

## Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
<b>SERIAL NUMBER</b>	85935572
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 106
<b>MARK SECTION (no change)</b>	
<b>ARGUMENT(S)</b>	
<p>1. APPLIED FOR MARK IS FUNCTIONAL</p> <p>A Notice of Appeal is being filed concurrently herewith.</p> <p>Please reconsider based on arguments made including essentially: we admit that article has a function that includes an ability to flex and deform; however, the specific contour and irregularity of its shape is not for this or any purpose. The same irregularity contributes to the distinctive nature of the article.</p> <p>1A. Collateral Estoppel</p> <p>Please reconsider based on a requirement that issues be identical, not just closely related.</p> <p>2. APPLIED FOR MARK COMPRISES A NON-DISTINCTIVE CONFIGURATION OF THE GOODS AND APPLICANT'S CLAIM OF ACQUIRED DISTINCTIVENESS IS INSUFFICIENT.</p> <p>Please reconsider based on lack of evidence on record of similar looking toothbrushes; and in the alternative, Applicant's approximately ten years of use.</p>	
<b>ADDITIONAL STATEMENTS SECTION</b>	
<b>DESCRIPTION OF THE MARK (and Color Location, if applicable)</b>	The mark consists of the three-dimensional contour and configuration of a toothbrush, more specifically featuring an irregular barbell shape in atop aspect with a rear end portion being larger than a front end portion; and a side aspect featuring an head portion and a handle portion with a greatest thickness at the transition from the head end and the handle portion, the thickness further tapering to each end; the bristles shown in broken lines are not part of the mark.
<b>CORRESPONDENCE SECTION</b>	
<b>ORIGINAL ADDRESS</b>	TIMOTHY W. FITZWILLIAM Law Ofc. of TW Fitzwilliam 2835 Bayside Walk SAN DIEGO

	California (CA) US 92109
<b>NEW CORRESPONDENCE SECTION</b>	
<b>NAME</b>	TIMOTHY W. FITZWILLIAM
<b>FIRM NAME</b>	Law Ofc. of TW Fitzwilliam
<b>INDIVIDUAL ATTORNEY DOCKET/REFERENCE NUMBER</b>	506.311US2
<b>STREET</b>	303 Magnolia Drive
<b>CITY</b>	Laguna Beach
<b>STATE</b>	California
<b>ZIP/POSTAL CODE</b>	92651
<b>COUNTRY</b>	United States
<b>PHONE</b>	(949) 231-0434
<b>EMAIL</b>	fitzwilliam.esq@gmail.com
<b>AUTHORIZED EMAIL COMMUNICATION</b>	Yes
<b>SIGNATURE SECTION</b>	
<b>RESPONSE SIGNATURE</b>	/twfitzwilliam/
<b>SIGNATORY'S NAME</b>	Timothy W. Fitzwilliam
<b>SIGNATORY'S POSITION</b>	Attorney of record, CA bar member
<b>SIGNATORY'S PHONE NUMBER</b>	(949) 231-0434
<b>DATE SIGNED</b>	06/30/2015
<b>AUTHORIZED SIGNATORY</b>	YES
<b>CONCURRENT APPEAL NOTICE FILED</b>	YES
<b>FILING INFORMATION SECTION</b>	
<b>SUBMIT DATE</b>	Tue Jun 30 14:27:35 EDT 2015
<b>TEAS STAMP</b>	USPTO/RFR-189.252.57.24-2 0150630142735043852-85935 572-5306a6f6b95f7a119d62c fa8a74d2ad2d15357bbb6fa7a 76e21b29e61128a6-N/A-N/A- 20150630141315178525

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

Application serial no. **85935572** has been amended as follows:

**ARGUMENT(S)**

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

**1. APPLIED FOR MARK IS FUNCTIONAL**

A Notice of Appeal is being filed concurrently herewith.

Please reconsider based on arguments made including essentially: we admit that article has a function that includes an ability to flex and deform; however, the specific contour and irregularity of its shape is not for this or any purpose. The same irregularity contributes to the distinctive nature of the article.

**1A. Collateral Estoppel**

Please reconsider based on a requirement that issues be identical, not just closely related.

**2. APPLIED FOR MARK COMPRISES A NON-DISTINCTIVE CONFIGURATION OF THE GOODS AND APPLICANT'S CLAIM OF ACQUIRED DISTINCTIVENESS IS INSUFFICIENT.**

Please reconsider based on lack of evidence on record of similar looking toothbrushes; and in the alternative, Applicant's approximately ten years of use.

**CORRESPONDENCE ADDRESS CHANGE**

Applicant proposes to amend the following:

**Current:**

TIMOTHY W. FITZWILLIAM  
Law Ofc. of TW Fitzwilliam  
2835 Bayside Walk  
SAN DIEGO  
California (CA)  
US  
92109

**Proposed:**

TIMOTHY W. FITZWILLIAM of Law Ofc. of TW Fitzwilliam, having an address of  
303 Magnolia Drive Laguna Beach, California 92651  
United States  
fitzwilliam.esq@gmail.com  
(949) 231-0434  
The attorney docket/reference number is 506.311US2 .

## **ADDITIONAL STATEMENTS**

### **Description of mark**

The mark consists of the three-dimensional contour and configuration of a toothbrush, more specifically featuring an irregular barbell shape in atop aspect with a rear end portion being larger than a front end portion; and a side aspect featuring an head portion and a handle portion with a greatest thickness at the transition from the head end and the handle portion, the thickness further tapering to each end; the bristles shown in broken lines are not part of the mark.

## **SIGNATURE(S)**

### **Request for Reconsideration Signature**

Signature: /twfitzwilliam/ Date: 06/30/2015

Signatory's Name: Timothy W. Fitzwilliam

Signatory's Position: Attorney of record, CA bar member

Signatory's Phone Number: (949) 231-0434

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: TIMOTHY W. FITZWILLIAM

Law Ofc. of TW Fitzwilliam

303 Magnolia Drive

Laguna Beach, California 92651

Serial Number: 85935572

Internet Transmission Date: Tue Jun 30 14:27:35 EDT 2015

TEAS Stamp: USPTO/RFR-189.252.57.24-2015063014273504

3852-85935572-5306a6f6b95f7a119d62cfa8a7

4d2ad2d15357bbb6fa7a76e21b29e61128a6-N/A

-N/A-20150630141315178525