

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	78691247
LAW OFFICE ASSIGNED	LAW OFFICE 115
MARK SECTION (no change)	
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_66192178162-185625041 . NAG CHAMPA 78691247 - Response - Request for Reconsideration.pdf
CONVERTED PDF FILE(S) (2 pages)	\\TICRS\EXPORT16\IMAGEOUT16\786\912\78691247\xml8\RFR0002.JPG
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DESCRIPTION OF EVIDENCE FILE	Discussion and Conclusion
SIGNATURE SECTION	
RESPONSE SIGNATURE	/James L. Vana/
SIGNATORY'S NAME	James L. Vana
SIGNATORY'S POSITION	Attorney for Applicant, Washington bar
SIGNATORY'S PHONE NUMBER	206-359-8000
DATE SIGNED	12/10/2013
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Tue Dec 10 19:10:08 EST 2013
	USPTO/RFR-66.192.178.162-

TEAS STAMP

20131210191008265297-7869
1247-5008645491fc57eb3415
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2b8add1ec986419ae5-N/A-N/
A-20131210185625041847

PTO Form 1930 (Rev 9/2007)
OMB No. 0651-0050 (Exp. 05/31/2014)

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

Application serial no. **78691247** has been amended as follows:

EVIDENCE

Evidence in the nature of Discussion and Conclusion has been attached.

Original PDF file:

[evi_66192178162-185625041_.NAG.CHAMPA.78691247_-_Response_-_Request_for_Reconsideration.pdf](#)

Converted PDF file(s) (2 pages)

[Evidence-1](#)

[Evidence-2](#)

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /James L. Vana/ Date: 12/10/2013

Signatory's Name: James L. Vana

Signatory's Position: Attorney for Applicant, Washington bar

Signatory's Phone Number: 206-359-8000

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: 78691247

Internet Transmission Date: Tue Dec 10 19:10:08 EST 2013
TEAS Stamp: USPTO/RFR-66.192.178.162-201312101910082
65297-78691247-5008645491fc57eb3415dbe1d
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Applicant: Shrinivas Sugandhalaya
Serial No.: 78691247
Mark: NAG CHAMPA
Class: 3
Office Action Date: June 10, 2013
Examiner: Jeffrey S. DeFord (L.O. 115)

**RESPONSE TO
FINAL OFFICE ACTION**

**REQUEST FOR
RECONSIDERATION**

This document responds to a final Office Action sent June 10, 2013 regarding the application by Shrinivas Sugandhalaya ("Applicant") for registration of the mark NAG CHAMPA in Class 3 (the "Mark"). Applicant respectfully requests reconsideration of the refusal of registration continued in the June 10 Office Action.

DISCUSSION

A. The Mark Has Acquired Distinctiveness. The Examiner has maintained and made final the refusal to register the Mark for the identified goods on the grounds that the Mark is merely descriptive. Applicant respectfully maintains that the Mark is inherently distinctive for the reasons set forth in the previous Office Action responses. In the alternative,¹ Applicant submits that the Mark has acquired distinctiveness for the reasons set forth below. Evidence relevant in making a showing of acquired distinctiveness may relate to the length of time that the mark has been used. See In Re Chung, Jeanne & Kim Co., 226 U.S.P.Q. 938, 942 (T.T.A.B. 1985). Any reasonable doubt regarding whether the Mark has acquired distinctiveness must be resolved in Applicant's favor. See In re Merrill Lynch, Pierce, Fenner, & Smith Inc., 4 U.S.P.Q.2d 1141, 1144 (Fed. Cir. 1987).

¹ A claim of acquired distinctiveness in the alternative does not constitute a concession that the Mark is not inherently distinctive. See, e.g., In Re E S Robbins Corp., 30 U.S.P.Q.2d 1540 (T.T.A.B. 1992).

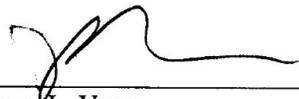
Extended substantially exclusive and continuous use of a mark is relevant to support a finding of acquired distinctiveness. See Genesee Brewing Co., Inc. v. Stroh Brewing Co., 124 F.3d 137, 143 (2d Cir. 1997); T.M.E.P. § 1212.06(a) ("Long use of the mark is one relevant factor to consider in determining whether a mark has acquired distinctiveness.").

As indicated in the initial application to register the Mark and further noted in the declaration of Applicant's General Manger attached to the April 18, 2013 Office Action response, Applicant has used the Mark in commerce continuously for more than twenty years. While the examiner has provided evidence of occasional third party use, such use does not precede and has not been authorized by Applicant. As a result, Applicant believes that such third party use is infringing on Applicant's Mark. Applicant has taken numerous steps to address and stop such third party activity, including sending demand letters to parties filing applications to register marks containing the Mark, and in one case filing a lawsuit for trademark infringement. As a result of these enforcement efforts, several third party applications and registrations for marks containing the Mark (such as BOMBAY NAG CHAMPA, AMERICAN NAG CHAMPA, and HEM NAG CHAMPA) have been abandoned or cancelled. Applicant submits that these facts support a finding that the Mark has acquired distinctiveness as a source indicator for Applicant's goods.

B. Conclusion. As shown above, Applicant has used and promoted the Mark for more than twenty years for incense sticks. The record demonstrates that the Mark has acquired distinctiveness as a source indicator for the identified goods. Registration should therefore be allowed on the Principal Register. Applicant submits that it has responded to each of the issues raised in the Office Action. Please contact James L. Vana with any questions.

DATED: December 10, 2013

PERKINS COIE LLP

By 

James L. Vana

Attorneys for Applicant
1201 Third Avenue, Suite 4900
Seattle, Washington 98101-3099
(206) 359-3036