

PTO Form 1830 (Rev 9/2007)

OMB No. 0851-0050 (Exp. 4/30/2009)

## Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	79023681
LAW OFFICE ASSIGNED	LAW OFFICE 107
MARK SECTION (no change)	
ARGUMENT(S)	
<p>A final action has been entered by the examiner in this case.</p> <p>The examining attorney states that the goods need only be related and that the fact that the goods may differ is not controlling in determining likelihood of confusion.</p> <p>Applicant strongly believes that its mark OPTOMIC can coexist wit the mark OPTIMIX without causing a likelihood of confusion scenario as to the source of the goods.</p> <p>In and of itself, the difference of the goods is not necessarily controlling in determining likelihood of confusion. Yet the difference of the goods determines the markets that each product serves and the type of consumer most likely to be in contact with the mark and the product it identifies. In this sense, the characteristics of the goods in question and their differences may be controlling in determining the existence of likelihood of confusion as to the source of the goods, or at least will have great weight as to whether there will be or not a likelihood of confusion scenario.</p> <p>The cited registration covers only one specific product, namely, medical syringes. This is only one product. There is no other OPTIMIX product in the market, a product which is disposable as it is only used once on a patient or by a patient himself. Applicant, on the other hand, manufactures and wants to sell in the United States under the mark OPTOMIC essentially surgical equipment. That is, equipment used to assists surgeons in their various operations and other invasive procedures they conduct on patients. Please refer to the amended identification of the goods sought to be covered by this application. The products sought to be covered by the OPTOMIC mark, "Surgical, medical and veterinary apparatus and instruments, namely, surgical microscopes; colposcopes; physiotherapy equipment; ophtalmologic equipment; cold light sources; hearing equipment, namely stethoscopes, rigid and flex endoscopes; endoscopy cameras; stroboscopes; lasers for surgical and medical use; orthopedic articles, namely, orthopedic belts, orthopedic braces; splints; orthopedic joint implants; medical and surgical apparatus and instruments, namely, orthopedic fixation device used in orthopedic transplant and/or implant surgery," are expensive goods purchased by hospitals or doctors to be used repeatedly and for long periods of time. They are not inexpensive, disposable goods such as medical syringes. These are simply different goods, only related to the extent that they are all used for medical treatment. Applicant submits that this thin relation of the goods is not sufficient to conclude that a</p>	

likelihood of confusion scenario will come about if the marks OPTIMIX and OPTOMIC are allowed to coexist in the market.

One must also consider that the clients purchasing the the OPTOMIC medical equipment will be hospitals and doctors which are not common consumers. These are highly educated purchasers that are experts in their field of work who would be purchasing goods related to their work. That is, this analysis cannot be carried out based on the premise that the consumers buying the products in question are regular consumers buying clothing, DVD's or other consumer goods. These are specialized goods, purchased by a limited group of professionals in the context of their work. Applicant strongly believes that a doctor or other person in charge of the purchase of supplies for a hospital, surgeon's office or other medical facility is knowledgeable about the products and brands there are in the market for their line of work and will not be lead into believing that the OPTIMIX syringes come from the same source as the OPTOMIC surgical microscopes; colposcopes; physiotherapy equipment; ophthalmologic equipment; cold light sources; hearing equipment, namely stethoscopes, rigid and flex endoscopes; endoscopy cameras; stroboscopes; or lasers for surgical and medical us.

The OPTOMIC goods woud be sold to a handful of medical experts that know about the brands and goods there are in the marketplace for the line of business. Therefore, likelihood of confusion is less likely in this case because the relevant consumers of Applicant's products are a limited group of experts in the fields of human or veterinary medicine who are very unliely to confuse the source of the one and only OPTIMIX product with that of the OPTOMIC medical equipment.

Furthermore, the OPTOMIC goods are expensive goods that are not purchased every day. These are goods whose use is long term and not goods that are continuously being purchased. The attention and care involved in their purchase is of such a level that confusion as to the source of the goods is highly unlikely.

The OPTIMIX syringes are, on the other hand, more common goods purchased by the general public in drugstores and like establishments. So even in channels of trade, the OPTOMIC makr and the OPTIMIX mark will NOT coincide.

Upon considering the above arguments, Applicant respectfully requests that the mark OPTOMIC be approved and allowed to proceed to publication.

Respectuffly submitted.

#### SIGNATURE SECTION

RESPONSE SIGNATURE	/Arturo Perez-Guerrero/
SIGNATORY'S NAME	Arturo Perez-Guerrero
SIGNATORY'S POSITION	Attorney of record
DATE SIGNED	09/27/2007
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES

#### FILING INFORMATION SECTION

SUBMIT DATE	Thu Sep 27 22:30:32 EDT 2007
TEAS STAMP	USPTO/RFR-70.45.44.14-200 70927223032986089-7902368 1-4001cac52dfd02d4724cfad ab8748ccedaf-N/A-N/A-2007 0927222039136943

PTO Form 1930 (Rev 9/2007)

OMB No. 0651-0050 (Exp. 4/30/2009)

### Request for Reconsideration after Final Action

#### To the Commissioner for Trademarks:

Application serial no. **79023681** has been amended as follows:

#### ARGUMENT(S)

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

A final action has been entered by the examiner in this case.

The examining attorney states that the goods need only be related and that the fact that the goods may differ is not controlling in determining likelihood of confusion.

Applicant strongly believes that its mark OPTOMIC can coexist with the mark OPTIMIX without causing a likelihood of confusion scenario as to the source of the goods.

In and of itself, the difference of the goods is not necessarily controlling in determining likelihood of confusion. Yet the difference of the goods determines the markets that each product serves and the type of consumer most likely to be in contact with the mark and the product it identifies. In this sense, the characteristics of the goods in question and their differences may be controlling in determining the existence of likelihood of confusion as to the source of the goods, or at least will have great weight as to whether there will be or not a likelihood of confusion scenario.

The cited registration covers only one specific product, namely, medical syringes. This is only one product. There is no other OPTIMIX product in the market, a product which is disposable as it is only used once on a patient or by a patient himself. Applicant, on the other hand, manufactures and wants to sell in the United States under the mark OPTOMIC essentially surgical equipment. That is, equipment used to assist surgeons in their various operations and other invasive procedures they conduct on patients. Please refer to the amended identification of the goods sought to be covered by this application. The products sought to be covered by the OPTOMIC mark, "Surgical, medical and veterinary apparatus and instruments, namely, surgical microscopes; colposcopes; physiotherapy equipment; ophthalmologic equipment; cold light sources; hearing equipment, namely stethoscopes, rigid and flex endoscopes; endoscopy cameras; stroboscopes; lasers for surgical and medical use; orthopedic articles, namely, orthopedic belts, orthopedic braces; splints; orthopedic joint implants; medical and surgical apparatus

and instruments, namely, orthopedic fixation device used in orthopedic transplant and/or implant surgery," are expensive goods purchased by hospitals or doctors to be used repeatedly and for long periods of time. They are not inexpensive, disposable goods such as medical syringes. These are simply different goods, only related to the extent that they are all used for medical treatment. Applicant submits that this thin relation of the goods is not sufficient to conclude that a likelihood of confusion scenario will come about if the marks OPTIMIX and OPTOMIC are allowed to coexist in the market.

One must also consider that the clients purchasing the the OPTOMIC medical equipment will be hospitals and doctors which are not common consumers. These are highly educated purchasers that are experts in their field of work who would be purchasing goods related to their work. That is, this analysis cannot be carried out based on the premise that the consumers buying the products in question are regular consumers buying clothing, DVD's or other consumer goods. These are specialized goods, purchased by a limited group of professionals in the context of their work. Applicant strongly believes that a doctor or other person in charge of the purchase of supplies for a hospital, surgeon's office or other medical facility is knowledgeable about the products and brands there are in the market for their line of work and will not be lead into believing that the OPTIMIX syringes come from the same source as the OPTOMIC surgical microscopes; colposcopes; physiotherapy equipment; ophthalmologic equipment; cold light sources; hearing equipment, namely stethoscopes, rigid and flex endoscopes; endoscopy cameras; stroboscopes; or lasers for surgical and medical us.

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The OPTIMIX syringes are, on the other hand, more common goods purchased by the general public in drugstores and like establishments. So even in channels of trade, the OPTOMIC makr and the OPTIMIX mark will NOT coincide.

Upon considering the above arguments, Applicant respectfully requests that the mark OPTOMIC be approved and allowed to proceed to publication.

Respectfully submitted.

**SIGNATURE(S)**

**Request for Reconsideration Signature**

Signature: /Arturo Perez-Guerrero/ Date: 09/27/2007

Signatory's Name: Arturo Perez-Guerrero

Signatory's Position: Attorney of record

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: 79023681

Internet Transmission Date: Thu Sep 27 22:30:32 EDT 2007

TEAS Stamp: USPTO/RFR-70.45.44.14-200709272230329860

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