

## Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85087050
LAW OFFICE ASSIGNED	LAW OFFICE 110
MARK SECTION (no change)	
ARGUMENT(S)	
<u>Notice of Appeal</u>	
<p>A Notice of Appeal is being filed concurrently with this Request for Reconsideration.</p>	
<p style="text-align: center;"><b><u>Discussion</u></b></p>	
<p>In the final office action dated June 14, 2011, the Examining Attorney continued and made final her refusal under Trademark Act Section 2(d) based on prior Registration No. 3369786. A Notice of Appeal is being filed concurrently with this Request for Reconsideration.</p>	
<p>Applicant continues to respectfully disagree that there is a likelihood of confusion with the cited registration. It is well established that a likelihood of confusion analysis must be based upon all of the probative facts in evidence. <i>See In re E. I. du Pont de Nemours &amp; Co.</i>, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973); <i>see also In re Majestic Distilling Co., Inc.</i>, 315 F.3d 1311, 65 USPQ2d1201 (Fed. Cir. 2003). The issue of likelihood of confusion typically revolves around the similarity or dissimilarity of the marks and the relatedness of the goods or services. Even where the marks are similar in one aspect, if the goods or services in question are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source, confusion is not likely. Other relevant factors in determining likelihood of confusion includes the similarity or dissimilarity of established, likely-to-continue trade channels and the conditions under which and buyers to whom sales are made, i.e., “impulse” vs. careful, sophisticated purchasing conditions. Further, consideration must also be given to the overall effect of the entire mark. <i>See Rockwood Chocolate Co., Inc. v. Hoffman Candy Company</i>, 152 USPQ 599 (CCPA 1967).</p>	
<p>In this case, the respective marks convey distinct overall commercial impressions based on the distinctive stylization and design elements present in marks, and the goods and services are offered, marketed and utilized in sufficiently disparate trade channels and to distinct classes of highly sophisticated consumers, such that there would be no likelihood of confusion.</p>	

Applicant has applied to register the mark MIDAS MILLIONS, for computer game programs; computer game software; slot machines, in Class 9; scratch cards for playing lottery games, in Class 28; and entertainment services, namely, providing a website featuring online gaming, and conducting live blackjack card game tournaments; entertainment services, namely, providing on-line computer betting and gaming services, in Class 41.

The cited registered mark is MIDAS MILLIONS, owned by Aristocrat Technologies, Inc., for gaming devices, namely, gaming machines and associated software for use therewith.

The goods in the cited registration are stand-alone gaming machines, as supported by the specimen of records. See Exhibit A. The registrant does not offer scratch cards for playing lottery games, nor does it provide a website featuring online gaming and conducting live blackjack card game tournaments or online computer betting and gaming services. Customers playing a stand-alone gaming machine are not likely to believe that a scratch-off lottery card, perhaps purchased at a convenience store back in his home state, is related to the gaming machine he played, for example, in Las Vegas. Accordingly, the goods and services of the Applicant and the cited registrant are distinguishable and therefore customers would not believe the goods or services originate in the same source. If the instant refusal is limited to certain classes of the application, Applicant respectfully requests that the refusal be expressly limited accordingly.

Next, the registrant's customers apparently include licensed and legal Class III gaming establishments. The registrant designs, manufactures, markets and sells gaming machines, progressive systems, and casino management systems. See Exhibit B. Applicant is a leader in its field, focusing solely on providing innovative, best-of-breed games to the betting and gambling sector. Applicant's customers include large operators, bookmakers and platform providers. See Exhibit C. Moreover, the respective goods are highly specialized, offered in highly sophisticated trade channels, and are offered at high price points. Accordingly, these factors work to mitigate any likelihood of confusion.

Accordingly, Applicant respectfully requests withdrawal of the refusal and approval of instant application for publication.

## EVIDENCE SECTION

EVIDENCE FILE NAME(S)	
<b>ORIGINAL PDF FILE</b>	<a href="#">evi_63122162138-094250217_.MIDAS_MILLIONS_-_Exhibit_A.pdf</a>
<b>CONVERTED PDF FILE(S)</b> (2 pages)	<a href="\\TICRS\EXPORT11\IMAGEOUT11\850\870\85087050\xml9\RFR0002.JPG">\\TICRS\EXPORT11\IMAGEOUT11\850\870\85087050\xml9\RFR0002.JPG</a>
	<a href="\\TICRS\EXPORT11\IMAGEOUT11\850\870\85087050\xml9\RFR0003.JPG">\\TICRS\EXPORT11\IMAGEOUT11\850\870\85087050\xml9\RFR0003.JPG</a>
<b>ORIGINAL PDF FILE</b>	<a href="#">evi_63122162138-094250217_.MIDAS_MILLIONS_-_Exhibit_B.pdf</a>
<b>CONVERTED PDF FILE(S)</b> (1 page)	<a href="\\TICRS\EXPORT11\IMAGEOUT11\850\870\85087050\xml9\RFR0004.JPG">\\TICRS\EXPORT11\IMAGEOUT11\850\870\85087050\xml9\RFR0004.JPG</a>
<b>ORIGINAL PDF FILE</b>	<a href="#">evi_63122162138-094250217_.MIDAS_MILLIONS_-_Exhibit_C.pdf</a>
<b>CONVERTED PDF FILE(S)</b> (1 page)	<a href="\\TICRS\EXPORT11\IMAGEOUT11\850\870\85087050\xml9\RFR0005.JPG">\\TICRS\EXPORT11\IMAGEOUT11\850\870\85087050\xml9\RFR0005.JPG</a>

<b>DESCRIPTION OF EVIDENCE FILE</b>	Exhibit A - Copies of registrant's specimens; Exhibit B - About Us from registrant's website; Exhibit C - About Us from applicant's website
<b>SIGNATURE SECTION</b>	
<b>RESPONSE SIGNATURE</b>	/hparksuk/
<b>SIGNATORY'S NAME</b>	Hae Park-Suk
<b>SIGNATORY'S POSITION</b>	Attorney of Record, DC
<b>SIGNATORY'S PHONE NUMBER</b>	202-408-6919
<b>DATE SIGNED</b>	12/13/2011
<b>AUTHORIZED SIGNATORY</b>	YES
<b>CONCURRENT APPEAL NOTICE FILED</b>	NO
<b>FILING INFORMATION SECTION</b>	
<b>SUBMIT DATE</b>	Tue Dec 13 14:53:50 EST 2011
<b>TEAS STAMP</b>	USPTO/RFR-63.122.162.138-20111213145350351600-85087050-490f5e7c895d8e1857e3e46c0f1218fd026-N/A-N/A-20111213094250217341

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. **85087050** has been amended as follows:

**ARGUMENT(S)**

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

Notice of Appeal

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**Discussion**

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**EVIDENCE**

Evidence in the nature of Exhibit A - Copies of registrant's specimens; Exhibit B - About Us from registrant's website; Exhibit C - About Us from applicant's website has been attached.

**Original PDF file:**

[evi\\_63122162138-094250217\\_.MIDAS\\_MILLIONS\\_-\\_Exhibit\\_A.pdf](#)

**Converted PDF file(s)** (2 pages)

[Evidence-1](#)

[Evidence-2](#)

**Original PDF file:**

[evi\\_63122162138-094250217\\_.MIDAS\\_MILLIONS\\_-\\_Exhibit\\_B.pdf](#)

**Converted PDF file(s)** (1 page)

[Evidence-1](#)

**Original PDF file:**

[evi\\_63122162138-094250217\\_.MIDAS\\_MILLIONS\\_-\\_Exhibit\\_C.pdf](#)

**Converted PDF file(s)** (1 page)

[Evidence-1](#)

**SIGNATURE(S)**

**Request for Reconsideration Signature**

Signature: /hparksuk/ Date: 12/13/2011

Signatory's Name: Hae Park-Suk

Signatory's Position: Attorney of Record, DC

Signatory's Phone Number: 202-408-6919

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 not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 85087050

Internet Transmission Date: Tue Dec 13 14:53:50 EST 2011

TEAS Stamp: USPTO/RFR-63.122.162.138-201112131453503

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f1218fd026-N/A-N/A-20111213094250217341







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ABOUT US

Ash Gaming is a leader in its field, focusing solely on providing innovative, best-of-breed games to the betting and gambling sector. Our customers are large operators, bookmakers and platform providers.

The company began life in 2002 delivering specific custom projects for customers in the early online gaming market. It has rapidly evolved delivering an extensive portfolio of products across the industry sectors in multiple languages.

Ash Gaming's fundamental approach is to deliver the highest quality gaming experience for the player whilst delivering a profitable game for our customers. Our teams achieve this using tried and tested approaches balanced with creativity and innovation, adding the magic that keeps players returning time and time again.

Quality is key and the company is structured around a strict level of quality assurance. We hold a Gambling Software License issued by the UK Gambling Commission.

Employees are our most important asset; we nurture our staff and provide a workplace that encourages ideas and innovation. As a result we enjoy an incredibly low staff turnover rate and hold the Investors in People award. Based at Southwark, London, our team of over 30 people pride themselves on delivering world-class games.

You can view our games on our YouTube channel.



FIFTH FLOOR / 61 SOUTHWARK STREET / LONDON / SE1 0HL / UK / +44 (0)207 403 8796

REGISTERED IN ENGLAND AND WALES, COMPANY No: 4070861 REGISTERED OFFICE: 5TH FLOOR, 61 SOUTHWARK STREET, LONDON, SE1 0HL



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Share price AUD \$ 2.42

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## Americas

Aristocrat Technologies, Inc., the Americas subsidiary of global gaming leader Aristocrat Leisure Limited (Australian Stock Exchange: ALL), is responsible for the Company's North America and Latin America operations from its headquarters in Las Vegas, Nevada. Aristocrat Technologies designs, manufactures, markets, and sells gaming machines, progressive systems, and casino management systems.

Aristocrat Technologies offers a diversified product line that reaches into virtually all facets of the casino floor. In addition to video and stepper (mechanical reel) slots, the Company provides the OASIS 360™ casino management system and local-area and multisite progressive (MSP) systems.

Aristocrat also offers the full line of Interblock multiplayer gaming devices. Aristocrat's customers and potential customers include licensed and legal Class III gaming establishments in North America, Latin America, and the Caribbean. Aristocrat Technologies has sales and support centers in Minneapolis, Minnesota; Gulfport, Mississippi; Atlantic City, New Jersey; and Reno, Nevada.

The reported revenue for the Americas in 2008 as \$470.4 million, down from 2007 reported revenues of \$483.6 million. The VIRIDIAN™ cabinet powered by GEN7™ was released in the US market and by the end of 2008 the installed base was nearing 6,000 units with very encouraging performance. The VIRIDIAN RFX Stepper was also introduced to the USA market in 2008 and the company is in the process of re-working many of its popular title in stepper form.

The installed base for recurring revenue units in the Americas increased to 7,785 at year end and the company has created a new Gaming Operations Division which will be responsible for maintaining and growing the recurring revenue footprint. The systems business had another record year in 2008 with its revenues growing by 35.9%. The Oasis 360™ group undertook 20 new installations around the US including 2 in Nevada. Sales of Sentinel III units remain strong and the Oasis 360 customer base is now over 250 properties.

## Latin America

Aristocrat sells and places gaming machines throughout Latin America. The Company manages sales, service, and support from its Buenos Aires, Argentina office, where Aristocrat also has a product showroom and training area.

Aristocrat's gaming machines can be found in nearly every country in Latin America in legal gaming establishments.

The Company is committed to growing its business in Latin America and will continue to add Spanish titles to its games portfolio for the region.

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