

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77861470
LAW OFFICE ASSIGNED	LAW OFFICE 117
MARK SECTION (no change)	
ARGUMENT(S)	
<p>This Request for Reconsideration is in response to the Final Office Action dated August 5, 2010. In the subject Office Action, the Examining Attorney maintained a likelihood of confusion rejection against the subject mark asserting that the unity of control statements made by Applicant in its prior Office Action response were insufficient to overcome the rejection.</p> <p>Applicant respectfully submits the Declaration of Daniel W. Ford ("Ford Dec."), Executive Vice-President and General Counsel for Mears Transportation Group, Inc. illustrating the relationship between Mears Transportation Group, Inc. ("MTG") and Mears Destination Services, Inc. ("MDS") and the necessary unity of control. Based on the statements below, Applicant respectfully requests that the Examining Attorney lift the refusal to register and allow the mark for publication.</p> <p>As a threshold matter, MTG and MDS are both closely held, private corporations owned by members of the Mears family of Orlando, Florida. <i>See</i> Ford Dec at ¶ 5. More specifically, MTG is a wholly owned subsidiary of Property General, Inc. Owners of Property General, Inc. include Paul Mears, Jr., Paul Mears, III, and James Mears. <i>Id.</i> at ¶ 6. MDS owners are Paul Mears, Jr., Paul Mears, III, and James Mears. <i>Id.</i> at ¶ 7.</p> <p>A substantial number of the shares of MDS are owned by persons or entities that own and/or control MTG. <i>Id.</i> at ¶ 8. MTG and MDS have common officers and directors. <i>Id.</i> at ¶ 9; <i>see also</i> Ford Dec. Exhibits 1 and 2. MTG and MDS operate out of the same facilities in Orlando, have the same business address and offer their services through a common website. <i>See</i> Ford Dec at ¶ 10. The activities and operations – i.e., the day-to-day business affairs - of MTG and MDS are controlled by similar officers and directors, thus giving rise to a unity of control between MTG and MDS. <i>Id.</i> at ¶ 11. The control of the activities and operations of the aforementioned officers and directors includes the selection and use</p>	

of MDS' trademarks. *Id.* at ¶ 12.

MTG and MDS are the co-owners of an undivided 50% ownership interest in U.S. Trademark Registration Nos.: 2,290,711 and 3,621,783, for the mark MEARS for, *inter alia*, "Passenger ground transportation by automobiles, buses, vans, motor coaches and limousines; travel information services; and arranging travel tours" in IC 039, with a first use date of at least as early as June, 1985. *Id.* at ¶ 13; *see also* Ford Dec. **Exhibits 3 and 4.**

Because of the close relationship of MTG and MDS, the consuming public sees the companies as constituting an integrated group of transportation services. *Id.* at ¶ 14. Because of the manner in which the respective marks are used by the respective owners, there is no likelihood of confusion between the mark in the instant application and the marks in the prior registrations. *Id.* at ¶ 15. The mark in the instant application has co-existed with the marks in the above-cited US Registrations for more than twenty-five (25) years, without any likelihood of confusion among them due to the related nature of the companies. *Id.* at ¶ 16.

In addition to the foregoing, MTG consents to the registration of the mark in the instant application. *See id.* at ¶ 17. Applicant respectfully suggests that the foregoing statements, supported by the executed Declaration of Daniel W. Ford, establish the facts necessary to support a finding of unity of control between Mears Transportation Group, Inc. and Mears Destination Services, Inc. Based on the foregoing, Applicant respectfully requests that the Examining Attorney lift the refusal to register and allow the mark for publication. Such action is earnestly solicited.

EVIDENCE SECTION

EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_2086684110-152713152_._Delcaration_of_Daniel_Ford_with_Exhibits__O1626497_.PDF
CONVERTED PDF FILE(S) (10 pages)	\\TICRS\EXPORT11\IMAGEOUT11\778\614\77861470\xml4\RFR0002.JPG
	\\TICRS\EXPORT11\IMAGEOUT11\778\614\77861470\xml4\RFR0003.JPG
	\\TICRS\EXPORT11\IMAGEOUT11\778\614\77861470\xml4\RFR0004.JPG
	\\TICRS\EXPORT11\IMAGEOUT11\778\614\77861470\xml4\RFR0005.JPG
	\\TICRS\EXPORT11\IMAGEOUT11\778\614\77861470\xml4\RFR0006.JPG
	\\TICRS\EXPORT11\IMAGEOUT11\778\614\77861470\xml4\RFR0007.JPG
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	\\TICRS\EXPORT11\IMAGEOUT11\778\614\77861470\xml4\RFR0010.JPG
	\\TICRS\EXPORT11\IMAGEOUT11\778\614\77861470\xml4\RFR0011.JPG
DESCRIPTION OF EVIDENCE FILE	The Declaration of Daniel W. Ford under 37 C.F.R § 2.20 with attached exhibits.
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Jon M. Gibbs/
SIGNATORY'S NAME	Jon M. Gibbs, Reg. No. 47,594
SIGNATORY'S POSITION	Attorney of Record, Florida Bar member
DATE SIGNED	02/07/2011
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Feb 07 16:04:49 EST 2011
TEAS STAMP	USPTO/RFR-208.66.84.110-2 0110207160449456140-77861 470-480a87d78172befceff96 4209fcde31e45-N/A-N/A-201 10207152713152574

PTO Form (Rev. 4/2000)
OMB No. 0651-... (Exp. 06/30/2004)

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

Application serial no. **77861470** has been amended as follows:

ARGUMENT(S)

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

This Request for Reconsideration is in response to the Final Office Action dated August 5, 2010. In the

subject Office Action, the Examining Attorney maintained a likelihood of confusion rejection against the subject mark asserting that the unity of control statements made by Applicant in its prior Office Action response were insufficient to overcome the rejection.

Applicant respectfully submits the Declaration of Daniel W. Ford ("Ford Dec."), Executive Vice-President and General Counsel for Mears Transportation Group, Inc. illustrating the relationship between Mears Transportation Group, Inc. ("MTG") and Mears Destination Services, Inc. ("MDS") and the necessary unity of control. Based on the statements below, Applicant respectfully requests that the Examining Attorney lift the refusal to register and allow the mark for publication.

As a threshold matter, MTG and MDS are both closely held, private corporations owned by members of the Mears family of Orlando, Florida. *See* Ford Dec at ¶ 5. More specifically, MTG is a wholly owned subsidiary of Property General, Inc. Owners of Property General, Inc. include Paul Mears, Jr., Paul Mears, III, and James Mears. *Id.* at ¶ 6. MDS owners are Paul Mears, Jr., Paul Mears, III, and James Mears. *Id.* at ¶ 7.

A substantial number of the shares of MDS are owned by persons or entities that own and/or control MTG. *Id.* at ¶ 8. MTG and MDS have common officers and directors. *Id.* at ¶ 9; *see also* Ford Dec. **Exhibits 1 and 2.** MTG and MDS operate out of the same facilities in Orlando, have the same business address and offer their services through a common website. *See* Ford Dec at ¶ 10. The activities and operations – i.e., the day-to-day business affairs - of MTG and MDS are controlled by similar officers and directors, thus giving rise to a unity of control between MTG and MDS. *Id.* at ¶ 11. The control of the activities and operations of the aforementioned officers and directors includes the selection and use of MDS' trademarks. *Id.* at ¶ 12.

MTG and MDS are the co-owners of an undivided 50% ownership interest in U.S. Trademark Registration Nos.: 2,290,711 and 3,621,783, for the mark MEARS for, *inter alia*, "Passenger ground transportation by automobiles, buses, vans, motor coaches and limousines; travel information services; and arranging travel tours" in IC 039, with a first use date of at least as early as June, 1985. *Id.* at ¶ 13; *see also* Ford Dec. **Exhibits 3 and 4.**

Because of the close relationship of MTG and MDS, the consuming public sees the companies as constituting an integrated group of transportation services. *Id.* at ¶ 14. Because of the manner in which the respective marks are used by the respective owners, there is no likelihood of confusion between the mark in the instant application and the marks in the prior registrations. *Id.* at ¶ 15. The mark in the instant application has co-existed with the marks in the above-cited US Registrations for more than twenty-five (25) years, without any likelihood of confusion among them due to the related nature of the companies. *Id.* at ¶ 16.

In addition to the foregoing, MTG consents to the registration of the mark in the instant application. *See id*

. at ¶ 17. Applicant respectfully suggests that the foregoing statements, supported by the executed Declaration of Daniel W. Ford, establish the facts necessary to support a finding of unity of control between Mears Transportation Group, Inc. and Mears Destination Services, Inc. Based on the foregoing, Applicant respectfully requests that the Examining Attorney lift the refusal to register and allow the mark for publication. Such action is earnestly solicited.

EVIDENCE

Evidence in the nature of The Declaration of Daniel W. Ford under 37 C.F.R § 2.20 with attached exhibits. has been attached.

Original PDF file:

evi_2086684110-152713152_._Delcaration_of_Daniel_Ford_with_Exhibits__O1626497_.PDF

Converted PDF file(s) (10 pages)

Evidence-1
Evidence-2
Evidence-3
Evidence-4
Evidence-5
Evidence-6
Evidence-7
Evidence-8
Evidence-9
Evidence-10

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Jon M. Gibbs/ Date: 02/07/2011

Signatory's Name: Jon M. Gibbs, Reg. No. 47,594

Signatory's Position: Attorney of Record, Florida 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: 77861470

Internet Transmission Date: Mon Feb 07 16:04:49 EST 2011

TEAS Stamp: USPTO/RFR-208.66.84.110-2011020716044945

6140-77861470-480a87d78172befeff964209f

cde31e45-N/A-N/A-20110207152713152574

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Mears Destination Services, Inc.

Filing Date: October 30, 2009 Examining Attorney: Douglas M. Lee

Serial No.: 77/861,470 Law Office: 117

Mark: MEARS LUXURY LIMOUSINES

DECLARATION OF DANIEL W. FORD UNDER 37 C.F.R. §2.20

1. My name is Daniel W. Ford.
2. I am above the age of majority and competent to testify to the matters contained herein.
3. I make this declaration based on information and belief.
4. I am a member of the Florida Bar and the Executive Vice President and General Counsel for Mears Transportation Group, Inc. ("MTG").
5. MTG and Mears Destination Services, Inc. ("MDS") are both closely held, private corporations owned by members of the Mears family of Orlando, Florida.
6. More specifically, MTG is a wholly owned subsidiary of Property General, Inc. Owners of Property General, Inc. include Paul Mears, Jr., Paul Mears, III, and James Mears.
7. MDS owners are Paul Mears, Jr., Paul Mears, III, and James Mears.
8. A substantial number of the shares of MDS are owned by persons or entities that own and/or control MTG.
9. MTG and MDS have common officers and directors. *See* 2010 Florida Department of Corporation Annual Reports for MTG and MDS, appended hereto as **EXHIBITS 1 and 2**, respectively.
10. MTG and MDS operate out of the same facilities in Orlando, have the same business address and offer their services through a common website.

11. The activities and operations – i.e., the day-to-day business affairs - of MTG and MDS are controlled by similar officers and directors, thus giving rise to a unity of control between MTG and MDS.

12. The control of the activities and operations of the aforementioned officers and directors includes the selection and use of MDS' trademarks.

13. MTG and MDS are the co-owners of an undivided 50% ownership interest in U.S. Trademark Registration Nos.: 2,290,711 and 3,621,783, for the mark MEARS for, *inter alia*, "Passenger ground transportation by automobiles, buses, vans, motor coaches and limousines; travel information services; and arranging travel tours" in IC 039, with a first use date of at least as early as June, 1985. True and correct copies of the registration certificates for U.S. Trademark Registration Nos.: 2,290,711 and 3,621,783 are appended hereto as **EXHIBITS 3 and 4**, respectively.

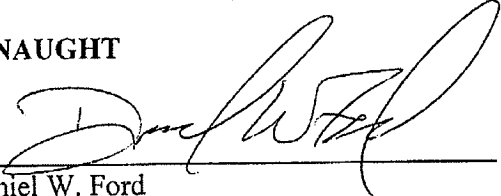
14. Because of the close relationship of MTG and MDS, the consuming public sees the companies as constituting an integrated group of transportation services.

15. Because of the manner in which the respective marks are used by the respective owners, there is no likelihood of confusion between the mark in the instant application and the marks in the prior registrations.

16. The mark in the instant application has co-existed with the marks in the above-cited US Registrations for more than twenty-five (25) years, without any likelihood of confusion among them due to the related nature of the companies.

17. MTG consents to the registration of the mark in the instant application.

FURTHER DECLARANT SAYETH NAUGHT



Daniel W. Ford
Executive Vice President, General Counsel
Mears Transportation Group, Inc.

EXHIBIT 1

2010 FOR PROFIT CORPORATION ANNUAL REPORT

DOCUMENT# J93084

FILED
Apr 09, 2010
Secretary of State

Entity Name: MEARS TRANSPORTATION GROUP, INC.

Current Principal Place of Business:

324 W. GORE ST
ORLANDO, FL 32806 US

New Principal Place of Business:

Current Mailing Address:

324 W. GORE ST
ORLANDO, FL 32806 US

New Mailing Address:

FEI Number: 59-0729149 FEI Number Applied For () FEI Number Not Applicable () Certificate of Status Desired ()

Name and Address of Current Registered Agent:

SWANN & HADLEY, P.A.
1031 W. MORSE BLVD
SUITE 350
WINTER PARK, FL 32789 US

Name and Address of New Registered Agent:

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: _____

Electronic Signature of Registered Agent

_____ Date

Election Campaign Financing Trust Fund Contribution ()

OFFICERS AND DIRECTORS:

Title: DP
Name: MEARS, PAUL S JR
Address: 324 WEST GORE STREET
City-St-Zip: ORLANDO, FL 32806

Title: DVP
Name: MEARS, JAMES L
Address: 324 WEST GORE STREET
City-St-Zip: ORLANDO, FL 32806

Title: STVP
Name: BAKER, TIMOTHY L
Address: 324 WEST GORE STREET
City-St-Zip: ORLANDO, FL 32806

Title: CEO
Name: CARNES, CHARLES E JR
Address: 324 WEST GORE STREET
City-St-Zip: ORLANDO, FL 32806

Title: VP
Name: POSEY, RODNEY W
Address: 324 WEST GORE STREET
City-St-Zip: ORLANDO, FL 32806

Title: EVP
Name: FORD, DANIEL
Address: 324 W GORE STREET
City-St-Zip: ORLANDO, FL 32806

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am an officer or director of the corporation or the receiver or trustee empowered to execute this report as required by Chapter 607, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: TIMOTHY L BAKER

STVP

04/09/2010

_____ Electronic Signature of Signing Officer or Director

_____ Date

EXHIBIT 2

2010 FOR PROFIT CORPORATION ANNUAL REPORT

DOCUMENT# G26395

FILED
Apr 09, 2010
Secretary of State

Entity Name: MEARS DESTINATION SERVICES, INC.

Current Principal Place of Business:

324 W. GORE ST
ORLANDO, FL 32806 US

New Principal Place of Business:

Current Mailing Address:

324 W. GORE ST
ORLANDO, FL 32806 US

New Mailing Address:

FEI Number: 59-2260852 **FEI Number Applied For ()** **FEI Number Not Applicable ()** **Certificate of Status Desired ()**

Name and Address of Current Registered Agent:

SWANN & HADLEY P. A.
1031 W. MORSE BLVD
SUITE 350
WINTER PARK, FL 32789 US

Name and Address of New Registered Agent:

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: _____

Electronic Signature of Registered Agent

_____ Date

Election Campaign Financing Trust Fund Contribution ()

OFFICERS AND DIRECTORS:

Title: DCOB
Name: MEARS, PAUL S JR
Address: 324 W GORE ST
City-St-Zip: ORLANDO, FL 32806

Title: EVP
Name: FORD, DANIEL W
Address: 324 W GORE ST
City-St-Zip: ORLANDO, FL 32806

Title: CEOD
Name: CARNS, CHARLES E JR
Address: 324 W. GORE STREET
City-St-Zip: ORLANDO, FL 32806

Title: ST
Name: BAKER, TIMOTHY L
Address: 324 W. GORE ST.
City-St-Zip: ORLANDO, FL 32806

Title: DP
Name: MEARS, PAUL III
Address: 324 W GORE ST
City-St-Zip: ORLANDO, FL 32806

Title: DVP
Name: MEARS, JAMES B
Address: 324 W GORE STREET
City-St-Zip: ORLANDO, FL 32809

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am an officer or director of the corporation or the receiver or trustee empowered to execute this report as required by Chapter 607, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: TIMOTHY L BAKER

ST

04/09/2010

_____ Electronic Signature of Signing Officer or Director

_____ Date

EXHIBIT 3

Int. Cls.: 35 and 39

Prior U.S. Cls.: 100, 101, 102, and 105

United States Patent and Trademark Office

Reg. No. 2,290,711

Registered Nov. 2, 1999

**SERVICE MARK
SUPPLEMENTAL REGISTER**

MEARS

MEARS TRANSPORTATION GROUP, INC.
(FLORIDA CORPORATION)
324 W. GORE STREET
ORLANDO, FL 32806

FOR: TRAVEL MANAGEMENT SERVICES,
IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 6-0-1987; IN COMMERCE
6-0-1987.

FOR: PASSENGER GROUND TRANSPORTA-
TION BY AUTOMOBILES, BUSES, VANS,

MOTOR COACHES AND LIMOUSINES;
TRAVEL INFORMATION SERVICES; AND AR-
RANGING TRAVEL TOURS, IN CLASS 39 (U.S.
CLS. 100 AND 105).

FIRST USE 6-0-1987; IN COMMERCE
2-0-1994.

SER. NO. 75-492,445, FILED P.R. 5-28-1998;
AM. S.R. 7-19-1999.

SANDY SWITZER, EXAMINING ATTORNEY

EXHIBIT 4

Int. Cl.: 39

Prior U.S. Cls.: 100 and 105

United States Patent and Trademark Office

Reg. No. 3,621,783

Registered May 19, 2009

SERVICE MARK
PRINCIPAL REGISTER

MEARS

MEARS TRANSPORTATION GROUP, INC.
(FLORIDA CORPORATION)
324 WEST GORE STREET
ORLANDO, FL 32806 AND
MEARS DESTINATION SERVICES, INC. (FLORIDA
CORPORATION)
324 WEST GORE STREET
ORLANDO, FL 32806

FOR: PASSENGER GROUND TRANSPORTA-
TION BY AUTOMOBILES, BUSES, VANS, MOTOR
COACHES AND LIMOUSINES; TRAVEL INFOR-
MATION SERVICES; AND ARRANGING TRAVEL
TOURS, IN CLASS 39 (U.S. CLS. 100 AND 105).

FIRST USE 6-0-1985; IN COMMERCE 6-0-1985.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 2,290,704, 2,290,711
AND OTHERS.

SEC. 2(F).

SER. NO. 77-440,031, FILED 4-4-2008.

JANICE L. MCMORROW, EXAMINING ATTOR-
NEY