

## Request for Reconsideration after Final Action

**The table below presents the data as entered.**

Input Field	Entered
<b>SERIAL NUMBER</b>	86710005
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 104
<b>MARK SECTION</b>	
<b>MARK</b>	http://tmng-al.uspto.gov/resting2/api/img/86710005/large
<b>LITERAL ELEMENT</b>	KHEWELLA
<b>STANDARD CHARACTERS</b>	YES
<b>USPTO-GENERATED IMAGE</b>	YES
<b>MARK STATEMENT</b>	The mark consists of standard characters, without claim to any particular font style, size or color.
<b>ARGUMENT(S)</b>	
Please see argument attached in the evidence section	
<b>EVIDENCE SECTION</b>	
<b>EVIDENCE FILE NAME(S)</b>	
<b>JPG FILE(S)</b>	<a href="\\TICRS\EXPORT17\IMAGEOUT17\867\100\86710005\xml1\RFR0002.JPG">\\TICRS\EXPORT17\IMAGEOUT17\867\100\86710005\xml1\RFR0002.JPG</a>
	<a href="\\TICRS\EXPORT17\IMAGEOUT17\867\100\86710005\xml1\RFR0003.JPG">\\TICRS\EXPORT17\IMAGEOUT17\867\100\86710005\xml1\RFR0003.JPG</a>
	<a href="\\TICRS\EXPORT17\IMAGEOUT17\867\100\86710005\xml1\RFR0004.JPG">\\TICRS\EXPORT17\IMAGEOUT17\867\100\86710005\xml1\RFR0004.JPG</a>
<b>ORIGINAL PDF FILE</b>	<a href="#">evj_736513844-20161005172138194246_ . Argument_2.pdf</a>
<b>CONVERTED PDF FILE(S) (1 page)</b>	<a href="\\TICRS\EXPORT17\IMAGEOUT17\867\100\86710005\xml1\RFR0005.JPG">\\TICRS\EXPORT17\IMAGEOUT17\867\100\86710005\xml1\RFR0005.JPG</a>
<b>DESCRIPTION OF EVIDENCE FILE</b>	argument; screen captures related to cited mark
<b>GOODS AND/OR SERVICES SECTION (018)(no change)</b>	
<b>GOODS AND/OR SERVICES SECTION (025)(current)</b>	
<b>INTERNATIONAL CLASS</b>	025
<b>DESCRIPTION</b>	
Bathing trunks, bathing suits, swimsuits; beach clothes, namely, shorts, shirts, tops, socks, beach coverups; clothing, namely, dresses, pants, shirts, tops, skirts, skirts, socks, belts, scarves, gloves, jackets, coats, suits; knitwear, namely, knit bottoms, knit tops; leggings; scarves, shawls, shirts, skirts, tee-shirts, trousers, waterproof clothing, namely, pants, shirts, jackets, wind-resistant jackets; bath sandals, bath slippers, beach shoes, esparto shoes, esparto sandals, footwear, sandals, shoes	
<b>FILING BASIS</b>	Section 1(b)
<b>GOODS AND/OR SERVICES SECTION (025)(proposed)</b>	
<b>INTERNATIONAL CLASS</b>	025
<b>TRACKED TEXT DESCRIPTION</b>	
Bathing trunks, bathing suits, swimsuits; beach clothes, namely, shorts, shirts, tops, socks, beach coverups; clothing, namely, dresses, pants,	

shirts, tops, skirts, skirts, socks, belts, scarves, gloves, jackets, coats, suits; knitwear, namely, knit bottoms, knit tops; leggings; ~~scarves, shawls, shirts, skirts, tee-shirts, trousers, waterproof clothing, namely, pants, shirts, jackets, wind-resistant jackets~~; [scarves, shawls, shirts, skirts, trousers, waterproof clothing, namely, pants, shirts, jackets, wind-resistant jackets](#); bath sandals, bath slippers, beach shoes, esparto shoes, esparto sandals, footwear, sandals, shoes

**FINAL DESCRIPTION**

Bathing trunks, bathing suits, swimsuits; beach clothes, namely, shorts, shirts, tops, socks, beach coverups; clothing, namely, dresses, pants, shirts, tops, skirts, skirts, socks, belts, scarves, gloves, jackets, coats, suits; knitwear, namely, knit bottoms, knit tops; leggings; scarves, shawls, shirts, skirts, trousers, waterproof clothing, namely, pants, shirts, jackets, wind-resistant jackets; bath sandals, bath slippers, beach shoes, esparto shoes, esparto sandals, footwear, sandals, shoes

**FILING BASIS**

Section 1(b)

**SIGNATURE SECTION**

**RESPONSE SIGNATURE**

/Nicholas Wells/

**SIGNATORY'S NAME**

Nicholas D. Wells

**SIGNATORY'S POSITION**

Attorney of record, New York bar member

**SIGNATORY'S PHONE NUMBER**

8013374500

**DATE SIGNED**

10/05/2016

**AUTHORIZED SIGNATORY**

YES

**CONCURRENT APPEAL NOTICE FILED**

YES

**FILING INFORMATION SECTION**

**SUBMIT DATE**

Wed Oct 05 17:43:22 EDT 2016

**TEAS STAMP**

USPTO/RFR-XX.XX.XXX.XX-20  
161005174322695725-867100  
05-5706dc6f09aac1103ad403  
39d73f2be27e543584154889f  
ce18eb7f26761aa-N/A-N/A-2  
0161005172138194246

Under the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PTO Form 1990 (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. **86710005** KHEWELLA(Standard Characters, see <http://tmng-al.uspto.gov/resting2/api/img/86710005/large>) has been amended as follows:

**ARGUMENT(S)**

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

Please see argument attached in the evidence section

**EVIDENCE**

Evidence in the nature of argument; screen captures related to cited mark has been attached.

**JPG file(s):**

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

**Original PDF file:**

## CLASSIFICATION AND LISTING OF GOODS/SERVICES

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

**Current:** Class 025 for Bathing trunks, bathing suits, swimsuits; beach clothes, namely, shorts, shirts, tops, socks, beach coverups; clothing, namely, dresses, pants, shirts, tops, skirts, skirts, socks, belts, scarves, gloves, jackets, coats, suits; knitwear, namely, knit bottoms, knit tops; leggings; scarves, shawls, shirts, skirts, tee-shirts, trousers, waterproof clothing, namely, pants, shirts, jackets, wind-resistant jackets; bath sandals, bath slippers, beach shoes, esparto shoes, esparto sandals, footwear, sandals, shoes

Original Filing Basis:

**Filing Basis: Section 1(b), Intent to Use: For a trademark or service mark application:** As of the application filing date, the applicant had a bona fide intention, and was entitled, to use the mark in commerce on or in connection with the identified goods/services in the application. **For a collective trademark, collective service mark, or collective membership mark application:** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization. **For a certification mark application:** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users in connection with the identified goods/services, and the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

### Proposed:

**Tracked Text Description:** Bathing trunks, bathing suits, swimsuits; beach clothes, namely, shorts, shirts, tops, socks, beach coverups; clothing, namely, dresses, pants, shirts, tops, skirts, skirts, socks, belts, scarves, gloves, jackets, coats, suits; knitwear, namely, knit bottoms, knit tops; leggings; ~~scarves, shawls, shirts, skirts, tee-shirts, trousers, waterproof clothing, namely, pants, shirts, jackets, wind-resistant jackets;~~ [scarves, shawls, shirts, skirts, trousers, waterproof clothing, namely, pants, shirts, jackets, wind-resistant jackets;](#) bath sandals, bath slippers, beach shoes, esparto shoes, esparto sandals, footwear, sandals, shoes

Class 025 for Bathing trunks, bathing suits, swimsuits; beach clothes, namely, shorts, shirts, tops, socks, beach coverups; clothing, namely, dresses, pants, shirts, tops, skirts, skirts, socks, belts, scarves, gloves, jackets, coats, suits; knitwear, namely, knit bottoms, knit tops; leggings; scarves, shawls, shirts, skirts, trousers, waterproof clothing, namely, pants, shirts, jackets, wind-resistant jackets; bath sandals, bath slippers, beach shoes, esparto shoes, esparto sandals, footwear, sandals, shoes

**Filing Basis: Section 1(b), Intent to Use: For a trademark or service mark application:** As of the application filing date, the applicant had a bona fide intention, and was entitled, to use the mark in commerce on or in connection with the identified goods/services in the application. **For a collective trademark, collective service mark, or collective membership mark application:** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization. **For a certification mark application:** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users in connection with the identified goods/services, and the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

## SIGNATURE(S)

### Request for Reconsideration Signature

Signature: /Nicholas Wells/ Date: 10/05/2016

Signatory's Name: Nicholas D. Wells

Signatory's Position: Attorney of record, New York bar member

Signatory's Phone Number: 8013374500

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the owner's/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the owner/holder in this matter: (1) the owner/holder has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

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

Serial Number: 86710005

Internet Transmission Date: Wed Oct 05 17:43:22 EDT 2016

TEAS Stamp: USPTO/RFR-XX.XX.XXX.XX-20161005174322695

725-86710005-5706dc6f09aac1103ad40339d73

f2be27e543584154889fce18eb7f26761aa-N/A-

N/A-20161005172138194246

# KREWELLA



**SWEATBOX TOUR**  
CLICK HERE

**REDEEM YOUR DOWNLOAD**

**AMMUNITION** Krewella - Ammunition

enter code here

Where do I find this?  
Need help?



FEATURING **BEGGARS**  
AND **BROKEN RECORD**

AVAILABLE NOW



KREWELLA STORE

# KREWELLA

[NEW](#) [VIEW ALL](#) [SHIRTS](#) [HOODIES](#) [ACCESSORIES](#) [POSTERS](#) [SALE](#)



# KREWELLA

NEW VIEW ALL SHIRTS HOODIES ACCESSORIES POSTERS SALE



Applicant has with this response deleted some goods from the application so as to remove any likelihood of confusion.

The Examining Attorney has noted that there is no “correct” pronunciation of a mark. Yet it is reasonable to speculate on possible or probable pronunciations, as Applicant has done in the prior response. This speculation suggests that the cited mark will be pronounced in a manner identical to a widely known fictional character. The Examining Attorney has not refuted that speculation or its implications for the analysis of the likelihood of confusion.

The Examining Attorney has also stated that Applicant’s mark and the cited mark differ by only one letter. Yet the pronunciation of the two marks differs much more than this statement suggests.

Pronunciation (sound) is a very relevant factor when analyzing likelihood of confusion. Applicant’s mark will likely be pronounced by most U.S. purchasers in a manner that makes the H silent, because a voiced “H” as found in Arabic and many Turkic languages does not exist in English.

Thus, Applicant’s mark will be pronounced as KEWELLA in virtually all cases. The sound of the first part of this mark does not correspond to any commonly known word in English. Conversely, the first part of the cited mark sounds identical to the word “crew.” The mouth is formed in a different shape as well when voicing these phonemes.

Purchasers are likely to note the differences between an English word (“crew”) and a foreign-sounding, non-word at the beginning of Applicant’s mark.

Applicant also submits with this response screen captures of two websites owned by the owner of the cited mark, namely, the band Krewella.

Applicant respectfully asserts that use of the cited KREWELLA mark in Class 25 will always and only be associated in the in the minds of purchasers with the band Krewella. The logical outcome of this mental association is that purchasers will not regard Applicant’s KHEWELLA mark as associated with any goods sold in Class 25 under the KREWELLA mark unless Applicant has some relation to the Krewella band, or unless Applicant operates a band of its own, so that the mental associations with music and music products (in Class 09, for example) are visible to purchasers.

Because Applicant does not have a band or any association with music or goods in Class 09, it seems certain that purchasers will not be likely to confuse applicant’s mark