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

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86048224
LAW OFFICE ASSIGNED	LAW OFFICE 108
MARK SECTION (no change)	
ARGUMENT(S)	

REQUEST FOR RECONSIDERATION

In an Office Action issued July 17, 2014, the Examining Attorney maintained and made final her refusal to register Applicant's mark GEORGIA COLLEGE OF OSTEOPATHIC MEDICINE pursuant to Sections 2(d) and 2(e)(2) of the Lanham Act, 15 U.S.C. §§ 1052(d) & 1052(e)(2). In response, Applicant hereby submits the following in further support of registration.

I. NO LIKELIHOOD OF CONFUSION

In the Office Action, the Examining Attorney refused registration of Applicant's mark GEORGIA COLLEGE OF OSTEOPATHIC MEDICINE on the ground that the mark is allegedly confusingly similar to the "GEORGIA"-formative marks registered under U.S. Registration Nos. 4,154,833, 3,282,904, 3,725,163, 3,725,162, 3,031,191, 2,246,860, and 1,339,141, all registered in connection with, *inter alia*, the provision of educational services at the college and university levels in Class 41, and all of which are owned by the Board of Regents of the University System of Georgia (collectively, the "Cited Marks"). The Examining Attorney's finding that Applicant's

mark is likely to be confused with the Cited Marks is based on her unsupported assertion that the factors most relevant to the likelihood of confusion analysis in this case are “similarity of the marks, similarity and nature of the goods and/or services, and similarity of the trade channels of the goods and/or services.” Applicant respectfully submits that the sophistication of the consumers to whom Applicant’s and Registrant’s services are offered, the costs of such services, and the number and nature of similar marks in use in connection with such services strongly outweigh the other du Pont factors, and consideration of the same mandates a finding that Applicant’s mark and the Cited Marks are not likely to be confused in the minds of relevant consumers. Accordingly, based on Applicant’s previous arguments and evidence, the following supplemental analysis set forth herein, and additional evidence submitted herewith, Applicant respectfully, albeit vigorously, maintains its position that there is no likelihood of confusion between its mark and the Cited Marks and respectfully requests that the Examining Attorney’s refusal be withdrawn and that Applicant’s mark be approved for publication.

A. Relevant Consumers Are Sophisticated.

No likelihood of confusion exists between Applicant’s mark and the Cited Marks in view of the sophistication of relevant consumers and the nature of their purchasing practices with respect to Applicant’s and Registrant’s services. See In re E.I. du Pont de Nemours & Co., 177 U.S.P.Q. 563 (C.C.P.A. 1973).

Applicant respectfully submits that the sophistication of relevant consumers of Applicant’s and Registrant’s services is so gr eat that the provision of educational services by Applicant and Registrant under marks that incorporate the same word, namely,

“GEORGIA,” is not likely to generate consumer confusion. Consumers of Applicant’s and Registrant’s educational services are individuals seeking degrees from institutions of higher learning, such as Bachelor’s, Master’s, and doctorate degrees. Such individuals are not casual consumers and do not make purchasing decisions hastily; rather, they are highly knowledgeable, sophisticated, and discriminating in identifying the institutions and academic programs in which they hope to enroll and must exercise a high degree of care before investing in such services. Indeed, before a purchase can be made, consumers need not only identify the institutions and programs in which they are interested, requiring significant research, but they must also engage in a lengthy and extensive application process (including without limitation studying for and taking standardized tests, acquiring letters of recommendation, and applying for admission and paying appropriate application fees) and ultimately be accepted in order to matriculate. Given the vital importance of higher education, relevant purchasers are exceedingly likely to exercise extraordinary care in selecting the appropriate institution offering such educational services. As such, relevant consumers are highly unlikely to confuse the source of Applicant’s and Registrant’s services and/or Applicant with Registrant.

Moreover, as previously argued and explained further below, the differences between Applicant’s mark and the Cited Marks are rendered all the more significant in the context of post-secondary education where, as here, the allegedly dominant portion of the marks is a state name. Indeed, as demonstrated in the evidence attached to Applicant’s Response to Office Action submitted June 23, 2014, it is commonplace for unrelated universities, colleges, and other institutions of higher learning to incorporate and use identical

state designations in their names. Consequently, it would defy logic to conclude that such highly sophisticated and discriminating consumers – prospective students of higher learning – would be likely to be confused as to the provider of the educational services.

In view of the sophistication and care of the relevant consumers of Applicant's and Registrant's educational services in their purchasing practices, it is highly unlikely that such discriminating consumers are likely to believe that Applicant's and Registrant's services emanate from the same source merely because such services are offered under "GEORGIA"-formative marks. Consequently, consideration of the relevant sophisticated consumers weighs decidedly against a finding of likelihood of confusion.

B. Applicant's and Registrant's Services Are Expensive.

Consistent with du Pont, where the relevant services are costly, the level of sophistication that consumers employ in choosing the services is even more acute. See AMF, Inc. v. Sleekcraft Boats, 599 F.2d 341, 353, 204 U.S.P.Q. 808, 817 (9th Cir. 1979). Applicant's and Registrant's educational services are highly expensive, often costing a consumer in excess of $100,000 before a degree can be obtained. Consequently, Applicant's and Registrant's services are not purchased casually without the consumer researching the relevant institution, its programs, its reputation, and relevant costs. In view of such costs, along with other relevant factors, consumers of Applicant's and Registrant's services are "careful, sophisticated purchas[ers]," not "impulse" buyers. See id. Consequently, consideration of both the costs of Applicant's and Registrant's educational services, along with the sophistication of their consumers, further weighs heavily against a finding of likelihood of confusion.

C. Other Registered "GEORGIA"-Formative Marks Negate Any

Likelihood of Confusion.

Applicant's position against likelihood of confusion is further supported by the concurrent existence of several "GEORGIA"-formative marks registered in connection with post-secondary education services in Class 41. Such registrations include but are not limited to the examples attached hereto as Exhibit A, along with evidence of actual use of such marks. Indeed, if marks incorporating state names in this context were deemed confusingly similar, these marks would not be able to coexist on the Principal and Supplemental Registers and in the marketplace. See T.M.E.P. § 1207.01(d)(x) (Oct. 2013) ("If the examining attorney finds registrations that appear to be owned by more than one registrant, he or she should consider the extent to which dilution may indicate that there is no likelihood of confusion.").

Finally, it bears emphasizing that, during the prosecution of Applicant's prior applications for nearly identical marks for identical services,[1] no other Examining Attorney refused registration based on likelihood of confusion, clearly demonstrating that Applicant's mark cannot now be considered confusingly similar to the Cited Marks.

In view of the foregoing, it cannot reasonably be maintained that the term "GEORGIA" is associated with any one source. Indeed, it is clear that, when encountering a mark that is comprised in whole or in part of the term "GEORGIA" (or any other state name), sophisticated consumers seeking providers of higher education, recognizing that such term cannot readily identify the source of the services, will scrutinize the mark for additional source-identifying information. Consequently, as noted above, Applicant's mark and the

Cited Marks can coexist without resulting in consumer confusion. This factor in the likelihood of confusion analysis therefore weighs decidedly in Applicant's favor.

D. The Extent of Potential Confusion is *De Minimis*.

Where the scope and extent of any potential confusion is *de minimis*, as opposed to substantial, there can be no support for a refusal pursuant to Section 2(d) of the Lanham Act. See In re E.I. du Pont, 177 U.S.P.Q. at 567. Accordingly, Applicant respectfully submits that where, as here, several analogous marks coexist on the Principal and Supplemental Registers and in the marketplace, the marks differ significantly with respect to appearances, sounds, and overall commercial impressions, relevant consumers are sophisticated, and the services are expensive, there can be little doubt that any potential confusion is *de minimis*, much less likely. Indeed, the record remains significantly devoid of persuasive evidence tending to support the Examining Attorney's allegation of likelihood of confusion as to source of Applicant's and Registrant's services, and, as the foregoing analysis demonstrates, consumers are simply not likely to believe that Applicant's and Registrant's services emanate from the same source. All of the aforementioned distinctions between Applicant's mark and the Cited Marks necessitate a finding that the extent of potential confusion is absolutely and unequivocally *de minimis*. The mere possibility of confusion is too remote to justify a Section 2(d) refusal.

Accordingly, because there is no likelihood of confusion between Applicant's mark and the Cited Marks, Applicant respectfully requests that the Examining Attorney withdraw the refusal and pass Applicant's mark on to publication.

II. NOT PRIMARILY GEOGRAPHICALLY DESCRIPTIVE

In the Office Action, the Examining Attorney refused registration of Applicant's mark GEORGIA COLLEGE OF OSTEOPATHIC MEDICINE on the basis that the word "GEORGIA" is allegedly primarily geographically descriptive of the origin of Applicant's services. Based on the following, Applicant fervently maintains its position that the word "GEORGIA," as used in Applicant's mark, simply cannot be found to be primarily geographically descriptive of Applicant's services, as its primary significance is *not* geographic, and purchasers are *not* likely to make a services/place association. Applicant's mark is therefore registrable on the Principal Register without a claim of acquired distinctiveness. Accordingly, Applicant respectfully requests that the Examining Attorney's refusal be withdrawn and that Applicant's mark be approved for publication.

A. "GEORGIA" Is Not Primarily Geographically Descriptive Under the Appropriate Standard.

Contrary to the Examining Attorney's position, Applicant emphatically reiterates that, under the appropriate standard set forth in Applicant's Response to Office Action submitted June 23, 2014, Applicant's mark is not primarily geographically descriptive under the appropriate standard, as its primary significance is not geographic, and the consuming public is not likely to make a services/place association.

1. Primary Significance of Mark Not Geographic

As previously explained, Applicant is a renowned college of medicine that has opened a new campus which it intends to operate under the mark GEORGIA COLLEGE OF OSTEOPATHIC MEDICINE. By consequence, when prospective students view the mark as a whole, it

does not bring to mind a geographic location, but rather a renowned and respected college of medicine. The mark clearly functions as the name of a place of higher education. When consumers refer to DISNEY WORLD or DOLLYWOOD, both geographic places, they are in fact referring to Disney Enterprises Incorporated and Dolly Parton Productions, respectively. Similarly, when consumers refer to the GEORGIA COLLEGE OF OSTEOPATHIC MEDICINE, they are referring to Applicant.

It is well-settled that the validity of a mark is judged not by an examination of its individual parts, but rather by viewing the trademark as a whole. See Franklin Mint Corp., 667 F.2d at 1007 ("It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion."). When a geographic term is "composed of geographic matter coupled with additional matter (e.g., wording and/or a design element), . . . the examining attorney must determine the primary significance of the composite." T.M.E.P. § 1210.02(c).

Here, Applicant's mark is comprised of the term "GEORGIA" along with the additional phrase "COLLEGE OF OSTEOPATHIC MEDICINE," forming the unique compound mark GEORGIA COLLEGE OF OSTEOPATHIC MEDICINE. Due in part to the addition of this phrasing, the *primary* significance of Applicant's mark is to indicate that Applicant's provides higher education services. The mark as a whole thus evokes in the minds of consumers the idea of a school – a college of medicine. The *primary* significance therefore is not any alleged geographic meaning behind the mark.

In sum, Applicant respectfully maintains that the Examining Attorney has not satisfied her burden of proving that the primary significance of Applicant's mark is geographic. To the contrary, as demonstrated by Applicant, the primary significance of Applicant's

mark is unequivocally *not* geographic. Indeed, Applicant's mark GEORGIA COLLEGE OF OSTEOPATHIC MEDICINE is a prime example of a mark that is the exception to the traditional rule for geographic descriptiveness. Accordingly, because the mark's primary significance is *not* geographic, the first element of the geographic descriptiveness test is not satisfied, and the geographic descriptiveness refusal must be withdrawn.

2. No Services/Place Association

As previously explained, the Examining Attorney's assertion that "[c]onsumers are likely to associate the applicant's educational services with the state of Georgia" is undercut by the lack of evidence required to prove such a services/place association. As indicated above, the Examining Attorney bears the burden of proving that the public would make a services/place association. "The determination of the goods/place [or services/place] association is made not in the abstract, but rather in connection with the goods or services with which the mark is used and from the perspective of the relevant public for those goods or services." In re Joint-Stock Co. "Baik", 80 U.S.P.Q.2d 1305, 1309 (T.T.A.B. 2006). In other words, whether a services/place association exists depends on whether relevant consumers would likely associate the applied-for services with the location identified in the mark. See, e.g., In re Consolidated Foods Corp., 218 U.S.P.Q. 184, 186 (T.T.A.B. 1983) (finding that the Examining Attorney's evidence failed to support any public association between the geographic location and the applied-for goods).

As previously explained, the term "GEORGIA" as used in Applicant's mark is part of a school name and not a geographic

indicator. Again, it cannot be overstated that Applicant is a renowned college of medicine, and its new campus will likewise be associated in the minds of consumers with a prominent medical school, *not* with a geographic location. Over the last hundred years, Applicant has worked tirelessly to organize, improve, and promote its medical college. Just as students, applicants, faculty, and the medical profession associate Applicant with its medical school, such associations will likewise be made with Applicant's new campus. Like Applicant's entity name GEORGIA COLLEGE OF OSTEOPATHIC MEDICINE will evoke more than just a geographic location; the mark will refer to Applicant's celebrated schools and its famed reputation in the medical field.

The services/place association that once existed with respect to institutions of higher learning has changed dramatically with the advent of virtual and intercontinental universities, such as Texas A&M University and Virginia Commonwealth University, each of which offers a full campus in Qatar, and other campuses far from the original campuses affiliated with the institutions. Given the rise of such virtual and affiliate institutions, academic consumers no longer automatically associate schools with an exact location or with brick and mortar classrooms. As virtual and intercontinental brick and mortar universities continue to grow, consumers' perceptions are changing, and students no longer assume that a geographic location in the name of a college (such as Virginia or Texas) means that the school is to be found in that location. As such, consumers are *not* likely to make the services/place association required to sustain the Examining Attorney's geographic descriptiveness refusal. The final element of the geographic descriptiveness test therefore is not satisfied, and the geographic descriptiveness test thus fails. Applicant's mark can thus be understood only as a unique source

identifier for Applicant and is therefore unequivocally registrable on the Principal Register without a claim of acquired distinctiveness. Accordingly, because the subject refusal is untenable, Applicant respectfully requests that the Examining Attorney withdraw the refusal and approve Applicant's mark for publication.

B. All Doubts Concerning Registration Should Be Resolved in Applicant's Favor.

Finally, as underscored in Applicant's Response to Office Action submitted June 23, 2014, Applicant reiterates that, where there is doubt as to whether a mark is geographically descriptive, the clear weight of authority is to resolve such doubt in favor of the Applicant and to publish the mark for opposition. After all, "any person who believes that he would be damaged by the registration will have an opportunity . . . to oppose the registration of the mark and to present evidence. . . ." In re Gourmet Bakers, Inc., 173 U.S.P.Q. 565, 565 (T.T.A.B. 1972); see, e.g., In re John Harvey & Sons Ltd., 32 U.S.P.Q.2d 1451, 1455 (T.T.A.B. 1994) ("To the extent that any evidence of record raises a doubt about our conclusion here, we elect to resolve that doubt in favor of applicant. Then, when the mark is published, any person who has a legitimate interest in the use of the geographic name claimed by applicant may file an opposition."); cf. In re Merrill Lynch, Pierce, Fenner, & Smith Inc., 828 F.2d 1567, 1571, 4 U.S.P.Q.2d 1141, 1144 (Fed. Cir. 1987) ("It is incumbent on the Board to balance the evidence of public understanding of the mark against the degree of descriptiveness encumbering the mark, and to resolve reasonable doubt in favor of the applicant, in accordance with practice and precedent."); In re Aid Labs., Inc., 221 U.S.P.Q. 1215, 1216 (T.T.A.B. 1983) ("Where there is doubt on the matter, the

doubt should be resolved in applicant's behalf and the mark should be published in accordance with Section 12(c) of the [Lanham] Statute for purposes of opposition."); In re The Gracious Lady Serv., Inc., 175 U.S.P.Q. 380, 382 (T.T.A.B. 1972) ("It is recognized that there is a large gray area in determining the descriptiveness of a mark, and where reasonable men may differ, it has been the practice to resolve such doubt in an applicant's behalf and publish the mark for opposition purposes. . . ."); In re Entenmann's Inc., 15 U.S.P.Q.2d 1750, 1751 n.2 (T.T.A.B. 1990) ("[I]n ex parte cases involving a refusal to register on the basis of mere descriptiveness, it is the practice of this Board to resolve doubts in the favor of the applicant and pass the mark to publication.").

As the foregoing makes exceedingly clear, the Examining Attorney's position in the instant case is supported neither by the evidence in the record nor by application of the law to the facts. When viewed in context, with the law applied to the facts, the purported geographic descriptiveness of "GEORGIA" significantly diminishes in favor of the mark's suggestiveness as a unique and unitary source identifier for Applicant. Accordingly, any remaining doubt should be resolved in Applicant's favor, and Applicant's mark should be approved for publication.

III. CONCLUSION

Whereas Applicant has satisfied the concerns of the Examining Attorney, Applicant respectfully requests that the subject refusals be withdrawn and that Applicant's mark be approved for publication.

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[1] These applications include: PHARMACY COLLEGE OF GEORGIA (Ser. No. 85/327,283); PHARMACY SCHOOL OF GEORGIA (Ser. No. 85/327,215); GEORGIA COLLEGE OF OPTOMETRY (Ser. No. 85/327,208); GEORGIA COLLEGE OF PHARMACY (Ser. No. 85/310,079); GEORGIA SCHOOL OF PHARMACY (Ser. No. 85/310,077); GEORGIA SCHOOL OF OSTEOPATHIC MEDICINE (Ser. No. 85/309,897).

EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_389822016-20150120174010218184_._Exhibit_A.pdf
CONVERTED PDF FILE(S) (15 pages)	\\TICRS\EXPORT16\IMAGEOUT16\860\482\86048224\xml7\RFR0002.JPG
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DESCRIPTION OF EVIDENCE FILE	details of analogous registrations from PTO database and evidence of actual use of same
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Timothy D. Pecsenye/
SIGNATORY'S NAME	Timothy D. Pecsenye
SIGNATORY'S POSITION	Attorney of Record, PA Bar Member
SIGNATORY'S PHONE NUMBER	215-569-5619
DATE SIGNED	01/20/2015
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO

FILING INFORMATION SECTION	
SUBMIT DATE	Tue Jan 20 17:48:20 EST 2015
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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. **86048224** has been amended as follows:

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

REQUEST FOR RECONSIDERATION

In an Office Action issued July 17, 2014, the Examining Attorney maintained and made final her refusal to register Applicant's mark GEORGIA COLLEGE OF OSTEOPATHIC MEDICINE pursuant to Sections 2(d) and 2(e)(2) of the Lanham Act, 15 U.S.C. §§ 1052(d) & 1052(e)(2). In response, Applicant hereby submits the following in further support of registration.

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all registered in connection with, *inter alia*, the provision of educational services at the college and university levels in Class 41, and all of which are owned by the Board of Regents of the University System of Georgia (collectively, the "Cited Marks"). The Examining Attorney's finding that Applicant's mark is likely to be confused with the Cited Marks is based on her unsupported assertion that the factors most relevant to the likelihood of confusion analysis in this case are "similarity of the marks, similarity and nature of the goods and/or services, and similarity of the trade channels of the goods and/or services." Applicant respectfully submits that the sophistication of the consumers to whom Applicant's and Registrant's services are offered, the costs of such services, and the number and nature of similar marks in use in connection with such services strongly outweigh the other du Pont factors, and consideration of the same mandates a finding that Applicant's mark and the Cited Marks are not likely to be confused in the minds of relevant consumers. Accordingly, based on Applicant's previous arguments and evidence, the following supplemental analysis set forth herein, and additional evidence submitted herewith, Applicant respectfully, albeit vigorously, maintains its position that there is no likelihood of confusion between its mark and the Cited Marks and respectfully requests that the Examining Attorney's refusal be withdrawn and that Applicant's mark be approved for publication.

A. Relevant Consumers Are Sophisticated.

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Applicant respectfully submits that the sophistication of relevant

consumers of Applicant’s and Registrant’s services is so great that the provision of educational services by Applicant and Registrant under marks that incorporate the same word, namely, “GEORGIA,” is not likely to generate consumer confusion. Consumers of Applicant’s and Registrant’s educational services are individuals seeking degrees from institutions of higher learning, such as Bachelor’s, Master’s, and doctorate degrees. Such individuals are not casual consumers and do not make purchasing decisions hastily; rather, they are highly knowledgeable, sophisticated, and discriminating in identifying the institutions and academic programs in which they hope to enroll and must exercise a high degree of care before investing in such services. Indeed, before a purchase can be made, consumers need not only identify the institutions and programs in which they are interested, requiring significant research, but they must also engage in a lengthy and extensive application process (including without limitation studying for and taking standardized tests, acquiring letters of recommendation, and applying for admission and paying appropriate application fees) and ultimately be accepted in order to matriculate. Given the vital importance of higher education, relevant purchasers are exceedingly likely to exercise extraordinary care in selecting the appropriate institution offering such educational services. As such, relevant consumers are highly unlikely to confuse the source of Applicant’s and Registrant’s services and/or Applicant with Registrant.

Moreover, as previously argued and explained further below, the differences between Applicant’s mark and the Cited Marks are rendered all the more significant in the context of post-secondary education where, as here, the allegedly dominant portion of the marks is a state name. Indeed, as demonstrated in the evidence attached to Applicant’s Response to Office Action submitted June 23, 2014, it is commonplace for unrelated universities, colleges, and other institutions of higher

learning to incorporate and use identical state designations in their names. Consequently, it would defy logic to conclude that such highly sophisticated and discriminating consumers – prospective students of higher learning – would be likely to be confused as to the provider of the educational services.

In view of the sophistication and care of the relevant consumers of Applicant's and Registrant's educational services in their purchasing practices, it is highly unlikely that such discriminating consumers are likely to believe that Applicant's and Registrant's services emanate from the same source merely because such services are offered under "GEORGIA"-formative marks. Consequently, consideration of the relevant sophisticated consumers weighs decidedly against a finding of likelihood of confusion.

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finding of likelihood of confusion.

C. Other Registered "GEORGIA"-Formative Marks Negate Any Likelihood of Confusion.

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In view of the foregoing, it cannot reasonably be maintained that the term "GEORGIA" is associated with any one source. Indeed, it is clear that, when encountering a mark that is comprised in whole or in part of the term "GEORGIA" (or any other state name), sophisticated consumers seeking providers of higher education, recognizing that such term cannot readily identify the source of the services, will scrutinize the mark for additional source-identifying information. Consequently, as noted above, Applicant's mark and the Cited Marks can coexist without resulting in consumer confusion. This factor in the

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Accordingly, because there is no likelihood of confusion between Applicant's mark and the Cited Marks, Applicant respectfully requests that the Examining Attorney withdraw the refusal and pass Applicant's mark on to publication.

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Contrary to the Examining Attorney's position, Applicant emphatically reiterates that, under the appropriate standard set forth in Applicant's Response to Office Action submitted June 23, 2014, Applicant's mark is not primarily geographically descriptive under the appropriate standard, as its primary significance is not geographic, and the consuming public is not likely to make a services/place association.

1. Primary Significance of Mark Not Geographic

As previously explained, Applicant is a renowned college of medicine that has opened a new campus which it intends to operate under the mark GEORGIA COLLEGE OF OSTEOPATHIC MEDICINE. By consequence, when prospective students view the mark as a whole, it does not bring to mind a geographic location, but rather a renowned and respected college of medicine. The mark clearly functions as the name of a place of

higher education. When consumers refer to DISNEY WORLD or DOLLYWOOD, both geographic places, they are in fact referring to Disney Enterprises Incorporated and Dolly Parton Productions, respectively. Similarly, when consumers refer to the GEORGIA COLLEGE OF OSTEOPATHIC MEDICINE, they are referring to Applicant.

It is well-settled that the validity of a mark is judged not by an examination of its individual parts, but rather by viewing the trademark as a whole. See Franklin Mint Corp., 667 F.2d at 1007 ("It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion."). When a geographic term is "composed of geographic matter coupled with additional matter (e.g., wording and/or a design element), . . . the examining attorney must determine the primary significance of the composite." T.M.E.P. § 1210.02(c).

Here, Applicant's mark is comprised of the term "GEORGIA" along with the additional phrase "COLLEGE OF OSTEOPATHIC MEDICINE," forming the unique compound mark GEORGIA COLLEGE OF OSTEOPATHIC MEDICINE. Due in part to the addition of this phrasing, the *primary* significance of Applicant's mark is to indicate that Applicant's provides higher education services. The mark as a whole thus evokes in the minds of consumers the idea of a school – a college of medicine. The *primary* significance therefore is not any alleged geographic meaning behind the mark.

In sum, Applicant respectfully maintains that the Examining Attorney has not satisfied her burden of proving that the primary significance of Applicant's mark is geographic. To the contrary, as demonstrated by Applicant, the primary significance of Applicant's mark is unequivocally *not* geographic. Indeed, Applicant's mark GEORGIA COLLEGE OF OSTEOPATHIC MEDICINE is a prime example of a mark that is

the exception to the traditional rule for geographic descriptiveness. Accordingly, because the mark's primary significance is *not* geographic, the first element of the geographic descriptiveness test is not satisfied, and the geographic descriptiveness refusal must be withdrawn.

2. No Services/Place Association

As previously explained, the Examining Attorney's assertion that "[c]onsumers are likely to associate the applicant's educational services with the state of Georgia" is undercut by the lack of evidence required to prove such a services/place association. As indicated above, the Examining Attorney bears the burden of proving that the public would make a services/place association. "The determination of the goods/place [or services/place] association is made not in the abstract, but rather in connection with the goods or services with which the mark is used and from the perspective of the relevant public for those goods or services." In re Joint-Stock Co. "Baik", 80 U.S.P.Q.2d 1305, 1309 (T.T.A.B. 2006). In other words, whether a services/place association exists depends on whether relevant consumers would likely associate the applied-for services with the location identified in the mark. See, e.g., In re Consolidated Foods Corp., 218 U.S.P.Q. 184, 186 (T.T.A.B. 1983) (finding that the Examining Attorney's evidence failed to support any public association between the geographic location and the applied-for goods).

As previously explained, the term "GEORGIA" as used in Applicant's mark is part of a school name and not a geographic indicator. Again, it cannot be overstated that Applicant is a renowned college of medicine, and its new campus will likewise be associated in the minds of consumers with a prominent medical school, *not* with a geographic location. Over the last hundred years, Applicant has worked tirelessly

to organize, improve, and promote its medical college. Just as students, applicants, faculty, and the medical profession associate Applicant with its medical school, such associations will likewise be made with Applicant’s new campus. Like Applicant’s entity name GEORGIA COLLEGE OF OSTEOPATHIC MEDICINE will evoke more than just a geographic location; the mark will refer to Applicant’s celebrated schools and its famed reputation in the medical field.

The services/place association that once existed with respect to institutions of higher learning has changed dramatically with the advent of virtual and intercontinental universities, such as Texas A&M University and Virginia Commonwealth University, each of which offers a full campus in Qatar, and other campuses far from the original campuses affiliated with the institutions. Given the rise of such virtual and affiliate institutions, academic consumers no longer automatically associate schools with an exact location or with brick and mortar classrooms. As virtual and intercontinental brick and mortar universities continue to grow, consumers’ perceptions are changing, and students no longer assume that a geographic location in the name of a college (such as Virginia or Texas) means that the school is to be found in that location. As such, consumers are *not* likely to make the services/place association required to sustain the Examining Attorney’s geographic descriptiveness refusal. The final element of the geographic descriptiveness test therefore is not satisfied, and the geographic descriptiveness test thus fails. Applicant’s mark can thus be understood only as a unique source identifier for Applicant and is therefore unequivocally registrable on the Principal Register without a claim of acquired distinctiveness. Accordingly, because the subject refusal is untenable, Applicant respectfully requests that the Examining Attorney withdraw the refusal and approve Applicant’s mark for publication.

B. All Doubts Concerning Registration Should Be Resolved in Applicant's Favor.

Finally, as underscored in Applicant's Response to Office Action submitted June 23, 2014, Applicant reiterates that, where there is doubt as to whether a mark is geographically descriptive, the clear weight of authority is to resolve such doubt in favor of the Applicant and to publish the mark for opposition. After all, "any person who believes that he would be damaged by the registration will have an opportunity . . . to oppose the registration of the mark and to present evidence. . . ." In re Gourmet Bakers, Inc., 173 U.S.P.Q. 565, 565 (T.T.A.B. 1972); see, e.g., In re John Harvey & Sons Ltd., 32 U.S.P.Q.2d 1451, 1455 (T.T.A.B. 1994) ("To the extent that any evidence of record raises a doubt about our conclusion here, we elect to resolve that doubt in favor of applicant. Then, when the mark is published, any person who has a legitimate interest in the use of the geographic name claimed by applicant may file an opposition."); cf. In re Merrill Lynch, Pierce, Fenner, & Smith Inc., 828 F.2d 1567, 1571, 4 U.S.P.Q.2d 1141, 1144 (Fed. Cir. 1987) ("It is incumbent on the Board to balance the evidence of public understanding of the mark against the degree of descriptiveness encumbering the mark, and to resolve reasonable doubt in favor of the applicant, in accordance with practice and precedent."); In re Aid Labs., Inc., 221 U.S.P.Q. 1215, 1216 (T.T.A.B. 1983) ("Where there is doubt on the matter, the doubt should be resolved in applicant's behalf and the mark should be published in accordance with Section 12(c) of the [Lanham] Statute for purposes of opposition."); In re The Gracious Lady Serv., Inc., 175 U.S.P.Q. 380, 382 (T.T.A.B. 1972) ("It is recognized that there is a large gray area in determining the descriptiveness of a mark, and where reasonable men may differ, it has been the practice to resolve such doubt in an

applicant's behalf and publish the mark for opposition purposes. . . .”); In re Entenmann's Inc., 15 U.S.P.Q.2d 1750, 1751 n.2 (T.T.A.B. 1990) (“[I]n ex parte cases involving a refusal to register on the basis of mere descriptiveness, it is the practice of this Board to resolve doubts in the favor of the applicant and pass the mark to publication.”).

As the foregoing makes exceedingly clear, the Examining Attorney's position in the instant case is supported neither by the evidence in the record nor by application of the law to the facts. When viewed in context, with the law applied to the facts, the purported geographic descriptiveness of “GEORGIA” significantly diminishes in favor of the mark's suggestiveness as a unique and unitary source identifier for Applicant. Accordingly, any remaining doubt should be resolved in Applicant's favor, and Applicant's mark should be approved for publication.

III. CONCLUSION

Whereas Applicant has satisfied the concerns of the Examining Attorney, Applicant respectfully requests that the subject refusals be withdrawn and that Applicant's mark be approved for publication.

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[1] These applications include: PHARMACY COLLEGE OF GEORGIA (Ser. No. 85/327,283); PHARMACY SCHOOL OF GEORGIA (Ser. No. 85/327,215); GEORGIA COLLEGE OF OPTOMETRY (Ser. No. 85/327,208); GEORGIA COLLEGE OF PHARMACY (Ser. No. 85/310,079); GEORGIA SCHOOL OF PHARMACY (Ser. No. 85/310,077); GEORGIA SCHOOL OF OSTEOPATHIC MEDICINE (Ser. No. 85/309,897).

EVIDENCE

Evidence in the nature of details of analogous registrations from PTO database and evidence of actual use of same has been attached.

Original PDF file:

evi_389822016-20150120174010218184_._Exhibit_A.pdf

Converted PDF file(s) (15 pages)

Evidence-1

Evidence-2

Evidence-3
Evidence-4
Evidence-5
Evidence-6
Evidence-7
Evidence-8
Evidence-9
Evidence-10
Evidence-11
Evidence-12
Evidence-13
Evidence-14
Evidence-15

SIGNATURE(S)
Request for Reconsideration Signature
Signature: /Timothy D. Pecsenye/ Date: 01/20/2015
Signatory's Name: Timothy D. Pecsenye
Signatory's Position: Attorney of Record, PA Bar Member

Signatory's Phone Number: 215-569-5619

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 not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 86048224
Internet Transmission Date: Tue Jan 20 17:48:20 EST 2015
TEAS Stamp: USPTO/RFR-38.98.220.16-20150120174820145
551-86048224-5307a874373dcc4cf86a4130e19
07b9236c4bbed0c557eddbc0e66edf7953bc-N/A
-N/A-20150120174010218184

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Tue Jan 20 03:20:58 EST 2015

Record 1 out of 1

GEORGIA SCHOOL OF
PROFESSIONAL PSYCHOLOGY

Word Mark	GEORGIA SCHOOL OF PROFESSIONAL PSYCHOLOGY
Goods and Services	IC 041. US 100 101 107. G & S: Education services, namely, offering courses of instruction at the post-secondary level. FIRST USE: 20120415. FIRST USE IN COMMERCE: 20120415
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	**85448996**
Filing Date	October 17, 2011
Current Basis	1A
Original Filing Basis	1B
Date Amended to Current Register	June 19, 2012
Registration Number	4211786
Registration Date	September 18, 2012
Owner	(REGISTRANT) Education Management LLC LIMITED LIABILITY COMPANY DELAWARE 210 Sixth Avenue Pittsburgh PENNSYLVANIA 15222 (LAST LISTED OWNER) EDUCATION MANAGEMENT II LLC LIMITED LIABILITY COMPANY DELAWARE 210 SIXTH AVENUE PITTSBURGH PENNSYLVANIA 15222
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Christie Baty Hudgins

Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SCHOOL OF PROFESSIONAL PSYCHOLOGY" APART FROM THE MARK AS SHOWN
Type of Mark	SERVICE MARK
Register	SUPPLEMENTAL
Live/Dead Indicator	LIVE

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Accreditation: Office of Program Consultation and Accreditation, American Psychological Association, 750 1st Street, NE, Washington, DC 20002 Phone: (202) 336-5979 / E-mail: apaaccred@apa.org (mailto: apaaccred@apa.org) Web: www.apa.org/ed/accreditation (http://www.apa.org/ed/accreditation/).

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Safe Harbor Policy (http://www.edmc.edu/edmc-safe-harbor-privacy-policy.aspx)

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Georgia Atlanta College

Word Mark	GEORGIA ATLANTA COLLEGE
Goods and Services	IC 041. US 100 101 107. G & S: Educating at university or colleges; Educational services, namely, providing courses of instruction at the college level; Educational services, namely, providing courses of instruction at the college level and distribution of course material in connection therewith; Providing courses of instruction at the college level. FIRST USE: 20120401. FIRST USE IN COMMERCE: 20120401
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85606392
Filing Date	April 24, 2012
Current Basis	1A
Original Filing Basis	1A
Date Amended to Current	August 15, 2012

Register	
Registration Number	4223542
Registration Date	October 9, 2012
Owner	(REGISTRANT) Georgia Atlanta Prep., LLC DBA Georgia Atlanta College LIMITED LIABILITY COMPANY GEORGIA 3545 Peachtree Industrial Blvd Suite 4 Duluth GEORGIA 30096
Type of Mark	SERVICE MARK
Register	SUPPLEMENTAL
Live/Dead Indicator	**LIVE**

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Georgia Highlands College

Word Mark	GEORGIA HIGHLANDS COLLEGE
Goods and Services	IC 041. US 100 101 107. G & S: Education services in the nature of courses at the university level; Organizing and conducting college sport competitions and athletic events; Providing collegiate athletic and sporting events. FIRST USE: 20130701. FIRST USE IN COMMERCE: 20130701
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	**86117827**
Filing Date	November 13, 2013
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	May 6, 2014
Registration Number	4571362
Registration Date	July 22, 2014
Owner	(REGISTRANT) Georgia Highlands College Foundation, Inc. CORPORATION GEORGIA 3175 Cedartown Hwy SE Rome GEORGIA 30161
Attorney of	Wilma R. Bush

Record	
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "GEORGIA" OR "COLLEGE" APART FROM THE MARK AS SHOWN
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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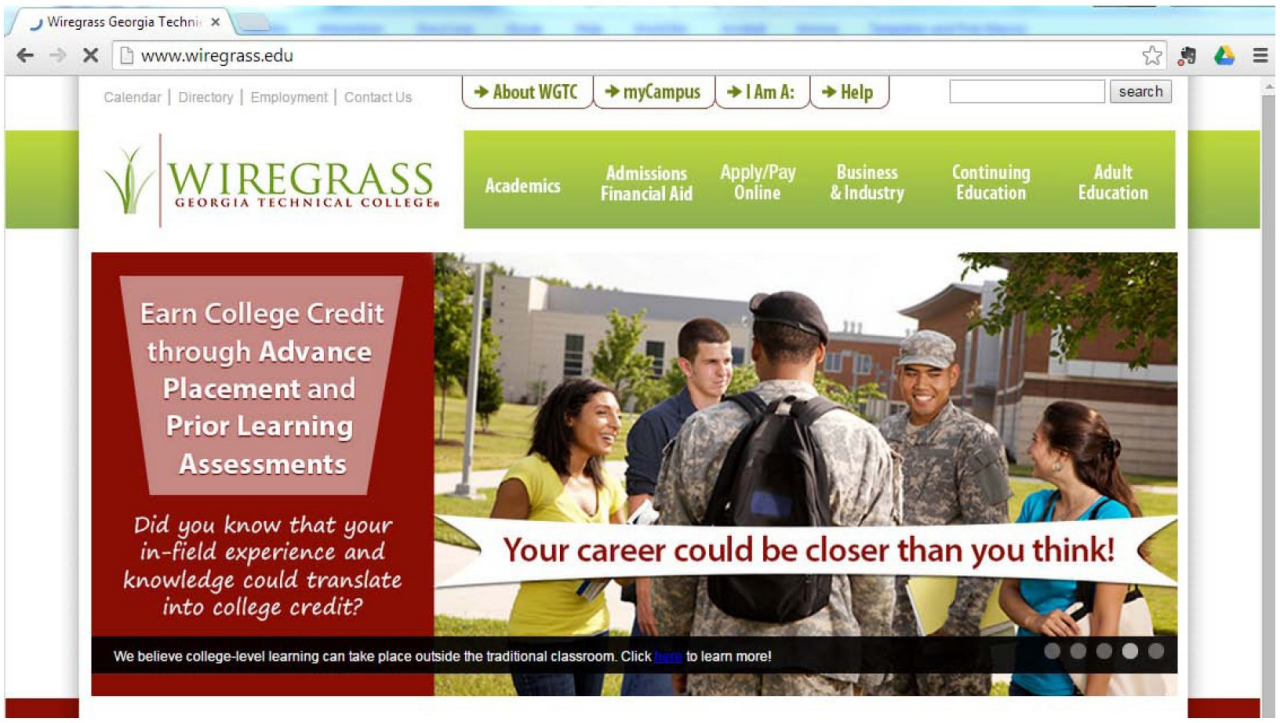
Wiregrass Georgia Technical College

Word Mark	WIREGRASS GEORGIA TECHNICAL COLLEGE
Goods and Services	IC 041. US 100 101 107. G & S: Educational services, namely, providing for-credit courses of instruction at the college level, and noncredit vocational courses, in the fields of Accounting, Business Administration, Banking and Finance, Business Management, Marketing Management, Computer Information Systems, Computer Programming, Computer Networking, Design and Media Production Technology, Digital Media Technology, Drafting Technology, Electrical Systems Technology, Practical Nursing, Clinical Laboratory Technology, Dental Hygiene, Dental Assisting, Emergency Medical Services, Paramedicine, Healthcare Assistant, Healthcare Science, Health Information Technology, Medical Assisting, Nurse Assistant, Opticianry, Pharmacy Technology, Radiologic Technology, Surgical Technology, Cosmetology, Criminal Justice, Culinary Arts, Early Childhood Care and Education, Fire Science, Air Conditioning Technology, Automotive Collision Repair, Automotive Technology, Automotive Collision Repair, Commercial Truck Driving, Commercial Construction Management, Industrial Systems Technology, Horticulture, Telecommunications and Security Systems Technology, Machine Tool Technology, and Welding and Joining Technology; and adult literacy classes. FIRST USE: 20100701. FIRST USE IN COMMERCE: 20100701
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85524121

Filing Date	January 24, 2012
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	March 19, 2013
Registration Number	4345128
Registration Date	June 4, 2013
Owner	(REGISTRANT) Technical College System of Georgia STATE AGENCY GEORGIA 1800 Century Place, NE Atlanta GEORGIA 30345
Attorney of Record	Jeffrey R. Kuester
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "TECHNICAL COLLEGE" APART FROM THE MARK AS SHOWN
Type of Mark	SERVICE MARK
Register	PRINCIPAL-2(F)
Live/Dead Indicator	**LIVE**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