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Subject: U.S. TRADEMARK APPLICATION NO. 85872407 - AMISH MAFIA - 026143.00000 - Request for Reconsideration Denied - Return to TTAB - Message 1 of 3

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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. 85872407

MARK: AMISH MAFIA



CORRESPONDENT ADDRESS:

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ARENT FOX LLP

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WASHINGTON, DC 20036-5342

GENERAL TRADEMARK INFORMATION:

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

APPLICANT: Discovery Communications, LLC

CORRESPONDENT'S REFERENCE/DOCKET NO:

026143.00000

CORRESPONDENT E-MAIL ADDRESS:

tmdocket@arentfox.com

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 7/2/2014

The trademark examining attorney has carefully reviewed applicant's request for reconsideration and is denying the request as to the Section 2(a) refusal 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 Section 2(a) refusal made final in the Office action dated December 17, 2013, is maintained and continues to be final. See TMEP §§715.03(a)(2)(B), (a)(2)(E), 715.04(a).

The applicant's Section 2(f) claim based on evidence is sufficient to overcome the Section 2(e)(1) refusal. The Section 2(f) claim has been entered in the record. The Section 2(e)(1) refusal is no longer an issue for appeal.

In the present case, applicant's request has not resolved all the outstanding issues, nor does it raise a new issue or provide any new or compelling evidence with regard to the Section 2(a) refusal 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.

Applicant's Section 2(f) Evidence

The applicant has attached a substantial amount of evidence in support of its Section 2(f) claim. In some cases, the pages that were attached are truncated on the right side. The legible information on these pages was sufficient to show support for the applicant's Section 2(f) claim. However, some of these pages also include information relevant to the Section 2(a) refusal. Therefore, as appropriate, the Examining Attorney has attached additional copies of these pages to this Office action to ensure the record is complete for appeal.

Section 2(a) Refusal

The applicant's mark was previously refused registration on the basis that the mark AMISH MAFIA as used for the applicant's entertainment services conveys the idea of a criminal organization composed of members of the Amish religious sect, and such a meaning is disparaging to a substantial composite of that religious sect.

The applicant's request for reconsideration includes the following arguments regarding the Section 2(a) refusal. The applicant appears to argue that the mark would only be disparaging to individuals who identify themselves as part of the Amish mafia, not to the members of the Amish religious community as a whole. The applicant has again referenced other registrations for marks that include the term MAFIA, and has argued that those marks do not disparage all members of the referenced groups, e.g., grannies and Americans, and thus, neither does the mark AMISH MAFIA. The applicant has also argued that no other application featuring the term "mafia" "has ever been found to be disparaging and refused on such grounds by the PTO or the TTAB."

Applicant's arguments have been considered and found unpersuasive for the reasons set forth below.

Marks in Other Registrations

In the Final Office action, the Examining Attorney agreed with the applicant that the term MAFIA has both disparaging and non-disparaging meanings.

In the Final Office action, the applicant's mark was distinguished from the marks in the third-party registrations, and the applicant's prior registration based on the nature of the goods in the referenced registrations and the services at issue here. Unlike the marks PORTUGUESE MAFIA and REDNECK MAFIA, which are likely to convey the non-disparaging tight knit (clique) type connotation, when used on clothing and similar types of goods, the applicant's mark is here associated with an entertainment program, which is specifically advertised as containing information about a criminal organization composed of members of the Amish religious sect.

One of the articles made of record by the applicant even analogizes the group to the Italian mafia:

The show portrays a group of Amish men in Lancaster County, Pa., who use a series of legally ambiguous methods –akin to the notorious Italian Mafia. Dustin J. Seibert, MSN News, *Rumor: The "Amish Mafia" TV Series is Fake*, <http://news.msn.com/rumors/rumor-the-amish-mafia-tv-series-is-fake> (viewed on May-27-2014 17:12 EDT). *Applicant's Request for Reconsideration, Exhibit XX, TSDR at 274.*

Marks in Other Cases

In the Final Office action, the applicant's mark was also distinguished from other MAFIA marks, which were refused registration by the PTO, but which were reversed on appeal. As with the third-party registrations, the applicant's mark was distinguished based on the services at issue here along with the beliefs of the religious sect identified in the mark, as well as the manner in which the applicant is using the mark in the marketplace in connection with the services. *See Blackhorse v. Pro-Football, Inc.*, No. 92046185, slip op. at 20-21 (TTAB June 18, 2014) ("We must make our determination in the context of a respondent's goods or services. Such context can: (1) turn an innocuous term into a disparaging one; or (2) strip the disparaging meaning from an otherwise disparaging term; or (3) have no effect on a term's disparaging meaning.") (internal citations omitted).

Misstatement of Factors

The applicant's assertion that only criminal members of the Amish community would be disparaged by the mark misstates the Section 2(a) criteria for determining the group disparaged by a mark like that in this case. The mark conveys the meaning that the Amish community (as a whole) uses a criminal organization to enforce its rules through violence, and the manner in which the applicant uses the mark in the marketplace emphasizes this meaning. Such a meaning is disparaging to all members of the Amish religion based on the religion's doctrine of non-resistance.

The applicant is referred to the attached excerpts from articles and associated commentary made of record in support of the applicant's Section 2(f) claim, all of which provide additional support to the finding that AMISH MAFIA is disparaging to a substantial composite of members of the Amish religious sect.

[The Amish's] entire culture sort of works against crass self-promotion, and it's that reluctance to draw attention to themselves that, presumably, has kept Amish leaders from showing upon Fox News to vehemently debunk this travesty. . . . So, to have a show that single out that faithful for a frivolous and foul basic cable show seems not just a shame. It's almost an affront. Paul Asay, *Plugged In TV Reviews, Amish Mafia*, <http://www.pluggedin.com/tv/abc/amish-mafia.aspx> (viewed on May-28-2014). *Applicant's Request for Reconsideration, Exhibit F, TSDR at 39-40.*

I find this show VERY offense. Having been born and raised Amish for 30years before leaving I can say without a doubt that this show is FICTION. . . I think they should be sued for slander. . .

. [W]hy would anyone want to tear down the Amish like that? SICK!!. Post by Sarah Mast, PennLive.com, "Amish Mafia": Amish Experts Weigh in on New Discovery Channel Show, http://www.pennlive.com/midstate/index.ssf/2012/12/amish_mafia_amish_experts_weig.html (viewed on May-28-2014), *Applicant's Request for Reconsideration, Exhibit G, TSDR at 46.*

My parents grew up in the Amish church. I have lived with Amish neighbors most of my life right in the heart of Amish country . . . [T]here is absolutely nothing like the Amish Mafia in Amish life. I hope people are wise enough not to believe such things!!! Post by Chris Stoltzfus, *Id.*

The Amish are peaceful people. They don't serve in our military, they don't believe in violence, and they don't go on TV. They would find this repulsive and repugnant. Post by Layla Robbins, *Id. at 49.*

During his seven years as a local prosecutor, [Jeffrey Conrad] heard of no such "mafia" group. "We would have gone after them," he said." The Associated Press, Penn Live, "Amish Mafia": *Is it real or fake? Network says it's real; Lancaster Countians doubt it,* http://blog.pennlive.com/go//print.html?entry=/2012/12/amish_mafia_is_it_real_or_fake.html (viewed on May-28-2014). *Applicant's Request for Reconsideration, Exhibit K, TSDR at 73.*

Many others in the community and familiar with the Amish also deny that the Amish mafia exists. "Amish Mafia" was called "trash TV" by a professor at Elizabethtown College who is familiar with the Amish community and their lifestyle. Emma Riley Sutton, Examiner.com, "Amish Mafia" *Leader in Charge of Amish Community's Finances,* <http://www.examiner.com/article/amish-leader-charge-of-amish-community-s-finances> (viewed on May-28-2014). *Applicant's Request for Reconsideration, Exhibit O, TSDR at 87.*

The consensus of critics is that the show . . . exploits the reluctance of the Amish to publicly speak out about negative and unrealistic portrayals of their culture. Snopes.com, *Amish Mafia,* <http://www.snopes.com/politics/crime/amishmafia.asp> (viewed on May-27-2014). *Applicant's Request for Reconsideration, Exhibit HH, TSDR at 163.*

I live in the middle of Michigan's Amish country. I am on dropping-in-on terms with several Amish families. I can tell you that there is no "Amish Mafia." As others have noted, the TV show in question is fraudulent and exploitative of a faith community that because of its beliefs, cannot

defend itself on its own in a world of mass media, infotainment, and “spin.” Post by Ellen P., Huffington Post, *My Fascination With the Amish Mafia*, http://www.huffingtonpost.com/christian-piatt/my-fascination-with-the-amish-mafia_b_2497792.html (viewed on May-27-2014), *Applicant’s Request for Reconsideration, Exhibit RR, TSDR at 240.*

The show, which airs in early December, brags a behind-the-scenes “first-ever look at the men who protect and maintain peace and order within the Amish.” They are wrong. The only thing that makes this endeavor a “first-ever” is that it’s perhaps the most offensive production yet from Hollywood regarding Amish people. . . . Since their Christian faith doesn’t support “graven images” (see the Ten Commandments), and since the Amish prioritize humility and view pride as a threat to community harmony, you won’t see Amish spokespersons appearing before the press to defend their culture from a Discovery or Learning Channel attack. . . . Amish and Mennonite people . . . helped raised me in an Ohio farming town I grew up Mennonite My father was a Mennonite preacher, as were both grandfathers . . . This is where the show becomes grotesquely offensive because here especially it veers completely off base. After the shootings [at a school in 2006], which were deplorable and deeply saddening, the community came together in a remarkable show of reconciliation and forgiveness. My mother, who is Mennonite and who lives and works in this community as a counselor to the plain people, can attest to how great the grief was but also to the bigness of heart. The Amish did not want to respond, as Discovery intimates, by picking up arms against the oppressors, or in revenge. That philosophy is diametrically opposed to the strong and prevailing Amish Mennonite belief in nonviolence. In fact, at the time of the school shooting the national media were confounded at how nonviolently the Amish victims’ families responded. And while there are certainly renegades and outliers in every society, . . . to suggest that a community would somehow secretly or subversively rely on a “mafia” to keep the peace is a Hollywood producer’s basest pitch to a lowest ethical common denominator. . . . Imagine for a moment if the Discovery or Learning channels did a similarly distasteful and disrespectful parody of America’s Jewish, Muslim, Hindu or Buddhist communities and faith systems. Michael Shank, Huffington Post, *Amish Mafia Shows Deplorable Depths of Discovery Channel*, http://www.huffingtonpost.com/michael-shank/amish-mafia-shows-deplora_b_2213122.html (viewed on May-27-2014), *Applicant’s Request for Reconsideration, Exhibit TT, TSDR at 254-55. Additional copy attached to this Office action due to truncation on right side of applicant’s copy.*

[T]he Discovery Channel . . . has decided to launch a television show following the group, which they have dubbed the “Amish Mafia.” Nevermind that one of the guys isn’t even Amish, that the Amish live without electricity (and thus television), this is totally a legitimate view into Amish life. Steven Lloyd Wilson, Pajiba, *Somehow Television Got Stupider: New Discovery Series “Amish Mafia,”* http://www.pajiba.com/trade_news/somehow-television-got-stupider-new-discovery-

[series-amish-mafia.php](#) (viewed on May-27-2014). *Applicant's Request for Reconsideration, Exhibit VV, TSDR at 262.*

You are not Amish if you condone violence. The Amish have different sets of morals, ethics, and values than the normal society we all live in. I have friends that are Amish, and this is a disgrace to their religion and their society. Post by Riyeko Lordaeron to Steven Lloyd Wilson, Pajiba, *Somehow Television Got Stupider: New Discovery Series "Amish Mafia,"* http://www.pajiba.com/trade_news/somehow-television-got-stupider-new-discovery-series-amish-mafia.php, attached to this Office action.

The applicant is also referred to the attached additional article, which indicates that the individuals featured on the applicant's program were originally told that the program would be called AMISH AID and only learned of the title AMISH MAFIA after the program premiered. Lauren DuBois, Enstars, *"Amish Mafia" Season 4 Spoilers: Esther and John Schmucker Address Halted Production on Show in Meet and Greet Event? [VIDEO]*, <http://www.enstarz.com/articles/36127/20140409/amish-mafia-season-4-spoilers-esther-and-john-schmucker-address-halted-production-on-show-in-meet-and-greet-event-video.htm> (viewed on Jun-19-2014, 16:48 EDT).

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).

Because the 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).

/Kim Teresa Moninghoff/

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'Amish Mafia' Season 4 Spoilers: Esther And John Schmucker Address Halted Production On Show In Meet And Greet Event? [VIDEO]

By Lauren O'Bois ENSTARS on Apr 09, 2014 01:50 PM EDT

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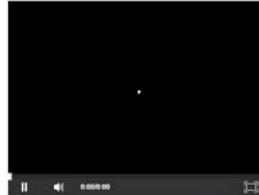


The cast and crew reach a boiling point on the season 3 finale of Amish Mafia! (Photo: screen capture)



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The cast and crew reach a boiling point on the season 3 finale of 'Amish Mafia' (Photo: screen capture)



Esther and John Schmucker of 'Amish Mafia' after Levi's Cheating was exposed (Photo: facebook.com/esther.schmucker)

Fans of Discovery's hit series *Amish Mafia* are currently waiting for news about the show potentially returning for a fourth season, but according to the season 3 finale, production on the show was halted on Feb. 26.

Claims 'Amish Mafia' Is Fake Resurface?

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During the season 3 finale episode, the Lancaster group swore off of the English for good after what happened to Esther at the hands of her English boyfriend. As their anger against the English increased, they asked producers to meet up with them in an abandoned barn and turn off the microphones and cameras (which didn't happen), and the cast refused to continue filming despite having 14 days of production left on the schedule for season 3. Lawyer Steve Breit then delivered a cease and desist letter to Discovery Headquarters, and production was officially halted Feb. 26.

In a special that aired after the finale, more information was revealed as to why the cast has become increasingly more fed up with the show's crew, including [the gang realizing after the series premiere that the show was not going to be called Amish Aid.](#)

Levi and Lancaster Group Turn On English Film Crew?

However, while production on the show has been halted, Esther and John Schmucker are scheduled to have a meet and greet with fans on April 10 at That Shm Girl Boutique in Lancaster. Tickets are \$30.00 and fans will receive signed photographs of the two. It is unclear if they will

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was not going to be called *Amish Aid*.

Levi and Lancaster Group Turn On English Film Crew?

However, while production on the show has been halted, Esther and John Schmucker are scheduled to have a **meet and greet** with fans on April 19 at That Shuu Girl Boutique in Lancaster. Tickets are \$30.00 and fans will receive signed photographs of the two. It is unclear if they will address the rumors that the show will not return for a fourth season.

Production on the show was halted just one day after the Season 3 premiere, though the season did end with the same number of episodes produced as the two before it (eight total). It is unclear if the third season was initially supposed to include more episodes than that.

Though Discovery has said a **fourth season of the show is a part of their planned fall lineup**, the show could go on without the Lancaster crew and solely focus on Merlin and Wayne, who are based in Ohio. However, like the Lancaster based crew, they did not appear on-camera for the *End of Days* special. The only members of the cast who willingly appeared on camera for the special were Private Investigator Sean Hall (who was tailing Levi all season and investigating him), Lancaster County constable Paul Castline, lawyer Steven Breit and Alan Beiler.

For more on *Amish Mafia* and whether or not Season 4 will air, continue coming back to Enstars for the latest information.



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Amish Mafia Shows Deplorable Depths of Discovery Channel

Discovery Channel, National Peace Academy, The Learning Channel, Amish Mafia, Breacking Amish, Menominee, Entertainment News

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If anyone thinks that the Discovery Channel is about actual discovery of, say, science, history, space, or tech, as their website claims, think again. Or if you think that its sister company, The Learning Channel (TLC), is about learning new insight or information, you are mistaken. After TLC's first run of the reality television show Breacking Amish, with paid persons assuming the roles of rebellious ex-Amish, the Discovery Channel has produced a more scripted Amish Mafia, admitting on their site that scenes are reenacted. The show, which airs in early December, brags of a behind-the-scenes "first-ever look at the men who protect and maintain peace and order within the Amish."

They are wrong. The only thing that makes this endeavor a "first-ever" is that it's perhaps the most offensive production yet from Hollywood regarding Amish people, after a long



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