

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86215732
LAW OFFICE ASSIGNED	LAW OFFICE 102
MARK SECTION	
MARK	http://tmng-al.uspto.gov/resting2/api/img/86215732/large
LITERAL ELEMENT	IMPULSE
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size

ARGUMENT(S)

The Examining Attorney has refused registration of Applicant's mark based upon a likelihood of confusion U.S. Registration No. 3172883 and a refusal of the specimen provided by Applicant. Applicant respectfully disagrees with the Examining Attorney's findings with regard to the likelihood of confusion by consumers for Applicant's snorkeling product and the registrant Head Technology Group with regard to the IMPULSE mark by Head Technology Group (hereinafter "HEAD") for its racquetball goggles. Applicant's contention that the goods associated with HEAD's trademark of US Registration No. 3172883 and the Applicant's goods do not travel in the same trade channels as suggested by the Examining Attorney. The racquetball sports goods with the HEAD's trademark are purchased by consumers for a specific sport and Applicant's goods are in a sports activity not related to the racquet sports. While HEAD also markets snorkeling gear - it has not chosen to market snorkeling gear using the "IMPULSE" mark. Applicant re-asserts its contention that Consumers and Retailers of Applicant's IMPULSE snorkeling goods would not mistakenly believe those goods come from the same source as HEAD's racquetball goods. The goods would not be encountered by the same customers under circumstances such that the goods under both marks would lead to the mistaken belief they derive from the same source. Applicant would supplement its argument on this point by pointing out that Applicant and its predecessor (by assignment) marketed IMPULSE snorkeling products long before HEAD entered the market. In order to supplement its argument regarding Applicant's prior marketing, Applicant submits with the Request for Reconsideration both an Affidavit of the IMPULSE mark from US Divers to Applicant, a copy of the registration filed by Applicant in the USPTO in interest to the IMPULSE trademark as well as a specimen of the IMPULSE mark which was previously accepted for registration. Given the length of time of Applicant's mark in the market over HEAD's snorkeling products with

the IMPULSE mark, Applicant asserts the Examining Attorney's concern regarding confusion is not based on goods that have been provided in the market. Applicant has been providing IMPULSE snorkeling products since a decade prior to HEAD's entry into the racquetball goggles market using the IMPULSE trademark name. Applicant respectfully requests that the Examining Attorney take into consideration the prior history of this mark and its use in the market by Applicant and Applicant's predecessor-in-interest (U.S. Divers, a current subsidiary of Applicant, AquaLung) - well before HEAD's use of the IMPULSE mark for a completely different and unrelated sport. Applicant re-asserts its contention that the specimen provided is sufficient to identify the goods distinctly from HEAD's goods. In response to the question, Applicant does not wish to amend the specimen filed or submit a different specimen at this time but has the opportunity to provide one at a later time. Applicant would ask the Examining Attorney to consider the specimen which was previously accepted and registered by Applicant's predecessor-in-interest and current affiliate.

EVIDENCE SECTION

EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_20462206254-20150713191832630041 . PULSE Registration Certificate 1618893_10231990_7380
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT16\IMAGEOUT16\862\157\86215732\xml8\RFR0002.JPG
ORIGINAL PDF FILE	evi_20462206254-20150713191832630041 . e Document from US Divers to AquaLung_03202000 .
CONVERTED PDF FILE(S) (4 pages)	\\TICRS\EXPORT16\IMAGEOUT16\862\157\86215732\xml8\RFR0003.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\862\157\86215732\xml8\RFR0004.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\862\157\86215732\xml8\RFR0005.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\862\157\86215732\xml8\RFR0006.JPG
ORIGINAL PDF FILE	evi_20462206254-20150713191832630041 . Specimen from the Trademark Filed January 1989_738
CONVERTED PDF FILE(S) (2 pages)	\\TICRS\EXPORT16\IMAGEOUT16\862\157\86215732\xml8\RFR0007.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\862\157\86215732\xml8\RFR0008.JPG

SIGNATURE SECTION

RESPONSE SIGNATURE	/Donald R. Naylor, Jr./
SIGNATORY'S NAME	Donald R. Naylor, Jr.
SIGNATORY'S POSITION	Attorney of Record, Texas Bar Member
SIGNATORY'S PHONE NUMBER	713-624-8149

DATE SIGNED	07/13/2015
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Jul 13 19:44:41 EDT 2015
TEAS STAMP	USPTO/RFR-204.62.206.254-20150713194441212162-86215732-5403368adac1a44574904a2ecf48cc9ad3260ce3e15ff1923b1c171ddc5b7c0-N/A-N/A-20150713191832630041

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

Application serial no. **86215732** IMPULSE(Standard Characters, see <http://tmngal.uspto.gov/resting2/api/img/86215732/large>) has been amended as follows:

ARGUMENT(S)

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

The Examining Attorney has refused registration of Applicant's mark based upon a likelihood of confusion with the mark in U.S. Registration No. 3172883 and a refusal of the specimen provided by Applicant. Applicant respectfully re-asserts its disagreement with the Examining Attorney's findings with regard to the likelihood of confusion by consumers and/or retailers for Applicant's snorkeling product and the registrant Head Technology Group with regard to the use of an IMPULSE mark by Head Technology Group (hereinafter "HEAD") for its racquetball goggles. Applicant re-asserts its contention that the goods associated with HEAD's trademark of US Registration No. 3172883 and the Applicant's trademarks do not travel in the same trade channels as suggested by the Examining Attorney. The racquetball sports goggles associated with the HEAD's trademark are purchased by consumers for a specific sport and Applicant's goods are in a different area of sports activity not related to the racquet sports. While HEAD also markets snorkeling gear - it has not chosen to market the snorkeling gear using the "IMPULSE" mark. Applicant re-asserts its contention that Consumers and Retailers seeking Applicant's IMPULSE snorkeling goods would not mistakenly believe those goods come from the same source as HEAD's racquetball goods. The goods would not be encountered by the same customers under circumstances such that offering the goods under both marks would lead to the mistaken belief they derive from the same source. Applicant would like to supplement its argument on this point by pointing out that Applicant and its predecessor (by

assignment) marketed IMPULSE snorkeling products long before HEAD entered the market. In order to supplement its argument on the point regarding Applicant's prior marketing, Applicant submits with the Request for Reconsideration both an Assignment document of the IMPULSE mark from US Divers to Applicant, a copy of the registration filed by Applicant's predecessor-in-interest to the IMPLUSE trademark as well as a specimen of the IMPULSE mark which was previously accepted and registered. Given the length of time of Applicant's mark in the market over HEAD's snorkeling products which do not bear the IMPULSE mark, Applicant asserts the Examining Attorney's concern regarding confusion is not based on the how these goods have been provided in the market. Applicant has been providing IMPULSE snorkeling products since 1989 - over a decade prior to HEAD's entry into the racquetball goggles market using the IMPULSE trademark name. Applicant respectfully requests that the Examining Attorney take into consideration the prior history of this mark and its particular use in the market by Applicant and Applicant's predecessor-in-interest (U.S. Divers, a current subsidiary of Applicant AquaLung) - well before HEAD's use of the IMPULSE mark for a completely different and unrelated sport. While Applicant re-asserts its contention that the specimen provided is sufficient to identify the goods distinctly from HEAD's registration in question, Applicant does not wish to amend the specimen filed or submit a different specimen at this time but would reserve the opportunity to provide one at a later time. Applicant would ask the Examining Attorney to consider the IMPULSE mark which was previously accepted and registered by Applicant's predecessor-in-interest and current affiliate.

EVIDENCE

Original PDF file:

[evi_20462206254-](#)

[20150713191832630041 . PULSE Registration Certificate 1618893_10231990_73808966_3 .pdf](#)

Converted PDF file(s) (1 page)

[Evidence-1](#)

Original PDF file:

[evi_20462206254-](#)

[20150713191832630041 . e Document from US Divers to AquaLung_03202000_73808966_2 .pdf](#)

Converted PDF file(s) (4 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

Original PDF file:

[evi_20462206254-](#)

[20150713191832630041 . Specimen from the Trademark Filed January 1989_73808966_1 .pdf](#)

Converted PDF file(s) (2 pages)

[Evidence-1](#)

[Evidence-2](#)

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Donald R. Naylor, Jr./ Date: 07/13/2015

Signatory's Name: Donald R. Naylor, Jr.

Signatory's Position: Attorney of Record, Texas Bar Member

Signatory's Phone Number: 713-624-8149

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 owner's/holder'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 owner/holder in this matter: (1) the owner/holder 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 owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder'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: 86215732

Internet Transmission Date: Mon Jul 13 19:44:41 EDT 2015

TEAS Stamp: USPTO/RFR-204.62.206.254-201507131944412

12162-86215732-5403368adac1a44574904a2ec

f48cc9ad3260ce3e15fff1923b1c171ddc5b7c0-

N/A-N/A-20150713191832630041

Int. Cl.: 28

Prior U.S. Cl.: 22

United States Patent and Trademark Office **Reg. No. 1,618,893**
Registered Oct. 23, 1990

**TRADEMARK
PRINCIPAL REGISTER**

IMPULSE

U.S. DIVERS COMPANY, INC. (DELAWARE
CORPORATION)
3323 WEST WARNER AVENUE
SANTA ANA, CA 927995018

FIRST USE 1-0-1989; IN COMMERCE
1-0-1989.

SER. NO. 73-808,966, FILED 6-26-1989.

FOR: DIVER'S AND SWIMMER'S BREATH-
ING SNORKEL, IN CLASS 28 (U.S. CL. 22).

KAREN K. BUSH, EXAMINING ATTORNEY

04-24-2000

FORM PTC-16 8A
Expires 06/30/99
OMB 0651-0027

U.S. Department of Commerce
Patent and Trademark Office
TRADEMARK



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Handwritten: 1110 3.27.00



RDATION FORM COVER SHEET
RADEMARKS ONLY

emarks: Please record the attached original document(s) or copy(ies).

TO: The 03-27-2000

U.S. Patent & TMOs/TM Mail Rpt Dt. #30

Submission

New

Resubmission (Non-Recordation)
Document ID # _____

Correction of PTO Error
Reel # _____ Frame # _____

Corrective Document
Reel # _____ Frame # _____

Conveyance Type

Assignment License

Security Agreement Nunc Pro Tunc Assignment

Merger Effective Date
Month Day Year _____

Change of Name

Other _____

Conveying Party Mark if additional names of conveying parties attached

Name U.S. Divers Company, Inc. Execution Date
Month Day Year 03/20/2000

Formerly _____

Individual General Partnership Limited Partnership Corporation Association

Other _____

Citizenship/State of Incorporation/Organization Delaware

Receiving Party Mark if additional names of receiving parties attached

Name Aqua Lung America, Inc.

DBA/AKA/TA _____

Composed of _____

Address (line 1) 2340 Cousteau Court

Address (line 2) _____

Address (line 3) Vista, CA 92083
City State/Country Zip Code

Individual General Partnership Limited Partnership If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

Corporation Association

Other _____

Citizenship/State of Incorporation/Organization Delaware

FOR OFFICE USE ONLY

04/24/2000 JJALLAH2 00:00095 1618893

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40.00 DP

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

TRADEMARK
REEL: 002058 FRAME: 0043

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages

Enter the total number of pages of the attached conveyance document including any attachments. #

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)			Registration Number(s)		
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="1,618,893"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Number of Properties

Enter the total number of properties involved. #

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41): \$

Method of Payment: Enclosed Deposit Account

Deposit Account (Enter for payment by deposit account or if additional fees can be charged to the account.)
Deposit Account Number: #

Authorization to charge additional fees: Yes No

Statement and Signature

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

George F. Bethel

Name of Person Signing


Signature


Date Signed

ASSIGNMENT

PARTIES AND RECITALS

U.S. Divers Company, Inc. a Delaware corporation organized and existing under the laws of the State of Delaware (hereinafter referred to as Assignor) having a business address at 2340 Cousteau Court, Vista, California 92083 is the owner and has adopted and used in its business a certain trademark which is registered in the United States Patent and Trademark Office as follows:

<u>Mark</u>	<u>Registration No.</u>	<u>Class</u>	<u>Date of Registration</u>
IMPULSE	1,618,893	28	October 23, 1990

Aqua-Lung America, Inc. a corporation organized and existing under the laws of the State of Delaware (hereinafter referred to as Assignee) having its principal office at 2340 Cousteau Court, Vista, California 92083 is desirous of acquiring said trademark.

ASSIGNMENT

For good and valuable consideration, receipt of which is hereby acknowledged, Assignor has sold, assigned and transferred and by these presents does sell, assign and

transfer to Assignee, its successors and assigns, its entire right, title and interest in and to said trademark and registration, together with the good will of the business in connection with which the trademark is used and associated with.

U.S. Divers Company, Inc.

Dated 3/20/00



Donald Rockwell
Executive Vice President and
General Manager

12-8369-95



U.S. DIVERS[®]

IMPULSE[™]

ORZ DIVERS

IMBURSE™

