

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77432389
LAW OFFICE ASSIGNED	LAW OFFICE 103
MARK SECTION (current)	
STANDARD CHARACTERS	NO
USPTO-GENERATED IMAGE	NO
LITERAL ELEMENT	RED RIBBON BAKESHOP
COLOR(S) CLAIMED (If applicable)	Color is not claimed as a feature of the mark.
DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of the words "Red Ribbon BakeShop" in stylized letters with curled ribbon designs before and after.
MARK SECTION (proposed)	
MARK FILE NAME	<u>\\TICRS\EXPORT1\IMAGEOUT</u> <u>1\774\323\77432389\xml4\ RFR0002.JPG</u>
STANDARD CHARACTERS	NO
USPTO-GENERATED IMAGE	NO
LITERAL ELEMENT	RED RIBBON BAKESHOP
COLOR MARK	NO
DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of the words "Red Ribbon BakeShop" in stylized letters with curled ribbon designs before and after.
PIXEL COUNT ACCEPTABLE	NO
PIXEL COUNT	944 x 121
ARGUMENT(S)	

ARGUMENT FOR RESPONSE TO FINAL OFFICE ACTION

Dear Examiner Sung In:

RRB Holdings, Inc. ("Applicant") hereby responds to the final Office Action mailed December 6, 2010 for App. No. 77432389 for RED RIBBON BAKESHOP and Design (Curls). Therein, the Examiner again refused

Applicant's specimen of use submitted with Applicant's Statement of Use filed on March 12, 2010, on the grounds that Applicant's mark on the specimen disagrees with the mark in the drawing. Applicant responds as follows:

Applicant Submits A New Drawing of the Mark And Requests Amendment of the Drawing, Which Amendment Is Immaterial.

The general test of whether an alteration of a trademark is material is whether the mark would have to be republished after the alteration in order to fairly present the mark for purposes of opposition. If one mark is sufficiently different from another mark as to require republication, it would be tantamount to a new mark appropriate for a new application. *In re Hacot-Colombier*, 105 F.3d 616, 620, 41 USPQ2d 1523, 1526 (Fed. Cir. 1997), quoting *Visa Int'l Service Ass'n v. Life-Code Systems, Inc.*, 220 USPQ 740, 743-44 (TTAB 1983); 37 C.F.R. Sec. 2.72; TMEP Sec. 807.14. It is not a material alteration to a trademark, where the modified mark contains what is the essence of the original mark, and the new form creates the impression of being essentially the same mark. *In re Nationwide Industries Inc.*, 6 USPQ2d 1882, 1885 (TTAB 1988) (the new and old forms of the mark must create essentially the same commercial impression). Where the amendment creates the nearly identical commercial impression, and merely rearranges the elements of the display in a manner that would not require republication, amendment of the mark drawing is allowable. See *In re ECCS, Inc.*, 94 F.3d 1578, 39 USPQ2d 2001 (Fed. Cir. 1996) (applicant allowed to amend the drawing to conform to the mark as actually used); *Paris Glove of Canada, Ltd. v. SBC/Sportco Corp.*, 84 USPQ2d 1856, 1862 (TTAB 2007) ("AQUASTOP" depicted on one line in semicircular form not a material alteration of "AQUA STOP" depicted on two lines in rectangular form; finding that the commercial impression of the mark is dependent upon the literal terms, not the form of display). Inversion of design elements is not a material amendment to a drawing. *Visa Int'l Service Ass'n v. Life-Code Systems, Inc.*, 220 USPQ 740. In light of the Examiner's argument that Applicant's mark on its specimen disagrees with the mark in the drawing, Applicant respectfully submits a revised drawing, and proposes to amend the filed drawing to the new drawing. The new drawing is in reversed black and white, showing shorter ribbon curls, and the term BAKESHOP beside the term RED RIBBON, instead of stacked underneath. This precisely matches the specimen of use, which is a sample of Applicant's signage. Inasmuch as no elements of the mark drawing have been removed or deleted, but merely re-emphasized for the most practical use in commerce, the new drawing creates essentially the same commercial impression as the old drawing. The original drawing was in black in white, as is the amended drawing, so color is not at issue (and a revision to such would not in this case be material. See TMEP Sec. 807.14). The Examiner has indicated that amendment of the drawing to match the specimen would be immaterial. Therefore, Applicant respectfully maintains that the new drawing matches and accurately reflects Applicant's use of the mark in commerce for the identified services and the drawing amendment is immaterial. Accordingly, Applicant believes that its proof of use submitted with its March 12, 2010 Statement of Use (SOU) has been perfected.

In light of the foregoing, Applicant respectfully requests that the refusal to register be withdrawn, and the application approved for registration. Applicant has submitted a Notice of Appeal with this final response, but the Examiner is encouraged to contact counsel for Applicant should any minor items remain outstanding. TMEP Sec. 715.03(a).

Respectfully submitted,

/MTGeorge/

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RRB Holdings, Inc.
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M. Tally George

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130 E. Randolph Drive
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312/861-8000

SIGNATURE SECTION

RESPONSE SIGNATURE	/MTGeorge/
SIGNATORY'S NAME	M. Tally George
SIGNATORY'S POSITION	Attorney of Record, IL Bar Member
DATE SIGNED	06/06/2011
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES

FILING INFORMATION SECTION

SUBMIT DATE	Mon Jun 06 13:48:35 EDT 2011
TEAS STAMP	USPTO/RFR-63.85.72.242-20 110606134835761305-774323 89-480831a7a9c67e7303078e d327aecdc1-N/A-N/A-201106 06131144762627

11/11/11 11:55 AM (11/11/11)

**Request for Reconsideration after Final Action
To the Commissioner for Trademarks:**

Application serial no. **77432389** has been amended as follows:

MARK

Applicant proposes to amend the mark as follows:

Current: RED RIBBON BAKESHOP (Stylized and/or with Design)

Color is not claimed as a feature of the mark.

The mark consists of the words "Red Ribbon BakeShop" in stylized letters with curled ribbon designs before and after.

Proposed: RED RIBBON BAKESHOP (Stylized and/or with Design, see mark)

The applicant is not claiming color as a feature of the mark.

The mark consists of the words "Red Ribbon BakeShop" in stylized letters with curled ribbon designs before and after.

ARGUMENT(S)

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

ARGUMENT FOR RESPONSE TO FINAL OFFICE ACTION

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application approved for registration. Applicant has submitted a Notice of Appeal with this final response, but the Examiner is encouraged to contact counsel for Applicant should any minor items remain outstanding. TMEP Sec. 715.03(a).

Respectfully submitted,

/MTGeorge/

Attorneys for Applicant,
RRB Holdings, Inc.
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130 E. Randolph Drive
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312/861-8000

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /MTGeorge/ Date: 06/06/2011

Signatory's Name: M. Tally George

Signatory's Position: Attorney of Record, IL Bar Member

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: 77432389

Internet Transmission Date: Mon Jun 06 13:48:35 EDT 2011

TEAS Stamp: USPTO/RFR-63.85.72.242-20110606134835761

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Red Ribbon BakeShop