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

Proceeding	91212131
Party	Defendant Timarron Owners Association, Inc.
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Submission	Answer
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Signature	/s/ John T. Wilson
Date	09/30/2013
Attachments	Applicant's Original Answer.pdf(31774 bytes) Exhibit A.pdf(345282 bytes) Exhibit B.pdf(3768736 bytes) Exhibit C.pdf(17358 bytes)

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

BARBARA LOUISE MORTON D/B/A TIMARRON COLLEGE PREP	§	
	§	
Opposer,	§	**Opposition No.: 91212131**
	§	
v.	§	**Mark: TIMARRON**
	§	
TIMARRON OWNERS ASSOCIATION, INC.	§	**In re Trademark No.: 85516680**
	§	
Applicant.	§	

APPLICANT'S ORIGINAL ANSWER

COMES NOW Applicant TIMARRON OWNERS ASSOCIATION, INC. ("TIMARRON") which files this Original Answer (the "Answer") to Opposer BARBARA LOUISE MORTON D/B/A TIMARRON COLLEGE PREP's Notice of Opposition (the "Opposition") and, in support of said Answer, would show the Board the following:

1. Applicant admits the allegations contained in paragraph 1 of the first section of the Opposition.

2. Applicant is without knowledge or information sufficient to form a belief about the truth or accuracy of the allegations contained in paragraph 2 of the first section of the Opposition; accordingly, such allegations are denied.

3. Applicant admits the allegations contained in paragraph 3 of the first section of the Opposition.

<u>As grounds of the opposition, it is alleged that:</u>

1. Applicant admits the allegations contained in paragraph 1 of the second section of

the Opposition.[1]

2. Applicant is without knowledge or information sufficient to form a belief about the truth or accuracy of the allegations contained in paragraph 2 of the second section of the Opposition; accordingly, such allegations are denied.

a. Applicant is without knowledge or information sufficient to form a belief about the truth or accuracy of the allegations contained in subparagraph a. of paragraph 2 of the second section of the Opposition; accordingly, such allegations are denied.

b. Applicant is without knowledge or information sufficient to form a belief about the truth or accuracy of the allegations contained in subparagraph b. of paragraph 2 of the second section of the Opposition; accordingly, such allegations are denied.

c. Applicant is without knowledge or information sufficient to form a belief about the truth or accuracy of the allegations contained in subparagraph c. of paragraph 2 of the second section of the Opposition; accordingly, such allegations are denied.

d. Applicant is without knowledge or information sufficient to form a belief about the truth or accuracy of the allegations contained in subparagraph d. of paragraph 2 of the second section of the Opposition; accordingly, such allegations are denied.

e. Applicant is without knowledge or information sufficient to form a belief about the truth or accuracy of the allegations contained in subparagraph e. of paragraph 2 of the second section of the Opposition; accordingly, such allegations are denied.

f. Applicant is without knowledge or information sufficient to form a belief about the truth or accuracy of the allegations contained in subparagraph f. of paragraph 2 of the second section of the Opposition; accordingly, such allegations are denied.

[1] *N.B.* It should be noted that the Opposition contains a numerical error as to its paragraphs, having multiple paragraphs with the same numbering. For the sake of clarity, Applicant herein follows Opposer's numbering conventions in the Opposition.

g. Applicant is without knowledge or information sufficient to form a belief about the truth or accuracy of the allegations contained in subparagraph g. of paragraph 2 of the second section of the Opposition; accordingly, such allegations are denied.

h. Applicant is without knowledge or information sufficient to form a belief about the truth or accuracy of the allegations contained in subparagraph h. of paragraph 2 of the second section of the Opposition; accordingly, such allegations are denied.

i. Applicant is without knowledge or information sufficient to form a belief about the truth or accuracy of the allegations contained in subparagraph i. of paragraph 2 of the second section of the Opposition; accordingly, such allegations are denied.

j. Applicant is without knowledge or information sufficient to form a belief about the truth or accuracy of the allegations contained in subparagraph j. of paragraph 2 of the second section of the Opposition; accordingly, such allegations are denied.

k. Applicant is without knowledge or information sufficient to form a belief about the truth or accuracy of the allegations contained in subparagraph k. of paragraph 2 of the second section of the Opposition; accordingly, such allegations are denied.

l. Applicant is without knowledge or information sufficient to form a belief about the truth or accuracy of the allegations contained in subparagraph l. of paragraph 2 of the second section of the Opposition; accordingly, such allegations are denied.

m. Applicant is without knowledge or information sufficient to form a belief about the truth or accuracy of the allegations contained in subparagraph m. of paragraph 2 of the second section of the Opposition; accordingly, such allegations are denied.

n. Applicant is without knowledge or information sufficient to form a belief about the truth or accuracy of the allegations contained in subparagraph n. of paragraph 2 of

the second section of the Opposition; accordingly, such allegations are denied.

o. Applicant is without knowledge or information sufficient to form a belief about the truth or accuracy of the allegations contained in subparagraph o. of paragraph 2 of the second section of the Opposition; accordingly, such allegations are denied.

p. Applicant is without knowledge or information sufficient to form a belief about the truth or accuracy of the allegations contained in subparagraph p. of paragraph 2 of the second section of the Opposition; accordingly, such allegations are denied.

q. Applicant is without knowledge or information sufficient to form a belief about the truth or accuracy of the allegations contained in subparagraph q. of paragraph 2 of the second section of the Opposition; accordingly, such allegations are denied.

r. Applicant is without knowledge or information sufficient to form a belief about the truth or accuracy of the allegations contained in subparagraph r. of paragraph 2 of the second section of the Opposition; accordingly, such allegations are denied.

s. Applicant is without knowledge or information sufficient to form a belief about the truth or accuracy of the allegations contained in subparagraph s. of paragraph 2 of the second section of the Opposition; accordingly, such allegations are denied.

t. Applicant is without knowledge or information sufficient to form a belief about the truth or accuracy of the allegations contained in subparagraph t. of paragraph 2 of the second section of the Opposition; accordingly, such allegations are denied.

3. Applicant is without knowledge or information sufficient to form a belief about the truth or accuracy of the allegations contained in paragraph 3 of the second section of the Opposition; accordingly, such allegations are denied.

a. Applicant denies the allegations contained in subparagraph a. of paragraph 3 of the

second section of the Opposition.

b. Applicant admits the allegations contained in subparagraph b. of paragraph 3 of the second section of the Opposition.[2]

c. Applicant is without knowledge or information sufficient to form a belief about the truth or accuracy of the allegations contained in subparagraph c. of paragraph 3 of the second section of the Opposition; accordingly, such allegations are denied.

Laches

4. Applicant is without knowledge or information sufficient to form a belief about the truth or accuracy of the allegations contained in paragraph 4 of the second section of the Opposition; accordingly such allegations are denied.

5. Applicant is without knowledge or information sufficient to form a belief about the truth or accuracy of the allegations contained in paragraph 5 of the second section of the Opposition; accordingly such allegations are denied.

6. Applicant is without knowledge or information sufficient to form a belief about the truth or accuracy of the allegations contained in paragraph 6 of the second section of the Opposition; accordingly such allegations are denied.

Affirmative Defense of Dilution

7. Applicant is without knowledge or information sufficient to form a belief about the truth or accuracy of the allegations contained in paragraph 7 of the second section of the Opposition; accordingly such allegations are denied.

[2] *N.B.* In the interest of clarity, it should be noted that Applicant non-suited its claims without prejudice in the matter of *Timarron Owners Association, Inc. v. Barbara Louise Morton d/b/a Timarron College Prep*; Cause No. 096-260449-12, before the 96th Judicial District Court of Tarrant County, due, in part, to Opposer bring her opposition and in favor of resolving the disputes between Opposer and Applicant before a federal venue. Such voluntary non-suit at Plaintiff's discretion in no way constituted an acknowledgement or suggestion by Applicant that its claims raised against Opposer in such state lawsuit were without merit or untenable, and Applicant explicitly denies such a possibility.

8. Applicant denies the allegations contained in paragraph 8 of the second section of the Opposition.

9. Applicant admits the allegation that it is known by the name "TIMARRON OWNER'S ASSOCIATION" contained in paragraph 9 of the second section of the Opposition; all other allegations contained in paragraph 9 of the second section of the Opposition are denied.

Applicant's mark is not valid.

10. Applicant admits the allegation that the State of Texas has given a registration to Applicant for "TIMARRON" contained in paragraph 10 of the second section of the Opposition; Applicant denies the allegation that Applicant has challenged such registration in the 96th Tarrant County; Applicant is without knowledge or information sufficient to form a belief about the truth or accuracy of the remaining allegations contained in paragraph 10 of the second section of the Opposition; accordingly, such allegations are denied.

Prayer

11. Applicant denies that Opposer is entitled to the relief requested in the prayer of the Opposition.

APPLICANT'S AFFIRMATIVE DEFENSES

12. Applicant affirmatively pleads the defense of judicial estoppel and alleges that Opposer is estopped from claiming that registration of Applicant's trademark will create a false suggestion of a connection in that Opposer has previously affirmatively pled that Applicant and Opposer's concurrent use of the term "Timarron" does not create a false suggestion of a connection between Applicant and Opposer. Specifically, in *Defendant Morton's Traditional and No Evidence Motion for Summary Judgment* (the "Prior Summary Judgment Motion"), filed under Cause No. 096-260449-12 before the 96th Judicial District of Tarrant County, Texas (the

"State Litigation"), Opposer affirmatively pled that "[t]here is no reason to believe that consumers will confuse TIMARRON OWNER'S ASSOCIATION with TIMARRON COLLEGE PREP" and that consumers "would not see yet another business in the area using the word TIMARRON as connected to Plaintiff [TIMARRON]." Prior Summary Judgment Motion, p. 4, ¶ 13. A true and correct copy of said Prior Summary Judgment Motion filed in the State Litigation is attached hereto as "Exhibit A" and is incorporated by reference as if fully set forth herein. Further, Opposer is currently seeking a federal trademark registration in which application for registration Opposer has disclaimed all elements except for the term "Timarron," as required by the trademark examiner. Specifically, as part of the proceedings of Federal Trademark Application No. 85516680 for the phrase "Timarron College Prep" ("Opposer's Trademark Application"), the trademark examining attorney issued an Office Action to Opposer (the "Office Action to Opposer"), requiring, *inter alia*, that Opposer "disclaim the descriptive wording 'college prep' apart from the mark shown because it merely describes an ingredient, quality, characteristic, function, feature, purpose or use of [Opposer's] goods and/or services." Office Action to Opposer, p. 3-4, § Disclaimer. A true and correct copy of said Office Action to Opposer in Opposer's Trademark Application is attached hereto as "Exhibit B" and is incorporated by reference as if fully set forth herein. In response to said Office Action to Opposer, Opposer filed her Response to Office Action, wherein Opposer specifically disclaimed the phrase "college prep" as part of her trademark application, stating that "[n]o claim is made to the exclusive right to use college prep apart from the mark shown." Response to Office Action, p. 2, § Disclaimer. A true and correct copy of said Response to Office Action in Opposer's Trademark Application is attached hereto as "Exhibit C" and is incorporated by reference as if fully set forth herein. Accordingly, Opposer is and should be judicially estopped from claiming

that registration of Applicant's trademark will create a false suggestion of a connection.

13. Applicant affirmatively pleads the defense of priority and alleges that its date of first use of the term "Timarron" in commerce predates Opposer's date of first use.

14. Applicant affirmatively pleads the defense of judicial estoppel and alleges that Opposer is estopped from claiming that registration of Applicant's trademark will lead to a likelihood of confusion in that Opposer has previously affirmatively pled that there is no likelihood of confusion arising from Applicant. Specifically, in the Prior Summary Judgment Motion, Opposer affirmatively pled that "[t]here is no reason to believe that consumers will confuse TIMARRON OWNER'S ASSOCIATION with TIMARRON COLLEGE PREP" and that consumers "would not see yet another business in the area using the word TIMARRON as connected to Plaintiff [TIMARRON]." Prior Summary Judgment Motion, p. 4, ¶ 13. Further, Opposer is currently seeking a federal trademark registration in which application for registration Opposer has disclaimed all elements except for the term "Timarron," as required by the trademark examiner. Specifically, as part of the proceedings of Opposer's Trademark Application, the trademark examining attorney issued the Office Action to Opposer, requiring, *inter alia*, that Opposer "disclaim the descriptive wording 'college prep' apart from the mark shown because it merely describes an ingredient, quality, characteristic, function, feature, purpose or use of [Opposer's] goods and/or services." Office Action to Opposer, p. 3-4, § Disclaimer. In response to said Office Action to Opposer, Opposer filed her Response to Office Action, wherein Opposer specifically disclaimed the phrase "college prep" as part of her trademark application, stating that "[n]o claim is made to the exclusive right to use college prep apart from the mark shown." Response to Office Action, p. 2, § Disclaimer. Accordingly, Opposer is and should be judicially estopped from claiming that registration of Applicant's

trademark will lead to a likelihood of confusion.

15. Applicant affirmatively pleads the defense of judicial estoppel and alleges that Opposer is estopped from claiming that the term "Timarron" is primarily geographical such that it cannot be a registered trademark in that Opposer is currently seeking federal trademark registration for the phrase "Timarron College Prep" but has not disclaimed the term "Timarron" as merely geographical as part of such application. *See* Federal Trademark Application No. 85516680. Accordingly, because Opposer currently affirmatively seeks a federal trademark registration including the term "Timarron" but has not disclaimed such term as being merely geographic, Opposer is and should be judicially estopped from claiming as part of her opposition to Applicant's trademark that the term "Timarron" is merely geographic.

16. Applicant affirmatively pleads the defense of judicial estoppel and alleges that Opposer is estopped from claiming that the term "Timarron" is diluted such that it cannot be a registered trademark in that Opposer is currently seeking a federal trademark registration in which application for registration Opposer has disclaimed all elements except for the term "Timarron," as required by the trademark examiner. Specifically, as part of the proceedings of Opposer's Trademark Application, the trademark examining attorney issued the Office Action to Opposer, requiring, *inter alia*, that Opposer "disclaim the descriptive wording 'college prep' apart from the mark shown because it merely describes an ingredient, quality, characteristic, function, feature, purpose or use of [Opposer's] goods and/or services." Office Action to Opposer, p. 3-4, § Disclaimer. In response to said Office Action to Opposer, Opposer filed her Response to Office Action, wherein Opposer specifically disclaimed the phrase "college prep" as part of her trademark application, stating that "[n]o claim is made to the exclusive right to use college prep apart from the mark shown." Response to Office Action, p. 2, § Disclaimer.

Accordingly, Opposer is and should be judicially estopped from claiming that the term "Timarron" is diluted such that it cannot be a registered trademark.

17. Applicant affirmatively pleads the defense of judicial estoppel and alleges that Opposer is estopped from claiming that the term "Timarron" is so generic such that it cannot be a registered trademark in that Opposer is currently seeking a federal trademark registration in which application for registration Opposer has disclaimed all elements except for the term "Timarron," as required by the trademark examiner. Specifically, as part of the proceedings of Opposer's Trademark Application, the trademark examining attorney issued the Office Action to Opposer, requiring, *inter alia*, that Opposer "disclaim the descriptive wording 'college prep' apart from the mark shown because it merely describes an ingredient, quality, characteristic, function, feature, purpose or use of [Opposer's] goods and/or services." Office Action to Opposer, p. 3-4, § Disclaimer. In response to said Office Action to Opposer, Opposer filed her Response to Office Action, wherein Opposer specifically disclaimed the phrase "college prep" as part of her trademark application, stating that "[n]o claim is made to the exclusive right to use college prep apart from the mark shown." Response to Office Action, p. 2, § Disclaimer. Accordingly, Opposer is and should be judicially estopped from claiming that the term "Timarron" is so genereic that it cannot be a registered trademark.

18. Applicant affirmatively pleads the defense of waiver and alleges that Opposer is barred from disputing the validity of Applicant's State Trademark for the term "Timarron" in that Opposer has previously affirmatively waived such claims. Specifically, in the Prior Summary Judgment Motion, Opposer affirmatively stated, "Defendant waives all causes of action and relief not requested in this motion." Prior Summary Judgment Motion, p. 6, ¶ 22. Despite having affirmatively sought to invalidate Applicant's State Trademark in her Original

Answer and Counterclaim in the State Litigation, Opposer did not seek such invalidation of Applicant's State Trademark as part of her Prior Summary Judgment Motion and, accordingly, waived such relief and cause of action. *See* Prior Summary Judgment Motion, pp. 1-6. As such, Opposer has waived her ability to contest the validity of Applicant's State Trademark and is and should be barred from seeking such relief herein.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Applicant TIMARRON OWNERS ASSOCIATION, INC. respectfully prays that this Board deny Opposer BARBARA LOUISE MORTON D/B/A TIMARRON COLLEGE PREP's Opposition in its entirety and for such further relief, at law or in equity, to which Applicant may show itself entitled.

DATED: September 30, 2013

Respectfully submitted,
WILSON LEGAL GROUP P.C.

By: */s/*John T. Wilson

John T. Wilson
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ATTORNEYS FOR APPLICANT TIMARRON OWNERS ASSOCIATION, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on September 30, 2013, a true and correct copy of the foregoing was served on Warren V. Norred of The Law Office of Warren V. Norred, located at 200 E. Abram St., Ste. 300, Arlington, Texas 76010; facsimile no.: (817) 549-0161 in accordance with the Federal Rules of Civil Procedure.

/*s*/John T. Wilson
John T. Wilson

“EXHIBIT A”

Cause No. 096-260449-12

FILED
TARRANT COUNTY
2013 JUL 15 AM 10: 45
THOMAS A. WILDE
DISTRICT CLERK

TIMARRON OWNERS ASSOC., INC.	§	**IN THE DISTRICT COURT**
Plaintiff,	§	
	§	
v.	§	**96TH JUDICIAL DISTRICT**
	§	
BARBARA LOUISE MORTON D/B/A/	§	
TIMARRON COLLEGE PREP	§	**TARRANT COUNTY, TEXAS**
Defendant.	§	

DEFENDANT MORTON'S
TRADITIONAL AND NO EVIDENCE MOTION FOR SUMMARY JUDGMENT

Defendant Morton asks the court to sign a final summary judgment against Plaintiff on all claims under the traditional and no-evidence standards, and in favor of Defendant's Counter-Claims.

A. Introduction

1. Plaintiff sued Defendant Morton for:
   a. trademark infringement,
   b. unjust enrichment,
   c. tortious interference with prospective business relations, and
   d. unfair competition.

2. Defendant answered the suit with counterclaims for:
   a. declaratory judgment,
   b. disclaimer or cancellation of Plaintiff's Texas-registered mark,
   c. tortious interference with business relations,
   d. motion to transfer the case to Travis County, and
   e. attorney fees.

3. Discovery in this suit is governed by a Level 2 discovery control plan.

B. Defendant moves for a No-Evidence Summary Judgment against Plaintiff's Claims

4. Trademark Infringement - Plaintiff can show no evidence that Defendant used Plaintiff's registered mark in connection with the selling and offering for sale of goods that is likely to deceive or cause confusion or mistake as to the source or origin of said good, which is required to constitute infringement under TEX. BUS. & COMM. CODE § 16.26, because

Plaintiff's mark represents only insurance & financial products found in International Trademark Class 36 (see Plaintiff's Original Petition, Exhibit A), and Defendant uses the mark only to advertise tutoring services that no reasonable person could associate with Plaintiff's mark. Without evidence of likely confusion, the infringement claim must fail.

5. Unjust Enrichment - Generally, to sustain an action for unjust enrichment, there must be some basis for the law to infer a promise on the part of the defendant to the plaintiff to pay for the benefit or property, as discussed in *Berger Engineering Co. v. Village Casuals, Inc.*, 576 S.W.2d 649, 652 (Tex. Civ. App.--Beaumont 1978, no writ) ("there must exist between the parties an implication that the party performing the services would be paid by the party accepting and benefiting by them"). The absence of such a relationship between a coventurer and the other coventurer's father, for example, defeated a coventurer's claim of unjust enrichment against the father, even though the father took depreciation and operating losses stemming from the joint venture as deductions in his personal federal income tax return in *Shwiff v. Priest*, 650 S.W.2d 894, 902 (Tex. App.--San Antonio 1983, writ ref'd n.r.e.). Plaintiff can show no relationship between the Parties that will sustain a claim for unjust enrichment, so its claim must fail.

6. Tortious Interference With Prospective Business Relations - Plaintiff's claim must fail because Plaintiff can provide no evidence on *any* of its elements, as listed in *Faucette v. Chantos*, 322 S.W.3d 901, 914 (Tex. App.--Houston [14th Dist.] 2010, no pet. h.):
   a. There must be a "reasonable probability" that the plaintiff would have entered into the prospective relations. This must be a specific relationship.
   b. The defendant's conduct must have been independently tortious or wrongful.
   c. The defendant's interference must have resulted in actual harm or damage.

d. The defendant's acts of interference must have been the proximate cause of the plaintiff's damages.

e. When the interference is with prospective business relations that are the subject of competition, the plaintiff must show defendant's actions violated antitrust laws or caused third persons to refuse to deal with the plaintiff. *Caller-Times Pub. Co. v. Triad Communications*, 855 S.W.2d 18, 22 (Tex. App.--Corpus Christi 1993, no writ).

7. Unfair Competition - Among other elements, Plaintiff must prove that Defendant's use of the trade mark would be likely to confuse the public. *Thompson v. Thompson Air Conditioning & Heating, Inc.*, 884 S.W.2d 555, 558 (Tex. App.--Texarkana 1994, no writ). As the Parties provide very different services that have no relation, Defendant's use of the mark would not be likely to confuse the public.

8. Defendant attaches affidavits to this motion as Exhibit A to establish facts in support of this motion and incorporates the affidavits by reference.

C. Argument & Authorities Supporting Defendant's No-Evidence Motion

9. A court may grant a no-evidence motion for summary judgment if the movant can show that adequate time for discovery has passed and the nonmovant has no evidence to support one or more essential elements of its claim or defense. TEX. R. CIV. P. 166a(i).

10. An adequate time for discovery has passed.

11. Defendant is entitled to summary judgment because Plaintiff cannot, by any admissible evidence, demonstrate there is any evidence to support the specific elements as discussed *supra*, causing all five of Plaintiff's substantive claims to fail.

D. Defendant also moves for a Traditional Summary Judgment against Plaintiff's Claims

12. To prevail on summary judgment, a movant must conclusively establish all elements of its cause of action as a matter of law, TEX. R. CIV. P. 166a(c); Defendant herein incorporates the prior factual discussion in previous paragraphs, and adds the additional facts and argument in support of a traditional summary judgment as follows.

13. Facts - There is no reason to believe that consumers will confuse TIMARRON OWNER'S ASSOCIATION with TIMARRON COLLEGE PREP, as consumers are already aware of these two businesses and others in operation in the Southlake and surrounding area, along with many others, and would not see yet another business in the area using the word TIMARRON as connected to Plaintiff. As discussed in Exhibit A, the following commercial enterprises exist near Plaintiff:

    a. "The Courtyard at Timarron" is a current business in Southlake, TX.
    b. "The Villages at Timarron" is a current business in Southlake, TX.
    c. "Timarron Family Medicine, PA" is a current business in Southlake, TX.
    d. "Timarron at Creekside Park" is a current business in Southlake, TX.
    e. "Timarron Financial Services, LLC" is a current business in Southlake, TX.
    f. "Timarron Partners, Inc." is a current business in Grapevine, TX.
    g. "Timmaron LLC" is a current business in Richardson, TX.
    h. "Timarron Capital Inc" is a current business in Irving, TX.
    i. "Timarron Custom Homes, Inc." is a current business in Keller, TX.
    j. "Timarron Venture, Ltd." is a current business in Dallas, TX.
    k. "Timarron Venture One, L.C." is a current business in Dallas, TX.
    l. "Timarron Shopping Center, L.P." is a current business in Dallas, TX.
    m. "Timarron Mortgage Group Inc." is a current business in Dallas, TX.
    n. "Timarron Land Corporation" is a current business in Mesquite, TX.
    o. "Timarron Skin & Laser" is a current business in Southlake, TX.
    p. "Timarron Professional Eye" is a current business in Southlake, TX.
    q. "Timarron Golf Club Maintenance" is a current business in Southlake, TX.
    r. "Timarron Family Medicine" is a current business in Southlake, TX.
    s. "Village at Timarron 4120" is a current business in Southlake, TX.
    t. "Timarron Tiger Sharks" is a current business in Southlake, TX.

14. No similarity of Goods - Plaintiff's claims requires at least a reasonable possibility that consumer confusion might result from Defendant's use of the word "Timarron", but the services provided by TIMARRON OWNER'S ASSOCIATION is not remotely connected to the educational tutoring services provided by Defendant.
15. No Confusion - After recognizing that the services offered by the Plaintiff and Defendant are so different, and there are so many other commercial enterprises using the word "Timarron", no reasonable person could be confused as to think that one organization is responsible for all of the enterprises.
16. Affirmative Defense of Laches - Applicant has been using TIMARRON as part of her mark for years, along with many other entities in the area. Timarron home owners have employed Defendant's mentoring services for years. The delay in filing suit was not reasonable or excusable. Though the Lanham Act has no Statute of Limitations, federal courts often look to state law and apply the doctrine of laches accordingly; the Texas Deceptive Trade Practices Act has a statute of limitations of two years, which supports a finding of laches in this case. Plaintiff cannot lie in wait while Defendant builds her business and then try to force a business name change.
17. Affirmative Defense of Dilution - The word "TIMARRON" is used by many businesses in the Southlake, TX area. In the minds of consumers, the word "TIMARRON" is not attached to one particular business. The word "TIMARRON" is diluted; no single entity can claim exclusive rights to the word.
18. No Colorable Claim for Common Law Trademark Confusion - Plaintiff's claim to a common law trademark is limited to its full name "TIMARRON OWNER'S ASSOCIATION", by which it is known. Defendant does not use Plaintiff's common law mark.

19. Summary of Motion for Traditional Summary Judgment - Based on the above facts, Defendant asks the Court for a declaration that Defendant is not infringing Plaintiff's registered mark, and award fees in accordance with TEX. CIV. PRAC. & REM. CODE § 37, in accordance with the following paragraph.

E. Attorney Fees

20. Defendant is entitled, under the authority of TEX. CIV. PRAC. & REM. CODE § 37, to reasonable and necessary attorney fees that were incurred in the prosecution of this suit and contingent attorney fees in case of unsuccessful appeal, as supported by Exhibit B, including:
    a. Defendant is entitled to attorney fees incurred in the amount of **$7515.00.**
    b. If this case is unsuccessfully appealed to the court of appeals, Defendant is entitled to an additional $15,000; if to the Texas Supreme Court, an additional amount of $15,000.

F. Prayer

21. Defendant asks for summary judgment against Plaintiff with regard to all of its claims, and summary judgment on her claim for declaratory judgment and associated attorney fees, including pre- and post-judgment interest.
22. Defendant waives all causes of action and relief not requested in this motion.

Respectfully submitted,

By: _____

Warren V. Norred, Texas Bar No. 24045094
200 E. Abram, Suite 300, Arlington, TX 76010
Tel. (817) 704-3984, Fax. (817) 549-0161

CERTIFICATE OF SERVICE - I certify that on July 12, 2013, a true and correct copy of Defendant's MSJ was served by fax to John Wilson at 972.248.8080.

_____
Warren V. Norred

Cause No. 096-260449-12

TIMARRON OWNERS ASSOC., INC.	§	**IN THE DISTRICT COURT**
Plaintiff,	§	
	§	
v.	§	**96TH JUDICIAL DISTRICT**
	§	
BARBARA LOUISE MORTON D/B/A/	§	
TIMARRON COLLEGE PREP	§	**TARRANT COUNTY, TEXAS**
Defendant.	§	

EXHIBIT A
AFFIDAVIT OF DEFENDANT BARBARA MORTON

BEFORE ME, the undersigned authority, on this day personally appeared Barbara Morton, who swore on oath that the following facts are true:

"My name is Barbara Louis Morton. I am over 18 years of age, of sound mind, and fully competent to make this affidavit. I have personal knowledge of the facts stated herein and they are all true and correct."

1. "I did not intentionally use 'TIMARRON' in the name of my tutoring service in order to take advantage of Plaintiff's name, or any of the many businesses using the same word.
2. "The use of "TIMARRON" by itself cannot be used as a trademark because it is used by so many other people that it provides no identification of the provider of any good or service.
3. "I am familiar with the commercial enterprises in and around the Dallas-Fort Worth area. I have personally seen more than a dozen entities using the name "TIMARRON" in their title, and a search on the Internet revealed the following commercial entities in north Texas.
    a. The Courtyard at Timarron is a current business in Southlake, TX.
    b. The Villages at Timarron is a current business in Southlake, TX.
    c. Timarron Family Medicine, PA is a current business in Southlake, TX.
    d. Timarron at Creekside Park is a current business in Southlake, TX.
    e. Timarron Financial Services, LLC is a current business in Southlake, TX.
    f. Timarron Partners, Inc. is a current business in Grapevine, TX.
    g. Timmaron LLC is a current business in Richardson, TX.

h. Timarron Capital Inc is a current business in Irving, TX.
i. Timarron Custom Homes, Inc. is a current business in Keller, TX.
j. Timarron Venture, Ltd. is a current business in Dallas, TX.
k. Timarron Venture One, L.C. is a current business in Dallas, TX.
l. Timarron Shopping Center, L.P. is a current business in Dallas, TX.
m. Timarron Mortgage Group Inc. is a current business in Dallas, TX.
n. Timarron Land Corporation is a current business in Mesquite, TX.
o. Timarron Skin & Laser is a current business in Southlake, TX.
p. Timarron Professional Eye is a current business in Southlake, TX.
q. Timarron Golf Club Maintenance is a current business in Southlake, TX.
r. Timarron Family Medicine is a current business in Southlake, TX.
s. Village at Timarron 4120 is a current business in Southlake, TX.
t. Timarron Tiger Sharks is a current business in Southlake, TX."

4. "The number of businesses using the word "TIMARRON" in the geographic area indicates that even if the word "TIMARRON" was at one time a valid trademark, it is too diluted to be protectable as a mark today."
5. "Besides the commercial enterprises listed above, I have seen that the USPTO provided a Notice of Allowance for "TIMARRON CAPITAL, INC." as a standard character mark in 2006 for commercial loan services. Though that mark was eventually abandoned for lack of use, the USPTO did not see any conflict between "TIMARRON CAPITAL, INC" and "TIMARRON OWNERS ASSOC., INC."
6. No reasonable person would see all of the businesses with the name "TIMARRON" in them and think that they were all owned by the same organization. It's just a common name used commercially in this geographic area. If TIMARRON OWNERS ASSOC., INC. was the first organization to use "TIMARRON" and everyone else has used it in response, then it would be unfair to wait more than 20 years of use by two dozen other entities before reacting. None of the businesses using "TIMARRON" have hidden that fact.
7. "There is no likelihood of confusion between my tutoring service and TIMARRON OWNERS ASSOC., INC."

8. "There is no similarity of goods between TIMARRON OWNERS ASSOC., INC., which is a home owner association, and my organization, which provides tutoring services."
9. "I have performed tutoring services since 1999 with the word "TIMARRON" in my entity name; I have been doing business specifically as "TIMARRON COLLEGE PREP" since at least as far back as May 2008.
10. "When I was naming my company, I learned that 'TIMARRON' meant 'child of promise' in the Hopi language. I do not recall where or how I learned that, and I do not contend that I am some sort of expert on the Hopi language. But when I learned it, I chose to use the word in my company's name on that basis."
11. "I had to hire Warren Norred to defend me in this suit. I am paying him $300 per hour, and have accumulated legal fees as detailed in Exhibit B."

Barbara L. Morton

Barbara L. Morton

SUBSCRIBED AND SWORN TO BEFORE ME by July 11 Date: 2013

Wendy A Knutson

Notary Public, State of Texas

WENDY A KNUTSON
My Commission Expires
March 8, 2016

Cause No. 096-260449-12

TIMARRON OWNERS ASSOC., INC.	§	**IN THE DISTRICT COURT**
Plaintiff,	§	
	§	
v.	§	**96TH JUDICIAL DISTRICT**
	§	
BARBARA LOUISE MORTON D/B/A/	§	
TIMARRON COLLEGE PREP	§	**TARRANT COUNTY, TEXAS**
Defendant.	§	

EXHIBIT B
AFFIDAVIT OF WARREN NORRED IN SUPPORT OF ATTORNEY FEES

BEFORE ME, the undersigned authority, on this day personally appeared Warren V. Norred, who swore on oath that the following facts are true:

"My name is Warren V. Norred. I am over 18 years of age, of sound mind, and fully competent to make this affidavit. I have personal knowledge of the facts stated herein and they are all true and correct."

"Movant Barbara Louis Morton employed Norred Law, PLLC in connection with the matter on which this suit is based. Movant is entitled to recover the reasonable attorney's fees requested herein pursuant to the Declaratory Judgment Act, TEX. CIV. PRAC. & REM. CODE § 37. It is my opinion that these fees are reasonable attorney's fees based upon the following factors:

1. The novelty and difficulty of the issue involved, the skill required to provide the legal services properly, and my experience, reputation, and expertise in performing the services;
2. The time and labor involved to perform the legal services properly; and,
3. The fee customarily charged in the community for similar services."

"I charge $300 per hour for attorney time on this case. The estimated fees in this case are, to date, $6615.00, which includes the fees for the initial consult, writing of the answer, amended

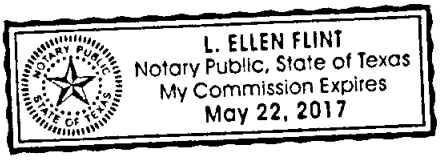
answer, handling discovery issues, preparation and service of the Motion for Summary Judgment to which this affidavit is attached. I anticipate another three hours to participate in the hearing on this motion and post-hearing issues, totaling **$7515.00.**

"In support of this accounting, I have attached a pre-bill to this affidavit as Attachment 1, reflecting a true and correct accounting of the tasks that my office has performed for this case."

"It is my opinion that attorney's fees in the amount of $5,000.00 would be a reasonable fee for the services required to perform post-judgment discovery and to satisfy the judgment by writ of execution and other procedures, $10,000.00 if appealed to the Court of Appeals, and $15,000.00 to the Supreme Court."

Warren V. Norred

SUBSCRIBED AND SWORN TO BEFORE ME by Warren V. Norred on July 12, 2013.



Notary Public, State of Texas

PRE-BILL

ATTACHMENT 1

Norred Law, PLLC

Bobbie Morton
476 Cherokee Ct. S
Keller, TX 76248

Client:	12-439	Bobbie Morton	
Matter:	12-439	Timarron v. Bobbie Morton - Trademark	
Matter Type:	LIT Litigation	**Originating Timekeeper:**	WVN
Comments :		**Responsible Timekeeper:**	WVN
File Open Date:	7/26/2012	**Billing Format Code:**	GEN
Billing Mode:	Hourly	**Bill Date:** 7/12/2013	**Fees/Costs Cut Date:** 7/12/2013
		Start Date: 1/1/1900	**Payments Cut Date:** 7/12/2013
Billing Frequency :	Monthly	**Last Bill:**	
Remarks:			**Type of Bill:** Regular

ACCOUNT AGING	Current	30 - 59 Days	60 - 89 Days	90 Days and Over
	$ 0.00	$ 0.00	$ 0.00	$ 0.00

Fees Billed to Date: $0.00 **Costs Billed to Date:** $0.00

Fees

Ticket Number	Date	Timekeeper	Description	Hours	Amount	
17	1/25/2012	WVN	Initial disc with BM re HOA dispute.	0.33	$99.00	BL
10	4/4/2012	WVN	Email exchange with BM; decided not to send letter.	0.33	$99.00	BL
19	4/14/2012	WVN	Email with BM on decision not to get an agreement with HOA.	0.10	$30.00	BL
18	5/29/2012	WVN	Email disc with BM about new lease at Courtyard at Timarron.	0.17	$51.00	BL
11	8/22/2012	WVN	Rec'd petition.	0.50	$150.00	BL
1	8/23/2012	WVN	Rec'd rest of Pet.	0.17	$51.00	BL
2	8/24/2012	WVN	Rec'd evidence from BM, number of emails with examples of other Timarron companies.	0.50	$150.00	BL
3	8/25/2012	WVN	Rec'd additional evidence of Timarron used.	0.17	$51.00	BL
4	8/31/2012	WVN	Begin drafting answer.	0.50	$150.00	BL
5	9/6/2012	WVN	Complete Answer. Added counter-claims of tortious interference.	3.50	$1,050.00	BL
6	9/7/2012	WVN	File and serve answer	1.00	$300.00	BL
7	9/8/2012	WVN	Write Rule 11 for email and email to JW. Examined national trademark.	0.50	$150.00	BL
8	10/12/2012	WVN	Rec'd Timarron's answer.	0.50	$150.00	BL
20	11/27/2012	WVN	Wrote and filed response to Notice of Opposition.	2.00	$600.00	BL
21	12/15/2012	WVN	Sent discovery to Wilson via email.	0.25	$75.00	BL
9	1/11/2013	WVN	Wrote & served Discovery to HOA.	2.00	$600.00	BL
12	5/15/2013	WVN	Rec'd discovery requests from HOA.	0.25	$75.00	BL

Continued On Next Page

PRE-BILL

Norred Law, PLLC

Client: 12-439 Bobbie Morton
Matter: 12-439 Timarron v. Bobbie Morton - Trademark

13	5/16/2013	WVN	Status to client. Discussion of opposition to HOA's marks.	0.25	$75.00	BL
14	5/16/2013	WVN	Email disc re: deposition of BM, set for July 15.	0.25	$75.00	BL
15	5/17/2013	WVN	Disc re: trademark case, opposition case.	0.75	$225.00	BL
16	5/17/2013	WVN	BM sent out req. discovery on 12/17, followed with phone discussion.	0.83	$249.00	BL
23	5/22/2013	EF	Emailed Admissions to Bobbie. Awaiting responses.	0.00	$0.00	BL
26	5/30/2013	EF	Prepared Admissions Responses.	1.25	$112.50	BL
24	5/31/2013	EF	Drafted Interrogatory answers.	1.75	$157.50	BL
25	5/31/2013	WVN	Instruct and draft discovery.	0.75	$225.00	BL
28	6/3/2013	EF	Drafted Production responses/emailed Bobbie/LM on Bobbie's cell.	0.75	$67.50	BL
27	6/4/2013	EF	Served Discovery Responses (Int, Adm, & Prod).	0.25	$22.50	BL
32	6/17/2013	WVN	Rec'd Motion to Compel. No hrg set yet.	0.25	$75.00	BL
30	7/3/2013	WVN	Draft MSJ.	3.00	$900.00	BL
29	7/5/2013	WVN	Finalize, file, serve MSJ.	2.00	$600.00	BL
			Total Hours:	24.85		
			Billable Hours:	24.85	$6,615.00	

Timekeeper Summary

Timekeeper EF worked 4.00 hours at $90.00 per hour, totaling $360.00.
Timekeeper WVN worked 20.85 hours at $300.00 per hour, totaling $6,255.00.

Prior Balance:	$0.00
Payments Received:	$0.00
Current Fees:	$6,615.00
Sales Tax on Fees:	$0.00
Advanced Costs:	$0.00
Sales Tax on Costs:	$0.00
Administrative Cost:	$0.00
Late Charges:	$0.00
Additional Retainer Due:	$0.00
	$0.00
TOTAL AMOUNT DUE:	**$6,615.00**

Fees and Costs [ ] Fees Only [ ] Costs Only [ ] Don't Bill [ ]

“EXHIBIT B”

To:	Morton, Barbara (docket@iplaw.pro)
Subject:	U.S. TRADEMARK APPLICATION NO. 85516680 - TIMARRON COLLEGE PREP - BMRT-28480TM
Sent:	4/21/2012 11:14:47 AM
Sent As:	ECOM116@USPTO.GOV
Attachments:	Attachment - 1 Attachment - 2 Attachment - 3 Attachment - 4 Attachment - 5 Attachment - 6 Attachment - 7 Attachment - 8 Attachment - 9 Attachment - 10 Attachment - 11 Attachment - 12 Attachment - 13 Attachment - 14 Attachment - 15 Attachment - 16

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

APPLICATION SERIAL NO. 85516680

MARK: TIMARRON COLLEGE PREP

85516680

CORRESPONDENT ADDRESS:
MARK W HANDLEY
HANDLEY LAW FIRM, PLLC
PO BOX 97
GRAPEVINE, TX 76099-0097

CLICK HERE TO RESPOND TO THIS LETTER:
http://www.uspto.gov/trademarks/teas/response_forms.jsp

APPLICANT: Morton, Barbara

CORRESPONDENT'S REFERENCE/DOCKET NO:
BMRT-28480TM

CORRESPONDENT E-MAIL ADDRESS:
docket@iplaw.pro

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 4/21/2012

TEAS PLUS APPLICANTS MUST SUBMIT DOCUMENTS ELECTRONICALLY OR SUBMIT FEE: Applicants who filed their application online using the reduced-fee TEAS Plus application must continue to submit certain documents online using TEAS, including responses to Office actions. *See* 37 C.F.R. §2.23(a)(1). For a complete list of these documents, see TMEP §819.02(b). In addition, such applicants must accept correspondence from the Office via e-mail throughout the examination process and must maintain a valid e-mail address. 37 C.F.R. §2.23(a)(2); TMEP §§819, 819.02(a). TEAS Plus applicants who do not meet these requirements must submit an additional fee of $50 per international class of goods and/or services. 37 C.F.R. §2.6(a)(1)(iv); TMEP §819.04. In appropriate situations and where all issues can be resolved by amendment, responding by telephone to authorize an examiner's amendment will not incur this additional fee.

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

Search Results

The trademark examining attorney has searched the Office's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; *see* 15 U.S.C. §1052(d).

Identification of Goods

The identification of goods is indefinite and must be clarified because it includes the open-ended wording "**including**." *See* TMEP §§1402.01, 1402.03(a). The identification must be specific and all-inclusive. Therefore, this wording should be deleted and replaced with "**namely**." **This applies to each instance where "including" appears in the identification.**

Applicant may amend the identification to list only those items that are within the scope of the goods set forth in the application or within the scope of a previously accepted amendment to the identification. *See* 37 C.F.R. §2.71(a); TMEP §§1402.06 *et seq.*, 1402.07.

Disclaimer

Applicant must disclaim the descriptive wording "college prep" apart from the mark as shown because it merely describes an ingredient, quality, characteristic, function, feature, purpose or use of applicant's

goods and/or services. *See* 15 U.S.C. §§1052(e)(1), 1056(a); *In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005); *In re Gyulay*, 820 F.2d 1216, 1217-18, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987); TMEP §§1213, 1213.03(a).

Specifically, the attached evidence shows that "college prep" describes a school that helps to prepare students for college. The applicant's identification of services and specimen show that the applicant operates such a school. Thus, "college prep" is descriptive of the services. As additional evidence, copies of registrations for similar services that have disclaimed this wording are attached.

A "disclaimer" is a statement that applicant does not claim exclusive rights to an unregistrable component of a mark; it does not affect the appearance of the mark. TMEP §1213. An unregistrable component of a mark includes wording and designs that are merely descriptive or generic of the services, and is wording or an illustration that others would need to use to describe or show their services in the marketplace. 15 U.S.C. §1052(e); *see* TMEP §§1209.03(f), 1213.03 *et seq*.

Applicant may submit the following standardized format for a disclaimer:

No claim is made to the exclusive right to use "college prep" apart from the mark as shown.

TMEP §1213.08(a)(i); *see In re Owatonna Tool Co.*, 231 USPQ 493 (Comm'r Pats. 1983).

/Doritt Carroll/
Trademark Examining Attorney
Law Office 116
Phone: (571) 272-9138
doritt.carroll@uspto.gov
www.uspto.gov/teas/index.html

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/mailing date before using TEAS, to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at http://tarr.uspto.gov/. Please keep a

copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see http://www.uspto.gov/trademarks/process/status/.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at http://www.uspto.gov/teas/eTEASpageE.htm.

DESIGN MARK

Serial Number
78699145

Status
REGISTERED

Word Mark
NEXT STEP COLLEGE PREP

Standard Character Mark
Yes

Registration Number
3336432

Date Registered
2007/11/13

Type of Mark
SERVICE MARK

Register
PRINCIPAL

Mark Drawing Code
(4) STANDARD CHARACTER MARK

Owner
Next Step Publishing, Inc. CORPORATION NEW YORK 86 W. Main St. Victor NEW YORK 14564

Goods/Services
Class Status -- ACTIVE. IC 041. US 100 101 107. G & S: Educational services, namely, conducting programs in the field of college preparatory courses provided in a summer camp environment. First Use: 2007/03/00. First Use In Commerce: 2007/03/00.

Prior Registration(s)
2222157;3067634

Disclaimer Statement
NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "COLLEGE PREP" APART FROM THE MARK AS SHOWN.

Filing Date
2005/08/24

Examining Attorney
RITTNER, HANNO

Attorney of Record
Peter Nussbaum

NEXT STEP COLLEGE PREP

DESIGN MARK

Serial Number
78904935

Status
REGISTERED

Word Mark
FLEX COLLEGE PREP

Standard Character Mark
Yes

Registration Number
3229639

Date Registered
2007/04/17

Type of Mark
SERVICE MARK

Register
PRINCIPAL

Mark Drawing Code
(4) STANDARD CHARACTER MARK

Owner
Flex College Resource Centers CORPORATION CALIFORNIA Suite 201 1072 South De Anza Blvd. San Jose CALIFORNIA 95129

Goods/Services
Class Status -- ACTIVE. IC 041. US 100 101 107. G & S: Education services, namely, providing test preparation, enrichment courses, homework tutorials and essay editing in the fields of writing, mathematics, science and SAT college preparation; and providing college admissions counseling. First Use: 2001/12/01. First Use In Commerce: 2001/12/01.

Disclaimer Statement
NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "college prep" APART FROM THE MARK AS SHOWN.

Filing Date
2006/06/09

Examining Attorney
AYALA, LOURDES

Attorney of Record
Marie G. Quashnock

FLEX COLLEGE PREP

DESIGN MARK

Serial Number
78904961

Status
REGISTERED

Word Mark
F FLEX COLLEGE PREP

Standard Character Mark
No

Registration Number
3241899

Date Registered
2007/05/15

Type of Mark
SERVICE MARK

Register
PRINCIPAL

Mark Drawing Code
(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner
Flex College Resource Centers CORPORATION CALIFORNIA Suite 201 1072 South De Anza Blvd. San Jose CALIFORNIA 95129

Goods/Services
Class Status -- ACTIVE. IC 041. US 100 101 107. G & S: Education services, namely, providing test preparation, enrichment courses, homework tutorials and essay editing in the fields of writing, mathematics, science and SAT college preparation; and providing college admissions counseling. First Use: 2001/12/01. First Use In Commerce: 2001/12/01.

Disclaimer Statement
NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "college prep" APART FROM THE MARK AS SHOWN.

Colors Claimed
The color(s) blue, black and white is/are claimed as a feature of the mark.

Part of Mark in Color
The mark consists of a blue circle with a stylized letter "F", above

the words FLEX COLLEGE PREP in black letters, together with two black lines above and below the word FLEX. The color blue appears in the circle and stylized letter F. The color black appears in the words FLEX COLLEGE PREP and the two black lines. The color white appears in the background.

Filing Date
2006/06/09

Examining Attorney
AYALA, LOURDES

Attorney of Record
Marie G. Quashnock

FLEX

COLLEGE PREP

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Dictionary.com

college-preparatory

Search

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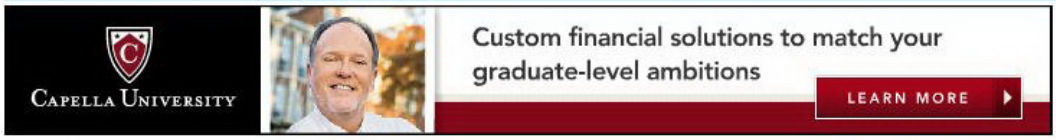
Related Searches

Lincoln college p...
Gaston college
Jones college pre...

Nearby Words

college station
college student
college try
college-prepara...
college-radio
college-try
collegepreparat...

Did you know: Experts use this term to describe a fantasy world invented by children. **What is it?**



college-preparatory

[kol-ij-pri-**pair**-*uh*-tawr-ee, -tohr-ee] Like +1

Private High School in VA
www.cortona-virginia.com/HighSchool
Take The Lead In Your Childs Future Surround Them With Knowledge!

College Prep School
www.rma.edu/
Military and **College Prep** School. Co-Ed. Grades 6-12. Front Royal VA.

The Nora School
www.nora-school.org/
A small **college-prep** high school for students who learn differently.

Ads

Word Dynamo Rating For College-preparatory

People who can define **College-preparatory** may know **45,520** words, as many as a **12th grader.**

How many words do you know?

col·lege-pre·par·a·to·ry [kol-ij-pri-**pair**-*uh*-tawr-ee, -tohr-ee] Show IPA

adjective

adjective
preparing a student for academic work at the college level.

College Preparatory
www.laurelsprings.com/
Laurel Springs® Accredited Private Online K-12 School. Learn About Us.
Ad

$0 Intro Annual Fee for the first year, and earn 25,000 Membership Rewards® Points
APPLY NOW
Terms, Conditions, and Restrictions apply.

Dictionary.com Unabridged
Based on the Random House Dictionary, © Random House, Inc. 2012.
Cite This Source | Link To **college-preparatory**

Related Words
preparatory school
MORE

Matching Quote
"I wondered just how far women would permit this to go."
-David Duncan
MORE

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http://webcache.googleusercontent.com/search?q=cache:G9glWFRWs3UJ:en.wikipedia.org/wiki/University-preparatory_school+college+prep+definition&cd=4&hl=en&ct=clnk&gl=us 04/21/2012 10:48:21 AM

This is Google's cache of http://en.wikipedia.org/wiki/University-preparatory_school. It is a snapshot of the page as it appeared on Apr 14, 2012 03:30:02 GMT. The current page could have changed in the meantime. Learn more

These search terms are highlighted: college prep

University-preparatory school

From Wikipedia, the free encyclopedia

"College Prep" redirects here. For the high school in Oakland, CA, see The College Preparatory School.

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. *(May 2010)*

A **university-preparatory school** or **college-preparatory school** (also known as **tertiary preparation** and usually abbreviated to **preparatory school**, **college prep school**, **tertiary prep**, or **prep school**) is a secondary school, usually private, designed to prepare students for a **college** or university education. Some schools will also include a junior, or elementary school. This designation is most common in North America.

In many parts of Europe, such as Germany, the countries of former Austria-Hungary, the Netherlands and Scandinavia, secondary schools specializing in **college**-preparatory education are called gymnasia and/or in some countries athenaea. **College prep** schools are usually a secondary school along with work for a host school, to help get into a desired **college**. Most students attend a **college**-preparatory school but also accomplish the host school's work for a high school diploma.

Contents [hide]

1 North America
1.1 United States and Canada
2 Europe
2.1 France
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2.3 Italy
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2.5 Spain
2.6 United Kingdom
3 Asia
3.1 Korea
3.2 Pakistan
3.3 Philippines
3.4 Singapore
3.5 Hong Kong
4 See also
5 References

6 Bibliography
7 External links

North America [edit]

United States and Canada [edit]

College preparatory schools in the United States and Canada, commonly referred to as ***prep*** *schools*, are private independent secondary schools, funded by tuition fees and philanthropic donations and governed by independent boards of trustees. **Prep** schools may be day schools or boarding schools, or both, and may be co-educational or single-sex; however in both the United States and Canada, day schools are more common than boarding, and co-educational schools are more common than single-sex.

The schools generally address all aspects of the "well rounded" person. This honors the classical ideal that is expressed in the Latin phrase, "*Mens sana in corpore sano*" ("A sound mind in a sound body") by providing rigorous academics and a strong emphasis on athleticism (see The Ten Schools Admissions Organization, Independent School Leagues or Ivy Preparatory School League). Many **prep** schools require students to participate in one or more of the school's sports team and some require students to participate in a sport during all three athletic seasons. **Prep** schools also provide many other activities, such as elaborate plays and musicals, and many other clubs and leadership opportunities that prepare the students for **college**.

Fewer than 1% of students enrolled in school in the United States attend an independent private preparatory school, a small fraction compared with the 9% who attend parochial schools and 88% who attend public schools. Some independent preparatory schools are affiliated with a particular religion or denomination, although unlike parochial schools, independent preparatory schools are not governed by a religious organization, and students are usually not required to receive instruction in one particular religion. While independent **prep** schools in the United States are not subject to government oversight or regulation, they are accredited by one of the six regional accreditation agencies for educational institutions.

Columbia International **College** is the largest university-**prep** school in Canada.

Europe [edit]

France [edit]

In France, certain private or public secondary schools offer special post-secondary classes called classes préparatoires, equivalent in level to the first years of university, for students who wish to prepare for the competitive exams for the entrance in the Grandes écoles. French classes préparatoires are exceptionally intensive and selective, taking only the very best students graduating from high schools but generally not charging fees.

Germany [edit]

Main article: Gymnasium (Germany)

Evangelical Seminaries of Maulbronn and Blaubeuren - church and courtyard

A Gymnasium (plural: Gymnasien) is a particular type of school in Germany and other countries in Europe, with the goal to prepare its pupils to enter a university. According to the PISA examination the Gymnasium is the best school form in the world, because it is by far the number one in the PISA league table.[1] However some hold the opinion that "that this success came at the cost of a catastrophe in the Hauptschulen".[2]

The γυμνάσιον (gymnasion) of Ancient Greece was a place for physical and eventually also intellectual education of young men. The later meaning of intellectual education persisted in German and other languages, whereas in English, the older meaning of physical education was retained. The German Gymnasien are selective and competitive schools. They enroll students after completing 4th or 6th grade (depending on the "Bundesland", i.e., state) and prepare them

after completing 4th or 6th grade (depending on the "Bundesland", i.e., state) and prepare them for **college**. The vast majority of Gymnasien is public and does not charge tution fees. Article 7, Paragraph 4 of the German constitution, forbids segregation of students according to the means of their parents (the so called Sondierungsverbot). Therefore, most private Gymnasien have rather low tuition fees and/or offer scholarships.

Recently, there has been some debate about the Gymnasium and some people put forward the opinion that the Gymnasien are not enrolling enough students from non-east-Asian immigrant families and from working class and lower class families. As a result of that discussion, the Senate of Berlin ruled that the Gymnasien should only be able to pick 70% to 65% of their students, the other places at the Gymnasien are to be allocated by lottery. Every child will be able to enter the lottery, no matter how he or she performed in primary school. It is hoped that this policy will increase the number of lower and working class students atteding a Gymnasium.[3]

Germany's oldest Gymnasien include Gymnasium Paulinum (founded around 797), Gymnasium Theodorianum (founded in 799) and Gymnasium Carolinum (founded in 804).

Italy [edit]

In Italy, there are several kinds of high schools, both public and private, whose curriculum has as a primary aim the preparation for university. These are called "Liceo", plural "Licei". Other kind of high schools, usually referred to as "technical institutes", also offer the possibility to attain university after graduation, although they also form students to have some kind of professional prospective after graduation. There are four main types of Liceo: Liceo Classico (focusing on classical subjects, such as Italian, Latin and Ancient Greek studies), Liceo Scientifico (lacking Greek to devote approximately equal time to the remaining classical subjects and scientific subjects), Liceo Artistico (focusing on artistic subjects as Art History and Drawing and Liceo Linguistico (focusing on foreign languages such as French, German, Spanish, Chinese: two of these are added to the study of the mandatory language, English).

Netherlands [edit]

Main article: Education in the Netherlands

In the Netherlands, the official terminology is *voorbereidend wetenschappelijk onderwijs* (or *vwo*) meaning "preparatory academic education". The vwo is divided into the atheneum and gymnasium. These are identical in level of education, except that the gymnasium includes Latin and Ancient Greek as compulsory subjects in the first few years, and a pupil must include at least one of these classical languages in his final exams. In the Netherlands, education is usually public.

Spain [edit]

The International Baccalaureate's Diploma Programme in Spain was created in 1968. It is a demanding pre-university course of study that leads to examinations. It is designed for highly motivated secondary school students aged 16 to 19. The programme has earned a reputation for rigorous assessment, giving IB diploma holders access to the world's leading universities. The Diploma Programme is rigorous and is world renown. Each student's performance is measured against well-defined levels of achievement. These are consistent from one examination session to the next and are applied equally to all schools. The International Baccalaureate has shown that students are well prepared for university work. They are accepted by universities in more than 110 countries.

One school is the Academy School in the Balearic Islands, which is a member of the National Association of British Schools in Spain. It is inspected regularly both by British Inspectors and Inspectors from the Spanish Ministry of Education and Science. Among other prestigious schools are the Hastings School in Madrid, the Caxton **College** in Valencia, and the Bellver International **College** in Mallorca.

The International Preparatory Schools are ranked and recognised by the Spanish Ministry of Education and Science (MEC) and all teach a minimum level of Spanish language, science, literature, geography and history. The curriculum also varies from one international school to another.

United Kingdom [edit]

*Main article: **Prep** school (UK)*

In the United Kingdom, the concept of a university preparatory school has never existed as such. In British usage a preparatory school,

more commonly "**prep** school", is an independent private fee paying school that a student attends prior to the move to senior school, and thus has nothing directly to do with university entrance. The only institutions specialising in university entrance are crammers for (usually) privately educated pupils who have failed to gain entrance to their university of choice directly from school, and whose parents are willing to pay for a year of specialist tuition to give them a second chance, but very few students attend these as a first choice option.

Historically independent secondary schools ("public schools" in British usage), and grammar schools (mainly charitable until the 1944 Act, then mainly state sector) would prepare some or most of their pupils for university entrance, although this was not explicitly their mission. With the introduction of comprehensive schools in the 1960s and 1970s, all state secondary schools had a responsibility, at least in theory, to prepare their more academically able pupils for university entrance, unless they were located in one of the relatively small number of places where state secondary schools only catered for under 16s, and sixth form colleges were responsible for the "Sixth Form" education of 16–18 year olds. In practice, in the late 20th century, some comprehensives in working class areas actually sent very few students to university. In the early 21st century, with the expansion of university education, most secondary schools are sending significant numbers of pupils to universities: a school that does not do so risks being classified as a "failing school" and closed or placed in special measures.

Asia [edit]

Korea [edit]

In South Korea, many high schools designated as foreign language high or science high are often considered university-preparatory schools.

- Korean Minjok Leadership Academy
- Myungduk Foreign Language High School
- Daewon Foreign Language High School
- Seoul Science High School
- Hankuk Academy of Foreign Studies

Pakistan [edit]

Aitchison **College**, Karachi Grammar School and Habib Public School are a notable preparatory schools in Pakistan.

Philippines [edit]

The Brent International School and similar schools were founded by Americans upon the American **college** preparatory model in the early 20th Century during the country's American colonial period.

Singapore [edit]

Main article: Education in Singapore

In Singapore, **prep** schools for universities are known as "junior colleges".

Hong Kong [edit]

In Hong Kong, some schools offer the 2-year Advanced-level Matriculation Course particularly, such as Hang Seng School of Commerce, Po Leung Kuk Vicwood K. T. Chong Sixth Form **College**.

See also [edit]

- International Baccalaureate
- Remedial education

Schools portal

References [edit]

1. ^ Wetzlar Kurier. 6. Januar 2006. "Einheitsschulen — das falsche Rezept für PISA"
2. ^ Jan-Martin Wiarda: "A new class of education". Guardian. 21 September 2009 [1]
3. ^ Heinz-Peter Meidinger: "Berliner Schullotterie". Profil 07-08/2009 (August 24th. 2009)

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[edit]

- Adam Hochschild, *Finding the Trapdoor: Essays, Portraits, Travels* (Syracuse University Press, 1997), "World on a Hilltop," pp. 123–139.

External links

[edit]

- The Independent Schools Directory (Global)
- National Association of Independent Schools
- Independent Schools Association of the Southwest
- Canadian Association of Independent Schools
- The Association of Boarding Schools
- Boarding School Review

VTE	School types		
by educational stage	Early childhood		Preschool • Pre-K • Kindergarten • Nursery school
	Primary education		Elementary school • Primary school
	Secondary education		Adult high school • Comprehensive school • Grammar school • Gymnasium • High school • Lyceum • Middle school • Secondary school • Sixth form **college** • **University-preparatory school** • Upper school
	Tertiary education	Higher education	Academy • **College** • Community **college** • Graduate school • Institute of technology • Junior **college** • University • Upper division **college** • Vocational university
			Continuing education • Further education • Vocational school
by funding / eligibility			Academy (England) • Charter school • Comprehensive school • For-profit education • Free education • Free school (England) • Independent school • Independent school (United Kingdom) (Preparatory school (United Kingdom) • Public school (United Kingdom)) • Private school • Selective school • State or public school
by style of education			Adult education • Alternative school • Boarding school • Day school • Folk high school • Free skool • Homeschool • International school • K-12 • Madrasah • Magnet school • Montessori school • Parochial school • Virtual school
by scope			**College** preparatory • Compulsory education • Democratic education • Gifted education • Remedial education • Vocational education
Category Commons			

Categories: School types | University-preparatory schools | High schools and secondary schools

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To:	Morton, Barbara (docket@iplaw.pro)
Subject:	U.S. TRADEMARK APPLICATION NO. 85516680 - TIMARRON COLLEGE PREP - BMRT-28480TM
Sent:	4/21/2012 11:14:49 AM
Sent As:	ECOM116@USPTO.GOV
Attachments:	

IMPORTANT NOTICE REGARDING YOUR U.S. TRADEMARK APPLICATION

USPTO OFFICE ACTION HAS ISSUED ON 4/21/2012 FOR SERIAL NO. 85516680

Please follow the instructions below to continue the prosecution of your application:

TO READ OFFICE ACTION: Click on this **link** **or** go to **http://portal.uspto.gov/external/portal/tow** and enter the application serial number to **access** the Office action.

PLEASE NOTE: The Office action may not be immediately available but will be viewable within 24 hours of this e-mail notification.

RESPONSE IS REQUIRED: You should carefully review the Office action to determine (1) how to respond; and (2) the applicable **response time period**. Your response deadline will be calculated from **4/21/2012** (or sooner if specified in the office action).

Do NOT hit "Reply" to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System Response Form.

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“EXHIBIT C”

PTO Form 1957 (Rev 9/2005)
OMB No. 0651-0050 (Exp. 05/31/2014)

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85516680
LAW OFFICE ASSIGNED	LAW OFFICE 116
MARK SECTION (no change)	
GOODS AND/OR SERVICES SECTION (current)	
INTERNATIONAL CLASS	041
DESCRIPTION	
Conducting after school tutoring programs; Education services, namely, providing tutoring in the field of mathematics, sciences, social studies, language arts and foreign languages; Education services, namely providing tutoring in the fields of curriculum for all educational levels, including primary and secondary grades, and college level, including undergraduate, graduate and post-graduate levels; Education services, namely providing tutoring in the fields of taking academic entrance examinations and standardized tests; Providing courses of instruction at the primary and secondary levels, and college levels, including undergraduate, graduate and post-graduate level; Teaching in the field of mathematics, sciences, social studies, language arts and foreign languages	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 05/31/2008
FIRST USE IN COMMERCE DATE	At least as early as 05/31/2008
GOODS AND/OR SERVICES SECTION (proposed)	
INTERNATIONAL CLASS	041
TRACKED TEXT DESCRIPTION	
Conducting after school tutoring programs; Education services, namely, providing tutoring in the field of mathematics, sciences, social studies, language arts and foreign languages; ~~Education services, namely providing tutoring in the fields of curriculum for all educational levels, including primary and secondary grades, and college level, including undergraduate, graduate and post-graduate levels~~; Education services, namely providing tutoring in the fields of curriculum for all educational levels, namely primary and secondary grades, and college level, namely undergraduate, graduate and post-graduate levels; Education services, namely providing tutoring in the fields of taking academic entrance examinations and standardized tests; ~~Providing courses of instruction at the primary and secondary levels, and college levels, including undergraduate, graduate and post-graduate level~~; Providing courses of instruction at the primary and secondary levels, and college levels, namely undergraduate, graduate and post-graduate level; Teaching in the field of mathematics, sciences, social studies, language arts and	

foreign languages	
FINAL DESCRIPTION	
Conducting after school tutoring programs; Education services, namely, providing tutoring in the field of mathematics, sciences, social studies, language arts and foreign languages; Education services, namely providing tutoring in the fields of curriculum for all educational levels, namely primary and secondary grades, and college level, namely undergraduate, graduate and post-graduate levels; Education services, namely providing tutoring in the fields of taking academic entrance examinations and standardized tests; Providing courses of instruction at the primary and secondary levels, and college levels, namely undergraduate, graduate and post-graduate level; Teaching in the field of mathematics, sciences, social studies, language arts and foreign languages	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 05/31/2008
FIRST USE IN COMMERCE DATE	At least as early as 05/31/2008
ADDITIONAL STATEMENTS SECTION	
DISCLAIMER	No claim is made to the exclusive right to use college prep apart from the mark as shown.
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Mark Handley/
SIGNATORY'S NAME	Mark W Handley, Esq.
SIGNATORY'S POSITION	Attorney of Record, Member State Bar of Texas
SIGNATORY'S PHONE NUMBER	972-518-1713
DATE SIGNED	08/27/2012
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Aug 27 09:47:15 EDT 2012
TEAS STAMP	USPTO/ROA-173.71.42.71-20 120827094715387351-855166 80-490e828e4b7a12b5d8af7b cd0aad05c1619-N/A-N/A-201 20827094017800973

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. **85516680** has been amended as follows:

CLASSIFICATION AND LISTING OF GOODS/SERVICES
Applicant proposes to amend the following class of goods/services in the application:
Current: Class 041 for Conducting after school tutoring programs; Education services, namely, providing tutoring in the field of mathematics, sciences, social studies, language arts and foreign languages; Education services, namely providing tutoring in the fields of curriculum for all educational levels, including primary and secondary grades, and college level, including undergraduate, graduate and post-graduate levels; Education services, namely providing tutoring in the fields of taking academic entrance examinations and standardized tests; Providing courses of instruction at the primary and secondary levels, and college levels, including undergraduate, graduate and post-graduate level; Teaching in the field of mathematics, sciences, social studies, language arts and foreign languages
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 05/31/2008 and first used in commerce at least as early as 05/31/2008, and is now in use in such commerce.

Proposed:
Tracked Text Description: Conducting after school tutoring programs; Education services, namely, providing tutoring in the field of mathematics, sciences, social studies, language arts and foreign languages; ~~Education services, namely providing tutoring in the fields of curriculum for all educational levels, including primary and secondary grades, and college level, including undergraduate, graduate and post-graduate levels~~; Education services, namely providing tutoring in the fields of curriculum for all educational levels, namely primary and secondary grades, and college level, namely undergraduate, graduate and post-graduate levels; Education services, namely providing tutoring in the fields of taking academic entrance examinations and standardized tests; ~~Providing courses of instruction at the primary and secondary levels, and college levels, including undergraduate, graduate and post-graduate level~~; Providing courses of instruction at the primary and secondary levels, and college levels, namely undergraduate, graduate and post-graduate level; Teaching in the field of mathematics, sciences, social studies, language arts and foreign languages

Class 041 for Conducting after school tutoring programs; Education services, namely, providing tutoring in the field of mathematics, sciences, social studies, language arts and foreign languages; Education services, namely providing tutoring in the fields of curriculum for all educational levels, namely primary and secondary grades, and college level, namely undergraduate, graduate and post-graduate levels; Education services, namely providing tutoring in the fields of taking academic entrance examinations and standardized tests; Providing courses of instruction at the primary and secondary levels, and college levels, namely undergraduate, graduate and post-graduate level; Teaching in the field of mathematics, sciences, social studies, language arts and foreign languages
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 05/31/2008 and first used in commerce at least as early as 05/31/2008, and is now in use in such commerce.
ADDITIONAL STATEMENTS

Disclaimer
No claim is made to the exclusive right to use college prep apart from the mark as shown.

SIGNATURE(S)
Response Signature
Signature: /Mark Handley/ Date: 08/27/2012
Signatory's Name: Mark W Handley, Esq.
Signatory's Position: Attorney of Record, Member State Bar of Texas

Signatory's Phone Number: 972-518-1713

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 applicant'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 applicant in this matter: (1) the applicant 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 applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant'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.

Serial Number: 85516680
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TEAS Stamp: USPTO/ROA-173.71.42.71-20120827094715387
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