

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85179243
LAW OFFICE ASSIGNED	LAW OFFICE 114
MARK SECTION (no change)	
ARGUMENT(S)	
<u>Response to Refusal:</u>	
<u>Refusal – Section 2(a): False Connection</u>	
<p>The Examining Attorney has now refused registration under Section 2(a) of the Lanham Act, stating that the applied-for mark consists of or includes matter which may falsely suggest a connection with Catherine, Duchess of Cambridge. Applicant respectfully requests that the Examining Attorney withdraw the refusal because Applicant's mark does not satisfy the test to determine a false association.</p> <p>As the Office Action indicated, for a showing of false connection under Trademark Act Section 2(a), all factors of the current four-part test to determine the existence of a false connection must be satisfied. <i>In re Peter S. Herrick, P.A.</i>, 91 USPQ2d 1505, 1507 (TTAB 2009); <i>In re MC MC S.r.l.</i>, 88 USPQ2d 1378, 1379 (TTAB 2008); TMEP §1203.03(e); <i>see also Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imps. Co.</i>, 703 F.2d 1372, 1375-77, 217 USPQ 505,508-10 (Fed. Cir. 1983) (providing foundational principles for the current four-part test determine the existence of a false connection). Here, there is no evidence to support the assertion that Applicant's mark is creating a false connection with Catherine, the Duchess of Cambridge, and as the mark does not satisfy the test.</p> <p>Unless one of the prongs clearly fails, courts analyze each prong individually to discover if the mark fails the close approximation test.</p> <p><u>i. The mark sought to be registered is the same as, or a close approximation of, the name or identity previously used by another person or institution.</u></p> <p>The office action draws a comparison between the public perception of a connection between the PRINCESS KATE and Kate Middleton with the public perception of a connection between Jimmy Buffett and "Margaritaville," a song title for which he is associated with. They argue that if goods and services using the name Margaritaville can be associated with Jimmy Buffett, it is even more likely that goods and services under the name PRINCESS KATE would be associated with Middleton. This argument relates to the second prong of the four prong test, but the first prong has yet to be proven. All four prongs must be met to satisfy a false connection under section 2(a) of the Trademark Act.</p> <p>When analyzing the first prong, whether or not public perception ties a product to a specific person is irrelevant. Jimmy Buffett did not satisfy this prong because of the public perception of a connection between himself and Margaritaville. He satisfied this prong because he had attempted to commercially license the mark in the past. The court concluded that there was "evidence of licensing agreements held</p>	

by Jimmy Buffett for the name "J.B.'s MARGARITAVILLE" for a restaurant, and for the sale of clothing, and various advertisements and depictions of the clothing bearing the term "MARGARITAVILLE".” *Buffett v. Chi-Chi’s, Inc.*, 226 USPQ 428 (TTAB 1985)

There is no factual evidence that Kate Middleton had ever “used” PRINCESS KATE or any similar mark in a commercial context, and the Office Action admits that Kate Middleton’s official title is “Duchess of Cambridge”. Moreover, whether or not the court in Buffett would have come to the same conclusion without the direct evidence of previous commercial licensing would be pure speculation. Although the court acknowledged the relationship between a trademark and public perception, it did not say that a trademark application can fail section 2(a) based on public perception alone. That would defeat the purpose of the first prong of the test, which requires a previous use of a mark. Again, PRINCESS KATE is not a name used by Kate Middleton.

Because Middleton never used PRINCESS KATE, in order to satisfy the first prong of the test, the mark would need to be a “close approximation” of a name or identity used by her. It is not. Unlike a disparagement motion, which requires the mark be “reasonably understood as referring to” the identity of the opposing party, a “close approximation” test “is a more stringent one, requiring a greater degree of similarity between the two designations.” *Boston Red Sox Baseball Club Ltd. P’ship v. Sherman*, 88 U.S.P.Q.2d 1581, 1593 (TTAB 2008). In other words, a standard higher than whether or not a reasonable person would connect PRINCESS KATE to Kate Middleton must be met. Although PRINCESS KATE may be reasonably understood as referring to Kate Middleton, Duchess of Cambridge, it is not a close approximation of her name because Kate Middleton is not a princess.

When analyzing whether or not a trademark is the same or a close approximation, courts also look into the meaning of the words within the mark. Here, the court did not consider whether the public would perceive MOHAWK to be connected to the St. Regis Band. *In re White*, 80 U.S.P.Q.2d 1654, 1658-59, (TTAB 2006). Instead, they used a dictionary to prove that MOHAWK is historically associated with the Mohawk tribe. The meaning of Princess is not the same as the meaning of Duchess. Moreover, the other definitions of princess are not exclusive enough to point directly to Middleton, nor do they connote a close approximation of her identity.

Even if the dictionary definition of Princess is sufficient to link Middleton to PRINCESS KATE, *Mohawk* is still distinguishable from this action because MOHAWK is a unique part of the name of the designation for the federally recognized St. Regis Band of Mohawk Indians of New York. “Princess” and “Kate” are too common to be a close approximation of Kate Middleton, especially in the way of which the applicant plans to use the mark. The use of the term “princess” will connote to consumers that the Applicant’s goods are select and of a high quality. The applied-for mark is merely fanciful due to the fact that it is not a “coined” term in the United States, as this country has no royal family. In addition, the mark PRINCESS KATE is arbitrary in that it is used in connection with products unrelated to its meaning. Here, the applied-for mark is used in connection with luxury items and home goods, items not specifically or exclusively associated with the term “Princess Kate”. As a result, this phrase is not a descriptive phrase, but a concocted one, deserving of registration.

All factors of the current four-part test to determine the existence of a false connection must be satisfied. PRINCESS KATE is not the same as, or a close approximation of, the name or identity previously used by Catherine, Duchess of Cambridge ever herself.

Even if the general public associates PRINCESS KATE with Middleton, the first prong is still not met.

ii. The mark would be recognized as such, in that it points uniquely and unmistakably to that person or institution.

As stated above, the Applicant’s mark, PRINCESS KATE, is not the same or a close approximation of the name of a person or institution. As such, the Applicant’s mark does not point uniquely and unmistakably to Catherine, Duchess of Cambridge.

The Office Action cites several articles from both Google searches and the Nexus database as evidence

that Catherine, Duchess of Cambridge is well-known throughout the world as “PRINCESS KATE”. Applicant neither acknowledges nor denies the fame of Catherine, Duchess of Cambridge, but respectfully submits that the articles and search results referenced in the Office Action are of an unverified nature and must therefore be deemed immaterial and irrelevant.

“Articles downloaded from the Internet are admissible as evidence of information available to the general public. However, the weight given to this evidence must be carefully evaluated, because the source may be unknown.” TMEP §710.01(b); *See In re Total Quality Group Inc.*, 51 USPQ2d 1474, 1475-76 (TTAB 1999); *Raccioppi v. Apogee Inc.*, 47 USPQ2d 1368, 1370-71 (TTAB 1998). Moreover, one must be careful when evaluating the results of a Google search. “Search engine results--which provide little context to discern how a term is actually used on the webpage that can be accessed through the search result link--may be insufficient to determine the nature of the use of a term or the relevance of the search results to registration considerations.” *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 967 (Fed. Cir. 2007). The office action references the number of hits that result when searching the phrase PRINCESS KATE using the Google search engine. However, many of those results are false positives. For example, punctuation marks such as colons and commas appear between the words PRINCESS and KATE in various results, such as “What’s it like to be a princess, Kate” and “The New Princess: Kate Middleton’s Fashion Evolution.” Although the Office Action does provide full web pages that arose from the Google search, they do not show that Kate Middleton is publicly perceived at PRINCESS KATE, and although a few results do refer to Middleton as PRINCESS KATE, they are not frequent enough to meet the burden of “unique and unmistakable.”

The office action’s claim that Kate Middleton’s public perception is that of a princess is dubious. As stated previously, Kate Middleton is not a princess. Additionally, many of them, if taken as relevant for any reason, favor applicant’s mark as the Google search found the mark PRINCESS KATE but these articles supported the position and explain that she was never and will not know be known as PRINCESS KATE. Although the examiner found the words PRINCESS KATE in a search query, the content of the captions and articles clearly state that Catherine is not nor will ever be known as a Princess.

Applicant does not dispute the importance of public perception when analyzing a trademark request. However, using news articles to decipher whether or not the public perceives Catherine Middleton as PRINCESS KATE does not yield conclusive results. The Office Action infers that the American media acknowledges that Kate Middleton is commonly referred to as PRINCESS KATE. It cites an article from an ABC News broadcast, claiming that PRINCESS KATE is Middleton’s “handle and she wears it well.” While this is one person’s opinion, ABC News also recently aired a segment explaining that Middleton must curtsy to “blood princesses” when not in the company of Prince William. These actual princesses are “the Princess Royal, Princess Alexandra, and the daughters of the Duke of York, Princesses Beatrice and Eugenie.” Here, ABC re-enforces the notion that Middleton is not a princess and should not be perceived as such.

iii. The person or institution identified in the mark is not connected with the goods sold or services performed by applicant under the mark.

Applicant does not dispute that Catherine, Duchess of Cambridge, is not connected with the goods sold by Applicant under the mark. Applicant does, however, maintain that the mark is not a reference to nor does it have any connection with such person.

iv. The fame or reputation of the named person or institution is of such a nature that a connection with such person or institution would be presumed when applicant’s mark is used on its goods and/or services.

Applicant does not dispute that Catherine, Duchess of Cambridge, is a well-known figure, stemming from her well-publicized relationship with Prince William and her subsequent wedding. However, there is no evidence to support the assertion that a connection with Catherine would be presumed when Applicant’s mark is on the goods. The Office Action suggested that due to the media coverage of Catherine and William’s lives and the repeated comments about her style and wardrobe, use of Applicant’s mark in connection with makeup, luxury and home goods, and the like would create an association with Catherine. Applicant respectfully submits that the evidence submitted in support of this

assertion is immaterial.

As stated above, the Internet articles cited in the Office Action are of an unreliable and unverifiable nature, and as such, should be given limited probative value. In addition, while the Duchess of Cambridge is well-known, there is no evidence of a presumptive connection between Catherine and the specific goods upon which the Applicant's mark will be used. Simply because Catherine is believed to have style and good taste does not mean that she is publicly perceived to be involved in the industry at all. While this may occur in the future, it was not the case upon filing of Applicant's application.

*If applicant's goods and/or services are of a type that the **named person or institution sells or uses**, and the named party is sufficiently famous, then it may be inferred that purchasers of the goods and/or services would be misled into making a false connection of sponsorship, approval, support or the like with the named party. In re Cotter & Co., 228 USPQ 202 (TTAB 1985); In re Nat'l Intelligence Acad., 190 USPQ 570 (TTAB 1976).*

In *Hornby v. TJX Companies, Inc.*, 87 USPQ2d 1411 (TTAB 2008), the Board found a definite connection between Twiggy's career as a model and clothing line designer and the goods containing the Applicant's mark. The Board determined that as a result of her long and successful modeling career as well as her other promotional activities, Twiggy had increased her celebrity to the point that purchasers of her children's clothing line would assume an association with her. Here, there is no obvious connection between the Duchess of Cambridge and the goods listed in the application for registration. The Duchess of Cambridge does not have her own clothing line, nor does she promote or advertise for any such product. Again, while a clothing line or some other association with fashion may be forthcoming for the Duchess of Cambridge, she is not as of yet involved in the industry. She merely wears clothing and makeup. Therefore, there is no evidence that consumers will presume a connection when Applicant's mark is affixed to the goods.

The applicant does not dispute that Kate Middleton has attended fashion shows, but nowhere has examiner shown or proven that Catherine has ever endorsed any particular style or brand, nor claim that she is connected to the lifestyle branding business in any way. Examiner simply tries to show that a third party recognizing something Catherine has on herself places her in the fashion business. The examiner simply has not presented any proof that Catherine is even perceived as endorsing any goods. Although Kate Middleton's clothing choices are critiqued, this does not necessarily mean that the public expects her to endorse the kind of clothing she wears. The examiner is making the argument that everything that Catherine wears or uses (all goods) is perceived to be directly connected and affiliated with her and she is perceived to be the source. However, the examiner has not shown any evidence of this.

It is true that a false connection can be inferred if an applicant uses a mark in a way that misleads the public into thinking the goods and/or services "are of a type that the named person or institution sells or uses," But, as stated above, Kate Middleton does not or has ever used the name PRINCESS KATE, nor has she ever sold anything under that name, and as stated above, she merely wears clothing and make-up.

The applicant's use of the mark will not Spike Lee applied for a preliminary injunction to stop Viacom from changing the name of TNN to Spike TV, claiming that a channel named "Spike" TV would cause the public to perceive that there is a false connection. *Lee v. Viacom Inc.*, INDEX110080/2003MTNS, 2003 WL 22319071 (N.Y. Sup. Ct. June 12, 2003). The injunction was granted because Lee was able to provide an expert witness with "expertise in the evaluation of consumer perception of advertising marketing and other forms of mass communications" whose affidavit stated that "if an impartial survey were conducted in New York and similar urban center cities, a substantial portion of black men and women aged 18-45, and also a substantial, though smaller, proportion of young white professionals would infer from Viacom press releases that Spike Lee was associated with Spike TV. I believe that irreverent, hip, aggressive and brash are words which will associate Spike Lee with Spike TV." Here, the court did not grant the injunction because Spike Lee is a famous entertainer whose name just happens to be the same as Spike TV. The court granted the injunction because Viacom's press release allegedly creates connotations between Lee's aggressive personality and the channel's new format. *Id.*, at 4. Moreover, the holding focuses on the use of "spike" in the film and television industry, of which Spike Lee is a part of. Although Kate Middleton has been to fashion shows, she is not a part of the fashion industry. The applicant wishes to use PRINCESS KATE in a field unrelated to the Duchess of

Cambridge using a definition of “princess” that connotes elegance and class, as stated above. It is also important to know that although an injunction was granted, the court was never able to decide if Spike Lee could receive a judgment because the case was settled; therefore, it is unknown if the amount of evidence Lee accrued was sufficient to prove a false connection.

Also, the applicant does not dispute the office action’s claim that Kate Middleton’s fame is not temporary. However, unlike Twiggy, she is not involved in the fashion industry, and there is no evidence that the public would perceive such a connection because she does not endorse any products.

Conclusion

As demonstrated above, there is no evidence that the public will assume Applicant’s goods bearing the mark PRINCESS KATE have a connection with the Duchess of Cambridge, Catherine.

Refusal – Section 2(c): Particular Living Individual

The Examining Attorney refused registration on an additional ground that the Applicant’s mark consists of or includes a name, portrait, or signature identifying a particular living individual whose written consent to register the mark is not of record. Trademark Act Section 2(c), 15 U.S.C. §1052(c); TMEP §1206; see, e.g., *In re Hoefflin*, 97 U.S.P.Q.2d 1174 (TTAB 2010). Applicant respectfully requests that the Examining Attorney withdraw the refusal because the Applicant’s mark does not identify a particular living individual.

For a Section 2(c) refusal, a name in a mark identifies a particular living individual if the person bearing the name will be associated with the mark as used on the goods or services because he or she (1) is “so well-known that the public would reasonably assume a connection” or (2) is “publicly connected with the business in which the mark is being used.” *In re Hoefflin*, 97 USPQ2d 1174, 1175-76 (TTAB 2010); see also *Krause v. Krause Publ’ns, Inc.*, 76 USPQ2d 1904, 1909-10 (TTAB 2005); *In re Sauer*, 27 USPQ2d 1073, 1075 (TTAB 1994). Based on the evidence presented above regarding false connection, the Duchess of Cambridge is a well-known figure, but consumers would not reasonably assume a connection between her and the goods at issue. In addition, as stated above, the Duchess of Cambridge was, at the time of the application’s filing, not publicly connected with the business of clothing, makeup, home goods and the like. She is believed to have style and good taste as a result of her celebrity status, but does not have any association with the industry in which Applicant’s mark is used. As a result, the mark PRINCESS KATE does not identify any particular living individual.

Cases cited by the Office Action with respect to this ground for refusal can be distinguished from the matter at hand. First, the Board in *In re Hoefflin*, 97 USPQ2d 1174, 1177-78 (TTAB 2010), held that registration of the marks OBAMA PAJAMA, OBAMA BAHAMA PAJAMAS, and BARACK’S JOCKS DRESS TO THE LEFT were barred because they created a direct association with President Obama. The name “Barack Obama” is not a common name, neither individually nor as one term. Here, the name “Kate” is significantly popular, listed as #93 on the babycenter list of 100 most popular baby names of 2011 and #209 on the Social Security Association’s list of popular baby names in 2010. While the existence of others with the same name does not alter the requirement for a written consent, See *In re Steak & Ale Rests. of Am., Inc.*, 185 USPQ 447, 447-48 (TTAB 1975), Kate is generally a very popular name. In addition, “PRINCESS KATE” is not her given or adopted name, thus the use of the name “Kate” in the mark does not automatically draw an association to Catherine, Duchess of Cambridge. In fact, the point has been made – over and over – that Catherine is not a princess.

The Board in *In re Sauer*, 27 USPQ2d 1073, 1074-75 (TTAB 1993) held that the registration of a mark containing the term BO, used in connection with a sports ball, was barred because the ball was associated with a well-known athlete by the name Bo. The connection between Bo Jackson, the world-famous athlete, and the ball was specific and well-established. Bo Jackson was and is recognized for being a talented athlete on both the football field and the baseball diamond, while the ball itself was shaped like a football but contained baseball stitches. As a result, Bo Jackson’s use of a ball throughout his career created a connection with the mark BO in referencing the ball. Here, Catherine is a Duchess of Cambridge. In her capacity as Duchess, clothing, fashion, makeup, etc. are not inherently connected with her position and thus will not create an association.

Finally, the Board in *In re Steak & Ale* cited above affirmed a refusal of the mark PRINCE CHARLES before the wording identifies a particular well-known living individual whose consent was not of record. In that case, Prince Charles is the actual name of the living person. Here, PRINCESS KATE is neither the official nor adopted name of Catherine, Duchess of Cambridge.

Further support for the registration of Applicant’s mark lies, for example, in the recent publication of the mark PRINCESS ANNE, in connection with candy, as well as the registration of HRH PRINCESS ELIZABETH, in connection with perfume, skin cream, skin lotion and toners. For the mark, PRINCESS ANNE, while it is claimed that such mark does not identify any living individual, the British royal family does include “Anne, Princess Royal”. Similarly, the British royal family, for many years, included “Princess Elizabeth” as one of its members, as Queen Elizabeth II was a princess prior to her coronation. In the same way, “Catherine, Duchess of Cambridge” is a member of the British royal family. In both instances, the mark deemed to be associated with the particular, living individual is neither the exact nor the adopted name of that individual. As PRINCESS ANNE was approved for publication and HRH PRINCESS ELIZABETH was registered, so too should PRINCESS KATE be approved for publication.

Conclusion

As demonstrated, there is no evidence that the Applicant’s mark PRINCESS KATE identifies a particular living individual.

*Any Exhibits submitted in support of this response are hereby incorporated herein by this reference

EVIDENCE SECTION

EVIDENCE FILE NAME(S)	
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CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT16\IMAGEOUT16\851\792\85179243\xml3\RFR0031.JPG
DESCRIPTION OF EVIDENCE FILE	Evidence attached documents - which are all part of the refusal response herein 1) attachment one is our refusal response 2) The next seven attachments labeled exhibits 5 through 10 are all samples of what public perception really is and what types of things are also included in the goggle searches examiner is talking about - another words The Duchess of Cambridge is not a "Princess", not named one, and does not call herself one, and there is no evidence that Applicant's mark identifies a particular living person. 3) Attachments 9 and 10 which are labeled exhibits 14 and 15 are proof of Kate being such a popular name. 4) Attachment 11 is proof of Princess Anne Mark as described in our argument. Labeled exhibit 16 in title. 5) Attachment 12 is proof of Princess Elizabeth Mark as described in our argument. Labeled exhibit 17 in title.
ADDITIONAL STATEMENTS SECTION	
	Refusal - Section 2(a): False Connection The Examining Attorney has now refused registration under Section 2(a) of the Lanham Act, stating that the applied-for mark consists of or includes matter which may falsely suggest a connection with Catherine, Duchess of Cambridge. Applicant respectfully requests that the Examining Attorney withdraw the refusal because Applicant's mark does not satisfy the test to determine a false association. As the Office Action indicated, for a showing of false connection under Trademark Act Section 2(a), all factors of the current four-part test to determine the existence of a false connection must be satisfied. In re Peter S. Herrick, P.A., 91 USPQ2d 1505, 1507 (TTAB 2009); In re MC MC S.r.l., 88 USPQ2d 1378, 1379 (TTAB 2008); TMEP §1203.03(e); see also Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imps. Co., 703 F.2d 1372, 1375-77, 217 USPQ 505,508-10 (Fed. Cir. 1983) (providing foundational principles for the current four-part test determine the existence of a false connection). Here, there is no evidence to support the assertion that Applicant's mark is creating a false connection with Catherine, the Duchess of Cambridge, and as the mark does not satisfy the test. Unless one of the prongs clearly fails, courts analyze each prong individually to discover if the mark fails the close approximation test. i. The mark sought to be registered is the same as, or a close approximation of, the name or identity previously used by another person or institution. The office action draws a comparison between the public

perception of a connection between the PRINCESS KATE and Kate Middleton with the public perception of a connection between Jimmy Buffett and "Margaritaville," a song title for which he is associated with. They argue that if goods and services using the name Margaritaville can be associated with Jimmy Buffett, it is even more likely that goods and services under the name PRINCESS KATE would be associated with Middleton. This argument relates to the second prong of the four prong test, but the first prong has yet to be proven. All four prongs must be met to satisfy a false connection under section 2(a) of the Trademark Act. When analyzing the first prong, whether or not public perception ties a product to a specific person is irrelevant. Jimmy Buffett did not satisfy this prong because of the public perception of a connection between himself and Margaritaville. He satisfied this prong because he had attempted to commercially license the mark in the past. The court concluded that there was "evidence of licensing agreements held by Jimmy Buffett for the name "J.B.'s MARGARITAVILLE" for a restaurant, and for the sale of clothing, and various advertisements and depictions of the clothing bearing the term "MARGARITAVILLE"." Buffett v. Chi-Chi's, Inc., 226 USPQ 428 (TTAB 1985) There is no factual evidence that Kate Middleton had ever "used" PRINCESS KATE or any similar mark in a commercial context, and the Office Action admits that Kate Middleton's official title is "Duchess of Cambridge". Moreover, whether or not the court in Buffett would have come to the same conclusion without the direct evidence of previous commercial licensing would be pure speculation. Although the court acknowledged the relationship between a trademark and public perception, it did not say that a trademark application can fail section 2(a) based on public perception alone. That would defeat the purpose of the first prong of the test, which requires a previous use of a mark. Again, PRINCESS KATE is not a name used by Kate Middleton. Because Middleton never used PRINCESS KATE, in order to satisfy the first prong of the test, the mark would need to be a "close approximation" of a name or identity used by her. It is not. Unlike a disparagement motion, which requires the mark be "reasonably understood as referring to" the identity of the opposing party, a "close approximation" test "is a more stringent one, requiring a greater degree of similarity between the two designations." Boston Red Sox Baseball Club Ltd. P'ship v. Sherman, 88 U.S.P.Q.2d 1581, 1593 (TTAB 2008). In other words, a standard higher than whether or not a reasonable person would connect PRINCESS KATE to Kate Middleton must be met. Although PRINCESS KATE may be reasonably understood as referring to Kate Middleton, Duchess of Cambridge, it is not a close approximation of her name because Kate Middleton is not a princess. When analyzing whether or not a trademark is the same or a close approximation, courts also look into the meaning of the words within the mark. Here, the court did not consider whether the public would perceive MOHAWK to be connected to the St. Regis Band. In re White, 80 U.S.P.Q.2d 1654, 1658-59, (TTAB 2006). Instead, they used a dictionary to prove that MOHAWK is historically associated with the Mohawk tribe. The meaning of Princess is not the same as the meaning of Duchess. Moreover, the other definitions of princess are not exclusive enough to point directly to Middleton, nor do they connote a close approximation of her identity. Even if the dictionary definition of Princess is sufficient to link Middleton to PRINCESS KATE, Mohawk is still

distinguishable from this action because MOHAWK is a unique part of the name of the designation for the federally recognized St. Regis Band of Mohawk Indians of New York. "Princess" and "Kate" are too common to be a close approximation of Kate Middleton, especially in the way of which the applicant plans to use the mark. The use of the term "princess" will connote to consumers that the Applicant's goods are select and of a high quality. The applied-for mark is merely fanciful due to the fact that it is not a "coined" term in the United States, as this country has no royal family. In addition, the mark PRINCESS KATE is arbitrary in that it is used in connection with products unrelated to its meaning. Here, the applied-for mark is used in connection with luxury items and home goods, items not specifically or exclusively associated with the term "Princess Kate". As a result, this phrase is not a descriptive phrase, but a concocted one, deserving of registration. All factors of the current four-part test to determine the existence of a false connection must be satisfied. PRINCESS KATE is not the same as, or a close approximation of, the name or identity previously used by Catherine, Duchess of Cambridge ever herself. Even if the general public associates PRINCESS KATE with Middleton, the first prong is still not met. ii. The mark would be recognized as such, in that it points uniquely and unmistakably to that person or institution. As stated above, the Applicant's mark, PRINCESS KATE, is not the same or a close approximation of the name of a person or institution. As such, the Applicant's mark does not point uniquely and unmistakably to Catherine, Duchess of Cambridge. The Office Action cites several articles from both Google searches and the Nexus database as evidence that Catherine, Duchess of Cambridge is well-known throughout the world as "PRINCESS KATE". Applicant neither acknowledges nor denies the fame of Catherine, Duchess of Cambridge, but respectfully submits that the articles and search results referenced in the Office Action are of an unverified nature and must therefore be deemed immaterial and irrelevant. "Articles downloaded from the Internet are admissible as evidence of information available to the general public. However, the weight given to this evidence must be carefully evaluated, because the source may be unknown." TMEP §710.01(b); See *In re Total Quality Group Inc.*, 51 USPQ2d 1474, 1475-76 (TTAB 1999); *Raccioppi v. Apogee Inc.*, 47 USPQ2d 1368, 1370-71 (TTAB 1998). Moreover, one must be careful when evaluating the results of a Google search. "Search engine results--which provide little context to discern how a term is actually used on the webpage that can be accessed through the search result link--may be insufficient to determine the nature of the use of a term or the relevance of the search results to registration considerations." *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 967 (Fed. Cir. 2007). The office action references the number of hits that result when searching the phrase PRINCESS KATE using the Google search engine. However, many of those results are false positives. For example, punctuation marks such as colons and commas appear between the words PRINCESS and KATE in various results, such as "'What's it like to be a princess, Kate" and "The New Princess: Kate Middleton's Fashion Evolution." Although the Office Action does provide full web pages that arose from the Google search, they do not show that Kate Middleton is publicly perceived at PRINCESS KATE, and although a few results do refer to Middleton as PRINCESS KATE, they are not frequent

**MISCELLANEOUS
STATEMENT**

enough to meet the burden of "unique and unmistakable." The office action's claim that Kate Middleton's public perception is that of a princess is dubious. As stated previously, Kate Middleton is not a princess. Additionally, many of them, if taken as relevant for any reason, favor applicant's mark as the Google search found the mark PRINCESS KATE but these articles supported the position and explain that she was never and will not know be known as PRINCESS KATE. Although the examiner found the words PRINCESS KATE in a search query, the content of the captions and articles clearly state that Catherine is not nor will ever be known as a Princess. Applicant does not dispute the importance of public perception when analyzing a trademark request. However, using news articles to decipher whether or not the public perceives Catherine Middleton as PRINCESS KATE does not yield conclusive results. The Office Action infers that the American media acknowledges that Kate Middleton is commonly referred to as PRINCESS KATE. It cites an article from an ABC News broadcast, claiming that PRINCESS KATE is Middleton's "handle and she wears it well." While this is one person's opinion, ABC News also recently aired a segment explaining that Middleton must curtsy to "blood princesses" when not in the company of Prince William. These actual princesses are "the Princess Royal, Princess Alexandra, and the daughters of the Duke of York, Princesses Beatrice and Eugenie." Here, ABC re-enforces the notion that Middleton is not a princess and should not be perceived as such. iii. The person or institution identified in the mark is not connected with the goods sold or services performed by applicant under the mark. Applicant does not dispute that Catherine, Duchess of Cambridge, is not connected with the goods sold by Applicant under the mark. Applicant does, however, maintain that the mark is not a reference to nor does it have any connection with such person. iv. The fame or reputation of the named person or institution is of such a nature that a connection with such person or institution would be presumed when applicant's mark is used on its goods and/or services. Applicant does not dispute that Catherine, Duchess of Cambridge, is a well-known figure, stemming from her well-publicized relationship with Prince William and her subsequent wedding. However, there is no evidence to support the assertion that a connection with Catherine would be presumed when Applicant's mark is on the goods. The Office Action suggested that due to the media coverage of Catherine and William's lives and the repeated comments about her style and wardrobe, use of Applicant's mark in connection with makeup, luxury and home goods, and the like would create an association with Catherine. Applicant respectfully submits that the evidence submitted in support of this assertion is immaterial. As stated above, the Internet articles cited in the Office Action are of an unreliable and unverifiable nature, and as such, should be given limited probative value. In addition, while the Duchess of Cambridge is well-known, there is no evidence of a presumptive connection between Catherine and the specific goods upon which the Applicant's mark will be used. Simply because Catherine is believed to have style and good taste does not mean that she is publicly perceived to be involved in the industry at all. While this may occur in the future, it was not the case upon filing of Applicant's application. If applicant's goods and/or services are of a type that the named person or institution sells or uses, and the named party is sufficiently famous, then it may be inferred that purchasers of the goods and/or services would be misled

into making a false connection of sponsorship, approval, support or the like with the named party. In re Cotter & Co., 228 USPQ 202 (TTAB 1985); In re Nat'l Intelligence Acad., 190 USPQ 570 (TTAB 1976). In Hornby v. TJX Companies, Inc., 87 USPQ2d 1411 (TTAB 2008), the Board found a definite connection between Twiggy's career as a model and clothing line designer and the goods containing the Applicant's mark. The Board determined that as a result of her long and successful modeling career as well as her other promotional activities, Twiggy had increased her celebrity to the point that purchasers of her children's clothing line would assume an association with her. Here, there is no obvious connection between the Duchess of Cambridge and the goods listed in the application for registration. The Duchess of Cambridge does not have her own clothing line, nor does she promote or advertise for any such product. Again, while a clothing line or some other association with fashion may be forthcoming for the Duchess of Cambridge, she is not as of yet involved in the industry. She merely wears clothing and makeup. Therefore, there is no evidence that consumers will presume a connection when Applicant's mark is affixed to the goods. The applicant does not dispute that Kate Middleton has attended fashion shows, but nowhere has examiner shown or proven that Catherine has ever endorsed any particular style or brand, nor claim that she is connected to the lifestyle branding business in any way. Examiner simply tries to show that a third party recognizing something Catherine has on herself places her in the fashion business. The examiner simply has not presented any proof that Catherine is even perceived as endorsing any goods. Although Kate Middleton's clothing choices are critiqued, this does not necessarily mean that the public expects her to endorse the kind of clothing she wears. The examiner is making the argument that everything that Catherine wears or uses (all goods) is perceived to be directly connected and affiliated with her and she is perceived to be the source. However, the examiner has not shown any evidence of this. It is true that a false connection can be inferred if an applicant uses a mark in a way that misleads the public into thinking the goods and/or services "are of a type that the named person or institution sells or uses," But, as stated above, Kate Middleton does not or has ever used the name PRINCESS KATE, nor has she ever sold anything under that name, and as stated above, she merely wears clothing and make-up. The applicant's use of the mark will not Spike Lee applied for a preliminary injunction to stop Viacom from changing the name of TNN to Spike TV, claiming that a channel named "Spike" TV would cause the public to perceive that there is a false connection. Lee v. Viacom Inc., INDEX110080/2003MTNS, 2003 WL 22319071 (N.Y. Sup. Ct. June 12, 2003). The injunction was granted because Lee was able to provide an expert witness with "expertise in the evaluation of consumer perception of advertising marketing and other forms of mass communications" whose affidavit stated that "if an impartial survey were conducted in New York and similar urban center cities, a substantial portion of black men and women aged 18-45, and also a substantial, though smaller, proportion of young white professionals would infer from Viacom press releases that Spike Lee was associated with Spike TV. I believe that irreverent, hip, aggressive and brash are words which will associate Spike Lee with Spike TV." Here, the court did not grant the injunction because Spike Lee is a famous entertainer whose

name just happens to be the same as Spike TV. The court granted the injunction because Viacom's press release allegedly creates connotations between Lee's aggressive personality and the channel's new format. *Id.*, at 4. Moreover, the holding focuses on the use of "spike" in the film and television industry, of which Spike Lee is a part of. Although Kate Middleton has been to fashion shows, she is not a part of the fashion industry. The applicant wishes to use PRINCESS KATE in a field unrelated to the Duchess of Cambridge using a definition of "princess" that connotes elegance and class, as stated above. It is also important to know that although an injunction was granted, the court was never able to decide if Spike Lee could receive a judgment because the case was settled; therefore, it is unknown if the amount of evidence Lee accrued was sufficient to prove a false connection. Also, the applicant does not dispute the office action's claim that Kate Middleton's fame is not temporary. However, unlike Twiggy, she is not involved in the fashion industry, and there is no evidence that the public would perceive such a connection because she does not endorse any products. Conclusion As demonstrated above, there is no evidence that the public will assume Applicant's goods bearing the mark PRINCESS KATE have a connection with the Duchess of Cambridge, Catherine. Refusal - Section 2(c): Particular Living Individual The Examining Attorney refused registration on an additional ground that the Applicant's mark consists of or includes a name, portrait, or signature identifying a particular living individual whose written consent to register the mark is not of record. Trademark Act Section 2(c), 15 U.S.C. §1052(c); TMEP §1206; see, e.g., *In re Hoefflin*, 97 U.S.P.Q.2d 1174 (TTAB 2010). Applicant respectfully requests that the Examining Attorney withdraw the refusal because the Applicant's mark does not identify a particular living individual. For a Section 2(c) refusal, a name in a mark identifies a particular living individual if the person bearing the name will be associated with the mark as used on the goods or services because he or she (1) is "so well-known that the public would reasonably assume a connection" or (2) is "publicly connected with the business in which the mark is being used." *In re Hoefflin*, 97 USPQ2d 1174, 1175-76 (TTAB 2010); see also *Krause v. Krause Publ'ns, Inc.*, 76 USPQ2d 1904, 1909-10 (TTAB 2005); *In re Sauer*, 27 USPQ2d 1073, 1075 (TTAB 1994). Based on the evidence presented above regarding false connection, the Duchess of Cambridge is a well-known figure, but consumers would not reasonably assume a connection between her and the goods at issue. In addition, as stated above, the Duchess of Cambridge was, at the time of the application's filing, not publicly connected with the business of clothing, makeup, home goods and the like. She is believed to have style and good taste as a result of her celebrity status, but does not have any association with the industry in which Applicant's mark is used. As a result, the mark PRINCESS KATE does not identify any particular living individual. Cases cited by the Office Action with respect to this ground for refusal can be distinguished from the matter at hand. First, the Board in *In re Hoefflin*, 97 USPQ2d 1174, 1177-78 (TTAB 2010), held that registration of the marks OBAMA PAJAMA, OBAMA BAHAMA PAJAMAS, and BARACK'S JOCKS DRESS TO THE LEFT were barred because they created a direct association with President Obama. The name "Barack Obama" is not a common name, neither individually nor as one term. Here, the name "Kate" is significantly popular, listed as #93 on the babycenter

list of 100 most popular baby names of 2011 and #209 on the Social Security Association's list of popular baby names in 2010. While the existence of others with the same name does not alter the requirement for a written consent, See *In re Steak & Ale Rests. of Am., Inc.*, 185 USPQ 447, 447-48 (TTAB 1975), Kate is generally a very popular name. In addition, "PRINCESS KATE" is not her given or adopted name, thus the use of the name "Kate" in the mark does not automatically draw an association to Catherine, Duchess of Cambridge. In fact, the point has been made - over and over - that Catherine is not a princess. The Board in *In re Sauer*, 27 USPQ2d 1073, 1074-75 (TTAB 1993) held that the registration of a mark containing the term BO, used in connection with a sports ball, was barred because the ball was associated with a well-known athlete by the name Bo. The connection between Bo Jackson, the world-famous athlete, and the ball was specific and well-established. Bo Jackson was and is recognized for being a talented athlete on both the football field and the baseball diamond, while the ball itself was shaped like a football but contained baseball stitches. As a result, Bo Jackson's use of a ball throughout his career created a connection with the mark BO in referencing the ball. Here, Catherine is a Duchess of Cambridge. In her capacity as Duchess, clothing, fashion, makeup, etc. are not inherently connected with her position and thus will not create an association. Finally, the Board in *In re Steak & Ale* cited above affirmed a refusal of the mark PRINCE CHARLES before the wording identifies a particular well-known living individual whose consent was not of record. In that case, Prince Charles is the actual name of the living person. Here, PRINCESS KATE is neither the official nor adopted name of Catherine, Duchess of Cambridge. Further support for the registration of Applicant's mark lies, for example, in the recent publication of the mark PRINCESS ANNE, in connection with candy, as well as the registration of HRH PRINCESS ELIZABETH, in connection with perfume, skin cream, skin lotion and toners. For the mark, PRINCESS ANNE, while it is claimed that such mark does not identify any living individual, the British royal family does include "Anne, Princess Royal". Similarly, the British royal family, for many years, included "Princess Elizabeth" as one of its members, as Queen Elizabeth II was a princess prior to her coronation. In the same way, "Catherine, Duchess of Cambridge" is a member of the British royal family. In both instances, the mark deemed to be associated with the particular, living individual is neither the exact nor the adopted name of that individual. As PRINCESS ANNE was approved for publication and HRH PRINCESS ELIZABETH was registered, so too should PRINCESS KATE be approved for publication. Conclusion As demonstrated, there is no evidence that the Applicant's mark PRINCESS KATE identifies a particular living individual. *Any Exhibits submitted in support of this response are hereby incorporated herein by this reference Exhibits attached to our response herein are: Evidence attached documents - which are all part of the refusal response herein 1) attachment one is our refusal response 2) The next seven attachments labeled exhibits 5 through 10 are all samples of what public perception really is and what types of things are also included in the goggle searches examiner is talking about - another words The Duchess of Cambridge is not a "Princess", not named one, and does not call herself one, and there is no evidence that Applicant's mark identifies a particular living

	person. 3) Attachments 9 and 10 which are labeled exhibits 14 and 15 are proof of Kate being such a popular name. 4) Attachment 11 is proof of Princess Anne Mark as described in our argument. Labeled exhibit 16 in title. 5) Attachment 12 is proof of Princess Elizabeth Mark as described in our argument. Labeled exhibit 17 in title.
SIGNATURE SECTION	
RESPONSE SIGNATURE	/rb/
SIGNATORY'S NAME	Richard Blank
SIGNATORY'S POSITION	Attorney of Record, NYS bar member
SIGNATORY'S PHONE NUMBER	917 830 4702
DATE SIGNED	12/06/2012
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Thu Dec 06 14:42:51 EST 2012
TEAS STAMP	USPTO/RFR-65.51.190.67-20 121206144251045608-851792 43-490b41b38b3eb798265518 be7e2d907814-N/A-N/A-2012 1206133324795070

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

Application serial no. **85179243** has been amended as follows:

ARGUMENT(S)

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

Response to Refusal:

Refusal – Section 2(a): False Connection

The Examining Attorney has now refused registration under Section 2(a) of the Lanham Act, stating that the applied-for mark consists of or includes matter which may falsely suggest a connection with Catherine, Duchess of Cambridge. Applicant respectfully requests that the Examining Attorney withdraw the refusal because Applicant's mark does not satisfy the test to determine a false association.

As the Office Action indicated, for a showing of false connection under Trademark Act Section 2(a), **all factors of the current four-part test to determine the existence of a false connection must be satisfied.** *In re Peter S. Herrick, P.A.*, 91 USPQ2d 1505, 1507 (TTAB 2009); *In re MC MC S.r.l.*, 88 USPQ2d 1378, 1379 (TTAB 2008); TMEP §1203.03(e); *see also Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imps. Co.*, 703 F.2d 1372, 1375-77, 217 USPQ 505,508-10 (Fed. Cir. 1983) (providing foundational principles for the current four-part test determine the existence of a false connection). Here, there is no evidence to support the assertion that Applicant's mark is creating a false connection with Catherine, the Duchess of Cambridge, and as the mark does not satisfy the test.

Unless one of the prongs clearly fails, courts analyze each prong individually to discover if the mark fails the close approximation test.

i. The mark sought to be registered is the same as, or a close approximation of, the name or identity previously used by another person or institution.

The office action draws a comparison between the public perception of a connection between the PRINCESS KATE and Kate Middleton with the public perception of a connection between Jimmy Buffett and "Margaritaville," a song title for which he is associated with. They argue that if goods and services using the name Margaritaville can be associated with Jimmy Buffett, it is even more likely that goods and services under the name PRINCESS KATE would be associated with Middleton. This argument relates to the second prong of the four prong test, but the first prong has yet to be proven. All four prongs must be met to satisfy a false connection under section 2(a) of the Trademark Act.

When analyzing the first prong, whether or not public perception ties a product to a specific person is irrelevant. Jimmy Buffett did not satisfy this prong because of the public perception of a connection between himself and Margaritaville. He satisfied this prong because he had attempted to commercially license the mark in the past. The court concluded that there was "evidence of licensing agreements held by Jimmy Buffett for the name "J.B.'s MARGARITAVILLE" for a restaurant, and for the sale of clothing, and various advertisements and depictions of the clothing bearing the term "MARGARITAVILLE"." *Buffett v. Chi-Chi's, Inc.*, 226 USPQ 428 (TTAB 1985)

There is no factual evidence that Kate Middleton had ever "used" PRINCESS KATE or any similar mark in a commercial context, and the Office Action admits that Kate Middleton's official title is "Duchess of Cambridge". Moreover, whether or not the court in Buffett would have come to the same conclusion without the direct evidence of previous commercial licensing would be pure speculation. Although the court acknowledged the relationship between a trademark and public perception, it did not say that a trademark application can fail section 2(a) based on public perception alone. That would defeat the purpose of the first prong of the test, which requires a previous use of a mark. Again, PRINCESS KATE is not a name used by Kate Middleton.

Because Middleton never used PRINCESS KATE, in order to satisfy the first prong of the test, the mark would need to be a "close approximation" of a name or identity used by her. It is not. Unlike a disparagement motion, which requires the mark be "reasonably understood as referring to" the identity of the opposing party, a "close approximation" test "is a more stringent one, requiring a greater degree of similarity between the two designations." *Boston Red Sox Baseball Club Ltd. P'ship v. Sherman*, 88 U.S.P.Q.2d 1581, 1593 (TTAB 2008). In other words, a standard higher than whether or not a reasonable person would connect PRINCESS KATE to Kate Middleton must be met. Although PRINCESS KATE may be reasonably understood as referring to Kate Middleton, Duchess of Cambridge, it is not a close approximation of her name because Kate Middleton is not a princess.

When analyzing whether or not a trademark is the same or a close approximation, courts also look into the meaning of the words within the mark. Here, the court did not consider whether the public would perceive MOHAWK to be connected to the St. Regis Band. *In re White*, 80 U.S.P.Q.2d 1654, 1658-59, (TTAB 2006). Instead, they used a dictionary to prove that MOHAWK is historically associated with the Mohawk tribe. The meaning of Princess is not the same as the meaning of Duchess. Moreover, the other definitions

of princess are not exclusive enough to point directly to Middleton, nor do they connote a close approximation of her identity.

Even if the dictionary definition of Princess is sufficient to link Middleton to PRINCESS KATE, *Mohawk* is still distinguishable from this action because MOHAWK is a unique part of the name of the designation for the federally recognized St. Regis Band of Mohawk Indians of New York. “Princess” and “Kate” are too common to be a close approximation of Kate Middleton, especially in the way of which the applicant plans to use the mark. The use of the term “princess” will connote to consumers that the Applicant’s goods are select and of a high quality. The applied-for mark is merely fanciful due to the fact that it is not a “coined” term in the United States, as this country has no royal family. In addition, the mark PRINCESS KATE is arbitrary in that it is used in connection with products unrelated to its meaning. Here, the applied-for mark is used in connection with luxury items and home goods, items not specifically or exclusively associated with the term “Princess Kate”. As a result, this phrase is not a descriptive phrase, but a concocted one, deserving of registration.

All factors of the current four-part test to determine the existence of a false connection must be satisfied. PRINCESS KATE is not the same as, or a close approximation of, the name or identity previously used by Catherine, Duchess of Cambridge ever herself.

Even if the general public associates PRINCESS KATE with Middleton, the first prong is still not met.

ii. The mark would be recognized as such, in that it points uniquely and unmistakably to that person or institution.

As stated above, the Applicant’s mark, PRINCESS KATE, is not the same or a close approximation of the name of a person or institution. As such, the Applicant’s mark does not point uniquely and unmistakably to Catherine, Duchess of Cambridge.

The Office Action cites several articles from both Google searches and the Nexus database as evidence that Catherine, Duchess of Cambridge is well-known throughout the world as “PRINCESS KATE”. Applicant neither acknowledges nor denies the fame of Catherine, Duchess of Cambridge, but respectfully submits that the articles and search results referenced in the Office Action are of an unverified nature and must therefore be deemed immaterial and irrelevant.

“Articles downloaded from the Internet are admissible as evidence of information available to the general public. However, the weight given to this evidence must be carefully evaluated, because the source may be unknown.” TMEP §710.01(b); *See In re Total Quality Group Inc.*, 51 USPQ2d 1474, 1475-76 (TTAB 1999); *Raccioppi v. Apogee Inc.*, 47 USPQ2d 1368, 1370-71 (TTAB 1998). Moreover, one must be careful when evaluating the results of a Google search. “Search engine results--which provide little context to discern how a term is actually used on the webpage that can be accessed through the search result link--may be insufficient to determine the nature of the use of a term or the relevance of the search results to registration considerations.” *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 967 (Fed. Cir. 2007). The office action references the number of hits that result when searching the phrase PRINCESS KATE using the Google search engine. However, many of those results are false positives. For example, punctuation marks such as colons and commas appear between the words PRINCESS and KATE in various results, such as “What’s it like to be a princess, Kate” and “The New Princess: Kate Middleton’s Fashion Evolution.” Although the Office Action does provide full web pages that arose from the Google search, they do not show that Kate Middleton is publicly perceived at PRINCESS KATE, and although a few results do refer to Middleton as PRINCESS KATE, they are not frequent enough to meet the burden of “unique and unmistakable.”

The office action’s claim that Kate Middleton’s public perception is that of a princess is dubious. As stated previously, Kate Middleton is not a princess. Additionally, many of them, if taken as relevant for any reason, favor applicant’s mark as the Google search found the mark PRINCESS KATE but these articles supported the position and explain that she was never and will not know be known as PRINCESS KATE. Although the examiner found the words PRINCESS KATE in a search query, the content of the captions and articles clearly state that Catherine is not nor will ever be known as a Princess.

Applicant does not dispute the importance of public perception when analyzing a trademark request. However, using news articles to decipher whether or not the public perceives Catherine Middleton as PRINCESS KATE does not yield conclusive results. The Office Action infers that the American media acknowledges that Kate Middleton is commonly referred to as PRINCESS KATE. It cites an article from an ABC News broadcast, claiming that PRINCESS KATE is Middleton's "handle and she wears it well." While this is one person's opinion, ABC News also recently aired a segment explaining that Middleton must curtsy to "blood princesses" when not in the company of Prince William. These actual princesses are "the Princess Royal, Princess Alexandra, and the daughters of the Duke of York, Princesses Beatrice and Eugenie." Here, ABC re-enforces the notion that Middleton is not a princess and should not be perceived as such.

iii. The person or institution identified in the mark is not connected with the goods sold or services performed by applicant under the mark.

Applicant does not dispute that Catherine, Duchess of Cambridge, is not connected with the goods sold by Applicant under the mark. Applicant does, however, maintain that the mark is not a reference to nor does it have any connection with such person.

iv. The fame or reputation of the named person or institution is of such a nature that a connection with such person or institution would be presumed when applicant's mark is used on its goods and/or services.

Applicant does not dispute that Catherine, Duchess of Cambridge, is a well-known figure, stemming from her well-publicized relationship with Prince William and her subsequent wedding. However, there is no evidence to support the assertion that a connection with Catherine would be presumed when Applicant's mark is on the goods. The Office Action suggested that due to the media coverage of Catherine and William's lives and the repeated comments about her style and wardrobe, use of Applicant's mark in connection with makeup, luxury and home goods, and the like would create an association with Catherine. Applicant respectfully submits that the evidence submitted in support of this assertion is immaterial.

As stated above, the Internet articles cited in the Office Action are of an unreliable and unverifiable nature, and as such, should be given limited probative value. In addition, while the Duchess of Cambridge is well-known, there is no evidence of a presumptive connection between Catherine and the specific goods upon which the Applicant's mark will be used. Simply because Catherine is believed to have style and good taste does not mean that she is publicly perceived to be involved in the industry at all. While this may occur in the future, it was not the case upon filing of Applicant's application.

*If applicant's goods and/or services are of a type that the **named person or institution sells or uses**, and the named party is sufficiently famous, then it may be inferred that purchasers of the goods and/or services would be misled into making a false connection of sponsorship, approval, support or the like with the named party. In re Cotter & Co., 228 USPQ 202 (TTAB 1985); In re Nat'l Intelligence Acad., 190 USPQ 570 (TTAB 1976).*

In *Hornby v. TJX Companies, Inc.*, 87 USPQ2d 1411 (TTAB 2008), the Board found a definite connection between Twiggy's career as a model and clothing line designer and the goods containing the Applicant's mark. The Board determined that as a result of her long and successful modeling career as well as her other promotional activities, Twiggy had increased her celebrity to the point that purchasers of her children's clothing line would assume an association with her. Here, there is no obvious connection between the Duchess of Cambridge and the goods listed in the application for registration. The Duchess of Cambridge does not have her own clothing line, nor does she promote or advertise for any such product. Again, while a clothing line or some other association with fashion may be forthcoming for the Duchess of Cambridge, she is not as of yet involved in the industry. She merely wears clothing and makeup. Therefore, there is no evidence that consumers will presume a connection when Applicant's mark is affixed to the goods.

The applicant does not dispute that Kate Middleton has attended fashion shows, but nowhere has examiner shown or proven that Catherine has ever endorsed any particular style or brand, nor claim that she is connected to the lifestyle branding business in any way. Examiner simply tries to show that a third party recognizing something Catherine has on herself places her in the fashion business. The examiner simply

has not presented any proof that Catherine is even perceived as endorsing any goods. Although Kate Middleton's clothing choices are critiqued, this does not necessarily mean that the public expects her to endorse the kind of clothing she wears. The examiner is making the argument that everything that Catherine wears or uses (all goods) is perceived to be directly connected and affiliated with her and she is perceived to be the source. However, the examiner has not shown any evidence of this.

It is true that a false connection can be inferred if an applicant uses a mark in a way that misleads the public into thinking the goods and/or services "are of a type that the named person or institution sells or uses." But, as stated above, Kate Middleton does not or has ever used the name PRINCESS KATE, nor has she ever sold anything under that name, and as stated above, she merely wears clothing and make-up. The applicant's use of the mark will not Spike Lee applied for a preliminary injunction to stop Viacom from changing the name of TNN to Spike TV, claiming that a channel named "Spike" TV would cause the public to perceive that there is a false connection. *Lee v. Viacom Inc.*, INDEX110080/2003MTNS, 2003 WL 22319071 (N.Y. Sup. Ct. June 12, 2003). The injunction was granted because Lee was able to provide an expert witness with "expertise in the evaluation of consumer perception of advertising marketing and other forms of mass communications" whose affidavit stated that "if an impartial survey were conducted in New York and similar urban center cities, a substantial portion of black men and women aged 18-45, and also a substantial, though smaller, proportion of young white professionals would infer from Viacom press releases that Spike Lee was associated with Spike TV. I believe that irreverent, hip, aggressive and brash are words which will associate Spike Lee with Spike TV." Here, the court did not grant the injunction because Spike Lee is a famous entertainer whose name just happens to be the same as Spike TV. The court granted the injunction because Viacom's press release allegedly creates connotations between Lee's aggressive personality and the channel's new format. *Id.*, at 4. Moreover, the holding focuses on the use of "spike" in the film and television industry, of which Spike Lee is a part of. Although Kate Middleton has been to fashion shows, she is not a part of the fashion industry. The applicant wishes to use PRINCESS KATE in a field unrelated to the Duchess of Cambridge using a definition of "princess" that connotes elegance and class, as stated above. It is also important to know that although an injunction was granted, the court was never able to decide if Spike Lee could receive a judgment because the case was settled; therefore, it is unknown if the amount of evidence Lee accrued was sufficient to prove a false connection.

Also, the applicant does not dispute the office action's claim that Kate Middleton's fame is not temporary. However, unlike Twiggy, she is not involved in the fashion industry, and there is no evidence that the public would perceive such a connection because she does not endorse any products.

Conclusion

As demonstrated above, there is no evidence that the public will assume Applicant's goods bearing the mark PRINCESS KATE have a connection with the Duchess of Cambridge, Catherine.

Refusal – Section 2(c): Particular Living Individual

The Examining Attorney refused registration on an additional ground that the Applicant's mark consists of or includes a name, portrait, or signature identifying a particular living individual whose written consent to register the mark is not of record. Trademark Act Section 2(c), 15 U.S.C. §1052(c); TMEP §1206; see, e.g., *In re Hoefflin*, 97 U.S.P.Q.2d 1174 (TTAB 2010). Applicant respectfully requests that the Examining Attorney withdraw the refusal because the Applicant's mark does not identify a particular living individual.

For a Section 2(c) refusal, a name in a mark identifies a particular living individual if the person bearing the name will be associated with the mark as used on the goods or services because he or she (1) is "so well-known that the public would reasonably assume a connection" or (2) is "publicly connected with the business in which the mark is being used." *In re Hoefflin*, 97 USPQ2d 1174, 1175-76 (TTAB 2010); see also *Krause v. Krause Publ'ns, Inc.*, 76 USPQ2d 1904, 1909-10 (TTAB 2005); *In re Sauer*, 27 USPQ2d 1073, 1075 (TTAB 1994). Based on the evidence presented above regarding false connection, the Duchess of Cambridge is a well-known figure, but consumers would not reasonably assume a connection between her and the goods at issue. In addition, as stated above, the Duchess of Cambridge was, at the time of the application's filing, not publicly connected with the business of clothing, makeup, home goods and the like. She is believed to have style and good taste as a result of her celebrity status, but does not have any

association with the industry in which Applicant's mark is used. As a result, the mark PRINCESS KATE does not identify any particular living individual.

Cases cited by the Office Action with respect to this ground for refusal can be distinguished from the matter at hand. First, the Board in *In re Hoefflin*, 97 USPQ2d 1174, 1177-78 (TTAB 2010), held that registration of the marks OBAMA PAJAMA, OBAMA BAHAMA PAJAMAS, and BARACK'S JOCKS DRESS TO THE LEFT were barred because they created a direct association with President Obama. The name "Barack Obama" is not a common name, neither individually nor as one term. Here, the name "Kate" is significantly popular, listed as #93 on the babycenter list of 100 most popular baby names of 2011 and #209 on the Social Security Association's list of popular baby names in 2010. While the existence of others with the same name does not alter the requirement for a written consent, See *In re Steak & Ale Rests. of Am., Inc.*, 185 USPQ 447, 447-48 (TTAB 1975), Kate is generally a very popular name. In addition, "PRINCESS KATE" is not her given or adopted name, thus the use of the name "Kate" in the mark does not automatically draw an association to Catherine, Duchess of Cambridge. In fact, the point has been made – over and over – that Catherine is not a princess.

The Board in *In re Sauer*, 27 USPQ2d 1073, 1074-75 (TTAB 1993) held that the registration of a mark containing the term BO, used in connection with a sports ball, was barred because the ball was associated with a well-known athlete by the name Bo. The connection between Bo Jackson, the world-famous athlete, and the ball was specific and well-established. Bo Jackson was and is recognized for being a talented athlete on both the football field and the baseball diamond, while the ball itself was shaped like a football but contained baseball stitches. As a result, Bo Jackson's use of a ball throughout his career created a connection with the mark BO in referencing the ball. Here, Catherine is a Duchess of Cambridge. In her capacity as Duchess, clothing, fashion, makeup, etc. are not inherently connected with her position and thus will not create an association.

Finally, the Board in *In re Steak & Ale* cited above affirmed a refusal of the mark PRINCE CHARLES before the wording identifies a particular well-known living individual whose consent was not of record. In that case, Prince Charles is the actual name of the living person. Here, PRINCESS KATE is neither the official nor adopted name of Catherine, Duchess of Cambridge.

Further support for the registration of Applicant's mark lies, for example, in the recent publication of the mark PRINCESS ANNE, in connection with candy, as well as the registration of HRH PRINCESS ELIZABETH, in connection with perfume, skin cream, skin lotion and toners. For the mark, PRINCESS ANNE, while it is claimed that such mark does not identify any living individual, the British royal family does include "Anne, Princess Royal". Similarly, the British royal family, for many years, included "Princess Elizabeth" as one of its members, as Queen Elizabeth II was a princess prior to her coronation. In the same way, "Catherine, Duchess of Cambridge" is a member of the British royal family. In both instances, the mark deemed to be associated with the particular, living individual is neither the exact nor the adopted name of that individual. As PRINCESS ANNE was approved for publication and HRH PRINCESS ELIZABETH was registered, so too should PRINCESS KATE be approved for publication.

Conclusion

As demonstrated, there is no evidence that the Applicant's mark PRINCESS KATE identifies a particular living individual.

*Any Exhibits submitted in support of this response are hereby incorporated herein by this reference

EVIDENCE

Evidence in the nature of Evidence attached documents - which are all part of the refusal response herein
1) attachment one is our refusal response
2) The next seven attachments labeled exhibits 5 through 10 are all samples of what public perception really is and what types of things are also included in the google searches examiner is talking about - another words The Duchess of Cambridge is not a "Princess", not named one, and does not call herself one, and there is no evidence that Applicant's mark identifies a particular living person.
3) Attachments 9 and 10 which are labeled exhibits 14 and 15 are proof of Kate

being such a popular name. 4) Attachment 11 is proof of Princess Anne Mark as described in our argument. Labeled exhibit 16 in title. 5) Attachment 12 is proof of Princess Elizabeth Mark as described in our argument. Labeled exhibit 17 in title. has been attached.

Original PDF file:

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Converted PDF file(s) (7 pages)

[Evidence-1](#)

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[Evidence-3](#)

[Evidence-4](#)

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[Evidence-7](#)

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[Evidence-1](#)

[Evidence-2](#)

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[Evidence-4](#)

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[Evidence-1](#)

Original PDF file:

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[Evidence-1](#)

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[Evidence-1](#)

ADDITIONAL STATEMENTS

Miscellaneous Statement

Refusal - Section 2(a): False Connection The Examining Attorney has now refused registration under Section 2(a) of the Lanham Act, stating that the applied-for mark consists of or includes matter which may falsely suggest a connection with Catherine, Duchess of Cambridge. Applicant respectfully requests that the Examining Attorney withdraw the refusal because Applicant's mark does not satisfy the test to determine a false association. As the Office Action indicated, for a showing of false connection under Trademark Act Section 2(a), all factors of the current four-part test to determine the existence of a false connection must be satisfied. In re Peter S. Herrick, P.A., 91 USPQ2d 1505, 1507 (TTAB 2009); In re MC MC S.r.l., 88 USPQ2d 1378, 1379 (TTAB 2008); TMEP §1203.03(e); see also Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imps. Co., 703 F.2d 1372, 1375-77, 217 USPQ 505,508-10 (Fed. Cir. 1983) (providing foundational principles for the current four-part test determine the existence of a false connection). Here, there is no evidence to support the assertion that Applicant's mark is creating a false connection with Catherine, the Duchess of Cambridge, and as the mark does not satisfy the test. Unless one of the prongs clearly fails, courts analyze each prong individually to discover if the mark fails the close approximation test. i. The mark sought to be registered is the same as, or a close approximation of, the name or identity previously used by another person or institution. The office action draws a comparison between the public perception of a connection between the PRINCESS KATE and Kate Middleton with the public perception of a connection between Jimmy Buffett and "Margaritaville," a song title for which he is associated with. They argue that if goods and services using the name Margaritaville can be associated with Jimmy Buffett, it is even more likely that goods and services under the name PRINCESS KATE would be associated with Middleton. This argument relates to the second prong of the four prong test, but the first prong has yet to be proven. All four prongs must be met to satisfy a false connection under section 2(a) of the Trademark Act. When analyzing the first prong, whether or not public perception ties a product to a specific person is irrelevant. Jimmy Buffett did not satisfy this prong because of the public perception of a connection between himself and Margaritaville. He satisfied this prong because he had attempted to commercially license the mark in the past. The court concluded that there was

"evidence of licensing agreements held by Jimmy Buffett for the name "J.B.'s MARGARITAVILLE" for a restaurant, and for the sale of clothing, and various advertisements and depictions of the clothing bearing the term "MARGARITAVILLE"." *Buffett v. Chi-Chi's, Inc.*, 226 USPQ 428 (TTAB 1985) There is no factual evidence that Kate Middleton had ever "used" PRINCESS KATE or any similar mark in a commercial context, and the Office Action admits that Kate Middleton's official title is "Duchess of Cambridge". Moreover, whether or not the court in *Buffett* would have come to the same conclusion without the direct evidence of previous commercial licensing would be pure speculation. Although the court acknowledged the relationship between a trademark and public perception, it did not say that a trademark application can fail section 2(a) based on public perception alone. That would defeat the purpose of the first prong of the test, which requires a previous use of a mark. Again, PRINCESS KATE is not a name used by Kate Middleton. Because Middleton never used PRINCESS KATE, in order to satisfy the first prong of the test, the mark would need to be a "close approximation" of a name or identity used by her. It is not. Unlike a disparagement motion, which requires the mark be "reasonably understood as referring to" the identity of the opposing party, a "close approximation" test "is a more stringent one, requiring a greater degree of similarity between the two designations." *Boston Red Sox Baseball Club Ltd. P'ship v. Sherman*, 88 U.S.P.Q.2d 1581, 1593 (TTAB 2008). In other words, a standard higher than whether or not a reasonable person would connect PRINCESS KATE to Kate Middleton must be met. Although PRINCESS KATE may be reasonably understood as referring to Kate Middleton, Duchess of Cambridge, it is not a close approximation of her name because Kate Middleton is not a princess. When analyzing whether or not a trademark is the same or a close approximation, courts also look into the meaning of the words within the mark. Here, the court did not consider whether the public would perceive MOHAWK to be connected to the St. Regis Band. *In re White*, 80 U.S.P.Q.2d 1654, 1658-59, (TTAB 2006). Instead, they used a dictionary to prove that MOHAWK is historically associated with the Mohawk tribe. The meaning of Princess is not the same as the meaning of Duchess. Moreover, the other definitions of princess are not exclusive enough to point directly to Middleton, nor do they connote a close approximation of her identity. Even if the dictionary definition of Princess is sufficient to link Middleton to PRINCESS KATE, Mohawk is still distinguishable from this action because MOHAWK is a unique part of the name of the designation for the federally recognized St. Regis Band of Mohawk Indians of New York. "Princess" and "Kate" are too common to be a close approximation of Kate Middleton, especially in the way of which the applicant plans to use the mark. The use of the term "princess" will connote to consumers that the Applicant's goods are select and of a high quality. The applied-for mark is merely fanciful due to the fact that it is not a "coined" term in the United States, as this country has no royal family. In addition, the mark PRINCESS KATE is arbitrary in that it is used in connection with products unrelated to its meaning. Here, the applied-for mark is used in connection with luxury items and home goods, items not specifically or exclusively associated with the term "Princess Kate". As a result, this phrase is not a descriptive phrase, but a concocted one, deserving of registration. All factors of the current four-part test to determine the existence of a false connection must be satisfied. PRINCESS KATE is not the same as, or a close approximation of, the name or identity previously used by Catherine, Duchess of Cambridge ever herself. Even if the general public associates PRINCESS KATE with Middleton, the first prong is still not met. ii. The mark would be recognized as such, in that it points uniquely and unmistakably to that person or institution. As stated above, the Applicant's mark, PRINCESS KATE, is not the same or a close approximation of the name of a person or institution. As such, the Applicant's mark does not point uniquely and unmistakably to Catherine, Duchess of Cambridge. The Office Action cites several articles from both Google searches and the Nexus database as evidence that Catherine, Duchess of Cambridge is well-known throughout the world as "PRINCESS KATE". Applicant neither acknowledges nor denies the fame of Catherine, Duchess of Cambridge, but respectfully submits that the articles and search results referenced in the Office Action are of an unverified nature and must therefore be deemed immaterial and irrelevant. "Articles downloaded from the Internet are admissible as evidence of information available to the general public. However, the weight given to this evidence must be carefully evaluated, because the source may be unknown." TMEP §710.01(b); See *In re Total Quality*

Group Inc., 51 USPQ2d 1474, 1475-76 (TTAB 1999); Raccioppi v. Apogee Inc., 47 USPQ2d 1368, 1370-71 (TTAB 1998). Moreover, one must be careful when evaluating the results of a Google search. "Search engine results--which provide little context to discern how a term is actually used on the webpage that can be accessed through the search result link--may be insufficient to determine the nature of the use of a term or the relevance of the search results to registration considerations." In re Bayer Aktiengesellschaft, 488 F.3d 960, 967 (Fed. Cir. 2007). The office action references the number of hits that result when searching the phrase PRINCESS KATE using the Google search engine. However, many of those results are false positives. For example, punctuation marks such as colons and commas appear between the words PRINCESS and KATE in various results, such as "'What's it like to be a princess, Kate" and "The New Princess: Kate Middleton's Fashion Evolution." Although the Office Action does provide full web pages that arose from the Google search, they do not show that Kate Middleton is publicly perceived at PRINCESS KATE, and although a few results do refer to Middleton as PRINCESS KATE, they are not frequent enough to meet the burden of "unique and unmistakable." The office action's claim that Kate Middleton's public perception is that of a princess is dubious. As stated previously, Kate Middleton is not a princess. Additionally, many of them, if taken as relevant for any reason, favor applicant's mark as the Google search found the mark PRINCESS KATE but these articles supported the position and explain that she was never and will not know be known as PRINCESS KATE. Although the examiner found the words PRINCESS KATE in a search query, the content of the captions and articles clearly state that Catherine is not nor will ever be known as a Princess. Applicant does not dispute the importance of public perception when analyzing a trademark request. However, using news articles to decipher whether or not the public perceives Catherine Middleton as PRINCESS KATE does not yield conclusive results. The Office Action infers that the American media acknowledges that Kate Middleton is commonly referred to as PRINCESS KATE. It cites an article from an ABC News broadcast, claiming that PRINCESS KATE is Middleton's "handle and she wears it well." While this is one person's opinion, ABC News also recently aired a segment explaining that Middleton must curtsy to "blood princesses" when not in the company of Prince William. These actual princesses are "the Princess Royal, Princess Alexandra, and the daughters of the Duke of York, Princesses Beatrice and Eugenie." Here, ABC re-enforces the notion that Middleton is not a princess and should not be perceived as such. iii. The person or institution identified in the mark is not connected with the goods sold or services performed by applicant under the mark. Applicant does not dispute that Catherine, Duchess of Cambridge, is not connected with the goods sold by Applicant under the mark. Applicant does, however, maintain that the mark is not a reference to nor does it have any connection with such person. iv. The fame or reputation of the named person or institution is of such a nature that a connection with such person or institution would be presumed when applicant's mark is used on its goods and/or services. Applicant does not dispute that Catherine, Duchess of Cambridge, is a well-known figure, stemming from her well-publicized relationship with Prince William and her subsequent wedding. However, there is no evidence to support the assertion that a connection with Catherine would be presumed when Applicant's mark is on the goods. The Office Action suggested that due to the media coverage of Catherine and William's lives and the repeated comments about her style and wardrobe, use of Applicant's mark in connection with makeup, luxury and home goods, and the like would create an association with Catherine. Applicant respectfully submits that the evidence submitted in support of this assertion is immaterial. As stated above, the Internet articles cited in the Office Action are of an unreliable and unverifiable nature, and as such, should be given limited probative value. In addition, while the Duchess of Cambridge is well-known, there is no evidence of a presumptive connection between Catherine and the specific goods upon which the Applicant's mark will be used. Simply because Catherine is believed to have style and good taste does not mean that she is publicly perceived to be involved in the industry at all. While this may occur in the future, it was not the case upon filing of Applicant's application. If applicant's goods and/or services are of a type that the named person or institution sells or uses, and the named party is sufficiently famous, then it may be inferred that purchasers of the goods and/or services would be misled into making a false connection of sponsorship, approval, support or the

like with the named party. In re Cotter & Co., 228 USPQ 202 (TTAB 1985); In re Nat'l Intelligence Acad., 190 USPQ 570 (TTAB 1976). In Hornby v. TJX Companies, Inc., 87 USPQ2d 1411 (TTAB 2008), the Board found a definite connection between Twiggy's career as a model and clothing line designer and the goods containing the Applicant's mark. The Board determined that as a result of her long and successful modeling career as well as her other promotional activities, Twiggy had increased her celebrity to the point that purchasers of her children's clothing line would assume an association with her. Here, there is no obvious connection between the Duchess of Cambridge and the goods listed in the application for registration. The Duchess of Cambridge does not have her own clothing line, nor does she promote or advertise for any such product. Again, while a clothing line or some other association with fashion may be forthcoming for the Duchess of Cambridge, she is not as of yet involved in the industry. She merely wears clothing and makeup. Therefore, there is no evidence that consumers will presume a connection when Applicant's mark is affixed to the goods. The applicant does not dispute that Kate Middleton has attended fashion shows, but nowhere has examiner shown or proven that Catherine has ever endorsed any particular style or brand, nor claim that she is connected to the lifestyle branding business in any way. Examiner simply tries to show that a third party recognizing something Catherine has on herself places her in the fashion business. The examiner simply has not presented any proof that Catherine is even perceived as endorsing any goods. Although Kate Middleton's clothing choices are critiqued, this does not necessarily mean that the public expects her to endorse the kind of clothing she wears. The examiner is making the argument that everything that Catherine wears or uses (all goods) is perceived to be directly connected and affiliated with her and she is perceived to be the source. However, the examiner has not shown any evidence of this. It is true that a false connection can be inferred if an applicant uses a mark in a way that misleads the public into thinking the goods and/or services "are of a type that the named person or institution sells or uses," But, as stated above, Kate Middleton does not or has ever used the name PRINCESS KATE, nor has she ever sold anything under that name, and as stated above, she merely wears clothing and make-up. The applicant's use of the mark will not Spike Lee applied for a preliminary injunction to stop Viacom from changing the name of TNN to Spike TV, claiming that a channel named "Spike" TV would cause the public to perceive that there is a false connection. Lee v. Viacom Inc., INDEX110080/2003MTNS, 2003 WL 22319071 (N.Y. Sup. Ct. June 12, 2003). The injunction was granted because Lee was able to provide an expert witness with "expertise in the evaluation of consumer perception of advertising marketing and other forms of mass communications" whose affidavit stated that "if an impartial survey were conducted in New York and similar urban center cities, a substantial portion of black men and women aged 18-45, and also a substantial, though smaller, proportion of young white professionals would infer from Viacom press releases that Spike Lee was associated with Spike TV. I believe that irreverent, hip, aggressive and brash are words which will associate Spike Lee with Spike TV." Here, the court did not grant the injunction because Spike Lee is a famous entertainer whose name just happens to be the same as Spike TV. The court granted the injunction because Viacom's press release allegedly creates connotations between Lee's aggressive personality and the channel's new format. Id., at 4. Moreover, the holding focuses on the use of "spike" in the film and television industry, of which Spike Lee is a part of. Although Kate Middleton has been to fashion shows, she is not a part of the fashion industry. The applicant wishes to use PRINCESS KATE in a field unrelated to the Duchess of Cambridge using a definition of "princess" that connotes elegance and class, as stated above. It is also important to know that although an injunction was granted, the court was never able to decide if Spike Lee could receive a judgment because the case was settled; therefore, it is unknown if the amount of evidence Lee accrued was sufficient to prove a false connection. Also, the applicant does not dispute the office action's claim that Kate Middleton's fame is not temporary. However, unlike Twiggy, she is not involved in the fashion industry, and there is no evidence that the public would perceive such a connection because she does not endorse any products. Conclusion As demonstrated above, there is no evidence that the public will assume Applicant's goods bearing the mark PRINCESS KATE have a connection with the Duchess of Cambridge, Catherine. Refusal - Section 2(c): Particular Living Individual The Examining Attorney refused registration on an additional ground that the Applicant's mark consists of or includes a name,

portrait, or signature identifying a particular living individual whose written consent to register the mark is not of record. Trademark Act Section 2(c), 15 U.S.C. §1052(c); TMEP §1206; see, e.g., *In re Hoefflin*, 97 U.S.P.Q.2d 1174 (TTAB 2010). Applicant respectfully requests that the Examining Attorney withdraw the refusal because the Applicant's mark does not identify a particular living individual. For a Section 2(c) refusal, a name in a mark identifies a particular living individual if the person bearing the name will be associated with the mark as used on the goods or services because he or she (1) is "so well-known that the public would reasonably assume a connection" or (2) is "publicly connected with the business in which the mark is being used." *In re Hoefflin*, 97 USPQ2d 1174, 1175-76 (TTAB 2010); see also *Krause v. Krause Publ'ns, Inc.*, 76 USPQ2d 1904, 1909-10 (TTAB 2005); *In re Sauer*, 27 USPQ2d 1073, 1075 (TTAB 1994). Based on the evidence presented above regarding false connection, the Duchess of Cambridge is a well-known figure, but consumers would not reasonably assume a connection between her and the goods at issue. In addition, as stated above, the Duchess of Cambridge was, at the time of the application's filing, not publicly connected with the business of clothing, makeup, home goods and the like. She is believed to have style and good taste as a result of her celebrity status, but does not have any association with the industry in which Applicant's mark is used. As a result, the mark PRINCESS KATE does not identify any particular living individual. Cases cited by the Office Action with respect to this ground for refusal can be distinguished from the matter at hand. First, the Board in *In re Hoefflin*, 97 USPQ2d 1174, 1177-78 (TTAB 2010), held that registration of the marks OBAMA PAJAMA, OBAMA BAHAMA PAJAMAS, and BARACK'S JOCKS DRESS TO THE LEFT were barred because they created a direct association with President Obama. The name "Barack Obama" is not a common name, neither individually nor as one term. Here, the name "Kate" is significantly popular, listed as #93 on the babycenter list of 100 most popular baby names of 2011 and #209 on the Social Security Association's list of popular baby names in 2010. While the existence of others with the same name does not alter the requirement for a written consent, See *In re Steak & Ale Rests. of Am., Inc.*, 185 USPQ 447, 447-48 (TTAB 1975), Kate is generally a very popular name. In addition, "PRINCESS KATE" is not her given or adopted name, thus the use of the name "Kate" in the mark does not automatically draw an association to Catherine, Duchess of Cambridge. In fact, the point has been made - over and over - that Catherine is not a princess. The Board in *In re Sauer*, 27 USPQ2d 1073, 1074-75 (TTAB 1993) held that the registration of a mark containing the term BO, used in connection with a sports ball, was barred because the ball was associated with a well-known athlete by the name Bo. The connection between Bo Jackson, the world-famous athlete, and the ball was specific and well-established. Bo Jackson was and is recognized for being a talented athlete on both the football field and the baseball diamond, while the ball itself was shaped like a football but contained baseball stitches. As a result, Bo Jackson's use of a ball throughout his career created a connection with the mark BO in referencing the ball. Here, Catherine is a Duchess of Cambridge. In her capacity as Duchess, clothing, fashion, makeup, etc. are not inherently connected with her position and thus will not create an association. Finally, the Board in *In re Steak & Ale* cited above affirmed a refusal of the mark PRINCE CHARLES before the wording identifies a particular well-known living individual whose consent was not of record. In that case, Prince Charles is the actual name of the living person. Here, PRINCESS KATE is neither the official nor adopted name of Catherine, Duchess of Cambridge. Further support for the registration of Applicant's mark lies, for example, in the recent publication of the mark PRINCESS ANNE, in connection with candy, as well as the registration of HRH PRINCESS ELIZABETH, in connection with perfume, skin cream, skin lotion and toners. For the mark, PRINCESS ANNE, while it is claimed that such mark does not identify any living individual, the British royal family does include "Anne, Princess Royal". Similarly, the British royal family, for many years, included "Princess Elizabeth" as one of its members, as Queen Elizabeth II was a princess prior to her coronation. In the same way, "Catherine, Duchess of Cambridge" is a member of the British royal family. In both instances, the mark deemed to be associated with the particular, living individual is neither the exact nor the adopted name of that individual. As PRINCESS ANNE was approved for publication and HRH PRINCESS ELIZABETH was registered, so too should PRINCESS KATE be approved for

publication. Conclusion As demonstrated, there is no evidence that the Applicant's mark PRINCESS KATE identifies a particular living individual. *Any Exhibits submitted in support of this response are hereby incorporated herein by this reference Exhibits attached to our response herein are: Evidence attached documents - which are all part of the refusal response herein 1) attachment one is our refusal response 2) The next seven attachments labeled exhibits 5 through 10 are all samples of what public perception really is and what types of things are also included in the goggle searches examiner is talking about - another words The Duchess of Cambridge is not a "Princess", not named one, and does not call herself one, and there is no evidence that Applicant's mark identifies a particular living person. 3) Attachments 9 and 10 which are labeled exhibits 14 and 15 are proof of Kate being such a popular name. 4) Attachment 11 is proof of Princess Anne Mark as described in our argument. Labeled exhibit 16 in title. 5) Attachment 12 is proof of Princess Elizabeth Mark as described in our argument. Labeled exhibit 17 in title.

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /rb/ Date: 12/06/2012

Signatory's Name: Richard Blank

Signatory's Position: Attorney of Record, NYS bar member

Signatory's Phone Number: 917 830 4702

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: 85179243

Internet Transmission Date: Thu Dec 06 14:42:51 EST 2012

TEAS Stamp: USPTO/RFR-65.51.190.67-20121206144251045

608-85179243-490b41b38b3eb798265518be7e2

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Refusal – Section 2(a): False Connection

The Examining Attorney has now refused registration under Section 2(a) of the Lanham Act, stating that the applied-for mark consists of or includes matter which may falsely suggest a connection with Catherine, Duchess of Cambridge. Applicant respectfully requests that the Examining Attorney withdraw the refusal because Applicant's mark does not satisfy the test to determine a false association.

As the Office Action indicated, for a showing of false connection under Trademark Act Section 2(a), **all factors of the current four-part test to determine the existence of a false connection must be satisfied.** *In re Peter S. Herrick, P.A.*, 91 USPQ2d 1505, 1507 (TTAB 2009); *In re MC MC S.r.l.*, 88 USPQ2d 1378, 1379 (TTAB 2008); TMEP §1203.03(e); *see also Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imps. Co.*, 703 F.2d 1372, 1375-77, 217 USPQ 505,508-10 (Fed. Cir. 1983) (providing foundational principles for the current four-part test determine the existence of a false connection). Here, there is no evidence to support the assertion that Applicant's mark is creating a false connection with Catherine, the Duchess of Cambridge, and as the mark does not satisfy the test.

Unless one of the prongs clearly fails, courts analyze each prong individually to discover if the mark fails the close approximation test.

i. The mark sought to be registered is the same as, or a close approximation of, the name or identity previously **used** by another person or institution.

The office action draws a comparison between the public perception of a connection between the PRINCESS KATE and Kate Middleton with the public perception of a connection between Jimmy Buffett and "Margaritaville," a song title for which he is associated with. They argue that if goods and services using the name Margaritaville can be associated with Jimmy Buffett, it is even more likely that goods and services under the name PRINCESS KATE would be associated with Middleton. This argument relates to the second prong of the four prong test, but the first prong has yet to be proven. All four prongs must be met to satisfy a false connection under section 2(a) of the Trademark Act.

When analyzing the first prong, whether or not public perception ties a product to a specific person is irrelevant. Jimmy Buffett did not satisfy this prong because of the public perception of a connection between himself and Margaritaville. He satisfied this prong because he had attempted to commercially license the mark in the past. The court concluded that there was "evidence of licensing agreements held by Jimmy Buffett for the name "J.B.'s MARGARITAVILLE" for a restaurant, and for the sale of clothing, and various advertisements and depictions of the clothing bearing the term "MARGARITAVILLE"." *Buffett v. Chi-Chi's, Inc.*, 226 USPQ 428 (TTAB 1985)

There is no factual evidence that Kate Middleton had ever "used" PRINCESS KATE or any similar mark in a commercial context, and the Office Action admits that Kate Middleton's official title is "Duchess of Cambridge". Moreover, whether or not the court in Buffett would have come to the same conclusion without the direct evidence of previous commercial licensing would be pure

speculation. Although the court acknowledged the relationship between a trademark and public perception, it did not say that a trademark application can fail section 2(a) based on public perception alone. That would defeat the purpose of the first prong of the test, which requires a previous use of a mark. Again, PRINCESS KATE is not a name used by Kate Middleton.

Because Middleton never used PRINCESS KATE, in order to satisfy the first prong of the test, the mark would need to be a “close approximation” of a name or identity used by her. It is not. Unlike a disparagement motion, which requires the mark be “reasonably understood as referring to” the identity of the opposing party, a “close approximation” test “is a more stringent one, requiring a greater degree of similarity between the two designations.” *Boston Red Sox Baseball Club Ltd. P’ship v. Sherman*, 88 U.S.P.Q.2d 1581, 1593 (TTAB 2008). In other words, a standard higher than whether or not a reasonable person would connect PRINCESS KATE to Kate Middleton must be met. Although PRINCESS KATE may be reasonably understood as referring to Kate Middleton, Duchess of Cambridge, it is not a close approximation of her name because Kate Middleton is not a princess.

When analyzing whether or not a trademark is the same or a close approximation, courts also look into the meaning of the words within the mark. Here, the court did not consider whether the public would perceive MOHAWK to be connected to the St. Regis Band. *In re White*, 80 U.S.P.Q.2d 1654, 1658-59, (TTAB 2006). Instead, they used a dictionary to prove that MOHAWK is historically associated with the Mohawk tribe. The meaning of Princess is not the same as the meaning of Duchess. Moreover, the other definitions of princess are not exclusive enough to point directly to Middleton, nor do they connote a close approximation of her identity.

Even if the dictionary definition of Princess is sufficient to link Middleton to PRINCESS KATE, *Mohawk* is still distinguishable from this action because MOHAWK is a unique part of the name of the designation for the federally recognized St. Regis Band of Mohawk Indians of New York. “Princess” and “Kate” are too common to be a close approximation of Kate Middleton, especially in the way of which the applicant plans to use the mark. The use of the term “princess” will connote to consumers that the Applicant’s goods are select and of a high quality. The applied-for mark is merely fanciful due to the fact that it is not a “coined” term in the United States, as this country has no royal family. In addition, the mark PRINCESS KATE is arbitrary in that it is used in connection with products unrelated to its meaning. Here, the applied-for mark is used in connection with luxury items and home goods, items not specifically or exclusively associated with the term “Princess Kate”. As a result, this phrase is not a descriptive phrase, but a concocted one, deserving of registration.

All factors of the current four-part test to determine the existence of a false connection must be satisfied. PRINCESS KATE is not the same as, or a close approximation of, the name or identity previously used by Catherine, Duchess of Cambridge ever herself.

Even if the general public associates PRINCESS KATE with Middleton, the first prong is still not met.

ii. The mark would be recognized as such, in that it points uniquely and unmistakably to that person or institution.

As stated above, the Applicant's mark, PRINCESS KATE, is not the same or a close approximation of the name of a person or institution. As such, the Applicant's mark does not point uniquely and unmistakably to Catherine, Duchess of Cambridge.

The Office Action cites several articles from both Google searches and the Nexus database as evidence that Catherine, Duchess of Cambridge is well-known throughout the world as "PRINCESS KATE". Applicant neither acknowledges nor denies the fame of Catherine, Duchess of Cambridge, but respectfully submits that the articles and search results referenced in the Office Action are of an unverified nature and must therefore be deemed immaterial and irrelevant.

"Articles downloaded from the Internet are admissible as evidence of information available to the general public. However, the weight given to this evidence must be carefully evaluated, because the source may be unknown." TMEP §710.01(b); *See In re Total Quality Group Inc.*, 51 USPQ2d 1474, 1475-76 (TTAB 1999); *Raccioppi v. Apogee Inc.*, 47 USPQ2d 1368, 1370-71 (TTAB 1998). Moreover, one must be careful when evaluating the results of a Google search. "Search engine results--which provide little context to discern how a term is actually used on the webpage that can be accessed through the search result link--may be insufficient to determine the nature of the use of a term or the relevance of the search results to registration considerations." *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 967 (Fed. Cir. 2007). The office action references the number of hits that result when searching the phrase PRINCESS KATE using the Google search engine. However, many of those results are false positives. For example, punctuation marks such as colons and commas appear between the words PRINCESS and KATE in various results, such as "What's it like to be a princess, Kate" and "The New Princess: Kate Middleton's Fashion Evolution." Although the Office Action does provide full web pages that arose from the Google search, they do not show that Kate Middleton is publicly perceived as PRINCESS KATE, and although a few results do refer to Middleton as PRINCESS KATE, they are not frequent enough to meet the burden of "unique and unmistakable."

The office action's claim that Kate Middleton's public perception is that of a princess is dubious. As stated previously, Kate Middleton is not a princess. Additionally, many of them, if taken as relevant for any reason, favor applicant's mark as the Google search found the mark PRINCESS KATE but these articles supported the position and explain that she was never and will not know be known as PRINCESS KATE. Although the examiner found the words PRINCESS KATE in a search query, the content of the captions and articles clearly state that Catherine is not nor will ever be known as a Princess.

Applicant does not dispute the importance of public perception when analyzing a trademark request. However, using news articles to decipher whether or not the public perceives Catherine Middleton as PRINCESS KATE does not yield conclusive results. The Office Action infers that the American media acknowledges that Kate Middleton is commonly referred to as PRINCESS KATE. It cites an article from an ABC News broadcast, claiming that PRINCESS KATE is Middleton's "handle and she wears it well." While this is one person's opinion, ABC News also recently aired a segment explaining that Middleton must curtsy to "blood princesses" when not in the company of Prince William. These actual princesses are "the Princess Royal, Princess

Alexandra, and the daughters of the Duke of York, Princesses Beatrice and Eugenie.” Here, ABC re-enforces the notion that Middleton is not a princess and should not be perceived as such.

iii. The person or institution identified in the mark is not connected with the goods sold or services performed by applicant under the mark.

Applicant does not dispute that Catherine, Duchess of Cambridge, is not connected with the goods sold by Applicant under the mark. Applicant does, however, maintain that the mark is not a reference to nor does it have any connection with such person.

iv. The fame or reputation of the named person or institution is of such a nature that a connection with such person or institution would be presumed when applicant’s mark is used on its goods and/or services.

Applicant does not dispute that Catherine, Duchess of Cambridge, is a well-known figure, stemming from her well-publicized relationship with Prince William and her subsequent wedding. However, there is no evidence to support the assertion that a connection with Catherine would be presumed when Applicant’s mark is on the goods. The Office Action suggested that due to the media coverage of Catherine and William’s lives and the repeated comments about her style and wardrobe, use of Applicant’s mark in connection with makeup, luxury and home goods, and the like would create an association with Catherine. Applicant respectfully submits that the evidence submitted in support of this assertion is immaterial.

As stated above, the Internet articles cited in the Office Action are of an unreliable and unverifiable nature, and as such, should be given limited probative value. In addition, while the Duchess of Cambridge is well-known, there is no evidence of a presumptive connection between Catherine and the specific goods upon which the Applicant’s mark will be used. Simply because Catherine is believed to have style and good taste does not mean that she is publicly perceived to be involved in the industry at all. While this may occur in the future, it was not the case upon filing of Applicant’s application.

*If applicant’s goods and/or services are of a type that the **named person or institution sells or uses**, and the named party is sufficiently famous, then it may be inferred that purchasers of the goods and/or services would be misled into making a false connection of sponsorship, approval, support or the like with the named party. In re Cotter & Co., 228 USPQ 202 (TTAB 1985); In re Nat’l Intelligence Acad., 190 USPQ 570 (TTAB 1976).*

In *Hornby v. TJX Companies, Inc.*, 87 USPQ2d 1411 (TTAB 2008), the Board found a definite connection between Twiggy’s career as a model and clothing line designer and the goods containing the Applicant’s mark. The Board determined that as a result of her long and successful modeling career as well as her other promotional activities, Twiggy had increased her celebrity to the point that purchasers of her children’s clothing line would assume an association with her. Here, there is no obvious connection between the Duchess of Cambridge and the goods listed in the application for registration. The Duchess of Cambridge does not have her own clothing line, nor does she promote or advertise for any such product. Again, while a clothing line or some other association with fashion may be forthcoming for the Duchess of Cambridge,

she is not as of yet involved in the industry. She merely wears clothing and makeup. Therefore, there is no evidence that consumers will presume a connection when Applicant's mark is affixed to the goods.

The applicant does not dispute that Kate Middleton has attended fashion shows, but nowhere has examiner shown or proven that Catherine has ever endorsed any particular style or brand, nor claim that she is connected to the lifestyle branding business in any way. Examiner simply tries to show that a third party recognizing something Catherine has on herself places her in the fashion business. The examiner simply has not presented any proof that Catherine is even perceived as endorsing any goods. Although Kate Middleton's clothing choices are critiqued, this does not necessarily mean that the public expects her to endorse the kind of clothing she wears. The examiner is making the argument that everything that Catherine wears or uses (all goods) is perceived to be directly connected and affiliated with her and she is perceived to be the source. However, the examiner has not shown any evidence of this.

It is true that a false connection can be inferred if an applicant uses a mark in a way that misleads the public into thinking the goods and/or services "are of a type that the named person or institution sells or uses." But, as stated above, Kate Middleton does not or has ever used the name PRINCESS KATE, nor has she ever sold anything under that name, and as stated above, she merely wears clothing and make-up.

The applicant's use of the mark will not Spike Lee applied for a preliminary injunction to stop Viacom from changing the name of TNN to Spike TV, claiming that a channel named "Spike" TV would cause the public to perceive that there is a false connection. *Lee v. Viacom Inc.*, INDEX110080/2003MTNS, 2003 WL 22319071 (N.Y. Sup. Ct. June 12, 2003). The injunction was granted because Lee was able to provide an expert witness with "expertise in the evaluation of consumer perception of advertising marketing and other forms of mass communications" whose affidavit stated that "if an impartial survey were conducted in New York and similar urban center cities, a substantial portion of black men and women aged 18-45, and also a substantial, though smaller, proportion of young white professionals would infer from Viacom press releases that Spike Lee was associated with Spike TV. I believe that irreverent, hip, aggressive and brash are words which will associate Spike Lee with Spike TV." Here, the court did not grant the injunction because Spike Lee is a famous entertainer whose name just happens to be the same as Spike TV. The court granted the injunction because Viacom's press release allegedly creates connotations between Lee's aggressive personality and the channel's new format. *Id.*, at 4. Moreover, the holding focuses on the use of "spike" in the film and television industry, of which Spike Lee is a part of. Although Kate Middleton has been to fashion shows, she is not a part of the fashion industry. The applicant wishes to use PRINCESS KATE in a field unrelated to the Duchess of Cambridge using a definition of "princess" that connotes elegance and class, as stated above. It is also important to know that although an injunction was granted, the court was never able to decide if Spike Lee could receive a judgment because the case was settled; therefore, it is unknown if the amount of evidence Lee accrued was sufficient to prove a false connection.

Also, the applicant does not dispute the office action's claim that Kate Middleton's fame is not temporary. However, unlike Twiggy, she is not involved in the fashion industry, and there is no

evidence that the public would perceive such a connection because she does not endorse any products.

Conclusion

As demonstrated above, there is no evidence that the public will assume Applicant's goods bearing the mark PRINCESS KATE have a connection with the Duchess of Cambridge, Catherine.

Refusal – Section 2(c): Particular Living Individual

The Examining Attorney refused registration on an additional ground that the Applicant's mark consists of or includes a name, portrait, or signature identifying a particular living individual whose written consent to register the mark is not of record. Trademark Act Section 2(c), 15 U.S.C. §1052(c); TMEP §1206; see, e.g., *In re Hoefflin*, 97 U.S.P.Q.2d 1174 (TTAB 2010). Applicant respectfully requests that the Examining Attorney withdraw the refusal because the Applicant's mark does not identify a particular living individual.

For a Section 2(c) refusal, a name in a mark identifies a particular living individual if the person bearing the name will be associated with the mark as used on the goods or services because he or she (1) is "so well-known that the public would reasonably assume a connection" or (2) is "publicly connected with the business in which the mark is being used." *In re Hoefflin*, 97 USPQ2d 1174, 1175-76 (TTAB 2010); see also *Krause v. Krause Publ'ns, Inc.*, 76 USPQ2d 1904, 1909-10 (TTAB 2005); *In re Sauer*, 27 USPQ2d 1073, 1075 (TTAB 1994). Based on the evidence presented above regarding false connection, the Duchess of Cambridge is a well-known figure, but consumers would not reasonably assume a connection between her and the goods at issue. In addition, as stated above, the Duchess of Cambridge was, at the time of the application's filing, not publicly connected with the business of clothing, makeup, home goods and the like. She is believed to have style and good taste as a result of her celebrity status, but does not have any association with the industry in which Applicant's mark is used. As a result, the mark PRINCESS KATE does not identify any particular living individual.

Cases cited by the Office Action with respect to this ground for refusal can be distinguished from the matter at hand. First, the Board in *In re Hoefflin*, 97 USPQ2d 1174, 1177-78 (TTAB 2010), held that registration of the marks OBAMA PAJAMA, OBAMA BAHAMA PAJAMAS, and BARACK'S JOCKS DRESS TO THE LEFT were barred because they created a direct association with President Obama. The name "Barack Obama" is not a common name, neither individually nor as one term. Here, the name "Kate" is significantly popular, listed as #93 on the babycenter list of 100 most popular baby names of 2011 and #209 on the Social Security Association's list of popular baby names in 2010. While the existence of others with the same name does not alter the requirement for a written consent, See *In re Steak & Ale Rests. of Am., Inc.*, 185 USPQ 447, 447-48 (TTAB 1975), Kate is generally a very popular name. In addition, "PRINCESS KATE" is not her given or adopted name, thus the use of the name "Kate" in the mark does not automatically draw an association to Catherine, Duchess of Cambridge. In fact, the point has been made – over and over – that Catherine is not a princess.

The Board in *In re Sauer*, 27 USPQ2d 1073, 1074-75 (TTAB 1993) held that the registration of a mark containing the term BO, used in connection with a sports ball, was barred because the ball was associated with a well-known athlete by the name Bo. The connection between Bo Jackson, the world-famous athlete, and the ball was specific and well-established. Bo Jackson was and is recognized for being a talented athlete on both the football field and the baseball diamond, while the ball itself was shaped like a football but contained baseball stitches. As a result, Bo Jackson's use of a ball throughout his career created a connection with the mark BO in referencing the ball. Here, Catherine is a Duchess of Cambridge. In her capacity as Duchess, clothing, fashion, makeup, etc. are not inherently connected with her position and thus will not create an association.

Finally, the Board in *In re Steak & Ale* cited above affirmed a refusal of the mark PRINCE CHARLES before the wording identifies a particular well-known living individual whose consent was not of record. In that case, Prince Charles is the actual name of the living person. Here, PRINCESS KATE is neither the official nor adopted name of Catherine, Duchess of Cambridge.

Further support for the registration of Applicant's mark lies, for example, in the recent publication of the mark PRINCESS ANNE, in connection with candy, as well as the registration of HRH PRINCESS ELIZABETH, in connection with perfume, skin cream, skin lotion and toners. For the mark, PRINCESS ANNE, while it is claimed that such mark does not identify any living individual, the British royal family does include "Anne, Princess Royal". Similarly, the British royal family, for many years, included "Princess Elizabeth" as one of its members, as Queen Elizabeth II was a princess prior to her coronation. In the same way, "Catherine, Duchess of Cambridge" is a member of the British royal family. In both instances, the mark deemed to be associated with the particular, living individual is neither the exact nor the adopted name of that individual. As PRINCESS ANNE was approved for publication and HRH PRINCESS ELIZABETH was registered, so too should PRINCESS KATE be approved for publication.

Conclusion

As demonstrated, there is no evidence that the Applicant's mark PRINCESS KATE identifies a particular living individual.

*Any Exhibits submitted in support of this response are hereby incorporated herein by this reference

http://www.royal.gov.uk/ThecurrentRoyalFamily/TheDuchessofCambridge/TheDuchessofCambridge.aspx

The screenshot shows a web browser window displaying the official website of The British Monarchy. The page title is "The official website of The British Monarchy". The URL in the address bar is "http://www.royal.gov.uk/ThecurrentRoyalFamily/TheDuchessofCambridge/TheDuchessofCambridge.aspx". The page features a navigation menu on the left with links to various members of the Royal Family, including The Duke of Edinburgh, The Prince of Wales, The Duchess of Cornwall, The Duke of Cambridge, The Duchess of Cambridge (highlighted), Work, Interests, Prince Harry, The Duke of York, The Earl of Wessex, The Countess of Wessex, The Princess Royal, The Duke of Gloucester, The Duchess of Gloucester, The Duke of Kent, The Duchess of Kent, Princess Alexandra, Prince and Princess Michael of Kent, The Royal Family name, Succession and precedence, Greeting a member of the Royal Family, and How to contact a member of the Royal Family. The main content area is titled "The Duchess of Cambridge" and features a large photograph of Catherine, Duchess of Cambridge. Below the photo, there is a text block starting with "Catherine Elizabeth Middleton, now known as The Duchess of Cambridge, was born to Michael and Carole Middleton at the Royal Berkshire Hospital, Reading, on 9th January 1982. The Duchess is the eldest of three children." This is followed by a paragraph about her christening and another about her family life in Jordan and Pangbourne. To the right of the main text, there are sections for "Related Images" (showing a photo of the Duke and Duchess of Cambridge), "Also in this section" (with links to The Royal Family name, The Duke of Edinburgh, and Succession and precedence), and "Other areas of interest" (with links to Charities and Patronages, The Royal Collection and other collections, The Royal Residences, Images and Broadcasts, Queen and anniversary messages, Her Majesty The Queen, The Queen and the UK, The Royal Household, The Queen and the Commonwealth, and Royal events and ceremonies). The browser's taskbar at the bottom shows the system clock as 7:01 PM on 3/19/2012.

http://www.officialroyalwedding2011.org/blog/2011/April/29/Titles-announced-for-Prince-William-and-Catherine-Middleton

Titles announced for Prince William and Catherine Middleton

29th April 2011



THE FOLLOWING STATEMENT IS ISSUED BY THE PRESS SECRETARY TO THE QUEEN

The Queen has today been pleased to confer a Dukedom on Prince William of Wales. His titles will be Duke of Cambridge, Earl of Strathearn and Baron Carrickfergus.

Prince William thus becomes His Royal Highness The Duke of Cambridge and Miss Catherine Middleton on marriage will become Her Royal Highness The Duchess of Cambridge.

Background:

Coming to London?

The Royal Wedding
Prince William & Catherine Middleton
Friday 29 April 2011 at Westminster Abbey

HOME THE SERVICE THE PROCESSION THE RECEPTION BACKGROUND

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7:07 PM
3/19/2012

Firefox - Titles announced for Prince William and ...

www.officialroyalwedding2011.org/blog/2011/April/29/Titles-announced-for-Prince-William-and-Catherine-Middleton

Charitable Gift Fund website

“The Queen has today been pleased to confer a Dukedom on Prince William of Wales. His titles will be Duke of Cambridge, Earl of Strathearn and Baron Carrickfergus.

DUKEDOM: Cambridge:

In 1706 George Augustus (subsequently George II) the only son of George Ludwig, Elector of Hanover (subsequently George I of Great Britain) was created with other titles Duke of Cambridge. On the accession of his father to the throne in 1714 he also became Duke of Cornwall and was created Prince of Wales. On his own accession to the throne in 1727 the Dukedom of Cambridge merged with The Crown and ceased.

Cambridge was previously a Royal Dukedom and four sons of James, Duke of York (afterwards James II) who died in infancy were all created Duke of Cambridge. As an Earldom Cambridge was a medieval Royal title. Edward IV was Duke of York and Earl of Cambridge till proclaimed King of England in 1461 when his titles merged with The Crown.

His father and grandfather both Richard Plantagenet were both Earls of Cambridge and the latter was also Duke of York. Edmund of Langley, 5th son of Edward III and great-grandfather of Edward IV, was created Earl of Cambridge in 1362 and Duke of York in 1385.

The Dukedom of Cambridge created in 1801 became extinct on the death of the 2nd Duke of Cambridge in 1904. Cambridge existed as a Marquessate from 1917 when it was conferred on Queen Mary's brother till 1981 when the 2nd Marquess died and the title became extinct.

EARLDOM: Strathearn

Strathearn has had Royal connections since Robert Stewart, High Steward of Scotland, was created Earl of Strathearn in 1357. In 1371 he succeeded his Uncle as King of Scotland becoming Robert II and the Earldom merged with The Crown Robert II created his 5th son David, Earl of Strathearn in 1371. Subsequently in 1427 the 6th son of Robert II was created Earl of Strathearn.

In 1766 George III's younger brother Prince Henry Frederick was created Duke of Cumberland and Strathearn. He died without issue in 1790 and in 1799 Queen Victoria's father was created Duke of Kent and Strathearn. These Dukedoms became extinct on his death in 1820. Finally, Prince Arthur William Patrick Albert, 3rd son of Queen Victoria was created Duke of Connaught and

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Strathearn in 1874. He died in 1942 and was succeeded by his grandson who died the following year 1943 since when Strathearn as a title has been extinct.

BARONY: Carrickfergus:

An Irish Viscounty of Chichester of Carrickfergus now held by the Marquess of Donegall was created in 1625 but Carrickfergus alone only existed as a title between 1841 and 1883. The 3rd Marquess of Donegall was created Baron Ennishowen and Carrickfergus, of Ennishowen, co: Donegal and Carrickfergus, co: Antrim. He died in 1883 being succeeded by his brother and the Barony became extinct.

Carrickfergus is County Antrim's oldest town. The word means Rock of Fergus and as an urban settlement it predates Belfast. It is on the north shore of Belfast Lough and is the site of Carrickfergus Castle which dates from circa 1180 and is one of the best preserved Castles in Ireland.

Tags: prince william catherine middleton titles earl countess strathearn baron lady carrickfergus

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Kate Middleton arrives at the Abbey to meet her Prince. While the public knows her as 'Princess Kate', her actual title is Princess William of Wales.
Photograph by: Reuters, Reuters

The commoner Kate Middleton may have married a prince, but she's destined to be Princess William of Wales — not a princess in her own right — unless her new husband's grandmother is feeling generous.

[While the title Princess Kate will likely stick in popular opinion — and in the media, which often mistakenly referred to William's mother Diana as Princess Di — she wasn't a princess in her own right on her wedding day.](#)

"Princesses are born into the Royal Family, so it's up to the Queen to make her a princess," said Carolyn Harris, an expert on the monarchy with Queen's University. "The Queen is the only one able to bestow titles."

On their wedding day, Queen Elizabeth conferred several new titles on William, the second in line to the throne: he is now Duke of Cambridge, Earl of Strathearn and Baron Carrickfergus. Kate is now known as Her Royal Highness Duchess of Cambridge.

Harris said this is a long-standing tradition that is unlikely to change, even in the 21st century.

In 1917, King George V limited the title of prince and princess to the sovereign's children and the children of the sovereign's sons out of concerns that "there were too many successors to the throne," said Harris.

"Queen Victoria had something like 40 grandchildren alone."

This means that, until Prince Charles becomes king — or dies — and

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Royal Watch

The Post follows newlyweds Prince William and Kate Middleton

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- They've had their fairy tale wedding. Prince William and Kate Middleton are now starting their happily ever after, and The Post's Royal Watch will be there to follow all of the appearances, outings and fashion trends that go with it.
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Posted at 07:50 AM ET, 04/29/2011

Duchess of Cambridge: Is Kate a Princess or not?

By Elizabeth Flock



Queen Elizabeth II conferred among Prince William and Kate Middleton the new titles of William, Duke of Cambridge, Catherine, Her Royal Highness the Duchess of Cambridge Friday, and Middleton will also get the courtesy titles of the Countess of Strathearn and Baroness

Sorry, Kate, not a princess yet. (Screen grab from youtube)

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Autumn Brewington started reading royal biographies as a child and never stopped. She will be joined by fellow Post staff and Royal enthusiasts following the couple's first year of marriage.

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from youuser/ Carrickfergus.

[But is she now a princess?](#)

[It appears not. She won't take the title of Princess until Prince Charles becomes king](#), according to [The Hollywood Reporter](#).

So why did the Queen choose Duchess over Princess?

The [Telegraph](#) speculates that Duchess of Cambridge is a much better name than "Princess William."

The [Guardian](#) says that the Queen could have made an exception and called her "Princess Catharine," but instead stuck to tradition. The Queen's own husband, Philip, had relinquished his princely Greek title before they wed, and had to wait ten years before he became a prince again.

But to make matters even more confusing, Middleton can still technically be described as a princess even though that's not her title.

[Live Science](#) has more clarity on the differences between princesses and duchesses, although the relationship between the two titles is not always clearly defined. Important to note is that a duchess can also have the title of princess or queen or vice versa, and a princess or duchess only loses her royal title if the couple divorces.

But Middleton may be content to wait. Princess Diana once famously said: "Being a princess isn't all it's cracked up to be."

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She'll go by "Her Royal Highness the Duchess of Cambridge" until her father-in-law, Prince Charles, becomes King.

LONDON -- It's no more Prince William and Kate. Britain woke to the news on Royal Wedding day that the Queen has conferred the bride and groom with the new titles of William, Duke of Cambridge and Catherine, Her Royal Highness the Duchess of

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Cambridge. PHOTOS: Kate Middleton and Prince William say "I Do"

The Duke and Duchess, as they will now be known, also retain titles that connect them to Ireland and Scotland, but will not take the titles of Prince and Princess until the current Prince of Wales becomes King. PHOTOS: What Kate Middleton and famous guests wore to the wedding

The announcement came as excitement about the ceremony reached fever pitch in London as guests began arriving at Westminster Abbey from 8.15 am GMT Friday morning. Despite the cool weather and overcast skies, the excitement was palpable.

Months of meticulous planning and preparation have gone into the wedding at Westminster Abbey, which will take place before 1900 guests and will be watched by a television audience of as many as two billion. PHOTOS: Famous royal weddings

Earlier, overnight campers - some of whom have spent two or three nights camping out in London parks to make sure of ringside seats lining the Mall and in front of Buckingham Palace - were delighted by an unexpected appearance of Prince William the night before the wedding.

William was given an ecstatic reaction by crowds outside Clarence House as he shook hands chatted and joked with members of the public who cheered his surprise appearance. PHOTOS: The 9 wackiest wedding celebrations

"All I've got to do is get my lines right," he joked, according to news reports.

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She'll go by "Her Royal Highness the Duchess of Cambridge" until her father-in-law, Prince Charles, becomes King.

LONDON -- It's no more Prince William and Kate. Britain woke to the news on Royal Wedding day that the Queen has conferred the bride and groom with the new titles of William, Duke of Cambridge and Catherine, Her Royal Highness the Duchess of

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Cambridge. PHOTOS: Kate Middleton and Prince William say "I Do"

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Royal wedding: William and Kate to be Duke and Duchess of Cambridge

Queen gifts grandson highest rank in British peerage, meaning Kate Middleton will not officially become a princess

Caroline Davies
guardian.co.uk, Friday 29 April 2011 04:47 EDT
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Royal wedding

The Queen has gifted Prince William the title of the Duke of Cambridge on the day of the royal wedding, making Kate Middleton the Duchess of Cambridge. Photograph: [unreadable]



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Kate Middleton will become a duchess on her wedding to Prince William and not, officially at least, a princess

Buckingham Palace has announced that the Queen has gifted her grandson the title Duke of Cambridge on his wedding day – a dukedom being the highest rank in the British peerage. As such, Kate will become Her Royal Highness the Duchess of Cambridge.

There had been speculation that the Queen might confer a title that would allow her to be called Princess Catherine.

Instead, the monarch has stuck to tradition. Her own husband, Philip, who relinquished his princely Greek title before they wed, had to wait 10 years before he became a prince again.

And according to protocol, while William was born Prince William of Wales, **his bride, who is not a royal in her own right**, does not have the title Princess William of Wales, although through marrying William she could technically be described as such.

Explaining the slightly confusing picture, a palace spokesman said: **“She is not a princess in her own right. That title has not been conferred on her. Her title is that of duchess. So she is not Princess Catherine. And to call her Princess William of Wales is misleading.”**

William also becomes the Earl of Strathearn and Baron Carrickfergus, which means Kate can add Countess of Strathearn and Baroness Carrickfergus to her royal titles.

All titles are in the gift of the Queen.

The full palace statement, released three hours before the wedding ceremony, read: “The Queen has today been pleased to confer a Dukedom on Prince William of Wales. His titles will be Duke of Cambridge, Earl of Strathearn and Baron Carrickfergus. Prince William thus becomes His Royal Highness the Duke of Cambridge and Miss Catherine Middleton on marriage will become Her Royal Highness the

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Duchess of Cambridge.*

The Duke of Cambridge was seen as a favourite for William's new title in the runup to the wedding, the Queen fuelling speculation by visiting the city two days ago.

It could be considered appropriate since the last Duke of Cambridge, Prince George, a grandson of George III, was a military figure who married a commoner for love. But there the similarities end.

George married the actor Sarah Louisa Fairbrother in 1847, when she was pregnant with their third child, refusing to have an arranged marriage and declaring such unions "doomed to failure". That marriage was never recognised by his cousin, Queen Victoria. He went on to keep a mistress for some 30 years.

There is an equestrian statue of him in the middle of London's Whitehall, which William and Kate would be able to see from their carriage procession after the service.

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The screenshot shows a Firefox browser window displaying the BabyCenter website. The address bar shows the URL 'http://www.babycenter.com/top-baby-names-2011'. The website header includes the BabyCenter logo and a navigation menu with categories like 'GETTING PREGNANT', 'PREGNANCY', 'BABY', 'TODDLER', 'PRESCHOOLER', 'BIG KID', 'FOR YOU', 'COMMUNITY', 'SHOP', and 'REGISTRY'. A search bar is also present. Below the header, there is a 'Baby-naming dilemmas' section with a sub-headline 'Solutions for sticky scenarios' and a link to 'Explore this special feature'. The main article is titled '100 most popular baby names of 2011' and includes social media sharing options (Recommend 13k, Tweet 475). A 'Highlights' section lists 'Top 100 names of the year' and 'More about baby names'. A video player is visible with the title 'What's hot in baby names this year'. On the right side, there is a 'My Family' section with a 'Log in' link and a 'Your Pregnancy, Week by Week' section with a subscription form. The bottom of the browser window shows the Windows taskbar with various application icons and the system clock displaying '7:54 PM 3/19/2012'.

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Sophia continues to reign supreme on the girls' list, while Emily shimmied up three spots this year to reach number 9. Addison was edged out of the top 10 to settle at number 11.

Click on each name for its popularity over time, common sibling names, and more.

Note: To capture true popularity, our exclusive baby names list combines names that sound the same but have multiple spellings (like Sophia or Sofia). Our data comes from hundreds of thousands of parents who shared their baby's name with us in 2011.

Top 100 names of the year

Girls' Names	Boys' Names
1. Sophia	1. Aiden
2. Emma	2. Jackson
3. Isabella	3. Mason
4. Olivia	4. Liam
5. Ava	5. Jacob
6. Lily	6. Jayden
7. Chloe	7. Ethan
8. Madison	8. Noah
9. Emily	9. Lucas
10. Abigail	10. Logan
11. Addison	11. Caleb
12. Mia	12. Caden
13. Madelyn	13. Jack
14. Ella	14. Ryan
15. Hailey	15. Connor
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39. Gabriella	39. Christian
40. Elsie	40. Wyatt
41. Lillian	41. Henry
42. Samantha	42. Eli
43. Makayla	43. Joseph
44. Audrey	44. Max
45. Alyssa	45. Isaac
46. Ellie	46. Samuel
47. Alexis	47. Anthony
48. Isabelle	48. Grayson
49. Savannah	49. Zachary
50. Evelyn	50. David
51. Leah	51. Christopher
52. Keira	52. John
53. Allison	53. Isalah
54. Maya	54. Levi
55. Lucy	55. Jonathan
56. Sydney	56. Oliver
57. Taylor	57. Chase
58. Molly	58. Cooper
59. Lauren	59. Tristan
60. Harper	60. Colton
61. Scarlett	61. Austin

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Related Items

- Hottest baby names of 2011: The movers and shakers
- Hottest baby name trends of 2011
- When to choose and announce a baby name
- 100 most popular baby names of 2010
- John, Mary, Joe: Simpler names may help you succeed
- Truly inspired baby names 2005: Editors' choice
- When can't agree on your baby's name

From our Community

Baby Names
Which names do you think will be popular on the 2011 list?

Bi-Racial Pregnancy
what are your babies names or what are you going to name your baby?

June 2012 Birth Club
we officially named our baby boy...what ya think? whats your official name?

7:55 PM
3/19/2012

http://www.babycenter.com/top-baby-names-2011

http://www.babycenter.com/top-baby-names-2011

The screenshot shows a Firefox browser window with the address bar displaying "www.babycenter.com/top-baby-names-2011". The page content is organized into several sections:

- Navigation Menu:** Johnson's Natural, Baby Crajel, Stonyfield, ViaCord, Calendars & More, Baby Names, Get Answers, News & Blogs, Photos & Videos, Favorites, Deals, Deals, Deals!, Products & Gear.
- Top 100 Baby Names (2011):**

61. Scarlett	61. Austin
62. Brianna	62. Colin
63. Victoria	63. Charlie
64. Liliana	64. Dominic
65. Aria	65. Parker
66. Kayla	66. Hunter
67. Annabelle	67. Thomas
68. Gianna	68. Alex
69. Kennedy	69. Ian
70. Stella	70. Jordan
71. Reagan	71. Cole
72. Julia	72. Julian
73. Bailey	73. Aaron
74. Alexandra	74. Carson
75. Jordyn	75. Miles
76. Nora	76. Blake
77. Caroline	77. Brody
78. Mackenzie	78. Adam
79. Jasmine	79. Sebastian
80. Jocelyn	80. Adrian
81. Kendall	81. Nolan
82. Morgan	82. Sean
83. Nevaeh	83. Riley
84. Maria	84. Bentley
85. Eva	85. Xavier
86. Juliana	86. Hayden
87. Abby	87. Jeremiah
88. Alexa	88. Jason
89. Summer	89. Jake
90. Brooke	90. Asher
91. Penelope	91. Micah
92. Violet	92. Jace
93. Dante	93. Brandon
94. Hadley	94. Josiah
95. Ashlyn	95. Hudson
96. Sadie	96. Nathaniel
97. Paige	97. Bryson
98. Katherine	98. Ryder
99. Sienna	99. Justin
100. Piper	100. Bryce
- Community Section:**
 - think? whats your official name?**

African American Moms and Moms to Be do u think this name is ugly my baby is goin to be named after my mother she passed away DARLENE JOHNSON MY BABY NAME WILL BE DA

February 2012 Birth Club for all the single moms, do u give ur baby ur last name or the dady last name?

>> Join our Community
 - Mom Answers**
 - Q: baby name**

A: Joey... read more
 - Q: Need help with baby name...**

A: If you are okay with almost EVERYONE thinking you named him after Luke Skywalker, then go ahead and do it. But know that almost... read more
 - Q: I want your opinion on a baby name**

A: nope dont think thats a great idea but you know i wanted to name mine unique but people thought i was crazy... read more

The bottom of the browser window shows the Windows taskbar with the system clock at 7:57 PM on 3/19/2012.

http://www.socialsecurity.gov/cgi-bin/babyname.cgi

The screenshot shows a web browser window displaying the Social Security Online 'Popular Baby Names' page. The page title is 'Popular Baby Names' and the date is 'March 19, 2012'. The main content area is titled 'Popularity of the female name Kate' and features a table showing the name's rank from 1999 to 2010. On the left side, there is a section for 'Background information' with a search box containing 'Kate' and a 'Go' button. Below that, a table lists 'Similar female names for births in 2010', showing 'Kate' at rank 209 and 'Katie' at rank 161. A note at the bottom of the main table explains the ranking system. The browser's address bar shows the URL 'www.socialsecurity.gov/cgi-bin/babyname.cgi'. The Windows taskbar at the bottom indicates the time is 8:01 PM on 3/19/2012.

Social Security Online

Popular Baby Names

Popularity of a Name
March 19, 2012

Background information

Select another name?

Kate

Similar female names for births in 2010

Name	Rank
Kate	209
Katie	161

Popularity of the female name Kate

Year of birth	Rank
2010	209
2009	159
2008	139
2007	136
2006	142
2005	140
2004	147
2003	161
2002	193
2001	200
2000	225
1999	229

Note: Rank 1 is the most popular, rank 2 is the next most popular, and so forth. Name data are from Social Security card applications for births that occurred in the United States.

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PRINCESS ANNE

Word Mark	PRINCESS ANNE
Goods and Services	IC 030. US 046. G & S: Candy
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85205244
Filing Date	December 23, 2010
Current Filing Basis	1B
Original Filing Basis	1B
Published for Opposition	November 1, 2011
Owner	(APPLICANT) Queen Anne Candy Company CORPORATION DELAWARE 4801 South Lawndale Chicago ILLINOIS 60632
Attorney of Record	Amy Cohen Heller
Prior Registrations	1199758
Type of Mark	TRADEMARK
Register	PRINCIPAL
Other Data	The name(s), portrait(s), and/or signature(s) shown in the mark does not identify a particular living individual.
Live/Dead Indicator	LIVE

Int. Cl.: 3

Prior U.S. Cls.: 1, 4, 6, 50, 51, and 52

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