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Filing date: **07/31/2014**

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

Proceeding	91215449
Party	Plaintiff Lumen Water, Inc.
Correspondence Address	DYAN M HOUSE CARTER SCHOLER ARNETT HAMADA & MOCKLER PLLC 8150 N CENTRAL EXPRESSWAY, 5TH FLOOR DALLAS, TX 75206 UNITED STATES dhouse@carterscholer.com, trademarks@carterscholer.com
Submission	Opposition/Response to Motion
Filer's Name	Dyan M. HOUSE
Filer's e-mail	dhouse@carterscholer.com, trademarks@carterscholer.com
Signature	/Dyan House/
Date	07/31/2014
Attachments	LUME01-00002 Response to Motion for Leave to Amend.pdf(125218 bytes ) EX A-1.pdf(5929830 bytes ) EX A-2.pdf(1631046 bytes ) EX B.pdf(1420811 bytes ) EX C.pdf(47536 bytes )

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

Lumen Water, Inc.,  
Opposer,

v.

Nuclear Wine Company LLC,  
Applicant.

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Opposition No. 91215449

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

**RESPONSE TO APPLICANT’S MOTION FOR LEAVE TO FILE AMENDED  
ANSWER TO ADD COUNTERCLAIM**

Lumen Water, Inc. (“*Opposer*”) hereby timely opposes Applicant’s Motion for Leave to File Amended Answer to Add Counterclaim (“*Applicant’s Motion for Leave to Amend*”) and submits that the proposed amendments are legally insufficient. Further, Opposer asserts that the proposed amendment is improper. Accordingly, Opposer respectfully requests that Applicant’s Motion for Leave to Amend be denied.

“Where the moving party seeks to add a new claim or defense, and the proposed pleading thereof is legally insufficient, or would serve no useful purpose, the Board normally will deny the motion for leave to amend.” *See* TBMP §507.02. Applicant’s proposed counterclaim – to partially cancel Opposer’s Registration by amending the listing of goods in the registration on the basis of an erroneous assumption – is legally insufficient. Applicant’s assumption is not – and never can be – supported by the record for the reasons discussed herein.

Applicant argues that Opposer’s registration for LUMEN (Reg. No. 3,953,059) in class 32 for “drinking water” (the “*Registration*”) was granted because Opposer made representations to the USPTO that it sold its water only in “couture establishments.”<sup>1</sup> While it is true that Opposer made these arguments to the USPTO, it is false that the USPTO granted Opposer’s registration because of its statements.<sup>2</sup> Opposer’s trade channel argument did not persuade the USPTO in granting Opposer’s Registration, and the USPTO issued a final refusal. Indeed, a review of the file wrapper reveals that the USPTO maintained its rejection of Opposer’s application because of the registered mark, LUMENE (the “*Cited Mark*”). Attached as Exhibit A to this Response is a complete copy of the file history for Opposer’s Registration. For the convenience of the Board, a copy of the final office action issued (in which the USPTO maintained its 2(d) refusal because of the Cited Mark) is attached as Exhibit B. It was only after the Cited Mark was cancelled for failure to file the Section 8 affidavit that Opposer’s application was approved for publication. The final office action in which the USPTO maintained its 2(d) refusal of Opposer’s application was issued on October 18, 2010. The Section 8 affidavit for the Cited Mark was due by December 1, 2010 (extended deadline). On January 7, 2011, the registration for the Cited Mark was cancelled. Attached as Exhibit C is a copy of the status record for the Cited Mark as of July 30, 2014. Opposer did not respond to the October 18, 2010 final office action because the USPTO’s refusal therein became moot with the cancellation of the Cited Mark. On January 11, 2011, Opposer’s LUMEN mark was approved for publication.

Thus, Applicant’s sole basis for its Motion for Leave to Amend is its mistaken belief that the USPTO relied on Opposer’s representation as to trade channels in allowing the Registration. As indicated above, this position is not supported by fact. Nor is Applicant’s position supported by the

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<sup>1</sup> At the time Opposer made these statements to the USPTO, it was, in fact, only selling its water in “couture establishments.” Since that time, Opposer’s distribution channels have expanded beyond such establishments.

<sup>2</sup> Assuming, *arguendo*, that Applicant’s assertion that the USPTO allowed Opposer’s Registration because of then-differences in trade channels as between Opposer’s Mark and the Cited Mark, Opposer’s Registration contains no such limitation of trade channels.

law. As TMEP §1207.01(a)(iii) sets forth, “the nature and scope of a party’s goods or services must be determined on the basis of the goods or services recited in the application or registration.” Further, the Applicant may not restrict the scope of the goods covered in Opposer’s Registration by extrinsic argument or evidence. *Id.*

Finally, as Applicant indicates throughout its Motion for Leave to Amend, it was well aware of the basis for its amended answer and counterclaim prior to filing its Answer. Had Applicant wished to assert its counterclaim, it should have done so when filing its Answer in April. Applicant’s basis (albeit erroneous) for its prospective counterclaim was known to it months ago. “[I]f grounds for the counterclaim are known to the defendant when its answer to the complaint is filed, the counterclaim should be pleaded with or as part of the answer.” TBMP §507.02(b).

Based upon the foregoing, granting Applicant’s Motion for Leave to Amend will unduly prejudice Opposer.

WHEREFORE, Opposer respectfully requests that Applicant’s Motion for Leave to File an Amended Answer to Add a Counterclaim be denied.

Dated: July 31, 2014

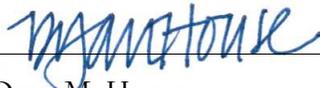
Respectfully submitted,

By:   
Dyan M. House  
Texas State Bar No. 24036923  
CARTER SCHOLER ARNETT  
HAMADA & MOCKLER, PLLC  
8150 N. Central Expy., 5<sup>th</sup> Floor  
Dallas, Texas 75206  
214.550.8188 Telephone  
214.550.8185 Facsimile

ATTORNEYS FOR APPLICANT

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Response to Applicant's Motion for Leave to File Amended Answer to Add Counterclaim has been served via First Class Mail, postage prepaid, to Applicant's attorney, Andrew J. Gray IV, Morgan, Lewis & Bockius LLP, Two Palo Alto Square, Suite 700, 3000 El Camino Real, Palo Alto, CA 94306, on this the 31<sup>st</sup> day of July 2014.

  
\_\_\_\_\_  
Dyan M. House

## **EXHIBIT A**

Generated on: This page was generated by TSDR on 2014-07-28 15:42:42 EDT

Mark: LUMEN

LUMEN

US Serial Number: 77702676  
US Registration Number: 3953059  
Filed as TEAS Plus: Yes  
Register: Principal  
Mark Type: Trademark  
Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.  
Status Date: May 03, 2011  
Publication Date: Feb. 15, 2011

Application Filing Date: Mar. 30, 2009  
Registration Date: May 03, 2011  
Currently TEAS Plus: Yes

## Mark Information

Mark Literal Elements: LUMEN  
Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.  
Mark Drawing Type: 4 - STANDARD CHARACTER MARK

## Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (...) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks \*.\* identify additional (new) wording in the goods/services.

For: Drinking water  
International Class(es): 032 - Primary Class  
U.S Class(es): 045, 046, 048  
Class Status: ACTIVE  
Basis: 1(a)  
First Use: Oct. 10, 2008  
Use in Commerce: Oct. 10, 2008

## Basis Information (Case Level)

Filed Use: Yes	Currently Use: Yes	Amended Use: No
Filed ITU: No	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

## Current Owner(s) Information

Owner Name: Lumen Water, Inc.  
Owner Address: 8600 Thackery Street, Apartment 8406  
Dallas, TEXAS 75225  
UNITED STATES  
Legal Entity Type: CORPORATION  
State or Country Where Organized: TEXAS

## Attorney/Correspondence Information

### Attorney of Record

Attorney Name: Dyan M. House  
Docket Number: LUME01-00002

### Correspondent

Correspondent Name/Address: Dyan M. House  
Munck Carter, LLP  
PO Drawer 800889  
Dallas, TEXAS 75380

UNITED STATES

Phone: 972.628.3600

Fax: 972.628.3616

Correspondent e-mail: [dhouse@munckcarter.com](mailto:dhouse@munckcarter.com)

Correspondent e-mail No  
Authorized:

Domestic Representative - Not Found

## Prosecution History

Date	Description	Proceeding Number
May 03, 2011	REGISTERED-PRINCIPAL REGISTER	
Feb. 15, 2011	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Feb. 15, 2011	PUBLISHED FOR OPPOSITION	
Jan. 12, 2011	LAW OFFICE PUBLICATION REVIEW COMPLETED	70138
Jan. 11, 2011	APPROVED FOR PUB - PRINCIPAL REGISTER	
Oct. 18, 2010	NOTIFICATION OF FINAL REFUSAL EMAILED	
Oct. 18, 2010	FINAL REFUSAL E-MAILED	
Oct. 18, 2010	FINAL REFUSAL WRITTEN	76843
Oct. 01, 2010	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Oct. 01, 2010	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Oct. 01, 2010	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Apr. 01, 2010	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Apr. 01, 2010	NON-FINAL ACTION E-MAILED	6325
Apr. 01, 2010	NON-FINAL ACTION WRITTEN	76843
Mar. 15, 2010	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Mar. 12, 2010	PETITION TO REVIVE-GRANTED	88889
Mar. 12, 2010	TEAS PETITION TO REVIVE RECEIVED	
Mar. 11, 2010	ATTORNEY REVOKED AND/OR APPOINTED	
Mar. 11, 2010	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Mar. 02, 2010	ABANDONMENT NOTICE MAILED - FAILURE TO RESPOND	
Mar. 02, 2010	ABANDONMENT - FAILURE TO RESPOND OR LATE RESPONSE	
Aug. 04, 2009	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Aug. 04, 2009	NON-FINAL ACTION E-MAILED	6325
Aug. 04, 2009	NON-FINAL ACTION WRITTEN	76843
Jun. 18, 2009	COMBINED EXAMINER'S AMENDMENT/PRIORITY ACTION ENTERED	70138
Jun. 18, 2009	ASSIGNED TO LIE	70138
Jun. 17, 2009	NOTIFICATION OF EXAMINER'S AMENDMENT/PRIORITY ACTION E-MAILED	6326
Jun. 17, 2009	EXAMINER'S AMENDMENT/PRIORITY ACTION E-MAILED	6326
Jun. 17, 2009	EXAMINERS AMENDMENT AND/OR PRIORITY ACTION - COMPLETED	76843
Jun. 17, 2009	ASSIGNED TO EXAMINER	76843
Apr. 02, 2009	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Apr. 02, 2009	NEW APPLICATION ENTERED IN TRAM	

## TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: May 03, 2011

## Proceedings

### Summary

Number of Proceedings: 1

Type of Proceeding: Opposition

Proceeding Number: [91215449](#)

Filing Date: Mar 17, 2014

Status: Pending

Status Date: Mar 17, 2014

Interlocutory Attorney: CHERYL S GOODMAN

**Defendant**

Name: Nuclear Wine Company LLC

Correspondent Address: ANDREW J GRAY IV  
MORGAN LEWIS & BOCKIUS LLP  
TWO PALO ALTO SQUARE SUITE 700, 3000 EL CAMINO REAL  
PALO ALTO CA , 94306  
UNITED STATES

Correspondent e-mail: [trademarks@morganlewis.com](mailto:trademarks@morganlewis.com) , [jennifer.evans@moranlewis.com](mailto:jennifer.evans@moranlewis.com) , [agray@morganlewis.com](mailto:agray@morganlewis.com) , [pneely@morganlewis.com](mailto:pneely@morganlewis.com) , [dmedina@morganlewis.com](mailto:dmedina@morganlewis.com)

**Associated marks**

Mark	Application Status	Serial Number	Registration Number
LUMEN	Opposition Pending	<a href="#">85971019</a>	

**Plaintiff(s)**

Name: Lumen Water, Inc.

Correspondent Address: DYAN M HOUSE  
CARTER SCHOLER ARNETT HAMADA & MOCKLER PLLC  
8150 N CENTRAL EXPRESSWAY, SUITE 1950  
DALLAS TX , 75206  
UNITED STATES

Correspondent e-mail: [dhouse@carterscholer.com](mailto:dhouse@carterscholer.com) , [trademarks@carterscholer.com](mailto:trademarks@carterscholer.com)

**Associated marks**

Mark	Application Status	Serial Number	Registration Number
LUMEN	Registered	<a href="#">77702676</a>	<a href="#">3953059</a>
LUMEN	Registered	<a href="#">85585881</a>	<a href="#">4237348</a>

**Prosecution History**

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Mar 17, 2014	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Mar 17, 2014	Apr 26, 2014
3	PENDING, INSTITUTED	Mar 17, 2014	
4	ANSWER	Apr 28, 2014	
5	MOT TO AMEND ANS OR COUNTERCLAIM/AMENDED ANS OR COUNTERCLAIM	Jul 18, 2014	

# United States of America

United States Patent and Trademark Office

## LUMEN

**Reg. No. 3,953,059**

**Registered May 3, 2011**

**Int. Cl.: 32**

**TRADEMARK**

**PRINCIPAL REGISTER**

LUMEN WATER, INC. (TEXAS CORPORATION)  
8600 THACKERY STREET, APARTMENT 8406  
DALLAS, TX 75225

FOR: DRINKING WATER, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 10-10-2008; IN COMMERCE 10-10-2008.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 77-702,676, FILED 3-30-2009.

JOHN HWANG, EXAMINING ATTORNEY



*David J. Kyjars*

Director of the United States Patent and Trademark Office

**From:** TMOfficialNotices@USPTO.GOV  
**Sent:** Tuesday, February 15, 2011 00:25 AM  
**To:** dhouse@munckcarter.com  
**Subject:** Official USPTO Notice of Publication: Serial Number 77702676

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## NOTICE OF PUBLICATION

**Serial Number:** 77-702,676  
**Mark:** LUMEN(STANDARD CHARACTER MARK)  
**International Class(es):** 032  
**Applicant:** Lumen Water, Inc.  
**Attorney Reference Number:** LUME01-00002

The mark identified above has been published in the *Trademark Official Gazette* (OG) on Feb 15, 2011. Any party who believes it will be damaged by the registration of the mark may file a notice of opposition (or extension of time therefor) with the Trademark Trial and Appeal Board. If no party files an opposition or extension request within thirty (30) days after the publication date, then within twelve (12) weeks of the publication date a certificate of registration should issue.

On the publication date or shortly thereafter, the applicant should carefully review the information that appears in the OG for accuracy (see steps, *below*). If any information is incorrect, the applicant should immediately email the requested correction to **TMPostPubQuery@uspto.gov**. For general information about this notice, please contact the Trademark Assistance Center at 1-800-786-9199.

1. Click on the following link or paste the URL into an internet browser:  
[http://www.uspto.gov/web/trademarks/tmog/20110215\\_OG.pdf#page=1](http://www.uspto.gov/web/trademarks/tmog/20110215_OG.pdf#page=1)
2. Wait for the total OG to download completely (as indicated on bottom of OG page).
3. At the top/side of the displayed page, click wherever the "binoculars" icon appears.
4. Enter in the "search" box the name of the applicant (for individual: last name, first name) or the serial number in this exact format (with hyphen and comma): 77-702,676, e.g.
5. View the retrieved result(s). If multiple results appear in the "results" box, click directly on each "search term" shown in the box to access all separate appearances in the OG.

**Trademark Snap Shot Publication & Issue Review Stylesheet**  
(Table presents the data on Publication & Issue Review Complete)

**OVERVIEW**

SERIAL NUMBER	77702676	FILING DATE	03/30/2009
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	HWANG, JOHN C B	L.O. ASSIGNED	114

**PUB INFORMATION**

RUN DATE	01/13/2011		
PUB DATE	02/15/2011		
STATUS	681-PUBLICATION/ISSUE REVIEW COMPLETE		
STATUS DATE	01/12/2011		
LITERAL MARK ELEMENT	LUMEN		
DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPUB 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

**FILING BASIS**

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	YES	1 (a)	YES	1 (a)	NO
1 (b)	NO	1 (b)	NO	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

**MARK DATA**

STANDARD CHARACTER MARK	YES
LITERAL MARK ELEMENT	LUMEN

MARK DRAWING CODE	4-STANDARD CHARACTER MARK
COLOR DRAWING FLAG	NO

### CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	Lumen Water, Inc.
ADDRESS	8600 Thackery Street, Apartment 8406 Dallas, TX 75225
ENTITY	03-CORPORATION
CITIZENSHIP	Texas

### GOODS AND SERVICES

INTERNATIONAL CLASS	032
DESCRIPTION TEXT	Drinking water

### GOODS AND SERVICES CLASSIFICATION

INTERNATIONAL CLASS	032	FIRST USE DATE	10/10/2008	FIRST USE IN COMMERCE DATE	10/10/2008	CLASS STATUS	6-ACTIVE
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### MISCELLANEOUS INFORMATION/STATEMENTS

CHANGE IN REGISTRATION	NO
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### PROSECUTION HISTORY

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
01/12/2011	PREV	O	LAW OFFICE PUBLICATION REVIEW COMPLETED	029
01/11/2011	CNSA	O	APPROVED FOR PUB - PRINCIPAL REGISTER	028
10/18/2010	GNFN	O	NOTIFICATION OF FINAL REFUSAL EMAILED	027
10/18/2010	GNFR	O	FINAL REFUSAL E-MAILED	026
10/18/2010	CNFR	R	FINAL REFUSAL WRITTEN	025
10/01/2010	TEME	I	TEAS/EMAIL CORRESPONDENCE ENTERED	024
10/01/2010	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	023
10/01/2010	TROA	I	TEAS RESPONSE TO OFFICE ACTION RECEIVED	022
04/01/2010	GNRN	O	NOTIFICATION OF NON-FINAL ACTION E-MAILED	021
04/01/2010	GNRT	O	NON-FINAL ACTION E-MAILED	020
04/01/2010	CNRT	R	NON-FINAL ACTION WRITTEN	019

03/15/2010	TCCA	I	TEAS CHANGE OF CORRESPONDENCE RECEIVED	018
03/12/2010	PETG	O	PETITION TO REVIVE-GRANTED	017
03/12/2010	PROA	I	TEAS PETITION TO REVIVE RECEIVED	016
03/11/2010	ARAA	I	ATTORNEY REVOKED AND/OR APPOINTED	015
03/11/2010	REAP	I	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	014
03/02/2010	MAB2	O	ABANDONMENT NOTICE MAILED - FAILURE TO RESPOND	013
03/02/2010	ABN2	O	ABANDONMENT - FAILURE TO RESPOND OR LATE RESPONSE	012
08/04/2009	GNRN	O	NOTIFICATION OF NON-FINAL ACTION E-MAILED	011
08/04/2009	GNRT	O	NON-FINAL ACTION E-MAILED	010
08/04/2009	CNRT	R	NON-FINAL ACTION WRITTEN	009
06/18/2009	CEPE	I	COMBINED EXAMINER'S AMENDMENT/PRIORITY ACTION ENTERED	008
06/18/2009	ALIE	A	ASSIGNED TO LIE	007
06/17/2009	GEAN	O	NOTIFICATION OF EXAMINER'S AMENDMENT/PRIORITY ACTION E-MAILED	006
06/17/2009	GEAP	F	EXAMINER'S AMENDMENT/PRIORITY ACTION E-MAILED	005
06/17/2009	CPEA	R	EXAMINERS AMENDMENT AND/OR PRIORITY ACTION - COMPLETED	004
06/17/2009	DOCK	D	ASSIGNED TO EXAMINER	003
04/02/2009	NWOS	I	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	002
04/02/2009	NWAP	I	NEW APPLICATION ENTERED IN TRAM	001

### CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	Dyan M. House
CORRESPONDENCE ADDRESS	Dyan M. House Munck Carter, LLP PO Drawer 800889 Dallas TX 75380
DOMESTIC REPRESENTATIVE	NONE

LUMEN

**Trademark Snap Shot Publication Stylesheet**  
(Table presents the data on Publication Approval)

**OVERVIEW**

SERIAL NUMBER	77702676	FILING DATE	03/30/2009
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	HWANG, JOHN C B	L.O. ASSIGNED	114

**PUB INFORMATION**

RUN DATE	01/12/2011		
PUB DATE	N/A		
STATUS	680-APPROVED FOR PUBLICATON		
STATUS DATE	01/11/2011		
LITERAL MARK ELEMENT	LUMEN		
DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPUB 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

**FILING BASIS**

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	YES	1 (a)	YES	1 (a)	NO
1 (b)	NO	1 (b)	NO	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

**MARK DATA**

STANDARD CHARACTER MARK	YES
LITERAL MARK ELEMENT	LUMEN

MARK DRAWING CODE	4-STANDARD CHARACTER MARK
COLOR DRAWING FLAG	NO

### CURRENT OWNER INFORMATION

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CHANGE IN REGISTRATION	NO
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### PROSECUTION HISTORY

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04/01/2010	GNRT	O	NON-FINAL ACTION E-MAILED	020
04/01/2010	CNRT	R	NON-FINAL ACTION WRITTEN	019
03/15/2010	TCCA	I	TEAS CHANGE OF CORRESPONDENCE RECEIVED	018

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03/12/2010	PROA	I	TEAS PETITION TO REVIVE RECEIVED	016
03/11/2010	ARAA	I	ATTORNEY REVOKED AND/OR APPOINTED	015
03/11/2010	REAP	I	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	014
03/02/2010	MAB2	O	ABANDONMENT NOTICE MAILED - FAILURE TO RESPOND	013
03/02/2010	ABN2	O	ABANDONMENT - FAILURE TO RESPOND OR LATE RESPONSE	012
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08/04/2009	GNRT	O	NON-FINAL ACTION E-MAILED	010
08/04/2009	CNRT	R	NON-FINAL ACTION WRITTEN	009
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06/18/2009	ALIE	A	ASSIGNED TO LIE	007
06/17/2009	GEAN	O	NOTIFICATION OF EXAMINER'S AMENDMENT/PRIORITY ACTION E-MAILED	006
06/17/2009	GEAP	F	EXAMINER'S AMENDMENT/PRIORITY ACTION E-MAILED	005
06/17/2009	CPEA	R	EXAMINERS AMENDMENT AND/OR PRIORITY ACTION - COMPLETED	004
06/17/2009	DOCK	D	ASSIGNED TO EXAMINER	003
04/02/2009	NWOS	I	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	002
04/02/2009	NWAP	I	NEW APPLICATION ENTERED IN TRAM	001

### CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	Dyan M. House
CORRESPONDENCE ADDRESS	Dyan M. House Munck Carter, LLP PO Drawer 800889 Dallas TX 75380
DOMESTIC REPRESENTATIVE	NONE

LUMEN

**To:** Lumen Water, Inc. ([dhouse@munckcarter.com](mailto:dhouse@munckcarter.com))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 77702676 - LUMEN - LUME01-00002  
**Sent:** 10/18/2010 9:27:14 AM  
**Sent As:** ECOM114@USPTO.GOV  
**Attachments:** [Attachment - 1](#)  
[Attachment - 2](#)  
[Attachment - 3](#)  
[Attachment - 4](#)

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

**APPLICATION SERIAL NO.** 77702676

**MARK:** LUMEN

**\*77702676\***

**CORRESPONDENT ADDRESS:**

Dyan M. House  
Munck Carter, LLP  
PO Drawer 800889  
Dallas TX 75380

**CLICK HERE TO RESPOND TO THIS LETTER:**  
<http://www.uspto.gov/teas/eTEASpageD.htm>

**APPLICANT:** Lumen Water, Inc.

**CORRESPONDENT'S REFERENCE/DOCKET**

**NO:**

LUME01-00002

**CORRESPONDENT E-MAIL ADDRESS:**

[dhouse@munckcarter.com](mailto:dhouse@munckcarter.com)

**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:** 10/18/2010

**THIS IS A FINAL ACTION.**

**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.

For the reasons set forth below, the refusal under Trademark Act Section 2(d) is now made FINAL with respect to U.S. Registration No(s). 2847190. *See* 15 U.S.C. §1052(d); 37 C.F.R. §2.64(a).

### **RESPONSE TO OFFICE ACTION**

If applicant does not respond within six months of the date of issuance of this final Office action, the application will be abandoned. 15 U.S.C. §1062(b); 37 C.F.R. §2.65(a). Applicant may respond to this final Office action by:

- (1) Submitting a response that fully satisfies all outstanding requirements, if feasible; and/or
- (2) Filing an appeal to the Trademark Trial and Appeal Board, with an appeal fee of \$100 per class.

37 C.F.R. §§2.6(a)(18), 2.64(a); TBMP ch. 1200; TMEP §714.04.

In certain rare circumstances, a petition to the Director may be filed pursuant to 37 C.F.R. §2.63(b)(2) to review a final Office action that is limited to procedural issues. 37 C.F.R. §2.64(a); TMEP §714.04; *see* 37 C.F.R. §2.146(b); TBMP §1201.05; TMEP §1704 (explaining petitionable matters). The petition fee is \$100. 37 C.F.R. §2.6(a)(15).

In its response to the initial refusal, applicant argues that the marks look and sound different, that the goods are sold in different commercial trade channels and that the marketing of the goods are different. Applicant does not contend that the goods are dissimilar. This final refusal addresses applicant's arguments as follows:

Applicant has amended the drawing of the mark to delete the generic word "water" from the mark. The comparison is thus between LUMEN and LUMENE. Although the marks may have some significance in meaning as applicant stated, the general public is unlikely to recognize these meanings nor would the recognition of such preclude confusion. Furthermore, slight differences in the sound of similar marks will not avoid a likelihood of confusion. *In re Energy Telecomm. & Elec. Ass'n*, 222 USPQ 350, 351 (TTAB 1983). There is no correct pronunciation of a mark because it is impossible to predict how the public will pronounce a particular mark. *In re Great Lakes Canning, Inc.*, 227 USPQ 483, 484 (TTAB 1985); TMEP §1207.01(b)(iv); *see In re Energy Telecomm. & Elec. Ass'n*, 222 USPQ 350, 351 (TTAB 1983). The marks in question could clearly be pronounced the same; such similarity in sound alone may be sufficient to support a finding of likelihood of confusion. *See RE/MAX of Am., Inc. v. Realty Mart, Inc.*, 207 USPQ 960, 964 (TTAB 1980); *Molenaar, Inc. v. Happy Toys Inc.*, 188 USPQ 469, 471 (TTAB 1975); TMEP §1207.01(b)(iv).

Applicant also contends that the goods are marketed differently and in different commercial trade channels. The goods and/or services of the parties need not be identical or directly competitive to find a

likelihood of confusion. *See Safety-Kleen Corp. v. Dresser Indus., Inc.*, 518 F.2d 1399, 1404, 186 USPQ 476, 480 (C.C.P.A. 1975); TMEP §1207.01(a)(i). Rather, it is sufficient that the goods and/or services are related in some manner and/or the conditions surrounding their marketing are such that they would be encountered by the same purchasers under circumstances that would give rise to the mistaken belief that the goods and/or services come from a common source. *In re Total Quality Group, Inc.*, 51 USPQ2d 1474, 1476 (TTAB 1999); TMEP §1207.01(a)(i); *see, e.g., On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086-87, 56 USPQ2d 1471, 1475-76 (Fed. Cir. 2000); *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1566-68, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

The presumption under Trademark Act Section 7(b), 15 U.S.C. §1057(b), is that the registrant is the owner of the mark and that use of the mark extends to all goods and/or services identified in the registration. The presumption also implies that the registrant operates in all normal channels of trade and reaches all classes of purchasers of the identified goods and/or services. *In re Melville Corp.*, 18 USPQ2d 1386, 1389 (TTAB 1991); *McDonald's Corp. v. McKinley*, 13 USPQ2d 1895, 1899 (TTAB 1989); *RE/MAX of Am., Inc. v. Realty Mart, Inc.*, 207 USPQ 960, 964-65 (TTAB 1980); *see* TMEP §1207.01(a)(iii).

Even if registrant's waters were sold in convenience stores or similar retail venues and applicant's waters were sold in restaurants, restaurants and other similar businesses are not excluded from selling waters which are also sold in convenience stores such as CVS. Indeed a number of higher end waters such as Evian and Pelligrino are readily sold at such stores and such waters are often also sold at restaurants.

/John Hwang/  
john.hwang@uspto.gov  
LAW OFFICE 114  
USPTO  
571-272-9452  
571-273-9114 FAX

**TO RESPOND TO THIS LETTER:** Use the Trademark Electronic Application System (TEAS) response form at <http://teasroa.uspto.gov/roa/>. 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](mailto:TEAS@uspto.gov).

**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>.



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**Nestle Water S. Pellegrino Sparkling Natural Mineral Water, 33.8 fl oz (1 qt 1.8 fl oz) 1 lt**

Kmart Item# 033W296028110001 | Model# 29602811

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## Product Description

**Product Description**

Natural mineral water with natural CO2 added. Total dissolved solids 960 mg/lit. Very low in sodium. Bottled at the source, San Pellegrino Terme, Italy.  
**Directions:** Store in a clean, cool, dry and odorless place, away from direct sunlight and freezing temperatures.

Added on April 28, 2010

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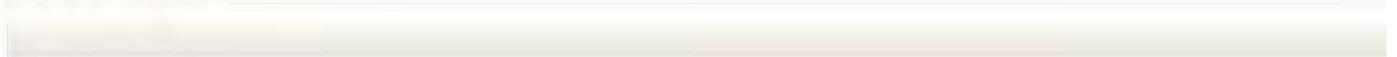
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bottled mineral water, evian natural mineral water, mineral water, mineral water sodium, natural mineral water, natural solids, natural sparkling water, san pellegrino sparkling water, sparkling natural mineral water, sparkling water no sodium

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**To:** Lumen Water, Inc. ([dhouse@munckcarter.com](mailto:dhouse@munckcarter.com))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 77702676 - LUMEN - LUME01-00002  
**Sent:** 10/18/2010 9:27:16 AM  
**Sent As:** ECOM114@USPTO.GOV  
**Attachments:**

## IMPORTANT NOTICE REGARDING YOUR U.S. TRADEMARK APPLICATION

USPTO OFFICE ACTION HAS ISSUED ON **10/18/2010** FOR  
SERIAL NO. **77702676**

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 **10/18/2010** (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](#).**

**HELP:** For *technical* assistance in accessing the Office action, please e-mail [TDR@uspto.gov](mailto:TDR@uspto.gov). Please contact the assigned examining attorney with questions about the Office action.

## WARNING

**Failure to file the required response by the applicable deadline will result in the [ABANDONMENT](#) of your application.**

**Trademark Snap Shot Amendment & Mail Processing Stylesheet**  
(Table presents the data on Amendment & Mail Processing Complete)

**OVERVIEW**

SERIAL NUMBER	77702676	FILING DATE	03/30/2009
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	HWANG, JOHN C B	L.O. ASSIGNED	114

**PUB INFORMATION**

RUN DATE	10/02/2010		
PUB DATE	N/A		
STATUS	661-RESPONSE AFTER NON-FINAL-ACTION-ENTERED		
STATUS DATE	10/01/2010		
LITERAL MARK ELEMENT	LUMEN		
DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPUB 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

**FILING BASIS**

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	YES	1 (a)	YES	1 (a)	NO
1 (b)	NO	1 (b)	NO	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

**MARK DATA**

STANDARD CHARACTER MARK	YES
LITERAL MARK ELEMENT	LUMEN

MARK DRAWING CODE	4-STANDARD CHARACTER MARK
COLOR DRAWING FLAG	NO

### CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	Lumen Water, Inc.
ADDRESS	8600 Thackery Street, Apartment 8406 Dallas, TX 75225
ENTITY	03-CORPORATION
CITIZENSHIP	Texas

### GOODS AND SERVICES

INTERNATIONAL CLASS	032
DESCRIPTION TEXT	Drinking water

### GOODS AND SERVICES CLASSIFICATION

INTERNATIONAL CLASS	032	FIRST USE DATE	10/10/2008	FIRST USE IN COMMERCE DATE	10/10/2008	CLASS STATUS	6-ACTIVE
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### MISCELLANEOUS INFORMATION/STATEMENTS

CHANGE IN REGISTRATION	NO
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### PROSECUTION HISTORY

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
10/01/2010	TEME	I	TEAS/EMAIL CORRESPONDENCE ENTERED	024
10/01/2010	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	023
10/01/2010	TROA	I	TEAS RESPONSE TO OFFICE ACTION RECEIVED	022
04/01/2010	GNRN	O	NOTIFICATION OF NON-FINAL ACTION E-MAILED	021
04/01/2010	GNRT	O	NON-FINAL ACTION E-MAILED	020
04/01/2010	CNRT	R	NON-FINAL ACTION WRITTEN	019
03/15/2010	TCCA	I	TEAS CHANGE OF CORRESPONDENCE RECEIVED	018
03/12/2010	PETG	O	PETITION TO REVIVE-GRANTED	017
03/12/2010	PROA	I	TEAS PETITION TO REVIVE RECEIVED	016
03/11/2010	ARAA	I	ATTORNEY REVOKED AND/OR APPOINTED	015
03/11/2010	REAP	I	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	014

03/02/2010	MAB2	O	ABANDONMENT NOTICE MAILED - FAILURE TO RESPOND	013
03/02/2010	ABN2	O	ABANDONMENT - FAILURE TO RESPOND OR LATE RESPONSE	012
08/04/2009	GNRN	O	NOTIFICATION OF NON-FINAL ACTION E-MAILED	011
08/04/2009	GNRT	O	NON-FINAL ACTION E-MAILED	010
08/04/2009	CNRT	R	NON-FINAL ACTION WRITTEN	009
06/18/2009	CEPE	I	COMBINED EXAMINER'S AMENDMENT/PRIORITY ACTION ENTERED	008
06/18/2009	ALIE	A	ASSIGNED TO LIE	007
06/17/2009	GEAN	O	NOTIFICATION OF EXAMINER'S AMENDMENT/PRIORITY ACTION E-MAILED	006
06/17/2009	GEAP	F	EXAMINER'S AMENDMENT/PRIORITY ACTION E-MAILED	005
06/17/2009	CPEA	R	EXAMINERS AMENDMENT AND/OR PRIORITY ACTION - COMPLETED	004
06/17/2009	DOCK	D	ASSIGNED TO EXAMINER	003
04/02/2009	NWOS	I	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	002
04/02/2009	NWAP	I	NEW APPLICATION ENTERED IN TRAM	001

### CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	Dyan M. House
CORRESPONDENCE ADDRESS	Dyan M. House Munck Carter, LLP PO Drawer 800889 Dallas TX 75380
DOMESTIC REPRESENTATIVE	NONE

LUMEN

LUMEN

LUMEN

## Response to Office Action

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

Input Field	Entered
<b>SERIAL NUMBER</b>	77702676
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 114
<b>MARK SECTION (current)</b>	
<b>STANDARD CHARACTERS</b>	YES
<b>USPTO-GENERATED IMAGE</b>	YES
<b>LITERAL ELEMENT</b>	LUMEN WATER
<b>MARK STATEMENT</b>	The mark consists of standard characters, without claim to any particular font style, size or color.
<b>MARK SECTION (proposed)</b>	
<b>MARK</b>	<a href="#">LUMEN</a>
<b>STANDARD CHARACTERS</b>	YES
<b>USPTO-GENERATED IMAGE</b>	YES
<b>LITERAL ELEMENT</b>	LUMEN
<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 the actual argument text attached within the Evidence section.	
<b>EVIDENCE SECTION</b>	
<b>EVIDENCE FILE NAME(S)</b>	
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<b>CONVERTED PDF FILE(S) (2 pages)</b>	<a href="\\TICRS\EXPORT11\IMAGEOUT11\777\026\77702676\xml1\ROA0013.JPG">\\TICRS\EXPORT11\IMAGEOUT11\777\026\77702676\xml1\ROA0013.JPG</a>
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<b>DESCRIPTION OF EVIDENCE FILE</b>	Applicant's argument and exhibits referenced in the argument. The evidence consists of dictionary definitions and pronunciation keys, screen shots from Registrant's website, and Applicant's marketing materials.
<b>GOODS AND/OR SERVICES SECTION (current)</b>	
<b>INTERNATIONAL CLASS</b>	032
<b>DESCRIPTION</b>	Drinking water
<b>FILING BASIS</b>	Section 1(a)

FIRST USE ANYWHERE DATE	At least as early as 10/10/2008
FIRST USE IN COMMERCE DATE	At least as early as 10/10/2008
<b>GOODS AND/OR SERVICES SECTION (proposed)</b>	
INTERNATIONAL CLASS	032
DESCRIPTION	Drinking water
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 10/10/2008
FIRST USE IN COMMERCE DATE	At least as early as 10/10/2008
STATEMENT TYPE	<b>"The substitute (or new, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application" [for an application based on Section 1(a), Use in Commerce] OR "The substitute (or new, if appropriate) specimen(s) was/were in use in commerce prior either to the filing of the Amendment to Allege Use or expiration of the filing deadline for filing a Statement of Use" [for an application based on Section 1(b) Intent-to-Use].</b>
SPECIMEN FILE NAME(S)	<a href="#">\\TICRS\EXPORT11\IMAGEOUT 11\777\026\77702676\xml1\ROA0070.JPG</a>
SPECIMEN DESCRIPTION	photo of product and its packaging
<b>SIGNATURE SECTION</b>	
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SIGNATORY'S NAME	Tom Hegwer
SIGNATORY'S POSITION	CEO
RESPONSE SIGNATURE	/Dyan M. House/
SIGNATORY'S NAME	Dyan M. House
SIGNATORY'S POSITION	Attorney of record, Texas bar member
DATE SIGNED	10/01/2010
AUTHORIZED SIGNATORY	YES

## FILING INFORMATION SECTION

<b>SUBMIT DATE</b>	Fri Oct 01 15:54:54 EDT 2010
<b>TEAS STAMP</b>	USPTO/ROA-173.226.149.131 -20101001155454449088-777 02676-470b64c8d417b66895d 1f709f68d0557dd4-N/A-N/A- 20101001153445596357

PTO Form 1957 (Rev 9/2005)  
OMB No. 0651-0050 (Exp. 04/30/2011)

### **Response to Office Action To the Commissioner for Trademarks:**

Application serial no. **77702676** has been amended as follows:

#### **MARK**

**Applicant proposes to amend the mark as follows:**

**Current:** LUMEN WATER (standard characters)

**Proposed (USPTO generated image):** LUMEN (Standard Characters, see [mark](#))

The mark consists of standard characters, without claim to any particular font, style, size, or color.

#### **ARGUMENT(S)**

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

Please see the actual argument text attached within the Evidence section.

#### **EVIDENCE**

Evidence in the nature of Applicant's argument and exhibits referenced in the argument. The evidence consists of dictionary definitions and pronunciation keys, screen shots from Registrant's website, and Applicant's marketing materials. has been attached.

**Original PDF file:**

[evi\\_173226149131-153445596 . LUME01-02\\_Response\\_to\\_OA.pdf](#)

**Converted PDF file(s)** (7 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

[Evidence-7](#)

**Original PDF file:**

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**Converted PDF file(s) (1 page)**

[Evidence-1](#)

**Original PDF file:**

[evi\\_173226149131-153445596 . EX B.pdf](#)

**Converted PDF file(s) (1 page)**

[Evidence-1](#)

**Original PDF file:**

[evi\\_173226149131-153445596 . EX C.pdf](#)

**Converted PDF file(s) (1 page)**

[Evidence-1](#)

**Original PDF file:**

[evi\\_173226149131-153445596 . EX D.pdf](#)

**Converted PDF file(s) (2 pages)**

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[Evidence-2](#)

**Original PDF file:**

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**Converted PDF file(s) (3 pages)**

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

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**Converted PDF file(s) (1 page)**

[Evidence-1](#)

**Original PDF file:**

[evi\\_173226149131-153445596 . EX G.pdf](#)

**Converted PDF file(s) (30 pages)**

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

[Evidence-7](#)

[Evidence-8](#)

[Evidence-9](#)

[Evidence-10](#)

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[Evidence-21](#)

[Evidence-22](#)

[Evidence-23](#)

[Evidence-24](#)

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[Evidence-26](#)

[Evidence-27](#)

[Evidence-28](#)

[Evidence-29](#)

[Evidence-30](#)

**Original PDF file:**

[evi\\_173226149131-153445596 . EX H.pdf](#)

**Converted PDF file(s)** (2 pages)

[Evidence-1](#)

[Evidence-2](#)

**Original PDF file:**

[evi\\_173226149131-153445596 . EX I.pdf](#)

**Converted PDF file(s)** (19 pages)

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[Evidence-3](#)

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[Evidence-7](#)

[Evidence-8](#)

[Evidence-9](#)

[Evidence-10](#)

[Evidence-11](#)

[Evidence-12](#)

[Evidence-13](#)

[Evidence-14](#)

[Evidence-15](#)

[Evidence-16](#)

[Evidence-17](#)

[Evidence-18](#)

[Evidence-19](#)

## **CLASSIFICATION AND LISTING OF GOODS/SERVICES**

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

**Current:** Class 032 for Drinking water

Original Filing Basis:

**Filing Basis: Section 1(a), Use in Commerce:** The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 10/10/2008 and first used in commerce at least as early as 10/10/2008, and is now in use in such commerce.

**Proposed:** Class 032 for Drinking water

**Filing Basis: Section 1(a), Use in Commerce:** The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 10/10/2008 and first used in commerce at least as early as 10/10/2008, and is now in use in such commerce.

Applicant hereby submits a new specimen for Class 032. The specimen(s) submitted consists of photo of product and its packaging.

**"The substitute (or new, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application"** *[for an application based on Section 1(a), Use in Commerce]* OR **"The substitute (or new, if appropriate) specimen(s) was/were in use in commerce prior either to the filing of the Amendment to Allege Use or expiration of the filing deadline for filing a Statement of Use"** *[for an application based on Section 1(b) Intent-to-Use]*.

[Specimen File1](#)

## **SIGNATURE(S)**

**Declaration Signature**

**Original PDF file:**

[HS\\_173226149131-153445596\\_Signed\\_DECLARATION\\_LUME01-02.pdf](#)

**Converted PDF file(s)** (1 page)

[Signature File1](#)

Signatory's Name: Tom Hegwer

Signatory's Position: CEO

## **Response Signature**

Signature: /Dyan M. House/ Date: 10/01/2010

Signatory's Name: Dyan M. House

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

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: 77702676

Internet Transmission Date: Fri Oct 01 15:54:54 EDT 2010

TEAS Stamp: USPTO/ROA-173.226.149.131-20101001155454

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LUMEN

**DOCKET NO.: LUME01-00002**

**TRADEMARK**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant : Lumen Water, Inc.  
Serial Number : 77/702,676  
Mark : LUMEN  
Filing Date : March 30, 2009  
Class : 032  
Trademark Attorney : John Hwang  
Law Office : 114

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

**RESPONSE TO OFFICE ACTION**

In response to the Office Action dated April 1, 2010, Applicant makes the following remarks:

**I.**

**REQUEST TO DELETE MATTER FROM DRAWING**

Pursuant to 37 C.F.R. §2.72, Applicant requests that the term “WATER” be removed from the drawing. The goods as listed in the application are “drinking water” in International Class 032. Applicant’s Mark is in standard characters, without regard to design. The mark LUMEN has the same commercial impression as LUMEN WATER. Such an amendment to the drawing does not constitute a material alteration. *See In re*

*CTB Inc.*, 52 U.S.P.Q.2d 1471, 1475 (T.T.A.B. 1999) (“For example, the Office often finds that the deletion of the generic name of the goods (e.g., from “TURBO BLOWERS” to simply “TURBO”) would not generally constitute a material alteration”).

## II.

### **NO LIKELIHOOD OF CONFUSION**

The Office has refused registration of Applicant’s Mark (“Applicant’s Mark”) for “drinking water” in International Class 032 on the grounds that there is a likelihood of confusion with U.S. Registration No. 2,847,190 for the mark LUMENE (“Registered Mark”). Applicant respectfully submits that there is no likelihood of confusion for the following reasons: 1) the marks are different in terms of appearance, sound, connotation and commercial impression; 2) the established and likely-to-continue trade channels are substantially different; and 3) the conditions surrounding the marketing of the goods are substantially different.

When comparing marks, the “fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and the differences in the marks.” *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976). When the essential characteristics of Applicant’s Mark and the Registered Mark are compared and the relevant factors from *In re E.I. DuPont DeNemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) are applied, no likelihood of confusion exists between Applicant’s Mark and the Registered Mark.

#### **1. Marks Are Substantially Different in Terms of Appearance, Sound, Connotation and Commercial Impression**

The first *DuPont* factor to consider in any likelihood of confusion analysis is “the similarity or dissimilarity of the marks in their entirety as to appearance, sound,

connotation and commercial impression.” Applicant’s Mark and the Registered Mark differ in terms of appearance. The marks are not spelled the same. While the spelling of Applicant’s Mark can be found in Registrant’s Mark, the addition of the letter “e” at the end of the Registered Mark substantially changes the appearance of the marks.

Moreover, the addition of the letter “e” to the end of Registrant’s Mark dramatically changes the sound of the Registered Mark when compared to Applicant’s Mark. When spoken as a whole, the marks do not sound the same. Applicant points the Office to the website *www.forvo.com* to hear the differences in the pronunciation of the two marks. The pronunciation of the word “lumen” in English can be found at *http://www.forvo.com/search/lumen/en*. Applicant further notes that pronunciations of the term “lumen” at *www.forvo.com* can be found in English, Portuguese and Galician. *See* Exhibit A. The term “lumene”, on the other hand, is found only in Finnish, and can be found at *http://www.forvo.com/word/lumene*. *See* Exhibit B. While just one letter, the additional “e” on Registrant’s Mark is not inconsequential; the addition of the “e” completely changes the sound of the marks.

Not only are there differences in the appearance and sound of Applicant’s Mark and Registrant’s Mark, Registrant’s own website describes that Registrant’s Mark is a Finnish term derived from the name of a lake in Finland, Lake Lummenne. *See* Exhibit C attached hereto for a print out from Registrant’s website describing the name. Registrant’s Mark is not a word in the English language. Applicant’s Mark, on the other hand, consists of the term LUMEN, a word that is found in the English language and has a number of meanings. According to Merriam-Webster OnLine, “lumen” can mean 1) the cavity of a tubular organ or part; 2) the bore of a tube; or 3) a unit of luminous flux equal

to the light emitted in a unit solid angle by a uniform point source of one candle intensity. See Exhibit D attached hereto for a print out of the definition of “lumen” found at <http://merriam-webster.com/dictionary/lumen>. Lumen is most commonly known as a unit of luminous flux under the International System of Units. See Exhibit E attached hereto for a print out of the Wikipedia entry for lumen found at [http://en.wikipedia.org/wiki/Lumen\\_\(unit\)](http://en.wikipedia.org/wiki/Lumen_(unit)). See also Exhibit F for a print out from Wikipedia’s site regarding the various connotations of lumen found at <http://en.wikipedia.org/wiki/Lumen>.

## **2. Relevant Market and Trade Channels Are Dissimilar**

In addition to the differences in the appearance, sound and connotation of the marks, there are substantial dissimilarities between the relevant markets and the established and likely-to-continue trade channels. Registrant’s products are mass-produced and sold in drugstores, grocery stores, and discount retailers. For example, in the United States, Registrant’s products are sold online through CVS and other discount retailers. See Exhibit G. In contrast, Applicant’s goods is sold in upscale restaurants and bars. Attached as Exhibit H is one of Applicant’s press releases which describes LUMEN and the market in which the goods are sold. It is not likely that Applicant’s goods would be sold in close proximity to Registrant’s goods. Confusion has been found where similar goods sold under similar marks in the same trade channels. See, e.g., *In re Majestic Distilling Co.*, 23 U.S.P.Q.2d 1698, 1701 (Fed. Cir. 1992) (finding RED BULL for malt liquor likely to confuse with RED BULL for tequila); *Kangol, Ltd. v. KangaROOS U.S.A., Inc.*, 23 U.S.P.Q.2d 1945, 1946 (Fed. Cir. 1992) (finding that golf

shirts and athletic shirts were likely to be sold in department stores or specialty shops). Those similarities do not exist as between Applicant's goods and Registrant's goods.

**3. The Conditions Surrounding the Marketing of the Goods Are Substantially Different**

It is well established that marks must be viewed in their entirety and in context. See *Kemp v. Bumble Bee Seafoods, Inc.*, 398 F.3d 1049, 1054 (8th Cir. 2005) citing *Homeowners Group, Inc. v. Home Marketing Specialists, Inc.*, 931 F.2d 1100, 1109 (6th Cir. 1991) (A court must determine, in the light of what occurs in the marketplace, whether the mark "will be confusing to the public when singly presented."). Registrant's goods are mass-produced, mass marketed products in connection with cosmetics. Applicant's goods, as discussed above, are sold in upscale restaurants and bars. As noted in the press release attached as Exhibit H, Applicant's goods are sold "exclusively to couture establishments." To further distinguish the conditions surrounding the marketing of the goods, Applicant attaches as Exhibit I examples of Applicant's brochures and screen shots from Applicant's website.

Given the differences in the relevant markets necessarily, it logically follows that the conditions and marketing surrounding the goods offered under Applicant's Mark will be dramatically different than those associated with the Registered Mark. Applicant's goods and the goods sold under the Registered Mark are marketed in such a way that they would not be encountered by the same persons in situations that would create the incorrect assumption that the goods originate from the same source. See, e.g., *Shen Mfg. Co. v. Ritz Hotel Ltd.*, 73 USPQ2d 1350 (Fed. Cir. 2004); *Local Trademarks, Inc. v. Handy Boys Inc.*, 16 USPQ2d 1156 (TTAB 1990); *Quartz Radiation Corp. v. Comm/Scope Co.*, 1 USPQ2d 1668 (TTAB 1986).

Given the vast differences in the marks, the relevant markets and the conditions surrounding the marketing of the goods, it is highly unlikely that a consumer would be confused as to the source of the goods as between Applicant's Mark and the Registered Mark. For the reasons set forth above, Applicant respectfully requests that the Office reconsider the refusal to register Applicant's Mark and approve the Applicant's Mark for publication.

**III.**

**REMARKS**

Applicant respectfully submits that all issues raised in the Office Action have been fully addressed and satisfied and that the Application should be allowed. If any outstanding issues remain, or if the Examining Attorney has any further suggestions for expediting allowance of this application, Applicant respectfully invites the Examining Attorney to contact the undersigned.

Respectfully submitted,

MUNCK CARTER, LLP

Date: October 1, 2010

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12770 Coit Road  
Dallas, Texas 75251  
(972) 628-3600  
(972) 628-3616 Fax

/Dyan M. House/  
Dyan M. House  
Texas Bar No. 24036923

**Exhibits to the Response to Office Action**

Exhibit A	Example of pronunciation of “lumen”
Exhibit B	Example of pronunciation of “lumene”
Exhibit C	Screen shot from Registrant’s website describing the name “Lumene”
Exhibit D	Definition of “lumen” from Merriam-Webster’s OnLine Dictionary
Exhibit E	Wikipedia entry for “lumen”
Exhibit F	Wikipedia page regarding various connotations of “lumen”
Exhibit G	Screen shots from discount retailers
Exhibit H	Applicant’s press release
Exhibit I	Applicant’s brochures; screen shots from Applicant’s website

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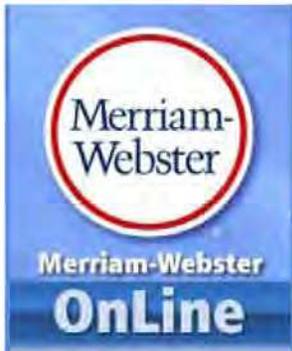


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## lumen

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Pronunciation: \ˈlü-mən\

Function: *noun*

Inflected Form(s): *plural lumens also lu-mi-na* \-mə-nə\

Etymology: New Latin *lumin-*, *lumen*, from Latin, light, air shaft, opening

Date: 1873

- 1** : the cavity of a tubular organ or part <the lumen of a blood vessel>
- 2** : the bore of a tube (as of a hollow needle or catheter)
- 3** : a unit of luminous flux equal to the light emitted in a unit solid angle by a uniform point source of one candle intensity

— **lu-mi-nal** also **lu-men-al** \-mə-n<sup>ə</sup>\ *adjective*

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lumen. (2010). In *Merriam-Webster Online Dictionary*.

Retrieved March 5, 2010, from <http://www.merriam-webster.com/dictionary/lumen>

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# Lumen (unit)

From Wikipedia, the free encyclopedia

The **lumen** (symbol: **lm**) is the SI unit of luminous flux, a measure of the power of light perceived by the human eye. Luminous flux differs from radiant flux, the measure of the total power of light emitted, in that luminous flux is adjusted to reflect the varying sensitivity of the human eye to different wavelengths of light. The lumen is defined in relation to the candela by

$$1 \text{ lm} = 1 \text{ cd}\cdot\text{sr}$$

That is, a light source that uniformly radiates one candela in all directions radiates a total of  $4\pi$  lumens. If the source were partially covered by an ideal absorbing hemisphere, that system would radiate half as much luminous flux—only  $2\pi$  lumens. The luminous intensity would still be one candela in those directions that are not obscured.

## Contents

- 1 Explanation
- 2 Projector output
  - 2.1 ANSI lumens
  - 2.2 Peak lumens
- 3 SI photometry units
- 4 See also
- 5 References

## Explanation

If a light source emits one candela of luminous intensity uniformly across a solid angle of one steradian, its total luminous flux emitted into that angle is one lumen. Alternatively, an isotropic one-candela light source emits a total luminous flux of exactly  $4\pi$  lumens. The lumen can be thought of casually as a measure of the total "amount" of visible light in some defined beam or angle, or emitted from some source. The number of candelas or lumens from a source also depends on its spectrum, via the nominal response of the human eye as represented in the luminosity function.

A 23 watt compact fluorescent lamp emits about 1500–1600 lm.<sup>[1][2]</sup>

The difference between the units *lumen* and *lux* is that the lux takes into account the area over which the luminous flux is spread. A flux of 1000 lumens, concentrated into an area of one square metre, lights up that square metre with an illuminance of 1000 lux. The same 1000 lumens, spread out over ten square metres, produces a dimmer illuminance of only 100 lux. Mathematically,  $1 \text{ lx} = 1 \text{ lm}/\text{m}^2$ .

A single fluorescent light fixture that produces a luminous flux of 12000 lumens might light a residential kitchen with an illuminance of 500 lux. Lighting a larger area to the same illuminance requires a proportionately greater number of lumens.

## Projector output

## ANSI lumens

The light output of projectors (including video projectors) is typically measured in lumens. A standardized procedure for testing projectors has been established by the American National Standards Institute, which involves averaging together several measurements taken at different positions.<sup>[3]</sup> For marketing purposes, the luminous flux of projectors that have been tested according to this procedure may be quoted in "ANSI lumens", to distinguish them from those tested by other methods. ANSI lumen measurements are in general more accurate than the other measurement techniques used in the projector industry.<sup>[4]</sup> This allows projectors to be more easily compared on the basis of their brightness specifications.<sup>[5]</sup>

The method for measuring ANSI lumens is defined in the IT7.215 document which was created in 1992. First the projector is set up to display an image in a room at a temperature of 25 degrees celsius. The brightness and contrast of the projector are adjusted so that on a full white field, it is possible to distinguish between a 5% screen area block of 95% percent peak white, and two identically sized 100% and 90% peak white boxes at the center of the white field. The light output is then measured on a full white field at nine specific locations around the screen and averaged. This average is then multiplied by the screen area to give the brightness of the projector in "ANSI lumens".<sup>[6]</sup>

## Peak lumens

Peak lumens is a measure of light output normally used with CRT video projectors. The testing uses a test pattern with typically at either 10 and 20 percent of the image area as white at the center of the screen, the rest as black. The light output is measured just in this center area. Limitations with CRT video projectors result in them producing greater brightness when just a fraction of the image content is at peak brightness. For example the Sony VPH-G70Q CRT video projector produces 1200 "peak" lumens but just 200 ANSI lumens.<sup>[7]</sup>

## SI photometry units

### SI photometry units

Quantity	Symbol	SI unit	Abbr.	Notes
Luminous energy	$Q_v$	<b>lumen</b> second	lm·s	units are sometimes called talbots
Luminous flux	$F$	<b>lumen</b> (= cd·sr)	lm	also called <i>luminous power</i>
Luminous intensity	$I_v$	candela (= lm/sr)	cd	an SI base unit
Luminance	$L_v$	candela per square metre	cd/m <sup>2</sup>	units are sometimes called "nits"
Illuminance	$E_v$	lux (= lm/m <sup>2</sup> )	lx	Used for light incident on a surface
Luminous emittance	$M_v$	lux (= lm/m <sup>2</sup> )	lx	Used for light emitted from a surface
Luminous efficacy		lumen per watt	lm/W	ratio of luminous flux to radiant flux
See also SI · Photometry				

## See also

- Brightness
- Lux

## References

- <sup>^</sup> "Osram Dulux EL electronic energy-saving lamps" (pdf). *Osram.dk*. [http://www.osram.dk/osram\\_dk/Professionelle/Brochurer\\_&\\_kataloger/Energispareprer\\_og\\_kompaktr/e21\\_DULUX\\_EL\\_teknisk\\_guide.pdf](http://www.osram.dk/osram_dk/Professionelle/Brochurer_&_kataloger/Energispareprer_og_kompaktr/e21_DULUX_EL_teknisk_guide.pdf). Retrieved Jan. 04, 2009.
- <sup>^</sup> "Conventional CFLs". Energy Federation Incorporated. [http://www.energyfederation.org/consumer/default.php/cPath/25\\_44\\_784](http://www.energyfederation.org/consumer/default.php/cPath/25_44_784). Retrieved 2008-12-23.
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- <sup>^</sup> "Sony G70 Brochure". [http://www.curtpalme.com/docs/SonyG70\\_Brochure.pdf](http://www.curtpalme.com/docs/SonyG70_Brochure.pdf).

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# Lumen

From Wikipedia, the free encyclopedia

**Lumen** can mean:

- Lumen (unit), the SI unit of luminous flux
- Lumen (anatomy), the cavity or channel within a tubular structure
- Thylakoid lumen, the inner membrane space of the chloroplast
- 141 Lumen, an asteroid discovered by the French astronomer Paul Henry in 1875
- Lumen (band), Russian punk rock band

## See also

- Candela
- Lux

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Categories: Disambiguation pages

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				<b>Add to Cart &gt;</b>	<a href="#">Save to List &gt;</a>
	<b>Lumene</b> Lumene Absolute Away Eye Makeup Remover  FREE standard shipping eligible <a href="#">Details</a> <a href="#">Similar Items</a>	3.4 OZ	0.12 LBS	<b>\$6.49</b>	1
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	<b>Lumene</b> Lumene Sensitive Touch Comforting Night Cream Sensitive Skin  FREE standard shipping eligible <a href="#">Details</a> <a href="#">Similar Items</a>	1.7 OZ	0.47 LBS	<b>\$17.99</b>	1
				<b>Add to Cart &gt;</b>	<a href="#">Save to List &gt;</a>
	<b>Lumene</b> Lumene Excellent Future Deep Repairing Cream  FREE standard shipping eligible <a href="#">Details</a> <a href="#">Similar Items</a>	1.7 OZ	NA	<b>\$29.99</b>	1
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	<b>Lumene</b> Lumene ExCELLent Future Deep Repairing Eye Cream for All Skin Types	0.5 OZ	1.60 LBS	<b>\$24.99</b>	1	<a href="#">Add to Cart &gt;</a> <a href="#">Save to List &gt;</a>
	<b>Lumene</b> Lumene ExCELLent Future Deep Repairing Night Cream for All Skin Types	1.7 OZ	7.68 LBS	<b>\$29.99</b>	1	<a href="#">Add to Cart &gt;</a> <a href="#">Save to List &gt;</a>
	<b>Lumene</b> Lumene ExCELLent Future Deep Repairing Night Cream for All Skin Types	1.7 OZ	7.68 LBS	<b>\$29.99</b>	1	<a href="#">Add to Cart &gt;</a> <a href="#">Save to List &gt;</a>
	<b>Lumene</b> Lumene Excellent Future Deep Repairing Serum	1.0 OZ	NA	<b>\$29.99</b>	1	<a href="#">Add to Cart &gt;</a> <a href="#">Save to List &gt;</a>
	<b>Lumene</b> Lumene Excellent Future Deep Repairing Serum	1.0 OZ	NA	<b>\$29.99</b>	1	<a href="#">Add to Cart &gt;</a> <a href="#">Save to List &gt;</a>
	<b>Lumene Skincare</b> Lumene Time Freeze Firming Day Cream	1.7 OZ	0.50 LBS	<b>\$21.99</b>	1	<a href="#">Add to Cart &gt;</a> <a href="#">Save to List &gt;</a>
	<b>Lumene Skincare</b> Lumene Time Freeze Firming Day Cream	1.7 OZ	0.50 LBS	<b>\$21.99</b>	1	<a href="#">Add to Cart &gt;</a> <a href="#">Save to List &gt;</a>
	<b>Lumene Skincare</b> Lumene Vitamin C+ Nourishing Day Cream	1.7 OZ	0.05 LBS	<b>\$19.99</b>	1	<a href="#">Add to Cart &gt;</a> <a href="#">Save to List &gt;</a>
	<b>Lumene Skincare</b> Lumene Vitamin C+ Nourishing Day Cream	1.7 OZ	0.05 LBS	<b>\$19.99</b>	1	<a href="#">Add to Cart &gt;</a> <a href="#">Save to List &gt;</a>
	<b>Lumene Skincare</b> Lumene Radiant Touch Cream	5.1 OZ	0.47 LBS	<b>\$10.99</b>		<b>OUT OF STOCK</b> <a href="#">Add to Cart &gt;</a> <a href="#">Save to List &gt;</a>
	<b>Lumene Skincare</b> Lumene Radiant Touch Cream	5.1 OZ	0.47 LBS	<b>\$10.99</b>		<b>OUT OF STOCK</b> <a href="#">Add to Cart &gt;</a> <a href="#">Save to List &gt;</a>
	<b>Lumene Skincare</b>	0.5 OZ	0.06 LBS	<b>\$3.99</b>	1	

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	<b>Lumene Skincare</b> Lumene Skin Supporter Night Firming Night Cream	1.7 OZ	0.17 LBS	<b>\$21.99</b>	1	<a href="#">Add to Cart &gt;</a> <a href="#">Save to List &gt;</a>
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	<b>Lumene Skincare</b> Lumene Sensitive Touch Daily Moisture Cream for Sensitive Skin	1.7 OZ	0.44 LBS	<b>\$17.99</b>	1	<a href="#">Add to Cart &gt;</a> <a href="#">Save to List &gt;</a>
	<b>FREE</b> standard shipping eligible <a href="#">Details</a> <a href="#">Similar Items</a>					
	<b>Lumene Skincare</b> Lumene Premium Beauty Rejuvenating Night Cream	1.7 OZ	0.44 LBS	<b>\$29.99</b>	1	<a href="#">Add to Cart &gt;</a> <a href="#">Save to List &gt;</a>
	<b>FREE</b> standard shipping eligible <a href="#">Details</a> <a href="#">Similar Items</a>					
	<b>Lumene Skincare</b> Lumene Premium Beauty Rejuvenating Day Cream Spf 15	1.7 OZ	0.10 LBS	<b>\$29.99</b>	1	<a href="#">Add to Cart &gt;</a> <a href="#">Save to List &gt;</a>
	<b>FREE</b> standard shipping eligible <a href="#">Details</a> <a href="#">Similar Items</a>					
	<b>Lumene Skincare</b> Lumene Vitamin C+ Nourishing Night Care	1.7 OZ	0.05 LBS	<b>\$19.99</b>	1	<a href="#">Add to Cart &gt;</a> <a href="#">Save to List &gt;</a>
	<b>FREE</b> standard shipping eligible <a href="#">Details</a> <a href="#">Similar Items</a>					
	<b>Lumene Skincare</b> Lumene Time Freeze Firming Day Cream Spf 15	1.7 OZ	0.50 LBS	<b>\$21.99</b>	1	<a href="#">Add to Cart &gt;</a> <a href="#">Save to List &gt;</a>
	<b>FREE</b> standard shipping eligible <a href="#">Details</a> <a href="#">Similar Items</a>					
	<b>Lumene Skincare</b>	6.8 OZ	0.40 LBS	<b>\$10.99</b>		

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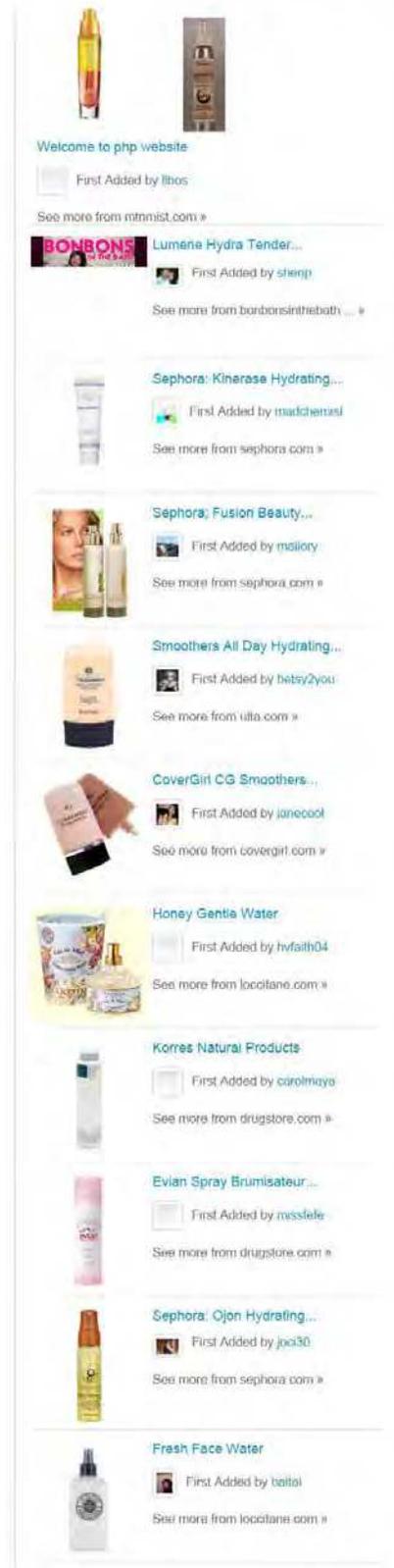


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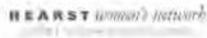
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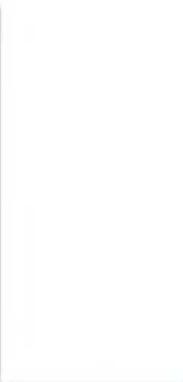
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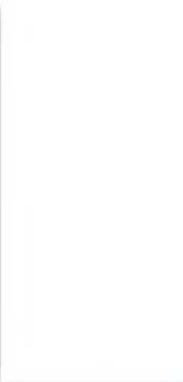
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**Lumene Sensitive Eye Makeup Remover** **Lumene Vitamin C + Energy Skin Care** **Lumene Time Freeze Firming Night Cream** **Lumene Doublestay Mineral Makeup Only...**

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**Lumene Time Freeze Makeup #40** **Lumene Vitamin C + Nourishing Night Care** **Lumene Radiant Touch Toner** **Lumene Time Freeze Cooling Eye Stick**

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**Lumene Time Freeze Lifting Eye Cream** **Lumene Premium Beauty Rejuvenating...** **Lumene Premium Beauty Supreme Restruct...**

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**Lumene 3 Step Age Defying Trio and...** **Lumene Lipstick #206 Wildrose** **Lumene Firming Day Cream Trio Size** **Lumene Lipstick #209 Luring Smile**

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Serums  
Eye Care  
Neck and Decollete Care  
Intensive Care  
Night Treatments  
Acne and Blemish Control  
See all...

Skin Care Action

Tightening  
Elasticity  
Soothing  
Firming  
Smoothing  
Lifting  
Matifying  
Radiance  
Energizing / Stress Relief  
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Features

Shines  
Long Lasting  
Glossy Finish  
Softens  
Nourishing  
Easy Application  
Flavored  
Protectant  
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Face  
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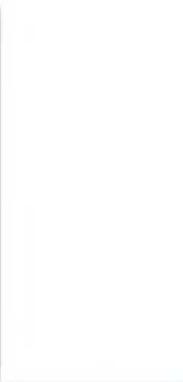
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**Lumene** Face Makeup Beauty Base For all

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**Lumene Beautiful Pumping Lipshine**  
  
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**Lumene Berryfun Lip Gloss #2 "A Rosa"**  
  
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**Lumene Berry Fun Lip Gloss: 15 Perfect**  
  
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**Lumene Berry Fun Lip Gloss: 2 a Rosa**  
  
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**Lumene Berry Fun Lip Gloss: 10 Forever...**  
  
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**771702,676**

[Lumene](#) Berry Fun Lip Gloss: 6 It's Okay...



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1 offer

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[Lumene](#) Double Stay Long-lasting Makeup...



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[www.Gifts.com](http://www.Gifts.com)

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1 offer

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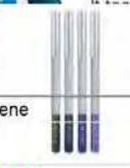
**Lumene Unique Liner Eye Liner #2 Brown...**  
  
**\$9.99**

**Lumene Sensitive Touch Cleansing Wipes**  
  
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**Lumene Deluxe Face Body Powder Blush**  
  
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**Lumene Face Powder Blush**  
  
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**Lumene Eye Liner Pencil Eye Graphics**  
  
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**Lumene Eye Liner Pencil Eye Graphics**  
  
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**Lumene Eye Liner Pencil Eye Graphics**  
  
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**Lumene Skin Couture Long-Lasting Cream**  
  
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**Lumene 5 Nip Rejuvenating Hand**  
  
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<p><b>Lumene Face Blender Brush Great For...</b></p>  <p><b>\$6.99</b> <b>Free Shipping!</b> <a href="#">See Total Price</a> eBay</p>	<p><b>Lumene Retractable Powder Brush For...</b></p>  <p><b>\$6.99</b> <b>Free Shipping!</b> <a href="#">See Total Price</a> eBay</p>		



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- Toners
- Moisturizers
- Serums
- Eye Care
- Neck and Decollete Care
- Intensive Care
- Night Treatments
- Acne and Blemish Control
- See all...

**Skin Care Action**

- Tightening
- Elasticity
- Soothing
- Firming
- Smoothing
- Lifting
- Matifying
- Radiance
- Energizing / Stress Relief
- Revitalizing
- See all...

**Features**

- Shines
- Long Lasting
- Glossy Finish
- Softens
- Nourishing
- Easy Application
- Flavored
- Protectant
- Fragrance Free
- Oil Free
- See all...

**Cosmetic Types**

- Lips
- Eyes
- Face
- Nails
- Select more than one...

**Skin Care Applicat...**

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- Lotion
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**Skin Care Features**

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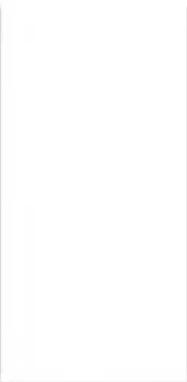
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Lumene Rejuvenating Neck & Decollete



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Rejuvenating

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## LUMEN WATER™ An ultra-premium couture bottled water™

DALLAS, TEXAS - Lumen Water, Inc. today announced the introduction of its couture water brand into the marketplace. With its ultra-premium source, sleek modern cap and bottle design, extraordinary external packaging and fashion-defining image, Lumen Water™ provides an entirely new experience for discerning water connoisseurs. Sourced from the deepest region of the Ogallala aquifer which flows over 700 feet below the North American continent (latitude 35° 56'N - longitude 102° 1'W™), Lumen Water represents the highest purity of any ultra-premium water. Its unique mineral signature complemented by its low TDS (total dissolved solids) count (in mg/l: K - 6.3, MG - 25, CA - 36, TDS - 290) and pH level of 7.2 are recognized immediately by the palate as a light and smooth experience.

“The term ultra-premium is frequently misused when describing bottled water,” explains the company’s CEO, Tom Hegwer. “An ultra-premium water is of such purity that it may be experienced straight from its source in its natural state. No minerals can be added to the water to enhance taste and conversely nothing can be subtracted from the water through harsh, artificial processes such as reverse osmosis which degrade water’s natural purity. Additionally, the water must flow from a protected, virgin source and be at least 5,000 years in age. As Lumen Water has been protected by nature in an ultra-deep aquifer for over 10,000 years, it defines the standard for ultra-premium.”

However, the brand’s identity moves significantly beyond its extraordinary source and is further experienced through its highly innovative packaging and rich iconic fashion photography. The uniquely embossed, high-polished all aluminum cap represents a first for luxury bottled waters and provides Lumen™ with a distinct, modern feel. The bottle’s sleek design, complemented by its split, brushed aluminum labels further advances its progressive aesthetic design.

Lumen’s external packaging represents a radical departure from common beverage packaging as well and dramatically deepens the brand’s overall experience. The bold, black packaging is vividly offset by metallic silver print, which immediately defines the brand’s ethos as modern and sophisticated. Lumen’s identity is completed through its rich, ultra-chic photography and couture advertising campaign that may be found on [lumenwater.com](http://lumenwater.com). The Lumen brand is available exclusively to couture establishments.

# LUMEN

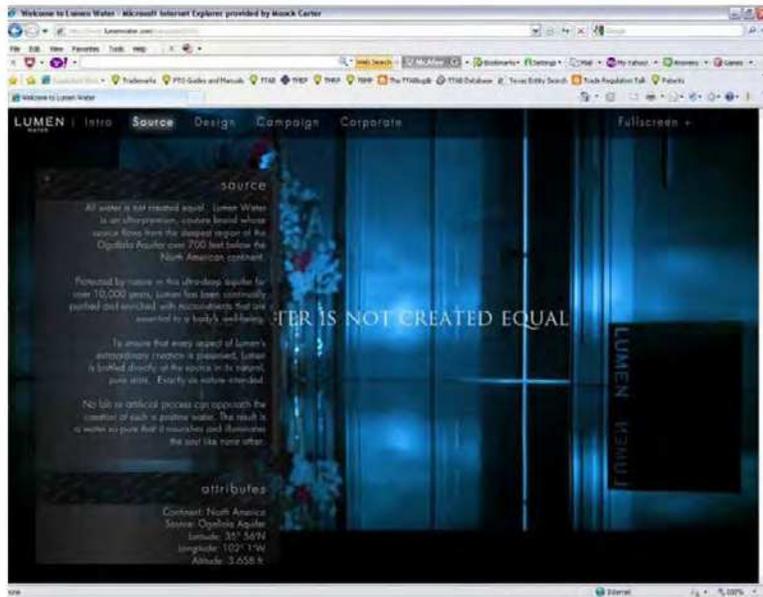
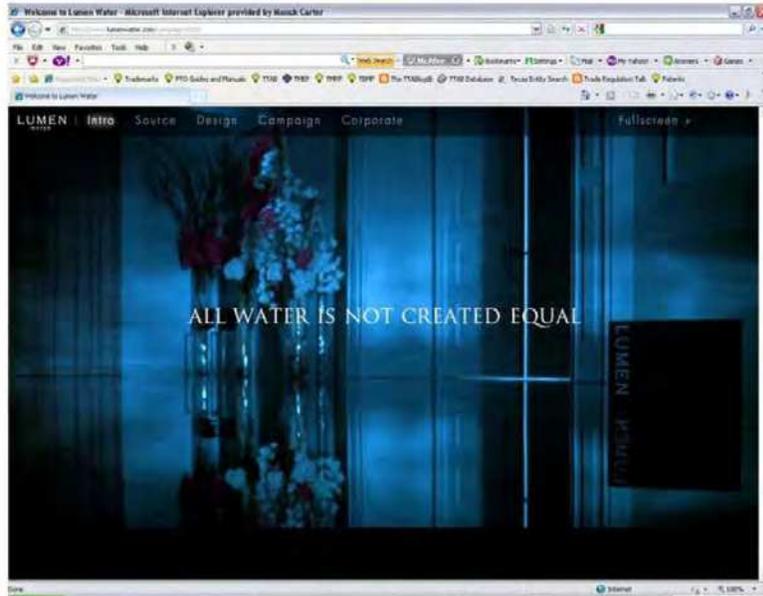
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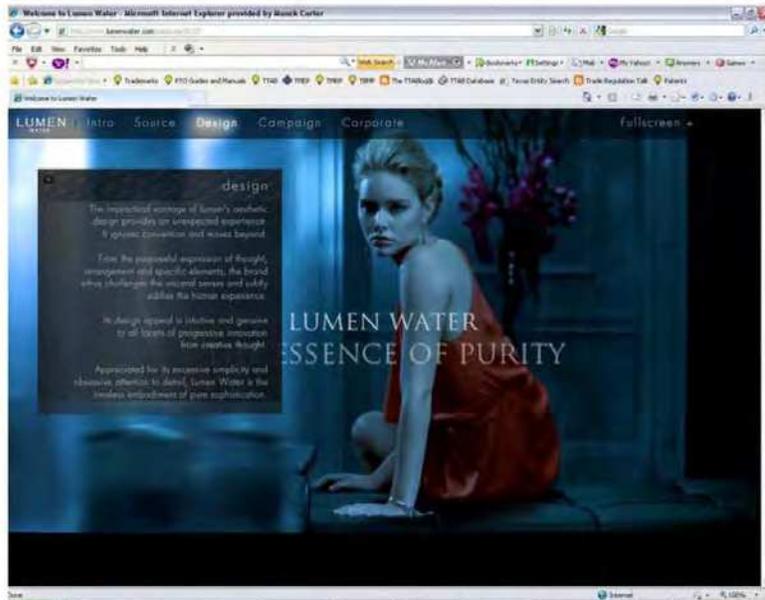
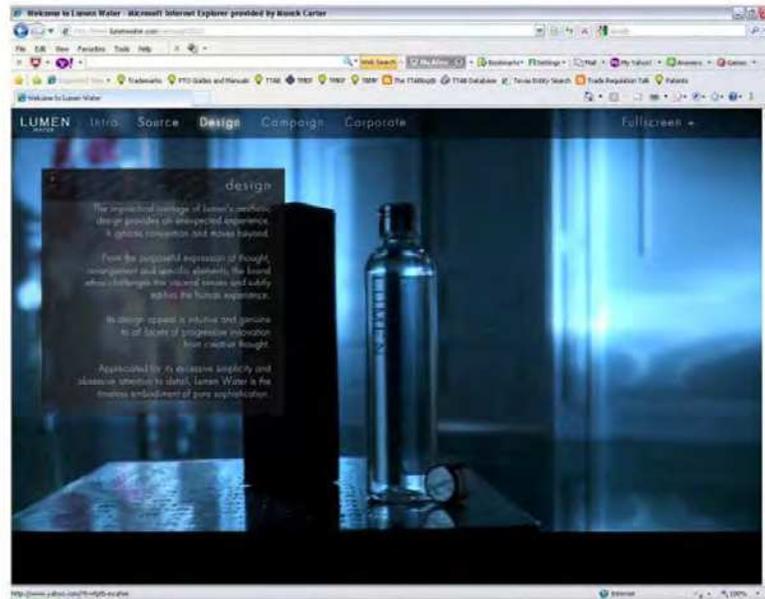
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771702,676

## **About Lumen Water, Inc.**

Lumen Water, Inc. is an ultra-premium bottled water company focused exclusively on defining market leadership for the luxury water market. The Lumen brand is 'exclusive to couture establishments' and represents the finest bottled water experience in the world. Comprised of its ultra-premium source, unique couture image, and modern aesthetic design, its brand appeal is intuitive yet genuine to all facets of progressive innovation. Appreciated for its excessive simplicity and obsessive attention to detail, Lumen Water is the timeless embodiment of pure sophistication. Source and composition; Continent: North American, Source: Ogallala Aquifer, Latitude: 35° 56'N - Longitude: 102° 1'W, Altitude: 3,658 Feet, Aquifer depth: 700 Feet, Age: >10,000 years, Composition: (in mg/l; K – 6.3, MG – 25, CL – 6.9, CA – 36, TDS – 290, pH – 7.2).

Applicant's Website:





LUMEN WATER  
ESSENCE OF PURITY

Applicant's Brochure:





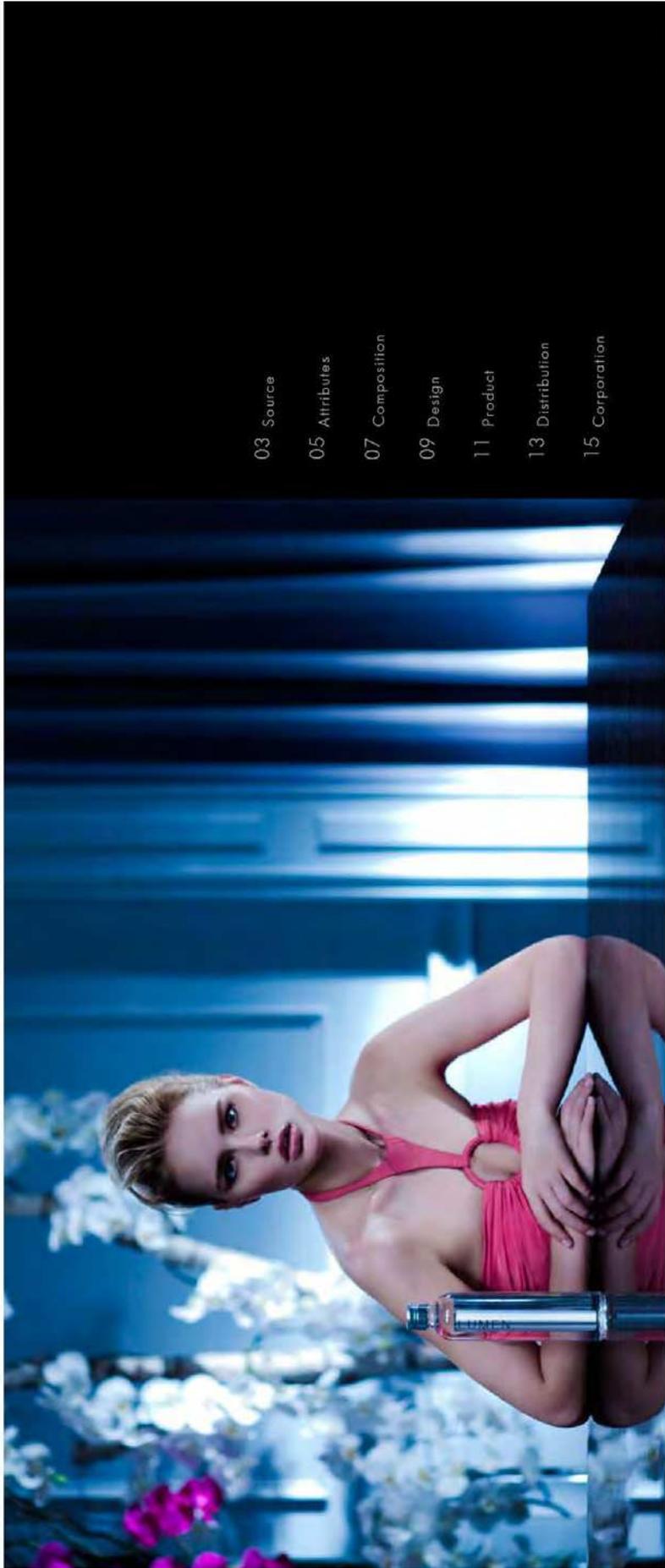






# LUMEN

OVERVIEW



03 Source

05 Attributes

07 Composition

09 Design

11 Product

13 Distribution

15 Corporation



EXHIBIT I  
77/702,676

Source

All water is not created equal. Lumen Water is an ultra-premium, couture brand whose source flows from the deepest region of the Ogishla Aquifer over 700 feet below the North American continent.

Protected by nature in this ultra-deep aquifer for over 10,000 years, Lumen has been continually purified and enriched with micronutrients that are essential to a body's well-being.

To ensure that every aspect of this extraordinary creation is preserved, Lumen is bottled directly at the source in its natural, pure state, exactly as nature intended. To the point, nothing is added or subtracted.

To the water as its innate purity exceeds all standards required by the FDA, EPA and IBWA.

No lab or artificial process can approach the creation of such an extraordinary water that required nature over 10,000 years to complete.

The result is Lumen, a water so pure that it nourishes and illuminates the soul like none other.



Four Pack

EXHIBIT I  
77/702,676

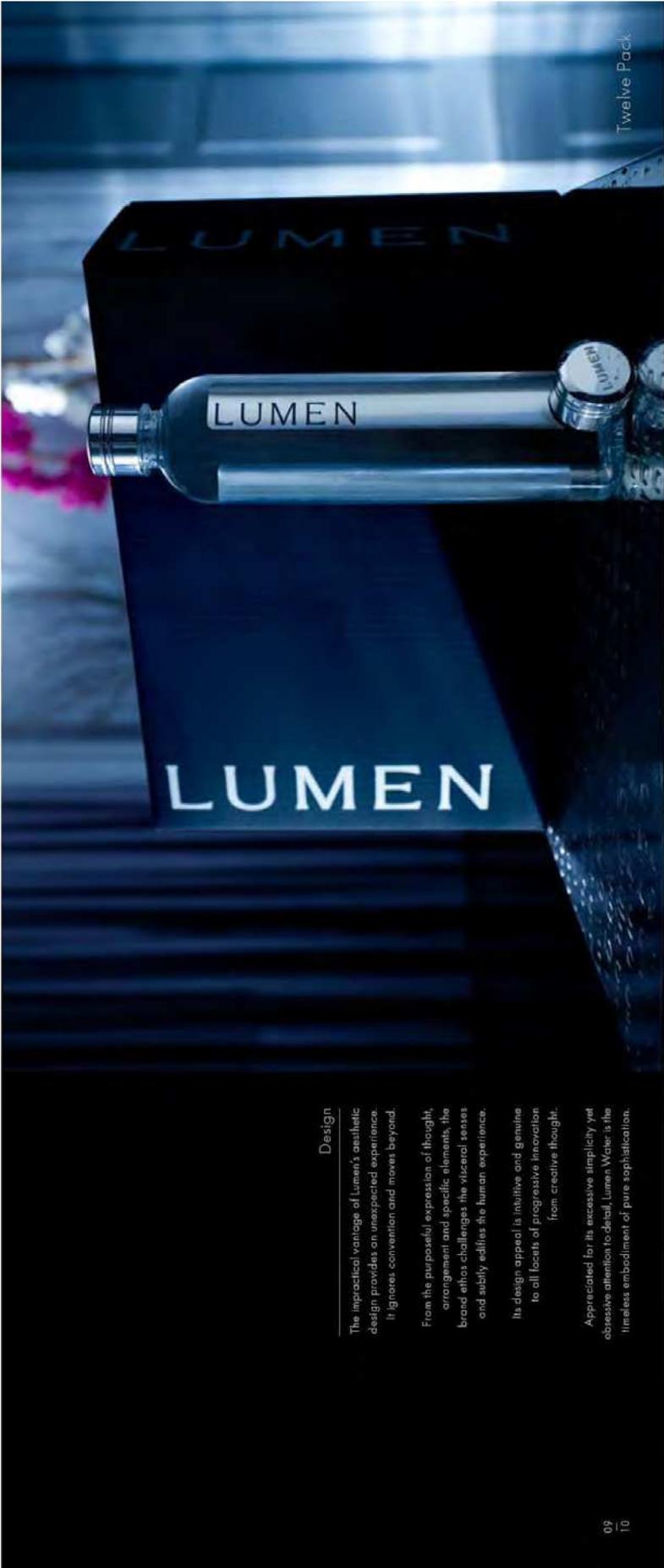
Attributes

Continent: North America  
Source: Ogallala Aquifer  
Latitude: 35° 56' N  
Longitude: 102° 1' W  
Altitude: 3,658 ft.  
Aquifer depth: 700 ft.  
Age: >10,000 years



Composition: mg/l

- K - 63
- Mg - 25
- Cl - 69
- Ca - 36
- TDS - 290
- pH - 7.2
- [Nitrate] NO3 - 21
- [Bicarbonate] HCO3 - 200
- [Sulfate] SO4 - 40
- [Total Dissolved Solids] TDS - 290



Design

The impractical language of Lumen's aesthetic design provides an unexpected experience. It ignores convention and moves beyond.

From the purposeful expression of thought, arrangement and specific elements, the brand ethos challenges the visceral senses and subtly edifies the human experience.

Its design appeal is intuitive and genuine to all facets of progressive innovation from creative thought.

Appreciated for its excessive simplicity yet obsessive attention to detail, Lumen Water is the timeless embodiment of pure sophistication.

### Product & Packaging

Lumen Water's highly innovative and luxurious external packaging is unique and is tailored in a specific way to meet each environment that is served or sold through.

For more information on our packaging options and what may best suit your specific environment and needs please visit: [www.lumenwater.com/brochure](http://www.lumenwater.com/brochure)

#### Single Serving Sizes:

- 450ml - glass
- 500ml - plastic

#### Table bottle Sizes:

- 900ml - glass
- 1000ml - plastic

#### Restaurant & On-Premises Use:

- 450ml - glass: 12 bottles/case
- 500ml - plastic: 12 bottles /case
- 900ml - glass: 8 bottles /case
- 1000ml - plastic: 8 bottles /case

#### Retail Environments:

- 450ml - glass: 12 bottles/case bundled into 4-packs
- 500ml - plastic: 12 bottles /case bundled into 4-packs
- 900ml - glass: 8 bottles /case
- 1000ml - plastic: 8 bottles /case

#### Luxury Packaging:

- 450ml - glass: 12 bottles/case - individually packaged
- 500ml - plastic: 12 bottles /case - individually packaged
- 900ml - glass: 8 bottles /case - individually packaged
- 1000ml - plastic: 8 bottles /case - individually packaged



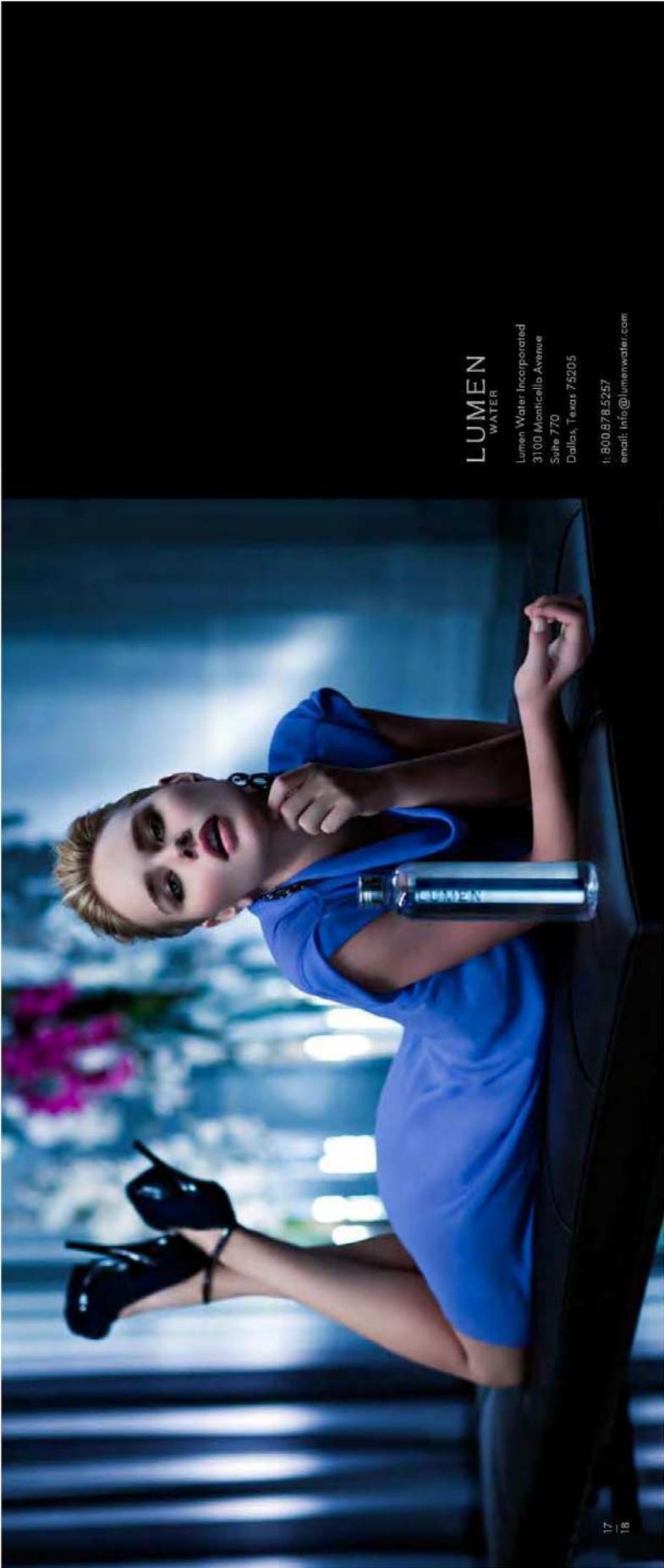
Single Pack

EXHIBIT I  
77/702,676



#### Corporation

Lumen Water is an ultra-premium bottled water company focused exclusively on defining market leadership for the luxury water market. The Lumen brand is exclusive to upscale establishments, and represents the finest bottled water experience in the world. Comprised of its ultra-premium source, unique cottle image, and modern aesthetic design, its brand appeal is intuitive and genuine to all facets of progressive innovation. Appreciated for its excessive simplicity yet obsessive attention to detail, Lumen Water is the timeless embodiment of pure sophistication.



**LUMEN**  
WATER

Lumen Water Incorporated  
3100 Monticello Avenue  
Suite 770  
Dallas, Texas 75205

t: 800.878.5257  
email: info@lumenwater.com

WATER

LUMENWATER.COM



LUMENWATER.COM

EXHIBIT I  
77/702,676

### Source

All water is not created equal. Lumen Water is an ultra-premium, nature brand whose source flows from the deepest region of the Ogallala Aquifer over 700 feet below the North American continent.

Protected by nature in this ultra-deep aquifer for over 10,000 years, Lumen has been continually purified and enriched with minerals that are essential to a body's well-being.

To ensure that every aspect of this extraordinary creation is preserved, Lumen is bottled directly at the source in its natural, pure state, exactly as nature intended. To this point, nothing is added or subtracted to the water as its innate purity exceeds all standards required by the FDA, EPA and BWA.

No lab or artificial process can approach the creation of such an extraordinary water that required nature over 10,000 years to complete.

The result is Lumen: a water so pure that it nourishes and illuminates the soul like none other.

### Attributes

Continent: North America  
Source: Ogallala Aquifer  
Latitude: 35° 52'N  
Longitude: 102° 1'W  
Altitude: 3,658 ft  
Aquifer depth: 700 ft  
Age: 10,000 years

### Composition: mg/l

K - 6.3  
Mg - 25  
Cl - 6.9  
Ca - 36  
TDS - 290  
pH - 7.2  
[Minerals] NO3 - 2.1  
[Bicarbonates] HCO3 - 200  
[Sulfates] SO4 - 40  
[Total Dissolved Solids] TDS - 290

### Design

The impractical vintage of Lumen's aesthetic design provides an unexpected experience. It ignores convention and moves beyond.

From the purposeful expression of thought, arrangement and specific elements, the brand ethos challenges the visceral senses and subtly defines the human experience.

Its design appeal is intuitive and genuine to all facets of progressive innovation from creative thought.

Appreciated for its excessive simplicity yet obsessive attention to detail, Lumen Water is the timeless embodiment of pure sophistication.

### Distribution

**LUMEN**  
WATER  
Lumen Water Incorporated  
3100 Monticello Avenue  
Suite 770  
Dallas, Texas 75205  
t 800.878.5257  
email: info@lumenwater.com

### Product & Packaging

Lumen Water's highly innovative and luxurious external packaging is unique and is tailored in a specific way to meet each environment that it served or sold through. For more information on our packaging options and what may best suit your specific environment and needs please visit: [www.lumenwater.com/brochure](http://www.lumenwater.com/brochure)

Single Serving Sizes:  
450ml - glass  
500ml - plastic

Table bottle Sizes:  
900ml - glass  
1000ml - plastic

Restaurant & On-Premises Use:  
450ml - glass, 12 bottles/case  
500ml - plastic, 12 bottles/case  
900ml - glass, 8 bottles/case  
1000ml - plastic, 8 bottles/case

Retail Environments:  
450ml - glass, 12 bottles/case bundled into 4 packs  
500ml - plastic, 12 bottles/case bundled into 4 packs  
900ml - glass, 8 bottles/case  
1000ml - plastic, 8 bottles/case

Luxury Packaging:  
450ml - glass, 12 bottles/case - individually packaged  
500ml - plastic, 12 bottles/case - individually packaged  
900ml - glass, 8 bottles/case - individually packaged  
1000ml - plastic, 8 bottles/case - individually packaged



**DECLARATION**

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he is properly authorized to execute this application on behalf of the applicant; he believes the applicant to be the owner of the trademark sought to be registered; or, if the application is being filed under 15 U.S.C. § 1051(b), he believes applicant entitled to use such mark in commerce; to the best of his knowledge and belief no other person, firm, corporation, or association has the right to use the above-identified mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the services of such other person, to cause confusion, or to cause mistake, or to deceive; and all statements made of his own knowledge are true; and that all statements made on information and belief are believed to be true.

LUMEN WATER, INC.



\_\_\_\_\_  
Tom Hegwer  
CEO

Date: 09/30/2010



**To:** Lumen Water, Inc. ([dhouse@munckcarter.com](mailto:dhouse@munckcarter.com))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 77702676 - LUMEN WATER - LUME01-00002  
**Sent:** 4/1/2010 8:31:42 AM  
**Sent As:** ECOM114@USPTO.GOV  
**Attachments:**

## UNITED STATES PATENT AND TRADEMARK OFFICE

**SERIAL NO:** 77702676

**MARK:** LUMEN WATER

**\*77702676\***

**CORRESPONDENT ADDRESS:**

Dyan M. House  
Munck Carter, LLP  
PO Drawer 800889  
Dallas TX 75380

**RESPOND TO THIS ACTION:**

<http://www.uspto.gov/teas/eTEASpageD.htm>

**GENERAL TRADEMARK INFORMATION:**

<http://www.uspto.gov/main/trademarks.htm>

**APPLICANT:** Lumen Water, Inc.

**CORRESPONDENT'S REFERENCE/DOCKET**

**NO:**

LUME01-00002

**CORRESPONDENT E-MAIL ADDRESS:**

[dhouse@munckcarter.com](mailto:dhouse@munckcarter.com)

### OFFICE ACTION

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

**ISSUE/MAILING DATE: 4/1/2010**

This application has been reinstated by the Commissioner for Trademarks. Applicant has six months from the date of this Office action to respond to the issues raised in the previous Office action. TMEP §1714.01(a)(i).

A copy of the previous Office action and any supporting documentation can be viewed and downloaded online at <http://portal.uspto.gov/external/portal/tow>. Enter the serial number of this application in the box labeled NUMBER and click on the SUBMIT button. The Office action can then be viewed by clicking

the link labeled "Office Action Outgoing" next to the Mail/Create Date of 08/04/2009 in Trademark Document Retrieval (TDR). If applicant has any problems viewing the Office action, please contact the undersigned.

If the previous Office action contained fee information or requirements, please confirm current fee information at <http://www.uspto.gov/>.

**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. 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. Responding by telephone to authorize an examiner's amendment will not incur this additional fee.

/John Hwang/  
LAW OFFICE 114  
USPTO  
571-272-9452  
571-273-9114 FAX

**RESPOND TO THIS ACTION:** Applicant should file a response to this Office action online using the form at <http://www.uspto.gov/teas/eTEASpageD.htm>, waiting 48-72 hours if applicant received notification of the Office action via e-mail. For *technical* assistance with the form, please e-mail [TEAS@uspto.gov](mailto:TEAS@uspto.gov). For questions about the Office action itself, please contact the assigned examining attorney. **Do not respond to this Office action by e-mail; the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

**STATUS CHECK:** Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

**To:** Lumen Water, Inc. ([dhouse@munckcarter.com](mailto:dhouse@munckcarter.com))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 77702676 - LUMEN WATER - LUME01-00002  
**Sent:** 4/1/2010 8:31:46 AM  
**Sent As:** ECOM114@USPTO.GOV  
**Attachments:**

## **IMPORTANT NOTICE REGARDING YOUR TRADEMARK APPLICATION**

**Your trademark application (Serial No. 77702676) has been reviewed. The examining attorney assigned by the United States Patent and Trademark Office (“USPTO”) has written a letter (an “Office action”) on 4/1/2010 to which you must respond (*unless the Office letter specifically states that no response is required*). Please follow these steps:**

1. **Read** the Office letter by clicking on this **link** [http://tportal.uspto.gov/external/portal/tow?DDA=Y&serial\\_number=77702676&doc\\_type=OOA&](http://tportal.uspto.gov/external/portal/tow?DDA=Y&serial_number=77702676&doc_type=OOA&) OR go to <http://tportal.uspto.gov/external/portal/tow> and enter your serial number to access the Office letter. If you have difficulty accessing the Office letter, contact [TDR@uspto.gov](mailto:TDR@uspto.gov).

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

2. **Contact** the examining attorney who reviewed your application if you have any questions about the content of the Office letter (contact information appears at the end thereof).

3. **Respond** within 6 months, calculated from 4/1/2010 (*or sooner if specified in the Office letter*), using the Trademark Electronic Application System (TEAS) **Response to Office Action form**. If you have difficulty using TEAS, contact [TEAS@uspto.gov](mailto:TEAS@uspto.gov).

### **ALERT:**

**Failure to file any required response by the applicable deadline will result in the ABANDONMENT (loss) of your application.**

**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.**

\*\*\* User:jhwang \*\*\*

#	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/ Search Duration	Search
01	1	0	1	1	0:01	77702676[SN]
02	20	8	4	3	0:06	*lum{v}n*[bi,ti] & ("032" a b 200)[ic]

Session started 4/1/2010 8:24:21 AM

Session finished 4/1/2010 8:25:19 AM

Total search duration 0 minutes 7 seconds

Session duration 0 minutes 58 seconds

Default NEAR limit=1ADJ limit=1

Sent to TICRS as Serial Number: 77702676

## Change Of Correspondence Address

---

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

Input Field	Entered
<b>SERIAL NUMBER</b>	77702676
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 114
<b>MARK SECTION</b>	
<b>MARK</b>	LUMEN WATER
<b>CORRESPONDENCE SECTION (current)</b>	
<b>ORIGINAL ADDRESS</b>	Dyan M. House Munck Carter, LLP PO Drawer 800889 Dallas Texas 75380 United States 972.628.3600 972.628.3616
<b>NEW CORRESPONDENCE ADDRESS</b>	
<b>NEW ADDRESS</b>	Dyan M. House Munck Carter, LLP PO Drawer 800889 Dallas Texas United States 75380 972.628.3600 972.628.3616 dhouse@munckcarter.com
<b>SIGNATURE SECTION</b>	
<b>SIGNATURE</b>	/dyanhouse/
<b>SIGNATORY NAME</b>	Dyan House
<b>SIGNATORY DATE</b>	03/15/2010
<b>SIGNATORY POSITION</b>	Attorney of record, Texas bar member 24036923
<b>AUTHORIZED SIGNATORY</b>	YES
<b>FILING INFORMATION SECTION</b>	
<b>SUBMIT DATE</b>	Mon Mar 15 12:01:34 EDT 2010

**TEAS STAMP**

USPTO/CCA-216.138.64.42-2  
0100315120134952231-77707  
745-4607dfd6ca9c2dff2a456  
79f436bce974-N/A-N/A-201  
00315115657158336

Side - 1



**NOTICE OF REVIVAL**  
**MAILING DATE: Mar 12, 2010**

The trademark application identified below has been revived to pending status. The application file will be forwarded to the appropriate section of the Office for further processing.

To verify the status and location of your application, please wait approximately three weeks and check the USPTO website at <http://tarr.uspto.gov/> or call the Trademark Assistance Center at 1-800-786-9199.

**SERIAL NUMBER: 77702676**  
**MARK: LUMEN WATER**  
**OWNER: Lumen Water, Inc.**  
**REVIVAL DATE: Mar 12, 2010**

Side - 2

UNITED STATES PATENT AND TRADEMARK OFFICE  
COMMISSIONER FOR TRADEMARKS  
P.O. BOX 1451  
ALEXANDRIA, VA 22313-1451

FIRST-CLASS  
MAIL  
U.S POSTAGE  
PAID

Dyan M. House  
Munck Carter, LLP  
PO Drawer 800889  
Dallas, TX 75380

## Petition To Revive For Office Action

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

Input Field	Entered
<b>SERIAL NUMBER</b>	77702676
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 114
<b>DATE OF NOTICE OF ABANDONMENT</b>	03/02/2010
<b>PETITION</b>	
<b>PETITION STATEMENT</b>	Applicant has firsthand knowledge that the failure to respond to the Office Action by the specified deadline was unintentional. The signatory did not receive the Office action prior to the expiration of the six-month response period, and requests the USPTO to revive the abandoned application and reissue the Office Action
<b>PAYMENT SECTION</b>	
<b>TOTAL AMOUNT</b>	100
<b>TOTAL FEES DUE</b>	100
<b>SIGNATURE SECTION</b>	
<b>RESPONSE SIGNATURE</b>	/Tom Hegwer/
<b>SIGNATORY'S NAME</b>	Tom Hegwer
<b>SIGNATORY'S POSITION</b>	CEO
<b>DATE SIGNED</b>	03/12/2010
<b>AUTHORIZED SIGNATORY</b>	YES
<b>FILING INFORMATION SECTION</b>	
<b>SUBMIT DATE</b>	Fri Mar 12 15:27:14 EST 2010
<b>TEAS STAMP</b>	USPTO/POA-216.138.64.42-2 0100312152714223385-77702 676-4602c88f269ccb3d5df06 8a6ff9bb65d9f-DA-1823-201 00312151723493629

---

**Petition To Revive For Office Action**  
**To the Commissioner for Trademarks:**

Application serial no. **77702676** has been amended as follows:

**PETITION**

**Petition Statement**

Applicant has firsthand knowledge that the failure to respond to the Office Action by the specified deadline was unintentional. The signatory did not receive the Office action prior to the expiration of the six-month response period, and requests the USPTO to revive the abandoned application and reissue the Office Action

**FEE(S)**

Fee(s) in the amount of \$100 is being submitted.

**SIGNATURE(S)**

**Petition/Response Signature**

Signature: /Tom Hegwer/ Date: 03/12/2010

Signatory's Name: Tom Hegwer

Signatory's Position: CEO

RAM Sale Number: 1823

RAM Accounting Date: 03/15/2010

Serial Number: 77702676

Internet Transmission Date: Fri Mar 12 15:27:14 EST 2010

TEAS Stamp: USPTO/POA-216.138.64.42-2010031215271422

3385-77702676-4602c88f269ccb3d5df068a6ff

9bb65d9f-DA-1823-20100312151723493629

RAM SALE NUMBER: 1823  
RAM ACCOUNTING DATE: 20100315

INTERNET TRANSMISSION DATE:  
2010/03/12

SERIAL NUMBER:  
77/702676

Description	Fee Code	Transaction	Total Fees Paid
POA	7005	2010/03/12	100

## Revocation of Attorney/Domestic Representative and/or Appointment of Attorney/Domestic Representative

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77702676
LAW OFFICE ASSIGNED	LAW OFFICE 114
ATTORNEY DOCKET NUMBER	LUME01-00002
MARK SECTION	
MARK	LUMEN WATER
ATTORNEY SECTION	
ORIGINAL ADDRESS	STEVEN R. SHAVER SHAVER LAW FIRM 325 OVER DALE CT SUNNYVALE Texas (TX) 75182-2646 United States (USX) 214-295-2901 214-432-6688 sshaver@shaverlawfirm.com
NEW OTHER APPOINTED ATTORNEYS	William A. Munck, Robert D. McCutcheon, Michael A. McCabe
NEW ATTORNEY ADDRESS	
STATEMENT TEXT	By submission of this request, the undersigned REVOKES the power of attorney currently of record, as listed above, and hereby APPOINTS the following new attorney.
NAME	Dyan M. House
FIRM NAME	Munck Carter, LLP
STREET	PO Drawer 800889
CITY	Dallas
STATE	Texas
COUNTRY	United States

<b>POSTAL/ZIP CODE</b>	75380
<b>PHONE</b>	972.628.3600
<b>FAX</b>	972.628.3616
<b>ATTORNEY DOCKET NUMBER</b>	LUME01-00002
<b>NEW CORRESPONDENCE ADDRESS</b>	
<b>NAME</b>	Dyan M. House
<b>FIRM NAME</b>	Munck Carter, LLP
<b>STREET</b>	PO Drawer 800889
<b>CITY</b>	Dallas
<b>STATE</b>	Texas
<b>COUNTRY</b>	United States
<b>POSTAL/ZIP CODE</b>	75380
<b>PHONE</b>	972.628.3600
<b>FAX</b>	972.628.3616
<b>SIGNATURE SECTION</b>	
<b>SIGNATURE</b>	/Tom Hegwer/
<b>SIGNATORY NAME</b>	Tom Hegwer
<b>SIGNATORY DATE</b>	03/11/2010
<b>SIGNATORY POSITION</b>	CEO
<b>FILING INFORMATION SECTION</b>	
<b>SUBMIT DATE</b>	Thu Mar 11 16:21:35 EST 2010
<b>TEAS STAMP</b>	USPTO/RAA-216.138.64.42-2 0100311162135531500-77702 676-460a9f81d19d1dba7c2dc 844582f307b3f-N/A-N/A-201 00311161359693871

---

## **Revocation of Attorney/Domestic Representative and/or Appointment of Attorney/Domestic Representative**

To the Commissioner for Trademarks:

**MARK:** LUMEN WATER

**SERIAL NUMBER:** 77702676

**ATTORNEY DOCKET NUMBER** LUME01-00002

**The original attorney**

STEVEN R. SHAVER

SHAVER LAW FIRM

325 OVER DALE CT

SUNNYVALE Texas 75182-2646

United States

214-295-2901

214-432-6688

sshaver@shaverlawfirm.com

**Original Correspondence Address :**

STEVEN R. SHAVER

SHAVER LAW FIRM

325 OVER DALE CT

SUNNYVALE Texas 75182-2646

United States

214-295-2901

214-432-6688

sshaver@shaverlawfirm.com

By submission of this request, the undersigned REVOKES the power of attorney currently of record, as listed above, and hereby APPOINTS the following new attorney. In addition, any additional previously-appointed attorneys that are currently listed in the application are replaced with the new "Other Appointed Attorneys" listed below.

**Newly Appointed Attorney:**

Dyan M. House

Munck Carter, LLP

PO Drawer 800889

Dallas, Texas 75380

United States

972.628.3600

972.628.3616

LUME01-00002

**Other Appointed Attorneys:**

William A. Munck, Robert D. McCutcheon, Michael A. McCabe

**The following is to be used as the correspondence address:**

Dyan M. House  
Munck Carter, LLP  
PO Drawer 800889  
Dallas, Texas 75380  
United States

972.628.3600

972.628.3616

Signature: /Tom Hegwer/ Date: 03/11/2010

Signatory's Name: Tom Hegwer

Signatory's Position: CEO

Serial Number: 77702676

Internet Transmission Date: Thu Mar 11 16:21:35 EST 2010

TEAS Stamp: USPTO/RAA-216.138.64.42-2010031116213553

1500-77702676-460a9f81d19d1dba7c2dc84458

2f307b3f-N/A-N/A-20100311161359693871

Side - 1



**NOTICE OF ABANDONMENT**  
**MAILING DATE: Mar 2, 2010**

The trademark application identified below was abandoned in full because a response to the Office Action mailed on Aug 4, 2009 was not received within the 6-month response period.

If the delay in filing a response was unintentional, you may file a petition to revive the application with a fee. If the abandonment of this application was due to USPTO error, you may file a request for reinstatement. Please note that a petition to revive or request for reinstatement **must be received within two months from the mailing date of this notice.**

For additional information, go to <http://www.uspto.gov/teas/petinfo.htm>. If you are unable to get the information you need from the website, call the Trademark Assistance Center at 1-800-786-9199.

**SERIAL NUMBER:** 77702676  
**MARK:** LUMEN WATER  
**OWNER:** Lumen Water, Inc.

Side - 2

UNITED STATES PATENT AND TRADEMARK OFFICE  
COMMISSIONER FOR TRADEMARKS  
P.O. BOX 1451  
ALEXANDRIA, VA 22313-1451

FIRST-CLASS  
MAIL  
U.S POSTAGE  
PAID

STEVEN R. SHAVER  
SHAVER LAW FIRM  
325 OVER DALE CT  
SUNNYVALE , TX 75182-2646



**To:** Lumen Water, Inc. ([sshaver@shaverlawfirm.com](mailto:sshaver@shaverlawfirm.com))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 77702676 - LUMEN WATER - N/A  
**Sent:** 8/4/2009 10:56:51 AM  
**Sent As:** ECOM114@USPTO.GOV  
**Attachments:** [Attachment - 1](#)  
[Attachment - 2](#)  
[Attachment - 3](#)  
[Attachment - 4](#)

## UNITED STATES PATENT AND TRADEMARK OFFICE

**SERIAL NO:** 77/702676

**MARK:** LUMEN WATER

**\*77702676\***

**CORRESPONDENT ADDRESS:**

STEVEN R. SHAVER  
SHAVER LAW FIRM  
325 OVER DALE CT  
SUNNYVALE, TX 75182-2646

**RESPOND TO THIS ACTION:**

<http://www.uspto.gov/teas/eTEASpageD.htm>

**GENERAL TRADEMARK INFORMATION:**

<http://www.uspto.gov/main/trademarks.htm>

**APPLICANT:** Lumen Water, Inc.

**CORRESPONDENT'S REFERENCE/DOCKET**

**NO:**

N/A

**CORRESPONDENT E-MAIL ADDRESS:**

[sshaver@shaverlawfirm.com](mailto:sshaver@shaverlawfirm.com)

### OFFICE ACTION

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

**ISSUE/MAILING DATE: 8/4/2009**

This Office action supersedes any previous Office action issued in connection with this application.

In addition to the issues raised in the prior Office action which are incorporated by reference herein, applicant must also address the issue(s) below. Applicant must respond to all issues raised in this Office

action, as well as in the previous Office action within six (6) months of the date of issuance of this Office action. 37 C.F.R. §2.62(a). If applicant does not respond within this time limit, the application will be abandoned.

#### SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 2847190. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the enclosed registration.

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely that a potential consumer would be confused or mistaken or deceived as to the source of the goods and/or services of the applicant and registrant. *See* 15 U.S.C. §1052(d). The court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) listed the principal factors to be considered when determining whether there is a likelihood of confusion under Section 2(d). *See* TMEP §1207.01. However, not all of the factors are necessarily relevant or of equal weight, and any one factor may be dominant in a given case, depending upon the evidence of record. *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); *see In re E. I. du Pont*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity of the goods and/or services, and similarity of trade channels of the goods and/or services. *See In re Opus One, Inc.*, 60 USPQ2d 1812 (TTAB 2001); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593 (TTAB 1999); *In re Azteca Rest. Enters., Inc.*, 50 USPQ2d 1209 (TTAB 1999); TMEP §§1207.01 *et seq.*

In a likelihood of confusion determination, the marks are compared for similarities in their appearance, sound, meaning or connotation and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973); TMEP §1207.01(b). Similarity in any one of these elements may be sufficient to find a likelihood of confusion. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1043 (TTAB 1987); *see* TMEP §1207.01(b).

The registration covers, among other things, “Mineral and aerated waters” in Class 32. The marks are substantially similar, in that both share the common LUMEN, and the only distinction being that the registrant has an E on the end of the word and applicant’s mark includes the generic term WATER. Moreover, the goods of the parties are identical and/or closely related in part. “Drinking water” could be considered to include “mineral waters.”

Such highly related goods are presumed to fall under common commercial trade channels. The presumption under Trademark Act Section 7(b), 15 U.S.C. §1057(b), is that the registrant is the owner of the mark and that use of the mark extends to all goods and/or services identified in the registration. The presumption also implies that the registrant operates in all normal channels of trade and reaches all classes of purchasers of the identified goods and/or services. *In re Melville Corp.*, 18 USPQ2d 1386, 1389 (TTAB 1991); *McDonald's Corp. v. McKinley*, 13 USPQ2d 1895, 1899 (TTAB 1989); *RE/MAX of Am., Inc. v. Realty Mart, Inc.*, 207 USPQ 960, 964-65 (TTAB 1980); *see* TMEP §1207.01(a)(iii).

Although applicant’s mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration. In addition, applicant must satisfy the following requirements.

TEAS PLUS APPLICANTS MUST SUBMIT DOCUMENTS ELECTRONICALLY OR SUBMIT FEE: Applicants who filed their application online using the reduced-fee TEAS Plus application must submit certain documents electronically. In addition, such applicants must accept correspondence from the Office via e-mail throughout the examination process and maintain a valid e-mail address. 37 C.F.R. §§2.23(a), (b); TMEP §§819, 819.02(a), (b). Failure to do so will incur an additional fee of \$50 per class of goods and/or services. 37 C.F.R. §2.6(a)(1)(iv); TMEP §819.04.

Therefore, applicant must submit the following documents using the Trademark Electronic Application System (TEAS) at <http://www.uspto.gov/teas/index.html>: (1) responses to Office actions; (2) preliminary amendments; (3) changes of correspondence address; (4) changes of owner's address; (5) appointments and revocations of power of attorney; (6) appointments and revocations of domestic representative; (7) amendments to allege use; (8) statements of use; (9) requests for extension of time to file a statement of use; and (10) requests to delete a Trademark Act Section 1(b) basis. If applicant files any of these documents on paper instead of via TEAS, then applicant must also submit the \$50 per class fee. 37 C.F.R. §§2.6(a)(1)(iv), 2.23(a)(1); TMEP §§819.02(b), 819.04. Telephone responses that result in the issuance of an examiner's amendment will not incur this additional fee.

/John Hwang/  
Attorney  
LAW OFFICE 114  
571-272-9452  
571-273-9114 FAX

**RESPOND TO THIS ACTION:** Applicant should file a response to this Office action online using the form at <http://www.uspto.gov/teas/eTEASpageD.htm>, waiting 48-72 hours if applicant received notification of the Office action via e-mail. For *technical* assistance with the form, please e-mail [TEAS@uspto.gov](mailto:TEAS@uspto.gov). For questions about the Office action itself, please contact the assigned examining attorney. **Do not respond to this Office action by e-mail; the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

**STATUS CHECK:** Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

**DESIGN MARK**

**Serial Number**

76384478

**Status**

REGISTERED

**Word Mark**

LUMENE

**Standard Character Mark**

No

**Registration Number**

2847190

**Date Registered**

2004/06/01

**Type of Mark**

TRADEMARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(1) TYPED DRAWING

**Owner**

LUMENE OY CORPORATION FINLAND LASIKUJA 2 ESPOO FINLAND FIN-02780

**Goods/Services**

Class Status -- ACTIVE. IC 008. US 023 028 044. G & S: Nail files; tweezers; implements for manicures and pedicures, namely, nail files, nail clippers, cuticle pushers, tweezers, nail and cuticle scissors; nail clippers; nail nippers; cuticle nippers; hair-cutting implements, namely scissors and hair-cutting knives; beard clippers; razors; eyebrow tweezers; eyelash curlers; replacement parts for eyelash curlers; non-electric, hand-held curling appliances, namely, curling tongs.

**Goods/Services**

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S: Sunglasses; eyeglasses; contact lenses; eyeglass cases; eyeglass chains; electric hair curling irons.

**Goods/Services**

Class Status -- ACTIVE. IC 018. US 001 002 003 022 041. G & S: Cosmetic bags and cosmetic cases sold empty; traveling bags; beach bags; toiletry cases sold empty; tote bags; handbags; wallets;

rucksacks; coin purses; belts; umbrellas; parasols.

**Goods/Services**

Class Status -- ACTIVE. IC 021. US 002 013 023 029 030 033 040 050.

G & S: Brushes, namely bath brushes, clothes brushes, shoe brushes, hair brushes, cosmetic brushes, scraping brushes, brushes for applying make-up; eyebrow brushes; nail brushes; shaving brushes; combs; powder puffs; sponges, namely, facial sponges for applying makeup, bath sponges, cleaning sponges, abrasive sponges for scrubbing the skin, natural sea sponges, loofah sponges and body sponges.

**Goods/Services**

Class Status -- ACTIVE. IC 025. US 022 039. G & S: Clothing, namely shirts, t-shirts, sweatshirts, sweaters, vests, pants, parkas, jackets, overcoats, raincoats, hats, caps, mittens, gloves, socks, headbands, neckties, aprons, bathing suits, bathing trunks, bathrobes, blouses, bow ties, boxer shorts, dresses, ear muffs, garter belts, gym shorts, gym suits, jogging suits, track suits, night shirts, pocket squares, vests, robes, sleep wear, namely pyjamas and night gowns, sun visors, and wrist bands; footwear and headwear.

**Goods/Services**

Class Status -- ACTIVE. IC 032. US 045 046 048. G & S: Mineral and aerated waters and other non-alcoholic drinks, namely soft drinks, energy drinks and sports drinks; fruit drinks and fruit juices.

**Foreign Country Name**

FINLAND

**Foreign Registration Number**

69958

**Foreign Registration Date**

1979/08/06

**Foreign Expiration Date**

2009/08/06

**Foreign Country Name**

FINLAND

**Foreign Registration Number**

112034

**Foreign Registration Date**

1991/05/20

**Foreign Expiration Date**

2011/05/20

**Foreign Country Name**

**Print: Aug 4, 2009**

**76384478**

FINLAND

**Foreign Priority**

FOREIGN PRIORITY CLAIMED

**Foreign Application Number**

T-200200855

**Foreign Filing Date**

2002/03/15

**Foreign Registration Number**

226235

**Foreign Registration Date**

2003/01/15

**Foreign Expiration Date**

2013/01/15

**Prior Registration(s)**

2429020

**Filing Date**

2002/03/19

**Examining Attorney**

CAIN, CATHERINE

**Attorney of Record**

Mark I. Peroff

**LUMENE**

**To:** Lumen Water, Inc. ([sshaver@shaverlawfirm.com](mailto:sshaver@shaverlawfirm.com))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 77702676 - LUMEN WATER - N/A  
**Sent:** 8/4/2009 10:56:56 AM  
**Sent As:** ECOM114@USPTO.GOV  
**Attachments:**

## IMPORTANT NOTICE REGARDING YOUR TRADEMARK APPLICATION

**Your trademark application (Serial No. 77702676) has been reviewed. The examining attorney assigned by the United States Patent and Trademark Office (“USPTO”) has written a letter (an “Office action”) on 8/4/2009 to which you must respond (*unless the Office letter specifically states that no response is required*). Please follow these steps:**

1. **Read** the Office letter by clicking on this **link** [http://tportal.uspto.gov/external/portal/tow?DDA=Y&serial\\_number=77702676&doc\\_type=OOA&](http://tportal.uspto.gov/external/portal/tow?DDA=Y&serial_number=77702676&doc_type=OOA&) OR go to <http://tportal.uspto.gov/external/portal/tow> and enter your serial number to access the Office letter. If you have difficulty accessing the Office letter, contact [TDR@uspto.gov](mailto:TDR@uspto.gov).

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

2. **Contact** the examining attorney who reviewed your application if you have any questions about the content of the Office letter (contact information appears at the end thereof).

3. **Respond** within 6 months, calculated from 8/4/2009 (*or sooner if specified in the Office letter*), using the Trademark Electronic Application System (TEAS) **Response to Office Action form**. If you have difficulty using TEAS, contact [TEAS@uspto.gov](mailto:TEAS@uspto.gov).

### **ALERT:**

**Failure to file any required response by the applicable deadline will result in the ABANDONMENT (loss) of your application.**

**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.**

**Trademark Snap Shot Amendment & Mail Processing Stylesheet**  
(Table presents the data on Amendment & Mail Processing Complete)

**OVERVIEW**

SERIAL NUMBER	77702676	FILING DATE	03/30/2009
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	HWANG, JOHN C B	L.O. ASSIGNED	114

**PUB INFORMATION**

RUN DATE	06/19/2009		
PUB DATE	N/A		
STATUS	656-EXAMINER'S AMENDMENT/PRIORITY ACTION MAILED		
STATUS DATE	06/17/2009		
LITERAL MARK ELEMENT	LUMEN WATER		
DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPub 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

**FILING BASIS**

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	YES	1 (a)	YES	1 (a)	NO
1 (b)	NO	1 (b)	NO	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

**MARK DATA**

STANDARD CHARACTER MARK	YES
LITERAL MARK ELEMENT	LUMEN WATER

MARK DRAWING CODE	4-STANDARD CHARACTER MARK
COLOR DRAWING FLAG	NO

### CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	Lumen Water, Inc.
ADDRESS	8600 Thackery Street, Apartment 8406 Dallas, TX 75225
ENTITY	03-CORPORATION
CITIZENSHIP	Texas

### GOODS AND SERVICES

INTERNATIONAL CLASS	032
DESCRIPTION TEXT	Drinking water

### GOODS AND SERVICES CLASSIFICATION

INTERNATIONAL CLASS	032	FIRST USE DATE	10/10/2008	FIRST USE IN COMMERCE DATE	10/10/2008	CLASS STATUS	6-ACTIVE
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### MISCELLANEOUS INFORMATION/STATEMENTS

CHANGE IN REGISTRATION	NO
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### PROSECUTION HISTORY

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
06/18/2009	CEPE	I	COMBINED EXAMINER'S AMENDMENT/PRIORITY ACTION ENTERED	008
06/18/2009	ALIE	A	ASSIGNED TO LIE	007
06/17/2009	GEAN	O	NOTIFICATION OF EXAMINER'S AMENDMENT/PRIORITY ACTION E-MAILED	006
06/17/2009	GEAP	F	EXAMINER'S AMENDMENT/PRIORITY ACTION E-MAILED	005
06/17/2009	CPEA	R	EXAMINERS AMENDMENT AND/OR PRIORITY ACTION - COMPLETED	004
06/17/2009	DOCK	D	ASSIGNED TO EXAMINER	003
04/02/2009	NWOS	I	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	002
04/02/2009	NWAP	I	NEW APPLICATION ENTERED IN TRAM	001

**CURRENT CORRESPONDENCE INFORMATION**

ATTORNEY	Steven R. Shaver
CORRESPONDENCE ADDRESS	STEVEN R. SHAVER SHAVER LAW FIRM 325 OVER DALE CT SUNNYVALE, TX 75182-2646
DOMESTIC REPRESENTATIVE	NONE

LUMEN WATER

**To:** Lumen Water, Inc. ([sshaver@shaverlawfirm.com](mailto:sshaver@shaverlawfirm.com))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 77702676 - LUMEN WATER - N/A  
**Sent:** 6/17/2009 9:45:28 PM  
**Sent As:** ECOM114@USPTO.GOV  
**Attachments:**

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**SERIAL NO:** 77/702676

**MARK:** LUMEN WATER

**\*77702676\***

**CORRESPONDENT ADDRESS:**

STEVEN R. SHAVER  
SHAVER LAW FIRM  
325 OVER DALE CT  
SUNNYVALE, TX 75182-2646

**RESPOND TO THIS ACTION:**

<http://www.uspto.gov/teas/eTEASpageD.htm>

**GENERAL TRADEMARK INFORMATION:**

<http://www.uspto.gov/main/trademarks.htm>

**APPLICANT:** Lumen Water, Inc.

**CORRESPONDENT'S**

**REFERENCE/DOCKET NO:**

N/A

**CORRESPONDENT E-MAIL ADDRESS:**

[sshaver@shaverlawfirm.com](mailto:sshaver@shaverlawfirm.com)

**EXAMINER'S AMENDMENT/PRIORITY ACTION**

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

**ISSUE/MAILING DATE:** 6/17/2009

**EXAMINER'S AMENDMENT**

**OFFICE SEARCH:** The examining attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d). TMEP section 704.02.

**AMENDMENT:** In accordance with the authorization granted by STEVEN R. SHAVER on June 17, 2009,

the application has been AMENDED as indicated below. Please advise the undersigned immediately if there is an objection to the amendment. Otherwise, no response is necessary. TMEP §707.

If the identification of goods or services has been amended, please note that any future amendments must be in accordance with 37 C.F.R. 2.71(a); TMEP section 1402.07(e).

#### DISCLAIMER

The disclaimer of LUMEN is deleted.

See 15 U.S.C. §1056(a); TMEP §§1213, 1213.08(a)(i).

### **PRIORITY ACTION**

The following issues were discussed with the person listed above.

#### SPECIMEN

The specimen is not acceptable because it is a printer's proof and thus does not show the applied-for mark in use in commerce. Printer's proofs are printed materials in draft form used for making corrections before a final print run. As such, they are not disseminated to the public and do not show use of the mark in the ordinary course of trade on the actual goods that are sold or transported in commerce. See *In re The Signal Cos.*, 228 USPQ 956, 957-58 n.4 (TTAB 1986); TMEP §§904.04(a), 904.07(a).

Trademark Act Section 45 requires that the mark be in "use in commerce" and defines such term to mean "the bona fide use of a mark in the ordinary course of trade." 15 U.S.C. §1127. A mark is used in commerce in relation to goods when it is used on the goods, containers for the goods, displays associated with the goods or tags or labels affixed to the goods, and the goods are sold or transported in commerce. 15 U.S.C. §1127; TMEP §901.01; see 37 C.F.R. §2.56(b)(1).

An application based on Section 1(a) must include a specimen showing the applied-for mark in use in commerce for each class of goods. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

Therefore, applicant must submit the following:

- (1) A substitute specimen showing the mark in use in commerce for each class of goods specified in the application; and
- (2) The following statement, verified with an affidavit or signed declaration under 37 C.F.R. §§2.20, 2.33: "**The substitute specimen was in use in commerce at least as early as the filing date of the application.**" 37 C.F.R. §2.59(a); TMEP §904.05. If submitting a substitute specimen requires an amendment to the dates of use, applicant must also verify the amended dates. 37 C.F.R. §2.71(c); TMEP §904.05.

Examples of specimens for goods are tags, labels, instruction manuals, containers, photographs that show the mark on the actual goods or packaging, or displays associated with the actual goods at their point of sale. See TMEP §§904.03 *et seq.*

If applicant cannot satisfy the above requirements, applicant may amend the application from a use in

commerce basis under Section 1(a) to an intent to use basis under Section 1(b), for which no specimen is required. *See* TMEP §806.03(c). However, if applicant amends the basis to Section 1(b), registration will not be granted until applicant later amends the application back to use in commerce by filing an acceptable allegation of use with a proper specimen. *See* 15 U.S.C. §1051(c), (d); 37 C.F.R. §§2.76, 2.88; TMEP §1103.

To amend to Section 1(b), applicant must submit the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §§2.20, 2.33: “**Applicant has had a bona fide intention to use the mark in commerce on or in connection with the goods listed in the application as of the filing date of the application.**” 37 C.F.R. §2.34(a)(2); TMEP §806.01(b); *see* 15 U.S.C. §1051(b); 37 C.F.R. §2.35(b)(1).

**Pending receipt of a proper response, registration is refused because the specimen does not show the applied-for mark in use in commerce as a trademark. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).**

TEAS PLUS APPLICANTS MUST SUBMIT DOCUMENTS ELECTRONICALLY OR SUBMIT FEE: Applicants who filed their application online using the reduced-fee TEAS Plus application must submit certain documents electronically. In addition, such applicants must accept correspondence from the Office via e-mail throughout the examination process and maintain a valid e-mail address. 37 C.F.R. §§2.23(a), (b); TMEP §§819, 819.02(a), (b). Failure to do so will incur an additional fee of \$50 per class of goods and/or services. 37 C.F.R. §2.6(a)(1)(iv); TMEP §819.04.

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/John Hwang/  
Attorney  
LAW OFFICE 114  
571-272-9452  
571-273-9114 FAX

**RESPOND TO THIS ACTION:** Applicant should file a response to this Office action online using the form at <http://www.uspto.gov/teas/eTEASpageD.htm>, waiting 48-72 hours if applicant received notification of the Office action via e-mail. For *technical* assistance with the form, please e-mail [TEAS@uspto.gov](mailto:TEAS@uspto.gov). For questions about the Office action itself, please contact the assigned examining attorney. **Do not respond to this Office action by e-mail; the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person

signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

**STATUS CHECK:** Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

**To:** Lumen Water, Inc. ([sshaver@shaverlawfirm.com](mailto:sshaver@shaverlawfirm.com))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 77702676 - LUMEN WATER - N/A  
**Sent:** 6/17/2009 9:45:32 PM  
**Sent As:** ECOM114@USPTO.GOV  
**Attachments:**

**IMPORTANT NOTICE**  
**USPTO OFFICE ACTION HAS ISSUED ON 6/17/2009 FOR**  
**APPLICATION SERIAL NO. 77702676**

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

**VIEW OFFICE ACTION:** Click on this link [http://tportal.uspto.gov/external/portal/tow?DDA=Y&serial\\_number=77702676&doc\\_type=EAP&](http://tportal.uspto.gov/external/portal/tow?DDA=Y&serial_number=77702676&doc_type=EAP&) (or copy and paste this URL into the address field of your browser), or visit <http://tportal.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 notification.

**RESPONSE MAY BE REQUIRED:** You should carefully review the Office action to determine (1) if a response is required; (2) how to respond; and (3) the applicable response time period. Your response deadline will be calculated from **6/17/2009**.

**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 at <http://www.uspto.gov/teas/eTEASpageD.htm>.**

**HELP:** For *technical* assistance in accessing the Office action, please e-mail [TDR@uspto.gov](mailto:TDR@uspto.gov). Please contact the assigned examining attorney with questions about the Office action.

**WARNING**

- 1. The USPTO will NOT send a separate e-mail with the Office action attached.**
- 2. Failure to file any required response by the applicable deadline will result in the ABANDONMENT of your application.**



\*\*\* User:jhwang \*\*\*

#	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/ Search Duration	Search
01	1	0	1	1	0:01	77716009[SN]
02	1154	N/A	0	0	0:02	lum{v}n*[bi,ti]
03	131	68	39	36	0:01	lum{v}n[bi,ti]
04	1298	N/A	0	0	0:03	l{v}m{v}n[bi,ti]
05	23	6	17	14	0:03	3 & "032"[cc]
06	749	N/A	0	0	0:02	4 & "032"[cc]
07	193	N/A	0	0	0:02	4 & ("032" a b 200)[ic]
08	8	2	6	5	0:02	2 & ("032" a b 200)[ic]
09	0	0	0	0	0:01	7707745
10	1	0	1	1	0:01	77707745
11	8	4	4	2	0:03	*lumen*[bi,ti] & water[gs]

Session started 6/17/2009 9:18:34 PM

Session finished 6/17/2009 9:28:25 PM

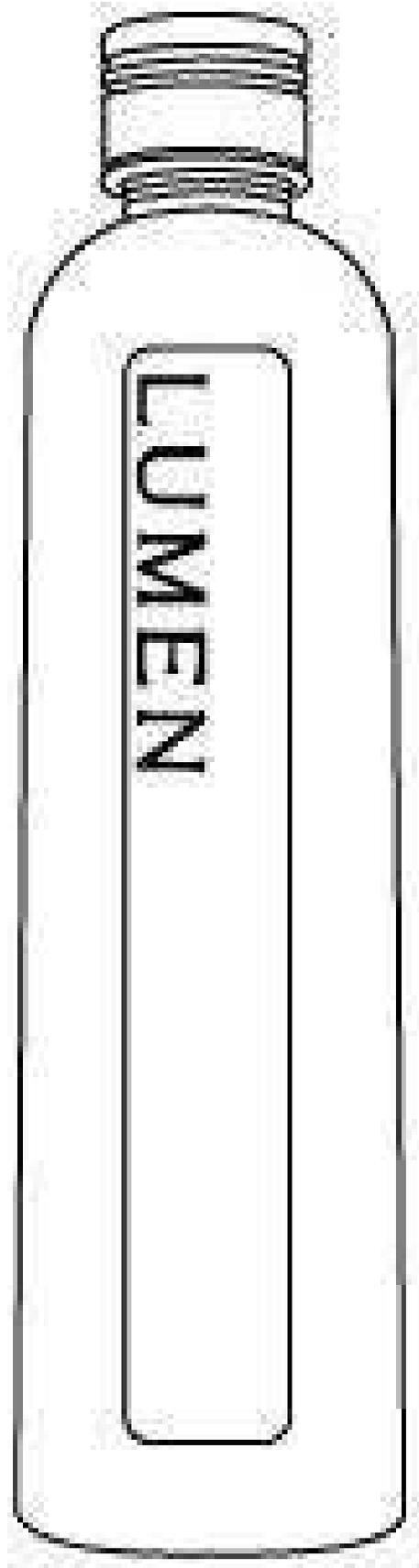
Total search duration 0 minutes 21 seconds

Session duration 9 minutes 51 seconds

Default NEAR limit=1ADJ limit=1

Sent to TICRS as Serial Number: 77702676

LUMEN WATER



# Trademark/Service Mark Application, Principal Register

## TEAS Plus Application

Serial Number: 77702676

Filing Date: 03/30/2009

*NOTE: Data fields with the \* are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.*

The table below presents the data as entered.

Input Field	Entered
<b>TEAS Plus</b>	<b>YES</b>
<b>MARK INFORMATION</b>	
*MARK	<a href="#">LUMEN WATER</a>
*STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	LUMEN WATER
*MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
<b>REGISTER</b>	Principal
<b>APPLICANT INFORMATION</b>	
*OWNER OF MARK	Lumen Water, Inc.
*STREET	8600 Thackery Street, Apartment 8406
*CITY	Dallas
*STATE (Required for U.S. applicants)	Texas
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	75225
PHONE	800-878-5257
<b>LEGAL ENTITY INFORMATION</b>	

<b>*TYPE</b>	CORPORATION
<b>* STATE/COUNTRY OF INCORPORATION</b>	Texas
<b>GOODS AND/OR SERVICES AND BASIS INFORMATION</b>	
<b>* INTERNATIONAL CLASS</b>	032
<b>IDENTIFICATION</b>	Drinking water
<b>* FILING BASIS</b>	SECTION 1(a)
<b>FIRST USE ANYWHERE DATE</b>	At least as early as 10/10/2008
<b>FIRST USE IN COMMERCE DATE</b>	At least as early as 10/10/2008
<b>SPECIMEN FILE NAME(S)</b>	<a href="\\TICRS\EXPORT6\IMAGEOUT6\777\026\77702676\xml1\FT K0003.JPG">\\TICRS\EXPORT6\IMAGEOUT6\777\026\77702676\xml1\FT K0003.JPG</a>
<b>SPECIMEN DESCRIPTION</b>	Specimen is a clear plastic bottle with the Lumen Water label affixed.
<b>ADDITIONAL STATEMENTS SECTION</b>	
<b>*TRANSLATION (if applicable)</b>	
<b>*TRANSLITERATION (if applicable)</b>	
<b>*CLAIMED PRIOR REGISTRATION (if applicable)</b>	
<b>*CONSENT (NAME/LIKENESS) (if applicable)</b>	
<b>*CONCURRENT USE CLAIM (if applicable)</b>	
<b>DISCLAIMER</b>	No claim is made to the exclusive right to use "Lumen" and "Water" apart from the mark as shown.
<b>ATTORNEY INFORMATION</b>	
<b>NAME</b>	Steven R. Shaver
<b>FIRM NAME</b>	Shaver Law Firm
<b>STREET</b>	325 Overdale Court
<b>CITY</b>	Sunnyvale
<b>STATE</b>	Texas
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	75182

<b>PHONE</b>	214-295-2901
<b>FAX</b>	214-432-6688
<b>EMAIL ADDRESS</b>	sshaver@shaverlawfirm.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>CORRESPONDENCE INFORMATION</b>	
<b>*NAME</b>	Steven R. Shaver
<b>FIRM NAME</b>	Shaver Law Firm
<b>*STREET</b>	325 Overdale Court
<b>*CITY</b>	Sunnyvale
<b>*STATE (Required for U.S. applicants)</b>	Texas
<b>*COUNTRY</b>	United States
<b>*ZIP/POSTAL CODE</b>	75182
<b>PHONE</b>	214-295-2901
<b>FAX</b>	214-432-6688
<b>*EMAIL ADDRESS</b>	sshaver@shaverlawfirm.com
<b>*AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>FEE INFORMATION</b>	
<b>NUMBER OF CLASSES</b>	1
<b>FEE PER CLASS</b>	275
<b>*TOTAL FEE PAID</b>	275
<b>SIGNATURE INFORMATION</b>	
<b>* SIGNATURE</b>	/Steven R. Shaver/
<b>* SIGNATORY'S NAME</b>	Steven R. Shaver
<b>* SIGNATORY'S POSITION</b>	Attorney of Record; TX Bar 18136550
<b>* DATE SIGNED</b>	03/30/2009

---

## Trademark/Service Mark Application, Principal Register

### TEAS Plus Application

**Serial Number: 77702676**

**Filing Date: 03/30/2009**

#### To the Commissioner for Trademarks:

**MARK:** LUMEN WATER (Standard Characters, see [mark](#))

The literal element of the mark consists of LUMEN WATER.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Lumen Water, Inc., a corporation of Texas, having an address of  
8600 Thackery Street, Apartment 8406  
Dallas, Texas 75225  
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

**For specific filing basis information for each item, you must view the display within the Input Table.**

International Class 032: Drinking water

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, or the applicant's predecessor in interest used the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

In International Class 032, the mark was first used at least as early as 10/10/2008, and first used in commerce at least as early as 10/10/2008, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) Specimen is a clear plastic bottle with the Lumen Water label affixed..

[Specimen File 1](#)

No claim is made to the exclusive right to use "Lumen" and "Water" apart from the mark as shown.

The applicant's current Attorney Information:

Steven R. Shaver of Shaver Law Firm  
325 Overdale Court  
Sunnyvale, Texas 75182  
United States

The applicant's current Correspondence Information:

Steven R. Shaver  
Shaver Law Firm  
325 Overdale Court  
Sunnyvale, Texas 75182  
214-295-2901(phone)  
214-432-6688(fax)  
sshaver@shaverlawfirm.com (authorized)

A fee payment in the amount of \$275 has been submitted with the application, representing payment for 1 class(es).

### **Declaration**

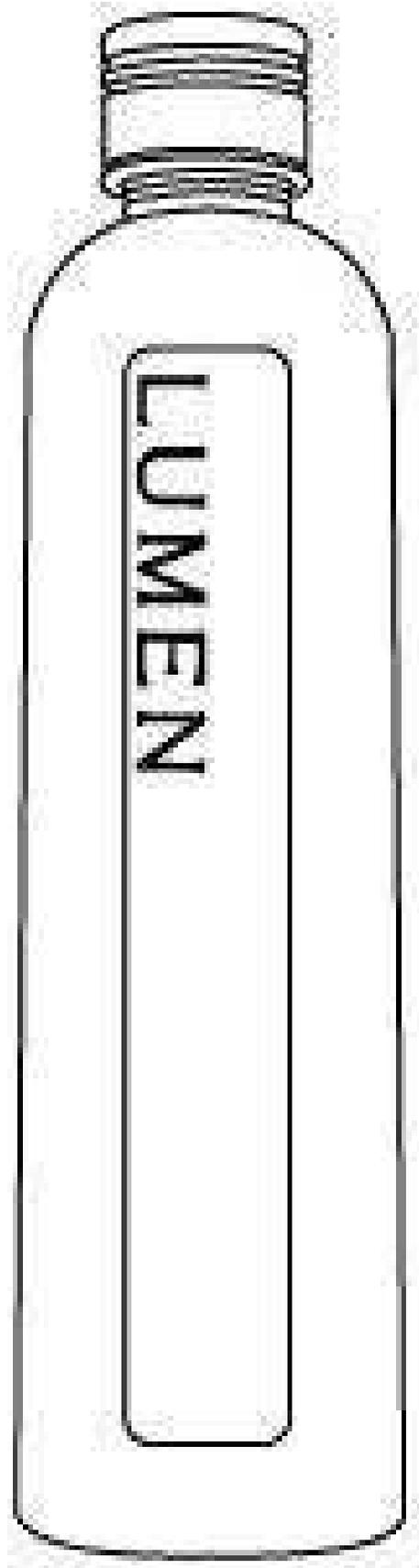
The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Steven R. Shaver/ Date Signed: 03/30/2009  
Signatory's Name: Steven R. Shaver  
Signatory's Position: Attorney of Record; TX Bar 18136550

RAM Sale Number: 6081  
RAM Accounting Date: 03/31/2009

Serial Number: 77702676  
Internet Transmission Date: Mon Mar 30 21:04:21 EDT 2009  
TEAS Stamp: USPTO/FTK-76.184.168.248-200903302104214  
97066-77702676-400e7fca33a37425a7a5ec334  
52d6db3490-CC-6081-20090330205501156107

LUMEN WATER



## **EXHIBIT B**

**To:** Lumen Water, Inc. ([dhouse@munckcarter.com](mailto:dhouse@munckcarter.com))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 77702676 - LUMEN - LUME01-00002  
**Sent:** 10/18/2010 9:27:14 AM  
**Sent As:** ECOM114@USPTO.GOV  
**Attachments:** [Attachment - 1](#)  
[Attachment - 2](#)  
[Attachment - 3](#)  
[Attachment - 4](#)

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

**APPLICATION SERIAL NO.** 77702676

**MARK:** LUMEN

**\*77702676\***

**CORRESPONDENT ADDRESS:**

Dyan M. House  
Munck Carter, LLP  
PO Drawer 800889  
Dallas TX 75380

**CLICK HERE TO RESPOND TO THIS LETTER:**  
<http://www.uspto.gov/teas/eTEASpageD.htm>

**APPLICANT:** Lumen Water, Inc.

**CORRESPONDENT'S REFERENCE/DOCKET**

**NO:**

LUME01-00002

**CORRESPONDENT E-MAIL ADDRESS:**

dhouse@munckcarter.com

**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: 10/18/2010**

**THIS IS A FINAL ACTION.**

**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.

For the reasons set forth below, the refusal under Trademark Act Section 2(d) is now made FINAL with respect to U.S. Registration No(s). 2847190. *See* 15 U.S.C. §1052(d); 37 C.F.R. §2.64(a).

### **RESPONSE TO OFFICE ACTION**

If applicant does not respond within six months of the date of issuance of this final Office action, the application will be abandoned. 15 U.S.C. §1062(b); 37 C.F.R. §2.65(a). Applicant may respond to this final Office action by:

- (1) Submitting a response that fully satisfies all outstanding requirements, if feasible; and/or
- (2) Filing an appeal to the Trademark Trial and Appeal Board, with an appeal fee of \$100 per class.

37 C.F.R. §§2.6(a)(18), 2.64(a); TBMP ch. 1200; TMEP §714.04.

In certain rare circumstances, a petition to the Director may be filed pursuant to 37 C.F.R. §2.63(b)(2) to review a final Office action that is limited to procedural issues. 37 C.F.R. §2.64(a); TMEP §714.04; *see* 37 C.F.R. §2.146(b); TBMP §1201.05; TMEP §1704 (explaining petitionable matters). The petition fee is \$100. 37 C.F.R. §2.6(a)(15).

In its response to the initial refusal, applicant argues that the marks look and sound different, that the goods are sold in different commercial trade channels and that the marketing of the goods are different. Applicant does not contend that the goods are dissimilar. This final refusal addresses applicant's arguments as follows:

Applicant has amended the drawing of the mark to delete the generic word "water" from the mark. The comparison is thus between LUMEN and LUMENE. Although the marks may have some significance in meaning as applicant stated, the general public is unlikely to recognize these meanings nor would the recognition of such preclude confusion. Furthermore, slight differences in the sound of similar marks will not avoid a likelihood of confusion. *In re Energy Telecomm. & Elec. Ass'n*, 222 USPQ 350, 351 (TTAB 1983). There is no correct pronunciation of a mark because it is impossible to predict how the public will pronounce a particular mark. *In re Great Lakes Canning, Inc.*, 227 USPQ 483, 484 (TTAB 1985); TMEP §1207.01(b)(iv); *see In re Energy Telecomm. & Elec. Ass'n*, 222 USPQ 350, 351 (TTAB 1983). The marks in question could clearly be pronounced the same; such similarity in sound alone may be sufficient to support a finding of likelihood of confusion. *See RE/MAX of Am., Inc. v. Realty Mart, Inc.*, 207 USPQ 960, 964 (TTAB 1980); *Molenaar, Inc. v. Happy Toys Inc.*, 188 USPQ 469, 471 (TTAB 1975); TMEP §1207.01(b)(iv).

Applicant also contends that the goods are marketed differently and in different commercial trade channels. The goods and/or services of the parties need not be identical or directly competitive to find a

likelihood of confusion. *See Safety-Kleen Corp. v. Dresser Indus., Inc.*, 518 F.2d 1399, 1404, 186 USPQ 476, 480 (C.C.P.A. 1975); TMEP §1207.01(a)(i). Rather, it is sufficient that the goods and/or services are related in some manner and/or the conditions surrounding their marketing are such that they would be encountered by the same purchasers under circumstances that would give rise to the mistaken belief that the goods and/or services come from a common source. *In re Total Quality Group, Inc.*, 51 USPQ2d 1474, 1476 (TTAB 1999); TMEP §1207.01(a)(i); *see, e.g., On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086-87, 56 USPQ2d 1471, 1475-76 (Fed. Cir. 2000); *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1566-68, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

The presumption under Trademark Act Section 7(b), 15 U.S.C. §1057(b), is that the registrant is the owner of the mark and that use of the mark extends to all goods and/or services identified in the registration. The presumption also implies that the registrant operates in all normal channels of trade and reaches all classes of purchasers of the identified goods and/or services. *In re Melville Corp.*, 18 USPQ2d 1386, 1389 (TTAB 1991); *McDonald's Corp. v. McKinley*, 13 USPQ2d 1895, 1899 (TTAB 1989); *RE/MAX of Am., Inc. v. Realty Mart, Inc.*, 207 USPQ 960, 964-65 (TTAB 1980); *see* TMEP §1207.01(a)(iii).

Even if registrant's waters were sold in convenience stores or similar retail venues and applicant's waters were sold in restaurants, restaurants and other similar businesses are not excluded from selling waters which are also sold in convenience stores such as CVS. Indeed a number of higher end waters such as Evian and Pelligrino are readily sold at such stores and such waters are often also sold at restaurants.

/John Hwang/  
john.hwang@uspto.gov  
LAW OFFICE 114  
USPTO  
571-272-9452  
571-273-9114 FAX

**TO RESPOND TO THIS LETTER:** Use the Trademark Electronic Application System (TEAS) response form at <http://teasroa.uspto.gov/roa/>. 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](mailto:TEAS@uspto.gov).

**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>.



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**Nestle Water S. Pellegrino Sparkling Natural Mineral Water, 33.8 fl oz (1 qt 1.8 fl oz) 1 lt**

Kmart Item# 033W296028110001 | Model# 29602811

☆☆☆☆☆ (Be the first to rate and review this item)

**\$1.69**

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### Product Description

**Product Description**

Natural mineral water with natural CO2 added. Total dissolved solids 960 mg/lit. Very low in sodium. Bottled at the source, San Pellegrino Terme, Italy.  
**Directions:** Store in a clean, cool, dry and odorless place, away from direct sunlight and freezing temperatures.

Added on April 28, 2010

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 <p>Perrier Sparkling Natural Mineral Water, Lemon, 25.3</p> <p>\$1.51</p> <p><a href="#">PRICE DETAILS</a></p>	 <p>Perrier Sparkling Water 33.8 Fluid Ounce Plastic Bottle</p> <p>\$1.50 <del>\$1.59</del></p> <p><a href="#">PRICE DETAILS</a></p>	 <p>M&amp;M's Chocolate Candies, Milk Chocolate, Fun Size</p> <p>\$2.67 <del>\$2.99</del></p> <p><a href="#">PRICE DETAILS</a></p>	 <p>Smart Sense Sparkling Blueberry Water, 33.8 fl oz</p> <p>\$0.79</p> <p><a href="#">PRICE DETAILS</a></p>	 <p>Club Soda, 33.8 fl oz (1 qt 1.8 fl oz) 1 lt</p> <p>\$1.29</p> <p><a href="#">PRICE DETAILS</a></p>	 <p>American Fare Drinkin Water 16.9 Fluid Ounc</p> <p>\$3.99</p> <p><a href="#">PRICE DETAILS</a></p>
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**Community Discussions** [Learn more](#)

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Some of our discussions on Nestle Water S. Pellegrino Sparkling Natural Mineral Water, 33.8 fl oz (1 qt 1.8 fl oz) 1 lt

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[diet code red mountain dew](#)

*PrincessAM* - 16 Sep 2010

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[Chicken Wings](#)

*yobarps* - 10 Oct 2010

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[Smart Sense Feedback](#)

*yobarps* - 22 Sep 2010

[14 replies so far](#)



[Eggs](#)

*yobarps* - 31 Aug 2010

[21 replies so far](#)



[What's Cooking?](#)

*houdiniphile* - 11 Aug 2010

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## Customer Ratings And Reviews

### Video Reviews

Do you own this product?

---

## Written Reviews

### Customer Ratings And Reviews

Do you own this product?

#### Beverages Top Sellers

 <p>Maxwell House Coffee, Ground, Master Blend, Mild, <b>\$9.99</b> <a href="#">PRICE DETAILS</a></p>	 <p>Starbucks Coffee Drink, Frappuccino, 13.7 fl <b>\$2.00</b> <del>\$2.49</del> <a href="#">PRICE DETAILS</a></p>	 <p>Maxwell House Coffee, Ground, Original Roast, <b>\$9.99</b> <a href="#">PRICE DETAILS</a></p>	 <p>Maxwell House Coffee, Instant, Decaf Original, 8 oz <b>\$6.49</b> <a href="#">PRICE DETAILS</a></p>	 <p>Fresca Flavored Soda, Sparkling Original Citrus, <b>\$4.33</b> <a href="#">PRICE DETAILS</a></p>	 <p>Smart Sense Purified Water, 24 - 16.9 fl oz (5 <b>\$3.99</b> <a href="#">PRICE DETAILS</a></p>
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#### WHAT'S BIG AT KMART

bottled mineral water, evian natural mineral water, mineral water, mineral water sodium, natural mineral water, natural solids, natural sparkling water, san pellegrino sparkling water, sparkling natural mineral water, sparkling water no sodium

Village Naturals Therapy Mineral Shower Gel, Aches and... more...  
Lotus Ancient Secrets Mineral Baths, Aromatherapy Dead... more...  
Queen Helene Baththerapy Mineral Bath, Natural, 16 oz (1... more...

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**To:** Lumen Water, Inc. ([dhouse@munckcarter.com](mailto:dhouse@munckcarter.com))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 77702676 - LUMEN - LUME01-00002  
**Sent:** 10/18/2010 9:27:16 AM  
**Sent As:** ECOM114@USPTO.GOV  
**Attachments:**

## IMPORTANT NOTICE REGARDING YOUR U.S. TRADEMARK APPLICATION

USPTO OFFICE ACTION HAS ISSUED ON **10/18/2010** FOR  
SERIAL NO. **77702676**

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 **10/18/2010** (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](#).**

**HELP:** For *technical* assistance in accessing the Office action, please e-mail [TDR@uspto.gov](mailto:TDR@uspto.gov). Please contact the assigned examining attorney with questions about the Office action.

## WARNING

**Failure to file the required response by the applicable deadline will result in the [ABANDONMENT](#) of your application.**

## EXHIBIT C

Generated on: This page was generated by TSDR on 2014-07-30 19:18:42 EDT

Mark: LUMENE

LUMENE

US Serial Number: 76384478      Application Filing Date: Mar. 19, 2002  
US Registration Number: 2847190      Registration Date: Jun. 01, 2004  
Register: Principal  
Mark Type: Trademark

Status: Registration cancelled because registrant did not file an acceptable declaration under Section 8. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date: Jan. 07, 2011  
Publication Date: Mar. 09, 2004  
Date Cancelled: Jan. 07, 2011

---

## Mark Information

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Mark Literal Elements: LUMENE  
Standard Character Claim: No  
Mark Drawing Type: 1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)

---

## Related Properties Information

---

Claimed Ownership of US Registrations: 2429020

---

## Foreign Information

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Priority Claimed:	Yes		
Foreign Application Number:	T-200200855	Foreign Application Filing Date:	Mar. 15, 2002
Foreign Registration Number:	226235	Foreign Registration Date:	Jan. 15, 2003
Foreign Application/Registration Country:	FINLAND	Foreign Expiration Date:	Jan. 15, 2013
Foreign Registration Number:	112034	Foreign Registration Date:	May 20, 1991
Foreign Application/Registration Country:	FINLAND	Foreign Expiration Date:	May 20, 2011
Foreign Registration Number:	69958	Foreign Registration Date:	Aug. 06, 1979
Foreign Application/Registration Country:	FINLAND	Foreign Expiration Date:	Aug. 06, 2009

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## Goods and Services

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Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (()) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks \*.\* identify additional (new) wording in the goods/services.

**For:** Nail files; tweezers; implements for manicures and pedicures, namely, nail files, nail clippers, cuticle pushers, tweezers, nail and cuticle scissors; nail clippers; nail nippers; cuticle nippers; hair-cutting implements, namely scissors and hair-cutting knives; beard clippers; razors; eyebrow tweezers; eyelash curlers; replacement parts for eyelash curlers; non-electric, hand-held curling appliances, namely, curling tongs

International Class(es): 008 - Primary Class

U.S Class(es): 023, 028, 044

Class Status: SECTION 8 - CANCELLED

Basis: 44(e)

**For:** Sunglasses; eyeglasses; contact lenses; eyeglass cases; eyeglass chains; electric hair curling irons

---

**International Class(es):** 009 - Primary Class

**U.S Class(es):** 021, 023, 026, 036, 038

**Class Status:** SECTION 8 - CANCELLED

**Basis:** 44(e)

**For:** Cosmetic bags and cosmetic cases sold empty; traveling bags; beach bags; toiletry cases sold empty; tote bags; handbags; wallets; rucksacks; coin purses; belts; umbrellas; parasols

**International Class(es):** 018 - Primary Class

**U.S Class(es):** 001, 002, 003, 022, 041

**Class Status:** SECTION 8 - CANCELLED

**Basis:** 44(e)

**For:** Brushes, namely bath brushes, clothes brushes, shoe brushes, hair brushes, cosmetic brushes, scraping brushes, brushes for applying make-up; eyebrow brushes; nail brushes; shaving brushes; combs; powder puffs; sponges, namely, facial sponges for applying makeup, bath sponges, cleaning sponges, abrasive sponges for scrubbing the skin, natural sea sponges, loofah sponges and body sponges

**International Class(es):** 021 - Primary Class

**U.S Class(es):** 002, 013, 023, 029, 030, 033, 040, 050

**Class Status:** SECTION 8 - CANCELLED

**Basis:** 44(e)

**For:** Clothing, namely shirts, t-shirts, sweatshirts, sweaters, vests, pants, parkas, jackets, overcoats, raincoats, hats, caps, mittens, gloves, socks, headbands, neckties, aprons, bathing suits, bathing trunks, bathrobes, blouses, bow ties, boxer shorts, dresses, ear muffs, garter belts, gym shorts, gym suits, jogging suits, track suits, night shirts, pocket squares, vests, robes, sleep wear, namely pyjamas and night gowns, sun visors, and wrist bands; footwear and headwear

**International Class(es):** 025 - Primary Class

**U.S Class(es):** 022, 039

**Class Status:** SECTION 8 - CANCELLED

**Basis:** 44(e)

**For:** Mineral and aerated waters and other non-alcoholic drinks, namely soft drinks, energy drinks and sports drinks; fruit drinks and fruit juices

**International Class(es):** 032 - Primary Class

**U.S Class(es):** 045, 046, 048

**Class Status:** SECTION 8 - CANCELLED

**Basis:** 44(e)

## Basis Information (Case Level)

**Filed Use:** No

**Currently Use:** No

**Amended Use:** No

**Filed ITU:** Yes

**Currently ITU:** No

**Amended ITU:** No

**Filed 44D:** Yes

**Currently 44D:** No

**Amended 44D:** No

**Filed 44E:** Yes

**Currently 44E:** Yes

**Amended 44E:** No

**Filed 66A:** No

**Currently 66A:** No

**Filed No Basis:** No

**Currently No Basis:** No

## Current Owner(s) Information

**Owner Name:** LUMENE OY

**Owner Address:** LASIKUJA 2  
ESPOO FIN-02780  
FINLAND

**Legal Entity Type:** CORPORATION

**State or Country Where Organized:** FINLAND

## Attorney/Correspondence Information

### Attorney of Record

**Attorney Name:** Mark I. Peroff

**Docket Number:** 406.102

### Correspondent

**Correspondent Name/Address:** MARK I PEROFF  
KIRKPATRICK & LOCKHART LLP  
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UNITED STATES

**Phone:** 212-536-3900

**Fax:** 212-536-3901

### Domestic Representative

**Domestic Representative Name:** Trademark & Patent Counselors of America, P.C.

**Phone:** (212) 387-0247

## Prosecution History

Date	Description	Proceeding Number
Jan. 07, 2011	CANCELLED SEC. 8 (6-YR)	
Jun. 01, 2004	REGISTERED-PRINCIPAL REGISTER	
Mar. 27, 2004	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Mar. 09, 2004	PUBLISHED FOR OPPOSITION	
Feb. 18, 2004	NOTICE OF PUBLICATION	
Jan. 08, 2004	APPROVED FOR PUB - PRINCIPAL REGISTER	
Nov. 28, 2003	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Nov. 28, 2003	PAPER RECEIVED	
Aug. 25, 2003	FINAL REFUSAL MAILED	
Feb. 07, 2003	Sec. 1(B) CLAIM DELETED	76538
Feb. 18, 2003	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Aug. 05, 2003	CASE FILE IN TICRS	
Jul. 28, 2003	INQUIRY AS TO SUSPENSION MAILED	
Feb. 07, 2003	PAPER RECEIVED	
Jan. 08, 2003	LETTER OF SUSPENSION MAILED	
Dec. 23, 2002	ASSIGNED TO EXAMINER	77767
Dec. 12, 2002	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Dec. 12, 2002	PAPER RECEIVED	
Sep. 19, 2002	PAPER RECEIVED	
Aug. 26, 2002	PAPER RECEIVED	
Aug. 02, 2002	PAPER RECEIVED	
Jun. 17, 2002	NON-FINAL ACTION MAILED	
Jun. 14, 2002	ASSIGNED TO EXAMINER	74818
Apr. 16, 2002	APPLICANT AMENDMENT PRIOR TO EXAMINATION - ENTERED	
Apr. 16, 2002	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Apr. 16, 2002	PAPER RECEIVED	

## TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: FILE REPOSITORY (FRANCONIA)

Date in Location: Jun. 21, 2004

## Assignment Abstract Of Title Information

### Summary

Total Assignments: 2

Registrant: ORION CORPORATION

### Assignment 1 of 2

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: [3025/0426](#)

Pages: 20

Date Recorded: Feb. 09, 2005

Supporting Documents: [assignment-tm-3025-0426.pdf](#)

### Assignor

Name: [ORION-YHTYMA OYJ, ALSO TRADING AS ORION CORPORATION](#)

Execution Date: Nov. 17, 2003

Legal Entity Type: CORPORATION

State or Country Where Organized: FINLAND

### Assignee

Name: [NOIRO OY](#)

Legal Entity Type: CORPORATION

State or Country Where Organized: FINLAND

Address: LASIKUJA 2  
ESPOO, FINLAND FIN-02780

**Correspondent**

**Correspondent Name:** KEITH E. DANISH, ESQ.

**Correspondent Address:** 599 LEXINGTON AVENUE  
NEW YORK, NY 10022-6030

**Domestic Representative - Not Found**

**Assignment 2 of 2**

**Conveyance:** CHANGE OF NAME

**Reel/Frame:** [3160/0715](#)

**Pages:** 3

**Date Recorded:** Sep. 16, 2005

**Supporting Documents:** [assignment-tm-3160-0715.pdf](#)

**Assignor**

**Name:** [NOIRO OY](#)

**Execution Date:** Feb. 16, 2005

**Legal Entity Type:** CORPORATION

**State or Country Where** FINLAND

**Organized:**

**Assignee**

**Name:** [LUMENE OY](#)

**Legal Entity Type:** CORPORATION

**State or Country Where** FINLAND

**Organized:**

**Address:** LASIKUJA 2  
ESPOO, FINLAND FIN-02780

**Correspondent**

**Correspondent Name:** KEITH E. DANISH

**Correspondent Address:** 599 LEXINGTON AVENUE  
NEW YORK, NY 10022-6030

**Domestic Representative**

**Domestic Representative Name:** KIRKPATRICK & LOCKHART NICHOLSON GRAHAM

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NEW YORK, NY 10022-6030