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

Proceeding	85070964
Applicant	The Young People's Chorus of New York Ci
Applied for Mark	YOUNG PEOPLE'S CHORUS OF NEW YORK CITY
Correspondence Address	Edward M. Weisz Cozen O'Connor 277 Park Avenue New York, NY 10172 UNITED STATES NYOdoCKET@cozen.com
Submission	Request for Reconsideration
Attachments	Req Reconsideration-Composite TM.PDF (7 pages)(227621 bytes)
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Signature	/Edward M. Weisz/
Date	12/20/2011

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

In Re Trademark Application of

**The Young People's Chorus of New York
City, Inc.**

Serial No.: **85/070,964**

Filed: **June 24, 2010**

Mark: **YOUNG PEOPLE'S CHORUS
OF NEW YORK CITY Logo**

Box TTAB FEE
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

REQUEST FOR RECONSIDERATION

S I R:

Applicant respectfully requests reconsideration of the refusal to register applicant's mark based on a likelihood of confusion with The New York Philharmonic's trademark registration for Young Peoples Concerts. The Applicant and The New York Philharmonic have entered into a Mutual Coexistence Agreement concerning their use of their respective marks and have agreed to take all necessary steps to avoid a likelihood of confusion in the event one exists. A copy of the Agreement is attached. Accordingly, it is requested that the

CO-EXISTENCE AND CONSENT TO REGISTER AGREEMENT

This Co-Existence and Consent to Register Agreement ("Agreement") is made and entered into by and between The Young People's Chorus of New York City, Inc., a not-for-profit corporation of New York, having an office and place of business at 1995 Broadway, New York, New York 10023 ("YPC," or "Party"), and The Philharmonic-Symphony Society of New York, Inc., a not-for-profit corporation of New York, having an office and place of business at Avery Fisher Hall, Broadway at 65th Street, New York, New York 10023 ("New York Philharmonic," or "Party," and with YPC, "the Parties").

WITNESSETH:

WHEREAS, YPC has been using the mark YOUNG PEOPLE'S CHORUS OF NEW YORK CITY since at least as early as 1996, and has applied to register with the United States Patent and Trademark Office ("PTO") the mark YOUNG PEOPLE'S CHORUS OF NEW YORK CITY, Trademark Application Serial No. 85070971, for entertainment services, namely, providing live performances in the nature of concerts by a children's chorus, and the mark YOUNG PEOPLE'S CHORUS OF NEW YORK CITY plus Design, Trademark Application Serial No. 85070964, for entertainment services, namely, providing live performances in the nature of concerts by a children's chorus; and

WHEREAS, New York Philharmonic has been using the mark YOUNG PEOPLE'S CONCERTS since at least as early as 1958 and is the owner of U.S. Trademark Registration No. 1,726,349 for the mark YOUNG PEOPLE'S CONCERTS for entertainment services, namely, live musical performances by an orchestra, and U.S. Trademark Registration No. 1,848,084 for the mark YOUNG PEOPLE'S CONCERTS for prerecorded audiotapes and videotapes featuring music and educational material related thereto; and

WHEREAS, U.S. Trademark Registration Nos. 1,726,349 and 1,848,084 have been asserted by the Examining Attorney as a basis of rejection of YPC's Trademark Application Serial Nos. 85070971 and 85070964; and

WHEREAS, the Parties, mindful of the public interest in the prevention of customer confusion, believe that the concurrent use of their respective marks in connection with their respective services and goods is not likely to cause confusion in the marketplace; and

WHEREAS, neither Party is aware of any instance of actual confusion among the consuming public with respect to their respective marks as used with their respective services and goods, despite the fact that their respective marks have been used concurrently in the United States since at least as early as 1996;

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, the Parties hereto mutually agree as follows:

1. The Parties are in agreement in their belief that, because of the differences in the services and goods offered by the Parties under their respective marks as identified in their respective above-referenced U.S. Trademark Applications and Registrations and the intended audiences therefor, and in view of the terms of this Agreement, any likelihood of confusion arising from concurrent use of the respective marks of the Parties in connection with their respective services and goods is de minimis or non-existent.
2. The Parties agree that, in the event either of them becomes aware of or is informed of any confusion arising from the simultaneous use of their respective marks in connection with their respective services or goods as set forth in their respective above-identified U.S. Trademark Applications and Registrations, such Party shall promptly inform the other Party of such confusion and the Parties shall promptly and in good faith confer and

cooperate to develop appropriate steps to obviate and avoid future confusion, and YPC agrees that it will adopt such reasonable steps as may be proposed and requested by New York Philharmonic to avoid future confusion.

3. Subject to the terms of this Agreement, New York Philharmonic consents to the registration and continued use by YPC of its trademarks YOUNG PEOPLE'S CHORUS OF NEW YORK CITY and YOUNG PEOPLE'S CHORUS OF NEW YORK CITY plus Design for the services identified in YPC's U.S. Trademark Application Serial Nos. 85070971 and 85070964.
4. YPC acknowledges that New York Philharmonic's U.S. Trademark Registration Nos. 1,726,349 and 1,848,084 are incontestable under 15 U.S.C. § 1065, and agrees that New York Philharmonic has the right to maintain said registrations and to use the mark YOUNG PEOPLE'S CONCERTS for the services and goods identified in said registrations.
5. Neither Party shall, by advertising, promotion, or otherwise, perform any act or do anything that would suggest that it is in any way affiliated or associated with the other Party.
6. The Parties agree to take such further actions as may be necessary to carry out the spirit and intent of this Agreement.
7. Notices and other communications required under this Agreement shall be in writing and for all purposes be deemed to be fully given and received if sent by overnight Federal Express or other overnight delivery service providing proof of delivery to the respective parties at the following addresses:

For YPC:

Howell Nunez
The Young People's Chorus of New York City, Inc.
1995 Broadway
New York, NY 10023

with a copy to:

Martin B. Pavane, Esq.
Cozen O'Connor
277 Park Avenue
New York, NY 10172

For New York Philharmonic:

Bill Thomas
Senior Vice President
New York Philharmonic
Avery Fisher Hall
10 Lincoln Center Plaza
New York, NY 10023
Tel: (212) 875-5721
Fax: (212) 875-5716
thomasb@nyphil.org

with a copy to:

Jenifer deWolf Paine, Esq.
Proskauer
Eleven Times Square
New York, NY 10036-8299

These addresses may be changed by giving the other party written notice of the new address in accordance with the provisions of paragraph 7.

8. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.
9. This Agreement constitutes the entire understanding between YPC and New York Philharmonic with respect to the subject matter hereof, and supersedes any prior agreements, whether written or oral.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed
by their respective officers on the date and year shown.

The Young People's Chorus of New York City, Inc.

By: Francis J. King

Title: President

Date: 12/14/2011

The Philharmonic-Symphony Society of New York, Inc.

By: William W. ...

Title: Sr. Vice President

Date: 12/16/11