

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	87217988
LAW OFFICE ASSIGNED	LAW OFFICE 111
MARK SECTION	
MARK FILE NAME	https://tmng-al.uspto.gov/resting2/api/img/87217988/large
LITERAL ELEMENT	FOODKICK BY FRESHDIRECT
STANDARD CHARACTERS	NO
USPTO-GENERATED IMAGE	NO
GOODS AND/OR SERVICES SECTION (009)(current)	
INTERNATIONAL CLASS	009
DESCRIPTION	
Mobile software application featuring information about food and grocery products, and for shop-at-home ordering of food and grocery products, processing orders of food and grocery products and tracking of delivery of food and grocery products; pre-recorded software for mobile devices, namely, software application featuring information about food and grocery products, and for shop-at-home ordering of food and grocery products, processing orders of food and grocery products and tracking of delivery of food and grocery products; provision of mobile application for searching food and grocery products, storing preferences of food and beverage products, scanning product barcodes, creating shopping lists, viewing recipes, and disseminating discount and price saving information for food and beverage products; related goods	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 01/12/2016
FIRST USE IN COMMERCE DATE	At least as early as 01/12/2016
GOODS AND/OR SERVICES SECTION (009)(proposed)	
INTERNATIONAL CLASS	009
TRACKED TEXT DESCRIPTION	
Mobile software application featuring information about food and grocery products, and for shop-at-home ordering of food and grocery products, processing orders of food and grocery products and tracking of delivery of food and grocery products; pre-recorded software for mobile devices, namely, software application featuring information about food and grocery products, and for shop-at-home ordering of food and grocery products, processing orders of food and grocery products and tracking of delivery of food and grocery products; provision of mobile application for searching food and grocery products, storing preferences of food and beverage products, scanning product barcodes, creating shopping lists, viewing recipes, and disseminating discount and price saving information for food and beverage products; related goods	
FINAL DESCRIPTION	
Mobile software application featuring information about food and grocery products, and for shop-at-home ordering of food and grocery products, processing orders of food and grocery products and tracking of delivery of food and grocery products; pre-recorded software for mobile devices, namely, software application featuring information about food and grocery products, and for shop-at-home ordering of food and grocery products, processing orders of food and grocery products and tracking of delivery of food and grocery products	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 01/12/2016

FIRST USE IN COMMERCE DATE	At least as early as 01/12/2016
GOODS AND/OR SERVICES SECTION (042)(class added)	
INTERNATIONAL CLASS	042
DESCRIPTION	
Provision of mobile application for searching food and grocery products, storing preferences of food and beverage products, scanning product bar codes, creating shopping lists, viewing recipes, and disseminating discount and price saving information for food and beverage products	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 01/12/2016
FIRST USE IN COMMERCE DATE	At least as early as 01/12/2016
STATEMENT TYPE	"The substitute (or new, or originally submitted, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application"[for an application based on Section 1(a), Use in Commerce] OR "The substitute (or new, or originally submitted, if appropriate) specimen(s) was/were in use in commerce prior either to the filing of the Amendment to Allege Use or expiration of the filing deadline for filing a Statement of Use" [for an application based on Section 1(b) Intent-to-Use]. OR "The attached specimen is a true copy of the specimen that was originally submitted with the application, amendment to allege use, or statement of use" [for an illegible specimen].
SPECIMEN FILE NAME(S)	
ORIGINAL PDF FILE	SPN0-65246216100-20171108115147229983_ _FOODKICK_and_Design_-.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT17\IMAGEOUT17\872\179\87217988\xml8\RFR0002.JPG
SPECIMEN DESCRIPTION	Mobile app. web page
PAYMENT SECTION	
NUMBER OF CLASSES	1
APPLICATION FOR REGISTRATION PER CLASS	275
TOTAL FEES DUE	275
SIGNATURE SECTION	
DECLARATION SIGNATURE	/Howard J. Shire/
SIGNATORY'S NAME	Howard J. Shire, Esq.
SIGNATORY'S POSITION	Attorney of Record
SIGNATORY'S PHONE NUMBER	2124257200
DATE SIGNED	11/08/2017
RESPONSE SIGNATURE	/Howard J. Shire/
SIGNATORY'S NAME	Howard J. Shire, Esq.
SIGNATORY'S POSITION	Attorney of Record
SIGNATORY'S PHONE NUMBER	2124257200
DATE SIGNED	11/08/2017
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Wed Nov 08 12:06:34 EST 2017

TEAS STAMP

USPTO/RFR-XX.XXX.XXX.XXX-
20171108120634850209-8721
7988-510592c61166d1d55234
2fcc72918eac3ef41e55bbe51
448d6bf4a1e1772e5b9f-DA-9
818-20171108115147229983

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PTO Form 1960 (Rev 10/2011)
OMB No. 0651-0050 (Exp 09/20/2020)

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. **87217988** FOODKICK BY FRESHDIRECT (Stylized and/or with Design, see <https://tmng-al.uspto.gov/resting2/api/img/87217988/large>) has been amended as follows:

CLASSIFICATION AND LISTING OF GOODS/SERVICES

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

Current: Class 009 for Mobile software application featuring information about food and grocery products, and for shop-at-home ordering of food and grocery products, processing orders of food and grocery products and tracking of delivery of food and grocery products; pre-recorded software for mobile devices, namely, software application featuring information about food and grocery products, and for shop-at-home ordering of food and grocery products, processing orders of food and grocery products and tracking of delivery of food and grocery products; provision of mobile application for searching food and grocery products, storing preferences of food and beverage products, scanning product barcodes, creating shopping lists, viewing recipes, and disseminating discount and price saving information for food and beverage products; related goods
Original Filing Basis:

Filing Basis: Section 1(a), Use in Commerce: For all applications: The mark is in use in commerce and was in use in commerce as of the application filing date. The provided specimen shows the mark in use in commerce (see specimen statement below). **For a collective trademark, collective service mark, collective membership mark, or certification mark application:** The applicant is exercising legitimate control over the use of the mark in commerce and was exercising legitimate control over the use of the mark in commerce as of the application filing date. **For a certification mark application:** The applicant is not engaged 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. The mark was first used at least as early as 01/12/2016 and first used in commerce at least as early as 01/12/2016 , and is now in use in such commerce.

Proposed:

Tracked Text Description: Mobile software application featuring information about food and grocery products, and for shop-at-home ordering of food and grocery products, processing orders of food and grocery products and tracking of delivery of food and grocery products; pre-recorded software for mobile devices, namely, software application featuring information about food and grocery products, and for shop-at-home ordering of food and grocery products, processing orders of food and grocery products and tracking of delivery of food and grocery products; ~~provision of mobile application for searching food and grocery products, storing preferences of food and beverage products, scanning product barcodes, creating shopping lists, viewing recipes, and disseminating discount and price saving information for food and beverage products; related goods~~

Class 009 for Mobile software application featuring information about food and grocery products, and for shop-at-home ordering of food and grocery products, processing orders of food and grocery products and tracking of delivery of food and grocery products; pre-recorded software for mobile devices, namely, software application featuring information about food and grocery products, and for shop-at-home ordering of food and grocery products, processing orders of food and grocery products and tracking of delivery of food and grocery products

Filing Basis: Section 1(a), Use in Commerce:For all applications: The mark is in use in commerce and was in use in commerce as of the application filing date. The provided specimen shows the mark in use in commerce (see specimen statement below). **For a collective trademark, collective service mark, collective membership mark, or certification mark application:** The applicant is exercising legitimate control over the use of the mark in commerce and was exercising legitimate control over the use of the mark in commerce as of the application filing date. **For a certification mark application:** The applicant is not engaged 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. The mark was first used at least as early as 01/12/2016 and first used in commerce at least as early as 01/12/2016 , and is now in use in such commerce.

Applicant hereby adds the following class of goods/services to the application:

New: Class 042 for Provision of mobile application for searching food and grocery products, storing preferences of food and beverage products, scanning product bar codes, creating shopping lists, viewing recipes, and disseminating discount and price saving information for food and beverage products

Filing Basis: Section 1(a), Use in Commerce: For all applications: The mark is in use in commerce and was in use in commerce as of the application filing date. The provided specimen shows the mark in use in commerce (see specimen statement below). **For a collective trademark, collective service mark, collective membership mark, or certification mark application:** The applicant is exercising legitimate control over the use of the mark in commerce and was exercising legitimate control over the use of the mark in commerce as of the application filing date. **For a certification mark application:** The applicant is not engaged 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. The mark was first used at least as early as 01/12/2016 and first used in commerce at least as early as 01/12/2016, and is now in use in such commerce.

Applicant hereby submits a specimen for Class 042. The specimen(s) submitted consists of Mobile app. web page.

"The substitute (or new, or originally submitted, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application" [for an application based on Section 1(a), Use in Commerce] **OR** **"The substitute (or new, or originally submitted, if appropriate) specimen(s) was/were in use in commerce prior either to the filing of the Amendment to Allege Use or expiration of the filing deadline for filing a Statement of Use"** [for an application based on Section 1(b) Intent-to-Use]. **OR** **"The attached specimen is a true copy of the specimen that was originally submitted with the application, amendment to allege use, or statement of use"** [for an illegible specimen].

Original PDF file:

[SPN0-65246216100-20171108115147229983_ FOODKICK and Design -.pdf](#)

Converted PDF file(s) (1 page)

[Specimen File1](#)

FEE(S)

Fee(s) in the amount of \$275 is being submitted.

SIGNATURE(S)

Declaration Signature

DECLARATION: The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that, if the applicant submitted the application or allegation of use (AOU) unsigned, all statements in the application or AOU and this submission based on the signatory's own knowledge are true, and all statements in the application or AOU and this submission made on information and belief are believed to be true.

STATEMENTS FOR UNSIGNED SECTION 1(a) APPLICATION/AOU: If the applicant filed an unsigned application under 15 U.S.C. §1051(a) or AOU under 15 U.S.C. §1051(c), the signatory additionally believes that: the applicant is the owner of the mark sought to be registered; the mark is in use in commerce and was in use in commerce as of the filing date of the application or AOU on or in connection with the goods/services/collective membership organization in the application or AOU; the original specimen(s), if applicable, shows the mark in use in commerce as of the filing date of the application or AOU on or in connection with the goods/services/collective membership organization in the application or AOU; **for a collective trademark, collective service mark, collective membership mark application, or certification mark application,** the applicant is exercising legitimate control over the use of the mark in commerce and was exercising legitimate control over the use of the mark in commerce as of the filing date of the application or AOU; **for a certification mark application,** the applicant is not engaged 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. **To the best of the signatory's knowledge and belief, no other persons, except, if applicable, authorized users, members, and/or concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services/collective membership organization of such other persons, to cause confusion or mistake, or to deceive.**

STATEMENTS FOR UNSIGNED SECTION 1(b)/SECTION 44 APPLICATION AND FOR SECTION 66(a)

COLLECTIVE/CERTIFICATION MARK APPLICATION: If the applicant filed an unsigned application under 15 U.S.C. §§ 1051(b), 1126(d), and/or 1126(e), or filed a collective/certification mark application under 15 U.S.C. §1141f(a), the signatory additionally believes that: **for a trademark or service mark application,** the applicant is entitled to use the mark in commerce on or in connection with the goods/services specified in the application; the applicant has a bona fide intention to use the mark in commerce and had a bona fide intention to use the mark in commerce as of the application filing date; **for a collective trademark, collective service mark, collective membership mark, or certification mark application,** the applicant has a bona fide intention, and is entitled, to exercise legitimate control over the use of the mark in commerce and had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce as of the application filing date; the signatory is properly authorized to execute the declaration on behalf of the applicant; **for a certification mark application,** 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. **To the best of the signatory's knowledge**

and belief, no other persons, except, if applicable, authorized users, members, and/or concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services/collective membership organization of such other persons, to cause confusion or mistake, or to deceive.

Signature: /Howard J. Shire/ Date: 11/08/2017

Signatory's Name: Howard J. Shire, Esq.

Signatory's Position: Attorney of Record

Signatory's Phone Number: 2124257200

Request for Reconsideration Signature

Signature: /Howard J. Shire/ Date: 11/08/2017

Signatory's Name: Howard J. Shire, Esq.

Signatory's Position: Attorney of Record

Signatory's Phone Number: 2124257200

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.

RAM Sale Number: 87217988

RAM Accounting Date: 11/08/2017

Serial Number: 87217988

Internet Transmission Date: Wed Nov 08 12:06:34 EST 2017

TEAS Stamp: USPTO/RFR-XX.XXX.XXX.XXX-201711081206348

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2918eac3ef41e55bbe51448d6bf4a1e1772e5b9f

-DA-9818-20171108115147229983



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RAM SALE NUMBER: 87217988
RAM ACCOUNTING DATE: 20171108

INTERNET TRANSMISSION DATE:
2017/11/08

SERIAL NUMBER:
87/217988

Description	Fee Code	Transaction Date	Fee	Number Of Classes	Total Fees Paid
	7009	2017/11/08	275	1	275