

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	79129381
LAW OFFICE ASSIGNED	LAW OFFICE 111
MARK SECTION	
MARK	http://tmng-al.uspto.gov/resting2/api/img/79129381/large
LITERAL ELEMENT	LUNE D'OR
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.
ARGUMENT(S)	
<p>With respect to cited mark GOLDEN MOON (U.S. Reg. No. 4506214), Applicant advises the examining attorney that the parties have entered into a consent agreement. The examining attorney has refused registration under Trademark Act Section 2(d) of the Trademark Act because the Applicant's mark, LUNE D'OR, when used on the identified goods, so resembles U.S. Registration No. 4506214 that it is likely to cause confusion, to cause mistake or to deceive. The terms and conditions of the referenced Consent Agreement clearly delineates the differences in marks, marketplace, goods at issue and consumers. Without discussing the merits of the likelihood of confusion refusal, Applicant submits a Consent Agreement between the parties. See attached. The Court of Appeals for the Federal Circuit (hereinafter "CAFC") has clearly indicated that a consent agreement between two parties is to be accorded great, or substantial weight unless hard evidence negates the underlying assumptions in the consent and/or demonstrates that the consent is contradictory on its face. See <i>In re Four Seasons Hotels Ltd.</i>, 26 USPQ2d 1071 (Fed. Cir. 1993). Therefore, in light of the attached Consent Agreement, it is respectfully requested that the examining attorney withdraw the likelihood of confusion refusal.</p> <p>Applicant hereby notes the continued Section 2(d) refusal as to mark LUNA D'OR (Reg. No. 4204240).</p>	
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_20918320618-20150916161714272604_Executed Consent Agreement for 4506214.pdf
CONVERTED PDF	

FILE(S) (3 pages)	\\TICRS\EXPORT16\IMAGEOUT16\791\293\79129381\xml24\RFR0002.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\791\293\79129381\xml24\RFR0003.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\791\293\79129381\xml24\RFR0004.JPG
GOODS AND/OR SERVICES SECTION (current)	
INTERNATIONAL CLASS	033
DESCRIPTION	Wines from France
GOODS AND/OR SERVICES SECTION (proposed)	
INTERNATIONAL CLASS	033
TRACKED TEXT DESCRIPTION	
Wines from France ; Alcoholic beverages excluding beer and including wines from France and Europe	
FINAL DESCRIPTION	
Alcoholic beverages excluding beer and including wines from France and Europe	
SIGNATURE SECTION	
RESPONSE SIGNATURE	/jas/
SIGNATORY'S NAME	Jeffrey A. Smith
SIGNATORY'S POSITION	Applicant's Attorney
SIGNATORY'S PHONE NUMBER	703-465-5355
DATE SIGNED	09/16/2015
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Wed Sep 16 16:22:16 EDT 2015
TEAS STAMP	USPTO/RFR-209.183.206.18- 20150916162216151526-7912 9381-540cce4402ec83ef195c 46e77ab49fbb0b561bc7e9b3e 6a3cea2d91fabe70dabe60-N/ A-N/A-2015091616171427260 4

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

Application serial no. **79129381** LUNE D'OR(Standard Characters, see <http://tmng-al.uspto.gov/resting2/api/img/79129381/large>) has been amended as follows:

ARGUMENT(S)

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

With respect to cited mark GOLDEN MOON (U.S. Reg. No. 4506214), Applicant advises the examining attorney that the parties have entered into a consent agreement. The examining attorney has refused registration under Trademark Act Section 2(d) of the Trademark Act because the Applicant's mark, LUNE D'OR, when used on the identified goods, so resembles U.S. Registration No. 4506214 that it is likely to cause confusion, to cause mistake or to deceive. The terms and conditions of the referenced Consent Agreement clearly delineates the differences in marks, marketplace, goods at issue and consumers. Without discussing the merits of the likelihood of confusion refusal, Applicant submits a Consent Agreement between the parties. See attached. The Court of Appeals for the Federal Circuit (hereinafter "CAFC") has clearly indicated that a consent agreement between two parties is to be accorded great, or substantial weight unless hard evidence negates the underlying assumptions in the consent and/or demonstrates that the consent is contradictory on its face. See *In re Four Seasons Hotels Ltd.*, 26 USPQ2d 1071 (Fed. Cir. 1993). Therefore, in light of the attached Consent Agreement, it is respectfully requested that the examining attorney withdraw the likelihood of confusion refusal.

Applicant hereby notes the continued Section 2(d) refusal as to mark LUNA D'OR (Reg. No. 4204240).

EVIDENCE

Original PDF file:

[evi_20918320618-20150916161714272604_Executed Consent Agreement for 4506214.pdf](#)

Converted PDF file(s) (3 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 033 for Wines from France

Original Filing Basis:

Filing Basis Section 66(a) , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

Proposed:

Tracked Text Description: ~~Wines from France~~; [Alcoholic beverages excluding beer and including wines from France and Europe](#)

Class 033 for Alcoholic beverages excluding beer and including wines from France and Europe

Filing Basis Section 66(a) , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /jas/ Date: 09/16/2015

Signatory's Name: Jeffrey A. Smith

Signatory's Position: Applicant's Attorney

Signatory's Phone Number: 703-465-5355

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 owner's/holder'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 owner/holder in this matter: (1) the owner/holder 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 owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder'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: 79129381

Internet Transmission Date: Wed Sep 16 16:22:16 EDT 2015

TEAS Stamp: USPTO/RFR-209.183.206.18-201509161622161

51526-79129381-540cce4402ec83ef195c46e77

ab49fbb0b561bc7e9b3e6a3cea2d91fabe70dabe

60-N/A-N/A-20150916161714272604

WHEREAS, Maison de la Vie, Ltd, located at 412 Violet Street Golden, Colorado 80401, U.S.A. is the owner of United States trademark registration number 4506214 issued on April 01, 2014 for the mark GOLDEN MOON for a variety of distilled spirits in Class 33; and

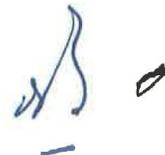
WHEREAS, Societe Civile du Domaine de Chevalier, located at Chemin de Mignoy F-33850, Leognan, France is the applicant for United States trademark application Serial Number 79/129,381 filed February 26, 2013 for the mark LUNE D'OR for wines from France in Class 33; and

WHEREAS, the parties believe in good faith that these trademarks can co-exist in the marketplace without any likelihood of confusion among the relevant purchasing public as to source, origin or sponsorship because the nature of and differences between their marks, the differences between their respective goods should in their opinion as business people familiar with the marketplace and consumer behavior prevent consumer confusion; specifically:

- The two marks are not identical and are in different languages; and
- The Maison de la Vie mark will be used on premium, artisan distilled spirits and Societe Civile du Domaine; de Chevalier is in the wine business; and
- The Maison de la Vie mark will be used on goods that originate in United States and the Societe Civile du Domaine de Chevalier mark will be used on goods that originate in France; and
- Wineries and distilleries require different Federal licenses; and
- The goods are not identical; and
- Maison de la Vie does not and legally cannot make or sell wines in Class 33; and
- Maison de la Vie will not use the applied for mark on wines; and
- Societe Civile du Domaine de Chevalier will not use its mark on distilled spirits; and
- The parties do not believe that the ordinary American consumer will stop and translate either mark into English or French.

NOW, THEREFORE, in consideration of the mutual promises and undertakings set forth herein, and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

Maison de la Vie hereby consents to the use, registration, and promotion by Societe Civile du Domaine de Chevalier of the mark LUNE D'OR in application Serial Number 79/129,381 on



or in connection with wines from France, as well as of any other LUNE D'OR mark or any mark including the word LUNE(S) with or without other elements such as other words, colors, logos or labels on or in connection with wines from France, and it shall not object to the use, registration, or promotion of these marks for these goods.

To the parties knowledge and belief, there have been no instances of confusion during the overlapping period wherever they have used their respective marks. They are familiar with the use of their marks in the marketplace and interested in precluding confusion. Accordingly, as the circumstances merit and as they determine appropriate, they agree to consider consulting with each other with an objective of taking suitable action to avoid confusing the public regarding their respective uses of the marks in question.

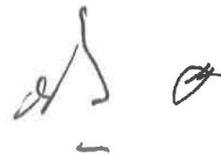
The parties agree to take actions and execute agreements appropriate to carry out the spirit and intent of this Agreement including providing one another with letter(s) of consent in obtaining future trademark registrations for the above-referenced respective mark(s) in connection with the parties' respective goods, so long as such assistance is not inconsistent with the terms of this Agreement..

Maison de la Vie will not directly or indirectly knowingly commit any act at any time that divests or attempts to divest Societe Civile du Domaine de Chevalier's goodwill as represented by its LUNE D'OR mark or knowingly do anything that encroaches on the rights in its mark. Furthermore, Maison de la Vie agrees not to contest, administratively or judicially, in the United States or elsewhere, Societe Civile du Domaine de Chevalier's right to use, register, maintain, and/or enforce its mark as well as any other LUNE D'OR mark or any mark including the word LUNE(S) with or without other elements such as other words, colors, logos or labels..

Societe Civile du Domaine; de Chevalier's will not directly or indirectly knowingly commit any act at any time that divests or attempts to divest Maison de la Vie's goodwill as represented by its GOLDEN MOON mark or knowingly do anything that encroaches on the rights in its mark. Furthermore, Societe Civile du Domaine; de Chevalier's agrees not to contest, administratively or judicially, in the United States or elsewhere, Maison de la Vie's right to use, register, maintain, and or enforce rights its mark.

This Agreement shall be binding upon and inure to the benefit of the parties directors, officers, members, parent companies, subsidiaries, affiliates, licensees, successors, and assigns, as the case may be.

This scope of this Agreement shall be the United States and its territories and it shall be construed and enforced in accordance with the laws of the United States, except that body of law concerning conflicts of law and shall be binding upon and shall inure to the benefit of each party, its successors and permitted assigns, affiliates, related companies, successors, and interests, affiliates, related companies, successors. A judicial determination that any provision of this Agreement is invalid in whole or in part shall not affect the enforceability of those provisions found not to be invalid. Should any provision of this Agreement be void or unenforceable, such provision shall be deemed omitted or changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or

Handwritten signature and initials in black ink, located at the bottom right of the page. The signature appears to be 'M. de la Vie' and the initials are 'M. de la Vie'.

applicable court decisions, and if this is not practicable this Agreement with such provision omitted shall remain in full force and effect.

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof superseding and merging herein any and all courses of conduct and dealing between the parties concerning the subject matter hereof and undertakings of the parties, previous proposals, representations or statements, oral or written and may not be altered, modified, amended, or waived, in whole or in part, in any way except by an instrument duly executed by all parties hereto. Any previous agreements between the parties pertaining to the subject matter of this Agreement are hereby expressly canceled and terminated. Any modifications of this Agreement must be in writing and signed by authorized representatives of both parties hereto. Whenever the consent or approval of a party is required pursuant to any provision of this Agreement, the same shall not be deemed to have been given unless in writing signed by the party whose consent or approval is required.

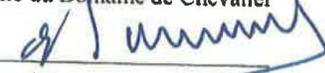
The individuals who sign this Agreement on behalf of the respective parties hereby represent and warrant they have the legal capacity, requisite power, and authority, to sign this Agreement on behalf of the party for whom they sign.

WHEREAS, each of the parties has caused a duly authorized officer thereof as set forth below, to sign on its behalf as of the date and year written below.

DIS MOI OUI Maison de la Vie
By 
Name: Stephen A. Gould
MDLV, Ltd. 412 Violet Street Golden CO 80401
Title: Managing Member of LLC

Date: 7 July 2015

Societe Civile du Domaine de Chevalier

By 

Name: OLIVIER BERNARD

Title: Gérant de la société civile
Domaine de Chevalier

Date: 28 Aout 2015

SC DU DOMAINE DE CHEVALIER
Grand Cru Classé de Graves
33850 LÉOGNAN
Tél. 05 56 64 16 16 - Fax 05 56 64 18 18
SIRET 328 006 416 00015 - APE 011G
TVA FR 44 328 006 156