

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86511770
LAW OFFICE ASSIGNED	LAW OFFICE 117
MARK SECTION	
MARK	http://tmng-al.uspto.gov/resting2/api/img/86511770/large
LITERAL ELEMENT	JUICE CLUB
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.
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_20620511711-20160520192808247505_ . Request for Reconsideration - JUICE CLUB.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT16\IMAGEOUT16\865\117\86511770\xml7\RFR0002.JPG
DESCRIPTION OF EVIDENCE FILE	Request for Reconsideration
ADDITIONAL STATEMENTS SECTION	
DISCLAIMER	No claim is made to the exclusive right to use JUICE apart from the mark as shown.
SIGNATURE SECTION	
RESPONSE SIGNATURE	/David M. Kramer/
SIGNATORY'S NAME	David M. Kramer
SIGNATORY'S POSITION	Attorney of Record, DC Bar Member
SIGNATORY'S PHONE NUMBER	202-799-4000
DATE SIGNED	05/20/2016
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Fri May 20 19:38:46 EDT 2016
TEAS STAMP	USPTO/RFR-XXX.XXX.XXX.XX- 20160520193846805798-8651 1770-550f750adc1603dd3cfe 48a6c64149ec58cced98ac5ed 1e41e47d1a7526536cb66-N/A -N/A-20160520192808247505

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. **86511770** JUICE CLUB(Standard Characters, see <http://tmng-al.uspto.gov/resting2/api/img/86511770/large>) has been amended as follows:

EVIDENCE

Evidence in the nature of Request for Reconsideration has been attached.

Original PDF file:

[evi_20620511711-20160520192808247505 . Request for Reconsideration - JUICE CLUB.pdf](#)

Converted PDF file(s) (1 page)

[Evidence-1](#)

ADDITIONAL STATEMENTS

Disclaimer

No claim is made to the exclusive right to use JUICE apart from the mark as shown.

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /David M. Kramer/ Date: 05/20/2016

Signatory's Name: David M. Kramer

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

Signatory's Phone Number: 202-799-4000

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 filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 86511770

Internet Transmission Date: Fri May 20 19:38:46 EDT 2016

TEAS Stamp: USPTO/RFR-XXX.XXX.XXX.XX-201605201938468

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64149ec58cced98ac5ed1e41e47d1a7526536cb6

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JUICE CLUB
App. No. 86511770
Request for Reconsideration

I. Introduction

The Examining Attorney has maintained the refusal to register the applied-for mark JUICE CLUB on the basis that it is allegedly merely descriptive under Section 2(e)(1) of the Trademark Act. Specifically, the Examining Attorney has taken the position that JUICE CLUB merely describes the goods covered under the applied-for mark, namely fruit juice and restaurant services in Classes 32 and 43. For the reasons discussed herein, Applicant respectfully disagrees, and requests that the Application proceed to publication.

II. Mere Descriptiveness

A. The Applied-for Mark JUICE CLUB Is Not Descriptive.

i. Applicant's Mark Is Not Descriptive Because It Does Not Convey An Immediate Idea Of The Nature of Applicant's Goods And Services And Further Requires The Consumer To Use Imagination To Determine The Nature of Those Goods And Services.

The Examining Attorney may refuse registration if a mark, when used in connection with Applicant's goods and services, is merely descriptive of them. 15 U.S.C. § 1052(e)(1). A mark is merely descriptive only if it "immediately describes" the Applicant's goods or services. In re *Econoheat Inc.*, 218 U.S.P.Q. 381, 383 (T.T.A.B. 1983)(emphasis in original). For a term to be considered "merely descriptive," the name must "immediately tell a potential customer what to expect in sum total of these concepts." *Holiday Inns, Inc. v. Monolith Enter.*, 21 U.S.P.Q. 949, 952 (T.T.A.B. 1981). However, if the term used as a mark provides vague or indirect information about the goods or services, then the term is used in a "suggestive" manner. 2 J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS §11:19 (4th ed. 2002). See also *Glamorene Products Corp. v. Boyle-Midway, Inc.*, 873 F.2d 1985 (S.D.N.Y. 1975) (finding that the mark SPRAY 'N VAC is not merely descriptive of a no scrub rug cleaner and stating "a mark is not merely descriptive unless descriptiveness is its principal significance. A mark is not descriptive if it merely suggests the nature or class of the product on which it is used").

Here, the applied-for mark does not merely describe a characteristic of Applicant's goods and services, but rather evokes its own unique commercial impression. Specifically, the literal dictionary definition of the applied-for mark JUICE CLUB, a club based on membership dedicated to juice, is significantly different from the recited goods and services, which are fruit juice and restaurant services. Indeed, in viewing the phrase JUCIE CLUB, some imagination is certainly required to understand the nature of the goods and services at issue. The nature of the mark itself requires consumers to use multi-stage reasoning to reach a full understanding of the goods covered under the applied-for mark, as no reasonable consumer would immediately understand the applied-for mark JUICE CLUB to obviously relate to a restaurant or to fruit juices and drinks. Upon encountering the applied-for mark, consumers will subsequently be required to use a mature thought process to reach a conclusion as to the goods and services covered under the applied-for mark, namely fruit juices, drinks and restaurant services. This is particularly true of the Class 32 goods appearing in the application, in connection with which the term CLUB certainly has no descriptive meaning.

III. Conclusion

For the reasons discussed herein, Applicant respectfully requests that the Examining Attorney withdraw the refusal and approve the application for publication. In the alternative, if the Examining Attorney does not deem these arguments to be persuasive with respect to all the recited goods and services, Applicant respectfully requests that, at a minimum, the application be approved for publication in connection with the recited goods in Class 32.