

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
<b>SERIAL NUMBER</b>	77534075
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 102
<b>MARK SECTION (no change)</b>	
<b>ARGUMENT(S)</b>	
<p>This is in response to the December 9, 2008 office action in which a likelihood of confusion objection was raised between the “What’s Next! What’s Next!! What’s Next!!!” mark and applicant’s mark.</p> <p style="padding-left: 40px;">Applicant has now amended its identification of services to limit said services to: Entertainment in the nature of an on-going special variety reality show featuring lifestyle makeovers for middle aged people distributed by television, satellite and video media.</p> <p style="padding-left: 40px;">Since applicant has limited its services to a reality show featuring lifestyle makeovers for middle age people, likelihood of confusion has been eliminated between applicant’s mark and Mr. Thompson’s talk and variety show featuring music and comedy.</p> <p style="padding-left: 40px;">Likelihood of confusion has also been eliminated because the “What’s Next” field is a crowded filed. Along with Mr. Thompson’s use of “What’s Next” as part of a mark for his television program, XM Satellite Radio, Inc. owns a trademark registration that includes “What’s Next” as part of its “What’s Next Now” mark (Registration No. 3,231,316) for audio programs that include the same services as Mr. Thompson includes in his registration. If a “What’s Next” television program can exist along with “What’s Next Now” satellite radio program for extremely similar services, there is no reason why applicant cannot have its own small niche for “What’s Next” for the extremely</p>	

limited services of a reality show featuring middle aged lifestyle makeovers.

In view of the foregoing, it is respectfully requested that the final refusal be withdrawn.

**GOODS AND/OR SERVICES SECTION (current)**

INTERNATIONAL CLASS 041

**DESCRIPTION**

Entertainment in the nature of an on-going special variety, news, music or comedy show featuring lifestyle makeovers for middle aged people distributed by television, satellite, audio and video media

FILING BASIS Section 1(a)

FIRST USE ANYWHERE DATE At least as early as 10/11/2007

FIRST USE IN COMMERCE DATE At least as early as 10/11/2007

**GOODS AND/OR SERVICES SECTION (proposed)**

INTERNATIONAL CLASS 041

**DESCRIPTION**

Entertainment in the nature of an on-going special variety reality show featuring lifestyle makeovers for middle aged people distributed by television, satellite and video media.

FILING BASIS Section 1(a)

FIRST USE ANYWHERE DATE At least as early as 10/11/2007

FIRST USE IN COMMERCE DATE At least as early as 10/11/2007

**SIGNATURE SECTION**

DECLARATION SIGNATURE /MLitwak/

SIGNATORY'S NAME Mark Litwak

SIGNATORY'S POSITION Attorney of Record

DATE SIGNED 06/08/2009

RESPONSE SIGNATURE /mlitwak/

SIGNATORY'S NAME Mark Litwak

SIGNATORY'S POSITION Attorney of Record

DATE SIGNED 06/08/2009

AUTHORIZED SIGNATORY YES

CONCURRENT APPEAL NOTICE FILED YES

<b>FILING INFORMATION SECTION</b>	
<b>SUBMIT DATE</b>	Mon Jun 08 18:53:12 EDT 2009
<b>TEAS STAMP</b>	USPTO/RFR-66.159.215.141- 20090608185312711095-7753 4075-4305c11b47f8c9981146 46597db619d3ea-N/A-N/A-20 090608184545298032

PTO Form 1930 (Rev 9/2007)

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

### Request for Reconsideration after Final Action

#### To the Commissioner for Trademarks:

Application serial no. 77534075 has been amended as follows:

#### ARGUMENT(S)

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

This is in response to the December 9, 2008 office action in which a likelihood of confusion objection was raised between the "What's Next! What's Next!! What's Next!!!" mark and applicant's mark.

Applicant has now amended its identification of services to limit said services to: Entertainment in the nature of an on-going special variety reality show featuring lifestyle makeovers for middle aged people distributed by television, satellite and video media.

Since applicant has limited its services to a reality show featuring lifestyle makeovers for middle age people, likelihood of confusion has been eliminated between applicant's mark and Mr. Thompson's talk and variety show featuring music and comedy.

Likelihood of confusion has also been eliminated because the "What's Next" field is a crowded filed. Along with Mr. Thompson's use of "What's Next" as part of a mark for his television program, XM Satellite Radio, Inc. owns a trademark registration that includes "What's Next" as part of its "What's Next Now" mark (Registration No. 3,231,316) for audio programs that include the same

services as Mr. Thompson includes in his registration. If a "What's Next" television program can exist along with "What's Next Now" satellite radio program for extremely similar services, there is no reason why applicant cannot have its own small niche for "What's Next" for the extremely limited services of a reality show featuring middle aged lifestyle makeovers.

In view of the foregoing, it is respectfully requested that the final refusal be withdrawn.

### **CLASSIFICATION AND LISTING OF GOODS/SERVICES**

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

**Current:** Class 041 for Entertainment in the nature of an on-going special variety, news, music or comedy show featuring lifestyle makeovers for middle aged people distributed by television, satellite, audio and video media

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 10/11/2007 and first used in commerce at least as early as 10/11/2007, and is now in use in such commerce.

**Proposed:** Class 041 for Entertainment in the nature of an on-going special variety reality show featuring lifestyle makeovers for middle aged people distributed by television, satellite and video media.

**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 10/11/2007 and first used in commerce at least as early as 10/11/2007, and is now in use in such commerce.

### **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 or services listed in the application as of the application filing date. 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. 244. 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. §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. §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: /MLitwak/ Date: 06/08/2009  
Signatory's Name: Mark Litwak  
Signatory's Position: Attorney of Record

**Request for Reconsideration Signature**

Signature: /mlitwak/ Date: 06/08/2009  
Signatory's Name: Mark Litwak  
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: 77534075  
Internet Transmission Date: Mon Jun 08 18:53:12 EDT 2009  
TEAS Stamp: USPTO/RFR-66.159.215.141-200906081853127  
11095-77534075-4305c11b47f8c998114646597  
db619d3ea-N/A-N/A-20090608184545298032