

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85177983
LAW OFFICE ASSIGNED	LAW OFFICE 112
MARK SECTION (no change)	
ARGUMENT(S)	
<p>Response to Office Action and Request for Reconsideration</p> <p>Applicant is respectfully requesting reconsideration of the refusal to register its mark, LIVEWELL based on the mark LIVINGWELL and design shown in U.S. Registration No. 4008814 under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d).</p> <p>The examining attorney has failed to recognize the different channels of trade of the two parties, Applicant, Allina Health Systems and Registrant, Vitalae Corporate Services, Inc. Allina Health is a non-profit organization of clinics, hospitals and health care services, providing care throughout Minnesota and western Wisconsin. Vitalae Corporation Services works with corporate clients to implement employee wellness programs that decrease healthcare costs, but increase productivity, and boost employee morale.</p> <p>The services of Applicant and Registrant are not sold through the same channels so confusion is not likely. The conditions surrounding the marketing of each party is such that they will not be encountered by the same consumers. Registrant's recitation of services is limited to corporate clients who are sophisticated and would not lead to the mistaken belief that the services originate from the same source as Applicant's services sold under the LIVEWELL mark. Registrant's services are limited to corporate clients to help their employees as reflected in the recitation of Registrant's services as follows: <i>Providing assistance, fitness evaluation and consultation to corporate clients to help their employees make health, wellness and nutritional changes in their daily living to improve health.</i></p> <p>Applicant previously submitted evidence of 18 third-party registrations showing the words, LIVING WELL as used in the health and wellness field. Accordingly purchasers in the relevant</p>	

field have been conditioned to look at the other elements of marks to distinguish the source of goods in this field. When comparing the marks in their entireties, less weight should be placed on suggestive portions of the marks. See *Tektronix, Inc. v. Daktronics, Inc.* 534 F.2d 915, 189 USPQ 693, 694 (CCPA 1976).

Further, the examining attorney has not considered the design element of Registrant's mark. The circle V design in Registrant's trademark is the Registrant Vitalae's company logo (see attached web page from Registrant's web site showing Registrant's company logo).

Registrant's corporate clients are well aware of the source of Registrant's services because the company logo, the circle V representing Vitalae Corporate Services, Inc. is prominently displayed within the mark. The circle V design in Registrant's mark immediately tells the purchasers or corporate clients the source of the services.

In light of all the third-party registrations previously submitted that contain the words LIVING WELL, Applicant asserts that the prominent portion of Registrant's mark is the circle V, Registrant company logo, and further distinguishes the mark from Applicant's mark.

Applicant and Registrant have been in contact and agree that confusion is not likely. The parties are negotiating and drafting a consent and co-existing agreement. Application hereby requests that this Application be suspended until the negotiations are completed and the agreement is signed.

EVIDENCE SECTION

EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_7514616241-152419618 . Vitalae Corporate Services - Home.pdf
CONVERTED PDF FILE(S) (2 pages)	\\TICRS\EXPORT16\IMAGEOUT16\851\779\85177983\xml5\RFR0002.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\851\779\85177983\xml5\RFR0003.JPG
DESCRIPTION OF EVIDENCE FILE	Web site page of Registrant showing the company's logo

SIGNATURE SECTION

RESPONSE SIGNATURE	/Michael B. Lasky/
SIGNATORY'S NAME	Michael B. Lasky
SIGNATORY'S POSITION	Attorney of record, MN bar member
SIGNATORY'S PHONE NUMBER	952-253-4106
DATE SIGNED	09/05/2013

AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Thu Sep 05 15:46:28 EDT 2013
TEAS STAMP	USPTO/RFR-75.146.162.41-2 0130905154628586556-85177 983-500379f209cc132ac783b b77bd0efcca34620e69395d24 0434515803ad1707467fa-N/A -N/A-20130905152419618392

PTO Form 1930 (Rev 9/2007)
OMB No. 0651-0050 (Exp. 05/31/2014)

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

Application serial no. **85177983** has been amended as follows:

ARGUMENT(S)

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

Response to Office Action and Request for Reconsideration

Applicant is respectfully requesting reconsideration of the refusal to register its mark, LIVEWELL based on the mark LIVINGWELL and design shown in U.S. Registration No. 4008814 under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d).

The examining attorney has failed to recognize the different channels of trade of the two parties, Applicant, Allina Health Systems and Registrant, Vitalae Corporate Services, Inc. Allina Health is a non-profit organization of clinics, hospitals and health care services, providing care throughout Minnesota and western Wisconsin. Vitalae Corporation Services works with corporate clients to implement employee wellness programs that decrease healthcare costs, but increase productivity, and boost employee morale.

The services of Applicant and Registrant are not sold through the same channels so confusion is not likely. The conditions surrounding the marketing of each party is such that they will not be encountered by the same consumers. Registrant's recitation of services is limited to corporate

clients who are sophisticated and would not lead to the mistaken belief that the services originate from the same source as Applicant's services sold under the LIVEWELL mark. Registrant's services are limited to corporate clients to help their employees as reflected in the recitation of Registrant's services as follows: *Providing assistance, fitness evaluation and consultation to corporate clients to help their employees make health, wellness and nutritional changes in their daily living to improve health.*

Applicant previously submitted evidence of 18 third-party registrations showing the words, LIVING WELL as used in the health and wellness field. Accordingly purchasers in the relevant field have been conditioned to look at the other elements of marks to distinguish the source of goods in this field. When comparing the marks in their entireties, less weight should be placed on suggestive portions of the marks. See *Tektronix, Inc. v. Daktronics, Inc.* 534 F.2d 915, 189 USPQ 693, 694 (CCPA 1976).

Further, the examining attorney has not considered the design element of Registrant's mark. The circle V design in Registrant's trademark is the Registrant Vitalae's company logo (see attached web page from Registrant's web site showing Registrant's company logo). Registrant's corporate clients are well aware of the source of Registrant's services because the company logo, the circle V representing Vitalae Corporate Services, Inc. is prominently displayed within the mark. The circle V design in Registrant's mark immediately tells the purchasers or corporate clients the source of the services.

In light of all the third-party registrations previously submitted that contain the words LIVING WELL, Applicant asserts that the prominent portion of Registrant's mark is the circle V, Registrant company logo, and further distinguishes the mark from Applicant's mark.

Applicant and Registrant have been in contact and agree that confusion is not likely. The parties are negotiating and drafting a consent and co-existing agreement. Application hereby requests that this Application be suspended until the negotiations are completed and the agreement is signed.

EVIDENCE

Evidence in the nature of Web site page of Registrant showing the company's logo has been attached.

Original PDF file:

[evi_7514616241-152419618_. Vitalae Corporate Services - Home.pdf](#)

Converted PDF file(s) (2 pages)

[Evidence-1](#)

[Evidence-2](#)

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Michael B. Lasky/ Date: 09/05/2013
Signatory's Name: Michael B. Lasky
Signatory's Position: Attorney of record, MN bar member

Signatory's Phone Number: 952-253-4106

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: 85177983
Internet Transmission Date: Thu Sep 05 15:46:28 EDT 2013
TEAS Stamp: USPTO/RFR-75.146.162.41-2013090515462858
6556-85177983-500379f209cc132ac783bb77bd
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a-N/A-N/A-20130905152419618392



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Vitalae Corporate Services brings state-of-the-art clinical testing, innovative lifestyle programs, efficacious Nutraceutical guidance, and professional health practitioners to deliver premiere wellness programs at your workplace.



Employers

We offer a variety of services and programs providing unmatched benefits for employees and tangible results for employers.

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Brokers

Vitalae Corporate Services will help you create viable wellness programs and benefits differentiating your firm and giving you a competitive edge in the market.

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Research & Development

In conjunction with our partners, Vitalae Corporate Services is on a mission to pioneer health & wellness initiatives, bringing Wellness within Reach™.

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Questionnaire

Coming Soon! A questionnaire to assist you in evaluating your company's current health & wellness initiatives.



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