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PTO Form 1960 (Rev 10/2011)

OMB No. 0651-0050 (Exp 07/31/2017)

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	79161731
LAW OFFICE ASSIGNED	LAW OFFICE 104
MARK SECTION	
MARK	http://tmng-al.uspto.gov/resting2/api/img/79161731/large
LITERAL ELEMENT	GODDESSES HERA
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)	
LIKELIHOOD OF CONFUSION REFUSAL	
<p>In the final Office Action of August 29, 2015, the Examining Attorney continues to refuse registration of the Applicant's mark on the grounds that the applied-for mark GODDESSES HERA is so similar to the Registered mark HERA'S GOLD as to cause a likelihood of confusion. However, fair consideration of the relevant factors set out in <i>In re E.I. du Pont de Nemours & Co.</i>, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), establishes that there is no such likelihood of confusion.</p> <p>The first DuPont factor is thus of particular importance, directed to "the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation, and commercial impression." <i>Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772</i>, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005) (quoting <i>DuPont</i>, 177 USPQ at 567).</p> <p>Similarity or dissimilarity is determined based on the marks in their entireties. It is improper to dissect the marks into their various components, as the analysis must be based on the entire marks, not just the parts thereof. <i>In re Nat'l Data Corp.</i>, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985); see also <i>Franklin Mint Corp. v. Master Mfg. Co.</i>, 667 F.2d 1005, 212 USPQ 233, 234 (CCPA 1981) ("It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion.").</p> <p>The Examining Attorney asserts that the applied-for mark and the Registered mark are similar in sound and appearance, because both marks include the term "HERA," and each mark has an</p>	

additional word that begins with a “G.” While the Examining Attorney states that “a trademark examining attorney may weigh the individual components of a mark to determine its overall commercial impression,” the Examining Attorney has failed to provide rational reasons as to why the alleged similarities in sound and appearance between the applied-for and the Registered mark deserve additional weight in concluding that there is a likelihood of confusion between the mark. The Examining Attorney’s analysis is contrary to the cases relied upon by the Examining Attorney, in particular the cited quote from *In re Nat’l Data Corp.*, which requires the Examining Attorney to articulate “rational reasons” why more weight has been given to a particular feature of a mark. 753 F.2d at 1058, 224 USPQ at 751; *see also See In re Cynosure Inc.*, 90 USPQ2d 1644, 1646 (TTAB 2009).

In asserting that the applied-for mark and the Registered mark are similar in sound and appearance the Examining Attorney has failed to articulate sufficient reasons why the features of “HERA” and an additional word that begins with a “G” of the Registered mark warrant any additional weight in the analysis of the respective marks. To the contrary, applicant has already argued that “GODDESSES” in the applied-for mark is the initial part of the mark, and therefore makes a greater impression upon consumers. *See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F. 3d 1369, 1372, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005); *see also Mattel Inc. v. Funline Merch. Co.*, 81 USPQ2d 1372, 1374-75 (TTAB 2006); *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) (it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered when making purchasing decisions). Since a feature such as the formative “GODDESSES” in the applied-for mark is likely to make a greater impression upon consumers as the initial part of the mark, it is improper to discount the presence of “GODDESSES” in the applied-for mark.

While the Examining Attorney has asserted that “HERA” in connection with the goods at issue is strong, this alone, even if it were true, which applicant does not admit, would not warrant focusing only on any perceived superficial similarities of the respective marks without taking into account the significant differences in sound and appearance between the applied-for mark and the Registered mark. Applicant respectfully notes that the Registered mark includes “HERA’S,” and not just “HERA,” and therefore the assertion that “HERA” is strong is completely irrelevant due to the manner in which the formative is used in the Registered mark. Not only is “HERA” visually and phonetically different from “HERA’S,” but the respective meanings are also different, with one identifying an entity or individual and the other signifying possession. By artificially inflating the importance of “HERA’S” in the Registered mark, the Examining Attorney has taken the position that any mark that contains the formative “HERA” in connection with the goods at issue would result in a finding of likelihood of confusion with the Registered mark, even though the Registered mark itself does not contain the formative “HERA.” Therefore, for at least the reasons discussed below, applicant respectfully submits that the applied-for mark and Registered mark are not similar in terms of appearance and sound.

As to appearance, when considered in their entirety, the marks differ significantly. The inclusion of the formative GODDESSES before HERA in the applied-for-mark creates a very distinct appearance when compared to HERA’S GOLD of the Registered mark. Not only are the positions of HERA and HERA’S within the respective marks reversed, but the presence of the additional formatives GODDESSES and GOLD certainly causes the marks to appear to be distinct to customers. Any superficial similarities between GODDESSES and GOLD is far outweighed by the numerous visual, not to mention sound and meaning, differences between these formatives. The difference in appearance alone may reduce confusing similarity of even identical words. *See, e.g., In re Anderson Electric Corp.*, 370 F.2d 593, 152 USPQ 245, 247 (CCPA 1967); *In re Brundy Corp.*, 300 F.2d 938,

The Examining Attorney has also asserted, with respect to the appearance of the respective marks, that the “proper focus is on the recollection of the average purchaser, who retains a general rather than specific impression of trademarks.” Once again, the Examining Attorney appears to assert that the presence of “HERA’S” in the Registered mark and “HERA” in the applied-for mark is sufficient to result in a finding of likelihood of confusion between the respective marks. However, such an assertion requires that the average purchaser retain a general impression of “HERA” from the Registered mark, which as discussed above, is not even the form of “HERA” that is present in the Registered mark. Accordingly, the Examining Attorney has used an adaptation of the Registered mark in analyzing the respective marks in order to attempt to assert that there are similarities between the respective marks. It is unlikely that a consumer would focus on the formative HERA alone in the applied-for mark, and therefore it is not reasonable to assert that the applied-for-mark and Registered mark are similar solely due to the presence of HERA and HERA’S in the respective marks. *See e.g. Marshall Field & Co. v. Mrs. Fields Cookies*, 25 USPQ2d 1321, 1332 (TTAB 1992) (public will readily recognize the differences in the marks MARSHALL FIELD’S and MRS. FIELDS); *see also Sunbeam Corp. v. American Safety Razor Co.*, 207 USPQ 799, 805 (TTAB 1980) (marks THE LADY and LADY SUNBEAM sufficiently different).

Furthermore, contrary to the assertions of the Examining Attorney, simply because both marks include the term “HERA,” and each mark has an additional word that begins with a “G” does not mean that the marks are similar in sound. Instead, the applied-for mark and Registered mark are highly distinct in terms of sound. The applied-for mark “GODDESSES HERA” has significantly more syllables than the Registered mark, “GODDESSES” and “GOLD” despite beginning with the letter “G” are phonetically distinct, likewise “HERA” in the applied-for mark and “HERA’S” also have distinct sounds and the order of pronunciation of the marks are also completely distinct due to the reversal of positions of “HERA” and “HERA’S within the respective marks. Therefore, despite the alleged similarities between the applied-for mark and the Registered mark asserted by the Examining Attorney, the respective marks are not at all similar in terms of sound.

Commercial impression or connotation is another factor that weights against a finding of likelihood of confusion. The applied-for mark is GODDESSES HERA, and conveys one particular meaning, namely, the Greek goddess of women, marriage and childbirth, and the wife and sister of Zeus. In contrast, the Registered mark as a whole has a meaning of “gold possessed by Hera.” Therefore, the overall meaning of the Registered mark and the applied-for mark are clearly distinguishable. The GODDESSES formative in the applied-for mark reinforces the particular meaning of the Greek goddess of the applied-for mark. The Examining Attorney asserts that “HERA’S as a possessive personifies the word,” and that “the use of GODDESSES by applicant also personifies the name.” Applicant respectfully submits that even if HERA’S personified GOLD in the applied-for mark, which applicant does not admit, the any alleged personification of “HERA” by “GODDESSES” in the applied-for mark would a completely different connotation than attributing human nature or character to “gold.” Instead, if “HERA” from the applied-for mark was an embodiment or incarnation of “GODDESSES,” this is a completely different meaning from attributing human nature or character to an object, such as gold. While the Applicant’s mark has a significantly different appearance from the Registered mark sufficient to avoid any likelihood of confusion, even where marks are identical, there is no likelihood of confusion where the marks convey different meanings. *In re Sears, Roebuck and Co.*, 2 USPQ2d 1312 (TTAB 1987) (no likelihood of confusion between CROSS-OVER for bras and CROSSOVER for ladies’ sportswear, namely, tops, shorts and pants); *In British Bulldog, Ltd.*, 224 USPQ 854 (TTAB 1984) (no likelihood of confusion between

PLAYERS for men's underwear and PLAYERS for shoes); *In re Sydel Lingerie Co., Inc.*, 197 USPQ 629 (TTAB 1977) (no likelihood of confusion between BOTTOMS UP for ladies' and children's underwear and BOTTOMS UP for men's suits, coats and trousers).

Given the number of differences between the applied-for-mark and the Registered mark, there is no likelihood of confusion between the marks, and it is respectfully requested that the Applicant's mark be approved for registration.

CORRESPONDENCE SECTION

ORIGINAL ADDRESS	Keith R. Obert Ware, Fressola, Maguire & Barber LLP 755 Main Street, Building 5 P.O. Box 224 Monroe Connecticut US 06468
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NEW CORRESPONDENCE SECTION

NAME	Keith R. Obert
FIRM NAME	Ware, Fressola, Maguire & Barber LLP
DOCKET/REFERENCE NUMBER	610.093-658
INTERNAL ADDRESS	P.O. Box 224
STREET	755 Main Street, Building 5
CITY	Monroe
STATE	Connecticut
ZIP/POSTAL CODE	06468
COUNTRY	United States
PHONE	203-261-1234
FAX	203-261-5676
EMAIL	kro@warefressola.com; moc@warefressola.com; mail@warefressola.com
AUTHORIZED EMAIL COMMUNICATION	Yes

SIGNATURE SECTION

RESPONSE SIGNATURE	/Keith R. Obert/
SIGNATORY'S NAME	Keith R. Obert
SIGNATORY'S POSITION	Associate Attorney, Ware, Fressola, Maguire & Barber LLP, Connecticut bar member

SIGNATORY'S PHONE NUMBER	203-261-1234
DATE SIGNED	02/04/2016
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Thu Feb 04 19:20:10 EST 2016
TEAS STAMP	USPTO/RFR-XX.XX.XX.XXX-20 160204192010564330-791617 31-550d649ed288aea4dc1d73 f1e3220cf4facb1f168ba66d b20238eb74cab88f1-N/A-N/A -20160204191700441590

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PTO Form 1960 (Rev 10/2011)

OMB No. 0651-0050 (Exp 07/31/2017)

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

Application serial no. **79161731** GODDESSES HERA(Standard Characters, see <http://tmng-al.uspto.gov/resting2/api/img/79161731/large>) has been amended as follows:

ARGUMENT(S)

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

LIKELIHOOD OF CONFUSION REFUSAL

In the final Office Action of August 29, 2015, the Examining Attorney continues to refuse registration of the Applicant's mark on the grounds that the applied-for mark GODDESSES HERA is so similar to the Registered mark HERA'S GOLD as to cause a likelihood of confusion. However, fair consideration of the relevant factors set out in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), establishes that there is no such likelihood of confusion.

The first DuPont factor is thus of particular importance, directed to "the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation, and commercial impression." *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005) (quoting *DuPont*, 177 USPQ at 567).

Similarity or dissimilarity is determined based on the marks in their entireties. It is improper to dissect the marks into their various components, as the analysis must be based on the entire marks, not

just the parts thereof. *In re Nat'l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985); see also *Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 212 USPQ 233, 234 (CCPA 1981) (“It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion.”).

The Examining Attorney asserts that the applied-for mark and the Registered mark are similar in sound and appearance, because both marks include the term “HERA,” and each mark has an additional word that begins with a “G.” While the Examining Attorney states that “a trademark examining attorney may weigh the individual components of a mark to determine its overall commercial impression,” the Examining Attorney has failed to provide rational reasons as to why the alleged similarities in sound and appearance between the applied-for and the Registered mark deserve additional weight in concluding that there is a likelihood of confusion between the mark. The Examining Attorney’s analysis is contrary to the cases relied upon by the Examining Attorney, in particular the cited quote from *In re Nat'l Data Corp.*, which requires the Examining Attorney to articulate “rational reasons” why more weight has been given to a particular feature of a mark. 753 F.2d at 1058, 224 USPQ at 751; see also *In re Cynosure Inc.*, 90 USPQ2d 1644, 1646 (TTAB 2009).

In asserting that the applied-for mark and the Registered mark are similar in sound and appearance the Examining Attorney has failed to articulate sufficient reasons why the features of “HERA” and an additional word that begins with a “G” of the Registered mark warrant any additional weight in the analysis of the respective marks. To the contrary, applicant has already argued that “GODDESSES” in the applied-for mark is the initial part of the mark, and therefore makes a greater impression upon consumers. See *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F. 3d 1369, 1372, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005); see also *Mattel Inc. v. Funline Merch. Co.*, 81 USPQ2d 1372, 1374-75 (TTAB 2006); *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) (it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered when making purchasing decisions). Since a feature such as the formative “GODDESSES” in the applied-for mark is likely to make a greater impression upon consumers as the initial part of the mark, it is improper to discount the presence of “GODDESSES” in the applied-for mark.

While the Examining Attorney has asserted that “HERA” in connection with the goods at issue is strong, this alone, even if it were true, which applicant does not admit, would not warrant focusing only on any perceived superficial similarities of the respective marks without taking into account the significant differences in sound and appearance between the applied-for mark and the Registered mark. Applicant respectfully notes that the Registered mark includes “HERA’S,” and not just “HERA,” and therefore the assertion that “HERA” is strong is completely irrelevant due to the manner in which the formative is used in the Registered mark. Not only is “HERA” visually and phonetically different from “HERA’S,” but the respective meanings are also different, with one identifying an entity or individual and the other signifying possession. By artificially inflating the importance of “HERA’S” in the Registered mark, the Examining Attorney has taken the position that any mark that contains the formative “HERA” in connection with the goods at issue would result in a finding of likelihood of confusion with the Registered mark, even though the Registered mark itself does not contain the formative “HERA.” Therefore, for at least the reasons discussed below, applicant respectfully submits that the applied-for mark and Registered mark are not similar in terms of appearance and sound.

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HERA'S within the respective marks reversed, but the presence of the additional formatives GODDESSES and GOLD certainly causes the marks to appear to be distinct to customers. Any superficial similarities between GODDESSES and GOLD is far outweighed by the numerous visual, not to mention sound and meaning, differences between these formatives. The difference in appearance alone may reduce confusing similarity of even identical words. *See, e.g., In re Anderson Electric Corp.*, 370 F.2d 593, 152 USPQ 245, 247 (CCPA 1967); *In re Brundy Corp.*, 300 F.2d 938, 133 U.S.P.Q. 196, 197 (CCPA 1962).

The Examining Attorney has also asserted, with respect to the appearance of the respective marks, that the "proper focus is on the recollection of the average purchaser, who retains a general rather than specific impression of trademarks." Once again, the Examining Attorney appears to assert that the presence of "HERA'S" in the Registered mark and "HERA" in the applied-for mark is sufficient to result in a finding of likelihood of confusion between the respective marks. However, such an assertion requires that the average purchaser retain a general impression of "HERA" from the Registered mark, which as discussed above, is not even the form of "HERA" that is present in the Registered mark. Accordingly, the Examining Attorney has used an adaptation of the Registered mark in analyzing the respective marks in order to attempt to assert that there are similarities between the respective marks. It is unlikely that a consumer would focus on the formative HERA alone in the applied-for mark, and therefore it is not reasonable to assert that the applied-for-mark and Registered mark are similar solely due to the presence of HERA and HERA'S in the respective marks. *See e.g. Marshall Field & Co. v. Mrs. Fields Cookies*, 25 USPQ2d 1321, 1332 (TTAB 1992) (public will readily recognize the differences in the marks MARSHALL FIELD'S and MRS. FIELDS); *see also Sunbeam Corp. v. American Safety Razor Co.*, 207 USPQ 799, 805 (TTAB 1980) (marks THE LADY and LADY SUNBEAM sufficiently different).

Furthermore, contrary to the assertions of the Examining Attorney, simply because both marks include the term "HERA," and each mark has an additional word that begins with a "G" does not mean that the marks are similar in sound. Instead, the applied-for mark and Registered mark are highly distinct in terms of sound. The applied-for mark "GODDESSES HERA" has significantly more syllables than the Registered mark, "GODDESSES" and "GOLD" despite beginning with the letter "G" are phonetically distinct, likewise "HERA" in the applied-for mark and "HERA'S" also have distinct sounds and the order of pronunciation of the marks are also completely distinct due to the reversal of positions of "HERA" and "HERA'S within the respective marks. Therefore, despite the alleged similarities between the applied-for mark and the Registered mark asserted by the Examining Attorney, the respective marks are not at all similar in terms of sound.

Commercial impression or connotation is another factor that weights against a finding of likelihood of confusion. The applied-for mark is GODDESSES HERA, and conveys one particular meaning, namely, the Greek goddess of women, marriage and childbirth, and the wife and sister of Zeus. In contrast, the Registered mark as a whole has a meaning of "gold possessed by Hera." Therefore, the overall meaning of the Registered mark and the applied-for mark are clearly distinguishable. The GODDESSES formative in the applied-for mark reinforces the particular meaning of the Greek goddess of the applied-for mark. The Examining Attorney asserts that "HERA'S as a possessive personifies the word," and that "the use of GODDESSES by applicant also personifies the name." Applicant respectfully submits that even if HERA'S personified GOLD in the applied-for mark, which applicant does not admit, the any alleged personification of "HERA" by "GODDESSES" in the applied-for mark would a completely different connotation than attributing human nature or character to "gold." Instead, if "HERA" from the applied-for mark was an embodiment or incarnation of

“GODDESSES,” this is a completely different meaning from attributing human nature or character to an object, such as gold. While the Applicant’s mark has a significantly different appearance from the Registered mark sufficient to avoid any likelihood of confusion, even where marks are identical, there is no likelihood of confusion where the marks convey different meanings. *In re Sears, Roebuck and Co.*, 2 USPQ2d 1312 (TTAB 1987) (no likelihood of confusion between CROSS-OVER for bras and CROSSOVER for ladies’ sportswear, namely, tops, shorts and pants); *In British Bulldog, Ltd.*, 224 USPQ 854 (TTAB 1984) (no likelihood of confusion between PLAYERS for men’s underwear and PLAYERS for shoes); *In re Sydel Lingerie Co., Inc.*, 197 USPQ 629 (TTAB 1977) (no likelihood of confusion between BOTTOMS UP for ladies’ and children’s underwear and BOTTOMS UP for men’s suits, coats and trousers).

Given the number of differences between the applied-for-mark and the Registered mark, there is no likelihood of confusion between the marks, and it is respectfully requested that the Applicant’s mark be approved for registration.

CORRESPONDENCE ADDRESS CHANGE

Applicant proposes to amend the following:

Current:

Keith R. Obert
Ware, Fressola, Maguire & Barber LLP
755 Main Street, Building 5
P.O. Box 224
Monroe
Connecticut
US
06468

Proposed:

Keith R. Obert of Ware, Fressola, Maguire & Barber LLP, having an address of
P.O. Box 224 755 Main Street, Building 5 Monroe, Connecticut 06468
United States
kro@warefressola.com; moc@warefressola.com; mail@warefressola.com
203-261-1234
203-261-5676
The docket/reference number is 610.093-658 .

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Keith R. Obert/ Date: 02/04/2016

Signatory's Name: Keith R. Obert

Signatory's Position: Associate Attorney, Ware, Fressola, Maguire & Barber LLP, Connecticut bar member

Signatory's Phone Number: 203-261-1234

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.

Mailing Address: Keith R. Obert
Ware, Fressola, Maguire & Barber LLP
P.O. Box 224
755 Main Street, Building 5
Monroe, Connecticut 06468

Serial Number: 79161731

Internet Transmission Date: Thu Feb 04 19:20:10 EST 2016

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