

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86400560
LAW OFFICE ASSIGNED	LAW OFFICE 114
MARK SECTION	
MARK	MAESTRO
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.
ARGUMENT(S)	
Please see the attached request for reconsideration.	
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_4345370-20160225173737317186_.MAESTRO_request_for_reconsideration-v1.pdf
CONVERTED PDF FILE(S) (4 pages)	\\TICRS\EXPORT16\IMAGEOUT16\864\005\86400560\xml7\RFR0002.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\864\005\86400560\xml7\RFR0003.JPG
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GOODS AND/OR SERVICES SECTION (035)(current)	
INTERNATIONAL CLASS	035
DESCRIPTION	
Advertising and promotional services on behalf of others; promotional services, namely, promoting the goods and services of others via the Internet and other communications networks; all of the foregoing being in the nature of placing advertisements of others on communications network featuring interactive electronic media; providing a website featuring content supplied by a user where advertisers, marketers, and content providers can reach, engage, and interact with online users for the purposes of promotion or advertising; advertising services, namely, cost-per-action online advertising	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 06/20/2014
FIRST USE IN COMMERCE DATE	At least as early as 06/20/2014
GOODS AND/OR SERVICES SECTION (035)(proposed)	
INTERNATIONAL CLASS	035
TRACKED TEXT DESCRIPTION	
Advertising and promotional services on behalf of others; Advertising and promotional services on behalf of others, promotional services,	

namely, promoting the goods and services of others via the Internet and other communications networks, all of the foregoing being in the nature of placing advertisements of others on communications network featuring interactive electronic media wherein the advertising content is supplied by the user; promotional services, namely, promoting the goods and services of others via the Internet and other communications networks; providing a website featuring content supplied by a user where advertisers, marketers, and content providers can reach, engage, and interact with online users for the purposes of promotion or advertising featuring advertising content supplied by the user; all of the foregoing being in the nature of placing advertisements of others on communications network featuring interactive electronic media; advertising services, namely, cost-per-action online advertising featuring advertising content supplied by the user; ~~providing a website featuring content supplied by a user where advertisers, marketers, and content providers can reach, engage, and interact with online users for the purposes of promotion or advertising; advertising services, namely, cost-per-action online advertising~~

FINAL DESCRIPTION

Advertising and promotional services on behalf of others, promotional services, namely, promoting the goods and services of others via the Internet and other communications networks, all of the foregoing being in the nature of placing advertisements of others on communications network featuring interactive electronic media wherein the advertising content is supplied by the user; providing a website featuring content supplied by a user where advertisers, marketers, and content providers can reach, engage, and interact with online users for the purposes of promotion or advertising featuring advertising content supplied by the user; advertising services, namely, cost-per-action online advertising featuring advertising content supplied by the user.

FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 06/20/2014
FIRST USE IN COMMERCE DATE	At least as early as 06/20/2014

GOODS AND/OR SERVICES SECTION (038)(no change)

GOODS AND/OR SERVICES SECTION (041)(no change)

GOODS AND/OR SERVICES SECTION (042)(current)

INTERNATIONAL CLASS	042
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DESCRIPTION

Application service provider (ASP) featuring software to enable posting, showing, displaying, tagging, blogging, sharing or otherwise providing electronic media or information over the Internet or other communications network; providing temporary use of online non-downloadable computer software for creating web pages and hosting web content; providing temporary use of non-downloadable software to enable uploading, capturing, posting, showing, editing, playing, streaming, viewing, previewing, displaying, tagging, blogging, sharing, manipulating, distributing, publishing, reproducing, and otherwise providing electronic media, multimedia content, videos, movies, pictures, images, text, photos, user-generated content, audio content and information via the Internet and other communications networks; providing temporary use of non-downloadable software to enable sharing of multimedia content and comments among users; providing temporary use of non-downloadable software to enable content providers to track multimedia content; providing temporary use of non-downloadable analytics software, namely, software that provides statistics about the behavior of viewers of online videos, movies, pictures, images, text, photos, games and other user-generated content; providing a web site featuring technology that enables users to host, upload, and share audio clips, video clips, musical performances, musical videos, movies, movie clips, user-generated content, photographs, other multimedia materials on a wide variety of topics and subjects

FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 06/20/2014
FIRST USE IN COMMERCE DATE	At least as early as 06/20/2014

GOODS AND/OR SERVICES SECTION (042)(proposed)

INTERNATIONAL CLASS	042
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TRACKED TEXT DESCRIPTION

Application service provider (ASP) featuring software to enable posting, showing, displaying, tagging, blogging, sharing or otherwise providing electronic media or information over the Internet or other communications network; ~~providing temporary use of online non-downloadable computer software for creating web pages and hosting web content;~~ providing temporary use of online non-downloadable computer software for creating web pages and hosting web content, wherein the content of the web pages and the web content is supplied by the user; providing temporary use of non-downloadable software to enable uploading, capturing, posting, showing, editing, playing, streaming, viewing, previewing, displaying, tagging, blogging, sharing, manipulating, distributing, publishing, reproducing, and otherwise providing electronic media, multimedia content, videos, movies, pictures, images, text, photos, user-generated content, audio content and information via the Internet and other communications networks; providing temporary use of non-downloadable software to enable sharing of multimedia

content and comments among users; providing temporary use of non-downloadable software to enable content providers to track multimedia content; providing temporary use of non-downloadable analytics software, namely, software that provides statistics about the behavior of viewers of online videos, movies, pictures, images, text, photos, games and other user-generated content; ~~providing a web site featuring technology that enables users to host, upload, and share audio clips, video clips, musical performances, musical videos, movies, movie clips, user-generated content, photographs, other multimedia materials on a wide variety of topics and subjects;~~ providing a web site featuring technology that enables users to host, upload, and share audio clips, video clips, musical performances, musical videos, movies, movie clips, user-generated content, photographs, other multimedia materials on a wide variety of topics and subjects.

FINAL DESCRIPTION

Application service provider (ASP) featuring software to enable posting, showing, displaying, tagging, blogging, sharing or otherwise providing electronic media or information over the Internet or other communications network; providing temporary use of online non-downloadable computer software for creating web pages and hosting web content, wherein the content of the web pages and the web content is supplied by the user; providing temporary use of non-downloadable software to enable uploading, capturing, posting, showing, editing, playing, streaming, viewing, previewing, displaying, tagging, blogging, sharing, manipulating, distributing, publishing, reproducing, and otherwise providing electronic media, multimedia content, videos, movies, pictures, images, text, photos, user-generated content, audio content and information via the Internet and other communications networks; providing temporary use of non-downloadable software to enable sharing of multimedia content and comments among users; providing temporary use of non-downloadable software to enable content providers to track multimedia content; providing temporary use of non-downloadable analytics software, namely, software that provides statistics about the behavior of viewers of online videos, movies, pictures, images, text, photos, games and other user-generated content; providing a web site featuring technology that enables users to host, upload, and share audio clips, video clips, musical performances, musical videos, movies, movie clips, user-generated content, photographs, other multimedia materials on a wide variety of topics and subjects.

FILING BASIS

Section 1(a)

FIRST USE ANYWHERE DATE

At least as early as 06/20/2014

FIRST USE IN COMMERCE DATE

At least as early as 06/20/2014

GOODS AND/OR SERVICES SECTION (045)(no change)

SIGNATURE SECTION

RESPONSE SIGNATURE

/pfw/

SIGNATORY'S NAME

Peter F. Weinberg

SIGNATORY'S POSITION

Attorney, CO bar member

SIGNATORY'S PHONE NUMBER

303.629.3400

DATE SIGNED

02/25/2016

AUTHORIZED SIGNATORY

YES

CONCURRENT APPEAL NOTICE FILED

NO

FILING INFORMATION SECTION

SUBMIT DATE

Thu Feb 25 17:48:27 EST 2016

TEAS STAMP

USPTO/RFR-X.XX.XX.XX-2016
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 -20160225173737317186

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

Application serial no. **86400560** MAESTRO(Standard Characters, see) has been amended as follows:

ARGUMENT(S)

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

Please see the attached request for reconsideration.

EVIDENCE

Original PDF file:

[evi_4345370-20160225173737317186 . MAESTRO_request_for_reconsideration-v1.pdf](#)

Converted PDF file(s) (4 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

CLASSIFICATION AND LISTING OF GOODS/SERVICES

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

Current: Class 035 for Advertising and promotional services on behalf of others; promotional services, namely, promoting the goods and services of others via the Internet and other communications networks; all of the foregoing being in the nature of placing advertisements of others on communications network featuring interactive electronic media; providing a website featuring content supplied by a user where advertisers, marketers, and content providers can reach, engage, and interact with online users for the purposes of promotion or advertising; advertising services, namely, cost-per-action online advertising

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 06/20/2014 and first used in commerce at least as early as 06/20/2014 , and is now in use in such commerce.

Proposed:

Tracked Text Description: ~~Advertising and promotional services on behalf of others; Advertising and promotional services on behalf of others, promotional services, namely, promoting the goods and services of others via the Internet and other communications networks, all of the foregoing being in the nature of placing advertisements of others on communications network featuring interactive electronic media wherein the advertising content is supplied by the user; promotional services, namely, promoting the goods and services of others via the Internet and other communications networks; providing a website featuring content supplied by a user where advertisers, marketers, and content providers can reach, engage, and interact with online users for the purposes of promotion or advertising featuring advertising content supplied by the user; all of the foregoing being in the nature of placing advertisements of others on communications network featuring interactive electronic media; advertising services, namely, cost-per-action online advertising featuring advertising content supplied by the user.; providing a website featuring content supplied by a user where advertisers, marketers, and content providers can reach, engage, and interact with online users for the purposes of promotion or advertising; advertising services, namely, cost-per-action online advertising~~

Class 035 for Advertising and promotional services on behalf of others, promotional services, namely, promoting the goods and services of others via the Internet and other communications networks, all of the foregoing being in the nature of placing advertisements of others on communications network featuring interactive electronic media wherein the advertising content is supplied by the user; providing a website featuring content supplied by a user where advertisers, marketers, and content providers can reach, engage, and interact with online users for the purposes of promotion or advertising featuring advertising content supplied by the user; advertising services, namely, cost-per-action online advertising featuring advertising content supplied by the user.

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 06/20/2014 and first used in commerce at least as early as 06/20/2014 , and is now in use in such commerce.

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

Current: Class 042 for Application service provider (ASP) featuring software to enable posting, showing, displaying, tagging, blogging, sharing or otherwise providing electronic media or information over the Internet or other communications network; providing temporary use of online non-downloadable computer software for creating web pages and hosting web content; providing temporary use of non-downloadable software to enable uploading, capturing, posting, showing, editing, playing, streaming, viewing, previewing, displaying, tagging, blogging, sharing, manipulating, distributing, publishing, reproducing, and otherwise providing electronic media, multimedia content, videos, movies, pictures, images, text, photos, user-generated content, audio content and information via the Internet and other communications networks; providing temporary use of non-downloadable software to enable sharing of multimedia content and comments among users; providing temporary use of non-downloadable software to enable content providers to track multimedia content; providing temporary use of non-downloadable analytics software, namely, software that provides statistics about the behavior of viewers of online videos, movies, pictures, images, text, photos, games

and other user-generated content; providing a web site featuring technology that enables users to host, upload, and share audio clips, video clips, musical performances, musical videos, movies, movie clips, user-generated content, photographs, other multimedia materials on a wide variety of topics and subjects

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 06/20/2014 and first used in commerce at least as early as 06/20/2014 , and is now in use in such commerce.

Proposed:

Tracked Text Description: Application service provider (ASP) featuring software to enable posting, showing, displaying, tagging, blogging, sharing or otherwise providing electronic media or information over the Internet or other communications network; ~~providing temporary use of online non-downloadable computer software for creating web pages and hosting web content;~~ providing temporary use of online non-downloadable computer software for creating web pages and hosting web content, wherein the content of the web pages and the web content is supplied by the user; providing temporary use of non-downloadable software to enable uploading, capturing, posting, showing, editing, playing, streaming, viewing, previewing, displaying, tagging, blogging, sharing, manipulating, distributing, publishing, reproducing, and otherwise providing electronic media, multimedia content, videos, movies, pictures, images, text, photos, user-generated content, audio content and information via the Internet and other communications networks; providing temporary use of non-downloadable software to enable sharing of multimedia content and comments among users; providing temporary use of non-downloadable software to enable content providers to track multimedia content; providing temporary use of non-downloadable analytics software, namely, software that provides statistics about the behavior of viewers of online videos, movies, pictures, images, text, photos, games and other user-generated content; ~~providing a web site featuring technology that enables users to host, upload, and share audio clips, video clips, musical performances, musical videos, movies, movie clips, user-generated content, photographs, other multimedia materials on a wide variety of topics and subjects;~~ providing a web site featuring technology that enables users to host, upload, and share audio clips, video clips, musical performances, musical videos, movies, movie clips, user-generated content, photographs, other multimedia materials on a wide variety of topics and subjects.

Class 042 for Application service provider (ASP) featuring software to enable posting, showing, displaying, tagging, blogging, sharing or otherwise providing electronic media or information over the Internet or other communications network; providing temporary use of online non-downloadable computer software for creating web pages and hosting web content, wherein the content of the web pages and the web content is supplied by the user; providing temporary use of non-downloadable software to enable uploading, capturing, posting, showing, editing, playing, streaming, viewing, previewing, displaying, tagging, blogging, sharing, manipulating, distributing, publishing, reproducing, and otherwise providing electronic media, multimedia content, videos, movies, pictures, images, text, photos, user-generated content, audio content and information via the Internet and other communications networks; providing temporary use of non-downloadable software to enable sharing of multimedia content and comments among users; providing temporary use of non-downloadable software to enable content providers to track multimedia content; providing temporary use of non-downloadable analytics software, namely, software that provides statistics about the behavior of viewers of online videos, movies, pictures, images, text, photos, games and other user-generated content; providing a web site featuring technology that enables users to host, upload, and share audio clips, video clips, musical performances, musical videos, movies, movie clips, user-generated content, photographs, other multimedia materials on a wide variety of topics and subjects.

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 06/20/2014 and first used in commerce at least as early as 06/20/2014 , and is now in use in such commerce.

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /p/w/ Date: 02/25/2016

Signatory's Name: Peter F. Weinberg

Signatory's Position: Attorney, CO bar member

Signatory's Phone Number: 303.629.3400

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: 86400560

Internet Transmission Date: Thu Feb 25 17:48:27 EST 2016

TEAS Stamp: USPTO/RFR-X.XX.XX.XX-2016022517482739521
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A-N/A-20160225173737317186

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: LessThan3, Inc. Examining
Attorney: DAVID I
Mark: MAESTRO Law Office: 114
Filed: 9/19/2014
Serial No.: 86/400,560 Ref. No.: T252571.US.01 ~ 492432

Request for Reconsideration

Introduction

Applicant thanks the examining attorney for his careful consideration of the captioned application and the indication that the pending application is allowable with respect to all of the services in Classes 38, 41, 42, and 45 and all of the services in Class 42 except for “*providing temporary use of online non-downloadable computer software for creating web pages and hosting web content.*” Applicant herein respectfully requests reconsideration of the outstanding refusal with respect to the services in Class 35 and the aforementioned services in Class 42.

Applicant further amends the services in Class 35 and Class 42 in order to clarify that those services are not in fact related to the services in cited Registration No. 3733122 for the mark MAESTRO MARKETING SERVICES, *i.e.*, “advertising services, namely, creating marketing materials, corporate names, logos and taglines, and brand identities for others” in Class 35 and for “designing, creating, and maintaining websites for others” in Class 42.

Amendment

Applicant hereby amends the services in its application as follows, wherein changes are shown in underline:

Class 35: *Advertising and promotional services on behalf of others*; promotional services, namely, promoting the goods and services of others via the Internet and other communications networks; all of the foregoing being in the nature of placing advertisements of others on communications network featuring interactive electronic media wherein the advertising content is supplied by the user; providing a website featuring content supplied by a user where advertisers, marketers, and content providers can reach, engage, and interact with online users for the purposes of promotion or advertising featuring advertising content supplied by the user; advertising services, namely, cost-per-action online advertising featuring advertising content supplied by the user.

Class 42: Application service provider (ASP) featuring software to enable posting, showing, displaying, tagging, blogging, sharing or otherwise providing electronic media or information over the Internet or other communications network; providing temporary use of online non-downloadable computer software for creating web pages and hosting web content, wherein the content of the web pages and the web content is supplied by the user; providing temporary use of non-downloadable software to enable uploading, capturing, posting, showing, editing, playing, streaming, viewing, previewing, displaying, tagging, blogging, sharing, manipulating, distributing, publishing, reproducing, and otherwise providing electronic media, multimedia content, videos, movies, pictures, images, text, photos, user-generated content, audio content and information via the Internet and other communications networks; providing temporary use of non-downloadable software to enable sharing of multimedia content and comments among users; providing temporary use of non-downloadable software to enable content providers to track multimedia content; providing temporary use of non-downloadable analytics software, namely, software that provides statistics about the behavior of viewers of

online videos, movies, pictures, images, text, photos, games and other user-generated content; providing a web site featuring technology that enables users to host, upload, and share audio clips, video clips, musical performances, musical videos, movies, movie clips, user-generated content, photographs, other multimedia materials on a wide variety of topics and subjects.

Remarks

The services in Class 35 and the relevant services in Class 42 have been amended to more clearly to distinguish them from the services in the cited registration.

The services in the cited registration all clearly relate to creating marketing materials and the like for others (in Class 35) and designing, creating, and maintaining websites for others (in Class 42). This is further reinforced by the generic wording **MARKETING SERVICES** in the mark in the cited registration.

In other words, the mark in the cited registration is used in connection with the services of creating marketing materials and/or creating websites for others.

Those services are entirely distinct from Applicant's services, which, as to the relevant services, are providing a technology platform that users can use to place their own advertisements.

In the Office action of August 29, 2015, the Examining Attorney stated as follows:

“The applicant's advertising services are claimed broadly and encompass the registrant's more narrowly claimed advertising services.”

Whatever the merits of that statement in connection with the then-pending identification of services, it does not describe the identification of services as amended, wherein it is clearly noted that Applicant's services relate to advertising content and web content that is *supplied by the user*. The Applicant's services are neither claimed broadly nor do they encompass the

registrant's narrowly identified services. Moreover, the services of the Applicant and the registrant are not meaningfully related. Someone would use the registrant's services when they desire to have advertising or web content created for them. Someone would use the Applicant's services as a technology platform to display advertising or web content that it has already created (or perhaps that has been created by a third party). The services do not serve the same purpose and would not typically be provided together by third parties.

Moreover, Applicant respectfully notes that, for the reasons set forth in its prior response, which are incorporated herein by reference, the "scope" of the cited registration cannot reasonably be construed to be extremely broad in light of the extensive third party use of MAESTRO formative marks. While Applicant will not repeat that response, it is worth mentioning that the prior cited mark in Reg. No. 4357511 for "brand maestro" (in stylized letters) is for much closer services than is the pending application, and the mark is closer as well in that the words "marketing" and "brand" reinforce the similar services provided in connection with each of the marks.¹ This is not said to cast aspersions on either of those marks, but rather to emphasize that when analyzing marks in a crowded field, it is not tenable to take the position that any given registration should be construed to conflict with another mark for substantially different services.

Conclusion

Applicant respectfully requests that the Examining Attorney reconsider the pending application in light of the amendment and remarks herein and approve the application for publication.

¹ The services are "Brand imagery consulting services; Branding services, namely, consulting, development, management and marketing of brands for businesses and/or individuals; Business advisory services, consultancy and information."