

PTO Form 1930 (Rev 9/2007)

OMB No. 0651-0050 (Exp. 4/30/2009)

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77045763
LAW OFFICE ASSIGNED	LAW OFFICE 104
MARK SECTION (no change)	
ARGUMENT(S)	
<p>This is in response to the Office Action dated April 3, 2009, in which applicant's mark HOMEVISIONS for "closet organization systems comprised of closet shelving, closet hanging rods, closet drawers, and closet storage units, sold through retail stores," was refused registration under Section 2(d) based on U.S. Registration No. 2256093 for HOMEVISIONS for "mail order catalog services featuring home furnishings, namely, furniture, home appliances, housewares, home accessories, domestics, textile goods, and electrical appliances; jewelry; hardware; sporting goods; toys and food." Applicant respectfully traverses the refusal to register. Reconsideration is requested.</p> <p>A determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. <i>See In re E. I du Pont de Nemours and Co.</i>, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973); <i>see also, In re Majestic Distilling Co.</i>, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003).</p> <p>Turning to a consideration of the goods and services, it is well established that the issue of likelihood of confusion must be determined on the basis of the goods and services as they are set forth in the involved application and cited registration. <i>See, e.g., CBS Inc. v. Morrow</i>, 708 F.2d 1579, 218 USPQ 198 (Fed. Cir. 1983). Applicant's goods are directed to "closet organization systems...sold through retail stores" in International Class 20 and registrant's services are defined as "mail order catalog services" for a wide variety of goods in International Class 35. It is respectfully submitted that the respective goods and services are dissimilar.</p> <p>The respective goods and services move in separate and distinct channels of trade: retail stores as opposed to mail order catalog services. Due to the relatively expensive nature of the goods, customers of the respective goods and services are sophisticated and can readily distinguish between applicant's retail store goods and registrant's mail order catalog services. Further, the different customers would not "cross-shop" the outlets for the goods and services. Therefore, the respective goods and services are unrelated.</p> <p>In the Office Action, the examining attorney cited certain third-party registrations in an attempt to show that the respective goods and services are related. Based on this evidence, the examining attorney found that, "Consumers encounter [sic] the parties' marks and furniture would thus likely</p>	

believe mistakenly that the parties' [sic] are the same and the marks represent the same underlying sources [sic]." Applicant respectfully traverses the examining attorney's findings based on this evidence.

The cited third-party registrations have no probative value because they appear to be "house marks" that cover a wide variety of services and/or goods in different classes. They merely show that occasionally some goods and services might be included in multi-class, single registrations along with a number of other goods and/or services. The remote possibility that a mail order catalog firm might theoretically sell closet organization systems under the same mark does not prove that mail order catalog services are related to closet organization systems sold through retail stores. It is respectfully submitted that the examining attorney's findings that the respective goods and services are related based on the cited third-party registrations are speculative and therefore erroneous.

The clear differences between applicant's goods and the services of the cited registration eliminate any possibility of confusion. Accordingly, the Section 2(d) refusal to register should be withdrawn.

It is respectfully submitted that the present application is in condition to be passed to publication and such action is solicited.

ADDITIONAL STATEMENTS SECTION

MISCELLANEOUS STATEMENT	Please delete the disclaimer currently of record.
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SIGNATURE SECTION

RESPONSE SIGNATURE	/Gregg W. Emch/
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SIGNATORY'S NAME	Gregg W. Emch
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SIGNATORY'S POSITION	Attorney of record
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DATE SIGNED	10/02/2009
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AUTHORIZED SIGNATORY	YES
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CONCURRENT APPEAL NOTICE FILED	YES
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FILING INFORMATION SECTION

SUBMIT DATE	Fri Oct 02 13:33:34 EDT 2009
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TEAS STAMP	USPTO/RFR-12.167.248.138- 20091002133334275056-7704 5763-46019475c633a4cb1a38 1ccfbd438cb55f4-N/A-N/A-2 0091002131954234340
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Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. 77045763 has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

This is in response to the Office Action dated April 3, 2009, in which applicant's mark HOMEVISIONS for "closet organization systems comprised of closet shelving, closet hanging rods, closet drawers, and closet storage units, sold through retail stores," was refused registration under Section 2(d) based on U.S. Registration No. 2256093 for HOMEVISIONS for "mail order catalog services featuring home furnishings, namely, furniture, home appliances, housewares, home accessories, domestics, textile goods, and electrical appliances; jewelry; hardware; sporting goods; toys and food." Applicant respectfully traverses the refusal to register. Reconsideration is requested.

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Turning to a consideration of the goods and services, it is well established that the issue of likelihood of confusion must be determined on the basis of the goods and services as they are set forth in the involved application and cited registration. *See, e.g., CBS Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198 (Fed. Cir. 1983). Applicant's goods are directed to "closet organization systems...sold through retail stores" in International Class 20 and registrant's services are defined as "mail order catalog services" for a wide variety of goods in International Class 35. It is respectfully submitted that the respective goods and services are dissimilar.

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In the Office Action, the examining attorney cited certain third-party registrations in an attempt to show that the respective goods and services are related. Based on this evidence, the examining attorney found that, "Consumers encounter [sic] the parties' marks and furniture would thus likely believe mistakenly that the parties' [sic] are the same and the marks represent the same underlying sources [sic]." Applicant respectfully traverses the examining attorney's findings based on this evidence.

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ADDITIONAL STATEMENTS

Please delete the disclaimer currently of record.

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Gregg W. Emch/ Date: 10/02/2009

Signatory's Name: Gregg W. Emch

Signatory's Position: Attorney of record

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 77045763

Internet Transmission Date: Fri Oct 02 13:33:34 EDT 2009

TEAS Stamp: USPTO/RFR-12.167.248.138-200910021333342

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