

ESTTA Tracking number: **ESTTA1107264**

Filing date: **01/12/2021**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	88559109
Applicant	Emma Sievers
Applied for Mark	B.A. WOMEN
Correspondence Address	WYNNE REECE REECE LAW, P.L.L.C. 80 SOUTH EIGHTH STREET, 900 IDS CENTER MINNEAPOLIS, MN 55402 UNITED STATES Primary Email: wreece@reece-law.com Secondary Email(s): bwelle@reece-law.com 6124554577
Submission	Appeal Brief
Attachments	0111.2021.BA Women Response Brief w-Exhibits_Reduced Size.pdf(1186430 bytes) 0111.2021.BA Women Response Brief Addendum_Reduced Size.pdf(3492411 bytes)
Appealed class	Class 025. First Use: 0 First Use In Commerce: 0 All goods and services in the class are appealed, namely: Clothing, namely, t-shirts, long sleeved shirts, hoodies, short sets, sport tops, leggings, tank tops, athletic tops and bottoms for women
Filer's Name	Wynne Reece
Filer's email	wreece@reece-law.com
Signature	/Wynne C. S. Reece/
Date	01/12/2021

UNITED STATES PATENT AND TRADEMARK OFFICE

January 11, 2020

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1415

RE: Serial No.: 88559109
Mark: B.A. Women
Applicant: Emma Sievers
Office Action Of: November 7, 2019

APPLICANT’S EXPARTE APPEAL BRIEF

The following is the Exparte appeal of Applicant, Emma Sievers, by Counsel, to the Final Office Action sent via email on May 26, 2020, by Examining Attorney Corinne Kleinman.

I. BACKGROUND

The Examining Attorney refuses to register Applicant’s standard character **B.A. WOMEN** mark pursuant to Trademark Act Section 2(d), 15 U.S.C. 1052(d), on the ground that the mark is likely to be confused with the mark **B. A. MAN**, in the U.S. Registration No. 5662286 (“Cited Registration”), which is a standard character mark. While the marks do share common elements in the usage of the letters or perhaps abbreviation “B. A.” and the use of the opposite of “man”, the marks are otherwise entirely distinguishable. Further, through continued research, Applicant

has found no usage of the alleged competing mark. Applicant respectfully disagrees with the refusal based on “likelihood of confusion”, and requests Applicant’s mark proceed to publication.¹

II. ABANDONMENT

Applicant continues to strongly assert the lack of confusion between its mark and the Cited Registration for reasons set forth in Applicant’s Response to Office Action, dated and submitted on May 4, 2020. Applicant recognizes the current status of Cited Registration as “live” with the USPTO and at this time makes the following points purely to lay further foundation as to the substantial unlikelihood of consumer confusion.

While the Cited Registration does not appear to be marked as abandoned with the USPTO, Applicant notes that when a mark is abandoned, it becomes available for others to adopt and use as a trademark. *Azeka Building Corp. v. Azeka*, 122 U.S.P.Q.2d (BNA) 1477, 1483 (TTAB 2017). Pursuant to 15 U.S.C.A. §1127, a mark is deemed abandoned “[w]hen its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances.” Intent not to resume can certainly be inferred in this instance. Applicant has proceeded to continuously search for Cited Registration’s mark online and on social media platforms. Through this continued and thorough search, Cited Registration has yet to appear in any search as it relates to the applied for goods – “Hats; Jogging suits; Pants; Shorts; Yoga pants” in International Class 25. At this point, there appears to be an indication of potential abandonment for the mark as held. As shown in Exhibit A, Google does not easily generate search results for “B. A. Man” as it relates to the Cited Registration. *See Exhibit A*. This is a similar result that Applicant obtains across platform and suggests that Cited Registration is not being used in commerce for the mark as held, in relation to the goods it purports to have; it should also be noted that it would appear that other businesses have appropriated the mark and the use may be becoming commonplace. Moreover, the Limited Liability Company that owns the Cited Registration is suspended. *See Exhibit B*. The company’s suspension provides further evidence that the owners of this mark do not intend to resume its use. This is clear evidence that Cited Registration has been abandoned in relation to the goods listed in International Class 25.

¹ Further information pertaining to the background of this matter can be found in Addendum A, which includes the May 4, 2020 brief submitted in response to the November 7, 2019 Section 2(d) refusal.

Though there is a lack of use of the Cited Registration by its owner, that is not the case as it pertains to Applicant's mark. Applicant has continued to consistently promote and use the applied for mark in connection with "Clothing, namely, t-shirts, long sleeved shirts, hoodies, short sets, sport tops, leggings, tank tops, athletic tops and bottoms for women" in International Class 25. Not only has Applicant continued the use of the mark, but Applicant has expanded the mark's use by substantially growing Applicant's business and consumer presence over the past few months. Applicant's continued use of the mark is evidenced in the attached Exhibits C - G. *See Exhibits C - G.* Applicant's website, Instagram, and Facebook pages are regularly updated as the business grows. Further evidence of Applicant's continued and expanded use of the mark is the creation of additional elements on which the mark is used with consumers. *See Exhibit H.* Applicant designed clothing tags to add to its line of t-shirts (and other goods) as an ornamental feature and to further emphasize the mark. As Applicant's business grows, Applicant is not only recognized in its state of origin, but Applicant is recognized by women all over the United States. *See Exhibits I - K.* Applicant's recognition on a national level is due to its continued use of the mark, while Cited Registration's mark cannot be located on any level. While Applicant continues to create, launch, and expand its product and presence, Cited Registration remains unable to be located. In sum, Cited Registration's lack of use is clear evidence of its abandonment and is sufficient to prevent a likelihood of confusion with Applicant's mark. Accordingly, Applicant respectfully requests that the application be permitted to proceed to publication.

III. Attorney Bar Information

Applicant's attorney's bar information is listed below, and may be added to the application pursuant to this Brief:

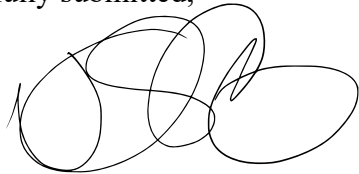
Name:	Wynne Reece
State of License:	Minnesota (Wisconsin and Illinois)
Year of Admission:	2013 (2020 for the latter two admissions)
MN Atty License No.:	0395611

IV. CONCLUSION

If any further information or response is required, please contact the Applicant's attorney. The attorney may be reached by telephone at 612-455-4577.

It is respectfully submitted that there is no likelihood of confusion between the Cited Registration and applied for mark **B.A. WOMEN**, additionally Cited Registration has been abandoned as it relates to its goods in International Class 25. It is respectfully requested this mark proceed to publication.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wynne C. S. Reece', written in a cursive style.

Wynne C. S. Reece, Esq.
Attorney for Applicant

REECE LAW, P.L.L.C.
80 South Eighth Street
900 IDS Center
Minneapolis, MN 55402
P: (612) 455-4577
E: wreece@reece-law.com

Cc: Emma Sievers

Exhibits:

Exhibit A: Google Image Search for “B. A. MAN”;

https://www.google.com/search?q=B.A.+Man&rlz=1C5CHFA_enUS886US886&sxsrf=ALeKk02h9W4pL4VQu2E36XeqYHFB_TTyEQ:1605295625952&source=lnms&tbn=isch&sa=X&ved=2ahUKEwjB-aycoIDtAhULX80KHbGaAsYQ_AUoAnoECA8QBA&biw=1397&bih=766
(last visited Nov. 13, 2020).

Exhibit B: Blessed and Brilliant Productions, LLC on California Secretary of State, <https://businesssearch.sos.ca.gov/> (search “Blessed and Brilliant”) (last visited Nov. 13, 2020).

Exhibit C: Home Page, B.A. Women, <https://www.bawomen.co/> (last visited Nov. 13, 2020).

Exhibit D: Shop, B.A. Women, <https://www.bawomen.co/shop> (last visited Nov. 13, 2020).

Exhibit E: Example shop pages, B.A. Women, <https://www.bawomen.co/product-page-1/whitetee> (last visited November 13, 2020), <https://www.bawomen.co/product-page-1/bacap> (last visited Nov.13, 2020).

Exhibit F: B.A. Women (@bawomen). Profile Posts, Instagram, <https://www.instagram.com/bawomen/> (last visited Nov. 13, 2020).

Exhibit G: B.A. Women (bawomen). Profile Page, Facebook, <https://www.facebook.com/bawomenn/> (last visited Nov.13, 2020).

Exhibit H: Sievers, Emma. Photographs of B.A. Women Clothing. (December 16, 2020). Author’s personal collection.

Exhibit I: B.A. Women (@bawomen). Profile Posts, Instagram, <https://www.instagram.com/bawomen/> (last visited December 17, 2020).

Exhibit J: B.A. Women (@bawomen). Profile Posts, Instagram, <https://www.instagram.com/bawomen/> (last visited December 17, 2020).

Exhibit K: B.A. Women (@bawomen). Profile Posts, Instagram, <https://www.instagram.com/bawomen/> (last visited December 17, 2020).

EXHIBIT A

Bookmarks People Tab Window Help

27% Fri Nov 13 1:30 PM

"b. a. man" - Google Search

google.com/search?q="b.+a.+man"&source=lnms&tbm=isch&sa=X&ved=2ahUKEwl_oaugofrnAhWPpp4KHUfClgQ_AUoAXoECBIQAw&biw=1212&bih=601

Google "b. a. man"

All Videos Images News Shopping More Settings Tools

Collections SafeSearch

bia ba moein ahmad saeedi ba soot bezan man bash jahan ba sami beigi man sanama tohi beraghs moein ba man beraghs ma

Moein Ba Man Bemoon Audio - YouTube
youtube.com

Moein Ba Man Bemoon Official Video ...
m.youtube.com

BA MAN MIRAGHSI (HD VIDEO) SamiBeigi ...
youtube.com

Arash - Ba Man Soot Bezan (2016) | L...
imvdb.com

Tohi Featuring Sami Beigi - Ba Man ...
youtube.com

Ba Man Beman by Ali Lohrasbi o...
amazon.com

Ba Man Miraghsi (feat. Sami Be...
amazon.com

Don, Nassim, & AFX - Beraghs B...
radiojavan.com

B.A. Man Podcast's stream on S...
soundcloud.com

Dance whit Me Jahan - Jahan Ba Man ...
imvbox.com

Ba Man Ezdevaj Kon (Marry Me)...
amazon.com

Jahan, Ba Man Beragh...
amazon.com

Arash - Ba Man Soot Bezan - YouTub...
youtube.com

Ba man Sanama (music)
amazon.com

Yalda - Ba Man Bemoon OFFICIAL VIDEO HD ...
amazon.com

Ba Man Che Kardi by Reza ...
amazon.com

Bia Ba Man by Barad on A...
amazon.com


EXHIBIT B

Bookmarks People Tab Window Help

Business Search - Business En x +

businesssearch.sos.ca.gov/CBS/Detail

Skip to Main Content | Skip to Footer



Alex Padilla California Secretary of State

About Business Notary & Apostille Elections Campaign & Lobbying State Archives Registries News Contact

Business Entities (BE)




Business Search - Entity Detail

The California Business Search is updated daily and reflects work processed through Thursday, November 12, 2020. Please refer to document [Processing Times](#) for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity. Not all images are available online.

201128410067 BLESSED AND BRILLIANT PRODUCTIONS, LLC

Registration Date: 09/29/2011
Jurisdiction: CALIFORNIA
Entity Type: DOMESTIC
Status: FTB SUSPENDED
Agent for Service of Process: EMANUEL POPE
403 E 139TH ST
LOS ANGELES CA 90061
Entity Address: 1212 WEST 124TH STREET
LOS ANGELES CA 90044
Entity Mailing Address: 1212 WEST 124TH STREET
LOS ANGELES CA 90044
LLC Management: One Manager

This entity is not eligible for online records requests. To order a Certificate of Status, please complete and return the [Business Entities Records Order Form](#)

Document Type	File Date	PDF
SI-COMPLETE	11/08/2018	
SI-COMPLETE	11/05/2018	
REGISTRATION	09/29/2011	

* Indicates the information is not contained in the California Secretary of State's database.

Online Services

- File LLC Statement of Information
- File Corporation Statement of Information
- Business Search
- Publicly Traded Disclosure Search
- Current Processing Dates

Service Options

Name Availability

Forms, Samples & Fees

Statements of Information (annual/biennial reports)

Filing Tips

Information Requests (certificates, copies & status reports)

Service of Process

FAQs

Contact Information

Resources

EXHIBIT C

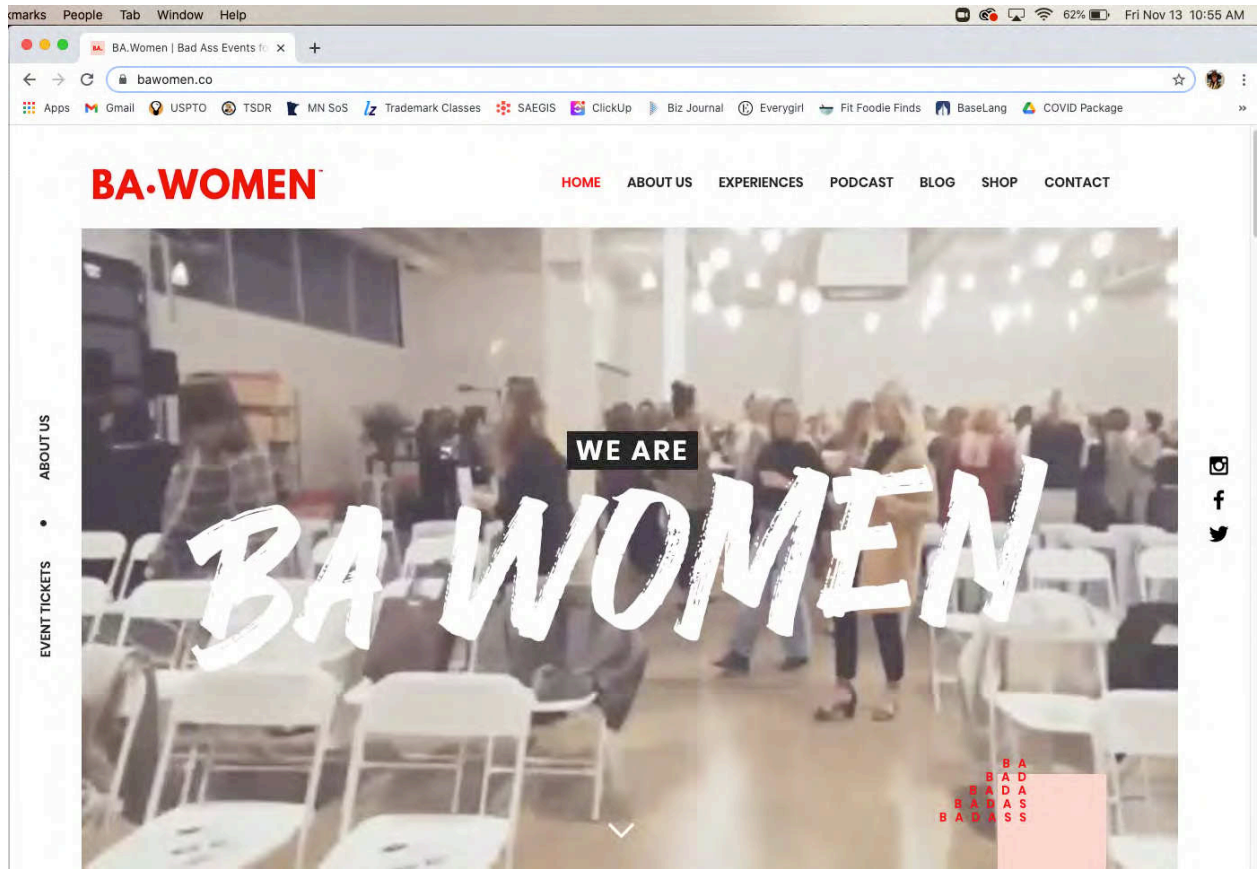


EXHIBIT D

Shop | BA Women - BadAss C x


bawomen.co/shop

Apps Gmail USPTO TSDR MN SoS Trademark Classes SAEGIS ClickUp Biz Journal Everygirl Fit Foodie Finds BaseLang COVID Package


ESTIMATED SHIPPING TIME IS 1-2 WEEKS AFTER PURCHASE.

First Name Enter your email here* **SUBSCRIBE**

EVENT TICKETS • ABOUT US




Black BA. Tee - Original Fit
\$34.00



White BA. Tee - Original Fit
\$34.00

SOLD OUT



BA.Cap - Relaxed Fit
Out of stock

EXHIBIT E

The screenshot shows a web browser window displaying the product page for the 'White BA Tee - Original Fit'. The browser's address bar shows the URL 'bawomen.co/product-page-1/whitetee'. The website's navigation menu includes 'HOME', 'ABOUT US', 'EXPERIENCES', 'PODCAST', 'BLOG', 'SHOP', and 'CONTACT'. The product image shows a white t-shirt hanging on a wooden hanger with the text 'I AM A B.A. WOMAN' printed in red. The price is listed as '\$34.00'. There is a size selection dropdown menu, a quantity input field set to '1', and a red 'Add to Cart' button. Below the main image are three smaller thumbnail images. The text 'DETAILS AND SIZING:' is followed by 'WHITE W/ RED I AM A BAWOMEN' and a short description: 'Our super soft "I AM A BAWOMEN" lightweight white tee is the newest addition to the BA apparel collection and our favorite new way declare badassery.'

The screenshot shows the 'SHOP +' page on the BA-WOMEN website. The browser's address bar shows the URL 'bawomen.co/shop'. The navigation menu is the same as in the previous screenshot. On the left side, there is a vertical menu with 'EVENT TICKETS' and 'ABOUT US'. The main content area features a large image of a woman wearing a black leather jacket and a black bucket hat with 'B.A.' on it. To the left of the image is a graphic with the word 'BADASS' repeated in a grid. The heading 'SHOP +' is prominently displayed. Below the image, there is a paragraph of text: 'Hey, BAI! Welcome to our shop, where the threats are just as badass as your goals and ambitions. We're big proponents of "look good, feel good", and we can't help but think spelling it out for the world to see is a stellar way to declare your own B.A. status. We designed these with all types of badasses in mind—emphasizing that extra zing that you already possess oops well. We can attest they look fabulous in the office, wow-worthy on the dance floor, and unparalleled everywhere in between. What kind of badass are you?' Below this is another paragraph: 'Take an item from our shop and personalize it with your own flare. Patterned silk scarf? Hell yes! Low-hanging layered neckties? Damn! Fancy bow tie and oversized blazer? We're loving it already.'

EXHIBIT F

The image shows the Instagram profile for 'bawomen'. The profile picture is a pink circle with the letters 'BA.' in red. The bio includes the text 'BA.Women™', '•connecting & elevating BadAss', 'Women to go beyond limits; a conversation for what is possible', '•PODCAST+SHOP', 'lifestyle,risk,wellness,music;', '#bawomen', and the link 'linktr.ee/bawomen'. It also shows '227 posts', '3,006 followers', and '1,177 following'. Below the bio, it says 'Followed by emily_grotkin, ljohnson331, jennaesaltzman +41 more'. At the bottom, there are seven category icons: APPAREL (a person in a hoodie), PODCAST (a group of people), D@NCE (a pink cassette tape), BA x Women (two women), EXPERIEN... (a person with a microphone), Possibility (pink fabric), and EVENT 4.0 (a pink circle).

bawomen Message

227 posts 3,006 followers 1,177 following

BA.Women™
•connecting & elevating BadAss
Women to go beyond limits; a conversation for what is possible
•PODCAST+SHOP
lifestyle,risk,wellness,music;
#bawomen
linktr.ee/bawomen

Followed by [emily_grotkin](#), [ljohnson331](#), [jennaesaltzman](#) +41 more

APPAREL PODCAST D@NCE BA x Women EXPERIEN... Possibility EVENT 4.0

EXHIBIT G

BA.Women | Facebook

facebook.com/bawomenn/

BA WOMEN

BA. BA.Women
@bawomenn - Event

Send Message

Home Events Reviews About More

Like

About See All

Connecting and elevating badass women, taking action consistent with possibility.

434 people like this

456 people follow this

<http://www.bawomen.co/>

Send Message

events@bawomen.co

Event · Podcast · Community

Create Post

Photo/Video Check in Tag Friends

PINNED POST

BA.Women
March 15, 2018

Don't forget to get your ticket ASAP! 🍌

#bawomen #whorunstheworld #minnesotawomen #empowerment

EXHIBIT H



EXHIBIT H (CONT.)



EXHIBIT H (CONT.)



EXHIBIT I



bawomen • Following
San Francisco, California



bawomen 📸 Nurse: @sarahpetras
Received this picture yesterday of this BADASS Nurse in San Fran rocking our Black T. This post is for all the healthcare workers out there playing big right now. We see you, we honor you and may you be given all the wine you could dream of 🍷🍷
Tag a healthcare worker below and we'll send them a personal message 📩
#paystobebrave #SF #healthcareworkers #badass #bawomen

36w



maliakunz @palmajl3
@mmmikayslay @ivarox 🍷



36w 4 likes Reply



👤 Liked by raeesam and 108 others

APRIL 8

Add a comment...

Post

EXHIBIT J



EXHIBIT K



ADDENDUM A

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	88559109
LAW OFFICE ASSIGNED	LAW OFFICE 122
MARK SECTION	
MARK	mark
LITERAL ELEMENT	B.A. WOMEN
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_1732034163-2020050417_2219307056_.0504.2020.BA_Women_TM_Response_Brief_SN_88559109.pdf
CONVERTED PDF FILE(S) (24 pages)	\\TICRS\EXPORT18\IMAGEOUT 18\885\591\88559109\xml1\ ROA0002.JPG
	\\TICRS\EXPORT18\IMAGEOUT 18\885\591\88559109\xml1\ ROA0003.JPG
	\\TICRS\EXPORT18\IMAGEOUT 18\885\591\88559109\xml1\ ROA0004.JPG
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DESCRIPTION OF EVIDENCE FILE	Response Brief
ATTORNEY INFORMATION (current)	
NAME	Wynne Reece
ATTORNEY BAR MEMBERSHIP NUMBER	NOT SPECIFIED
YEAR OF ADMISSION	NOT SPECIFIED
U.S. STATE/ COMMONWEALTH/ TERRITORY	NOT SPECIFIED
FIRM NAME	REECE LAW, LLC
STREET	80 SOUTH EIGHTH STREET, 900 IDS CENTER
CITY	MINNEAPOLIS
STATE	Minnesota
POSTAL CODE	55402
COUNTRY/REGION/JURISDICTION/U.S. TERRITORY	United States
PHONE	612-455-4577
FAX	612-455-4578
EMAIL	wreece@reece-law.com
ATTORNEY INFORMATION (proposed)	
NAME	Wynne Reece
ATTORNEY BAR MEMBERSHIP NUMBER	XXX
YEAR OF ADMISSION	XXXX
U.S. STATE/ COMMONWEALTH/ TERRITORY	XX
FIRM NAME	REECE LAW, P.L.L.C.
STREET	80 SOUTH EIGHTH STREET, 900 IDS CENTER
CITY	MINNEAPOLIS
STATE	Minnesota
POSTAL CODE	55402
COUNTRY/REGION/JURISDICTION/U.S. TERRITORY	United States
PHONE	612-455-4577
FAX	612-455-4578
EMAIL	wreece@reece-law.com
CORRESPONDENCE INFORMATION (current)	
NAME	WYNNE REECE

PRIMARY EMAIL ADDRESS FOR CORRESPONDENCE	wreece@reece-law.com
SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES)	NOT PROVIDED
CORRESPONDENCE INFORMATION (proposed)	
NAME	Wynne Reece
PRIMARY EMAIL ADDRESS FOR CORRESPONDENCE	wreece@reece-law.com
SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES)	NOT PROVIDED
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Wynne C. S. Reece/
SIGNATORY'S NAME	Wynne Reece
SIGNATORY'S POSITION	Attorney of record, Minnesota Bar member
SIGNATORY'S PHONE NUMBER	612-455-4577
DATE SIGNED	05/04/2020
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Mon May 04 17:26:20 ET 2020
TEAS STAMP	USPTO/ROA-XXX.XX.XX.XXX-2 0200504172620226362-88559 109-710d7332521d1d06ec1de eb4ab0adc6111cb0be76a59d3 32b98609ea4faab2fc1e-N/A- N/A-20200504172219307056

Under the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless it displays a valid OMB control number.
PTO Form 1957 (Rev 10/2011)
OMB No. 0651-0050 (Exp 09/20/2020)

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. **88559109** B.A. WOMEN(Standard Characters, see <https://tmng-al.uspto.gov/resting2/api/img/88559109/large>) has been amended as follows:

EVIDENCE

Evidence has been attached: Response Brief

Original PDF file:

[evi_1732034163-2020050417_2219307056_.0504.2020.BA_Women_TM_Response_Brief_SN_88559109.pdf](#)

Converted PDF file(s) (24 pages) [Evidence-1Evidence-2Evidence-3Evidence-4Evidence-5Evidence-6](#)

[Evidence-7Evidence-8Evidence-9Evidence-10Evidence-11Evidence-12Evidence-13Evidence-14](#)

[Evidence-15Evidence-16Evidence-17Evidence-18Evidence-19Evidence-20Evidence-21Evidence-22Evidence-23Evidence-24](#)

The owner's/holder's current attorney information: Wynne Reece. Wynne Reece of REECE LAW, LLC, is located at

80 SOUTH EIGHTH STREET, 900 IDS CENTER
MINNEAPOLIS, Minnesota 55402
United States
The phone number is 612-455-4577.
The fax number is 612-455-4578.
The email address is wreece@reece-law.com

The owner's/holder's proposed attorney information: Wynne Reece. Wynne Reece of REECE LAW, P.L.L.C., is a member of the XX bar, admitted to the bar in XXXX, bar membership no. XXX, is located at

80 SOUTH EIGHTH STREET, 900 IDS CENTER
MINNEAPOLIS, Minnesota 55402
United States
The phone number is 612-455-4577.
The fax number is 612-455-4578.
The email address is wreece@reece-law.com

Wynne Reece submitted the following statement: The attorney of record is an active member in good standing of the bar of the highest court of a U.S. state, the District of Columbia, or any U.S. Commonwealth or territory.

Correspondence Information (current):

WYNNE REECE
PRIMARY EMAIL FOR CORRESPONDENCE: wreece@reece-law.com
SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES): NOT PROVIDED

Correspondence Information (proposed):

Wynne Reece
PRIMARY EMAIL FOR CORRESPONDENCE: wreece@reece-law.com
SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES): NOT PROVIDED

Requirement for Email and Electronic Filing: I understand that a valid email address must be maintained by the owner/holder and the owner's/holder's attorney, if appointed, and that all official trademark correspondence must be submitted via the Trademark Electronic Application System (TEAS).

SIGNATURE(S)

Response Signature

Signature: /Wynne C. S. Reece/ Date: 05/04/2020
Signatory's Name: Wynne Reece
Signatory's Position: Attorney of record, Minnesota Bar member

Signatory's Phone Number: 612-455-4577

The signatory has confirmed that he/she is a U.S.-licensed attorney who is an active member in good standing of the bar of the highest court of a U.S. state (including the District of Columbia and any U.S. Commonwealth or territory); 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.-licensed attorney not currently associated with his/her company/firm previously represented the owner/holder in this matter: the owner/holder has revoked their power of attorney by a signed revocation or substitute power of attorney with the USPTO; the USPTO has granted that attorney's withdrawal request; the owner/holder has filed a power of attorney appointing him/her in this matter; or the owner's/holder's appointed U.S.-licensed attorney has filed a power of attorney appointing him/her as an associate attorney in this matter.

Mailing Address: WYNNE REECE
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Serial Number: 88559109
Internet Transmission Date: Mon May 04 17:26:20 ET 2020
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

May 4, 2020

Corinne Kleinman
Trademark Examining Attorney
Law Office 122
United States Patent and Trademark Office

RE: Serial No.: 88559109
Mark: B.A. Women
Applicant: Emma Sievers
Office Action Of: November 7, 2019

APPLICANT'S RESPONSE TO OFFICE ACTION

The following is the response of Applicant, Emma Sievers, by Counsel, to the Nonfinal Office Action sent via email on November 7, 2019, by Examining Attorney Corinne Kleinman.

I. LIKELIHOOD OF CONFUSION REFUSAL: B.A. WOMEN

The Examining Attorney refuses to register Applicant's standard character **B.A. WOMEN** mark pursuant to Trademark Act Section 2(d), 15 U.S.C. 1052(d), on the ground that the mark is likely to be confused with the mark **B. A. MAN**, in the U.S. Registration No. 5662286 ("Cited Registration"), which is a standard character mark. While the marks do share common elements in the usage of the letters or perhaps abbreviation "B. A." and the use of the opposite of "man", the marks are otherwise entirely distinguishable. For the following reasons, Applicant respectfully disagrees with the refusal based on "likelihood of confusion", and requests that the Examining Attorney allow registration of Applicant's mark.

Likelihood of confusion between two marks at the United States Patent and Trademark Office ("USPTO") is determined by a review of the relevant factors under the *du Pont* test. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Although the issue

of likelihood of confusion typically revolves around the similarity or dissimilarity of the marks and the relatedness of the goods or services, “there is no litmus rule which can provide a ready guide to all cases”, *id.* at 1361, or put more simply, each case must be decided on its own facts. Each of the thirteen *du Pont* factors may be considered in weighing likelihood of confusion, if raised, and any one may be dispositive. *See* TMEP § 1207.01. In some cases, a determination that there is no likelihood of confusion may be appropriate, even where the marks share common terms and the goods/services relate to a common industry, because these factors are outweighed by other factors, such as differences in the relevant trade channels of the goods/services, the presence in the marketplace of a significant number of similar marks in use on similar goods/services, the existence of a valid consent agreement between the parties, or another established fact probative of the effect of use. *Id.*

Table 1: Relevant Marks and Goods

Applicant’s Mark	Cited Mark
B.A. Women	B. A. Man
IC 025. Clothing, namely, t-shirts, long sleeved shirts, hoodies, short sets, sport tops, leggings, tank tops, athletic tops and bottoms for women	IC 025. Hats; Jogging suits; Pants; Shorts; Yoga pants

Here, Applicant seeks registration of the standard character mark **B.A. WOMEN** for “clothing, namely, t-shirts, long sleeved shirts, hoodies, short sets, sport tops, leggings, tank tops, athletic tops and bottoms for women” in International Class 25. Applicant’s mark is being refused registration based on an alleged likelihood of confusion with the standard character mark **B. A. MAN** for “Hats; Jogging suits; Pants; Shorts; Yoga pants” in International Class 25. *See* Table 1, above.

There is no likelihood that consumers will be confused as to the source of the goods, in connection with each of these marks, because Applicant’s mark differs from Cited Registration in

sound, connotation, and significantly so, in commercial impression. Further, the goods used in connection with Applicant's mark and the Cited Registration are different, noncompetitive, and clearly marketed toward different consumers. Therefore, Applicant respectfully requests the Examining Attorney permit Applicant's mark to be published on the Principal Register.

The Marks are Different in Appearance, Sound, Meaning, and Commercial Impression

Under *du Pont*, marks are compared for similarity or dissimilarity in their entireties as to appearance, sound, meaning and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (CCPA 1973).

Applicant's and Cited Registration's marks are different in appearance, sound, meaning and commercial impression. Applicant's mark is **B.A. WOMEN**, which is notably different from the Cited Registration's **B. A. MAN** mark. First, while both Applicant's and Cited Registration's marks incorporate the combination of letters appearing as 'B' and 'A', the connotations are clearly distinguishable. The Applicant's incorporation of the abbreviation "B.A." stand for "Badass", to make "B.A. Women" short for "Badass Women," in keeping with the Applicant's theme of female empowerment. We know this not only based on Applicant's attestation, but the vast presence of both the word and abbreviation being exchanged for one another on Applicant's business channels and in consumers reference to the brand. *See Exhibit A*. In contrast, the Cited Registration uses the letters "B. A." to stand for "be a..."; while there is no conclusive indication as to why this is, the pronunciation together with the publicized purpose of the app later discussed herein – "...teaching Young Men to be Men", it can be reasonably inferred that this intended use is meant to sound like "be a". *See Exhibit B*. Based on this assessment, Cited Registration is intended to be a shortening of "Be A Man", which has a different connotation from "Badass Women."

As a result, while appearance and sound are similar, when the cumulative effect of these significant differences between Applicant's **B.A. WOMEN** mark and the cited **B. A. MAN** mark is given fair weight, particularly in light of the differences in meaning and the diverse commercial impressions between the marks, this factor weighs against any likelihood of confusion.

Lack of Overlap of the Goods; The Variety of Goods on Which a Mark is or is not used.

Under *du Pont*, marks are compared for similarity or dissimilarity in their entireties as to the nature of the goods, as described in the application or registration, or in connection with which

a prior mark that is in use, as well as the variety of goods on which a mark is or is not used. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (CCPA 1973).

Applicant has submitted an application for an actual brand of a company, that represents community discussions, lifestyle events and a digital platform focused on female empowerment, and retails the goods listed in the application, whereas Cited Registration is for a mark that is screen-printed on what appears to be a t-shirt (notably not a good that is listed in its trademark application); this in itself draws a stark distinction between the two.

Applicant's clothing line is intimately tied with Applicant's other avenues of business, while there is no indication that Cited Registration is distributing its listed goods, and if it were, it would not be distributing it in the same places as Applicant, and therefore would not cause confusion about the source of the goods. Furthermore, Applicant's website clearly illustrates the range of its clothing and accessories actually in commerce, which is only continuing to grow given the consumer feedback around the products that are currently listed for sale. In fact, one can clearly see that the products sold by Applicant are diverse in nature, carrying with them the continuity of the brand. *See Exhibit C.*

Cited Registration, on the other hand, does not appear to have an online presence for its listed good. In fact, beyond the specimen submitted with the Cited Registration, neither a law clerk or two attorneys that Counsel had review this matter, could find any further example of any clothing or tangentially related product, available to any consumer, created in relation to the Cited Registration; the specimen itself cannot be found beyond the initial trademark application. It should be noted that Applicant's team was able to find Cited Registration being used in conjunction with an app for cell phones called "B.A. Man", which is owned by the same company as Cited Registration. *See Exhibit B.* The app describes itself as "Revolutionary Smart Phone Application teaching Young Men to be Men." This falls clearly outside of the class of the Cited Registration and does not appear to come with athletic clothing for purchase. Because the app is not athletic gear as described in the Cited Registration, Applicant's mark would not cause confusion with the app. Accordingly, to the best efforts in looking at what any consumer may find and the potential for likelihood of confusion, neither party manufactures, sells, or markets the other's products and confusion as to the source of their products is extremely unlikely.

While Applicant acknowledges that Cited Registration's initial application does include a picture of a T-shirt with the mark "B. A. Man" as a specimen, *See Exhibit D*, the two marks remain

different in that they are marketed to two groups with little overlap, based on the consumer presence found: men supporting a cell phone app and women supporting female empowerment. Because the two groups do not overlap, the goods marketed in conjunction with both marks will not compete for the same market, and the different audiences will not mistake them for each other due to the connection between Applicant's apparel and Applicant's brand philosophy. The simple commonality is too tenuous of a connection upon which to find that the goods are commercially related. The goods are non-competitive and clearly have significant differences in essential characteristics, as well as different consumers.

Cited Applications' and Applicant's goods are, therefore, not competitive, overlapping, or related in any way. Accordingly, Applicant's goods and the cited goods are clearly different and are not similar enough to create a likelihood of confusion in the minds of the consumers.

Conditions for Buying the Goods are Different

Another *du Pont* factor to consider is the conditions under which sales are made and which buyers to whom sales are made. Applicant's goods are sold in connection to its business of orchestration community discussion, lifestyle events and hosting a digital platform focused on female empowerment. The goods are not sold as part of a general market for athletic wear, but as part of the business's mission. Because buyers will only acquire the goods from the Applicant as part of the business's mission, buyers will not be confused as to the source of the goods. Cited Registration's mark cannot be found on goods sold online or anywhere easily discoverable by the average consumer, and therefore its buyers will not be confused by Applicant's online store.

Balancing the Factors

In sum, the differences between the commercial impressions created by Applicant's mark and the Cited Registration, as well as the differences in appearance and sound, are sufficient to prevent a likelihood of confusion. Furthermore, Applicant's goods are separate and distinct from the Cited Applications' goods and are not likely to be purchased by the same consumers, given the near complete lack of sales accessibility to Cited Registration's. Accordingly, Applicant respectfully requests that the application be permitted to proceed to publication.

II. DISCLAIMER

No claim is made to the exclusive right to use "WOMEN" apart from the mark as shown.

III. ATTORNEY BAR INFORMATION

Applicant's attorney's bar information is listed below, and may be added to the application pursuant to this Brief:

Name:	Wynne Reece
State of License:	Minnesota (Wisconsin and Illinois)
Year of Admission:	2013 (2020 for the latter two admissions)
MN Atty License No.:	0395611

IV. CONCLUSION

The Applicant has responded to all issues raised in the Office Action. If any further information or response is required, please contact the Applicant's attorney. The attorney may be reached by telephone at 612-455-4577.

It is respectfully submitted that there is no likelihood of confusion between the Cited Registration and applied for mark **B.A. WOMEN**. It is respectfully requested this mark proceed to publication.

Respectfully submitted,



Wynne C. S. Reece, Esq.
Attorney for Applicant

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Minneapolis, MN 55402
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E: wreece@reece-law.com

Cc: Emma Sievers

Exhibits:

Exhibit A: Home Page, Visitor Pop-up and About Us, B.A. Women, <https://www.bawomen.co/about> (last visited March 1, 2020).

Exhibit B: B. A. Man app from Google Play; <https://play.google.com/store/apps/details?id=com.mobile.baman> (last visited April 23, 2020).

Exhibit C: Example shop pages, B.A. Women, <https://www.bawomen.co/product-page-1/whitetee> (last visited March 1, 2020), <https://www.bawomen.co/product-page-1/bacap> (last visited April 23, 2020).

Exhibit D: Specimen from the 'B. A. MAN' USPTO TSDR; June 7, 2018 Specimen for 'B. A. MAN' Srl. No. 87476696.

Exhibit E: Google Image Search for "B. A. MAN"; https://www.google.com/search?q=%22b.+a.+man%22&source=lnms&tbm=isch&sa=X&ved=2ahUKEwi_oaugofrnAhWPpp4KHUfClgQ_AUoAXoECBIQAw&biw=1212&bih=601 (last visited Apr. 23, 2020).

Exhibit F: Blessed and Brilliant Productions, LLC on California Secretary of State, <https://businesssearch.sos.ca.gov/> (search "Blessed and Brilliant") (last visited Apr. 23, 2020).

EXHIBIT A

Response to Office Action for Srl. No.: 88559109

HEY YOU, YOU BADASS YOU!



Join the Squad, and get first dibs on early bird tickets!

<input type="text" value="First Name"/>	<input type="text" value="Email"/>
---	------------------------------------

<input type="text" value="Birthday"/>	<input type="text" value=""/>
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subscribe to BA.Women event updates.

SUBMIT

ABOUT US
•
EVENT TICKETS



WHO WE ARE_

We are a community of women unapologetically succeeding, supporting and empowering other women to become the best versions of themselves. Our conferences inspire and educate women to be the most badass versions of themselves and provide insights, connections, and excitement to help you reach your goals. **because you are a badass woman!**

[LEARN MORE](#)

BA-WOMEN

EVENT TICKETS • ABOUT US



B A D A S
B A D A S
B A D A
B A D
B A

A better question might be: "Who aren't we?"

BA Women began as a conversation and evolved into a community, creating a tangible space for discussions on female empowerment, ideas from A to Z, and unapologetic new beginnings.

EXHIBIT B

Response to Office Action for Srl. No.: 88559109

B.A. Man - Apps on Google Play

https://play.google.com/store/apps/details?id=com.blessedbrilliantproductions.ba.man

We're updating our Terms of Service. Get to know our new Terms before they take effect on March 31, 2020. [Review](#) [Got it](#)

Google Play Search [Sign in](#)

Apps Categories Home Top charts New releases

My apps
Shop
Games
Family
Editors' Choice

Account
Payment methods
My subscriptions
Redeem
Buy gift card
My wishlist
My Play activity
Parent Guide

B.A. Man

Blessed & Brilliant Productions LLC Education

Everyone

Add to Wishlist [Install](#)

Challenge Details Series Details Timeline

Best Camp week one of the B.A. Man Project

B.A. Man Series

Recycling

How to Play to Win!

Respect

New Q is ready!

Similar [See more](#)

Eventee - Your Event Touch Art, s.r.o. ★★★★★

My apps

Shop



Games

Family

Editors' Choice

Account

Payment methods

Play Points New

My subscriptions

Redeem

Buy gift card

My wishlist

My Play activity

Parent Guide

Revolutionary Smart Phone Application teaching Young Men to be Men.

Called B.A Man Project, designed for young men. B.A Man Project is no ordinary education program, designed on the patented engagement technology developed by Ringorang®. The spaced-repetition format clinically proven benchmarks that will help audience of young men to actually become men. Single Mother, Father or a two-parent home, this is for you. B.A Man Project bridges the gap and for families. Organizations with existing education programs geared to train young men can use the B.A Man Project to further enhance their current initiatives.

COLLAPSE

WHAT'S NEW

In addition to squashing bugs and polishing up the app, we made various stability improvements of the app!

ADDITIONAL INFORMATION

Updated	Size	Installs
December 20, 2018	34M	5+
Current Version	Requires Android	Content Rating
2.177	4.4 and up	Everyone Learn More
Permissions	Report	Offered By
View details	Flag as inappropriate	Blessed & Brilliant Productions LLC

EXHIBIT C

Response to Office Action for Srl. No.: 88559109



White BA. Tee - Original Fit

\$28.00

Size

Select

Quantity

1

Add to Cart

DETAILS AND SIZING:



BA.Cap - Relaxed Fit

SKU: BH1

\$28.00

Out of Stock

DETAILS AND SIZING:

BLACK W/ WHITE EMBROIDERED BA.

Classy and a little bit badass.

- Fabric: 100% brushed cotton twill
- Fit: Unstructured
- Bill Type: Normal
- Crown: Mid
- Closure: Hidden tuck-in with hook and loop
- Embroidered lettering

**Made by a BA.Women*

EXHIBIT D

Response to Office Action for Srl. No.: 88559109

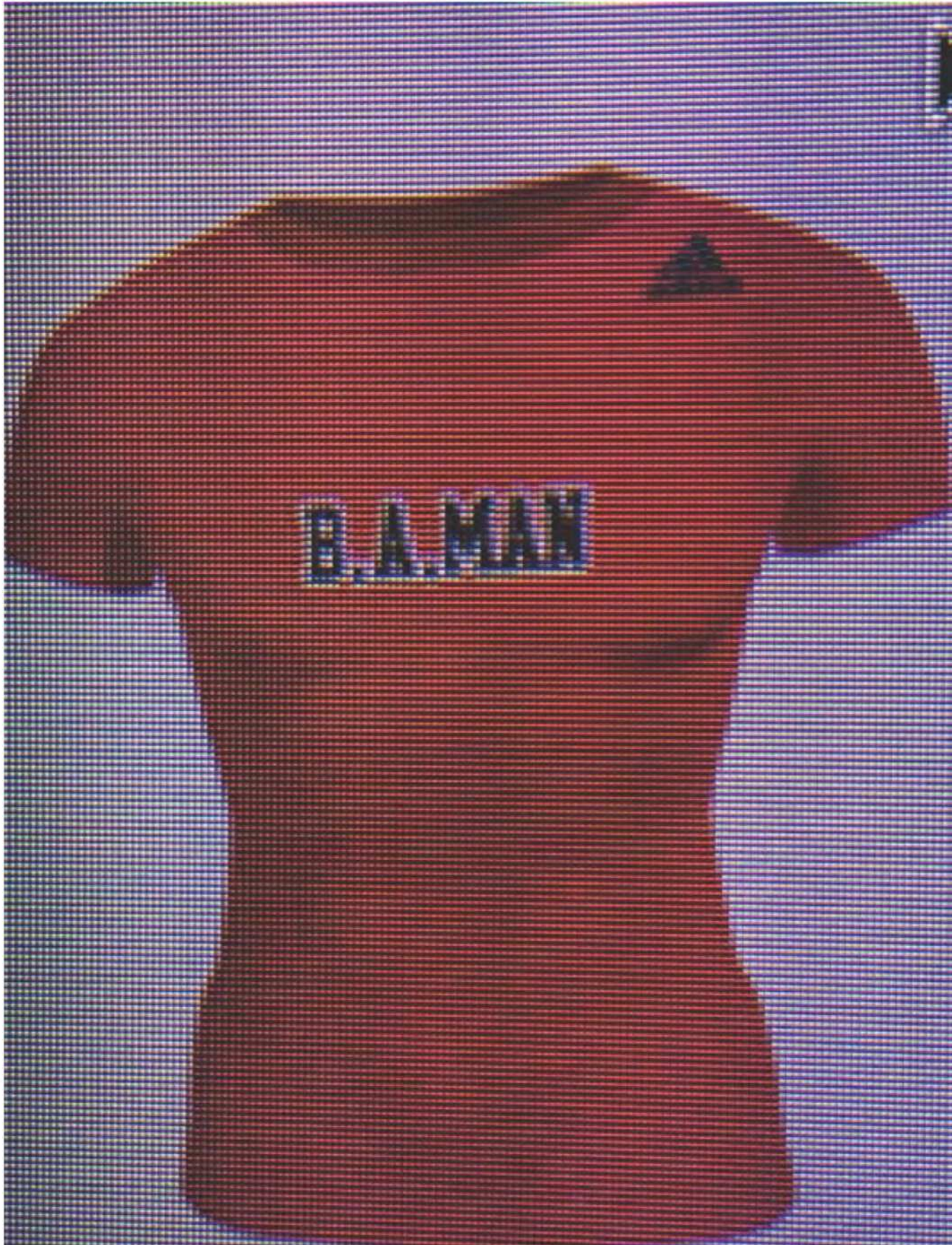


EXHIBIT E

Response to Office Action for Srl. No.: 88559109

Google Search results for "b. a. man".

Search filters: All, Images, Videos, News, Shopping, More, Settings, Tools. SafeSearch is on.

Filter tabs: baman, beraghs, moein, man sanama, man bash, moein ba, bemoon, bia2, man ast, man bemoon, tohi.

Results:

- Moein Ba Man Bemoon Audio** - YouTube (youtube.com)
- Arash - Ba Man Soot Bezan** (Off...) - YouTube (youtube.com)
- Moein Ba Man Bemoon Official Video** - YouTube (youtube.com)
- Ba Man Beman by Ali L...** - amazon.com
- Tohi Featuring Sami Beigi - Ba Man** - YouTube (youtube.com)
- Baman** - Album cover featuring Sami Beigi
- BA MAN BIA** - Album cover featuring a group of men
- TALKHI NAKON BA MAN** - Album cover featuring a man with sunglasses
- BERAGHS BA MAN** - Album cover featuring a colorful floral design
- SHERVIN** - Album cover featuring a man with sunglasses



O ba man - Hero - T-Shirt | TeeP...
teepublic.com · In stock



Man. The Myth. The Legend, T ...
amazon.com



Beard B A Man - Ultra-Cotton ...
storetees.com · In stock



EXO Kai Ba, man in dre...
pngguru.com



man wearing white coll...
pngguru.com



standing man wear...
hiclipart.com



man in blue and white ...
pngguru.com



Ba Man Bash by Shervin o...
amazon.com



Funny Football coach Def...
spreadshirt.com



Man In Blue Long Sleeve...
dreamstime.com



Man With Many Problems. Brazilian ...
dreamstime.com



Vintage Batman Retu...
jointcustodydc.com · In



EXHIBIT F

Response to Office Action for Srl. No.: 88559109



Alex Padilla California Secretary of State

Business Entities (BE)

- Online Services
 - [File LLC Statement of Information](#)
 - [File Corporation Statement of Information](#)
 - [Business Search](#)
 - [Publicly Traded Disclosure Search](#)
 - [Current Processing Dates](#)
- Service Options
- Name Availability
- Forms, Samples & Fees
- Statements of Information (annual/biennial reports)

Business Search - Entity Detail

The California Business Search is updated daily and reflects work processed through Wednesday, April 22, 2020. Please refer to document [Processing Times](#) for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity. Not all images are available online.

201128410067 BLESSED AND BRILLIANT PRODUCTIONS, LLC

Registration Date:	09/29/2011
Jurisdiction:	CALIFORNIA
Entity Type:	DOMESTIC
Status:	FTB SUSPENDED
Agent for Service of Process:	EMANUEL POPE 403 E 139TH ST LOS ANGELES CA 90061
Entity Address:	1212 WEST 124TH STREET LOS ANGELES CA 90044
Entity Mailing Address:	1212 WEST 124TH STREET LOS ANGELES CA 90044
LLC Management	One Manager