

## Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
<b>SERIAL NUMBER</b>	85711094
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 102
<b>MARK SECTION (no change)</b>	
<b>ARGUMENT(S)</b>	
<p>The Examining Attorney has maintained her refusal of Applicant's specimen with respect to Class 9 of U.S. Trademark App. No. 85/711,094 for the mark ENDGAME (the "Application"). The Examining Attorney has stated that "the specimen is not acceptable as a display associated with the goods and appears to be mere advertising material." Specifically, the Examiner has alleged that the specimen is unacceptable because it consists of a webpage that does not include the means for ordering the goods. However, telephone numbers and/or email addresses are capable of transforming material otherwise deemed to be mere advertising, provided that the telephone number or email address is accompanied by special instructions for placing or accepting orders. TMEP 904.03(i)(C)(2). Thus, in light of the fact that Applicant's substitute specimen submitted in connection with this response clearly provides a dedicated sales email address through which consumers may place orders, Applicant respectfully asserts that the substitute specimen meets the requirements and requests that the Examining Attorney accept the specimen and allow the application to proceed to registration.</p> <p>Specifically, the TMEP notes that an email address constitutes an acceptable means of ordering if the address itself indicates that orders may be placed or are accepted via email. See TMEP 904.03(i)(C)(2). Here, the substitute specimen displays the dedicated <a href="mailto:enterprisesales@endgame.com">enterprisesales@endgame.com</a> email address through which orders are accepted and may be placed. Importantly, the email address itself indicates that consumers wishing to contact Applicant's sales department should write to that address. Further, this dedicated sales email address is displayed directly beneath the header ENTERPRISE SALES, unmistakably identifying this email address as a means through which the consumer may place an order.</p> <p>In addition, we note that the TMEP specifically notes that complex or sophisticated goods for which technical assistance may be required in selecting or determining the product specifications constitutes a special situation for which a telephone number or email address would suffice. See TMEP 904.03(i)(C)(2). Applicant offers highly specialized software products that provide enterprise-wide defense mechanisms against highly advanced cyber threats. Applicant's products are primarily used by the federal government in order to protect national security interests and large commercial enterprises. Importantly, Applicant's software is not marketed to the general public. Likewise, Applicant's software is not available to members of the general public through retail or online retail outlets. Rather, Applicant's software is acquired by highly sophisticated information technology professionals in the public and private sector. Applicant's software requires substantial financial investment, and as a result, Applicant's consumers generally have myriad inquiries about the software's capabilities before consummating their purchase. Accordingly, Applicant's sales process is a multi-layered series of interactions between Applicant and its prospective purchasers. While Applicant's goods are available through the ENTERPRISE SALES email address noted above, the vast majority of Applicant's consumers elect to contact Applicant to obtain additional information before making a purchase.</p>	

Thus, in light of the fact that the substitute specimen includes an email address that indicates that orders may be placed through such email address, coupled with the highly complex and sophisticated nature of Applicant's goods, Applicant respectfully asserts that the substitute specimen meets the requirements and requests that the Examining Attorney accept the specimen and allow the application to proceed to registration.

**GOODS AND/OR SERVICES SECTION (009)(current)**

INTERNATIONAL CLASS 009

**DESCRIPTION**

software for use in cyber and network security management; software for use in data analytics and visualization

FIRST USE ANYWHERE DATE At least as early as 03/01/2013

FIRST USE IN COMMERCE DATE At least as early as 03/01/2013

FILING BASIS Section 1(b)

**GOODS AND/OR SERVICES SECTION (009)(proposed)**

INTERNATIONAL CLASS 009

**DESCRIPTION**

software for use in cyber and network security management; software for use in data analytics and visualization

FIRST USE ANYWHERE DATE At least as early as 03/01/2013

FIRST USE IN COMMERCE DATE At least as early as 03/01/2013

STATEMENT TYPE **"The substitute (or new, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application"** [for an application based on Section 1(a), Use in Commerce] OR **"The substitute (or new, if appropriate) specimen(s) was/were in use in commerce prior either to the filing of the Amendment to Allege Use or expiration of the filing deadline for filing a Statement of Use"** [for an application based on Section 1(b) Intent-to-Use].

SPECIMEN FILE NAME(S) <\\TICRS\EXPORT16\IMAGEOUT16\857\110\85711094\xml18\RFR0002.JPG>

<\\TICRS\EXPORT16\IMAGEOUT16\857\110\85711094\xml18\RFR0003.JPG>

<\\TICRS\EXPORT16\IMAGEOUT16\857\110\85711094\xml18\RFR0004.JPG>

**GOODS AND/OR SERVICES SECTION (042)(no change)**

**SIGNATURE SECTION**

DECLARATION SIGNATURE	/Ryan C. Compton/
SIGNATORY'S NAME	Ryan C. Compton
SIGNATORY'S POSITION	Attorney of record, D.C. bar member
SIGNATORY'S PHONE NUMBER	2027994000
DATE SIGNED	05/20/2015
RESPONSE SIGNATURE	/Ryan C. Compton/
SIGNATORY'S NAME	Ryan C. Compton
SIGNATORY'S POSITION	Attorney of record, D.C. bar member
SIGNATORY'S PHONE NUMBER	2027994000
DATE SIGNED	05/20/2015
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
<b>FILING INFORMATION SECTION</b>	
SUBMIT DATE	Wed May 20 21:10:29 EDT 2015
TEAS STAMP	USPTO/RFR-65.175.3.10-201 50520211029979162-8571109 4-5305633fd8ca5e9f536dd23 0c2b430e1bfa84e5c24b49a50 17f875e531f69cb3-N/A-N/A- 20150520190752842455

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

Application serial no. **85711094** has been amended as follows:

### **ARGUMENT(S)**

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

The Examining Attorney has maintained her refusal of Applicant's specimen with respect to Class 9 of U.S. Trademark App. No. 85/711,094 for the mark ENDGAME (the "Application"). The Examining Attorney has stated that "the specimen is not acceptable as a display associated with the goods and appears to be mere advertising material." Specifically, the Examiner has alleged that the specimen is unacceptable because it consists of a webpage that does not include the means for ordering the goods. However, telephone numbers

and/or email addresses are capable of transforming material otherwise deemed to be mere advertising, provided that the telephone number or email address is accompanied by special instructions for placing or accepting orders. TMEP 904.03(i)(C)(2). Thus, in light of the fact that Applicant's substitute specimen submitted in connection with this response clearly provides a dedicated sales email address through which consumers may place orders, Applicant respectfully asserts that the substitute specimen meets the requirements and requests that the Examining Attorney accept the specimen and allow the application to proceed to registration.

Specifically, the TMEP notes that an email address constitutes an acceptable means of ordering if the address itself indicates that orders may be placed or are accepted via email. See TMEP 904.03(i)(C)(2).

Here, the substitute specimen displays the dedicated [enterprisesales@endgame.com](mailto:enterprisesales@endgame.com) email address through which orders are accepted and may be placed. Importantly, the email address itself indicates that consumers wishing to contact Applicant's sales department should write to that address. Further, this dedicated sales email address is displayed directly beneath the header ENTERPRISE SALES, unmistakably identifying this email address as a means through which the consumer may place an order.

In addition, we note that the TMEP specifically notes that complex or sophisticated goods for which technical assistance may be required in selecting or determining the product specifications constitutes a special situation for which a telephone number or email address would suffice. See TMEP 904.03(i)(C)(2). Applicant offers highly specialized software products that provide enterprise-wide defense mechanisms against highly advanced cyber threats. Applicant's products are primarily used by the federal government in order to protect national security interests and large commercial enterprises. Importantly, Applicant's software is not marketed to the general public. Likewise, Applicant's software is not available to members of the general public through retail or online retail outlets. Rather, Applicant's software is acquired by highly sophisticated information technology professionals in the public and private sector. Applicant's software requires substantial financial investment, and as a result, Applicant's consumers generally have myriad inquiries about the software's capabilities before consummating their purchase. Accordingly, Applicant's sales process is a multi-layered series of interactions between Applicant and its prospective purchasers. While Applicant's goods are available through the ENTERPRISE SALES email address noted above, the vast majority of Applicant's consumers elect to contact Applicant to obtain additional information before making a purchase.

Thus, in light of the fact that the substitute specimen includes an email address that indicates that orders may be placed through such email address, coupled with the highly complex and sophisticated nature of Applicant's goods, Applicant respectfully asserts that the substitute specimen meets the requirements and requests that the Examining Attorney accept the specimen and allow the application to proceed to registration.

## **CLASSIFICATION AND LISTING OF GOODS/SERVICES**

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

**Current:** Class 009 for software for use in cyber and network security management; software for use in data analytics and visualization

Original Filing Basis:

**Filing Basis: Section 1(b), Intent to Use:** The applicant has had a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

In International Class 009, the mark was first used at least as early as 03/01/2013 and first used in commerce at least as early as 03/01/2013 .

**Proposed:** Class 009 for software for use in cyber and network security management; software for use in data analytics and visualization

Deleted Filing Basis: 1(b)

In International Class 009, the mark was first used at least as early as 03/01/2013 . and first used in commerce at least as early as 03/01/2013 .

Applicant hereby submits one(or more) specimen(s) for Class 009 .

" **The substitute (or new, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application**"*[for an application based on Section 1(a), Use in Commerce]* OR " **The substitute (or new, if appropriate) specimen(s) was/were in use in commerce prior either to the filing of the Amendment to Allege Use or expiration of the filing deadline for filing a Statement of Use** " *[for an application based on Section 1(b) Intent-to-Use]* . [Specimen File1](#)

[Specimen File2](#)

[Specimen File3](#)

## **SIGNATURE(S)**

### **Declaration Signature**

DECLARATION: The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that, if the applicant submitted the application or amendment to allege use (AAU) unsigned, all statements in the application or AAU and this submission based on the signatory's own knowledge are true, and all statements in the application or AAU and this submission made on information and belief are believed to be true.

STATEMENTS FOR UNSIGNED SECTION 1(a) APPLICATION/AAU: If the applicant filed an unsigned application under 15 U.S.C. Section 1051(a) or AAU under 15 U.S.C. Section 1051(c), the signatory additionally believes that: the applicant is the owner of the trademark/service mark sought to be registered; the applicant or the applicant's related company or licensee is using the mark in commerce and has been using the mark in commerce as of the filing date of the application or AAU on or in connection with the goods/services in the application or AAU, and such use by the applicant's related company or licensee inures to the benefit of the applicant; the original specimen(s), if applicable, shows the mark in use in commerce as of the filing date of the application or AAU on or in connection with the goods/services in the application or AAU; and to the best of the signatory's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion or mistake, or to deceive.

STATEMENTS FOR UNSIGNED SECTION 1(b)/SECTION 44 APPLICATION: If the applicant filed an unsigned application under 15 U.S.C. Section 1051(b), Section 1126(d), and/or Section 1126(e), the signatory additionally believes that: the applicant is entitled to use the mark in commerce; the applicant has a bona fide intention and has had a bona fide intention as of the application filing date to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the goods/services in the application; and to the best of the signatory's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion or mistake, or to deceive.

Signature: /Ryan C. Compton/     Date: 05/20/2015

Signatory's Name: Ryan C. Compton

Signatory's Position: Attorney of record, D.C. bar member  
Signatory's Phone Number: 2027994000

**Request for Reconsideration Signature**

Signature: /Ryan C. Compton/ Date: 05/20/2015

Signatory's Name: Ryan C. Compton

Signatory's Position: Attorney of record, D.C. bar member

Signatory's Phone Number: 2027994000

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: 85711094

Internet Transmission Date: Wed May 20 21:10:29 EDT 2015

TEAS Stamp: USPTO/RFR-65.175.3.10-201505202110299791

62-85711094-5305633fd8ca5e9f536dd230c2b4

30e1bfa84e5c24b49a5017f875e531f69cb3-N/A

-N/A-20150520190752842455

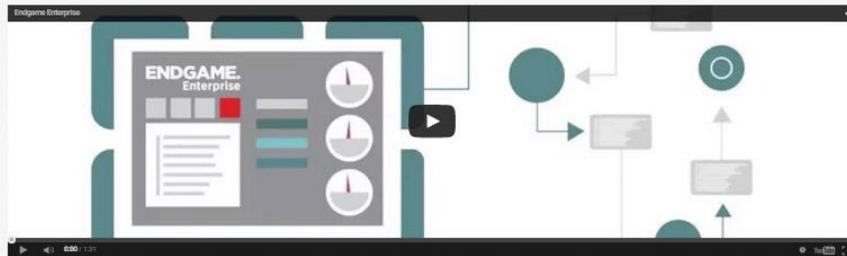


- Media Inquiries  
media@endgame.com
- General Inquiries  
info@endgame.com
- Customer Support  
support@endgame.com  
800.476.1760
- Enterprise Sales  
enterprise@endgame.com  
@endgame.com
- 3101 Wilson Blvd, Suite 900  
Arlington, VA 22201  
703.633.0381



### INSTANT DETECTION AND ACTIVE RESPONSE

Endgame Enterprise is the industry's first endpoint detection and response (EDR) platform that delivers early warning, instant detection, and active response to advanced threats. Endgame Enterprise never sleeps, continuously monitoring your endpoints for threats missed by traditional defenses. Featuring advanced threat intelligence, behavioral analysis, and attack chain modeling, Endgame Enterprise "thinks like the adversary", enabling customers to detect and respond faster to unknown threats, preventing damage and loss.



### HOW IT WORKS

# ENDGAME. ENTERPRISE

Instant detection and active response to the most advanced adversaries.

[Learn More About Endgame Enterprise](#)

**Media Inquiries**  
media@endgame.com

**General Inquiries**  
info@endgame.com

**Customer Support**  
support@endgame.com  
800.476.1760

**Enterprise Sales**  
enterprise@endgame.com  
@endgame.com

3101 Wilson Blvd, Suite 500  
Arlington, VA 22201  
703.633.0381

f t in

### How the Sino-Russian Cyber Pact Furthers the Geopolitical Digital Divide

As I wrote at the end of last year, China and Russia have been in discussions to initiate a security agreement to tackle the various forms of digital behavior in cyberspace. Last Friday, Xi Jinping...

[Learn More](#)

### White Paper: Turn the Map Around to Prevent Damage and Loss from Cyber Attacks

Traditional security technologies are incapable of addressing today's targeted threats. By learning your people, processes, technologies, and supply chains, adversaries pass through perimeter...

[Learn More](#)

### Solution Brief: Detecting Adversaries and Responding Rapidly in the Cloud

While the benefits of cloud computing - agility, scalability, and cost control - can be incredibly compelling, protecting these dynamic environments against targeted threats remains a challenge. As...

[Learn More](#)

## THE ENDGAME ADVANTAGE

### EARLY WARNING.

Endgame Enterprise uses Endgame's unique network of global sensors, combined with its adversary intelligence and proprietary threat research, to ensure early detection of evolving attacks and the



Status Search SN x USPTO TSDR Case x USPTO TSDR Case x Endgame Enterpr... x Inbox (5) - binkste... x RDMS TMEP - Jan... x USPTO TSDR Case x

https://www.endgame.com/enterprise

Apps MyZmanim.com - In... ROMARIN Remarks Blog Admin Clients/Matters Dire... Masonic and Kabbal... Rent Spritzlet Dashboard | Lexolo... Other bookmarks

Enterprise Federal About Resources Blog Careers Contact

# ENDGAME. ENTERPRISE

**Media Inquiries**  
media@endgame.com

**General Inquiries**  
info@endgame.com

**Customer Support**  
support@endgame.com  
800.678.1786

**Enterprise Sales**  
enterprisesales  
@endgame.com

3101 Wilson Blvd., Suite 500  
Arlington, VA 22201  
703.653.0361

f t in

## INSTANT DETECTION AND ACTIVE RESPONSE

Endgame Enterprise is the industry's first endpoint detection and response (EDR) platform that delivers early warning, instant detection, and active response to advanced threats. Endgame Enterprise never sleeps, continuously monitoring your endpoints for threats missed by traditional defenses. Featuring advanced threat intelligence, behavioral analysis, and attack chain modeling, Endgame Enterprise "thinks like the adversary", enabling customers to detect and respond faster to unknown threats, preventing damage and loss.

85711094 (1).pdf Show all downloads...