

From: Thompson, Heather

Sent: 1/26/2014 11:23:01 AM

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Subject: U.S. TRADEMARK APPLICATION NO. 85707925 - MY SCORE - 072363-00001 - Request for
Reconsideration Denied - Return to TTAB - Message 1 of 3

Attachment Information:

Count: 7

Files: jwp1-1.jpg, jwp1-2.jpg, jwp2-1.jpg, jwp2-2.jpg, jwp3-1.jpg, jwp3-2.jpg, 85707925.doc

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

U.S. APPLICATION SERIAL NO. 85707925

MARK: MY SCORE



CORRESPONDENT ADDRESS:

TIMOTHY D. PECSENYE

BLANK ROME LLP

1 LOGAN SQ FL 8

PHILADELPHIA, PA 19103-6998

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/trademarks/index.jsp>

APPLICANT: J.W. Pepper & Son, Inc.

CORRESPONDENT'S REFERENCE/DOCKET NO:

072363-00001

CORRESPONDENT E-MAIL ADDRESS:

pecsenye@blankrome.com

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 1/26/2014

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 requirement(s) and/or refusal(s) made final in the Office action dated July 15, 2013 are maintained and continue to be final. See TMEP §§715.03(a)(2)(B), (a)(2)(E), 715.04(a).

Applicant seeks registration of MY SCORE for "on-line retail store services featuring printed or digital sheet music." Applicant has been required to disclaim the descriptive wording "SCORE" apart from the mark as shown because it merely describes a feature of these services. See 15 U.S.C. §§1052(e)(1), 1056(a); *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1251, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012) (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004)); *In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005); TMEP §§1213, 1213.03(a).

That is, SCORE describes a primary feature (or item) of the online music stores in that the stores offer musical scores for sale or download. Applicant argues that score "merely suggests the nature of Applicant's services" because of a "distinction between a 'score' and 'sheet music'." (Request for Reconsideration, January 13, 2014.) Notwithstanding the applicant's drawn distinction between sheet music and scores, the relationship between the two in the context of applicant's services is key. The sheet music featured in applicant's online shop is drawn from musical scores and the applicant's website simply confirms this fact:

This is the officially licensed, collectible sheet music book from the motion picture, featuring solo piano arrangements of nine standout selections from Alexandre Desplat's acclaimed score, along with several pages of color imagery from the final film of the Harry Potter series.

<http://www.jwpepper.com/Harry-Potter-and-the-Deathly-Hallows%2C-Part-2/10291155.item>

Award-winning film composer Hans Zimmer brings two groundbreaking scores with his soundtracks to Warner Bros. Entertainment's Sherlock Holmes and Sherlock Holmes: A Game of Shadows. With this sheet music collection, pianists and aspiring film composers can explore the music in depth with solo piano reductions of three standout selections from each soundtrack.

<http://www.jwpepper.com/Sherlock-Holmes/10317939.item>

Dreaming of Bag End is a standout theme from Howard Shore's majestic score to "The Hobbit: An Unexpected Journey." This officially licensed sheet music provides pianists with a beautiful solo rendition that's perfect for recital or performance.

<http://www.jwpepper.com/Dreaming-of-Bag-End/10348718.item>

National Federation Selection 2004-2007. Alternating hands (chords) contrasted with an energetic melody. Bass part takes the melody in the middle section. 4/4, D minor/G Major. Separate score sheets for each performer included.

<http://www.jwpepper.com/Hot-Pursuit-1-Piano-6-Hands/5575170.item>

Moreover, as is clear from the terms and specifications of the "My Score" service described on the applicant's website, prospective users/purchasers of that service would understand the direct link between their musical compositions or "scores" and the sheet music printed therefrom:

Common Formats

To achieve best **printed** results, we'll work with you to determine the best size and format for your composition.

Choral Sizes

Octavo Standard octavo size, folded and bound
Choral Book Cover stock with saddle stitched pages
Vocal Score 11 x 17 size, folding and binding

Instrumental Music, **Score and Parts**

8 1/2 x 11 Standard, collated in **score** order
9 x 12 Standard, collated in **score** order
9 x 14 Oversized, collated in **score order(Score will be coil bound)**
11 x 17 Oversized, collated in **score order(Score will be coil bound)**
12 x 18 Oversized, collated in **score order(Score will be coil bound)**
Spine Spines standard on full instrumental sets
All **music printed** on 60 lbs. Text Accent Opaque
All covers printed on 80 lbs. Cover Stock Accent Opaque

(Emphasis added) http://www.jwpepper.com/sheet-music/my_score/ms_getstarted.jsp.

As the term SCORE is immediately descriptive of a primary feature of the applicant's services, the final requirement for disclaimer and maintained and continued.

Accordingly, as applicant's request has not resolved all the outstanding issue, does not raise a new issue, provide any new or compelling evidence, and since applicant's analysis and arguments are not persuasive, the request is *denied*.

Since applicant has already filed a timely notice of appeal with the Board, the Board will be notified to resume the appeal. *See* TMEP §715.04(a).

/Heather D. Thompson/

Trademark Examining Attorney

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Dreaming of Bag End
Howard Shore - Alfred Music Publishing

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Publisher Desc. *Dreaming of Bag End* is a standout theme from Howard Shore's majestic score to *"The Hobbit: An Unexpected Journey."* This officially licensed sheet music provides pianists with a beautiful solo rendition that's perfect for recital or performance.

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|-------------------|--|-----------|-------|--------|-----------------------------------|
| | Piano Music UPC: 038081457253 ID: 40835 Publisher | 10348718 | | \$3.99 | <input type="text"/> |
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Sherlock Holmes

(Sheet Music Selections from the Warner Bros. Pictures Soundtracks)
Hans Zimmer - Alfred Music Publishing

Be the first to write a review
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Award-winning film composer Hans Zimmer brings two groundbreaking scores with his soundtracks to Warner Bros. Entertainment's *Sherlock Holmes* and *Sherlock Holmes: A Game of Shadows*. With this sheet music collection, pianists and aspiring film composers can explore the music in depth with solo piano reductions of three standout selections from each soundtrack. Titles include: *Discombobulate*; *I Never Woke Up in Handcuffs Before*; *Ah, Putrefaction*; *Tick Tock (Shadows - Part 2)*; *It's So Overt It's Covert* and *Memories of Sherlock*.
Copyright: Van Nuys, CA: Alfred Publishing, Inc. ©2012

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Full Song List

- [Discombobulate](#)
- [I Never Woke Up in Handcuffs Before](#)

Ah, Putrefaction
Tick Tock (Shadows- Part 2)
It's So Overt It's Covert
Memories of Sherlock

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Product Rating: [?]

Overall Rating ★★★★★ (0 ratings submitted)

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Search Keyword or item #



Harry Potter and the Deathly Hallows, Part 2
Alexandre Desplat - Alfred Music Publishing

Be the first to write a review
[Click to review](#)

This is the officially licensed, collectible sheet music book from the motion picture, featuring solo piano arrangements of nine standout selections from Alexandre Desplat's acclaimed score, along with several pages of color imagery from the final film of the *Harry Potter* series. Titles include: *Lily's Theme*; *Statues*; *Courtyard Apocalypse*; *Severus and Lily*; *Harry's Sacrifice*; *The Resurrection Stone*; *Neville the Hero*; *A New Beginning* and *Lily's Lullaby*.

| listen view watch | Description | Number | Level | Price | Qty |
|-------------------------------------|---|----------|-------|---------|----------------------|
| <input checked="" type="checkbox"/> | Moderate UPC: 038081428543 Publisher ID: 38654 | 10291155 | M | \$14.99 | <input type="text"/> |
| <input type="checkbox"/> | Easy Piano View Details | 10291292 | EZ | \$12.99 | <input type="text"/> |
| <input type="checkbox"/> | Big Note View Details | 10291295 | BN | \$12.99 | <input type="text"/> |
| <input type="checkbox"/> | Five Finger View Details | 10291543 | F | \$10.99 | <input type="text"/> |

Full Song List

Full Song List

- LILY'S THEME
- STATUES
- NEVILLE THE HERO
- COURTYARD APOCALYPSE
- SEVERUS AND LILY
- HARRY'S SACRIFICE
- RESURRECTION STONE
- A NEW BEGINNING

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Product Rating: [?]

Overall Rating ★★★★★ (0 ratings submitted)

Select 1 to 5 stars to rate this product

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