

Request for Reconsideration after Final Action

The table below presents the data as entered.

| Input Field | Entered |
|---|----------------|
| SERIAL NUMBER | 85486751 |
| LAW OFFICE ASSIGNED | LAW OFFICE 104 |
| MARK SECTION (no change) | |
| ARGUMENT(S) | |
| The Examining Attorney has made final the likelihood of confusion refusal based on Reg. No. 1819752. Applicant will submit its arguments against a likelihood of confusion on appeal to the TTAB. In the meantime, however, Applicant submits this request for reconsideration in order to satisfy the Examining Attorney's final requirement for amendments of the identification of goods. | |
| GOODS AND/OR SERVICES SECTION (009)(current) | |
| INTERNATIONAL CLASS | 009 |
| DESCRIPTION | |
| Swimming, snorkeling and diving equipment and apparatus, namely, protective diving boots, buoyancy compensators and buoyancy control devices (BCD) for divers, face masks, diving gloves, goggles, masks, nose clips, snorkels, diving suits, weight belts for scuba diving, pressures gauges, depth level gauges, underwater diving computers, scuba diving regulators and breathing apparatus, namely regulators, rebreathers, compressed air bailout units, signaling and safety apparatus, namely, diving marking and signaling buoys, and safety sausages; and parts and fittings therefor | |
| FILING BASIS | Section 44(d) |
| FOREIGN APPLICATION NUMBER | 1429157 |
| FOREIGN APPLICATION COUNTRY | Australia |
| FOREIGN FILING DATE | 06/06/2011 |
| GOODS AND/OR SERVICES SECTION (009)(proposed) | |
| INTERNATIONAL CLASS | 009 |
| TRACKED TEXT DESCRIPTION | |
| Swimming, snorkeling and diving equipment and apparatus, namely, protective diving boots, buoyancy compensators and buoyancy control devices (BCD) for divers, face masks, diving gloves, goggles, masks, nose clips, snorkels, diving suits, weight belts for scuba diving, pressures gauges, depth level gauges, underwater diving computers, scuba diving regulators and breathing apparatus, namely regulators, rebreathers, compressed air bailout units, signaling and safety apparatus, namely, diving | |

~~marking and signaling buoys, and safety sausages;~~ Swimming, snorkeling and diving equipment and apparatus, namely, protective diving boots, buoyancy compensators and buoyancy control devices (BCD) for divers, face masks, diving gloves, goggles, masks, nose clips, snorkels, diving suits, weight belts for scuba diving, pressures gauges, depth level gauges, underwater diving computers, scuba diving regulators and breathing apparatus, namely oxygen regulators, rebreathers, compressed air bailout units, divers signaling and safety apparatus, namely, diving marking and signaling buoys, and safety sausages; and parts and fittings therefor

FINAL DESCRIPTION

Swimming, snorkeling and diving equipment and apparatus, namely, protective diving boots, buoyancy compensators and buoyancy control devices (BCD) for divers, face masks, diving gloves, goggles, masks, nose clips, snorkels, diving suits, weight belts for scuba diving, pressures gauges, depth level gauges, underwater diving computers, scuba diving regulators and breathing apparatus, namely oxygen regulators, rebreathers, compressed air bailout units, divers signaling and safety apparatus, namely, diving marking and signaling buoys, and safety sausages; and parts and fittings therefor

FILING BASIS

Section 44(d)

FOREIGN APPLICATION NUMBER

1429157

FOREIGN APPLICATION COUNTRY

Australia

FOREIGN FILING DATE

06/06/2011

GOODS AND/OR SERVICES SECTION (025)(current)

INTERNATIONAL CLASS

025

DESCRIPTION

Clothing and headgear associated with water sports including waterproof clothing and headgear, namely, footwear associated with water sports including waterproof footwear; thermal clothing and headgear, namely, shirts, pants, shorts, headwear and thermal footwear; wetsuits for water sports including wetsuits for waterskiing and windsurfing; clothing for swimming, namely, swim suits, swim trunks, swim caps, snorkeling suits; swimming, snorkeling and diving hoods; swimming, snorkeling and diving kneepads; swimming, snorkeling and diving wetsuits

FILING BASIS

Section 44(d)

GOODS AND/OR SERVICES SECTION (025)(proposed)

INTERNATIONAL CLASS

025

TRACKED TEXT DESCRIPTION

~~Clothing and headgear associated with water sports including waterproof clothing and headgear, namely, footwear associated with water sports including waterproof footwear;~~ Clothing and headgear associated with water sports including waterproof clothing and headgear, namely, shirts, pants, jackets, hats and hoods; footwear associated with water sports namely waterproof footwear; thermal clothing and headgear, namely, shirts, pants, shorts, headwear and thermal footwear; wetsuits for water sports including wetsuits for waterskiing and windsurfing; clothing for swimming, namely, swim suits, swim trunks, swim caps, snorkeling suits; ~~swimming, snorkeling and diving kneepads;~~ swimming, snorkeling and diving hoods; swimming, snorkeling and diving wetsuits; swimming and snorkeling boots

FINAL DESCRIPTION

Clothing and headgear associated with water sports including waterproof clothing and headgear, namely, shirts, pants, jackets, hats and hoods; footwear associated with water sports namely waterproof footwear; thermal clothing and headgear, namely, shirts, pants, shorts, headwear and thermal footwear; wetsuits for water sports including wetsuits for waterskiing and windsurfing; clothing for swimming, namely, swim suits, swim trunks, swim caps, snorkeling suits; swimming, snorkeling and diving hoods; swimming, snorkeling and diving wetsuits; swimming and snorkeling boots

FILING BASIS Section 44(d)

GOODS AND/OR SERVICES SECTION (028)(current)

INTERNATIONAL CLASS 028

DESCRIPTION

Sporting articles for water sports, namely, fins for swimming, snorkeling, diving and other aquatic sports, flippers for swimming, snorkeling, diving and other aquatic sports, swimming and snorkeling boots; swimming and snorkeling gloves

FILING BASIS Section 44(d)

GOODS AND/OR SERVICES SECTION (028)(proposed)

INTERNATIONAL CLASS 028

TRACKED TEXT DESCRIPTION

~~Sporting articles for water sports, namely, fins for swimming, snorkeling, diving and other aquatic sports, flippers for swimming, snorkeling, diving and other aquatic sports, swimming and snorkeling boots;~~ Sporting articles for water sports, namely, fins for swimming, snorkeling, diving and other aquatic sports, flippers for swimming, snorkeling, diving and other aquatic sports, swimming and snorkeling gloves; ~~swimming and snorkeling gloves;~~ swimming, snorkeling and diving kneepads

FINAL DESCRIPTION

Sporting articles for water sports, namely, fins for swimming, snorkeling, diving and other aquatic sports, flippers for swimming, snorkeling, diving and other aquatic sports, swimming and snorkeling gloves; swimming, snorkeling and diving kneepads

FILING BASIS Section 44(d)

SIGNATURE SECTION

RESPONSE SIGNATURE /jarcher/

SIGNATORY'S NAME Julia C. Archer

SIGNATORY'S POSITION Attorney of record, NC Bar

SIGNATORY'S PHONE NUMBER 336-723-5180

DATE SIGNED 04/08/2013

AUTHORIZED SIGNATORY YES

CONCURRENT APPEAL NOTICE FILED YES

FILING INFORMATION SECTION

| | |
|--------------------|--|
| SUBMIT DATE | Mon Apr 08 10:54:12 EDT 2013 |
| TEAS STAMP | USPTO/RFR-96.10.211.234-2 0130408105412730064-85486 751-50064eef17f22193a5986 579a543fc2ebad9cb04d7fc68 fae62455f53cedc5faf60-N/A -N/A-20130408103937412686 |

PTO Form 1930 (Rev 9/2007)
OMB No. 0651-0050 (Exp. 05/31/2014)

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

Application serial no. **85486751** has been amended as follows:

ARGUMENT(S)

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

The Examining Attorney has made final the likelihood of confusion refusal based on Reg. No. 1819752. Applicant will submit its arguments against a likelihood of confusion on appeal to the TTAB. In the meantime, however, Applicant submits this request for reconsideration in order to satisfy the Examining Attorney's final requirement for amendments of the identification of goods.

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 009 for Swimming, snorkeling and diving equipment and apparatus, namely, protective diving boots, buoyancy compensators and buoyancy control devices (BCD) for divers, face masks, diving gloves, goggles, masks, nose clips, snorkels, diving suits, weight belts for scuba diving, pressures gauges, depth level gauges, underwater diving computers, scuba diving regulators and breathing apparatus, namely regulators, rebreathers, compressed air bailout units, signaling and safety apparatus, namely, diving marking and signaling buoys, and safety sausages; and parts and fittings therefor

Original Filing Basis:

Filing Basis: Section 44(d), Priority based on foreign filing: Applicant has had a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and asserts a claim of priority based on [Australia application number 1429157 filed 06/06/2011]. 15 U.S.C. Section 1126(d), as amended.

Proposed:

Tracked Text Description: ~~Swimming, snorkeling and diving equipment and apparatus, namely, protective diving boots, buoyancy compensators and buoyancy control devices (BCD) for divers, face masks, diving gloves, goggles, masks, nose clips, snorkels, diving suits, weight belts for scuba diving, pressures gauges, depth level gauges, underwater diving computers, scuba diving regulators and breathing~~

~~apparatus, namely regulators, rebreathers, compressed air bailout units, signaling and safety apparatus, namely, diving marking and signaling buoys, and safety sausages;~~ Swimming, snorkeling and diving equipment and apparatus, namely, protective diving boots, buoyancy compensators and buoyancy control devices (BCD) for divers, face masks, diving gloves, goggles, masks, nose clips, snorkels, diving suits, weight belts for scuba diving, pressures gauges, depth level gauges, underwater diving computers, scuba diving regulators and breathing apparatus, namely oxygen regulators, rebreathers, compressed air bailout units, divers signaling and safety apparatus, namely, diving marking and signaling buoys, and safety sausages; and parts and fittings therefor

Class 009 for Swimming, snorkeling and diving equipment and apparatus, namely, protective diving boots, buoyancy compensators and buoyancy control devices (BCD) for divers, face masks, diving gloves, goggles, masks, nose clips, snorkels, diving suits, weight belts for scuba diving, pressures gauges, depth level gauges, underwater diving computers, scuba diving regulators and breathing apparatus, namely oxygen regulators, rebreathers, compressed air bailout units, divers signaling and safety apparatus, namely, diving marking and signaling buoys, and safety sausages; and parts and fittings therefor

Filing Basis: Section 44(d), Priority based on foreign filing: Applicant has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and asserts a claim of priority based on [Australia application number 1429157 filed 06/06/2011]. 15 U.S.C. Section 1126(d), as amended.

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 025 for Clothing and headgear associated with water sports including waterproof clothing and headgear, namely, footwear associated with water sports including waterproof footwear; thermal clothing and headgear, namely, shirts, pants, shorts, headwear and thermal footwear; wetsuits for water sports including wetsuits for waterskiing and windsurfing; clothing for swimming, namely, swim suits, swim trunks, swim caps, snorkeling suits; swimming, snorkeling and diving hoods; swimming, snorkeling and diving kneepads; swimming, snorkeling and diving wetsuits

Original Filing Basis:

Based on Foreign Application: Applicant has had a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and will submit a copy of a foreign registration, and translation thereof, if appropriate. 15 U. S.C. Section 1126(d), as amended.

Proposed:

Tracked Text Description: ~~Clothing and headgear associated with water sports including waterproof clothing and headgear, namely, footwear associated with water sports including waterproof footwear;~~ Clothing and headgear associated with water sports including waterproof clothing and headgear, namely, shirts, pants, jackets, hats and hoods; footwear associated with water sports namely waterproof footwear; thermal clothing and headgear, namely, shirts, pants, shorts, headwear and thermal footwear; wetsuits for water sports including wetsuits for waterskiing and windsurfing; clothing for swimming, namely, swim suits, swim trunks, swim caps, snorkeling suits; ~~swimming, snorkeling and diving kneepads;~~ swimming, snorkeling and diving hoods; swimming, snorkeling and diving wetsuits; swimming and snorkeling boots

Class 025 for Clothing and headgear associated with water sports including waterproof clothing and headgear, namely, shirts, pants, jackets, hats and hoods; footwear associated with water sports namely waterproof footwear; thermal clothing and headgear, namely, shirts, pants, shorts, headwear and thermal footwear; wetsuits for water sports including wetsuits for waterskiing and windsurfing; clothing for swimming, namely, swim suits, swim trunks, swim caps, snorkeling suits; swimming, snorkeling and diving hoods; swimming, snorkeling and diving wetsuits; swimming and snorkeling boots

Based on Foreign Application: Applicant has a bona fide intention to use the mark in commerce on or in

connection with the identified goods and/or services, and will submit a copy of a foreign registration, and translation thereof, if appropriate. 15 U. S.C. Section 1126(d), as amended.

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 028 for Sporting articles for water sports, namely, fins for swimming, snorkeling, diving and other aquatic sports, flippers for swimming, snorkeling, diving and other aquatic sports, swimming and snorkeling boots; swimming and snorkeling gloves

Original Filing Basis:

Based on Foreign Application: Applicant has had a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and will submit a copy of a foreign registration, and translation thereof, if appropriate. 15 U. S.C. Section 1126(d), as amended.

Proposed:

Tracked Text Description: ~~Sporting articles for water sports, namely, fins for swimming, snorkeling, diving and other aquatic sports, flippers for swimming, snorkeling, diving and other aquatic sports, swimming and snorkeling boots;~~ Sporting articles for water sports, namely, fins for swimming, snorkeling, diving and other aquatic sports, flippers for swimming, snorkeling, diving and other aquatic sports, swimming and snorkeling gloves; ~~swimming and snorkeling gloves;~~ swimming, snorkeling and diving kneepads

Class 028 for Sporting articles for water sports, namely, fins for swimming, snorkeling, diving and other aquatic sports, flippers for swimming, snorkeling, diving and other aquatic sports, swimming and snorkeling gloves; swimming, snorkeling and diving kneepads

Based on Foreign Application: Applicant has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and will submit a copy of a foreign registration, and translation thereof, if appropriate. 15 U. S.C. Section 1126(d), as amended.

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /jarcher/ Date: 04/08/2013

Signatory's Name: Julia C. Archer

Signatory's Position: Attorney of record, NC Bar

Signatory's Phone Number: 336-723-5180

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: 85486751

Internet Transmission Date: Mon Apr 08 10:54:12 EDT 2013
TEAS Stamp: USPTO/RFR-96.10.211.234-2013040810541273
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