

To: All-Ways Forwarding Int'l Inc. (dara@onofriolaw.com)

Subject: U.S. TRADEMARK APPLICATION NO. 85554445 - ALL-WAYS - ALL-100 - Request for Reconsideration Denied - Return to TTAB

Sent: 4/14/2013 6:07:53 PM

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**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 85554445

MARK: ALL-WAYS

85554445

CORRESPONDENT ADDRESS:

DARA L ONOFRIO

ONOFRIO LAW

15 N MILL ST STE 225

NYACK, NY 10960-3015

GENERAL TRADEMARK I

<http://www.uspto.gov/traden>

APPLICANT: All-Ways Forwarding Int'l Inc.

CORRESPONDENT'S REFERENCE/DOCKET NO :

ALL-100

CORRESPONDENT E-MAIL ADDRESS:

dara@onofriolaw.com

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 4/14/2013

The trademark examining attorney has carefully reviewed applicant's request for reconsideration and is denying the request for the reasons stated below. *See* 37 C.F.R. §2.64(b); TMEP §§715.03(a)(2)(B), (a)(2)(E), 715.04(a). The refusal made final in the Office action dated September 28, 2012 is maintained and continues to be final. *See* TMEP §§715.03(a)(2)(B), (a)(2)(E), 715.04(a).

In the present case, applicant's request has not resolved the outstanding issue, nor does it raise a new issue or provide any new or compelling evidence with regard to the outstanding issue in the final Office action. In addition, applicant's analysis and arguments are not persuasive nor do they shed new light on the issues. Accordingly, the request is denied.

There is a likelihood of confusion with the mark in U.S. Registration No. 4015760. As explained in the final refusal, applicant's **ALL-WAYS** mark is confusingly similar to the dominant wording **ALL WAYS** in the registrant's mark. The wording "MOVING AND STORAGE" in the registrant's mark has been disclaimed. It is well settled that, although marks are compared in their entireties, one feature of a mark may be more significant or dominant in creating a commercial impression. *See In re Vittera Inc.*, 671

F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 751 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii). Disclaimed matter is typically less significant or less dominant when comparing marks. *See In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1060, 224 USPQ 749, 752 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii). In this case, the dominant wording in the registrant's mark is very similar in sound, appearance, meaning and commercial impression to applicant's **ALL-WAYS** mark. Moreover, **ALL-WAYS** or **ALL WAYS** is the first wording in the marks. Consumers are generally more inclined to focus on the first word, prefix or syllable in any trademark or service mark. *See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F. 3d 1369, 1372, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005); *see also Mattel Inc. v. Funline Merch. Co.*, 81 USPQ2d 1372, 1374-75 (TTAB 2006); *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) ("it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered" when making purchasing decisions).

Applicant's assorted freight and shipping-related services are related to the registrant's broadly-identified "moving company services" because "moving company services" may encompass storage, forwarding, transportation, warehousing and delivery services for others. *See* evidence attached to the final refusal dated September 28, 2012, and incorporated herein by reference; *see also* the attached evidence from the USPTO's X-Search database, consisting of a number of third-party marks registered for use in connection with the same or similar services as those of both applicant and registrant in this case. This evidence shows that the services listed therein, namely "moving company services" and air freight shipping services, freight transportation services, supply chain logistics and reverse logistics services, namely, storage, transportation and delivery of documents, packages, raw materials, and other freight for others by air, rail, ship or truck, packing, storage and warehouse services and/or freight forwarding the goods of others, are of a kind that may emanate from a single source under a single mark. *See In re Anderson*, 101 USPQ2d 1912, 1919 (TTAB 2012); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988); TMEP §1207.01(d)(iii).

Applicant's claim of priority of use is not relevant to this *ex parte* proceeding. *See In re Calgon Corp.*, 435 F.2d 596, 168 USPQ 278 (C.C.P.A. 1971). Trademark Act Section 7(b), 15 U.S.C. §1057(b), provides that a certificate of registration on the Principal Register is *prima facie* evidence of the validity of the registration, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the mark in commerce on or in connection with the goods and/or services specified in the certificate. During *ex parte* prosecution, the trademark examining attorney has no authority to review or to decide on matters that constitute a collateral attack on the cited registration. TMEP §1207.01(d)(iv).

In a likelihood of confusion analysis, any doubt regarding a likelihood of confusion determination is resolved in favor of the registrant. TMEP §1207.01(d)(i); *see Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1025 (Fed. Cir. 1988). Given the similar dominant wording in the marks for related services, there is a likelihood of confusion regarding the source of the services.

The filing of a request for reconsideration does not extend the time for filing a proper response to a final Office action or an appeal with the Trademark Trial and Appeal Board (Board), which runs from the date the final Office action was issued/mailed. *See* 37 C.F.R. §2.64(b); TMEP §715.03, (a)(2)(B), (a)(2)(E), (c).

If time remains in the six-month response period to the final Office action, applicant has the remainder of the response period to comply with and/or overcome any outstanding final requirement(s) and/or refusal(s) and/or to file an appeal with the Board. TMEP §715.03(a)(2)(B), (c). However, if applicant has already filed a timely notice of appeal with the Board, the Board will be notified to resume the appeal when the time for responding to the final Office action has expired. *See* TMEP §715.04(a).

TEAS PLUS APPLICANTS MUST SUBMIT DOCUMENTS ELECTRONICALLY OR SUBMIT FEE: Applicants who filed their application online using the reduced-fee TEAS Plus application must continue to submit certain documents online using TEAS, including responses to Office actions. *See* 37 C.F.R. §2.23(a)(1). For a complete list of these documents, see TMEP §819.02(b). In addition, such applicants must accept correspondence from the Office via e-mail throughout the examination process and must maintain a valid e-mail address. 37 C.F.R. §2.23(a)(2); TMEP §§819, 819.02(a). TEAS Plus applicants who do not meet these requirements must submit an additional fee of \$50 per international class of goods and/or services. 37 C.F.R. §2.6(a)(1)(iv); TMEP §819.04. In appropriate situations and where all issues can be resolved by amendment, responding by telephone to authorize an examiner's amendment will not incur this additional fee.

/Kathy de Jonge/

Examining Attorney

Law Office 107

(571) 272-9152

DESIGN MARK

Serial Number

77864733

Status

REGISTERED

Word Mark

MOVEBUILDER

Standard Character Mark

No

Registration Number

3820943

Date Registered

2010/07/20

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

Moving Solutions, Inc. CORPORATION ARKANSAS 3801 Old Greenwood Road
Fort Smith ARKANSAS 72903

Goods/Services

Class Status -- ACTIVE. IC 039. US 100 105. G & S: Moving company services for household and commercial purposes; transportation services, namely, freight forwarding the goods of others by truck and ship. First Use: 2009/11/24. First Use In Commerce: 2009/11/24.

Description of Mark

The mark consists of the wording "MOVEBUILDER" to the right of a square design that encompasses six smaller squares.

Colors Claimed

Color is not claimed as a feature of the mark.

Filing Date

2009/11/04

Examining Attorney

HAN, DAWN

Print: Apr 14, 2013

77864733

Attorney of Record

Michele P. Schwartz

MoveBuilder

DESIGN MARK

Serial Number

85048006

Status

REGISTERED

Word Mark

UNPACK US.COM UNPACKUS.COM

Standard Character Mark

No

Registration Number

3903953

Date Registered

2011/01/11

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

UnPackUs, LLC LIMITED LIABILITY COMPANY ALABAMA 4424 Hampton Heights
Dr. Birmingham ALABAMA 35209

Goods/Services

Class Status -- ACTIVE. IC 039. US 100 105. G & S: Furniture
moving; Moving company services; Packing, crating and warehousing
services; Transport services, namely, local, interstate and
international moving services. First Use: 2009/10/15. First Use In
Commerce: 2009/10/15.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "UNPACK" APART FROM THE
MARK AS SHOWN.

Description of Mark

The mark consists of the word "UNPACK" in black with images of a blue
dresser with white drawers, gold lamp and red table with white
handles, all located below the word. Underneath the images is the word
"US" in white with black borders followed by ".com" in black which is
positioned vertically. A black line is located under "US.com". Below
the line is the complete literal element "UnpackUs.com" in black.

Colors Claimed

The color(s) blue, gold, red, black and white is/are claimed as a feature of the mark.

Filing Date

2010/05/26

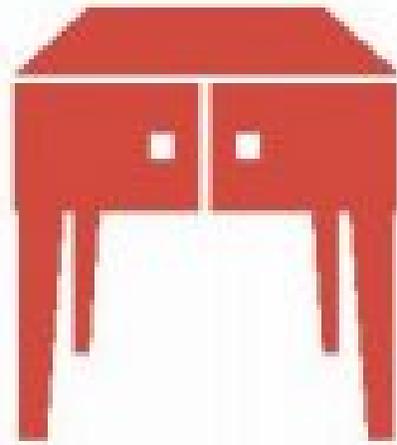
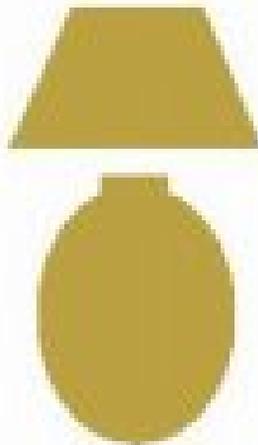
Examining Attorney

BENMAMAN, ALICE

Attorney of Record

Marcus L Hunt

UNPACK



US.COM



UNPACKUS.COM

DESIGN MARK

Serial Number

85071025

Status

REGISTERED

Word Mark

GET OUT OF THE BOX AND ON WITH YOUR LIFE

Standard Character Mark

Yes

Registration Number

3900752

Date Registered

2011/01/04

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

UnPackUs, LLC LIMITED LIABILITY COMPANY ALABAMA 4424 Hampton Heights
Dr. Birmingham ALABAMA 35209

Goods/Services

Class Status -- ACTIVE. IC 039. US 100 105. G & S: Furniture
moving; Moving company services; Packaging and parcelling of goods for
transport purposes, namely, the packing of goods using sustainable or
biodegradable packaging and shipping materials; Packing articles for
transportation; Packing, crating and warehousing services. First Use:
2010/02/01. First Use In Commerce: 2010/06/01.

Filing Date

2010/06/24

Examining Attorney

BENMAMAN, ALICE

Attorney of Record

Marcus L Hunt

Get out of the box and on
with your life

DESIGN MARK

Serial Number

85088451

Status

REGISTERED

Word Mark

FGM MOVING

Standard Character Mark

No

Registration Number

3940354

Date Registered

2011/04/05

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

FGM Worldwide Movers & Logistics, Inc. CORPORATION FLORIDA 10465 N.W.
29th Terrace Miami FLORIDA 33172

Goods/Services

Class Status -- ACTIVE. IC 039. US 100 105. G & S: Delivery and storage of goods; Moving company services; Moving van services; Moving van transport; Rental of moving vans; Supply chain logistics and reverse logistics services, namely, storage, transportation and delivery of documents, packages, raw materials, and other freight for others by air, rail, ship or truck; Supply chain logistics and reverse logistics services, namely, storage, transportation and delivery of goods for others by air, rail, ship or truck; Transport services, namely, local, interstate and international moving services. First Use: 2010/07/01. First Use In Commerce: 2010/07/01.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "MOVING" AND THE REPRESENTATION OF THE GLOBE APART FROM THE MARK AS SHOWN.

Description of Mark

The mark consists of a depiction of a globe within arrows. The letters

Print: Apr 14, 2013

85088451

"FGM" and the word "MOVING" are to the right.

Colors Claimed

Color is not claimed as a feature of the mark.

Filing Date

2010/07/20

Examining Attorney

SWAIN, MICHELE

Attorney of Record

Albert Bordas, Esq.



FGM MOVING

DESIGN MARK

Serial Number

85120484

Status

REGISTERED

Word Mark

IMCA INDEPENDENT MOVERS CO-OP OF AMERICA

Standard Character Mark

No

Registration Number

4154769

Date Registered

2012/06/05

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

A. Guminiak, Jeffrey INDIVIDUAL UNITED STATES 5607 8th Street W.
Lehigh Acres FLORIDA 33971

Goods/Services

Class Status -- ACTIVE. IC 039. US 100 105. G & S: moving company services; storage and delivery of goods; supply chain logistics and reverse logistics services, namely, storage, transportation and delivery of documents, packages, raw materials, and other freight for others by air, rail, ship or truck. First Use: 2011/03/00. First Use In Commerce: 2011/03/00.

Goods/Services

Class Status -- ACTIVE. IC 035. US 100 101 102. G & S: association services, namely, promoting the interests of moving companies. First Use: 2011/03/00. First Use In Commerce: 2011/03/00.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "INDEPENDENT MOVERS CO-OP OF AMERICA" APART FROM THE MARK AS SHOWN.

Description of Mark

Print: Apr 14, 2013

85120484

The mark consists of the large letters "IMCA" with the letter "A" including an arrow and the wording "INDEPENDENT MOVERS CO-OP OF AMERICA" in smaller lettering underneath.

Colors Claimed

Color is not claimed as a feature of the mark.

Filing Date

2010/09/01

Examining Attorney

LEE, DOUGLAS

Attorney of Record

Peter A. Matos

IMCA

INDEPENDENT Movers Co-op of America

DESIGN MARK

Serial Number

85313205

Status

REGISTERED

Word Mark

YOUR NEEDS. YOUR BUDGET. YOUR MOVE.

Standard Character Mark

Yes

Registration Number

4073880

Date Registered

2011/12/20

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Moving Solutions, Inc. CORPORATION ARKANSAS 3801 Old Greenwood Road
Fort Smith ARKANSAS 72903

Goods/Services

Class Status -- ACTIVE. IC 039. US 100 105. G & S: moving company services for household and commercial purposes; transportation services, namely, freight forwarding the goods of others by truck and ship. First Use: 2010/02/00. First Use In Commerce: 2010/02/00.

Filing Date

2011/05/05

Examining Attorney

MONINGHOFF, KIM

Attorney of Record

Michele P. Schwartz

YOUR NEEDS. YOUR BUDGET.
YOUR MOVE.

DESIGN MARK

Serial Number

85326949

Status

REGISTERED

Registration Number

4234788

Date Registered

2012/10/30

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(2) DESIGN ONLY

Owner

Yangpu NGT Industrial Co., Ltd. LIMITED LIABILITY COMPANY CHINA No.236
Zhonghang Building YangpuGuanghua Co. Hainan CHINA

Goods/Services

Class Status -- ACTIVE. IC 039. US 100 105. G & S: Air freight shipping services; arranging of tours; car parking; car rental; courier services; freight and transport brokerage; freight forwarding; freight transportation by truck, train, air and ship; furniture moving; moving company services; moving van transport; organisation of sightseeing tours; passenger transport; postal, freight and courier services; rental of warehouses; storage of goods; transport of goods; transport services, namely, local, interstate and international moving services; travel and tour ticket reservation service; vehicle and boat moving services; warehouse storage; water supplying. First Use: 2011/07/01. First Use In Commerce: 2011/07/01.

Goods/Services

Class Status -- ACTIVE. IC 041. US 100 101 107. G & S: Amusement parks; arranging and conducting educational conferences; education services in the nature of courses at the university level; education services in the nature of early childhood instruction; Educational services, namely, conducting distance learning instruction at the primary and secondary levels; educational services, namely, conducting distance learning instruction at the secondary, college and graduate levels; educational services, namely, providing internships and exchange programs in the fields of business, science, research, and humanities; entertainment event booking agencies; entertainment

information; health club services, namely, providing instruction and equipment in the field of physical exercise; holiday camp services; organisation of fashion shows for entertainment purposes; organisation of sports competitions; organization of shows for cultural purposes; organizing on-line exhibitions and conferences in the fields of education, culture, sports and entertainment for non-business and non-commercial purposes; physical education services; providing amusement arcade services; providing golf facilities; providing sports facilities; rental of skin diving equipment; rental of tennis courts; social club services, namely, arranging, organizing, and hosting social events, get-togethers, and parties for club members; sports camp services. First Use: 2011/07/01. First Use In Commerce: 2011/07/01.

Goods/Services

Class Status -- ACTIVE. IC 042. US 100 101. G & S: Architectural consultation; computer hardware and software consulting services; computer programming; computer software consultancy; computer software design; construction drafting; consulting in the fields of engineering and architecture; consulting services in the fields of energy measurement to improve energy efficiency; design of interior decor; engineering; engineering services, particularly technical project planning and design engineering of lines for the processing of web products; land surveying; packaging design; rental of computer software; research and development for new products for others; scientific research and development; surveying; technical advice relating to operation of computers; technical consultancy in relation to research services relating to foods and dietary supplements; technical consultancy in relation to technical research in the field of food and beverages; technical consultancy in the field of environmental science; technical research in the field of aeronautics; technology consultation services in the field of alternative energy, namely, gasifying and combusting alternative fuels; urban planning. First Use: 2011/07/01. First Use In Commerce: 2011/07/01.

Goods/Services

Class Status -- ACTIVE. IC 043. US 100 101. G & S: Agency services for the reservation of temporary accommodation; bar services; boarding houses; cafes; canteen services; catering of food and drinks; hotel accommodation services; hotels; leasing of metal and non-metal buildings for temporary use purposes; motels; providing campground facilities; providing temporary lodging at holiday camps; rental of portable buildings; rental of rooms as temporary living accommodations; restaurant; snack-bars; tourist homes. First Use: 2011/07/01. First Use In Commerce: 2011/07/01.

Goods/Services

Class Status -- ACTIVE. IC 044. US 100 101. G & S: Animal breeding; animal grooming; beauty salons; gardener and gardening services; health spa services for health and wellness of the body and spirit offered at a health resort; healthcare; hospitals; landscape

design; landscape gardening; medical assistance services; nursing care; nursing services; opticians' services; psychological assessment services; psychological consultation; psychological counseling; psychological testing services; psychotherapy services; rental of sanitation facilities; rest homes; veterinary services. First Use: 2011/07/01. First Use In Commerce: 2011/07/01.

Description of Mark

The mark consists of a wave design inside a circle.

Colors Claimed

Color is not claimed as a feature of the mark.

Filing Date

2011/05/22

Examining Attorney

ABRAMS, JACQUELINE A.



To: All-Ways Forwarding Int'l Inc. (dara@onofriolaw.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85554445 - ALL-WAYS - ALL-100 - Request for Reconsideration Denied - Return to TTAB
Sent: 4/14/2013 6:07:54 PM
Sent As: ECOM107@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

**IMPORTANT NOTICE REGARDING YOUR
U.S. TRADEMARK APPLICATION**

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED
ON **4/14/2013** FOR U.S. APPLICATION SERIAL NO. 85554445

Please follow the instructions below:

(1) TO READ THE LETTER: Click on this [link](#) or go to <http://tsdr.uspto.gov>, enter the U.S. application serial number, and click on “Documents.”

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

(2) TIMELY RESPONSE IS REQUIRED: Please carefully review the Office action to determine (1) how to respond, and (2) the applicable response time period. Your response deadline will be calculated from **4/14/2013** (*or sooner if specified in the Office action*). For information regarding response time periods, see <http://www.uspto.gov/trademarks/process/status/responsetime.jsp>.

Do NOT hit “Reply” to this e-mail notification, or otherwise e-mail your response because the USPTO does NOT accept e-mails as responses to Office actions. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System (TEAS) response form located at

http://www.uspto.gov/trademarks/teas/response_forms.jsp.

(3) QUESTIONS: For questions about the contents of the Office action itself, please contact the assigned trademark examining attorney. For *technical* assistance in accessing or viewing the Office action in the Trademark Status and Document Retrieval (TSDR) system, please e-mail TSDR@uspto.gov.

WARNING

Failure to file the required response by the applicable response deadline will result in the ABANDONMENT of your application. For more information regarding abandonment, see <http://www.uspto.gov/trademarks/basics/abandon.jsp>.

PRIVATE COMPANY SOLICITATIONS REGARDING YOUR APPLICATION: Private companies **not** associated with the USPTO are using information provided in trademark applications to mail or e-mail trademark-related solicitations. These companies often use names that closely resemble the USPTO and their solicitations may look like an official government document. Many solicitations require that you pay “fees.”

Please carefully review all correspondence you receive regarding this application to make sure that you are responding to an official document from the USPTO rather than a private company solicitation. All official USPTO correspondence will be mailed only from the “United States Patent and Trademark Office” in Alexandria, VA; or sent by e-mail from the domain “@uspto.gov.” For more information on how to handle private company solicitations, see http://www.uspto.gov/trademarks/solicitation_warnings.jsp.