

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85925162
LAW OFFICE ASSIGNED	LAW OFFICE 118
MARK SECTION (no change)	
ARGUMENT(S)	
<p>Remarks: Refusal - Likelihood of Confusion Comparison of Services The Examining Attorney noted in his explanation of his basis for the refusal that, "the identifications . . . have no restrictions as to channels of trade for classes of purchasers". The Examining Attorney should appreciate that the amendment to the services has been made to address this point. More particularly, the amended description should reflect that the mark identifies a corporate fitness plan available to employees of a corporate subscriber to encourage those employees to enhance their health and well-being and thereby minimize health costs and insurance risks. It is respectfully submitted that the amended description clearly evidences that the applicant's recited services are unrelated to those services stated in the cited registrations. The Examining Attorney's confirmation that the specimens in the application drawings are now consistent and that that the disclaimer of the word "PLAN" has been satisfied, are gratefully acknowledged. It is respectfully submitted that this application is now condition for publication and an early notice thereof is requested.</p>	
GOODS AND/OR SERVICES SECTION (current)	
INTERNATIONAL CLASS	044
DESCRIPTION	
<p>Health care services, namely, wellness programs; Providing a website featuring information about health, wellness and nutrition; Providing a website featuring information and advice in the fields of diet, weight loss, diet planning and lifestyle wellness; Providing a website featuring information regarding healthy living and lifestyle wellness; Providing assistance, fitness evaluation and consultation to corporate clients to help their employees make health, wellness and nutritional changes in their daily living to improve health; Providing assistance, fitness evaluation and consultation to individuals to help them make health, wellness and nutritional changes in their daily living to improve health; Providing information, news and commentary in the field of nutrition, health and wellness; Providing wellness services, namely, personal assessments, personalized routines, maintenance schedules, and counseling; Providing wellness services, namely, weight loss programs offered at a wellness center; Wellness and health-related consulting services</p>	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 08/24/2007

FIRST USE IN COMMERCE DATE	At least as early as 08/24/2007
GOODS AND/OR SERVICES SECTION (proposed)	
INTERNATIONAL CLASS	044
TRACKED TEXT DESCRIPTION	
<p>Health care services, namely, wellness programs; Providing a subscription-based website featuring information about health, wellness and nutrition to employees of an insurance plan subscriber, featuring information and advice in the fields of diet, weight loss, diet planning and lifestyle wellness, including assistance, fitness evaluation and consultation to corporate clients to help their employees make health, wellness and nutritional changes in their daily living to improve health; Providing a website featuring information about health, wellness and nutrition; Providing a website featuring information and advice in the fields of diet, weight loss, diet planning and lifestyle wellness; Providing a website featuring information regarding healthy living and lifestyle wellness; Providing assistance, fitness evaluation and consultation to corporate clients to help their employees make health, wellness and nutritional changes in their daily living to improve health; Providing assistance, fitness evaluation and consultation to individuals to help them make health, wellness and nutritional changes in their daily living to improve health; Providing information, news and commentary in the field of nutrition, health and wellness; Providing wellness services, namely, personal assessments, personalized routines, maintenance schedules, and counseling; Providing wellness services, namely, weight loss programs offered at a wellness center; Wellness and health-related consulting services</p>	
FINAL DESCRIPTION	
<p>Providing a subscription-based website featuring information about health, wellness and nutrition to employees of an insurance plan subscriber, featuring information and advice in the fields of diet, weight loss, diet planning and lifestyle wellness, including assistance, fitness evaluation and consultation to corporate clients to help their employees make health, wellness and nutritional changes in their daily living to improve health</p>	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 08/24/2007
FIRST USE IN COMMERCE DATE	At least as early as 08/24/2007
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Patrick R. Roche/
SIGNATORY'S NAME	Patrick R. Roche
SIGNATORY'S POSITION	Attorney for Applicant
SIGNATORY'S PHONE NUMBER	2163639000
DATE SIGNED	09/24/2014
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Wed Sep 24 13:43:45 EDT 2014

TEAS STAMP

USPTO/RFR-38.67.194.146-2
0140924134345157780-85925
162-500113af193b99ec46937
a6c371f402aa3869042948af5
7fb765d3bae8ae80a593-N/A-
N/A-20140924120445525546

PTO Form 1960 (Rev 9/2007)
OMB No. 0651-0050 (Exp. 07/31/2017)

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

Application serial no. **85925162** has been amended as follows:

ARGUMENT(S)

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

Remarks: Refusal - Likelihood of Confusion Comparison of Services The Examining Attorney noted in his explanation of his basis for the refusal that, "the identifications . . . have no restrictions as to channels of trade for classes of purchasers". The Examining Attorney should appreciate that the amendment to the services has been made to address this point. More particularly, the amended description should reflect that the mark identifies a corporate fitness plan available to employees of a corporate subscriber to encourage those employees to enhance their health and well-being and thereby minimize health costs and insurance risks. It is respectfully submitted that the amended description clearly evidences that the applicant's recited services are unrelated to those services stated in the cited registrations. The Examining Attorney's confirmation that the specimens in the application drawings are now consistent and that that the disclaimer of the word "PLAN" has been satisfied, are gratefully acknowledged. It is respectfully submitted that this application is now condition for publication and an early notice thereof is requested.

CLASSIFICATION AND LISTING OF GOODS/SERVICES

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

Current: Class 044 for Health care services, namely, wellness programs; Providing a website featuring information about health, wellness and nutrition; Providing a website featuring information and advice in the fields of diet, weight loss, diet planning and lifestyle wellness; Providing a website featuring information regarding healthy living and lifestyle wellness; Providing assistance, fitness evaluation and consultation to corporate clients to help their employees make health, wellness and nutritional changes in their daily living to improve health; Providing assistance, fitness evaluation and consultation to individuals to help them make health, wellness and nutritional changes in their daily living to improve health; Providing information, news and commentary in the field of nutrition, health and wellness; Providing wellness services, namely, personal assessments, personalized routines, maintenance schedules, and counseling; Providing wellness services, namely, weight loss programs offered at a wellness center; Wellness and health-related consulting services

Original Filing Basis:

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the

applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 08/24/2007 and first used in commerce at least as early as 08/24/2007 , and is now in use in such commerce.

Proposed:

Tracked Text Description: ~~Health care services, namely, wellness programs; Providing a subscription-based website featuring information about health, wellness and nutrition to employees of an insurance plan subscriber, featuring information and advice in the fields of diet, weight loss, diet planning and lifestyle wellness, including assistance, fitness evaluation and consultation to corporate clients to help their employees make health, wellness and nutritional changes in their daily living to improve health; Providing a website featuring information about health, wellness and nutrition; Providing a website featuring information and advice in the fields of diet, weight loss, diet planning and lifestyle wellness; Providing a website featuring information regarding healthy living and lifestyle wellness; Providing assistance, fitness evaluation and consultation to corporate clients to help their employees make health, wellness and nutritional changes in their daily living to improve health; Providing assistance, fitness evaluation and consultation to individuals to help them make health, wellness and nutritional changes in their daily living to improve health; Providing information, news and commentary in the field of nutrition, health and wellness; Providing wellness services, namely, personal assessments, personalized routines, maintenance schedules, and counseling; Providing wellness services, namely, weight loss programs offered at a wellness center; Wellness and health-related consulting services~~

Class 044 for Providing a subscription-based website featuring information about health, wellness and nutrition to employees of an insurance plan subscriber, featuring information and advice in the fields of diet, weight loss, diet planning and lifestyle wellness, including assistance, fitness evaluation and consultation to corporate clients to help their employees make health, wellness and nutritional changes in their daily living to improve health

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 08/24/2007 and first used in commerce at least as early as 08/24/2007 , and is now in use in such commerce.

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Patrick R. Roche/ Date: 09/24/2014

Signatory's Name: Patrick R. Roche

Signatory's Position: Attorney for Applicant

Signatory's Phone Number: 2163639000

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: 85925162

Internet Transmission Date: Wed Sep 24 13:43:45 EDT 2014

TEAS Stamp: USPTO/RFR-38.67.194.146-2014092413434515

7780-85925162-500113af193b99ec46937a6c37

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