

ESTTA Tracking number: **ESTTA637858**

Filing date: **11/10/2014**

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	Lakefront Brewery, Inc.		
Entity	Corporation	Citizenship	Wisconsin
Address	1872 N Commerce Milwaukee, WI 53212 UNITED STATES		

Attorney information	Melissa S. Hockersmith Ryan Kromholz & Manion, S.C. P O Box 26618 Milwaukee, WI 53226 UNITED STATES mhockersmith@rkmiplaw.com, ppechulis@rkmiplaw.com, malexander@rkmiplaw.com		
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### Registration Subject to Cancellation

Registration No	4481865	Registration date	02/11/2014
Registrant	Harbor Hill Fruit Farms, Inc. 34 South Manitou Trail Lake Leelanau, MI 49653 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 033. First Use: 2012/07/01 First Use In Commerce: 2012/07/01  
All goods and services in the class are cancelled, namely: Wine

### Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	86073966	Application Date	09/25/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	LAKEFRONT BREWERY, INC. LB MILWAUKEE WISCONSIN TRADE MARK		

Design Mark	
Description of Mark	The mark consists of a broken oval containing the words "Lakefront Brewery, Inc.", "Milwaukee Wisconsin" and "Trade Mark" surrounding the letter "L" and the letter "B" with a beer mug between the letters "L" and "B". Horizontal lines appear both above and below the words "Milwaukee" and "Wisconsin".
Goods/Services	Class 032. First use: First Use: 1987/00/00 First Use In Commerce: 1987/00/00 Beer

Attachments	86073966#TMSN.png( bytes ) 141110 Petition to Cancel.pdf(121971 bytes ) Exhibit A.pdf(188235 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	/Melissa S. Hockersmith/
Name	Melissa S. Hockersmith
Date	11/10/2014

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

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Lakefront Brewery, Inc.  
Petitioner,

v.

Harbor Hill Fruit Farms, Inc. d/b/a  
Good Harbor Vineyards  
Registrant.

Cancellation No.:

Registration No.: 4,481,865  
Date of Registration: 2/11/2014  
Serial No.: 85/661,486  
Atty. Docket No.: 5271.22167

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**PETITION TO CANCEL**

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Petitioner Lakefront Brewery, Inc. (“Lakefront”) is a Wisconsin corporation doing business at 1872 N. Commerce, Milwaukee, Wisconsin 53212.

To the best of Petitioner’s knowledge, the name and address of the current owner of U.S. Registration No. 4,481,865 for LAKE FRONT WHITE in International Class 33 for use on wine (the “Registration”) is Harbor Hill Fruit Farms, Inc. d/b/a Good Harbor Vineyards, a Michigan corporation doing business at 34 South Manitou Trail, Lake Leelanau, Michigan 49653.

Petitioner is currently and will continue to be damaged by the Registration, and hereby petitions to cancel the same.

The grounds for cancellation are as follows:

1. Petitioner is the applicant for U.S. Application Serial No. 86/073,966 for LAKEFRONT BREWERY, INC. & design (“Lakefront Logo”), shown below, for use on “beer” in International Class 32. (“Petitioner’s Goods”).



2. Registrant, Harbor Hill Fruit Farms, Inc. d/b/a Good Harbor Vineyards , owns a registration for the mark LAKE FRONT WHITE, Registration No. 4,481,865, for use on “wine” in International Class 33. Registrant’s mark was registered with the PTO on February 11, 2014, with a filing date of June 26, 2012 and a claimed first use date of July 1, 2012.

3. In an Office Action mailed May 8, 2014, the Examining Attorney cited Registrant’s Registration under Section 2(d) of the Lanham Act on the ground that registration of Petitioner’s LAKEFRONT BREWERY, INC. & design mark in connection with Petitioner’s Goods would lead to consumer confusion as to source/quality of goods due to the alleged similarities with Registrant’s LAKE FRONT WHITE mark. A copy of the Office Action is attached hereto as Exhibit A.

4. Lakefront Brewery, Inc., has extensively used the term LAKEFRONT with respect to beer for nearly 30 years.

5. Lakefront Brewery, Inc. has sold a beer under the Lakefront Logo that is called “White” since at least 1998.

6. Upon information and belief, Registrant’s rights in and use of the LAKE FRONT WHITE mark are subsequent and junior to Petitioner’s rights in its mark.

7. Based upon the foregoing, Petitioner is currently and will continue to be damaged by Registrant’s mark.

WHEREFORE, Petitioner deems that it is or will be damaged by Registration No. 4,481,865 and requests that it be cancelled.

Please direct all communications in this matter to the undersigned attorneys for  
Petitioner.

Dated: 10 November 2014

Respectfully Submitted,

By: /Melissa S. Hockersmith/

Melissa S. Hockersmith  
Email: mhockersmith@rkmiplaw.com  
Garet K. Galster  
Email: ggalster@rkmiplaw.com  
RYAN KROMHOLZ & MANION, S.C.  
P.O. Box 26618  
Milwaukee, Wisconsin 53226-0618  
Telephone: (262) 783-1300  
Facsimile: (262) 783-1211

*Attorneys for Petitioner, Lakefront Brewery, Inc.*

**CERTIFICATE OF SERVICE**

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

Erinn M Cypher  
P O Box 215  
Medford, OR 97501

Dated: 10 November 2014

/Melissa S. Hockersmith/

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Melissa S. Hockersmith  
RYAN KROMHOLZ & MANION, S.C  
P.O. Box 26618  
Milwaukee, Wisconsin 53226-0618  
Telephone: (262) 783-1300  
Facsimile: (262) 783-1211  
Email: [mhockersmith@rkmiplaw.com](mailto:mhockersmith@rkmiplaw.com)

*Attorneys for Lakefront Brewery, Inc.*

**To:** Lakefront Brewery, Inc. ([rkmip@rkmiplaw.com](mailto:rkmip@rkmiplaw.com))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 86073966 - LAKEFRONT BREWERY, INC. LB - 5271.22167  
**Sent:** 5/8/2014 7:05:59 PM  
**Sent As:** ECOM108@USPTO.GOV  
**Attachments:** [Attachment - 1](#) [Attachment - 2](#) [Attachment - 3](#) [Attachment - 4](#) [Attachment - 5](#)  
[Attachment - 6](#) [Attachment - 7](#) [Attachment - 8](#) [Attachment - 9](#) [Attachment - 10](#)  
[Attachment - 11](#) [Attachment - 12](#) [Attachment - 13](#) [Attachment - 14](#) [Attachment - 15](#)  
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[Attachment - 31](#) [Attachment - 32](#) [Attachment - 33](#) [Attachment - 34](#) [Attachment - 35](#)  
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[Attachment - 51](#)

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

**U.S. APPLICATION SERIAL NO.** 86073966

**MARK:** LAKEFRONT BREWERY, INC. LB

**\*86073966\***

**CORRESPONDENT ADDRESS:**

MELISSA S. HOCKERSMITH  
RYAN KROMHOLZ & MANION, S.C.  
PO BOX 26618  
MILWAUKEE, WI 53226-0618

**CLICK HERE TO RESPOND TO THIS LETTER:**  
[http://www.uspto.gov/trademarks/teas/response\\_forms.jsp](http://www.uspto.gov/trademarks/teas/response_forms.jsp)

**APPLICANT:** Lakefront Brewery, Inc.

**CORRESPONDENT'S REFERENCE/DOCKET NO:**

5271.22167

**CORRESPONDENT E-MAIL ADDRESS:**

[rkmip@rkmiplaw.com](mailto:rkmip@rkmiplaw.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:** **5/8/2014**

This Office action is in response to applicant's communication filed on 04/16/14.

**EXHIBIT A**

In the first Office action, dated 01/15/14, the examining attorney cited prior pending Application Serial No. 85661486 as a potential bar to registration of applicant's mark under Trademark Act Section 2(d). In addition, the examining attorney required applicant to enter a disclaimer of the merely descriptive and primarily geographically descriptive wording appearing in the applied-for mark. Finally, the examining attorney required applicant to submit an amended mark description.

In its response, dated 04/16/14, applicant submitted a disclaimer of the merely descriptive and primarily geographically descriptive wording appearing in the applied-for mark. The examining attorney accepts applicant's disclaimer and hereby makes it of record. In addition, in its response, applicant amended the mark description of record. The examining attorney accepts the amended mark description and hereby makes it of record. Finally, applicant elected not to address the cited prior pending Application Serial No. 85661486 as a potential bar to registration of applicant's mark. The examining attorney points out that the referenced prior-pending application has since registered. Therefore, registration is refused as follows.

#### Section 2(d) Likelihood of Confusion Refusal – New Refusal

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 4481865. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the enclosed registration.

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

Taking into account the relevant *du Pont* factors, a likelihood of confusion determination in this case involves a two-part analysis. The marks are compared for similarities in their appearance, sound, connotation and commercial impression. TMEP §§1207.01, 1207.01(b). The goods and/or services are compared to determine whether they are similar or commercially related or travel in the same trade channels. *See Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002); *Han Beauty, Inc. v. Alberto-Culver Co.*, 236 F.3d 1333, 1336, 57 USPQ2d 1557, 1559 (Fed. Cir. 2001); TMEP §§1207.01, 1207.01(a)(vi).

#### *Comparison of the Marks*

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

The question is not whether people will confuse the marks, but whether the marks will confuse people into believing that the goods and/or services they identify come from the same source. *In re West Point-Pepperell, Inc.*, 468 F.2d 200, 201, 175 USPQ 558, 558-59 (C.C.P.A. 1972); TMEP §1207.01(b). For that reason, the test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison. The question is whether the marks create the same overall impression. *See Recot, Inc. v. M.C. Becton*, 214 F.2d 1322, 1329-30, 54 USPQ2d 1894, 1899 (Fed. Cir. 2000); *Visual Info. Inst., Inc. v. Vicon Indus. Inc.*, 209 USPQ 179, 189 (TTAB 1980). The focus is on the recollection of the average purchaser who normally retains a general rather than specific impression of trademarks. *Chemetron Corp. v. Morris Coupling & Clamp*

Co., 203 USPQ 537, 540-41 (TTAB 1979); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975); TMEP §1207.01(b).

In this case, applicant's mark is LAKEFRONT BREWERY, INC. MILWAUKEE WISCONSIN TRADE MARK (stylized plus design) for goods listed as "Beer" in International Class 32.

Registrant's mark is LAKE FRONT WHITE (standard character) for goods listed as "Wine" in International Class 33.

Here, applicant's mark and registrant's mark share virtually identical dominant portions consisting of the first and distinctive terms "LAKEFRONT" versus "LAKE FRONT", and therefore, are confusingly similar in general appearance, meaning, connotation and overall commercial impression. Although marks are compared in their entireties, one feature of a mark may be more significant or dominant in creating a commercial impression. *See In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 751 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii). Greater weight is often given to this dominant feature when determining whether marks are confusingly similar. *See In re Nat'l Data Corp.*, 753 F.2d at 1058, 224 USPQ at 751.

Furthermore, the examining attorney points out that disclaimed matter, such as the term "WHITE" in registrant's mark and "BREWERY, INC.", "MILWAUKEE WISCONSIN" AND "TRADEMARK" in applicant's mark, is accorded less weight in a Trademark Act Section 2(d) likelihood of confusion analysis than the dominant portion of a mark. Although marks are compared in their entireties, one feature of a mark may be more significant or dominant in creating a commercial impression. *See In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 751 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii). Disclaimed matter that is descriptive of or generic for an applicant's goods and/or services is typically less significant or less dominant when comparing marks. *See In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997); *In re Nat'l Data Corp.*, 753 F.2d at 1060, 224 USPQ at 752 ; TMEP §1207.01(b)(viii), (c)(ii).

Moreover, the design portion of applicant's mark is accorded less weight in a Trademark Act Section 2(d) likelihood of confusion analysis than the literal word portion of the mark. For a composite mark containing both words and a design, the word portion may be more likely to be impressed upon a purchaser's memory and to be used when requesting the goods. *Joel Gott Wines, LLC v. Rehoboth Von Gott, Inc.*, 107 USPQ2d 1424, 1431 (TTAB 2013) (citing *In re Dakin's Miniatures, Inc.*, 59 USPQ2d 1593, 1596 (TTAB 1999)); TMEP §1207.01(c)(ii); *see In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908, 1911 (Fed. Cir. 2012) (citing *CBS Inc. v. Morrow*, 708 F. 2d 1579, 1581-82, 218 USPQ 198, 200 (Fed. Cir 1983)). Thus, although such marks must be compared in their entireties, the word portion is often considered the dominant feature and is accorded greater weight in determining whether marks are confusingly similar, even where the word portion has been disclaimed. *In re Viterra Inc.*, 671 F.3d at 1366, 101 USPQ2d at 1911 (Fed. Cir. 2012) (citing *Giant Food, Inc. v. Nation's Foodservice, Inc.*, 710 F.2d 1565, 1570-71, 218 USPQ2d 390, 395 (Fed. Cir. 1983)).

#### *Comparison of the Goods*

The goods of the parties need not be identical or directly competitive to find a likelihood of confusion. *See Safety-Kleen Corp. v. Dresser Indus., Inc.*, 518 F.2d 1399, 1404, 186 USPQ 476, 480 (C.C.P.A. 1975); TMEP §1207.01(a)(i). Rather, they need only be related in some manner, or the conditions surrounding their marketing are such that they would be encountered by the same purchasers under circumstances that would give rise to the mistaken belief that the goods come from a common source. *In re Total Quality Group, Inc.*, 51 USPQ2d 1474, 1476 (TTAB 1999); TMEP §1207.01(a)(i); *see, e.g., On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086-87, 56 USPQ2d 1471, 1475-76 (Fed. Cir. 2000); *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1566-68, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

In this case, applicant's goods listed as "Beer" in International Class 32 are related to registrant's goods listed as "Wine" in International Class 33, as both applicant's goods and registrant's goods consist of alcoholic beverages encountered by consumers in the same channels of trade. *Please see attached third-party website evidence.*

Various alcoholic beverages have been shown to be related goods for purposes of a Trademark Act Section 2(d) analysis. *In re Chatam Int'l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944 (Fed. Cir. 2004) (holding GASPAR'S ALE for beer and ale likely to be confused with JOSE GASPAR GOLD for tequila); *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003) (holding RED BULL for tequila likely to be confused with RED BULL for malt liquor); *In re Salierbrau Franz Sailer*, 23 USPQ2d 1719 (TTAB 1992) (holding CHRISTOPHER COLUMBUS for beer likely to be confused with CRISTOBAL COLON & design for sweet wine); *Somerset Distilling, Inc. v. Speymalt Whiskey Distribs. Ltd.*, 14 USPQ2d 1539 (TTAB 1989) (holding JAS. GORDON and design for scotch whiskey likely to be confused with GORDON'S for distilled gin and vodka); *Schieffelin & Co. v. Molson Cos.*, 9 USPQ2d 2069 (TTAB 1989) (holding BRAS D'OR for brandy likely to be confused with BRADOR for beer); *Bureau Nat'l Interprofessionnel Du Cognac v. Int'l Better Drinks Corp.*, 6 USPQ2d 1610 (TTAB 1988) (holding trademark COLAGNAC for cola flavored liqueur likely to be confused with certification mark COGNAC for brandy).

### **Third Party Registrations – Useful to Show Relatedness of Goods**

Attached are copies of printouts from the USPTO X-Search database, which show third-party registrations of marks used in connection with the same or similar goods as those of applicant and registrant in this case. These printouts have probative value to the extent that they serve to suggest that the goods listed therein, namely, "Beer" and "Wine", are of a kind that may emanate from a single source. *In re Infinity Broad. Corp.*, 60 USPQ2d 1214, 1217-18 (TTAB 2001); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988); TMEP §1207.01(d)(iii).

Therefore, confusion is likely, as consumers would believe that both applicant's proposed goods and registrant's goods emanate from a single source. Accordingly, registration is refused under Trademark Act Section 2(d).

Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

### **Response Guidelines**

For this application to proceed toward registration, applicant must explicitly address each refusal and/or requirement raised in this Office action. If the action includes a refusal, applicant may provide arguments and/or evidence as to why the refusal should be withdrawn and the mark should register. Applicant may also have other options for responding to a refusal and should consider such options carefully. To respond to requirements and certain refusal response options, applicant should set forth in writing the required changes or statements.

If applicant does not respond to this Office action within six months of the issue/ mailing date, or responds by expressly abandoning the application, the application process will end, the trademark will fail to register, and the application fee will not be refunded. *See* 15 U.S.C. §1062(b); 37 C.F.R. §§2.65(a), 2.68(a), 2.209(a); TMEP §§405.04, 718.01, 718.02. Where the application has been abandoned for failure to respond to an Office action, applicant's only option would be to file a timely petition to revive the application, which, if granted, would allow the application to return to live status. *See* 37 C.F.R. §2.66; TMEP §1714. There is a \$100 fee for such petitions. *See* 37 C.F.R. §§2.6, 2.66(b)(1).

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §2.191; TMEP §§709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or

requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. See TMEP §§705.02, 709.06.

Furthermore, if applicant has an amendment that does not require the payment of a fee, submission of a specimen, response to a statutory refusal or declaration signature, applicant is encouraged to telephone the examining attorney to expedite the processing of the application.

/Brian P. Callaghan/  
Examining Attorney  
U.S. Patent & Trademark Office  
Law Office 108  
Phone: 571-272-4906  
Email: brian.callaghan@uspto.gov

**TO RESPOND TO THIS LETTER:** Go to [http://www.uspto.gov/trademarks/teas/response\\_forms.jsp](http://www.uspto.gov/trademarks/teas/response_forms.jsp). Please wait 48-72 hours from the issue/ mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail [TEAS@uspto.gov](mailto:TEAS@uspto.gov). 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 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](mailto:TrademarkAssistanceCenter@uspto.gov) or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

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