

## Request for Reconsideration after Final Action

**The table below presents the data as entered.**

Input Field	Entered
<b>SERIAL NUMBER</b>	87102250
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 101
<b>MARK SECTION</b>	
<b>MARK</b>	https://tmng-al.uspto.gov/resting2/api/img/87102250/large
<b>LITERAL ELEMENT</b>	ADRENALINE
<b>STANDARD CHARACTERS</b>	YES
<b>USPTO-GENERATED IMAGE</b>	YES
<b>MARK STATEMENT</b>	The mark consists of standard characters, without claim to any particular font style, size or color.
<b>ARGUMENT(S)</b>	
<p>When considered in their entirety, Applicant's Mark and the Cited Registration for DRENALINE in stylized text are dissimilar and convey separate commercial impressions. See, e.g., In re Electrolyte Labs, Inc., 16 U.S.P.Q.2d 1239, 1240 (Fed. Cir. 1990). Here, Applicant's mark is pronounced differently from DRENALINE (and differ by a syllable), and therefore has a different overall impression. Indeed, the addition of a single term, or a variation of even one or two letters, can be sufficient to render the marks visually and aurally distinct. See, e.g., B.V.D. Licensing Corp. v. Body Action Design, Inc., 846 F.2d 727 (Fed. Cir. 1988) (holding no likelihood of confusion between B.V.D. and B.A.D. for ?clothing.?). Here, the difference in sight, sound, and pronunciation that follows from the differences in the marks is highly significant. When ascertaining whether a likelihood of confusion exists between two marks, the marks ?should not be dissected and considered piece-meal?; instead, each mark ?must be considered as a whole.? McNeil Nutritionals, LLC v. Heartland Sweeteners, LLC, 511 F.3d 350, 368-69 (3d Cir. 2007). As a result, marks are often held to be distinct even when they share some wording and/or identify similar goods. See, e.g., Luigino's Inc. v. Stouffer Corp., 170 F.3d 827 (8th Cir. 1999) (finding MICHELINA'S LEAN ?N TASTY and LEAN CUISINE for low-fat frozen entrees do not create same overall impression). Therefore, Applicant requests that the Trademark Office lift the Section 2(d) refusal.</p>	
<b>SIGNATURE SECTION</b>	
<b>RESPONSE SIGNATURE</b>	/WDA/
<b>SIGNATORY'S NAME</b>	Wesley D. Anderson
<b>SIGNATORY'S POSITION</b>	Attorney of Record, MN Bar Member
<b>SIGNATORY'S PHONE NUMBER</b>	XXXXXXXXXX
<b>DATE SIGNED</b>	09/08/2017
<b>AUTHORIZED SIGNATORY</b>	YES
<b>CONCURRENT APPEAL NOTICE FILED</b>	YES
<b>FILING INFORMATION SECTION</b>	
<b>SUBMIT DATE</b>	Fri Sep 08 15:42:50 EDT 2017
<b>TEAS STAMP</b>	USPTO/RFR-XX.XX.XXX.XXX-2 0170908154250194825-87102 250-510255f2b09d1d724beca 3af7c3677471d55640809c171 dbbef5d157415bde157-N/A-N /A-20170908154010248837

## Request for Reconsideration after Final Action

### To the Commissioner for Trademarks:

Application serial no. **87102250** ADRENALINE(Standard Characters, see <https://tmng-al.uspto.gov/resting2/api/img/87102250/large>) has been amended as follows:

#### ARGUMENT(S)

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

When considered in their entirety, Applicant's Mark and the Cited Registration for DRENALINE in stylized text are dissimilar and convey separate commercial impressions. See, e.g., *In re Electrolyte Labs, Inc.*, 16 U.S.P.Q.2d 1239, 1240 (Fed. Cir. 1990). Here, Applicant's mark is pronounced differently from DRENALINE (and differ by a syllable), and therefore has a different overall impression. Indeed, the addition of a single term, or a variation of even one or two letters, can be sufficient to render the marks visually and aurally distinct. See, e.g., *B.V.D. Licensing Corp. v. Body Action Design, Inc.*, 846 F.2d 727 (Fed. Cir. 1988) (holding no likelihood of confusion between B.V.D. and B.A.D. for "clothing."). Here, the difference in sight, sound, and pronunciation that follows from the differences in the marks is highly significant. When ascertaining whether a likelihood of confusion exists between two marks, the marks "should not be dissected and considered piece-meal"; instead, each mark "must be considered as a whole." *McNeil Nutritionals, LLC v. Heartland Sweeteners, LLC*, 511 F.3d 350, 368-69 (3d Cir. 2007). As a result, marks are often held to be distinct even when they share some wording and/or identify similar goods. See, e.g., *Luigino's Inc. v. Stouffer Corp.*, 170 F.3d 827 (8th Cir. 1999) (finding MICHELINA'S LEAN 'N TASTY and LEAN CUISINE for low-fat frozen entrees do not create same overall impression). Therefore, Applicant requests that the Trademark Office lift the Section 2(d) refusal.

#### SIGNATURE(S)

##### Request for Reconsideration Signature

Signature: /WDA/ Date: 09/08/2017

Signatory's Name: Wesley D. Anderson

Signatory's Position: Attorney of Record, MN Bar Member

Signatory's Phone Number: XXXXXXXXXX

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 owner/holder 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.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 87102250

Internet Transmission Date: Fri Sep 08 15:42:50 EDT 2017

TEAS Stamp: USPTO/RFR-XX.XX.XXX.XXX-2017090815425019

4825-87102250-510255f2b09d1d724beca3af7c

3677471d55640809c171dbbef5d157415bde157-

N/A-N/A-20170908154010248837