

PTO Form (Rev 4/2000)

OMB No. 0651-.... (Exp. 08/31/2004)

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	79071120
LAW OFFICE ASSIGNED	LAW OFFICE 116
MARK SECTION (no change)	
ARGUMENT(S)	
<p>In Response to office action dated March 3, 2010, the word TOUS has no English translation.</p> <p>The phonetic transcription of this word/brand name would be /touz/, which to an English speaker sounds fairly similar to the pronunciation of the word "toes". It should not be read like the French word "tous" because this mark is a Catalan surname. Tous, is the Catalan surname of the owners of the firm S. Tous, S.L., the applicant of this mark.</p> <p>Neither English nor foreign surnames should be translated. TMEP §809.02. For example, "Schwarzkopf" can be literally translated as "black head," but the primary significance of "Schwarzkopf" is most likely that of a surname.</p> <p>"Tous" is not a common surname, nor are Catalan surnames well known among English speakers. Thus, TOUS also is not primarily merely a surname. TMEP §1211.01(a)(v). <i>See, also, In re Joint-Stock Co. "Baik,"</i> 84 USPQ2d 1921 (TTAB 2007) (finding that extreme rarity of BAIK weighed against surname refusal); <i>In re Benthin Management GmbH,</i> 37 USPQ2d 1332 (TTAB 1995) (the fact that BENTHIN was a rare surname found to be a factor weighing against a finding that the term would be perceived as primarily merely a surname); <i>In re Sava Research Corp.,</i> 32 USPQ2d 1380 (TTAB 1994) (SAVA not primarily merely a surname, where there was evidence that the term had other meaning, no evidence that the term was the surname of anyone connected with applicant, and the term's use as a surname was very rare); <i>In re Garan Inc.,</i> 3 USPQ2d 1537 (TTAB 1987)</p>	

(GARAN held not primarily merely a surname).

GOODS AND/OR SERVICES SECTION (018)(current)

INTERNATIONAL CLASS

018

DESCRIPTION

Leather and imitations of leather, and goods made of these materials and not included in other classes, namely, bags, evening bags, trolleys, billfolds, attache cases, portfolios, cigarett cases, pen cases, card cases, laptop cases, Mp3 cases, mobile phone cases, toilet cases, key rings, trunks and travelling bags, agendas, umbrellas, parasols, purses, suitcases, handbags, cases of leather or leather board, pocket wallets, briefcases, school bags, travelling trunks, leather leads, haversacks, beach bags; animal skins and hides, walking sticks; whips, harnesses and saddlery

GOODS AND/OR SERVICES SECTION (018)(proposed)

INTERNATIONAL CLASS

018

TRACKED TEXT DESCRIPTION

~~Leather and imitations of leather, and goods made of these materials and not included in other classes, namely, bags, evening bags, trolleys, billfolds, attache cases, portfolios, cigarett cases, pen cases, card cases, laptop cases, Mp3 cases, mobile phone cases, toilet cases, key rings, trunks and travelling bags, agendas, umbrellas, parasols, purses, suitcases, handbags, cases of leather or leather board, pocket wallets, briefcases, school bags, travelling trunks, leather leads, haversacks, beach bags.~~ Leather and imitations of leather, and goods made of these materials and not included in other classes, namely, bags, evening bags, general purpose trolley bags, billfolds, attache cases, briefcase-type portfolios, pen cases made of leather, credit card and name card cases, toiletry cases sold empty, trunks and travelling bags, umbrellas, parasols, purses, suitcases, handbags, cases of leather or leather board, pocket wallets, briefcases, school bags, travelling trunks, haversacks, beach bags; animal skins and hides, walking sticks; whips, harnesses and saddlery

FINAL DESCRIPTION

Leather and imitations of leather, and goods made of these materials and not included in other classes, namely, bags, evening bags, general purpose trolley bags, billfolds, attache cases, briefcase-type portfolios, pen cases made of leather, credit card and name card cases, toiletry cases sold empty, trunks and travelling bags, umbrellas, parasols, purses, suitcases, handbags, cases of leather or leather board, pocket wallets, briefcases, school bags, travelling trunks, haversacks, beach bags; animal skins and hides, walking sticks; whips, harnesses and saddlery

GOODS AND/OR SERVICES SECTION (025)(current)

INTERNATIONAL CLASS

025

DESCRIPTION

Clothing, namely, bodysuits, shirts, t-shirts, jackets, t rousers, scarves, pullovers, foulards, suits, vests, kerchief, nekerchiefs, shawls, belts, gloves; footwear, headgear, namely, hats, caps, visors, berets

GOODS AND/OR SERVICES SECTION (025)(proposed)

INTERNATIONAL CLASS

025

TRACKED TEXT DESCRIPTION	
Clothing, namely, bodysuits, shirts, t-shirts, jackets, trousers, scarves, pullovers, foulards, suits, vests, kerchief, neckerchiefs, shawls, belts, gloves; <u>Clothing, namely, bodysuits, shirts, t-shirts, jackets, trousers, scarves, pullovers, foulards, suits, vests, kerchief, neckerchiefs, shawls, belts, gloves;</u> footwear, headgear, namely, hats, caps, visors, berets	
FINAL DESCRIPTION	
Clothing, namely, bodysuits, shirts, t-shirts, jackets, trousers, scarves, pullovers, foulards, suits, vests, kerchief, neckerchiefs, shawls, belts, gloves; footwear, headgear, namely, hats, caps, visors, berets	
ADDITIONAL STATEMENTS SECTION	
TRANSLATION	The wording TOUS has no meaning in a foreign language.
DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of a rectangular design containing the repeated word TOUS and designs of hearts, daffodils, tulips, teddy bears, and other flowers.
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Lisa Parker Gates/
SIGNATORY'S NAME	Lisa Parker Gates
SIGNATORY'S POSITION	Attorney of record, Illinois bar members
DATE SIGNED	08/27/2010
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Fri Aug 27 13:07:02 EDT 2010
TEAS STAMP	USPTO/RFR-63.85.72.242-20 100827130702410986-790711 20-470e61aba19b225d92e2f6 d857e13146f77-N/A-N/A-201 00827130537119200

PTO Form (Rev 4/2000)

OMB No. 0651-.... (Exp. 08/31/2004)

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

Application serial no. 79071120 has been amended as follows:

ARGUMENT(S)

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

In Response to office action dated March 3, 2010, the word TOUS has no English translation.

The phonetic transcription of this word/brand name would be /touz/, which to an English speaker sounds fairly similar to the pronunciation of the word "toes". It should not be read like the French word "tous" because this mark is a Catalan surname. Tous, is the Catalan surname of the owners of the firm S. Tous, S.L., the applicant of this mark.

Neither English nor foreign surnames should be translated. TMEP §809.02. For example, "Schwarzkopf" can be literally translated as "black head," but the primary significance of "Schwarzkopf" is most likely that of a surname.

"Tous" is not a common surname, nor are Catalan surnames well known among English speakers. Thus, TOUS also is not primarily merely a surname. TMEP §1211.01(a)(v). *See, also, In re Joint-Stock Co. "Baik,"* 84 USPQ2d 1921 (TTAB 2007) (finding that extreme rarity of BAIK weighed against surname refusal); *In re Benthin Management GmbH,* 37 USPQ2d 1332 (TTAB 1995) (the fact that BENTHIN was a rare surname found to be a factor weighing against a finding that the term would be perceived as primarily merely a surname); *In re Sava Research Corp.,* 32 USPQ2d 1380 (TTAB 1994) (SAVA not primarily merely a surname, where there was evidence that the term had other meaning, no evidence that the term was the surname of anyone connected with applicant, and the term's use as a surname was very rare); *In re Garan Inc.,* 3 USPQ2d 1537 (TTAB 1987) (GARAN held not primarily merely a surname).

CLASSIFICATION AND LISTING OF GOODS/SERVICES

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

Current: Class 018 for Leather and imitations of leather, and goods made of these materials and not included in other classes, namely, bags, evening bags, trolleys, billfolds, attache cases, portfolios, cigarett cases, pen cases, card cases, laptop cases, Mp3 cases, mobile phone cases, toilet cases, key rings, trunks and travelling bags, agendas, umbrellas, parasols, purses, suitcases, handbags, cases of leather or leather board, pocket wallets, briefcases, school bags, travelling trunks, leather leads, haversacks, beach bags; animal skins and hides, walking sticks; whips, harnesses and saddlery

Original Filing Basis:

Filing Basis Section 66(a), Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

Proposed:

Tracked Text Description: ~~Leather and imitations of leather, and goods made of these materials and not included in other classes, namely, bags, evening bags, trolleys, billfolds, attache cases, portfolios, cigarette cases, pen cases, card cases, laptop cases, Mp3 cases, mobile phone cases, toilet cases, key rings, trunks and travelling bags, agendas, umbrellas, parasols, purses, suitcases, handbags, cases of leather or leather board, pocket wallets, briefcases, school bags, travelling trunks, leather leads, haversacks, beach bags; Leather and imitations of leather, and goods made of these materials and not included in other classes, namely, bags, evening bags, general purpose trolley bags, billfolds, attache cases, briefcase-type portfolios, pen cases made of leather, credit card and name card cases, toiletry cases sold empty, trunks and travelling bags, umbrellas, parasols, purses, suitcases, handbags, cases of leather or leather board, pocket wallets, briefcases, school bags, travelling trunks, haversacks, beach bags; animal skins and hides, walking sticks; whips, harnesses and saddlery~~

Class 018 for Leather and imitations of leather, and goods made of these materials and not included in other classes, namely, bags, evening bags, general purpose trolley bags, billfolds, attache cases, briefcase-type portfolios, pen cases made of leather, credit card and name card cases, toiletry cases sold empty, trunks and travelling bags, umbrellas, parasols, purses, suitcases, handbags, cases of leather or leather board, pocket wallets, briefcases, school bags, travelling trunks, haversacks, beach bags; animal skins and hides, walking sticks; whips, harnesses and saddlery

Filing Basis Section 66(a), Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

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

Current: Class 025 for Clothing, namely, bodysuits, shirts, t-shirts, jackets, t rousers, scarves, pullovers, foulards, suits, vests, kerchief, neckerchiefs, shawls, belts, gloves; footwear, headgear, namely, hats, caps, visors, berets

Original Filing Basis:

Filing Basis Section 66(a), Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

Proposed:

Tracked Text Description: ~~Clothing, namely, bodysuits, shirts, t-shirts, jackets, t rousers, scarves, pullovers, foulards, suits, vests, kerchief, neckerchiefs, shawls, belts, gloves; Clothing, namely, bodysuits, shirts, t-shirts, jackets, t rousers, scarves, pullovers, foulards, suits, vests, kerchief, neckerchiefs, shawls, belts, gloves; footwear, headgear, namely, hats, caps, visors, berets~~

Class 025 for Clothing, namely, bodysuits, shirts, t-shirts, jackets, t rousers, scarves, pullovers, foulards, suits, vests, kerchief, neckerchiefs, shawls, belts, gloves; footwear, headgear, namely, hats, caps, visors, berets

Filing Basis Section 66(a), Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

ADDITIONAL STATEMENTS**Translation**

The wording TOUS has no meaning in a foreign language.

Description of mark

The mark consists of a rectangular design containing the repeated word TOUS and designs of hearts,

daffodils, tulips, teddy bears, and other flowers.

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Lisa Parker Gates/ Date: 08/27/2010

Signatory's Name: Lisa Parker Gates

Signatory's Position: Attorney of record, Illinois bar members

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: 79071120

Internet Transmission Date: Fri Aug 27 13:07:02 EDT 2010

TEAS Stamp: USPTO/RFR-63.85.72.242-20100827130702410

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