

Request for Reconsideration after Final Action

The table below presents the data as entered.

SERIAL NUMBER 77894130
LAW OFFICE ASSIGNED LAW OFFICE 109

MARK SECTION (no change)

ARGUMENT(S)

This will respond to the final office action which issued on October 21, 2010. Applicant would like to thank the Examining Attorney for her responsiveness in communications regarding this matter.

As a result of the final refusal based on the grounds of likelihood of confusion with US Registration Nos. 3755679, 3755678 and 3670163 and in light of Applicant's longstanding use of the term OVATION in connection with the services specified in the application, Applicant has filed a Petition to Cancel the registrations cited as a bar to registration of Applicant's mark. Proof of the filings of the Petitions to Cancel as filed with the Trademark Trial and Appeal Board are attached. An appeal to the final refusal will be filed with the TTAB as well.

Based on the foregoing, Applicant respectfully requests that the application be suspended pending resolution of the cancellation action.

EVIDENCE SECTION

EVIDENCE FILE NAME(S)

ORIGINAL PDF FILE evi_7016551101-194838709 . OvationCancel_001.pdf

CONVERTED PDF FILE(S)

(6 pages)

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\\TICRS\EXPORT11\IMAGEOUT11\778\941\77894130\xml5\RFR0003.JPG

\\TICRS\EXPORT11\IMAGEOUT11\778\941\77894130\xml5\RFR0004.JPG

\\TICRS\EXPORT11\IMAGEOUT11\778\941\77894130\xml5\RFR0005.JPG

\\TICRS\EXPORT11\IMAGEOUT11\778\941\77894130\xml5\RFR0006.JPG

\\TICRS\EXPORT11\IMAGEOUT11\778\941\77894130\xml5\RFR0007.JPG

DESCRIPTION OF EVIDENCE FILE

ESTTA Filing Receipt for Petition to Cancel US. Registration Nos. 3755679, 3755678 and 3670163.

SIGNATURE SECTION

RESPONSE SIGNATURE

RESPONSE SIGNATURE /eta/
SIGNATORY'S NAME Elise Tenen-Aoki
SIGNATORY'S POSITION Attorney of Record, California bar member
DATE SIGNED 04/19/2011
AUTHORIZED SIGNATORY YES
CONCURRENT APPEAL NOTICE FILED NO

FILING INFORMATION SECTION

SUBMIT DATE Tue Apr 19 19:58:08 EDT 2011
TEAS STAMP USPTO/RFR-70.165.51.101-2
0110419195808633043-77894
130-4801d599fafa799f8210f
1c34eb709e0-N/A-N/A-20110
419194838709510

PTO Form (Rev 4/2000)
CM3 No. 0651-... (Exp. 08/31/2004)

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

Application serial no. **77894130** has been amended as follows:

ARGUMENT(S)

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

This will respond to the final office action which issued on October 21, 2010. Applicant would like to thank the Examining Attorney for her responsiveness in communications regarding this matter.

As a result of the final refusal based on the grounds of likelihood of confusion with US Registration Nos. 3755679, 3755678 and 3670163 and in light of Applicant's longstanding use of the term OVATION in connection with the services specified in the application, Applicant has filed a Petition to Cancel the registrations cited as a bar to registration of Applicant's mark. Proof of the filings of the Petitions to Cancel as filed with the Trademark Trial and Appeal Board are attached. An appeal to the final refusal will be filed with the TTAB as well.

Based on the foregoing, Applicant respectfully requests that the application be suspended pending resolution of the cancellation action.

EVIDENCE

Evidence in the nature of ESTTA Filing Receipt for Petition to Cancel US. Registration Nos. 3755679,

3755678 and 3670163. has been attached.

Original PDF file:

evi 7016551101-194838709 . OvationCancel 001.pdf

Converted PDF file(s) (6 pages)

Evidence-1

Evidence-2

Evidence-3

Evidence-4

Evidence-5

Evidence-6

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /eta/ Date: 04/19/2011

Signatory's Name: Elise Tenen-Aoki

Signatory's Position: Attorney of Record, California 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 not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 77894130

Internet Transmission Date: Tue Apr 19 19:58:08 EDT 2011

TEAS Stamp: USPTO/RFR-70.165.51.101-2011041919580863

3043-77894130-4801d599fafa799f8210f1c34e

b709e0-N/A-N/A-20110419194838709510



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Electronic System for Trademark Trials and Appeals

Receipt

Your submission has been received by the USPTO.
 The content of your submission is listed below.
 You may print a copy of this receipt for your records.

ESTTA Tracking number: **ESTTA404574**

Filing date: **04/19/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Ovation LLC		
Entity	Limited Liability Company	Citizenship	Delaware
Address	2800 28th Street, Suite 240 SANTA MONICA, CA 90405 UNITED STATES		

Attorney information	Elise Tenen-Aoki Greenberg Traurig LLP 2450 COLORADO AVENUE, SUITE 400E SANTA MONICA, CA 90405 UNITED STATES laipmail@gtlaw.com Phone:949-732-6587		
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Registrations Subject to Cancellation

Registration No	3755679	Registration date	03/02/2010
	OVATION, INC.		

Registrant	Suite 200 3810 Bedford Ave. NASHVILLE, TN 37215 UNITED STATES
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Goods/Services Subject to Cancellation

Class 042. First Use: 2008/07/10 First Use In Commerce: 2008/10/00
All goods and services in the class are cancelled, namely: Design, development and maintenance of websites and web-based applications for others, design and development of multimedia products for use in corporate events, meetings and conferences, lighting design, graphics design, industrial design, visual design services in the nature of designing visual elements for online, broadcast, print, outdoor and other communication media, and set design services for corporate events

Grounds for Cancellation

Priority and likelihood of confusion		Trademark Act section 2(d)	
Dilution		Trademark Act section 43(c)	
Registration No	3755678	Registration date	03/02/2010
Registrant	OVATION, INC. Suite 200 3810 Bedford Ave. Nashville, TN 37215 UNITED STATES		

Goods/Services Subject to Cancellation

Class 038. First Use: 2008/07/10 First Use In Commerce: 2008/10/00
All goods and services in the class are cancelled, namely: Webcasting of live events and audio, data, graphics, video and multimedia data in connection therewith, video conferencing services, electronic transmission of music, audio, data, graphics and video, satellite broadcasting of live television special events

Grounds for Cancellation

Priority and likelihood of confusion		Trademark Act section 2(d)	
Dilution		Trademark Act section 43(c)	
Registration No	3670163	Registration date	08/18/2009

Registrant	OVATION, INC. 601 GRASSMERE PARK SUITE 22 NASHVILLE, TN 37211 UNITED STATES
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Goods/Services Subject to Cancellation

Class 035. First Use: 2008/10/09 First Use In Commerce: 2008/10/09 All goods and services in the class are cancelled, namely: Business meeting planning, arranging and conducting business conferences and providing facilities for business meetings, providing on-line registrations services for business meetings and for live corporate business events
Class 038. First Use: 2008/10/09 First Use In Commerce: 2008/10/09 All goods and services in the class are cancelled, namely: Webcasting of live events and audio, data, graphics, video and multimedia data in connection therewith, video conferencing services, electronic transmission of music, audio, data, graphics and video, satellite broadcasting of live television special events
Class 041. First Use: 2008/10/09 First Use In Commerce: 2008/10/09 All goods and services in the class are cancelled, namely: Arranging and conducting educational conferences, special event planning consultation services
Class 042. First Use: 2008/10/09 First Use In Commerce: 2008/10/09 All goods and services in the class are cancelled, namely: Design, development and maintenance of websites and web-based applications for others, design and development of multimedia products for use in corporate events, meetings and conferences, lighting design, graphics design, industrial design, visual design services in the nature of designing visual elements for online, broadcast, print, outdoor and other communication media, and set design services for corporate events

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Petitioner as Basis for Cancellation

U.S. Application No.	77943009	Application Date	02/23/2010
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	OVATION
Design Mark	77943009#TMSN.jpeg
Description of Mark	The mark consists of the term OVATION in stylized font with circles within circles design on top of the word.
Goods/Services	Class 038. First use: Cable television broadcasting services Class 041. First use: Development and production of television programs to be broadcast over television, iptv, Internet, cable and satellite; production of motion picture films to be broadcast over television, cable and satellite; cable television programming; providing a website featuring programs and information relating to the arts, artists, entertainers, dance, music and prerecorded performances

U.S. Application No.	77894130	Application Date	12/15/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	OVATION TV		
Design Mark	77894130#TMSN.jpeg		
Description of Mark	The mark consists of The words "OVATION TV" surrounded by three squares.		
Goods/Services	Class 038. First use: First Use: 2007/03/31 First Use In Commerce: 2007/03/31 Cable television broadcasting services Class 041. First use: First Use: 2007/03/31 First Use In Commerce: 2007/03/31 Development and production of television programs to be broadcast over television, iptv, Internet, cable and satellite; production of motion picture films to be broadcast over television, cable and satellite; cable television programming		

U.S. Application No.	77943004	Application Date	02/23/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	OVATION		
Design Mark	77943004#TMSN.jpeg		

Description of Mark	The mark consists of the term OVATION in stylized font with circles within circles design to the left of the word.
Goods/Services	Class 038. First use: Cable television broadcasting services Class 041. First use: Development and production of television programs to be broadcast over television, iptv, Internet, cable and satellite; production of motion picture films to be broadcast over television, cable and satellite; cable television programming; providing a website featuring programs and information relating to the arts, artists, entertainers, dance, music and prerecorded performances

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	OVATION		
Goods/Services	Cable television broadcasting services Development and production of television programs to be broadcast over television, iptv, Internet, cable and satellite; production of motion picture films to be broadcast over television, cable and satellite; cable television programming; providing a website featuring programs and information relating to the arts, artists, entertainers, dance, music and prerecorded performances		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	OVATION		
Goods/Services	Class 038, . Goods and Services: Cable television broadcasting services Class 041, . Goods and Services: Development and production of television programs to be broadcast over television, iptv, Internet, cable and satellite; production of motion picture films to be broadcast over television, cable and satellite; cable television programming; providing a website featuring programs and information relating to the arts, artists, entertainers, dance, music and prerecorded performances		

	77943009#TMSN.jpeg (1 page)(bytes) 77894130#TMSN.jpeg (1 page)(bytes)
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Attachments	77943004#TMSN.jpeg (1 page)(bytes) OVATION 3670163.pdf (7 pages)(695900 bytes) OVATION 3755678.pdf (7 pages)(685594 bytes) OVATION 3755679.pdf (7 pages)(685104 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Facsimile or email (by agreement only) on this date.

Signature	/ETA/
Name	Elise Tenen-Aoki
Date	04/19/2011

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