

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86616754
LAW OFFICE ASSIGNED	LAW OFFICE 114
MARK SECTION	
MARK	http://tmng-al.uspto.gov/resting2/api/img/86616754/large
LITERAL ELEMENT	SEACRET
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)

REMARKS

In the office action, the Examining Attorney refused registration of Applicant's mark "SEACRET" because of potential confusion between the mark herein and mark Nos. 4445452, 4445451, 3007136, 4196258, and 2984773 (same owner). The Examining Attorney also requested that the applicant respond to certain informalities. Reconsideration is respectfully requested particularly in light of the foregoing amendment limiting the scope of the goods recited in this application.

Potential Confusion With Mark Nos. 4445452, 4445451, 3007136, and 4196258

The Examining Attorney has cited U.S. Registration Nos. 4445452, 4445451, 3007136, and 4196258 asserting that Applicant's mark so resembles the cited mark that it is likely to cause confusion, to cause mistake, or to deceive others in the relevant trade or industry.

Applicant respectfully disagrees with the Examining Attorney's speculation and conclusions. Applicant contends that, regardless of any possible similarities between the Applicant's mark and the cited mark, the substantial differences between the respective goods when accurately compared and the different purposes they serve are such that confusion is clearly not likely.

Applicant's Goods

Applicant's identification of goods are:

Class 9: Computer accessories, namely, power banks, computer bags, flash drives, and mouse pads sold to sales consultants, demonstrators and other individuals carrying on sales of other products by means of personal home and private demonstrations, sales parties, and group gatherings to the individual consumer

Class 14: Jewelry, namely, watches, earrings, rings, bracelets and necklaces sold to sales consultants, demonstrators and other individuals carrying on sales of other products by means of personal home and private demonstrations, sales parties, and group gatherings to the individual consumer

Class 16: calendar planners sold to sales consultants, demonstrators and other individuals carrying on sales of other products by means of personal home and private demonstrations, sales parties, and group gatherings to the individual consumer

Class 18: backpacks; fitted protective covers for suitcases; cosmetic bags sold empty sold to sales consultants, demonstrators and other individuals carrying on sales of other products by means of personal home and private demonstrations, sales parties, and group gatherings to the individual consumer

Registrant's Goods/Services

Registrant's goods/services in Mark No. 4445452 (hereinafter "452 Goods") are:

Class 35: Providing consumer information services and making referrals in the field of entertainment services for products, services, events, activities, facilities and locations; retail clothing boutiques; on-line retail gift shops; retail gift shops; retail store and on-line retail stores services featuring golf shirts, hats, t-shirts, shorts, sweatshirts, windshirts, tanks, football jerseys, golf towels, shot glasses, compact discs, cups, holiday ornaments, hip klippockets, golf balls, postcards, glasswares, bottle openers, beach towels and gift cards.

Class 36: Charitable fundraising services by means of entertainment events.

Class 41: Entertainment services, namely, providing a website that displays various requests, reviews, recommendations, rankings, trackings, votes, and information relating to new, special, popular services, and events in the fields of pop culture entertainment and sports, all exclusively for nonbusiness and non-commercial transactions and purposes; personal appearances by celebrities and national band acts; providing radio programs in the field of music, entertainment and commentary via global computer network; fireworks displays; arranging of contests; conducting parties; providing non-downloadable prerecorded music, information in the field of music, and commentary and articles about music, all on-line via a global computer network; entertainment services in the nature of live musical performances; comedy shows; providing non-downloadable playback of music via global communications networks; entertainment services, namely, the provision of continuing programs, segments, and shows featuring news, comedy, and commentary delivered via radio, the Internet, or live; entertainment services, namely, providing information by means of a global computer network in the fields of celebrities, entertainment, and popular culture; presenting live musical performances; entertainment ticket agency services and on-line entertainment ticket agency services for entertainment events; production and distribution of radio programs; radio entertainment services, namely, radio programs featuring performances by a radio personality; night clubs; on-line electronic newsletters delivered by e-mail in the field of music and entertainment.

Class 43: Restaurant, bar and catering services; providing travel lodging information services and travel lodging booking agency services for travelers; travel agency services, namely, making reservation and booking for temporary lodging.

Class 25: Clothing, namely, golf shirts, hats, t-shirts, shorts, sweatshirts, windshirts, tank tops, football jerseys.

Registrant's goods/services in Mark No. 4445451 (hereinafter "451 Goods") are:

Class 25: Clothing, namely, golf shirts, hats, t-shirts, shorts, sweatshirts, windshirts, tank tops, football jerseys

Class 35: Providing consumer information services and making referrals in the field of entertainment services for products, services, events, activities, facilities and locations; retail clothing boutiques; on-line retail gift shops; retail gift shops; retail store and on-line retail stores services featuring golf shirts, hats, t-shirts, shorts, sweatshirts, windshirts, tanks, football jerseys, golf towels, shot glasses, compact discs, cups, holiday ornaments, hip klippockets, golf balls, postcards, glasswares, bottle openers, beach towels and gift cards.

Class 36: Charitable fundraising services by means of entertainment events.

Class 41: Entertainment services, namely, providing a website that displays various requests, reviews, recommendations, rankings, trackings, votes, and information relating to new, special, popular services, and events in the fields of pop culture entertainment and sports, all exclusively for nonbusiness and non-commercial transactions and purposes; personal appearances by celebrities and national band acts; providing radio programs in the field of music, entertainment and commentary via global computer network; fireworks displays; arranging of contests; conducting parties; providing non-downloadable prerecorded music, information in the field of music, and commentary and articles about music, all on-line via a global computer network; entertainment services in the nature of live musical performances; comedy shows; providing non-downloadable playback of music via global communications networks; entertainment services, namely, the provision of continuing programs, segments, and shows featuring news, comedy, and commentary delivered via radio, the internet, or live; entertainment services, namely, providing information by means of a global computer network in the fields of celebrities, entertainment, and popular culture; presenting live musical performances; entertainment ticket agency services and on-line entertainment ticket agency services for entertainment events; production and distribution of radio programs; radio entertainment services, namely, radio programs featuring performances by a radio personality; night clubs; on-line electronic newsletters delivered by e-mail in the field of music and entertainment.

Class 43: Restaurant, bar and catering services; providing travel lodging information services and travel lodging booking agency services for travelers; travel agency services, namely, making reservation and booking for temporary lodging.

Registrant's goods/services in Mark No. 3007136 (hereinafter "136 Goods") are:

Class 21: Drinking cups and glasses, namely, shot glasses, pint glasses and coolie cups.

Class 24: [Towels and] cloth flags.

Class 25: Clothing, namely, golf shirts, hats, t-shirts, shorts, sweatshirts, windshirts, tank tops, football jerseys

Class 34: Cigarette lighters not of precious metal and matches.

Registrant's goods/services in Mark No. 4196258 (hereinafter "'258 Goods'") are:

Class 25: Clothing, namely, golf shirts, hats, t-shirts, shorts, sweatshirts, windshirts, tank tops, football jerseys

Class 38: Broadcasting of radio programs; internet radio broadcasting services; internet radio services, namely, transmission of audio material via the internet, radio broadcasting; radio broadcasting of information and other programs.

Class 41: Entertainment services, namely, providing a website that displays various requests, reviews, recommendations, rankings, trackings, votes, and information relating to new, special, popular services, and events in the fields of pop culture entertainment and sports, all exclusively for nonbusiness and non-commercial transactions and purposes; personal appearances by celebrities and national band acts; providing radio programs in the field of music, entertainment and commentary via global computer network; fireworks displays; arranging of contests; conducting parties; providing non-downloadable prerecorded music, information in the field of music, and commentary and articles about music, all on-line via a global computer network; entertainment services in the nature of live musical performances; comedy shows; providing non-downloadable playback of music via global communications networks; entertainment services, namely, the provision of continuing programs, segments, and shows featuring news, comedy, and commentary delivered via radio, the internet, or live; entertainment services, namely, providing information by means of a global computer network in the fields of celebrities, entertainment, and popular culture; presenting live musical performances; entertainment ticket agency services and on-line entertainment ticket agency services for entertainment events; production and distribution of radio programs; radio entertainment services, namely, radio programs featuring performances by a radio personality; night clubs; on-line electronic newsletters delivered by e-mail in the field of music and entertainment.

Collectively, the '452 Goods, '451 Goods, '136 Goods, and '258 Goods are referred to as Registrant's Goods.

Accordingly, Applicant respectfully submits that Applicant's mark "SEACRET" of the present application used for Applicant's Goods will cause no likelihood of confusion, mistake or deception from "SEACRETS" used for Registrant's Goods. Therefore, Applicant's mark is suitable for registration on the Principle Register and Applicant respectfully requests registration of the mark of the application for the following reasons:

1. The goods are dissimilar.

There is no monopoly in Registrant's mark as applied to all goods and similar marks often co-exist in different fields without confusion. To demonstrate that goods are related, it is not sufficient that a particular term or use may be found which may generically describe the goods. See *General Electric Company v. Graham Magnetics Incorporated*, 197 USPQ 690 (TTAB 1977); *Harvey Hubbell Incorporated v. Tokyo Seimitsu Co., Ltd.*, 188 USPQ 517 (TTAB 1975). Accordingly, the Examining Attorney cannot describe the different goods in issue here at some common level of generality. This overreaches the rule that there is no monopoly right to a mark for all goods. More importantly, the issue of relatedness is not one of semantics and speculation but of consumer expectations. There is no evidence in this record that Applicant's contractor services in the field of underground utilities, grading, paving, masonry, hard-scape and landscape are related in any way (e.g., commercially, technologically, by channels of trade, etc.) to Registrant's services.

Applicant's goods, as currently listed in the application, are not similar or related, or indeed encompassed by and legally identical to, the goods recited in the cited registration. Applicant's mark is used for computer accessories, watches, earrings, rings, bracelets and necklaces, calendar planners, backpacks, suitcases and cosmetic bags. The cited marks owned by Seacrets, Inc., lists as its identification of goods entertainment referral services, retail stores and gift shops, charitable fund raising, entertainment services, travel agency services, clothing, pins for hats, flashlights, cigarettes, postcards and bumper stickers. Registrant's identification of goods is very specific and cannot include the same features as those found in Applicant's identified goods. In fact, Applicant's goods are not found within Registrant's identification of goods and services. Similarly, Registrant's goods are not found within Applicant's identification of goods.

Applicant's identification of goods is very specific and in fact some of identification of goods include qualifying language by using the term "namely." Registrant's identification of goods is also very specific and it likewise uses qualifying language some of the identification of goods. The scope of the trademark registration is therefore limited to the specific goods following the qualifying language. As provided for in T.M.E.P. § 1402.6, "the identification of goods and/or services in an application defines the scope of those rights established by the filing of an application for registration on the Principal Register." Because the identification of goods and services of Applicant and Registrant are specific, the goods are dissimilar and therefore there is no likelihood of confusion.

The Examining Attorney references third party registrations in an effort to show that the goods are related. However, Applicant cannot locate any evidence in the record regarding the use and effect on the public mind of Applicant's and Registrant's marks, and therefore have little impact on the likelihood of confusion. *See Smith Bros. Mfg. Co. v. Stone Mfg. Co.*, 476 F.2d 1004, 177 U.S.P.Q. 462 (C.C.P.A. 1973). In fact, little weight is to be given to such third party registration in evaluating whether there is a likelihood of confusion because these registrations are not evidence of what happens in the market place or that customers are familiar with them. *See AMF, Inc. v. American Leisure Products, Inc.*, 474 F.2d 1403, 177 U.S.P.Q. 268 (C.C.P.A. 1973). Thus, the third party registrations submitted by the Examiner do not present evidence that Applicant's goods are related to Registrant's goods and services.

Therefore, for at least these foregoing reasons, the goods are dissimilar and there is no likelihood of confusion.

2. The established, likely-to-continue trade channels are dissimilar.

If the goods in question are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source, then, even if the marks are identical, confusion is not likely. *See, e.g., Local Trademarks, Inc. v. Handy Boys Inc.*, 16 USPQ2d 1156 (TTAB 1990) (LITTLE PLUMBER for liquid drain opener held not confusingly similar to LITTLE PLUMBER and design for advertising services, namely the formulation and preparation of advertising copy and literature in the plumbing field); *Quartz Radiation Corp. v. Comm/Scope Co.*, 1 USPQ2d 1668 (TTAB 1986) (QR for coaxial cable held not confusingly similar to QR for various products (e.g., lamps, tubes) related to the photocopying field). The test is what purchasers reasonably might believe when encountering the marks being considered in a commercial environment.

The Examining Attorney has not placed any evidence into the record demonstrating that the channels of trade for Applicant's Goods and Registrant's Goods are ever overlapping. Notwithstanding, the non-complementariness and non-competitiveness between and significant differences in the goods of Applicant and Registrant results in the products being sold through different trade channels, and used for different purposes. These cumulative dissimilarities are sufficient to outweigh any similarity between the respective marks.

Registrant's Goods are directed to consumers that have or are visiting Registrant's venues . Applicant's services are sold through network marketing channels and not to the general public. Even if the Registrant's Goods followed a similar trade channel as that of Applicant's Goods, which there is no evidence that they do, the end consumer or user would be different for both goods.

Specifically, Applicant's Goods are sold to customers through network marketing channels and not available to the general public.

More specifically, as indicated in the amended identification of goods, Applicant's goods are sold to sales consultants, demonstrators and other individuals carrying on sales of other products by means of personal home and private demonstrations, sales parties, and group gatherings to the individual consumer. Registrant sells its Registrant's Goods to the general public.

Thus, as to channels of trade, there is clearly nothing in the record to suggest that Applicant's Goods, on the one hand, and Registrant's Goods, on the other hand, share the same channels of trade. For at least these reasons, there is no likelihood of confusion.

3. The conditions under which and buyers to whom sales are made are different.

Conditions under which goods or services are encountered in the marketplace, and under which purchasing decisions are made, must be considered as well when evaluating the likelihood that a mark sought to be registered in an application might be confused with a registered mark. If the decision is made by a sophisticated purchaser and concerns an expensive product, or is made after careful examination of the product, it is sufficient to negate a likelihood of confusion even between marks of great similarity.

This is exactly the situation here. Applicant's goods are sold to sales consultants, demonstrators and other individuals carrying on sales of other products by means of personal home and private demonstrations, sales parties, and group gatherings to the individual consumer. These goods are sold through a specific channel to a specific customer.

Registrant's goods are particular for its venues. Accordingly, the purchasers are the general public that have visited or are visiting one of Registrant's venues.

Thus, focusing on the conditions under which sales are made, the specialized nature of the products, and the specific customers who have the ability to purchase Applicant's goods, it is clear that Applicant's goods are directed to sophisticated customers and cannot be considered to be impulse purchases.

Accordingly, for at least these reasons, there is no likelihood of confusion.

4. Concurrent Use

Applicant has been using the mark in commerce on the listed goods since at least as early as October 2011. For nearly 5 years Applicant and Registrant have been concurrently using their respective trademarks in commerce without any evidence of actual confusion. Accordingly, there is no evidence that consumers are confused as the source of Applicant's goods and Registrant's goods and services. For at least this reason, there is no likelihood of confusion.

5. Fame of Registrant's Mark

Applicant cannot find anywhere on the record where the Examining Attorney has presented evidence as to the fame of Registrant's marks. Accordingly, the cited registrations are not entitled to the broad scope of protection the Examining Attorney has bestowed upon it. On the contrary, such protection should be restricted to the particular goods for which it was registered. Consumers are simply unlikely to assume

that the different products offered under these marks emanate from the same source. Therefore, because Registrant's marks lack fame, confusion is unlikely.

Conclusion

In view of the amended identification of goods, the differences in the goods, and particularly the different customers to which they are directed and the different channels of trade through which they are sold, and the different consumers, as well as all the other reasons set forth above, the Examining Attorney has not met the burden of proving that Applicant's use of the mark SEACRET for its identified goods is likely to cause any confusion with the cited marks. Therefore, favorable action is earnestly requested. The Examining Attorney is invited to call the undersigned if this would in any way advance the prosecution of this case.

GOODS AND/OR SERVICES SECTION (009)(current)

INTERNATIONAL CLASS	009
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DESCRIPTION

Computer accessories, namely, power banks, computer bags, flash drives, and mouse pads

FILING BASIS	Section 1(a)
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FIRST USE ANYWHERE DATE	At least as early as 10/00/2011
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FIRST USE IN COMMERCE DATE	At least as early as 10/00/2011
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GOODS AND/OR SERVICES SECTION (009)(proposed)

INTERNATIONAL CLASS	009
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TRACKED TEXT DESCRIPTION

~~Computer accessories, namely, power banks, computer bags, flash drives, and mouse pads;~~ [Computer accessories, namely, power banks, computer bags, flash drives, and mouse pads sold to sales consultants, demonstrators and other individuals carrying on sales of other products by means of personal home and private demonstrations, sales parties, and group gatherings to the individual consumer](#)

FINAL DESCRIPTION

Computer accessories, namely, power banks, computer bags, flash drives, and mouse pads sold to sales consultants, demonstrators and other individuals carrying on sales of other products by means of personal home and private demonstrations, sales parties, and group gatherings to the individual consumer

FILING BASIS	Section 1(a)
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FIRST USE ANYWHERE DATE	At least as early as 10/00/2011
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FIRST USE IN COMMERCE DATE	At least as early as 10/00/2011
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GOODS AND/OR SERVICES SECTION (014)(current)

INTERNATIONAL CLASS	014
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DESCRIPTION

Jewelry, namely, watches, earrings, rings, bracelets and necklaces

FILING BASIS	Section 1(a)
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FIRST USE ANYWHERE DATE	At least as early as 10/00/2011
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FIRST USE IN COMMERCE DATE	At least as early as 10/00/2011
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GOODS AND/OR SERVICES SECTION (014)(proposed)

INTERNATIONAL CLASS	014
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TRACKED TEXT DESCRIPTION

~~Jewelry, namely, watches, earrings, rings, bracelets and necklaces;~~ [Jewelry, namely, watches, earrings, rings, bracelets and necklaces sold to](#)

[sales consultants, demonstrators and other individuals carrying on sales of other products by means of personal home and private demonstrations, sales parties, and group gatherings to the individual consumer](#)

FINAL DESCRIPTION

Jewelry, namely, watches, earrings, rings, bracelets and necklaces sold to sales consultants, demonstrators and other individuals carrying on sales of other products by means of personal home and private demonstrations, sales parties, and group gatherings to the individual consumer

FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 10/00/2011
FIRST USE IN COMMERCE DATE	At least as early as 10/00/2011

GOODS AND/OR SERVICES SECTION (016)(current)

INTERNATIONAL CLASS	016
DESCRIPTION	calendar planners
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 10/00/2011
FIRST USE IN COMMERCE DATE	At least as early as 10/00/2011

GOODS AND/OR SERVICES SECTION (016)(proposed)

INTERNATIONAL CLASS	016
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TRACKED TEXT DESCRIPTION

~~calendar planners~~; [calendar planners sold to sales consultants, demonstrators and other individuals carrying on sales of other products by means of personal home and private demonstrations, sales parties, and group gatherings to the individual consumer](#)

FINAL DESCRIPTION

calendar planners sold to sales consultants, demonstrators and other individuals carrying on sales of other products by means of personal home and private demonstrations, sales parties, and group gatherings to the individual consumer

FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 10/00/2011
FIRST USE IN COMMERCE DATE	At least as early as 10/00/2011

GOODS AND/OR SERVICES SECTION (018)(current)

INTERNATIONAL CLASS	018
DESCRIPTION	backpacks; fitted protective covers for suitcases; cosmetic bags sold empty
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 10/00/2011
FIRST USE IN COMMERCE DATE	At least as early as 10/00/2011

GOODS AND/OR SERVICES SECTION (018)(proposed)

INTERNATIONAL CLASS	018
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TRACKED TEXT DESCRIPTION

backpacks; fitted protective covers for suitcases; ~~cosmetic bags sold empty~~; [cosmetic bags sold empty sold to sales consultants, demonstrators and other individuals carrying on sales of other products by means of personal home and private demonstrations, sales parties, and group gatherings to the individual consumer](#)

FINAL DESCRIPTION

backpacks; fitted protective covers for suitcases; cosmetic bags sold empty sold to sales consultants, demonstrators and other individuals carrying on sales of other products by means of personal home and private demonstrations, sales parties, and group gatherings to the individual

consumer	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 10/00/2011
FIRST USE IN COMMERCE DATE	At least as early as 10/00/2011
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Sean K. Enos/
SIGNATORY'S NAME	Sean K. Enos
SIGNATORY'S POSITION	Attorney of record, Arizona bar member
SIGNATORY'S PHONE NUMBER	4806550073
DATE SIGNED	08/24/2016
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMATION SECTION	
SUBMIT DATE	Wed Aug 24 19:26:29 EDT 2016
TEAS STAMP	USPTO/RFR-XX.XX.XXX.XX-20 160824192629476296-866167 54-55049b4d2fb3f92e517b3f 1e51bec67fa85f246deb3b836 af93ce79c1c9c1febd6f-N/A- N/A-20160824192225800015

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Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. **86616754** SEACRET(Standard Characters, see <http://tmng-al.uspto.gov/resting2/api/img/86616754/large>) has been amended as follows:

ARGUMENT(S)

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

REMARKS

In the office action, the Examining Attorney refused registration of Applicant's mark "SEACRET" because of potential confusion between the mark herein and mark Nos. 4445452, 4445451, 3007136, 4196258, and 2984773 (same owner). The Examining Attorney also requested that the applicant respond to certain informalities. Reconsideration is respectfully requested particularly in light of the foregoing amendment limiting the scope of the goods recited in this application.

Potential Confusion With Mark Nos. 4445452, 4445451, 3007136, and 4196258

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Applicant respectfully disagrees with the Examining Attorney's speculation and conclusions. Applicant contends that, regardless of any possible similarities between the Applicant's mark and the cited mark, the substantial differences between the respective goods when accurately compared and the different purposes they serve are such that confusion is clearly not likely.

Applicant's Goods

Applicant's identification of goods are:

Class 9: Computer accessories, namely, power banks, computer bags, flash drives, and mouse pads sold to sales consultants, demonstrators and other individuals carrying on sales of other products by means of personal home and private demonstrations, sales parties, and group gatherings to the individual consumer

Class 14: Jewelry, namely, watches, earrings, rings, bracelets and necklaces sold to sales consultants, demonstrators and other individuals carrying on sales of other products by means of personal home and private demonstrations, sales parties, and group gatherings to the individual consumer

Class 16: calendar planners sold to sales consultants, demonstrators and other individuals carrying on sales of other products by means of personal home and private demonstrations, sales parties, and group gatherings to the individual consumer

Class 18: backpacks; fitted protective covers for suitcases; cosmetic bags sold empty sold to sales consultants, demonstrators and other individuals carrying on sales of other products by means of personal home and private demonstrations, sales parties, and group gatherings to the individual consumer

Registrant's Goods/Services

Registrant's goods/services in Mark No. 4445452 (hereinafter "'452 Goods") are:

Class 35: Providing consumer information services and making referrals in the field of entertainment services for products, services, events, activities, facilities and locations; retail clothing boutiques; on-line retail gift shops; retail gift shops; retail store and on-line retail stores services featuring golf shirts, hats, t-shirts, shorts, sweatshirts, windshirts, tanks, football jerseys, golf towels, shot glasses, compact discs, cups, holiday ornaments, hip klippockets, golf balls, postcards, glasswares, bottle openers, beach towels and gift cards.

Class 36: Charitable fundraising services by means of entertainment events.

Class 41: Entertainment services, namely, providing a website that displays various requests, reviews, recommendations, rankings, trackings, votes, and information relating to new, special, popular services, and events in the fields of pop culture entertainment and sports, all exclusively for nonbusiness and non-commercial transactions and purposes; personal appearances by celebrities and national band acts; providing radio programs in the field of music, entertainment and commentary via global computer network; fireworks displays; arranging of contests; conducting parties; providing non-downloadable prerecorded music, information in the field of music, and commentary and articles about music, all on-line via a global computer network; entertainment services in the nature of live musical performances; comedy shows; providing non-downloadable playback of music via global communications networks; entertainment services, namely, the provision of continuing programs, segments, and shows featuring news, comedy, and commentary delivered via radio, the Internet, or live; entertainment services, namely, providing information by means of a global computer network in the fields of celebrities, entertainment, and popular culture; presenting live musical performances; entertainment ticket agency services and on-line entertainment ticket agency services for entertainment events; production and distribution of radio programs; radio entertainment services, namely, radio programs featuring performances by a radio personality; night clubs; on-line electronic newsletters delivered by e-mail in the field of music and entertainment.

Class 43: Restaurant, bar and catering services; providing travel lodging information services and travel lodging booking agency services for travelers; travel agency services, namely, making reservation and booking for temporary lodging.

Class 25: Clothing, namely, golf shirts, hats, t-shirts, shorts, sweatshirts, windshirts, tank tops, football jerseys.

Registrant's goods/services in Mark No. 4445451 (hereinafter "'451 Goods") are:

Class 25: Clothing, namely, golf shirts, hats, t-shirts, shorts, sweatshirts, windshirts, tank tops, football jerseys

Class 35: Providing consumer information services and making referrals in the field of entertainment services for products, services, events, activities, facilities and locations; retail clothing boutiques; on-line retail gift shops; retail gift shops; retail store and on-line retail stores featuring golf shirts, hats, t-shirts, shorts, sweatshirts, windshirts, tanks, football jerseys, golf towels, shot glasses, compact discs, cups, holiday ornaments, hip klippockets, golf balls, postcards, glasswares, bottle openers, beach towels and gift cards.

Class 36: Charitable fundraising services by means of entertainment events.

Class 41: Entertainment services, namely, providing a website that displays various requests, reviews, recommendations, rankings, trackings, votes, and information relating to new, special, popular services, and events in the fields of pop culture entertainment and sports, all exclusively for nonbusiness and non-commercial transactions and purposes; personal appearances by celebrities and national band acts; providing radio programs in the field of music, entertainment and commentary via global computer network; fireworks displays; arranging of contests; conducting parties; providing non-downloadable prerecorded music, information in the field of music, and commentary and articles about music, all on-line via a global computer network; entertainment services in the nature of live musical performances; comedy shows; providing non-downloadable playback of music via global communications networks; entertainment services, namely, the provision of continuing programs, segments, and shows featuring news, comedy, and commentary delivered via radio, the internet, or live; entertainment services, namely, providing information by means of a global computer network in the fields of celebrities, entertainment, and popular culture; presenting live musical performances; entertainment ticket agency services and on-line entertainment ticket agency services for entertainment events; production and distribution of radio programs; radio entertainment services, namely, radio programs featuring performances by a radio personality; night clubs; on-line electronic newsletters delivered by e-mail in the field of music and entertainment.

Class 43: Restaurant, bar and catering services; providing travel lodging information services and travel lodging booking agency services for travelers; travel agency services, namely, making reservation and booking for temporary lodging.

Registrant's goods/services in Mark No. 3007136 (hereinafter "'136 Goods'") are:

Class 21: Drinking cups and glasses, namely, shot glasses, pint glasses and coolie cups.

Class 24: [Towels and] cloth flags.

Class 25: Clothing, namely, golf shirts, hats, t-shirts, shorts, sweatshirts, windshirts, tank tops, football jerseys

Class 34: Cigarette lighters not of precious metal and matches.

Registrant's goods/services in Mark No. 4196258 (hereinafter "'258 Goods'") are:

Class 25: Clothing, namely, golf shirts, hats, t-shirts, shorts, sweatshirts, windshirts, tank tops, football jerseys

Class 38: Broadcasting of radio programs; internet radio broadcasting services; internet radio services, namely, transmission of audio material via the internet, radio broadcasting; radio broadcasting of information and other programs.

Class 41: Entertainment services, namely, providing a website that displays various requests, reviews, recommendations, rankings, trackings, votes, and information relating to new, special, popular services, and events in the fields of pop culture entertainment and sports, all exclusively for nonbusiness and non-commercial transactions and purposes; personal appearances by celebrities and national band acts; providing radio programs in the field of music, entertainment and commentary via global computer network; fireworks displays; arranging of contests; conducting parties; providing non downloadable prerecorded music, information in the field of music, and commentary and articles about music, all on-line via a global computer network; entertainment services in the nature of live musical performances; comedy shows; providing non-downloadable playback of music via global communications networks; entertainment services, namely, the provision of continuing programs, segments, and shows featuring news, comedy, and commentary delivered via radio, the internet, or live; entertainment services, namely, providing information by means of a global computer network in the fields of celebrities, entertainment, and popular culture; presenting live musical performances; entertainment ticket agency services and on-line entertainment ticket agency services for entertainment events; production and distribution of radio programs; radio entertainment services, namely, radio programs featuring performances by a radio personality; night clubs; on-line electronic newsletters delivered by e-mail in the field of music and entertainment.

Collectively, the '452 Goods, '451 Goods, '136 Goods, and '258 Goods are referred to as Registrant's Goods.

Accordingly, Applicant respectfully submits that Applicant's mark "SEACRET" of the present application used for Applicant's Goods

will cause no likelihood of confusion, mistake or deception from “SEACRETS” used for Registrant’s Goods. Therefore, Applicant’s mark is suitable for registration on the Principle Register and Applicant respectfully requests registration of the mark of the application for the following reasons:

1. The goods are dissimilar.

There is no monopoly in Registrant’s mark as applied to all goods and similar marks often co-exist in different fields without confusion. To demonstrate that goods are related, it is not sufficient that a particular term or use may be found which may generically describe the goods. *See General Electric Company v. Graham Magnetics Incorporated*, 197 USPQ 690 (TTAB 1977); *Harvey Hubbell Incorporated v. Tokyo Seimitsu Co., Ltd.*, 188 USPQ 517 (TTAB 1975). Accordingly, the Examining Attorney cannot describe the different goods in issue here at some common level of generality. This overreaches the rule that there is no monopoly right to a mark for all goods. More importantly, the issue of relatedness is not one of semantics and speculation but of consumer expectations. There is no evidence in this record that Applicant’s contractor services in the field of underground utilities, grading, paving, masonry, hard-scape and landscape are related in any way (e.g., commercially, technologically, by channels of trade, etc.) to Registrant’s services.

Applicant’s goods, as currently listed in the application, are not similar or related, or indeed encompassed by and legally identical to, the goods recited in the cited registration. Applicant’s mark is used for computer accessories, watches, earrings, rings, bracelets and necklaces, calendar planners, backpacks, suitcases and cosmetic bags. The cited marks owned by Seacrets, Inc., lists as its identification of goods entertainment referral services, retail stores and gift shops, charitable fund raising, entertainment services, travel agency services, clothing, pins for hats, flashlights, cigarettes, postcards and bumper stickers. Registrant’s identification of goods is very specific and cannot include the same features as those found in Applicant’s identified goods. In fact, Applicant’s goods are not found within Registrant’s identification of goods and services. Similarly, Registrant’s goods are not found within Applicant’s identification of goods.

Applicant’s identification of goods is very specific and in fact some of identification of goods include qualifying language by using the term “namely.” Registrant’s identification of goods is also very specific and it likewise uses qualifying language some of the identification of goods. The scope of the trademark registration is therefore limited to the specific goods following the qualifying language. As provided for in T.M.E.P. § 1402.6, “the identification of goods and/or services in an application defines the scope of those rights established by the filing of an application for registration on the Principal Register.” Because the identification of goods and services of Applicant and Registrant are specific, the goods are dissimilar and therefore there is no likelihood of confusion.

The Examining Attorney references third party registrations in an effort to show that the goods are related. However, Applicant cannot not locate any evidence in the record regarding the use and effect on the public mind of Applicant’s and Registrant’s marks, and therefore have little impact on the likelihood of confusion. *See Smith Bros. Mfg. Co. v. Stone Mfg. Co.*, 476 F.2d 1004, 177 U.S.P.Q. 462 (C.C.P.A. 1973). In fact, little weight is to be given to such third party registration in evaluating whether there is a likelihood of confusion because these registrations are not evidence of what happens in the market place or that customers are familiar with them. *See AMF, Inc. v. American Leisure Products, Inc.*, 474 F.2d 1403, 177 U.S.P.Q. 268 (C.C.P.A. 1973). Thus, the third party registrations submitted by the Examiner do not present evidence that Applicant’s goods are related to Registrant’s goods and services.

Therefore, for at least these foregoing reasons, the goods are dissimilar and there is no likelihood of confusion.

2. The established, likely-to-continue trade channels are dissimilar.

If the goods in question are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source, then, even if the marks are identical, confusion is not likely. *See, e.g., Local Trademarks, Inc. v. Handy Boys Inc.*, 16 USPQ2d 1156 (TTAB 1990) (LITTLE PLUMBER for liquid drain opener held not

confusingly similar to LITTLE PLUMBER and design for advertising services, namely the formulation and preparation of advertising copy and literature in the plumbing field); *Quartz Radiation Corp. v. Comm/Scope Co.*, 1 USPQ2d 1668 (TTAB 1986) (QR for coaxial cable held not confusingly similar to QR for various products (e.g., lamps, tubes) related to the photocopying field). The test is what purchasers reasonably might believe when encountering the marks being considered in a commercial environment.

The Examining Attorney has not placed any evidence into the record demonstrating that the channels of trade for Applicant's Goods and Registrant's Goods are ever overlapping. Notwithstanding, the non-complementariness and non-competitiveness between and significant differences in the goods of Applicant and Registrant results in the products being sold through different trade channels, and used for different purposes. These cumulative dissimilarities are sufficient to outweigh any similarity between the respective marks.

Registrant's Goods are directed to consumers that have or are visiting Registrant's venues . Applicant's services are sold through network marketing channels and not to the general public. Even if the Registrant's Goods followed a similar trade channel as that of Applicant's Goods, which there is no evidence that they do, the end consumer or user would be different for both goods.

Specifically, Applicant's Goods are sold to customers through network marketing channels and not available to the general public. More specifically, as indicated in the amended identification of goods, Applicant's goods are sold to sales consultants, demonstrators and other individuals carrying on sales of other products by means of personal home and private demonstrations, sales parties, and group gatherings to the individual consumer. Registrant sells its Registrant's Goods to the general public.

Thus, as to channels of trade, there is clearly nothing in the record to suggest that Applicant's Goods, on the one hand, and Registrant's Goods, on the other hand, share the same channels of trade. For at least these reasons, there is no likelihood of confusion.

3. The conditions under which and buyers to whom sales are made are different.

Conditions under which goods or services are encountered in the marketplace, and under which purchasing decisions are made, must be considered as well when evaluating the likelihood that a mark sought to be registered in an application might be confused with a registered mark. If the decision is made by a sophisticated purchaser and concerns an expensive product, or is made after careful examination of the product, it is sufficient to negate a likelihood of confusion even between marks of great similarity.

This is exactly the situation here. Applicant's goods are sold to sales consultants, demonstrators and other individuals carrying on sales of other products by means of personal home and private demonstrations, sales parties, and group gatherings to the individual consumer. These goods are sold through a specific channel to a specific customer.

Registrant's goods are particular for its venues. Accordingly, the purchasers are the general public that have visited or are visiting one of Registrant's venues.

Thus, focusing on the conditions under which sales are made, the specialized nature of the products, and the specific customers who have the ability to purchase Applicant's goods, it is clear that Applicant's goods are directed to sophisticated customers and cannot be considered to be impulse purchases.

Accordingly, for at least these reasons, there is no likelihood of confusion.

4. Concurrent Use

Applicant has been using the mark in commerce on the listed goods since at least as early as October 2011. For nearly 5 years Applicant and Registrant have been concurrently using their respective trademarks in commerce without any evidence of actual confusion. Accordingly, there is no evidence that consumers are confused as the source of Applicant's goods and Registrant's goods and services. For at least this reason, there is no likelihood of confusion.

5. Fame of Registrant's Mark

Applicant cannot find anywhere on the record where the Examining Attorney has presented evidence as to the fame of Registrant's marks. Accordingly, the cited registrations are not entitled to the broad scope of protection the Examining Attorney has bestowed upon it. On the contrary, such protection should be restricted to the particular goods for which it was registered. Consumers are simply unlikely to assume that the different products offered under these marks emanate from the same source. Therefore, because Registrant's marks lack fame, confusion is unlikely.

Conclusion

In view of the amended identification of goods, the differences in the goods, and particularly the different customers to which they are directed and the different channels of trade through which they are sold, and the different consumers, as well as all the other reasons set forth above, the Examining Attorney has not met the burden of proving that Applicant's use of the mark SEACRET for its identified goods is likely to cause any confusion with the cited marks. Therefore, favorable action is earnestly requested. The Examining Attorney is invited to call the undersigned if this would in any way advance the prosecution of this case.

CLASSIFICATION AND LISTING OF GOODS/SERVICES

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

Current: Class 009 for Computer accessories, namely, power banks, computer bags, flash drives, and mouse pads

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 10/00/2011 and first used in commerce at least as early as 10/00/2011 , and is now in use in such commerce.

Proposed:

Tracked Text Description: ~~Computer accessories, namely, power banks, computer bags, flash drives, and mouse pads;~~ [Computer accessories, namely, power banks, computer bags, flash drives, and mouse pads sold to sales consultants, demonstrators and other individuals carrying on sales of other products by means of personal home and private demonstrations, sales parties, and group gatherings to the individual consumer](#)

Class 009 for Computer accessories, namely, power banks, computer bags, flash drives, and mouse pads sold to sales consultants, demonstrators and other individuals carrying on sales of other products by means of personal home and private demonstrations, sales parties, and group gatherings to the individual consumer

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 10/00/2011 and first used in commerce at least as early as 10/00/2011 , and is now in use in such commerce.

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

Current: Class 014 for Jewelry, namely, watches, earrings, rings, bracelets and necklaces

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 10/00/2011 and first used in commerce at least as early as 10/00/2011 , and is now in use in such commerce.

Proposed:

Tracked Text Description: ~~Jewelry, namely, watches, earrings, rings, bracelets and necklaces;~~ [Jewelry, namely, watches, earrings, rings, bracelets and necklaces sold to sales consultants, demonstrators and other individuals carrying on sales of other products by means of personal home and private demonstrations, sales parties, and group gatherings to the individual consumer](#)

Class 014 for Jewelry, namely, watches, earrings, rings, bracelets and necklaces sold to sales consultants, demonstrators and other individuals carrying on sales of other products by means of personal home and private demonstrations, sales parties, and group gatherings to the individual consumer

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 10/00/2011 and first used in commerce at least as early as 10/00/2011 , and is now in use in such commerce.

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

Current: Class 016 for calendar planners

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 10/00/2011 and first used in commerce at least as early as 10/00/2011 , and is now in use in such commerce.

Proposed:

Tracked Text Description: ~~calendar planners;~~ [calendar planners sold to sales consultants, demonstrators and other individuals carrying on sales of other products by means of personal home and private demonstrations, sales parties, and group gatherings to the individual consumer](#)

Class 016 for calendar planners sold to sales consultants, demonstrators and other individuals carrying on sales of other products by means of personal home and private demonstrations, sales parties, and group gatherings to the individual consumer

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 10/00/2011 and first used in commerce at least as early as 10/00/2011 , and is now in use in such commerce.

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

Current: Class 018 for backpacks; fitted protective covers for suitcases; cosmetic bags sold empty

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 10/00/2011 and first used in commerce at least as early as 10/00/2011 , and is now in use in such commerce.

Proposed:

Tracked Text Description: backpacks; fitted protective covers for suitcases; ~~cosmetic bags sold empty;~~ [cosmetic bags sold empty sold to sales consultants, demonstrators and other individuals carrying on sales of other products by means of personal home and private demonstrations, sales parties, and group gatherings to the individual consumer](#)

Class 018 for backpacks; fitted protective covers for suitcases; cosmetic bags sold empty sold to sales consultants, demonstrators and other individuals carrying on sales of other products by means of personal home and private demonstrations, sales parties, and group gatherings to the individual consumer

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 10/00/2011 and first used in commerce at least as early as 10/00/2011 , and is now in use in such commerce.

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Sean K. Enos/ Date: 08/24/2016

Signatory's Name: Sean K. Enos

Signatory's Position: Attorney of record, Arizona bar member

Signatory's Phone Number: 4806550073

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.

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