

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85406934
LAW OFFICE ASSIGNED	LAW OFFICE 104
MARK SECTION (no change)	
ARGUMENT(S)	
<p>This is a response to the office action issued July 12, 2012. Applicant respectfully disagrees that its DIAMOND H2O mark is likely to cause confusion with the cited registrations.</p> <p><u>Cited Registration Nos. 3438295 and 3588101 for DIAMOND GLIDE and DIAMOND SEAL</u> The cited DIAMOND GLIDE and DIAMOND SEAL registrations cover "plumbing products, namely, faucets and fluid valves" and "plumbing products, namely, faucets" in Class 11. Applicant deleted "plumbing products" from its Class 35 description. It is now clear that the parties' goods and services are unrelated and that coexistence of the marks is unlikely to cause consumer confusion. Applicant respectfully requests that these refusals be withdrawn.</p> <p><u>Cited Registration No. 2960431 for AQUADIAMOND</u> For the reasons set forth in its June 19, 2012 response, Applicant respectfully disagrees that its DIAMOND H2O mark is likely to cause confusion with the cited AQUADIAMOND registration. Applicant respectfully requests that this refusal be withdrawn.</p>	
GOODS AND/OR SERVICES SECTION (011)(no change)	
GOODS AND/OR SERVICES SECTION (035)(current)	
INTERNATIONAL CLASS	035
DESCRIPTION	
Retail store services featuring water conditioning, treatment and filtration products, plumbing products, water testing equipment, and fluid monitoring and measuring equipment	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 00/00/1999
FIRST USE IN COMMERCE DATE	At least as early as 00/00/1999
GOODS AND/OR SERVICES SECTION (035)(proposed)	
INTERNATIONAL CLASS	035
TRACKED TEXT DESCRIPTION	

~~Retail store services featuring water conditioning, treatment and filtration products, plumbing products, water testing equipment, and fluid monitoring and measuring equipment;~~ [Retail store services featuring water conditioning, treatment and filtration products, water testing equipment, and fluid monitoring and measuring equipment](#)

FINAL DESCRIPTION

Retail store services featuring water conditioning, treatment and filtration products, water testing equipment, and fluid monitoring and measuring equipment

FILING BASIS

Section 1(a)

FIRST USE ANYWHERE DATE

At least as early as 00/00/1999

FIRST USE IN COMMERCE DATE

At least as early as 00/00/1999

SIGNATURE SECTION

RESPONSE SIGNATURE

/Laura M. Konkel/

SIGNATORY'S NAME

Laura M. Konkel

SIGNATORY'S POSITION

Associate of Attorney of Record, WI Bar Member

DATE SIGNED

01/14/2013

AUTHORIZED SIGNATORY

YES

CONCURRENT APPEAL NOTICE FILED

YES

FILING INFORMATION SECTION

SUBMIT DATE

Mon Jan 14 18:04:37 EST 2013

TEAS STAMP

USPTO/RFR-97.88.243.226-2
0130114180437484063-85406
934-4903a13553bc6f669b52b
abf6c4cd1e2ad-N/A-N/A-201
30114180203868582

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

Application serial no. **85406934** has been amended as follows:

ARGUMENT(S)

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

This is a response to the office action issued July 12, 2012. Applicant respectfully disagrees that its DIAMOND H2O mark is likely to cause confusion with the cited registrations.

Cited Registration Nos. 3438295 and 3588101 for DIAMOND GLIDE and DIAMOND SEAL

The cited DIAMOND GLIDE and DIAMOND SEAL registrations cover "plumbing products, namely, faucets and fluid valves" and "plumbing products, namely, faucets" in Class 11. Applicant deleted "plumbing products" from its Class 35 description. It is now clear that the parties' goods and services are unrelated and that coexistence of the marks is unlikely to cause consumer confusion. Applicant respectfully requests that these refusals be withdrawn.

Cited Registration No. 2960431 for AQUADIAMOND

For the reasons set forth in its June 19, 2012 response, Applicant respectfully disagrees that its DIAMOND H2O mark is likely to cause confusion with the cited AQUADIAMOND registration. Applicant respectfully requests that this refusal be withdrawn.

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 035 for Retail store services featuring water conditioning, treatment and filtration products, plumbing products, water testing equipment, and fluid monitoring and measuring equipment

Original Filing Basis:

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 00/00/1999 and first used in commerce at least as early as 00/00/1999, and is now in use in such commerce.

Proposed:

Tracked Text Description: ~~Retail store services featuring water conditioning, treatment and filtration products, plumbing products, water testing equipment, and fluid monitoring and measuring equipment;~~
[Retail store services featuring water conditioning, treatment and filtration products, water testing equipment, and fluid monitoring and measuring equipment](#)

Class 035 for Retail store services featuring water conditioning, treatment and filtration products, water testing equipment, and fluid monitoring and measuring equipment

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 00/00/1999 and first used in commerce at least as early as 00/00/1999, and is now in use in such commerce.

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Laura M. Konkel/ Date: 01/14/2013

Signatory's Name: Laura M. Konkel

Signatory's Position: Associate of Attorney of Record, WI Bar Member

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: 85406934

Internet Transmission Date: Mon Jan 14 18:04:37 EST 2013

TEAS Stamp: USPTO/RFR-97.88.243.226-2013011418043748

4063-85406934-4903a13553bc6f669b52babf6c

4cd1e2ad-N/A-N/A-20130114180203868582