
To: Masonite International Corporation (jberenato@lblw.com)
Subject: TRADEMARK APPLICATION NO. 78389392 - CAVALIER - 26240.325
Sent: 2/28/2006 10:52:04 AM
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Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE**SERIAL NO:** 78/389392**APPLICANT:** Masonite International Corporation**CORRESPONDENT ADDRESS:**

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RETURN ADDRESS:

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

If no fees are enclosed, the address should
include the words "Box Responses - No Fee."

MARK: CAVALIER**CORRESPONDENT'S REFERENCE/DOCKET NO:** 26240.325

Please provide in all correspondence:

CORRESPONDENT EMAIL ADDRESS:jberenato@lblw.com

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

Serial Number 78/389392

REQUEST FOR RECONSIDERATION OF FINAL REFUSAL - DENIED

Applicant is requesting reconsideration of a final refusal dated August 31, 2005, by proposing an amended identification specifically excluding **railings, guardrails and handrails**. The proposed amendment would not obviate the likelihood of confusion for the reasons set forth in the prior office actions. (NOTE: The applicant's identification has not been amended, but remains as specified in the applicant's response of June 27, 2005).

As stated in the prior office actions, if the marks of the respective parties are identical, the relationship between the goods of the respective parties need not be as close to support a finding of likelihood of confusion as might apply where differences exist between the marks. *Amcors, Inc. v. Amcor Industries, Inc.*, 210 USPQ 70 (TTAB 1981). In addition, any goods or services in the registrant's normal fields of expansion must also be considered in order to determine whether the registrant's goods or services are related to the applicant's identified goods or services for purposes of analysis under Section 2(d). *In re*

General Motors Corp., 196 USPQ 574 (TTAB 1977). The test is whether purchasers would believe the product or service is within the registrant's logical zone of expansion. *CPG Prods. Corp. v. Perceptual Play, Inc.*, 221 USPQ 88 (TTAB 1983); TMEP §1207.01(a)(v). Therefore, the applicant's specific exclusion of the "railings, guardrails and handrails," is not sufficient to obviate the likelihood of confusion. As the examining attorney has submitted in the prior office actions, the same type of goods specified in the applicant's identification and registrant's identification are likely to be marketed within the same channels of trade. Therefore potential purchasers of the applicant's and registrant's goods encountering the identical trademark on the products would likely erroneously believe that the goods emanate from a common source.

After careful consideration of the law and facts of the case, the examining attorney must deny the request for reconsideration and adhere to the final action as written since no new facts or reasons have been presented that are significant and compelling with regard to the point at issue.

Accordingly, applicant's request for reconsideration is *denied*. The time for appeal runs from the date the final action was mailed. 37 C.F.R. Section 2.64(b); TMEP Section 715.03(c).

//jmb//

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<http://www.uspto.gov/teas/index.html> (file responses)

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Please note: All electronic communications must be signed using the "/name/" format. TMEP section 710.03(c).

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