

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

In re the Application of:)
Musculoskeletal Management Systems, LLC)
Serial No.: 76/491893)
Filing Date: February 21, 2003)
Mark: "HUMAN MOTION INSTITUTE")
Atty. File No.: 5049-1)

T.M. Law Office: 112
T.M. Examiner: Gina Hayes

REQUEST FOR REINSTATE IMPROPERLY
ABANDONED APPLICATION

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

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO COMMISSIONER FOR TRADEMARKS, P. O. BOX 1451, ALEXANDRIA, VIRGINIA 22313-1451 ON 2/28/05.

SHERIDAN BOSS P.C.
BY: *Bernie B. Sullivan*

Dear Commissioner:

In response to the Notice of Abandonment dated February 14, 2005, Applicant respectfully requests reinstatement of this Application.

The Notice of Abandonment indicates that the Application was abandoned on February 14, 2005 because no Response was received by the Patent and Trademark Office within the statutory six-month period. However, Applicant submits that Request for Reconsideration and Notice of Appeal was timely filed on January 18, 2005 and that the Application should not be abandoned.

The Applicant timely filed a Request for Reconsideration and Notice of Appeal (copies enclosed) to the Final Office Action dated July 16, 2004 on January 18, 2005, under the Certificate of Mailing procedures, TMEP §702.03. The deadline for response was January 16, 2005, however, the filings made on January 18, 2005, were timely because January 16 was a Sunday and January 17 was Martin Luther King Day. As required under §1112.05 of the TMEP, the Applicant respectfully submits that the Notice of Appeal, Request for Reconsideration, Certificate of Mailing on the Request for Reconsideration, and the return postcard verifying receipt of the Request for Reconsideration and Notice of Appeal by the Trademark Office adequately verify the Applicant's timely response to the Final Office Action dated July 16, 2004.




MEX

The Applicant believes that the present Application is now in condition for reinstatement and requests favorable consideration of the same. No fee should be due since the abandonment was an error of the Trademark Office.

Respectfully submitted,

SHERIDAN ROSS P.C.

Date: 2/28/05

By: 
Sabrina C. Stavish
1560 Broadway, Suite 1200
Denver, Colorado 80202-5141
Phone: (303) 863-9700
Facsimile: (303) 863-0223

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Musculoskeletal Management Systems, LLC)
Serial No.: 76/491893)
Filing Date: February 21, 2003)
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Atty. File No.: 5049-1)

T.M. Law Office: 112
T.M. Examiner: Gina Hayes

REQUEST FOR RECONSIDERATION

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

CERTIFICATE OF MAILING
I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO COMMISSIONER FOR TRADEMARKS, P. O. BOX 1451, ALEXANDRIA, VIRGINIA 22313-1451 ON <u>1/18/05</u> .
SHERIDAN ROSS P. C.
BY: <u>Bonnie Ludlow</u>

Dear Commissioner:

In response to the Office Action having a mailing date of July 16, 2004, Applicant requests for reconsideration of the refusal of registration. The Examining Attorney has made final the refusal of registration of the mark HUMAN MOTION INSTITUTE. While Applicant did in fact disclaim the words "HUMAN MOTION INSTITUTE" for services in its prior Registration No. 2,574,102, Applicant believes that at this time the mark has become distinctive based on actual use of the mark for almost five years. Specifically, the mark has been used in commerce since February 8, 2000. At the time of filing this response, the mark has been in use for almost five years and it is likely that at the time this Request for Reconsideration is reviewed, the mark will have acquired distinctiveness based on substantially exclusive and continuous use for five years.

Since this response is being filed after a Final Office Action, Applicant has also filed a Notice of Appeal. In sum, Applicant requests that the application be amended to seek registration under §2(f) based on the enclosed Declaration.

Respectfully submitted,

SHERIDAN ROSS P.C.

Date: 1/18/05

By: Sabrina C. Stavish

Sabrina C. Stavish
1560 Broadway, Suite 1200
Denver, Colorado 80202-5141
Phone: (303) 863-9700
Facsimile: (303) 863-0223

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:)
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Musculoskeletal Management Systems, LLC)
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Serial No.: 76/491893)
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Mark: HUMAN MOTION INSTITUTE)
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Atty. File No.: 5049-1)

T.M. Law Office: Gina Hayes
T.M. Examiner: 112

DECLARATION

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

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SHERIDAN ROSS P. C.
BY: <u>Brian Shivler</u>

Dear Commissioner:

I, Brian Shivler, declare that I am the Presiden of the Applicant corporation and am authorized to make this Declaration.

It is my belief that the mark "HUMAN MOTION INSTITUTE" is distinctive, as applied to Applicant's services, by reason of substantially exclusive and continuous use in commerce for almost five (5) years immediately preceding the execution of this Declaration.

Applicant has been using said mark in commerce since February 8, 2000.

All statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and, further, that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or document or any registration resulting therefrom.

MUSCULOSKELETAL MANAGEMENT SYSTEMS, LLC

By: Brian Shivler

Print Name: BRIAN SHIVLER

Title: PRESIDENT

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

In re the Application of:)
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Musculoskeletal Management Systems, LLO)
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Serial No.: 76/491893)
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Filing Date: February 21, 2003)
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Mark: "HUMAN MOTION INSTITUTE")
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Atty. File No.: 5049-1)

T.M. Law Office: 112
T.M. Examiner: Gina Hayes

NOTICE OF APPEAL

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

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<i>1/18/05.</i>
BY: <i>Bonnie Ludlow</i> SHERIDAN ROSS P. C.

Dear Commissioner:

Applicant, hereby appeals to the Trademark Trial and Appeal Board from the final rejections of registration of the above-identified mark by the Examiner dated July 16, 2004. An appeal fee of \$300.00 is attached hereto. Please credit any overpayment or debit any underpayment to our Deposit Account No. 19-1970.

Applicant has also filed a Request for Reconsideration.

Respectfully submitted,

SHERIDAN ROSS P.C.

Date: 1/18/05

By: *Sabrina C. Stavish*
Sabrina C. Stavish
1560 Broadway, Suite 1200
Denver, Colorado 80202-5141
Phone: (303) 863-9700
Facsimile: (303) 863-0223

SHERIDAN ROSS P.C.
 PROFESSIONAL ACCOUNT
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 1560 BROADWAY, SUITE 1200
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 (303) 863-9700

WELLS FARGO BANK, N.A.
 DENVER
 DENVER, CO 80274
 23-7-1020

23863

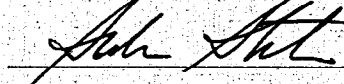
DATE: 01/18/05 CHECK NO.: 23863 CHECK AMOUNT: *\$300.00*

THREE HUNDRED AND 00/100 DOLLARS

PAY TO THE ORDER OF COMMISSIONER OF PATENTS AND TRADEMARKS

TO THE ORDER OF

U.S. DOLLARS
 VOID AFTER 180 DAYS
 SHERIDAN ROSS AUTHORIZED SIGNATURE



⑈023863⑈ ⑆102000076⑆ 2016571796⑈

SHERIDAN ROSS

VENDOR NO.

VENDOR NAME

23863

TRANSACTION DATE	REFERENCE	GROSS AMOUNT	DEDUCTION	NET AMOUNT
01/18/05	OPER-BBL	Notice of Appeal Filing Fee 5049-1	1122000	300.00

CHECK DATE	CHECK NO.	TOTAL GROSS	TOTAL DEDUCTION	CHECK AMOUNT
01/18/05	23863			

Initial: BBL

Date: 01/18/05

PTO Stamp indicates receipt of: Patent Matter Trademark Matter

Application Docket No.: 5049-1

Applicant: Musculoskeletal Management Systems, LLC

Title or Mark: "HUMAN MOTION INSTITUTE"

Serial/Reg. No.: 76/491893

Filed/Issued Date: February 21, 2003



Certificate of Mailing

Express Mail No.:

01-25-2005

Check for \$300.00

U.S. Patent & TM Office/TM Mail Rcpt Dt. #64

RECEIVED
FEB 07 2005
SHERIDAN, ROSS

Pages in Specification

Pages in Claims

Sheets of Drawings

LIST ALL DOCUMENTS BEING SENT TO PATENT OFFICE:

Request for Reconsideration
2F Declaration
Notice of Appeal