

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85362134
LAW OFFICE ASSIGNED	LAW OFFICE 110
MARK SECTION (no change)	
ARGUMENT(S)	
<p>The Examining Attorney has issued a final rejection of Applicant's application for VAULT BIOVENTURES. Applicant respectfully requests reconsideration of the rejection.</p> <p>Applicant's services are : Class 35- Assistance, advisory services and consultancy with regard to business analysis, business development, business operations, marketing, product commercialization, market research, branding, business project management and portfolio management for biopharmaceutical and biotechnology companies; Class 38- Assistance, advisory services and consultancy with regard to communications in the medical field for biopharmaceutical and biotechnology companies; Class 42- Assistance, advisory services and consultancy services with regard to clinical research and product development for biopharmaceutical and biotechnology companies .</p> <p>The Examining Attorney 's rejection of Applicant's application is based upon the belief that Applicant's mark: VAULT BIOVENTURES is likely to be confused with Registration Nos. 4030759, 4030758 and 3864144.</p> <p>Registration No. 4030759 is VAULT COMMUNICATIONS, INC. for marketing and advertising services (Reg. '759). Registration No. 4030758 is for VAULT COMMUNICATIONS, INC. with a stylized "V", also for marketing and advertising services (Reg. '758). Both Reg. '759 and '758 are owned by the same company, Vault Communications, Inc. Registration 3864144 is for THE VAULT and is owned by a different company, The Vault NYC . This Registration and is also for advertising, marketing and promotion services (Reg. '144).</p> <p>As Applicant has previously asserted, Applicant does not agree that confusion is likely to occur in view of the above listed Registrations / cited marks primarily on the basis that the marks differ, the services differ, the commercial impressions differ and the relevant purchasers are sophisticated.</p> <p>Applicant's mark is VAULT BIOVENTURES, for the services listed above, is limited to the biopharmaceutical and biotechnology fields. The biopharmaceutical and biotechnology fields are distinct communities with a limited number of sophisticated players.</p> <p>Confusion if Not likely to Occur</p> <p>In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods or services. See <i>Federated Foods, Inc. v. Fort Howard Paper Co.</i>, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).</p>	

Comparing the Marks

Although Applicant has been required to disclaim the word "BIOVENTURES", this word still carries significance within the mark and teaches the public that the services relate to biotechnology and related fields. On a scale from one to ten, with one being the most descriptive, BIOVENTURES would definitely be much closer to a one or a two. This word does carry enough significance apart from its apparent meaning to be capable of helping to differentiate Applicant's mark from the cited marks in a manner closer to that of a suggestive mark. This is especially the case in a two word mark

Comparing the Commercial Impressions

The differences between the cited marks and Applicant's mark are significant enough to create entirely different commercial impressions. THE VAULT Registration (Reg.'144) brings to mind a locked container. Applicant's mark, while it contains the word VAULT, does not convey such an impression. Rather, Applicant's mark brings to mind something along the lines of a biology based venture that is bound for success. VAULT COMMUNICATIONS, INC. appears as a company name because of the word "INC" and the word "COMMUNICATIONS" creates a different commercial impression to the word "BIOVENTURES".

Comparing the Services

Applicant's services are advisory and consultancy business services directed to the biotech and pharma industries. The services for the cited marks are marketing and advertising services generally. These services differ. As stated above, the biotech and pharma fields are very distinct and unique. The advisory and consulting services offered by Applicant are specifically directed to these industries and do not consist of the general marketing and advising services offered under the cited marks. There is little chance that any consumer would be confused.

Sophistication of Purchasers

Applicant's services as well as those offered by the owners of the cited Registrations differ greatly from inexpensive goods offered off store shelves. In addition, the services offered by Applicant and the owners of the cited Registrations are services that would need to be tailored to each particular customer and these services would be expensive. These factors weigh against the likelihood that confusion will take place. In addition, the biotech and pharma industries are an especially sophisticated community and the services of Applicant are specifically directed to their needs alone.

Conclusion

Based upon the foregoing and especially the difference in the marks, Applicant requests, with respect, that the rejection of its application based upon a likelihood of confusion be withdrawn.

SIGNATURE SECTION

RESPONSE SIGNATURE	/kap/
SIGNATORY'S NAME	Kathleen A. Pasulka
SIGNATORY'S POSITION	Attorney of record, CA Bar member
SIGNATORY'S PHONE NUMBER	619 525 3827
DATE SIGNED	11/15/2012
AUTHORIZED SIGNATORY	YES

CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Thu Nov 15 17:56:59 EST 2012
TEAS STAMP	USPTO/RFR-209.242.145.130 -20121115175659534288-853 62134-490d65d713dd14765ff 25c471b73569702b-N/A-N/A- 20121115175444519459

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. **85362134** has been amended as follows:

ARGUMENT(S)

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

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Applicant's services are : Class 35- Assistance, advisory services and consultancy with regard to business analysis, business development, business operations, marketing, product commercialization, market research, branding, business project management and portfolio management for biopharmaceutical and biotechnology companies; Class 38- Assistance, advisory services and consultancy with regard to communications in the medical field for biopharmaceutical and biotechnology companies; Class 42- Assistance, advisory services and consultancy services with regard to clinical research and product development for biopharmaceutical and biotechnology companies .

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As Applicant has previously asserted, Applicant does not agree that confusion is likely to occur in view of the above listed Registrations / cited marks primarily on the basis that the marks differ, the services differ, the commercial impressions differ and the relevant purchasers are sophisticated.

Applicant's mark is VAULT BIOVENTURES, for the services listed above, is limited to the biopharmaceutical

and biotechnology fields. The biopharmaceutical and biotechnology fields are distinct communities with a limited number of sophisticated players.

Confusion if Not likely to Occur

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SIGNATURE(S)

Request for Reconsideration Signature

Signature: /kap/ Date: 11/15/2012

Signatory's Name: Kathleen A. Pasulka

Signatory's Position: Attorney of record, CA Bar member

Signatory's Phone Number: 619 525 3827

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: 85362134

Internet Transmission Date: Thu Nov 15 17:56:59 EST 2012

TEAS Stamp: USPTO/RFR-209.242.145.130-20121115175659

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