

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	79148490
LAW OFFICE ASSIGNED	LAW OFFICE 108
MARK SECTION	
MARK FILE NAME	http://tmng-al.uspto.gov/resting2/api/img/79148490/large
LITERAL ELEMENT	LEICA
STANDARD CHARACTERS	NO
USPTO-GENERATED IMAGE	NO

ARGUMENT(S)

Section 2(d) Refusal

The final Office Action of March 25, 2016 includes a partial refusal of the instant application based on an asserted likelihood of confusion under Section 2(d) based on U.S. Registration No. 2,962,487 for LEIKA (stylized) in relation to the following goods in Class 14:

Gemstones, pearls and precious metals, and imitations thereof, namely imitation precious gemstones, charms, [...];jewelry, jewellery ornaments; [...];articles of precious metals, precious stones, and imitations thereof, namely [...];jewelry ornaments, [...]and tokens in the nature of pendants, [...];jewelry boxes [...];[...]jewelry, namely, amulets, pins bracelets, brooches, necklaces, chains, and rings; [...]; tie pins; cuff links; medals; earrings; [...]; ornamental pins; [...]

The Office Action indicates that the refusal does not apply to the goods of Classes 18 and 25, as well as the remaining goods of Class 14.

A Notice of Appeal is being filed along with this Request for Reconsideration in relation to Class 14. The Notice of Appeal does not include Classes 18 and 25 as they are not a part of the refusal in the Office Action of March 25, 2016.

Reconsideration of the refusal to register the goods of Class 14 as identified above based on the LEIKA registration is hereby requested.

The *DuPont* case cited in the Office Action establishes that the comparison of two marks must be based on the marks in their entirety: their appearance, sound, connotation, and commercial impression must all be taken into account. *In re E.I. DuPont de Nemours & Co.*, 476 F.2d 1357, 1360-51 (C.C.P.A. 1973). Applicant respectfully submits that there is no likelihood of confusion between Applicant's mark and the mark of the cited registration due to the differences between the appearances and commercial impressions of the respective marks.

The refusal to register relies on the similarity in the spelling of the respective marks and the similarity of the goods. However, the difference in the spelling of the marks, specifically, "LEICA" of the instant application vs. "LEIKA" of the cited registration, should not be minimized. As the word portion of both marks includes only five letters, the difference of a single letter within the mark must be given weight when

considering the possibility of confusion between the marks. In a longer mark, a single letter would not create a considerable contrast, but with only five letters in each of the marks, each letter is significant. This difference reduces any likelihood of confusion by consumers encountering the marks in the marketplace.

In addition to this difference, the stylization of the respective marks must also be considered. As previously indicated, Applicant's mark is "LEICA," written neatly in cursive within a dramatic red circle, which adds a strength to the meticulousness of the "LEICA" portion of the mark.

Registrant's mark is "LEIKA" written in a font similar to messy handwriting with a space between "LEI" and "KA" providing a dramatically different appearance and commercial impression from the mark of the instant application.

Please see the attached images of the two marks. Although consideration of the marks is not based on a side-by-side comparison, the dramatic commercial impressions created by each are strong enough to create lasting impressions in consumers' minds and these lasting impressions will be significantly different. Accordingly, consumers encountering the marks separately are not likely to confuse the two marks as they just aren't at all similar.

The refusal is based on the fact that the marks include the majority of the same letters, with the exception of a "C" in Applicant's mark corresponding to a "K" in the Registrant's mark. However, the commercial impressions created by the stylizations of the two marks are dramatic to the point of reducing the possibility of confusion that could be created by the similarity of the spellings of the respective marks, which is also a significant factor when considering two five letter marks. The vastly different appearances and commercial impressions of the marks diminish the possibility of confusion by consumers to below the threshold of a likelihood of confusion, as is required to refuse the registration of a mark.

Conclusion

"The Trademark Act does not speak in terms of remote possibilities of confusion, but rather, the likelihood of such confusion occurring in the marketplace. . . . More than a mere possibility of confusion must be shown; instead, there must be demonstrated a probability or likelihood of confusion." *George H. Fuller & Son Co. v. Thomas A. Wheeler*, TTAB, 1999, 1999 TTAB LEXIS 695. In the instant case, there clearly is not a probability or likelihood of confusion due to the dramatically different appearances and commercial impressions created by the marks. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the refusal.

EVIDENCE SECTION

EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_69195247116-20160923071455613235_.30058Evidence.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT17\IMAGEOUT17\791\484\79148490\xml1\RFR0002.JPG

SIGNATURE SECTION

RESPONSE SIGNATURE	/David J. Ervin/
SIGNATORY'S NAME	David J. Ervin
SIGNATORY'S POSITION	Attorney of record, Virginia bar member

SIGNATORY'S PHONE NUMBER	202-624-2622
DATE SIGNED	09/26/2016
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Sep 26 12:37:14 EDT 2016
TEAS STAMP	USPTO/RFR-XX.XXX.XXX.XXX- 20160926123714852245-7914 8490-5507f2e81bcfd28a630a 56c9b6825245c0cc9357af253 fcde9c351295324ea6f4-N/A- N/A-20160923071455613235

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PTO Form 1960 (Rev 10/2011)

OMB No. 0651-0050 (Exp 07/31/2017)

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. **79148490** LEICA (Stylized and/or with Design, see <http://tmng-al.uspto.gov/resting2/api/img/79148490/large>) has been amended as follows:

ARGUMENT(S)

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

Section 2(d) Refusal

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EVIDENCE

Original PDF file:

[evi_69195247116-20160923071455613235_.30058Evidence.pdf](#)

Converted PDF file(s) (1 page)

[Evidence-1](#)

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /David J. Ervin/ Date: 09/26/2016

Signatory's Name: David J. Ervin

Signatory's Position: Attorney of record, Virginia bar member

Signatory's Phone Number: 202-624-2622

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 owner's/holder'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 owner/holder in this matter: (1) the owner/holder 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 owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder'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: 79148490

Internet Transmission Date: Mon Sep 26 12:37:14 EDT 2016

TEAS Stamp: USPTO/RFR-XX.XXX.XXX.XXX-201609261237148

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6825245c0cc9357af253fcde9c351295324ea6f4

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Leika