

## Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85012005
LAW OFFICE ASSIGNED	LAW OFFICE 104
MARK SECTION (no change)	
ARGUMENT(S)	
<p>In the first Office Action dated July 23, 2010, the Examining Attorney refused registration under Section 2(d) of the Trademark Act on the grounds of likelihood of confusion with the mark <b>JAGUAR COMMUNICATIONS (&amp; Design)</b>, as shown in U.S. Registration No. 3459482. Applicant respectfully disagreed with the Examining Attorney's position, and on January 24, 2011, Applicant responded to the Office Action by presenting certain information and arguments to show that there is no likelihood that consumers would be confused between these marks and the respective services. The Examining Attorney was not persuaded, and February 28, 2011, issued this final Office Action maintaining the refusal to register on the grounds of likelihood of confusion with the mark shown in U.S. Registration No. 3459482.</p> <p>Applicant maintains its position that the subject mark is not likely to cause confusion with the cited mark. Based on the information and arguments provided herein, as well as the information and arguments provided in response to the first Office Action, Applicant asserts that the subject mark is worthy of registration on the Principal Register.</p> <p>First, the marks are easily distinguishable in their overall appearance. As previously argued, Applicant seeks to register a composite mark made up of several unique word and design elements. <i>Franklin Mint Corp. v. Master Manufacturing Co.</i>, 212 USPQ 233, 234 (CCPA 1981) ("It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole."); <i>see also Association of Co-operative Members, Inc. v. Farmland Industries, Inc.</i>, 216 USPQ 361, 366 (5th Cir. 1982) (a composite mark is more than the mere sum of its parts).</p> <p>Applicant reiterates that its mark comprises the words "JAGUAR TECHNOLOGIES INC." in a stylized font <i>and</i> the design of a house with a curved line extending from outside the house into the middle of the house. The design elements are an integral part of Applicant's mark and create a very unique connotation – the impression is that the services offered under this design mark will bring something into a person's home, and in fact, Applicant's services involve the installation of home theaters, computer systems, and telecommunication networks.</p> <p>The cited mark comprises its own unique design elements, namely, a gold square. Clearly, Applicant's mark and the cited mark – <i>when viewed in their entirety</i> – have their own distinguishable characteristics that negate any similarity in appearance or connotation.</p> <p>The design elements in Applicant's mark are even more significant in light of the fact that Applicant's mark and the cited mark appear to co-exist within a crowded field. Because the word "jaguar" is also used by several other entities on potentially related goods/services, the design elements in Applicant's mark could be considered more dominant, and again, their presence negates any similarities with the cited mark.</p> <p>Second, Registrant's services are not so related to Applicant's services that consumers would mistakenly believe they come from a common source. <i>In re Martin's Famous Pastry Shoppe, Inc.</i>, 748 F.2d 1565 (Fed. Cir. 1984). A determination of likelihood of confusion must be made solely on the</p>	

basis of the goods/services identified in the application and registration, without limitations or restrictions that are not reflected therein. *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593, 1595 (TTAB 1999).

In this case, Applicant is using its mark on the following services: "Installation of computer systems; Installation of home theatres and related structured wiring; Maintenance and repair of telecommunications networking hardware, apparatus, and instruments; Telecommunication wiring," in Class 37, and "Consulting in the field of information technology; Custom design and engineering of telephony systems, cable television systems and fiber optics; Design for others in the field of computer networks, software, and engineering for the commercial, government or residential customer.; Design of computer hardware, integrated circuits, communications hardware and software and computer networks for other," in Class 42.

On the other hand, Registrant's mark is identified for use on the following services:

"telecommunications services, namely, local, long distance, and international voice, text, facsimile, video and data telecommunication services; frame relay telecommunications services; virtual network telecommunications services; electronic mail and voice mail and messaging services; electronic data transmission packet services; computer aided transmission of messages and images; audio and video teleconferencing services; private line voice, text, facsimile, video and data telecommunications services; integrated services digital network (isdn) telecommunications services; transmission of voice, text, facsimile, video and data via satellite, terrestrial and undersea telecommunications links; television transmission services; 800 telecommunications services; 900 telecommunications services; switched voice, data, video and multimedia services; location independent personal communications services comprising mobile voice, data and facsimile services; digital subscriber line (dsl) telecommunications services; providing telecommunications connections to worldwide global computer networks, other computer networks, namely, private computer networks, on-line services and bulletin boards; providing back bone telecommunications network services to others to enable them to display content on worldwide global computer networks and other computer networks, namely, private computer networks, on-line services and bulletin boards; providing telecommunications connections to on-line information services; the transmission over cable of entertainment services and voice, video, data and facsimile telephone services; wireless telecommunications services, namely, wireless cellular telephone services, wireless digital messaging services and wireless facsimile mail services; providing and facilitating connections to telecommunications services, namely, providing telecommunications connections to local and long distance telephone services of others by electronic means, namely, providing access to an electronic data base through a global computer network. providing on-line chat rooms for transmission of messages among computer users concerning a wide variety of topics; the transmission over Internet Protocol of local, long distance, and international voice, video, data and facsimile telephone services, multimedia services and entertainment services; the transmission over fiber optic cable of local, long distance, and international voice, video, data and facsimile telephone services, multimedia services and entertainment services; Voice-Over-Internet-Protocol services; all aforementioned services over packet networks," in Class 38.

On their face, these services are not identical, nor technically related, nor do they fall within the same international classification.

The Examining Attorney has argued in the final Office Action that Applicant's services are related to those of the Registrant in that both services enable telecommunication and are the type of services commonly provided together. To support such a conclusion, the Examining Attorney submitted evidence that purports to show that one company – Verizon – offers all of the services offered by both Applicant and Registrant. Applicant respectfully disagrees that information relating to *a single company*, and a very large one at that, is not persuasive in the instant case. Moreover, many other third parties have registered the same mark on completely unrelated goods, such as COCA-COLA glassware and board games, or ARTISANAT ANGKOR laundry detergent and honey. (See Exhibit 1, copies of registration certificates.) The evidence of record merely suggests that a company oftentimes has a varied line of products and services; it does not establish that consumers are likely to confuse the source of the services of the Applicant and Registrant in the instant case.

Third, Applicant's channels of trade and classes of consumers are distinctive. See *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357 (CCPA 1973); *Astra Pharmaceutical Products, Inc. v. Beckman*

*Instruments, Inc.*, 718 F.2d 1201, 1206 (1<sup>st</sup> Cir. 1983) (finding no confusion between the marks **ASTRA** and **ASTRA** after consideration of dissimilar goods and sophisticated purchasers). Applicant's services involve the installation of home theaters, computer systems, and telecommunication networks, and as previously argued, Applicant counts among its clients major cable companies such as Bright House

Networks, Comcast Cable and Time Warner, as well as major residential home builders and developers. On the other hand, it appears that Registrant is providing phone service to individuals; according to its website, Registrant's services are marketed to actual home owners in small, rural towns.

Applicant's services and Registrant's services do not have common channels of trade and are not marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source.

Fourth, Applicant reiterates that it has used its mark in commerce (in some form) since at least as early as 1994. The cited mark claims to have been used since 1999. In the past decade, the marks have managed to co-exist in the marketplace without any known instances of actual confusion. Such a fact strongly supports the conclusion that any future is unlikely. In the final Office Action, the Examining Attorney states that the overriding concern is not only to prevent buyer confusion as to the source of the services, but to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. In the instant case, all the available evidence strongly suggests that Registrant has not, and will not, be damaged by the registration of Applicant's mark.

In conclusion, Applicant notes that "[i]n considering the evidence of record..., we must keep in mind that 'the fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.'" *Federated Foods, Inc. v. Fort Howard Paper Co.*, 192 USPQ 24, 29 (CCPA 1976). In the instant case, there is no likelihood of confusion between Applicant's mark and the cited mark due to the differences in the appearance, sound, and connotation between the marks, *and* due to the potentially crowded field, *and* due to the different types of services, *and* due to the different types of consumers, *and* due to the differences in the activities surrounding the marketing and distribution of the respective services. Taken all together, these factors weigh heavily in Applicant's favor.

Applicant respectfully requests that the Examining Attorney reconsider the rejection of the subject application in light of this information, and approve the subject application for publication.

Should the Examining Attorney have any questions regarding this response, or would like clarification of any of the points raised herein, the undersigned requests that she be contacted by telephone at (407) 841-2330 or email at [blabutta@addmg.com](mailto:blabutta@addmg.com).

## EVIDENCE SECTION

### EVIDENCE FILE NAME(S)

ORIGINAL PDF FILE	<a href="#">evi_6619316998-210510301_. Exhibit 1.pdf</a>
CONVERTED PDF FILE(S) (4 pages)	<a href="#">\\TICRS\EXPORT11\IMAGEOUT11\850\120\85012005\xml7\RFR0002.JPG</a>
	<a href="#">\\TICRS\EXPORT11\IMAGEOUT11\850\120\85012005\xml7\RFR0003.JPG</a>
	<a href="#">\\TICRS\EXPORT11\IMAGEOUT11\850\120\85012005\xml7\RFR0004.JPG</a>
	<a href="#">\\TICRS\EXPORT11\IMAGEOUT11\850\120\85012005\xml7\RFR0005.JPG</a>
DESCRIPTION OF EVIDENCE FILE	Exhibit 1

## SIGNATURE SECTION

RESPONSE SIGNATURE	/Bridget H Labutta/
SIGNATORY'S NAME	Bridget H Labutta
SIGNATORY'S POSITION	Attorney of record
DATE SIGNED	08/29/2011
AUTHORIZED	YES

<b>SIGNATORY</b>	
<b>CONCURRENT APPEAL NOTICE FILED</b>	YES
<b>FILING INFORMATION SECTION</b>	
<b>SUBMIT DATE</b>	Mon Aug 29 21:12:11 EDT 2011
<b>TEAS STAMP</b>	USPTO/RFR-66.193.169.98-2 0110829211211718858-85012 005-480efe733bb86498f9f58 3dd8d1f9020b7-N/A-N/A-201 10829210510301155

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. **85012005** has been amended as follows:

### ARGUMENT(S)

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

In the first Office Action dated July 23, 2010, the Examining Attorney refused registration under Section 2(d) of the Trademark Act on the grounds of likelihood of confusion with the mark **JAGUAR COMMUNICATIONS (& Design)**, as shown in U.S. Registration No. 3459482. Applicant respectfully disagreed with the Examining Attorney's position, and on January 24, 2011, Applicant responded to the Office Action by presenting certain information and arguments to show that there is no likelihood that consumers would be confused between these marks and the respective services. The Examining Attorney was not persuaded, and February 28, 2011, issued this final Office Action maintaining the refusal to register on the grounds of likelihood of confusion with the mark shown in U.S. Registration No. 3459482.

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First, the marks are easily distinguishable in their overall appearance. As previously argued, Applicant seeks to register a composite mark made up of several unique word and design elements. *Franklin Mint Corp. v. Master Manufacturing Co.*, 212 USPQ 233, 234 (CCPA 1981) ("It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole."); *see also Association of Co-operative Members, Inc. v. Farmland Industries, Inc.*, 216 USPQ 361, 366 (5th Cir. 1982) (a composite mark is more than the mere sum of its parts).

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*Instruments, Inc.*, 718 F.2d 1201, 1206 (1<sup>st</sup> Cir. 1983) (finding no confusion between the marks **ASTRA** and **ASTRA** after consideration of dissimilar goods and sophisticated purchasers). Applicant's services involve the installation of home theaters, computer systems, and telecommunication networks, and as previously argued, Applicant counts among its clients major cable companies such as Bright House Networks, Comcast Cable and Time Warner, as well as major residential home builders and developers. On the other hand, it appears that Registrant is providing phone service to individuals; according to its website, Registrant's services are marketed to actual home owners in small, rural towns.

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## **EVIDENCE**

Evidence in the nature of Exhibit 1 has been attached.

### **Original PDF file:**

[evi\\_6619316998-210510301 . Exhibit 1.pdf](#)

### **Converted PDF file(s) (4 pages)**

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

## **SIGNATURE(S)**

### **Request for Reconsideration Signature**

Signature: /Bridget H Labutta/ Date: 08/29/2011

Signatory's Name: Bridget H Labutta

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: 85012005

Internet Transmission Date: Mon Aug 29 21:12:11 EDT 2011

TEAS Stamp: USPTO/RFR-66.193.169.98-2011082921121171

8858-85012005-480efe733bb86498f9f583dd8d

1f9020b7-N/A-N/A-20110829210510301155

Int. Cl.: 21

Prior U.S. Cls.: 2, 30, 33 and 50

Reg. No. 1,342,741

**United States Patent and Trademark Office** Registered June 18, 1985

TRADEMARK  
PRINCIPAL REGISTER



COCA-COLA COMPANY, THE (DELAWARE  
CORPORATION)  
310 NORTH AVENUE, N.W.  
ATLANTA, GA 30313

FOR: GLASSWARE, NAMELY, TANKARDS,  
MUGS, TUMBLERS, GOBLETS, STEMWARE,  
PLATES, DECANTERS, PITCHERS, BOWLS,  
STORAGE JARS AND COASTERS; STRAW  
DISPENSERS, VASES, AND PORCELAIN  
GIFTWARE, NAMELY FIGURINES, PLATES,  
CUPS, SAUCERS, ORNAMENTAL TABLE

BELLS, ORNAMENTAL TABLE EGGS, AND  
SYRUP URNS, IN CLASS 21 (U.S. CLS. 2, 30, 33  
AND 50).

FIRST USE 0-0-1900; IN COMMERCE  
0-0-1900.

OWNER OF U.S. REG. NOS. 22,406 AND  
1,277,043.

SER. NO. 509,020, FILED 11-15-1984.

AMANDA LAURA NYE, EXAMINING ATTOR-  
NEY



**Int. Cl.: 28**

**Prior U.S. Cls.: 22, 23, 38 and 50**

**Reg. No. 2,844,970**

**United States Patent and Trademark Office**

**Registered May 25, 2004**

**TRADEMARK  
PRINCIPAL REGISTER**

**COCA-COLA**

THE COCA-COLA COMPANY (DELAWARE  
CORPORATION)  
P.O. BOX 1734  
ATLANTA, GA 30301

FOR: BOARD GAMES; CHECKER SETS; PLAY-  
ING CARDS; CARD GAMES; PUZZLES; BAL-  
LOONS; HAND HELD UNIT FOR PLAYING  
ELECTRONIC GAMES; CHRISTMAS DECORA-  
TIONS AND ACCESSORIES OF ALL KINDS, NAME-  
LY, CHRISTMAS TREE SKIRTS, ARTIFICIAL  
CHRISTMAS GARLANDS; CHRISTMAS TREE OR-  
NAMENTS; CHRISTMAS STOCKINGS; CHRIST-  
MAS TREE DECORATIONS; SNOW GLOBES;  
SPORTING EQUIPMENT AND ACCESSORIES FOR  
SOCCER, NAMELY, SOCCER BALLS; SPORTING  
EQUIPMENT AND ACCESSORIES FOR GOLF,  
NAMELY, GOLF BALLS, GOLF TEES, GOLF BALL  
MARKERS, BALL CLEANERS, GOLF PUTTERS,  
DIVOT REPAIR TOOLS, GOLF BAGS; SPORTING  
EQUIPMENT AND ACCESSORIES FOR SKATING,  
NAMELY, IN-LINE SKATES, SKATE BOARDS; EL-  
BOW PADS FOR ATHLETIC USE; KNEE PADS FOR  
ATHLETIC USE; SHIN PADS FOR ATHLETIC USE;  
BADMINTON GAME PLAYING EQUIPMENT;  
SPORTING EQUIPMENT AND ACCESSORIES FOR  
FISHING, NAMELY, FISHING LURES; BILLIARD  
CUES, BILLIARD BALLS, BILLIARD GAME PLAY-

ING EQUIPMENT AND ACCESSORIES, NAMELY  
BILLIARD BRIDGES, BILLIARD BUMPERS, BIL-  
LIARD CHALK, BILLIARD CUE RACKS, BILLIARD  
CUSHIONS, BILLIARD NETS, BILLIARD TABLES,  
BILLIARD TALLY BALLS, BILLIARD TIPS, BIL-  
LIARD TRIANGLES, CUE STICKS FOR BILLIARD  
OR POOL; SNOW SLEDS FOR RECREATIONAL  
USE; PINBALL MACHINES; SPORT BALLS; TOY  
VEHICLES; TOY ELECTRIC TRAINS; TOY MODEL  
TRAIN SETS; TRAIN SET ACCESSORIES, NAMELY,  
ARTIFICIAL TREES, TURF, FOLIAGE, BALLAST,  
BUILDINGS, FIGURINES, BILLBOARDS, LICHEN  
AND GRASS; TOY BANKS, TOY MOBILES, MULTI-  
PLE ACTIVITY BABY TOYS; DART BOARD CASES;  
DART BOARDS; DOLLS AND ACCESSORIES  
THEREFOR; PLUSH TOYS; YO-YOS; FLYING  
DISCS; INFLATABLE TOYS, IN CLASS 28 (U.S.  
CLS. 22, 23, 38 AND 50).

FIRST USE 1-1-1920; IN COMMERCE 1-1-1920.

OWNER OF U.S. REG. NOS. 47,189, 229,380 AND  
OTHERS.

SER. NO. 78-264,035, FILED 6-18-2003.

ROBERT COGGINS, EXAMINING ATTORNEY

# United States of America

United States Patent and Trademark Office

ARTISANAT  
ANGKOR



**Reg. No. 3,763,405** ARTISANS D'ANGKOR EUROPE (FRANCE SOCIÉTÉ À RESPONSABILITÉ LIMITÉE)  
Registered Mar. 23, 2010 UNIPERSONNELLE)  
175 AVENUE D'ALSACE  
F-68000 COLMAR, FRANCE

**Int. Cls.: 3, 4, 8, 14 and**

**30**

**TRADEMARK  
PRINCIPAL REGISTER**

FOR: LAUNDRY DETERGENT; DETERGENT SOAPS; LIQUID SOAPS; LIQUID BATH SOAPS; LIQUID SOAPS FOR HANDS, FACE AND BODY; SHAVING SOAPS; TOILET SOAPS; SOAPS FOR HOUSEHOLD USE; DEODORANT SOAPS; BODY WASHES; PERFUMERY; ESSENTIAL OILS; COSMETICS; DEPILATORY WAX; HAIR LOTIONS; DENTIFRICES; JOSS STICKS; SCENTED WOOD; HAIR COLORANTS; BATH SALTS, NOT FOR MEDICAL PURPOSES; SCENTED ROOM WATER; SCENTED BODY WATER, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

FOR: CANDLES; PERFUMED CANDLES; CANDLES AND WICKS FOR CANDLES FOR LIGHTING; CANDLES MADE FROM BEESWAX; CANDLES TORCHES MADE FROM BEESWAX, IN CLASS 4 (U.S. CLS. 1, 6 AND 15).

FOR: CUTLERY NAMELY FORKS, SPOONS AND KNIVES; SIDE ARMS OTHER THAN FIREARMS; RAZORS; PENKNIVES; MINCING KNIFE; VEGETABLE SLICERS; DAGGERS; RAZOR BLADES; ELECTRIC RAZORS, NON-ELECTRIC RAZORS; NAIL FILES; TWEEZERS; ELECTRIC DEPILATORY APPLIANCES, NON-ELECTRIC DEPILATORY APPLIANCES; HAND TOOLS, NAMELY, HAMMERS AND SAWS; PRUNING SCISSORS; PRUNING KNIVES; NUTCRACKERS; SHEARS; SCISSORS; SWORDS; SABRES; SICKLES; FORKS, IN CLASS 8 (U.S. CLS. 23, 28 AND 44).



FOR: PRECIOUS METALS; JEWELLERY; PRECIOUS STONES; CLOCKS, WATCHES AND CHRONOMETERS; JEWELLERY, NAMELY, AMULETS; KEYRINGS OF PRECIOUS METAL; PEARLS BEING JEWELLERY; SUNDIALS; JEWELLERY CASES; BOXES OF PRECIOUS METAL; STATUES AND FIGURINES OF PRECIOUS METAL, IN CLASS 14 (U.S. CLS. 2, 27, 28 AND 50).

FOR: COFFEE; TEA; COCOA; SUGAR; RICE; TAPIOCA; SAGO; ARTIFICIAL COFFEE; FLOUR AND FARINACEOUS FOOD PASTES FOR HUMAN CONSUMPTION; OAT FLAKES; CORN FLAKES; BREAD; PASTRIES AND SWEETS BEING CANDY; EDIBLE ICES; HONEY; MOLASSES SYRUP; YEAST; BAKING POWDER; SALT; MUSTARD; VINEGAR; SEASONING PRODUCTS, NAMELY, SAUCES; SPICES; ICE FOR REFRESHMENT; HERB TEA FOR FOOD PURPOSES; ICED TEA; GINGERBREAD, IN CLASS 30 (U.S. CL. 46).

*David J. Kappas*

Director of the United States Patent and Trademark Office

OWNER OF U.S. REG. NO. 3,508,819.

**Reg. No. 3,763,405** PRIORITY DATE OF 8-11-2008 IS CLAIMED.

OWNER OF INTERNATIONAL REGISTRATION 0998364 DATED 9-1-2008, EXPIRES 9-1-2018.

THE COLOR(S) BLACK AND GOLD IS/ARE CLAIMED AS A FEATURE OF THE MARK.

THE REPRESENTATION OF A LEAF IS IN GOLD AND THE WORDS "ARTISANAT" AND "ANGKOR" ARE IN BLACK.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ARTISANAT ANKOR", APART FROM THE MARK AS SHOWN.

THE ENGLISH TRANSLATION OF THE WORD "ARTISANAT" IN THE MARK IS "CRAFTS".

SER. NO. 79-067,136, FILED 9-1-2008.

MARK RADEMACHER, EXAMINING ATTORNEY