

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85677459
LAW OFFICE ASSIGNED	LAW OFFICE 103
MARK SECTION	
MARK	http://tsdr.uspto.gov/img/85677459/large
LITERAL ELEMENT	NOMI MADE FOR A BETTER LIFE
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.
ARGUMENT(S)	
<p>Applicant hereby responds to the Office Action dated November 20, 2014. In the Office Action, the Trademark Attorney refused registration on the ground that a likelihood of confusion exists pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), with regard to the mark in U.S. Registration No. 3918897. Applicant has amended its description of goods to remove all goods in Class 25 and to revise the services in Class 35 as follows: “On-line retail store services featuring clothing items, excluding footwear, that are specifically identified as made by survivors of sex slavery and human trafficking and sold to consumers who wish to support victims of sex slavery and human trafficking”. Applicant respectfully traverses the refusal to register based on §2(d) of the Trademark Act and, based on the amended description and new arguments evidence submitted herein, requests reconsideration. Applicant is filing a Notice of Appeal concurrently with this response.</p>	
<p style="text-align: center;">Consumers Will Not Be Confused as to the Source of Applicant’s Goods</p>	
<p>Applicant’s mark is NOMI MADE FOR A BETTER LIFE for use in connection with “On-line retail store services featuring clothing items, excluding footwear, that are specifically identified as made by survivors of sex slavery and human trafficking and sold to consumers who wish to support victims of sex slavery and human trafficking”. Applicant’s services are on-line retail store services integrated with its website that promotes and sells goods made by survivors of sex slavery and human trafficking who are specially trained in Applicant’s training centers in India and Cambodia. Applicant provides its retail store services on its website specifically to further its charitable mission: to raise awareness of sex slavery and human trafficking and give individuals who then want to assist Applicant the opportunity to do so by purchasing goods made by survivors of sex slavery and human trafficking. Applicant’s retail stores services also create economic opportunities for survivors and women at risk of human trafficking by equipping them with leadership, entrepreneurship, and production skills to become financially</p>	

independent. In contrast to Applicant's services, the '897 Registration is for NOMI for use on "footwear".

In a likelihood of confusion analysis, the relevant inquiry is "not whether people will confuse the marks, but rather whether the marks will confuse people into believing that the goods they identify emanate from the same source." *Paula Payne Prods. Co. v. Johnson's Pub'g Co., Inc.*, 473 F.2d 901, 902, 177 USPQ 76, 77 (C.C.P.A. 1973); *see also Viacom International Inc. v. Komm*, 46 U.S.P.Q.2d 1233 (T.T.A.B. 1998) (holding that even though applicant's mark might call to mind registrant's mark there is no likelihood of confusion because consumers are not likely to be confused into believing applicant's and registrant's products emanate from the same source). Applying this analysis properly, it is clear that here consumers will not believe that the services and items on Applicant's website emanate from the owner of the '897 Registration, or vice versa.

In *Quartz Radiation Corp. v. Comm/Scope Co.* the Board held that QR for coaxial cable and QR for various apparatus used in connection with photocopying, drafting, and blueprint machines was not likely to cause confusion because of the differences between the nature and purpose of the relevant goods, how the goods were promoted, and who purchased the goods. 1 U.S.P.Q.2d 1668, 1669 (T.T.A.B. 1986). As in *Quartz Radiation Corporation*, the differences in the nature and purpose of the services and goods at issue here, how those services and goods are promoted and who purchases those services and goods establish that confusion is unlikely.

The nature and the purpose of Applicant's services are extremely different from that of the goods in the '897 Registration such that confusion is unlikely. Applicant provides on-line retail store services where it sells clothing items that are made by survivors of sex slavery and human trafficking (and clearly identified as such) specially trained in Applicant's India and Cambodia training centers and sold to consumers wishing to support Applicant's charitable mission. The purpose of the services is to raise awareness of sex slavery and human trafficking, to provide survivors of human trafficking with marketable skills and to generate financial support for Applicant's charitable mission. Importantly, Applicant does not sell any footwear through its on-line retail store services and has excluded footwear from its description of services. By contrast to Applicant's services, the goods in the '897 Registration are not at all similar. They are footwear sold solely to make a profit. They are not made by victims of sex slavery and human trafficking or sold to consumers seeking to support a charitable purpose.

Next, the manner in which Applicant's services and the goods in the '897 Registration are promoted also are markedly different. Applicant's target customers are those that want to support Applicant's charitable activities by visiting Applicant's on-line store to purchase clothing made by survivors of sex slavery and human trafficking. Applicant's website, therefore, is marketed and promoted to a particular target audience in a very limited way, *i.e.* as offering goods to be purchased not just for their style and function, but primarily in pursuit of Applicant's charitable purpose. By stark contrast, the goods in the '897 Registration are not affiliated with any charitable purpose and the owner of that mark does not target consumers who wish to support a charitable cause. Rather, Registrant's footwear is marketed as commercial goods and directed at consumers who are simply looking to make a purchase for themselves and basing their purchasing decisions on utility, aesthetics, and price. Further, the owner of the '897 Registration does not target consumers looking to purchase the same goods as those offered through Applicant's services—the owner of the '897 Registration targets consumers wishing to purchase shoes, not clothing.

In short, Applicant's website and the footwear in the '897 Registration are not related and are not marketed to or purchased by the same consumers. As demonstrated by *Quartz Radiation Corporation*, if, as is the case here, the goods in question are not related or 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, then, even if the marks are identical—and, here, they are not—confusion is not likely. See *In re British Bulldog, Ltd.*, 224 U.S.P.Q. 854, 856 (T.T.A.B. 1984) (finding PLAYERS for shoes and PLAYERS for men's underwear not confusingly similar because they are sold in different stores or different parts of the same store, are not the same type or nature of goods, and are purchased with varying levels of care); *In re Sydel Lingerie Co.*, 197 U.S.P.Q. 629, 630 (T.T.A.B. 1977) (holding BOTTOMS UP for women's and children's underwear and BOTTOMS UP for men's clothing not likely to cause confusion).

Moreover, of Applicant's services are such that the relevant purchasers are likely to exercise care in selecting the provider of such services. Support of a charitable organization and its cause is very personal and not taken lightly. As a result of the sophistication of and care taken by the relevant purchasers, no one who wants to support Applicant by buying the products made by human trafficking survivors would be confused into buying the Registrant's footwear or vice versa. Such circumstances suggesting care in purchasing may tend to minimize the likelihood of confusion. See, e.g., *In re N.A.D., Inc.*, 754 F.2d 996, 999-1000, 224 U.S.P.Q. 969, 971 (Fed. Cir. 1985) (holding that as only sophisticated purchasers exercising great care would purchase the relevant goods, there would be no likelihood of confusion merely because of the similarity between the marks NARCO and NARKOMED).

The Trademark Attorney's argument that confusion is likely because five third-party entities unrelated to Applicant or the owners of the '897 Registration produce the relevant goods, market them under the same mark, and sell them through the same channels of trade is not determinative. The Trademark Trial and Appeal Board has often found **no likelihood of confusion even though goods are sold by the same entity in the same stores**. For example, In *In re Palm Beach Inc.*, the Board held that the mark ADLER (stylized) as used on men's pants is not likely to be confused with ADLER as used on socks because "pants and knitted socks are specifically different items of clothing which are normally displayed in different sections of the stores in which they are sold". 225 U.S.P.Q. 785 (T.T.A.B. 1985). In *In re Sears, Roebuck and Co.* the Board found that CROSS-OVER for brassieres is not confusingly similar to CROSSOVER for women's sportswear even though the goods were "all clothing items that may be sold through the same outlets to the same classes of purchasers, and may well be purchased during the same shopping trip, quite possibly to be worn together". 2 U.S.P.Q.2d 1312 (T.T.A.B. 1987); see also *H.D. Lee Co. v. Maidenform Inc.*, 87 U.S.P.Q.2d 1715 (T.T.A.B. 2008) (finding no likelihood of confusion even though undergarments sold in same store as jeans, pants, shirts, and skirts in part because goods are sold in different parts of the store); *In re British Bulldog, Ltd.*, 224 U.S.P.Q. 854, 856 (T.T.A.B. 1984) (finding PLAYERS for shoes and PLAYERS for men's underwear not confusingly similar because "they are distinctly different [sic] when sold in the same stores, e.g., department stores, nature; they would ordinarily be displayed in different sections thereof").

Here, Applicant's services are separated even further from the goods in the '897 Registration than the relevant goods in the above cited cases. Applicant's services are limited to a website which promotes awareness of sex slavery and human trafficking, offers clothing clearly advertised as made by survivors of sex slavery and human trafficking and clearly states that proceeds from sales of clothing will be used to support survivors of sex slavery and human trafficking. As such, Applicant's clothing generally will not even be sold in the same stores or on the same websites as the footwear in the '897 Registration. It will be sold in separate places and always with a clear message that Applicant's goods are made by survivors of sex slavery and human trafficking and that consumers who purchase Applicant's goods will be supporting Applicant's very specific charitable cause. Applicant's clothing is clearly marked as clothing made by human trafficking victims, the purchase of which will support Applicant's charitable mission.

Furthermore, the evidence relied upon by the Trademark Attorney does not demonstrate that there is a likelihood of confusion here. The Office Action cites only five third parties, out of the vast array of

companies, that sell clothing and footwear under the same mark. This is simply not enough to show consumers will be confused into believing that Applicant’s website, which features specialized clothing, emanates from the same source as the footwear in the ‘897 Registration. Similarly, the third-party registrations cited by the Trademark Attorney are not relevant because none of them is for on-line services to sell clothing made by and sold in support of a charitable purpose. Rather, all of the third-party registrations are for simply clothing and/or footwear. Citing these registrations ignores that Applicant’s description, as amended, and its website clearly denote that its clothing is sold in support of and connection with its charitable purpose.

Notably, Applicant’s mark is not even identical to, and certainly does not convey the same commercial impression as Registrant’s mark. Registrant’s mark is simply NOMI, a single word and nothing else. Applicant’s mark is NOMI MADE FOR A BETTER LIFE, which suggests a quality of Applicant’s services, namely that they will improve someone’s life. The inclusion of “MADE FOR A BETTER LIFE” is more than just adding “a slogan sounding phrase to Registrant’s mark”; it transforms Applicant’s mark such that it conveys a commercial impression distinct from that conveyed by Registrant’s mark. Accordingly, the marks are not identical and confusion is unlikely. *See Swatch AG (Swatch SA) (Swatch Ltd.) v. M. Z. Berger & Co.*, 108 U.S.P.Q.2d 1463 (T.T.A.B. 2013) (holding SWATCH and IWATCH are not confusingly similar, despite identical goods and channels of trade for marks and fame of SWATCH mark, because marks differ in sound, meaning and commercial impressions); *Embarcadero Technologies Inc. v. RStudio Inc.*, 105 U.S.P.Q.2d 1825 (T.T.A.B. 2013) (finding RSTUDIO and ER/STUDIO not confusingly similar in part because, despite “a degree of similarity in the marks’ appearance and sound, each mark possesses a separate and distinctively different commercial impression and connotation” and because applicant amended its description of goods to clarify that it was not providing the same specific type of software provided by registrant).

The sum total of the above facts and considerations, including the differences in the services and goods themselves, the differences in the nature and purpose of the parties’ services and goods, the differences in the way the parties’ services and goods are marketed, and the differences in the parties’ target customers and the sophistication of those customers definitively establishes that the marks will not “confuse people into believing that the [services and] goods they identify emanate from the same source.” *Paula Payne Prods. Co. v. Johnson’s Pub’g Co., Inc.*, 473 F.2d 901, 902, 177 USPQ 76, 77 (C.C.P.A. 1973). Therefore, there is no likelihood of confusion and Applicant respectfully submits that the mark should be passed to publication.

GOODS AND/OR SERVICES SECTION (025)(class deleted)

GOODS AND/OR SERVICES SECTION (035)(current)

INTERNATIONAL CLASS

035

DESCRIPTION

On-line retail store services featuring clothing items and clothing accessories made by survivors of sex slavery and human trafficking

FILING BASIS

Section 1(b)

GOODS AND/OR SERVICES SECTION (035)(proposed)

INTERNATIONAL CLASS

035

TRACKED TEXT DESCRIPTION

~~On-line retail store services featuring clothing items and clothing accessories made by survivors of sex slavery and human trafficking;~~ On-line retail store services featuring clothing items, excluding footwear, that are specifically identified as made by survivors of sex slavery and human trafficking and sold to consumers who wish to support victims of sex slavery and human trafficking

FINAL DESCRIPTION

On-line retail store services featuring clothing items, excluding footwear, that are specifically identified as made by survivors of sex slavery and human trafficking and sold to consumers who wish to support victims of sex slavery and human trafficking

FILING BASIS

Section 1(b)

CORRESPONDENCE SECTION

ORIGINAL ADDRESS

DONNA A. TOBIN
BAKER & HOSTETLER, LLP
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New York (NY)
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10111-0230

NEW CORRESPONDENCE SECTION

NAME

DONNA A. TOBIN

FIRM NAME

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AUTHORIZED EMAIL COMMUNICATION

Yes

SIGNATURE SECTION

RESPONSE SIGNATURE

/Kimberly M. Maynard/

SIGNATORY'S NAME

Kimberly M. Maynard

SIGNATORY'S POSITION

Associate of Attorney of Record, New York Bar Member

SIGNATORY'S PHONE NUMBER	212.589.4239
DATE SIGNED	05/20/2015
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Wed May 20 12:56:57 EDT 2015
TEAS STAMP	USPTO/RFR-10.70.72.15-201 50520125657825994-8567745 9-530bcbd0d846190dead3190 73dcf0d7749c66b54194abbd1 61ccfad1ac905db4-N/A-N/A- 20150520125044155828

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

Application serial no. **85677459** NOMI MADE FOR A BETTER LIFE(Standard Characters, see <http://tsdr.uspto.gov/img/85677459/large>) has been amended as follows:

ARGUMENT(S)

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

Applicant hereby responds to the Office Action dated November 20, 2014. In the Office Action, the Trademark Attorney refused registration on the ground that a likelihood of confusion exists pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), with regard to the mark in U.S. Registration No. 3918897. Applicant has amended its description of goods to remove all goods in Class 25 and to revise the services in Class 35 as follows: “On-line retail store services featuring clothing items, excluding footwear, that are specifically identified as made by survivors of sex slavery and human trafficking and sold to consumers who wish to support victims of sex slavery and human trafficking”. Applicant respectfully traverses the refusal to register based on §2(d) of the Trademark Act and, based on the amended description and new arguments evidence submitted herein, requests reconsideration. Applicant is filing a Notice of Appeal concurrently with this response.

Consumers Will Not Be Confused as to the Source of Applicant’s Goods

Applicant’s mark is NOMI MADE FOR A BETTER LIFE for use in connection with “On-line retail store services featuring clothing items, excluding footwear, that are specifically identified as made by survivors of sex slavery and human trafficking and sold to consumers who wish to support victims of sex slavery and human trafficking”. Applicant’s services are on-line retail store services integrated with its

website that promotes and sells goods made by survivors of sex slavery and human trafficking who are specially trained in Applicant's training centers in India and Cambodia. Applicant provides its retail store services on its website specifically to further its charitable mission: to raise awareness of sex slavery and human trafficking and give individuals who then want to assist Applicant the opportunity to do so by purchasing goods made by survivors of sex slavery and human trafficking. Applicant's retail store services also create economic opportunities for survivors and women at risk of human trafficking by equipping them with leadership, entrepreneurship, and production skills to become financially independent. In contrast to Applicant's services, the '897 Registration is for NOMI for use on "footwear".

In a likelihood of confusion analysis, the relevant inquiry is "not whether people will confuse the marks, but rather whether the marks will confuse people into believing that the goods they identify emanate from the same source." *Paula Payne Prods. Co. v. Johnson's Pub'g Co., Inc.*, 473 F.2d 901, 902, 177 USPQ 76, 77 (C.C.P.A. 1973); *see also Viacom International Inc. v. Komm*, 46 U.S.P.Q.2d 1233 (T.T.A.B. 1998) (holding that even though applicant's mark might call to mind registrant's mark there is no likelihood of confusion because consumers are not likely to be confused into believing applicant's and registrant's products emanate from the same source). Applying this analysis properly, it is clear that here consumers will not believe that the services and items on Applicant's website emanate from the owner of the '897 Registration, or vice versa.

In *Quartz Radiation Corp. v. Comm/Scope Co.* the Board held that QR for coaxial cable and QR for various apparatus used in connection with photocopying, drafting, and blueprint machines was not likely to cause confusion because of the differences between the nature and purpose of the relevant goods, how the goods were promoted, and who purchased the goods. 1 U.S.P.Q.2d 1668, 1669 (T.T.A.B. 1986). As in *Quartz Radiation Corporation*, the differences in the nature and purpose of the services and goods at issue here, how those services and goods are promoted and who purchases those services and goods establish that confusion is unlikely.

The nature and the purpose of Applicant's services are extremely different from that of the goods in the '897 Registration such that confusion is unlikely. Applicant provides on-line retail store services where it sells clothing items that are made by survivors of sex slavery and human trafficking (and clearly identified as such) specially trained in Applicant's India and Cambodia training centers and sold to consumers wishing to support Applicant's charitable mission. The purpose of the services is to raise awareness of sex slavery and human trafficking, to provide survivors of human trafficking with marketable skills and to generate financial support for Applicant's charitable mission. Importantly, Applicant does not sell any footwear through its on-line retail store services and has excluded footwear from its description of services. By contrast to Applicant's services, the goods in the '897 Registration are not at all similar. They are footwear sold solely to make a profit. They are not made by victims of sex slavery and human trafficking or sold to consumers seeking to support a charitable purpose.

Next, the manner in which Applicant's services and the goods in the '897 Registration are promoted also are markedly different. Applicant's target customers are those that want to support Applicant's charitable activities by visiting Applicant's on-line store to purchase clothing made by survivors of sex slavery and human trafficking. Applicant's website, therefore, is marketed and promoted to a particular target audience in a very limited way, *i.e.* as offering goods to be purchased not just for their style and function, but primarily in pursuit of Applicant's charitable purpose. By stark contrast, the goods in the '897 Registration are not affiliated with any charitable purpose and the owner of that mark does not target consumers who wish to support a charitable cause. Rather, Registrant's footwear is marketed as commercial goods and directed at consumers who are simply looking to make a purchase for themselves and basing their purchasing decisions on utility, aesthetics, and price. Further, the owner of the '897 Registration does not target consumers looking to purchase the same goods as those offered through

Applicant's services—the owner of the '897 Registration targets consumers wishing to purchase shoes, not clothing.

In short, Applicant's website and the footwear in the '897 Registration are not related and are not marketed to or purchased by the same consumers. As demonstrated by *Quartz Radiation Corporation*, if, as is the case here, the goods in question are not related or 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, then, even if the marks are identical—and, here, they are not—confusion is not likely. See *In re British Bulldog, Ltd.*, 224 U.S.P.Q. 854, 856 (T.T.A.B. 1984) (finding PLAYERS for shoes and PLAYERS for men's underwear not confusingly similar because they are sold in different stores or different parts of the same store, are not the same type or nature of goods, and are purchased with varying levels of care); *In re Sydel Lingerie Co.*, 197 U.S.P.Q. 629, 630 (T.T.A.B. 1977) (holding BOTTOMS UP for women's and children's underwear and BOTTOMS UP for men's clothing not likely to cause confusion).

Moreover, of Applicant's services are such that the relevant purchasers are likely to exercise care in selecting the provider of such services. Support of a charitable organization and its cause is very personal and not taken lightly. As a result of the sophistication of and care taken by the relevant purchasers, no one who wants to support Applicant by buying the products made by human trafficking survivors would be confused into buying the Registrant's footwear or vice versa. Such circumstances suggesting care in purchasing may tend to minimize the likelihood of confusion. See, e.g., *In re N.A.D., Inc.*, 754 F.2d 996, 999-1000, 224 U.S.P.Q. 969, 971 (Fed. Cir. 1985) (holding that as only sophisticated purchasers exercising great care would purchase the relevant goods, there would be no likelihood of confusion merely because of the similarity between the marks NARCO and NARKOMED).

The Trademark Attorney's argument that confusion is likely because five third-party entities unrelated to Applicant or the owners of the '897 Registration produce the relevant goods, market them under the same mark, and sell them through the same channels of trade is not determinative. The Trademark Trial and Appeal Board has often found **no likelihood of confusion even though goods are sold by the same entity in the same stores**. For example, in *In re Palm Beach Inc.*, the Board held that the mark ADLER (stylized) as used on men's pants is not likely to be confused with ADLER as used on socks because "pants and knitted socks are specifically different items of clothing which are normally displayed in different sections of the stores in which they are sold". 225 U.S.P.Q. 785 (T.T.A.B. 1985). In *In re Sears, Roebuck and Co.* the Board found that CROSS-OVER for brassieres is not confusingly similar to CROSSOVER for women's sportswear even though the goods were "all clothing items that may be sold through the same outlets to the same classes of purchasers, and may well be purchased during the same shopping trip, quite possibly to be worn together". 2 U.S.P.Q.2d 1312 (T.T.A.B. 1987); see also *H.D. Lee Co. v. Maidenform Inc.*, 87 U.S.P.Q.2d 1715 (T.T.A.B. 2008) (finding no likelihood of confusion even though undergarments sold in same store as jeans, pants, shirts, and skirts in part because goods are sold in different parts of the store); *In re British Bulldog, Ltd.*, 224 U.S.P.Q. 854, 856 (T.T.A.B. 1984) (finding PLAYERS for shoes and PLAYERS for men's underwear not confusingly similar because "they are distinctly different [sic] when sold in the same stores, e.g., department stores, nature; they would ordinarily be displayed in different sections thereof").

Here, Applicant's services are separated even further from the goods in the '897 Registration than the relevant goods in the above cited cases. Applicant's services are limited to a website which promotes awareness of sex slavery and human trafficking, offers clothing clearly advertised as made by survivors of sex slavery and human trafficking and clearly states that proceeds from sales of clothing will be used to support survivors of sex slavery and human trafficking. As such, Applicant's clothing generally will not even be sold in the same stores or on the same websites as the footwear in the '897 Registration. It will be sold in separate places and always with a clear message that Applicant's goods are made by survivors of

sex slavery and human trafficking and that consumers who purchase Applicant's goods will be supporting Applicant's very specific charitable cause. Applicant's clothing is clearly marked as clothing made by human trafficking victims, the purchase of which will support Applicant's charitable mission.

Furthermore, the evidence relied upon by the Trademark Attorney does not demonstrate that there is a likelihood of confusion here. The Office Action cites only five third parties, out of the vast array of companies, that sell clothing and footwear under the same mark. This is simply not enough to show consumers will be confused into believing that Applicant's website, which features specialized clothing, emanates from the same source as the footwear in the '897 Registration. Similarly, the third-party registrations cited by the Trademark Attorney are not relevant because none of them is for on-line services to sell clothing made by and sold in support of a charitable purpose. Rather, all of the third-party registrations are for simply clothing and/or footwear. Citing these registrations ignores that Applicant's description, as amended, and its website clearly denote that its clothing is sold in support of and connection with its charitable purpose.

Notably, Applicant's mark is not even identical to, and certainly does not convey the same commercial impression as Registrant's mark. Registrant's mark is simply NOMI, a single word and nothing else. Applicant's mark is NOMI MADE FOR A BETTER LIFE, which suggests a quality of Applicant's services, namely that they will improve someone's life. The inclusion of "MADE FOR A BETTER LIFE" is more than just adding "a slogan sounding phrase to Registrant's mark"; it transforms Applicant's mark such that it conveys a commercial impression distinct from that conveyed by Registrant's mark. Accordingly, the marks are not identical and confusion is unlikely. *See Swatch AG (Swatch SA) (Swatch Ltd.) v. M. Z. Berger & Co.*, 108 U.S.P.Q.2d 1463 (T.T.A.B. 2013) (holding SWATCH and IWATCH are not confusingly similar, despite identical goods and channels of trade for marks and fame of SWATCH mark, because marks differ in sound, meaning and commercial impressions); *Embarcadero Technologies Inc. v. RStudio Inc.*, 105 U.S.P.Q.2d 1825 (T.T.A.B. 2013) (finding RSTUDIO and ER/STUDIO not confusingly similar in part because, despite "a degree of similarity in the marks' appearance and sound, each mark possesses a separate and distinctively different commercial impression and connotation" and because applicant amended its description of goods to clarify that it was not providing the same specific type of software provided by registrant).

The sum total of the above facts and considerations, including the differences in the services and goods themselves, the differences in the nature and purpose of the parties' services and goods, the differences in the way the parties' services and goods are marketed, and the differences in the parties' target customers and the sophistication of those customers definitively establishes that the marks will not "confuse people into believing that the [services and] goods they identify emanate from the same source." *Paula Payne Prods. Co. v. Johnson's Pub'g Co., Inc.*, 473 F.2d 901, 902, 177 USPQ 76, 77 (C.C.P.A. 1973). Therefore, there is no likelihood of confusion and Applicant respectfully submits that the mark should be passed to publication.

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant hereby deletes the following class of goods/services from the application.

Class 025 for Clothing, namely, shirts, tank tops, T-shirts, long sleeve shirts, sweat shirts and polo shirts

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

Current: Class 035 for On-line retail store services featuring clothing items and clothing accessories made by survivors of sex slavery and human trafficking

Original Filing Basis:

Filing Basis: Section 1(b), Intent to Use: *For a trademark or service mark application:* As of the application filing date, the applicant had a bona fide intention, and was entitled, to use the mark in commerce on or in connection with the identified goods/services in the application. *For a collective trademark, collective service mark, or collective membership mark application:* As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization. *For a certification mark application:* As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users in connection with the identified goods/services, and the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

Proposed:

Tracked Text Description: ~~On-line retail store services featuring clothing items and clothing accessories made by survivors of sex slavery and human trafficking;~~ On-line retail store services featuring clothing items, excluding footwear, that are specifically identified as made by survivors of sex slavery and human trafficking and sold to consumers who wish to support victims of sex slavery and human trafficking

Class 035 for On-line retail store services featuring clothing items, excluding footwear, that are specifically identified as made by survivors of sex slavery and human trafficking and sold to consumers who wish to support victims of sex slavery and human trafficking

Filing Basis: Section 1(b), Intent to Use: *For a trademark or service mark application:* As of the application filing date, the applicant had a bona fide intention, and was entitled, to use the mark in commerce on or in connection with the identified goods/services in the application. *For a collective trademark, collective service mark, or collective membership mark application:* As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization. *For a certification mark application:* As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users in connection with the identified goods/services, and the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

CORRESPONDENCE ADDRESS CHANGE

Applicant proposes to amend the following:

Current:

DONNA A. TOBIN
BAKER & HOSTETLER, LLP
45 ROCKEFELLER PLZ FL 10
NEW YORK
New York (NY)
US
10111-0230

Proposed:

DONNA A. TOBIN of BAKER & HOSTETLER, LLP, having an address of
45 ROCKEFELLER PLZ FL 10 NEW YORK, New York 10111-0230

United States

dtobin@bakerlaw.com;kmaynard@bakerlaw.com; alifshin@bakerlaw.com; bhipdocket@bakerlaw.com;
ipdocketing@bakerlaw.com

212 589-4250

212 589-4200

The docket/reference number is Nomi 7521 .

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Kimberly M. Maynard/ Date: 05/20/2015

Signatory's Name: Kimberly M. Maynard

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

Signatory's Phone Number: 212.589.4239

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.

Mailing Address: DONNA A. TOBIN

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