

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85009475
LAW OFFICE ASSIGNED	LAW OFFICE 104
MARK SECTION (no change)	
ARGUMENT(S)	
<p>This is a Response to the Final Office Action dated November 6, 2012.</p> <p>The Examiner indicates that the Specimen is not acceptable to show use of the mark with the retail and wholesale gift shop services. The Examiner further states that Applicant may submit a new specimen or withdraw the amendment to allege use and reassert use at a later date when proper specimens become available.</p> <p>Applicant hereby withdraws the amendment to allege use filed on February 29, 2012. Applicant also hereby withdraws the previously submitted date of first use anywhere as being at least as early as 12/15/2009 and date of first use in commerce as being at least as early as 12/15/2009.</p> <p>Respectfully submitted,</p> <p>Gregory C. Smith Attorney for Applicant</p>	
GOODS AND/OR SERVICES SECTION (current)	
INTERNATIONAL CLASS	035
DESCRIPTION	retail and wholesale gift shop services
FIRST USE ANYWHERE DATE	At least as early as 12/15/2009
FIRST USE IN COMMERCE DATE	At least as early as 12/15/2009
FILING BASIS	Section 1(b)
GOODS AND/OR SERVICES SECTION (proposed)	
INTERNATIONAL CLASS	035
DESCRIPTION	retail and wholesale gift shop services
FIRST USE ANYWHERE DATE	DELETED

FIRST USE IN COMMERCE DATE	DELETED
ADDITIONAL STATEMENTS SECTION	
MISCELLANEOUS STATEMENT	Applicant hereby withdraws the amendment to allege use filed on February 29, 2012. Applicant also hereby withdraws the previously submitted date of first use anywhere as being at least as early as 12/15/2009 and date of first use in commerce as being at least as early as 12/15/2009.
SIGNATURE SECTION	
DECLARATION SIGNATURE	/Gregory C. Smith, #29,441/
SIGNATORY'S NAME	Gregory C. Smith
SIGNATORY'S POSITION	Attorney of record, Louisiana bar member
SIGNATORY'S PHONE NUMBER	505-835-2000
DATE SIGNED	05/06/2013
RESPONSE SIGNATURE	/Gregory C. Smith, #29,441/
SIGNATORY'S NAME	Gregory C. Smith
SIGNATORY'S POSITION	Attorney of record, Louisiana bar member
SIGNATORY'S PHONE NUMBER	(504) 835-2000
DATE SIGNED	05/06/2013
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Mon May 06 18:32:38 EDT 2013
TEAS STAMP	USPTO/RFR-208.115.6.198-2 0130506183238152545-85009 475-500ada53e597f5cebd9ff 6b2681b597bfb2a891969341d 465eab93194c6af1dea0-N/A- N/A-20130506181847382968

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

Application serial no. **85009475** has been amended as follows:

ARGUMENT(S)

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

This is a Response to the Final Office Action dated November 6, 2012.

The Examiner indicates that the Specimen is not acceptable to show use of the mark with the retail and wholesale gift shop services. The Examiner further states that Applicant may submit a new specimen or withdraw the amendment to allege use and reassert use at a later date when proper specimens become available.

Applicant hereby withdraws the amendment to allege use filed on February 29, 2012. Applicant also hereby withdraws the previously submitted date of first use anywhere as being at least as early as 12/15/2009 and date of first use in commerce as being at least as early as 12/15/2009.

Respectfully submitted,

Gregory C. Smith
Attorney for Applicant

CLASSIFICATION AND LISTING OF GOODS/SERVICES

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

Current: Class 035 for retail and wholesale gift shop services

Original Filing Basis:

Filing Basis: Section 1(b), Intent to Use: The applicant has had a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

In International Class 035, the mark was first used at least as early as 12/15/2009 and first used in commerce at least as early as 12/15/2009.

Proposed: Class 035 for retail and wholesale gift shop services

Deleted Filing Basis: 1(b)

In International Class 035, the mark was first used at least as early as 00/00/0000. and first used in commerce at least as early as 00/00/0000.

ADDITIONAL STATEMENTS

Miscellaneous Statement

Applicant hereby withdraws the amendment to allege use filed on February 29, 2012. Applicant also hereby withdraws the previously submitted date of first use anywhere as being at least as early as 12/15/2009 and date of first use in commerce as being at least as early as 12/15/2009.

SIGNATURE(S)

Declaration Signature

If the applicant is seeking registration under Section 1(b) and/or Section 44 of the Trademark Act, the applicant has had a bona fide intention to use or use through the applicant's related company or licensee

the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. 37 C.F.R. Secs. 2.34(a)(2)(i); 2.34 (a)(3)(i); and 2.34(a)(4)(ii); and/or the applicant has had a bona fide intention to exercise legitimate control over the use of the mark in commerce by its members. 37 C.F. R. Sec. 2.44. If the applicant is seeking registration under Section 1(a) of the Trademark Act, the mark was in use in commerce on or in connection with the goods and/or services listed in the application as of the application filing date or as of the date of any submitted allegation of use. 37 C.F.R. Secs. 2.34(a)(1)(i); and/or the applicant has exercised legitimate control over the use of the mark in commerce by its members. 37 C.F.R. Sec. 2.44. The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; that if the original application was submitted unsigned, that all statements in the original application and this submission made of the declaration signer's knowledge are true; and all statements in the original application and this submission made on information and belief are believed to be true.

Signature: /Gregory C. Smith, #29,441/ Date: 05/06/2013
Signatory's Name: Gregory C. Smith
Signatory's Position: Attorney of record, Louisiana bar member
Signatory's Phone Number: 505-835-2000

Request for Reconsideration Signature

Signature: /Gregory C. Smith, #29,441/ Date: 05/06/2013
Signatory's Name: Gregory C. Smith
Signatory's Position: Attorney of record, Louisiana bar member

Signatory's Phone Number: (504) 835-2000

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: 85009475
Internet Transmission Date: Mon May 06 18:32:38 EDT 2013

TEAS Stamp: USPTO/RFR-208.115.6.198-2013050618323815
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