

ESTTA Tracking number: **ESTTA37796**

Filing date: **07/06/2005**

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

Proceeding	92044538
Party	Defendant ONFOLIO, INC. ONFOLIO, INC. FOUR CAMBRIDGE CENTER 3RD FLOOR CAMBRIDGE, MA 02142
Correspondence Address	ONFOLIO, INC. FOUR CAMBRIDGE CENTER 3RD FLOOR CAMBRIDGE, MA 02142
Submission	Registrant's Request for Substitution of Corrected Page in Previously-Filed Motion for Summary Judgment
Filer's Name	Charles E. Weinstein, Esq.
Filer's e-mail	cew@foleyhoag.com, gmaclellan@foleyhoag.com
Signature	/charleseweinstein/
Date	07/06/2005
Attachments	Cancellation No. 92-044538 - Request for Substitution of Corrected Page.pdf (2 pages)

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

MISSIONTREK LTD. CO.,
Petitioner

v.

ONFOLIO, INC.,
Registrant.

Cancellation No. 92044538

v.

Reg. No. 2,904,982

**REGISTRANT'S REQUEST FOR SUBSTITUTION OF CORRECTED PAGE IN
PREVIOUSLY-FILED MOTION FOR SUMMARY JUDGMENT**

Registrant, Onfolio, Inc., ("Registrant"), herewith encloses a corrected page 5 for its previously-filed Motion for Summary Judgment, and requests that this corrected page be substituted for the previous page 5.

Registrant's Motion for Summary Judgment was filed on June 30, 2005. Registrant subsequently noted that three of the third-party marks listed on page 5 do not appear among the TARR print-outs contained in Exhibit C to that Motion. Accordingly, Registrant has prepared a new page 5 from which the three marks in question have been deleted, and respectfully requests that this new page 5 be substituted for the old page 5.

Respectfully submitted,

Date:

JULY 6, 2005



Charles E. Weinstein
Foley Hoag LLP
155 Seaport Boulevard
Boston, MA 02210
(617) 832-1238
(617) 832-7000
e-mail: cweinste@foleyhoag.com

Attorneys for Registrant

In short, except for the ordinary suffix, *there are no common letters whatsoever in Petitioner's mark and Registrant mark.* The marks are therefore predominantly different in appearance.³

C. Sound

Given their different letters, Petitioner's mark and Registrant's mark are significantly different in pronunciation. To use phonetic spelling, Petitioner's mark is pronounced KAR-TAHJ-EE-O while Registrant's mark is pronounced ON-FOHL-EE-O.

Petitioner argues that its mark and Registrant's mark have the same number of syllables and the same placement of accent. However, this is also true of, e.g., the registered browser marks PROVISIO, INPERIO and PENOKIO; the registered database management hardware/software marks CELESIO, PROTECTIO and RISKFOLIO; and other registered marks shown in the attached Exhibit C such as COMPERIO, COMPOSIO, COFICIO, CONSORTIO, COGNITIO and CAMERIO. Registrant is unaware of any cases which hold that the same number of syllables and the same placement of accent are sufficient to create confusion between marks that are otherwise distinguishable. Indeed, the cases discussed in Section E below clearly hold otherwise.

D. Commercial Impression

As noted above, Opposer's and Applicant's marks have entirely different meanings, entirely different letters (other than the ordinary and ubiquitous suffix "-IO") and entirely different pronunciations. For these reasons, the marks are also entirely different in overall commercial impression. Indeed, Applicant's mark is likely to be seen as a novel variant

³ Petitioner argues that the initial "C" of its mark and the initial "O" of Registrant's mark are both "round" letters. Of course, the same is true of Q and G; while round features can also be found in B, D, S and P. "Roundness" does not confer similarity upon letters that are otherwise distinct. In this regard, Registrant notes that C is a hard consonant while O is a vowel.