

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77799451
LAW OFFICE ASSIGNED	LAW OFFICE 101
MARK SECTION (no change)	
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_20487401-145531564_._JDW_roa_12_17_10.pdf
CONVERTED PDF FILE(S) (2 pages)	\\TICRS\EXPORT11\IMAGEOUT11\777\994\77799451\xml1\RFR0002.JPG
	\\TICRS\EXPORT11\IMAGEOUT11\777\994\77799451\xml1\RFR0003.JPG
ORIGINAL PDF FILE	evi_20487401-145531564_._iname_TRF6NR0S62BS-7529.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT11\IMAGEOUT11\777\994\77799451\xml1\RFR0004.JPG
DESCRIPTION OF EVIDENCE FILE	Written response to Request for Reconsideration and Response to office Action and Receipt from Notice of Appeal filed with TTAB
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Jaclyne D. Wallace/
SIGNATORY'S NAME	Jaclyne D. Wallace
SIGNATORY'S POSITION	Attorney for Applicant Illinois State Bar Member
DATE SIGNED	12/17/2010
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES

FILING INFORMATION SECTION

SUBMIT DATE	Fri Dec 17 15:17:27 EST 2010
TEAS STAMP	USPTO/RFR-204.87.40.1-201 01217151727218315-7779945 1-47092e4c4a9414e515daac6 51950744cd6-N/A-N/A-20101 217145531564547

PTO Form (Rev 4/2009)
OMB No. 0651-... (Exp. 05/31/2004)

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

Application serial no. **77799451** has been amended as follows:

EVIDENCE

Evidence in the nature of Written response to Request for Reconsideration and Response to office Action and Receipt from Notice of Appeal filed with TTAB has been attached.

Original PDF file:

evi_20487401-145531564_._JDW_roa_12_17_10.pdf

Converted PDF file(s) (2 pages)

Evidence-1

Evidence-2

Original PDF file:

evi_20487401-145531564_._iname_TRF6NR0S62BS-7529.pdf

Converted PDF file(s) (1 page)

Evidence-1

SIGNATURE(S)**Request for Reconsideration Signature**

Signature: /Jaclyne D. Wallace/ Date: 12/17/2010

Signatory's Name: Jaclyne D. Wallace

Signatory's Position: Attorney for Applicant Illinois State 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: 77799451

Internet Transmission Date: Fri Dec 17 15:17:27 EST 2010

TEAS Stamp: USPTO/RFR-204.87.40.1-201012171517272183

15-77799451-47092e4c4a9414e515daac651950

744cd6-N/A-N/A-20101217145531564547

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

MARK: 24 HOUR BODY
SERIAL NO.: 77/799451
APPLICANT: Alberto-Culver International, Inc.
FILING DATE: August 7, 2009
INTERNATIONAL CLASS: 3
TO: Commissioner for Trademarks
ATTN: Robert Clark
Trademark Attorney
Law Office 101

**REQUEST FOR RECONSIDERATION AND RESPONSE TO
OFFICE ACTION DATED JUNE 18, 2010**

This is in response to the office action dated June 18, 2010, wherein the Trademark Attorney made final his refusal of registration on the grounds that applicant's mark is merely descriptive. Applicant respectfully submits that its mark is suggestive, not merely descriptive of applicant's hair care products and is therefore entitled to registration.¹ Moreover, even if applicant's mark were not suggestive, as demonstrated below, applicant's mark has acquired distinctiveness as a result of two years of continuous use.

It is well settled that "one may be informed by suggestion as well as description." *Application of Reynolds Metal Co.*, 480 F.2d 902, 178 U.S.P.Q. 296, 297 (C.C.P.A. 1973). The fact that persons noting the mark "24 HOUR BODY" might recognize a suggestion regarding applicant's goods, therefore, does not render the mark merely descriptive. *See, e.g., In re Nalco Chemical Company*, 228 U.S.P.Q. 972, 973 (T.T.A.B. 1986) (VERI-CLEAN is suggestive, not

¹ Applicant wishes to advise the Trademark Attorney that it filed a notice of appeal. Copy attached.

merely descriptive, of applicant's anti-fouling additives for use in refineries); *In re George Weston Limited*, 228 U.S.P.Q. at 58 (SPEEDIE BAKE is suggestive, not merely descriptive, of desirable characteristic of dough that quickly bakes into bread); *Jeno's Inc. v. Commissioner of Patents and Trademarks*, 227 U.S.P.Q. 227, 228 (D. Minn. 1985) (PIZZA ROLLS is suggestive of snack rolls); *In re Mobile Ray, Inc.*, 224 U.S.P.Q. 247, 248 (T.T.A.B. 1984) (MOBILE RAY is not merely descriptive of providing x-ray examination and other services from mobile van); *In re House Store, Ltd.*, 221 U.S.P.Q. 92, 93 (T.T.A.B. 1983) (THE HOUSE STORE is suggestive not merely descriptive of store selling house wares and furniture); *In re Shutts*, 217 U.S.P.Q. at 365 (SNO-RAKE is suggestive not descriptive of snow removal hand tool); *In re Pennwalt Corp.*, 173 U.S.P.Q. 317, 319 (T.T.A.B. 1972) (DRI-FOOT is suggestive not merely descriptive of antiperspirant foot deodorant).

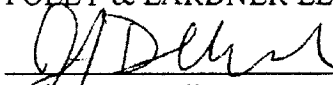
Moreover, even if applicant's mark 24 HOUR BODY was merely descriptive, applicant respectfully submits that it is entitled to registration because its mark has acquired distinctiveness, as evidenced by two years of continuous use.

For the reasons set forth above, applicant respectfully requests that its application be approved for publication.

Respectfully submitted,

FOLEY & LARDNER LLP

Date: 12/17/10


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Receipt

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ESTTA Tracking number: **ESTTA384395**

Filing date: **12/17/2010**

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

Application Serial No.	77799451
Applicant	Alberto-Culver International, Inc.

Notice of Appeal

Notice is hereby given that Alberto-Culver International, Inc. appeals to the Trademark Trial and Appeal Board the refusal to register the mark depicted in Application Serial No. 77799451.

Applicant has filed a request for reconsideration of the refusal to register, and requests suspension of the appeal pending consideration of the request by the Examining Attorney.

The refusal to register has been appealed as to the following class of goods/services:

- Class 003. First Use: 2008/12/15 First Use In Commerce: 2008/12/15
All goods and services in the class are appealed, namely: Hair care preparations

Respectfully submitted,

/Jaclyne D. Wallace/

12/17/2010

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