

ESTTA Tracking number: **ESTTA423697**

Filing date: **08/05/2011**

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

Proceeding	85100007
Applicant	The Lifeguard Store, Inc.
Applied for Mark	THE LIFEGUARD STORE
Correspondence Address	ELLIOTT C BANKENDORF MCCRACKEN & FRANK LLP 311 S WACKER DRIVE, SUITE 2500 CHICAGO, IL 60606-6674 UNITED STATES tmdocket@mccrackenfrank.com
Submission	Request for Reconsideration
Attachments	TTAB Request for Reconsideration 85100007.pdf ( 1 page )(79124 bytes ) Signed 2F Decl for The Lifeguard Store.pdf ( 2 pages )(76082 bytes ) Signed POA The Lifeguard Store .pdf ( 3 pages )(81901 bytes )
Filer's Name	Richard W. Young
Filer's e-mail	tm-dept@quarles.com, nicholas.schmidbauer@quarles.com, richard.young@quarles.com, veronica.brooks@quarles.com
Signature	/Richard W. Young/
Date	08/05/2011

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

Mark: The Lifeguard Store  
Serial No. 85/100007  
Examining Attorney: Katy Halmen, Law Office 109

REQUEST FOR RECONSIDERATION

In further response to the Office Action dated May 25, 2011 and per Examining Attorney's request on July 21, 2011, please amend the The Lifeguard Store Application No. 85/100007 as follows:

- Please enter a disclaimer stating that no claim is made to the exclusive right to use STORE apart from the mark as shown.
- Applicant hereby amends the application to include a Section 2(f) Declaration stating that the mark has become distinctive of the services through applicant's substantially exclusive and continuous use in commerce of the mark for at least the five years immediately before the date of this statement, namely, at least as early as January 1, 1992.

**REMARKS**

The Examining Attorney previously accepted the substitute specimens, requested that the Applicant enter a disclaimer for the word STORE and agreed to submission of the 2(f) Declaration since Applicant's mark has been in use and continues to be in use since 1992. A *copy* of the 2(f) Declaration is attached with this filing. Also, a *copy* of the Revocation and New Power of Attorney document as filed is attached for quick reference. With the above amendments, the Applicant has complied with the Examining Attorney's request.

In view of the foregoing, Applicant believes that the application is in condition for allowance and requests that the application be remanded to the Examining Attorney for review and publication.

Respectfully submitted,

/Richard W. Young/

Quarles & Brady LLP  
Suite 4000  
300 North LaSalle Street  
Chicago, IL 60654  
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**TRADEMARK:** The Lifeguard Store  
**APPLICANT:** The Lifeguard Store, Inc.  
**SERIAL NO.:** 85/100,007  
**EXAMINING ATTORNEY:** Katy Halmen, Law Office 109

**2 (F) Declaration Based on Use as Early as January 1, 1992**

**ADDITIONAL STATEMENTS**

**Section 2(f), based on Use**

The mark has become distinctive of the goods/services through the applicant's substantially exclusive and continuous use in commerce that the U.S. Congress may lawfully regulate for at least the five years immediately before the date of this statement.

**Disclaimer**

No claim is made to the exclusive right to use STORE apart from the mark as shown.

**SIGNATURE(S)****Declaration Signature**

If the applicant is seeking registration under Section 1(b) and/or Section 44 of the Trademark Act, the applicant has had a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. 37 C.F.R. Secs. 2.34(a)(2)(i); 2.34(a)(3)(i); and 2.34(a)(4)(ii); and/or the applicant has had a bona fide intention to exercise legitimate control over the use of the mark in commerce by its members. 37 C.F.R. Sec. 2.44. If the applicant is seeking registration under Section 1(a) of the Trademark Act, the mark was in use in commerce on or in connection with the goods and/or services listed in the application as of the application filing date or as of the date of any submitted allegation of use. 37 C.F.R. Secs. 2.34(a)(1)(i); and/or the applicant has exercised legitimate control over the use of the mark in commerce by its members. 37 C.F.R. Sec. 2.44. The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; that if the original application was submitted unsigned, that all statements in the original application and this submission made of the declaration signer's knowledge are true; and all statements in the original application and this submission made on information and belief are believed to be true.

**Signature Section:**

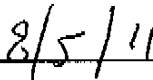
Signature: \_\_\_\_\_



Signatory's Name: Amy Hilten

Signatory's Position: General Manager

Date Signed: \_\_\_\_\_



**NOTE TO APPLICANT:** When filed as part of the electronic form (i.e., scanned and attached as an image file), the signature page **must** include both the signature information and the boilerplate declaration language. Do **not** include the entire application, but do ensure that the boilerplate declaration language actually appears; *a signature by itself will not be acceptable*. If, due to browser limitations, the boilerplate declaration language appears on a previous page when printed, you must "merge" the declaration and signature block onto a single page prior to signing, so that the *one complete page* can be scanned to create an acceptable image file. It is recommended that you copy and paste the entire text form into another document, manipulate the spacing there to move the declaration and signature section to a separate page, and then print this new version of the text form to send to the signatory.

PTO Form 2196 (Rev 9/2005)  
OMB No 0651-0056 (Exp 09/30/2011)

**Revocation of Attorney/Domestic Representative and/or Appointment of Attorney/Domestic Representative**

**Handwritten Signature**

**To the Commissioner for Trademarks:**

**MARK: THE LIFEGUARD STORE**  
**SERIAL NUMBER: 85100007**  
**ATTORNEY DOCKET NUMBER 145085.00005**

**The original attorney**  
ELLIOTT C BANKENDORF  
MCCRACKEN & FRANK LLP  
80332/70526  
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312-263-3990  
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By submission of this request, the undersigned REVOKES the power of attorney currently of record, as listed above, and hereby APPOINTS the following new attorney. In addition, any additional previously-appointed attorneys that are currently listed in the application are replaced with the new "Other Appointed Attorneys" listed below.

**Newly Appointed Attorney:**  
Richard W. Young  
Quarles & Brady LLP  
Suite 4000  
300 North LaSalle Street  
Chicago, Illinois 60654-3422  
United States  
312.715.5260  
312.652.1736  
tm-dept@quarles.com  
145085.00005

**Other Appointed Attorneys:**

Nicholas P. Schmidbauer, Nicole M. Murray and Nicole A. Bashor

**The following is to be used as the correspondence address:**

Richard W. Young  
Quarles & Brady LLP  
Suite 4000  
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Chicago, Illinois 60654-3422  
United States

312.715.5260

312.652.1736

tm-dept@quarles.com The attorney docket/reference number is 145085.00005

**Revocation of Attorney/Domestic Representative and/or Appointment of Attorney/Domestic Representative**

**Handwritten Signature**

**Signature Section:**  
Signature: *Amy Hilten*  
Date: *8/5/11*  
Signatory's Name: Amy Hilten  
Signatory's Position: General Manager

**NOTE TO APPLICANT:** When filed as part of the electronic form (i.e., scanned and attached as an image file), include only the signature page (no declaration is required, nor should any other information from the actual revocation be included).