

ESTTA Tracking number: **ESTTA772783**

Filing date: **09/26/2016**

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	SOFlete, LLC		
Entity	limited liability company	Citizenship	North Carolina
Address	105 Zapata Lane Chapel Hill, NC 27517 UNITED STATES		

Attorney information	Devon E. White Wyrick Robbins Yates & Ponton LLP 4101 Lake Boone Trail Suite 300 Raleigh, NC 27607 UNITED STATES ip@wyrick.com Phone:9197814000		
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### Registration Subject to Cancellation

Registration No	4137842	Registration date	05/08/2012
Registrant	Ojdanic, Goran 54 Pomander Walk Ridgewood, NJ 07450 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 025. First Use: 2010/04/01 First Use In Commerce: 2010/04/01 All goods and services in the class are cancelled, namely: Shirts, t-shirts, shorts, socks, pants, gloves, jackets, jerseys, underwear, bras, panties, sweat suits, swimsuits, andboard shorts
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### Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)
Fraud on the USPTO	Trademark Act Section 14(3); In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)

Attachments	Petition to Cancel with Exhibits.pdf(1238632 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	/DEW/
Name	Devon E. White
Date	09/26/2016

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

SOFlete, LLC,	)	Cancellation No. _____
Petitioner,	)	
v.	)	Trademark Reg. No. 4,137,842
	)	
Goran Ojdanic,	)	Mark: DIE LIVING
Registrant.	)	
_____	)	Date Registered: May 8, 2012

PETITION TO CANCEL

SOFlete, LLC (“Petitioner”) is a North Carolina limited liability company with a business address at 105 Zapata Lane, Chapel Hill 27517. Petitioner believes that it is damaged by the Registration and petitions to cancel it as set forth below.

To the best of Petitioner’s knowledge, and according the USPTO’s records associated with the U.S. Registration No. 4,137,842, the name and address of the correspondent and owner of the registration is Goran Ojdanic, an individual, at 54 Pomander Walk, Ridgewood, New Jersey 07450, with an email address of Goran.Ojdanic@gmail.com.

BACKGROUND

1. Petitioner provides fitness training services and digital fitness programs; consultancy services in the field of fitness training and nutrition; and products, namely clothing, patches, and decals.

2. Since at least as early as September, 2015, Petitioner has used its DIE LIVING marks in connection with clothing and digital fitness products and services, and as a result Petitioner has common law rights in its DIE LIVING marks (the “Petitioner’s Marks”).

3. Petitioner is the owner of pending application Serial Nos. 87/181,062 and 87/181,047 for the marks DIE LIVING SOFLETE & Design and DIE LIVING respectively, for Clothing, namely, shirts, t-shirts, long-sleeved shorts, thermal shirts, merino-based layer shirts, headwear, hats, baseball caps, knit hats, shorts, board shorts, pants, tactical pants, technical pants, spandex pants, yoga pants, denim pants,

jackets, outer jackets, vests, outer vests, socks, underwear, athletic wear, belts, footwear, gloves, hooded sweat shirts, sweat shirts, sweat pants, in International Class 25 (the “Class 25 Applications”). Filing receipts for the Class 25 Applications are attached here as Exhibits A and B.

4. Petitioner is the owner of pending application Serial No. 87/181,030 for the mark DIE LIVING for Weight lifting equipment, namely, weight lifting belts, knee wraps, wrist wraps, weight lifting gloves, weight lifting shoes, barbells, weight plates, kettle balls, sandbags, weight vests, mouth guards, medicine balls, sport balls, slam balls, wall balls, knee pads, wrist wraps, resistance bands; eyewear for athletic purposes; protective eyewear; Bags specially adapted to carry yoga equipment; Bags specially adapted to carry weightlifting equipment; Sports equipment for boxing and martial arts, namely, boxing gloves, mixed martial arts gloves, punching mitts, and shin guards; manually-operated exercise equipment for physical fitness purposes, in International Class 28 (the “Class 28 Application”), (collectively referred to as the “Applications”). Filing receipt for the Class 28 Application is attached here as Exhibit C.

5. The owner of U.S. Registration No. 4,137,842 (the “Registration”), for the mark DIE LIVING (“Mark”), for use in connection with Shirts, t-shirts, shorts, socks, pants, gloves, jackets, jerseys, underwear, bras, panties, sweat suits, swimsuits, and board shorts, in International Class 25 (collectively, “Goods”) is Goran Ojdanic, an individual with a record address of 54 Pomander Walk, Ridgewood, New Jersey 07450 (“Registrant”).

6. Petitioner expects the Registration to be cited under Section 2(d) of the Trademark Act as a basis for refusing registration of Petitioner’s Class 025 Applications containing the mark DIE LIVING.

#### COUNT I

#### ABANDONMENT

7. Petitioner re-alleges and incorporates by reference paragraphs 1 through 6.

8. Upon information and belief, Registrant has not used the Mark in commerce in the United States in connection with any of the Goods.

9. Upon information and belief, Registrant has not used the Mark in commerce in the United States in connection with shirts.

10. Upon information and belief, Registrant has not used the Mark in commerce in the United States in connection with t-shirts.

11. Upon information and belief, Registrant has not used the Mark in commerce in the United States in connection with shorts.

12. Upon information and belief, Registrant has not used the Mark in commerce in the United States in connection with socks.

13. Upon information and belief, Registrant has not used the Mark in commerce in the United States in connection with pants.

14. Upon information and belief, Registrant has not used the Mark in commerce in the United States in connection with gloves.

15. Upon information and belief, Registrant has not used the Mark in commerce in the United States in connection with jackets.

16. Upon information and belief, Registrant has not used the Mark in commerce in the United States in connection with jerseys.

17. Upon information and belief, Registrant has not used the Mark in commerce in the United States in connection with underwear.

18. Upon information and belief, Registrant has not used the Mark in commerce in the United States in connection with bras.

18. Upon information and belief, Registrant has not used the Mark in commerce in the United States in connection with panties.

20. Upon information and belief, Registrant has not used the Mark in commerce in the United States in connection with sweat suits.

21. Upon information and belief, Registrant has not used the Mark in commerce in the United States in connection with swimsuits.

22. Upon information and belief, Registrant has not used the Mark in commerce in the United States in connection with board shorts.

23. Upon information and belief, Registrant is not currently using the Mark in commerce in the United States in connection with any of the Goods.

24. Upon information and belief, Registrant has not used the Mark in commerce in the United States in connection with the Goods for more than three (3) years.

25. Upon information and belief, Registrant has no intent to commence or to resume use of the Mark in commerce in the United States with any of the Goods.

26. Upon information and belief, the Mark has been abandoned due to nonuse.

27. The Petitioner has been and will continue to be damaged by continuance of the Registration, in that the Petitioner expects to will be unable to obtain registration of Petitioner's Marks on the Principal Register and obtain the procedural and evidentiary advantages and presumptions that result therefrom so long as the Registration is maintained on the register, despite the abandonment of the Mark by the Registrant.

## COUNT II

### FRAUD IN FILING THE USE-BASED APPLICATION

28. Petitioner re-alleges and incorporates by reference paragraphs 1 through 27.

29. Upon information and belief, Registrant's Registration was obtained fraudulently in that the formal application papers filed by the Registrant on March 31, 2011, under oath and notice of 18 U.S.C. § 1001, state that Registrant was making actual use of the mark in interstate commerce at least as early as April 1, 2010, in connection with "Shirts, t-shirts, shorts, socks, pants, gloves, jackets, jerseys, underwear, bras, panties, sweat suits, swimsuits, and board shorts." Upon information and belief, such statement was false in that the Registrant was not using the mark in interstate commerce in connection with *any or all* of the goods as of the time of filing the application because the Registrant did not have *any or all* of the goods identified in the Registration. The Registrant's application, initial specimens and Office Action issued against same are attached here as Exhibit D.

30. Such statement of use was made and the application was filed unsigned. This statement was made with the knowledge and belief that the statement was false. Such false statement was made with

the intent to knowingly induce the U.S. Patent and Trademark Office to grant such registration. The U.S. Patent and Trademark office did, in fact, reasonably rely upon the truth of such intentionally false statements, and consequently granted the registration to Registrant.

### COUNT III

#### FRAUD IN FILING THE SPECIMEN

31. Petitioner re-alleges and incorporates by reference paragraphs 1 through 30.

32. The specimen originally filed by the Registrant with the original application documents on March 31, 2011 was deficient, and the Registrant's application for registration was subsequently rejected on that basis. See Exhibit D.

33. Later, on December 27, 2011, Registrant filed a substitute specimen in a signed response to an Office Action, which also included a signature for the application. The substitute specimens filed by the Registrant were a series of photographs showing the applied-for mark. As part of that amendment, the Registrant declared that "the substitute specimen was in use in commerce at least as early as the filing date of the application." The Registrant's Response to Office Action and Substitute Specimens are attached here as Exhibit E.

34. Additionally, Registrant described the substitute specimen as "a hang tag and a shirt tag from one of our DIE-LIVING sweaters is included. The sweaters are 100% wool and whole sale for \$25. This was taken at a whole sale event in New York City." At no time after the filing of the application were "sweaters" included in the identification of goods. See Exhibit E.

35. Such false statement was made with the intent to knowingly induce the U.S. Patent and Trademark Office to grant such registration. The U.S. Patent and Trademark Office did, in fact, reasonably rely upon the truth of such false statements, and consequently granted the registration to Registrant.





# EXHIBIT A

## Bronwyn A. Tucker

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**From:** TEAS@uspto.gov  
**Sent:** Friday, September 23, 2016 11:11 AM  
**To:** IP Practice  
**Subject:** 027996.005 Serial number 87181062: Received Your Trademark/Service Mark Application, Principal Register

1. **YOUR MARK:** DIE LIVING SOFLETE (stylized and/or with design, MRK64132139178-163309222\_.\_DIE\_LIVING\_SOFLETE\_LOGO\_\_blk\_.jpg)

The literal element of the mark consists of DIE LIVING SOFLETE.

The mark consists of a black spade design with a skull and cross bones image inset in white, with the words DIE LIVING appearing above and SOFLETE appearing below the spade design.

2. **YOUR SERIAL NUMBER:** We have received your U.S. Trademark Application and assigned serial number '87181062' to your submission. A summary of your application data is provided at the bottom of this message and serves as your official filing receipt. Please keep a copy of this information for your records. All correspondence concerning the application should reference your assigned serial number.

Please read all of the important information below. Not every mark is registrable with the USPTO and we do not refund the application filing fee(s) if a registration does not ultimately issue.

3. **RECEIVING E-MAIL COMMUNICATIONS/FILING DOCUMENTS ON-LINE:** Because you have authorized receipt of correspondence by e-mail, please make sure that your server will accept USPTO e-mail and not treat it as SPAM. If you must submit correspondence to us, please use the Trademark Electronic Application System (TEAS) forms, available at <http://www.uspto.gov/trademarks/teas/index.jsp>. Applicants who filed their application online using the lower-fee TEAS RF application form must (1) continue to submit certain documents online using TEAS, including responses to Office actions (see [http://www.uspto.gov/trademarks/teas/required\\_tegas\\_filings.jsp](http://www.uspto.gov/trademarks/teas/required_tegas_filings.jsp) for a complete list of these documents); (2) accept correspondence from the USPTO via e-mail throughout the examination process; and (3) maintain a valid e-mail address. TEAS RF applicants who do not meet these three requirements must submit an additional processing fee of \$50 per international class of goods/services. However, in certain situations, authorizing an examiner's amendment by telephone will not incur this additional fee.
4. **KEEP YOUR ADDRESS CURRENT IN USPTO RECORDS:** We do not extend filing deadlines due to a failure to receive USPTO mailings/e-mailings. You must update the correspondence and/or owner's address if a postal address and/or e-mail address changes, using the form(s) available at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.
5. **WARNING ABOUT UNSOLICITED COMMUNICATIONS:** You may receive trademark-related communications from private companies not associated with the USPTO. These communications frequently display customer-specific information, including your USPTO serial number or registration number and owner name, and request fees for trademark-related services, such as monitoring, listings in international publications, and document filing. None of the companies offering these services are affiliated with the USPTO or any other federal agency. All official correspondence will be from the "United States Patent and Trademark Office" in Alexandria, VA,

and if by e-mail, specifically from the domain "@uspto.gov." Please consult the "Warning" page on the Trademarks section of the USPTO's website for further information about unsolicited communications and to view representative examples of them. For general information on filing and maintenance requirements for trademark applications and registrations, including fees required by law, please consult [www.uspto.gov](http://www.uspto.gov), contact the [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov) or telephone 1-800-786-9199.

6. **LEGAL EXAMINATION PROCESS:** Your application is now pending examination. In approximately 3 months, your application will be assigned to a USPTO examining attorney for review. The application cannot mature into a registration unless all legal requirements are met, and many applications never satisfy these requirements and therefore never register. The overall process can take up to 18 months.
7. **CHECK STATUS AND REVIEW DOCUMENTS OR YOUR APPLICATION MAY BE UNINTENTIONALLY ABANDONED:** You **must** check the status and review all documents associated with your application at least every 3-4 months using Trademark Status and Document Retrieval (TSDR), available at <http://tsdr.uspto.gov/>.

Promptly e-mail the [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov) or telephone 1-800-786-9199 (select option #1) if an Office action (letter from the USPTO) or notice has issued for your application that you did not receive or do not understand. Failure to respond timely to any Office action or notice may result in the abandonment of your application, requiring you to pay an additional fee to have your application revived even if you did not receive the Office action or notice.

8. **FILING ERRORS:** If you discover an error in the application data, you must file a Voluntary Amendment at <http://www.uspto.gov/trademarks/teas/miscellaneous.jsp>. Do **not** submit any proposed amendment to [TEAS@uspto.gov](mailto:TEAS@uspto.gov), because the TEAS technical support team may not make any data changes. Please wait approximately 7 days after the filing date of your application to submit a Voluntary Amendment in order to allow for initial upload of your application data into the USPTO database. The assigned examining attorney will determine the acceptability of any Voluntary Amendment during examination. Not all errors may be corrected. For example, if you submitted the wrong mark or if the proposed correction would be considered a material alteration to your original filing, it will not be accepted. In this situation, your only recourse would be to file a new application, with a new fee and no refund of your original filing fee.
9. **REQUEST FOR REFUND AND/OR CANCELLATION:** Since your application has already been assigned a serial number, please do not contact [TEAS@uspto.gov](mailto:TEAS@uspto.gov) to request a refund or to cancel the filing. We will only cancel the filing and refund the filing fee if the application does not meet minimum filing requirements. The fee is a processing fee that the USPTO does not refund, even if your mark does not proceed to registration.

In the limited situation where you inadvertently filed identical applications, one immediately after the other, because no confirmation of the first filing was received, please provide both serial numbers to the technical support team at [TEAS@uspto.gov](mailto:TEAS@uspto.gov).

10. **SelectUSA:** The United States represents the largest, most dynamic marketplace in the world and is an unparalleled location for business investment, innovation, and commercialization of new technologies. The U.S. offers tremendous resources and advantages for those who invest and manufacture goods here. Through SelectUSA, our nation works to promote and facilitate business investment. SelectUSA provides information assistance to the international investor community; serves as an ombudsman for existing and potential investors; advocates on behalf of U.S. cities, states, and regions competing for global investment; and counsels U.S. economic development organizations on investment attraction best practices. To learn more about why the United States is

the best country in the world to develop technology, manufacture products, deliver services, and grow your business, visit [SelectUSA.gov](http://SelectUSA.gov) or call +1-202-482-6800.

**SUMMARY OF APPLICATION DATA FOLLOWS:**

**APPLICATION DATA:** You have filed a **Trademark/Service Mark Application** for registration on the **Principal Register** using a **TEAS RF** application form.

The applicant, SOFlete, LLC, a limited liability company legally organized under the laws of North Carolina, having an address of  
105 Zapata Ln  
Chapel Hill, North Carolina 27517-9199  
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 025: Clothing, namely, shirts, t-shirts, long-sleeved shorts, thermal shirts, merino-based layer shirts, headwear, hats, baseball caps, knit hats, shorts, board shorts, pants, tactical pants, technical pants, spandex pants, yoga pants, denim pants, jackets, outer jackets, vests, outer vests, socks, underwear, athletic wear, belts, footwear, gloves, hooded sweat shirts, sweat shirts, sweat pants;  
Intent to Use: The applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the identified goods/services.

The applicant's current Attorney Information:

Devon E. White and John M. Fuscoe; J. Christopher Lynch of WYRICK ROBBINS YATES & PONTON LLP  
4101 LAKE BOONE TRAIL, SUITE 300  
RALEIGH, North Carolina 27607  
United States

The attorney docket/reference number is 027996.005.

The applicant's current Correspondence Information:

Devon E. White  
WYRICK ROBBINS YATES & PONTON LLP  
4101 LAKE BOONE TRAIL, SUITE 300  
RALEIGH, North Carolina 27607  
919-781-4000(phone)  
919-781-4865(fax)  
IP@WYRICK.COM (authorized)

**E-mail Authorization:** I authorize the USPTO to send e-mail correspondence concerning the application to the applicant or applicant's attorney at the e-mail address provided above. I understand that a valid e-mail address must be maintained and that the applicant or the applicant's attorney must file the relevant subsequent application-related submissions via the Trademark Electronic Application System (TEAS). Failure to do so will result in an additional processing fee of \$50 per international class of goods/services.

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

### **Declaration**

The signatory believes that: if the applicant is filing the application under 15 U.S.C. § 1051(a), the applicant is the owner of the trademark/service mark sought to be registered; the applicant is using the mark in commerce on or in connection with the goods/services in the application; the specimen(s) shows the mark as used on or in connection with the goods/services in the application; and/or if the applicant filed an application under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e), the applicant is entitled to use the mark in commerce; the applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the goods/services in the application. The signatory believes that to the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

### **Declaration Signature**

Signature: /DEW/ Date: 09/23/2016

Signatory's Name: DEVON E. WHITE

Signatory's Position: ATTORNEY OF RECORD, NC BAR MEMBER

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Thank you,

The TEAS support team

Fri Sep 23 11:11:06 EDT 2016

STAMP: USPTO/BAS-64.132.139.178-20160923111106950156-87181062-

550d2813906e8ff8bf2436268edcaa7bbd9d7b4ff74acac29f70d6b71f1464b2fb-CC-11034-

20160923110459663977

# EXHIBIT B

## Bronwyn A. Tucker

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**From:** TEAS@uspto.gov  
**Sent:** Friday, September 23, 2016 11:04 AM  
**To:** IP Practice  
**Subject:** 027996.007 Serial number 87181047: Received Your Trademark/Service Mark Application, Principal Register

1. **YOUR MARK:** DIE LIVING (Standard Characters, mark.jpg)  
The literal element of the mark consists of DIE LIVING.  
The mark consists of standard characters, without claim to any particular font, style, size, or color.
2. **YOUR SERIAL NUMBER:** We have received your U.S. Trademark Application and assigned serial number '87181047' to your submission. A summary of your application data is provided at the bottom of this message and serves as your official filing receipt. Please keep a copy of this information for your records. All correspondence concerning the application should reference your assigned serial number.

Please read all of the important information below. Not every mark is registrable with the USPTO and we do not refund the application filing fee(s) if a registration does not ultimately issue.

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5. **WARNING ABOUT UNSOLICITED COMMUNICATIONS:** You may receive trademark-related communications from private companies not associated with the USPTO. These communications frequently display customer-specific information, including your USPTO serial number or registration number and owner name, and request fees for trademark-related services, such as monitoring, listings in international publications, and document filing. None of the companies offering these services are affiliated with the USPTO or any other federal agency. All official correspondence will be from the "United States Patent and Trademark Office" in Alexandria, VA, and if by e-mail, specifically from the domain "@uspto.gov." Please consult the "Warning" page on the Trademarks section of the USPTO's website for further information about unsolicited communications and to view representative examples of them. For general information on filing and

maintenance requirements for trademark applications and registrations, including fees required by law, please consult [www.uspto.gov](http://www.uspto.gov), contact the [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov) or telephone 1-800-786-9199.

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**SUMMARY OF APPLICATION DATA FOLLOWS:**

**APPLICATION DATA:** You have filed a **Trademark/Service Mark Application** for registration on the **Principal Register** using a **TEAS RF** application form.

The applicant, SOFlete, LLC, a limited liability company legally organized under the laws of North Carolina, having an address of

105 Zapata Ln  
Chapel Hill, North Carolina 27517-9199  
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 025: Clothing, namely, shirts, t-shirts, long-sleeved shorts, thermal shirts, merino-based layer shirts, headwear, hats, baseball caps, knit hats, shorts, board shorts, pants, tactical pants, technical pants, spandex pants, yoga pants, denim pants, jackets, outer jackets, vests, outer vests, socks, underwear, athletic wear, belts, footwear, gloves, hooded sweat shirts, sweat shirts, sweat pants;  
Intent to Use: The applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the identified goods/services.

The applicant's current Attorney Information:

Devon E. White and John M. Fuscoe; J. Christopher Lynch of WYRICK ROBBINS YATES & PONTON LLP  
4101 LAKE BOONE TRAIL, SUITE 300  
RALEIGH, North Carolina 27607  
United States

The attorney docket/reference number is 027996.007.

The applicant's current Correspondence Information:

Devon E. White  
WYRICK ROBBINS YATES & PONTON LLP  
4101 LAKE BOONE TRAIL, SUITE 300  
RALEIGH, North Carolina 27607  
919-781-4000(phone)  
919-781-4865(fax)  
IP@WYRICK.COM (authorized)

**E-mail Authorization:** I authorize the USPTO to send e-mail correspondence concerning the application to the applicant or applicant's attorney at the e-mail address provided above. I understand that a valid e-mail address must be maintained and that the applicant or the applicant's attorney must file the relevant subsequent application-related submissions via the Trademark Electronic Application System (TEAS). Failure to do so will result in an additional processing fee of \$50 per international class of goods/services.

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

**Declaration**

The signatory believes that: if the applicant is filing the application under 15 U.S.C. § 1051(a), the applicant is the owner of the trademark/service mark sought to be registered; the applicant is using the mark in commerce on or in connection with the goods/services in the application; the specimen(s) shows the mark as used on or in connection with the goods/services in the application; and/or if the applicant filed an application under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e), the applicant is entitled to use the mark in commerce; the applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the goods/services in the application. The signatory believes that to the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

### **Declaration Signature**

Signature: /DEW/ Date: 09/23/2016

Signatory's Name: DEVON E. WHITE

Signatory's Position: ATTORNEY OF RECORD, NC BAR MEMBER

---

Thank you,

The TEAS support team

Fri Sep 23 11:04:22 EDT 2016

STAMP: USPTO/BAS-64.132.139.178-20160923110422818132-87181047-

55048509c48781f89ce87f914a376d4fc7424e517e8affc7cc9e5288fd1d6e-CC-10951-

20160923110019145930

# EXHIBIT C

## Bronwyn A. Tucker

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**From:** TEAS@uspto.gov  
**Sent:** Friday, September 23, 2016 10:59 AM  
**To:** IP Practice  
**Subject:** 027996.008 Serial number 87181030: Received Your Trademark/Service Mark Application, Principal Register

1. **YOUR MARK:** DIE LIVING (Standard Characters, mark.jpg)  
The literal element of the mark consists of DIE LIVING.  
The mark consists of standard characters, without claim to any particular font, style, size, or color.
2. **YOUR SERIAL NUMBER:** We have received your U.S. Trademark Application and assigned serial number '87181030' to your submission. A summary of your application data is provided at the bottom of this message and serves as your official filing receipt. Please keep a copy of this information for your records. All correspondence concerning the application should reference your assigned serial number.

Please read all of the important information below. Not every mark is registrable with the USPTO and we do not refund the application filing fee(s) if a registration does not ultimately issue.

3. **RECEIVING E-MAIL COMMUNICATIONS/FILING DOCUMENTS ON-LINE:** Because you have authorized receipt of correspondence by e-mail, please make sure that your server will accept USPTO e-mail and not treat it as SPAM. If you must submit correspondence to us, please use the Trademark Electronic Application System (TEAS) forms, available at <http://www.uspto.gov/trademarks/teas/index.jsp>. Applicants who filed their application online using the lower-fee TEAS RF application form must (1) continue to submit certain documents online using TEAS, including responses to Office actions (see [http://www.uspto.gov/trademarks/teas/required\\_tegas\\_filings.jsp](http://www.uspto.gov/trademarks/teas/required_tegas_filings.jsp) for a complete list of these documents); (2) accept correspondence from the USPTO via e-mail throughout the examination process; and (3) maintain a valid e-mail address. TEAS RF applicants who do not meet these three requirements must submit an additional processing fee of \$50 per international class of goods/services. However, in certain situations, authorizing an examiner's amendment by telephone will not incur this additional fee.
4. **KEEP YOUR ADDRESS CURRENT IN USPTO RECORDS:** We do not extend filing deadlines due to a failure to receive USPTO mailings/e-mailings. You must update the correspondence and/or owner's address if a postal address and/or e-mail address changes, using the form(s) available at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.
5. **WARNING ABOUT UNSOLICITED COMMUNICATIONS:** You may receive trademark-related communications from private companies not associated with the USPTO. These communications frequently display customer-specific information, including your USPTO serial number or registration number and owner name, and request fees for trademark-related services, such as monitoring, listings in international publications, and document filing. None of the companies offering these services are affiliated with the USPTO or any other federal agency. All official correspondence will be from the "United States Patent and Trademark Office" in Alexandria, VA, and if by e-mail, specifically from the domain "@uspto.gov." Please consult the "Warning" page on the Trademarks section of the USPTO's website for further information about unsolicited communications and to view representative examples of them. For general information on filing and

maintenance requirements for trademark applications and registrations, including fees required by law, please consult [www.uspto.gov](http://www.uspto.gov), contact the [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov) or telephone 1-800-786-9199.

6. **LEGAL EXAMINATION PROCESS:** Your application is now pending examination. In approximately 3 months, your application will be assigned to a USPTO examining attorney for review. The application cannot mature into a registration unless all legal requirements are met, and many applications never satisfy these requirements and therefore never register. The overall process can take up to 18 months.
7. **CHECK STATUS AND REVIEW DOCUMENTS OR YOUR APPLICATION MAY BE UNINTENTIONALLY ABANDONED:** You **must** check the status and review all documents associated with your application at least every 3-4 months using Trademark Status and Document Retrieval (TSDR), available at <http://tsdr.uspto.gov/>.

Promptly e-mail the [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov) or telephone 1-800-786-9199 (select option #1) if an Office action (letter from the USPTO) or notice has issued for your application that you did not receive or do not understand. Failure to respond timely to any Office action or notice may result in the abandonment of your application, requiring you to pay an additional fee to have your application revived even if you did not receive the Office action or notice.

8. **FILING ERRORS:** If you discover an error in the application data, you must file a Voluntary Amendment at <http://www.uspto.gov/trademarks/teas/miscellaneous.jsp>. Do **not** submit any proposed amendment to [TEAS@uspto.gov](mailto:TEAS@uspto.gov), because the TEAS technical support team may not make any data changes. Please wait approximately 7 days after the filing date of your application to submit a Voluntary Amendment in order to allow for initial upload of your application data into the USPTO database. The assigned examining attorney will determine the acceptability of any Voluntary Amendment during examination. Not all errors may be corrected. For example, if you submitted the wrong mark or if the proposed correction would be considered a material alteration to your original filing, it will not be accepted. In this situation, your only recourse would be to file a new application, with a new fee and no refund of your original filing fee.
9. **REQUEST FOR REFUND AND/OR CANCELLATION:** Since your application has already been assigned a serial number, please do not contact [TEAS@uspto.gov](mailto:TEAS@uspto.gov) to request a refund or to cancel the filing. We will only cancel the filing and refund the filing fee if the application does not meet minimum filing requirements. The fee is a processing fee that the USPTO does not refund, even if your mark does not proceed to registration.

In the limited situation where you inadvertently filed identical applications, one immediately after the other, because no confirmation of the first filing was received, please provide both serial numbers to the technical support team at [TEAS@uspto.gov](mailto:TEAS@uspto.gov).

10. **SelectUSA:** The United States represents the largest, most dynamic marketplace in the world and is an unparalleled location for business investment, innovation, and commercialization of new technologies. The U.S. offers tremendous resources and advantages for those who invest and manufacture goods here. Through SelectUSA, our nation works to promote and facilitate business investment. SelectUSA provides information assistance to the international investor community; serves as an ombudsman for existing and potential investors; advocates on behalf of U.S. cities, states, and regions competing for global investment; and counsels U.S. economic development organizations on investment attraction best practices. To learn more about why the United States is the best country in the world to develop technology, manufacture products, deliver services, and grow your business, visit [SelectUSA.gov](http://SelectUSA.gov) or call +1-202-482-6800.

**SUMMARY OF APPLICATION DATA FOLLOWS:**

**APPLICATION DATA:** You have filed a **Trademark/Service Mark Application** for registration on the **Principal Register** using a **TEAS RF** application form.

The applicant, SOFlete, LLC, a limited liability company legally organized under the laws of North Carolina, having an address of

105 Zapata Ln  
Chapel Hill, North Carolina 27517-9199  
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 028: Weight lifting equipment, namely, weight lifting belts, knee wraps, wrist wraps, weight lifting gloves, weight lifting shoes, barbells, weight plates, kettle balls, sandbags, weight vests, mouth guards, medicine balls, sport balls, slam balls, wall balls, knee pads, wrist wraps, resistance bands; eyewear for athletic purposes; protective eyewear; Bags specially adapted to carry yoga equipment; Bags specially adapted to carry weightlifting equipment; Sports equipment for boxing and martial arts, namely, boxing gloves, mixed martial arts gloves, punching mitts, and shin guards; manually-operated exercise equipment for physical fitness purposes

Intent to Use: The applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the identified goods/services.

The applicant's current Attorney Information:

Devon E. White and John M. Fuscoe; J. Christopher Lynch of WYRICK ROBBINS YATES & PONTON LLP

4101 LAKE BOONE TRAIL, SUITE 300  
RALEIGH, North Carolina 27607  
United States

The attorney docket/reference number is 027996.008.

The applicant's current Correspondence Information:

Devon E. White  
WYRICK ROBBINS YATES & PONTON LLP  
4101 LAKE BOONE TRAIL, SUITE 300  
RALEIGH, North Carolina 27607  
919-781-4000(phone)  
919-781-4865(fax)  
IP@WYRICK.COM (authorized)

**E-mail Authorization:** I authorize the USPTO to send e-mail correspondence concerning the application to the applicant or applicant's attorney at the e-mail address provided above. I understand that a valid e-mail address must be maintained and that the applicant or the applicant's attorney must file the relevant subsequent application-related submissions via the Trademark Electronic Application System (TEAS). Failure to do so will result in an additional processing fee of \$50 per international class of goods/services.

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

### **Declaration**

The signatory believes that: if the applicant is filing the application under 15 U.S.C. § 1051(a), the applicant is the owner of the trademark/service mark sought to be registered; the applicant is using the mark in commerce on or in connection with the goods/services in the application; the specimen(s) shows the mark as used on or in connection with the goods/services in the application; and/or if the applicant filed an application under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e), the applicant is entitled to use the mark in commerce; the applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the goods/services in the application. The signatory believes that to the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

### **Declaration Signature**

Signature: /DEW/ Date: 09/23/2016

Signatory's Name: DEVON E. WHITE

Signatory's Position: ATTORNEY OF RECORD, NC BAR MEMBER

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Thank you,

The TEAS support team

Fri Sep 23 10:59:16 EDT 2016

STAMP: USPTO/BAS-64.132.139.178-20160923105916237741-87181030-

550b571e7cf20aee220e742ec43b99666836ff39264c485eaf7a1f2c36445de9-CC-10887-

20160923104734554884

# EXHIBIT D

## Trademark/Service Mark Application, Principal Register

Serial Number: 85283148

Filing Date: 03/31/2011

The table below presents the data as entered.

Input Field	Entered
<b>SERIAL NUMBER</b>	85283148
<b>MARK INFORMATION</b>	
<b>*MARK</b>	<a href="#">DIE LIVING</a>
<b>STANDARD CHARACTERS</b>	YES
<b>USPTO-GENERATED IMAGE</b>	YES
<b>LITERAL ELEMENT</b>	DIE LIVING
<b>MARK STATEMENT</b>	The mark consists of standard characters, without claim to any particular font, style, size, or color.
<b>REGISTER</b>	Principal
<b>APPLICANT INFORMATION</b>	
<b>*OWNER OF MARK</b>	Ojdanic, Goran
<b>*STREET</b>	54 Pomander Walk
<b>*CITY</b>	Ridgewood
<b>*STATE (Required for U.S. applicants)</b>	New Jersey
<b>*COUNTRY</b>	United States
<b>*ZIP/POSTAL CODE (Required for U.S. applicants only)</b>	07450
<b>PHONE</b>	(917) 620-3108
<b>EMAIL ADDRESS</b>	Goran.Ojdanic@gmail.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>LEGAL ENTITY INFORMATION</b>	
<b>TYPE</b>	individual
<b>COUNTRY OF CITIZENSHIP</b>	United States
<b>GOODS AND/OR SERVICES AND BASIS INFORMATION</b>	
<b>INTERNATIONAL CLASS</b>	
<b>*IDENTIFICATION</b>	Shirts, t-shirts, shorts, socks, pants, gloves, jackets, jerseys, underwear, bras, panties, sweat suits, swimsuits, and board shorts
<b>FILING BASIS</b>	SECTION 1(a)
<b>FIRST USE ANYWHERE DATE</b>	At least as early as 04/01/2010
<b>FIRST USE IN COMMERCE DATE</b>	At least as early as 04/01/2010

<b>SPECIMEN FILE NAME(S)</b>	<a href="#">\\TICRS\EXPORT11\IMAGEOUT11\852\831\85283148\xml1\ APP0003.JPG</a>
	<a href="#">\\TICRS\EXPORT11\IMAGEOUT11\852\831\85283148\xml1\ APP0004.JPG</a>
<b>SPECIMEN DESCRIPTION</b>	digital images of hat and clothing currently used in commerce
<b>CORRESPONDENCE INFORMATION</b>	
<b>NAME</b>	Ojdanic, Goran
<b>STREET</b>	54 Pomander Walk
<b>CITY</b>	Ridgewood
<b>STATE</b>	New Jersey
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	07450
<b>PHONE</b>	(917) 620-3108
<b>EMAIL ADDRESS</b>	Goran.Ojdanic@gmail.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>FEE INFORMATION</b>	
<b>NUMBER OF CLASSES</b>	1
<b>FEE PER CLASS</b>	325
<b>*TOTAL FEE DUE</b>	325
<b>*TOTAL FEE PAID</b>	325
<b>SIGNATURE INFORMATION</b>	
<b>SIGNATURE</b>	NOT PROVIDED
<b>SIGNATORY'S NAME</b>	NOT PROVIDED
<b>SIGNATORY'S POSITION</b>	NOT PROVIDED
<b>DATE SIGNED</b>	NOT PROVIDED

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## Trademark/Service Mark Application, Principal Register

**Serial Number: 85283148**

**Filing Date: 03/31/2011**

### To the Commissioner for Trademarks:

**MARK:** DIE LIVING (Standard Characters, see [mark](#))

The literal element of the mark consists of DIE LIVING.

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

The applicant, Goran Ojdanic, a citizen of United States, having an address of  
54 Pomander Walk  
Ridgewood, New Jersey 07450  
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 \_\_\_\_\_: Shirts, t-shirts, shorts, socks, pants, gloves, jackets, jerseys, underwear, bras, panties, sweat suits, swimsuits, and board shorts

In International Class \_\_\_\_\_, the mark was first used at least as early as 04/01/2010, and first used in commerce at least as early as 04/01/2010, 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) digital images of hat and clothing currently used in commerce.

[Specimen File1](#)

[Specimen File2](#)

The applicant's current Correspondence Information:

Ojdanic, Goran  
54 Pomander Walk  
Ridgewood, New Jersey 07450  
(917) 620-3108(phone)  
Goran.Ojdanic@gmail.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

RAM Sale Number: 6264  
RAM Accounting Date: 04/01/2011

Serial Number: 85283148  
Internet Transmission Date: Thu Mar 31 19:58:26 EDT 2011  
TEAS Stamp: USPTO/BAS-XXX.XX.XXX.X-20110331195826212  
683-85283148-4803b526f4d760426dbc1bff589  
6c8f30-DA-6264-20110331195239392363

DIE LIVING

DIE-LIVING.COM



**DUCATI** 

**DIE LIVING**

DIE-LIVING.COM



**DUCATI** 

**DIE LIVING**

**To:** Ojdanic, Goran ([Goran.Ojdanic@gmail.com](mailto:Goran.Ojdanic@gmail.com))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 85283148 - DIE LIVING - N/A  
**Sent:** 6/27/2011 1:06:49 PM  
**Sent As:** ECOM113@USPTO.GOV  
**Attachments:**

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

**APPLICATION SERIAL NO.** 85283148

**MARK:** DIE LIVING

**\*85283148\***

**CORRESPONDENT ADDRESS:**  
OJDANIC, GORAN  
54 POMANDER WALK  
RIDGEWOOD, NJ 07450-3711

**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:** Ojdanic, Goran

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

**CORRESPONDENT E-MAIL ADDRESS:**  
[Goran.Ojdanic@gmail.com](mailto:Goran.Ojdanic@gmail.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: 6/27/2011**

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

**Search Results**

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

However, applicant must respond to the following refusals and/or requirements.

**Summary of Issues**

- Ornamental refusal;
- Unsigned application.

**Ornamental Refusal**

Registration is refused because the applied-for mark, as used on the specimen of record, is merely a decorative or ornamental feature of applicant's clothing; it does not function as a trademark to identify the source of applicant's clothing and distinguish applicant's clothing from that of others. Trademark Act Sections 1, 2, and 45, 15 U.S.C. §§1051-1052, 1127; *see* TMEP §§904.07(b), 1202.03 *et seq.*

When evaluating a mark that appears to be ornamental, "the size, location, dominance and significance of the alleged mark as applied to the

goods” are all relevant factors to be considered in determining whether it also functions as a trademark. *E.g., In re Pro-Line Corp.*, 28 USPQ2d 1141, 1142 (TTAB 1993); *In re Dimitri’s Inc.*, 9 USPQ2d 1666, 1667 (TTAB 1988); *In re Astro-Gods Inc.*, 223 USPQ 621, 623 (TTAB 1984); *see* TMEP §1202.03(a). Although there is no prescribed method or place for affixation of a mark to goods, the location of a mark on the goods “is part of the environment in which the [mark] is perceived by the public and . . . may influence how the [mark] is perceived.” *In re Tilcon Warren Inc.*, 221 USPQ 86, 88 (TTAB 1984); *see In re Paramount Pictures Corp.*, 213 USPQ 1111, 1115 (TTAB 1982).

With respect to clothing, consumers have been conditioned to recognize small designs or discrete wording as trademarks if placed, for example, on the pocket or breast area of a shirt; however, consumers typically do not perceive larger designs or slogans as trademarks, especially when such matter is displayed in a different location on the clothing. *See* TMEP §1202.03(a), (b), (f)(i), (f)(ii); *see, e.g., In re Pro-Line Corp.*, 28 USPQ2d at 1142 (finding “BLACKER THE COLLEGE SWEETER THE KNOWLEDGE,” centered in large letters across most of the upper half of a shirt, to be a primarily ornamental slogan that is not likely to be perceived as source indicator); *In re Dimitri’s Inc.*, 9 USPQ2d at 1667-68 (finding “SUMO,” used in connection with stylized depictions of sumo wrestlers and displayed in large lettering across the top-center portion of t-shirts and caps, to be an ornamental feature of the goods that does not function as a trademark).

In this case, the submitted specimen shows the applied-for mark, DIE LIVING, appearing directly on the rear portion of the hat and the front of what appears to be a t-shirt, where ornamental elements may appear on such goods. *See* TMEP §1202.03(a)(b). Furthermore, the mark is displayed in a relatively large size on the clothing, such that it dominates the overall appearance of the goods. Lastly, the applied-for mark appears to be a slogan with no particular trademark significance.

Therefore, consumers would view the applied-for mark as a decorative or ornamental feature of the goods, rather than as a trademark to identify the source of applicant’s goods and distinguish applicant’s goods from those of others.

#### *Ornamental Refusal Response Options*

Applicant may respond to the stated ornamental refusal by satisfying one of the following, as appropriate:

- (1) Claiming **acquired distinctiveness** under Trademark Act Section 2(f) by submitting **evidence** that the applied-for mark has become distinctive of applicant’s goods in commerce. Trademark Act Section 2(f), 15 U.S.C. §1052(f). Evidence may consist of examples of advertising and promotional materials that specifically promote, as a trademark, the mark for which registration is sought; dollar figures for advertising devoted to such promotion; dealer and consumer statements of recognition of the applied-for mark as a trademark; and any other evidence that establishes recognition of the applied-for mark as a trademark for the goods. *See* 37 C.F.R. §2.41(a); TMEP §§1202.03(d), 1212.06 *et seq.*;
- (2) Submitting evidence that the applied-for mark is an **indicator of secondary source** or sponsorship for the identified goods. *Univ. Book Store v. Univ. of Wis. Bd. of Regents*, 33 USPQ2d 1385, 1405 (TTAB 1994); *In re Olin Corp.*, 181 USPQ 182, 182 (TTAB 1973). That is, applicant may submit evidence showing that the applied-for mark would be recognized as a trademark through applicant’s use of the mark with goods and/or services other than those being refused as ornamental. *In re The Original Red Plate Co.*, 223 USPQ 836, 837 (TTAB 1984). Applicant must establish that, as a result of this use in connection with other goods and/or services, the public would recognize applicant as the secondary source of, or sponsor for, the identified goods. *See* TMEP §1202.03(c);
- (3) Amending the application to seek registration on the **Supplemental Register**. Trademark Act Section 23, 15 U.S.C. §1091; *see* 37 C.F.R. §§2.47, 2.75(a); TMEP §§801.02(b), 816.; or
- (4) Submitting a **substitute specimen** that shows non-ornamental trademark use, and 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 amendment to the dates of use, applicant must also verify the amended dates. 37 C.F.R. §2.71(c); TMEP §904.05.

If applicant cannot satisfy one of the above, applicant may amend the application from a use in commerce basis under Trademark Act Section 1(a) to an intent to use basis under Section 1(b), and the refusal will be withdrawn. *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. If the same specimen is submitted with an allegation of use, the same refusal will issue.

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 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).

#### **Unsigned Application—Signed Verification Required**

The application was not signed and verified, which are application requirements. *See* 15 U.S.C. §1051(a); 37 C.F.R. §§2.33(a)-(b)(1), 2.34(a)(1)(i). Therefore, applicant must verify the statements specified further below in a signed affidavit or declaration under 37 C.F.R. §2.20. *See* 15 U.S.C. §1051(a)(3); 37 C.F.R. §§2.33(a)-(b)(1), (c), 2.193(e)(1); TMEP §§804.02, 806.01(a).

**If applicant responds to this Office action online via the Trademark Electronic Application System (TEAS)**, applicant may satisfy this requirement by answering “yes” to the TEAS response form wizard question relating to submitting a “signed declaration,” and following the instructions within the form for signing. *See* 37 C.F.R. §§2.33(a)-(b)(1), (c), 2.193(a), (c)-(d), (e)(1); TMEP §§611.01(c), 804.01(b).

**If applicant responds to this Office action on paper, via regular mail**, applicant may satisfy this requirement by providing the following statements and declaration at the end of the response, personally signed and dated by a person authorized under 37 C.F.R. §2.193(e)(1). *See* 37 C.F.R. §§2.20, 2.33(a)-(b)(1), (c), 2.193(a), (d); TMEP §§611.01(b), 804.01(b).

STATEMENTS: The undersigned 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; the mark is in use in commerce and 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; the specimen shows the mark as used on or in connection with the goods or services listed in the application; the facts set forth in the application are true and accurate; and to the best of the undersigned’s 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.

DECLARATION: The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print or Type Name and Position)

\_\_\_\_\_  
(Date)

### **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).

Applicant may wish to hire an attorney to assist in prosecuting this application because of the legal technicalities involved. The Office, however, cannot aid in the selection of an attorney. 37 C.F.R. §2.11. Applicant may wish to consult a local telephone directory for a listing of attorneys specializing in trademark or intellectual property law, or seek guidance from a local bar association attorney-referral service.

### **Assistance**

If applicant has questions about the application or this Office action, please contact the assigned trademark examining attorney at the telephone number below.

/April A. Hesik/  
Examining Attorney  
Law Office 113  
(571) 272-4735  
april.hesik@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 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 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>.

**To:** Ojdanic, Goran ([Goran.Ojdanic@gmail.com](mailto:Goran.Ojdanic@gmail.com))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 85283148 - DIE LIVING - N/A  
**Sent:** 6/27/2011 1:06:54 PM  
**Sent As:** ECOM113@USPTO.GOV  
**Attachments:**

**IMPORTANT NOTICE REGARDING YOUR TRADEMARK APPLICATION**

Your trademark application (Serial No. 85283148) has been reviewed. The examining attorney assigned by the United States Patent and Trademark Office (“USPTO”) has written a letter (an “Office Action”) on **6/27/2011** to which you must respond. Please follow these steps:

1. **Read** the Office letter by clicking on this [link](#) OR go to <http://tportal.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 **6/27/2011** (*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](mailto:TDR@uspto.gov).

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

/April A. Hesik/  
Examining Attorney  
Law Office 113  
(571) 272-4735  
[april.hesik@uspto.gov](mailto:april.hesik@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](#).

# EXHIBIT E

## Response to Office Action

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

Input Field	Entered
<b>SERIAL NUMBER</b>	85283148
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 113
<b>MARK SECTION</b>	
<b>MARK</b>	http://tess2.uspto.gov/ImageAgent/ImageAgentProxy?getImage=85283148
<b>LITERAL ELEMENT</b>	DIE LIVING
<b>STANDARD CHARACTERS</b>	YES
<b>USPTO-GENERATED IMAGE</b>	YES
<b>MARK STATEMENT</b>	The mark consists of standard characters, without claim to any particular font style, size or color.
<b>GOODS AND/OR SERVICES SECTION (current)</b>	
<b>INTERNATIONAL CLASS</b>	025
<b>DESCRIPTION</b>	
Shirts, t-shirts, shorts, socks, pants, gloves, jackets, jerseys, underwear, bras, panties, sweat suits, swimsuits, and board shorts	
<b>FILING BASIS</b>	Section 1(a)
<b>FIRST USE ANYWHERE DATE</b>	At least as early as 04/01/2010
<b>FIRST USE IN COMMERCE DATE</b>	At least as early as 04/01/2010
<b>GOODS AND/OR SERVICES SECTION (proposed)</b>	
<b>INTERNATIONAL CLASS</b>	025
<b>DESCRIPTION</b>	
Shirts, t-shirts, shorts, socks, pants, gloves, jackets, jerseys, underwear, bras, panties, sweat suits, swimsuits, and board shorts	
<b>FILING BASIS</b>	Section 1(a)
<b>FIRST USE ANYWHERE DATE</b>	At least as early as 04/01/2010
<b>FIRST USE IN COMMERCE DATE</b>	At least as early as 04/01/2010
<b>STATEMENT TYPE</b>	"The substitute (or new, or originally submitted, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application" [for an application based on Section 1(a), Use in Commerce] OR "The substitute (or new, or originally submitted, if appropriate) specimen(s) was/were in use in commerce prior either to the filing of the Amendment to Allege Use or expiration of the filing deadline for filing a Statement of Use" [for an application based on Section 1(b) Intent-to-Use]. OR "The attached specimen is a true copy of the specimen that was originally submitted with the application, amendment to allege use, or statement of use" [for an illegible specimen].
<b>SPECIMEN FILE NAME(S)</b>	<a href="#">\\TICRS\EXPORT1\IMAGEOUT 11\852\831\85283148\xml4\ ROA0002.JPG</a>
	<a href="#">\\TICRS\EXPORT1\IMAGEOUT 11\852\831\85283148\xml4\ ROA0003.JPG</a>
	<a href="#">\\TICRS\EXPORT1\IMAGEOUT 11\852\831\85283148\xml4\ ROA0004.JPG</a>

<b>SPECIMEN DESCRIPTION</b>	A hang tag and a shirt tag from one of our DIE-LIVING sweaters is included. The sweaters are 100% wool and whole sale for \$25. This was taken at a whole sale event in New York City.
<b>SIGNATURE SECTION</b>	
<b>DECLARATION SIGNATURE</b>	/Goran Ojdanic/
<b>SIGNATORY'S NAME</b>	Goran Ojdanic
<b>SIGNATORY'S POSITION</b>	Owner
<b>SIGNATORY'S PHONE NUMBER</b>	917-620-3108
<b>DATE SIGNED</b>	12/27/2011
<b>RESPONSE SIGNATURE</b>	/Goran Ojdanic/
<b>SIGNATORY'S NAME</b>	Goran Ojdanic
<b>SIGNATORY'S POSITION</b>	Owner
<b>SIGNATORY'S PHONE NUMBER</b>	917-620-3108
<b>DATE SIGNED</b>	12/27/2011
<b>AUTHORIZED SIGNATORY</b>	YES
<b>FILING INFORMATION SECTION</b>	
<b>SUBMIT DATE</b>	Tue Dec 27 11:28:38 EST 2011
<b>TEAS STAMP</b>	USPTO/ROA-XX.XX.XX.XX-201 11227112838538695-8528314 8-490f27062dd55b4becebc29 e0f571dd83e-N/A-N/A-20111 227110527966349

## Response to Office Action

### To the Commissioner for Trademarks:

Application serial no. **85283148** DIE LIVING(Standard Characters, see <http://tess2.uspto.gov/ImageAgent/ImageAgentProxy?getImage=85283148>) has been amended as follows:

#### CLASSIFICATION AND LISTING OF GOODS/SERVICES

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

**Current:** Class 025 for Shirts, t-shirts, shorts, socks, pants, gloves, jackets, jerseys, underwear, bras, panties, sweat suits, swimsuits, and board shorts

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 04/01/2010 and first used in commerce at least as early as 04/01/2010 , and is now in use in such commerce.

**Proposed:** Class 025 for Shirts, t-shirts, shorts, socks, pants, gloves, jackets, jerseys, underwear, bras, panties, sweat suits, swimsuits, and board shorts

**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 04/01/2010 and first used in commerce at least as early as 04/01/2010 , and is now in use in such commerce.

Applicant hereby submits one(or more) specimen(s) for Class 025 . The specimen(s) submitted consists of A hang tag and a shirt tag from one of

our DIE-LIVING sweaters is included. The sweaters are 100% wool and whole sale for \$25. This was taken at a whole sale event in New York City. .

**"The substitute (or new, or originally submitted, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application" [for an application based on Section 1(a), Use in Commerce] OR "The substitute (or new, or originally submitted, if appropriate) specimen(s) was/were in use in commerce prior either to the filing of the Amendment to Allege Use or expiration of the filing deadline for filing a Statement of Use" [for an application based on Section 1(b) Intent-to-Use]. OR "The attached specimen is a true copy of the specimen that was originally submitted with the application, amendment to allege use, or statement of use"** [for an illegible specimen]. [Specimen File1](#)

[Specimen File2](#)

[Specimen File3](#)

## **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: /Goran Ojdanic/ Date: 12/27/2011

Signatory's Name: Goran Ojdanic

Signatory's Position: Owner

Signatory's Phone Number: 917-620-3108

### **Response Signature**

Signature: /Goran Ojdanic/ Date: 12/27/2011

Signatory's Name: Goran Ojdanic

Signatory's Position: Owner

Signatory's Phone Number: 917-620-3108

The signatory has confirmed that he/she is not represented by either an authorized attorney or Canadian attorney/agent, and that he/she is either (1) the applicant or (2) a person(s) with legal authority to bind the applicant; and if an authorized U.S. attorney or Canadian attorney/agent previously represented him/her in this matter, either he/she has filed a signed revocation of power of attorney with the USPTO or the USPTO has granted the request of his/her prior representative to withdraw.

Serial Number: 85283148

Internet Transmission Date: Tue Dec 27 11:28:38 EST 2011

TEAS Stamp: USPTO/ROA-XX.XX.XX.XX-201112271128385386

95-85283148-490f27062dd55b4becebc29e0f57

1dd83e-N/A-N/A-20111227110527966349











