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OMB No. 0651-0054 (Exp 10/31/2017)

Petition To Revive Abandoned Application - Failure To Respond Timely To Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86524220
LAW OFFICE ASSIGNED	LAW OFFICE 101
DATE OF NOTICE OF ABANDONMENT	01/23/2017
PETITION	
PETITION STATEMENT	Applicant has firsthand knowledge that the failure to respond to the Office Action by the specified deadline was unintentional, and requests the USPTO to revive the abandoned application.
RESPONSE TO OFFICE ACTION	
MARK SECTION	
MARK	https://tmng-al.uspto.gov/resting2/api/img/86524220/large
LITERAL ELEMENT	OPERA
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.
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_3812213190-20170323151356257273_._OPERA_-_RFR_-_March_2017.pdf
CONVERTED PDF FILE(S) (4 pages)	\\TICRS\EXPORT17\IMAGEOUT17\865\242\86524220\xml3\POA0002.JPG
	\\TICRS\EXPORT17\IMAGEOUT17\865\242\86524220\xml3\POA0003.JPG
	\\TICRS\EXPORT17\IMAGEOUT17\865\242\86524220\xml3\POA0004.JPG
	\\TICRS\EXPORT17\IMAGEOUT17\865\242\86524220\xml3\POA0005.JPG
ORIGINAL PDF FILE	evi_3812213190-20170323151356257273_._OPERA_-_Exhibit_A.pdf
CONVERTED PDF FILE(S) (4 pages)	\\TICRS\EXPORT17\IMAGEOUT17\865\242\86524220\xml3\POA0006.JPG
	\\TICRS\EXPORT17\IMAGEOUT17\865\242\86524220\xml3\POA0007.JPG
	\\TICRS\EXPORT17\IMAGEOUT17\865\242\86524220\xml3\POA0008.JPG
	\\TICRS\EXPORT17\IMAGEOUT17\865\242\86524220\xml3\POA0009.JPG
DESCRIPTION OF EVIDENCE FILE	response and exhibit
PAYMENT SECTION	
TOTAL AMOUNT	100
TOTAL FEES DUE	100

SIGNATURE SECTION	
PETITION SIGNATURE	/rmw/
SIGNATORY'S NAME	Robert M. Wasnofski, Jr.
SIGNATORY'S POSITION	Attorney of record, New York bar member
SIGNATORY'S PHONE NUMBER	(212) 415-9200
DATE SIGNED	03/23/2017
RESPONSE SIGNATURE	/rmw/
SIGNATORY'S NAME	Robert M. Wasnofski, Jr.
SIGNATORY'S POSITION	Attorney of record, New York bar member
SIGNATORY'S PHONE NUMBER	(212) 415-9200
DATE SIGNED	03/23/2017
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Thu Mar 23 16:56:59 EDT 2017
TEAS STAMP	USPTO/POA-XX.XXX.XX.XXX-2 0170323165659755614-86524 220-5803fe667ba71aae7d625 c86acbad45d8e7fbb17624ae3 57d4193d4e93cf43537-ET-17 392-20170323151356257273

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PTO Form 2194 (Rev 03/2012)
OMB No. 0651-0054 (Exp 10/31/2017)

Petition To Revive Abandoned Application - Failure To Respond Timely To Office Action

To the Commissioner for Trademarks:

Application serial no. **86524220** OPERA(Standard Characters, see https://tmng-al.uspto.gov/resting2/api/img/86524220/large) has been amended as follows:

PETITION

Petition Statement

Applicant has firsthand knowledge that the failure to respond to the Office Action by the specified deadline was unintentional, and requests the USPTO to revive the abandoned application.

RESPONSE TO OFFICE ACTION

EVIDENCE

Evidence in the nature of response and exhibit has been attached.

Original PDF file:

evi_3812213190-20170323151356257273_._OPERA_-_RFR_-_March_2017.pdf

Converted PDF file(s) (4 pages)

Evidence-1

Evidence-2

Evidence-3

Evidence-4

Original PDF file:

evi_3812213190-20170323151356257273_._OPERA_-_Exhibit_A.pdf
Converted PDF file(s) (4 pages)
Evidence-1
Evidence-2
Evidence-3
Evidence-4

FEE(S)
Fee(s) in the amount of $100 is being submitted.

SIGNATURE(S)

Signature: /rmw/ Date: 03/23/2017
Signatory's Name: Robert M. Wasnofski, Jr.
Signatory's Position: Attorney of record, New York bar member
Signatory's Phone Number: (212) 415-9200

Response Signature
Signature: /rmw/ Date: 03/23/2017
Signatory's Name: Robert M. Wasnofski, Jr.
Signatory's Position: Attorney of record, New York bar member

Signatory's Phone Number: (212) 415-9200

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 owner's/holder'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 owner/holder 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 owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder'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.

RAM Sale Number: 86524220
RAM Accounting Date: 03/24/2017

Serial Number: 86524220
Internet Transmission Date: Thu Mar 23 16:56:59 EDT 2017
TEAS Stamp: USPTO/POA-XX.XXX.XX.XXX-2017032316565975
5614-86524220-5803fe667ba71aae7d625c86ac
bad45d8e7fbb17624ae357d4193d4e93cf43537-
ET-17392-20170323151356257273

REQUEST FOR RECONSIDERATION

Serial No.:	86524220
Mark:	OPERA
Filing Date:	February 04, 2015
Date of Office Action:	June 20, 2016
Applicant:	FMTM Distribution Ltd.
Correspondent Address:	Robert M. Wasnofski, Jr. DORSEY & WHITNEY LLP 51 W 52nd St. New York, NY 10019-6119
Correspondent Phone:	212-415-9200
Correspondent Email:	ny.trademark@dorsey.com
Examining Attorney:	Justine Parker

In response to the Final Office Action mailed on June 20, 2016, Applicant FMTM Distribution Ltd. submits the following Response.

The Examining Attorney has refused registration of Applicant's mark OPERA ("Applicant's Mark") on the Principal Register under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the alleged ground that it is likely to be confused with Registration No. 2433079 for the mark OPERA, owned by Uno A Erre Italia S.p.A. ("Uno Mark" and "Uno," respectively) and Reg. No. 4770995 for the mark FRANCO CIAMBELLA OPERA & Design, owned by Mr. Franco Ciambella ("Ciambella Mark" and "Ciambella," respectively). Applicant submits that the Examining Attorney has erred in this conclusion because: (1) upon information and belief the Uno Mark has been abandoned and Applicant intends to pursue a consent from Uno or to commence a cancellation action against the cited registration, as necessary; and (2) there is no likelihood of confusion between the Ciambella Mark and Applicant's Mark because

(a) the Ciambella Mark should be afforded a narrow scope of protection in view of prior registrations for OPERA and OPERA HOUSE in Class 14 and (b) Applicant's Mark is not similar to the Ciambella Mark in sight, sound and commercial impression.

1. *The Uno Mark has been Abandoned.*

Upon information and belief, Applicant respectfully submits that the Uno Mark has been abandoned through non-use. Internet research has revealed no evidence of commercial use of the Uno Mark. Because the Uno Mark has been abandoned, there can be no likelihood of confusion between Applicant's Mark and the Uno Mark. Accordingly, Applicant respectfully requests that the refusal to register Applicant's Mark under Section 2(d) of the Lanham Act on the basis of the Uno Mark be withdrawn.

Moreover, Applicant intends to seek a consent from Uno or to commence a cancellation action against the Uno registration if Uno fails to either grant the consent or voluntarily surrender its registration, as necessary.

2. *There is No Likelihood of Confusion between the Ciambella Mark and Applicant's Mark.*

   a. *The Ciambella Mark Should be Afforded a Narrow Scope of Protection in View of Prior Registrations.*

Applicant respectfully submits that there can be no confusion between Applicant's Mark and the Ciambella Mark because the USPTO allowed for the registration of the Ciambella Mark in 2015, notwithstanding prior registrations for both the Uno Mark and the mark OPERA HOUSE covering "*jewellery [sic] and precious stones*" in Class 14 (Reg. No. 3894856). A true and correct copy of the TSDR printout for the mark OPERA HOUSE is attached as Exhibit A. Applicant's Mark is at least as distinguishable from the Ciambella Mark as the various OPERA marks are from each other. The coexistence of these marks demonstrates that Applicant's Mark can also coexist with the Ciambella Mark without causing a likelihood of confusion.

Accordingly, Applicant respectfully requests consistency of examination, and requests that the refusal to register under Section 2(d) of the Lanham Act on the basis of the Uno Registration be withdrawn.

b. Applicant's Mark is Dissimilar to the Ciambella Mark in Sight, Sound and Commercial Impression.

It is well settled that in assessing similarities, marks must be examined in their entireties and not dissected into individual elements. *See, e.g., Marshall Field & Co. v. Mrs. Fields Cookies*, 25 USQ2d 1321 (TTAB 1992) (MRS. FIELDS not confusingly similar to FIELDS or MARSHALL FIELDS). Furthermore, both "the similarities and dissimilarities between the two marks must be considered." *In re Electrolyte Laboratories, Inc.*, 929 F.2d 645, 647 (Fed. Cir. 1990) (K+ not confusingly similar to K+EFF).

The anti-dissection rule is based upon the principle that the whole mark, not its component parts, is what makes a commercial impression on the average consumer. *See* J. THOMAS MCCARTHY, 4 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 23:41 (4th ed. 2010) ("A mark should not be dissected or split up into its component parts and each part then compared with corresponding parts of the conflicting mark to determine the likelihood of confusion. It is the impression that the mark as a whole creates on the average reasonably prudent buyer and not the parts thereof, that is important."); *see also Colgate-Palmolive Co. v. Carter-Wallace, Inc.* 432 F.2d 1400, 1402 (CCPA 1970) (PEAK PERIOD not confusingly similar to PEAK). Consistent with the anti-dissection rule, "[t]he use of identical, even dominant, words in common does not automatically mean that the two marks are [confusingly] similar." *General Mills, Inc. v. Kellogg Company*, 824 F.2d 622, 627 (8th Cir. 1987) (APPLE RAISIN CRISP not confusingly similar to OATMEAL RAISIN CRISP for breakfast cereal).

Here, the Ciambella Mark consists of the words FRANCO CIAMBELLA OPERA and a prominent circle design, while Applicant's Mark is simply the word OPERA.

FRANCO CIAMBELLA are the first words shown in the Ciambella Mark and, as such, consumers will see those words first and are likely to perceive same as the dominant and distinguishing portion of the Ciambella Mark. *See Coca-Cola Co. v. Carlisle Bottling Works*, 43 F.2d 101, 112 (E.D. Ky. 1929) ("The first word coming first is the more prominent, and its prominence may be such as to dominate the trade-mark.").

Additionally, FRANCO CIAMBELLA is the name of a living person. As such, the Ciambella Mark necessarily creates a distinct commercial impression from that of Applicant's Mark.

Accordingly, Applicant submits that confusion between its Mark and the Ciambella Mark is unlikely because of the distinct commercial impression in terms of sight, sound, and meaning created by the addition of the design element and the words FRANCO CIAMBELLA included in the Ciambella Mark. *See, e.g.*, *Bell Labs, Inc. v. Colonial Prods., Inc.*, 231 USPQ 569 (S.D. Fla. 1986) (no likelihood of confusion between FINAL and FINAL FLIP both for rodenticide); *Champagne Louis Roederer S.A. v. Delicato Vineyards*, 47 USPQ2d 1459 (Fed. Cir. 1998) (no likelihood of confusion between CRISTAL and CRYSTAL CREEK both for wine).

Conclusion

Based on the forgoing, Applicant respectfully requests that the Section 2(d) refusals be withdrawn and that its application be approved for publication.

EXHIBIT A

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Generated on:	This page was generated by TSDR on 2017-03-23 14:40:35 EDT		
Mark:	OPERA HOUSE OPERA HOUSE		
US Serial Number:	77796124	Application Filing Date:	Aug. 04, 2009
US Registration Number:	3894856	Registration Date:	Dec. 21, 2010
Filed as TEAS Plus:	Yes	Currently TEAS Plus:	Yes
Register:	Principal		
Mark Type:	Trademark		
TM5 Common Status Descriptor:	LIVE/REGISTRATION/Issued and Active The trademark application has been registered with the Office.		
Status:	A Section 8 declaration has been accepted.		
Status Date:	Feb. 22, 2016		
Publication Date:	Feb. 23, 2010	Notice of Allowance Date:	May 18, 2010

Mark Information

Collapse All

Mark Literal Elements:	OPERA HOUSE
Standard Character Claim:	Yes. The mark consists of standard characters without claim to any particular font style, size, or color.
Mark Drawing Type:	4 - STANDARD CHARACTER MARK

Goods and Services

Note:
The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [..] indicate deleted goods/services;
- Double parenthesis ((..)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For:	Jewellery and precious stones		
International Class(es):	014 - Primary Class	U.S Class(es):	002, 027, 028, 050
Class Status:	ACTIVE		
Basis:	1(a)		
First Use:	Sep. 22, 2010	Use in Commerce:	Sep. 22, 2010

Basis Information (Case Level)

Filed Use:	No	**Currently Use:**	Yes	**Amended Use:**	No
Filed ITU:	Yes	**Currently ITU:**	No	**Amended ITU:**	No
Filed 44D:	No	**Currently 44D:**	No	**Amended 44D:**	No
Filed 44E:	No	**Currently 44E:**	No	**Amended 44E:**	No
Filed 66A:	No	**Currently 66A:**	No		
Filed No Basis:	No	**Currently No Basis:**	No		

Current Owner(s) Information

Owner Name:	NEVATIA, KAPIL		
Owner Address:	102 SDF IV, SEEPZ, ANDHERI (E) MUMBAI INDIA 400096		
Legal Entity Type:	INDIVIDUAL	**Citizenship:**	INDIA

Attorney/Correspondence Information

Attorney of Record

Attorney Name:	Jason C. Gage	**Docket Number:**	Eleganza --
Attorney Primary Email Address:	jgage@gagelegal.com	**Attorney Email Authorized:**	Yes

Correspondent

Correspondent Name/Address:	JASON C. GAGE Law Office of Jason C. Gage 225 S. Lake Avenue, Suite 300 Pasadena, CALIFORNIA UNITED STATES 91101		
Phone:	323 254 2404		
Correspondent e-mail:	jgage@gagelegal.com	**Correspondent e-mail Authorized:**	Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Feb. 22, 2016	NOTICE OF ACCEPTANCE OF SEC. 8 - E-MAILED	
Feb. 22, 2016	REGISTERED - SEC. 8 (6-YR) ACCEPTED	76874
Feb. 22, 2016	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	76874
Jan. 29, 2016	TEAS SECTION 8 RECEIVED	
Dec. 21, 2015	COURTESY REMINDER - SEC. 8 (6-YR) E-MAILED	
Dec. 21, 2010	REGISTERED-PRINCIPAL REGISTER	
Nov. 19, 2010	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	
Nov. 18, 2010	LAW OFFICE REGISTRATION REVIEW COMPLETED	77312
Nov. 18, 2010	ASSIGNED TO LIE	77312
Nov. 02, 2010	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Oct. 15, 2010	STATEMENT OF USE PROCESSING COMPLETE	65362
Sep. 27, 2010	USE AMENDMENT FILED	65362
Oct. 15, 2010	CASE ASSIGNED TO INTENT TO USE PARALEGAL	65362
Sep. 27, 2010	TEAS STATEMENT OF USE RECEIVED	
May 18, 2010	NOA MAILED - SOU REQUIRED FROM APPLICANT	

Feb. 23, 2010	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Feb. 23, 2010	PUBLISHED FOR OPPOSITION	
Jan. 15, 2010	LAW OFFICE PUBLICATION REVIEW COMPLETED	65864
Jan. 13, 2010	APPROVED FOR PUB - PRINCIPAL REGISTER	
Dec. 23, 2009	TEAS/EMAIL CORRESPONDENCE ENTERED	65864
Dec. 23, 2009	CORRESPONDENCE RECEIVED IN LAW OFFICE	65864
Dec. 23, 2009	ASSIGNED TO LIE	65864
Dec. 11, 2009	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Dec. 11, 2009	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Nov. 20, 2009	ATTORNEY REVOKED AND/OR APPOINTED	
Nov. 20, 2009	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Nov. 09, 2009	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Nov. 09, 2009	NON-FINAL ACTION E-MAILED	6325
Nov. 09, 2009	NON-FINAL ACTION WRITTEN	60219
Nov. 08, 2009	ASSIGNED TO EXAMINER	60219
Aug. 07, 2009	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Aug. 07, 2009	NEW APPLICATION ENTERED IN TRAM	

Maintenance Filings or Post Registration Information

Affidavit of Continued Use: Section 8 - Accepted

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: TMEG LAW OFFICE 101 **Date in Location:** Feb. 22, 2016

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Department of Commerce
Strategy Targeting Organized Piracy

RAM SALE NUMBER: 86524220
RAM ACCOUNTING DATE: 20170324

INTERNET TRANSMISSION DATE:
2017/03/23

SERIAL NUMBER:
86/524220

Description	Fee Code	Transaction	Total Fees Paid
POA	7005	2017/03/23	100