

ESTTA Tracking number: **ESTTA555125**

Filing date: **08/20/2013**

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

Proceeding	92057669
Party	Plaintiff PADI Americas, Inc.
Correspondence Address	DIANE M REED KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET, 14TH FLOOR IRVINE, CA 92614 UNITED STATES efiling@knobbe.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Jonathan A. Menkes
Filer's e-mail	efiling@knobbe.com
Signature	/Jonathan A. Menkes/
Date	08/20/2013
Attachments	PADII.154N-PETITION.pdf(359665 bytes) PADII.154N-EXHIB A_Part1.pdf(3085294 bytes) PADII.154N-EXHIB A_Part2.pdf(4154954 bytes)

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

PADI Americas, Inc.,)	Cancellation No.: 92057669
)	
Petitioner,)	Registration No.: 4,290,402
)	
v.)	Mark: DIVE TRAVELER
)	
Sawyer Media Group,)	
)	
Respondent.)	
)	
)	
)	
)	

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, and TBMP § 507.02,

Petitioner hereby files the following:

FIRST AMENDED PETITION FOR CANCELLATION

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

Dear Sir or Madam:

Petitioner, PADI Americas, Inc., a corporation organized and existing under the laws of California (“Petitioner”), believes that it has been and will continue to be damaged by the continued registration of the mark shown in U.S. Trademark Registration No. 4,290,402 (the “Registration”) for the mark DIVE TRAVELER for goods in Class 9, and hereby petitions to cancel the same.

A description of the subject Registration is as follows:

Mark	DIVE TRAVELER
Original Filing Date	October 20, 2011
Date Amended to Supplemental Register	December 31, 2012
Registration Date	February 12, 2013
Registration No.	4,290,402
Goods	Digital materials, namely, downloadable audio and video files in the field of travel. Electronic publications, namely, digital magazines in the field of travel. Mobile media applications, namely, downloadable software in the nature of a mobile application for providing information on travel; [mobile media applications, namely, mobile computing and operating platforms consisting of data transceivers, wireless networks and gateways for collection and management of data] in Class 9

As grounds for this Petition, it is alleged:

Respondent's Registration

1. Sawyer Media Group, LLC, a Florida limited liability company having an address of 12863 Holdenbury Lane, Windermere, Florida 34786 ("Respondent"), is the owner of the Registration.

2. The Registration resulted from Application Serial No. 85/452,214, filed with the U.S. Patent and Trademark Office ("USPTO") by Respondent on October 20, 2011 pursuant to Section 1(a) of the Trademark Act ("Respondent's Application"). A copy of Respondent's Application and the prosecution history downloaded from the USPTO's TSDR database is attached hereto as **Exhibit A**.

3. On February 13, 2012, the USPTO issued an Office Action in connection with Respondent's Application, in which the Examining Attorney argued, *inter alia*, that the specimen submitted did not show use of Respondent's applied-for-mark. *See id.*

4. On August 13, 2012, Respondent submitted a response to the Office Action, in which Respondent amended the filing basis of its application to Section 1(b) of the Trademark Act "until appropriate specimens can be submitted." *See id.*

5. On or about November 30, 2012, Respondent filed an Amendment to Allege Use in connection with Respondent's Application. *See id.*

6. In Respondent's Amendment to Allege Use, Respondent alleged that the date of first use anywhere and first use in commerce for the mark DIVE TRAVELER was "10/26/2012." *See id.*

7. On December 31, 2012, Respondent authorized an amendment of Registrant's Application to the Supplemental Register, and on December 31, 2012, the USPTO issued an Examiner's Amendment, amending Respondent's Application to the Supplemental Register. *See id.*

8. On January 1, 2013, the USPTO issued a Notice of Acceptance of Amendment to Allege Use. *See id.*

9. The effective filing date of Respondent's Application was amended to December 31, 2012 to reflect the date Respondent's Application was amended to the Supplemental Register.

10. After amending Respondent's Application to the Supplemental Register, the Examining Attorney did not conduct a new search of USPTO records for conflicting marks as mandated by the Trademark Manual of Examining Procedure ("T.M.E.P.") § 1102.03 (providing that the Examining Attorney "must conduct a new search of USPTO records for conflicting marks") when an application is based solely on §1(b) and the applicant files an acceptable

amendment to allege use and an acceptable amendment to the Supplemental Register due to the change in the effective filing date of the application) (emphasis added). *See id.*

11. Had the Examining Attorney conducted the mandatory new search, the search would have revealed Petitioner's Application Serial No. 85/456,873 for the mark DIVE TRAVELER filed October 26, 2011, and pursuant to TMEP § 206.04, the Examining Attorney would have been required to suspend Respondent's Application pending disposition of Petitioner's Application.

12. On February 12, 2013, the Respondent's Application erroneously matured into the Registration, and was assigned Registration No. 4,290,402.

Petitioner's Common Law Rights and Trademark Application

13. Petitioner is the world's largest recreational diving membership and diver training organization. Petitioner was founded in 1966 and its members now include over 135,000 Individual Professional Members, including dive instructors, assistant instructors and divemasters, and over 6,000 Dive Centers and Resorts operating in more than 180 countries. In addition, Petitioner has issued more than 21 million dive certifications since 1966. "PADI" stands for "Professional Association of Diving Instructors."

14. Petitioner provides many services in addition to diver training, including travel services, which are offered through a division of PADI called PADI Travel Network. PADI Travel Network, in association with its member Dive Centers and Resorts around the world, has offered group and individual scuba diving travel services and travel specials for more than 20 years. PADI Travel Network promotes its travel services through its member Dive Centers and Resorts, on Petitioner's website, and through publications and promotional materials distributed both to PADI members and the general public.

15. Petitioner's DIVE TRAVELER magazine is the official publication of PADI Travel Network. DIVE TRAVELER magazine provides information on planning scuba dive vacations, scuba diving destinations, accommodations, and pricing.

16. Since at least as early as December, 1989, a date many years prior to the filing date of the Respondent's Application and many years prior to Respondent's alleged date of first use anywhere and first use in commerce, Petitioner has continuously used and promoted the DIVE TRAVELER mark in interstate commerce in connection with magazines and brochures in the field of scuba diving, travel, and travel destinations. As a result of Petitioner's continuous and substantial use, Petitioner has acquired extensive common law rights in its DIVE TRAVELER mark throughout the United States, and has built up valuable goodwill in the mark. Petitioner's DIVE TRAVELER mark has become an identifier of Petitioner and its goods and distinguishes Petitioner's goods from the goods of others.

17. Since at least as early as 2008, a date many years prior to the filing of the Respondent's Application and many years prior to Respondent's alleged date of first use anywhere and first use in commerce, Petitioner has continuously used and promoted the DIVE TRAVELER mark in interstate commerce in connection with electronic publications in the field of scuba diving, travel, and travel destinations.

18. On October 26, 2011, Petitioner filed an application with the USPTO to register the mark DIVE TRAVELER covering "electronic publications, namely, magazines featuring topics and information relating to scuba diving, travel and travel destinations recorded on computer media; downloadable electronic publications, namely, magazines featuring topics and information relating to scuba diving, travel and travel destinations" in Class 9, and "printed materials, namely, magazines and brochures featuring topics and information relating to scuba

diving, travel and travel destinations” in Class 16. This application was assigned Serial No. 85/456,873 (the “’873 Application”).

19. On April 2, 2013, the USPTO issued an Office Action in connection the with the ‘873 Application, refusing registration under 15 U.S.C. § 1052(d) on the ground of a likelihood of confusion with the mark shown in the Registration, even though the Registration had a later effective filing date than the ‘873 Application due to the amendment of Respondent’s Application to the Supplemental Register.

Likelihood of Confusion

20. Petitioner’s common law rights in its DIVE TRAVELER mark predate the date of first use and first use in commerce alleged in the Registration, and predate the filing date of Respondent’s Application.

21. The filing date of Petitioner’s ‘873 Application predates the effective filing date of Respondent’s Registration.

22. The goods covered by the Registration and by Petitioner’s ‘873 Application directly overlap and/or are highly related.

23. The USPTO has taken the position that the mark shown in the Registration and the mark shown in the ‘873 Application “are similar in appearance, meaning, sound, and connotation” and have “similar goods featuring information in the same travel field.”

24. In view of the USPTO’s refusal of Petitioner’s ‘873 Application based on the Registration, it is alleged that the Registration has and continues to damage Petitioner.

25. Petitioner will be damaged by continued registration of the Registration in that the mark so resembles Petitioner’s DIVE TRAVELER mark in which Petitioner owns earlier common law trademark rights and for which Petitioner owns the pending ‘873 Application

having an earlier effective filing date, as to be likely, when used on or in connection with the goods as they are identified in the Registration, as to cause confusion, or to cause mistake or to deceive within the meaning of Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d).

26. In view of the USPTO's refusal of the Petitioner's '873 Application based on the Registration, Petitioner's prior, continued and legal use of the DIVE TRAVELER mark has been and will continue to be impaired by the continued registration of the mark shown in the Registration.

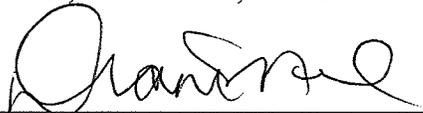
27. By reason of the foregoing, the Registration should be cancelled.

WHEREFORE, Petitioner prays that the Registration, namely, U.S. Trademark Registration No. 4,290,402, be cancelled and that this cancellation action be sustained in favor of Petitioner.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 8/20/13

By: 

Diane M. Reed
Jonathan A. Menkes
2040 Main Street, 14th Floor
Irvine, CA 92614
(949) 760-0404
efiling@kmob.com

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **FIRST AMENDED PETITION FOR CANCELLATION** upon Respondent and Respondent's counsel by depositing copies thereof in the United States mail, first-class postage prepaid on 8/20, 2013 addressed as follows:

Ty Sawyer, CEO
Sawyer Media Group AKA Dive Traveler LLC
12863 Holdenbury Lane, Windermere, Florida 34786

With courtesy copy addressed to:

Kathryn M. Wheble, Esq.
Hiaring + Smith, LLP 101 Lucas Valley Road, Suite 300
San Rafael, CA 94903


Terry Bishop
Trademark Paralegal

16016794
081413

EXHIBIT A

ESTTA Tracking number: **ESTTA551328**

Filing date: **07/30/2013**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	PADI Americas, Inc.		
Entity	Corporation	Citizenship	California
Address	30151 Tomas Street Rancho Santa Margarita, CA 92888 UNITED STATES		

Attorney information	Jonathan Menkes Knobbe, Martens, Olson & Bear LLP 2040 Main Street, 14th Floor Irvine, CA 92614 UNITED STATES efiling@knobbe.com Phone:949-760-0404		
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Registration Subject to Cancellation

Registration No	4290402	Registration date	02/12/2013
Registrant	Sawyer Media Group 12863 Holdenbury Ln Windermere, FL 34786 UNITED STATES		

Goods/Services Subject to Cancellation

Class 009. First Use: 2012/10/26 First Use In Commerce: 2012/10/26 All goods and services in the class are cancelled, namely: Digital materials, namely, downloadable audio and video files in the field of travel. Electronic publications, namely, digital magazines in the field of travel. Mobile media applications, namely, downloadable software in the nature of a mobile application for providing information on travel; [mobile media applications, namely, mobile computing and operating platforms consisting of data transceivers, wireless networks and gateways for collection and management of data]

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	85456873	Application Date	10/26/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	DIVE TRAVELER		

Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 009. First use: First Use: 2008/00/00 First Use In Commerce: 2008/00/00 ELECTRONIC PUBLICATIONS, NAMELY, MAGAZINES FEATURING TOPICS AND INFORMATION RELATING TO SCUBA DIVING, TRAVEL AND TRAVEL DESTINATIONS RECORDED ON COMPUTER MEDIA; DOWNLOADABLE ELECTRONIC PUBLICATIONS, NAMELY, MAGAZINES FEATURING TOPICS AND INFORMATION RELATING TO SCUBA DIVING, TRAVEL AND TRAVEL DESTINATIONS</p> <p>Class 016. First use: First Use: 1989/00/00 First Use In Commerce: 1989/00/00 Printed materials, namely, magazines and brochures featuring topics and information relating to scuba diving, travel and travel destinations</p>

Attachments	Signed Notice of Cancellation - PADII.154N.PDF(427532 bytes) PETITION TO CANCEL EXHIBIT A - Part 1.pdf(3141969 bytes) PETITION TO CANCEL EXHIBIT A - Part 2.pdf(3471319 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Jonathan A. Menkes/
Name	Jonathan Menkes
Date	07/30/2013

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

PADI Americas, Inc.,)	Cancellation No.:
)	
Petitioner,)	Registration No.: 4,290,402
)	
v.)	Mark: DIVE TRAVELER
)	
Sawyer Media Group,)	
)	
Respondent.)	
)	
)	
)	
)	

PETITION FOR CANCELLATION

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

Dear Sir or Madam:

Pursuant to Section 24 of the Trademark Act, 15 U.S.C. § 1092, and TBMP § 307, Petitioner, PADI Americas, Inc., a corporation organized and existing under the laws of California (“Petitioner”), believes that it has been and will continue to be damaged by the continued registration of the mark shown in U.S. Trademark Registration No. 4,290,402 (the “Registration”) for the mark DIVE TRAVELER for goods in Class 9, and hereby petitions to cancel the same.

A description of the subject Registration is as follows:

Mark	DIVE TRAVELER
Original Filing Date	October 20, 2011
Date Amended to Supplemental Register	December 31, 2012
Registration Date	February 12, 2013
Registration No.	4,290,402
Goods	Digital materials, namely, downloadable audio and video files in the field of travel. Electronic publications, namely, digital magazines in the field of travel. Mobile media applications, namely, downloadable software in the nature of a mobile application for providing information on travel; [mobile media applications, namely, mobile computing and operating platforms consisting of data transceivers, wireless networks and gateways for collection and management of data] in Class 9

As grounds for this Petition, it is alleged:

Respondent's Registration

1. Sawyer Media Group, LLC, a Florida limited liability company having an address of 12863 Holdenbury Lane, Windermere, Florida 34786 ("Respondent"), is the owner of the Registration.

2. The Registration resulted from Application Serial No. 85/452,214, filed with the U.S. Patent and Trademark Office ("USPTO") by Respondent on October 20, 2011 pursuant to Section 1(a) of the Trademark Act ("Respondent's Application"). A copy of Respondent's Application and the prosecution history downloaded from the USPTO's TSDR database is attached hereto as **Exhibit A**.

3. On February 13, 2012, the USPTO issued an Office Action in connection with Respondent's Application, in which the Examining Attorney argued, *inter alia*, that the specimen submitted did not show use of Respondent's applied-for-mark. *See id.*

4. On August 13, 2012, Respondent submitted a response to the Office Action, in which Respondent amended the filing basis of its application to Section 1(b) of the Trademark Act “until appropriate specimens can be submitted.” *See id.*

5. On or about November 30, 2012, Respondent filed an Amendment to Allege Use in connection with Respondent’s Application. *See id.*

6. In Respondent’s Amendment to Allege Use, Respondent alleged that the date of first use anywhere and first use in commerce for the mark DIVE TRAVELER was “10/26/2012.” *See id.*

7. On December 31, 2012, Respondent authorized an amendment of Registrant’s Application to the Supplemental Register, and on December 31, 2012, the USPTO issued an Examiner’s Amendment, amending Respondent’s Application to the Supplemental Register. *See id.*

8. On January 1, 2013, the USPTO issued a Notice of Acceptance of Amendment to Allege Use. *See id.*

9. The effective filing date of Respondent’s Application was amended to December 31, 2012 to reflect the date Respondent’s Application was amended to the Supplemental Register.

10. After amending Respondent’s Application to the Supplemental Register, the Examining Attorney did not conduct a new search of USPTO records for conflicting marks as mandated by the Trademark Manual of Examining Procedure (“T.M.E.P.”) § 1102.03 (providing that the Examining Attorney “must conduct a new search of USPTO records for conflicting marks” when an application is based solely on §1(b) and the applicant files an acceptable amendment to allege use and an acceptable amendment to the Supplemental Register due to the change in the effective filing date of the application) (emphasis added). *See id.*

11. Had the Examining Attorney conducted the mandatory new search, the search would have revealed Petitioner's Application Serial No. 85/456,873 for the mark DIVE TRAVELER filed October 26, 2011, and pursuant to TMEP § 206.04, the Examining Attorney would have been required to suspend Respondent's Application pending disposition of Petitioner's Application.

12. On February 12, 2013, the Respondent's Application erroneously matured into the Registration, and was assigned Registration No. 4,290,402.

Petitioner's Common Law Rights and Trademark Application

13. Petitioner is the world's largest recreational diving membership and diver training organization. Petitioner was founded in 1966 and its members now include over 135,000 Individual Professional Members, including dive instructors, assistant instructors and divemasters, and over 6,000 Dive Centers and Resorts operating in more than 180 countries. In addition, Petitioner has issued more than 21 million dive certifications since 1966. "PADI" stands for "Professional Association of Diving Instructors."

14. Petitioner provides many services in addition to diver training, including travel services, which are offered through a division of PADI called PADI Travel Network. PADI Travel Network, in association with its member Dive Centers and Resorts around the world, has offered group and individual scuba diving travel services and travel specials for more than 20 years. PADI Travel Network promotes its travel services through its member Dive Centers and Resorts, on Petitioner's website, and through publications and promotional materials distributed both to PADI members and the general public.

15. Petitioner's DIVE TRAVELER magazine is the official publication of PADI Travel Network. DIVE TRAVELER magazine provides information on planning scuba dive vacations, scuba diving destinations, accommodations, and pricing.

16. Since at least as early as December, 1989, a date many years prior to the filing date of the Respondent's Application and many years prior to Respondent's alleged date of first use anywhere and first use in commerce, Petitioner has continuously used and promoted the DIVE TRAVELER mark in interstate commerce in connection with magazines and brochures in the field of scuba diving, travel, and travel destinations. As a result of Petitioner's continuous and substantial use, Petitioner has acquired extensive common law rights in its DIVE TRAVELER mark throughout the United States, and has built up valuable goodwill in the mark. Petitioner's DIVE TRAVELER mark has become an identifier of Petitioner and its goods and distinguishes Petitioner's goods from the goods of others.

17. Since at least as early as 2008, a date many years prior to the filing of the Respondent's Application and many years prior to Respondent's alleged date of first use anywhere and first use in commerce, Petitioner has continuously used and promoted the DIVE TRAVELER mark in interstate commerce in connection with electronic publications in the field of scuba diving, travel, and travel destinations.

18. On October 26, 2011, Petitioner filed an application with the USPTO to register the mark DIVE TRAVELER covering "electronic publications, namely, magazines featuring topics and information relating to scuba diving, travel and travel destinations recorded on computer media; downloadable electronic publications, namely, magazines featuring topics and information relating to scuba diving, travel and travel destinations" in Class 9, and "printed materials, namely, magazines and brochures featuring topics and information relating to scuba

diving, travel and travel destinations” in Class 16. This application was assigned Serial No. 85/456,873 (the “’873 Application”).

19. On April 2, 2013, the USPTO issued an Office Action in connection the with the ‘873 Application, refusing registration under 15 U.S.C. § 1052(d) on the ground of a likelihood of confusion with the mark shown in the Registration, even though the Registration had a later effective filing date than the ‘873 Application due to the amendment of Respondent’s Application to the Supplemental Register.

Fraud

20. Petitioner has regularly advertised its DIVE TRAVELER magazine in various publications, including but not limited to *The Undersea Journal*. *The Undersea Journal* is a quarterly publication that was previously published by PADI but is now published for PADI by Bonnier Corporation, an international multimedia entity.

21. On information and belief, between 2009 and on or about October of 2011 (the date Respondent filed Respondent’s Application), Ty Sawyer (“Sawyer”), who is the CEO of Respondent, was the Bonnier editorial director of *The Undersea Journal* and had direct access to and responsibility for the content published in *The Undersea Journal*, including Petitioner’s advertisements for its DIVE TRAVELER magazine.

22. Respondent had actual knowledge of Petitioner’s rights and/or legitimate interests in the DIVE TRAVELER mark since long before and at the time Respondent filed its application on October 20, 2011.

23. Respondent knowingly made false statements in connection with Respondent’s Application. In particular, Respondent knew at the time it filed Respondent’s Application that the following statement provided in the declaration was false: “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.”

24. Respondent also knew at the time it filed its application that the following statement provided in the declaration was false: “[t]he 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 may jeopardize the validity of the form or any resulting registration, declares that he/she is properly authorized to execute this form on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered; 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.”

25. The USPTO prosecuted Respondent’s Application pursuant to Respondent’s false declaration that its statements in Respondent’s Application were true, which was material to the examination of the application.

26. Respondent’s Registration should be cancelled because Respondent obtained the Registration by false means and/or by knowingly making a false and/or fraudulent declaration or representation to the USPTO.

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Likelihood of Confusion

27. Petitioner's common law rights in its DIVE TRAVELER mark predate the date of first use and first use in commerce alleged in the Registration, and predate the filing date of Respondent's Application.

28. The filing date of Petitioner's '873 Application predates the effective filing date of Respondent's Registration.

29. The goods covered by the Registration and by Petitioner's '873 Application directly overlap and/or are highly related.

30. The USPTO has taken the position that the mark shown in the Registration and the mark shown in the '873 Application "are similar in appearance, meaning, sound, and connotation" and have "similar goods featuring information in the same travel field."

31. In view of the USPTO's refusal of Petitioner's '873 Application based on the Registration, it is alleged that the Registration has and continues to damage Petitioner.

32. Petitioner will be damaged by continued registration of the Registration in that the mark so resembles Petitioner's DIVE TRAVELER mark in which Petitioner owns earlier common law trademark rights and for which Petitioner owns the pending '873 Application having an earlier effective filing date, as to be likely, when used on or in connection with the goods as they are identified in the Registration, as to cause confusion, or to cause mistake or to deceive within the meaning of Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d).

33. In view of the USPTO's refusal of the Petitioner's '873 Application based on the Registration, Petitioner's prior, continued and legal use of the DIVE TRAVELER mark has been and will continue to be impaired by the continued registration of the mark shown in the Registration.

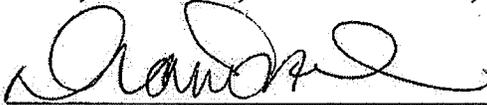
34. By reason of the foregoing, the Registration should be cancelled.

WHEREFORE, Petitioner prays that the Registration, namely, U.S. Trademark Registration No. 4,290,402, be cancelled and that this cancellation action be sustained in favor of Petitioner.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 7/30/2013

By: 

Diane M. Reed
Jonathan A. Menkes
2040 Main Street, 14th Floor
Irvine, CA 92614
(949) 760-0404
efiling@kmob.com

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **PETITION FOR CANCELLATION** upon Respondent and Respondent's counsel by depositing copies thereof in the United States mail, first-class postage prepaid on July 30, 2013 addressed as follows:

Ty Sawyer, CEO
Sawyer Media Group AKA Dive Traveler LLC
12863 Holdenbury Lane, Windermere, Florida 34786

With courtesy copy addressed to:

Kathryn M. Wheble, Esq.
Hiaring + Smith, LLP 101 Lucas Valley Road, Suite 300
San Rafael, CA 94903
trademarks@hiaringsmith.com

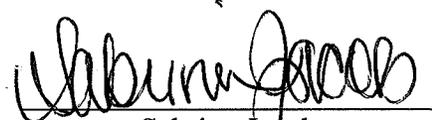

Sabrina Jacob
Trademark Paralegal

EXHIBIT A

Generated on: This page was generated by TSDR on 2013-07-30 17:02:31 EDT

Mark: DIVE TRAVELER

Dive Traveler

US Serial Number: 85452214 Application Filing Date: Oct. 20, 2011
US Registration Number: 4290402 Registration Date: Feb. 12, 2013
Register: Supplemental
Mark Type: Trademark
Date Amended to Current Register: Dec. 31, 2012
Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.
Status Date: Feb. 12, 2013

Mark Information

Mark Literal Elements: DIVE TRAVELER
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
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Digital materials, namely, downloadable audio and video files in the field of travel. Electronic publications, namely, digital magazines in the field of travel. Mobile media applications, namely, downloadable software in the nature of a mobile application for providing information on travel; [mobile media applications, namely, mobile computing and operating platforms consisting of data transceivers, wireless networks and gateways for collection and management of data]

International Class(es): 009 - Primary Class U.S Class(es): 021, 023, 026, 036, 038
Class Status: ACTIVE
Basis: 1(a)
First Use: Oct. 26, 2012 Use in Commerce: Oct. 26, 2012

Basis Information (Case Level)

Filed Use: Yes	Currently Use: Yes	Amended Use: No
Filed ITU: No	Currently ITU: No	Amended ITU: Yes
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: Sawyer Media Group
DBA, AKA, Formerly: AKA Dive Traveler
Owner Address: 12863 Holdenbury Ln
Windermere, FLORIDA 34786
UNITED STATES
Legal Entity Type: LIMITED LIABILITY COMPANY State or Country Where Organized: FLORIDA

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Kathryn M. Wheble Docket Number: SAWYER MEDIA
Attorney Primary Email Address: trademarks@hiaringsmith.com Attorney Email Authorized: No

Correspondent

Correspondent Name/Address: Kathryn M. Wheble
 HIARING + SMITH, LLP
 101 Lucas Valley Road, Suite 300
 San Rafael, CALIFORNIA 94903
 UNITED STATES

Phone: (415) 457-2040

Fax: (415) 457-2822

Correspondent e-mail: trademarks@hiaringsmith.com

Correspondent e-mail Authorized: No

Domestic Representative - Not Found**Prosecution History**

Date	Description	Proceeding Number
May 21, 2013	AMENDMENT UNDER SECTION 7 - ISSUED	74886
May 21, 2013	SEC 7 REQUEST FILED	74886
May 08, 2013	TEAS RESPONSE TO OFFICE ACTION-POST REG RECEIVED	
Apr. 19, 2013	POST REGISTRATION ACTION MAILED - SEC. 7	74886
Apr. 17, 2013	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	74886
Mar. 22, 2013	TEAS SECTION 7 REQUEST RECEIVED	
Feb. 12, 2013	REGISTERED-SUPPLEMENTAL REGISTER	
Jan. 04, 2013	LAW OFFICE PUBLICATION REVIEW COMPLETED	70468
Jan. 01, 2013	NOTICE OF ACCEPTANCE OF AMENDMENT TO ALLEGE USE E-MAILED	
Dec. 31, 2012	APPROVED FOR REGISTRATION SUPPLEMENTAL REGISTER	
Dec. 31, 2012	USE AMENDMENT ACCEPTED	78449
Dec. 31, 2012	EXAMINER'S AMENDMENT ENTERED	88888
Dec. 31, 2012	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Dec. 31, 2012	EXAMINERS AMENDMENT E-MAILED	6328
Dec. 31, 2012	EXAMINERS AMENDMENT -WRITTEN	78449
Dec. 01, 2012	AMENDMENT TO USE PROCESSING COMPLETE	88889
Dec. 01, 2012	USE AMENDMENT FILED	88889
Nov. 30, 2012	TEAS AMENDMENT OF USE RECEIVED	
Oct. 02, 2012	NOTIFICATION OF FINAL REFUSAL EMAILED	
Oct. 02, 2012	FINAL REFUSAL E-MAILED	
Oct. 02, 2012	FINAL REFUSAL WRITTEN	78449
Sep. 07, 2012	TEAS/EMAIL CORRESPONDENCE ENTERED	70468
Sep. 07, 2012	CORRESPONDENCE RECEIVED IN LAW OFFICE	70468
Aug. 17, 2012	ASSIGNED TO LIE	70468
Aug. 13, 2012	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Aug. 10, 2012	ATTORNEY REVOKED AND/OR APPOINTED	
Aug. 10, 2012	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Feb. 13, 2012	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Feb. 13, 2012	NON-FINAL ACTION E-MAILED	6325
Feb. 13, 2012	NON-FINAL ACTION WRITTEN	78449
Feb. 07, 2012	ASSIGNED TO EXAMINER	78449
Oct. 25, 2011	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	

Maintenance Filings or Post Registration Information

Change in Registration: Yes

Amendment to a Registration/Renewal Certificate: In the statement, Column 1, lines 5-12, "Digital materials, namely, downloadable audio and video files in the field of travel. Electronic publications, namely, digital magazines in the field of travel. Mobile medial applications, namely, downloadable software in the nature of a mobile application for providing information on travel; mobile media applications, namely, mobile computing and operating platforms consisting of data transceivers, wireless networks and gateways for collection and management of data" is deleted, and Digital materials, namely, downloadable audio and video files in the field of travel. Electronic publications, namely, digital magazines in

the field of travel. Mobile media applications, namely, downloadable software in the nature of a mobile application for providing information on travel is inserted.

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: POST REGISTRATION

Date in Location: Jun. 28, 2013

United States of America
United States Patent and Trademark Office

Dive Traveler

Reg. No. 4,290,402

Registered Feb. 12, 2013

Int. Cl.: 9

TRADEMARK

SUPPLEMENTAL REGISTER

SAWYER MEDIA GROUP (FLORIDA LIMITED LIABILITY COMPANY), AKA DIVE TRAVELER,
12863 HOLDENBURY LN
WINDERMERE, FL 34786

FOR: DIGITAL MATERIALS, NAMELY, DOWNLOADABLE AUDIO AND VIDEO FILES IN THE FIELD OF TRAVEL. ELECTRONIC PUBLICATIONS, NAMELY, DIGITAL MAGAZINES IN THE FIELD OF TRAVEL. MOBILE MEDIAL APPLICATIONS, NAMELY, DOWNLOADABLE SOFTWARE IN THE NATURE OF A MOBILE APPLICATION FOR PROVIDING INFORMATION ON TRAVEL; MOBILE MEDIA APPLICATIONS, NAMELY, MOBILE COMPUTING AND OPERATING PLATFORMS CONSISTING OF DATA TRANSCEIVERS, WIRELESS NETWORKS AND GATEWAYS FOR COLLECTION AND MANAGEMENT OF DATA, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 10-26-2012; IN COMMERCE 10-26-2012.

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

SER. NO. 85-452,214, FILED P.R. 10-20-2011; AM. S.R. 12-31-2012.

ODESSA BIBBINS, EXAMINING ATTORNEY



Lea Street Lee

Acting Director of the United States Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

Requirements in the First Ten Years*

What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or
reminder of these filing requirements.**

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

Trademark Snap Shot Publication & Issue Review Stylesheet

(Table presents the data on Publication & Issue Review Complete)

OVERVIEW

SERIAL NUMBER	85452214	FILING DATE	10/20/2011
REG NUMBER	0000000	REG DATE	N/A
REGISTER	SUPPLEMENTAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	BIBBINS, ODESSA B	L.O. ASSIGNED	105

PUB INFORMATION

RUN DATE	01/05/2013		
PUB DATE	N/A		
STATUS	681-PUBLICATION/ISSUE REVIEW COMPLETE		
STATUS DATE	01/04/2013		
LITERAL MARK ELEMENT	DIVE TRAVELER		
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	12/31/2012		

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)	YES
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	DIVE TRAVELER

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

CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	Sawyer Media Group
ADDRESS	12863 Holdenbury Ln Windermere, FL 34786
ENTITY	16-LTD LIAB CO
CITIZENSHIP	Florida
DBA/AKA	AKA Dive Traveler

GOODS AND SERVICES

INTERNATIONAL CLASS	009
DESCRIPTION TEXT	Digital materials, namely, downloadable audio and video files in the field of travel. Electronic publications, namely, digital magazines in the field of travel. Mobile medial applications, namely, downloadable software in the nature of a mobile application for providing information on travel; mobile media applications, namely, mobile computing and operating platforms consisting of data transceivers, wireless networks and gateways for collection and management of data

GOODS AND SERVICES CLASSIFICATION

INTERNATIONAL CLASS	009	FIRST USE DATE	10/26/2012	FIRST USE IN COMMERCE DATE	10/26/2012	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
01/04/2013	PREV	O	LAW OFFICE PUBLICATION REVIEW COMPLETED	025
01/01/2013	AAUA	E	NOTICE OF ACCEPTANCE OF AMENDMENT TO ALLEGE USE E-MAILED	024
12/31/2012	CNTA	O	APPROVED FOR REGISTRATION SUPPLEMENTAL REGISTER	023
12/31/2012	IUAA	P	USE AMENDMENT ACCEPTED	022
12/31/2012	XAEC	I	EXAMINER'S AMENDMENT ENTERED	021

12/31/2012	GNEN	O	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	020
12/31/2012	GNEA	O	EXAMINERS AMENDMENT E-MAILED	019
12/31/2012	CNEA	R	EXAMINERS AMENDMENT -WRITTEN	018
12/01/2012	AUPC	I	AMENDMENT TO USE PROCESSING COMPLETE	017
12/01/2012	IUAF	S	USE AMENDMENT FILED	016
11/30/2012	EAAU	I	TEAS AMENDMENT OF USE RECEIVED	015
10/02/2012	GNFN	O	NOTIFICATION OF FINAL REFUSAL EMAILED	014
10/02/2012	GNFR	O	FINAL REFUSAL E-MAILED	013
10/02/2012	CNFR	R	FINAL REFUSAL WRITTEN	012
09/07/2012	TEME	I	TEAS/EMAIL CORRESPONDENCE ENTERED	011
09/07/2012	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	010
08/17/2012	ALIE	A	ASSIGNED TO LIE	009
08/13/2012	TROA	I	TEAS RESPONSE TO OFFICE ACTION RECEIVED	008
08/10/2012	ARAA	I	ATTORNEY REVOKED AND/OR APPOINTED	007
08/10/2012	REAP	I	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	006
02/13/2012	GNRN	O	NOTIFICATION OF NON-FINAL ACTION E-MAILED	005
02/13/2012	GNRT	F	NON-FINAL ACTION E-MAILED	004
02/13/2012	CNRT	R	NON-FINAL ACTION WRITTEN	003
02/07/2012	DOCK	D	ASSIGNED TO EXAMINER	002
10/25/2011	NWOS	I	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	001

CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	Kathryn M. Wheble
CORRESPONDENCE ADDRESS	Kathryn M. Wheble HIARING + SMITH, LLP 101 Lucas Valley Road, Suite 300 San Rafael CA 94903
DOMESTIC REPRESENTATIVE	NONE

Dive Traveler

Trademark Snap Shot Amendment & Mail Processing Stylesheet

(Table presents the data on Amendment & Mail Processing Complete)

OVERVIEW

SERIAL NUMBER	85452214	FILING DATE	10/20/2011
REG NUMBER	0000000	REG DATE	N/A
REGISTER	SUPPLEMENTAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	BIBBINS, ODESSA B	L.O. ASSIGNED	105

PUB INFORMATION

RUN DATE	01/01/2013		
PUB DATE	N/A		
STATUS	680-APPROVED FOR PUBLICATON		
STATUS DATE	12/31/2012		
LITERAL MARK ELEMENT	DIVE TRAVELER		
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	12/31/2012		

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)	YES
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	DIVE TRAVELER

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

CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	Sawyer Media Group
ADDRESS	12863 Holdenbury Ln Windermere, FL 34786
ENTITY	16-LTD LIAB CO
CITIZENSHIP	Florida
DBA/AKA	AKA Dive Traveler

GOODS AND SERVICES

INTERNATIONAL CLASS	009
DESCRIPTION TEXT	Digital materials, namely, downloadable audio and video files in the field of travel. Electronic publications, namely, digital magazines in the field of travel. Mobile medial applications, namely, downloadable software in the nature of a mobile application for providing information on travel; mobile media applications, namely, mobile computing and operating platforms consisting of data transceivers, wireless networks and gateways for collection and management of data

GOODS AND SERVICES CLASSIFICATION

INTERNATIONAL CLASS	009	FIRST USE DATE	10/26/2012	FIRST USE IN COMMERCE DATE	10/26/2012	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
01/01/2013	AAUA	E	NOTICE OF ACCEPTANCE OF AMENDMENT TO ALLEGE USE E-MAILED	024
12/31/2012	CNTA	O	APPROVED FOR REGISTRATION SUPPLEMENTAL REGISTER	023
12/31/2012	IUAA	P	USE AMENDMENT ACCEPTED	022
12/31/2012	XAEC	I	EXAMINER'S AMENDMENT ENTERED	021
12/31/2012	GNEA	O	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	020

12/31/2012	GNEA	O	EXAMINERS AMENDMENT E-MAILED	019
12/31/2012	CNEA	R	EXAMINERS AMENDMENT -WRITTEN	018
12/01/2012	AUPC	I	AMENDMENT TO USE PROCESSING COMPLETE	017
12/01/2012	IUAF	S	USE AMENDMENT FILED	016
11/30/2012	EAAU	I	TEAS AMENDMENT OF USE RECEIVED	015
10/02/2012	GNFN	O	NOTIFICATION OF FINAL REFUSAL EMAILED	014
10/02/2012	GNFR	O	FINAL REFUSAL E-MAILED	013
10/02/2012	CNFR	R	FINAL REFUSAL WRITTEN	012
09/07/2012	TEME	I	TEAS/EMAIL CORRESPONDENCE ENTERED	011
09/07/2012	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	010
08/17/2012	ALIE	A	ASSIGNED TO LIE	009
08/13/2012	TROA	I	TEAS RESPONSE TO OFFICE ACTION RECEIVED	008
08/10/2012	ARAA	I	ATTORNEY REVOKED AND/OR APPOINTED	007
08/10/2012	REAP	I	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	006
02/13/2012	GNRN	O	NOTIFICATION OF NON-FINAL ACTION E-MAILED	005
02/13/2012	GNRT	F	NON-FINAL ACTION E-MAILED	004
02/13/2012	CNRT	R	NON-FINAL ACTION WRITTEN	003
02/07/2012	DOCK	D	ASSIGNED TO EXAMINER	002
10/25/2011	NWOS	I	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	001

CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	Kathryn M. Wheble
CORRESPONDENCE ADDRESS	Kathryn M. Wheble HIARING + SMITH, LLP 101 Lucas Valley Road, Suite 300 San Rafael CA 94903
DOMESTIC REPRESENTATIVE	NONE

Dive Traveler

From: TMOfficialNotices@USPTO.GOV
Sent: Tuesday, January 1, 2013 00:10 AM
To: trademarks@hiaringsmith.com
Subject: Trademark Serial Number 85452214 : Official USPTO Notice of Acceptance of Amendment to Allege Use

NOTICE OF ACCEPTANCE OF AMENDMENT TO ALLEGE USE

Serial Number: 85452214
Mark: DIVE TRAVELER(STANDARD CHARACTER MARK)
Owner: Sawyer Media Group
Docket/Reference Number: SAWYER MEDIA

The USPTO has accepted the Amendment to Allege Use (AAU) filed for the trademark application identified above as meeting the minimum filing requirements of 37 C.F.R. §2.76(e). The application was returned to the examining attorney for a substantive review of the AAU, which may result in the issuance of a refusal and/or additional requirement(s).

WARNING: The filing of the AAU does **not** relieve the applicant of the duty to file a response to any outstanding Office action or to take any other action required in the case, including filing a Notice of Appeal.

For further information, including information on filing and maintenance requirements for U.S. trademark applications and registrations and required fees, please consult the USPTO website at <http://www.uspto.gov/> or call the Trademark Assistance Center at 1-800-786-9199.

To check the status of the application, go to <http://tarr.uspto.gov/>.

To view this notice and other documents for this application on-line, go to <http://tdr.uspto.gov/search.action?sn=85452214>.

NOTE: This notice will only be available on-line the next business day after receipt of this e-mail.

Trademark Snap Shot Publication Stylesheet

(Table presents the data on Publication Approval)

OVERVIEW

SERIAL NUMBER	85452214	FILING DATE	10/20/2011
REG NUMBER	0000000	REG DATE	N/A
REGISTER	SUPPLEMENTAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	BIBBINS, ODESSA B	L.O. ASSIGNED	105

PUB INFORMATION

RUN DATE	01/01/2013		
PUB DATE	N/A		
STATUS	680-APPROVED FOR PUBLICATON		
STATUS DATE	12/31/2012		
LITERAL MARK ELEMENT	DIVE TRAVELER		
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	12/31/2012		

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)	YES
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	DIVE TRAVELER

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

CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	Sawyer Media Group
ADDRESS	12863 Holdenbury Ln Windermere, FL 34786
ENTITY	16-LTD LIAB CO
CITIZENSHIP	Florida
DBA/AKA	AKA Dive Traveler

GOODS AND SERVICES

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INTERNATIONAL CLASS	009	FIRST USE DATE	10/26/2012	FIRST USE IN COMMERCE DATE	10/26/2012	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
01/01/2013	AAUA	E	NOTICE OF ACCEPTANCE OF AMENDMENT TO ALLEGE USE E-MAILED	024
12/31/2012	CNTA	O	APPROVED FOR REGISTRATION SUPPLEMENTAL REGISTER	023
12/31/2012	IUAA	P	USE AMENDMENT ACCEPTED	022
12/31/2012	XAEC	I	EXAMINER'S AMENDMENT ENTERED	021
12/31/2012	GNEA	O	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	020

12/31/2012	GNEA	O	EXAMINERS AMENDMENT E-MAILED	019
12/31/2012	CNEA	R	EXAMINERS AMENDMENT -WRITTEN	018
12/01/2012	AUPC	I	AMENDMENT TO USE PROCESSING COMPLETE	017
12/01/2012	IUAF	S	USE AMENDMENT FILED	016
11/30/2012	EAAU	I	TEAS AMENDMENT OF USE RECEIVED	015
10/02/2012	GNFN	O	NOTIFICATION OF FINAL REFUSAL EMAILED	014
10/02/2012	GNFR	O	FINAL REFUSAL E-MAILED	013
10/02/2012	CNFR	R	FINAL REFUSAL WRITTEN	012
09/07/2012	TEME	I	TEAS/EMAIL CORRESPONDENCE ENTERED	011
09/07/2012	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	010
08/17/2012	ALIE	A	ASSIGNED TO LIE	009
08/13/2012	TROA	I	TEAS RESPONSE TO OFFICE ACTION RECEIVED	008
08/10/2012	ARAA	I	ATTORNEY REVOKED AND/OR APPOINTED	007
08/10/2012	REAP	I	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	006
02/13/2012	GNRN	O	NOTIFICATION OF NON-FINAL ACTION E-MAILED	005
02/13/2012	GNRT	F	NON-FINAL ACTION E-MAILED	004
02/13/2012	CNRT	R	NON-FINAL ACTION WRITTEN	003
02/07/2012	DOCK	D	ASSIGNED TO EXAMINER	002
10/25/2011	NWOS	I	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	001

CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	Kathryn M. Wheble
CORRESPONDENCE ADDRESS	Kathryn M. Wheble HIARING + SMITH, LLP 101 Lucas Valley Road, Suite 300 San Rafael CA 94903
DOMESTIC REPRESENTATIVE	NONE

Dive Traveler

To: Sawyer Media Group (trademarks@hiaringsmith.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85452214 - DIVE TRAVELER - SAWYER MEDIA
Sent: 12/31/2012 3:01:25 PM
Sent As: ECOM105@USPTO.GOV
Attachments:

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

U.S. APPLICATION SERIAL NO. 85452214

MARK: DIVE TRAVELER

85452214

CORRESPONDENT ADDRESS:

Kathryn M. Wheble
HIARING + SMITH, LLP
101 Lucas Valley Road, Suite 300
San Rafael CA 94903

GENERAL TRADEMARK INFORMATION:
<http://www.uspto.gov/trademarks/index.jsp>

APPLICANT: Sawyer Media Group

CORRESPONDENT'S REFERENCE/DOCKET NO :

SAWYER MEDIA

CORRESPONDENT E-MAIL ADDRESS:

trademarks@hiaringsmith.com

EXAMINER'S AMENDMENT

ISSUE/MAILING DATE: 12/31/2012

APPLICATION HAS BEEN AMENDED: In accordance with the authorization granted by Elizabeth J. Rest, Attorney on December 31, 2012, the trademark examining attorney has amended the application as indicated below. Please advise the undersigned immediately of any objections. Otherwise, no response is necessary. TMEP §707. Any amendments to the identification of goods and/or services may clarify or limit the goods and/or services, but may not add to or broaden the scope of the goods and/or services. 37 C.F.R. §2.71(a); *see* TMEP §§1402.06 *et seq.*

Amend Application to Supplemental Register

The application is amended to the Supplemental Register.

“ Change Principal Register to Supplemental Register.”

See 15 U.S.C. §1091; 37 C.F.R. §§2.47, 2.75; TMEP §§815.02, 816.01.

/Odessa Bibbins/

Attorney Advisor
Law Office 105
Odessa.Bibbins@USPTO.GOV
571-272-9425 :Telephone
571-273-9425: Fax

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 the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or 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 Trademark Electronic Application System (TEAS) form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

To: Sawyer Media Group (trademarks@hiaringsmith.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85452214 - DIVE TRAVELER - SAWYER MEDIA
Sent: 12/31/2012 3:01:25 PM
Sent As: ECOM105@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

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

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED
ON **12/31/2012** FOR U.S. APPLICATION SERIAL NO. 85452214

Please follow the instructions below:

(1) TO READ THE LETTER: Click on this [link](#) or go to <http://tsdr.uspto.gov/>, enter the U.S. application serial number, and click on “Documents.”

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

(2) QUESTIONS: For questions about the contents of the Office action itself, please contact the assigned trademark examining attorney. For *technical* assistance in accessing or viewing the Office action in the Trademark Status and Document Retrieval (TSDR) system, please e-mail TSDR@uspto.gov.

WARNING

PRIVATE COMPANY SOLICITATIONS REGARDING YOUR APPLICATION: Private companies **not** associated with the USPTO are using information provided in trademark applications to mail or e-mail trademark-related solicitations. These companies often use names that closely resemble the USPTO and their solicitations may look like an official government document. Many solicitations require that you pay “fees.”

Please carefully review all correspondence you receive regarding this application to make sure that you are responding to an official document from the USPTO rather than a private company solicitation. All official USPTO correspondence will be mailed only from the “United States Patent and Trademark Office” in Alexandria, VA; or sent by e-mail from the domain “@uspto.gov.” For more information on how to handle private company solicitations, see

http://www.uspto.gov/trademarks/solicitation_warnings.jsp

NOTE TO THE FILE

SERIAL NUMBER: 85452214

DATE: 12/31/2012

NAME: obibbins

NOTE:

Searched:

- Google
- Lexis/Nexis
- OneLook
- Wikipedia
- Acronym Finder
- Other:

Discussed ID with:

- Senior Atty
- Managing Atty

- Protest evidence reviewed

Checked:

- Geographic significance
- Surname
- Translation
- ID with ID/CLASS mailbox

Discussed Geo. Sig. with:

- Senior Atty
- Managing Atty

Checked list of approved Canadian attorneys and agents

Discussed file with

Attorney Rest via:

- phone
- email

Left message with Attorney/Applicant

Requested Law Library search for:

Issued Examiner's Amendment and entered changes in TRADEUPS

PRINT DO NOT PRINT

Added design code in TRADEUPS

Description of the mark

Translation statement

Re-imaged standard character drawing

Negative translation statement

Consent of living individual

Contacted TM MADRID ID/CLASS about misclassified definite ID

Changed TRADEUPS to:

OTHER: AKA Dive Traveler

Trademark Snap Shot AAU Processing Stylesheet

(Table presents the data on AAU Processing Complete)

OVERVIEW

SERIAL NUMBER	85452214	FILING DATE	10/20/2011
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	BIBBINS, ODESSA B	L.O. ASSIGNED	105

PUB INFORMATION

RUN DATE	12/04/2012		
PUB DATE	N/A		
STATUS	645-FINAL REFUSAL - MAILED		
STATUS DATE	10/02/2012		
LITERAL MARK ELEMENT	DIVE TRAVELER		
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)	NO	1 (a)	NO
1 (b)	NO	1 (b)	YES	1 (b)	YES
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	DIVE TRAVELER
MARK DRAWING CODE	4-STANDARD CHARACTER MARK

COLOR DRAWING FLAG	NO
--------------------	----

CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	Sawyer Media Group
ADDRESS	12863 Holdenbury Ln Windermere, FL 34786
ENTITY	16-LTD LIAB CO
CITIZENSHIP	Florida
DBA/AKA	AKA Dive Traveler

GOODS AND SERVICES

INTERNATIONAL CLASS	009
DESCRIPTION TEXT	Digital materials, namely, downloadable audio and video files in the field of travel. Electronic publications, namely, digital magazines in the field of travel. Mobile medial applications, namely, downloadable software in the nature of a mobile application for providing information on travel; mobile media applications, namely, mobile computing and operating platforms consisting of data transceivers, wireless networks and gateways for collection and management of data

GOODS AND SERVICES CLASSIFICATION

INTERNATIONAL CLASS	009	FIRST USE DATE	10/26/2012	FIRST USE IN COMMERCE DATE	10/26/2012	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
12/01/2012	AUPC	I	AMENDMENT TO USE PROCESSING COMPLETE	017
12/01/2012	IUAF	S	USE AMENDMENT FILED	016
11/30/2012	EAAU	I	TEAS AMENDMENT OF USE RECEIVED	015
10/02/2012	GNFN	O	NOTIFICATION OF FINAL REFUSAL EMAILED	014
10/02/2012	GNFR	O	FINAL REFUSAL E-MAILED	013
10/02/2012	CNFR	R	FINAL REFUSAL WRITTEN	012
09/07/2012	TEME	I	TEAS/EMAIL CORRESPONDENCE ENTERED	011

09/07/2012	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	010
08/17/2012	ALIE	A	ASSIGNED TO LIE	009
08/13/2012	TROA	I	TEAS RESPONSE TO OFFICE ACTION RECEIVED	008
08/10/2012	ARAA	I	ATTORNEY REVOKED AND/OR APPOINTED	007
08/10/2012	REAP	I	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	006
02/13/2012	GNRN	O	NOTIFICATION OF NON-FINAL ACTION E-MAILED	005
02/13/2012	GNRT	F	NON-FINAL ACTION E-MAILED	004
02/13/2012	CNRT	R	NON-FINAL ACTION WRITTEN	003
02/07/2012	DOCK	D	ASSIGNED TO EXAMINER	002
10/25/2011	NWOS	I	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	001

CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	Kathryn M. Wheble
CORRESPONDENCE ADDRESS	Kathryn M. Wheble HIARING + SMITH, LLP 101 Lucas Valley Road, Suite 300 San Rafael CA 94903
DOMESTIC REPRESENTATIVE	NONE

Dive Traveler

Trademark/Service Mark Amendment to Allege Use (15 U.S.C. Section 1051(c))

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85452214
LAW OFFICE ASSIGNED	LAW OFFICE 105
EXTENSION OF USE	NO
MARK SECTION	
MARK	DIVE TRAVELER
OWNER SECTION (current)	
NAME	Sawyer Media Group
STREET	12863 Holdenbury Ln
CITY	Windermere
STATE	Florida
ZIP/POSTAL CODE	34786
COUNTRY	United States
PHONE	407-670-4586
EMAIL	ashley@sawyermediagroup.com
OWNER SECTION (proposed)	
NAME	Sawyer Media Group
STREET	12863 Holdenbury Ln
CITY	Windermere
STATE	Florida
ZIP/POSTAL CODE	34786
COUNTRY	United States
PHONE	407-670-4586
EMAIL	

GOODS AND/OR SERVICES SECTION

INTERNATIONAL CLASS	009
CURRENT IDENTIFICATION	Digital materials, namely, downloadable audio and video files in the field of travel. Electronic publications, namely, digital magazines in the field of travel. Mobile medial applications, namely, downloadable software in the nature of a mobile application for providing information on travel; mobile media applications, namely, mobile computing and operating platforms consisting of data transceivers, wireless networks and gateways for collection and management of data
GOODS OR SERVICES	KEEP ALL LISTED
FIRST USE ANYWHERE DATE	10/26/2012
FIRST USE IN COMMERCE DATE	10/26/2012
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT16\IMAGEOUT16\854\522\85452214\xml5\ AAU0002.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\854\522\85452214\xml5\ AAU0003.JPG
SPECIMEN DESCRIPTION	iPad screenshot, and downloaded product on iPad, both showing the mark.
REQUEST TO DIVIDE	NO
PAYMENT SECTION	
NUMBER OF CLASSES IN USE	1
SUBTOTAL AMOUNT [ALLEGATION OF USE FEE]	100
TOTAL AMOUNT	100
SIGNATURE SECTION	
DECLARATION SIGNATURE	/kathryn m. wheble/
SIGNATORY'S NAME	Kathryn M. Wheble
SIGNATORY'S POSITION	Attorney of record, California bar member
DATE SIGNED	11/30/2012
SIGNATORY'S PHONE NUMBER	(415) 457-2040
FILING INFORMATION	
SUBMIT DATE	Fri Nov 30 16:45:05 EST 2012
	USPTO/AAU-173.200.186.227

TEAS STAMP

-20121130164505572389-854
52214-4907abf90c7d044d17b
e5f3ce817308f89-ET-4837-2
0121130163930360421

**Trademark/Service Mark Amendment to Allege Use
(15 U.S.C. Section 1051(c))**

To the Commissioner for Trademarks:

MARK: DIVE TRAVELER
SERIAL NUMBER: 85452214

The applicant, Sawyer Media Group, having an address of
12863 Holdenbury Ln
Windermere, Florida 34786
United States

is submitting the following allegation of use information:

For International Class 009:

Current identification: Digital materials, namely, downloadable audio and video files in the field of travel. Electronic publications, namely, digital magazines in the field of travel. Mobile medial applications, namely, downloadable software in the nature of a mobile application for providing information on travel; mobile media applications, namely, mobile computing and operating platforms consisting of data transceivers, wireless networks and gateways for collection and management of data

The mark is in use in commerce on or in connection with all goods or services listed in the application or Notice of Allowance or as subsequently modified for this specific class

The mark was first used by the applicant, or the applicant's related company, licensee, or predecessor in interest at least as early as 10/26/2012, and first used in commerce at least as early as 10/26/2012, and is now in use in such commerce. The applicant is submitting one specimen for the class showing the mark as used in commerce on or in connection with any item in the class, consisting of a(n) iPad screenshot, and downloaded product on iPad, both showing the mark..

[Specimen File1](#)

[Specimen File2](#)

The applicant is not filing a Request to Divide with this Allegation of Use form.

A fee payment in the amount of \$100 will be submitted with the form, representing payment for the allegation of use for 1 class.

Declaration

Applicant requests registration of the above-identified trademark/service mark 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). Applicant is the owner of the mark sought to be registered, and is using the mark in commerce on or in connection with the goods/services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce.

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 may jeopardize the validity of the form or any resulting registration, declares that he/she is properly authorized to execute this form on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered; 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: /kathryn m. wheble/ Date Signed: 11/30/2012
Signatory's Name: Kathryn M. Wheble
Signatory's Position: Attorney of record, California bar member
Signatory's Phone: (415) 457-2040

RAM Sale Number: 4837
RAM Accounting Date: 12/03/2012

Serial Number: 85452214
Internet Transmission Date: Fri Nov 30 16:45:05 EST 2012
TEAS Stamp: USPTO/AAU-173.200.186.227-20121130164505
572389-85452214-4907abf90c7d044d17be5f3c
e817308f89-ET-4837-20121130163930360421

iPad Screenshots



DIVE TRAVELER

The World's First
Personalized Content Magazine Application
For Kate WHEBLE

Komodo

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Articles

Galleries

Top 5

Destination 411

Dive Experts

New & Hot

Local Experts

Itineraries

Gear locker



iPad Screenshots



DIVE TRAVELER

The World's First
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For Kate WHEBLE

Komodo

Back to My Page

Articles

Galleries

Top 5

Destination 411

Dive Experts

New & Hot

Local Experts

Itineraries

Gear locker



To: Sawyer Media Group (trademarks@hiaringsmith.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85452214 - DIVE TRAVELER - SAWYER MEDIA
Sent: 10/2/2012 2:17:38 PM
Sent As: ECOM105@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. 85452214

MARK: DIVE TRAVELER

85452214

CORRESPONDENT ADDRESS:

Kathryn M. Wheble
HIARING + SMITH, LLP
101 Lucas Valley Road, Suite 300
San Rafael CA 94903

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

APPLICANT: Sawyer Media Group

CORRESPONDENT'S REFERENCE/DOCKET NO :

SAWYER MEDIA

CORRESPONDENT E-MAIL ADDRESS:

trademarks@hiaringsmith.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: 10/2/2012

THIS IS A FINAL ACTION.

This letter responds to the Applicant's communication filed on August 13, 2012. Applicant submitted:

- 1) An amended identification of goods in International Class 009;
- 2) Amended the filing basis from 1(A) to 1(b); and

3) Submitted arguments refuting the 2(e)(1) Descriptiveness Refusal.

The above item, No. 2 is acceptable and entered in the record. Item, No. 1 is not acceptable for the reasons stated below. The requirement to further amend the identification of goods is maintained and now made FINAL. *See* TMEP §1402.01; 37 C.F.R. §2.64(a).

The trademark examining attorney has reviewed applicant's evidence and arguments refuting the 2(e)(1) Descriptiveness Refusal, but does not find it persuasive. Accordingly, the 2(e)(1) Refusal is maintained and made FINAL. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); *see* TMEP §§1209.01(b), 1209.03 *et seq.* 37 C.F.R. §2.64(a).

1. 2(e)(1) Descriptiveness Refusal Maintained and Made FINAL

In the Office Action issued February 13, 2012, the trademark examining attorney refused registration, because the applied-for standard character mark, DIVE TRAVELER merely describes the subject matter of applicant's goods, under Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); *see* TMEP §§1209.01(b), 1209.03 *et seq.*

A mark is merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose, or use of an applicant's goods. TMEP §1209.01(b); *see In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005); *In re Gyulay*, 820 F.2d 1216, 1217-18, 3 USPQ2d 1009, 1009-10 (Fed. Cir. 1987).

Applicant's mark, **DIVE TRAVELER** is used with the following goods *as amended*:

International Class 009 Digital materials, namely, downloadable audio and video files in the field of **travel**; Electronic publications, namely digital magazines in the field of travel, recorded on computer media; mobile medial applications, namely, downloadable software in the nature of a mobile application for providing information on **travel**; mobile media applications, namely, mobile computing and operating platforms consisting of data transceivers, wireless networks and gateways for collection and management of data

The proposed mark is comprised of two descriptive terms, **DIVE** and **TRAVELER** when retains its descriptiveness when combined. **DIVE** means to engage in the activity of scuba diving, and **TRAVELER** describes someone who is traveling or who travels often. *See definitions – Exhibits 1 and 2* **DIVE TRAVELER** describes the subject matter of applicant's mobile media applications and magazine. In determining the descriptiveness of a term or mark comprising more than one element, it is permissible to consider the significance of each element separately in the course of evaluating the term or mark as a whole. *See In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1174-75, 71 USPQ2d 1370, 1372 (Fed. Cir. 2004) (holding PATENTS.COM merely descriptive of computer software for managing and tracking the status of database records when noting that "the PTO may [separately] consider the meaning of 'patents' and the meaning of '.com' with respect to the goods identified in the application.").

Upon review of a page from applicant's web site, the term, **DIVE** is used to describe the subject matter, e.g. *dive* gear of applicant's mobile media application. **TRAVELER** also describes the target audience of applicant's goods.

“Built on an exclusive opt-in platform, the user not only gets the **travel** content they want and will use, but also the **dive gear** that best suits their needs —by season and local conditions — in the innovative, self-populating Gear Locker.” *See Exhibit 3*

“Contributors from around the globe will provide an ongoing influx of fresh content, and Dive Traveler is giving a global platform to a large and diverse pool of professionals, including **dive** shop instructors and other local experts.” *See Exhibit 3*

“Dive Traveler will have content featured from the best writers and photographers in the **dive** industry.” *See Exhibit 4*

Applicant makes the following acknowledgement, “*while the software provides information in the field of scuba diving, it also provides a plethora of other information...*”. Descriptiveness of a mark is not considered in the abstract. In *re Bayer Aktiengesellschaft*, 488 F.3d at 963-64, 82 USPQ2d at 1831. Determining the descriptiveness of a mark is done in relation to an applicant’s goods, the context in which the mark is being used, and the possible significance the mark would have to the average purchaser because of the manner of its use or intended use. *See In re The Chamber of Commerce of the U.S.*, 675 F.3d 1297, 1300, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (citing *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 963-64, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)); TMEP §1209.01(b).

Applicant also states, “*Applicant’s mark is applied to software goods that allow users to find travel planning information.*” Therefore, applicant’s target audience are TRAVELERS who DIVE, or DIVE TRAVELERS.

Finally, a mark that combines descriptive words is generally not registrable unless the composite creates a unitary mark with a unique, non-descriptive meaning or commercial impression. *See In re Shiva Corp.*, 48 USPQ2d 1957 (TTAB 1998) (holding TARIFF MANAGEMENT merely descriptive for “computer hardware and computer programs to control, reduce and render more efficient wide area network (WAN) usage and printed user manuals sold therewith”). TMEP §1209.03(d). In this case, the terms, DIVE and TRAVELER retains its descriptiveness when combined.

For these reasons, the proposed mark, **DIVE TRAVELER** is descriptive of a feature of applicant’s mark and the target audience, therefore, registration is again refused on the Principal Register, and the 2(e)(1) Descriptiveness Refusal is hereby made FINAL. 37 C.F.R. §2.64(a).

(A D V I S O R Y) Section 1(b) Application Not Eligible for Supplemental Register Until Acceptable Allegation of Use is Filed

In response to the Specimen Refusal in the Office Action issued February 13, 2012, applicant amended the application filing basis to 1(b) Intent to Use.

A mark in an application under Trademark Act Section 1(b) is not eligible for registration on the Supplemental Register until an acceptable amendment to allege use under 37 C.F.R. §2.76 has been filed. 37 C.F.R. §§2.47(d), 2.75(b); TMEP §§815.02, 1102.03. When a Section 1(b) application is successfully amended to the Supplemental Register, the effective filing date of the application will be the date on which applicant met the minimum filing requirements of 37 C.F.R. §2.76(e) for the amendment to allege use. 37 C.F.R. §2.75(b); TMEP §§816.02, 1102.03.

2. **Requirement to Amend the Identification of Goods Maintained and Made FINAL**

In the Office Action issued February 13, 2012, the trademark examining attorney required an amendment of the identification of goods because of indefiniteness. Applicant submitted the following amendment:

International Class 009 Digital materials, namely, downloadable audio and video files in the field of travel; Electronic publications, namely, digital magazines in the field of travel; mobile medial applications, namely, downloadable software in the nature of a mobile application for providing information on travel; mobile media applications, namely, mobile computing and operating platforms consisting of data transceivers, wireless networks and gateways for collection and management of data

However, the particular wording, *electronic publications, namely, digital magazines in the field of travel*, is indefinite because applicant must state the nature of the publications, e.g., **recorded on computer media** as provided below.

International Class 009 Digital materials, namely, downloadable audio and video files in the field of travel; Electronic publications, namely, digital magazines in the field of travel **recorded on computer media**; mobile medial applications, namely, downloadable software in the nature of a mobile application for providing information on travel; mobile media applications, namely, mobile computing and operating platforms consisting of data transceivers, wireless networks and gateways for collection and management of data

An applicant may amend an identification of goods only to clarify or limit the goods; adding to or broadening the scope of the goods is not permitted. 37 C.F.R. §2.71(a); *see* TMEP §§1402.06 *et seq.*, 1402.07 *et seq.*

For assistance with identifying and classifying goods and/or services in trademark applications, please see the USPTO's online searchable *U.S. Acceptable Identification of Goods and Services Manual* at <http://tess2.uspto.gov/netathtml/tidm.html>. *See* TMEP §1402.04.

For the reasons stated, the above requirement is hereby made FINAL. 37 C.F.R. §2.64(a).

Proper Response to Final Action

If applicant does not respond within six months of the mailing date 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).

If the Applicant has *questions* about its application or needs assistance in responding to this Office action, please telephone the assigned Trademark Examining Attorney directly at the number below, or email.

/Odessa Bibbins/
Odessa Bibbins
Attorney Advisor
Law Office 105
Odessa.Bibbins@USPTO.GOV

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

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

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

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at <http://tarr.uspto.gov/>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

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

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http://education.yahoo.com/reference/dictionary/entry/dive

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dive¹ (dīv) [KEY](#)

VERB:
dived or **dove** (dɒv) [KEY](#), **dived**, **div-ing**, **dives**

VERB:
intr.

- To plunge, especially headfirst, into water.
 - To execute a dive in athletic competition.
 - To participate in the sport of competitive diving.
-  To go toward the bottom of a body of water; submerge.
 - To engage in the activity of scuba diving
 - To submerge under power. Used of a submarine.
- To fall head down through the air.
 - To descend nose down at an acceleration usually exceeding that of free fall. Used of an airplane.
 - To engage in the sport of skydiving.
- To drop sharply and rapidly, plummet. *Stock prices dove 100 points*

Reference

- Dictionary
- Encyclopedia
- Thesaurus
- World Factbook
- Spanish Dictionary
- Anatomy
- Conversion Calculator

Word of the Day

perfunctory
Definition: (adjective) unenthusiastic, routine, or mechanical.
Petersons.com

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DEER PARK direct

The Water You Love.

Delivered Right To Your Door.



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Free Use Of A Dispense

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traveler - definition ★★ Show Less

NOUN (COUNTABLE) Pronunciation /'træv(ə)lər/ Word Forms [View thesaurus entry for traveler](#)

someone who is traveling or who travels often a hotel for business travelers

Thesaurus entry for this meaning of traveler

- Related dictionary definitions**
- business traveler NOUN
 - fellow traveler NOUN
 - independent traveler NOUN
 - leisure traveler NOUN
 - traveler's check NOUN

Introducing DIVE TRAVELER - a new revolution in dive media: Scuba Diving News - Microsoft Internet Explorer provided by USPTO

http://www.skin-diver.com/scuba-news/378/privacy_policy.asp

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- Dive Skins
- Dry Boxes
- Dry Suits
- Fins
- Free Diving Gear
- Scuba Diving Gauges
- Gift Certificate
- Gift Items
- Dive Gloves
- Dive Hoods
- Hookah Systems
- Kayaks

Introducing DIVE TRAVELER - a new revolution in dive media

The world of dive media is about to change. Launching in early November, Dive Traveler is a digital magazine idea so revolutionary that it will redefine the way you think about the media content experience. Dive Traveler is a global, multi-platform, mobile media-based magazine app, an eMag, which is defined by the user for the user. And Dive Traveler delivers information and new content to the user every day. It's the world's first 365-day, personalized magazine experience.

Unlike PDF-based eZines, which are merely digitized print magazines, or Websites, which are linear, the mobile eMag user experiences content in 360 degrees, and the content gets updated every day. Built on an exclusive opt-in platform, the user not only gets the travel content they want and will use, but also the dive gear that best suits their needs —by season and local conditions — in the innovative, self-populating Gear Locker. And, they can buy gear on the spot, making the eMag the ultimate in one-stop ease for the user. Like the Gear Locker, the Itinerary Generator also utilizes the users Opt-in profile, and automatically puts a user in touch with the travel provider to finalize the sale. And, that's just the beginning of what this powerful new media will do.



Sawyer Media - Microsoft Internet Explorer provided by USPTO

http://www.sawyermediagroup.com/index-1.html

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Trademark Acceptable Identi... Sawyer Media

SAWYER MEDIA
A GLOBAL MEDIA SOLUTIONS COMPANY

ABOUT US



EXECUTIVES

PRESS ROOM

PARTNERS

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WELCOME TO SAWYER MEDIA!

WE'VE CREATED A REVOLUTIONARY NEW MEDIA PLATFORM WITH OUR CONTENT-DRIVEN DIGITAL MAGAZINE, LIFESTYLE CONTENT HUB, WHICH WE'RE CALLING AN EMAG, FOR TODAY'S SOPHISTICATED MULTIMEDIA CONSUMER THAT DESIRES LEADING, RELEVANT, ENGAGING, VITAL AND AUTHORITY CONTENT THAT BENEFITS THEM, PROVIDES SOLUTIONS, INSPIRES, INFORMS AND MOTIVATES. THESE CONSUMERS WANT TO CONTROL THE KIND OF INFORMATION THEY RECEIVE AND HOW IT'S RECEIVED, SO THAT EACH READER/CONSUMER CAN HAVE A PERSONALIZED, TAILOR-MADE MEDIA EXPERIENCE THAT REFLECTS THEIR UNIQUE, INDIVIDUAL INTERESTS AND DESIRES. THIS IS SAWYER MEDIA'S DIVE TRAVELER. MORE THAN A "MAGAZINE," IT'S A TOTAL, USER-DEFINED MULTI-LEVEL DIGITAL MEDIA EXPERIENCE.

DIVE TRAVELER



DIVE TRAVELER WILL HAVE CONTENT FEATURED FROM THE BEST WRITERS AND PHOTOGRAPHERS IN THE DIVE INDUSTRY, WITH EDITORIALIZED GALLERIES (MINI-STORIES), A GEAR LOCKER, TOP 5'S, DESTINATION 411, ITINERARIES, AND LOCAL TIPS. NOT TO MENTION WE'LL BE FOLLOWING TY SAWYER AS HE'S ON ASSIGNMENT THROUGH HIS TV SHOW, ANOTHER SHADE OF BLUE ON ASSIGNMENT WITH TY SAWYER. PLUS FOLLOW OTHER BIG NAMES IN TRAVEL WITH WHERE THEY ARE, BLOGS, PHOTOS AND MORE!

MULTI-PLATFORM CONTENT-DRIVE MEDIA SOLUTIONS: INCLUDING EMAG, IMAGES, EVENTS, TRIPS, AND A TV SHOW

To: Sawyer Media Group (trademarks@hiaringsmith.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85452214 - DIVE TRAVELER - SAWYER MEDIA
Sent: 10/2/2012 2:17:39 PM
Sent As: ECOM105@USPTO.GOV
Attachments:

IMPORTANT NOTICE REGARDING YOUR U.S. TRADEMARK APPLICATION

USPTO OFFICE ACTION HAS ISSUED ON **10/2/2012** FOR
SERIAL NO. 85452214

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 **10/2/2012** (or sooner if specified in the office action).

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

HELP: For *technical* assistance in accessing the Office action, please e-mail 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	85452214	FILING DATE	10/20/2011
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	BIBBINS, ODESSA B	L.O. ASSIGNED	105

PUB INFORMATION

RUN DATE	09/08/2012		
PUB DATE	N/A		
STATUS	661-RESPONSE AFTER NON-FINAL-ACTION-ENTERED		
STATUS DATE	09/07/2012		
LITERAL MARK ELEMENT	DIVE TRAVELER		
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)	NO	1 (a)	NO
1 (b)	NO	1 (b)	YES	1 (b)	YES
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	DIVE TRAVELER

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

CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	Sawyer Media Group
ADDRESS	12863 Holdenbury Ln Windermere, FL 34786
ENTITY	16-LTD LIAB CO
CITIZENSHIP	Florida
DBA/AKA	AKA Dive Traveler

GOODS AND SERVICES

INTERNATIONAL CLASS	009
DESCRIPTION TEXT	Digital materials, namely, downloadable audio and video files in the field of travel. Electronic publications, namely, digital magazines in the field of travel. Mobile medial applications, namely, downloadable software in the nature of a mobile application for providing information on travel; mobile media applications, namely, mobile computing and operating platforms consisting of data transceivers, wireless networks and gateways for collection and management of data

GOODS AND SERVICES CLASSIFICATION

INTERNATIONAL CLASS	009	FIRST USE DATE	NONE	FIRST USE IN COMMERCE DATE	NONE	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
09/07/2012	TEME	I	TEAS/EMAIL CORRESPONDENCE ENTERED	011
09/07/2012	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	010
08/17/2012	ALIE	A	ASSIGNED TO LIE	009
08/13/2012	TROA	I	TEAS RESPONSE TO OFFICE ACTION RECEIVED	008
08/10/2012	ARAA	I	ATTORNEY REVOKED AND/OR APPOINTED	007
08/10/2012	REAP	I	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	006

02/13/2012	GNRN	O	NOTIFICATION OF NON-FINAL ACTION E-MAILED	005
02/13/2012	GNRT	F	NON-FINAL ACTION E-MAILED	004
02/13/2012	CNRT	R	NON-FINAL ACTION WRITTEN	003
02/07/2012	DOCK	D	ASSIGNED TO EXAMINER	002
10/25/2011	NWOS	I	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	001

CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	Kathryn M. Wheble
CORRESPONDENCE ADDRESS	Kathryn M. Wheble HIARING + SMITH, LLP 101 Lucas Valley Road, Suite 300 San Rafael CA 94903
DOMESTIC REPRESENTATIVE	NONE

Dive Traveler

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85452214
LAW OFFICE ASSIGNED	LAW OFFICE 105
MARK SECTION (no change)	
ARGUMENT(S)	
Please see the actual argument text attached within the Evidence section.	
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_173200186227-151707690 . 8-13-12 Final ROA - Sawyer Media re Dive Traveler.pdf
CONVERTED PDF FILE(S) (6 pages)	\\TICRS\EXPORT16\IMAGEOUT16\854\522\85452214\xml2\ROA0002.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\854\522\85452214\xml2\ROA0003.JPG
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	\\TICRS\EXPORT16\IMAGEOUT16\854\522\85452214\xml2\ROA0007.JPG
DESCRIPTION OF EVIDENCE FILE	Text of argument.
GOODS AND/OR SERVICES SECTION (current)	
INTERNATIONAL CLASS	009
DESCRIPTION	
Company Name, Digital Materials, Name of a digital magazine and mobile media application	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 01/31/2011

FIRST USE IN COMMERCE DATE	At least as early as 01/31/2011
GOODS AND/OR SERVICES SECTION (proposed)	
INTERNATIONAL CLASS	009
TRACKED TEXT DESCRIPTION	
<p>Company Name, Digital Materials, Name of a digital magazine and mobile media application; <u>Digital materials, namely downloadable audio and video files in the field of travel.</u> ¶</p> <p>¶</p> <p><u>Electronic publications, namely digital magazines in the field of travel.</u> ¶</p> <p>¶</p> <p><u>Mobile medial applications, namely downloadable software in the nature of a mobile application for providing information on travel; mobile media applications, namely mobile computing and operating platforms consisting of data transceivers, wireless networks and gateways for collection and management of data.</u></p>	
FINAL DESCRIPTION	
<p>Digital materials, namely downloadable audio and video files in the field of travel. Electronic publications, namely digital magazines in the field of travel. Mobile medial applications, namely downloadable software in the nature of a mobile application for providing information on travel; mobile media applications, namely mobile computing and operating platforms consisting of data transceivers, wireless networks and gateways for collection and management of data.</p>	
FILING BASIS	Section 1(b)
SIGNATURE SECTION	
DECLARATION SIGNATURE	/kathryn m. wheble/
SIGNATORY'S NAME	Kathryn M. Wheble
SIGNATORY'S POSITION	Attorney of record, California bar member
DATE SIGNED	08/13/2012
RESPONSE SIGNATURE	/kathryn m. wheble/
SIGNATORY'S NAME	Kathryn M. Wheble
SIGNATORY'S POSITION	Attorney of record, California bar member
SIGNATORY'S PHONE NUMBER	(415) 457-2040
DATE SIGNED	08/13/2012
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	

SUBMIT DATE	Mon Aug 13 15:25:48 EDT 2012
TEAS STAMP	USPTO/ROA-173.200.186.227 -20120813152548923906-854 52214-4906ffc9f3bba4db152 631d6af3bcb8622e-N/A-N/A- 20120813151707690079

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

Response to Office Action To the Commissioner for Trademarks:

Application serial no. **85452214** has been amended as follows:

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 Text of argument. has been attached.

Original PDF file:

[evi_173200186227-151707690_8-13-12_Final_ROA_-_Sawyer_Media_re_Dive_Traveler.pdf](#)

Converted PDF file(s) (6 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

CLASSIFICATION AND LISTING OF GOODS/SERVICES

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

Current: Class 009 for Company Name, Digital Materials, Name of a digital magazine and mobile media application

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 01/31/2011 and first used in commerce at least as early as 01/31/2011, and is now in use in such commerce.

Proposed:

Tracked Text Description: ~~Company Name, Digital Materials, Name of a digital magazine and mobile media application;~~ Digital materials, namely downloadable audio and video files in the field of travel. ¶

¶

Electronic publications, namely digital magazines in the field of travel. ¶

¶

Mobile medial applications, namely downloadable software in the nature of a mobile application for providing information on travel; mobile media applications, namely mobile computing and operating platforms consisting of data transceivers, wireless networks and gateways for collection and management of data.

Class 009 for Digital materials, namely downloadable audio and video files in the field of travel.

Electronic publications, namely digital magazines in the field of travel. Mobile medial applications, namely downloadable software in the nature of a mobile application for providing information on travel; mobile media applications, namely mobile computing and operating platforms consisting of data transceivers, wireless networks and gateways for collection and management of data.

Deleted Filing Basis: 1(a)

Filing Basis: Section 1(b), Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

SIGNATURE(S)

Declaration Signature

If the applicant is seeking registration under Section 1(b) and/or Section 44 of the Trademark Act, the applicant has had a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. 37 C.F.R. Secs. 2.34(a)(2)(i); 2.34 (a)(3)(i); and 2.34(a)(4)(ii); and/or the applicant has had a bona fide intention to exercise legitimate control over the use of the mark in commerce by its members. 37 C.F. R. Sec. 2.44. If the applicant is seeking registration under Section 1(a) of the Trademark Act, the mark was in use in commerce on or in connection with the goods and/or services listed in the application as of the application filing date or as of the date of any submitted allegation of use. 37 C.F.R. Secs. 2.34(a)(1)(i); and/or the applicant has exercised legitimate control over the use of the mark in commerce by its members. 37 C.F.R. Sec. 2.44. 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 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; that if the original application was submitted unsigned, that all statements in the original application and this submission made of the declaration signer's knowledge are true; and all statements in the original application and this submission made on information and belief are believed to be true.

Signature: /kathryn m. wheble/ Date: 08/13/2012

Signatory's Name: Kathryn M. Wheble

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

Response Signature

Signature: /kathryn m. wheble/ Date: 08/13/2012

Signatory's Name: Kathryn M. Wheble

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

Signatory's Phone Number: (415) 457-2040

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: 85452214

Internet Transmission Date: Mon Aug 13 15:25:48 EDT 2012

TEAS Stamp: USPTO/ROA-173.200.186.227-20120813152548

923906-85452214-4906ffc9f3bba4db152631d6

af3bcb8622e-N/A-N/A-20120813151707690079

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of Sawyer Media Group ("Applicant")	RESPONSE TO OFFICE ACTION
Mark: DIVE TRAVELER	
Class: 9	
Serial No.: 85/452,214	Odessa Bibbins Attorney Advisor Law Office 105 (571) 272-9425
Filed: October 20, 2011	

To the Commissioner of Trademarks:

Dear Ms. Bibbins:

Applicant responds hereto to the Office Action issued on February 13, 2012, for the DIVE TRAVELER trademark (hereinafter the "Mark").

I. INFORMALITIES

A. Amendment to Identification of Goods.

Applicant has described its goods and services as "digital materials, a digital magazine and a mobile media application." Applicant agrees with the examiner's request to classify these goods and services in international class 9.

Applicant agrees to amend its description as follows:

Digital materials, namely downloadable audio and video files in the field of travel.

Electronic publications, namely digital magazines in the field of travel.

Mobile medial applications, namely downloadable software in the nature of a mobile application for providing information on travel; mobile media applications, namely mobile computing and operating platforms consisting of

data transceivers, wireless networks and gateways for collection and management of data.

B. Specimens of Use.

The Examining Attorney believes that the specimen submitted did not support use. Applicant wishes to amend its basis of filing to 1(b) until appropriate specimens can be submitted.

II. SUBSTANTIVE REFUSAL - Mere Descriptiveness Refusal of Applicant's Mark Pursuant to Section 2(e)(1).

The Examining Attorney has preliminarily refused registration under Trademark Act Section 2(e)(1) on the grounds that the Mark merely describes the subject matter and target audience of Applicant's goods.

Applicant respectfully disagrees. The Mark is not merely descriptive when applied to Applicant's goods; it is suggestive.

A mark is merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose, or use of the specified goods or services. Trademark Manual of Examining Procedure ("TMEP") §1209.01(b). By contrast, suggestive marks are those that, when applied to the goods or services at issue, require imagination, thought, or perception to reach a conclusion as to the nature of those goods or services. TMEP §1209.01(a); *In re Colonial Refining and Chemical Company*, 196 USPQ 46, 47 (TTAB 1977). A designation does not have to be devoid of all meaning in relation to the goods/services to be registrable. TMEP §1209.01(a).

The distinction between whether marks are suggestive or descriptive is nebulous and only a thin line of demarcation separates the two types of mark. *See, In re Gourmet Bakers, Inc.*, 173 USPQ 565 (TTAB 1972). The Board has repeatedly explained that the distinction between a descriptive mark and a suggestive one is often made on an intuitive basis rather than as a result of logical analysis susceptible of articulation.

E.g., In re George Weston Limited, 228 USPQ 57, 58 (TTAB 1985) (internal citation omitted). The Trademark Trial and Appeal Board has suggested the following criteria:

The concept of mere descriptiveness . . . must relate to general and readily recognizable word formulations and meanings, either in a popular or technical usage context, and should not penalize coinage of hitherto unused and somewhat incongruous word combinations whose impact would not be grasped without some measure of imagination and 'mental pause.'

In re Shutts, 217 USPQ 363, 364-365 (TTAB 1983) (SNO-RAKE held not to be merely descriptive of a snow removal hand tool).

Based on this standard, the Mark in question here is suggestive and appropriate for approval for publication.

A. Applicant's DIVE TRAVELER Mark Suggests the Subject Matter and Audience of Applicant's Goods.

The Examining Attorney must rely on the oft-cited rule that the "determination of whether a mark is merely descriptive is considered in relation to the identified goods, not in the abstract." *In re Abcor Dev. Corp.*, 588 F.2d 811, 814, 200 USPQ 215, 218 (C.C.P.A. 1978). When this rule is applied, one sees that Applicant's Mark is not merely descriptive when considered in relation to the goods.

Applicant's mark is applied to software goods that allow users to find travel-planning information. While the software provides information in the field of scuba diving, it also provides a plethora of other information to allow its users to create a "tailor-made experience that reflects their unique, individual interests" (see Exhibit 4 to Office Action 01). This includes content on hotels, resorts, dining, and many other land-based activities. Certainly the scope of topics is unlimited, including shopping, local entertainment, and other services. The breadth of information that Applicant's media can provide ranges far beyond that of diving.

Applicant's goods are not a "dive traveler" themselves, but rather electronic media. The subject matter of the goods is not only diving, but encompasses a vast array of goods and services. Accordingly, the Mark is subjective, not merely descriptive.

The assertion that the Mark merely describes the target audience for the goods is similarly mistaken. A mark is *only* merely descriptive if it describes the type of individuals to whom *an appreciable number or all of a party's goods or services are directed*. *In re Camel Mfg. Co.*, 22 USPQ 1031, 1032 (TTAB 1984) (emphasis added). Thus, in order to fall within the prohibition of Section 2(e)(1), the mark must, "*immediately and forthwith*" describe with particularity the individuals or classes of individuals to whom the goods or services are "*primarily directed*." *In re Hunter Publishing Company*, 204 USPQ 957, 963 (TTAB 1979) (emphasis added).

The target audience of Applicant's media defies any pat description. The application will attract devoted scuba fans, but many others will use it as well. These users range from the family of said scuba fanatic, who want to plan on-land activities, to those who may be just putting one toe into the ocean in terms of scuba, to those who do not dive, but know that dive destinations feature warm weather, natural beauty, and elaborate cocktails.

The Board has held that if a mark, while signifying the intended users of applicant's goods and services, *also* serves to identify and distinguish an applicant's goods and/or services in commerce as an indication of source, it does not fall within the proscription of Section 2(e)(1). *See, e.g., Sunbeam Corporation v. American Safety Razor Company*, 207 USPQ 799, 804 (TTAB 1980) (finding THE LADY indicated the class of users of razors designed for use by women or ladies, but ultimately holding THE LADY and design not merely descriptive of shaving razors for women).

For example, the Board held that consumers of clothing sold under the mark LEE WESTERNER would not presume that the clothes were intended for use only by Westerners, and that it was clear the "Westerner" did not describe clothing garments or any characteristics or quality thereof. *Levi Strauss & Co. v. H.D. Lee Co., Inc.*, 130 USPQ 46, 47 (TTAB 1961). Rather, the term "Westerner" was evocative of the brand's image. *Id.*

Additionally, the mark MANICURIST by CUTEX for nail polish was held not merely descriptive since the term “manicurist” did not describe nail polish or any characteristic or quality thereof, and because the average purchaser would not conclude that the mark signifies a nail polish intended specifically for use by manicurist. *In re Chesebrough-Pond's Inc.*, 163 USPQ 244, 245 (TTAB 1969). Instead, the Board held that the mark was suggestive that the product would give professional results in the care of finger nails. *Id.*

Using the logic of the Board in these cases, Applicant’s mark is suggestive. Here, as in these cases, the mark does not describe the goods, nor the uses of the goods limited to divers.

B. Applicant’s Registration of DIVE TRAVELER Will Not Prohibit Competition, Nor Will it Inhibit Freedom of Others to Use the Term Descriptively.

Section 1209 of the TMEP cites with approval from *In re Abcor Dev. Corp.*, 588 F.2d 811, 813, 200 USPQ 215, 217 (C.C.P.A. 1978) for the policy reasons underlying a refusal to register based on a mark being “merely descriptive”:

The major reasons for not protecting such marks are: (1) to prevent the owner of a mark from inhibiting competition in the sale of particular goods; and (2) to maintain freedom of the public to use the language involved, thus avoiding the possibility of harassing infringement suits by the registrant against others who use the mark when advertising or describing their own products.

Applying that standard to the Applicant’s Mark DIVE TRAVELER, Applicant’s competitors have, at their disposal, other terms in the lexicon to describe their goods and/or services. The public, too, is free to use the language involved so long as not used in a trademark sense. Thus the primary reason to deny registration – to preserve the use of terms needed for descriptive purposes by the public and competitors – is not present. The lack of such descriptive use argues in favor of registering Applicant’s Mark. *See, e.g., Coca-Cola Co., v. Seven-Up Co.*, 182 USPQ 207 (C.C.P.A. 1974).

C. Any Doubt Should Be Resolved In Applicant's Favor.

Finally, if there is any doubt as to whether the Mark is merely descriptive, which Applicant believes there is, the question should be resolved in Applicant's favor. The Board has repeatedly reiterated that in cases where the question to be resolved is one of descriptiveness of a mark, all doubt is resolved in favor of publishing the mark for opposition. See, e.g., *In re The Noble Company*, 225 USPQ 749, 750 (TTAB 1985). As the Board stated in *In re Gourmet Bakers, Inc.* 173 USPQ 565 (TTAB 1972):

It has been recognized by this and other tribunals that there is no easy applicable objective test to determine whether or not a particular mark, as applied to specific goods, is merely descriptive or merely suggestive. The distinction between marks which are "merely descriptive" and marks which are "suggestive" is so nebulous that more often than not it is determined largely on a subjective basis with any doubt in the matter being resolved in applicant's behalf . . . (emphasis added).

Since doubt regarding descriptiveness should be resolved in Applicant's favor, Applicant submits that the Mark should be passed on to publication.

III. Applicant's Mark Should Proceed to Registration.

Applicant respectfully submits that the Mark is not merely descriptive of a feature of Applicant's goods. As such, Applicant respectfully requests that the Application proceed to registration on the Principal Register.

Respectfully submitted,

HIARING + SMITH, LLP

By: 

Kathryn M. Wheble, Esq.

HIARING + SMITH, LLP

101 Lucas Valley Road, Suite 300

San Rafael, CA 94903

Tel: (415) 457-2040

Fax: (415) 457-2822

Attorneys for Applicant

Dated: August 13, 2012

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	85452214
LAW OFFICE ASSIGNED	LAW OFFICE 105
ATTORNEY DOCKET NUMBER	SAWYER MEDIA-3
MARK SECTION	
MARK	DIVE TRAVELER
NEW ATTORNEY ADDRESS	
STATEMENT TEXT	By submission of this request, the undersigned updates the attorney information of record.
NAME	Kathryn M. Wheble
FIRM NAME	HIARING + SMITH, LLP
STREET	101 Lucas Valley Road, Suite 300
CITY	San Rafael
STATE	California
COUNTRY	United States
POSTAL/ZIP CODE	94903
PHONE	(415) 457-2040
FAX	(415) 457-2822
EMAIL	trademarks@hiaringsmith.com
ATTORNEY AUTHORIZED TO COMMUNICATE VIA E-MAIL	YES
ATTORNEY DOCKET NUMBER	SAWYER MEDIA-3
NEW OTHER APPOINTED ATTORNEYS	Vijay K. Toke, Anne Hiarling Hocking, Carol L. Smith, Elizabeth J. Rest
NEW CORRESPONDENCE ADDRESS	

NAME	Kathryn M. Wheble
FIRM NAME	HIARING + SMITH, LLP
DOCKET/REFERENCE NUMBER	SAWYER MEDIA-3
STREET	101 Lucas Valley Road, Suite 300
CITY	San Rafael
STATE	California
COUNTRY	United States
POSTAL/ZIP CODE	94903
PHONE	(415) 457-2040
FAX	(415) 457-2822
EMAIL	trademarks@hiaringsmith.com
AUTHORIZED TO COMMUNICATE VIA E-MAIL	YES
OTHER APPOINTED ATTORNEY	Vijay K. Toke, Anne Hiaring Hocking, Carol L. Smith, Elizabeth J. Rest
SIGNATURE SECTION	
SIGNATURE	/Dave White/
SIGNATORY NAME	Dave White
SIGNATORY DATE	08/10/2012
SIGNATORY POSITION	Chief Operating Officer
SIGNATORY PHONE NUMBER	n/a
FILING INFORMATION SECTION	
SUBMIT DATE	Fri Aug 10 15:11:32 EDT 2012
TEAS STAMP	USPTO/RAA-173.200.186.227 -20120810151132326171-854 52214-4906285f43e383816e4 8a933c4aedd685-N/A-N/A-20 120810133222452292

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

To the Commissioner for Trademarks:

MARK: DIVE TRAVELER

SERIAL NUMBER: 85452214

ATTORNEY DOCKET NUMBER SAWYER MEDIA-3

Original Correspondence Address :

SAWYER MEDIA GROUP

12863 HOLDENBURY LN

WINDERMERE Florida 34786-6659

US

407-670-4586

ashley@sawyermediagroup.com

By submission of this request, the undersigned updates the attorney information of record. 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:

Kathryn M. Wheble

HIARING + SMITH, LLP

101 Lucas Valley Road, Suite 300

San Rafael, California 94903

United States

(415) 457-2040

(415) 457-2822

trademarks@hiaringsmith.com

SAWYER MEDIA-3

Other Appointed Attorneys:

Vijay K. Toke, Anne Hiaring Hocking, Carol L. Smith, Elizabeth J. Rest

The following is to be used as the correspondence address:

Kathryn M. Wheble

HIARING + SMITH, LLP

101 Lucas Valley Road, Suite 300

San Rafael, California 94903

United States

(415) 457-2040

(415) 457-2822

trademarks@hiaringsmith.com The attorney docket/reference number is SAWYER MEDIA-3.

Signature: /Dave White/ Date: 08/10/2012

Signatory's Name: Dave White

Signatory's Position: Chief Operating Officer

Signatory's Phone Number: n/a

Serial Number: 85452214

Internet Transmission Date: Fri Aug 10 15:11:32 EDT 2012

TEAS Stamp: USPTO/RAA-173.200.186.227-20120810151132

326171-85452214-4906285f43e383816e48a933

c4aedd685-N/A-N/A-20120810133222452292

To: Sawyer Media Group (ashley@sawyermediagroup.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85452214 - DIVE TRAVELER - N/A
Sent: 2/13/2012 11:19:05 PM
Sent As: ECOM105@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. 85452214

MARK: DIVE TRAVELER

85452214

CORRESPONDENT ADDRESS:

SAWYER MEDIA GROUP
SAWYER MEDIA GROUP
12863 HOLDENBURY LN
WINDERMERE, FL 34786-6659

CLICK HERE TO RESPOND TO THIS LETTER:

http://www.uspto.gov/trademarks/teas/response_forms.jsp

APPLICANT: Sawyer Media Group

CORRESPONDENT'S REFERENCE/DOCKET

NO:

N/A

CORRESPONDENT E-MAIL ADDRESS:

ashley@sawyermediagroup.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: 2/13/2012

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

SEARCH OF OFFICE'S DATABASE OF MARKS

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

SUMMARY OF ISSUES that applicant must address:

- **2(e)(1) Descriptive Refusal;**
- **Specimen Refusal;**
- **Amendment of the Identification of Goods**
- **Classification of Goods**

1. REFUSAL – Section 2(e)(1) Descriptiveness Refusal

Registration is refused because the applied-for standard character mark, DIVE TRAVELER merely describes the subject matter of applicant's goods, under Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); *see* TMEP §§1209.01(b), 1209.03 *et seq.*

A mark is merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the specified goods. TMEP §1209.01(b); *see In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005); *In re Gyulay*, 820 F.2d 1216, 1217-18, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987).

Applicant's mark, DIVE TRAVELER is used with *digital materials, a digital magazine and a mobile media application.*

The proposed mark is comprised of two descriptive terms, **DIVE** and **TRAVELER** when retains its descriptiveness when combined. **DIVE** means to engage in the activity of scuba diving, and **TRAVELER** describes someone who is traveling or who travels often. *See definitions – Exhibits 1 and 2* **DIVE TRAVELER** describes the subject matter of applicant's mobile media application. Upon review of a page from applicant's web site, the term, **DIVE** is used to describe the subject mater, e.g. dive gear of applicant's mobile media application. **TRAVELER** also describes the target audience of applicant's goods.

Built on an exclusive opt-in platform, the user not only gets the **travel** content they want and will use, but also the **dive gear** that best suits their needs —by season and local conditions — in the innovative, self-populating Gear Locker *See Exhibit 3*

Contributors from around the globe will provide an ongoing influx of fresh content, and Dive Traveler is giving a global platform to a large and diverse pool of professionals, including **dive**

shop instructors and other local experts

See Exhibit 3

Dive Traveler will have content featured from the best writers and photographers in the **dive** industry

See Exhibit 4

For these reasons, the proposed mark, **DIVE TRAVELER** is descriptive of a feature of applicant's mark and the target audience, therefore, registration is refused on the Principal Register.

Although the Trademark Examining Attorney has refused registration on the Principal Register, applicant may respond to the refusal to register by submitting evidence and arguments in support of registration. In the alternative, applicant should note the following.

Amendment to Supplemental Register Suggested – Use

The applied-for mark has been refused registration on the Principal Register. Applicant may respond to the refusal by submitting evidence and arguments in support of registration and/or by amending the application to seek registration on the Supplemental Register. *See* 15 U.S.C. §1091; 37 C.F.R. §§2.47, 2.75(a); TMEP §§801.02(b), 816. Amending to the Supplemental Register does not preclude applicant from submitting evidence and arguments against the refusal. TMEP §816.04.

The applicant should also note the following additional ground for refusal.

2. Specimen Does Not Show Use of Mark with Specified Goods - Use

The specimen is not acceptable because it does not show the applied-for mark used in connection with any of the goods specified in the application. An application based on Trademark Act 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).

In this case, the specimen displays the proposed mark, “**DIVE TRAVELER**” inside a square, with water swirling about the wording, on an otherwise blank page. Applicant's goods are *digital materials, a digital magazine, and mobile media application*. Therefore, the proposed mark is *not* shown and used with the goods in commerce.

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: “**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; *see* 37 C.F.R. §2.193(e)(1). 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: “**Applicant has had a bona fide intention to use the mark in commerce on or in connection with the goods and/or services 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), 2.193(e)(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 for the identified 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).

Although the Trademark Examining Attorney has refused registration, applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

Requirements

If the Applicant chooses to respond to the refusal to registers, the Applicant must also respond to the following requirements:

3. Requirement to Amend the Identification of Goods – Indefinite

Applicant must rewrite the identification of goods in its entirety because of the nature and extent of the amendment. 37 C.F.R. §2.74(a).

The goods in the application at the time of filing are identified as :

Company Name, Digital Materials, Name of a digital magazine and mobile media application

which is indefinite. Applicant must describe the nature of the digital materials and the subject matter, e.g.,

Digital materials, namely, CD’s, DVD’s, downloadable audio and video files featuring information on diving locations for travelers and diving equipment ; and electronic publications, namely, digital magazines in the field of diving recorded on computer media, in International Class 009, if accurate as provided below. Additionally, the wording, *mobile media application* is indefinite and applicant may clarify by substituting the following identification, e.g., *Mobile media applications,*

namely, downloadable software in the nature of a mobile application for providing information on dive locations for travelers, and *mobile media applications*, namely, mobile computing and operating platforms consisting of data transceivers, wireless networks and gateways for collection and management of data, if accurate, as suggested below. *See* TMEP §1402.01.

International Class 009 *Digital materials, namely, CD's, DVD's, downloadable audio and video files featuring information on locations for diving; Electronic publications, namely, digital magazines in the field of diving recorded on computer media; Mobile media applications, namely, downloadable software in the nature of a mobile application for providing information on diving locations for travelers and diving equipment; mobile media applications, namely, mobile computing and operating platforms consisting of data transceivers, wireless networks and gateways for collection and management of data*

An applicant may amend an identification of goods only to clarify or limit the goods; adding to or broadening the scope of the goods is not permitted. 37 C.F.R. §2.71(a); *see* TMEP §§1402.06 *et seq.*, 1402.07 *et seq.*

For assistance with identifying and classifying goods and/or services in trademark applications, please see the online searchable *Manual of Acceptable Identifications of Goods and Services* at <http://tess2.uspto.gov/netahtml/tidm.html>. *See* TMEP §1402.04.

4. Adopt Particular Classification – International Class 009

If applicant adopts the suggested identification of goods, applicant must amend the application to classify the goods in International Class 009. 37 C.F.R. §§2.32(a)(7) and 2.85; TMEP §§1401.02(a) and 1401.03(b).

The decision as to the proper classification of goods is a purely administrative matter within the sole discretion of the United States Patent and Trademark Office. *In re Tee-Pak inc.*, 164 USPQ 88 (TTAB 1969). Applicant must adopt the appropriate international classification number for the goods and services identified in the application. The United States uses the *International Classification of Goods and Services for the Purposes of the Registration of Marks*, established by the World Intellectual Property Organization to classify goods and services. 37 C.F.R. §6.1; TMEP §§1401 *et seq.*

If the Applicant has *questions* about its application or needs assistance in responding to this Office action, please telephone the assigned Trademark Examining Attorney directly at the number below or e-mail.

/Odessa Bibbins/
Attorney Advisor
Law Office 105
Tel: 571-272-9425
Fax: 571-273-9425
Odessa.Bibbins@uspto.gov

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

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

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

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at <http://tarr.uspto.gov/>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

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

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Word of the Day

perfunctory
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dive¹ (dīv) [KEY](#)

VERB:
dived or **dove** (dɔv) [KEY](#), **dived**, **div-ing**, **dives**

VERB:
intr.

- To plunge, especially headfirst, into water.
 - To execute a dive in athletic competition.
 - To participate in the sport of competitive diving.
-  To go toward the bottom of a body of water; submerge.
 - To engage in the activity of scuba diving
 - To submerge under power. Used of a submarine.
- To fall head down through the air.
 - To descend nose down at an acceleration usually exceeding that of free fall. Used of an airplane.
 - To engage in the sport of skydiving.
- To drop sharply and rapidly, plummet. *Stock prices dove 100 points*



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someone who is traveling or who travels often a hotel for business travelers

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 - Dive Skins
 - Dry Boxes
 - Dry Suits
 - Fins
 - Free Diving Gear
 - Scuba Diving Gauges
 - Gift Certificate
 - Gift Items
 - Dive Gloves
 - Dive Hoods
 - Hookah Systems
 - Kayaks

Introducing DIVE TRAVELER - a new revolution in dive media

The world of dive media is about to change. Launching in early November, Dive Traveler is a digital magazine idea so revolutionary that it will redefine the way you think about the media content experience. Dive Traveler is a global, multi-platform, mobile media-based magazine app, an eMag, which is defined by the user for the user. And Dive Traveler delivers information and new content to the user every day. It's the world's first 365-day, personalized magazine experience.

Unlike PDF-based eZines, which are merely digitized print magazines, or Websites, which are linear, the mobile eMag user experiences content in 360 degrees, and the content gets updated every day. Built on an exclusive opt-in platform, the user not only gets the travel content they want and will use, but also the dive gear that best suits their needs — by season and local conditions — in the innovative, self-populating Gear Locker. And, they can buy gear on the spot, making the eMag the ultimate in one-stop ease for the user. Like the Gear Locker, the Itinerary Generator also utilizes the users Opt-in profile, and automatically puts a user in touch with the travel provider to finalize the sale. And, that's just the beginning of what this powerful new media will do.



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A GLOBAL MEDIA SOLUTIONS COMPANY

ABOUT US



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WELCOME TO SAWYER MEDIA!

WE'VE CREATED A REVOLUTIONARY NEW MEDIA PLATFORM WITH OUR CONTENT-DRIVEN DIGITAL MAGAZINE, LIFESTYLE CONTENT HUB, WHICH WE'RE CALLING AN EMAG, FOR TODAY'S SOPHISTICATED MULTIMEDIA CONSUMER THAT DESIRES LEADING, RELEVANT, ENGAGING, VITAL AND AUTHORITY CONTENT THAT BENEFITS THEM, PROVIDES SOLUTIONS, INSPIRES, INFORMS AND MOTIVATES. THESE CONSUMERS WANT TO CONTROL THE KIND OF INFORMATION THEY RECEIVE AND HOW IT'S RECEIVED, SO THAT EACH READER/CONSUMER CAN HAVE A PERSONALIZED, TAILOR-MADE MEDIA EXPERIENCE THAT REFLECTS THEIR UNIQUE, INDIVIDUAL INTERESTS AND DESIRES. THIS IS SAWYER MEDIA'S DIVE TRAVELER. MORE THAN A "MAGAZINE," IT'S A TOTAL, USER-DEFINED MULTI-LEVEL DIGITAL MEDIA EXPERIENCE.

DIVE TRAVELER



DIVE TRAVELER WILL HAVE CONTENT FEATURED FROM THE BEST WRITERS AND PHOTOGRAPHERS IN THE DIVE INDUSTRY, WITH EDITORIALIZED GALLERIES (MINI-STORIES), A GEAR LOCKER, TOP 5'S, DESTINATION 411, ITINERARIES, AND LOCAL TIPS. NOT TO MENTION WE'LL BE FOLLOWING TY SAWYER AS HE'S ON ASSIGNMENT THROUGH HIS TV SHOW, ANOTHER SHADE OF BLUE ON ASSIGNMENT WITH TY SAWYER. PLUS FOLLOW OTHER BIG NAMES IN TRAVEL WITH WHERE THEY ARE, BLOGS, PHOTOS AND MORE!

MULTI-PLATFORM CONTENT-DRIVE MEDIA SOLUTIONS: INCLUDING EMAG, IMAGES, EVENTS, TRIPS, AND A TV SHOW

To: Sawyer Media Group (ashley@sawyermediagroup.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85452214 - DIVE TRAVELER - N/A
Sent: 2/13/2012 11:19:08 PM
Sent As: ECOM105@USPTO.GOV
Attachments:

IMPORTANT NOTICE REGARDING YOUR TRADEMARK APPLICATION

Your trademark application (Serial No. 85452214) has been reviewed. The examining attorney assigned by the United States Patent and Trademark Office (“USPTO”) has written a letter (an “Office Action”) on 2/13/2012 to which you must respond. Please follow these steps:

1. **Read** the Office letter by clicking on this [link](#) OR go to <http://tmportal.uspto.gov/external/portal/tow> and enter your serial number to [access](#) the Office letter.

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

2. **Respond** within 6 months, calculated from 2/13/2012 (*or sooner if specified in the Office letter*), using the Trademark Electronic Application System [Response to Office Action form](#). If you have difficulty using the USPTO website, contact TDR@uspto.gov.

3. **Contact** the examining attorney who reviewed your application with any questions about the content of the office letter:

/Odessa Bibbins/
Attorney Advisor
Law Office 105
Tel: 571-272-9425
Fax: 571-273-9425
Odessa.Bibbins@uspto.gov

WARNING

Failure to file any required response by the applicable deadline will result in the [ABANDONMENT](#) 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. Instead, please use the Trademark Electronic Application System [Response to Office Action form](#).

*** User:Obibbins ***

#	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/ Search Duration	Search
01	1205	0	1205	995	0:03	*d{"iy"} {"vfph"} e*[bi,ti] not dead [ld]
02	483	0	309	280	0:02	*tr{V; {"vfph"} {V} I{V} r*[bi,ti] not dead [ld]
03	2	0	2	2	0:01	1 and 2 not dead [ld]

Session started 2/13/2012 10:56:30 PM

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Total search duration 0 minutes 6 seconds

Session duration 21 minutes 24 seconds

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Sent to TICRS as Serial Number: 85452214

Trademark/Service Mark Application, Principal Register

Serial Number: 85452214

Filing Date: 10/20/2011

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85452214
MARK INFORMATION	
*MARK	Dive Traveler
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	Dive Traveler
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Sawyer Media Group
DBA/AKA/TA/Formerly	AKA Dive Traveler
*STREET	12863 Holdenbury Ln
*CITY	Windermere
*STATE (Required for U.S. applicants)	Florida
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	34786
PHONE	407-670-4586
EMAIL ADDRESS	ashley@sawyermediagroup.com
AUTHORIZED TO COMMUNICATE VIA	Yes

EMAIL	
WEBSITE ADDRESS	www.sawyermediagroup.com
LEGAL ENTITY INFORMATION	
TYPE	limited liability company
STATE/COUNTRY WHERE LEGALLY ORGANIZED	Florida
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	
*IDENTIFICATION	Company Name, Digital Materials, Name of a digital magazine and mobile media application.
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 01/31/2011
FIRST USE IN COMMERCE DATE	At least as early as 01/31/2011
SPECIMEN FILE NAME(S)	
ORIGINAL PDF FILE	spec-508988207-152339382 . DIVE TRAVELER With Water Final CV.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT11\IMAGEOUT11\854\522\85452214\xml1\APP0003.JPG
SPECIMEN DESCRIPTION	Dive Traveler
CORRESPONDENCE INFORMATION	
NAME	Sawyer Media Group
FIRM NAME	Sawyer Media Group
STREET	12863 Holdenbury Ln
CITY	Windermere
STATE	Florida
COUNTRY	United States
ZIP/POSTAL CODE	34786
PHONE	407-670-4586
EMAIL ADDRESS	ashley@sawyermediagroup.com
AUTHORIZED TO COMMUNICATE VIA	

COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	/Ashley Bringman/
SIGNATORY'S NAME	Ashley Bringman
SIGNATORY'S POSITION	Director of Marketing
DATE SIGNED	10/20/2011

Trademark/Service Mark Application, Principal Register

Serial Number: 85452214

Filing Date: 10/20/2011

To the Commissioner for Trademarks:

MARK: Dive Traveler (Standard Characters, see [mark](#))

The literal element of the mark consists of Dive Traveler.

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

The applicant, Sawyer Media Group, AKA Dive Traveler, a limited liability company legally organized under the laws of Florida, having an address of

12863 Holdenbury Ln
Windermere, Florida 34786
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:

International Class _____: Company Name, Digital Materials, Name of a digital magazine and mobile media application.

In International Class _____, the mark was first used at least as early as 01/31/2011, and first used in commerce at least as early as 01/31/2011, 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) Dive Traveler.

Original PDF file:

[spec-508988207-152339382 . DIVE TRAVELER With Water Final CV.pdf](#)

Converted PDF file(s) (1 page)

[Specimen File1](#)

For informational purposes only, applicant's website address is: www.sawyermediagroup.com

The applicant's current Correspondence Information:

Sawyer Media Group
Sawyer Media Group
12863 Holdenbury Ln
Windermere, Florida 34786
407-670-4586(phone)
ashley@sawyermediagroup.com (authorized)

A fee payment in the amount of \$325 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: /Ashley Bringman/ Date Signed: 10/20/2011

Signatory's Name: Ashley Bringman

Signatory's Position: Director of Marketing

RAM Sale Number: 1827

RAM Accounting Date: 10/21/2011

Serial Number: 85452214

Internet Transmission Date: Thu Oct 20 15:39:17 EDT 2011

TEAS Stamp: USPTO/BAS-50.89.88.207-20111020153917359

545-85452214-4807657889cf6daecf2f7b1065

1b485e9a-CC-1827-20111020152339382383

Dive Traveler

A dynamic splash of clear blue water with many small bubbles, centered on a white background. The splash is contained within a dark blue rectangular frame.

DIVE
TRAVELER

Dive Traveler

A dynamic splash of clear blue water with many small bubbles, centered on a white background. The splash is contained within a dark blue rectangular frame.

DIVE
TRAVELER