

## Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86535608
LAW OFFICE ASSIGNED	LAW OFFICE 113
MARK SECTION	
MARK	<a href="http://tmng-al.uspto.gov/resting2/api/img/86535608/large">http://tmng-al.uspto.gov/resting2/api/img/86535608/large</a>
LITERAL ELEMENT	BOYLSTON
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)	
<p>The applicant respectfully submits for reconsideration after the final Office Action dated Feb. 04, 2016 citing a likelihood of confusion, and also respectfully appeals to the Board in favor of publication.</p> <p>The applicant's mark, BOYLSTON, is for the goods "hats; jackets; socks; sweatshirts; t-shirts; and tank tops" in International Class 25.</p> <p>The registrant's mark, BOYLSTON TRADING CO., is for the services "on-line retail store featuring clothing, footwear, watches, wallets, hats, bags, undergarments, jewelry, and accessories" in International Class 35.</p> <p>As provided in the applicant's first response, the registrant stated that they do <b>not</b> market a connection to the Boylston Street that the examining attorney continues to reference. See registrant's TEAS Request Reconsideration after FOA dated Jan. 06, 2012. "III. THERE IS NO ASSOCIATION BETWEEN BOYLSTON STREET AND THE ONLINE RETAIL STORE SERVICES IDENTIFIED IN THE APPLICATION".</p> <p>Therefore, there is no similar commercial impression regarding this brand and online store via the referenced street.</p> <p>Considering the registrant has a listed address on said street, it cannot be concluded that the examining attorney was aware of any street named Boylston prior to seeing the address of the registrant. When asked during a phone call from the applicant on June 26, 2015 why Boylston, MA is also now being questioned in an email to the applicant, the examining attorney replied, "I did not see that until later," meaning the town is not generally known and was found by coincidence while searching.</p> <p>Boylston, MA was not included in the examining attorney's first Office Action dated May 21, 2015, only in an email dated June 26, 2015.</p> <p>Boylston, MA is actually mentioned at the top of the Boylston Street Wikipedia page the examining attorney referenced in their first Office Action, which means even though he recently viewed that page he still did not see or retain that information. So consumers nationwide aren't going to retain a street name from a news story years ago.</p> <p>It also cannot be concluded that the examining attorney for the registrant even had previous knowledge of that Boylston Street prior to seeing the registrant's listed owner address actually being on that street.</p> <p>There are streets and towns named Boylston all over the country and world. Consumers near any of these other locations would possibly think of those locations, but not necessarily form a connection. Consumers in Cambridge, MA attending Harvard would possibly think of Boylston Hall, but not think the goods must be connected or produced there.</p> <p>Wikipedia pages are created and maintained by the general public. Although Wikipedia has found itself at the top of most search results, these</p>	

pages wouldn't be found unless searched for, meaning prior knowledge would need to be had of what is being searched. A search for BOYLSTON CLOTHING would not return results for a Boylston Street Wikipedia page. Also, the information on them is not always reliable.

The Boylston Street being referenced is not a major east-west route through the city of Boston, MA, it is two miles long through one neighborhood, the Back Bay, shorter than Boylston Avenue in Seattle, WA. Boylston Street in Boston only goes to 1420 addresses, Boylston Avenue in Seattle has hundreds more. There are also over 20 more different Boylston Streets in eastern MA alone. At any time, Wikipedia pages can be generated for them.

In their FOA, the examining attorney stated, "In the applicant's response to the examining attorney's first Office action, applicant asserted that consumers would not be confused as to if the applicant's goods originate from BOYLSTON Street in Boston, Massachusetts." The applicant actually stated, "It is noted that the registrant owner does have an address on said street, but it is not a storefront where goods are sold. This is the address of the corporation that owns the service mark, and is of a different name than registrant's service mark. Consumers would not be confused to think applicant's goods derive from this location, as it has neither name on the exterior, and is merely an office building."

Since the registrant's service has no connection to this Boylston Street, the applicant would still not have the same commercial impression even if their goods did have a connection to that street.

The examining attorney has not provided any evidence as to what consumers actually think of when they see the mark BOYLSTON, in any region of the country. There is no evidence stating consumers would actually believe there is a connection between any of those places with the applicant's goods. The mark does not contain any descriptive words of a location, such as a state name, or the word "street."

This is an application for a U.S. trademark. The listed address on the application does not mean this mark is for use only in that general area. To mention only two places containing the word BOYLSTON in the same state of the owner's address is not relevant.

Registration 4827894 is a logo of the exact street signs that appear on the Wikipedia page for the Boylston Street being referenced by the examining attorney, with a listed owner's address only a short distance away. The intersection of Hereford St and Boylston St is also less than a mile away from the registrant. That same logo can also be found in the storefront window of an article photo the examining attorney attached as evidence in their FOA. The owner even has the word "packaging" in their name. However, the examining attorney for that mark did not issue an Office Action, an amendment, or find a likelihood of confusion to exist with BOYLSTON TRADING CO.

Based on this fact alone, it would be a complete contradiction to in turn deny the applicant's mark because of a likelihood of confusion.

Notice on the dictionary page from wordnik.com that the examining attorney provided, there is no mention of either of the two locations in question. In fact, one of the examples uses Boylston as someone's first name, similar to a brand name. Clothing brand names are often not words from a dictionary. There is also no need or rule for a further connection to be made or exist other than this is simply a brand name of clothing.

The first word of these marks being spelled the same way does not mean the sound and appearance of these marks are the same, and where they would appear is also not the same. The registrant's mark would appear only at the top of a website as a title. The applicant's mark would appear on tags of clothing, along with their website. Regardless of the registrant being able to format their mark in any way, TRADING CO. is still a part of the mark and will still be there, making it visually much longer. TRADING, being the center word, is arguably more dominant, especially since the brand was often referred to just as THE TRADE via their own website and by consumers. Consumers often refer to a service type rather than a company name.

The examining attorney stated, "Applicant acknowledged in his response that the terms TRADING CO. are 'significantly descriptive' of the registrant's services. See applicant's response on June 8, 2015." The applicant stated TRADING CO. are significantly descriptive of a service, not of the services they actually offer. The applicant continues to state, "Mark itself does not suggest clothing is part of the service or lead one to believe that goods will be branded as such." TRADING CO. is not a usual descriptive term for a clothing store or brand. It is more descriptive of a stock trading company.

Examining attorney continues, "The wording of a mark does not dictate the goods or services actually offered by an applicant or registrant." If the words in a mark describe the goods or services, then it does dictate what is being offered. TRADING CO. does not definitively describe a clothing store, thus distinguishing itself from being confused with the applicant's clothing brand.

No consumer would type in a search bar BOYLSTON TRADING CO. before BOYLSTON CLOTHING when searching for the applicant's clothing. In fact, if they did, BOYLSTON TRADING CO CLOSED would be a suggestion for them.

The registrant's mark is only for online retail, thus limiting any confusion to occur only on the internet, mainly searches. The examining attorney has not produced any evidence of searches that have conflicted or would show confusion between the applicant's mark and the registrant's mark. There was no evidence attached of any searches for BOYLSTON CLOTHING that produced results for the registrant

## BOYLSTON TRADING CO.

The trademark examining attorney has also attached evidence from the USPTO's X-Search database consisting of a number of third-party marks registered for use in connection with the same or similar goods as those of both the applicant and registrant in this case. This evidence shows that the goods listed therein, namely "online retail services" and various articles of clothing, are of a kind that **may** emanate from a single source under a single mark. "May" being the operative word. All this evidence shows is that those marks operate that way. It also does not mean that consumers don't understand the difference between a brand and a store, or the difference between the applicant's mark and the registrant's mark.

The examining attorney stated in their FOA: "When a consumer wants to purchase L.L. BEAN clothing, while they can use a variety of different retail services, there is an expectation of the consumer that the clothing can be bought through the L.L. Bean website. Therefore, when a consumer sees the BOYLSTON clothing brand, there is an expectation by that consumer to be able to purchase the clothing online through the clothing's producer. When a consumer then searches for the applicant's brand online and finds the online retailer BOYLSTON TRADING CO., that consumer would be confused and expect that the BOYLSTON brand of clothing is made available online through the BOYLSTON TRADING CO."

Consumers **can** find and purchase the applicant's clothing online directly through the clothing's producer.

L.L. Bean cannot be found at a variety of different retail services. L.L. Bean is exclusive to L.L. Bean. This was noted to the examining attorney by the applicant in their first response. "All except L.L. Bean sell their trademark clothing at hundreds of other dealers or retailers online and offline ... Manufacturers that sell their goods only under the same name, like L.L. Bean, also exist," referring to the examining attorney's list of brands available under the same service mark. L.L. Bean was the only example given that cannot be found at other retailers.

The applicant listed several domains that they own in their second response that were also not acknowledged or replied to by the examining attorney in their FOA, including: shop.justinhaggerty.com, boylstontrademark.com, boylstonclothing.com, boylstonclothingco.com, boylstonclothingcompany.com, boylstonofficial.com, and officialboylston.com.

Additionally, there is no evidence showing the applicant's clothing would even **need** to be searched for.

Brands do not need to be searched for online via a search engine. The examining attorney listed four brands and their websites in the first Office Action, and eleven more examples in their FOA, and they are **all** the brand's name followed by ".com." Consumers wanting to go to their site would just type in the brand name followed by ".com" in the address bar.

A consumer seeing the applicant's clothing and wanting to find it online would type in the address bar boylstonclothing.com or search for BOYLSTON CLOTHING, **not** boylstontradingco.com or BOYLSTON TRADING CO.

If both boylstonclothing.com and boylstontradingco.com did appear in search results for a consumer trying to find one of the applicant's shirts, they would click on boylstonclothing.com in their search results.

Also, depending on the search engine and other factors, consumers may not find information on either one, thus eliminating even further any likelihood of confusion.

The point of the applicant sharing that the registrant's clothing aspect did not focus on printed graphics, it focused on cut and sew pieces and at much higher price points, was that people would not see the applicant's goods and believe they came from the registrant, assuming they already know of the registrant's online store. See evidence attached to Jan. 15, 2016 response. Consumers are not looking at their trademark registration to see that it just vaguely says "on-line retail store featuring clothing," they are only seeing how they advertise and market to them. The entire campaign of that online store was cut and sew pieces by various other companies, not their own, and at much higher price points. Seeing the applicant's printed graphics on \$30-\$60 items would not make consumers believe they came from the registrant, again, assuming they even know of the registrant's online store already. Had the consumer seen and clicked on boylstontradingco.com, they would not find any clothing labeled BOYLSTON. BOYLSTON TRADING CO. was a retailer of other various brands, not their own, and not of the applicant. BOYLSTON would not be impressed upon the mind of a purchaser when making purchasing decisions from registrant's online store because the goods for sale would not be labeled BOYLSTON.

The examining attorney stated, "The issue is not if a likelihood of confusion exists between particular goods and services, but if a likelihood of confusion as to the source or sponsorship of those goods and services exists." The applicant has stated and shown an overwhelming amount of evidence in respect to this, such as using their own name and other trademarks in connection with the brand, professionally labeling their products, numerous domains, including a website on tags, and a retailer stock list where their goods are made available. (BOYLSTON TRADING CO. is not one of them.)

Because the applicant advertises and brands BOYLSTON merchandise coinciding with their own name and marks, and because BOYLSTON TRADING CO. advertised as a retailer of other brands, consumers are not likely to be confused as to the source of goods. The applicant has

taken all necessary steps beyond what already differentiates their mark to protect against confusion, and reverse confusion, with any other brand or store.

Examining attorney made a significant typo in their final Office Action, stating, "In the applicant's second response the applicant asserts that he has been using the mark for several years and that confusion has existed since that use began." The applicant stated **no** confusion has ever existed in all the years the mark has been in use, including in proximity to the registrant's headquarters. The lack of evidence of any confusion for this amount of time is sufficient enough to suggest confusion will not exist in the future between these two marks, and is credited to all the arguments and evidence listed herein above and in the applicant's previous responses.

The information provided by the applicant regarding the registrant stating they are no longer using the mark was not meant to be collateral or an attack, it is the most priority argument. The applicant understands that arguments and evidence such as information or statements regarding a registrant's non-use of its mark are not relevant unless proceeding before the Trademark Trial and Appeal Board to cancel the cited registration. However, as stated in their first response, the applicant does not agree that if this service was in operation it would likely confuse consumers to use the applied-for trademark based on all of the other information presented.

#### EVIDENCE SECTION

EVIDENCE FILE NAME(S)	
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DESCRIPTION OF EVIDENCE FILE	1: Registrant Request Reconsideration, 2: Registrant Street, 3-5: Boylston, MA, Street Signs, 6-7: Hereford St Boylston St, 8-13: Wikipedia, Other Locations, 14-15: The Trade, 16: Search Suggestion, 17-19: Boylston St, Boylston Ave Maps, 20: Brand Names ".com"

#### SIGNATURE SECTION

RESPONSE SIGNATURE	/JH/
SIGNATORY'S NAME	Justin Haggerty
SIGNATORY'S POSITION	Owner

DATE SIGNED	08/04/2016
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
<b>FILING INFORMATION SECTION</b>	
SUBMIT DATE	Thu Aug 04 07:46:22 EDT 2016
TEAS STAMP	USPTO/RFR-XX.XXX.XXX.XX-2 0160804074622329987-86535 608-5508bfeed923c37010d15 e8b69942a25e6ef501acf7f44 283f5671aa5e2328f57-N/A-N /A-20160803233647990706

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PTO Form 1960 (Rev 10/2011)

OMB No. 0651-0050 (Exp 07/31/2017)

### Request for Reconsideration after Final Action

#### To the Commissioner for Trademarks:

Application serial no. **86535608** BOYLSTON(Standard Characters, see <http://tmng-al.uspto.gov/resting2/api/img/86535608/large>) has been amended as follows:

#### ARGUMENT(S)

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

The applicant respectfully submits for reconsideration after the final Office Action dated Feb. 04, 2016 citing a likelihood of confusion, and also respectfully appeals to the Board in favor of publication.

The applicant's mark, BOYLSTON, is for the goods "hats; jackets; socks; sweatshirts; t-shirts; and tank tops" in International Class 25.

The registrant's mark, BOYLSTON TRADING CO., is for the services "on-line retail store featuring clothing, footwear, watches, wallets, hats, bags, undergarments, jewelry, and accessories" in International Class 35.

As provided in the applicant's first response, the registrant stated that they do **not** market a connection to the Boylston Street that the examining attorney continues to reference. See registrant's TEAS Request Reconsideration after FOA dated Jan. 06, 2012. "III. THERE IS NO ASSOCIATION BETWEEN BOYLSTON STREET AND THE ONLINE RETAIL STORE SERVICES IDENTIFIED IN THE APPLICATION".

Therefore, there is no similar commercial impression regarding this brand and online store via the referenced street.

Considering the registrant has a listed address on said street, it cannot be concluded that the examining attorney was aware of any street named Boylston prior to seeing the address of the registrant. When asked during a phone call from the applicant on June 26, 2015 why Boylston, MA is also now being questioned in an email to the applicant, the examining attorney replied, "I did not see that until later," meaning the town is not generally known and was found by coincidence while searching.

Boylston, MA was not included in the examining attorney's first Office Action dated May 21, 2015, only in an email dated June 26, 2015.

Boylston, MA is actually mentioned at the top of the Boylston Street Wikipedia page the examining attorney referenced in their first Office Action, which means even though he recently viewed that page he still did not see or retain that information. So consumers nationwide aren't going to retain a street name from a news story years ago.

It also cannot be concluded that the examining attorney for the registrant even had previous knowledge of that Boylston Street prior to seeing the registrant's listed owner address actually being on that street.

There are streets and towns named Boylston all over the country and world. Consumers near any of these other locations would possibly think of those locations, but not necessarily form a connection. Consumers in Cambridge, MA attending Harvard would possibly think of Boylston Hall, but not think the goods must be connected or produced there.

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In their FOA, the examining attorney stated, "In the applicant's response to the examining attorney's first Office action, applicant asserted that consumers would not be confused as to if the applicant's goods originate from BOYLSTON Street in Boston, Massachusetts." The applicant actually stated, "It is noted that the registrant owner does have an address on said street, but it is not a storefront where goods are sold. This is the address of the corporation that owns the service mark, and is of a different name than registrant's service mark. Consumers would not be confused to think applicant's goods derive from this location, as it has neither name on the exterior, and is merely an office building."

Since the registrant's service has no connection to this Boylston Street, the applicant would still not have the same commercial impression even if their goods did have a connection to that street.

The examining attorney has not provided any evidence as to what consumers actually think of when they see the mark BOYLSTON, in any region of the country. There is no evidence stating consumers would actually believe there is a connection between any of those places with the applicant's goods. The mark does not contain any descriptive words of a location, such as a state name, or the word "street."

This is an application for a U.S. trademark. The listed address on the application does not mean this mark is for use only in that general area. To mention only two places containing the word BOYLSTON in the same state of the owner's address is not relevant.

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Based on this fact alone, it would be a complete contradiction to in turn deny the applicant's mark because of a likelihood of confusion.

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The first word of these marks being spelled the same way does not mean the sound and appearance of these marks are the same, and where they would appear is also not the same. The registrant's mark would appear only at the top of a website as a title. The applicant's mark would appear on tags of clothing, along with their website. Regardless of the registrant being able to format their mark in any way, TRADING CO. is still a part of the mark and will still be there, making it visually much longer. TRADING, being the center word, is arguably more dominant, especially since the brand was often referred to just as THE TRADE via their own website and by consumers. Consumers often refer to a service type rather than a company name.

The examining attorney stated, "Applicant acknowledged in his response that the terms TRADING CO. are 'significantly descriptive' of the registrant's services. See applicant's response on June 8, 2015." The applicant stated TRADING CO. are significantly descriptive of a service, not of the services they actually offer. The applicant continues to state, "Mark itself does not suggest clothing is part of the service or lead one to believe that goods will be branded as such." TRADING CO. is not a usual descriptive term for a clothing store or brand. It is more descriptive of a stock trading company.

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No consumer would type in a search bar BOYLSTON TRADING CO. before BOYLSTON CLOTHING when searching for the applicant's clothing. In fact, if they did, BOYLSTON TRADING CO CLOSED would be a suggestion for them.

The registrant's mark is only for online retail, thus limiting any confusion to occur only on the internet, mainly searches. The examining attorney has not produced any evidence of searches that have conflicted or would show confusion between the applicant's mark and the registrant's mark. There was no evidence attached of any searches for BOYLSTON CLOTHING that produced results for the registrant BOYLSTON TRADING CO.

The trademark examining attorney has also attached evidence from the USPTO's X-Search database consisting of a number of third-party marks registered for use in connection with the same or similar goods as those of both the applicant and registrant in this case. This evidence shows that the goods listed therein, namely "online retail services" and various articles of clothing, are of a kind that **may** emanate from a single source under a single mark. "May" being the operative word. All this evidence shows is that those marks operate that way. It also does not mean that consumers don't understand the difference between a brand and a store, or the difference between the applicant's mark and the registrant's mark.

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Additionally, there is no evidence showing the applicant's clothing would even **need** to be searched for.

Brands do not need to be searched for online via a search engine. The examining attorney listed four brands and their websites in the first Office Action, and eleven more examples in their FOA, and they are **all** the brand's name followed by ".com." Consumers wanting to go to their site would just type in the brand name followed by ".com" in the address bar.

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If both boylstonclothing.com and boylstontradingco.com did appear in search results for a consumer trying to find one of the applicant's shirts, they would click on boylstonclothing.com in their search results.

Also, depending on the search engine and other factors, consumers may not find information on either one, thus eliminating even further any likelihood of confusion.

The point of the applicant sharing that the registrant's clothing aspect did not focus on printed graphics, it focused on cut and sew pieces and at much higher price points, was that people would not see the applicant's goods and believe they came from the registrant, assuming they already know of the registrant's online store. See evidence attached to Jan. 15, 2016 response. Consumers are not looking at their trademark registration to see that it just vaguely says "on-line retail store featuring clothing," they are only seeing how they advertise and market to them. The entire campaign of that online store was cut and sew pieces by various other companies, not their own, and at much higher price points. Seeing the applicant's printed graphics on \$30-\$60 items would not make consumers believe they came from the registrant, again, assuming they even know of the registrant's online store already. Had the consumer seen and clicked on boylstontradingco.com, they would not find any clothing labeled BOYLSTON. BOYLSTON TRADING CO. was a retailer of other various brands, not their own, and not of the applicant. BOYLSTON would not be impressed upon the mind of a purchaser when making purchasing decisions from registrant's online store because the goods for sale would not be labeled BOYLSTON.

The examining attorney stated, "The issue is not if a likelihood of confusion exists between particular goods and services, but if a likelihood of confusion as to the source or sponsorship of those goods and services exists." The applicant has stated and shown an overwhelming amount of evidence in respect to this, such as using their own name and other trademarks in connection with the brand, professionally labeling their products, numerous domains, including a website on tags, and a retailer stock list where their goods are made available. (BOYLSTON TRADING CO. is not one of them.)

Because the applicant advertises and brands BOYLSTON merchandise coinciding with their own name and marks, and because BOYLSTON TRADING CO. advertised as a retailer of other brands, consumers are not likely to be confused as to the source of goods. The applicant has taken all necessary steps beyond what already differentiates their mark to protect against confusion, and reverse confusion, with any other brand or store.

Examining attorney made a significant typo in their final Office Action, stating, "In the applicant's second response the applicant asserts that he has been using the mark for several years and that confusion has existed since that use began." The applicant stated **no** confusion has ever existed in all the years the mark has been in use, including in proximity to the registrant's headquarters. The lack of evidence of any confusion for this amount of time is sufficient enough to suggest confusion will not exist in the future between these two marks, and is credited to all the arguments and evidence listed herein above and in the applicant's previous responses.

The information provided by the applicant regarding the registrant stating they are no longer using the mark was not meant to be collateral or an attack, it is the most priority argument. The applicant understands that arguments and evidence such as information or statements regarding a registrant's non-use of its mark are not relevant unless proceeding before the Trademark Trial and Appeal Board to cancel the cited registration. However, as stated in their first response, the applicant does not agree that if this service was in operation it would likely confuse consumers to use the applied-for trademark based on all of the other information presented.

## **EVIDENCE**

Evidence in the nature of 1: Registrant Request Reconsideration, 2: Registrant Street, 3-5: Boylston, MA, Street Signs, 6-7: Hereford St Boylston St, 8-13: Wikipedia, Other Locations, 14-15: The Trade, 16: Search Suggestion, 17-19: Boylston St, Boylston Ave Maps, 20: Brand Names ".com" has been attached. [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](#)

[Evidence-16](#)

[Evidence-17](#)

[Evidence-18](#)

[Evidence-19](#)

[Evidence-20](#)

## **SIGNATURE(S)**

### **Request for Reconsideration Signature**

Signature: /JH/ Date: 08/04/2016

Signatory's Name: Justin Haggerty

Signatory's Position: Owner

The signatory has confirmed that he/she is not represented by either an authorized attorney or Canadian attorney/agent, and that he/she is either: (1) the owner/holder ; or (2) a person(s) with legal authority to bind the owner/holder; and if an authorized U.S. attorney or Canadian attorney/agent previously represented him/her in this matter, either he/she has filed a signed revocation of power of attorney with the USPTO or the USPTO has granted the request of his/her prior representative to withdraw.

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

Serial Number: 86535608

Internet Transmission Date: Thu Aug 04 07:46:22 EDT 2016

TEAS Stamp: USPTO/RFR-XX.XXX.XXX.XX-2016080407462232

9987-86535608-5508bfeed923c37010d15e8b69

942a25e6ef501acf7f44283f5671aa5e2328f57-  
N/A-N/A-20160803233647990706

Case Id  
85213804

Document Description  
17. TEAS Request Reconsideration after  
FOA

Mail/Create Date  
Jan. 06, 2012

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**III. THERE IS NO ASSOCIATION BETWEEN BOYLSTON STREET AND THE ONLINE RETAIL STORE SERVICES IDENTIFIED IN THE APPLICATION**

**A. The Location of Karmaloop's Corporate Headquarters Is Not Evidence of a Services/Place Association**

As a preliminary matter, Karmaloop notes that it is well settled that the mere fact that its corporate headquarters is located on Boylston Street is not sufficient evidence of a services/place association. Indeed, there are numerous examples in the case law where a Section 2(e)(2) rejection has been overturned despite the fact that the applicant's headquarters was located in the relevant geographic area. See, e.g., *In re John Harvey & Sons Ltd.*, 32 USPQ.2d 1451, 1454 (TTAB 1994) ("[T]he mere fact that applicant's headquarters are in Bristol, England does not mandate a finding here that a goods/place association should be presumed."); *In re Zeller*, 2009 at \*6 ("Indeed, even the location of a corporate headquarters is not necessarily sufficient to show a goods/place relationship"); *In re Mankovitz*, 90 U.S.P.Q.2d 1246 (TTAB 2009) (precedential) (reversing 2(e)(2) refusal for MONTESITO DIET despite the fact that applicant lived in Montesito, California).

Karmaloop respectfully submits that the Examining Attorney's arguments regarding its corporate headquarters are counter to the weight of the authority. The Examining Attorney's argument is that *because* Karmaloop's headquarters is on Boylston Street, consumers will automatically assume a services/place association. This is the type of reasoning routinely rejected by the Board because the question is not whether the applicant is associated with a place, but whether the services bearing the mark will be associated therewith. See *In re Gale Hayman Inc.*, 15 USPQ.2d 1478, 1479 (TTAB 1990) ("The mere fact that applicant's principal offices are in Century City, close to Sunset Boulevard, does not mandate a finding that a goods/place association should be presumed. Sunset Boulevard itself would have to be associated with the products in such a way that the consuming public would be likely to presume that Sunset Boulevard was the place in which the perfume and cologne originated.").

Moreover, there is ample evidence to support the fact that consumers do not know where Karmaloop's headquarters are located, which would rebut any inferences that could be drawn from its street address. The services/place association is ultimately about *consumer perception*, and the Examining Attorney has submitted no evidence that consumers are readily aware of Karmaloop's street address. To the contrary, the evidence of record shows that Karmaloop does not advertise or promote the location of its offices, and thus the average online shopper is unlikely to know the street address of its corporate headquarters. Indeed, 334 Boylston Street does not even display Karmaloop's name on the outside of the building, so its customers could drive right past without even knowing. See Moenstine Decl. ¶ 5.

The circumstances of the present case are distinguishable from those in *In re Nantucket Allserve, Inc.*, 28 U.S.P.Q.2d 1144 (TTAB 1993) because Karmaloop does not call attention to its street address in its marketing. In *Nantucket Allserve*, the location of Applicant's headquarters was found to be dispositive because the applicant made express efforts to associate its mark with the Island of Nantucket in the minds of consumers. *Id.* at \*2 (noting that the label of the soft drinks themselves stated "Born on the Faraway Isle [Nantucket translates to Faraway Island] . . . their flavor embodies the wholesome quality of the Island whose name they bear . . ."). In sharp contrast, Karmaloop does not market a connection with Boylston Street. Indeed, as noted above, it does not even have a sign on the outside of the building.

**B. There Is No Association Between "Boylston" and Online Retail Services**

Record 1 out of 1

TSDR ASSIGN Status TTAB Status ( Use the "Back" button of the Internet Browser to return to TESS)

# BOYLSTON TRADING CO.

<b>Word Mark</b>	<b>BOYLSTON TRADING COMPANY</b>
<b>Goods and Services</b>	IC 035. US 100 101 102. G & S: On-line retail store featuring clothing, footwear, watches, wallets, hats, bags, undergarments, jewelry, and accessories. FIRST USE: 20111102. FIRST USE IN COMMERCE: 20111102
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	85213804
<b>Filing Date</b>	January 10, 2011
<b>Current Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Date Amended to Current Register</b>	January 4, 2012
<b>Registration Number</b>	4165982
<b>Registration Date</b>	June 26, 2012
<b>Owner</b>	(REGISTRANT) Karmaloop, Inc. CORPORATION DELAWARE <u>334 Boylston Street</u> , 5th Floor Boston MASSACHUSETTS 02116
<b>Assignment Recorded</b>	ASSIGNMENT RECORDED
<b>Attorney of Record</b>	Oscar L. Alcantara
<b>Disclaimer</b>	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "TRADING CO." APART FROM THE MARK AS SHOWN
<b>Type of Mark</b>	SERVICE MARK
<b>Register</b>	SUPPLEMENTAL
<b>Live/Dead Indicator</b>	LIVE

TESS HOME NEW USER STRUCTURED FREE FORM BROWSE DICT SEARCH OG TOP HELP

On Jun 26, 2015, at 1:11 PM, Tratos, Mark <[Mark.Tratos@USPTO.GOV](mailto:Mark.Tratos@USPTO.GOV)> wrote:

Good Afternoon Mr. Haggerty:

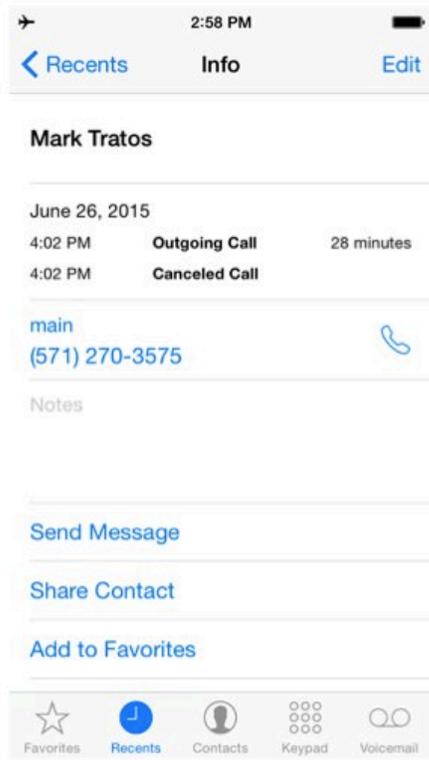
I am the examining attorney assigned to your application for the mark BOYLSTON (SN 86535608). I had a quick question that I wanted to ask you about your application.

Do your goods have any connection to BOYLSTON street in Boston or to BOYLSTON, MA? If you could please let me know today, I would be greatly appreciative as I hope to resolve your case as quickly as possible for you. If you would like to discuss the matter, my phone number is located below and you are more than welcome to call me.

Thank you very much!

*/Mark S. Tratos/*

Mark S. Tratos  
Trademark Examining Attorney  
Law Office 113  
(571) 270-3575  
[Mark.Tratos@ustpo.gov](mailto:Mark.Tratos@ustpo.gov)



- Applicant inquired about the need or reasoning for an amendment
- Examining attorney stated they did not know of or see Boylston, MA until now



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# Boylston Street

From Wikipedia, the free encyclopedia

Route map: [Bing](#) / [Google](#)



This article **needs additional citations for verification**. Please help improve this article by adding citations to reliable sources. Unsourced material may be challenged and removed. (December 2009) *(Learn how and when to remove this template message)*

**Boylston Street** is the name of a major east-west thoroughfare in the city of **Boston, Massachusetts**. The Boston street was known as Frog Lane in the early 18th century and was later known as Common Street. It was later again renamed for Ward Nicholas Boylston (1747–1828),<sup>[1][2][3][4]</sup> a man of wealth and refinement, an officer of the Crown, and philanthropist. Boylston, who was a descendent of **Zabdiel Boylston**,<sup>[5]</sup> was born in Boston and spent much of his life in it. The **Boylston Market** was named after him as was the town of **Boylston, Massachusetts**.<sup>[3]</sup>

Another Boylston Street runs through Boston's western suburbs, **Newton** and **Brookline**.

### Contents [hide]

- 1 **Boylston Street, Boston**
  - 1.1 Landmarks
  - 1.2 Shopping
  - 1.3 Transportation
- 2 **Boylston Street, Newton and Brookline**
- 3 **References**
- 4 **External links**

## Boylston Street, Boston [ edit ]

From west to east, Boston's Boylston Street begins at the intersection of **Park Drive** and **Brookline Avenue** as a two-way,



Street signs at Boylston and Hereford Streets



Boylston Street in 1911

Record 1 out of 1

TSDR ASSIGN Status TTAB Status ( Use the "Back" button of the Internet Browser to return to TESS)



**Word Mark** HEREFORD ST BOYLSTON ST

**Goods and Services** IC 016. US 002 005 022 023 029 037 038 050. G & S: stationery; magnetic bumper stickers. FIRST USE: 20120106. FIRST USE IN COMMERCE: 20120106

**Mark Drawing Code** IC 025. US 022 039. G & S: clothing, namely, T-shirts, tech shirts, sleeveless shirts, sweatshirts, and hats. FIRST USE: 20091201. FIRST USE IN COMMERCE: 20091207

**Design Search Code** 07.13.03 - Advertising, signs, mounted or with posts or standards; Street signs (mounted on posts)

**Serial Number** 86213449

**Filing Date** March 6, 2014

**Current Basis** 1A

**Original Filing Basis** 1A;1B

**Published for Opposition** August 5, 2014

**Registration Number** 4827894

**Registration Date** October 6, 2015

**Owner** (REGISTRANT) ProPackaging, LLC LIMITED LIABILITY COMPANY DELAWARE 140 Gould Street Needham MASSACHUSETTS 02494

**Attorney of Record** Edward M. Kriegsman

**Prior Registrations** 3536796

**Description of Mark** Color is not claimed as a feature of the mark. The mark consists of two intersecting street signs on a common post, one of the street signs reading "Hereford St" and the other street sign reading "Boylston St".

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

Case Id  
86535608

Document Description  
1. Offc Action Outgoing

Mail/Create Date  
Feb. 04, 2016

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PRE-ORDER NOW

#BeTheStory

While supplies last. Not available in all markets. Check retailer for details. ©2015 NBAE

# Bostonians take back their town

4/26/2013 - NBA, NEW YORK KNICKS +1 more

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Confirm password

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# Boylston, Alabama

From Wikipedia, the free encyclopedia

Coordinates: 32°25′42″N 86°16′46″W﻿ / ﻿﻿ / ﻿

**Boylston** is a populated place between the city of **Montgomery, Alabama**, United States and the Tallapoosa River. In 1950 it had a population of 1,000.

## History [ edit ]

The community was likely named after a local family.<sup>[2]</sup> A post office opened under the name Boylston in 1827.<sup>[3]</sup>

## References [ edit ]

- Encyclopædia Britannica Atlas*, 1958 Edition, Plate 72.
  - ↑ "Boylston" . *Geographic Names Information System*. United States Geological Survey.
  - ↑ Foscue, Virginia (1989). *Place Names in Alabama*. Tuscaloosa: The University of Alabama Press. p. 22. ISBN 0-8173-0410-X.
  - ↑ "Montgomery County" . Jim Forte Postal History. Retrieved 16 January 2015.

**Boylston**

Unincorporated community

Show map of Alabama

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# Boylston, Nova Scotia

From Wikipedia, the free encyclopedia

Coordinates: 45°26′6″N 61°30′11″W﻿ / ﻿45.435°N 61.503°W﻿ / 45.435; -61.503

**Boylston** is a rural community in the Canadian province of Nova Scotia, in the Municipality of the District of Guysborough in Guysborough County. There is a provincial park camp-ground in Boylston.<sup>[1]</sup>

Some researchers have asserted that Boylston was visited by Henry Sinclair based on evidence in the Zeno Narrative.<sup>[*citation needed*]</sup>



Boylston in Nova Scotia

## References

- ↑ Boylston Provincial Campground

*This Guysborough County, Nova Scotia location article is a stub. You can help Wikipedia by expanding it.*

Categories: Communities in Guysborough County, Nova Scotia | Guysborough County, Nova Scotia geography stubs

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# Boylston, New York

From Wikipedia, the free encyclopedia

Coordinates: 43°39′22″N 75°58′44″W﻿ / ﻿43.65611°N 75.97889°W﻿ / 43.65611; -75.97889

**Boylston** is a town in Oswego County, New York, U.S.. The population was 549 at the 2010 census. The name is that of the first landowner of the tract that became the town.

The **Town of Boylston** is located on the north boundary of the county.

## Contents [hide]

- History
- Geography
- Demographics
- Communities and locations in Boylston
- References
- External links

## History [edit]

The region was first called "Campania" and was first settled around 1812. Boylston was created from part of the Town of Orwell in 1828. The population of the town was always small.

## Geography [edit]

According to the [United States Census Bureau](#), the town has a total area of 39.2 square miles (102 km<sup>2</sup>), of which, 39.1 square miles (101 km<sup>2</sup>) of it is land and 0.03% is water.

The north town line with part of the west town line is the border of [Jefferson County](#), New York.

**Boylston, New York**

Town

Location in Oswego County and the state of New York.  
Coordinates: 43°39′22″N 75°58′44″W﻿ / ﻿43.65611°N 75.97889°W﻿ / 43.65611; -75.97889

<b>Country</b>	United States
<b>State</b>	New York
<b>County</b>	Oswego



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# Boylston, Wisconsin

From Wikipedia, the free encyclopedia

Coordinates: 46°35′51″N 92°07′44″W﻿ / ﻿46.59750°N 92.12889°W﻿ / 46.59750; -92.12889

**Boylston** is an unincorporated community located in the town of Superior, Douglas County, Wisconsin, United States.<sup>[1]</sup>

## Notes [ edit ]

- ↑ <sup>a</sup> <sup>b</sup> "Boylston, Wisconsin". *Geographic Names Information System*. United States Geological Survey.

### Boylston, Wisconsin

Unincorporated community



- Show map of Wisconsin
- Show map of USA
- Show all

Coordinates: 46°35′51″N 92°07′44″W﻿ / ﻿46.59750°N 92.12889°W﻿ / 46.59750; -92.12889

<b>Country</b>	United States
<b>State</b>	Wisconsin
<b>County</b>	Douglas
<b>Town</b>	Superior
<b>Elevation</b>	709 ft (216 m)
<b>Time zone</b>	Central (CST) (UTC-6)



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# Boylston Junction, Wisconsin

From Wikipedia, the free encyclopedia

Coordinates: 46°36′51″N 92°07′11″W﻿ / ﻿46.61417°N 92.11972°W﻿ / 46.61417; -92.11972

**Boylston Junction** is an unincorporated community located in the town of Superior, Douglas County, Wisconsin, United States.<sup>[1]</sup>

## Notes [ edit ]

- ↑ <sup>a</sup> <sup>b</sup> "Boylston Junction, Wisconsin" . *Geographic Names Information System*. United States Geological Survey.

### Boylston Junction, Wisconsin

Unincorporated community



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Coordinates: 46°36′51″N 92°07′11″W﻿ / ﻿46.61417°N 92.11972°W﻿ / 46.61417; -92.11972

<b>Country</b>	United States
<b>State</b>	Wisconsin
<b>County</b>	Douglas
<b>Town</b>	Superior
<b>Elevation</b>	689 <span> </span> ft (210 <span> </span> m)
<b>Time zone</b>	Central (CST) (UTC-6)

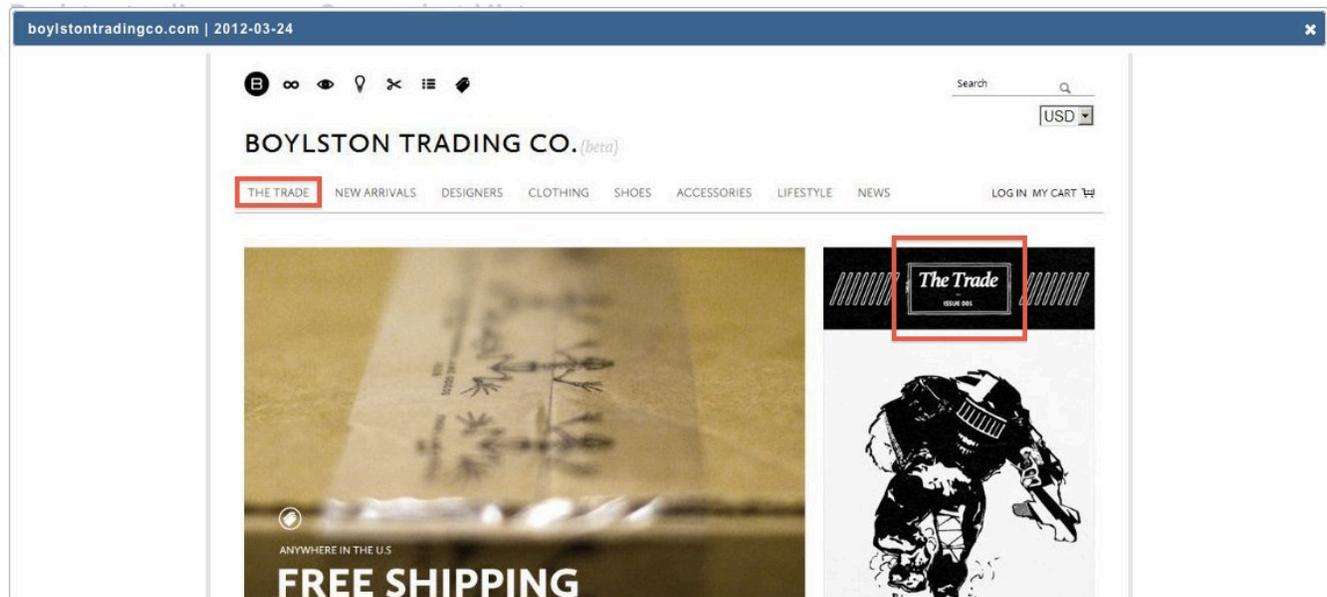
boylstontradingco.com | 2012-03-24

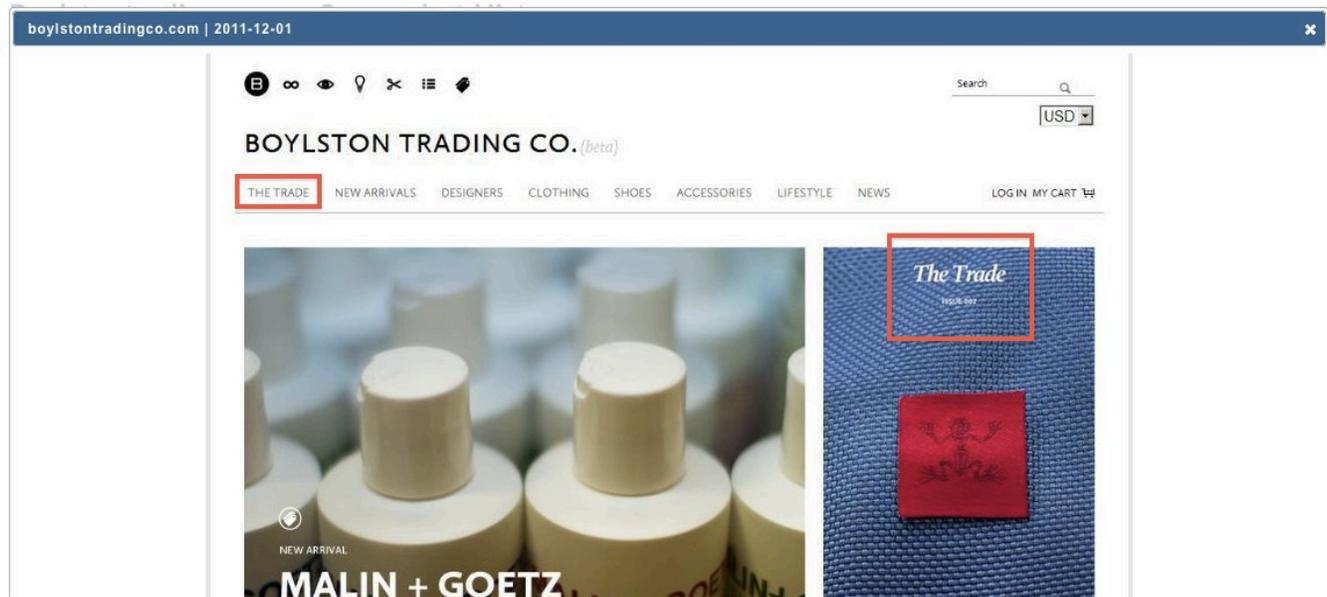
BOYLSTON TRADING CO. (beta)

THE TRADE NEW ARRIVALS DESIGNERS CLOTHING SHOES ACCESSORIES LIFESTYLE NEWS LOG IN MY CART

ANYWHERE IN THE U.S. **FREE SHIPPING**

*The Trade* ISSUE 005





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1420 Boylston Street, Boston, MA 02211

1 Boylston Street, Boston, MA 02116

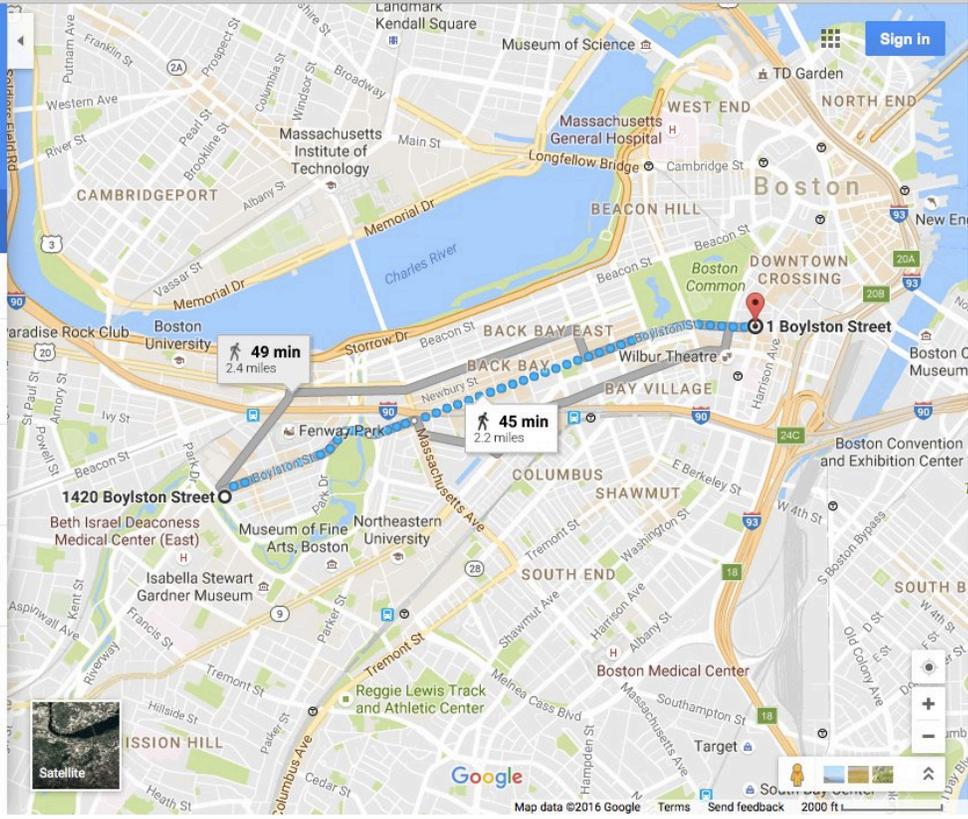
OPTIONS

Send directions to your phone

via Boylston St **45 min**  
2.2 miles

via Commonwealth Avenue and Boylston St **49 min**  
2.4 miles

via Stuart St and Boylston St **49 min**  
2.3 miles



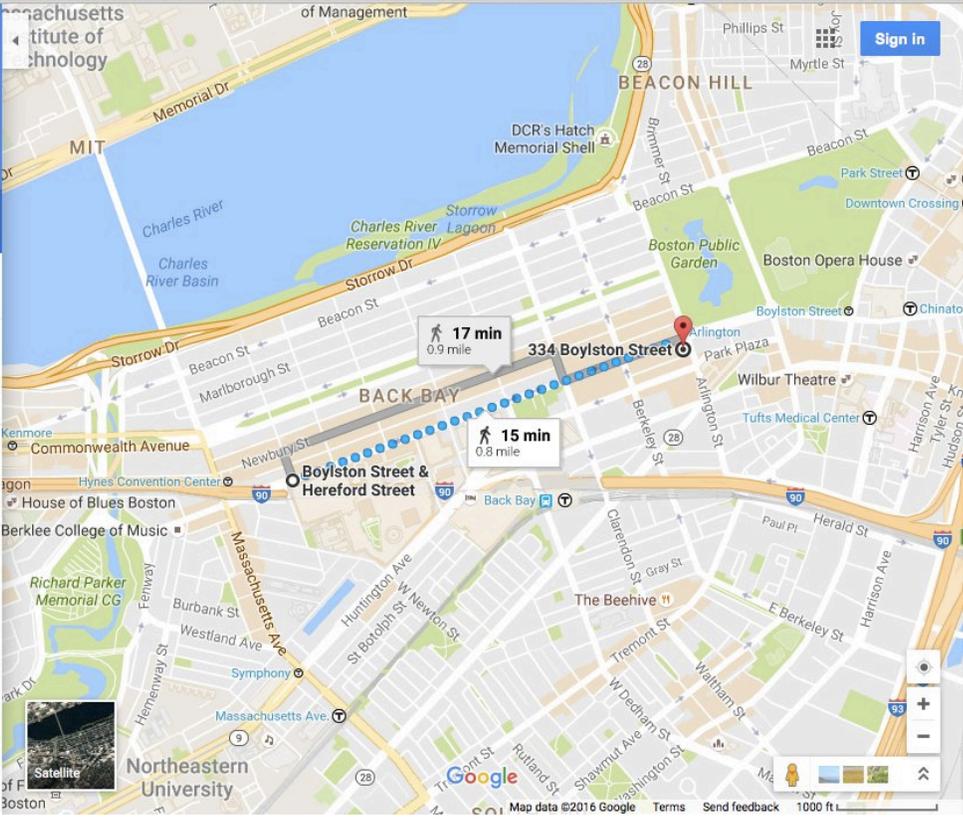
Boylston Street & Hereford Street, Boston, MA

334 Boylston Street, Boston, MA 02116

OPTIONS

Send directions to your phone

- via Boylston St** 15 min 0.8 mile  
[DETAILS](#)
- via Newbury St and Boylston St 17 min 0.9 mile



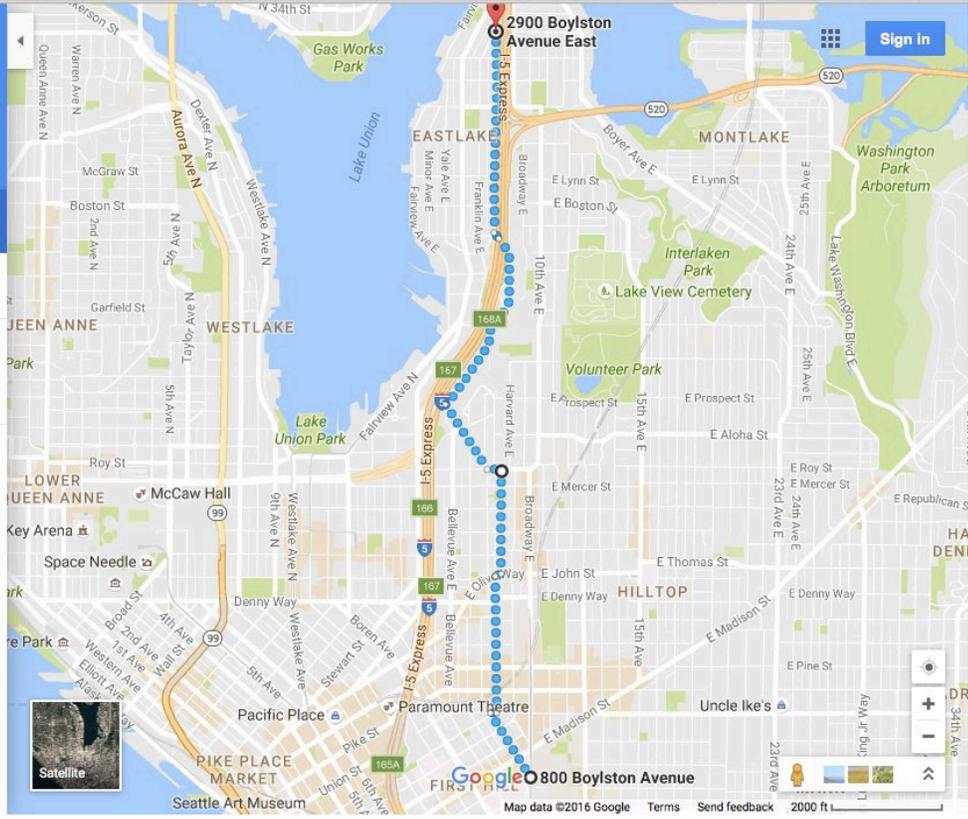
800 Boylston Avenue, Seattle, WA 9810...  
2900 Boylston Avenue East, Seattle, WA...

OPTIONS

Send directions to your phone

via Boylston Ave and Boylston Ave E 56 min  
2.8 miles

DETAILS



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that clothing through online retailers services at <http://www.llbean.com/>, <https://www.jcrew.com/index.jsp>, <http://www.gap.com/>, <http://www.bananarepublic.com/>, <http://www.brooksbrothers.com/>, <http://www.oldnavy.com/>, [http://www.josbank.com/menswear/shop/Home\\_11001\\_10050](http://www.josbank.com/menswear/shop/Home_11001_10050), <http://www.abercrombie.com/shop/us>, and [http://www.anthropologie.com/anthro/category/dresses/clothes-dresses.jsp?cm\\_sp=TOPNAV--CLOTHES--DRESSES#/](http://www.anthropologie.com/anthro/category/dresses/clothes-dresses.jsp?cm_sp=TOPNAV--CLOTHES--DRESSES#/); see also evidence included in examining attorney's first Office action.

The trademark examining attorney has also attached evidence from the USPTO's X-Search database consisting of a number of third-party marks registered for use in connection with the same or similar goods as those of both applicant and registrant in this case. This evidence shows that the goods listed therein, namely "online retail services" and various articles of clothing, are of a kind that may emanate from a single source under a single mark. See *In re Anderson*, 101 USPQ2d 1912, 1919 (TTAB 2012); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988); TMEP §1207.01(d)(iii).

See attached Registration Nos.: 3107432, 2753554, 3790846, 2795774, 4439662, 3845616, 4322348, 2800386, 3399328, 2914995, and 2673536.

In the applicant's response to the examining attorney's first Office action, the applicant stated that while brands of clothing are available on that brand's website, clothing is sometimes also available through a number of other retailers, both physical and online. He asserts that consumers would not be confused to see one brand of clothing offered through the online or physical retail services of another brand. While consumers may be able to purchase different brands of clothing through a variety of different channels, consumers are also able to purchase a brand of clothing through that same brand's online retail services and physical retail services. See attached evidence of clothing brands that sell their clothing through online and physical retail stores under the same mark as their clothing brand at [http://www.ralphlauren.com/shop/index.jsp?categoryId=1760788&ab=global\\_sale](http://www.ralphlauren.com/shop/index.jsp?categoryId=1760788&ab=global_sale) (offering online retail store services under the RALPH LAUREN brand for RALPH LAUREN clothing), <http://global.ralphlauren.com/en-us/rlstores/pages/StoreDetails.aspx?storeIDs=61725> (offering physical retail store services under the RALPH LAUREN brand for RALPH LAUREN CLOTHING), <http://global.ralphlauren.com/en-us/rlstores/pages/StoreDetails.aspx?storeIDs=86735> (offering physical retail store services under the RALPH LAUREN brand for RALPH LAUREN CLOTHING), [http://www.ralphlauren.com/product/index.jsp?productId=61797236&cp=1760781.2004212.2646472&ab=In\\_men\\_cs\\_sale&parentPage=family](http://www.ralphlauren.com/product/index.jsp?productId=61797236&cp=1760781.2004212.2646472&ab=In_men_cs_sale&parentPage=family) (offering clothing under the RALPH LAUREN brand), <https://www.jcrew.com/sale.jsp?intcmp=saleab> (offering online retail store services under the JCREW brand for JCREW clothing), <https://stores.factory.jcrew.com/j-crew-factory-tanger-outlets-national-harbor?srccode=X%7CPMG%7CNaturalSearch%7CLocal%7CGoogle%7C133> (offering physical retail store services under the JCREW brand for JCREW clothing), <https://stores.jcrew.com/pentagon-city?srccode=X%7CPMG%7CNaturalSearch%7CLocal%7CGoogle%7C601> (offering physical retail store services under the JCREW brand for JCREW clothing), [https://www.jcrew.com/mens\\_category/dressshirts/ludlowdress/PRDOVR~B8601/B8601.jsp](https://www.jcrew.com/mens_category/dressshirts/ludlowdress/PRDOVR~B8601/B8601.jsp) (providing clothing under the JCREW brand), [http://www.josbank.com/menswear/shop/Home\\_11001\\_10050](http://www.josbank.com/menswear/shop/Home_11001_10050) (offering online retail store services under the JOS. A. BANK brand for JOS. A. BANK clothing), <http://www.josbank.com/menswear/shop/StoreListingView?langId=-1&storeId=11001&catalogId=10050&postalcode=&city=washington&state=dc> (offering physical retail store services under the JOS. A. BANK brand for JOS. A. BANK clothing), [http://www.josbank.com/menswear/shop/Product\\_11001\\_10050\\_383372](http://www.josbank.com/menswear/shop/Product_11001_10050_383372) (offering JOS. A. BANK brand clothing), [http://store.nike.com/us/en\\_us/pw/mens-tops-t-shirts/7puZobp](http://store.nike.com/us/en_us/pw/mens-tops-t-shirts/7puZobp) (offering online retail store services under the NIKE brand for NIKE brand clothing),