

PTO Form 1930 (Rev 9/2007)

OMB No. 0651-0050 (Exp. 4/30/2009)

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85287117
LAW OFFICE ASSIGNED	LAW OFFICE 101
MARK SECTION (no change)	
ARGUMENT(S)	
Please see the actual argument text attached within the Evidence section.	
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	<u>evi_69482866-161619399_VISTM50_ROA_M0432668.PDF</u>
CONVERTED PDF FILE(S) (1 page)	<u>\\TICRS\EXPORT16\IMAGEOUT16\852\871\85287117\xml2\RFR0002.JPG</u>
DESCRIPTION OF EVIDENCE FILE	the actual argument text
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Thomas F. Dunn/
SIGNATORY'S NAME	Thomas F. Dunn
SIGNATORY'S POSITION	Attorney of record, Massachusetts bar member
SIGNATORY'S PHONE NUMBER	1.781.697.2248
DATE SIGNED	07/25/2012
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMATION SECTION	
SUBMIT DATE	Wed Jul 25 16:18:34 EDT 2012
TEAS STAMP	USPTO/RFR-69.48.28.66-201 20725161834124440-8528711 7-490a4cbb6c62acd635c9495

499c7354634c-N/A-N/A-2012 0725161619399127

PTO Form 1930 (Rev 9/2007)

OMB No. 0651-0050 (Exp. 4/30/2009)

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. **85287117** has been amended as follows:

ARGUMENT(S)

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

Please see the actual argument text attached within the Evidence section.

EVIDENCE

Evidence in the nature of the actual argument text has been attached.

Original PDF file:

evi_69482866-161619399_VISTM50 ROA_M0432668.PDF

Converted PDF file(s) (1 page)

Evidence-1

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Thomas F. Dunn/ Date: 07/25/2012

Signatory's Name: Thomas F. Dunn

Signatory's Position: Attorney of record, Massachusetts bar member

Signatory's Phone Number: 1.781.697.2248

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

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

Serial Number: 85287117

Internet Transmission Date: Wed Jul 25 16:18:34 EDT 2012

TEAS Stamp: USPTO/RFR-69.48.28.66-201207251618341244

40-85287117-490a4cbb6c62acd635c9495499c7

354634c-N/A-N/A-20120725161619399127

This is in response to the FINAL Office action dated January 25, 2012, whereby the Examining Attorney maintained the refusal to register the applied-for mark on grounds that it is merely descriptive.

Applicant hereby respectfully requests that the Examining Attorney reconsider that determination, based in part on the Statement of Use submitted on this date, and based in part on argument submitted earlier. With respect to the latter, while the Examining Attorney may be correct generally in stating that applicant's submission "as evidence the few times that the word ATTRIBUTION is a part of a registered trademark ... is not the standard," the Examining Attorney appears not to have considered both that (i) the reason the evidence is limited is because very few registered marks contain the ATTRIBUTION component, and (ii) that the rarity of such use and registration of the ATTRIBUTION component is itself evidence of the fact that it would be perceived as unique and, therefore, distinctive. As the Examining Attorney rightly observes, "Only where the combination of descriptive terms creates a unitary mark with a unique, incongruous, or otherwise nondescriptive meaning in relation to the goods and/or services is the combined mark registrable." (Emphasis added.) See, e.g., *In re Colonial Stores, Inc.*, 394 F.2d 549, 551, 157 USPQ 382, 384 (C.C.P.A. 1968).

In the alternative, pursuant to T.M.E.P. 816.04 and subject to a decision on appeal, Applicant hereby amends its application by including the following statement:

The applicant seeks registration of the mark on the Supplemental Register (i.e., a change of the words 'Principal Register' to 'Supplemental Register').

Based on the foregoing, Applicant respectfully requests the Examining Attorney withdraw the 2(e)(1) refusal, accept the previously submitted disclaimers of EARNED and MEDIA, accept the Statement of Use submitted separately on this date, and allow the application to proceed to publication.

Applicant is filing a Notice of Appeal concurrently herewith. Counsel for applicant invites the Examining Attorney to discuss this matter in order to avoid an appeal.