marks. In none of these cases does the applicant's mark include – whether at the beginning of the mark or anywhere else – a term that is distinctly different from anything in the registrant's mark. Here, nothing in Registrant's mark is similar in any respect to Applicant's QUALITY.

Second, the two words that the marks have in common, FREEDOM and CHOICE, appear in reverse order in Applicant's mark. Moreover, Applicant's mark is in a distinctive stylized form.

The Examining Attorney states that "The mere deletion of wording from a registered mark may not be sufficient to overcome a likelihood of confusion." But Applicant's mark does not "delete" wording from Registrant's mark, it *adds* a term that is not present in Registrant's mark – and adds it at the beginning of the mark, where it is especially prominent.

The Examining Attorney concludes her analysis by stating that "Applicant's mark does not create a distinct commercial impression because it contains the same common wording as registrant's mark, and there is no other wording to distinguish it from registrant's mark." But as previously noted, Applicant's mark *does* include additional wording to distinguish it from Registrant's mark, namely the word QUALITY.

Applicant respectfully submits that its inclusion of the word QUALITY, which appears nowhere in Registrant's mark; its placement of the distinguishing word QUALITY at the beginning of its mark, making it especially prominent, and its reversal of the order of the two words CHOICE and FREEDOM, creates a distinctively different overall commercial impression that eliminates any likelihood of consumer confusion.

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /john c blattner/ Date: 01/28/2011

Signatory's Name: John C. Blattner

Signatory's Position: Attorney for Applicant / State Bar of Michigan

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: 77850277

Internet Transmission Date: Fri Jan 28 14:39:55 EST 2011

TEAS Stamp: USPTO/RFR-68.40.10.233-20110128143955356

929-77850277-4808a1e73349742a934f0816ff2

c671ec-N/A-N/A-20110128141503708955