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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91204897
Party	Plaintiff John G. Marino
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Submission	Motion to Amend Pleading/Amended Pleading
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Date	10/05/2015
Attachments	Marino Motion to Conform to Evidence.pdf(87184 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**In the matter of trademark application Serial No. 85411955
For the mark LAGUNA LAKES Published in the Official Gazette on
February 28, 2012**

Consolidated Opposition No:91204897

91204941

JOHN GERARD MARINO

v.

LAGUNA LAKES COMMUNITY ASSOCIATION, INC.

**JOHN GERARD MARINO'S
MOTION FOR LEAVE TO CONFORM PLEADINGS
TO EVIDENCE**

John Gerard Marino (“Marino”), by and through his undersigned counsel hereby moves this Court to conform the pleadings to the evidence in this matter and states as follows:

1. During the presentation of trial briefs in this matter, LLCA has objected to arguments that LLCA’s use of the proposed marks are just ornamental.

While Marino contends that these argument are part and parcel of the priority arguments made by Marino since the inception of the case, in an abundance of caution, Marino files this Motion for Leave to Amend pleadings to conform to the evidence in the case.

2. In accordance with TBMP 507.03(a), this Board may, upon motion, allow the pleadings to be amended and should do so freely when the presentation of the merits of the case will be served. In this case, allowing Marino to argue ornamentality as part of his priority argument, will serve the interests of justice. Moreover, LLCA can't demonstrate any prejudice in that these very issues have already been addressed by the extensive discovery in this matter. Marino has promptly filed this Motion upon the objection made by LLCA.

3. Accordingly, Marino seeks for this Board to allow him to conform his Opposition Complaint to include arguments that LLCA's use of the proposed marks are merely ornamental in nature.

WHEREFORE, Marino seeks an Order conforming the pleadings to the evidence in this matter as well as any other relief this Court deems just and proper under the circumstances.

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by electronic mail on this 5 day of October 2015 to: Donna M. Flammang, Esq., Brennan Manna & Diamond, P.L., 3301 Bonita Beach Road, Suite 100, Bonita Springs, FL 34134.

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