

## Request for Reconsideration after Final Action

**The table below presents the data as entered.**

| Input Field   | Entered                                   |
|---|---|
| <b>SERIAL NUMBER</b>  | 85293345                                  |
| <b>LAW OFFICE ASSIGNED</b>  | LAW OFFICE 108                            |
| <b>MARK SECTION (no change)</b>   |   |
| <b>ARGUMENT(S)</b>  |   |
| <p>In response to the final office action dated February 14, 2012, Applicant requests that the examining attorney reconsider her 2(d) refusal. The standard of likelihood of confusion is not whether the goods may be confused, but rather whether the goods are likely to be confused by relevant consumers. In this case, the goods sold by the applicant consist of footwear. In contrast, the Cited Registration is used on apparel that is unrelated to footwear. The examiner has provided examples of several clothing retailers that sell both clothing and footwear, and several cases that hold that certain types of clothing are related. However, there is no evidence to indicate that the owner of the Cited Registration sells its clothing products in the same channels of trade as the products sold by Applicant and vice versa. Applicant further notes that the Cited Registration does contain limitations that suggest that the goods associated with the Cited Registration are not sold in the same channels of trade. The Cited Registration covers what appear to be women's apparel, "blouses, tunics", etc. The Applicant's products consist of footwear, but are not intended to cover women's fashion or casual shoes. Rather, applicant's footwear products consist of work shoes and boots that would not be sold by the same type of retailer that sells general fashion clothing and accessories. For these reasons, applicant requests that the examiner withdraw the 2(d) rejection.</p> |   |
| <b>SIGNATURE SECTION</b>  |   |
| <b>RESPONSE SIGNATURE</b>   | /dek/                                     |
| <b>SIGNATORY'S NAME</b>   | Daniel E. Kattman                         |
| <b>SIGNATORY'S POSITION</b>   | Attorney of Record. Wisconsin Bar Member. |
| <b>SIGNATORY'S PHONE NUMBER</b>   | 414-298-8185                              |
| <b>DATE SIGNED</b>  | 08/14/2012                                |
| <b>AUTHORIZED SIGNATORY</b>   | YES                                       |
| <b>CONCURRENT APPEAL NOTICE FILED</b>   | YES                                       |
| <b>FILING INFORMATION SECTION</b>   |   |
| <b>SUBMIT DATE</b>  | Tue Aug 14 18:41:48 EDT 2012              |

TEAS STAMP

USPTO/RFR-12.145.168.6-20  
120814184148256148-852933  
45-4902ae6487b1d495554ec7  
3cbd746c663b-N/A-N/A-2012  
0814181122309522

PTO Form 1430 (Rev. 9/2007)  
USPTO Form 1430 (Rev. 9/2007)

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

Application serial no. **85293345** has been amended as follows:

### **ARGUMENT(S)**

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

In response to the final office action dated February 14, 2012, Applicant requests that the examining attorney reconsider her 2(d) refusal. The standard of likelihood of confusion is not whether the goods may be confused, but rather whether the goods are likely to be confused by relevant consumers. In this case, the goods sold by the applicant consist of footwear. In contrast, the Cited Registration is used on apparel that is unrelated to footwear. The examiner has provided examples of several clothing retailers that sell both clothing and footwear, and several cases that hold that certain types of clothing are related. However, there is no evidence to indicate that the owner of the Cited Registration sells its clothing products in the same channels of trade as the products sold by Applicant and vice versa. Applicant further notes that the Cited Registration does contain limitations that suggest that the goods associated with the Cited Registration are not sold in the same channels of trade. The Cited Registration covers what appear to be women's apparel, "blouses, tunics", etc. The Applicant's products consist of footwear, but are not intended to cover women's fashion or casual shoes. Rather, applicant's footwear products consist of work shoes and boots that would not be sold by the same type of retailer that sells general fashion clothing and accessories. For these reasons, applicant requests that the examiner withdraw the 2(d) rejection.

### **SIGNATURE(S)**

#### **Request for Reconsideration Signature**

Signature: /dek/ Date: 08/14/2012

Signatory's Name: Daniel E. Kattman

Signatory's Position: Attorney of Record. Wisconsin Bar Member.

Signatory's Phone Number: 414-298-8185

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: 85293345

Internet Transmission Date: Tue Aug 14 18:41:48 EDT 2012

TEAS Stamp: USPTO/RFR-12.145.168.6-20120814184148256

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