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

Ex parte appeal no.	90002764
Appellant	Jeanette Conrad-Ellis
Applied for mark	THE BLACK DIAMOND SERIES
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Submission	APPELLANT'S MOTION TO SUSPEND THE APPEAL AND TO REMAND FOR EVIDENCE NOT PREVIOUSLY AVAILABLE AND ADDITIONAL EVIDENCE
Attachments	Appellants Motion to Suspend the Appeal and Remand for Not Previously Available Evidence.pdf(183259 bytes) Exhibit 1.pdf(232486 bytes) Exhibit 2.pdf(1545262 bytes) Exhibit 3.pdf(5654545 bytes) Exhibit 4.pdf(2767650 bytes) Exhibit 5.pdf(111615 bytes) Exhibit 6.pdf(1616263 bytes) Exhibit 7.pdf(3103415 bytes) Exhibit 8.pdf(3052051 bytes) Exhibit 9.pdf(1331104 bytes)
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Date	05/06/2022

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

In re application of:	:	
Jeanette Conrad-Ellis	:	
	:	
Serial No.: 90002764	:	Examining Attorney: Sanjeev K. Vohra
	:	
Filed: June 15, 2020	:	Law Office: 110
	:	
Mark: THE BLACK DIAMOND SERIES	:	

APPELLANT'S MOTION TO SUSPEND THE APPEAL AND TO REMAND FOR EVIDENCE NOT PREVIOUSLY AVAILABLE AND ADDITIONAL EVIDENCE

Jeanette Conrad-Ellis ("appellant") hereby moves to suspend this appeal and to remand the matter to the examining attorney for the purpose of consideration of (i) a new TTAB decision issued on March 31, 2022, *In re J. Spagnuolo & Associates, P.C.*, No. 88789548 (TTAB 2022) ("*Spagnuolo*", copy attached as Exhibit 1)[1], and (ii) additional evidence relevant to the other issues in the present case. As more fully explained below, appellant submits that the *Spagnuolo* decision represents a circumstance when the Board may remand an application to the examining attorney during an *ex parte* appeal because the *Spagnuolo* decision (i) was not previously available (it was decided after briefing was completed), and (ii) is likely to have a bearing on the examining attorney's position.[2] The additional evidence shines further light on issues that were presented during prosecution and through the appeal process, but were not afforded proper weight and consideration in the likelihood of confusion analysis. Appellant has good cause for filing its motion at this time.

[1] Appellant's counsel contacted the examining attorney by email on May 3, 2022 regarding the *Spagnuolo* decision (e.g., in accordance with TMEP § 304.01), and received an email response on May 4, 2022. *See* Exhibit 2.
[2] *See In re Dekra e.V.*, 44 USPQ2d 1693, 1694-95 (TTAB 1997) (after briefs were filed, the Federal Circuit issued a decision with applicability to the case; Board remanded case to examining attorney to consider refusal in light of that decision). *See also In re Consolidated Specialty Restaurants Inc.*, 71 USPQ2d 1921, 1922 (TTAB 2004) (Board granted examining attorney's request for remand in view of Federal Circuit decision setting forth new standard for primarily geographically deceptively misdescriptive marks).

Basis for Appellant's Motion

In accordance with TMEP § 1504.05, TBMP §§ 1207.02, 1208, 1209.01, 1209.04, 1213, and 1216, as well as 37 CFR §§ 2.142(d), 2.142(e) and 2.142(f), appellant satisfies all requirements for this Board to grant appellant's motion. The *Spagnuolo* decision issued on March 31, 2022 (after briefing was completed in the present case) and is evidence that (i) was not previously available, (ii) is not cumulative in nature, and (iii) may be of persuasive value in the likelihood of confusion determination at issue. *See* TMEP § 1504.05 and TBMP §§ 1207.02 and 1209.01. Additionally, appellant's motion is timely in that it was filed before a final decision by the Board on the appeal. *See* 37 CFR §§ 2.142(d) and TBMP §§ 1207.02 and 1209.04. Appellant has demonstrated good cause for filing its motion at this time. The additional evidence should be considered at least because it is directed to the strength of the marks at issue, a topic which is also discussed in *Spagnuolo*. *See Spagnuolo* at 7-10.

Relevance and Purpose of the Evidence Not Previously Available

The *Spagnuolo* decision reversed a likelihood of confusion refusal due to lack of similarity between the marks MACOMB LAW GROUP ("Macomb Law Group" disclaimed) and MLG AUTOMOTIVE LAW in Class 45 (even in view of overlapping services/channels of trade/ consumers), and in doing so referenced *In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1050 (Fed. Cir. 2018) ("*In re Detroit*") in connection with analysis of the dominant and disclaimed portions of the marks. *Spagnuolo* at 11-14. In the present case, the examining attorney relied heavily on *In re Detroit* to support the likelihood of confusion findings in each of the office actions of record and in the examining attorney's brief, for example to support the interpretation that "BLACK DIAMOND" is the dominant portion and is afforded greater weight

than the disclaimed last word "SERIES". *See, e.g., Ex. Att. Br.*, 8 TTABVUE 7. But *Spagnuolo* suggests that *In re Detroit* should not apply to limit the third word in a trademark from consideration in a likelihood of confusion analysis except in cases where the third word in the mark is "highly descriptive…and has been disclaimed", neither of which apply here where the word "EFFECT" in the cited mark is not "highly descriptive" and was not "disclaimed" during prosecution. *See Spagnuolo* at 11-12.

To highlight the inapplicability of the *In re Detroit* decision to the marks at issue in the present case, appellant notes that the marks "DETROIT ATHLETIC CLUB" (Class 25) and "DETROIT ATHLETIC CO." (Class 35) were found to be similar due to (i) the last words in both marks being disclaimed and the first words "DETROIT ATHLETIC" being identical/dominant, and (ii) the last words "CLUB" and "CO." being mere descriptive business identifiers, and thus afforded little weight in the similarity analysis.[3] But the words "SERIES" and "EFFECT" in the present case are very different from the words "CLUB" and "CO." Unlike *In re Detroit*, the last word "EFFECT" of the cited mark applied in the present case is not highly descriptive and was not disclaimed, and the last words "EFFECT" and "SERIES" do not share a common relationship as was the case with the last words of the marks in *In re Detroit*.

Taking all of these differences/distinctions between *In re Detroit* and the present case into account, the last word "EFFECT" in the present case warranted more consideration in a likelihood of confusion analysis than the last words in *In re Detroit*, but was not afforded such additional consideration. To illustrate that the word "EFFECT" has frequently been viewed as

[3] *See In re Detroit Athletic Co.*, 903 F.3d 1297, 1304, 128 USPQ2d 1047, 1049. ("As the Board noted, both marks consist of three words beginning with the identical phrase "Detroit Athletic" and ending with one-syllable "C" words (i.e., "Co." and "Club")…Second, while it is true that the words "Co." and "Club" technically differentiate the marks, those words do little to alleviate the confusion that is likely to ensue. Both words are descriptive insofar as they merely describe the business form of the entity that owns the marks.")

distinctive, appellant provides a list of 39 US marks with classification in class 16 that include the word "EFFECT". *See* Exhibit 3. Of these 39 marks, only 8 have a disclaimer, none of which disclaim just the word "EFFECT," thereby showing the recognized source identifying strength of the word "EFFECT" on the register. A sample of the 39 marks is provided below, none of which disclaim only the word "EFFECT":

Mark	Goods	Reg. No.	Class
THE MOZART EFFECT Disclaimer: "MOZART"	*Books and printed, instructional, educational and teaching materials on the subject of the use of music in health and education*	2152923	16
GIRL EFFECT Disclaimer: "GIRL"	*Printed matter, namely, paper and cardboard posters and banners relating to the fields of human rights, and girls' and women's rights, poverty and its relief, health and personal safety, sex and gender equality, sustainable development, good citizenship and social inclusion; printed publications, namely, magazines, newsletters, leaflets, brochures, articles, policy briefs and reports in the fields of human rights, and girls' and women's rights, poverty and its relief, health and personal safety, sex and gender equality, sustainable development, good citizenship and social inclusion; printed instructional and teaching material relating to the fields of human rights, and girls' and women's rights, poverty and its relief, health and personal safety, sex and gender equality, sustainable development, good citizenship and social inclusion*	5393890	16
THE RECONNECT EFFECT	*Books in the field of self-help; cook books; non-fiction books on a variety of topics; series of fiction books*	6673258	16
PE THE PET EFFECT Pe The Pet Effect Disclaimer: "THE PET EFFECT"	*Promotional materials, namely, printed pamphlets and brochures, on the subject of the physiological impact of the Human Animal Bond*	5667056	16

The marks at issue in the present case are not similar - the last word "EFFECT" in the cited mark was not disclaimed and was not afforded its due weight when evaluating similarity. These differences, and the *Spagnuolo* decision, support a finding that the marks at issue in the present case are dissimilar and that the public would be able to readily distinguish between "SERIES" and "EFFECT".

Relevance and Purpose of the Additional Evidence

Appellant submits additional evidence relevant to other issues in the present case that warrant additional consideration, specifically the impact of (i) narrow ID's, and (ii) the different author names of the goods at issue. This additional evidence should be considered at least because it is likely to have a bearing on the examining attorney's position, and because it relates to the strength of the marks at issue, a topic which is discussed in *Spagnuolo*. *See Spagnuolo* at 7-10.

First, the prosecution history of the cited mark shows that the ID was voluntarily narrowed by the registrant during prosecution from "books and comic books" to "cartoon science fiction books and comic books." *See* Exhibit 4 at pp. 4, 42, and 44 of the pdf. The examining attorney did not give due consideration to the registrant's narrowing of the ID and its relation to appellant's ID, especially since registrant's narrowing of the ID, as evidenced by the prosecution history, was necessary for registration of registrant's mark. The ID of appellant's mark was narrowed from "Series of fiction books" to "a series of fiction books for teen girls, excluding cartoon science fiction books and comic books." *See, e.g., Reply Br.*, 10 TTABVUE 4. The category "cartoon science fiction books" of the cited mark is a more narrow category than "books" or "comic books", and is entirely distinct from appellant's "series of fiction books for

teen girls." Appellant's ID further avoids any overlap with the goods sold by the registrant by including the additional limitation in the appellant's ID of "excluding cartoon science fiction books and comic books." Moreover, the third-party evidence cited by the examining attorney to support the alleged relatedness of the parties' respective goods does not adequately consider that the narrowed ID's of both the registrant's cited mark and appellant's mark, and the ID's of the third-party registrations, are entirely distinct with no overlap of the category "cartoon science fiction books…" in any of the cited third-party evidence. The non-overlapping portions of the ID's were not afforded proper consideration when evaluating relatedness.

To highlight the insufficient consideration afforded to the narrowed ID's, appellant notes the decision in *In re Bookriff Media Inc.*, No. 77537045, 2011 WL 3533288 (July 28, 2011) ("*Bookriff*", copy attached as Exhibit 5)[4], which illustrates the impact of narrow ID's in a relatedness determination. The *Bookriff* decision finds that even if the marks are similar, the presence of narrow, distinct ID limitations can be enough to thwart a likelihood of confusion finding. *Id.* at 14. In reversing the likelihood of confusion refusal, *Bookriff* found the refusal to be speculative/theoretical, and only supported by broad third party registrations that did not outweigh the clearly delineated ID's of the marks. *Id.* Here, the third-party registrations cited by the examining attorney during prosecution are inapposite and cover various goods which do not circumscribe or include either the narrow IDs "cartoon science fiction books…" or "a series of fiction books for teen girls" at issue. Taking the differences in the IDs and the shortcomings of the cited third-party registrations into account, the burden for establishing a likelihood of confusion based on relatedness of goods has not been met, and the goods at issue here are

[4] Although *Bookriff* was not presented during prosecution and/or the appeal process, the *Bookriff* decision is directed to a key issue that was discussed in the papers of record in the present application – the weight to be given to narrow ID's when conducting likelihood of confusion analysis. *See, e.g., Reply Br.*, 10 TTABVUE 4.

sufficiently unrelated such that confusion is not likely.

Second, and serving as a corollary to the dissimilarity provided by the narrow ID's, appellant also notes the importance of the difference between the author names of the cited mark and appellant's mark, and the long history in the book selling trade of considering the author's name, as well as the book's title, in distinguishing between books. For example, TMEP 1202.09(a) indicates that the name of an author may be registered if it is used on a series of written works, such as THE BLACK DIAMOND SERIES at issue in this case (although a registration of this type was not been pursued here). Also, it is a known practice in the book publishing industry to emphasize the importance of an author's name in categorizing, attributing and/or comparing works. *See* Exhibits 6, 7[5], 8[6], and 9[7]. The TMEP evidence and the materials

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[5] *See* Exhibit 7: Greg Lastowka, *The Trademark Function of Authorship, 85 B.U. L. Rev. 1171, 1176–77 (2005)* ("With regard to the first argument, it is clear that authorial attribution can function much like a trademark interest. If artists seek riches, they must compete for patrons, prizes, and the favor of the public. In order to win in this competition, artists must attempt to ensure that their works are of high quality, and that prospective consumers will associate their new works with their established reputations. If artists can ensure attribution of their works, artists producing better quality will gain public goodwill and reap the benefits of their investments in producing works of higher quality. This recognition and goodwill can lead to greater opportunities for employment and contractual leverage. Authorial attribution is thus a mechanism for ensuring that greater profits flow to those producing superior products. But the incentive role of attribution is not merely financial, as generally posited in the case of trademark protections. In the case of authorship, the benefits reaped by artists from attribution are social and psychological as well.")

[6] *See* Exhibit 8: Laura A. Heymann, *The Birth of the Authornym: Authorship, Pseudonymity, and Trademark Law*, 80 Notre Dame L. Rev. 1377, 1380 (2005) ("In either case, this choice of an author's name for each created work is a branding choice. To begin with, an author may--like a marketing team devising a brand for a new product--choose a statement of authorship that conveys certain qualities about the work to which it is attached. A writer of romance novels may choose a Victorian-sounding pseudonym; a female author of a war novel may choose a more masculine-sounding pen name to avoid biased readers. More important, however, is that the choice of an author's name, like a trademark, represents an attempt to reduce readers' search costs by ensuring that the goodwill attributable to the writer does not flow to another author. Rather than publishing works anonymously, a writer who chooses a statement of authorship corrals goodwill associated with that name to avoid diversion to competing authors. So, like the cola drinker mentioned above, the reader who enjoyed the first John Grisham novel and would like to read another does not have to spend time poring over books in the bookstore to find the one whose qualities match the first book she enjoyed. She can, rather, simply look to the author's name--the trademark-like "John Grisham"--to find such books instead.")

[7] *See* Exhibit 9: Laura N. Gasaway, *Libraries, Users, and the Problems of Authorship in the Digital Age*, 52 DePaul L. Rev. 1193, 1203 (2003) ("First, the name of the author is an important way to locate materials in the library collection. Second, the author's name is the first part of a citation to indicate responsibility for the work, a concept with which law students should have particular familiarity. Third, users should know that the name of the author can serve as an indication of subject, quality, date, or importance of the work. Finally, "author" is a shorthand device to describe a style of writing, ideas conveyed, or a literary genre. Some entire collections or portions of many library

in Exhibits 6-9 evidence that an author's name, especially when used in conjunction with a series of written works, can serve as a source identifier. This additional evidence is also submitted in accordance with TBMP § 1216, and may provide an opportunity for appellant and the examining attorney to potentially work out an agreement that results in approval of the application.

Conclusion

For the above reasons, appellant's motion to suspend and to remand for consideration of evidence not previously available and additional evidence should be granted. If granted, appellant requests that the Board cancel and/or otherwise reschedule the Oral Hearing currently set for May 19, 2022 to another date. If not granted, appellant requests the Board to proceed with the originally scheduled Oral Hearing date of May 19, 2022.

Dated: May 6, 2022

Respectfully submitted,

/s/ Edward W. Gray, Jr.

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collections are simply arranged by author's last name. For example, the fiction collection in many libraries is not classified by subject, but is instead arranged alphabetically by author's last name.").

Exhibit 1

This Opinion is not a
Precedent of the TTAB

Oral Hearing: February 9, 2022 Mailed: March 31, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re J. Spagnuolo & Associates, P.C.

Serial No. 88789548

Dean W. Amburn of Amburn Law PLLC,
for J. Spagnuolo & Associates, P.C.

Kyle Ingram, Trademark Examining Attorney, Law Office 125,
Heather Biddulph, Managing Attorney.

Before Lykos, Goodman and Hudis,
Administrative Trademark Judges.

Opinion by Goodman, Administrative Trademark Judge:

J. Spagnuolo & Associates, P.C. ("Applicant") seeks registration on the Principal Register of the mark MLG MACOMB LAW GROUP ("Macomb Law Group" disclaimed) for:

> Legal services; Providing customized legal information, counseling, and advice, and litigation services in the field of tort law in International Class 45.[1]

The Trademark Examining Attorney refused registration of Applicant's mark under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), based on likelihood of confusion with the mark MLG AUTOMOTIVE LAW (in standard characters, "automotive law" disclaimed) for:

> Legal consultation services; Legal consulting services in the field of automotive related legal cases; Legal services in International Class 45.[2]

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. An oral hearing was held.

We reverse the refusal to register.

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[1] Application Serial No. 88789548 was filed on February 7, 2020, based upon Applicant's claim of September 1, 2017 as its first use anywhere date and January 30, 2018 as its first use in commerce date under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a). As described in the Application, "the mark consists of the stylized literal element 'MLG' overlaid by the scales of justice design with MACOMB LAW GROUP written below the scales of justice design. The letter L is positioned in the middle of M and G and it is slightly lower than M and G. The scales of justice include a horizontally curved beam that is resting on the top portion of the L as its central pivot point and it is extended over the center of the M and G. Scales are seen hanging from the ends of the curved beam proximate to the M and G. Color is not claimed as a feature of the mark."

Page references to the application record refer to the online database of the USPTO's Trademark Status & Document Retrieval (TSDR) system. References to the briefs on appeal refer to the Board's TTABVUE docket system. Before the TTABVUE designation is the docket entry number; after this designation are the page references, if applicable. Applicant's brief is at 6 TTABVUE. The Examining Attorney's brief is at 8 TTABVUE. Applicant's reply brief is at 9 TTABVUE.

[2] Registration No. 4699169, issued March 10, 2015; Section 8 accepted and Section 15 acknowledged.

I. Evidentiary Issue

Before proceeding to the merits of the refusal, we address a few evidentiary matters.

The Examining Attorney objects to consideration of third-party registrations attached to Applicant's appeal brief as exhibit B. These registrations were not submitted during prosecution.

Because the third-party registrations in exhibit B were not previously submitted, the Examining Attorney's objection is sustained and the third-party registrations in exhibit B will not be considered. *See In re Inn at St. John's, LLC*, 126 USPQ2d 1742, 1744 (TTAB 2018) (evidence "submitted with Applicant's appeal brief that Applicant did not previously submit during prosecution is untimely and will not be considered."), *aff'd mem.*, 777 F. App'x 516 (Fed. Cir. 2019)). *See also* Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d) ("The record in the application should be complete prior to the filing of an appeal. Evidence should not be filed with the Board after the filing of a notice of appeal.").

Applicant also submitted with its appeal brief third-party registration evidence (exhibit A) and website evidence (exhibit C) that it already provided in its October 28, 2020 Response to Office Action at TSDR 8-35. While obviously admissible, the Board discourages this practice. *In re Lorillard Licensing Co.*, 99 USPQ2d 1312, 1315 (TTAB 2011) ("[T]he Board discourages attaching such material to briefs. … [I]t is far more helpful to identify, by the date of submission and the page numbers in the Office's [TSDR] database, the material which is referred to in a brief."); *In re Thor Tech Inc.*,

85 USPQ2d 1474, 1475 n.3 (TTAB 2007) (attaching evidence from the record to a brief is duplicative and unnecessary).

II. Likelihood of Confusion

Section 2(d) of the Trademark Act prohibits registration of a mark that so resembles a registered mark as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion, mistake, or to deceive. 15 U.S.C. § 1052(d). Our determination of likelihood of confusion under Section 2(d) is based on an analysis of all probative facts in the record that are relevant to the likelihood of confusion factors set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) ("*DuPont*"). We consider each *DuPont* factor for which there is evidence and argument. *See, e.g., In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019).

In every Section 2(d) case, two key factors are the similarity or dissimilarity of the marks and the goods or services. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks."). These factors and others for which there is evidence and argument are discussed below.

A. Similarity or Dissimilarity of the Services

We first consider the second *DuPont* factor, "[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration." *DuPont*, 177 USPQ at 567. *See also Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d

1317, 110 USPQ2d 1157, 1161-63 (Fed. Cir. 2014). The goods or services need not be identical or even competitive to find a likelihood of confusion. *On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot Inc. v. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000). They need only be "related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that the goods [or services] emanate from the same source." *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)). It is sufficient for a finding of likelihood of confusion as to a particular class if relatedness is established for any item of identified goods or services within that class in the application or cited registration. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981).

During prosecution and in its brief, Applicant argued that the legal services are different because Applicant is providing tort law services and Registrant's legal services focus on automotive law. 6 TTABVUE 22.

Applicant's services are identified as "Legal services; Providing customized legal information, counseling, and advice, and litigation services in the field of tort law," and Registrant's services are identified as "Legal consultation services; Legal consulting services in the field of automotive related legal cases; Legal services."

Applicant's and Registrant's "legal services" are legally identical. Registrant's "legal consultation services" encompass Applicant's more narrowly defined

"customized legal information, counseling and advice" services in the field of tort law. Additionally, as the Examining Attorney argues, and the website evidence shows, tort law includes personal injury law, and this type of law addresses automobile accidents that have resulted in injury. November 25, 2020 Office Action at TSDR 2-139. Thus, Applicant's legal counseling and advice in the field of tort law encompass Registrant's more narrowly defined automotive law legal consulting services. *See, e.g., In re Hughes Furniture Indus., Inc.*, 114 USPQ2d 1134, 1137 (TTAB 2015) ("Applicant's broadly worded identification of 'furniture' necessarily encompasses Registrant's narrowly identified 'residential and commercial furniture.'"); *In re Solid State Design Inc.*, 125 USPQ2d 1409, 1413 (TTAB 2018) (where the goods in an application or registration are broadly described, they are deemed to encompass all the goods of the nature and type described therein). Because we find the services are legally identical, the second *DuPont* factor weighs in favor of a finding of likelihood of confusion.

B. Similarity or Dissimilarity of the Trade Channels

We next turn to the third *DuPont* factor which requires us to consider "the similarity or dissimilarity of established, likely-to-continue trade channels." We compare the trade channels and classes of consumers for the services as identified in the involved application and cited registration. *Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990).

Because Applicant's and Registrant's legal services are legally identical, we presume that these services will move in the same trade channels to the same classes of purchasers, namely, consumers of legal services. *See In re Viterra Inc.*, 671 F.3d

1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Yawata Iron & Steel Co.*, 403 F.2d 752, 159 USPQ 721, 723 (CCPA 1968) (where there are legally identical goods, the channels of trade and classes of purchasers are considered to be the same).

In view of the overlapping trade channels and classes of purchasers, the third *DuPont* factor weighs in favor of a finding of likelihood of confusion.

C. Strength of the Mark

Because the strength or weakness of the cited mark informs our comparison of the marks, we address Applicant's arguments that MLG in the cited mark is weak and entitled to a narrow scope of protection.

In determining the strength of a mark, we first consider its inherent strength, based on the nature of the mark itself. *New Era Cap. Co. v. Pro Era LLC*, 2020 USPQ2d 10596, at *10 (TTAB 2020); *Top Tobacco, L.P. v. N. Atl. Operating Co.*, 101 USPQ2d 1163, 1171-72 (TTAB 2011). Suggestive, arbitrary and fanciful marks are deemed inherently distinctive. *Two Pesos Inc. v. Taco Cabana Inc.*, 505 U.S. 763, 23 USPQ2d 1081, 1083 (1992). Inherent distinctiveness does not extend to disclaimed, and therefore, admittedly descriptive, components of the registered mark. *See In re Highlights for Children, Inc.*, 118 USPQ2d 1268, 1275 (TTAB 2016) (there is no inherent or acquired distinctiveness in a disclaimed term in a registered mark). The cited mark issued on the Principal Register without a showing of acquired distinctiveness in part under Section 2(f) of the Trademark Act. Accordingly, we must presume that the MLG portion of the mark is inherently distinctive. *See New Era Cap Co.*, 2020 USPQ2d 10596, at *10 ("Opposer's mark is inherently distinctive as

evidenced by its registration on the Principal Register without a claim of acquired distinctiveness under Section 2(f) of the Trademark Act.”).

Applicant argues that the cited mark is weak because MLG is commonly used, referencing third-party registrations, and citing *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1674-75 (Fed. Cir. 2015) as support for the point that when there is widespread third-party use of similar marks in the marketplace, “customers have been educated to distinguish between different such marks on the bases of minute distinctions.” 6 TTABVUE 14. We note that third-party registration evidence goes to conceptual weakness, while third-party use evidence goes to commercial weakness. *See Tao Licensing LLC v. Bender Consulting Ltd.*, 125 USPQ2d 1043, 1057 (TTAB 2017). Third-party registrations are not evidence of use in the marketplace or public familiarity with the third-party marks. *See AMF Inc. v. Am. Leisure Prod., Inc.*, 474 F.2d 1403, 177 USPQ 268, 269 (CCPA 1973). In this case, Applicant did not submit any evidence of third-party use in the marketplace.

This leaves us with evaluating the cited mark’s conceptual strength. Active third-party registrations may be relevant to show that a mark or a portion of a mark is descriptive, suggestive, or so commonly used that the public will look to other elements to distinguish the source of the goods or services. *See, e.g., In re i.am.symbolic, llc,* 866 F.3d 1315, 123 USPQ2d 1744 (Fed. Cir. 2017); *Jack Wolfskin Ausrustung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1136 (Fed. Cir. 2015); *Juice Generation, Inc. v. GS Enters. LLC*, 115 USPQ2d at 1674-75. In other words, “[t]hird party registrations are

relevant to prove that some segment of the [marks] has a normally understood and well recognized descriptive or suggestive meaning, leading to the conclusion that that segment is relatively weak." *Id.* at 1675 (internal quotation marks omitted). *See also Jack Wolfskin*, 116 USPQ2d at 1136.

Applicant points to "several prior registrations [that] include the letters 'MLG' for goods and services and are not limited to legal services." 6 TTABVUE 14. However, as we stated above, we have excluded this evidence because it was not timely submitted. In any event, third-party registrations for non-legal services have very little, if any, probative value on the issue of the weakness of the cited mark. *See Omaha Steaks Int'l v. Greater Omaha Packing Co.*, 908 F.3d 1315, 128 USPQ2d 1686, 1694 (Fed. Cir. 2018) (error to rely on third-party evidence of similar marks for dissimilar goods, as Board must focus "on goods shown to be similar").

Applicant also relies on third-party registrations for marks that do not contain MLG as evidence that "[t]he USPTO has routinely registered overlapping use-based registrations in Class 45 featuring initials of a law firm's partners, or geographic place or location with a term or terms disclaimed." 6 TTABVUE 11. October 28, 2020 Response to Office Action at TSDR 9-29 (e.g., FLG and FLG FILIPINO LAW GROUP; PATHFINDER INJURY LAW and PATH LAW GROUP; SHE LAW and SHE WINS LAW; M LAW, M MESH LAW, M MOSTYN LAW; LAW LIONS, 1-800-LION-LAW). Applicant argues that "[t]he third-party registrations are relevant and provide evidence of the USPTO's pattern and practice of registering marks for legal services

on the Principal Register where the mark[s] share three non-disclaimed letters." 6 TTABVUE 14.

However, the Board previously has found this type of third-party registration evidence is not probative. *In re Joel Embiid*, 2021 USPQ2d 577, at * 35-38 (TTAB 2021) (third-party registrations used to show current peaceful coexistence of registrations for identical or substantially similar marks by separate entities for shoes and clothing for "paired" COBRA and SOLE marks were so different from the involved marks TRUST THE PROCESS that the Board found the evidence has no probative value); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1272 (TTAB 2009) (evidence that six pairs of similar marks for MRI and ultrasound equipment registered that are "so different" from the marks at issue found not relevant,). As the third-party registrations Applicant submitted do not include the initialism MLG, we do not find them probative.

Because Applicant's evidence does not establish commercial or conceptual weakness of the MLG portion of the cited registration, we accord it "the normal scope of protection to which inherently distinctive marks are entitled." *Bell's Brewery, Inc. v. Innovation Brewing*, 125 USPQ2d 1340, 1347 (TTAB 2017).

D. Similarity or Dissimilarity of the Marks

We now turn to the first *DuPont* factor that requires us to determine the similarity or dissimilarity of the marks when viewed in their entireties in terms of appearance, sound, connotation and overall commercial impression. *Palm Bay Imp., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772,* 396 F.3d 1369, 73 USPQ2d 1689, 1691

(Fed. Cir. 2005) (quoting *Dupont,* 177 USPQ at 567). The test, under the first *DuPont* factor, is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the services offered under the respective marks is likely to result. *See Coach Servs.,* 101 USPQ2d at 1721. While the marks must be considered in their entireties, "'in articulating reasons for reaching a conclusion on the issue of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties.'" *In re Nat'l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

"No mechanical rule determines likelihood of confusion, and each case requires weighing of the facts and circumstances of the particular mark." *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1259 (Fed. Cir. 2010). Our analysis cannot be predicated on dissecting the marks into their various components; that is, the decision must be based on a comparison of the entire marks, not just part of the marks. *In re Nat'l Data Corp.*, 224 USPQ at 751.

Applicant's mark is MLG MACOMB LAW GROUP ("law group" disclaimed). Registrant's mark is MLG AUTOMOTIVE LAW ("automotive law" disclaimed).

We find that MLG is the dominant portion of Registrant's mark because MLG is the first term in the mark and the wording that follows is at least highly descriptive

of the services and has been disclaimed. *See, e.g., In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1050 (Fed. Cir. 2018). As to Applicant's mark, we find that although MACOMB LAW GROUP is disclaimed, it is the dominant portion of Applicant's mark, with this wording reinforced by the scales of justice design, symbolizing the law. The MLG element, although somewhat larger, is partially obscured by the design, with the bold letters "M" and "G" being more prominent than the not bold letter "L," which has been placed in a lower position than "M" and "G," as it is being used as the central pivot point and base for the scales of justice, making it less likely that consumers will recall the MLG element. *See Giant Food, Inc. v. Nation's Foodservice, Inc.*, 710 F.2d 1565, 218 USPQ 390, 395 (Fed. Cir. 1983) (finding GIANT dominant part of mark GIANT HAMBURGERS and design even where GIANT disclaimed).

The marks are similar in appearance to the extent that they both share the initialism MLG and the term LAW. The marks otherwise are different in appearance as Applicant's mark has a design and the additional terms MACOMB and GROUP, while Registrant's mark includes the term AUTOMOTIVE. We find the marks are more dissimilar than similar in appearance.

As to sound, the marks are similar to the extent that both include the letters MLG and the term LAW but are otherwise different in sound due to the additional words used with them. For the reasons previously stated, in calling for the services, consumers are more likely to remember MACOMB LAW GROUP than MLG. We find the marks are dissimilar in sound.

In terms of connotation, we find the marks are dissimilar when viewed in their entireties. The letters MLG in Applicant's mark clearly connote MACOMB LAW GROUP due to the presence in the mark of that wording; customers viewing the mark as a whole will readily understand MLG to be an abbreviation or initialism of MACOMB LAW GROUP. In Registrant's mark, MLG likely references the initials of an unknown attorney or attorneys, and AUTOMOTIVE LAW identifies the type of law practiced. Therefore, the marks have different connotations.

In terms of overall commercial impression, we find that Applicant's mark MLG MACOMB LAW GROUP and design gives the impression of a law group in a particular geographic location, Macomb county, Michigan. The cited registered mark, on the other hand, gives the impression of a law firm practicing automotive law.

We find that the marks are dissimilar when viewed in their entireties as to appearance, sound, connotation and overall commercial impression. The first *DuPont* factor weighs heavily against a finding of likelihood of confusion.

III. Conclusion

Any of the *DuPont* factors may play a dominant role in assessing likelihood of confusion. *DuPont*, 177 USPQ at 567. In fact, in some cases, a single factor may be dispositive. *Kellogg Co. v. Pack'em Enters. Inc.*, 951 F.2d 330, 21 USPQ2d 1142, 1145 (Fed. Cir. 1991) stating that "[w]e know of no reason why, in a particular case, a single [*DuPont*] factor may not be dispositive" and holding that "substantial and undisputed differences" between two competing marks justified a conclusion of no likelihood of confusion on summary judgment).

Notwithstanding the legal identity of the services and the overlapping trade channels and consumers, we find that in view of the dissimilarities of the marks confusion is unlikely. Considering and weighing all of the relevant *DuPont* factors for which there has been evidence and argument, we find that the dissimilarity of the marks under the first *DuPont* factor simply outweighs the other relevant *DuPont* factors, and we conclude that there is no likelihood of confusion.

Decision: The Section 2(d) refusal to register Applicant's mark MACOMB LAW GROUP is reversed.

Exhibit 2

Thomas, Bradley H.

From: Pedersen, Chris <Chris.Pedersen@USPTO.GOV>
Sent: Wednesday, May 4, 2022 6:33 PM
To: Thomas, Bradley H.; Vohra, Sanjeev
Cc: Naruo, Shoko; Gray, Edward W. Jr.; Pedersen, Chris
Subject: RE: U.S. Trademark Application Serial No. 90002764 - THE BLACK DIAMOND SERIES

RECEIVED FROM EXTERNAL SENDER - USE CAUTION

Good evening Mr. Bradley,

I am responding to your e-mail below on the behalf of Mr. Vohra.

Mr. Vohra no longer has jurisdiction on this case.

The Trademark Trial and Appeal Board has jurisdiction over an application upon the filing of a notice of appeal. TMEP 1504.02

Therefore, because the TTAB has sole jurisdiction on this case, Mr. Vohra will not be reviewing your new argument. In addition, e-mail is not an acceptable form of submission for additional arguments. TMEP 304.01-02.

As you know, the oral hearing regarding this application was finally scheduled for May 19, 2022.

Thank you,

cafp

From: Thomas, Bradley H. <BHThomas@thompsoncoburn.com>
Sent: Tuesday, May 3, 2022 6:54 PM
To: Vohra, Sanjeev <Sanjeev.Vohra@USPTO.GOV>; Pedersen, Chris <Chris.Pedersen@USPTO.GOV>
Cc: Naruo, Shoko <SNaruo@thompsoncoburn.com>; Gray, Edward W. Jr. <EGray@thompsoncoburn.com>
Subject: RE: U.S. Trademark Application Serial No. 90002764 - THE BLACK DIAMOND SERIES

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Examiner Vohra,

We respectfully request that you review the comments below and reconsider your likelihood of confusion refusal in light of (1) a new TTAB decision, *In re J. Spagnuolo & Associates, P.C.*, No. 88789548 (TTAB 2022) ("*Spagnuolo*"), issued on March 31, 2022 (after the filing of our briefs) which clarifies that *In re Detroit Athletic Co.* should not apply to limit the third word in a trademark from consideration in a 2(d) analysis except in cases where the third word in the mark is "highly descriptive…and has been disclaimed", (2) the decision in *In re Bookriff Media Inc.*, No. 77537045, 2011 WL 3533288 (July 28, 2011) ("*Bookriff*"[1]), which addresses the issue herein of when narrowed ID's (in both the Applicant's and the Registrant's cited mark) sufficiently distinguish goods and services to avoid a likelihood of confusion, and (3) the significance of the different author names.

Spagnuolo reversed a likelihood of confusion refusal due to lack of similarity between the marks MLG MACOMB LAW GROUP ("Macomb Law Group" disclaimed) and MLG AUTOMOTIVE LAW in Class 45 (even in view of overlapping services, channels of trade, and consumers). Notably, *Spagnuolo* references and explains the *In re Detroit Athletic Co.* Federal Circuit decision on which you relied to support your likelihood of confusion analysis. However, *Spagnuolo* suggests that the third word in a trademark should not be ignored in a likelihood of confusion analysis except when the portions of the mark following the dominant portion are "highly descriptive" "and [have] been disclaimed". As you know, neither of those conditions apply here where the word "EFFECT" is neither "highly descriptive" nor was it "disclaimed" during prosecution.

The marks at issue are not similar - the last word "EFFECT" in the cited mark was not disclaimed and was not afforded its due weight when evaluating similarity.

1) The words "SERIES" and "EFFECT" in our case are very different from the words "CLUB" and "CO." in *In re Detroit Athletic Co.*
    a. *In re Detroit Athletic Co.* dealt with the marks "DETROIT ATHLETIC CLUB" (Class 25) and "DETROIT ATHLETIC CO." (Class 35).
        i. Similarity was found due to the last words in *both* marks being disclaimed and the first words "DETROIT ATHLETIC" being identical/dominant.
            1. Additionally, the last words "CLUB" and "CO." were both found to be mere descriptive business identifiers, and thus afforded little weight in the similarity analysis.
    b. Unlike *In re Detroit Athletic Co.*, the last word ("EFFECT") of the cited mark applied in our case was ***not*** disclaimed.
        i. Additionally, the last words "EFFECT" and "SERIES" do not share a common relationship as was the case with the last words in *In re Detroit Athletic Co*.
    c. Taking all of these differences/distinctions into account, the last word "EFFECT" in our case warranted more consideration in a likelihood of confusion analysis than the last words in *In re Detroit Athletic Co*.
        i. To illustrate that the word "EFFECT" has frequently been viewed as distinctive, Applicant provides a list of 39 US marks in class 16 that include the word "EFFECT".
            1. Of these 39 marks, only 8 have a disclaimer, none of which disclaim just the word "EFFECT," thereby showing the recognized source identifying strength of the word "EFFECT" on the register.
    d. Applicant believes that the TTAB hearing panel, when presented with the similarity analysis outlined above and *Spagnuolo*, will find the marks dissimilar because of the public's ability to readily distinguish between "SERIES" and "EFFECT".

The evidence cited to support relatedness of the parties respective goods does not adequately consider that the narrowed ID's of both the Registrant's cited mark and Applicant's mark are entirely distinct with no overlap of the term "cartoon science fiction books…" in any of the cited evidence, but the non-overlapping portions of the ID's were not afforded proper consideration when evaluating relatedness.

1) The ID of the cited mark was voluntarily narrowed by the Registrant during prosecution from "books and comic books" to "cartoon science fiction books and comic books." (see pgs. 3, 41, and 43 of the attached prosecution history).
2) The ID of Applicant's mark was narrowed from "Series of fiction books" to "a series of fiction books for teen girls, excluding cartoon science fiction books and comic books."
3) "Cartoon science fiction books" is a more narrow category than "books" or "comic books", and is entirely distinct from Applicant's "series of fiction books for teen girls."
    a. Applicant's ID further avoids any overlap with the goods sold by the Registrant by including the additional limitation in the Applicant's ID of "excluding cartoon science fiction books and comic books."

4) The 3rd party registrations cited by the Examiner during prosecution are inapposite and cover various goods which do not circumscribe or include either the narrow IDs "cartoon science fiction books…" or "a series of fiction books for teen girls" at issue in our case.
5) Taking the differences in the IDs and the shortcomings of the cited 3rd party registrations into account, the burden for establishing a likelihood of confusion based on relatedness of goods has not been met.
    a. Applicant requests the Examiner review the attached TTAB *Bookriff* decision, which finds that even if the marks are similar, the presence of narrow, distinct ID limitations can be enough to thwart a likelihood of confusion finding.
        i. In reversing the likelihood of confusion refusal in *Bookriff*, the TTAB found the refusal to be speculative/theoretical, and only supported by broad 3rd party registrations that did not outweigh the clearly delineated ID's of the marks.
6) Applicant believes that the TTAB hearing panel, when presented with the ID analysis outlined above and *Bookriff*, will find the goods sufficiently unrelated that confusion is not likely.

Lastly, Applicant notes the importance of the difference between the author names of the cited mark and Applicant's mark and the long history in the book selling trade of considering the author's name as well as the book's title in distinguishing between books. For example TMEP 1202.09(a) indicates that the name of an author may be registered if it is used on a series of written works, such as The Black Diamond Series at issue in this case. Also, it is a known practice in the book publishing industry to emphasize the importance of an author's name in attributing and/or comparing works[2]. The TMEP evidence and the additional materials referenced below show that an author's name, especially when used in conjunction with a series of written works, can serve as a source identifier.

We believe the new TTAB decision and the points above provide you with an opportunity to reconsider/rescind the refusal of record, and we'd welcome a chance to discuss these issues with you prior to the May 19 hearing.

---

[1] Although *Bookriff* was not presented by Applicant during prosecution and/or in its briefs, the *Bookriff* decision is directed to a central topic at issue and discussed in the present application – the weight given to narrow ID's when conducting likelihood of confusion analysis.

[2] *See* Exhibit A; *See also* Greg Lastowka, *The Trademark Function of Authorship, 85 B.U. L. Rev. 1171, 1176–77 (2005)* ("With regard to the first argument, it is clear that authorial attribution can function much like a trademark interest. If artists seek riches, they must compete for patrons, prizes, and the favor of the public. In order to win in this competition, artists must attempt to ensure that their works are of high quality, and that prospective consumers will associate their new works with their established reputations. If artists can ensure attribution of their works, artists producing better quality will gain public goodwill and reap the benefits of their investments in producing works of higher quality. This recognition and goodwill can lead to greater opportunities for employment and contractual leverage. Authorial attribution is thus a mechanism for ensuring that greater profits flow to those producing superior products. But the incentive role of attribution is not merely financial, as generally posited in the case of trademark protections. In the case of authorship, the benefits reaped by artists from attribution are social and psychological as well."); Laura A. Heymann, *The Birth of the Authornym: Authorship, Pseudonymity, and Trademark Law*, 80 Notre Dame L. Rev. 1377, 1379–80 (2005) ("In either case, this choice of an author's name for each created work is a branding choice. To begin with, an author may--like a marketing team devising a brand for a new product--choose a statement of authorship that conveys certain qualities about the work to which it is attached. A writer of romance novels may choose a Victorian-sounding pseudonym; a female author of a war novel may choose a more masculine-sounding pen name to avoid biased readers. More important, however, is that the choice of an author's name, like a trademark, represents an attempt to reduce readers' search costs by ensuring that the goodwill attributable to the writer does not flow to another author. Rather than publishing works anonymously, a writer who chooses a statement of authorship corrals goodwill associated with that name to avoid diversion to competing authors. So, like the cola drinker mentioned above, the reader who enjoyed the first John Grisham novel and would like to read another does not have to spend time poring over books in the bookstore to find the one whose qualities match the first book she enjoyed. She can, rather, simply look to the author's name--the trademark-like "John Grisham"--to find such books instead."); Laura N. Gasaway, *Libraries, Users, and the Problems of Authorship in the Digital Age*, 52 DePaul L. Rev. 1193, 1203 (2003) ("First, the name of the author is an important way to locate materials in the library collection. Second, the author's name is the first part of a citation to indicate responsibility for the work, a concept with which law students should have particular familiarity. Third, users should know that the name of the author can serve as an indication of subject, quality, date, or importance of the work. Finally, "author" is a shorthand device to describe a style of writing, ideas conveyed, or a literary genre. Some entire collections or portions of many library collections are simply arranged by author's last name. For example, the fiction collection in many libraries is not classified by subject, but is instead arranged alphabetically by author's last name.").

Sincerely,
Bradley H. Thomas
bhthomas@thompsoncoburn.com
P: 314 552 6563
F: 314 552 7000
M: 314.602.6563

Thompson Coburn LLP
One US Bank Plaza
St. Louis, MO 63101
www.thompsoncoburn.com

From: Thomas, Bradley H.
Sent: Tuesday, March 29, 2022 9:02 PM
To: Vohra, Sanjeev <Sanjeev.Vohra@USPTO.GOV>; Pedersen, Chris <Chris.Pedersen@USPTO.GOV>; DelGizzi, Denise <Denise.DelGizzi@USPTO.GOV>
Cc: Naruo, Shoko <SNaruo@thompsoncoburn.com>; Gray, Edward W. Jr. <egray@thompsoncoburn.com>
Subject: RE: U.S. Trademark Application Serial No. 90002764 - THE BLACK DIAMOND SERIES

Examining Attorney Vohra,

Please see the attached document (filed tonight). Thanks again.

Sincerely,
Bradley H. Thomas
bhthomas@thompsoncoburn.com
P: 314 552 6563
F: 314 552 7000
M: 314.602.6563

Thompson Coburn LLP
One US Bank Plaza
St. Louis, MO 63101
www.thompsoncoburn.com

From: Thomas, Bradley H.
Sent: Tuesday, March 29, 2022 4:01 PM
To: 'Vohra, Sanjeev' ; Pedersen, Chris ; DelGizzi, Denise
Cc: Naruo, Shoko ; Gray, Edward W. Jr.
Subject: RE: U.S. Trademark Application Serial No. 90002764 - THE BLACK DIAMOND SERIES

Examining Attorney Vohra,

Thank you for the confirmation. We will submit our revised supplemental notice to the Board via ESTTA as soon as possible, indicating tentative agreeable dates of May 5, 17, and 19, and including a copy of the corresponding email thread spanning from March 24 to today as an exhibit. Thanks again for being able to accommodate our dates.

Sincerely,
Bradley H. Thomas
bhthomas@thompsoncoburn.com
P: 314 552 6563
F: 314 552 7000
M: 314.602.6563

From: Vohra, Sanjeev <Sanjeev.Vohra@USPTO.GOV>
Sent: Tuesday, March 29, 2022 6:22 AM
To: Thomas, Bradley H. <BHThomas@thompsoncoburn.com>; Pedersen, Chris <Chris.Pedersen@USPTO.GOV>; DelGizzi, Denise <Denise.DelGizzi@USPTO.GOV>
Cc: Naruo, Shoko <SNaruo@thompsoncoburn.com>; Gray, Edward W. Jr. <EGray@thompsoncoburn.com>
Subject: RE: U.S. Trademark Application Serial No. 90002764 - THE BLACK DIAMOND SERIES

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Mr. Thomas,

May 5th is also agreeable to me. As I indicated previously, any date in May is fine.

Please file your written notice as soon as possible and inform the Board of your decision.

Thanks,

Sanjeev

Sanjeev K. Vohra | Trademark Attorney | United States Patent and Trademark Office | 600 Dulany Street | Madison East 5th Floor | Alexandria, VA 22314 | Tel: 571.272.5885 | Fax: 571.273.5885 | email: sanjeev.vohra@uspto.gov

From: Thomas, Bradley H. <BHThomas@thompsoncoburn.com>
Sent: Monday, March 28, 2022 9:11 PM
To: Pedersen, Chris <Chris.Pedersen@USPTO.GOV>; Vohra, Sanjeev <Sanjeev.Vohra@USPTO.GOV>; DelGizzi, Denise <Denise.DelGizzi@USPTO.GOV>
Cc: Naruo, Shoko <SNaruo@thompsoncoburn.com>; Gray, Edward W. Jr. <EGray@thompsoncoburn.com>
Subject: RE: U.S. Trademark Application Serial No. 90002764 - THE BLACK DIAMOND SERIES

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Dear Examining Attorney Vohra and Managing Attorney Pedersen,

Thank you for your emails. In addition to May 17, 18, and 19, and for purposes of complying with the "non-consecutive" requirement in item 1) of the Board's Order of February 16, 2022 (copy attached), we also offer up May 5th as a potential hearing date (we note that Examining Attorney Vohra previously indicated that any date in May would be acceptable).

Thus, if May 5th is also agreeable, we intend to provide written notice to the Board (via ESTTA) proposing the following tentative hearing dates:

- Any two dates from May 17, May 18, May 19

- Time: noon (or any other time between 10am to 3pm Eastern that is most convenient for the Board)

- May 5th
  - Time: noon (or any other time between 10am to 3pm Eastern that is most convenient for the Board)

We will hold off on filing our written ESTTA notice until we hear back from you that May 5th is also agreeable.

Sincerely,

Bradley H. Thomas
bhthomas@thompsoncoburn.com
P: 314 552 6563
F: 314 552 7000
M: 314.602.6563

Thompson Coburn LLP
One US Bank Plaza
St. Louis, MO 63101
www.thompsoncoburn.com

From: Pedersen, Chris <Chris.Pedersen@USPTO.GOV>
Sent: Monday, March 28, 2022 3:12 PM
To: Vohra, Sanjeev <Sanjeev.Vohra@USPTO.GOV>; Thomas, Bradley H. <BHThomas@thompsoncoburn.com>; DelGizzi, Denise <Denise.DelGizzi@USPTO.GOV>
Cc: Naruo, Shoko <SNaruo@thompsoncoburn.com>; Pedersen, Chris <Chris.Pedersen@USPTO.GOV>
Subject: RE: U.S. Trademark Application Serial No. 90002764 - THE BLACK DIAMOND SERIES

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Good afternoon everyone,

There may be no need for this e-mail, should a specific date have already been chosen and communicated to the Board, since Mr. Vohra's below e-mail was issued this morning.

However, I simply want to be sure that as soon as Mr. Thomas decides which May date is most convenient, that Ms. DelGizzi at the TTAB will be informed.

That is why I have included Ms. DelGizzi on this e-mail.

Thank you everyone and have a good rest of the week.

C

From: Vohra, Sanjeev
Sent: Monday, March 28, 2022 8:25 AM
To: Thomas, Bradley H. <BHThomas@thompsoncoburn.com>
Cc: Pedersen, Chris <Chris.Pedersen@USPTO.GOV>; Naruo, Shoko

<SNaruo@thompsoncoburn.com>
Subject: RE: U.S. Trademark Application Serial No. 90002764 - THE BLACK DIAMOND SERIES

Mr. Thomas,

Any of those dates work, so please choose the most convenient dates for you and if you would, please notify the Board of your selection as soon as possible.

Thanks,

Sanjeev Vohra

Sanjeev K. Vohra | Trademark Attorney | United States Patent and Trademark Office | 600 Dulany Street | Madison East 5th Floor | Alexandria, VA 22314 | Tel: 571.272.5885 | Fax: 571.273.5885 | email: sanjeev.vohra@uspto.gov

---

From: Thomas, Bradley H. <BHThomas@thompsoncoburn.com>
Sent: Friday, March 25, 2022 4:13 PM
To: Vohra, Sanjeev <Sanjeev.Vohra@USPTO.GOV>
Cc: Pedersen, Chris <Chris.Pedersen@USPTO.GOV>; Naruo, Shoko <SNaruo@thompsoncoburn.com>
Subject: RE: U.S. Trademark Application Serial No. 90002764 - THE BLACK DIAMOND SERIES

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Examiner Vohra,
Thank you for your email offering any date in the month of May for the tentative oral hearing date. We have availability on each of May 17, 18, 19. Please pick the date/dates that is/are most convenient your end.

Also, please let us know if you will be communicating the selected date/dates to the Board, or if we need to inform the Board of the selected date/dates on our end (e.g., via the filing of another supplemental notice).

Sincerely,
Bradley H. Thomas
bhthomas@thompsoncoburn.com
P: 314 552 6563
F: 314 552 7000
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From: Vohra, Sanjeev <Sanjeev.Vohra@USPTO.GOV>
Sent: Thursday, March 24, 2022 5:47 AM
To: Thomas, Bradley H. <BHThomas@thompsoncoburn.com>
Cc: Pedersen, Chris <Chris.Pedersen@USPTO.GOV>
Subject: RE: U.S. Trademark Application Serial No. 90002764 - THE BLACK DIAMOND SERIES

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Mr. Thomas,

Regarding your desire for a mutually agreeable tentative oral hearing date for the above referenced application, I am offering you the opportunity to select any date in the month of May 2022 that suits you.

I hope this helps in your selection.

Thanks,

Sanjeev Vohra

Sanjeev K. Vohra | Trademark Attorney | United States Patent and Trademark Office | 600 Dulany Street | Madison East 5th Floor | Alexandria, VA 22314 | Tel: 571.272.5885 | Fax: 571.273.5885 | email: sanjeev.vohra@uspto.gov

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90002764-Applicants_Revised_Supplemental_Notice.pdf (559.9KB)

(559.9KB)

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[1] Although *Bookriff* was not discussed by Applicant during prosecution and/or in its briefs, the *Bookriff* decision is directed to a central topic at issue in the present application – the weight given to narrow ID's when conducting likelihood of confusion analysis.
[2] *See* Exhibit A; *See also* Greg Lastowka, *The Trademark Function of Authorship, 85 B.U. L. Rev. 1171, 1176–77 (2005)* ("With regard to the first argument, it is clear that authorial attribution can function much like a trademark interest. If artists seek riches, they must compete for patrons, prizes, and the favor of the public. In order to win in this competition, artists must attempt to ensure that their works are of high quality, and that prospective consumers will associate their new works with their established reputations. If artists can ensure attribution of their works, artists producing better quality will gain public goodwill and reap the benefits of their investments in producing works of higher quality. This recognition and goodwill can lead to greater opportunities for employment and contractual leverage. Authorial attribution is thus a mechanism for ensuring that greater profits flow to those producing superior products.
But the incentive role of attribution is not merely financial, as generally posited in the case of trademark protections. In the case of authorship, the benefits reaped by artists from attribution are social and psychological as well."); Laura A. Heymann, *The Birth of the Authornym: Authorship, Pseudonymity, and Trademark Law*, 80 Notre Dame L. Rev. 1377, 1379–80 (2005) ("In either case, this choice of an author's name for each created work is a branding choice. To begin with, an author may--like a marketing team devising a brand for a new product--choose a statement of authorship that conveys certain qualities about the work to which it is attached. A writer of romance novels may choose a Victorian-sounding pseudonym; a female author of a war novel may choose a more masculine-sounding pen name to avoid biased readers. More important, however, is that the choice of an author's name, like a trademark, represents an attempt to reduce readers' search costs by ensuring that the goodwill attributable to the writer does not flow to another author. Rather than publishing works anonymously, a writer who chooses a statement of authorship corrals goodwill associated with that name to avoid diversion to competing authors. So, like the cola drinker mentioned above, the reader who enjoyed the first John Grisham novel and would like to read another does not have to spend time poring over books in the bookstore to find the one whose qualities match the first book she enjoyed. She can, rather, simply look to the author's name--the trademark-like "John Grisham"--to find such books instead."); Laura N. Gasaway, *Libraries, Users, and the Problems of Authorship in the Digital Age*, 52 DePaul L. Rev. 1193, 1203 (2003) ("First, the name of the author is an important way to locate materials in the library collection. Second, the author's name is the first part of a citation to indicate responsibility for the work, a concept with which law students should have particular familiarity. Third, users should know that the name of the author can serve as an indication of subject, quality, date, or importance of the work. Finally, "author" is a shorthand device to describe a style of writing, ideas conveyed, or a literary genre. Some entire collections or portions of many library collections are simply arranged by author's last name. For example, the fiction collection in many libraries is not classified by subject, but is instead arranged alphabetically by author's last name.")

Exhibit 3

CORSEARCH

Date Generated: April 20, 2022

Strategy

Date Run	Query	#Hits
	Tagged: 48	
4/20/2022	**US Federal, US State, Canada, WIPO, European Union (EUTM)**	
	Q4 ((Trademark = (EFFECT)) NOT (Trademark = (FX)) AND International Class = (16)) (Phonetic Engine off, Filter = Active)	48

Trademark

US Federal	48	US State	13	Canada	38
WIPO	5	European Union (EUTM)	19		

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Date Generated: April 20, 2022

Chart Of Tagged Records

TM Record	TM/AN/RN/Disclaimer	Disclaimer	Brief Goods/Services	Register Type	Status/Status Date
1	AFTER EFFECTS RN: 1970781 SN: 74491379		Int'l Class: 09, 16 (Int'l Class: 09) computer software for use in television, film and video production; computer software for use in connection with the creation and... (Int'l Class: 16) computer software users' manuals and books for use in film, broadcast and video production, and the creation and editing of...	Principal Register	Renewed, March 31, 2016 Office Status: Registered and Renewed
2	THE CUMULATIVE EFFECT SN: 97070238		Int'l Class: 09, 16 (Int'l Class: 09) Digital books (Int'l Class: 16) Hardcover books	Principal Register	Pending Application, November 2, 2021 Office Status: New Application - Record Initialized Not Assigned to Examiner
3	THE MOZART EFFECT RN: 2152923 SN: 75094727 Disclaimer: "MOZART"	"MOZART" Examiner Amendment 9/12/1996: not viewable in TSDR	Int'l Class: 09, 16 (Int'l Class: 09) [pre-recorded [videotapes,] audiotapes, and] compact discs featuring a combination of narration and music on the subject of the...	Principal Register	Renewed, April 25, 2018 Office Status: Registered and Renewed

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TM Record	TM/AN/RN/Disclaimer	Disclaimer	Brief Goods/Services	Register Type	Status/Status Date
			(Int'l Class: 16) books and printed, instructional, educational and teaching materials on the subject of the use of music in health and education		
4	GIRL EFFECT RN: 5393890 SN: 86932953 Disclaimer: "GIRL"	"GIRL" Office Action 6/27/2016: Examiner required disclaimer of “GIRL” because it merely describes an ingredient, quality, characteristic, function, feature, purpose, or use of applicant’s goods and/or services, and thus is an unregistrable component of the mark. The attached evidence from The American Heritage Dictionary of the English Language (The American Heritage Dictionary of the English Language: Fifth Edition. 2014) shows this wording means “a female child”. Therefore, the wording merely describes the intended user or subject matter of applicant’s goods and services.	Int'l Class: 09, 16, 25, 35, 36, 38, 41, 42, 43, 44, 45 (Int'l Class: 09) Downloadable electronic publications in the nature of electronic magazines, newsletters, leaflets, brochures, articles, policy briefs and reports in the fields... (Int'l Class: 16) Printed matter, namely, paper and cardboard posters and banners relating to the fields of human rights, and girls' and women's... (Int'l Class: 25) Clothing, namely, tops, t-shirts, sweatshirts, jumpers, dresses, skirts, trousers, shorts, socks and jackets; footwear; headgear, namely, hats and caps (Int'l Class: 35) Promotional and public awareness campaigns, namely, promoting public	Principal Register	Registered, February 6, 2018

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TM Record	TM/AN/RN/Disclaimer	Disclaimer	Brief Goods/Services	Register Type	Status/Status Date
		Office Action Response 12/27/2016: Applicant disclaimed “GIRL” Preliminary Amendment 2/2/2017: Applicant had the cited mark assigned to them.	awareness of human rights, and girls' and women's rights, poverty and its... (Int'l Class: 36) Charitable fundraising; arranging charitable collections, namely, accepting and administering monetary charitable contributions; management and monitoring of charitable funds and payment... (Int'l Class: 38) Telecommunication services, namely, providing personal communications services and provision of communications services over electronic networks; broadcasting television, radio and internet... (Int'l Class: 41) Education, namely, providing courses, seminars, classes and workshops in the fields of human rights, and girls' and women's rights, poverty... (Int'l Class: 42) Scientific research in relation to the social sciences; scientific research in relation to the social sciences, namely, longitudinal studies and... (Int'l Class: 43) Provision of food and drink		

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TM Record	TM/AN/RN/Disclaimer	Disclaimer	Brief Goods/Services	Register Type	Status/Status Date
			including for poverty, famine and disaster relief purposes; provision of temporary accommodation including emergency accommodation... (Int'l Class: 44) Health care services including mental healthcare services; advisory, consultancy and information in relation to health and mental health; psychological and... (Int'l Class: 45) Legal research in relation to the social sciences; legal services and legal advisory services; advisory, consultancy and information services in...		
5	MASS EFFECT and Design RN: 3423385 SN: 76978645		Int'l Class: 09, 16, 28, 41 (Int'l Class: 09) Computer game software (Int'l Class: 16) Printed materials, namely, instruction manuals and strategy guides for playing computer games (Int'l Class: 28) Toys and games, namely, action figures and action figure accessories (Int'l Class: 41) Entertainment services,	Principal Register	Renewed, April 30, 2018 Office Status: Registered and Renewed

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TM Record	TM/AN/RN/Disclaimer	Disclaimer	Brief Goods/Services	Register Type	Status/Status Date
			namely, on-line interactive game provided by means of a global computer network		
6	THE REP EFFECT RN: 4216356 SN: 85340592 Disclaimer: "REP"	"REP" Office Action 9/23/2011: Applicant must disclaim the descriptive wording “REP” apart from the mark as shown because it merely describes an ingredient, quality, characteristic, function, feature, purpose or use of applicant’s goods and/or services. Specifically, the attached evidence from acronymfinder.com shows this wording “rep” is short for repetition. As the attached Wikipedia entry regarding applicant’s BODYPUMP class states, applicant’s exercise programs feature several repetitions of various weight-lifting exercises. Thus, in the context of the identified goods and services “rep” describes the subject matter of the digital goods, printed goods and exercise programs – they feature physical exercise entailing several “reps” of each movement. Presumably,	Int'l Class: 09, 16, 28, 41 (Int'l Class: 09) [Audio and video recordings, namely, pre-recorded compact discs, digital video discs, CD Roms and digital files all featuring fitness and... (Int'l Class: 16) [Printed matter and training materials, namely, books, booklets, newsletters, magazines, manuals, posters and postcards all in relation to fitness and... (Int'l Class: 28) [Exercise equipment, namely, dumbbells and barbells] (Int'l Class: 41) Recreation services in the nature of providing training and education services, namely, classes, seminars, programs, courses, workshops and conferences in...	Principal Register	Registered, November 7, 2018 Office Status: Section 8-Accepted

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TM Record	TM/AN/RN/Disclaimer	Disclaimer	Brief Goods/Services	Register Type	Status/Status Date
		applicant's sporting goods are utilized to engage in "rep" based exercise. Office Action Response 2/3/2012: Applicant disclaimed "REP"			
7	THE VACATION EFFECT RN: 6054007 SN: 88055993		Int'l Class: 09, 16, 41 (Int'l Class: 09) Audio books in the field of productivity, time management, lifestyle design, self-improvement, goal achievement, business startup, business growth, business process... (Int'l Class: 16) Printed books in the field of productivity, time management, lifestyle design, self-improvement, goal achievement, business startup, business growth, business process... (Int'l Class: 41) Educational services, namely, conducting classes, seminars, and online workshops in the field of productivity, time management, lifestyle design, self-improvement, goal...	Principal Register	Registered, May 12, 2020
8	VIBEFFECT		Int'l Class: 09, 16, 41, 42	Principal Register	Registered, October 13,

TM Record	TM/AN/RN/Disclaimer	Disclaimer	Brief Goods/Services	Register Type	Status/Status Date
	RN: 4832530 SN: 86144300		(Int'l Class: 09) Computer programs and computer software, namely, apps for computers, tablets, smart phones and mobile computing devices to identify factors which... (Int'l Class: 16) Printed indices and reports in the field of college selection and concerning student satisfaction, success and thriving at colleges and... (Int'l Class: 41) In person and online college consulting services, namely, providing college selection assistance and college evaluation and comparison services; college consulting... (Int'l Class: 42) Online college selection assessment tool, namely, online non-downloadable software and applications used to identify factors which will make a prospective...		2015
9	AFFECT: RN: 3270034 SN: 78747558		Int'l Class: 16 (Int'l Class: 16) Printed instructional and educational materials in the field of missions	Principal Register	Renewed, February 9, 2018 Office Status: Registered and Renewed

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TM Record	TM/AN/RN/Disclaimer	Disclaimer	Brief Goods/Services	Register Type	Status/Status Date
10	ART EFFECTS, INC. (Stylized) RN: 3508376 SN: 77409591 Disclaimer: "ART" AND "INC."	"ART" AND "INC." New Application 2/29/2008: "ART" and "INC" were disclaimed at filing	Int'l Class: 16 (Int'l Class: 16) Art pictures	Principal Register	Renewed, September 7, 2018 Office Status: Registered and Renewed
11	ARTISAN'S EFFECT RN: 4942928 SN: 86662107		Int'l Class: 16 (Int'l Class: 16) Ink for pens; Ink pens; Markers; Pens	Principal Register	Registered, April 19, 2016
12	FAUX EFFECTS WORLD RN: 3202489 SN: 76577804		Int'l Class: 16 (Int'l Class: 16) magazine featuring articles about decorating and interior and exterior finishes, glazes, and paints	Principal Register - Sec. 2(F)	Renewed, March 18, 2017 Office Status: Registered and Renewed
13	FEAR EFFECT RN: 2707486 SN: 76019162		Int'l Class: 16 (Int'l Class: 16) publications, namely, books, [brochures, flysheets and periodicals] in the field of electronic entertainment; [comic books; paper, cardboard and plastic for	Principal Register	Renewed, May 24, 2013 Office Status: Registered and Renewed

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TM Record	TM/AN/RN/Disclaimer	Disclaimer	Brief Goods/Services	Register Type	Status/Status Date
			packaging;] instructional books and printed teaching materials in the field of electronic entertainment [, and posters...		
14	FIMO EFFECT and Design RN: 4297488 SN: 85584864		Int'l Class: 16 (Int'l Class: 16) Modeling materials, namely, modeling compounds; modeling clay; [modeling materials in the form of educational kits comprised of modeling compounds, modeling clay, pens, art instructional pamphlets, and artists' implements and materials, namely, spatulas, stencils, and molds for modeling clay]	Principal Register	Registered, June 19, 2018 Office Status: Section 8 & 15-Accepted and Acknowledged
15	FIMO EFFECT and Design SN: 90363276		Int'l Class: 16 (Int'l Class: 16) Kneadable and heat-hardenable modeling compounds for forming shaped objects; modeling clay; arts and crafts clay kits; educational kits comprised of modeling clay	Principal Register	Application pending publication, March 30, 2022 Office Status: Statement of Use - to Examiner

TM Record	TM/AN/RN/Disclaimer	Disclaimer	Brief Goods/Services	Register Type	Status/Status Date
16	FIMO LEATHER-EFFECT and Design RN: 6323418 SN: 88705532 Disclaimer: "LEATHER EFFECT"	"LEATHER EFFECT" Office Action 3/5/2020: Applicant must disclaim the wording “LEATHER EFFECT” because it is merely descriptive of an ingredient, quality, characteristic, function, feature, purpose, or use of applicant’s goods. The attached evidence from American Heritage Dictionary Online shows the wording “LEATHER” means “made of, relating to, or resembling dressed or tanned animal hide” and the wording “EFFECT” means “something brought about by a cause or agent; a result”. In addition, the attachment from applicant’s website shows that a characteristic of applicant’s goods is that the surface is “similar to leather” after hardening. See attachments. Thus, the wording merely describes applicant’s goods as resulting in resembling dressed or tanned animal hide. Office Action Response 3/20/2020: Applicant	Int'l Class: 16 (Int'l Class: 16) Kneadable and heat-hardenable modeling compounds for forming shaped objects; modeling clay; arts and crafts clay kits; educational kits comprised of modeling clay	Principal Register	Registered, April 13, 2021

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TM Record	TM/AN/RN/Disclaimer	Disclaimer	Brief Goods/Services	Register Type	Status/Status Date
		disclaimed “LEATHER EFFECT”			
17	FLEXEFFECT RN: 3397510 SN: 77170142		Int'l Class: 16 (Int'l Class: 16) Exercise books	Principal Register	Renewed, May 18, 2017 Office Status: Registered and Renewed
18	HICCUP EFFECT and Design RN: 5038931 SN: 86626813		Int'l Class: 16 (Int'l Class: 16) a series of non-fiction books and written articles featuring scenes and characters based upon real life experiences	Principal Register	Registered, September 13, 2016
19	LAKE EFFECT and Design RN: 5723005 SN: 87549944 Disclaimer: THE PICTORIAL	THE PICTORIAL REPRESENTATION OF THE STATE OF MICHIGAN Examiner’s Amendment 11/3/2017: No claim is made to the exclusive right to use the pictorial representation of the state of Michigan apart from the mark as shown.	Int'l Class: 16 (Int'l Class: 16) Decals; posters; stickers; trading cards	Principal Register	Registered, April 9, 2019

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TM Record	TM/AN/RN/Disclaimer	Disclaimer	Brief Goods/Services	Register Type	Status/Status Date
	REPRESENTATION OF THE STATE OF MICHIGAN				
20	LEATHER-EFFECT and Design RN: 6323419 SN: 88705558 Disclaimer: "LEATHER EFFECT"	"LEATHER EFFECT" Office Action 3/5/2020: Applicant must disclaim the wording “LEATHER EFFECT” because it is merely descriptive of an ingredient, quality, characteristic, function, feature, purpose, or use of applicant’s goods. The attached evidence from American Heritage Dictionary Online shows the wording “LEATHER” means “made of, relating to, or resembling dressed or tanned animal hide” and the wording “EFFECT” means “something brought about by a cause or agent; a result”. In addition, the attachment from applicant’s website shows that a characteristic of applicant’s goods is that the surface is “similar to leather” after hardening. See attachments. Thus, the wording merely describes applicant’s goods as resulting in resembling dressed or tanned animal	Int'l Class: 16 (Int'l Class: 16) Kneadable and heat-hardenable modeling compounds for forming shaped objects; modeling clay; arts and crafts clay kits; educational kits comprised of modeling clay	Principal Register	Registered, April 13, 2021

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TM Record	TM/AN/RN/Disclaimer	Disclaimer	Brief Goods/Services	Register Type	Status/Status Date
		hide. Office Action Response 3/20/2020: Applicant disclaimed “LEATHER EFFECT”			
21	PICAFFECTS RN: 6112555 SN: 88745362		Int'l Class: 16 (Int'l Class: 16) Note cards; Personalized writing journals; Posters; Art prints on canvas	Principal Register	Registered, July 28, 2020
22	RIPPLE EFFECT RN: 2503856 SN: 76125249		Int'l Class: 16 (Int'l Class: 16) publications, namely, an equities research report	Principal Register	Renewed, May 3, 2012 Office Status: Registered and Renewed
23	SOUND EFFECTS RN: 2482464 SN: 76138006		Int'l Class: 16 (Int'l Class: 16) Newsletter in the field of hearing and deafness, and current events and [developmental] * development * issues related to deafness	Principal Register	Renewed, January 31, 2022 Office Status: Registered and Renewed
24	THE BLACK DIAMOND EFFECT RN: 1752451 SN: 74105039		Int'l Class: 16 (Int'l Class: 16) cartoon science fiction books and comic books	Principal Register	Renewed, March 4, 2013 Office Status: Registered and Renewed
25	THE ELEGANCE		Int'l Class: 16	Principal Register	Pending Application, March

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TM Record	TM/AN/RN/Disclaimer	Disclaimer	Brief Goods/Services	Register Type	Status/Status Date
	EFFECT SN: 97319303		(Int'l Class: 16) Pens; Cardboard coasters; Paper hang tags; Personalized stickers; Plastic or paper envelopes for merchandise packaging; Plastic or paper pouches for merchandise packaging		23, 2022 Office Status: New Application - Record Initialized Not Assigned to Examiner
26	THE PROSPERITY EFFECT SN: 90882492		Int'l Class: 16 (Int'l Class: 16) Pencils; Pens; Stationery; Paper notebooks; Personal organizers; Printed guides for setting goals for the purpose of achieving those goals faster; Printed daily planners	Principal Register	Pending Application, October 4, 2021 Office Status: New Application - Record Initialized Not Assigned to Examiner
27	THE RECONNECT EFFECT RN: 6673258 SN: 90147105		Int'l Class: 16 (Int'l Class: 16) Books in the field of self-help; Cook books; Non-fiction books on a variety of topics; Series of fiction books	Principal Register	Registered, March 15, 2022
28	THE RIPPLE EFFECT SN: 88436815		Int'l Class: 16 (Int'l Class: 16) books, book series and workbooks in the field of inspiration and stories of general human interest	Principal Register	Pending Application, December 7, 2021 Office Status: Final Refusal Mailed

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TM Record	TM/AN/RN/Disclaimer	Disclaimer	Brief Goods/Services	Register Type	Status/Status Date
29	TRANSWORLD EFFECTS and Design SN: 97222408		Int'l Class: 16, 21 (Int'l Class: 16) Art mounts; Art pads; Arts and craft clay kits; Arts and craft paint kits; Modelling clay; Modelling compounds; Photo albums;... (Int'l Class: 21) Cooking utensils, namely, grills; Household utensils, namely, spatulas and tongs	Principal Register	Pending Application, January 21, 2022 Office Status: New Application - Record Initialized Not Assigned to Examiner
30	THE NEW GIRL EFFECT SN: 90580425		Int'l Class: 16, 25 (Int'l Class: 16) Stationery; Stationery folders; Glitter pens for stationery purposes; Office stationery; Printed comic books; Printed comic magazines; Printed comic strips; Printed... (Int'l Class: 25) Shirts; Bottoms as clothing; Shirts and short-sleeved shirts; A-shirts; Clothing for athletic use, namely, padded shirts; Dress shirts; Graphic T-shirts;...	Principal Register	Pending Application, February 8, 2022 Office Status: Final Refusal Mailed
31	MASS EFFECT RN: 3409613 SN: 76635840		Int'l Class: 16, 28 (Int'l Class: 16) printed materials, namely,	Principal Register	Renewed, March 14, 2018 Office Status: Registered and Renewed

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TM Record	TM/AN/RN/Disclaimer	Disclaimer	Brief Goods/Services	Register Type	Status/Status Date
			instruction manuals and strategy guides for playing computer games (Int'l Class: 28) toys and games, namely, action figures and action figure accessories		
32	BE PART OF THE EFFECT RN: 5008580 SN: 86343749		Int'l Class: 16, 35 (Int'l Class: 16) Printed matter, namely, direct selling aids and sales literature in the nature of printed forms, informational booklets, brochures, pamphlets, business... (Int'l Class: 35) Retail store services and computerized online ordering services featuring food supplements, food bars, powdered drink mixes, teas, nutritional supplements, dietary...	Principal Register	Registered, July 26, 2016
33	THE HIRE EFFECT RN: 5703953 SN: 87424335		Int'l Class: 16, 35 (Int'l Class: 16) Books in the field of Human Resources (Int'l Class: 35) Human resources consultation	Principal Register	Registered, March 19, 2019
34	BE PART OF THE		Int'l Class: 16, 35, 41 (Int'l Class: 16)	Principal Register	Pending Application, March 7, 2022

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TM Record	TM/AN/RN/Disclaimer	Disclaimer	Brief Goods/Services	Register Type	Status/Status Date
	EFFECT SN: 97111230		Printed material sold in bulk, namely, direct selling aids and sales literature in the nature of brochures, pamphlets, information sheets... (Int'l Class: 35) Retail store services and retail on-line ordering services featuring dietary and nutritional supplements, personal care preparations, household cleaning preparations, skin... (Int'l Class: 41) Providing online newsletters in the field of dietary and nutritional supplements, personal care preparations, household cleaning preparations, skin care preparations,...		Office Status: Non-Final Action - Mailed
35	THE MAMA BEAR EFFECT RN: 4921344 SN: 86558913		Int'l Class: 16, 35, 41, 45 (Int'l Class: 16) Printed publications, namely, booklets, a series of books, posters, brochures and flyers in the field of identification and prevention of... (Int'l Class: 35) Promoting public awareness of child sexual abuse (Int'l Class: 41) providing a website	Principal Register	Registered, March 22, 2016

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TM Record	TM/AN/RN/Disclaimer	Disclaimer	Brief Goods/Services	Register Type	Status/Status Date
			featuring blogs and non-downloadable publications in the nature of newsletters, posters, flyers, brochures and information sheets in... (Int'l Class: 45) Providing online information in the field of identification and prevention of child sexual abuse		
36	THE MAMA BEAR EFFECT and Design RN: 4925315 SN: 86560608		Int'l Class: 16, 35, 41, 45 (Int'l Class: 16) Printed publications, namely, booklets, a series of books, posters, brochures and flyers in the field of identification and prevention of... (Int'l Class: 35) Promoting public awareness of child sexual abuse (Int'l Class: 41) providing a website featuring blogs and non-downloadable publications in the nature of newsletters, posters, flyers, brochures and information sheets in... (Int'l Class: 45) Providing online information in the field of identification and prevention of child sexual abuse	Principal Register	Registered, March 29, 2016

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TM Record	TM/AN/RN/Disclaimer	Disclaimer	Brief Goods/Services	Register Type	Status/Status Date
37	PE THE PET EFFECT and Design Pe The Pet Effect RN: 5667056 SN: 87331718 Disclaimer: "THE PET EFFECT"	"THE PET EFFECT" Office Action 4/7/2017: Applicant must disclaim the wording “THE PET EFFECT” because it merely describes an ingredient, quality, characteristic, function, feature, purpose, or use of applicant’s goods and/or services, and thus is an unregistrable component of the mark. Specifically, THE PET EFFECT merely indicates the subject matter of applicant’s goods and services, specifically, “the physiological impact of the Human Animal Bond”. This wording is commonly used to describe the positive health effects of pet ownership. Office Action Response 7/31/2017: Applicant disclaimed “THE PET EFFECT”	Int'l Class: 16, 35, 44 (Int'l Class: 16) promotional materials, namely, printed pamphlets and brochures, on the subject of the physiological impact of the Human Animal Bond (Int'l Class: 35) promoting public awareness of the effects of the physiological impact of the Human Animal Bond using social medial platforms (Int'l Class: 44) Providing a website featuring health information about the physiological impact of the Human Animal Bond	Principal Register	Registered, January 29, 2019
38	THE SHAKLEE EFFECT RN: 4871070 SN: 85887850		Int'l Class: 16, 35, 44 (Int'l Class: 16) Printed matter, namely, direct selling aids and sales literature in the nature of printed forms, informational	Principal Register	Registered, December 15, 2015

TM Record	TM/AN/RN/Disclaimer	Disclaimer	Brief Goods/Services	Register Type	Status/Status Date
			booklets, brochures, pamphlets, business... (Int'l Class: 35) Retail store services and computerized online ordering services in the fields of food supplements, food bars, powdered drink mixes, teas,... (Int'l Class: 44) Providing information in the field of diet, nutrition, weight loss, personal health and/or wellness		
39	GREENEFFECTS SN: 79311129		Int'l Class: 16, 36, 42 (Int'l Class: 16) printed books in the field of investments and investment strategies; printed matter, flyers, prospectuses and periodicals in the field of... (Int'l Class: 36) Financial analysis; financial consulting services, namely, expert analysis in finance; insurance consultancy; stock exchange quotations services; financial clearing houses; financing... (Int'l Class: 42) Updating of computer software; database development services, namely development, updating and maintenance	Principal Register	Published, April 12, 2022 Office Status: Published For Opposition

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TM Record	TM/AN/RN/Disclaimer	Disclaimer	Brief Goods/Services	Register Type	Status/Status Date
			of computer software and database systems; research and...		

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Int. Cls.: 9 and 16

Prior U.S. Cls.: 2, 5, 21, 22, 23, 26, 29, 36, 37, 38 and 50

United States Patent and Trademark Office

Reg. No. 1,970,781

Registered Apr. 30, 1996

TRADEMARK
PRINCIPAL REGISTER

AFTER EFFECTS

ALDUS CORPORATION (WASHINGTON CORPORATION)
411 FIRST AVENUE SOUTH
SEATTLE, WA 98104

FOR: COMPUTER SOFTWARE FOR USE IN TELEVISION, FILM AND VIDEO PRODUCTION; COMPUTER SOFTWARE FOR USE IN CONNECTION WITH THE CREATION AND EDITING OF GRAPHICS, MOTION GRAPHICS, FILM CLIPS, PHOTOGRAPHS, SPECIAL EFFECTS, AND COMPOSITE IMAGES; AND USERS' MANUALS SOLD AS A UNIT THEREWITH, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 1-4-1993; IN COMMERCE 1-4-1993.

FOR: COMPUTER SOFTWARE USERS' MANUALS AND BOOKS FOR USE IN FILM, BROADCAST AND VIDEO PRODUCTION, AND THE CREATION AND EDITING OF GRAPHICS, MOTION GRAPHICS, FILM CLIPS, PHOTOGRAPHS, SPECIAL EFFECTS, AND COMPOSITE IMAGES, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 1-4-1993; IN COMMERCE 1-4-1993.

SER. NO. 74-491,379, FILED 2-16-1994.

K. MARGARET LE, EXAMINING ATTORNEY

Int. Cls.: 9 and 16

Prior U.S. Cls.: 2, 5, 21, 22, 23, 26, 29, 36, 37, 38 and 50

United States Patent and Trademark Office

Reg. No. 1,970,781

Registered Apr. 30, 1996

TRADEMARK
PRINCIPAL REGISTER

AFTER EFFECTS

ALDUS CORPORATION (WASHINGTON CORPORATION)
411 FIRST AVENUE SOUTH
SEATTLE, WA 98104

FOR: COMPUTER SOFTWARE FOR USE IN TELEVISION, FILM AND VIDEO PRODUCTION; COMPUTER SOFTWARE FOR USE IN CONNECTION WITH THE CREATION AND EDITING OF GRAPHICS, MOTION GRAPHICS, FILM CLIPS, PHOTOGRAPHS, SPECIAL EFFECTS, AND COMPOSITE IMAGES; AND USERS' MANUALS SOLD AS A UNIT THEREWITH, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 1-4-1993; IN COMMERCE 1-4-1993.

FOR: COMPUTER SOFTWARE USERS' MANUALS AND BOOKS FOR USE IN FILM, BROADCAST AND VIDEO PRODUCTION, AND THE CREATION AND EDITING OF GRAPHICS, MOTION GRAPHICS, FILM CLIPS, PHOTOGRAPHS, SPECIAL EFFECTS, AND COMPOSITE IMAGES, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 1-4-1993; IN COMMERCE 1-4-1993.

SER. NO. 74-491,379, FILED 2-16-1994.

K. MARGARET LE, EXAMINING ATTORNEY

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Mark: AFTER EFFECTS

US Serial Number: 74491379

Application Filing Date: Feb. 16, 1994

US Registration Number: 1970781

Registration Date: Apr. 30, 1996

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor: LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office.

Status: The registration has been renewed.

Status Date: Mar. 31, 2016

Publication Date: Feb. 06, 1996

Mark Information

Mark Literal Elements: AFTER EFFECTS

Standard Character Claim: No

Mark Drawing Type: 1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)

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: computer software for use in television, film and video production; computer software for use in connection with the creation and editing of graphics, motion graphics, film clips, photographs, special effects, and composite images [; and users' manuals sold as a unit therewith]

International Class(es): 009 - Primary Class

U.S Class(es): 021, 023, 026, 036, 038

Class Status: ACTIVE

Basis: 1(a)

First Use: Jan. 04, 1993

Use in Commerce: Jan. 04, 1993

For: computer software users' manuals and books for use in film, broadcast and video production, and the creation and editing of graphics, motion graphics, film clips, photographs, special effects, and composite images

International Class(es): 016 - Primary Class

U.S Class(es): 002, 005, 022, 023, 029, 037, 038, 050

Class Status: ACTIVE

Basis: 1(a)

First Use: Jan. 04, 1993

Use in Commerce: Jan. 04, 1993

Basis Information (Case Level)

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

Current Owner(s) Information

Owner Name: ADOBE INC.

Owner Address: 345 PARK AVENUE
SAN JOSE, CALIFORNIA UNITED STATES 95110

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record - None

Correspondent

Correspondent Name/Address: J. SCOTT EVANS
ADOBE SYSTEMS INCORPORATED
801 NORTH 34TH STREET
LEGAL DEPT
SEATTLE, WASHINGTON UNITED STATES 98103

Phone: 408-536-6000

Fax: 206-675-6818

Correspondent e-mail: tm@adobe.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Oct. 14, 2020	NOTICE OF SUIT	
Jul. 06, 2020	NOTICE OF SUIT	
Jun. 25, 2020	NOTICE OF SUIT	
Mar. 24, 2020	NOTICE OF SUIT	
Jul. 09, 2019	NOTICE OF SUIT	
Oct. 17, 2018	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Feb. 27, 2018	NOTICE OF SUIT	
Feb. 27, 2018	NOTICE OF SUIT	
Mar. 31, 2016	NOTICE OF ACCEPTANCE OF SEC. 8 & 9 - E-MAILED	
Mar. 31, 2016	REGISTERED AND RENEWED (SECOND RENEWAL - 10 YRS)	67603
Mar. 31, 2016	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	67603
Mar. 21, 2016	TEAS SECTION 8 & 9 RECEIVED	
Mar. 21, 2016	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Mar. 11, 2016	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Mar. 11, 2016	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Aug. 27, 2015	NOTICE OF SUIT	
Jul. 09, 2015	NOTICE OF SUIT	
Apr. 24, 2015	NOTICE OF SUIT	
Apr. 08, 2015	NOTICE OF SUIT	
Dec. 12, 2014	NOTICE OF SUIT	
Oct. 01, 2014	NOTICE OF SUIT	
Sep. 18, 2014	NOTICE OF SUIT	

Aug. 26, 2014	NOTICE OF SUIT	
Aug. 20, 2014	NOTICE OF SUIT	
Aug. 15, 2014	NOTICE OF SUIT	
Aug. 13, 2014	NOTICE OF SUIT	
Jul. 02, 2014	NOTICE OF SUIT	
Apr. 18, 2014	NOTICE OF SUIT	
Sep. 03, 2013	NOTICE OF SUIT	
Jul. 25, 2013	NOTICE OF SUIT	
May 13, 2013	NOTICE OF SUIT	
Mar. 04, 2013	NOTICE OF SUIT	
Mar. 04, 2013	NOTICE OF SUIT	
Jan. 10, 2013	NOTICE OF SUIT	
May 02, 2012	NOTICE OF SUIT	
Mar. 22, 2012	NOTICE OF SUIT	
Mar. 21, 2012	NOTICE OF SUIT	
Jun. 15, 2011	NOTICE OF SUIT	
Jun. 10, 2011	NOTICE OF SUIT	
May 31, 2011	NOTICE OF SUIT	
Sep. 16, 2010	NOTICE OF SUIT	
Sep. 08, 2010	NOTICE OF SUIT	
Aug. 27, 2010	NOTICE OF SUIT	
Aug. 26, 2010	NOTICE OF SUIT	
Aug. 24, 2010	NOTICE OF SUIT	
Aug. 24, 2010	NOTICE OF SUIT	
Aug. 24, 2010	NOTICE OF SUIT	
Jul. 06, 2010	NOTICE OF SUIT	
Aug. 11, 2006	CASE FILE IN TICRS	
Jan. 13, 2006	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	67603
Jan. 13, 2006	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	
Dec. 08, 2005	ASSIGNED TO PARALEGAL	67603
Jul. 07, 2005	REGISTERED - COMBINED SECTION 8 (10-YR) & SEC. 9 FILED	
Jul. 07, 2005	TEAS SECTION 8 & 9 RECEIVED	
May 15, 2002	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	
Mar. 12, 2002	REGISTERED - SEC. 8 (6-YR) & SEC. 15 FILED	
Apr. 30, 1996	REGISTERED-PRINCIPAL REGISTER	
Feb. 06, 1996	PUBLISHED FOR OPPOSITION	
Jan. 05, 1996	NOTICE OF PUBLICATION	
Nov. 29, 1995	APPROVED FOR PUB - PRINCIPAL REGISTER	
Sep. 15, 1995	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Mar. 15, 1995	NON-FINAL ACTION MAILED	
Feb. 03, 1995	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Aug. 01, 1994	NON-FINAL ACTION MAILED	
Jul. 26, 1994	ASSIGNED TO EXAMINER	69803
Jul. 21, 1994	ASSIGNED TO EXAMINER	63031

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: GENERIC WEB UPDATE **Date in Location:** Mar. 31, 2016

Assignment Abstract Of Title Information

Summary

Total Assignments: 4 **Registrant:** Aldus Corporation

Assignment 1 of 4

Conveyance: MERGER

Reel/Frame: 1437/0001 **Pages:** 11

Date Recorded: Mar. 05, 1996

Supporting Documents: No Supporting Documents Available

Assignor

Name: ALDUS CORPORATION **Execution Date:** Aug. 25, 1995

Legal Entity Type: CORPORATION **State or Country Where Organized:** WASHINGTON

Assignee

Name: ADOBE SYSTEMS INCORPORATED

Legal Entity Type: CORPORATION **State or Country Where Organized:** CALIFORNIA

Address: 1585 CHARLESTON ROAD
MOUNTAIN VIEW, CALIFORNIA 94039

Correspondent

Correspondent Name: LYNNE E. GRAYBEAL

Correspondent Address: 1111 THIRD AVENUE
SUITE 3400
SEATTLE, WA 98101

Domestic Representative - Not Found

Assignment 2 of 4

Conveyance: MERGER

Reel/Frame: 1442/0043 **Pages:** 13

Date Recorded: Mar. 15, 1996

Supporting Documents: No Supporting Documents Available

Assignor

Name: ALDUS CORPORATION **Execution Date:** Aug. 25, 1995

Legal Entity Type: CORPORATION **State or Country Where Organized:** WASHINGTON

Assignee

Name: ADOBE SYSTEMS INCORPORATED

Legal Entity Type: CORPORATION **State or Country Where Organized:** CALIFORNIA

Address: 1585 CHARLESTON ROAD
MOUNTAIN VIEW, CALIFORNIA 94039

Correspondent

Correspondent Name: LYNNE E. GRAYBEAL

Correspondent Address: 1111 THIRD AVENUE
SUITE 3400
SEATTLE, WA 98101

Domestic Representative - Not Found

Assignment 3 of 4

Conveyance: MERGER

Reel/Frame: 1644/0086 **Pages:** 27

Date Recorded: Oct. 06, 1997

Supporting Documents: No Supporting Documents Available

Assignor

Name: ADOBE SYSTEMS INCORPORATED **Execution Date:** May 30, 1997

Legal Entity Type: CORPORATION **State or Country** CALIFORNIA

Where Organized:

Assignee

Name: ADOBE SYSTEMS INCORPORATED

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Address: 345 PARK AVENUE
SAN JOSE, CALIFORNIA 95110

Correspondent

Correspondent Name: GREGORY J. WRENN

Correspondent Address: 411 FIRST AVENUE SOUTH
SEATTLE, WA 98104

Domestic Representative - Not Found

Assignment 4 of 4

Conveyance: CHANGE OF NAME

Reel/Frame: 6454/0725

Pages: 10

Date Recorded: Oct. 11, 2018

Supporting Documents: assignment-tm-6454-0725.pdf

Assignor

Name: ADOBE SYSTEMS INCORPORATED

Execution Date: Oct. 08, 2018

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Assignee

Name: ADOBE INC.

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

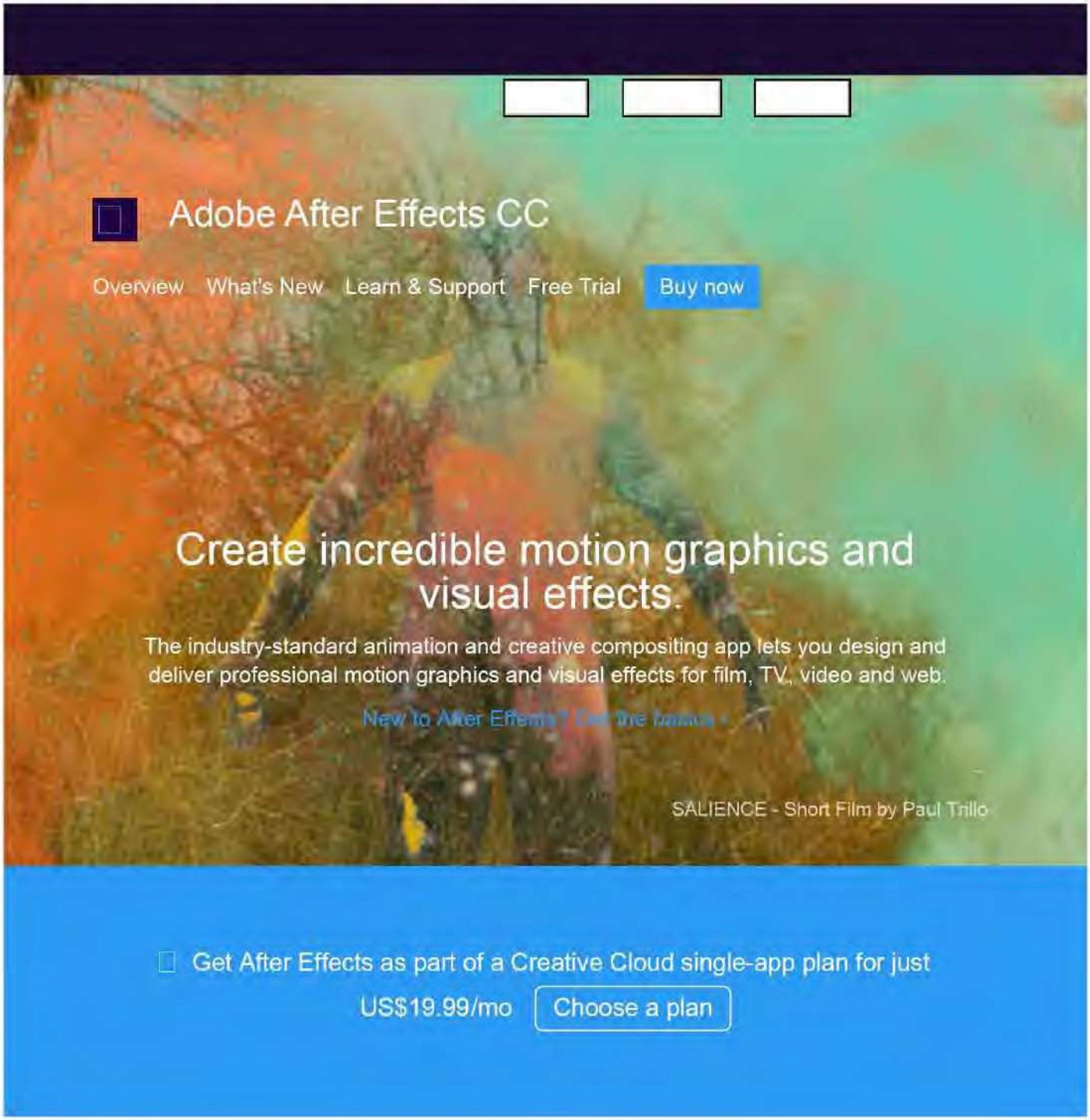
Address: 345 PARK AVENUE
SAN JOSE, CALIFORNIA 95110

Correspondent

Correspondent Name: J. SCOTT EVANS

Correspondent Address: 345 PARK AVENUE
SAN JOSE, CA 95110

Domestic Representative - Not Found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See how it works ›

Perfect while you preview — adjust a composition's properties and even resize panels without stopping playback.

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See how it works ›

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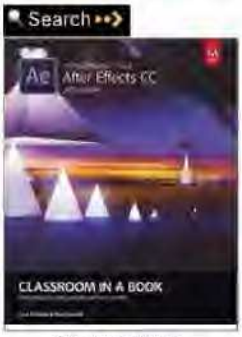

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By Jim Maivald

Book $47.99

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Book
ISBN-10: 0-13-430812-3
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Creative professionals who seek the fastest, easiest, most comprehensive way to learn Adobe After Effects CC (2015 release) choose this Classroom in a Book® from the best-selling series of hands-on software training workbooks. This series offers what no other book or training program does—an official training series from Adobe Systems Incorporated, developed with the support of Adobe product experts.

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Learn how to use Adobe After Effects CC to create, manipulate, and optimize motion graphics for film, video, DVD, the web, and mobile devices. Gain hands-on experience animating text and images, customizing a wide range of effects, rotoscoping, and correcting color. Learn to create 3D content with both After Effects and Maxon Cinema 4D Lite (included with the software).

What you need to use this product: Adobe After Effects CC (2015 release) software, for either Windows or Mac OS. (Software not included.)

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Mark: THE CUMULATIVE EFFECT

The Cumulative Effect

US Serial Number: 97070238

Application Filing Date: Oct. 12, 2021

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor: LIVE/APPLICATION/Awaiting Examination

The trademark application has been accepted by the Office (has met the minimum filing requirements) and has not yet been assigned to an examiner.

Status: New application will be assigned to an examining attorney approximately 6 months after filing date.

Status Date: Nov. 02, 2021

Mark Information

Mark Literal Elements: THE CUMULATIVE EFFECT

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: Digital books

International Class(es): 009 - Primary Class

U.S Class(es): 021, 023, 026, 036, 038

Class Status: ACTIVE

Basis: 1(b)

For: Hardcover books

International Class(es): 016 - Primary Class

U.S Class(es): 002, 005, 022, 023, 029, 037, 038, 050

Class Status: ACTIVE

Basis: 1(b)

Basis Information (Case Level)

Filed Use: No

Currently Use: No

Filed ITU: Yes

Currently ITU: Yes

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Lee, Anna

Owner Address: 8847 APPIAN WAY
Los Angeles, CALIFORNIA UNITED STATES 90046

Legal Entity Type: INDIVIDUAL **Citizenship:** UNITED STATES

Attorney/Correspondence Information

Attorney of Record - None

Correspondent

Correspondent Name/Address: LEE, ANNA
8847 APPIAN WAY
LOS ANGELES, CALIFORNIA UNITED STATES 90046

Correspondent e-mail: cleborn3@icloud.com tmapp@legalzoom.com **Correspondent e-mail Authorized:** Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Nov. 02, 2021	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: NEW APPLICATION PROCESSING **Date in Location:** Nov. 02, 2021

Int. Cls.: 9 and 16

Prior U.S. Cls.: 2, 5, 21, 22, 23, 26, 29, 36, 37, 38, and 50

Reg. No. 2,152,923

United States Patent and Trademark Office

Registered Apr. 21, 1998

TRADEMARK
PRINCIPAL REGISTER

THE MOZART EFFECT

DON CAMPBELL, INC. (COLORADO CORPORATION)
P.O. BOX 4179
BOULDER, CO 80306

FOR: PRE-RECORDED VIDEOTAPES, AUDIOTAPES, AND COMPACT DISCS FEATURING A COMBINATION OF NARRATION AND MUSIC ON THE SUBJECT OF THE USE OF MUSIC IN HEALTH AND EDUCATION, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 9-30-1997; IN COMMERCE 9-30-1997.

FOR: BOOKS AND PRINTED, INSTRUCTIONAL, EDUCATIONAL AND TEACHING MATERIALS ON THE SUBJECT OF THE USE OF MUSIC IN HEALTH AND EDUCATION, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 9-10-1997; IN COMMERCE 9-10-1997.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "MOZART", APART FROM THE MARK AS SHOWN.

SN 75-094,727, FILED 4-26-1996.

KATHERINE STOIDES, EXAMINING ATTORNEY

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Mark: THE MOZART EFFECT

US Serial Number: 75094727

Application Filing Date: Apr. 26, 1996

US Registration Number: 2152923

Registration Date: Apr. 21, 1998

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor: LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office.

Status: The registration has been renewed.

Status Date: Apr. 25, 2018

Publication Date: Dec. 03, 1996 **Notice of Allowance Date:** Feb. 25, 1997

Mark Information

Mark Literal Elements: THE MOZART EFFECT

Standard Character Claim: No

Mark Drawing Type: 1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)

Disclaimer: "MOZART"

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: [pre-recorded [videotapes,] audiotapes, and] compact discs featuring a combination of narration and music on the subject of the use of music in health and education

International Class(es): 009 - Primary Class

U.S Class(es): 021, 023, 026, 036, 038

Class Status: ACTIVE

Basis: 1(a)

First Use: Sep. 30, 1997

Use in Commerce: Sep. 30, 1997

For: books and printed, instructional, educational and teaching materials on the subject of the use of music in health and education

International Class(es): 016 - Primary Class

U.S Class(es): 002, 005, 022, 023, 029, 037, 038, 050

Class Status: ACTIVE

Basis: 1(a)

First Use: Sep. 10, 1997

Use in Commerce: Sep. 10, 1997

Basis Information (Case Level)

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

Current Owner(s) Information

Owner Name:	DON CAMPBELL, INC.		
Owner Address:	P.O. Box 4179 Boulder, COLORADO UNITED STATES 80306		
Legal Entity Type:	CORPORATION	**State or Country Where Organized:**	COLORADO

Attorney/Correspondence Information

Attorney of Record

Attorney Name:	Michael J. Andri	**Docket Number:**	DCI18401(2)
Attorney Primary Email Address:	TrademarkDocket@allemanhall.com	**Attorney Email Authorized:**	Yes

Correspondent

Correspondent Name/Address:	Michael J. Andri Alleman Hall Creasman & Tuttle LLP 900 SW 5th Ave. Suite 2300 Portland, OREGON UNITED STATES 97204		
Phone:	5035957300	**Fax:**	5035957301
Correspondent e-mail:	TrademarkDocket@allemanhall.com boyle@allemanhall.com andri@allemanhall.com	**Correspondent e-mail Authorized:**	Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Jul. 10, 2018	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Jul. 10, 2018	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Apr. 25, 2018	NOTICE OF ACCEPTANCE OF SEC. 8 & 9 - E-MAILED	
Apr. 25, 2018	REGISTERED AND RENEWED (SECOND RENEWAL - 10 YRS)	76874
Apr. 25, 2018	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	76874
Apr. 25, 2018	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	76874
Apr. 16, 2018	TEAS SECTION 8 & 9 RECEIVED	
Apr. 21, 2017	COURTESY REMINDER - SEC. 8 (10-YR)/SEC. 9 E-MAILED	
Oct. 17, 2007	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	75184
Oct. 17, 2007	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	
Aug. 21, 2007	ASSIGNED TO PARALEGAL	75184
Aug. 02, 2007	REGISTERED - COMBINED SECTION 8 (10-YR) & SEC. 9 FILED	
Aug. 02, 2007	TEAS SECTION 8 & 9 RECEIVED	
May 04, 2007	CASE FILE IN TICRS	
Feb. 18, 2004	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Sep. 24, 2003	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	
Aug. 05, 2003	REGISTERED - SEC. 8 (6-YR) & SEC. 15 FILED	
Aug. 05, 2003	PAPER RECEIVED	
Apr. 21, 1998	REGISTERED-PRINCIPAL REGISTER	

Mar. 02, 1998	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Mar. 02, 1998	ASSIGNED TO EXAMINER	67507
Feb. 24, 1998	STATEMENT OF USE PROCESSING COMPLETE	
Oct. 09, 1997	USE AMENDMENT FILED	
Jul. 11, 1997	SOU EXTENSION 1 GRANTED	
Jun. 13, 1997	SOU EXTENSION 1 FILED	
Feb. 25, 1997	NOA MAILED - SOU REQUIRED FROM APPLICANT	
Dec. 03, 1996	PUBLISHED FOR OPPOSITION	
Nov. 01, 1996	NOTICE OF PUBLICATION	
Sep. 20, 1996	APPROVED FOR PUB - PRINCIPAL REGISTER	
Sep. 12, 1996	EXAMINER'S AMENDMENT MAILED	
Sep. 11, 1996	ASSIGNED TO EXAMINER	67507

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: GENERIC WEB UPDATE **Date in Location:** Apr. 25, 2018

https://mozarteffect.labelstore.ca/releases/803057025725-the-mozart-effect-music-for-children-volume-2-rel...

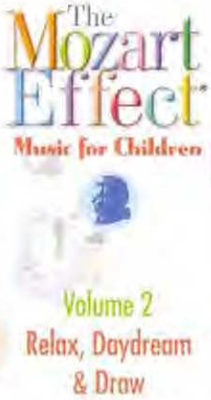
mozart effect resource center

ost Visited | Google Maps optpe... | helena.wald@gmail | AOL Mail | BizBanking | 7-Day Forecast for ... | Part Time Office Ad... | Bank of America | O... | Preferences passwo... | AmazonSmile: Onlin... | Facebook | PODCAST TRANSC...

The Mozart Effect

ALL PRODUCTS | CD | VINYL | DVD/BluRay | DIGITAL | MERCH | TICKETS | BUNDLE | Search...

The Mozart Effect: Music for Children Volume 2 - Relax, Daydream and Draw



The Mozart Effect: Music for Children Volume 2 - Relax, Daydream and Draw

The Mozart Effect

270257 | CD

PHYSICAL		
CD	US$11.99	Add to cart
DIGITAL		
FLAC	US$11.00	Add to cart
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mp3 | flac

1 Voi che sapete from... US$0.89
2 Cassation in G, K. 63... US$0.89
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5 Symphony No. 18 in F... US$0.89
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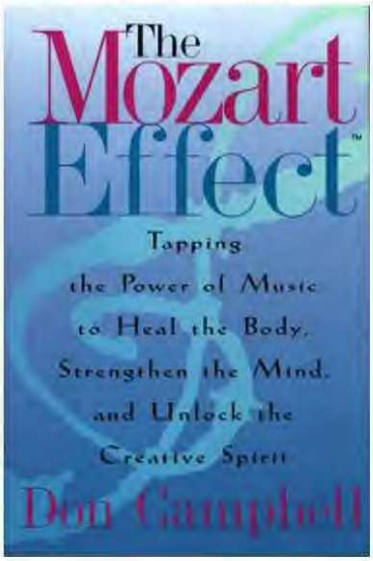
7 Sonatina No. 4: I. Andante... US$0.89
8 Serenade in D, K. 320... US$0.89
9 Das Kinderspeil, K.... US$0.89
10 Bassoon Concerto in... US$0.89
11 Clarinet Concerto, K... US$0.89
12 Marche Der Priester,... US$0.89

The Mozart Effect - Book



The Mozart Effect - Book
Don Campbell

Merchandise

MERCHANDISE
MERCHANDISE **US$31.00** Add to cart

United States of America

United States Patent and Trademark Office

GIRL EFFECT

Reg. No. 5,393,890

Registered Feb. 06, 2018

Int. Cl.: 9, 16, 25, 35, 36, 38, 41, 42, 43, 44, 45

Service Mark

Trademark

Principal Register

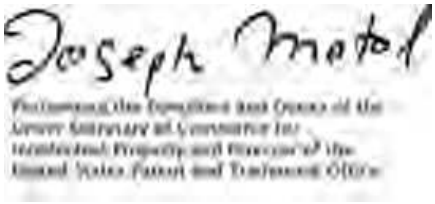
Girl Effect (ENGLAND private limited company)
17 Broadwick Street
Ingeni Building
London, ENGLAND W1F0DJ

CLASS 9: Downloadable electronic publications in the nature of electronic magazines, newsletters, leaflets, brochures, articles, policy briefs and reports in the fields of human rights, and girls' and women's rights, poverty and its relief, health and personal safety, sex and gender equality, sustainable development, good citizenship and social inclusion; downloadable information in electronic form, namely, electronic data files featuring information in the fields of human rights, and girls' and women's rights, poverty and its relief, health and personal safety, sex and gender equality, sustainable development, good citizenship and social inclusion; downloadable video and/or sound recordings relating to the fields of human rights, and girls' and women's rights, poverty and its relief, health and personal safety, sex and gender equality, sustainable development, good citizenship and social inclusion; software for the transmission and reception of messages and information and for social networking purposes; software for use with mobile devices for the transmission and reception of messages and information and for social networking purposes; CDs featuring music; DVDs featuring audio and video recordings relating to the fields of human rights, and girls' and women's rights, poverty and its relief, health and personal safety, sex and gender equality, sustainable development, good citizenship and social inclusion

CLASS 16: Printed matter, namely, paper and cardboard posters and banners relating to the fields of human rights, and girls' and women's rights, poverty and its relief, health and personal safety, sex and gender equality, sustainable development, good citizenship and social inclusion; printed publications, namely, magazines, newsletters, leaflets, brochures, articles, policy briefs and reports in the fields of human rights, and girls' and women's rights, poverty and its relief, health and personal safety, sex and gender equality, sustainable development, good citizenship and social inclusion; printed instructional and teaching material relating to the fields of human rights, and girls' and women's rights, poverty and its relief, health and personal safety, sex and gender equality, sustainable development, good citizenship and social inclusion

CLASS 25: Clothing, namely, tops, t-shirts, sweatshirts, jumpers, dresses, skirts, trousers, shorts, socks and jackets; footwear; headgear, namely, hats and caps

CLASS 35: Promotional and public awareness campaigns, namely, promoting public awareness of human rights, and girls' and women's rights, poverty and its relief, health and personal safety issues, sex and gender equality issues, sustainable development, good citizenship and social inclusion; public advocacy services to promote awareness of human rights, and girls' and women's rights, poverty and its relief, health and personal safety issues, sex and gender equality issues, sustainable development, good citizenship and social inclusion; business services in relation to corporate social responsibility, namely, business



consulting services that provide strategies to companies wishing to move towards socially-responsible business practices; advisory, consultancy and information services relating to all the aforesaid; Public policy research in relation to the social sciences

CLASS 36: Charitable fundraising; arranging charitable collections, namely, accepting and administering monetary charitable contributions; management and monitoring of charitable funds and payment of funds to charity; financial grant making, namely, providing grants for charitable use in the fields of human rights, and girls' and women's rights, poverty and its relief, health and personal safety issues, sex and gender equality issues, sustainable development, good citizenship and social inclusion; financial sponsorship in respect of charitable activities in the fields of human rights, and girls' and women's rights, poverty and its relief, health and personal safety issues, sex and gender equality issues, sustainable development, good citizenship and social inclusion; advisory, consultancy and information services in relation to money and finance; advisory, consultancy and information services in relation to permanent accommodation

CLASS 38: Telecommunication services, namely, providing personal communications services and provision of communications services over electronic networks; broadcasting television, radio and internet broadcasting and broadcasting over electronic communications networks; broadcasting of radio and television programs; internet forums for social networking, namely, providing online forums for social networking purposes; advisory, consultancy and information services relating to all the aforesaid

CLASS 41: Education, namely, providing courses, seminars, classes and workshops in the fields of human rights, and girls' and women's rights, poverty and its relief, health and personal safety, sex and gender equality, sustainable development, good citizenship and social inclusion; training services in the fields of human rights, and girls' and women's rights, poverty and its relief, health and personal safety issues, sex and gender equality issues, sustainable development, good citizenship and social inclusion; entertainment, namely, providing musical performances by a musical group; organizing of conferences, seminars, courses, and workshops in the fields of human rights, and girls' and women's rights, poverty and its relief, health and personal safety issues, sex and gender equality issues, sustainable development, good citizenship and social inclusion; providing recognition and incentives by the way of awards to recognize achievement in the fields of human rights, and girls' and women's rights, poverty and its relief, health and personal safety issues, sex and gender equality issues, sustainable development, good citizenship and social inclusion; sporting and cultural activities, namely, organizing community sporting and cultural events; production of audio and/or video recordings, and radio and television programs; publishing of magazines, newsletters, leaflets, brochures, articles, policy briefs and reports; online electronic publishing of magazines, newsletters, leaflets, brochures, articles, policy briefs and reports; provision of non-downloadable electronic publications in the nature of web pages in the fields of human rights, and girls' and women's rights, poverty and its relief, health and personal safety issues, sex and gender equality issues, sustainable development, good citizenship and social inclusion; advisory, consultancy and information services relating to all the aforesaid; Educational research in relation to the social sciences

CLASS 42: Scientific research in relation to the social sciences; scientific research in relation to the social sciences, namely, longitudinal studies and insights gathering; providing technical and scientific information services in the fields of the environment, environmental conservation, climate change and green innovation; provision of temporary use of non-downloadable software for use in education and communications for the transmission and reception of messages and information and for social networking purposes; advisory, consultancy and information services relating to all the aforesaid; Medical research in relation to the social sciences

CLASS 43: Provision of food and drink including for poverty, famine and disaster relief purposes; provision of temporary accommodation including emergency accommodation and emergency shelter; child care services; providing meeting facilities; advisory, consultancy and information services relating to all the aforesaid

CLASS 44: Health care services including mental healthcare services; advisory, consultancy and information in relation to health and mental health; psychological and mental health

counselling services; healthcare advisory, consultancy and information services in the fields of contraception, reproduction and reproductive rights; provision of immunizations; advisory, consultancy and information services relating to all the aforesaid

CLASS 45: Legal research in relation to the social sciences; legal services and legal advisory services; advisory, consultancy and information services in relation to legal and civil rights; mediation and dispute resolution services; political lobbying services; pastoral counseling services; social services, namely, providing companionship for young people; social services in the nature of case management services for the coordination of legal, social, healthcare and psychological services for young people; security services, and advisory, consultancy and information services in relation to personal security and personal safety and child safety; advisory, consultancy and information services relating to all the aforesaid

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

PRIORITY CLAIMED UNDER SEC. 44(D) ON EUROPEAN UNION APPLICATION NO. 015179229, FILED 03-02-2016, REG. NO. 015179229, DATED 07-27-2016, EXPIRES 03-02-2026

No claim is made to the exclusive right to use the following apart from the mark as shown: "GIRL"

SER. NO. 86-932,953, FILED 03-08-2016

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years*
What and When to File:

- ***First Filing Deadline:*** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

- ***Second Filing Deadline:*** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*
What and When to File:

- You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see http://www.wipo.int/madrid/en/.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at http://www.uspto.gov.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at http://www.uspto.gov.

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Mark: GIRL EFFECT

GIRL EFFECT

US Serial Number:	86932953	**Application Filing Date:**	Mar. 08, 2016
US Registration Number:	5393890	**Registration Date:**	Feb. 06, 2018
Filed as TEAS RF:	Yes	**Currently TEAS RF:**	Yes
Register:	Principal		
Mark Type:	Trademark, Service Mark		
TM5 Common Status Descriptor:	LIVE/REGISTRATION/Issued and Active The trademark application has been registered with the Office.		
Status:	Registered. The registration date is used to determine when post-registration maintenance documents are due.		
Status Date:	Feb. 06, 2018		

Publication Date: Nov. 21, 2017

Mark Information

Mark Literal Elements:	GIRL EFFECT
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
Disclaimer:	"GIRL"

Foreign Information

Priority Claimed:	Yes		
Foreign Application Number:	015179229	**Foreign Application Filing Date:**	Mar. 02, 2016
Foreign Registration Number:	015179229	**Foreign Registration Date:**	Jul. 27, 2016
Foreign Application/Registration Country:	EUROPEAN UNION	**Foreign Expiration Date:**	Mar. 02, 2026

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: Downloadable electronic publications in the nature of electronic magazines, newsletters, leaflets, brochures, articles, policy briefs and reports in the fields of human rights, and girls' and women's rights, poverty and its relief, health and personal safety, sex and gender equality, sustainable development, good citizenship and social inclusion; downloadable information in electronic form, namely, electronic data files featuring information in the fields of human rights, and girls' and women's rights, poverty and its relief, health and personal safety, sex and gender equality, sustainable development, good citizenship and social inclusion; downloadable video and/or

sound recordings relating to the fields of human rights, and girls' and women's rights, poverty and its relief, health and personal safety, sex and gender equality, sustainable development, good citizenship and social inclusion; software for the transmission and reception of messages and information and for social networking purposes; software for use with mobile devices for the transmission and reception of messages and information and for social networking purposes; CDs featuring music; DVDs featuring audio and video recordings relating to the fields of human rights, and girls' and women's rights, poverty and its relief, health and personal safety, sex and gender equality, sustainable development, good citizenship and social inclusion

International Class(es): 009 - Primary Class **U.S Class(es):** 021, 023, 026, 036, 038

Class Status: ACTIVE

Basis: 44(e)

For: Printed matter, namely, paper and cardboard posters and banners relating to the fields of human rights, and girls' and women's rights, poverty and its relief, health and personal safety, sex and gender equality, sustainable development, good citizenship and social inclusion; printed publications, namely, magazines, newsletters, leaflets, brochures, articles, policy briefs and reports in the fields of human rights, and girls' and women's rights, poverty and its relief, health and personal safety, sex and gender equality, sustainable development, good citizenship and social inclusion; printed instructional and teaching material relating to the fields of human rights, and girls' and women's rights, poverty and its relief, health and personal safety, sex and gender equality, sustainable development, good citizenship and social inclusion

International Class(es): 016 - Primary Class **U.S Class(es):** 002, 005, 022, 023, 029, 037, 038, 050

Class Status: ACTIVE

Basis: 44(e)

For: Clothing, namely, tops, t-shirts, sweatshirts, jumpers, dresses, skirts, trousers, shorts, socks and jackets; footwear; headgear, namely, hats and caps

International Class(es): 025 - Primary Class **U.S Class(es):** 022, 039

Class Status: ACTIVE

Basis: 44(e)

For: Promotional and public awareness campaigns, namely, promoting public awareness of human rights, and girls' and women's rights, poverty and its relief, health and personal safety issues, sex and gender equality issues, sustainable development, good citizenship and social inclusion; public advocacy services to promote awareness of human rights, and girls' and women's rights, poverty and its relief, health and personal safety issues, sex and gender equality issues, sustainable development, good citizenship and social inclusion; business services in relation to corporate social responsibility, namely, business consulting services that provide strategies to companies wishing to move towards socially-responsible business practices; advisory, consultancy and information services relating to all the aforesaid; Public policy research in relation to the social sciences

International Class(es): 035 - Primary Class **U.S Class(es):** 100, 101, 102

Class Status: ACTIVE

Basis: 44(e)

For: Charitable fundraising; arranging charitable collections, namely, accepting and administering monetary charitable contributions; management and monitoring of charitable funds and payment of funds to charity; financial grant making, namely, providing grants for charitable use in the fields of human rights, and girls' and women's rights, poverty and its relief, health and personal safety issues, sex and gender equality issues, sustainable development, good citizenship and social inclusion; financial sponsorship in respect of charitable activities in the fields of human rights, and girls' and women's rights, poverty and its relief, health and personal safety issues, sex and gender equality issues, sustainable development, good citizenship and social inclusion; advisory, consultancy and information services in relation to money and finance; advisory, consultancy and information services in relation to permanent accommodation

International Class(es): 036 - Primary Class **U.S Class(es):** 100, 101, 102

Class Status: ACTIVE

Basis: 44(e)

For: Telecommunication services, namely, providing personal communications services and provision of communications services over electronic networks; broadcasting television, radio and internet broadcasting and broadcasting over electronic communications networks; broadcasting of radio and television programs; internet forums for social networking, namely, providing online forums for social networking purposes; advisory, consultancy and information services relating to all the aforesaid

International Class(es): 038 - Primary Class **U.S Class(es):** 100, 101, 104

Class Status: ACTIVE

Basis: 44(e)

For: Education, namely, providing courses, seminars, classes and workshops in the fields of human rights, and girls' and women's rights, poverty and its relief, health and personal safety, sex and gender equality, sustainable development, good citizenship and social inclusion; training services in the fields of human rights, and girls' and women's rights, poverty and its relief, health and personal safety issues, sex and gender equality issues, sustainable development, good citizenship and social inclusion; entertainment, namely, providing musical performances by a musical group; organizing of conferences, seminars, courses, and workshops in the fields of

human rights, and girls' and women's rights, poverty and its relief, health and personal safety issues, sex and gender equality issues, sustainable development, good citizenship and social inclusion; providing recognition and incentives by the way of awards to recognize achievement in the fields of human rights, and girls' and women's rights, poverty and its relief, health and personal safety issues, sex and gender equality issues, sustainable development, good citizenship and social inclusion; sporting and cultural activities, namely, organizing community sporting and cultural events; production of audio and/or video recordings, and radio and television programs; publishing of magazines, newsletters, leaflets, brochures, articles, policy briefs and reports; online electronic publishing of magazines, newsletters, leaflets, brochures, articles, policy briefs and reports; provision of non-downloadable electronic publications in the nature of web pages in the fields of human rights, and girls' and women's rights, poverty and its relief, health and personal safety issues, sex and gender equality issues, sustainable development, good citizenship and social inclusion; advisory, consultancy and information services relating to all the aforesaid; Educational research in relation to the social sciences

International Class(es): 041 - Primary Class **U.S Class(es):** 100, 101, 107

Class Status: ACTIVE

Basis: 44(e)

For: Scientific research in relation to the social sciences; scientific research in relation to the social sciences, namely, longitudinal studies and insights gathering; providing technical and scientific information services in the fields of the environment, environmental conservation, climate change and green innovation; provision of temporary use of non-downloadable software for use in education and communications for the transmission and reception of messages and information and for social networking purposes; advisory, consultancy and information services relating to all the aforesaid; Medical research in relation to the social sciences

International Class(es): 042 - Primary Class **U.S Class(es):** 100, 101

Class Status: ACTIVE

Basis: 44(e)

For: Provision of food and drink including for poverty, famine and disaster relief purposes; provision of temporary accommodation including emergency accommodation and emergency shelter; child care services; providing meeting facilities; advisory, consultancy and information services relating to all the aforesaid

International Class(es): 043 - Primary Class **U.S Class(es):** 100, 101

Class Status: ACTIVE

Basis: 44(e)

For: Health care services including mental healthcare services; advisory, consultancy and information in relation to health and mental health; psychological and mental health counselling services; healthcare advisory, consultancy and information services in the fields of contraception, reproduction and reproductive rights; provision of immunizations; advisory, consultancy and information services relating to all the aforesaid

International Class(es): 044 - Primary Class **U.S Class(es):** 100, 101

Class Status: ACTIVE

Basis: 44(e)

For: Legal research in relation to the social sciences; legal services and legal advisory services; advisory, consultancy and information services in relation to legal and civil rights; mediation and dispute resolution services; political lobbying services; pastoral counseling services; social services, namely, providing companionship for young people; social services in the nature of case management services for the coordination of legal, social, healthcare and psychological services for young people; security services, and advisory, consultancy and information services in relation to personal security and personal safety and child safety; advisory, consultancy and information services relating to all the aforesaid

International Class(es): 045 - Primary Class **U.S Class(es):** 100, 101

Class Status: ACTIVE

Basis: 44(e)

Basis Information (Case Level)

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

Current Owner(s) Information

Owner Name: Girl Effect

Owner Address: 17 Broadwick Street
Ingeni Building
LONDON ENGLAND W1F0DJ

Legal Entity Type: private limited company

State or Country Where Organized: ENGLAND

Attorney/Correspondence Information

Attorney of Record

Attorney Name: David M. Abrahams

Docket Number: BWB-GE

Attorney Primary Email Address: trademarks@wc-b.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: DAVID M. ABRAHAMS
WEBSTER, CHAMBERLAIN & BEAN, LLP
1747 PENNSYLVANIA AVENUE, N.W.
SUITE 1000
WASHINGTON, DISTRICT OF COLUMBIA UNITED STATES 20006

Phone: (202) 785-9500

Fax: (202) 835-0243

Correspondent e-mail: trademarks@wc-b.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Feb. 06, 2018	REGISTERED-PRINCIPAL REGISTER	
Nov. 21, 2017	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Nov. 21, 2017	PUBLISHED FOR OPPOSITION	
Nov. 01, 2017	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Oct. 13, 2017	LAW OFFICE PUBLICATION REVIEW COMPLETED	70884
Oct. 10, 2017	APPROVED FOR PUB - PRINCIPAL REGISTER	
Sep. 18, 2017	EXAMINER'S AMENDMENT ENTERED	88888
Sep. 18, 2017	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Sep. 18, 2017	EXAMINERS AMENDMENT E-MAILED	6328
Sep. 18, 2017	EXAMINERS AMENDMENT -WRITTEN	72152
Sep. 13, 2017	PREVIOUS ALLOWANCE COUNT WITHDRAWN	
Sep. 12, 2017	WITHDRAWN FROM PUB - OG REVIEW QUERY	99910
Aug. 29, 2017	APPROVED FOR PUB - PRINCIPAL REGISTER	
Aug. 11, 2017	EXAMINER'S AMENDMENT ENTERED	88888
Aug. 11, 2017	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Aug. 11, 2017	EXAMINERS AMENDMENT E-MAILED	6328
Aug. 11, 2017	EXAMINERS AMENDMENT -WRITTEN	72152
Jun. 26, 2017	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Jun. 26, 2017	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Feb. 22, 2017	NOTIFICATION OF FINAL REFUSAL EMAILED	
Feb. 22, 2017	FINAL REFUSAL E-MAILED	
Feb. 22, 2017	FINAL REFUSAL WRITTEN	72152
Feb. 10, 2017	PRELIMINARY/VOLUNTARY AMENDMENT - ENTERED	70884
Feb. 08, 2017	TEAS VOLUNTARY AMENDMENT RECEIVED	
Feb. 06, 2017	TEAS/EMAIL CORRESPONDENCE ENTERED	70884
Feb. 06, 2017	CORRESPONDENCE RECEIVED IN LAW OFFICE	70884
Feb. 02, 2017	TEAS VOLUNTARY AMENDMENT RECEIVED	
Jan. 24, 2017	TEAS/EMAIL CORRESPONDENCE ENTERED	70884
Jan. 24, 2017	CORRESPONDENCE RECEIVED IN LAW OFFICE	70884
Jan. 20, 2017	ASSIGNED TO LIE	70884

Dec. 27, 2016	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Jun. 27, 2016	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Jun. 27, 2016	NON-FINAL ACTION E-MAILED	6325
Jun. 27, 2016	NON-FINAL ACTION WRITTEN	72152
Jun. 20, 2016	ASSIGNED TO EXAMINER	72152
Mar. 14, 2016	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Mar. 11, 2016	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION **Date in Location:** Feb. 06, 2018

Int. Cls.: 9, 16, 28, and 41

Prior U.S. Cls.: 2, 5, 21, 22, 23, 26, 29, 36, 37, 38, 50, 100, 101, and 107

Reg. No. 3,423,385

United States Patent and Trademark Office

Registered May 6, 2008

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER

BIOWARE CORP. (CANADA CORPORATION)
4445 CALGARY TRAIL, SUITE 200
EDMONTON, ALBERTA T6H 5R7, CANADA

FOR: COMPUTER GAME SOFTWARE, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 10-0-2005; IN COMMERCE 10-0-2005.

FOR: PRINTED MATERIALS, NAMELY, INSTRUCTION MANUALS AND STRATEGY GUIDES FOR PLAYING COMPUTER GAMES, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 11-20-2007; IN COMMERCE 11-20-2007.

FOR: TOYS AND GAMES, NAMELY, ACTION FIGURES AND ACTION FIGURE ACCESSORIES, IN CLASS 28 (U.S. CLS. 22, 23, 38 AND 50).

FIRST USE 11-20-2007; IN COMMERCE 11-20-2007.

FOR: ENTERTAINMENT SERVICES, NAMELY, ON-LINE INTERACTIVE GAME PROVIDED BY MEANS OF A GLOBAL COMPUTER NETWORK, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 10-0-2005; IN COMMERCE 10-0-2005.

SN 76-978,645, FILED 10-17-2005.

DAVID HOFFMAN, EXAMINING ATTORNEY

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Mark: MASS EFFECT

US Serial Number:	76978645	**Application Filing Date:**	Oct. 17, 2005
US Registration Number:	3423385	**Registration Date:**	May 06, 2008
Register:	Principal		
Mark Type:	Trademark, Service Mark		
TM5 Common Status Descriptor:		LIVE/REGISTRATION/Issued and Active The trademark application has been registered with the Office.	
Status:	The registration has been renewed.		
Status Date:	Apr. 30, 2018		

Publication Date: Oct. 23, 2007 **Notice of Allowance Date:** Jan. 15, 2008

Mark Information

Mark Literal Elements:	MASS EFFECT
Standard Character Claim:	No
Mark Drawing Type:	3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)
Color(s) Claimed:	Color is not claimed as a feature of the mark.
Design Search Code(s):	26.17.25 - Other lines, bands or bars

Related Properties Information

Child Of: 76648525

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:	Computer game software		
International Class(es):	009 - Primary Class	**U.S Class(es):**	021, 023, 026, 036, 038
Class Status:	ACTIVE		
Basis:	1(a)		
First Use:	Oct. 2005	**Use in Commerce:**	Oct. 2005

For:	Printed materials, namely, instruction manuals and strategy guides for playing computer games		
International Class(es):	016 - Primary Class	**U.S Class(es):**	002, 005, 022, 023, 029, 037, 038, 050
Class Status:	ACTIVE		

Basis:	1(a)		
First Use:	Nov. 20, 2007	**Use in Commerce:**	Nov. 20, 2007

For:	Toys and games, namely, action figures and action figure accessories		
International Class(es):	028 - Primary Class	**U.S Class(es):**	022, 023, 038, 050
Class Status:	ACTIVE		
Basis:	1(a)		
First Use:	Nov. 20, 2007	**Use in Commerce:**	Nov. 20, 2007

For:	Entertainment services, namely, on-line interactive game provided by means of a global computer network		
International Class(es):	041 - Primary Class	**U.S Class(es):**	100, 101, 107
Class Status:	ACTIVE		
Basis:	1(a)		
First Use:	Oct. 2005	**Use in Commerce:**	Oct. 2005

Basis Information (Case Level)

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

Current Owner(s) Information

Owner Name:	ELECTRONIC ARTS INC.		
Owner Address:	209 REDWOOD SHORES PARKWAY LEGAL DEPARTMENT REDWOOD CITY, CALIFORNIA UNITED STATES 94065		
Legal Entity Type:	COMPANY	**State or Country Where Organized:**	DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name:	Vineeta Gajwani		
Attorney Primary Email Address:	trademarks@ea.com	**Attorney Email Authorized:**	Yes

Correspondent

Correspondent Name/Address:	Vineeta Gajwani ELECTRONIC ARTS INC. 209 REDWOOD SHORES PARKWAY Legal Department REDWOOD CITY, CALIFORNIA UNITED STATES 94065		
Phone:	650-628-1500	**Fax:**	650-628-1422
Correspondent e-mail:	trademarks@ea.com	**Correspondent e-mail Authorized:**	Yes

Domestic Representative

Domestic Representative Name:	Jacob J. Schatz	**Phone:**	650-628-1500
Fax:	650-628-1422		
Domestic Representative e-mail:	jschatz@ea.com	**Domestic Representative e-mail Authorized:**	Yes

Prosecution History

Date	Description	Proceeding Number
Apr. 30, 2018	NOTICE OF ACCEPTANCE OF SEC. 8 & 9 - E-MAILED	
Apr. 30, 2018	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	76293
Apr. 30, 2018	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	76293
Mar. 28, 2018	TEAS RESPONSE TO OFFICE ACTION-POST REG RECEIVED	
Mar. 26, 2018	TEAS SECTION 8 & 9 RECEIVED	
Mar. 21, 2018	POST REGISTRATION ACTION MAILED - SEC. 8 & 9	76293
Mar. 18, 2018	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	76293
Mar. 06, 2018	TEAS SECTION 8 & 9 RECEIVED	
May 06, 2017	COURTESY REMINDER - SEC. 8 (10-YR)/SEC. 9 E-MAILED	
Aug. 31, 2016	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Jul. 16, 2013	NOTICE OF ACCEPTANCE OF SEC. 8 & 15 - E-MAILED	
Jul. 16, 2013	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	71378
Jul. 16, 2013	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	71378
Jul. 02, 2013	TEAS SECTION 8 & 15 RECEIVED	
May 16, 2008	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
May 16, 2008	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
May 16, 2008	WITHDRAWAL OF ATTORNEY GRANTED	
May 16, 2008	TEAS WITHDRAWAL OF ATTORNEY RECEIVED	
May 14, 2008	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
May 06, 2008	REGISTERED-PRINCIPAL REGISTER	
Apr. 09, 2008	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Mar. 28, 2008	LAW OFFICE REGISTRATION REVIEW COMPLETED	76529
Mar. 28, 2008	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Mar. 10, 2008	STATEMENT OF USE PROCESSING COMPLETE	64657
Feb. 08, 2008	USE AMENDMENT FILED	64657
Feb. 08, 2008	PAPER RECEIVED	
Jan. 15, 2008	NOA MAILED - SOU REQUIRED FROM APPLICANT	
Oct. 23, 2007	PUBLISHED FOR OPPOSITION	
Oct. 03, 2007	NOTICE OF PUBLICATION	
Sep. 20, 2007	LAW OFFICE PUBLICATION REVIEW COMPLETED	76529
Sep. 20, 2007	ASSIGNED TO LIE	76529
Aug. 21, 2007	NOTICE OF DIVIDED TRADEMARK APPLICATION MAILED	
Aug. 15, 2007	APPROVED FOR PUB - PRINCIPAL REGISTER	
Aug. 15, 2007	DIVISIONAL PROCESSING COMPLETE	
Jul. 16, 2007	DIVISIONAL REQUEST RECEIVED	
Aug. 01, 2007	AMENDMENT FROM APPLICANT ENTERED	78287
Jul. 16, 2007	CORRESPONDENCE RECEIVED IN LAW OFFICE	78287
Aug. 01, 2007	ASSIGNED TO LIE	78287
Jul. 16, 2007	PAPER RECEIVED	
May 17, 2007	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	
Nov. 17, 2006	LETTER OF SUSPENSION MAILED	
Nov. 16, 2006	SUSPENSION LETTER WRITTEN	81855
Oct. 27, 2006	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Oct. 25, 2006	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Oct. 25, 2006	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Apr. 27, 2006	NON-FINAL ACTION MAILED	
Apr. 27, 2006	NON-FINAL ACTION WRITTEN	81855
Apr. 20, 2006	ASSIGNED TO EXAMINER	81855
Oct. 21, 2005	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location:	GENERIC WEB UPDATE	**Date in Location:**	Apr. 30, 2018

Assignment Abstract Of Title Information

Summary

Total Assignments:	3	**Registrant:**	BioWare Corp.

Assignment 1 of 3

Conveyance:	AMALGAMATION		
Reel/Frame:	3751/0368	**Pages:**	17
Date Recorded:	Apr. 02, 2008		
Supporting Documents:	assignment-tm-3751-0368.pdf		

Assignor

Name:	BIOWARE CORP.	**Execution Date:**	Feb. 19, 2008
Legal Entity Type:	CORPORATION	**State or Country Where Organized:**	CANADA

Assignee

Name:	BIOWARE ULC		
Legal Entity Type:	UNLIMITED LIABILITY CORPORATION	**State or Country Where Organized:**	ALBERTA
Address:	1200, 700 - 2ND STREET SW CALGARY, ALBERTA, CANADA T2P 4V5		

Correspondent

Correspondent Name:	JAMES R. MEYER
Correspondent Address:	SCHNADER HARRISON SEGAL & LEWIS LLP 1600 MARKET STREET, SUITE 3600 PHILADELPHIA, PA 19103

Domestic Representative

Domestic Representative Name:	JAMES R. MEYER
Domestic Representative Address:	SCHNADER HARRISON SEGAL & LEWIS LLP 1600 MARKET STREET PHILADELPHIA, PA 19103

Assignment 2 of 3

Conveyance:	ASSIGNS THE ENTIRE INTEREST		
Reel/Frame:	3775/0613	**Pages:**	18
Date Recorded:	May 12, 2008		
Supporting Documents:	assignment-tm-3775-0613.pdf		

Assignor

Name:	BIOWARE ULC	**Execution Date:**	Apr. 08, 2008
Legal Entity Type:	UNLIMITED LIABILITY CORPORATION	**State or Country Where Organized:**	ALBERTA

Assignee

Name:	EA INTERNATIONAL (STUDIO AND PUBLISHING) LTD.		
Legal Entity Type:	EXEMPTED COMPANY	**State or Country Where Organized:**	BERMUDA
Address:	CLARENDON HOUSE 2 CHURCH STREET HAMILTON, BERMUDA HM11		

Correspondent

Correspondent Name:	JAMES R. MEYER
Correspondent Address:	SCHNADER HARRISON SEGAL & LEWIS LLP 1600 MARKET STREET, SUITE 3600 PHILADELPHIA, PA 19103

Domestic Representative

Domestic Representative Name:	JAMES R. MEYER
Domestic Representative Address:	SCHNADER HARRISON SEGAL & LEWIS LLP 1600 MARKET STREET, SUITE 3600 PHILADELPHIA, PA 19103

Assignment 3 of 3

Conveyance:	ASSIGNS THE ENTIRE INTEREST		
Reel/Frame:	5862/0326	**Pages:**	10
Date Recorded:	Aug. 23, 2016		
Supporting Documents:	assignment-tm-5862-0326.pdf		

Assignor

Name:	EA INTERNATIONAL (STUDIO AND PUBLISHING) LTD.	**Execution Date:**	Aug. 09, 2016
Legal Entity Type:	COMPANY	**State or Country Where Organized:**	BERMUDA

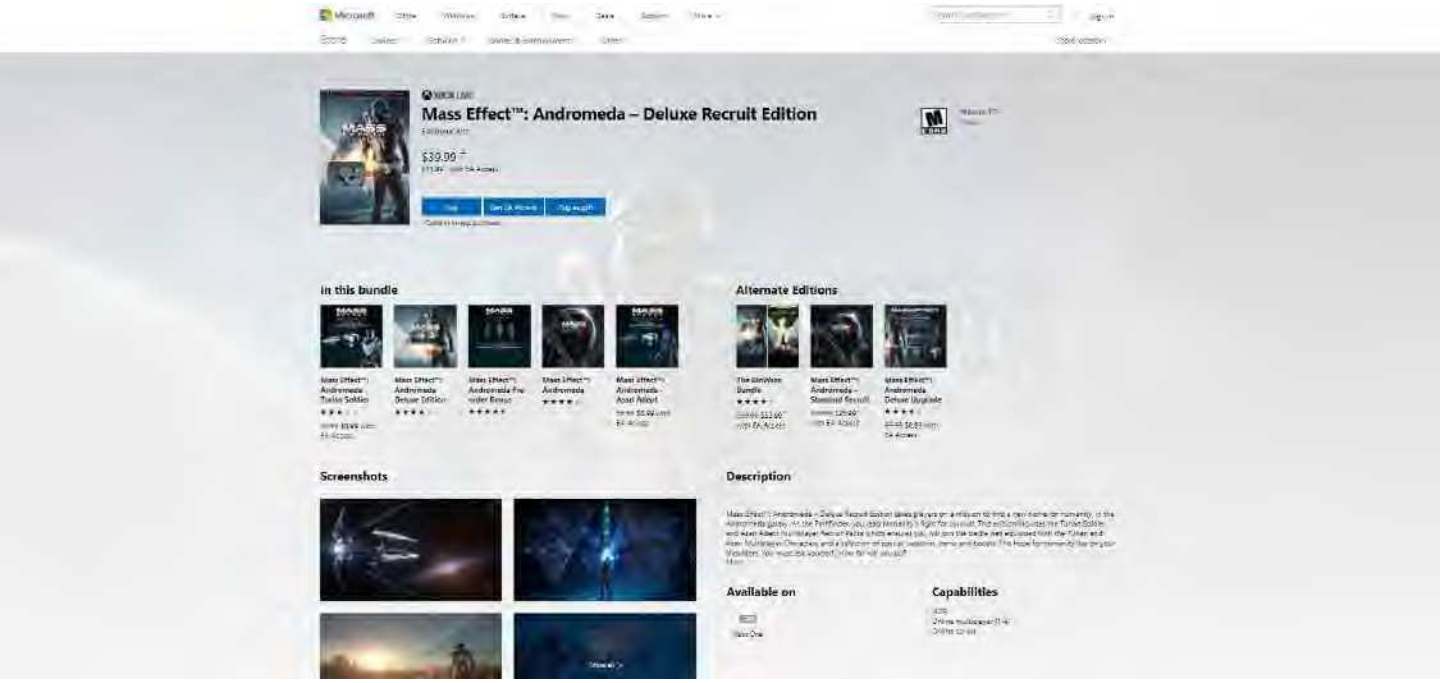
Assignee

Name:	ELECTRONIC ARTS INC.		
Legal Entity Type:	COMPANY	**State or Country Where Organized:**	DELAWARE
Address:	209 REDWOOD SHORES PARKWAY LEGAL DEPARTMENT REDWOOD CITY, CALIFORNIA 94065		

Correspondent

Correspondent Name:	VINEETA GAJWANI
Correspondent Address:	209 REDWOOD SHORES PARKWAY ELECTRONIC ARTS INC. - LEGAL REDWOOD CITY, CA 94065

Domestic Representative - Not Found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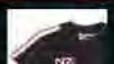

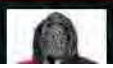

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- Digital soundtrack
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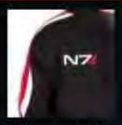

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MULTIPLAYER IN MASS EFFECT: ANDROMEDA

Welcome back to the *Mass Effect™: Andromeda* gameplay series! In our previous videos, we took a look at weapons and skills, crafting and upgrades, and exploration and discovery.

In the video below, we'll dive into multiplayer, which enables you to take on new adventures and further challenges beyond the single player campaign.

United States of America

United States Patent and Trademark Office

THE REP EFFECT

Reg. No. 4,216,356

Registered Oct. 2, 2012

Int. Cls.: 9, 16, 28 and 41

TRADEMARK

SERVICE MARK

PRINCIPAL REGISTER

LES MILLS INTERNATIONAL LIMITED (NEW ZEALAND LIMITED LIABILITY COMPANY)
22 CENTRE STREET
AUCKLAND, NEW ZEALAND 1010

FOR: AUDIO AND VIDEO RECORDINGS, NAMELY, PRE-RECORDED COMPACT DISCS, DIGITAL VIDEO DISCS, CD ROMS AND DIGITAL FILES ALL FEATURING FITNESS AND HEALTH CLUB RELATED PROGRAMS INCORPORATING AUDIO-VISUAL TEACHING RESOURCES IN THE NATURE OF DIGITAL FILES, GRAPHICS, TEXT, MUSIC AND INFORMATION RELATED TO FITNESS AND HEALTH CLUB RELATED PROGRAMS AND RECORDED SEMINARS AND PRESENTATIONS RELATED TO FITNESS AND HEALTH CLUB PROGRAMS; ELECTRONIC PUBLICATIONS, NAMELY, MAGAZINES, MANUALS, AND NEWSLETTERS FEATURING FITNESS AND HEALTH CLUB RELATED PROGRAMS INCORPORATING AUDIO-VISUAL TEACHING RESOURCES IN THE NATURE OF DIGITAL FILES FEATURING GRAPHICS AND TEXT RELATED TO FITNESS AND HEALTH CLUB PROGRAMS RECORDED ON COMPUTER MEDIA; DOWNLOADABLE MUSICAL SOUND RECORDINGS FEATURING MUSIC RELATED TO FITNESS AND HEALTH CLUB PROGRAMS; AUDIO-VISUAL PRESENTATIONS IN THE NATURE OF DOWNLOADABLE MUSIC, TEXT AND GRAPHICS FILES AND DOWNLOADABLE ELECTRONIC PUBLICATIONS IN THE NATURE OF TEACHING BOOKLETS AND TEACHING MANUALS, ALL IN THE FIELD OF HEALTH AND FITNESS; DOWNLOADABLE MULTIMEDIA FILE CONTAINING ARTWORK, TEXT, AUDIO, VIDEO, GAMES, AND INTERNET WEB LINKS RELATING TO EXERCISE-TO-MUSIC PROGRAMS INCORPORATING AUDIO-VISUAL TEACHING RESOURCES IN THE NATURE OF DIGITAL FILES FEATURING RECORDED SEMINARS, AND PRESENTATION IN THE FIELD OF INSTRUCTIONAL FITNESS AND HEALTH CLUB PROGRAMS; DOWNLOADABLE MUSICAL SOUND RECORDINGS; DOWNLOADABLE VIDEO RECORDINGS FEATURING EXERCISE-TO-MUSIC PROGRAMS INCORPORATING RELATED AUDIO-VISUAL TEACHING RESOURCES IN THE NATURE OF DIGITAL FILES FEATURING RECORDED SEMINARS AND PRESENTATIONS RELATED TO INSTRUCTIONAL FITNESS AND HEALTH CLUB PROGRAMS AND GRAPHICS, TEXT, INFORMATION AND MUSIC RELATED THERETO, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FOR: PRINTED MATTER AND TRAINING MATERIALS, NAMELY, BOOKS, BOOKLETS, NEWSLETTERS, MAGAZINES, MANUALS, POSTERS AND POSTCARDS ALL IN RELATION TO FITNESS AND HEALTH CLUB RELATED PROGRAMS ; INSTRUCTIONAL, TEACHING MATERIALS AND TRAINING MATERIALS, NAMELY, BOOKS, BOOKLETS, NEWSLETTERS, MAGAZINES, MANUALS, POSTERS AND POSTCARDS ALL IN RELATION TO THE

David J. Kappos

Director of the United States Patent and Trademark Office

Reg. No. 4,216,356 FITNESS AND HEALTH CLUB RELATED PROGRAMS; CALENDARS AND PRINTED PAPER BANNERS, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FOR: EXERCISE EQUIPMENT, NAMELY, DUMBBELLS AND BARBELLS, IN CLASS 28 (U.S. CLS. 22, 23, 38 AND 50).

FOR: RECREATION SERVICES IN THE NATURE OF PROVIDING TRAINING AND EDUCATION SERVICES, NAMELY, CLASSES, SEMINARS, PROGRAMS, COURSES, WORKSHOPS AND CONFERENCES IN THE FIELDS OF HEALTH, NUTRITION AND PHYSICAL FITNESS; HEALTH CLUB, AND PHYSICAL FITNESS CLUB SERVICES, NAMELY, PROVIDING INSTRUCTION AND EQUIPMENT IN THE FIELD OF PHYSICAL EXERCISE; EDUCATION SERVICES, NAMELY, PRODUCING AND CONDUCTING PRE-CHOREOGRAPHED GROUP FITNESS EXERCISE CLASSES AND PROVIDING INSTRUCTION AND ADVICE WITH RESPECT TO SUCH GROUP FITNESS EXERCISE CLASSES; EXERCISE INSTRUCTION AND PHYSICAL FITNESS TRAINING SERVICES; PROVIDING INFORMATION AND CONSULTATION IN THE FIELDS OF RECREATION, PHYSICAL FITNESS AND EXERCISE, AND INFORMATION ON GROUP EXERCISE PLANNING AND INSTRUCTION; PUBLICATION OF PRINTED MATTER, NAMELY, BOOKS, BOOKLETS, NEWSLETTERS, MAGAZINES, MANUALS, POSTERS AND POSTCARDS ALL IN RELATION TO FITNESS AND HEALTH CLUB RELATED PROGRAMS; PUBLICATION OF ELECTRONIC MEDIA, NAMELY, DIGITAL FILES, VIDEO RECORDINGS, SEMINARS, PRESENTATIONS, GRAPHICS, TEXT, INFORMATION AND MUSIC RELATED TO FITNESS PROGRAMS; PUBLICATION OF ELECTRONIC PUBLICATIONS, NAMELY, MAGAZINES, MANUALS, AND NEWSLETTERS FEATURING FITNESS AND HEALTH CLUB RELATED PROGRAMS, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF NEW ZEALAND REG. NO. 844719, DATED 6-28-2011, EXPIRES 6-28-2021.

OWNER OF NEW ZEALAND REG. NO. 829327, DATED 8-23-2010, EXPIRES 8-23-2020.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "REP", APART FROM THE MARK AS SHOWN.

SER. NO. 85-340,592, FILED 6-8-2011.

EMILY CARLSEN, EXAMINING ATTORNEY

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years*
What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See* 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.* *See* 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*
What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or reminder of these filing requirements.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see http://www.wipo.int/madrid/en/.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at http://www.uspto.gov.

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Mark: THE REP EFFECT

THE REP EFFECT

US Serial Number: 85340592

Application Filing Date: Jun. 08, 2011

US Registration Number: 4216356

Registration Date: Oct. 02, 2012

Register: Principal

Mark Type: Trademark, Service Mark

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: Nov. 07, 2018

Publication Date: Jul. 17, 2012

Mark Information

Mark Literal Elements: THE REP EFFECT

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

Disclaimer: "REP"

Foreign Information

Foreign Registration Number: 829327

Foreign Registration Date: Aug. 23, 2010

Foreign Application/Registration Country: NEW ZEALAND

Foreign Expiration Date: Aug. 23, 2020

Foreign Registration Number: 844719

Foreign Registration Date: Jun. 28, 2011

Foreign Application/Registration Country: NEW ZEALAND

Foreign Expiration Date: Jun. 28, 2021

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: [Audio and video recordings, namely, pre-recorded compact discs, digital video discs, CD Roms and digital files all featuring fitness and health club related programs incorporating audio-visual teaching resources in the nature of digital files, graphics, text, music and information related to fitness and health club related programs and recorded seminars and presentations related to fitness and health club programs; electronic publications, namely, magazines, manuals, and newsletters featuring fitness and health club related

programs incorporating audio-visual teaching resources in the nature of digital files featuring graphics and text related to fitness and health club programs recorded on computer media; Downloadable musical sound recordings featuring music related to fitness and health club programs; Audio-visual presentations in the nature of downloadable music, text and graphics files and downloadable electronic publications in the nature of teaching booklets and teaching manuals, all in the field of health and fitness; downloadable multimedia file containing artwork, text, audio, video, games, and Internet Web links relating to exercise-to-music programs incorporating audio-visual teaching resources in the nature of digital files featuring recorded seminars, and presentation in the field of instructional fitness and health club programs; downloadable musical sound recordings; downloadable video recordings featuring exercise-to-music programs incorporating related audio-visual teaching resources in the nature of digital files featuring recorded seminars and presentations related to instructional fitness and health club programs and graphics, text, information and music related thereto]

International Class(es): 009 - Primary Class **U.S Class(es):** 021, 023, 026, 036, 038

Class Status: ACTIVE

Basis: 44(e)

For: [Printed matter and training materials, namely, books, booklets, newsletters, magazines, manuals, posters and postcards all in relation to fitness and health club related programs ; instructional, teaching materials and training materials, namely, books, booklets, newsletters, magazines, manuals, posters and postcards all in relation to the fitness and health club related programs; calendars and printed paper banners]

International Class(es): 016 - Primary Class **U.S Class(es):** 002, 005, 022, 023, 029, 037, 038, 050

Class Status: ACTIVE

Basis: 44(e)

For: [Exercise equipment, namely, dumbbells and barbells]

International Class(es): 028 - Primary Class **U.S Class(es):** 022, 023, 038, 050

Class Status: ACTIVE

Basis: 44(e)

For: Recreation services in the nature of providing training and education services, namely, classes, seminars, programs, courses, workshops and conferences in the fields of health, nutrition and physical fitness; health club, and physical fitness club services, namely, providing instruction and equipment in the field of physical exercise; education services, namely, producing and conducting pre-choreographed group fitness exercise classes and providing instruction and advice with respect to such group fitness exercise classes; exercise instruction and physical fitness training services; providing information and consultation in the fields of recreation, physical fitness and exercise, and information on group exercise planning and instruction; publication of printed matter, namely, books, booklets, newsletters, magazines, manuals, posters and postcards all in relation to fitness and health club related programs; publication of electronic media, namely, digital files, video recordings, seminars, presentations, graphics, text, information and music related to fitness programs; publication of electronic publications, namely, magazines, manuals, and newsletters featuring fitness and health club related programs

International Class(es): 041 - Primary Class **U.S Class(es):** 100, 101, 107

Class Status: ACTIVE

Basis: 44(e)

Basis Information (Case Level)

Filed Use: No **Currently Use:** No

Filed ITU: Yes **Currently ITU:** No

Filed 44D: No **Currently 44E:** Yes

Filed 44E: Yes **Currently 66A:** No

Filed 66A: No **Currently No Basis:** No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Les Mills International Limited

Owner Address: 22 Centre Street
Auckland NEW ZEALAND 1010

Legal Entity Type: LIMITED LIABILITY COMPANY **State or Country Where Organized:** NEW ZEALAND

Attorney/Correspondence Information

Attorney of Record - None

Correspondent

Correspondent Name/Address: LES MILLS INTERNATIONAL LIMITED
22 CENTRE ST
AUCKLAND NEW ZEALAND 1010

Correspondent e-mail: legal@lesmills.com carina.barnett@lesmills.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Oct. 02, 2021	COURTESY REMINDER - SEC. 8 (10-YR)/SEC. 9 E-MAILED	
Jun. 26, 2019	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Nov. 07, 2018	NOTICE OF ACCEPTANCE OF SEC. 8 - E-MAILED	
Nov. 07, 2018	REGISTERED - SEC. 8 (6-YR) ACCEPTED	66607
Nov. 07, 2018	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	66607
Nov. 04, 2018	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Nov. 04, 2018	TEAS SECTION 8 RECEIVED	
Oct. 02, 2017	COURTESY REMINDER - SEC. 8 (6-YR) E-MAILED	
Oct. 02, 2012	REGISTERED-PRINCIPAL REGISTER	
Jul. 17, 2012	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Jul. 17, 2012	PUBLISHED FOR OPPOSITION	
Jun. 27, 2012	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Jun. 12, 2012	LAW OFFICE PUBLICATION REVIEW COMPLETED	70997
Jun. 06, 2012	APPROVED FOR PUB - PRINCIPAL REGISTER	
May 19, 2012	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
May 18, 2012	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
May 18, 2012	TEAS REQUEST FOR RECONSIDERATION RECEIVED	
Mar. 06, 2012	NOTIFICATION OF FINAL REFUSAL EMAILED	
Mar. 06, 2012	FINAL REFUSAL E-MAILED	
Mar. 06, 2012	FINAL REFUSAL WRITTEN	83176
Feb. 14, 2012	TEAS/EMAIL CORRESPONDENCE ENTERED	70997
Feb. 14, 2012	CORRESPONDENCE RECEIVED IN LAW OFFICE	70997
Feb. 09, 2012	ASSIGNED TO LIE	70997
Feb. 02, 2012	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Sep. 23, 2011	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Sep. 23, 2011	NON-FINAL ACTION E-MAILED	6325
Sep. 23, 2011	NON-FINAL ACTION WRITTEN	83176
Sep. 22, 2011	ASSIGNED TO EXAMINER	83176
Jun. 11, 2011	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Jun. 11, 2011	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

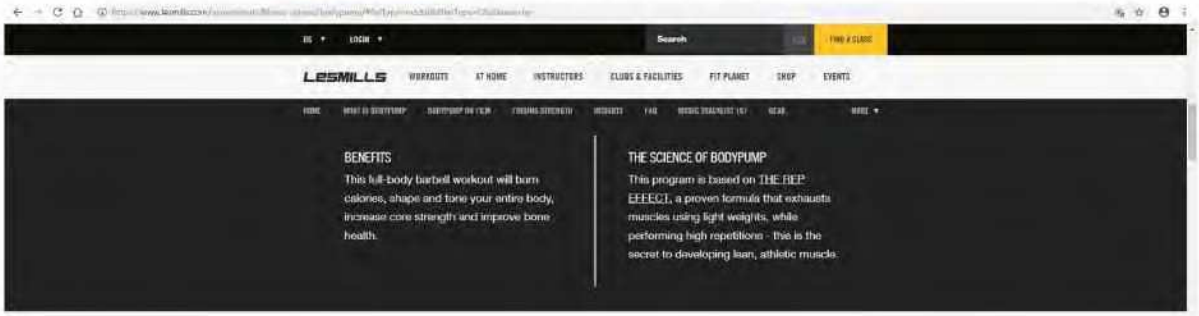
TM Staff Information - None

File Location

Current Location: TMEG LAW OFFICE 103

Date in Location: Nov. 07, 2018

Screenshot of Les Mills US website at www.lesmills.com/us showing use of "THE REP EFFECT" (as a proven formula)



https://www.lesmills.com/us/fit-planet/fitness/

US ▾ LOGIN ▾ Search GO FIND A CLASS

LESMILLS WORKOUTS AT HOME INSTRUCTORS CLUBS & FACILITIES FIT PLANET SHOP EVENTS

FIT PLANET FITNESS HEALTH NUTRITION PREGNANCY & CHILD GREEN LIVING MEDIA SUBSCRIBE

by Bryce Hastings

What makes The Rep Effect the proven formula for body transformation Read more

FRIDAY, AUGUST 10, 2018

THE TRUTH ABOUT THE REP EFFECT

by Sarah Shortt

As fitness professionals, we know that resistance training is a key ingredient to any balanced workout regime. But how does a program like BODYPUMP – lifting light weights for lots of repetitions – compare to more traditional models of resistance training? We caught up with Dr Nigel Harris, Senior Lecturer in Exercise Science, to gain key insights into high rep training that will benefit both you and your members.

LESMILLS WORKOUT INSTRUCTORS CLUBS & FACILITIES NEWS KNOWLEDGE

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BODYSTEP™ BODYVIVE™ RPM™ SH'SAM™

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REP
BODYPUMP

United States of America

United States Patent and Trademark Office

The Vacation Effect

Reg. No. 6,054,007

Registered May 12, 2020

Int. Cl.: 9, 16, 41

Service Mark

Trademark

Principal Register

Denise Gosnell Consulting, Inc. (INDIANA CORPORATION)
410 Breakwater Drive, Suite B
Fishers, INDIANA 46037

CLASS 9: Audio books in the field of productivity, time management, lifestyle design, self-improvement, goal achievement, business startup, business growth, business process efficiency, personal development, professional development, and general education; Audio and video recordings featuring instruction on productivity, time management, lifestyle design, self-improvement, goal achievement, business startup, business growth, business process efficiency, personal development, professional development, and general education; Electronic publications, namely, books and articles featuring instruction on productivity, time management, lifestyle design, self-improvement, goal achievement, business startup, business growth, business process efficiency, personal development, professional development, and general education recorded on computer media

FIRST USE 9-30-2018; IN COMMERCE 12-15-2018

CLASS 16: Printed books in the field of productivity, time management, lifestyle design, self-improvement, goal achievement, business startup, business growth, business process efficiency, personal development, professional development, and general education; A series of books, written articles, handouts and worksheets in the field of productivity, time management, lifestyle design, self-improvement, goal achievement, business startup, business growth, business process efficiency, personal development, professional development, and general education

FIRST USE 9-30-2018; IN COMMERCE 12-15-2018

CLASS 41: Educational services, namely, conducting classes, seminars, and online workshops in the field of productivity, time management, lifestyle design, self-improvement, goal achievement, business startup, business growth, business process efficiency, personal development, professional development, and general education and distribution of course material in connection therewith; Providing a web site featuring non-downloadable instructional videos in the field of productivity, time management, lifestyle design, self-improvement, goal achievement, business startup, business growth, business process efficiency, personal development, professional development, and general education; Providing a website featuring blogs and non-downloadable publications in the nature of articles in the field(s) of productivity, time management, lifestyle design, self-improvement, goal achievement, business startup, business growth, business process efficiency, personal development, professional development, and general education

FIRST USE 9-30-2018; IN COMMERCE 12-15-2018

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

Director of the United States
Patent and Trademark Office

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years*
What and When to File:

- ***First Filing Deadline:*** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

- ***Second Filing Deadline:*** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*
What and When to File:

- You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see http://www.wipo.int/madrid/en/.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at http://www.uspto.gov.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at http://www.uspto.gov.

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Mark: THE VACATION EFFECT

The Vacation Effect

US Serial Number:	88055993	**Application Filing Date:**	Jul. 27, 2018
US Registration Number:	6054007	**Registration Date:**	May 12, 2020
Filed as TEAS Plus:	Yes	**Currently TEAS Plus:**	Yes
Register:	Principal		
Mark Type:	Trademark, Service Mark		
TM5 Common Status Descriptor:	LIVE/REGISTRATION/Issued and Active The trademark application has been registered with the Office.		

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: May 12, 2020

Publication Date: Jan. 15, 2019 **Notice of Allowance Date:** Mar. 12, 2019

Mark Information

Mark Literal Elements: THE VACATION EFFECT

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: Audio books in the field of productivity, time management, lifestyle design, self-improvement, goal achievement, business startup, business growth, business process efficiency, personal development, professional development, and general education; Audio and video recordings featuring instruction on productivity, time management, lifestyle design, self-improvement, goal achievement, business startup, business growth, business process efficiency, personal development, professional development, and general education; Electronic publications, namely, books and articles featuring instruction on productivity, time management, lifestyle design, self-improvement, goal achievement, business startup, business growth, business process efficiency, personal development, professional development, and general education recorded on computer media

International Class(es):	009 - Primary Class	**U.S Class(es):**	021, 023, 026, 036, 038
Class Status:	ACTIVE		
Basis:	1(a)		
First Use:	Sep. 30, 2018	**Use in Commerce:**	Dec. 15, 2018

For: Printed books in the field of productivity, time management, lifestyle design, self-improvement, goal achievement, business startup, business growth, business process efficiency, personal development, professional development, and general education; A series of books, written articles, handouts and worksheets in the field of productivity, time management, lifestyle design, self-improvement, goal achievement, business startup, business growth, business process efficiency, personal development, professional development, and general education

International Class(es):	016 - Primary Class	**U.S Class(es):**	002, 005, 022, 023, 029, 037, 038, 050
Class Status:	ACTIVE		
Basis:	1(a)		
First Use:	Sep. 30, 2018	**Use in Commerce:**	Dec. 15, 2018

For: Educational services, namely, conducting classes, seminars, and online workshops in the field of productivity, time management, lifestyle design, self-improvement, goal achievement, business startup, business growth, business process efficiency, personal development, professional development, and general education and distribution of course material in connection therewith; Providing a web site featuring non-downloadable instructional videos in the field of productivity, time management, lifestyle design, self-improvement, goal achievement, business startup, business growth, business process efficiency, personal development, professional development, and general education; Providing a website featuring blogs and non-downloadable publications in the nature of articles in the field(s) of productivity, time management, lifestyle design, self-improvement, goal achievement, business startup, business growth, business process efficiency, personal development, professional development, and general education

International Class(es):	041 - Primary Class	**U.S Class(es):**	100, 101, 107
Class Status:	ACTIVE		
Basis:	1(a)		
First Use:	Sep. 30, 2018	**Use in Commerce:**	Dec. 15, 2018

Basis Information (Case Level)

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

Current Owner(s) Information

Owner Name:	Denise Gosnell Consulting, Inc.		
Owner Address:	410 Breakwater Drive, Suite B Fishers, INDIANA UNITED STATES 46037		
Legal Entity Type:	CORPORATION	**State or Country Where Organized:**	INDIANA

Attorney/Correspondence Information

Attorney of Record

Attorney Name:	Denise M. Gosnell	**Docket Number:**	128.15
Attorney Primary Email Address:	denise@gosnellassoc.com	**Attorney Email Authorized:**	Yes

Correspondent

Correspondent Name/Address:	Denise M. Gosnell GOSNELL & ASSOCIATES, P.C. 410 BREAKWATER DRIVE SUITE B FISHERS, INDIANA UNITED STATES 46037		
Phone:	317-579-9900	**Fax:**	317-579-9900
Correspondent e-mail:	denise@gosnellassoc.com docketing@gosnellassoc.com	**Correspondent e-mail Authorized:**	Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
May 12, 2020	REGISTERED-PRINCIPAL REGISTER	
Apr. 09, 2020	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	
Apr. 08, 2020	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	

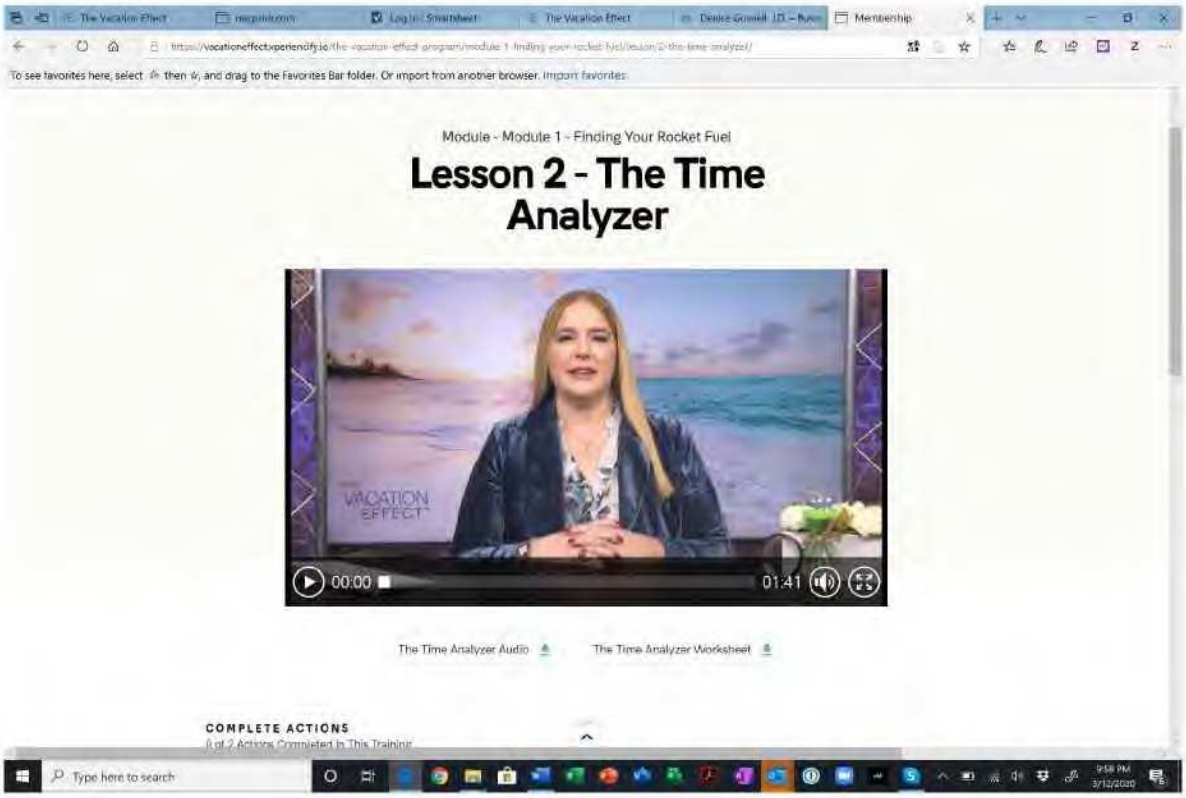
Mar. 23, 2020	TEAS/EMAIL CORRESPONDENCE ENTERED	66213
Mar. 23, 2020	CORRESPONDENCE RECEIVED IN LAW OFFICE	66213
Mar. 21, 2020	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Feb. 20, 2020	DIVISIONAL REQUEST RECEIVED	
Mar. 20, 2020	STATEMENT OF USE PROCESSING COMPLETE	66154
Mar. 12, 2020	USE AMENDMENT FILED	66154
Mar. 20, 2020	SOU EXTENSION 2 GRANTED	66154
Mar. 12, 2020	SOU EXTENSION 2 FILED	66154
Mar. 20, 2020	CASE ASSIGNED TO INTENT TO USE PARALEGAL	66154
Mar. 12, 2020	TEAS EXTENSION RECEIVED	
Mar. 12, 2020	TEAS STATEMENT OF USE RECEIVED	
Sep. 13, 2019	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Sep. 11, 2019	SOU EXTENSION 1 GRANTED	98765
Sep. 11, 2019	SOU EXTENSION 1 FILED	98765
Sep. 11, 2019	TEAS EXTENSION RECEIVED	
Mar. 12, 2019	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Jan. 15, 2019	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Jan. 15, 2019	PUBLISHED FOR OPPOSITION	
Dec. 26, 2018	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Dec. 08, 2018	APPROVED FOR PUB - PRINCIPAL REGISTER	
Dec. 07, 2018	TEAS/EMAIL CORRESPONDENCE ENTERED	66213
Dec. 07, 2018	CORRESPONDENCE RECEIVED IN LAW OFFICE	66213
Nov. 30, 2018	ASSIGNED TO LIE	66213
Nov. 27, 2018	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Nov. 15, 2018	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Nov. 15, 2018	NON-FINAL ACTION E-MAILED	6325
Nov. 15, 2018	NON-FINAL ACTION WRITTEN	93059
Nov. 14, 2018	ASSIGNED TO EXAMINER	93059
Aug. 03, 2018	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Jul. 31, 2018	NEW APPLICATION ENTERED IN TRAM	

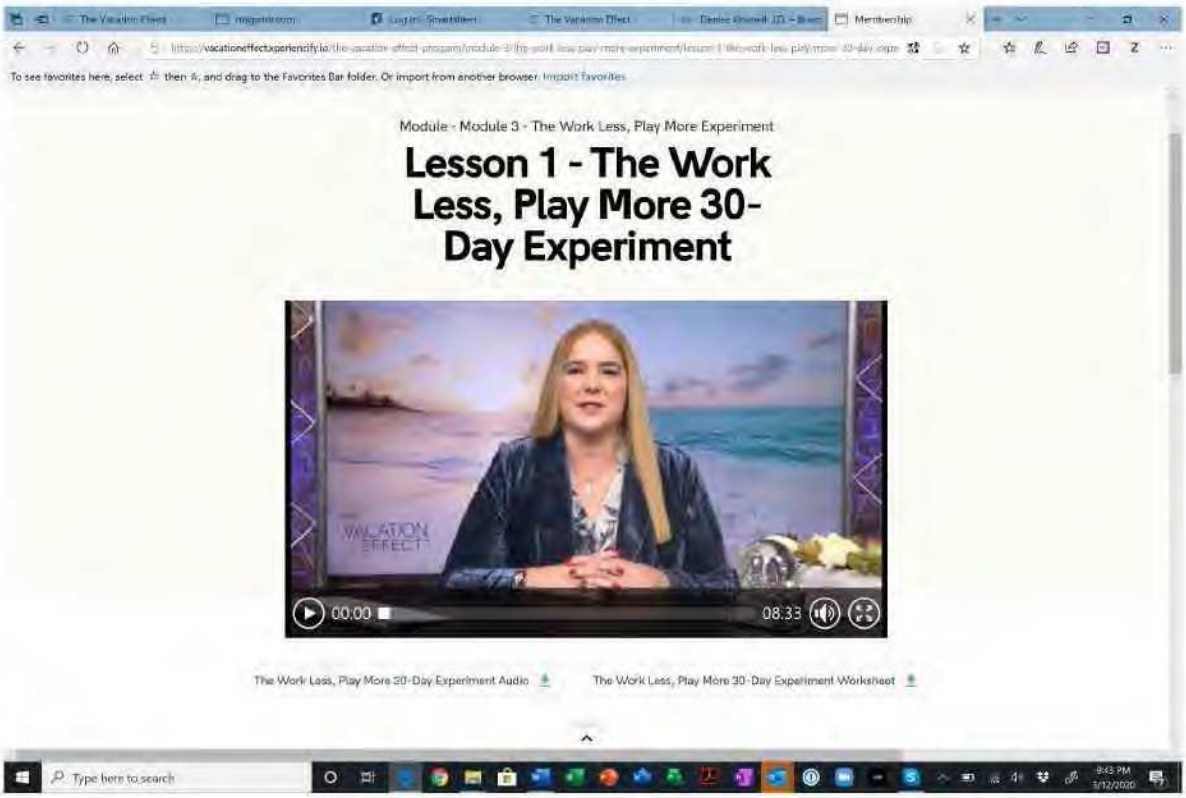
TM Staff and Location Information

TM Staff Information - None

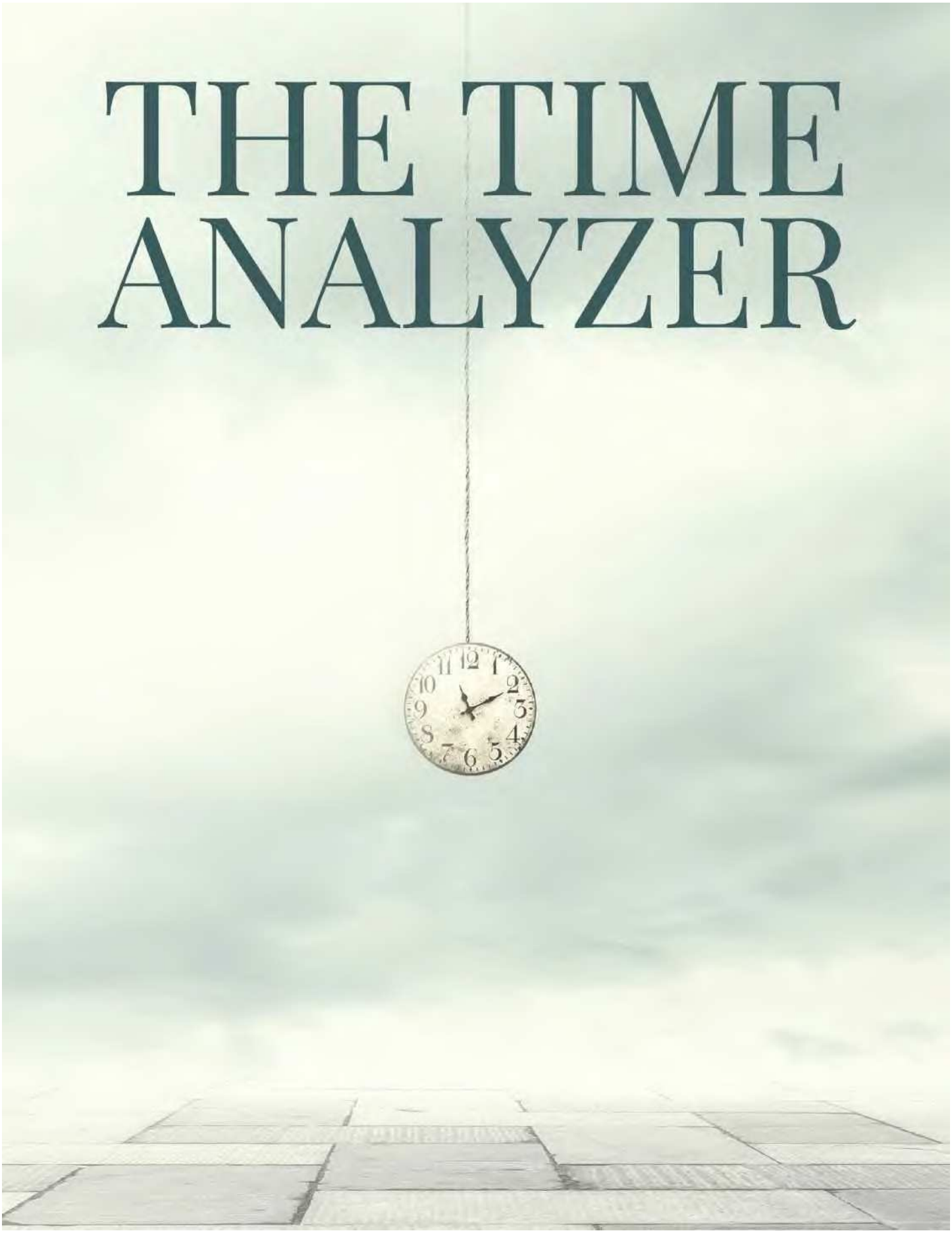
File Location

Current Location: PUBLICATION AND ISSUE SECTION **Date in Location:** Apr. 08, 2020


Membership
To see favorites here, select then , and drag to the Favorites Bar folder. Or import from another browser. Import favorites.
Module - Module 1 - Finding Your Rocket Fuel
Lesson 2 - The Time Analyzer
VACATION EFFECT
00:00
01:41
The Time Analyzer Audio
The Time Analyzer Worksheet
COMPLETE ACTIONS
0 of 2 Actions Completed In This Training
Type here to search


Membership
To see favorites here, select then A, and drag to the Favorites Bar folder. Or import from another browser. Import favorites
Module - Module 3 - The Work Less, Play More Experiment
Lesson 1 - The Work Less, Play More 30-Day Experiment
00:00
08:33
The Work Less, Play More 30-Day Experiment Audio
The Work Less, Play More 30-Day Experiment Worksheet
Type here to search

THE TIME ANALYZER



THE VACATION EFFECT™

The Time Analyzer™

In order to later find your hyper-efficient sweet spot that allows you to get as much done in 3 days per week as you used to get done in 6, it is important for you to evaluate how you currently spend your time.

In the next few weeks, pick a week that best represents a typical week for you, and log how you spend your time each day during that week. You can do this in a few ways.

Ideally, it is best if you can keep this worksheet handy throughout your day and write down how you spent your time that day.

If you forget to do so, you can also go back at the end of the day and write down as much as you can remember about how your day transpired.

You don't have to log your activities for the long term, but by doing so for just one "typical" week, there will be a lot of insights that can be used in the later sessions to help you continue to optimize how you spend your time and become a lot more effective.

There are 7 days' worth of activity logs included below, just in case you spend any time working on the weekend during that typical week.

Please use the time logs that follow to log how you spend your time working in your business. You can also log your personal time if you want to, but your work hours are the most important details to capture.

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Time Log For Day #1

Date: _____ Day of Week: _____

Early morning:

_____

_____

_____

Late morning:

_____

_____

_____

Early afternoon:

_____

_____

_____

Late afternoon:

_____

_____

_____

Evening:

_____

_____

_____

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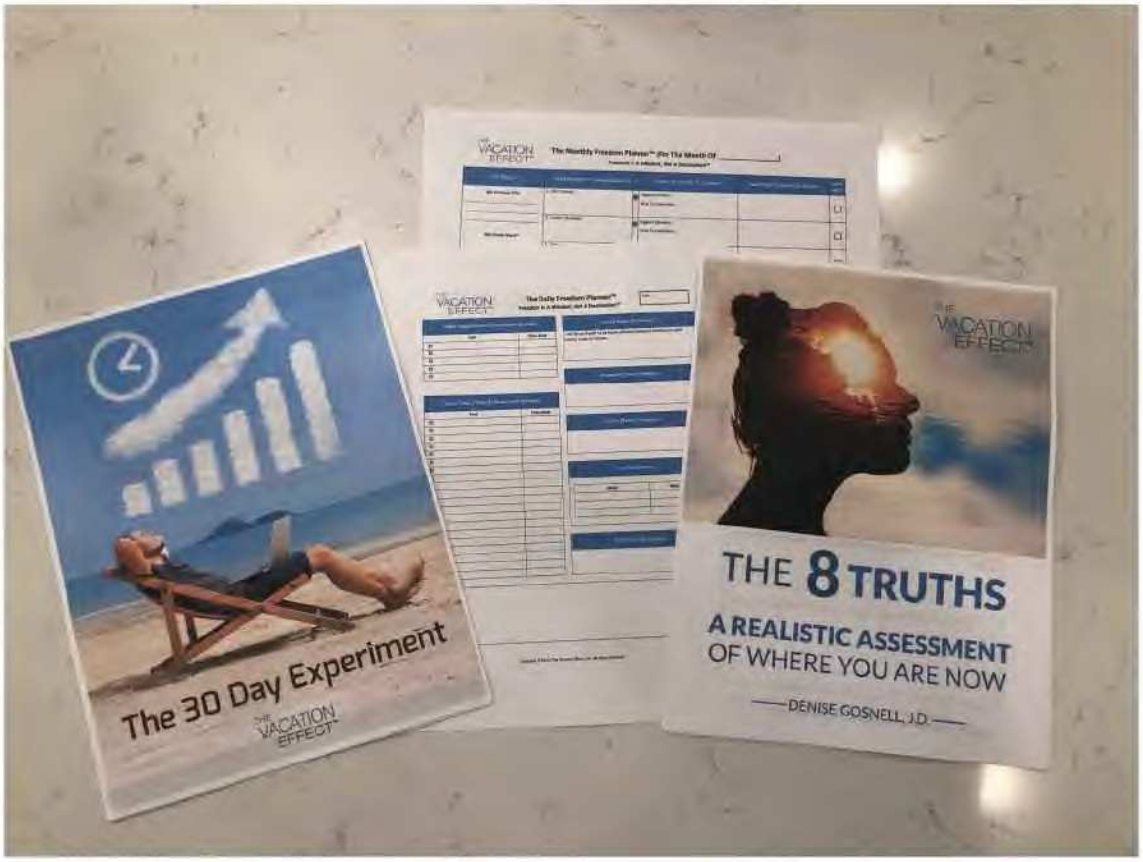
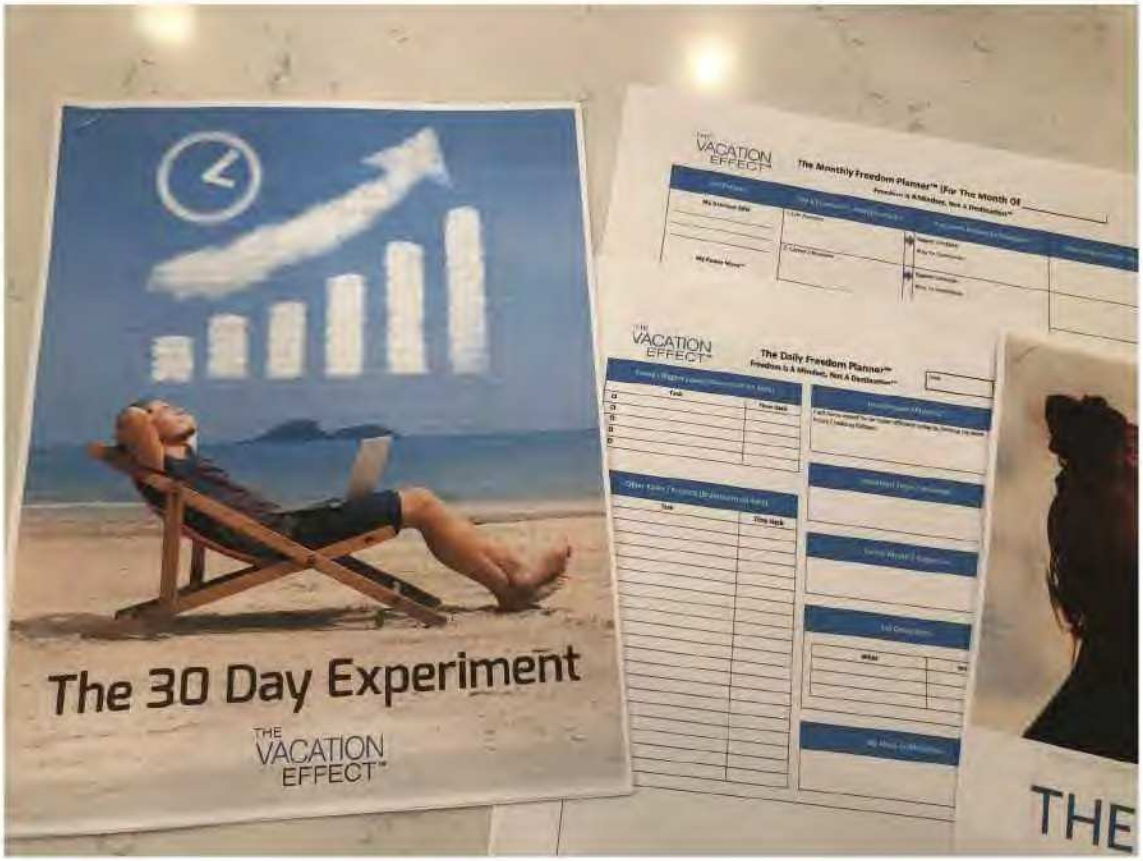

The 30 Day Experiment
THE VACATION EFFECT
THE 8 TRUTHS
A REALISTIC ASSESSMENT
OF WHERE YOU ARE NOW
DENISE GOSNELL, J.D.


The 30 Day Experiment
THE VACATION EFFECT™
THE VACATION EFFECT™
The Monthly Freedom Planner™ (For The Month Of
THE VACATION EFFECT™
The Daily Freedom Planner™
THE

vacationeffect.pages.ontraport.net/

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Experience **The Vacation Effect™**

To make the Vacation Effect as affordable as possible to help the greatest possible number of entrepreneurs and business leaders, we have two course offerings with unique perks and bonuses. Our premium training includes a full 12-weeks of virtual study with group coaching, while our VIP Experience also adds six 1:1 training sessions.

Option 1

The Vacation Effect™ Premium Group Coaching

$1,997

(regular price $2,997)

12 Week Training + Group Coaching + Accountability

- Six group coaching calls with Denise Gosnell (and if you can't attend live, you can submit your questions)
- Accountability from sharing your goals with Denise and the group
- 12 week online training course
- Lifetime access to all trainings & course materials
- Over $3,100 in exclusive bonuses

Enroll Now

Option 2

The Vacation Effect™ VIP Experience

$6,000

(regular price $7,500)

12 Week Training + 1:1 Coaching + Accountability

- Six one on one strategy calls with Denise Gosnell
- Accountability from Denise Gosnell on your progress
- The full 12 week online training with lifetime access
- Access to twice-monthly group calls with Denise for 3 months
- Over $3,100 in freebie bonuses
- $750 discount if paid in full

Enroll in VIP Now (Pay in Full)

Enroll in VIP Now (3 payments of $2,250)

$6,000 up-front or 3 payments of $2,250

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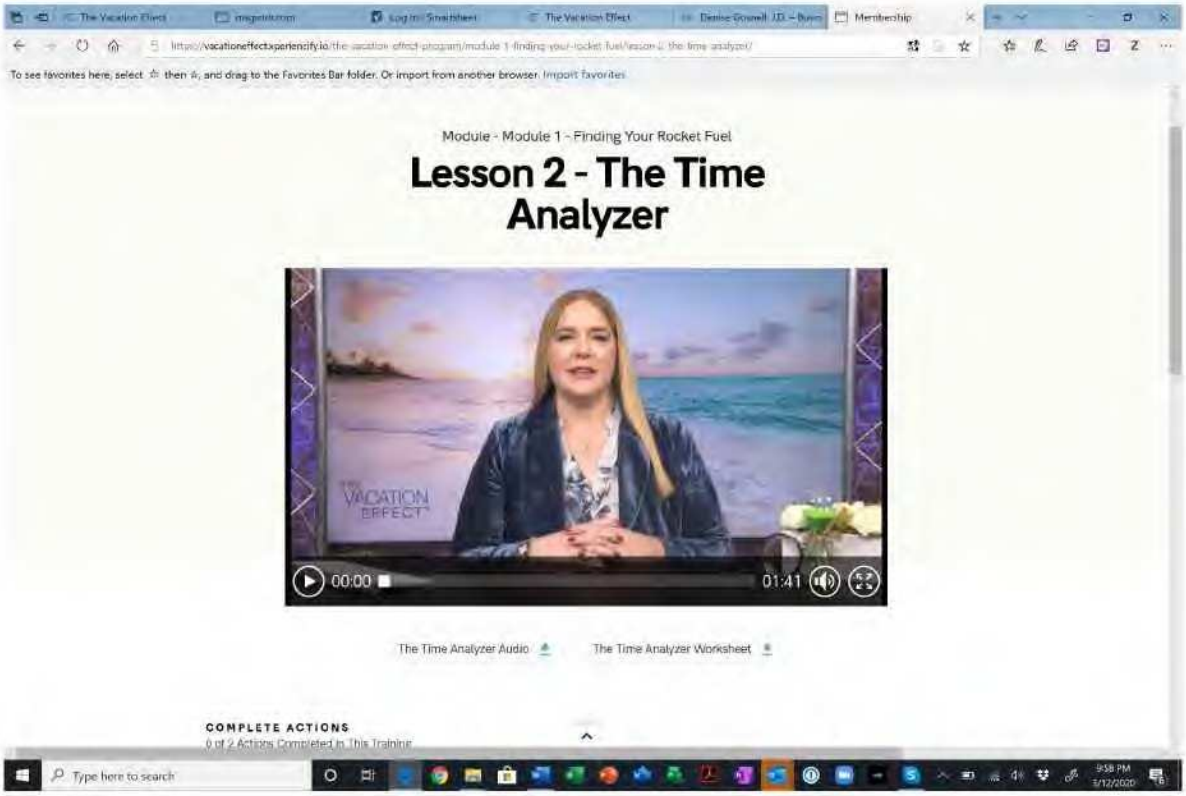
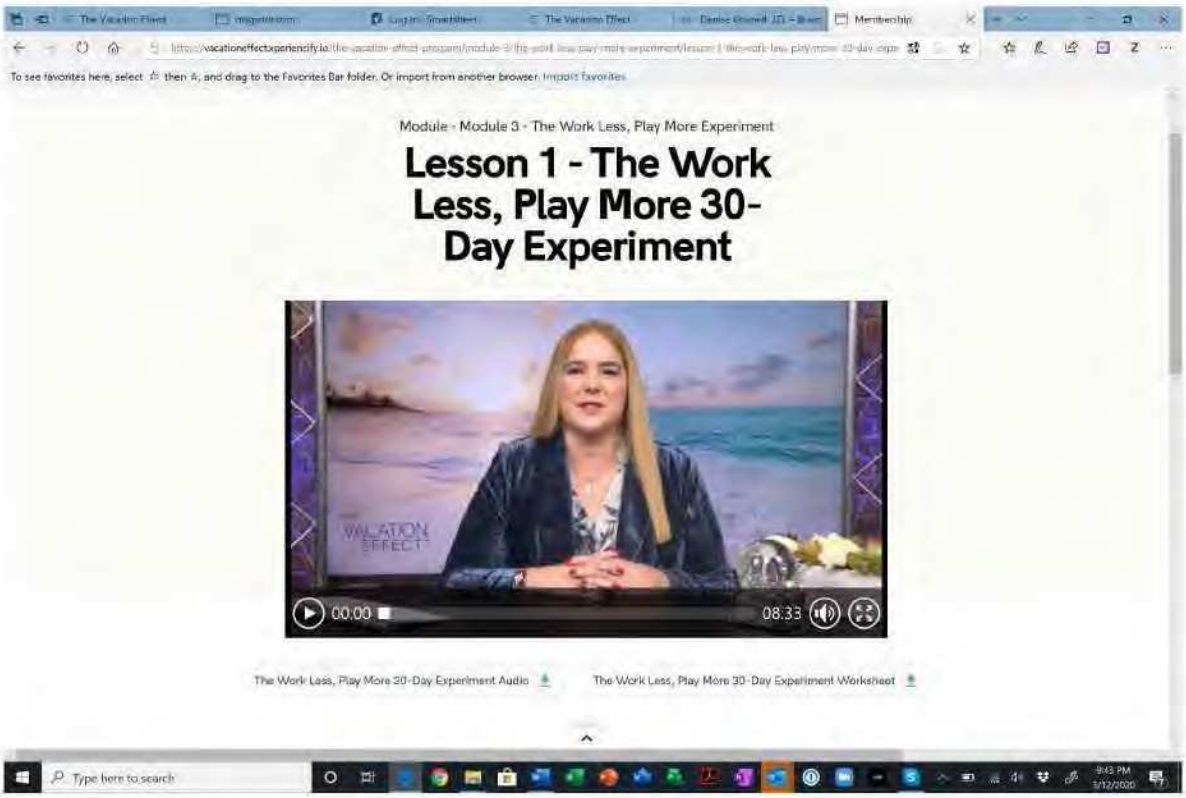

Module - Module 1 - Finding Your Rocket Fuel
Lesson 2 - The Time Analyzer
00:00
01:41
The Time Analyzer Audio
The Time Analyzer Worksheet
COMPLETE ACTIONS
0 of 2 Actions Completed in This Training


Membership
To see favorites here, select then A, and drag to the Favorites Bar folder. Or import from another browser. Import favorites
Module - Module 3 - The Work Less, Play More Experiment
Lesson 1 - The Work Less, Play More 30-Day Experiment
00:00
08:33
The Work Less, Play More 30-Day Experiment Audio
The Work Less, Play More 30-Day Experiment Worksheet
Type here to search

United States of America

United States Patent and Trademark Office

VIBEFFECT

Reg. No. 4,832,530

Registered Oct. 13, 2015

Int. Cls.: 9, 16, 41, and 42

TRADEMARK

SERVICE MARK

PRINCIPAL REGISTER

SIMPLE ENTRY, LLC (MARYLAND LIMITED LIABILITY COMPANY)
920 W. UNIVERSITY PARKWAY, SUITE B
BALTIMORE, MD 21210

FOR: COMPUTER PROGRAMS AND COMPUTER SOFTWARE, NAMELY, APPS FOR COMPUTERS, TABLETS, SMART PHONES AND MOBILE COMPUTING DEVICES TO IDENTIFY FACTORS WHICH WILL MAKE A PROSPECTIVE STUDENT MOST SUCCESSFUL IN A COLLEGE OR UNIVERSITY ENVIRONMENT, AND TO ASSESS AND PREDICT THE COLLEGES AND UNIVERSITIES AT WHICH A PROSPECTIVE STUDENT WILL THRIVE, HAVE SUCCESS AND GO ON TO GRADUATE, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 8-5-2015; IN COMMERCE 8-5-2015.

FOR: PRINTED INDICES AND REPORTS IN THE FIELD OF COLLEGE SELECTION AND CONCERNING STUDENT SATISFACTION, SUCCESS AND THRIVING AT COLLEGES AND UNIVERSITIES, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 12-22-2014; IN COMMERCE 12-22-2014.

FOR: IN PERSON AND ONLINE COLLEGE CONSULTING SERVICES, NAMELY, PROVIDING COLLEGE SELECTION ASSISTANCE AND COLLEGE EVALUATION AND COMPARISON SERVICES; COLLEGE CONSULTING SERVICES, NAMELY, ASSISTING STUDENTS AND THEIR PARENTS IN IDENTIFYING AND SELECTING COLLEGES, UNIVERSITIES AND POST-SECONDARY EDUCATIONAL INSTITUTIONS; PROVIDING INFORMATION ABOUT THE COLLEGE SELECTION PROCESS TO PROSPECTIVE STUDENTS AND THEIR PARENTS AND TO COLLEGES AND UNIVERSITIES; COLLEGE CONSULTING SERVICES, NAMELY, ASSISTING STUDENTS IN IDENTIFYING AND SELECTING COLLEGES, UNIVERSITIES AND POST-SECONDARY EDUCATIONAL INSTITUTIONS THROUGH ONLINE ASSESSMENT TOOLS, NAMELY, PUZZLES, QUESTIONNAIRES, SURVEYS AND REPORTS; PROVIDING NON-DOWNLOADABLE ONLINE VIDEOS IN THE FIELD OF COLLEGE SELECTION; PROVIDING INFORMATION, DATA, INDICES AND ONLINE REPORTS IN THE FIELD OF COLLEGE SELECTION AND CONCERNING STUDENT SATISFACTION, SUCCESS AND THRIVING AT COLLEGES AND UNIVERSITIES; PROVIDING AN ONLINE COMPUTER DATABASE FOR COLLECTING AND ANALYZING INFORMATION PERTAINING TO THE COLLEGE SELECTION PROCESS FOR PROSPECTIVE

Michelle K. Lee

Director of the United States Patent and Trademark Office

Reg. No. 4,832,530 STUDENTS AND THEIR PARENTS AND FOR COLLEGES AND UNIVERSITIES, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 12-22-2014; IN COMMERCE 12-22-2014.

FOR: ONLINE COLLEGE SELECTION ASSESSMENT TOOL, NAMELY, ONLINE NON-DOWNLOADABLE SOFTWARE AND APPLICATIONS USED TO IDENTIFY FACTORS WHICH WILL MAKE A PROSPECTIVE STUDENT MOST SUCCESSFUL IN A COLLEGE OR UNIVERSITY ENVIRONMENT, AND TO ASSESS AND PREDICT THE COLLEGES AND UNIVERSITIES AT WHICH A PROSPECTIVE STUDENT WILL THRIVE, HAVE SUCCESS AND GO ON TO GRADUATE; PROVIDING AN INTERACTIVE WEBSITE FEATURING TECHNOLOGY THAT ASSISTS USERS IN SELECTING COLLEGES, UNIVERSITIES OR OTHER POST-SECONDARY EDUCATIONAL INSTITUTIONS THROUGH PUZZLES, QUESTIONNAIRES, SURVEYS AND REPORTS; PROVIDING TEMPORARY USE OF NON-DOWNLOADABLE SOFTWARE FOR COLLECTING AND ANALYZING INFORMATION PERTAINING TO THE COLLEGE SELECTION PROCESS FOR PROSPECTIVE STUDENTS AND THEIR PARENTS AND FOR COLLEGES AND UNIVERSITIES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 8-5-2015; IN COMMERCE 8-5-2015.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 86-144,300, FILED 12-16-2013.

MARIA-VICTORIA SUAREZ, EXAMINING ATTORNEY

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years*
What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See* 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.* *See* 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*
What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see http://www.wipo.int/madrid/en/.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at http://www.uspto.gov.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at http://www.uspto.gov.

Generated on: This page was generated by TSDR on 2022-05-06 12:33:35 EDT

Mark: VIBEFFECT

VIBEFFECT

US Serial Number: 86144300

Application Filing Date: Dec. 16, 2013

US Registration Number: 4832530

Registration Date: Oct. 13, 2015

Register: Principal

Mark Type: Trademark, Service Mark

TM5 Common Status Descriptor: DEAD/REGISTRATION/Cancelled/Invalidated

The trademark application was registered, but subsequently it was cancelled or invalidated and removed from the registry.

Status: Registration cancelled because registrant did not file an acceptable declaration under Section 8. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date: Apr. 29, 2022

Publication Date: Jun. 17, 2014 **Notice of Allowance Date:** Aug. 12, 2014
Date Cancelled: Apr. 29, 2022

Mark Information

Mark Literal Elements: VIBEFFECT

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: Computer programs and computer software, namely, apps for computers, tablets, smart phones and mobile computing devices to identify factors which will make a prospective student most successful in a college or university environment, and to assess and predict the colleges and universities at which a prospective student will thrive, have success and go on to graduate

International Class(es): 009 - Primary Class

U.S Class(es): 021, 023, 026, 036, 038

Class Status: SECTION 8 - CANCELLED

Basis: 1(a)

First Use: Aug. 05, 2015

Use in Commerce: Aug. 05, 2015

For: Printed indices and reports in the field of college selection and concerning student satisfaction, success and thriving at colleges and universities

International Class(es): 016 - Primary Class

U.S Class(es): 002, 005, 022, 023, 029, 037, 038, 050

Class Status: SECTION 8 - CANCELLED

Basis: 1(a)

First Use: Dec. 22, 2014

Use in Commerce: Dec. 22, 2014

For: In person and online college consulting services, namely, providing college selection assistance and college evaluation and comparison services; college consulting services, namely, assisting students and their parents in identifying and selecting colleges, universities and post-secondary educational institutions; providing information about the college selection process to prospective students and their parents and to colleges and universities; college consulting services, namely, assisting students in identifying and selecting colleges, universities and post-secondary educational institutions through online assessment tools, namely, puzzles, questionnaires, surveys and reports; providing non-downloadable online videos in the field of college selection; providing information, data, indices and online reports in the field of college selection and concerning student satisfaction, success and thriving at colleges and universities; providing an online computer database for collecting and analyzing information pertaining to the college selection process for prospective students and their parents and for colleges and universities

International Class(es): 041 - Primary Class

U.S Class(es): 100, 101, 107

Class Status: SECTION 8 - CANCELLED

Basis: 1(a)

First Use: Dec. 22, 2014

Use in Commerce: Dec. 22, 2014

For: Online college selection assessment tool, namely, online non-downloadable software and applications used to identify factors which will make a prospective student most successful in a college or university environment, and to assess and predict the colleges and universities at which a prospective student will thrive, have success and go on to graduate; providing an interactive website featuring technology that assists users in selecting colleges, universities or other post-secondary educational institutions through puzzles, questionnaires, surveys and reports; providing temporary use of nondownloadable software for collecting and analyzing information pertaining to the college selection process for prospective students and their parents and for colleges and universities

International Class(es): 042 - Primary Class

U.S Class(es): 100, 101

Class Status: SECTION 8 - CANCELLED

Basis: 1(a)

First Use: Aug. 05, 2015

Use in Commerce: Aug. 05, 2015

Basis Information (Case Level)

Filed Use: No

Currently Use: Yes

Filed ITU: Yes

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Simple Entry, LLC

Owner Address: 920 W. University Parkway, Suite B
Baltimore, MARYLAND UNITED STATES 21210

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: MARYLAND

Attorney/Correspondence Information

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Docket Number: 21481.001

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Attorney Email Authorized: Yes

Correspondent

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Fax: 410-783-3530

Correspondent e-mail: dthomas@agtlawyers.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Apr. 29, 2022	CANCELLED SEC. 8 (6-YR)	
Oct. 13, 2020	COURTESY REMINDER - SEC. 8 (6-YR) E-MAILED	
Oct. 13, 2015	REGISTERED-PRINCIPAL REGISTER	
Sep. 10, 2015	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	
Sep. 09, 2015	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Aug. 26, 2015	STATEMENT OF USE PROCESSING COMPLETE	69302
Aug. 11, 2015	USE AMENDMENT FILED	69302
Aug. 26, 2015	CASE ASSIGNED TO INTENT TO USE PARALEGAL	69302
Aug. 11, 2015	TEAS STATEMENT OF USE RECEIVED	
Aug. 11, 2015	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Aug. 11, 2015	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Feb. 03, 2015	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Jan. 30, 2015	SOU EXTENSION 1 GRANTED	98765
Jan. 30, 2015	SOU EXTENSION 1 FILED	98765
Jan. 30, 2015	TEAS EXTENSION RECEIVED	
Aug. 12, 2014	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Jun. 17, 2014	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Jun. 17, 2014	PUBLISHED FOR OPPOSITION	
May 28, 2014	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
May 09, 2014	LAW OFFICE PUBLICATION REVIEW COMPLETED	73797
May 08, 2014	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	73797
May 08, 2014	CORRESPONDENCE RECEIVED IN LAW OFFICE	73797
Apr. 28, 2014	ASSIGNED TO LIE	73797
Apr. 09, 2014	UNRESPONSIVE/DUPLICATE PAPER RECEIVED	
Apr. 10, 2014	APPROVED FOR PUB - PRINCIPAL REGISTER	
Apr. 10, 2014	EXAMINER'S AMENDMENT ENTERED	88888
Apr. 10, 2014	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Apr. 10, 2014	EXAMINERS AMENDMENT E-MAILED	6328
Apr. 10, 2014	EXAMINERS AMENDMENT -WRITTEN	76625
Mar. 25, 2014	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Mar. 25, 2014	NON-FINAL ACTION E-MAILED	6325
Mar. 25, 2014	NON-FINAL ACTION WRITTEN	76625
Mar. 24, 2014	ASSIGNED TO EXAMINER	76625
Dec. 31, 2013	NOTICE OF PSEUDO MARK E-MAILED	
Dec. 28, 2013	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Dec. 19, 2013	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION **Date in Location:** Sep. 09, 2015

vibeffect: Take the vibePrimer

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Where Extraordinary College Decisions Begin

Hi! - Log in to start

mbetz@agtlawyers.com

Password

Sign in

Forgot password or username?

vibeffect

What's your vibe?

Your vibe is multi-dimensional. How cool is that?

Great - You finished!

Check out your results

Academic Vibe

Social Vibe

Life and Family Vibe

Responsible Money Vibe

Your responses change all the time,
so feel free to start a new test and review past tests below.

Start a new Test

vibeffect

Academic Vibe Results:

Print Results

The traits you already possess that give you an advantage in high school, in college and beyond:

Maintain effort, even when assignments are unpleasant

Confidence in ability to write well.

Confident of ability to succeed in even the most difficult classes

Working on the following characteristic will give you a double advantage:

Completing projects you begin

The campus environment where you are most likely to thrive has these characteristics:

Wide array of interesting and relevant clubs, organizations, and groups

An array of challenging courses

Faculty uses innovative teaching methods

Classroom designs create conducive learning environments

Lower division lecture-discussion class balance

No Worries

"Without the most accurate and subtle understanding of students' capabilities, we will waste both their promise and our country's." - William Hiss

vibeffect™

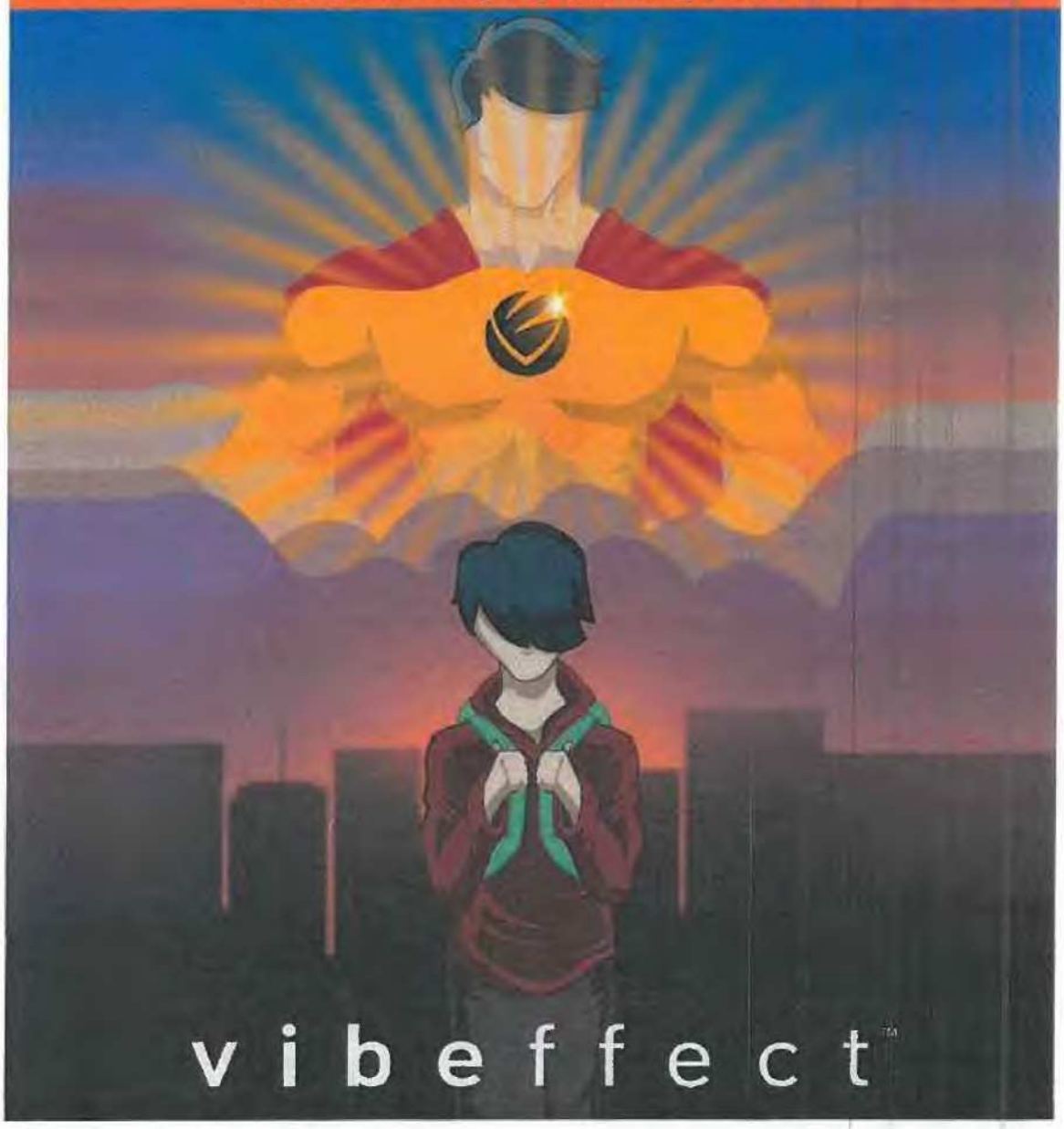
CONTENTS

No Worries

1. Your Child's Scores
2. How Much You Can Stock Away, or Not
3. Size of School, Will They Find Friends?
4. Party Schools
5. Grades
6. College Tour-cation
7. Sports Scholarship
8. Are You Different Enough to Stand Out?
9. AP Test Scores
10. The College Essay

Power 10: Absolutely

Launch your child assured that you made the best choice possible.
Watch your child grow in confidence and problem-solving skills throughout the whole process.
Save thousands of dollars during the high school and college years combined.



Dear Parent,

Every year millions of families send their children off to college in the hopes that they will be happy, grow and develop valuable skills, experiences and networks there. Generally, the years just before this launch are filled with anxiety, costly choices, investments in tutoring or leadership activities, and tons of (not-so) fun family confrontations about the college decision.

It is no secret that the system set up to provide you and your son or daughter with guidance is chaotic and pushes out contradictory criteria. The experts themselves, with a nod to humor and self-criticism, put it like this:

> *"There's something you should know about those of us who write about higher education on the Internet: Behind the scenes, we're careful to coordinate our advice for young people to be as utterly confusing as is humanly possible."*
>
> **Derek Thompson**, Sr. Editor, The Atlantic

We exist to help your family steer a clearer path, supported by the guidance that matters most to your success, avoiding distractions and mistakes that are directly related to today's escalating transfer and drop-out rates. Staying on the clear path requires disciplined decision-making (most of the discipline on your part is tuning out gossip, myth or 'inherited practices" that no longer work). To do this you need up-to-date facts and better analysis than is typically found in the drop-down menu world of college searching.

First, we give you a foundation in the facts and methods from reliable, unbiased sources. Some of today's facts will challenge your current assumptions. Then, we ask you to invite your teen into this discussion and we provide teen-friendly content and real life stories that decrease the mystery and counter-productive pressure that typically surrounds this decision.

Then, we continuously put in front of you the most important factors for ensuring that your entire journey into college is filled with practical decision-making and critical thinking skills so that by the time your teen is alone in college, they are prepared to make great decisions and optimize their time there.

It is never too early to begin!

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Where Extraordinary College Decisions Begin

SOLUTIONS BLOG FACT CHECK EDUCATORS ABOUT LOGIN

Parents: Discover a scientific 4-STEP system that ensures your family will choose the best college campus where your teen will thrive and graduate

Excel on Campus

Know Your Ideal Campus

Get Insider Info

Get the Facts

Start Here

GET SMARTER

75% OF STUDENTS WILL GET INTO THEIR 1ST CHOICE COLLEGE

WHAT YOUR TEEN REALLY THINKS

FREE WEBINAR

KNOWLEDGE POWER

REALITY CHECK: YOUR WEDDING BUDGET WILL BE HIGHER THAN YOUR COLLEGE DEBT

Is one day worth more than one lifetime? The majority of 4-year college graduates owe less than $10,000. The lifetime return for this debt is over $1M in higher earnings. On average, families spend $28,800 on weddings in America.

Read Blog Post

FREEBIES & HOT NEWS

The vibeffect team continuously reviews and pulls highlights from new research and expert guidance that can save your family time, money and stress. We do hundreds of hours of work and pack the best findings together for you to absorb all the benefit in just a few minutes each week.

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SOLUTIONS FOR FAMILIES FROM AGE 13 THROUGH EARLY COLLEGE

OUR PRODUCTS

Get the Facts: Guides

POWER 10 GUIDES

Get all four downloadable, power-packed guides for the early years in the College Decision process!

- **"10 Things You Can Absolutely Count On"** – We distill hundreds of hours of research into 10 easy to understand truths that demystify the college decision process.
- **"10 Worries That Are Not Worth the Worry"** – Avoid unnecessary anxiety for you and your child and better utilize your college selection budget.
- **"Guide For Teens"** – Provides clear, same facts, insights, information and guidance in an Instagram format for your teen.
- **"vibeXchange – A College Conversation Game"** – It's ideal for parents and teens to communicate effectively and make the college search process fun for both. The game reduces anxiety and miscommunication and starts the conversation in a positive and engaging way.

DOWNLOAD NOW - Only $37.50

STICKER vs. ACTUAL PRICE "APP"

What is your actual annual cost for a 4-year undergraduate degree? Our **FREE** app shows you:

- Instant answers on the total cost for colleges you're considering (tuition, room & board, fees)
- Get the actual average price based on your household income range
- Find the average financial aid granted to households like yours

FREE - FIND YOUR COST

COLLEGE OPTIMIZER INDEX

The College Optimizer Index is the foundation for **vibeffect**'s scientific approach to identifying ideal campus features by personal traits.

Since 2013, **vibeffect** has been measuring thriving across US 4-year colleges and collecting granular data that allows us to identify not just how many college students are thriving, but also what qualitative factors in the campus environment affect thriving on an individual level.

Each year we summarize our national findings and release highlights in the College Optimizer Index Whitepaper:

- Spending by families on higher education in America tops $461 billion
- **vibeffect**'s database includes more than 2000 universities and colleges and representation data on every demographic of students
- The first consumer measurement of the qualitative aspects of the investment

FREE - GET THE WHITEPAPER

Get Insider Info: Subscription

Know Your Ideal Campus: Assessments

Excel on Campus: Assessments

TEEN-TESTED AND APPROVED

Helping your teen choose a college is a team-building and relationship-building time and a "reward" question – what is most ideal finding the one college that deserves your child? Hopefully offers the power to confidently "frame" the campus where your future grad belongs.

Our groundbreaking guide is a complete control help your family save time and money. Our scientific assessments provide the data-driven balance that evaluate the problem in all ways and to daughter thriving both in the early stages of planning and after enrollment. Combined, our products offer a new and better framework for the college decision process.

Everything is reinforced and approved, so so great to do it!

Have a question? Talk to us

TESTIMONIALS

This is VERY interesting. Most of the results seem to fit Emma very – especially the independent thinker and frequent feedback from professors...This is a really GREAT gauging tool to use for a college search...

Amy K, Mom to Emma (age 14)

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TEEN-TESTED AND APPROVED

[illegible]

100% MONEY BACK GUARANTEE

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"This is VERY interesting. Most of the results seem to fit Emma well - especially the independent thinker and frequent feedback from professors...This is a really GREAT gauging tool to use for a college search."

Amy K., Mom to Emma (age 14)

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OUR PRODUCTS

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Get Insider Info!: Subscription

Know Your Ideal Campus: Assessments

vibePRIMER

At this point, choosing a college has become more of a reality than ever. Your teen will have several options to consider for his or her next four years of life (and future alma mater). Our **vibePrimer** establishes a baseline of information about the ideal campus "ecosystem" in light of the strengths your teen already has. This assessment is designed to:

See a demo of the vibePrimer

- Reveal the individual traits your teen already has that increase their likelihood to thrive in college
- Identify the ideal campus features perfect for them
- Help you know that the colleges they are planning correspond with where they are most likely to thrive
- Allow you to tune in to what matters and push aside common but unproven myths

[illegible]

vibeDIFFERENTIATOR

At the critical point when your teen is struggling with the decision of which college to say "yes" to, our **vibeDifferentiator** will ease both your mind and your teen's by providing:

- A scientific method to distinguish the pros and cons of each of the final offers
- An analysis of how likely your teen is to thrive at a particular college campus and why
- A method to reduce the financial and psychological risk of ending up in the wrong place
- A revealing explanation of what differentiates these top choice colleges

[illegible]

Excel on Campus: Assessments

TEEN TESTED AND APPROVED

Helping your teen choose a college can seem frustrating and overwhelming. So we asked a "radical" question ... what if it was about finding the one college that deserves your child? **vibeffect** offers the powerful opportunity choose the campus where your future grad belongs.

Our groundbreaking guides & subscription content help your family save time and money. Our scientific assessments predict the ideal campus features that increase the likelihood of your son or daughter thriving, both in the early stages of planning and after enrollment. Combined, our products create a new and better framework for the college decision process.

Everything is tested and approved. So go ahead, sign on.

Have a question? [illegible]

TESTIMONIALS

We are all really interested in finding that institution (where) our son or daughter is really, going to feel at home, is going to excel, and is going to thrive ... I think that some of the work that vibeffect is doing in that area has great potential.

Wayne Camara, Senior Vice President of Research at ACT

Int. Cl.: 16

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38, and 50

Reg. No. 3,270,034

United States Patent and Trademark Office

Registered July 24, 2007

TRADEMARK
PRINCIPAL REGISTER

AFFECT:

COOPERATIVE BAPTIST FELLOWSHIP, INC. (GEORGIA CORPORATION)
POST OFFICE BOX 450329
ATLANTA, GA 31145

FOR: PRINTED INSTRUCTIONAL AND EDUCATIONAL MATERIALS IN THE FIELD OF MISSIONS, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 1-1-2006; IN COMMERCE 6-1-2006.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 78-747,558, FILED 11-4-2005.

TINA L. SNAPP, EXAMINING ATTORNEY

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Mark: AFFECT:

AFFECT:

US Serial Number: 78747558

Application Filing Date: Nov. 04, 2005

US Registration Number: 3270034

Registration Date: Jul. 24, 2007

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor: LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office.

Status: The registration has been renewed.

Status Date: Feb. 09, 2018

Publication Date: Aug. 15, 2006 **Notice of Allowance Date:** Nov. 07, 2006

Mark Information

Mark Literal Elements: AFFECT:

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: Printed instructional and educational materials in the field of missions

International Class(es): 016 - Primary Class

U.S Class(es): 002, 005, 022, 023, 029, 037, 038, 050

Class Status: ACTIVE

Basis: 1(a)

First Use: Jan. 01, 2006

Use in Commerce: Jun. 01, 2006

Basis Information (Case Level)

Filed Use: No

Currently Use: Yes

Filed ITU: Yes

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Cooperative Baptist Fellowship, Inc.

Owner Address: Suite 500
160 Clairemont Avenue
Decatur, GEORGIA UNITED STATES 30030

Legal Entity Type: CORPORATION

State or Country Where Organized: GEORGIA

Attorney/Correspondence Information

Attorney of Record

Attorney Name: India E. Vincent

Docket Number: T0017428-003

Attorney Primary Email Address: ivincent@burr.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: India E. Vincent
BURR & FORMAN LLP
420 North 20th Street
Suite 3400
BIRMINGHAM, ALABAMA UNITED STATES 35203

Phone: 205-458-5284

Fax: 205-244-5714

Correspondent e-mail: ivincent@burr.com pkustos@burr.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Feb. 09, 2018	NOTICE OF ACCEPTANCE OF SEC. 8 & 9 - E-MAILED	
Feb. 09, 2018	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	73376
Feb. 09, 2018	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	73376
Feb. 09, 2018	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	73376
Jan. 20, 2018	TEAS SECTION 8 & 9 RECEIVED	
Jul. 24, 2016	COURTESY REMINDER - SEC. 8 (10-YR)/SEC. 9 E-MAILED	
Jul. 29, 2013	NOTICE OF ACCEPTANCE OF SEC. 8 & 15 - E-MAILED	
Jul. 29, 2013	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	76873
Jul. 29, 2013	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	76873
Jul. 17, 2013	TEAS SECTION 8 & 15 RECEIVED	
Jul. 24, 2007	REGISTERED-PRINCIPAL REGISTER	
Jun. 21, 2007	LAW OFFICE REGISTRATION REVIEW COMPLETED	66230
Jun. 21, 2007	ASSIGNED TO LIE	66230
May 23, 2007	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
May 08, 2007	STATEMENT OF USE PROCESSING COMPLETE	70565
Feb. 07, 2007	USE AMENDMENT FILED	70565
Feb. 07, 2007	TEAS STATEMENT OF USE RECEIVED	
Nov. 07, 2006	NOA MAILED - SOU REQUIRED FROM APPLICANT	
Aug. 15, 2006	PUBLISHED FOR OPPOSITION	
Jul. 26, 2006	NOTICE OF PUBLICATION	
Jun. 24, 2006	LAW OFFICE PUBLICATION REVIEW COMPLETED	78145
Jun. 02, 2006	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jun. 02, 2006	EXAMINER'S AMENDMENT ENTERED	88888
Jun. 02, 2006	EXAMINERS AMENDMENT E-MAILED	6328
Jun. 02, 2006	EXAMINERS AMENDMENT -WRITTEN	72617
Jun. 02, 2006	PREVIOUS ALLOWANCE COUNT WITHDRAWN	
May 15, 2006	ASSIGNED TO LIE	78145
May 12, 2006	ASSIGNED TO LIE	74192
May 11, 2006	APPROVED FOR PUB - PRINCIPAL REGISTER	

May 10, 2006	EXAMINER'S AMENDMENT ENTERED	88888
May 10, 2006	EXAMINERS AMENDMENT E-MAILED	6328
May 10, 2006	EXAMINERS AMENDMENT -WRITTEN	72617
May 10, 2006	ASSIGNED TO EXAMINER	72617
Nov. 12, 2005	NOTICE OF DESIGN SEARCH CODE MAILED	
Nov. 09, 2005	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: GENERIC WEB UPDATE **Date in Location:** Feb. 09, 2018

Opportunities to

affect:

NOVEMBER 2017

Impact of Welcoming

At Church: Around the Table

MISSIONS EDUCATION RESOURCE: The outline below is designed for mission groups, Bible study classes and other small groups. Share copies of *fellowship!* with group members prior to the meeting and have extra copies available. These suggestions are for a 45-minute time frame. ***Photocopy permission granted.***

CBF field personnel Kim and Marc Wyatt serve immigrants and refugees at Welcome House in the Research Triangle area of North Carolina.

Learn more at *cbf.net/wyatt*

1. Read the article on Kim and Marc Wyatt in the Fall 2017 issue of *fellowship!* and gather copies for participants.

2. Summarize the article or allow time for each table to read the article.

3. **Say:** Immigrant Jay mentions in the article, a transitional period he calls the "thin branch period," when a stage of life is being shaped and formed. In your table groups, discuss the following questions:

   - When have you experienced a "thin branch period" in your life? Who helped you? Who didn't help you?
   - As you look back now, how did that period shape and form you (positive and/or negative)?
   - How could you help others going through a transitional period?

4. Begin a short discussion of scriptural examples of the importance of welcoming the stranger and helping others based on scriptures such as Philippians 2:4 and Matthew 25:35-40.

5. In small groups, discuss how your church family could work in your local community or partner with local organizations to welcome and assist those who are new to the area, specifically refugees or immigrants. Be specific in your ideas.

(For additional ideas and information, visit Kim and Marc Wyatt's web page at: *www.cbf.net/wyatt* or provide information from local refugee and immigrant assistance programs. Most will have a "How can I help?" page on their website).

6. Close with prayer for Kim and Marc Wyatt and for the ministries of and resources for Welcome House. Ask God to show your church refugees and immigrants in your community who need assistance. Ask God to reveal specific ways in which your church and church members can minister to this group of people.

PRAYER GUIDE
cbf.net/pray

YOUTH LESSON
store.cbf.net/e3

BOOK CLUB
cbf.net/book-clubs

MORE AFFECT
cbf.net/affectonline

Int. Cl.: 16

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38 and 50

Reg. No. 3,508,376

United States Patent and Trademark Office

Registered Sep. 30, 2008

TRADEMARK
PRINCIPAL REGISTER

ART EFFECTS, INC. (MINNESOTA CORPORATION)
3715 50TH AVENUE NORTH
BROOKLYN CENTER, MN 55429

FOR: ART PICTURES, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 0-0-1996; IN COMMERCE 10-1-1997.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ART" AND "INC.", APART FROM THE MARK AS SHOWN.

SER. NO. 77-409,591, FILED 2-29-2008.

SETH A. RAPPAPORT, EXAMINING ATTORNEY

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Mark: ART EFFECTS, INC.

US Serial Number:	77409591	**Application Filing Date:**	Feb. 29, 2008
US Registration Number:	3508376	**Registration Date:**	Sep. 30, 2008
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:	The registration has been renewed.		
Status Date:	Sep. 07, 2018		

Publication Date: Jul. 15, 2008

Mark Information

Mark Literal Elements:	ART EFFECTS, INC.
Standard Character Claim:	No
Mark Drawing Type:	5 - AN ILLUSTRATION DRAWING WITH WORD(S) /LETTER(S)/ NUMBER(S) INSTYLIZED FORM
Color(s) Claimed:	Color is not claimed as a feature of the mark.
Disclaimer:	"ART" AND "INC."

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:	Art pictures		
International Class(es):	016 - Primary Class	**U.S Class(es):**	002, 005, 022, 023, 029, 037, 038, 050
Class Status:	ACTIVE		
Basis:	1(a)		
First Use:	1996	**Use in Commerce:**	Oct. 01, 1997

Basis Information (Case Level)

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

Filed 66A: No **Currently No Basis:** No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Art Effects, Inc.

Owner Address: 3715 50th Avenue North
Brooklyn Center, MINNESOTA UNITED STATES 55429

Legal Entity Type: CORPORATION **State or Country Where Organized:** MINNESOTA

Attorney/Correspondence Information

Attorney of Record - None

Correspondent

Correspondent Name/Address: Art Effects, Inc.
3715 50th Avenue North
BROOKLYN CENTER, MINNESOTA UNITED STATES 55429

Phone: 763.504.9773 **Fax:** 763.504.9918

Correspondent e-mail: monte@arteffectsinc.com
jenny@arteffectsinc.com **Correspondent e-mail Authorized:** Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Sep. 07, 2018	NOTICE OF ACCEPTANCE OF SEC. 8 & 9 - E-MAILED	
Sep. 07, 2018	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	67723
Sep. 07, 2018	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	67723
Sep. 07, 2018	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	67723
Aug. 29, 2018	TEAS SECTION 8 & 9 RECEIVED	
Aug. 29, 2018	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Sep. 30, 2017	COURTESY REMINDER - SEC. 8 (10-YR)/SEC. 9 E-MAILED	
Sep. 13, 2014	NOTICE OF ACCEPTANCE OF SEC. 8 & 15 - E-MAILED	
Sep. 13, 2014	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	76985
Sep. 13, 2014	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	76985
Aug. 29, 2014	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Aug. 29, 2014	TEAS SECTION 8 & 15 RECEIVED	
Sep. 30, 2008	REGISTERED-PRINCIPAL REGISTER	
Jul. 15, 2008	PUBLISHED FOR OPPOSITION	
Jun. 25, 2008	NOTICE OF PUBLICATION	
Jun. 10, 2008	LAW OFFICE PUBLICATION REVIEW COMPLETED	76985
Jun. 10, 2008	ASSIGNED TO LIE	76985
Jun. 10, 2008	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jun. 10, 2008	ASSIGNED TO EXAMINER	82438
Mar. 05, 2008	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: GENERIC WEB UPDATE **Date in Location:** Sep. 07, 2018

Art Effects™

Bird Chat I

Tava Studios

12 x 24

D45207

8 47872 01077 1

Art Effects
Chopper
Anthony Morrow
8x12
A15050
8 76595 00011 0

Art Effects, Inc.
Distinction in quality wall décor

NEW RELEASE

888.504.9773

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User Name •••••••• Log In

Art Effects has over 30,000 quality pieces of wall décor in stock and ready to ship within 72 hours.

New accounts please register to shop our online store.

Browsing?

Please view our online catalog.

© Art Effects, Inc. 3715 50th Avenue North, Brooklyn Center, MN 55429 | Phone: 888.504.9773 | Fax: 763.504.9918 | Email
Art Effects, Inc. image copyrights belong to their respective owners. All unauthorized use is prohibited. Website by Kindem Design.
Art Effects, Inc. is a wholesale art and wall décor manufacturer.

United States of America

United States Patent and Trademark Office

Artisan's Effect

Reg. No. 4,942,928

Registered Apr. 19, 2016

Int. Cl.: 16

TRADEMARK

PRINCIPAL REGISTER

RYNN, BRENT (UNITED STATES INDIVIDUAL)
2736 CLEARFIELD LN
FRISCO, TX 75034

FOR: INK FOR PENS; INK PENS; MARKERS; PENS, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 6-30-2015; IN COMMERCE 6-30-2015.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 86-662,107, FILED 6-15-2015.

ANTHONY RINKER, EXAMINING ATTORNEY

Michelle K. Lee

Director of the United States
Patent and Trademark Office

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years*
What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See* 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.* *See* 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*
What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see http://www.wipo.int/madrid/en/.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at http://www.uspto.gov.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at http://www.uspto.gov.

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Mark: ARTISAN'S EFFECT

Artisan's Effect

US Serial Number:	86662107	**Application Filing Date:**	Jun. 15, 2015
US Registration Number:	4942928	**Registration Date:**	Apr. 19, 2016
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: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Apr. 19, 2016

Publication Date: Nov. 03, 2015 **Notice of Allowance Date:** Dec. 29, 2015

Mark Information

Mark Literal Elements: ARTISAN'S EFFECT

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: Ink for pens; Ink pens; Markers; Pens

International Class(es):	016 - Primary Class	**U.S Class(es):**	002, 005, 022, 023, 029, 037, 038, 050
Class Status:	ACTIVE		
Basis:	1(a)		
First Use:	Jun. 30, 2015	**Use in Commerce:**	Jun. 30, 2015

Basis Information (Case Level)

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

Current Owner(s) Information

Owner Name: Rynn, Brent

Owner Address: 2736 Clearfield Ln
Frisco, TEXAS UNITED STATES 75034

Legal Entity Type: INDIVIDUAL **Citizenship:** UNITED STATES

Attorney/Correspondence Information

Attorney of Record - None

Correspondent

Correspondent Name/Address: RYNN, BRENT
2736 Clearfield Ln
Frisco, TEXAS UNITED STATES 75034-4339

Phone: (214)927-9820

Correspondent e-mail: brent@rynn.net **Correspondent e-mail Authorized:** Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Apr. 19, 2021	COURTESY REMINDER - SEC. 8 (6-YR) E-MAILED	
Apr. 19, 2016	REGISTERED-PRINCIPAL REGISTER	
Mar. 16, 2016	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	
Mar. 15, 2016	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Feb. 23, 2016	STATEMENT OF USE PROCESSING COMPLETE	66230
Jan. 18, 2016	USE AMENDMENT FILED	66230
Feb. 20, 2016	CASE ASSIGNED TO INTENT TO USE PARALEGAL	66230
Jan. 18, 2016	TEAS STATEMENT OF USE RECEIVED	
Dec. 29, 2015	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Nov. 03, 2015	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Nov. 03, 2015	PUBLISHED FOR OPPOSITION	
Oct. 14, 2015	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Sep. 23, 2015	APPROVED FOR PUB - PRINCIPAL REGISTER	
Sep. 23, 2015	ASSIGNED TO EXAMINER	81097
Jun. 18, 2015	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Jun. 18, 2015	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION **Date in Location:** Mar. 15, 2016

Artisan's
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Artisan's
Effect
Le Color Window Markers
8 Liquid Chalk Markers

www.artisanseffect.com/collections/all

ABOUT US WHOLESALE STORE CRAFT IDEAS HOME LOG IN CART (0) CHECKOUT

Artisan's Effect

HOME CRAFT IDEAS STORE WHOLESALE ABOUT US

PRODUCTS

Sort By: Alphabetically, A-Z

SALE

Artisan's Effect | Mega Liquid Chalk Markers No-odor 6mm with Reversible Tip for Windows, Chalkboards, Whiteboards, Metal, Tile, Mirror ~~$ 21.99~~ $ 16.99

SALE

Artisan's Effect Liquid Chalk Radiant Chalk Marker for Windows, Chalkboards, Whiteboard and Non Porous Surfaces No-Odor Dry Erase with Reversible Tip ~~$ 15.99~~ $ 11.95

SALE

Artisan's Effect Wine Glass Party Markers replacement for wine charms ~~$ 13.99~~ $ 9.99

SALE

Int. Cl.: 16

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38, and 50

Reg. No. 3,202,489

United States Patent and Trademark Office

Registered Jan. 23, 2007

TRADEMARK
PRINCIPAL REGISTER

FAUX EFFECTS WORLD

FAUX EFFECTS INTERNATIONAL, INC. (FLORIDA CORPORATION)

3435 AVIATION BOULEVARD

VERO BEACH, FL 32960

FOR: MAGAZINE FEATURING ARTICLES ABOUT DECORATING AND INTERIOR AND EXTERIOR FINISHES, GLAZES, AND PAINTS, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 6-30-2004; IN COMMERCE 6-30-2004.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 2,330,478.

SEC. 2(F) AS TO "FAUX EFFECTS".

SN 76-577,804, FILED 2-23-2004.

SUSAN STIGLITZ, EXAMINING ATTORNEY

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Mark: FAUX EFFECTS WORLD

FAUX EFFECTS WORLD

US Serial Number: 76577804

Application Filing Date: Feb. 23, 2004

US Registration Number: 3202489

Registration Date: Jan. 23, 2007

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor: LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office.

Status: The registration has been renewed.

Status Date: Mar. 18, 2017

Publication Date: Jun. 14, 2005 **Notice of Allowance Date:** Sep. 06, 2005

Mark Information

Mark Literal Elements: FAUX EFFECTS WORLD

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

Acquired Distinctiveness Claim: In part

Distinctiveness Limitation Statement: as to "FAUX EFFECTS"

Related Properties Information

Claimed Ownership of US Registrations: 2330478

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: magazine featuring articles about decorating and interior and exterior finishes, glazes, and paints

International Class(es): 016 - Primary Class

U.S Class(es): 002, 005, 022, 023, 029, 037, 038, 050

Class Status: ACTIVE

Basis: 1(a)

First Use: Jun. 30, 2004

Use in Commerce: Jun. 30, 2004

Basis Information (Case Level)

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

Current Owner(s) Information

Owner Name: Faux Effects International, Inc.

Owner Address: 2700 Industrial Ave 2
Fort Pierce, FLORIDA UNITED STATES 34946

Legal Entity Type: CORPORATION

State or Country Where Organized: FLORIDA

Attorney/Correspondence Information

Attorney of Record

Attorney Name: ASHLEY G. KESSLER

Docket Number: 389514.000

Attorney Primary Email Address: akessler@cozen.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: ASHLEY G. KESSLER
COZEN O'CONNOR
175 Greenwich Street, 55th Floor
3 World Trade Center
New York, NEW YORK UNITED STATES 10007

Phone: 212-883-2221

Fax: 612-260-8015

Correspondent e-mail: akessler@cozen.com phipdocketing@cozen.com mlima@cozen.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Dec. 16, 2020	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Dec. 16, 2020	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Dec. 16, 2020	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Dec. 16, 2020	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Dec. 16, 2020	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Dec. 14, 2020	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Dec. 14, 2020	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Dec. 14, 2020	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Dec. 14, 2020	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Dec. 14, 2020	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Jul. 30, 2018	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Mar. 18, 2017	NOTICE OF ACCEPTANCE OF SEC. 8 & 9 - E-MAILED	
Mar. 18, 2017	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	76293
Mar. 18, 2017	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	76293
Mar. 17, 2017	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	76293
Jan. 20, 2017	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Jan. 20, 2017	TEAS SECTION 8 & 9 RECEIVED	
Jul. 05, 2016	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Jul. 05, 2016	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	

Jan. 23, 2016	COURTESY REMINDER - SEC. 8 (10-YR)/SEC. 9 E-MAILED	
Jul. 17, 2012	NOTICE OF ACCEPTANCE OF SEC. 8 & 15 - E-MAILED	
Jul. 17, 2012	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	77315
Jul. 14, 2012	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	77315
Jul. 05, 2012	TEAS SECTION 8 & 15 RECEIVED	
Apr. 20, 2007	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Jan. 23, 2007	REGISTERED-PRINCIPAL REGISTER	
Dec. 15, 2006	LAW OFFICE REGISTRATION REVIEW COMPLETED	71441
Dec. 15, 2006	ASSIGNED TO LIE	71441
Dec. 01, 2006	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Sep. 22, 2006	STATEMENT OF USE PROCESSING COMPLETE	64657
Nov. 01, 2005	USE AMENDMENT FILED	64657
Sep. 06, 2006	TEAS STATEMENT OF USE RECEIVED	
Apr. 10, 2006	SOU EXTENSION 1 GRANTED	66530
Nov. 01, 2005	SOU EXTENSION 1 FILED	66530
Nov. 01, 2005	TEAS STATEMENT OF USE RECEIVED	
Oct. 04, 2005	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Oct. 04, 2005	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Sep. 06, 2005	NOA MAILED - SOU REQUIRED FROM APPLICANT	
Jun. 14, 2005	PUBLISHED FOR OPPOSITION	
May 25, 2005	NOTICE OF PUBLICATION	
Mar. 01, 2005	LAW OFFICE PUBLICATION REVIEW COMPLETED	68552
Mar. 01, 2005	ASSIGNED TO LIE	68552
Feb. 23, 2005	EXAMINERS AMENDMENT MAILED	
Feb. 22, 2005	APPROVED FOR PUB - PRINCIPAL REGISTER	
Feb. 22, 2005	EXAMINERS AMENDMENT -WRITTEN	76487
Sep. 13, 2004	NON-FINAL ACTION MAILED	
Sep. 13, 2004	NON-FINAL ACTION WRITTEN	76487
Sep. 12, 2004	ASSIGNED TO EXAMINER	76487
Mar. 11, 2004	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: GENERIC WEB UPDATE **Date in Location:** Mar. 18, 2017

A Faux Effects International, Inc. Publication

Volume XV

Faux Effects World®

The International Magazine of Decorative Finishing and Fine Art

Declaration

The mark is in use in commerce on or in connection with the goods and/or services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce. The mark has been in continuous use in commerce for five (5) consecutive years after the date of registration, or the date of publication under Section 12(c), and is still in use in commerce. There has been no final decision adverse to the owner's claim of ownership of such mark, or to the owner's right to register the same or to keep the same on the register; and there is no proceeding involving said rights pending and not disposed of either in the U.S. Patent and Trademark Office or in the courts.

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

Signature Section

Signature: _____
Date: 6/28/12
Signatory's Name: Raymond Sandor
Signatory's Position: President

NOTE TO APPLICANT: When filed as part of the electronic form (i.e., scanned and attached as an image file), the signature page **must** include both the signature information **and** the boilerplate declaration language. Do **not** include the entire application, but do ensure that the boilerplate declaration language actually appears; *a signature by itself will **not** be acceptable.* If, due to browser limitations, the boilerplate declaration language appears on a previous page when printed, you must "merge" the declaration and signature block onto a single page prior to signing, so that the *one complete page* can be scanned to create an acceptable image file. It is recommended that you copy-and-paste the entire text form into another document, manipulate the spacing there to move the declaration and signature section to a separate page, and then print this new version of the text form to send to the signatory.

Int. Cl.: 16

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38, and 50

Reg. No. 2,707,486

United States Patent and Trademark Office

Registered Apr. 15, 2003

TRADEMARK
PRINCIPAL REGISTER

FEAR EFFECT

EIDOS INTERACTIVE LIMITED (UNITED KINGDOM CORPORATION)
WIMBLEDON BRIDGE HOUSE
1 HARTFIELD ROAD
WIMBLEDON, LONDON, UNITED KINGDOM SW19 3RU

FOR: PUBLICATIONS, NAMELY, BOOKS, BROCHURES, FLYSHEETS AND PERIODICALS IN THE FIELD OF ELECTRONIC ENTERTAINMENT; COMIC BOOKS; PAPER, CARDBOARD AND PLASTIC FOR PACKAGING; INSTRUCTIONAL BOOKS AND PRINTED TEACHING MATERIALS IN THE FIELD OF ELECTRONIC ENTERTAINMENT, AND POSTERS, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 2-0-2000; IN COMMERCE 2-0-2000.

SN 76-019,162, FILED 4-6-2000.

JOHN E. MICHOS, EXAMINING ATTORNEY

Generated on: This page was generated by TSDR on 2022-05-06 13:34:03 EDT

Mark: FEAR EFFECT

FEAR EFFECT

US Serial Number: 76019162

Application Filing Date: Apr. 06, 2000

US Registration Number: 2707486

Registration Date: Apr. 15, 2003

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor: LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office.

Status: The registration has been renewed.

Status Date: May 24, 2013

Publication Date: Oct. 09, 2001 **Notice of Allowance Date:** Sep. 17, 2002

Mark Information

Mark Literal Elements: FEAR EFFECT

Standard Character Claim: No

Mark Drawing Type: 1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)

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: publications, namely, books, [brochures, flysheets and periodicals] in the field of electronic entertainment; [comic books; paper, cardboard and plastic for packaging;] instructional books and printed teaching materials in the field of electronic entertainment [, and posters]

International Class(es): 016 - Primary Class

U.S Class(es): 002, 005, 022, 023, 029, 037, 038, 050

Class Status: ACTIVE

Basis: 1(a)

First Use: Feb. 2000

Use in Commerce: Feb. 2000

Basis Information (Case Level)

Filed Use: No

Currently Use: Yes

Filed ITU: Yes

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: SQUARE ENIX LIMITED

Owner Address: 240 Blackfriars Road
London UNITED KINGDOM SE18NW

Legal Entity Type: PRIVATE LIMITED COMPANY

State or Country Where Organized: UNITED KINGDOM

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Laura J. Winston

Docket Number: 0245015.0021

Attorney Primary Email Address: trademarks@offitkurman.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: Laura J. Winston
Offit Kurman, P.A.
590 Madison Ave., 6th Floor
New York, NEW YORK UNITED STATES 10022

Phone: 347.589.8536

Fax: 212.545.1656

Correspondent e-mail: trademarks@offitkurman.com lwinston@offitkurman.com alison.pratt@offitkurman.com

Correspondent e-mail Authorized: Yes

Domestic Representative

Domestic Representative Name: Laura J. Winston

Phone: 347.589.8536

Fax: 212.545.1900

Domestic Representative e-mail: trademarks@offitkurman.com

Domestic Representative e-mail Authorized: Yes

Prosecution History

Date	Description	Proceeding Number
Apr. 15, 2022	COURTESY REMINDER - SEC. 8 (10-YR)/SEC. 9 E-MAILED	
Dec. 21, 2020	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Dec. 21, 2020	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Dec. 21, 2020	TEAS CHANGE OF DOMESTIC REPRESENTATIVES ADDRESS	
Dec. 21, 2020	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Dec. 21, 2020	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Dec. 21, 2020	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Apr. 26, 2019	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Apr. 26, 2019	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Mar. 08, 2019	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Mar. 08, 2019	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Oct. 10, 2014	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Oct. 10, 2014	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
May 24, 2013	NOTICE OF ACCEPTANCE OF SEC. 8 & 9 - E-MAILED	
May 24, 2013	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	75184
May 24, 2013	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	75184
May 24, 2013	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	75184
Apr. 29, 2013	TEAS SECTION 8 & 9 RECEIVED	
Feb. 10, 2010	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Sep. 25, 2009	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	73376
Sep. 25, 2009	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	73376
Sep. 15, 2009	TEAS SECTION 8 & 15 RECEIVED	
Dec. 19, 2007	CASE FILE IN TICRS	

Feb. 27, 2006	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Apr. 15, 2003	REGISTERED-PRINCIPAL REGISTER	
Feb. 09, 2003	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Feb. 06, 2003	ASSIGNED TO EXAMINER	67443
Feb. 05, 2003	STATEMENT OF USE PROCESSING COMPLETE	
Feb. 05, 2003	SOU EXTENSION 1 GRANTED	
Nov. 18, 2002	USE AMENDMENT FILED	
Nov. 18, 2002	SOU EXTENSION 1 FILED	
Nov. 21, 2002	PAPER RECEIVED	
Sep. 17, 2002	NOA MAILED - SOU REQUIRED FROM APPLICANT	
Nov. 13, 2001	EXTENSION OF TIME TO OPPOSE RECEIVED	
Oct. 09, 2001	PUBLISHED FOR OPPOSITION	
Sep. 19, 2001	NOTICE OF PUBLICATION	
Apr. 30, 2001	APPROVED FOR PUB - PRINCIPAL REGISTER	
Mar. 20, 2001	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Sep. 26, 2000	NON-FINAL ACTION MAILED	
Sep. 19, 2000	ASSIGNED TO EXAMINER	67443
Sep. 14, 2000	ASSIGNED TO EXAMINER	74814
Sep. 12, 2000	ASSIGNED TO EXAMINER	77302

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: GENERIC WEB UPDATE **Date in Location:** May 24, 2013

Assignment Abstract Of Title Information

Summary

Total Assignments: 2 **Registrant:** Eidos Interactive Limited

Assignment 1 of 2

Conveyance: SECURITY INTEREST

Reel/Frame: 3759/0745 **Pages:** 13

Date Recorded: Apr. 15, 2008

Supporting Documents: assignment-tm-3759-0745.pdf

Assignor

Name: EIDOS INTERACTIVE LIMITED **Execution Date:** Jan. 31, 2008

Legal Entity Type: PRIVATE LIMITED COMPANY **State or Country Where Organized:** UNITED KINGDOM

Assignee

Name: LLOYDS TSB BANK PLC

Legal Entity Type: PUBLIC LIMITED COMPANY **State or Country Where Organized:** UNITED KINGDOM

Address: 25 GRESHAM STREET
LONDON, UNITED KINGDOM EC2V 7HN

Correspondent

Correspondent Name: RYAN T. COLGAN

Correspondent Address: ROPES & GRAY LLP
1211 AVENUE OF THE AMERICAS
NEW YORK, NY 10036-8704

Domestic Representative

Domestic Representative Name: RYAN T. COLGAN

Domestic Representative Address: ROPES & GRAY LLP
1211 AVENUE OF THE AMERICAS
NEW YORK, NY 10036-8704

Assignment 2 of 2

Conveyance: CHANGE OF NAME

Reel/Frame: 4143/0794 **Pages:** 5

Date Recorded: Feb. 04, 2010

Supporting Documents: assignment-tm-4143-0794.pdf

Assignor

Name: EIDOS INTERACTIVE LIMITED **Execution Date:** Nov. 05, 2009

Legal Entity Type: CORPORATION **State or Country Where Organized:** UNITED KINGDOM

Assignee

Name: SQUARE ENIX LIMITED

Legal Entity Type: PRIVATE LIMITED COMPANY **State or Country Where Organized:** UNITED KINGDOM

Address: 1 HARTFIELD ROAD
WIMBLEDON BRIDGE HOUSE, WIMBLEDON
LONDON, UNITED KINGDOM SW19 3RU

Correspondent

Correspondent Name: JOHN W. CRITTENDEN

Correspondent Address: 777 6TH STREET, NW
SUITE 1100
WASHINGTON, DC 20001

Domestic Representative

Domestic Representative Name: JOHN W. CRITTENDEN

Domestic Representative Address: 777 6TH STREET, NW
SUITE 1100
WASHINGTON, DC 20001

Proceedings

Summary

Number of Proceedings: 1

Type of Proceeding: Extension of Time

Proceeding Number: 76019162 **Filing Date:** Jan 10, 2002

Status: Terminated **Status Date:** Jan 10, 2002

Interlocutory Attorney:

Defendant

Name: Eidos Interactive Limited

Correspondent Address: TSAN MERRITT-POREE
COOLEY GODWARD LLP
ONE MARITIME PLAZA, 20TH FLOOR
SAN FRANCISCO CA UNITED STATES , 94111-3580

Associated marks

Mark	Application Status	Serial Number	Registration Number
FEAR EFFECT	REGISTERED AND RENEWED	76019162	2707486

Potential Opposer(s)

Name: No Fear, Inc

Correspondent Address: Kit M. Stetina
Stetina Brunda Garred & Brucker
75 Enterprise, Suite 250
Aliso Viejo CA UNITED STATES , 92656

Prosecution History

Entry Number	History Text	Date	Due Date
3	DELETE ENTRY	Apr 01, 2002	
2	EXTENSION OF TIME GRANTED	Jan 10, 2002	
1	EXTENSION OF TIME TO OPPOSE FILED	Nov 13, 2001	

PRIMA'S OFFICIAL STRATEGY GUIDE

fear effect

Tactics for Detective Hong Kong's Most Wanted Fugitives

EIDOS

primagames.com

United States of America

United States Patent and Trademark Office

FIMO EFFECT

Reg. No. 4,297,488

Registered Mar. 5, 2013

Int. Cl.: 16

TRADEMARK

PRINCIPAL REGISTER

STAEDTLER MARS GMBH & CO. KG (FED REP GERMANY KOMMANDITGESELLSCHAFT (KG))
MOOSAECKERSTRASSE 3
90427 NUERNBERG, FED REP GERMANY

FOR: MODELING MATERIALS, NAMELY, MODELING COMPOUNDS; MODELING CLAY; MODELING MATERIALS IN THE FORM OF EDUCATIONAL KITS COMPRISED OF MODELING COMPOUNDS, MODELING CLAY, PENS, ART INSTRUCTIONAL PAMPHLETS, AND ARTISTS' IMPLEMENTS AND MATERIALS, NAMELY, SPATULAS, STENCILS, AND MOLDS FOR MODELING CLAY, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 12-0-2007; IN COMMERCE 12-0-2007.

OWNER OF U.S. REG. NOS. 1,049,547 AND 3,737,080.

THE MARK CONSISTS OF THE STYLIZED WORDING "FIMO" ABOVE A RECTANGULAR FIGURE WITH CONCAVE SIDES ON THE TOP AND BOTTOM WHICH CONTAINS THE WORD "EFFECT" WITH STARBURST DESIGNS TO THE RIGHT AND LEFT SIDES OF THE WORD.

SER. NO. 85-584,864, FILED 3-30-2012.

ZACHARY BELLO, EXAMINING ATTORNEY

UNITED STATES PATENT AND TRADEMARK OFFICE · DEPARTMENT OF COMMERCE

Acting Director of the United States Patent and Trademark Office

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years*
What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See* 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.* *See* 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*
What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or reminder of these filing requirements.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see http://www.wipo.int/madrid/en/.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at http://www.uspto.gov.

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Mark: FIMO EFFECT

US Serial Number: 85584864

Application Filing Date: Mar. 30, 2012

US Registration Number: 4297488

Registration Date: Mar. 05, 2013

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 Sections 8 and 15 combined declaration has been accepted and acknowledged.

Status Date: Jun. 19, 2018

Publication Date: Dec. 18, 2012

Mark Information

Mark Literal Elements: FIMO EFFECT

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of the stylized wording "FIMO" above a rectangular figure with concave sides on the top and bottom which contains the word "EFFECT" with starburst designs to the right and left sides of the word.

Color(s) Claimed: Color is not claimed as a feature of the mark.

Design Search Code(s): 01.01.09 - Two stars; Stars, two
01.01.12 - Stars - multiple stars with four points
26.11.21 - Rectangles that are completely or partially shaded
26.11.25 - Rectangles with one or more curved sides

Related Properties Information

Claimed Ownership of US Registrations: 1049547, 3737080

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: Modeling materials, namely, modeling compounds; modeling clay; [modeling materials in the form of educational kits comprised of modeling compounds, modeling clay, pens, art instructional pamphlets, and artists' implements and materials, namely, spatulas, stencils, and molds for modeling clay]

International Class(es): 016 - Primary Class

U.S Class(es): 002, 005, 022, 023, 029, 037, 038, 050

Class Status:	ACTIVE		
Basis:	1(a)		
First Use:	Dec. 2007	**Use in Commerce:**	Dec. 2007

Basis Information (Case Level)

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

Current Owner(s) Information

Owner Name:	STAEDTLER MARS GMBH & CO. KG		
Owner Address:	MOOSAECKERSTRASSE 3 90427 NUERNBERG GERMANY		
Legal Entity Type:	kommanditgesellschaft (kg)	**State or Country Where Organized:**	GERMANY

Attorney/Correspondence Information

Attorney of Record

Attorney Name:	Katrin Lewertoff	**Docket Number:**	STM045UST
Attorney Primary Email Address:	klewertoff@ferdinandip.com	**Attorney Email Authorized:**	Yes

Correspondent

Correspondent Name/Address:	Katrin Lewertoff Ferdinand IP, LLC 1221 Post Road East Suite 302 Westport, CONNECTICUT UNITED STATES 06880		
Phone:	203 557 4224	**Fax:**	203 905 6747
Correspondent e-mail:	klewertoff@ferdinandip.com annam@24iplg.com betha@24iplg.com	**Correspondent e-mail Authorized:**	Yes

Domestic Representative

Domestic Representative Name:	Katrin Lewertoff	**Phone:**	203 557 4224
Fax:	203 905 6747		
Domestic Representative e-mail:	klewertoff@ferdinandip.com	**Domestic Representative e-mail Authorized:**	Yes

Prosecution History

Date	Description	Proceeding Number
Mar. 05, 2022	COURTESY REMINDER - SEC. 8 (10-YR)/SEC. 9 E-MAILED	
Jun. 19, 2018	NOTICE OF ACCEPTANCE OF SEC. 8 & 15 - E-MAILED	
Jun. 19, 2018	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	74886
Jun. 19, 2018	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	74886
Jun. 05, 2018	TEAS SECTION 8 & 15 RECEIVED	
Mar. 05, 2018	COURTESY REMINDER - SEC. 8 (6-YR) E-MAILED	
Mar. 05, 2013	REGISTERED-PRINCIPAL REGISTER	
Dec. 18, 2012	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Dec. 18, 2012	PUBLISHED FOR OPPOSITION	
Nov. 28, 2012	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	

Nov. 13, 2012	LAW OFFICE PUBLICATION REVIEW COMPLETED	70629
Oct. 27, 2012	APPROVED FOR PUB - PRINCIPAL REGISTER	
Oct. 16, 2012	TEAS/EMAIL CORRESPONDENCE ENTERED	70629
Oct. 16, 2012	CORRESPONDENCE RECEIVED IN LAW OFFICE	70629
Oct. 03, 2012	ASSIGNED TO LIE	70629
Sep. 25, 2012	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Jul. 13, 2012	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Jul. 13, 2012	NON-FINAL ACTION E-MAILED	6325
Jul. 13, 2012	NON-FINAL ACTION WRITTEN	77073
Jul. 11, 2012	ASSIGNED TO EXAMINER	77073
Apr. 07, 2012	NOTICE OF DESIGN SEARCH CODE MAILED	
Apr. 06, 2012	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Apr. 03, 2012	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: TMO LAW OFFICE 111 **Date in Location:** Jun. 19, 2018

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Michaels

FIMO Effect® Modelling Clay

Item # M10187162

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Chat & help other shoppers on our community chat!

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Mark: FIMO EFFECT

US Serial Number: 90363276

Application Filing Date: Dec. 07, 2020

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor: LIVE/APPLICATION/Under Examination

The trademark application has been accepted by the Office (has met the minimum filing requirements) and that this application has been assigned to an examiner.

Status: Review prior to registration completed.

Status Date: Apr. 23, 2022

Publication Date: Jul. 13, 2021 **Notice of Allowance Date:** Sep. 07, 2021

Mark Information

Mark Literal Elements: FIMO EFFECT

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of the wording "FIMO" with the letter "F" in red, "I" in yellow, "M" in purple, and "O" in red, appearing above a diamond design in turquoise blue. The wording "EFFECT" appears on the diamond in white, and two white stars, one above "EFFECT", and one below, also appear in the diamond.

Color Drawing: Yes

Color(s) Claimed: The colors red, yellow, purple, turquoise blue, and white are claimed as a feature of the mark.

Design Search Code(s): 01.01.09 - Two stars; Stars, two
01.01.12 - Stars - multiple stars with four points
17.03.01 - Stones, gems; Diamonds, jewelry; Nuggets of precious metals

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: Kneadable and heat-hardenable modeling compounds for forming shaped objects; modeling clay; arts and crafts clay kits; educational kits comprised of modeling clay

International Class(es): 016 - Primary Class

U.S Class(es): 002, 005, 022, 023, 029, 037, 038, 050

Class Status: ACTIVE

Basis: 1(a)

First Use: Dec. 2020

Use in Commerce: Jan. 2022

Basis Information (Case Level)

Filed Use: No

Currently Use: Yes

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

Current Owner(s) Information

Owner Name: STAEDTLER Mars GmbH & Co. KG

Owner Address: Moosaeckerstr. 3
90427 Nuernberg GERMANY 90427

Legal Entity Type: gmbh & co. kg

State or Country Where Organized: GERMANY

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Katrin Lewertoff

Docket Number: STM066UST

Attorney Primary Email Address: klewertoff@fiplawgroup.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: Katrin Lewertoff
FERDINAND IP, LLC
1221 POST ROAD EAST
SUITE 302
WESTPORT, CONNECTICUT UNITED STATES 06880

Phone: 203-557-4224

Correspondent e-mail: klewertoff@fiplawgroup.com annam@fiplawgroup.com betha@fiplawgroup.com

Correspondent e-mail Authorized: Yes

Domestic Representative

Domestic Representative Name: Katrin Lewertoff

Phone: 203-557-4224

Domestic Representative e-mail: klewertoff@fiplawgroup.com

Domestic Representative e-mail Authorized: Yes

Prosecution History

Date	Description	Proceeding Number
Apr. 26, 2022	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	
Apr. 23, 2022	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Apr. 21, 2022	ASSIGNED TO EXAMINER	83187
Mar. 30, 2022	STATEMENT OF USE PROCESSING COMPLETE	66530
Mar. 04, 2022	USE AMENDMENT FILED	66530
Mar. 29, 2022	CASE ASSIGNED TO INTENT TO USE PARALEGAL	66530
Mar. 04, 2022	TEAS STATEMENT OF USE RECEIVED	
Sep. 07, 2021	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Jul. 13, 2021	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Jul. 13, 2021	PUBLISHED FOR OPPOSITION	
Jun. 23, 2021	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Jun. 10, 2021	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jun. 10, 2021	EXAMINER'S AMENDMENT ENTERED	88888
Jun. 10, 2021	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Jun. 10, 2021	EXAMINERS AMENDMENT E-MAILED	6328
Jun. 10, 2021	EXAMINERS AMENDMENT -WRITTEN	93921
May 26, 2021	ASSIGNED TO EXAMINER	93921
Feb. 12, 2021	NOTICE OF DESIGN SEARCH CODE E-MAILED	

Feb. 11, 2021	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM
Dec. 10, 2020	NEW APPLICATION ENTERED IN TRAM

TM Staff and Location Information

TM Staff Information			
TM Attorney:	HACK, ANDREA R	**Law Office Assigned:**	LAW OFFICE 108
File Location			
Current Location:	PUBLICATION AND ISSUE SECTION	**Date in Location:**	Apr. 23, 2022

STAEDTLER
FIMO
EFFECT
30 min
110°C
230°F
Modelliermasse · ofenhärtend
Modelling clay · oven-bake
Pâte à modeler · cuire au four
Pasta de modelar · endurecer al horno
57 g (2 oz) e

STAEDTLER
FIMO
EFFECT
30 min
110°C
230°F
Modelliermasse · ofenhärtend
Modelling clay · oven-bake
Pâte à modeler · cuire au four
Pasta de modelar · endurecer al horno
57 g (2 oz) e

FIMO
FIMO

United States of America

United States Patent and Trademark Office

Reg. No. 6,323,418

Registered Apr. 13, 2021

Int. Cl.: 16

Trademark

Principal Register

STAEDTLER Mars GmbH & Co. KG (GERMANY GMBH & CO. KG)
Moosaeckerstr. 3
90427 Nuernberg, FED REP GERMANY 90427

CLASS 16: Kneadable and heat-hardenable modeling compounds for forming shaped objects; modeling clay; arts and crafts clay kits; educational kits comprised of modeling clay

FIRST USE 7-10-2020; IN COMMERCE 7-10-2020

The color(s) red, yellow, purple, white, and brown is/are claimed as a feature of the mark.

The mark consists of the wording "FIMO" with the letter "F" in red, "I" in yellow, "M" in purple, and "O" in red, appearing above a diamond design in brown with a border around the diamond of stitching in white, and the wording "LEATHER-EFFECT" appearing on the diamond in brown.

OWNER OF U.S. REG. NO. 4297487, 3737080, 1049547

No claim is made to the exclusive right to use the following apart from the mark as shown: "LEATHER EFFECT"

SER. NO. 88-705,532, FILED 11-25-2019

Performing the Functions and Duties of the
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years*
What and When to File:

- ***First Filing Deadline:*** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

- ***Second Filing Deadline:*** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*
What and When to File:

- You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see http://www.wipo.int/madrid/en/.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at http://www.uspto.gov.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at http://www.uspto.gov.

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Mark: FIMO LEATHER-EFFECT

US Serial Number:	88705532	**Application Filing Date:**	Nov. 25, 2019
US Registration Number:	6323418	**Registration Date:**	Apr. 13, 2021
Filed as TEAS RF:	Yes	**Currently TEAS RF:**	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: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Apr. 13, 2021

Publication Date: May 12, 2020 **Notice of Allowance Date:** Jul. 07, 2020

Mark Information

Mark Literal Elements: FIMO LEATHER-EFFECT

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of the wording "FIMO" with the letter "F" in red, "I" in yellow, "M" in purple, and "O" in red, appearing above a diamond design in brown with a border around the diamond of stitching in white, and the wording "LEATHER-EFFECT" appearing on the diamond in brown.

Color Drawing: Yes

Color(s) Claimed: The color(s) red, yellow, purple, white, and brown is/are claimed as a feature of the mark.

Disclaimer: "LEATHER EFFECT"

Design Search Code(s):
09.01.02 - Stitching, not on clothing pockets; Labels, clothing; Embroidery
26.07.12 - Diamonds with bars, bands and lines
26.07.13 - Two diamonds; Diamonds, exactly two diamonds
26.07.21 - Diamonds that are completely or partially shaded

Related Properties Information

Claimed Ownership of US Registrations: 1049547, 3737080, 4297487 and others

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: Kneadable and heat-hardenable modeling compounds for forming shaped objects; modeling clay; arts and crafts clay kits; educational kits comprised of modeling clay

International Class(es):	016 - Primary Class	**U.S Class(es):**	002, 005, 022, 023, 029, 037, 038, 050
Class Status:	ACTIVE		
Basis:	1(a)		
First Use:	Jul. 10, 2020	**Use in Commerce:**	Jul. 10, 2020

Basis Information (Case Level)

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

Current Owner(s) Information

Owner Name:	STAEDTLER Mars GmbH & Co. KG		
Owner Address:	Moosaeckerstr. 3 90427 Nuernberg GERMANY 90427		
Legal Entity Type:	GMBH & CO. KG	**State or Country Where Organized:**	GERMANY

Attorney/Correspondence Information

Attorney of Record

Attorney Name:	Katrin Lewertoff	**Docket Number:**	STM062UST
Attorney Primary Email Address:	klewertoff@fiplawgroup.com	**Attorney Email Authorized:**	Yes

Correspondent

Correspondent Name/Address:	Katrin Lewertoff FERDINAND IP, LLC 1221 POST ROAD EAST SUITE 302 WESTPORT, CONNECTICUT UNITED STATES 06880		
Phone:	2035574224		
Correspondent e-mail:	klewertoff@fiplawgroup.com annam@fiplawgroup.com betha@fiplawgroup.com	**Correspondent e-mail Authorized:**	Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Apr. 13, 2021	REGISTERED-PRINCIPAL REGISTER	
Mar. 11, 2021	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	
Mar. 10, 2021	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Feb. 23, 2021	STATEMENT OF USE PROCESSING COMPLETE	71034
Feb. 02, 2021	USE AMENDMENT FILED	71034
Feb. 22, 2021	CASE ASSIGNED TO INTENT TO USE PARALEGAL	71034
Feb. 02, 2021	TEAS STATEMENT OF USE RECEIVED	
Dec. 10, 2020	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Dec. 08, 2020	SOU EXTENSION 1 GRANTED	98765
Dec. 08, 2020	SOU EXTENSION 1 FILED	98765
Dec. 08, 2020	TEAS EXTENSION RECEIVED	
Jul. 07, 2020	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
May 12, 2020	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
May 12, 2020	PUBLISHED FOR OPPOSITION	

Apr. 22, 2020	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Mar. 30, 2020	APPROVED FOR PUB - PRINCIPAL REGISTER	
Mar. 20, 2020	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Mar. 20, 2020	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Mar. 20, 2020	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Mar. 05, 2020	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Mar. 05, 2020	NON-FINAL ACTION E-MAILED	6325
Mar. 05, 2020	NON-FINAL ACTION WRITTEN	94050
Feb. 27, 2020	ASSIGNED TO EXAMINER	94050
Dec. 04, 2019	NOTICE OF DESIGN SEARCH CODE E-MAILED	
Dec. 03, 2019	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Nov. 28, 2019	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION **Date in Location:** Mar. 10, 2021

STAEDTLER
FIMO
LEATHER-EFFECT
30 min
130°C
265°F
Modelliermasse · ofenhärtend
Modelling clay · oven-bake
Pâte à modeler · cuire au four
Pasta de modelar · endurecer al horno
57 g (2 oz) e

STAEDTLER®
FIMO®
LEATHER-EFFECT
30 min
130°C
265°F
Modelliermasse · ofenhärtend
Modelling clay · oven-bake
Pâte à modeler · cuire au four
Pasta de modelar · endurecer al horno
57 g (2 oz) e

NEW CLAY EFFECT
STAEDTLER®
FIMO®
LEATHER-EFFECT
EXTREMELY BENDABLE
CUTTABLE AND PUNCHABLE
SEWABLE
WANDERLUST
MIX ALL COLORS
LEATHER EFFECT
130°C
265°F

Int. Cl.: 16

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38 and 50

Reg. No. 3,397,510

United States Patent and Trademark Office

Registered Mar. 18, 2008

TRADEMARK
PRINCIPAL REGISTER

FlexEffect

CROWLEY DEBORAH E (UNITED STATES INDIVIDUAL)
1604 H STREET
EUREKA, CA 95501

FOR: EXERCISE BOOKS, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 6-24-1979; IN COMMERCE 10-10-1993.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 77-170,142, FILED 5-1-2007.

TARAH HARDY, EXAMINING ATTORNEY

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Mark: FLEXEFFECT

US Serial Number:	77170142	**Application Filing Date:**	May 01, 2007
US Registration Number:	3397510	**Registration Date:**	Mar. 18, 2008
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:	The registration has been renewed.		
Status Date:	May 18, 2017		

Publication Date: Jan. 01, 2008

Mark Information

Mark Literal Elements:	FLEXEFFECT
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:	Exercise books		
International Class(es):	016 - Primary Class	**U.S Class(es):**	002, 005, 022, 023, 029, 037, 038, 050
Class Status:	ACTIVE		
Basis:	1(a)		
First Use:	Jun. 24, 1979	**Use in Commerce:**	Oct. 10, 1993

Basis Information (Case Level)

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

Current Owner(s) Information

Owner Name: Crowley Deborah E

Owner Address: 1604 H street
Eureka, CALIFORNIA UNITED STATES 95501

Legal Entity Type: INDIVIDUAL **Citizenship:** UNITED STATES

Attorney/Correspondence Information

Attorney of Record - None

Correspondent

Correspondent Name/Address: CROWLEY DEBORAH E
1604 H street
EUREKA, CALIFORNIA UNITED STATES 95501

Phone: 707 442-1166 **Fax:** 707 443-6780

Correspondent e-mail: deb@flexeffect.com **Correspondent e-mail Authorized:** Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
May 18, 2017	NOTICE OF ACCEPTANCE OF SEC. 8 & 9 - E-MAILED	
May 18, 2017	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	75461
May 18, 2017	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	75461
May 15, 2017	TEAS RESPONSE TO OFFICE ACTION-POST REG RECEIVED	
May 13, 2017	POST REGISTRATION ACTION MAILED - SEC. 8 & 9	75461
May 13, 2017	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	75461
Mar. 18, 2017	TEAS SECTION 8 & 9 RECEIVED	
Mar. 18, 2017	COURTESY REMINDER - SEC. 8 (10-YR)/SEC. 9 E-MAILED	
Jun. 12, 2013	NOTICE OF ACCEPTANCE OF SEC. 8 - E-MAILED	
Jun. 12, 2013	REGISTERED - SEC. 8 (6-YR) ACCEPTED	68973
Jun. 12, 2013	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	68973
May 17, 2013	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
May 17, 2013	TEAS SECTION 8 RECEIVED	
Mar. 18, 2008	REGISTERED-PRINCIPAL REGISTER	
Jan. 01, 2008	PUBLISHED FOR OPPOSITION	
Dec. 12, 2007	NOTICE OF PUBLICATION	
Nov. 23, 2007	LAW OFFICE PUBLICATION REVIEW COMPLETED	74221
Nov. 14, 2007	ASSIGNED TO LIE	74221
Nov. 01, 2007	APPROVED FOR PUB - PRINCIPAL REGISTER	
Nov. 01, 2007	TEAS/EMAIL CORRESPONDENCE ENTERED	73296
Nov. 01, 2007	CORRESPONDENCE RECEIVED IN LAW OFFICE	73296
Oct. 31, 2007	ASSIGNED TO LIE	73296
Sep. 27, 2007	TEAS REQUEST FOR RECONSIDERATION RECEIVED	
Sep. 11, 2007	TEAS REQUEST FOR RECONSIDERATION RECEIVED	
Sep. 10, 2007	NOTIFICATION OF FINAL REFUSAL EMAILED	
Sep. 10, 2007	FINAL REFUSAL E-MAILED	
Sep. 10, 2007	FINAL REFUSAL WRITTEN	76509
Sep. 08, 2007	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Aug. 22, 2007	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Aug. 22, 2007	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Aug. 14, 2007	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Aug. 14, 2007	NON-FINAL ACTION E-MAILED	6325
Aug. 14, 2007	NON-FINAL ACTION WRITTEN	76509

Aug. 14, 2007	ASSIGNED TO EXAMINER	76509
May 05, 2007	NOTICE OF PSEUDO MARK MAILED	
May 04, 2007	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: GENERIC WEB UPDATE **Date in Location:** May 18, 2017

FlexEffect™

United States of America

United States Patent and Trademark Office

Reg. No. 5,038,931

Registered Sep. 13, 2016

Int. Cl.: 16

Trademark

Principal Register

Newmaster, Nicole (UNITED STATES INDIVIDUAL)
113 Posey Street
Newburgh, IN 47630

CLASS 16: a series of non-fiction books and written articles featuring scenes and characters based upon real life experiences

FIRST USE 10-1-2014; IN COMMERCE 10-1-2014

The mark consists of the words "Hiccup Effect" with a design of an upside down turtle underneath the wording.

SER. NO. 86-626,813, FILED 05-12-2015
ANDREA DAWN SAUNDERS, EXAMINING ATTORNEY

Michelle K. Lee

Director of the United States
Patent and Trademark Office

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years*
What and When to File:

- ***First Filing Deadline:*** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

- ***Second Filing Deadline:*** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*
What and When to File:

- You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see http://www.wipo.int/madrid/en/.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at http://www.uspto.gov.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at http://www.uspto.gov.

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Mark: HICCUP EFFECT

US Serial Number: 86626813

Application Filing Date: May 12, 2015

US Registration Number: 5038931

Registration Date: Sep. 13, 2016

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor: LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office.

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Sep. 13, 2016

Publication Date: Jun. 28, 2016

Mark Information

Mark Literal Elements: HICCUP EFFECT

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of the words "Hiccup Effect" with a design of an upside down turtle underneath the wording.

Color(s) Claimed: Color is not claimed as a feature of the mark.

Design Search Code(s): 03.21.07 - Turtles; Tortoises; Terrapins
03.21.24 - Stylized reptiles, frogs and snails

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: a series of non-fiction books and written articles featuring scenes and characters based upon real life experiences

International Class(es): 016 - Primary Class

U.S Class(es): 002, 005, 022, 023, 029, 037, 038, 050

Class Status: ACTIVE

Basis: 1(a)

First Use: Oct. 01, 2014

Use in Commerce: Oct. 01, 2014

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E:	No	**Currently 66A:**	No
Filed 66A:	No	**Currently No Basis:**	No
Filed No Basis:	No		

Current Owner(s) Information

Owner Name: Newmaster, Nicole

Owner Address: 113 Posey Street
Newburgh, INDIANA UNITED STATES 47630

Legal Entity Type: INDIVIDUAL **Citizenship:** UNITED STATES

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Gary K. Price

Attorney Primary Email Address: gprice@tbsblaw.com **Attorney Email Authorized:** Yes

Correspondent

Correspondent Name/Address: GARY K. PRICE
700 S Green River Rd Ste 2000
Evansville, INDIANA UNITED STATES 47715-7907

Phone: 812-479-8721

Correspondent e-mail: gprice@tbsblaw.com **Correspondent e-mail Authorized:** Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Sep. 13, 2021	COURTESY REMINDER - SEC. 8 (6-YR) E-MAILED	
Sep. 13, 2016	REGISTERED-PRINCIPAL REGISTER	
Jun. 28, 2016	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Jun. 28, 2016	PUBLISHED FOR OPPOSITION	
Jun. 08, 2016	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
May 25, 2016	APPROVED FOR PUB - PRINCIPAL REGISTER	
May 04, 2016	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
May 04, 2016	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
May 04, 2016	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Dec. 30, 2015	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Dec. 30, 2015	NON-FINAL ACTION E-MAILED	6325
Dec. 30, 2015	NON-FINAL ACTION WRITTEN	76851
Dec. 16, 2015	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Dec. 14, 2015	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Dec. 14, 2015	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Aug. 24, 2015	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Aug. 24, 2015	NON-FINAL ACTION E-MAILED	6325
Aug. 24, 2015	NON-FINAL ACTION WRITTEN	76851
Aug. 23, 2015	ASSIGNED TO EXAMINER	76851
May 21, 2015	NOTICE OF DESIGN SEARCH CODE E-MAILED	
May 20, 2015	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
May 15, 2015	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION **Date in Location:** Sep. 13, 2016

JN

Hiccup Effect | About us | Inside the Novel | CONTACT | More

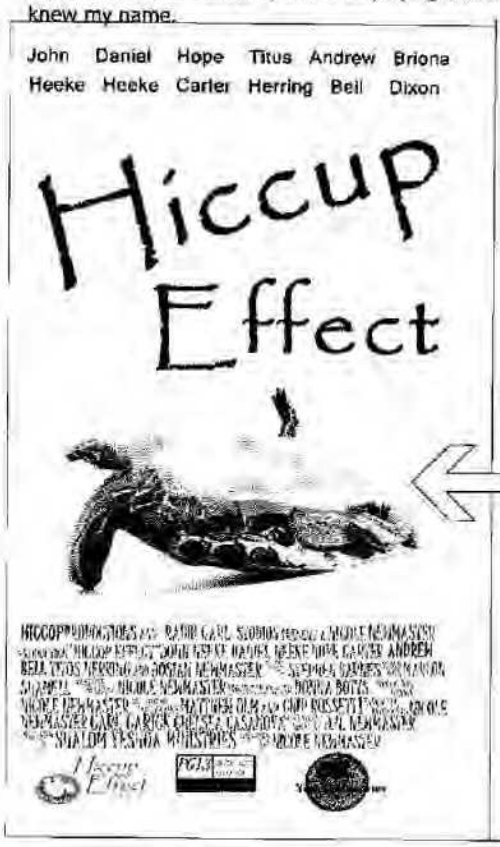
LOVING TRUTH, SHARING PEACE, GIVING GRACE BY OBEYING GOD...BE APART OF THE LIGHT.....

Josiah Newmaster

I am passionate about rhetoric and persuasion. I double majored in Arabic and linguistics at Indiana University in thoughts of pursuing politics. My mind drastically was changed once exposed to governmental truths while living in Dubai, United Arab Emirates. On returning to the United States, I received my high school teaching license in Math and English. I dream of living in an earth shelter, and writing books full time. I enjoy running around with my two daughters and calling my wife my best friend.

Nicole Newmaster

Wife of one and Mother of Two. I find energy in dancing and adventure in the outdoors. At the University of Southern Indian I pursued elementary education. I want to properly equip my children to overcome negative influence and find their identity in their Creator. I currently teach fitness classes of a wide variety. Teaching Kickboxing and hip hope are my favorites. I dream daily and love playing dress up with my two daughters. I loved my Husband before he even knew my name.



BUY Hiccup Effect Novel NOW by Clicking the TURTLE

JN © 2104 JOSIAH AND NICOLE NEWMASTER

Inside the teen fiction novel

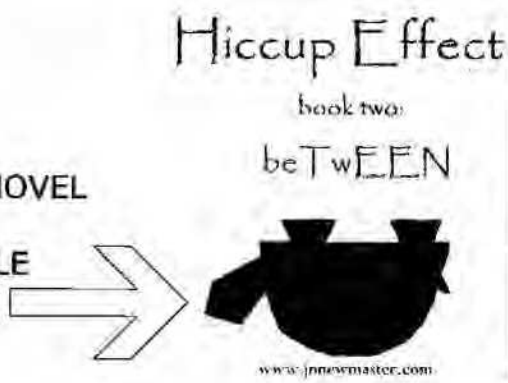
Hiccup Effect

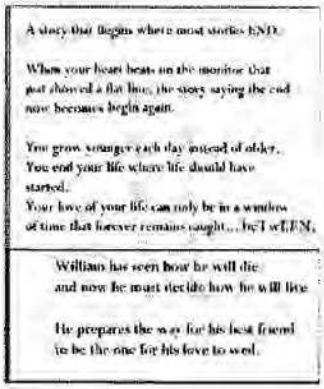
An ordinary Hiccup will give way to an extraodinary outcome. William Edgar Jones believed in Guardian Angels, but what he never would have guessed would be the angel guarding his shoulder is cloaked in darkness and leading him in deceit. Only thirteen he has survived being struck by lighting and living a life now color blind. His gray hue vison has provided a glimpse of souls eternal home, bound to heaven or condemed to hell. His fate will remain sealed, unless an opportunity of Grace is offered. Penny, viewed as beautiful to all but her own self is given this Grace through faith and displays her confidence, rooted in her Creator to be gorgeous in Heart. All is well untill William's perspective is turned upside down, and placed in disbelief, from a gasp of air trapped in his throat squeaking out in the form of hiccup. Realizing he has never felt like more of an Awkward Turtle.

Book available in stores January 1st 2015 Full length movie available January 2016

BUY Hiccup Effect NOVEL

CLICK on the TURTLE




A story that begins where most stories END.

When your heart beats on the monitor that just showed a flat line, the story saying the end now becomes begin again.

You grow younger each day instead of older. You end your life where life should have started.
Your love of your life can only be in a window of time that forever remains caught... beTwEEN.

William has seen how he will die and now he must decide how he will live.

He prepares the way for his best friend to be the one for his love to wed.

JN © 2104 JOSIAH AND NICOLE NEWMASTER

beTwEEN

JN

Hiccup Effect About us Inside the Novel CONTACT More

Josiah Newmaster
josiahnewmaster@yahoo.com

Nicole Newmaster
nicolenewmaster@gmail.com

Unknown Track - 03:16

Noah and Noahs Ark - 02:49

Unknown Track - 02:49

Unknown Track - 03:45

Unknown Track - 01:57

Donate

When Dreams are Reality
And Reality a Dream
No wonder William feels
lost as salt in the sea.

Hiccup Effect

Buy Hiccup Effect Novel Now by Clicking on the TURTLE

"beTwEEN"

Book Two of Hiccup Effect series

No Longer a Youth and Not yet an Adult forces everyone to be caught beTwEEN.

JN © 2104 JOSIAH AND NICOLE NEWMASTER

United States of America

United States Patent and Trademark Office

Reg. No. 5,723,005

Registered Apr. 09, 2019

Int. Cl.: 16

Trademark

Principal Register

LE TM HOLDINGS, LLC (MICHIGAN LIMITED LIABILITY COMPANY)
#143
4337 Grand River Avenue
Howell, MICHIGAN 48843

CLASS 16: Decals; posters; stickers; trading cards

FIRST USE 8-31-2017; IN COMMERCE 7-28-2018

The color(s) blue, grey, white, black, and green is/are claimed as a feature of the mark.

The mark consists of the stylized wording "LAKE EFFECT" in blue and black with a grey outline. The "C" of the wording "effect" consists of the stylized image of the state of Michigan. This image is grey and white, with a black outline. At the bottom left corner of this Michigan image is the stylized design of a green marijuana leaf. To the right of the "E" in "LAKE" and above the "T" in "EFFECT" is the stylized image of a larger green marijuana leaf. The white background is not a claimed feature of the mark.

No claim is made to the exclusive right to use the following apart from the mark as shown: THE PICTORIAL REPRESENTATION OF THE STATE OF MICHIGAN

SER. NO. 87-549,944, FILED 07-31-2017

Director of the United States
Patent and Trademark Office

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years*
What and When to File:

- ***First Filing Deadline:*** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

- ***Second Filing Deadline:*** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*
What and When to File:

- You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see http://www.wipo.int/madrid/en/.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at http://www.uspto.gov.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at http://www.uspto.gov.

Generated on: This page was generated by TSDR on 2022-05-06 14:02:54 EDT

Mark: LAKE EFFECT

US Serial Number:	87549944	**Application Filing Date:**	Jul. 31, 2017
US Registration Number:	5723005	**Registration Date:**	Apr. 09, 2019
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: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Apr. 09, 2019

Publication Date: Dec. 12, 2017 **Notice of Allowance Date:** Feb. 06, 2018

Mark Information

Mark Literal Elements: LAKE EFFECT

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of the stylized wording "LAKE EFFECT" in blue and black with a grey outline. The "C" of the wording "effect" consists of the stylized image of the state of Michigan. This image is grey and white, with a black outline. At the bottom left corner of this Michigan image is the stylized design of a green marijuana leaf. To the right of the "E" in "LAKE" and above the "T" in "EFFECT" is the stylized image of a larger green marijuana leaf. The white background is not a claimed feature of the mark.

Color Drawing: Yes

Color(s) Claimed: The color(s) blue, grey, white, black, and green is/are claimed as a feature of the mark.

Disclaimer: THE PICTORIAL REPRESENTATION OF THE STATE OF MICHIGAN

Design Search Code(s):
01.17.11 - Maps of states of the United States, excluding Texas
05.03.08 - More than one leaf, including scattered leaves, bunches of leaves not attached to branches
05.13.09 - Marijuana leaf, leaves, and plants; Cannabis leaf, leaves, and plants; Hemp leaf, leaves, and plants; Pot leaf, leaves, and plants
27.03.05 - Objects forming letters or numerals

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: Decals; posters; stickers; trading cards

International Class(es):	016 - Primary Class	**U.S Class(es):**	002, 005, 022, 023, 029, 037, 038, 050
Class Status:	ACTIVE		

Basis: 1(a)

First Use: Aug. 31, 2017 **Use in Commerce:** Jul. 28, 2018

Basis Information (Case Level)

Filed Use: No **Currently Use:** Yes

Filed ITU: Yes **Currently ITU:** No

Filed 44D: No **Currently 44E:** No

Filed 44E: No **Currently 66A:** No

Filed 66A: No **Currently No Basis:** No

Filed No Basis: No

Current Owner(s) Information

Owner Name: LE TM HOLDINGS, LLC

Owner Address: #143
4337 GRAND RIVER AVENUE
Howell, MICHIGAN UNITED STATES 48843

Legal Entity Type: LIMITED LIABILITY COMPANY **State or Country Where Organized:** MICHIGAN

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Travis J. Copenhaver

Attorney Primary Email Address: jackie@pollicella.net **Attorney Email Authorized:** Yes

Correspondent

Correspondent Name/Address: Travis J. Copenhaver
POLLICELLA & ASSOCIATES, PLLC
4312 EAST GRAND RIVER AVE
HOWELL, MICHIGAN UNITED STATES 48843

Phone: 517-546-1181 **Fax:** 517-292-2468

Correspondent e-mail: jackie@pollicella.net **Correspondent e-mail Authorized:** Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Apr. 09, 2019	REGISTERED-PRINCIPAL REGISTER	
Mar. 08, 2019	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	
Mar. 07, 2019	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Mar. 05, 2019	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Mar. 04, 2019	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Mar. 04, 2019	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Feb. 08, 2019	NOTIFICATION OF NON-FINAL ACTION E-MAILED	
Feb. 08, 2019	NON-FINAL ACTION E-MAILED	
Feb. 08, 2019	SU - NON-FINAL ACTION - WRITTEN	76507
Jan. 31, 2019	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Jan. 31, 2019	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Jan. 31, 2019	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Sep. 05, 2018	NOTIFICATION OF NON-FINAL ACTION E-MAILED	
Sep. 05, 2018	NON-FINAL ACTION E-MAILED	
Sep. 05, 2018	SU - NON-FINAL ACTION - WRITTEN	76507
Sep. 05, 2018	STATEMENT OF USE PROCESSING COMPLETE	65362
Aug. 04, 2018	USE AMENDMENT FILED	65362

Sep. 05, 2018	CASE ASSIGNED TO INTENT TO USE PARALEGAL	65362
Aug. 04, 2018	TEAS STATEMENT OF USE RECEIVED	
Feb. 06, 2018	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Dec. 12, 2017	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Dec. 12, 2017	PUBLISHED FOR OPPOSITION	
Nov. 22, 2017	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Nov. 03, 2017	APPROVED FOR PUB - PRINCIPAL REGISTER	
Nov. 03, 2017	EXAMINER'S AMENDMENT ENTERED	88888
Nov. 03, 2017	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	
Nov. 03, 2017	EXAMINERS AMENDMENT E-MAILED	
Nov. 03, 2017	EXAMINERS AMENDMENT -WRITTEN	76507
Nov. 03, 2017	ASSIGNED TO LIE	74221
Oct. 31, 2017	ASSIGNED TO EXAMINER	76507
Oct. 23, 2017	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Oct. 23, 2017	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Oct. 23, 2017	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Oct. 23, 2017	TEAS WITHDRAWAL OF ATTORNEY RECEIVED-FIRM RETAINS	
Aug. 04, 2017	NOTICE OF DESIGN SEARCH CODE E-MAILED	
Aug. 03, 2017	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Aug. 03, 2017	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION **Date in Location:** Mar. 07, 2019

LAKE
EFFECT
LAKE
EFFECT

United States of America

United States Patent and Trademark Office

Reg. No. 6,323,419

Registered Apr. 13, 2021

Int. Cl.: 16

Trademark

Principal Register

STAEDTLER Mars GmbH & Co. KG (GERMANY GMBH & CO. KG)
Moosaeckerstr. 3
90427 Nuernberg, FED REP GERMANY 90427

CLASS 16: Kneadable and heat-hardenable modeling compounds for forming shaped objects; modeling clay; arts and crafts clay kits; educational kits comprised of modeling clay

FIRST USE 7-10-2020; IN COMMERCE 7-10-2020

The color(s) brown and white is/are claimed as a feature of the mark.

The mark consists of a diamond design in brown with a border around the diamond of stitching in white and the wording "LEATHER-EFFECT" appearing on the diamond in brown.

No claim is made to the exclusive right to use the following apart from the mark as shown: "LEATHER EFFECT"

SER. NO. 88-705,558, FILED 11-25-2019

UNITED STATES PATENT AND TRADEMARK OFFICE
DEPARTMENT OF COMMERCE

Performing the Functions and Duties of the
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years*
What and When to File:

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- ***Second Filing Deadline:*** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*
What and When to File:

- You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see http://www.wipo.int/madrid/en/.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at http://www.uspto.gov.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at http://www.uspto.gov.

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Mark: LEATHER-EFFECT

US Serial Number:	88705558	**Application Filing Date:**	Nov. 25, 2019
US Registration Number:	6323419	**Registration Date:**	Apr. 13, 2021
Filed as TEAS RF:	Yes	**Currently TEAS RF:**	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: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Apr. 13, 2021

Publication Date: May 12, 2020 **Notice of Allowance Date:** Jul. 07, 2020

Mark Information

Mark Literal Elements: LEATHER-EFFECT

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of a diamond design in brown with a border around the diamond of stitching in white and the wording "LEATHER-EFFECT" appearing on the diamond in brown.

Color Drawing: Yes

Color(s) Claimed: The color(s) brown and white is/are claimed as a feature of the mark.

Disclaimer: "LEATHER EFFECT"

Design Search Code(s):
09.01.02 - Stitching, not on clothing pockets; Labels, clothing; Embroidery
26.07.12 - Diamonds with bars, bands and lines
26.07.13 - Two diamonds; Diamonds, exactly two diamonds
26.07.21 - Diamonds that are completely or partially shaded

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: Kneadable and heat-hardenable modeling compounds for forming shaped objects; modeling clay; arts and crafts clay kits; educational kits comprised of modeling clay

International Class(es):	016 - Primary Class	**U.S Class(es):**	002, 005, 022, 023, 029, 037, 038, 050
Class Status:	ACTIVE		
Basis:	1(a)		
First Use:	Jul. 10, 2020	**Use in Commerce:**	Jul. 10, 2020

Basis Information (Case Level)

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

Current Owner(s) Information

Owner Name:	STAEDTLER Mars GmbH & Co. KG		
Owner Address:	Moosaeckerstr. 3 90427 Nuernberg GERMANY 90427		
Legal Entity Type:	GMBH & CO. KG	**State or Country Where Organized:**	GERMANY

Attorney/Correspondence Information

Attorney of Record

Attorney Name:	Katrin Lewertoff	**Docket Number:**	STM063UST
Attorney Primary Email Address:	klewertoff@fiplawgroup.com	**Attorney Email Authorized:**	Yes

Correspondent

Correspondent Name/Address:	Katrin Lewertoff FERDINAND IP, LLC 1221 POST ROAD EAST SUITE 302 WESTPORT, CONNECTICUT UNITED STATES 06880		
Phone:	2035574224		
Correspondent e-mail:	klewertoff@fiplawgroup.com annam@fiplawgroup.com betha@fiplawgroup.com	**Correspondent e-mail Authorized:**	Yes

Domestic Representative

Domestic Representative Name:	Katrin Lewertoff	**Phone:**	203-557-4224
Domestic Representative e-mail:	klewertoff@ferdinandip.com	**Domestic Representative e-mail Authorized:**	Yes

Prosecution History

Date	Description	Proceeding Number
Apr. 13, 2021	REGISTERED-PRINCIPAL REGISTER	
Mar. 11, 2021	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	
Mar. 10, 2021	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Feb. 23, 2021	STATEMENT OF USE PROCESSING COMPLETE	71034
Feb. 02, 2021	USE AMENDMENT FILED	71034
Feb. 22, 2021	CASE ASSIGNED TO INTENT TO USE PARALEGAL	71034
Feb. 02, 2021	TEAS STATEMENT OF USE RECEIVED	
Dec. 10, 2020	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Dec. 08, 2020	SOU EXTENSION 1 GRANTED	98765
Dec. 08, 2020	SOU EXTENSION 1 FILED	98765
Dec. 08, 2020	TEAS EXTENSION RECEIVED	
Jul. 07, 2020	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
May 12, 2020	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
May 12, 2020	PUBLISHED FOR OPPOSITION	

Apr. 22, 2020	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Mar. 30, 2020	APPROVED FOR PUB - PRINCIPAL REGISTER	
Mar. 20, 2020	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Mar. 20, 2020	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Mar. 20, 2020	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Mar. 05, 2020	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Mar. 05, 2020	NON-FINAL ACTION E-MAILED	6325
Mar. 05, 2020	NON-FINAL ACTION WRITTEN	94050
Feb. 27, 2020	ASSIGNED TO EXAMINER	94050
Dec. 04, 2019	NOTICE OF DESIGN SEARCH CODE E-MAILED	
Dec. 03, 2019	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Nov. 28, 2019	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION **Date in Location:** Mar. 10, 2021

STAEDTLER
FIMO
LEATHER-EFFECT
30 min
130°C
265°F
Modelliermasse · ofenhärtend
Modelling clay · oven-bake
Pâte à modeler · cuire au four
Pasta de modelar · endurecer al horno
57 g (2 oz) e

STAEDTLER®
FIMO®
LEATHER-EFFECT
30 min
130°C
265°F
Modelliermasse · ofenhärtend
Modelling clay · oven-bake
Pâte à modeler · cuire au four
Pasta de modelar · endurecer al horno
57 g (2 oz) e

NEW CLAY EFFECT
STAEDTLER®
FIMO®
LEATHER-EFFECT
EXTREMELY BENDABLE
CUTTABLE AND PUNCHABLE
SEWABLE
WANDERLUST
MIX ALL COLORS
LEATHER EFFECT
130°C
265°F

United States of America

United States Patent and Trademark Office

PicAffects

Reg. No. 6,112,555

Registered Jul. 28, 2020

Int. Cl.: 16

Trademark

Principal Register

PicAffects LLC (NEW YORK LIMITED LIABILITY COMPANY), AKA PicAffects
140 Marvin
Syracuse, NEW YORK 13207

CLASS 16: Note cards; Personalized writing journals; Posters; Art prints on canvas

FIRST USE 10-26-2019; IN COMMERCE 12-12-2019

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

SER. NO. 88-745,362, FILED 01-02-2020

Director of the United States
Patent and Trademark Office

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

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- ***Second Filing Deadline:*** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

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Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see http://www.wipo.int/madrid/en/.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at http://www.uspto.gov.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at http://www.uspto.gov.

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Mark: PICAFFECTS

PicAffects

US Serial Number:	88745362	**Application Filing Date:**	Jan. 02, 2020
US Registration Number:	6112555	**Registration Date:**	Jul. 28, 2020
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: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Jul. 28, 2020

Publication Date: May 12, 2020

Mark Information

Mark Literal Elements: PICAFFECTS

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: Note cards; Personalized writing journals; Posters; Art prints on canvas

International Class(es):	016 - Primary Class	**U.S Class(es):**	002, 005, 022, 023, 029, 037, 038, 050
Class Status:	ACTIVE		
Basis:	1(a)		
First Use:	Oct. 26, 2019	**Use in Commerce:**	Dec. 12, 2019

Basis Information (Case Level)

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

Current Owner(s) Information

Owner Name: PicAffects LLC

DBA, AKA, Formerly: AKA PicAffects

Owner Address: 140 Marvin
Syracuse, NEW YORK UNITED STATES 13207

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: NEW YORK

Attorney/Correspondence Information

Attorney of Record - None

Correspondent

Correspondent Name/Address: PicAffects LLC
140 Marvin
Syracuse, NEW YORK UNITED STATES 13207

Phone: 304-405-6431

Correspondent e-mail: sketchmandesign@gmail.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Jul. 28, 2020	REGISTERED-PRINCIPAL REGISTER	
May 12, 2020	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
May 12, 2020	PUBLISHED FOR OPPOSITION	
Apr. 22, 2020	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Apr. 08, 2020	APPROVED FOR PUB - PRINCIPAL REGISTER	
Apr. 08, 2020	TEAS/EMAIL CORRESPONDENCE ENTERED	68171
Apr. 08, 2020	CORRESPONDENCE RECEIVED IN LAW OFFICE	68171
Apr. 01, 2020	ASSIGNED TO LIE	68171
Mar. 25, 2020	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Mar. 25, 2020	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Mar. 25, 2020	NON-FINAL ACTION E-MAILED	6325
Mar. 25, 2020	NON-FINAL ACTION WRITTEN	91173
Mar. 24, 2020	ASSIGNED TO EXAMINER	91173
Jan. 08, 2020	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Jan. 06, 2020	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Jul. 28, 2020

Photo Note Cards

$12.50

Shipping calculated at checkout.

Pack Size*

-- Choose Pack Size --

Quantity

1

Upload Photos

ADD TO CART

Our custom printed note cards let you add your personal touch to thank you cards and more. Your photo is showcased in front printed on your choice of card stock.

Card stock options include the following.

- Linen - A fine Italian paper provides a handcrafted look and feel, and a

Int. Cl.: 16

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38 and 50

Reg. No. 2,503,856

United States Patent and Trademark Office

Registered Nov. 6, 2001

TRADEMARK
PRINCIPAL REGISTER

RIPPLE EFFECT

BEAR STEARNS COMPANIES, INC. THE (DELAWARE CORPORATION)
245 PARK AVENUE
NEW YORK, NY 10167

FOR: PUBLICATIONS, NAMELY, AN EQUITIES RESEARCH REPORT, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 7-25-2000; IN COMMERCE 7-25-2000.

SER. NO. 76-125,249, FILED 9-8-2000.

CHRISTOPHER LAW, EXAMINING ATTORNEY

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Mark: RIPPLE EFFECT

RIPPLE EFFECT

US Serial Number: 76125249

Application Filing Date: Sep. 08, 2000

US Registration Number: 2503856

Registration Date: Nov. 06, 2001

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor: LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office.

Status: The registration has been renewed.

Status Date: May 03, 2012

Publication Date: Aug. 14, 2001

Mark Information

Mark Literal Elements: RIPPLE EFFECT

Standard Character Claim: No

Mark Drawing Type: 1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)

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: publications, namely, an equities research report

International Class(es): 016 - Primary Class

U.S Class(es): 002, 005, 022, 023, 029, 037, 038, 050

Class Status: ACTIVE

Basis: 1(a)

First Use: Jul. 25, 2000

Use in Commerce: Jul. 25, 2000

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Filed ITU: Yes

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name:	JPMORGAN CHASE BANK, N.A.		
Owner Address:	1111 POLARIS PARKWAY COLUMBUS, OHIO UNITED STATES 43240		
Legal Entity Type:	NATIONAL BANKING ASSOCIATION	**State or Country Where Organized:**	UNITED STATES

Attorney/Correspondence Information

Attorney of Record

Attorney Name:	Jessica L. Rothstein	**Docket Number:**	100144187817
Attorney Primary Email Address:	NY-TM-Admin@goodwinprocter.com	**Attorney Email Authorized:**	Yes

Correspondent

Correspondent Name/Address:	Jessica L. Rothstein GOODWIN PROCTER LLP THE NEW YORK TIMES BUILDING 620 EIGHTH AVENUE NEW YORK, NEW YORK UNITED STATES 10018		
Phone:	212-813-8800	**Fax:**	212-355-3333
Correspondent e-mail:	NY-TM-Admin@goodwinprocter.com	**Correspondent e-mail Authorized:**	Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Nov. 06, 2020	COURTESY REMINDER - SEC. 8 (10-YR)/SEC. 9 E-MAILED	
Jan. 27, 2016	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
May 03, 2012	NOTICE OF ACCEPTANCE OF SEC. 8 & 9 - E-MAILED	
May 03, 2012	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	66607
May 03, 2012	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	66607
May 03, 2012	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	66607
Apr. 18, 2012	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Apr. 16, 2012	TEAS SECTION 8 & 9 RECEIVED	
Mar. 19, 2009	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Mar. 19, 2009	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Aug. 23, 2007	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	59136
Aug. 21, 2007	ASSIGNED TO PARALEGAL	59136
Aug. 01, 2007	REGISTERED - SEC. 8 (6-YR) & SEC. 15 FILED	
Aug. 01, 2007	TEAS SECTION 8 & 15 RECEIVED	
Jan. 16, 2007	CASE FILE IN TICRS	
Mar. 22, 2006	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Nov. 06, 2001	REGISTERED-PRINCIPAL REGISTER	
Aug. 14, 2001	PUBLISHED FOR OPPOSITION	
Jul. 25, 2001	NOTICE OF PUBLICATION	
Mar. 07, 2001	APPROVED FOR PUB - PRINCIPAL REGISTER	
Mar. 07, 2001	ASSIGNED TO EXAMINER	78475

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location:	GENERIC WEB UPDATE	**Date in Location:**	May 03, 2012

Assignment Abstract Of Title Information

Summary

Total Assignments: 3 **Registrant:** Bear Stearns Companies, Inc. The

Assignment 1 of 3

Conveyance: CHANGE OF ADDRESS

Reel/Frame: 2475/0094 **Pages:** 3

Date Recorded: Mar. 14, 2002

Supporting Documents: assignment-tm-2475-0094.pdf

Assignor

Name: BEAR STEARNS COMPANIES INC., THE **Execution Date:** Mar. 14, 2002

Legal Entity Type: CORPORATION **State or Country Where Organized:** No Place Where Organized Found

Assignee

Name: BEAR STEARNS COMPANIES INC., THE

Legal Entity Type: CORPORATION **State or Country Where Organized:** DELAWARE

Address: 383 MADISON AVENUE
NY, NEW YORK 10179

Correspondent

Correspondent Name: KRAMER LEVIN NAFTALIS & FRANKEL LLP

Correspondent Address: MARY B. SCOTT, ESQ.
919 3RD AVE.
NY, NY 10022

Domestic Representative - Not Found

Assignment 2 of 3

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: 4757/0476 **Pages:** 2

Date Recorded: Apr. 16, 2012

Supporting Documents: assignment-tm-4757-0476.pdf

Assignor

Name: THE BEAR STEARNS COMPANIES LLC **Execution Date:** Mar. 30, 2012

Legal Entity Type: LIMITED LIABILITY COMPANY **State or Country Where Organized:** DELAWARE

Assignee

Name: JPMORGAN CHASE & CO.

Legal Entity Type: CORPORATION **State or Country Where Organized:** DELAWARE

Address: 270 PARK AVENUE
NEW YORK, NEW YORK 10017

Correspondent

Correspondent Name: GOODWIN PROCTER LLP ATTN: JANIS NICI

Correspondent Address: 620 EIGHTH AVENUE
THE NEW YORK TIMES BUILDING
NEW YORK, NY 10018

Domestic Representative - Not Found

Assignment 3 of 3

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: 5700/0586 **Pages:** 16

Date Recorded: Dec. 31, 2015

Supporting Documents: assignment-tm-5700-0586.pdf

Assignor

Name:	JPMORGAN CHASE & CO.	**Execution Date:**	Dec. 21, 2015
Legal Entity Type:	CORPORATION	**State or Country Where Organized:**	DELAWARE

Assignee

Name:	JPMORGAN CHASE BANK, N.A.		
Legal Entity Type:	NATIONAL BANKING ASSOCIATION	**State or Country Where Organized:**	UNITED STATES
Address:	1111 POLARIS PARKWAY COLUMBUS, OHIO 43240		

Correspondent

Correspondent Name:	COLLARD & ROE, P.C.
Correspondent Address:	1077 NORTHERN BLVD. ROSLYN, NY 11576

Domestic Representative - Not Found

J.P.Morgan

THE RIPPLE EFFECT
February 29th, 2012
Adam Crisafulli & Michael Pagliarulo
+212.272.5088

JPM Equity Research Summary

Coinstar Inc. : Downgrading to Neutral on Valuation. We are downgrading CSTR to Neutral on Valuation. The stock traded through our $62.00 price target yesterday, has appreciated by 35% year-to-date, and is now trading close to fair value, in our view. We are not adjusting estimates, which remain below consensus through 2013, reflecting our view that Redbox segment growth will decline in late 2012-2013, excluding the impact of the planned NCR kiosk acquisition. The pending JV with Verizon and the acquisition of NCR's kiosks introduces execution risk, in our view. Coster. http://bit.ly/wJAwoBv

Verisk Analytics : Revenues/EBITDA/EPS Above Estimates In Q4,11; Organic Revenues +8%; No 2012 Guidance Provided. We're reiterating our Overweight rating on Verisk shares following Q4,11 results. Revenues (+20%) and EBITDA (+21%) were nicely ahead of our estimates. Adjusted EPS of $0.50 (+29% y-o-y) compared with JPM's $0.44, and included +$0.03-0.04 from a low tax rate. Organic revs. grew 7.6% (v. JPM's +7.0%) in Q4, and at a similar clip for the full year. Risk segment revs. grew 4% while Analytics lifted 11% organic. Within Analytics, Insurance increased 15% organic and Healthcare spiked 37% while Mortgage Fraud (-7%) and Weather Modeling (-2%) were light. EBITDA margin lifted 20bps v. JPM's -60bp estimate—despite ~160bps of M&A drag. Verisk doesn't provide annual guidance, and the press release lacked any comment on 2012 expectations. We're pleased with Verisk's solid end to 2011, and expect a few tailwinds to bolster results in 2012-13. We think Wednesday's 8:30AM ET call will focus on P&C market improvement, Analytics trends (and new products), share buyback plans, and M&A prospects. Meltz. http://bit.ly/A72KMx

Cablevision : Subs and Revenue Start to Stabilize, But Margins and FCF Remain Pressured; Reiterate Underweight. Cablevision reported a solid fourth quarter to end the year. Revenue was higher on better ARPU growth and EBITDA came in above our estimate, even after taking out a number of one-time items. However, margins are expected to decline as programming costs continue to rise. Sub numbers were better than expected across the board in 4Q11, but video subs still saw a loss of -14k and we expect continued losses in 2012. Management guided capex up amid broadband and CPE initiatives, which could pressure FCF. We continue to see downside for the stock due to declining adj. EBITDA of 4.2% in 2012 and relatively high leverage/EBITDA multiple at ~4.5x/6.5x 2012 vs. 2-3x/6.2x for mature peers. We reiterate our Underweight rating and $12 PT. Cusick. http://bit.ly/y4Wgid

XLNX - On Thursday, March 1 at 11:00am EST we are hosting a conference call for investors with Xilinx's CEO and CFO. We continue to believe the reasons we are positive on Xilinx remain intact – the company should experience secularly increasing margins and share gains. As a result, we reiterate our Overweight rating on Xilinx shares. Danely https://mm.jpmorgan.com/PubServlet?action=email&doc=GPS-797549-0.pdf

STEC - STEC : Competition and Lengthy New Product Transitions Weigh; Maintain UW and Dec-12 PT of $6 - Underweight-rated STEC reported mixed Dec-Q results and a subdued Mar-Q outlook. STEC still anticipates larger customer qualifications of new products by the end of 2Q12. In the meantime, however, we expect the lack of near-term catalysts to weigh on the stock. We also think the competitive landscape will remain challenging with the threat of competitive displacements and alternative technology approaches. Overall, we expect STEC to lack above-peer growth and major appreciation potential during this transition period. Moskowitz https://mm.jpmorgan.com/PubServlet?action=email&doc=GPS-797734-0.pdf

VNET - 21Vianet Group Inc. : 4Q11. Management guidance increased again, results were strong, raise PT to US$19 – Sullivan https://mm.jpmorgan.com/PubServlet?action=email&doc=GPS-797545-0.pdf

VIT - VanceInfo : Topline Beat with Strong Guidance, Wage Inflation Outlook Still Unclear - Overall management is confident on revenue outlook. For wage inflation in 2012, the company's internal survey points to mid-single-digit to mid-teens YoY growth. With this wide range, management is guiding for 2012 adj. OPM of 12%-13% vs. prior guidance of 13%. Management acknowledged that 2012 margin guidance is on the conservative side. Overall strong demand, with strong growth in BFSI segment and new contract wins for US-based businesses. Maintain OW; PT of US$18. Wei https://mm.jpmorgan.com/PubServlet?action=email&doc=GPS-797713-0.pdf

FSLR - First Solar, Inc. : 4Q11 Earnings: Reduced 2012 Revenue Guidance Offset by Higher-than-Expected System Margins; Warranty Issues Return - Yesterday First Solar reported C4Q11 PF Rev/EPS of $660mn/$1.26 vs. our ests of $794mn/$1.05. Lower-than-expected module sales were offset by better-than-expected margins for system sales. Opex was higher than expected during the quarter, likely related to a significant warranty claims and repair activities that the company dealt with during the quarter. Taxes were also higher than expected, we suspect due to more US-related sales, which are likely to have a higher tax rate. Overall, management reiterated its cautious view on the solar PV market for C12 due to the rapidly declining subsidy environment in many major markets. Blansett https://mm.jpmorgan.com/PubServlet?action=email&doc=GPS-797635-0.pdf

Mobile World Congress : Day 2 Wrap: CSCO, JNPR, FFIV, NOK, ERIC & ALU Meetings, Plus Other Tidbits. https://mm.jpmorgan.com/PubServlet?action=email&doc=GPS-797554-0.pdf

European Technology : MWC day 2. Part 2: Alcatel-Lucent and Ericsson meetings. Deshpande https://mm.jpmorgan.com/PubServlet?action=email&doc=GPS-797489-0.pdf

WBSN - Websense : Analyst Day: The Triton Effect - Company management spent the bulk of today's analyst day explaining how it has transitioned already from the legacy URL filtering to providing the advanced context aware malware protection under the Triton product line. The message sounds good, but now needs to be followed up with evidence that the return to double digit billings is achievable. We maintain our UW rating on Websense. Auty https://mm.jpmorgan.com/PubServlet?action=email&doc=GPS-797422-0.pdf

Software Technology : RSA Security Conference Update 1. Big theme is next-gen security. CSCO is rejuvenated. Securing the cloud a major theme. Good sign for demand in 2012. Auty https://mm.jpmorgan.com/PubServlet?action=email&doc=GPS-797711-0.pdf

GLW - Corning : Price Declines Reiterated, SCP Expectations Lowered; Reiterate Underweight – Hall https://mm.jpmorgan.com/PubServlet?action=email&doc=GPS-797399-0.pdf

Headlines

Media

- **CBS**: CBS CEO Les Moonves said yesterday at the Morgan Stanley conference that he expects the CBS network to sell a bit more inventory in the upfront compared to last year (in the low 80% range) and said "we expect another double digit upfront ad increase this year". [THR] http://bit.ly/xc3cqU
- **PCS**: PCS said at the Deutsche Bank conf. that their CPGA in Q1 could be pressured and "very well could be in the $190 range"; the company said they will be offering a $30 mail in rebate on any customer. [Bloomberg]
- **LMCA, SIRI:** Liberty Media CEO Greg Maffei spoke yesterday at the Deutsche Bank Conf. and talked about the company's possibilities with its investment in Sirius. "We can increase out stake over 50%, and go into hard control, we can spin our stake into a holding company, but we need an active trader business to be stapled with it, and to create a separate stock we could do a Reverse Morris Trust, which would involve us getting to 51% one way or another." [Bloomberg]
- **NFLX:** CEO Reed Hastings said at the Morgan Stanley Conference that he would be open to exploring more partnerships' with cable // ISP providers, though that would be contingent on keep Netflix's economic model intact. [DJ]
- **VIAB:** CEO Philippe Dauman said that profit margin at the company's international division will be >20% and that its intl profit will reach $600M over the next 3-5yrs (from $200M in 2011). [Bloomberg]
- **NWS:** News Corp's Chase Carey said the company will exhaust its current buyback before the end of June and they will think of another buyback that makes sense as they work through the current authorization. [Bloomberg]

- **CMCSA:** CFO Mike Angelakis said that Xfinitity Streampix will be for those subscribers who don't as much TV. [Bloomberg]
- **NWS:** The FT highlights the ongoing investigation into News Corp's newspaper business in the U.K., and how the new revelations this week (e.g. "senior figures at News International...knew or should have known as long ago as 2006 that corruption went beyond the 'one rogue reporter' they maintained for years was responsible") could increase the possibility that News Corp face the FCPA. However, the article says the DoJ, FBI and SEC, "are unlikely to pre-empt the outcome of the police investigation in London." [FT] http://on.ft.com/xkfqmr
- **MCO:** A U.S. district judge in Manhattan ordered Moody's Investors Service to defend itself against claims for Eric Kolchinsky (a former Moody's Managing Director) that the company violated securities regulations when it demoted him after he brought about concerns regarding the quality of Moody's ratings. [WSJ] http://on.wsj.com/xnl2x3
- **CRAs:** European Union official said they are against calls from a member of the European Parliament (Leonardo Domenici) to stop CRAs from providing unsolicited ratings on sovereign debt. [Bloomberg]
- **U.K. Media:** Britain's ITV said that it's forecasting a 2% decline in advertising revenues in the current quarter because of tighter marketing budgets. [FT] http://on.ft.com/wGnmZl
- **VZ, TWC, CMCSA:** The Senate Antitrust Subcommittee has set a hearing on Verizon's proposed spectrum acquisition for March 21st. [Broadcasting & Cable] http://bit.ly/wUceh6
- **MOG**: Digital music start-up MOG is not actively trying to sell the company; CEO David Hyman made these comments in response to an article Tuesday morning reporting that MOG was struggling and up for sale. [Reuters] http://reut.rs/y1zpYz
- **Twitter**: Twitter is set to expand mobile advertising; the company will expand its promoted tweets and accounts on its mobile applications for iPhone and Android devices. [Reuters]
- **Video Games:** In response to a question about ATVI, Jim Cramer said that the gaming stocks are overvalued and he doesn't want to own any of them. [CNBC] http://bit.ly/w9sjFg
- **VIAB:** Jim Cramer said that the momentum was coming out of VIAB while suggesting that viewers shouldn't own it. [CNBC] http://bit.ly/w9sjFg
- **L2:** Lightsquared CEO and EVP stepped down on Tuesday. This follows the wireless networks' recent regulatory setbacks. CEO Sanjiv Ahuja left the role of CEO this month after working without a contract since July. [WSJ] http://on.wsj.com/yxpgyo

****

DWA Q4 2011 Earnings

- EPS 29c vs. St. 33c
- Revs $218M vs. St. $209M
- EBIT $31M vs. St. $41M
- Tax Rate 28.1%
- Repurchase "For the full year 2011, the Company repurchased approximately 0.9 million shares for $25 million. The Company has $125 million remaining under its current share repurchase authorization."
- The Company's full year 2012 results are expected to be driven primarily by the performance of Madagascar 3, which is scheduled to be released on June 8, 2012. The Company's first quarter results are expected to be driven primarily by the international box office performance and domestic home video release of Puss In Boots."

Tech

- **WDC** - has reached an agreement with Toshiba Corporation to divest certain assets to address the requirements of regulatory agencies that have conditionally approved or are continuing to review the company's planned acquisition of Hitachi Global Storage Technologies (HGST). The asset package covered by the agreement will enable Toshiba to manufacture and sell 3.5-inch hard drives.
- **Powerchip** - is in talks with creditor banks to defer repaying the principal of a loan of more than NT$40 billion (US$1.36 billion) for a year. The co said it resumed production of DRAM in Jan and expects shipments to start again in mar. DJ
- **DRAM Price Soars** to 4-Month High After Elpida Bankruptcy Filing – Bloomberg
- **HPQ is cutting ~275 people from its WebOS unit**, or about half the segment's workforce – WSJ http://on.wsj.com/xlJsuV

- **Europe's telecom firms want to share in capital spending investments** to help bolster industry margins. DT said it was open to teaming up w/other competitors when spending on network infrastructure – Bloomberg
- **Samsung said it will spend more to bolster its own proprietary mobile OS** as the co attempts to introduce another platform into the market (the field is crowded already w/iOS, Android, Blackberry, and Windows). Bloomberg
- **LSCC** - announced today that its Board of Directors has approved a stock repurchase program pursuant to which up to $20 million of its outstanding common stock may be repurchased from time to time.
- **AAPL** – investors expect the co will eventually start paying a $2/shr/Q dividend – Bloomberg
- **AAPL** – the co on Tues sent out invitations for an event scheduled for Mar 7 (1pmET). AAPL is widely expected to unveil an iPad refresh and could also introduce a new Apple TV set-top box. http://bit.ly/xA6S3n
- **ADI** – positive article in Barron's; says the company could wind up surprising on the upside – Barron's http://on.barrons.com/w28eND
- **ORCL, SAP** – a judge has set a June 18 date as the start of a jury trial in the ongoing copyright lawsuit battle between the two companies – DJ

DY reports earnings – results come in better

- Revs came in $267.4MM vs. the St $258MM
- EPS came in +0.10 vs. the St +0.05
- EBITDA came in $24.7MM vs. the St $21MM
- CC Wed 9amET 800.553.5260Pwd:Dycom Results

FSLR reports earnings – Dec Q results miss; they cut '12 revs/cash flow (reit EPS)

- Revs came in $660MM vs. the St $779MM
- EPS came in 1.26 vs. the St 1.53
- Recall the co back on Dec 14 cut its guidance for 2011 and issued a 2012 outlook. They are now cutting that 2012 guidance further
- For 2012, they see revs $3.5-3.8B vs. the prior $3.7-4B. They are reiterating their prior EPS guidance of 3.75-4.25 (St 4.13). They are cutting op cash flow guidance for 2012 from $900M-1.1B to $800-900MM.

PANL reports earnings – results come in better

- EPS came in 0.12 vs. the St 0.06
- Revs came in $18.7MM vs. the St $17.8MM.

STEC - results for Dec-end Q about inline; EPS guide a bit on light side

- Revs came in $58.1MM vs. the St $56MM
- GMs came in 41.5% v the St 42.66%
- EPS came in (0.02) vs the St (0.01) (0.02) vs the St (0.01)
- For next Q, sees revs $49-51MM vs. the St $48MM. Sees EPS (0.14-0.16) vs. the St (0.08).
- "As we reported last quarter, our business remains in a relatively stable pattern as we continue to qualify our new products with customers," said Manouch Moshayedi, STEC's Chairman and Chief Executive Officer. "We are encouraged by the signs of the market growth for enterprise SSDs and by the specific feedback we are getting from our early customer engagements around our new products"

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Unless the owner has specifically claimed excusable nonuse, the mark is in use in commerce on or in connection with the goods and/or services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce.

Section 9: Application for Renewal
The registrant requests that the registration be renewed for the goods and/or services identified above.

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

Signature Section

Signature: [signature]
Date: March 30, 2012
Signatory's Name: Anthony J. Horan
Signatory's Position: Corporate Secretary

NOTE TO APPLICANT: When filed as part of the electronic form (i.e., scanned and attached as an image file), the signature page **must** include both the signature information **and** the boilerplate declaration language. Do **not** include the entire application, but do ensure that the boilerplate declaration language actually appears; *a signature by itself will not be acceptable*. If, due to browser limitations, the boilerplate declaration language appears on a previous page when printed, you must "merge" the declaration and signature block onto a single page prior to signing, so that the *one complete page* can be scanned to create an acceptable image file. It is recommended that you copy-and-paste the entire text form into another document, manipulate the spacing there to move the declaration and signature section to a separate page, and then print this new version of the text form to send to the signatory.

RIPPLE EFFECT

Int. Cl.: 16

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38 and 50

Reg. No. 2,482,464

United States Patent and Trademark Office

Registered Aug. 28, 2001

TRADEMARK
PRINCIPAL REGISTER

SOUND EFFECTS

CENTRAL INSTITUTE FOR THE DEAF (MISSOURI NOT FOR PROFIT CORPORATION)
4560 CLAYTON AVENUE
ST. LOUIS, MO 63110

FOR: NEWSLETTER IN THE FIELD OF HEARING AND DEAFNESS, AND CURRENT EVENTS AND DEVELOPMENTAL ISSUES RELATED TO DEAFNESS, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 2-0-1999; IN COMMERCE 2-0-1999.

SER. NO. 76-138,006, FILED 9-28-2000.

DAVID C. REIHNER, EXAMINING ATTORNEY

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Mark: SOUND EFFECTS

SOUND EFFECTS

US Serial Number: 76138006

Application Filing Date: Sep. 28, 2000

US Registration Number: 2482464

Registration Date: Aug. 28, 2001

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor: LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office.

Status: The registration has been renewed.

Status Date: Jan. 31, 2022

Publication Date: Jun. 05, 2001

Mark Information

Mark Literal Elements: SOUND EFFECTS

Standard Character Claim: No

Mark Drawing Type: 1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)

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: Newsletter in the field of hearing and deafness, and current events and [developmental] * development * issues related to deafness

International Class(es): 016 - Primary Class

U.S Class(es): 002, 005, 022, 023, 029, 037, 038, 050

Class Status: ACTIVE

Basis: 1(a)

First Use: Feb. 1999

Use in Commerce: Feb. 1999

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Central Institute for the Deaf

Owner Address: 825 South Taylor Avenue
St. Louis, MISSOURI UNITED STATES 63110

Legal Entity Type: NOT FOR PROFIT CORPORATION

State or Country Where Organized: MISSOURI

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Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Jan. 31, 2022	NOTICE OF ACCEPTANCE OF SEC. 8 & 9 - E-MAILED	
Jan. 31, 2022	REGISTERED AND RENEWED (SECOND RENEWAL - 10 YRS)	81927
Jan. 31, 2022	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	81927
Jan. 31, 2022	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	81927
Aug. 23, 2021	TEAS SECTION 8 & 9 RECEIVED	
Aug. 28, 2020	COURTESY REMINDER - SEC. 8 (10-YR)/SEC. 9 E-MAILED	
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Jul. 05, 2011	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	
Jul. 01, 2011	TEAS SECTION 8 & 9 RECEIVED	
Sep. 14, 2007	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	73376
Sep. 10, 2007	ASSIGNED TO PARALEGAL	73376
Aug. 23, 2007	REGISTERED - SEC. 8 (6-YR) & SEC. 15 FILED	
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Oct. 26, 2005	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
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Feb. 22, 2002	CORRECTION UNDER SECTION 7 Â– PROCESSED	
Jan. 03, 2002	SEC 7 REQUEST FILED	
Aug. 28, 2001	REGISTERED-PRINCIPAL REGISTER	
Jun. 05, 2001	PUBLISHED FOR OPPOSITION	
May 23, 2001	NOTICE OF PUBLICATION	
Mar. 08, 2001	APPROVED FOR PUB - PRINCIPAL REGISTER	
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Feb. 28, 2001	ASSIGNED TO EXAMINER	61272

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: GENERIC WEB UPDATE

Date in Location: Jan. 31, 2022

sound effects

CID

listen talk read succeed

CENTRAL INSTITUTE FOR THE DEAF

Spring/Summer 2020

For alumni, faculty, staff, students and friends of CID.

314.977.0132
cid@cid.edu

CID teaches children who are deaf and hard of hearing to listen, talk, read and succeed. We empower families and professionals in St. Louis and worldwide to help children reach their fullest potential.

Pandemic report. Congrats, grads. p. 2

Trivia night. In memory. p. 3

Alumni accomplishments. pp. 4–5

CID OUT LOUD Online! p. 6

Tribute gifts. p. 7

Pre-corona highlights. p. 8

United Way

United Way of Greater St. Louis

CID tackles a challenging semester

When the governor ordered all Missouri schools to close on March 16, CID joined educators, parents and children across the world in transitioning to online distance teaching/learning from home. Our parent educators, teachers, speech-language pathologists and audiologists have been working hard to ensure each student continues to have fun while making progress toward his or her educational goals.

"Our students and teachers missed one another, but the fact that they weren't at school didn't mean the learning stopped," school principal Lynda Berkowitz said. The teachers kept lessons interesting with e-learning materials, hands-on home assignments and reading sessions to develop targeted listening, speech, language and academic skills. Some continued classroom activities like watching caterpillars turn into a butterflies. One teacher invited virtual zoo animals into her living room. Many made videos.

In the Anaberh and John Weil Early Childhood Center, some activities remained focused on a weekly theme; others on encouraging caregivers to get their children talking about everything from bubbles to family pets.

Whether one-on-one or in groups, the curriculum and many of the activities did not change, except for being conducted in the Brady Bunch style to which many of us have become accustomed. "Some of the familiar learning activities were circle time, read alouds, gym time and song time," teacher Patti Hoffman said. Weekly meetings with groups of students helped everyone stay connected.

In the Joanne Parrish Knight Family Center, CID parent educators already provided teleintervention coaching for parents of children

continues on page 7

ROBIN FEDER
CID executive director

rfeder@cid.edu

Unprecedented challenges

Wow, it's been a year! The March school closing due to the coronavirus challenged our staff to pivot to online teaching fast. I'm so proud of our teachers and SLP's for bringing their creativity and resourcefulness and for continuing to provide an excellent education to each and every CID student — while often caring for their own children at home.

In May, our 2020 graduates gave speeches for their families via a private virtual commencement ceremony. We're proud of their hard work and know their futures are bright. The extended school year looked a bit different this summer, too, but it was still full of learning and fun, helping the students retain skills, stay connected and continue to make progress.

In addition to teaching, family education and one-on-one speech therapy have continued. We continue to provide basic audiology services, both remotely and on CID's parking lot, socially distanced and with PPE. We recently converted a vestibule off the gym to a lab where our audiologists can safely conduct individual appointments, make earmolds, perform certain tests and program cochlear implants.

Our administrative staff has participated in quite a few remote meetings. We have devoted much attention to developing a comprehensive plan to slowly and safely re-open the school as conditions allow. We deep-cleaned the building and initiated daily cleaning routines. Some employees are already back following strict safety guidelines. We continue to monitor the situation and can't wait until we can be together again.

Meanwhile, the whole world is also facing another pandemic. Our hearts break as systemic racism in our society has resulted in the tragic deaths of George Floyd, Breonna Taylor and others. We stand alongside and support our CID community's Black students, families, staff, alumni, board members and partners in the fight against racial inequality. At CID we're dedicated to teaching our children to listen and talk. Now, as adults, we must do the same. We must listen. And we must talk. We too must learn.

We're proud of our strong history serving a diverse population. Every day, we teach children of all colors and socioeconomic backgrounds to listen and speak so they can achieve equity among their hearing peers. Equity has been, and continues to be, at the core of our mission.

We pledge to act responsibly to ensure equity and continue to grow as an informed community that honors individuals and values diversity. – *RF*

Kenan Alukic

Judith Hicks

Ainsley Copeland

Julia Ray

Jaylee Dixon

Sejla Suvic

Ivy Gordon

Nehil Zahkour

It's easier than ever to invest in the future of students at CID! Set up an automatic recurring gift at cid.edu/support-us/donate.

"Truly we are blessed that Sejla had the chance to be part of the CID family. She started CID school when she was 3 years old and was barely speaking, but with your help and support she succeeded. No words could ever express all the thanks we want to give to the teachers and audiologists." — Edin and Lejla Suvic

Vivian Bogan

Hazel Cohen

Sal Dunaway

Connor Lanier

Favorite destination dress-up winning table: Mardi Gras

Trivia Night brings out creativity

Our 18th annual CID Trivia Night in January was a huge success, raising more than $23,000 for CID. Thanks to our donors, volunteers and guests for being a part of a "journey" that took us to wine country, heaven, Bourbon Street, Texas and more with the "favorite destination" theme.

Thank you to the CID Young Professionals for helping raise funds to benefit the children and families at CID. We couldn't do it without you!

Trivia contest winning table led by CID board member Robin Hattori

Remembering CID family

▲ **Ruth (Lenz) Meyer**, of St. Louis, the mother of 1953 CID school alumnus Richard Meyer, passed away in April. She was 103.

▲ 1950 CID school alumna **Kay Margaret (Henry) Upshaw** of Walnut Creek, California, died in March at age 84. Mrs. Upshaw was diagnosed with profound hearing loss when she was a year old. At age 4, she moved with her aunt to St. Louis to learn to speak and read lips at CID. Mrs. Upshaw held a bachelor's degree in biology from Washington State University and enjoyed a career as a cytologist.

Rozella Lapp, mother of CID principal Lynda Berkowitz, passed away in February. She was 82.

1965 CID school alumnus **David J. Kreager III**, 69, of San Antonio, Texas, passed away in February. Although deaf, he lived a full, productive life as a sign-maker, painter and photographer.

1959 CID school alumnus **Warren E. Adolph, Jr.** of Peachtree City, Georgia died in February. He was 76.

▲ 1962 CID school alumna **Nancy A. (Hurd) Murphy** of St. Louis died in January at age 74. Mrs. Murphy was a natural extrovert who had a way of making people feel special. "Her gorgeous smile would light up a room."

Mrs. Murphy's late husband, Charles, was a 1955 CID graduate and a 2001 CIDAA Distinguished Alumni Award recipient.

Shari Summerlin of Kent, Ohio, former assistant to executive director Robin Feder (2004–2012), passed away in November 2019. She was married to former CID research scientist Jianxin Bao, PhD.

▲ *We are grateful to those families who requested memorial gifts be made to CID.*

In memory

Clayton Hicks

With heavy hearts, our community grieves the loss of CID student Clayton Hicks, who passed away in May at the age of 7. Clayton and his twin sister, Judith, enrolled in the Anabeth and John Weil Early Childhood Center in 2016.

Clayton's impish grin, sparkling eyes, infectious laugh and hilarious sense of humor captivated the hearts of everyone who knew him. We joyfully recall watching him and Judith race to the door of the school each day, to be the first to push Ms. Donita's buzzer. Even as his illness progressed, Clayton never lost his love of learning. He will forever hold a special place in our hearts.

Frank Withrow

Former CID graduate student (class of 1951), teacher, researcher, administrator and Scoutmaster **Frank Burdon Withrow, Jr.**, 93, died in October 2019 in Fredericksburg, Virginia.

After leaving CID in 1966, Dr. Withrow served 26 years in the U.S. Department of Education (DOE). He was the executive director of the President's National Advisory Committee for the Handicapped in 1975 at the time the Education for All Handicapped Children Act (PL 94-142) was passed. He helped develop more than 50 educational and closed captioned programs, including "Sesame Street."

Summit Daily News | SummitDailyNews.com

High school junior Allie Lane was surprised and thrilled to win the 2021 John Burroughs School Eric Newman Prize.

Lauren Weibert wins Olympic gold

Congratulations to 1996 CID alumna Lauren Weibert, who won two gold medals at the 2019 Winter Deaflympics in Valchiavenna, Italy. A native St. Louisan, she spent five years learning to listen and talk at CID, starting at age 3 and graduating at age 8.

Now 31, Weibert snowboarded for the first time when she was 13 years old. She also won gold and silver medals at the 2015 Deaflympics in Khanty-Mansiysk, Russia.

Her own fundraising efforts in her community of Summit County, Colorado, made it possible for her to train and travel to both events. She is sponsored by several snowboarding brands, including CAPITA, Union Bindings, 686 Outerwear, Coal Headwear, Crab Grab and Gravitee Boardshop.

JBS Eric Newman Prize goes to Allie Lane

2009 CID school alumna Allie Lane recently won the 2021 Eric Newman Prize at John Burroughs School (JBS).

Each year, JBS gives a member of its junior class the opportunity to meet with a famous American of choice. Interested students submit a brief application listing five living Americans they'd like to meet. Then a panel of alumni interview each student. After she won the award, Allie's proud mom posted her chosen five on social media:

- **Neil DeGrasse Tyson,** astrophysicist, author and science communicator
- **Bill Nye,** scientist, engineer, comedian, author and inventor
- **Nyle DiMarco,** actor, model and deaf rights activist
- **Caesar Jacobson,** women's empowerment, equality and deaf rights activist, scientist, author and entrepreneur
- **Stephen King,** author of horror, suspense and fantasy novels

We'll let you know who she meets!

Allie was diagnosed profoundly deaf at age 3. After researching schools in St. Louis as well as the various learning philosophies for children with hearing loss, her parents brought her to CID.

Her father, Chad, said one of his greatest fears at the beginning was that Allie would not learn to read. It turned out she not only learned to listen and talk, but also developed a deep love for reading and books. Academically, she started two years behind her same-aged peers with typical hearing. She spent four years learning at CID. When she graduated, she tested a year ahead.

The *St. Louis Post-Dispatch* and the Old Newsboys edition of the *Suburban Journals of Greater St. Louis* recently featured articles about Allie.

William Sheldon's honors include a CIDAA Distinguished Alumni Award, a Fair St. Louis Mel Loewenstein Distinguished Volunteer Service Award, a Round Table Representative on Deafness Humanities Award and various honors from the Boy Scouts of America. He was an assistant Scout leader for CID Troop 132 and held positions at the district level.

Article excerpted with permission from the Starkloff Disability Institute

Starkloff Disability Institute honors William Sheldon

The Starkloff Disability Institute (SDI) recently awarded 1959 CID alumnus and life board member William Sheldon its Gold Star Board Member Award.

Sheldon has served on the SDI board of directors since 2010, but his relationship with the Starkloffs goes back much further.

He first met Max Starkloff at a dance for area youth when they were both teenagers, long before the car accident that would render Max a quadriplegic. "We were both probably about 15 years old," Sheldon said. "Max moved away and we lost touch for many years. We reconnected in 1975 when we were both serving in the disability field. I met Colleen [Starkloff] for the first time at a meeting in Jeff City. Once Paraquad received its first federal grant a few years later, they invited me to come work with them."

Sheldon took over as Paraquad's director of deaf and hard of hearing programs, a role that would keep him busy for the next 24 years. He was without hearing and Max couldn't use sign language, but they were able to communicate. "I'm very skilled at reading lips. I can read lips in English as well as French and German," he said.

"I began learning how to speak and read lips as a young child at Central Institute for the Deaf, but I was 39 years old before I learned to sign. So I was already a grownup in the hearing world well before I joined the deaf world in its fight for advocacy and independence."

Sheldon engineered the first federally funded deaf and hard of hearing program of its kind at a center for independent living. He helped the Starkloffs dismantle physical and attitudinal barriers facing individuals in wheelchairs. He also used his position to encourage local television stations to implement closed captioning technology.

While working at Paraquad and attending graduate school at the University of Missouri – St. Louis, Sheldon was informed by the school administration that there was no money in the budget for his interpreter expenses. After unfruitful negotiations with the chancellor, Sheldon filed a discrimination claim with the Office of Civil Rights in Kansas City. After four months of legal wrangling and spending his own money on interpreters, he won the case and was reimbursed, paving the way for others to be entitled to interpreter services at universities nationwide.

Since retiring in 2003, Sheldon has served on various boards and councils in addition to his work with SDI and CID. He serves on the Office of the Disabled Advisory Council, the Deaf Professional Advisory Committee and the Home Care Givers Program for the Deaf.

Tyler Drake will begin audiology externship at CID

by Debbie Coghlan

"Just be yourself. The more open you are, the more others will realize that, while everyone is unique, you're just like them." — Tyler Drake

2000 CID alumnus Tyler Drake recently shared this sage advice with some older students in the Virginia J. Browning Primary School who are attending upper elementary or middle schools next year.

Tyler said he remembers what it's like to be the only student with hearing loss in a traditional classroom. He knows that transitioning into a traditional school setting is a natural time for insecurity to arise. Some students might be tempted to hide their deafness and not wear hearing aids. They may choose not to self-advocate so they don't draw unwanted attention. He hopes sharing strategies that worked for him will be particularly helpful to the pre-teen boys who haven't had male role models with hearing loss in their lives.

While Tyler admitted he once wore his hair longer to hide his hearing aids, he gained confidence with age. He eventually learned his friends didn't care about his hearing loss. In fact, the more he was himself, the easier it was to make friends.

These childhood experiences, combined with having many relatives on his father's side of the family working in the medical field, led Tyler to want to become an audiologist. Growing up, he was a curious child. He wanted to know how everything worked and its purpose, particularly when it came to what was happening on the other side of the glass at his audiology appointments. Tyler fondly remembers his childhood audiologists at CID and hopes to make such a difference in the lives of children who are deaf and hard of hearing he will soon serve.

Next year, Tyler will earn an AuD from the Washington University Program in Audiology and Communication Sciences (PACS). In June, he began his fourth year audiology externship at CID. He said

he wants to continue to be a role model for the primary students. Although he graduated when he was only 5½, he has many fond memories of his time at the CID school.

"CID had such a profound effect on my life" he said. "I would not be where I am today without all the great teachers, audiologists, SLPs and the rest of the staff who keep things running smoothly. I look forward to giving back to the kids and working at a place that I will always hold close to my heart."

One of Tyler's favorite memories is his speech at his CID graduation — a poem he wrote with the help of his mom that still hangs in his parents' house today:

My name is Tyler
And I am 5
I like to ask the question Why
I like to ask the question Why not a lot
And Who and Where and How
Miss Amy says that that's OK
That's how I'll grow and learn each day
When Mommy kisses me at night
She says now no more Whys tonight
I look at her
And kiss her back
And say Why no more Whys tonight?

Jaylee Dixon wins annual poster award

Recent CID graduate Jaylee Dixon is the 2020 Grand Prize winner of the Missouri Poison Center's annual poster contest. Every year in media literacy class, students in the Virginia J. Browning Primary School participate in the contest, open to all K through 4th graders in St. Louis City and County schools. The theme is poison prevention/safety.

Jaylee's poster was displayed at SSM Cardinal Glennon Children's Hospital during Poison Prevention Week in March. She also won a membership to the Magic House and other prizes.

Nabil Zakkour is All-Star of the Game

CID primary school student Nabil Zakkour and Blues player Ryan O'Reilly met courtesy of the St. Louis Blues for Kids Foundation Mighty RO'R program.

In February, CID primary student Nabil Zakkour received four tickets and attended his first ever Blues hockey game! The St. Louis Blues for Kids Foundation recognized him as the Mighty RO'R Community All-Star of the Game. The CID primary school teachers nominated Nabil for displaying the attributes of courage, compassion, leadership, perseverance and respect.

"Since coming to CID, Nabil has shown remarkable gains in his commitment to learning, his willingness to take risks and participate in class and supportive peer relationships at school," program coordinator Amy Hudson said.

Thanks to St. Louis Blues legend Brett Hull for lending his support to our *CID OUT LOUD Online!* scholarship paddle raise.

CID OUT LOUD Online! raises $270,000

Thank you from the families of Ainsley, Wesley, Armin and the other CID students for helping to raise more than $270,000 during *CID OUT LOUD Online!* in May. Your generous contributions will help children learn to listen, talk, read and pursue their dreams.

Thank you to our wonderful donors, bidders, event sponsors and volunteer committee (below) led by **Michelle Jordan** and a steering committee composed of **Jeff Kapfer, Jodi Lang, Karen Leebolt** and **Shelby Reneski.**

CID students Ainsley Copeland, Wesley Needham and Armin Alukic starred in videos shared with *CID OUT LOUD Online!* participants. Find their short clips at the links shown.

CID OUT LOUD! Online

COMMITTEE MEMBERS

Liz Dorr
Chris Fete
Missy Fish
Robin Hattori
Michael Hopfinger
Jennifer Koster
Nick Lampi
Noël Mangano
Matt McCarty
Gwen Meriwether
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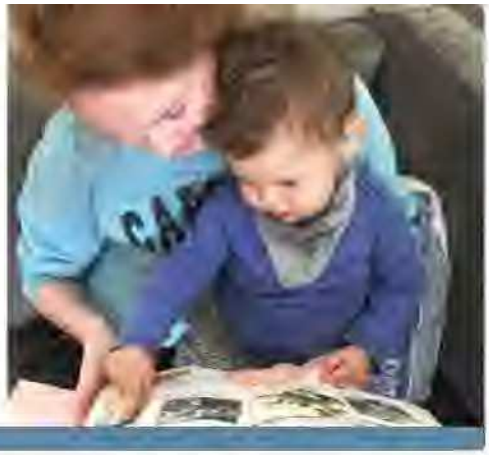
After a teleintervention session with CID parent educator Judy Odendahl, Henry and his mom, Lydia, went on a walk to collect items and pictures (for example, a picture of Henry jumping on a sewer lid to make noise) for an experience diary.

Henry and Lydia are looking at the first pages of the book Mom created using these items and some related words, phrases and sentences. "The value lies in recording an experience, writing about it and then revisiting it to repeat the language over and over," Odendahl said.

Lydia continues to add to the experience diary using Henry's planned and unplanned experiences to stimulate speech and language



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Ms. Natalie Ramirez
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Ms. Suzanne Whitehead

Ryan Voszler
Mr. Randy Balkan
Beth Yocks

Jean Wolff
Anonymous

challenging semester

continued from page 1

birth to age 3 living outside of driving distance to CID. CID also started a similar pilot coaching program for parents of 3-year-olds in the Early Childhood Center called Building Language Together. "During this time, more families have received remote coaching on how to help their children at home," Berkowitz said.

CID's Virginia J. Browning Primary School serves children ages 6 to 12. "As always, learning academics and all of the surrounding language is challenging for our students," program coordinator Amy Hudson said. "Our teachers have remained steadfastly focused on continuing to engage them in an outstanding education."

At all age levels, CID speech-language pathologists have continued one-on-one training with every student. Audiologists in the CID Martha E. Jones Pediatric Audiology Center continue to counsel families about hearing loss and have even repaired hearing devices remotely. "It's not an ideal time to test hearing," CID audiology team coordinator Kathy Holtman, AuD, said. "But it is a very good time to emphasize the importance of keeping a child's devices on all waking hours. This can complicate home life, but it really does give the children optimal access to spoken language. Listening to speech is the foundation for all children learning to talk."

Staff have been using social media to communicate with families. Every two weeks, all students, with or without internet access, received an individualized learning packet.

"We appreciate the parents' and caregivers' amazing commitment as they worked with our staff to support their child's continued learning," CID executive director Robin Feder said. "We want them to know we're always here for them."

The extended school year (ESY) summer program was also conducted remotely. "It's important for the children not just to keep up with their skills, but to make more than a year's progress every year to catch up with their age-mates with typical hearing," Feder said. "Our goal is to prepare every student to communicate, learn and succeed in their neighborhood schools."

CID CENTRAL INSTITUTE FOR THE DEAF
825 S. Taylor Avenue, Saint Louis, Missouri 63110

Sign up for e-news at www.cid.edu

since 2009

ATTN: CID Alumni: Due to COVID-19 concerns, a date has not yet been set for the 2021 reunion. Please check cidaa.org for updates.

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FALL 2019 SEMESTER HIGHLIGHTS

"Books Like Me!" was the theme of the 2020 school literacy fair. The students and their parents, siblings, grandparents, teachers and friends participated in activities to celebrate how books can be mirrors into our own lives or windows into the experiences of others.

As personal guests of assistant coach and CID mom, Emily Samuelson, some CID families attended an UMSL Tritons home game. The students befriended the team mascot, stood with the players during the national anthem and ran a relay race at halftime.

Thank you once again to Michael Laycob and David Schepers for leading the fall semester's after school tennis program. Congratulations to all the CID primary students who had a blast participating!

Laycob is a member of the CID board of directors and the grandson of the late Paul Mendelson and his wife, Betty, who started the tennis program in 2005.

Schepers is president of the CID board. Before the pandemic halted onsite work at CID, he taught a class of primary students how to play the ukeleles. He has held a class in each of the last three years, ending with a concert for families and staff.

Support CID at the amount and pace that fit your budget!
Set up a recurring gift today at cid.edu.

DONATE

Int. Cl.: 16

Prior U.S. Cl.: 38

Reg. No. 1,752,451

United States Patent and Trademark Office

Registered Feb. 16, 1993

TRADEMARK
PRINCIPAL REGISTER

THE BLACK DIAMOND EFFECT

GATSIS, GEORGE PETER (CANADA CITIZEN)
19 LORD ROBERTS DRIVE
SCARBOROUGH, ONTARIO M1K 3W1, CANADA

FOR: CARTOON SCIENCE FICTION BOOKS AND COMIC BOOKS, IN CLASS 16 (U.S. CL. 38).

PRIORITY CLAIMED UNDER SEC. 44(D) ON CANADA APPLICATION NO. 658204, FILED 5-23-1990, REG. NO. TMA398,451, DATED 5-22-1992, EXPIRES 5-22-2007.

SER. NO. 74-105,039, FILED 10-9-1990.

HOWARD B. LEVINE, EXAMINING ATTORNEY

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Mark: THE BLACK DIAMOND EFFECT

US Serial Number: 74105039

Application Filing Date: Oct. 09, 1990

US Registration Number: 1752451

Registration Date: Feb. 16, 1993

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor: LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office.

Status: The registration has been renewed.

Status Date: Mar. 04, 2013

Publication Date: Nov. 24, 1992

Mark Information

Mark Literal Elements: THE BLACK DIAMOND EFFECT

Standard Character Claim: No

Mark Drawing Type: 1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)

Foreign Information

Priority Claimed: Yes

Foreign Application Number: 658204

Foreign Application Filing Date: May 23, 1990

Foreign Registration Number: TMA398,451

Foreign Registration Date: May 22, 1992

Foreign Application/Registration Country: CANADA

Foreign Expiration Date: May 22, 2007

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: cartoon science fiction books and comic books

International Class(es): 016 - Primary Class

U.S Class(es): 038

Class Status: ACTIVE

Basis: 44(e)

Basis Information (Case Level)

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

Current Owner(s) Information

Owner Name: GATSIS, GEORGE PETER

Owner Address: 38 BOWSFIELD ROAD
NORTH YORK CANADA M3J 3R3

Legal Entity Type: INDIVIDUAL **Citizenship:** CANADA

Attorney/Correspondence Information

Attorney of Record

Attorney Name: PAUL HERBERT

Correspondent

Correspondent Name/Address: PAUL HERBERT
Riches, McKenzie & Herbert LLP
2 Bloor St. E.
1800
TORONTO, ON CANADA M4W3J5

Phone: 416-961-5000

Correspondent e-mail: riches@patents-toronto.com **Correspondent e-mail Authorized:** Yes

Domestic Representative

Domestic Representative Name: MALLINCKRODT & MALLINCKRODT

Prosecution History

Date	Description	Proceeding Number
Feb. 16, 2022	COURTESY REMINDER - SEC. 8 (10-YR)/SEC. 9 E-MAILED	
Feb. 10, 2021	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Mar. 04, 2013	NOTICE OF ACCEPTANCE OF SEC. 8 & 9 - E-MAILED	
Mar. 04, 2013	REGISTERED AND RENEWED (SECOND RENEWAL - 10 YRS)	71378
Mar. 04, 2013	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	71378
Feb. 26, 2013	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	71378
Feb. 12, 2013	TEAS SECTION 8 & 9 RECEIVED	
Feb. 12, 2013	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Apr. 05, 2011	CASE FILE IN TICRS	
Aug. 24, 2004	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	
Aug. 24, 2004	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	
Oct. 21, 2003	FAX RECEIVED	
Apr. 21, 2003	POST REGISTRATION ACTION MAILED - SEC. 8 & 9	
Feb. 03, 2003	REGISTERED - COMBINED SECTION 8 (10-YR) & SEC. 9 FILED	
Feb. 03, 2003	PAPER RECEIVED	
Jun. 14, 1999	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	
Jan. 19, 1999	REGISTERED - SEC. 8 (6-YR) & SEC. 15 FILED	
Feb. 16, 1993	REGISTERED-PRINCIPAL REGISTER	

Nov. 24, 1992	PUBLISHED FOR OPPOSITION	
Oct. 23, 1992	NOTICE OF PUBLICATION	
Jul. 27, 1992	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jul. 09, 1992	EXAMINER'S AMENDMENT MAILED	
Jun. 25, 1992	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Jun. 18, 1992	LETTER OF SUSPENSION MAILED	
Jun. 01, 1992	CORRESPONDENCE RECEIVED IN LAW OFFICE	
May 07, 1992	INQUIRY AS TO SUSPENSION MAILED	
Oct. 28, 1991	LETTER OF SUSPENSION MAILED	
Sep. 13, 1991	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Aug. 12, 1991	INQUIRY AS TO SUSPENSION MAILED	
Feb. 26, 1991	LETTER OF SUSPENSION MAILED	
Feb. 14, 1991	EXAMINER'S AMENDMENT MAILED	
Feb. 07, 1991	ASSIGNED TO EXAMINER	68792

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: GENERIC WEB UPDATE **Date in Location:** Mar. 04, 2013

Assignment Abstract Of Title Information

Summary

Total Assignments: 2 **Registrant:** Gatsis, George Peter

Assignment 1 of 2

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: 2852/0634 **Pages:** 3

Date Recorded: Oct. 27, 2003

Supporting Documents: assignment-tm-2852-0634.pdf

Assignor

Name: GATSIS, GEORGE PETER **Execution Date:** Jul. 25, 2002

Legal Entity Type: INDIVIDUAL **Citizenship:** No Citizenship Found

Assignee

Name: THE BLACK DIAMOND EFFECT INC.

Legal Entity Type: CORPORATION **State or Country Where Organized:** CANADA

Address: 19 LORD ROBERTS DRIVE
TORONTO, ONTARIO, CANADA M1K 3W1

Correspondent

Correspondent Name: RICHES MCKENZIE & HERBER LLP

Correspondent Address: PAUL HERBERT
2 BLOOR STREET EAST
SUITE 1800
TORONTO, ONTARIO, CAX M4W 3J5

Domestic Representative - Not Found

Assignment 2 of 2

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: 7173/0740 **Pages:** 2

Date Recorded: Jan. 29, 2021

Supporting Documents: assignment-tm-7173-0740.pdf

Assignor

Name:	THE BLACK DIAMOND EFFECT INC.	**Execution Date:**	Jan. 19, 2021
Legal Entity Type:	CORPORATION	**State or Country Where Organized:**	No Place Where Organized Found

Assignee

Name:	GATSIS, GEORGE PETER		
Legal Entity Type:	INDIVIDUAL	**Citizenship:**	CANADA
Address:	38 BOWSFIELD ROAD NORTH YORK, CANADA M3J 3R3		

Correspondent

Correspondent Name:	MATT SOLMON
Correspondent Address:	SOLMON IP LAW, PC 840 APOLLO STREET, SUITE 100 EL SEGUNDO, CA 90245

Domestic Representative - Not Found

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Combined Declaration of Use and/or Excusable Nonuse/
Application for Renewal of Registration of a Mark under Sections 8 & 9
(15 U.S.C. § § 1058 and 1059)

To: Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
U.S.A.

TRADE MARK INFORMATION

Trade Mark : **THE BLACK DIAMOND EFFECT**
Reg. No. : 1752451
Reg. Date : February 16, 1993
Serial No. : 74/105039
Int. Class : 016
Agent's Ref. : T125790

OWNER INFORMATION

Registrant : **THE BLACK DIAMOND EFFECT INC.**

Business Address : 111 - 7115 Rexwood Road
Mississauga, Ontario
L4T 4L5
Canada

I, the undersigned, declare that:

1. I am a duly authorized officer of the above-identified owner.

2. The owner owns the above-identified registration.

3. The owner is using the above-identified mark in commerce on or in connection with all the goods in the existing registration for International Class 016, namely, cartoon science fiction books and comic books.

4. The owner requests that the registration be renewed for the goods identified above in accordance with the provisions of Section 9 of the Trade Marks Act of July 5, 1946.

5. The specimen(s) attached shows current use of the mark.

6. The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of United States Code, and that such willful false statements will jeopardize the validity of this document, declares that: I am properly authorized to execute this document on behalf of the owner; all statements made herein of my knowledge are true; and all statements made on information and belief are believed to be true.

EXECUTED at Mississauga, Ontario, Canada, this 19 day of January, 2013.

THE BLACK DIAMOND EFFECT INC.

By: _____
George Peter Gatsis
President

K\SNS\T\USA\s8&9 applications\125790.doc

View More By This Developer

TBDE Comics

By George Peter Gatsis

Open iTunes to buy and download apps.

This app is designed for both iPhone and iPad

Free

Category: Books
Updated: Nov 03, 2011
Version: 4.0
Size: 1.33 MB
Language: English
Seller: George Peter Gatsis
© George Peter Gatsis
Rated 9+ for the following: Infrequent/Mild Cartoon or Fantasy Violence

Requirements: Compatible with iPhone, iPod touch, and iPad. Requires iOS 4.3 or later.

Customer Ratings

We have not received enough ratings to display an average for the current version of this application.

More by George Peter Gatsis

TBDE Comics HD
View in iTunes

HISTORYonJESUS
View in iTunes

Realestaternator
View in iTunes

Description

This is a digital collection of The Black Diamond Effect comic book series that premiered in 1990.

It is the first computer generated comic book to be almost entirely produced in the vector graphic format.

All seven issues are collected, with new additional artwork on splash pages throughout the run.

The original data for the first two issues was stored on 5 inch removable cartridge hard disks and was lost due to corruption.

The first two books were scanned from the best copies available. The remaining pages are rasterized from the original page data.

Oh... did I mention it's 271 pages! (update 2.0 is 300+ pages!)

George Peter Gatsis Web Site TBDE Comics Support ...More

What's New in Version 4.0

Universal compatible.

Screenshots

iPhone | iPad

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TBDE Comics HD

By George Peter Gatsis

Open iTunes to buy and download apps.

View More By This Developer

This app is designed for both iPhone and iPad

Free

Category: Entertainment
Updated: Nov 05, 2011
Version: 4.0
Size: 40.7 MB
Language: English
Seller: George Peter Gatsis
© George Peter Gatsis
Rated 9+ for the following: Infrequent/Mild Cartoon or Fantasy Violence

Requirements: Compatible with iPhone, iPod touch, and iPad. Requires iOS 4.3 or later.

Customer Ratings

We have not received enough ratings to display an average for the current version of this application.

More by George Peter Gatsis

TBDE Comics
View in iTunes

HISTORYonJESUS
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Realestaternator
View in iTunes

Description

At large group of misfits, brought together to take on missions too trivial for real space detectives. Among the group is Joe King, Cryptec, Ms. Take and Syntax E.R.R.O.R.

This is a BUY ONCE COMIC APP and the following issues will be updated on a regular schedule for free.

Yep, you read that right... This is the worlds first Buy Once/Update Forever Comic Book App!

Wait WHAT!!? That's crazy!!! How does that work?

Simple. Once you purchase the App, all the updates (I like to think of them as issues) will be free.

Issue 1, 2, 3, 4, 5... etc... Every update will have more pages added to the Comic Book App... ISN'T THAT COOL! Yes, yes it is.

Once you buy this Comic Book App... You never have to look at your iTunes account balance to see if you can afford to buy the next issue... ever again.

And for those people considering buying this App, after we have released many updates... Guess what, you get ALL the content as if you had been there at the beginning.

What are you waiting for? Buy the App and your eyes will ogle at the art and your mind will be challenged by the unique adventures (loud echoey voice) IN TIME & SPACE!

George Peter Gatsis Web Site TBDE Comics HD Support ...More

What's New In Version 4.0

Universal compatible.

Screenshots

iPhone | iPad

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View In iTunes

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Mark: THE ELEGANCE EFFECT

US Serial Number:	97319303	**Application Filing Date:**	Mar. 18, 2022
Filed as TEAS Plus:	Yes	**Currently TEAS Plus:**	Yes
Register:	Principal		
Mark Type:	Trademark		
TM5 Common Status Descriptor:	LIVE/APPLICATION/Awaiting Examination The trademark application has been accepted by the Office (has met the minimum filing requirements) and has not yet been assigned to an examiner.		
Status:	New application will be assigned to an examining attorney approximately 6 months after filing date.		
Status Date:	Mar. 23, 2022		

Mark Information

Mark Literal Elements:	THE ELEGANCE EFFECT
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:	Pens; Cardboard coasters; Paper hang tags; Personalized stickers; Plastic or paper envelopes for merchandise packaging; Plastic or paper pouches for merchandise packaging		
International Class(es):	016 - Primary Class	**U.S Class(es):**	002, 005, 022, 023, 029, 037, 038, 050
Class Status:	ACTIVE		
Basis:	1(b)		

Basis Information (Case Level)

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

Current Owner(s) Information

Owner Name: Nebbs, Melendy

Owner Address: 1044 Carmona Ave.
Los Angeles, CALIFORNIA UNITED STATES 90019

Legal Entity Type: INDIVIDUAL **Citizenship:** UNITED STATES

Attorney/Correspondence Information

Attorney of Record - None

Correspondent

Correspondent Name/Address: NEBBS, MELENDY
1044 CARMONA AVE.
LOS ANGELES, CALIFORNIA UNITED STATES 90019

Correspondent e-mail: mnebbs@me.com **Correspondent e-mail Authorized:** Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Mar. 23, 2022	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Mar. 22, 2022	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: NEW APPLICATION PROCESSING **Date in Location:** Mar. 23, 2022

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Mark: THE PROSPERITY EFFECT

US Serial Number: 90882492

Application Filing Date: Aug. 13, 2021

Filed as TEAS Plus: Yes

Currently TEAS Plus: Yes

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor: LIVE/APPLICATION/Awaiting Examination

The trademark application has been accepted by the Office (has met the minimum filing requirements) and has not yet been assigned to an examiner.

Status: New application will be assigned to an examining attorney approximately 6 months after filing date.

Status Date: Oct. 04, 2021

Mark Information

Mark Literal Elements: THE PROSPERITY EFFECT

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: Pencils; Pens; Stationery; Paper notebooks; Personal organizers; Printed guides for setting goals for the purpose of achieving those goals faster; Printed daily planners

International Class(es): 016 - Primary Class

U.S Class(es): 002, 005, 022, 023, 029, 037, 038, 050

Class Status: ACTIVE

Basis: 1(a)

First Use: Jun. 16, 2021

Use in Commerce: Jun. 16, 2021

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Kelly Suite LLC

Owner Address: 9521 Delaney Creek Blvd, 417
Tampa, FLORIDA UNITED STATES 33619

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: FLORIDA

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Julian Cordero

Attorney Primary Email Address: julian@mycorderolaw.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: JULIAN CORDERO
CORDERO LAW LLC
200 PARK AVE - SUITE 1700
NEW YORK, NEW YORK UNITED STATES 10166

Phone: 212-960-8890

Correspondent e-mail: julian@mycorderolaw.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Oct. 04, 2021	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Aug. 17, 2021	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: NEW APPLICATION PROCESSING

Date in Location: Oct. 04, 2021

United States of America

United States Patent and Trademark Office

The Reconnect Effect

Reg. No. 6,673,258

Registered Mar. 15, 2022

Int. Cl.: 16

Trademark

Principal Register

Natalie Parrish (UNITED STATES INDIVIDUAL)
504 Lewis Drive
Carolina Beach, NORTH CAROLINA 28428

CLASS 16: Books in the field of self-help; cook books; non-fiction books on a variety of topics; series of fiction books

FIRST USE 9-1-2020; IN COMMERCE 10-23-2020

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

SER. NO. 90-147,105, FILED 08-29-2020

Performing the Functions and Duties of the
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years*
What and When to File:

- ***First Filing Deadline:*** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

- ***Second Filing Deadline:*** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*
What and When to File:

- You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see http://www.wipo.int/madrid/en/.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at http://www.uspto.gov.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at http://www.uspto.gov.

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Mark: THE RECONNECT EFFECT

The Reconnect Effect

US Serial Number:	90147105	**Application Filing Date:**	Aug. 29, 2020
US Registration Number:	6673258	**Registration Date:**	Mar. 15, 2022
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: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Mar. 15, 2022

Publication Date: Feb. 23, 2021 **Notice of Allowance Date:** Apr. 20, 2021

Mark Information

Mark Literal Elements: THE RECONNECT EFFECT

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: Books in the field of self-help; cook books; non-fiction books on a variety of topics; series of fiction books

International Class(es):	016 - Primary Class	**U.S Class(es):**	002, 005, 022, 023, 029, 037, 038, 050
Class Status:	ACTIVE		
Basis:	1(a)		
First Use:	Sep. 01, 2020	**Use in Commerce:**	Oct. 23, 2020

Basis Information (Case Level)

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

Current Owner(s) Information

Owner Name: Natalie Parrish

Owner Address: 504 Lewis Drive
Carolina Beach, NORTH CAROLINA UNITED STATES 28428

Legal Entity Type: INDIVIDUAL **Citizenship:** UNITED STATES

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Matthew Janda

Attorney Primary Email Address: matt@laattorneyjanda.com **Attorney Email Authorized:** Yes

Correspondent

Correspondent Name/Address: Matthew Janda
504 LEWIS DRIVE
CAROLINA BEACH, NORTH CAROLINA UNITED STATES 28428

Phone: 408-691-3483

Correspondent e-mail: matt@laattorneyjanda.com **Correspondent e-mail Authorized:** Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Mar. 15, 2022	REGISTERED-PRINCIPAL REGISTER	
Feb. 05, 2022	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	
Feb. 04, 2022	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Jan. 27, 2022	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Jan. 26, 2022	STATEMENT OF USE PROCESSING COMPLETE	65362
Dec. 10, 2021	USE AMENDMENT FILED	65362
Jan. 26, 2022	SOU EXTENSION 1 GRANTED	65362
Oct. 20, 2021	SOU EXTENSION 1 FILED	65362
Jan. 26, 2022	CASE ASSIGNED TO INTENT TO USE PARALEGAL	65362
Dec. 11, 2021	NOTICE OF REVIVAL - E-MAILED	
Dec. 10, 2021	TEAS STATEMENT OF USE RECEIVED	
Dec. 10, 2021	EXTENSION RECEIVED WITH TEAS PETITION	
Dec. 10, 2021	PETITION TO REVIVE-GRANTED	88889
Dec. 10, 2021	TEAS PETITION TO REVIVE RECEIVED	
Nov. 22, 2021	ABANDONMENT NOTICE E-MAILED - NO USE STATEMENT FILED	
Nov. 22, 2021	ABANDONMENT - NO USE STATEMENT FILED	99999
Apr. 20, 2021	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Feb. 23, 2021	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Feb. 23, 2021	PUBLISHED FOR OPPOSITION	
Feb. 03, 2021	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Jan. 15, 2021	APPROVED FOR PUB - PRINCIPAL REGISTER	
Dec. 31, 2020	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Dec. 30, 2020	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
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Dec. 29, 2020	NON-FINAL ACTION E-MAILED	
Dec. 29, 2020	NON-FINAL ACTION WRITTEN	76507
Dec. 28, 2020	ASSIGNED TO EXAMINER	76507
Oct. 02, 2020	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Sep. 02, 2020	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION **Date in Location:** Feb. 04, 2022

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ISBN-13 : 978-1736918661

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Narrator	Melissa Hunt
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Audible.com Release Date	November 19, 2021
Publisher	Square Tree Publishing
Program Type	Audiobook
Version	Unabridged
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Mark: THE RIPPLE EFFECT

THE RIPPLE EFFECT

US Serial Number: 88436815

Application Filing Date: May 19, 2019

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor:

LIVE/APPLICATION/Under Examination

The trademark application has been accepted by the Office (has met the minimum filing requirements) and that this application has been assigned to an examiner.

Status: A final Office action refusing registration has been sent (issued) because the applicant neither satisfied nor overcame all requirements and/or refusals previously raised. The applicant may respond by filing (1) a request for reconsideration; and/or (2) an appeal to the Trademark Trial and Appeal Board. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date: Dec. 07, 2021

Mark Information

Mark Literal Elements: THE RIPPLE EFFECT

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: books, book series and workbooks in the field of inspiration and stories of general human interest

International Class(es): 016 - Primary Class

U.S Class(es): 002, 005, 022, 023, 029, 037, 038, 050

Class Status: ACTIVE

Basis: 1(a)

First Use: May 19, 2019

Use in Commerce: May 19, 2019

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Kandon Unlimited, Inc

Owner Address: 6977 Navajo Road, #105
San Diego, CALIFORNIA UNITED STATES 92119

Legal Entity Type: CORPORATION

State or Country Where Organized: CALIFORNIA

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Pollie Gautsch, Esq.

Attorney Primary Email Address: pollie@gandalegal.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: Pollie Gautsch, Esq.
G&A LEGAL, APC
665 SAN RODOLFO 124-209
SOLANA BEACH, CALIFORNIA UNITED STATES 92075

Phone: 858-344-5905

Fax: 760-454-4673

Correspondent e-mail: pollie@gandalegal.com pollie@gandalegal.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Dec. 07, 2021	NOTIFICATION OF FINAL REFUSAL EMAILED	
Dec. 07, 2021	FINAL REFUSAL E-MAILED	
Dec. 07, 2021	FINAL REFUSAL WRITTEN	76851
Nov. 09, 2021	TEAS/EMAIL CORRESPONDENCE ENTERED	96338
Nov. 09, 2021	CORRESPONDENCE RECEIVED IN LAW OFFICE	96338
Nov. 09, 2021	ASSIGNED TO LIE	96338
Nov. 04, 2021	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Jun. 15, 2021	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Jun. 15, 2021	NON-FINAL ACTION E-MAILED	6325
Jun. 15, 2021	NON-FINAL ACTION WRITTEN	76851
May 21, 2021	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
May 20, 2021	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
May 20, 2021	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
May 04, 2021	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
May 04, 2021	NON-FINAL ACTION E-MAILED	6325
May 04, 2021	NON-FINAL ACTION WRITTEN	76851
Jul. 15, 2020	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	
Jan. 15, 2020	NOTIFICATION OF LETTER OF SUSPENSION E-MAILED	6332
Jan. 15, 2020	LETTER OF SUSPENSION E-MAILED	6332
Jan. 15, 2020	SUSPENSION LETTER WRITTEN	76851
Jan. 15, 2020	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Jan. 14, 2020	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Jan. 14, 2020	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Aug. 06, 2019	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Aug. 06, 2019	NON-FINAL ACTION E-MAILED	6325
Aug. 06, 2019	NON-FINAL ACTION WRITTEN	76851
Aug. 06, 2019	ASSIGNED TO EXAMINER	76851
Jun. 04, 2019	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
May 22, 2019	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information			
TM Attorney:	SAUNDERS, ANDREA DAWN	**Law Office Assigned:**	LAW OFFICE 117
File Location			
Current Location:	LAW OFFICE 117 - EXAMINING ATTORNEY ASSIGNED	**Date in Location:**	Dec. 07, 2021

The
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Mark: TRANSWORLD EFFECTS

US Serial Number:	97222408	**Application Filing Date:**	Jan. 17, 2022
Filed as TEAS Plus:	Yes	**Currently TEAS Plus:**	Yes
Register:	Principal		
Mark Type:	Trademark		
TM5 Common Status Descriptor:	LIVE/APPLICATION/Awaiting Examination The trademark application has been accepted by the Office (has met the minimum filing requirements) and has not yet been assigned to an examiner.		
Status:	New application will be assigned to an examining attorney approximately 6 months after filing date.		
Status Date:	Jan. 21, 2022		

Mark Information

Mark Literal Elements:	TRANSWORLD EFFECTS
Standard Character Claim:	No
Mark Drawing Type:	3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)
Description of Mark:	The mark consists of the words "TRANSWORLD" and "EFFECTS", whereas the latter is positioned below the former, both in upper-case letters and represented in a stylized font. There is a graphic element of a circle and an oval in the background, both stylized graphically, whereas the circle element is positioned inside the oval so that they touch only on the top and bottom points on the vertical axis; whereas both words are positioned in the middle of the graphic elements on the horizontal axis.
Color(s) Claimed:	Color is not claimed as a feature of the mark.
Translation:	The wording TRANSWORLD" and "EFFECTS has no meaning in a foreign language.
Design Search Code(s):	26.01.02 - Plain single line circles; Circles, plain single line 26.03.02 - Plain single line ovals; Ovals, plain single line

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:	Art mounts; Art pads; Arts and craft clay kits; Arts and craft paint kits; Modelling clay; Modelling compounds; Photo albums; Poster board; Printed paper door hangers; Scrapbook albums; Scrapbooks; Stamp albums; Sticker albums		
International Class(es):	016 - Primary Class	**U.S Class(es):**	002, 005, 022, 023, 029, 037, 038, 050
Class Status:	ACTIVE		
Basis:	1(a)		
First Use:	Sep. 01, 2019	**Use in Commerce:**	Sep. 01, 2019

For:	Cooking utensils, namely, grills; Household utensils, namely, spatulas and tongs		
International Class(es):	021 - Primary Class	**U.S Class(es):**	002, 013, 023, 029, 030, 033, 040, 050

Class Status: ACTIVE

Basis: 1(b)

Basis Information (Case Level)

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

Current Owner(s) Information

Owner Name: Transworld Effects Ltd.

Owner Address: 529-1811 4 ST SW
Calgary CANADA T2S1W2

Legal Entity Type: Alberta Business Corporation

State or Country Where Organized: CANADA

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Marek Krizka

Attorney Primary Email Address: office@tramatm.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: MAREK KRIZKA
477 MADISSON AVENUE, 6TH FLOOR
NEW YORK, NEW YORK UNITED STATES 10022

Phone: 718-550-3490

Correspondent e-mail: office@tramatm.com igor@tramatm.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Jan. 25, 2022	NOTICE OF DESIGN SEARCH CODE E-MAILED	
Jan. 22, 2022	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Jan. 20, 2022	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: NEW APPLICATION PROCESSING

Date in Location: Jan. 21, 2022

TRANSWORLD

TRANSWORLD

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Mark: THE NEW GIRL EFFECT

The New Girl Effect

US Serial Number: 90580425

Application Filing Date: Mar. 15, 2021

Filed as TEAS Plus: Yes

Currently TEAS Plus: Yes

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor: LIVE/APPLICATION/Under Examination

The trademark application has been accepted by the Office (has met the minimum filing requirements) and that this application has been assigned to an examiner.

Status: A final Office action refusing registration has been sent (issued) because the applicant neither satisfied nor overcame all requirements and/or refusals previously raised. The applicant may respond by filing (1) a request for reconsideration; and/or (2) an appeal to the Trademark Trial and Appeal Board. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date: Feb. 08, 2022

Mark Information

Mark Literal Elements: THE NEW GIRL EFFECT

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: Stationery; Stationery folders; Glitter pens for stationery purposes; Office stationery; Printed comic books; Printed comic magazines; Printed comic strips; Printed comics; Printed manga comic books; Stickers

International Class(es): 016 - Primary Class

U.S Class(es): 002, 005, 022, 023, 029, 037, 038, 050

Class Status: ACTIVE

Basis: 1(b)

For: Shirts; Bottoms as clothing; Shirts and short-sleeved shirts; A-shirts; Clothing for athletic use, namely, padded shirts; Dress shirts; Graphic T-shirts; Hooded sweat shirts; Jackets; Pajama bottoms; Polo shirts; Short-sleeved shirts; Short-sleeved or long-sleeved t-shirts; Sleep shirts; Sports shirts; Sweat shirts; T-shirts; Women's clothing, namely, shirts, dresses, skirts, blouses

International Class(es): 025 - Primary Class

U.S Class(es): 022, 039

Class Status: ACTIVE

Basis: 1(b)

Basis Information (Case Level)

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

Current Owner(s) Information

Owner Name: Heart Pop! Comics

Owner Address: P.O. box#170445
539 Atlantic Ave
Brooklyn, NEW YORK UNITED STATES 11217

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: NEW YORK

Attorney/Correspondence Information

Attorney of Record - None

Correspondent

Correspondent Name/Address: Heart Pop! Comics
539 Atlantic Ave
P.O. box#170445
Brooklyn, NEW YORK UNITED STATES 11217

Correspondent e-mail: heartpopcomics@gmail.com neffertiti_banks@aol.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Feb. 08, 2022	NOTIFICATION OF FINAL REFUSAL EMAILED	
Feb. 08, 2022	FINAL REFUSAL E-MAILED	
Feb. 08, 2022	FINAL REFUSAL WRITTEN	94663
Jan. 03, 2022	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Jan. 01, 2022	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Jan. 01, 2022	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Oct. 13, 2021	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Oct. 13, 2021	NON-FINAL ACTION E-MAILED	6325
Oct. 13, 2021	NON-FINAL ACTION WRITTEN	94663
Oct. 13, 2021	ASSIGNED TO EXAMINER	94663
Jun. 15, 2021	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Mar. 18, 2021	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: PETTICAN, NATHANIEL VI

Law Office Assigned: LAW OFFICE 108

File Location

Current Location: TMEG LAW OFFICE 108 - EXAMINING ATTORNEY ASSIGNED

Date in Location: Feb. 08, 2022

Int. Cls.: 16 and 28

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38, and 50

Reg. No. 3,409,613

United States Patent and Trademark Office

Registered Apr. 8, 2008

TRADEMARK
PRINCIPAL REGISTER

MASS EFFECT

BIOWARE CORP. (CANADA CORPORATION)
4445 CALGARY TRAIL
SUITE 200
EDMONTON, CANADA T6H 5R7

FOR: PRINTED MATERIALS, NAMELY, INSTRUCTION MANUALS AND STRATEGY GUIDES FOR PLAYING COMPUTER GAMES, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 11-20-2007; IN COMMERCE 11-20-2007.

FOR: TOYS AND GAMES, NAMELY, ACTION FIGURES AND ACTION FIGURE ACCESSORIES, IN CLASS 28 (U.S. CLS. 22, 23, 38 AND 50).

FIRST USE 11-20-2007; IN COMMERCE 11-20-2007.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 76-635,840, FILED 4-11-2005.

BILL DAWE, EXAMINING ATTORNEY

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Mark: MASS EFFECT

MASS EFFECT

US Serial Number: 76635840

Application Filing Date: Apr. 11, 2005

US Registration Number: 3409613

Registration Date: Apr. 08, 2008

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor: LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office.

Status: The registration has been renewed.

Status Date: Mar. 14, 2018

Publication Date: Jul. 04, 2006 **Notice of Allowance Date:** Sep. 26, 2006

Mark Information

Mark Literal Elements: MASS EFFECT

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

Related Properties Information

Parent Of: 76978556

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: printed materials, namely, instruction manuals and strategy guides for playing computer games

International Class(es): 016 - Primary Class

U.S Class(es): 002, 005, 022, 023, 029, 037, 038, 050

Class Status: ACTIVE

Basis: 1(a)

First Use: Nov. 20, 2007

Use in Commerce: Nov. 20, 2007

For: toys and games, namely, action figures and action figure accessories

International Class(es): 028 - Primary Class

U.S Class(es): 022, 023, 038, 050

Class Status: ACTIVE

Basis: 1(a)

First Use: Nov. 20, 2007

Use in Commerce: Nov. 20, 2007

Basis Information (Case Level)

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

Current Owner(s) Information

Owner Name: ELECTRONIC ARTS INC.

Owner Address: 209 REDWOOD SHORES PARKWAY
LEGAL DEPARTMENT
REDWOOD CITY, CALIFORNIA UNITED STATES 94065

Legal Entity Type: COMPANY

State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Vineeta Gajwani

Attorney Primary Email Address: trademarks@ea.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: Vineeta Gajwani
ELECTRONIC ARTS INC.
209 REDWOOD SHORES PARKWAY
Legal Department
REDWOOD CITY, CALIFORNIA UNITED STATES 94065

Phone: 650-628-1500

Fax: 650-628-1422

Correspondent e-mail: trademarks@ea.com

Correspondent e-mail Authorized: Yes

Domestic Representative

Domestic Representative Name: Jacob J. Schatz

Phone: 650-628-1500

Fax: 650-628-1422

Domestic Representative e-mail: jschatz@ea.com

Domestic Representative e-mail Authorized: Yes

Prosecution History

Date	Description	Proceeding Number
Mar. 14, 2018	NOTICE OF ACCEPTANCE OF SEC. 8 & 9 - E-MAILED	
Mar. 14, 2018	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	70132
Mar. 14, 2018	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	70132
Mar. 14, 2018	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	70132
Feb. 28, 2018	TEAS SECTION 8 & 9 RECEIVED	
Apr. 08, 2017	COURTESY REMINDER - SEC. 8 (10-YR)/SEC. 9 E-MAILED	
Aug. 31, 2016	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Jul. 17, 2013	NOTICE OF ACCEPTANCE OF SEC. 8 & 15 - E-MAILED	
Jul. 17, 2013	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	68335
Jul. 17, 2013	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	68335
Jul. 02, 2013	TEAS SECTION 8 & 15 RECEIVED	
May 16, 2008	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	

May 16, 2008	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
May 16, 2008	WITHDRAWAL OF ATTORNEY GRANTED	
May 16, 2008	TEAS WITHDRAWAL OF ATTORNEY RECEIVED	
May 14, 2008	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Apr. 09, 2008	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Apr. 08, 2008	REGISTERED-PRINCIPAL REGISTER	
Mar. 06, 2008	LAW OFFICE REGISTRATION REVIEW COMPLETED	76538
Mar. 06, 2008	ASSIGNED TO LIE	76538
Feb. 12, 2008	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Jan. 07, 2008	STATEMENT OF USE PROCESSING COMPLETE	76873
Nov. 30, 2007	USE AMENDMENT FILED	76873
Nov. 30, 2007	PAPER RECEIVED	
Sep. 11, 2007	SOU EXTENSION 2 GRANTED	98765
Sep. 11, 2007	SOU EXTENSION 2 FILED	98765
Sep. 11, 2007	TEAS EXTENSION RECEIVED	
Jun. 06, 2007	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Apr. 09, 2007	SOU EXTENSION 1 GRANTED	76873
Mar. 08, 2007	SOU EXTENSION 1 FILED	76873
Apr. 09, 2007	DIVISIONAL PROCESSING COMPLETE	
Mar. 08, 2007	DIVISIONAL REQUEST RECEIVED	
Mar. 08, 2007	PAPER RECEIVED	
Sep. 26, 2006	NOA MAILED - SOU REQUIRED FROM APPLICANT	
Jul. 04, 2006	PUBLISHED FOR OPPOSITION	
Jun. 14, 2006	NOTICE OF PUBLICATION	
May 15, 2006	LAW OFFICE PUBLICATION REVIEW COMPLETED	73797
May 12, 2006	ASSIGNED TO LIE	73797
May 08, 2006	APPROVED FOR PUB - PRINCIPAL REGISTER	
May 08, 2006	TEAS/EMAIL CORRESPONDENCE ENTERED	70824
May 01, 2006	CORRESPONDENCE RECEIVED IN LAW OFFICE	70824
May 01, 2006	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Nov. 09, 2005	NON-FINAL ACTION MAILED	
Nov. 08, 2005	NON-FINAL ACTION WRITTEN	76838
Nov. 08, 2005	ASSIGNED TO EXAMINER	76838
Apr. 22, 2005	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: GENERIC WEB UPDATE **Date in Location:** Mar. 14, 2018

Assignment Abstract Of Title Information

Summary

Total Assignments: 4 **Registrant:** BIOWARE CORP.

Assignment 1 of 4

Conveyance: MERGER EFFECTIVE 04012007

Reel/Frame: 3553/0966 **Pages:** 12

Date Recorded: Jun. 04, 2007

Supporting Documents: assignment-tm-3553-0966.pdf

Assignor

Name: 1149000 ALBERTA LTD. **Execution Date:** Apr. 01, 2007

Legal Entity Type: CORPORATION **State or Country Where Organized:** CANADA

Assignee

Name: BIOWARE CORP.

Legal Entity Type: CORPORATION

State or Country Where Organized: CANADA

Address: 4445 CALGARY TRAIL
SUITE 200
EDMONTON, CANADA T6H 5R7

Correspondent

Correspondent Name: JAMES R. MEYER, C/O SCHNADER HARRISON

Correspondent Address: 1600 MARKET STREET
SUITE 3600
PHILADELPHIA, PA 19103

Domestic Representative

Domestic Representative Name: JAMES R. MEYER, C/O SCHNADER HARRISON

Domestic Representative Address: 1600 MARKET STREET
SUITE 3600
PHILADELPHIA, PA 19103

Assignment 2 of 4

Conveyance: AMALGAMATION

Reel/Frame: 3751/0368

Pages: 17

Date Recorded: Apr. 02, 2008

Supporting Documents: assignment-tm-3751-0368.pdf

Assignor

Name: BIOWARE CORP.

Execution Date: Feb. 19, 2008

Legal Entity Type: CORPORATION

State or Country Where Organized: CANADA

Assignee

Name: BIOWARE ULC

Legal Entity Type: UNLIMITED LIABILITY CORPORATION

State or Country Where Organized: ALBERTA

Address: 1200, 700 - 2ND STREET SW
CALGARY, ALBERTA, CANADA T2P 4V5

Correspondent

Correspondent Name: JAMES R. MEYER

Correspondent Address: SCHNADER HARRISON SEGAL & LEWIS LLP
1600 MARKET STREET, SUITE 3600
PHILADELPHIA, PA 19103

Domestic Representative

Domestic Representative Name: JAMES R. MEYER

Domestic Representative Address: SCHNADER HARRISON SEGAL & LEWIS LLP
1600 MARKET STREET
PHILADELPHIA, PA 19103

Assignment 3 of 4

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: 3775/0613

Pages: 18

Date Recorded: May 12, 2008

Supporting Documents: assignment-tm-3775-0613.pdf

Assignor

Name: BIOWARE ULC

Execution Date: Apr. 08, 2008

Legal Entity Type:	UNLIMITED LIABILITY CORPORATION	**State or Country Where Organized:**	ALBERTA

Assignee

Name:	EA INTERNATIONAL (STUDIO AND PUBLISHING) LTD.		
Legal Entity Type:	EXEMPTED COMPANY	**State or Country Where Organized:**	BERMUDA
Address:	CLARENDON HOUSE 2 CHURCH STREET HAMILTON, BERMUDA HM11		

Correspondent

Correspondent Name:	JAMES R. MEYER
Correspondent Address:	SCHNADER HARRISON SEGAL & LEWIS LLP 1600 MARKET STREET, SUITE 3600 PHILADELPHIA, PA 19103

Domestic Representative

Domestic Representative Name:	JAMES R. MEYER
Domestic Representative Address:	SCHNADER HARRISON SEGAL & LEWIS LLP 1600 MARKET STREET, SUITE 3600 PHILADELPHIA, PA 19103

Assignment 4 of 4

Conveyance:	ASSIGNS THE ENTIRE INTEREST		
Reel/Frame:	5862/0326	**Pages:**	10
Date Recorded:	Aug. 23, 2016		
Supporting Documents:	assignment-tm-5862-0326.pdf		

Assignor

Name:	EA INTERNATIONAL (STUDIO AND PUBLISHING) LTD.	**Execution Date:**	Aug. 09, 2016
Legal Entity Type:	COMPANY	**State or Country Where Organized:**	BERMUDA

Assignee

Name:	ELECTRONIC ARTS INC.		
Legal Entity Type:	COMPANY	**State or Country Where Organized:**	DELAWARE
Address:	209 REDWOOD SHORES PARKWAY LEGAL DEPARTMENT REDWOOD CITY, CALIFORNIA 94065		

Correspondent

Correspondent Name:	VINEETA GAJWANI
Correspondent Address:	209 REDWOOD SHORES PARKWAY ELECTRONIC ARTS INC. - LEGAL REDWOOD CITY, CA 94065

Domestic Representative - Not Found

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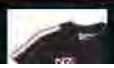

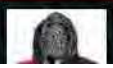

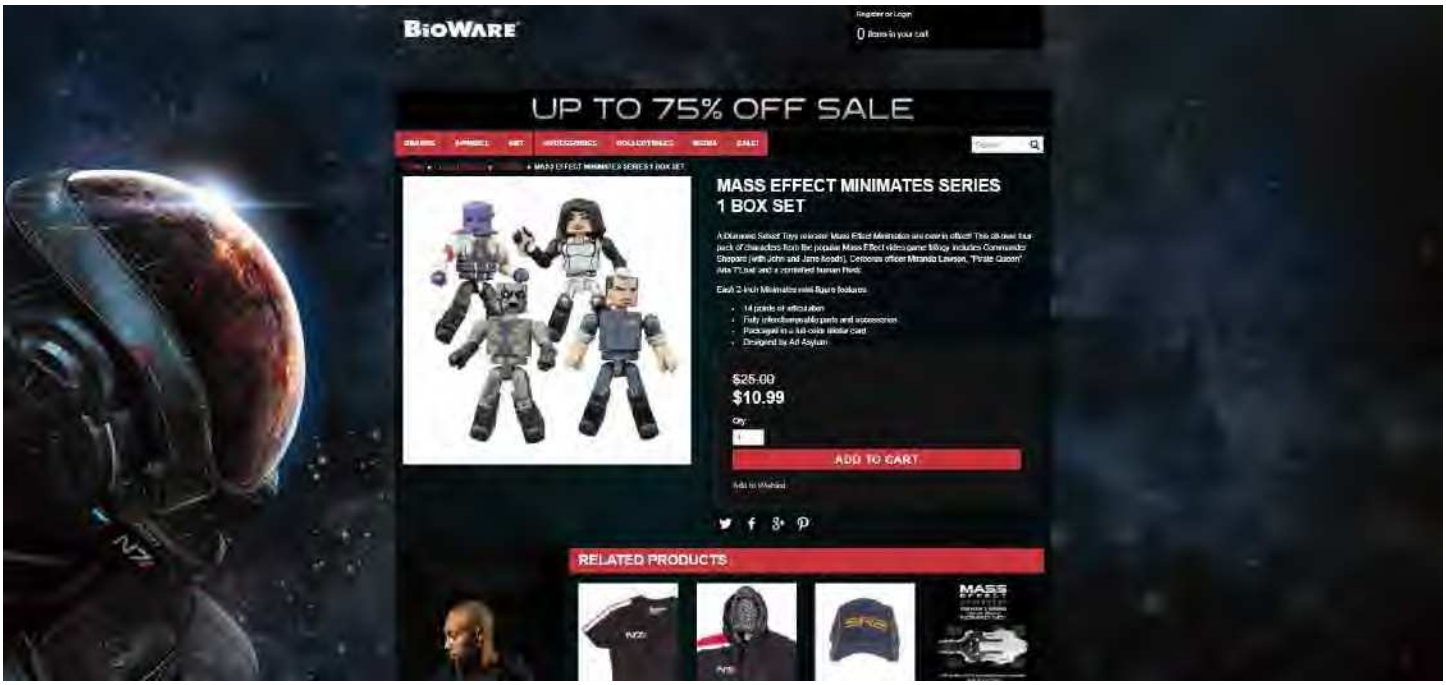
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United States of America

United States Patent and Trademark Office

BE PART OF THE EFFECT

Reg. No. 5,008,580

Registered Jul. 26, 2016

Int. Cl.: 16, 35

Service Mark

Trademark

Principal Register

Shaklee Corporation (DELAWARE CORPORATION)
4747 Willow Road
Pleasanton, CA 94588

CLASS 16: Printed matter, namely, direct selling aids and sales literature in the nature of printed forms, informational booklets, brochures, pamphlets, business kits comprised of printed literature, brochures, flyers, information sheets, product briefs, product guides, technical bulletins, and facts sheets, in the fields of dietary and nutritional supplements, food, tea, nutrition, personal health, weight loss, personal health care management, health care products, skin care, beauty care, cosmetics and personal care preparations, household cleaning preparations, laundry care products, dishwashing products, disinfectants, non-medicated skin care products, skin care preparations, cosmetics, hair care preparations, dentifrices, sunscreen preparations, and/or water purification units and filters; stationery; letterhead paper; envelopes; memo pads; shipping labels; decals; business cards; order forms; newsletters for independent distributors concerning the fields of food, nutrition, weight loss, health, wellness, the environment and/or marketing; motivational or instructional printed matter, namely, brochures and newsletters in the field of personal health care management and personal health care products, directed to independent distributors for marketing goods and services

FIRST USE 7-1-2014; IN COMMERCE 7-1-2014

CLASS 35: Retail store services and computerized online ordering services featuring food supplements, food bars, powdered drink mixes, teas, nutritional supplements, dietary supplements, vitamins and minerals, cosmetics, toiletries, skin and hair care products, household cleaners and household cleaning products, personal care products, water treatment products, stationery, letterhead, envelopes, memo pads, shipping labels, decals, business cards, order forms; retail shop-at-home party services and shop-at-office party services in the fields of food supplements, food bars, powdered drink mixes, teas, nutritional supplements, dietary supplements, cosmetics, toiletries, skin care products, hair care products, household cleaning products, personal care products, and water treatment products; promoting the retail store and online services of others, namely, independent distributors, through the distribution of printed promotional literature and placing advertisements, advertising questionnaires, and informational advertising brochures electronically on a global computer network; on-line business networking services; providing incentive commission reward programs for independent distributor sales representatives to promote the sale of food supplements, food bars, powdered drink mixes, teas, nutritional supplements, dietary supplements, cosmetics, toiletries, skin and hair care products, household cleaners and household cleaning products, personal care products, water treatment products

FIRST USE 7-1-2014; IN COMMERCE 7-1-2014

Michelle K. Lee

Director of the United States
Patent and Trademark Office

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

SER. NO. 86-343,749, FILED 07-21-2014

KEYLA MARIA GANDARA, EXAMINING ATTORNEY

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years*
What and When to File:

- ***First Filing Deadline:*** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

- ***Second Filing Deadline:*** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*
What and When to File:

- You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see http://www.wipo.int/madrid/en/.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at http://www.uspto.gov.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at http://www.uspto.gov.

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Mark: BE PART OF THE EFFECT

US Serial Number: 86343749

Application Filing Date: Jul. 21, 2014

US Registration Number: 5008580

Registration Date: Jul. 26, 2016

Register: Principal

Mark Type: Trademark, Service Mark

TM5 Common Status Descriptor: LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office.

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Jul. 26, 2016

Publication Date: Sep. 22, 2015 **Notice of Allowance Date:** Nov. 17, 2015

Mark Information

Mark Literal Elements: BE PART OF THE EFFECT

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: Printed matter, namely, direct selling aids and sales literature in the nature of printed forms, informational booklets, brochures, pamphlets, business kits comprised of printed literature, brochures, flyers, information sheets, product briefs, product guides, technical bulletins, and facts sheets, in the fields of dietary and nutritional supplements, food, tea, nutrition, personal health, weight loss, personal health care management, health care products, skin care, beauty care, cosmetics and personal care preparations, household cleaning preparations, laundry care products, dishwashing products, disinfectants, non-medicated skin care products, skin care preparations, cosmetics, hair care preparations, dentifrices, sunscreen preparations, and/or water purification units and filters; stationery; letterhead paper; envelopes; memo pads; shipping labels; decals; business cards; order forms; newsletters for independent distributors concerning the fields of food, nutrition, weight loss, health, wellness, the environment and/or marketing; motivational or instructional printed matter, namely, brochures and newsletters in the field of personal health care management and personal health care products, directed to independent distributors for marketing goods and services

International Class(es): 016 - Primary Class

U.S Class(es): 002, 005, 022, 023, 029, 037, 038, 050

Class Status: ACTIVE

Basis: 1(a)

First Use: Jul. 01, 2014

Use in Commerce: Jul. 01, 2014

For: Retail store services and computerized online ordering services featuring food supplements, food bars, powdered drink mixes, teas, nutritional supplements, dietary supplements, vitamins and minerals, cosmetics, toiletries, skin and hair care products, household cleaners and household cleaning products, personal care products, water treatment products, stationery, letterhead, envelopes, memo pads, shipping labels, decals, business cards, order forms; retail shop-at-home party services and shop-at-office party services in the fields of food supplements, food bars, powdered drink mixes, teas, nutritional supplements, dietary supplements, cosmetics, toiletries,

skin care products, hair care products, household cleaning products, personal care products, and water treatment products; promoting the retail store and online services of others, namely, independent distributors, through the distribution of printed promotional literature and placing advertisements, advertising questionnaires, and informational advertising brochures electronically on a global computer network; on-line business networking services; providing incentive commission reward programs for independent distributor sales representatives to promote the sale of food supplements, food bars, powdered drink mixes, teas, nutritional supplements, dietary supplements, cosmetics, toiletries, skin and hair care products, household cleaners and household cleaning products, personal care products, water treatment products

International Class(es): 035 - Primary Class

U.S Class(es): 100, 101, 102

Class Status: ACTIVE

Basis: 1(a)

First Use: Jul. 01, 2014

Use in Commerce: Jul. 01, 2014

Basis Information (Case Level)

Filed Use: No

Currently Use: Yes

Filed ITU: Yes

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Shaklee Corporation

Owner Address: 4747 Willow Road
Pleasanton, CALIFORNIA UNITED STATES 94588

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Richard J. Polley

Docket Number: 6592-92328-0

Attorney Primary Email Address: ptotmdocket@klarquist.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: RICHARD J. POLLEY
KLARQUIST SPARKMAN, LLP
121 SW SALMON ST STE 1600
PORTLAND, OREGON UNITED STATES 97204-2988

Phone: 503 595 5300

Fax: 503 595 5301

Correspondent e-mail: ptotmdocket@klarquist.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Jul. 26, 2021	COURTESY REMINDER - SEC. 8 (6-YR) E-MAILED	
Jul. 26, 2016	REGISTERED-PRINCIPAL REGISTER	
Jun. 24, 2016	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	
Jun. 23, 2016	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
May 26, 2016	ASSIGNED TO EXAMINER	92995
May 24, 2016	STATEMENT OF USE PROCESSING COMPLETE	71034
Apr. 26, 2016	USE AMENDMENT FILED	71034
May 20, 2016	CASE ASSIGNED TO INTENT TO USE PARALEGAL	71034
Apr. 26, 2016	TEAS STATEMENT OF USE RECEIVED	
Nov. 17, 2015	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	

Sep. 22, 2015	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Sep. 22, 2015	PUBLISHED FOR OPPOSITION	
Sep. 02, 2015	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Aug. 19, 2015	LAW OFFICE PUBLICATION REVIEW COMPLETED	73797
Aug. 18, 2015	APPROVED FOR PUB - PRINCIPAL REGISTER	
Aug. 12, 2015	TEAS/EMAIL CORRESPONDENCE ENTERED	73797
Aug. 12, 2015	CORRESPONDENCE RECEIVED IN LAW OFFICE	73797
Aug. 05, 2015	TEAS REQUEST FOR RECONSIDERATION RECEIVED	
Mar. 03, 2015	NOTIFICATION OF FINAL REFUSAL EMAILED	
Mar. 03, 2015	FINAL REFUSAL E-MAILED	
Mar. 03, 2015	FINAL REFUSAL WRITTEN	90290
Feb. 23, 2015	TEAS/EMAIL CORRESPONDENCE ENTERED	73797
Feb. 23, 2015	CORRESPONDENCE RECEIVED IN LAW OFFICE	73797
Feb. 16, 2015	ASSIGNED TO LIE	73797
Feb. 11, 2015	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Aug. 11, 2014	NOTIFICATION OF PRIORITY ACTION E-MAILED	6326
Aug. 11, 2014	PRIORITY ACTION E-MAILED	6326
Aug. 11, 2014	PRIORITY ACTION WRITTEN	90290
Aug. 07, 2014	ASSIGNED TO EXAMINER	90290
Jul. 28, 2014	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Jul. 24, 2014	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION **Date in Location:** Jun. 23, 2016

Be Part of the Effect™ and come celebrate in Los Cabos and Tuscany

With the supportive Shaklee community and innovative products, the Shaklee Opportunity lets you share what you love and get rewarded for it—both financially and personally.

Start building a team today, and live the life you want every day.

Krystle, Shaklee Distributor, with sister-in-law Mel and their daughters

CONTACT

Your Independent Distributor

CLICK

MyShaklee.com

CALL

1.800.SHAKLEE

TO LEARN MORE ABOUT OUR PRODUCT AND INCOME OPPORTUNITY CONTACT YOUR SHAKLEE INDEPENDENT DISTRIBUTOR

Members order online at MyShaklee.com. Log in to view your order history and shipment tracking.

Not a Member? Call your Shaklee Independent Distributor.

Be sure to have the Sponsor ID number listed below when ordering.

SPONSOR ID# _____

Shaklee®
Creating Healthier Lives®

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Pleasanton, CA 94588. #76384-(New 7/15)

With The Shaklee Effect™, small steps lead to big results. Here are just a few of the people who have made a difference in their lives and the lives of others. Their stories of how they have built their own health and their own wealth show us that anyone can create a healthier life.

Join today and Be Part of the Effect

The Shaklee Effect™

You've probably heard some buzz about it. Maybe you've seen people posting in social media about "being part of the Effect." It's a way of talking about who we are - our culture, our identity, our brand.

What is the Shaklee Effect?

It starts with a question. Can one person make a difference? With so many huge challenges in the world, trying to have an effect on any of them feels impossible. Improve the health care system? Fix the economy? Save the environment? It can seem overwhelming.

Start with something small that matters to you. The most powerful building blocks in the world that can create real progress and solve our most difficult challenges are small actions that you can take every day. Like freeing your home of dangerous chemicals. Making a happier meal for your kids, or even getting some exercise. Keep it up, you could lose 10 pounds and decrease your risk of heart disease. If everyone in your city and state lost 10 pounds, health care costs would fall. If we could help just 10% of those who are obese get to a healthier weight, we will be impacting the future health of our country. That's strength in numbers.

At Shaklee, we believe that small actions today lead to big effects tomorrow. That's what we call The Shaklee Effect. What little actions can you take? Have a healthy breakfast, you're part of the Effect. Use an eco-friendly cleaner, you're part of the Effect. Send an inspiring video, and you're part of the Effect. These small things multiply to create the foundation for financial freedom for you, healthier, longer lives to spend with the people you care about, and a cleaner, brighter future for all. Little by little, your actions can change the world.

Be part of the Effect™. Continue to take small, positive steps every day to be healthier, and to share that with others. Do this every day for the next 90 days and you'll be amazed at what happens.

"We realized that our passion to help others benefit from the Shaklee Effect, in the same way we have been helped, is our driving force as we move forward." – *Harper and Ryan Guerra (Senior Directors, IL)*

"It starts here in our communities and with our families, but it has a bigger impact on the world – healthwise, financially, it's the difference that we can make as a Shaklee Family Member." – *Maria Aristy (Coordinator, NY)*

"I want to positively touch a lot of lives. That's the Effect I want to have on people. That's what Shaklee enables me to do." *Nissi Lopez (with Edgar Reina, Senior Director), first time attendee from N.Y.*

United States of America

United States Patent and Trademark Office

The Hire Effect

Reg. No. 5,703,953

Registered Mar. 19, 2019

Int. Cl.: 16, 35

Service Mark

Trademark

Principal Register

The Hire Effect LLC (MICHIGAN LIMITED LIABILITY COMPANY)
90 W. Joy Road
Ann Arbor, MICHIGAN 48105

CLASS 16: Books in the field of Human Resources

FIRST USE 10-24-2017; IN COMMERCE 10-24-2017

CLASS 35: Human resources consultation

FIRST USE 11-15-2013; IN COMMERCE 11-15-2013

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

SER. NO. 87-424,335, FILED 04-25-2017

UNITED STATES PATENT AND TRADEMARK OFFICE
DEPARTMENT OF COMMERCE

Director of the United States
Patent and Trademark Office

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years*
What and When to File:

- ***First Filing Deadline:*** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

- ***Second Filing Deadline:*** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*
What and When to File:

- You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see http://www.wipo.int/madrid/en/.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at http://www.uspto.gov.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at http://www.uspto.gov.

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Mark: THE HIRE EFFECT

The Hire Effect

US Serial Number:	87424335	**Application Filing Date:**	Apr. 25, 2017
US Registration Number:	5703953	**Registration Date:**	Mar. 19, 2019
Filed as TEAS Plus:	Yes	**Currently TEAS Plus:**	Yes
Register:	Principal		
Mark Type:	Trademark, Service Mark		
TM5 Common Status Descriptor:	LIVE/REGISTRATION/Issued and Active The trademark application has been registered with the Office.		

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Mar. 19, 2019

Publication Date: Aug. 29, 2017 **Notice of Allowance Date:** Oct. 24, 2017

Mark Information

Mark Literal Elements: THE HIRE EFFECT

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: Books in the field of Human Resources

International Class(es):	016 - Primary Class	**U.S Class(es):**	002, 005, 022, 023, 029, 037, 038, 050
Class Status:	ACTIVE		
Basis:	1(a)		
First Use:	Oct. 24, 2017	**Use in Commerce:**	Oct. 24, 2017

For: Human resources consultation

International Class(es):	035 - Primary Class	**U.S Class(es):**	100, 101, 102
Class Status:	ACTIVE		
Basis:	1(a)		
First Use:	Nov. 15, 2013	**Use in Commerce:**	Nov. 15, 2013

Basis Information (Case Level)

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

Current Owner(s) Information

Owner Name: The Hire Effect LLC

Owner Address: 90 W. Joy Road
Ann Arbor, MICHIGAN UNITED STATES 48105

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: MICHIGAN

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Steven N. Rich

Docket Number: Rayment

Attorney Primary Email Address: Steve@photoniclegal.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: STEVEN N. RICH
PHOTONIC LEGAL PLLC
214 S. MAIN STREET
SUITE 202
ANN ARBOR, MICHIGAN UNITED STATES 48104

Phone: 7349045732

Fax: 8667272179

Correspondent e-mail: steve@photoniclegal.com sholem.steve@gmail.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Mar. 19, 2019	REGISTERED-PRINCIPAL REGISTER	
Feb. 13, 2019	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	
Feb. 12, 2019	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Jan. 29, 2019	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Jan. 28, 2019	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Jan. 28, 2019	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Aug. 08, 2018	NOTIFICATION OF NON-FINAL ACTION E-MAILED	
Aug. 08, 2018	NON-FINAL ACTION E-MAILED	
Aug. 08, 2018	SU - NON-FINAL ACTION - WRITTEN	82429
Jul. 20, 2018	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Jul. 19, 2018	STATEMENT OF USE PROCESSING COMPLETE	66230
Jun. 26, 2018	USE AMENDMENT FILED	66230
Jul. 19, 2018	SOU EXTENSION 1 GRANTED	66230
Apr. 24, 2018	SOU EXTENSION 1 FILED	66230
Jul. 18, 2018	CASE ASSIGNED TO INTENT TO USE PARALEGAL	66230
Jun. 26, 2018	TEAS STATEMENT OF USE RECEIVED	
Jun. 26, 2018	NOTICE OF REVIVAL - E-MAILED	
Jun. 26, 2018	EXTENSION RECEIVED WITH TEAS PETITION	
Jun. 26, 2018	PETITION TO REVIVE-GRANTED	88889
Jun. 26, 2018	TEAS PETITION TO REVIVE RECEIVED	
May 29, 2018	ABANDONMENT NOTICE MAILED - NO USE STATEMENT FILED	
May 28, 2018	ABANDONMENT - NO USE STATEMENT FILED	99999

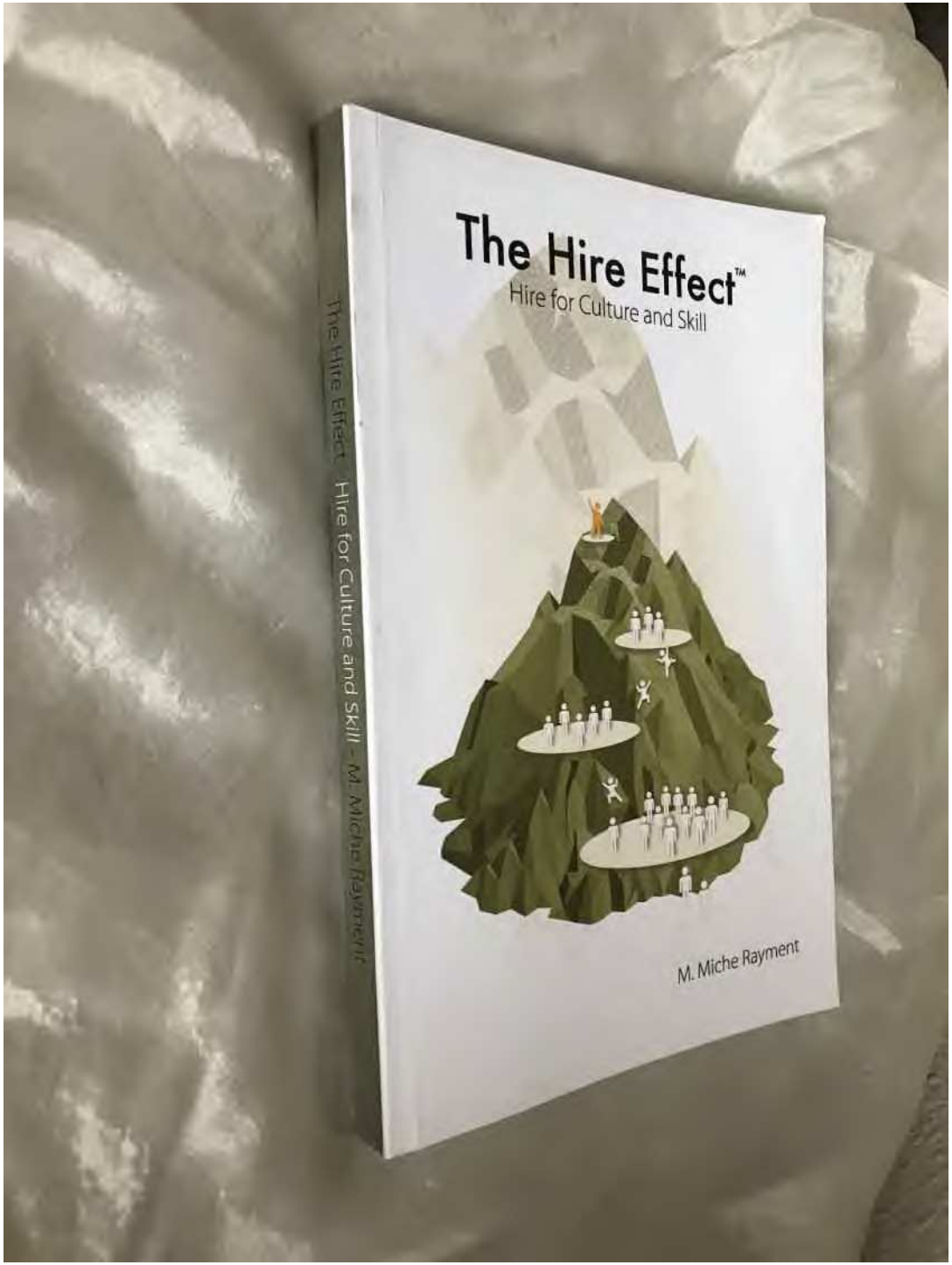
Oct. 24, 2017	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Aug. 29, 2017	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Aug. 29, 2017	PUBLISHED FOR OPPOSITION	
Aug. 09, 2017	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Jul. 21, 2017	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jul. 21, 2017	ASSIGNED TO EXAMINER	82429
May 02, 2017	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Apr. 28, 2017	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION **Date in Location:** Feb. 12, 2019


The Hire Effect™
Hire for Culture and Skill
M. Miche Rayment
The Hire Effect Hire for Culture and Skill - M. Miche Rayment

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Mark: BE PART OF THE EFFECT

US Serial Number: 97111230

Application Filing Date: Nov. 05, 2021

Register: Principal

Mark Type: Trademark, Service Mark

TM5 Common Status Descriptor:

LIVE/APPLICATION/Under Examination

The trademark application has been accepted by the Office (has met the minimum filing requirements) and that this application has been assigned to an examiner.

Status: A non-final Office action has been sent (issued) to the applicant. This is a letter from the examining attorney requiring additional information and/or making an initial refusal. The applicant must respond to this Office action. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date: Mar. 07, 2022

Mark Information

Mark Literal Elements: BE PART OF THE EFFECT

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: Printed material sold in bulk, namely, direct selling aids and sales literature in the nature of brochures, pamphlets, information sheets and product guides, in the fields of dietary and nutritional supplements, personal care preparations, household cleaning preparations, skin care preparations, and hair care preparations; brochures and newsletters for independent distributors concerning dietary and nutritional supplements, personal care preparations, household cleaning preparations, skin care preparations, and hair care preparations

International Class(es): 016 - Primary Class

U.S Class(es): 002, 005, 022, 023, 029, 037, 038, 050

Class Status: ACTIVE

Basis: 1(b)

For: Retail store services and retail on-line ordering services featuring dietary and nutritional supplements, personal care preparations, household cleaning preparations, skin care preparations, and hair care preparations; promoting the retail store and online services of others, namely, independent distributors, through the distribution of printed promotional literature and placing advertisements, advertising questionnaires, and informational advertising brochures electronically on a global computer network; on-line business networking services; providing incentive commission reward programs for independent distributor sales representatives to promote the sale of dietary and nutritional supplements, personal care preparations, household cleaning preparations, skin care preparations, and hair care preparations

International Class(es): 035 - Primary Class

U.S Class(es): 100, 101, 102

Class Status: ACTIVE

Basis: 1(b)

For: Providing online newsletters in the field of dietary and nutritional supplements, personal care preparations, household cleaning preparations, skin care preparations, and hair care preparations

International Class(es): 041 - Primary Class

U.S Class(es): 100, 101, 107

Class Status: ACTIVE

Basis: 1(b)

Basis Information (Case Level)

Filed Use: No

Currently Use: No

Filed ITU: Yes

Currently ITU: Yes

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Shaklee Corporation

Owner Address: 4747 Willow Road
Pleasanton, CALIFORNIA UNITED STATES 94588

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Lisa M. Caldwell

Docket Number: 65929232802

Attorney Primary Email Address: ptotmdocket@klarquist.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: LISA M. CALDWELL
KLARQUIST SPARKMAN, LLP
ONE WORLD TRADE CENTER
121 SW SALMON STREET, SUITE 1600
PORTLAND, OREGON UNITED STATES 97204

Phone: 503-595-5300

Fax: 503-595-5301

Correspondent e-mail: ptotmdocket@klarquist.com lisa.caldwell@klarquist.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Mar. 07, 2022	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Mar. 07, 2022	NON-FINAL ACTION E-MAILED	6325
Mar. 07, 2022	NON-FINAL ACTION WRITTEN	92587
Feb. 28, 2022	ASSIGNED TO EXAMINER	92587
Nov. 16, 2021	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Nov. 09, 2021	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: ZIMMERMAN, GAYNNE GEOR

Law Office Assigned: LAW OFFICE 120

File Location

Current Location: TMO LAW OFFICE 120 - EXAMINING

Date in Location: Mar. 07, 2022

ATTORNEY ASSIGNED

United States of America

United States Patent and Trademark Office

THE MAMA BEAR EFFECT

Reg. No. 4,921,344

Registered Mar. 22, 2016

Int. Cls.: 16, 35, 41 and 45

TRADEMARK

SERVICE MARK

PRINCIPAL REGISTER

THE MAMA BEAR EFFECT, INC. (MASSACHUSETTS NON-PROFIT CORPORATION)
11 DENNIS DRIVE
BURLINGTON, MA 01803

FOR: PRINTED PUBLICATIONS, NAMELY, BOOKLETS, A SERIES OF BOOKS, POSTERS, BROCHURES AND FLYERS IN THE FIELD OF IDENTIFICATION AND PREVENTION OF CHILD SEXUAL ABUSE, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 11-1-2012; IN COMMERCE 11-1-2012.

FOR: PROMOTING PUBLIC AWARENESS OF CHILD SEXUAL ABUSE, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 9-27-2012; IN COMMERCE 9-27-2012.

FOR: PROVIDING A WEBSITE FEATURING BLOGS AND NON-DOWNLOADABLE PUBLICATIONS IN THE NATURE OF NEWSLETTERS, POSTERS, FLYERS, BROCHURES AND INFORMATION SHEETS IN THE FIELD OF IDENTIFICATION AND PREVENTION OF CHILD SEXUAL ABUSE, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 9-27-2012; IN COMMERCE 9-27-2012.

FOR: PROVIDING ONLINE INFORMATION IN THE FIELD OF IDENTIFICATION AND PREVENTION OF CHILD SEXUAL ABUSE, IN CLASS 45 (U.S. CLS. 100 AND 101).

FIRST USE 9-27-2012; IN COMMERCE 9-27-2012.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 86-558,913, FILED 3-10-2015.

DOMINIC FATHY, EXAMINING ATTORNEY

Michelle K. Lee

Director of the United States
Patent and Trademark Office

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years*
What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See* 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.* *See* 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*
What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see http://www.wipo.int/madrid/en/.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at http://www.uspto.gov.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at http://www.uspto.gov.

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Mark: THE MAMA BEAR EFFECT

US Serial Number:	86558913	**Application Filing Date:**	Mar. 10, 2015
US Registration Number:	4921344	**Registration Date:**	Mar. 22, 2016
Filed as TEAS RF:	Yes	**Currently TEAS RF:**	Yes
Register:	Principal		
Mark Type:	Trademark, Service Mark		
TM5 Common Status Descriptor:	LIVE/REGISTRATION/Issued and Active The trademark application has been registered with the Office.		

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Mar. 22, 2016

Publication Date: Sep. 29, 2015

Mark Information

Mark Literal Elements:	THE MAMA BEAR EFFECT
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: Printed publications, namely, booklets, a series of books, posters, brochures and flyers in the field of identification and prevention of child sexual abuse

International Class(es):	016 - Primary Class	**U.S Class(es):**	002, 005, 022, 023, 029, 037, 038, 050
Class Status:	ACTIVE		
Basis:	1(a)		
First Use:	Nov. 01, 2012	**Use in Commerce:**	Nov. 01, 2012

For: Promoting public awareness of child sexual abuse

International Class(es):	035 - Primary Class	**U.S Class(es):**	100, 101, 102
Class Status:	ACTIVE		
Basis:	1(a)		
First Use:	Sep. 27, 2012	**Use in Commerce:**	Sep. 27, 2012

For: providing a website featuring blogs and non-downloadable publications in the nature of newsletters, posters, flyers, brochures and information sheets in the field of identification and prevention of child sexual abuse

International Class(es):	041 - Primary Class	**U.S Class(es):**	100, 101, 107
Class Status:	ACTIVE		
Basis:	1(a)		
First Use:	Sep. 27, 2012	**Use in Commerce:**	Sep. 27, 2012

For:	Providing online information in the field of identification and prevention of child sexual abuse		
International Class(es):	045 - Primary Class	**U.S Class(es):**	100, 101
Class Status:	ACTIVE		
Basis:	1(a)		
First Use:	Sep. 27, 2012	**Use in Commerce:**	Sep. 27, 2012

Basis Information (Case Level)

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

Current Owner(s) Information

Owner Name:	The Mama Bear Effect, Inc.		
Owner Address:	11 Dennis Drive Burlington, MASSACHUSETTS UNITED STATES 01803		
Legal Entity Type:	non-profit corporation	**State or Country Where Organized:**	MASSACHUSETTS

Attorney/Correspondence Information

Attorney of Record

Attorney Name:	Rachelle A. Dubow	**Docket Number:**	097048-0024
Attorney Primary Email Address:	trademarks@morganlewis.com	**Attorney Email Authorized:**	Yes

Correspondent

Correspondent Name/Address:	Rachelle A. Dubow MORGAN LEWIS & BOCKIUS LLP 1 FEDERAL ST BOSTON, MASSACHUSETTS UNITED STATES 02110-2012		
Phone:	617-951-8939	**Fax:**	617.341.7701
Correspondent e-mail:	trademarks@morganlewis.com rachelle.dubow@morganlewis.com jennifer.kagan@morganlewis.com	**Correspondent e-mail Authorized:**	Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Mar. 11, 2022	TEAS SECTION 8 & 15 RECEIVED	
Mar. 22, 2021	COURTESY REMINDER - SEC. 8 (6-YR) E-MAILED	
Mar. 22, 2016	REGISTERED-PRINCIPAL REGISTER	
Feb. 12, 2016	EXTENSION OF TIME TO OPPOSE PROCESS - TERMINATED	
Oct. 13, 2015	EXTENSION OF TIME TO OPPOSE RECEIVED	
Sep. 29, 2015	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Sep. 29, 2015	PUBLISHED FOR OPPOSITION	

Sep. 09, 2015	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Aug. 27, 2015	LAW OFFICE PUBLICATION REVIEW COMPLETED	77312
Aug. 27, 2015	ASSIGNED TO LIE	77312
Aug. 10, 2015	APPROVED FOR PUB - PRINCIPAL REGISTER	
Aug. 07, 2015	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Aug. 07, 2015	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Aug. 07, 2015	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Jun. 15, 2015	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Jun. 15, 2015	NON-FINAL ACTION E-MAILED	6325
Jun. 15, 2015	NON-FINAL ACTION WRITTEN	81854
Jun. 15, 2015	ASSIGNED TO EXAMINER	81854
Mar. 20, 2015	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Mar. 13, 2015	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION **Date in Location:** Mar. 22, 2016

Proceedings

Summary

Number of Proceedings: 1

Type of Proceeding: Extension of Time

Proceeding Number: 86558913 **Filing Date:** Oct 13, 2015

Status: Terminated **Status Date:** Feb 12, 2016

Interlocutory Attorney:

Defendant

Name: The Mama Bear Effect, Inc.

Correspondent Address: RACHELLE A. DUBOW
MORGAN LEWIS & BOCKIUS LLP
1 FEDERAL ST
BOSTON MA , 02110-2012

Associated marks

Mark	Application Status	Serial Number	Registration Number
THE MAMA BEAR EFFECT	Registered	86558913	4921344

Potential Opposer(s)

Name: Berenstsain Enterprises, Inc.

Correspondent Address: Roberta Jacobs-Meadway, Esquire
Eckert Seamans Cherin & Mellott, LLC
50 S. 16th StreetTwo Liberty Place, 22nd Floor
Philadelphia PA UNITED STATES , 19102

Correspondent e-mail: ipdocket@eckertseamans.com , rjacobsmeadway@eckertseamans.com , lnocella@eckertseamans.com

Prosecution History

Entry Number	History Text	Date	Due Date
2	EXTENSION OF TIME GRANTED	Oct 13, 2015	
1	INCOMING - EXT TIME TO OPPOSE FILED	Oct 13, 2015	

Rock the Talk - Poster/Flyer

$1.59

Add to Bag

You May Also Like

Awareness with Action

Mailing Address

Main Office

Share Tweet Pin

the MAMA BEAR EFFECT

April is Child Abuse Prevention Month | Donate! | Educational Materials | Apparel | Body Safety Accessories/ Favors | Stickers & Magnets

Mama Bear Effect Tri-fold Brochures

More / Educational Materials

SKU (none)

$0.00

Optional donation

- $2.00 (+$2.00)
- $5.00 (+$5.00)
- $9.00 (+$9.00)
- $14.00 (+$14.00)
- $21.00 (+$21.00)

Quantity: 1

Add to Bag

Product Details

5 Tri-fold brochures.
We reserve the right to limit quantities of this free product.

Often times, people struggle to find ways to bring up their awareness for the cause of child sexual abuse prevention. Use our brochures as a way to introduce our work and your commitment to protecting children and raising awareness with this

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Save this product for later

Favorite

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Sexual abuse ends with us

LEARN HOW TO ROCK THE TALK®

Rock the Talk®

We're breaking the **silence** and building a culture where every child is **protected, respected** and **empowered**.

Our Mission

Our down-to-earth educational resources help families and communities all over the world Rock the Talk® to raise awareness and protect children from the threat of sexual abuse. From parents and caregivers to advocates and prevention-focused organizations, we offer a range of free downloads, materials, coloring pages, and blog posts to help spark conversations and change the culture of sexual abuse, from a mindset of silence and shame to courage and compassion.

What is Abuse?

LEARN MORE

Learn about the different forms of abuse, what motivates abusers, and the impact on survivors.

- Local definition of abuse
- Understanding abusers
- Motives
- Effects on survivors

Find downloadable Conversation Starters and tools for parents and educators to

How do I Rock the Talk

LEARN MORE

What to do if?

LEARN MORE

Learn how to minimize risk of abuse and address behaviors and situations that cause concern.

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READ MORE

Teaching Kids Body Safety When They Break the Rules

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info@TheMamaBearEffect.org

EMAIL ADDRESS

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Our Blog

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Keeping Kids Safe from Sexual Abuse this Summer

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Five Ways Parents Can Deter Predators

READ MORE

Body Safety Sleepover Checklist

READ MORE

When A Child Lives With the Secret of Sexual Abuse

READ MORE

Think All Child Molesters are Pedophiles? Think Again.

READ MORE

Sexual Abuse Doesn't Take a Break During the Holidays

READ MORE

The Conversation We Need to Have With Teachers

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EMAIL ADDRESS:

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Online Resources

Prevention Education Resources

Child Welfare – Research and Information on Child Abuse

Darkness to Light – Online & Community Training
Enough Alliance – Training for Youth Serving Organizations & Communities

NASOP – Addressing Problematic & Abusive Sexual Behaviors in Youth

National Center on Sexual Behaviors of Youth – Addressing & Responding to Sexual Behaviors of Youth

Parenting Safe Children – Prevention Education & Community Training

Safe Youth Trusted – Preventing Abuse in Youth Serving Organization

Safe Sport – Resources for Abuse Prevention in Youth Sports

Stop Educator Sexual Abuse Misconduct and Exploitation – SESAME works to raise awareness and educate to end sexual abuse by educators.
Stop It Now – Training and Support

REPORT IMAGES OF CHILD EXPLOITATION

Tips for reporting images of child sexual abuse & exploitation online:

- *Do not take screenshots or download images you may see online – this is illegal.*
- *Do not share the links with friends or on social media*
- *Do not report more than once, or ask other people to report the image*

Resources for Support, Healing, & Advocacy

[illegible] Support for Male Survivors including weekly chat-based support groups.

[illegible] – resources for understanding treatment options for children and adolescents with sexual behavior issues

[illegible] – support for child survivors of abuse

[illegible] National Court Appointed Special Advocate volunteers are appointed by judges to advocate for abused or neglected children, to make sure they don't get lost in the overburdened legal and social service system or languish in inappropriate group or foster homes.

[illegible] – nonprofit organization with the mission to protect vulnerable children in the family court system and to strengthen the integrity of all courts by creating judicial accountability

[illegible] – a safe place for survivors to share their stories.

[illegible] – Support and empowerment of male survivors of sexual violence

[illegible] – Awareness for prevention of family-based sexual violence and support for survivors.

[illegible] – Resources specifically for the jewish community.

[illegible] a leader in the fight to improve the resources and support available to male survivors of all forms of sexual abuse in the US and around the globe.

[illegible] The MOSAC site is designed specifically for mothers who have experienced the sexual abuse of one of their children

[illegible] was created to raise the standard of care and increase access to services for children and families who experience or witness traumatic events.

[illegible] created and operates the National Sexual Assault Hotline (800.656.HOPE, [illegible])

[illegible] Resources for survivors navigating the balance of healing from childhood trauma and parenting.

[illegible] – Providing financial relief to families of sexually abused children through referrals by advocacy centers.

[illegible] – Support for survivors of sibling sexual abuse.

[illegible] makes in-person, one-on-one counseling accessible nationwide for those personally affected by sexual abuse and assault.

The Mama Bear Effect
PO BOX 180 • Pinehurst, MA 01866
info@themamabeareffect.org

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DESIGN BY OPUS

Sexual abuse ends with us

LEARN HOW TO ROCK THE TALK®

Rock the Talk®

We're breaking the **silence** and building a culture where every child is **protected, respected** and **empowered**.

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Our down-to-earth educational resources help families and communities all over the world Rock the Talk® to raise awareness and protect children from the threat of sexual abuse. From parents and caregivers to advocates and prevention-focused organizations, we offer a range of free downloads, materials, coloring pages, and blog posts to help spark conversations and change the culture of sexual abuse, from a mindset of silence and shame to courage and compassion.

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How do I Rock the Talk

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Learn how to minimize risk of abuse and address behaviors and situations that cause concern.

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United States of America

United States Patent and Trademark Office

Reg. No. 4,925,315

Registered Mar. 29, 2016

Int. Cls.: 16, 35, 41 and 45

TRADEMARK

SERVICE MARK

PRINCIPAL REGISTER

THE MAMA BEAR EFFECT, INC. (MASSACHUSETTS NON-PROFIT CORPORATION)
11 DENNIS DRIVE
BURLINGTON, MA 01803

FOR: PRINTED PUBLICATIONS, NAMELY, BOOKLETS, A SERIES OF BOOKS, POSTERS, BROCHURES AND FLYERS IN THE FIELD OF IDENTIFICATION AND PREVENTION OF CHILD SEXUAL ABUSE, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 11-1-2012; IN COMMERCE 11-1-2012.

FOR: PROMOTING PUBLIC AWARENESS OF CHILD SEXUAL ABUSE, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 9-27-2012; IN COMMERCE 9-27-2012.

FOR: PROVIDING A WEBSITE FEATURING BLOGS AND NON-DOWNLOADABLE PUBLICATIONS IN THE NATURE OF NEWSLETTERS, POSTERS, FLYERS, BROCHURES AND INFORMATION SHEETS IN THE FIELD OF IDENTIFICATION AND PREVENTION OF CHILD SEXUAL ABUSE, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 9-27-2012; IN COMMERCE 9-27-2012.

FOR: PROVIDING ONLINE INFORMATION IN THE FIELD OF IDENTIFICATION AND PREVENTION OF CHILD SEXUAL ABUSE, IN CLASS 45 (U.S. CLS. 100 AND 101).

FIRST USE 9-27-2012; IN COMMERCE 9-27-2012.

THE MARK CONSISTS OF THE OUTLINES OF THREE INTERTWINED BEARS IN THE COLORS CHARTREUSE AND WHITE HAVING BLACK CLAWS AND FACIAL FEATURES. TO THE LEFT OF THE BEAR DESIGNS ARE THE WORDS "THE MAMA BEAR EFFECT", WHICH APPEAR IN BLACK.

THE COLOR(S) CHARTREUSE, BLACK AND WHITE IS/ARE CLAIMED AS A FEATURE OF THE MARK.

SER. NO. 86-560,608, FILED 3-11-2015.

Michelle K. Lee

Director of the United States
Patent and Trademark Office

Reg. No. 4,925,315 DOMINIC FATHY, EXAMINING ATTORNEY

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years*
What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See* 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.* *See* 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*
What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see http://www.wipo.int/madrid/en/.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at http://www.uspto.gov.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at http://www.uspto.gov.

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Mark: THE MAMA BEAR EFFECT

US Serial Number:	86560608	**Application Filing Date:**	Mar. 11, 2015
US Registration Number:	4925315	**Registration Date:**	Mar. 29, 2016
Filed as TEAS RF:	Yes	**Currently TEAS RF:**	Yes
Register:	Principal		
Mark Type:	Trademark, Service Mark		
TM5 Common Status Descriptor:	LIVE/REGISTRATION/Issued and Active The trademark application has been registered with the Office.		

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Mar. 29, 2016

Publication Date: Oct. 06, 2015

Mark Information

Mark Literal Elements:	THE MAMA BEAR EFFECT
Standard Character Claim:	No
Mark Drawing Type:	3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)
Description of Mark:	The mark consists of the outlines of three intertwined bears in the colors chartreuse and white having black claws and facial features. To the left of the bear designs are the words "THE MAMA BEAR EFFECT", which appear in black.
Color Drawing:	Yes
Color(s) Claimed:	The color(s) chartreuse, black and white is/are claimed as a feature of the mark.
Design Search Code(s):	03.01.14 - Polar bears; Koala bears; Grizzly bears; Black bears; Bears, polar; Bears, koala; Bears other than Panda bears 03.01.24 - Stylized cats, dogs, wolves, foxes, bears, lions, tigers

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: Printed publications, namely, booklets, a series of books, posters, brochures and flyers in the field of identification and prevention of child sexual abuse

International Class(es):	016 - Primary Class	**U.S Class(es):**	002, 005, 022, 023, 029, 037, 038, 050
Class Status:	ACTIVE		
Basis:	1(a)		
First Use:	Nov. 01, 2012	**Use in Commerce:**	Nov. 01, 2012

For: Promoting public awareness of child sexual abuse

International Class(es):	035 - Primary Class	**U.S Class(es):**	100, 101, 102

Class Status: ACTIVE

Basis: 1(a)

First Use: Sep. 27, 2012 **Use in Commerce:** Sep. 27, 2012

For: providing a website featuring blogs and non-downloadable publications in the nature of newsletters, posters, flyers, brochures and information sheets in the field of identification and prevention of child sexual abuse

International Class(es): 041 - Primary Class **U.S Class(es):** 100, 101, 107

Class Status: ACTIVE

Basis: 1(a)

First Use: Sep. 27, 2012 **Use in Commerce:** Sep. 27, 2012

For: Providing online information in the field of identification and prevention of child sexual abuse

International Class(es): 045 - Primary Class **U.S Class(es):** 100, 101

Class Status: ACTIVE

Basis: 1(a)

First Use: Sep. 27, 2012 **Use in Commerce:** Sep. 27, 2012

Basis Information (Case Level)

Filed Use: Yes **Currently Use:** Yes

Filed ITU: No **Currently ITU:** No

Filed 44D: No **Currently 44E:** No

Filed 44E: No **Currently 66A:** No

Filed 66A: No **Currently No Basis:** No

Filed No Basis: No

Current Owner(s) Information

Owner Name: The Mama Bear Effect, Inc.

Owner Address: 11 Dennis Drive
Burlington, MASSACHUSETTS UNITED STATES 01803

Legal Entity Type: non-profit corporation **State or Country Where Organized:** MASSACHUSETTS

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Rachelle A. Dubow **Docket Number:** 097048-0024

Attorney Primary Email Address: trademarks@morganlewis.com **Attorney Email Authorized:** Yes

Correspondent

Correspondent Name/Address: Rachelle A. Dubow
MORGAN LEWIS & BOCKIUS LLP
1 FEDERAL ST
BOSTON, MASSACHUSETTS UNITED STATES 02110

Phone: 617-951-8939 **Fax:** 617.341.7701

Correspondent e-mail: trademarks@morganlewis.com rachelle.dubow@morganlewis.com jennifer.kagan@morganlewis.com **Correspondent e-mail Authorized:** Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Mar. 11, 2022	TEAS SECTION 8 & 15 RECEIVED	
Mar. 29, 2021	COURTESY REMINDER - SEC. 8 (6-YR) E-MAILED	

Mar. 29, 2016	REGISTERED-PRINCIPAL REGISTER	
Feb. 19, 2016	EXTENSION OF TIME TO OPPOSE PROCESS - TERMINATED	
Oct. 13, 2015	EXTENSION OF TIME TO OPPOSE RECEIVED	
Oct. 06, 2015	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Oct. 06, 2015	PUBLISHED FOR OPPOSITION	
Sep. 16, 2015	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Sep. 01, 2015	LAW OFFICE PUBLICATION REVIEW COMPLETED	77312
Aug. 31, 2015	ASSIGNED TO LIE	77312
Aug. 12, 2015	APPROVED FOR PUB - PRINCIPAL REGISTER	
Aug. 11, 2015	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Aug. 10, 2015	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Aug. 10, 2015	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Jun. 15, 2015	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Jun. 15, 2015	NON-FINAL ACTION E-MAILED	6325
Jun. 15, 2015	NON-FINAL ACTION WRITTEN	81854
Jun. 15, 2015	ASSIGNED TO EXAMINER	81854
Mar. 24, 2015	NOTICE OF DESIGN SEARCH CODE E-MAILED	
Mar. 23, 2015	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Mar. 14, 2015	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION **Date in Location:** Mar. 29, 2016

Proceedings

Summary

Number of Proceedings: 1

Type of Proceeding: Extension of Time

Proceeding Number: 86560608 **Filing Date:** Oct 13, 2015

Status: Terminated **Status Date:** Feb 19, 2016

Interlocutory Attorney:

Defendant

Name: The Mama Bear Effect, Inc.

Correspondent Address: RACHELLE A. DUBOW
MORGAN LEWIS & BOCKIUS LLP
1 FEDERAL ST
BOSTON MA , 02110-2012

Associated marks

Mark	Application Status	Serial Number	Registration Number
THE MAMA BEAR EFFECT	Registered	86560608	4925315

Potential Opposer(s)

Name: Berenstain Enterprises, Inc.

Correspondent Address: Roberta Jacobs-Meadway, Esquire
Eckert Seamans Cherin & Mellott, LLC
50 South 16th StreetTwo Liberty Place, 22nd Floor
Philadelphia PA UNITED STATES , 19102

Correspondent e-mail: ipdocket@eckertseamans.com , rjacobsmeadway@eckertseamans.com , lnocella@eckertseamans.com

Prosecution History

Entry Number	History Text	Date	Due Date

2	EXTENSION OF TIME GRANTED	Oct 13, 2015
1	INCOMING - EXT TIME TO OPPOSE FILED	Oct 13, 2015

Rock the Talk - Poster/Flyer

$1.59

Add to Bag

You May Also Like

Awareness with Action

Mailing Address

Main Office

Share Tweet Pin

the MAMA BEAR EFFECT

April is Child Abuse Prevention Month | Donate! | Educational Materials | Apparel | Body Safety Accessories/ Favors | Stickers & Magnets

Mama Bear Effect Tri-fold Brochures

More / Educational Materials

SKU (none)

$0.00

Optional donation

- $2.00 (+$2.00)
- $5.00 (+$5.00)
- $9.00 (+$9.00)
- $14.00 (+$14.00)
- $21.00 (+$21.00)

Quantity: 1

Add to Bag

Product Details

5 Tri-fold brochures.
We reserve the right to limit quantities of this free product.

Often times, people struggle to find ways to bring up their awareness for the cause of child sexual abuse prevention. Use our brochures as a way to introduce our work and your commitment to protecting children and raising awareness with this

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Sexual abuse ends with us

LEARN HOW TO ROCK THE TALK®

Rock the Talk®

We're breaking the **silence** and building a culture where every child is **protected, respected** and **empowered**.

Our Mission

Our down-to-earth educational resources help families and communities all over the world Rock the Talk® to raise awareness and protect children from the threat of sexual abuse. From parents and caregivers to advocates and prevention-focused organizations, we offer a range of free downloads, materials, coloring pages, and blog posts to help spark conversations and change the culture of sexual abuse, from a mindset of silence and shame to courage and compassion.

What is Abuse?

LEARN MORE

Learn about the different forms of abuse, what motivates abusers, and the impact on survivors.

- Local definition of abuse
- Understanding abusers
- Motives
- Effects on survivors

Find downloadable Conversation Starters and tools for parents and educators to

How do I Rock the Talk

LEARN MORE

What to do if?

LEARN MORE

Learn how to minimize risk of abuse and address behaviors and situations that cause concern.

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Our New Book!

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Our Blog

Five Ways Parents Can Deter Predators

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Red Flags of Child Predators

READ MORE

Teaching Kids Body Safety When They Break the Rules

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The Mama Bear Effect
PO BOX 190 • Finehurst, MA 01866
info@TheMamaBearEffect.org

EMAIL ADDRESS

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FILTER BY BLOG CATEGORY

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Body Safety Sleepover Checklist

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When A Child Lives With the Secret of Sexual Abuse

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Think All Child Molesters are Pedophiles? Think Again.

READ MORE

Sexual Abuse Doesn't Take a Break During the Holidays

READ MORE

The Conversation We Need to Have With Teachers

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Online Resources

Prevention Education Resources

Child Welfare – Research and Information on Child Abuse

Darkness to Light – Online & Community Training
Enough Alliance – Training for Youth Serving Organizations & Communities

NASOP – Addressing Problematic & Abusive Sexual Behaviors in Youth

National Center on Sexual Behaviors of Youth – Addressing & Responding to Sexual Behaviors of Youth

Parenting Safe Children – Prevention Education & Community Training

Safe Youth Trusted – Preventing Abuse in Youth Serving Organization

Safe Sport – Resources for Abuse Prevention in Youth Sports

Stop Educator Sexual Abuse Misconduct and Exploitation – SESAME works to raise awareness and educate to end sexual abuse by educators.
Stop It Now – Training and Support

REPORT IMAGES OF CHILD EXPLOITATION

Tips for reporting images of child sexual abuse & exploitation online:

- *Do not take screenshots or download images you may see online – this is illegal.*
- *Do not share the links with friends or on social media*
- *Do not report more than once, or ask other people to report the image*

Resources for Support, Healing, & Advocacy

[illegible] Support for Male Survivors including weekly chat-based support groups.

[illegible] – resources for understanding treatment options for children and adolescents with sexual behavior issues

[illegible] – support for child survivors of abuse

[illegible] National Court Appointed Special Advocate volunteers are appointed by judges to advocate for abused or neglected children, to make sure they don't get lost in the overburdened legal and social service system or languish in inappropriate group or foster homes.

[illegible] – nonprofit organization with the mission to protect vulnerable children in the family court system and to strengthen the integrity of all courts by creating judicial accountability

[illegible] – a safe place for survivors to share their stories.

[illegible] – Support and empowerment of male survivors of sexual violence

[illegible] – Awareness for prevention of family-based sexual violence and support for survivors.

[illegible] – Resources specifically for the jewish community.

[illegible] a leader in the fight to improve the resources and support available to male survivors of all forms of sexual abuse in the US and around the globe.

[illegible] The MOSAC site is designed specifically for mothers who have experienced the sexual abuse of one of their children

[illegible] was created to raise the standard of care and increase access to services for children and families who experience or witness traumatic events.

[illegible] created and operates the National Sexual Assault Hotline (800.656.HOPE, [illegible])

[illegible] Resources for survivors navigating the balance of healing from childhood trauma and parenting.

[illegible] – Providing financial relief to families of sexually abused children through referrals by advocacy centers.

[illegible] – Support for survivors of sibling sexual abuse.

[illegible] makes in-person, one-on-one counseling accessible nationwide for those personally affected by sexual abuse and assault.

The Mama Bear Effect
PO BOX 180 • Pinehurst, MA 01866
info@themamabeareffect.org

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DESIGN BY OPUS

Sexual abuse ends with us

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United States of America

United States Patent and Trademark Office

Pe The Pet Effect

Reg. No. 5,667,056

Registered Jan. 29, 2019

Int. Cl.: 16, 35, 44

Service Mark

Trademark

Principal Register

Zoetis Services LLC (DELAWARE LIMITED LIABILITY COMPANY)
10 Sylvan Way
Parsippany, NEW JERSEY 07054

CLASS 16: promotional materials, namely, printed pamphlets and brochures, on the subject of the physiological impact of the Human Animal Bond

FIRST USE 2-28-2017; IN COMMERCE 2-28-2017

CLASS 35: promoting public awareness of the effects of the physiological impact of the Human Animal Bond using social medial platforms

FIRST USE 2-28-2017; IN COMMERCE 2-28-2017

CLASS 44: Providing a website featuring health information about the physiological impact of the Human Animal Bond

FIRST USE 2-28-2017; IN COMMERCE 2-28-2017

The mark consists of the capital letter "P" and small letter "E" inside a square like shape where, the top right hand corner is rounded, and the phrase "THE PET EFFECT" on the right side.

No claim is made to the exclusive right to use the following apart from the mark as shown: "THE PET EFFECT"

SER. NO. 87-331,718, FILED 02-10-2017

UNITED STATES PATENT AND TRADEMARK OFFICE
DEPARTMENT OF COMMERCE

Director of the United States
Patent and Trademark Office

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years*
What and When to File:

- ***First Filing Deadline:*** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

- ***Second Filing Deadline:*** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*
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Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see http://www.wipo.int/madrid/en/.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at http://www.uspto.gov.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at http://www.uspto.gov.

Generated on: This page was generated by TSDR on 2022-05-06 15:28:25 EDT

Mark: PE THE PET EFFECT

US Serial Number:	87331718	**Application Filing Date:**	Feb. 10, 2017
US Registration Number:	5667056	**Registration Date:**	Jan. 29, 2019
Filed as TEAS RF:	Yes	**Currently TEAS RF:**	Yes
Register:	Principal		
Mark Type:	Trademark, Service Mark		
TM5 Common Status Descriptor:	LIVE/REGISTRATION/Issued and Active The trademark application has been registered with the Office.		

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Jan. 29, 2019

Publication Date: Nov. 14, 2017 **Notice of Allowance Date:** Jan. 09, 2018

Mark Information

Mark Literal Elements: PE THE PET EFFECT

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of the capital letter "P" and small letter "E" inside a square like shape where, the top right hand corner is rounded, and the phrase "THE PET EFFECT" on the right side.

Color(s) Claimed: Color is not claimed as a feature of the mark.

Disclaimer: "THE PET EFFECT"

Design Search Code(s): 26.09.02 - Plain single line squares; Squares, plain single line

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: promotional materials, namely, printed pamphlets and brochures, on the subject of the physiological impact of the Human Animal Bond

International Class(es): 016 - Primary Class **U.S Class(es):** 002, 005, 022, 023, 029, 037, 038, 050

Class Status: ACTIVE

Basis: 1(a)

First Use: Feb. 28, 2017 **Use in Commerce:** Feb. 28, 2017

For: promoting public awareness of the effects of the physiological impact of the Human Animal Bond using social medial platforms

International Class(es): 035 - Primary Class **U.S Class(es):** 100, 101, 102

Class Status: ACTIVE

Basis: 1(a)

First Use: Feb. 28, 2017 **Use in Commerce:** Feb. 28, 2017

For: Providing a website featuring health information about the physiological impact of the Human Animal Bond

International Class(es): 044 - Primary Class **U.S Class(es):** 100, 101

Class Status: ACTIVE

Basis: 1(a)

First Use: Feb. 28, 2017 **Use in Commerce:** Feb. 28, 2017

Basis Information (Case Level)

Filed Use: No **Currently Use:** Yes

Filed ITU: Yes **Currently ITU:** No

Filed 44D: No **Currently 44E:** No

Filed 44E: No **Currently 66A:** No

Filed 66A: No **Currently No Basis:** No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Zoetis Services LLC

Owner Address: 10 Sylvan Way
Parsippany, NEW JERSEY UNITED STATES 07054

Legal Entity Type: LIMITED LIABILITY COMPANY **State or Country Where Organized:** DELAWARE

Attorney/Correspondence Information

Attorney of Record

Docket Number: ZT404593

Correspondent

Correspondent Name/Address: JANE UNGARO
ZOETIS SERVICES LLC
10 SYLVAN WAY
ATTN: LEGAL DEPT. - TRADEMARKS
PARSIPPANY, NEW JERSEY UNITED STATES 07054

Phone: 973-443-2917 **Fax:** 862-210-6437

Correspondent e-mail: AnimalHealthTMdocketing@zoetis.com **Correspondent e-mail Authorized:** Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Jan. 29, 2019	REGISTERED-PRINCIPAL REGISTER	
Dec. 28, 2018	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	
Dec. 27, 2018	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Dec. 08, 2018	STATEMENT OF USE PROCESSING COMPLETE	74055
Nov. 27, 2018	USE AMENDMENT FILED	74055
Dec. 08, 2018	CASE ASSIGNED TO INTENT TO USE PARALEGAL	74055
Nov. 27, 2018	TEAS STATEMENT OF USE RECEIVED	
Jul. 11, 2018	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Jul. 09, 2018	SOU EXTENSION 1 GRANTED	98765
Jul. 09, 2018	SOU EXTENSION 1 FILED	98765
Jul. 09, 2018	TEAS EXTENSION RECEIVED	

Jan. 09, 2018	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Nov. 14, 2017	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Nov. 14, 2017	PUBLISHED FOR OPPOSITION	
Oct. 25, 2017	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Oct. 09, 2017	ASSIGNED TO LIE	70138
Sep. 27, 2017	APPROVED FOR PUB - PRINCIPAL REGISTER	
Sep. 26, 2017	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Sep. 26, 2017	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Sep. 26, 2017	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Aug. 18, 2017	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Aug. 18, 2017	NON-FINAL ACTION E-MAILED	6325
Aug. 18, 2017	NON-FINAL ACTION WRITTEN	91167
Jul. 31, 2017	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Jul. 31, 2017	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Jul. 31, 2017	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Apr. 07, 2017	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Apr. 07, 2017	NON-FINAL ACTION E-MAILED	6325
Apr. 07, 2017	NON-FINAL ACTION WRITTEN	91167
Mar. 31, 2017	ASSIGNED TO EXAMINER	91167
Feb. 17, 2017	NOTICE OF DESIGN SEARCH CODE E-MAILED	
Feb. 16, 2017	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Feb. 14, 2017	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION **Date in Location:** Dec. 27, 2018

WHAT VETERINARY PRACTICES SHOULD KNOW ABOUT

The Pet Effect™

What is The Pet Effect?

Pets change people – this is something we all understand on an emotional level. But is it possible that having a pet could change your health in other ways? A growing body of research says "yes."[1]

Studies show that pets can help lower blood pressure, lower risk of heart disease, prevent allergies in children, reduce stress levels, decrease anxiety and depression, strengthen immune systems, increase social interaction, and more.[1] Some call it the Human Animal Bond, but we call it *The Pet Effect*. Market research demonstrates that *The Pet Effect* phrase promotes better pet owner understanding of the emotional and physical health benefits that come from human-pet interactions.[2]

What is a Veterinarian's Role in The Pet Effect?

Pets are making people healthier. So it stands to reason that the professionals who keep animals healthy are contributing to the health of individuals, families and communities. These new discoveries help put veterinarians into the center of conversations about public health.

Who is Behind The Pet Effect Campaign?

The Human Animal Bond Research Institute (HABRI) and Zoetis have teamed-up to raise public awareness of this important research. We believe that these facts can make positive changes in the way pets are perceived by their owners, policymakers and human health professionals. Significant time, resources and energy have already gone into understanding and promoting *The Pet Effect*. And this is just the beginning.

How Can The Pet Effect Help My Practice?

You Can Improve Perceptions of Your Practice: Research shows that top performing practices (those with greater than 10% year-over-year growth) put more stock in improving the bond between pet owners and their pets than they do in improving that between the practice and the pet owner.[3] We've learned that pet owners would have a more favorable perception of their veterinarian if they displayed *The Pet Effect* materials in their practices.[4]

You Can Improve the Perceived Value of Checkups: As you know, pet owners often wait until something is wrong with their pet to visit your office. When pet owners understand that their pet's health may be intrinsically linked to their own, it can encourage them to bring their pets into your office for important regular checkups.[5]

Check out the campaign at ThePetEffect.org/vet

[illegible]

[illegible]

zoetis habri

WHAT VETERINARY PRACTICES SHOULD KNOW ABOUT

The Pet Effect™

Talking With Clients About The Pet Effect

The Pet Effect is easy to talk about—pet owners love hearing good news about their pets. To help you start those conversations, here are some suggestions. Of course, as a pet health professional, you'll know the best way to talk about *The Pet Effect* to your own clients.

Talking Points

When a Client Asks You What *The Pet Effect* Is:

The Pet Effect is the positive effect that our dogs and cats have on our health. Every year, more research shows that having a pet can actually improve your physical and emotional health.[1]

Other Talking Points:

- *Did you know that if you've ever owned a cat, your relative risk of death by heart attack decreases 40%?*[2]
- *Did you know that having a cat or dog in the house can actually decrease childhood allergies?*[3]
- *97% of people doctors believe that there are health benefits to owning a pet.*[4]

Check out the campaign at ThePetEffect.org/vet

[1]thepetEffect.org, [2]thepetEffect.org/cardiovascular-disease, [3]thepetEffect.org/childhood-allergies, [4]thepetEffect.org/doctor-recommended

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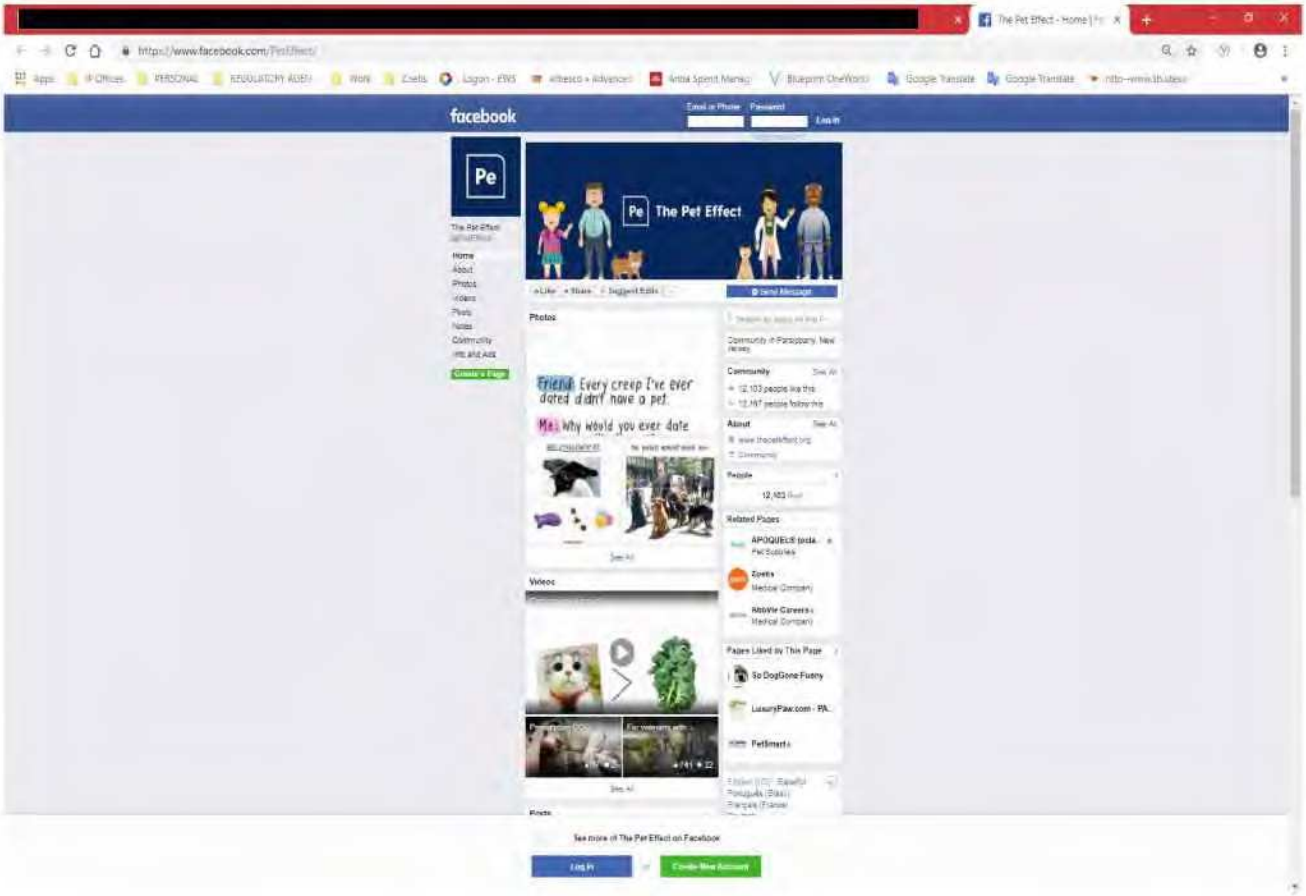
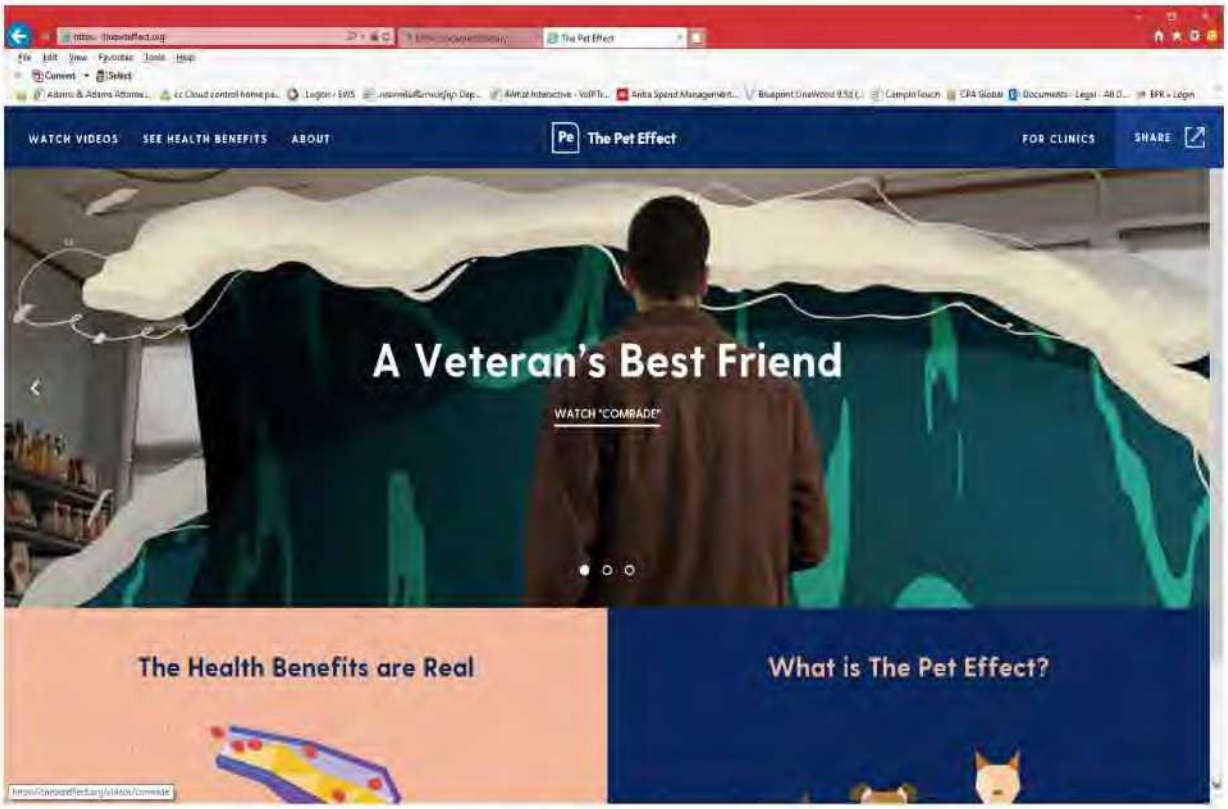
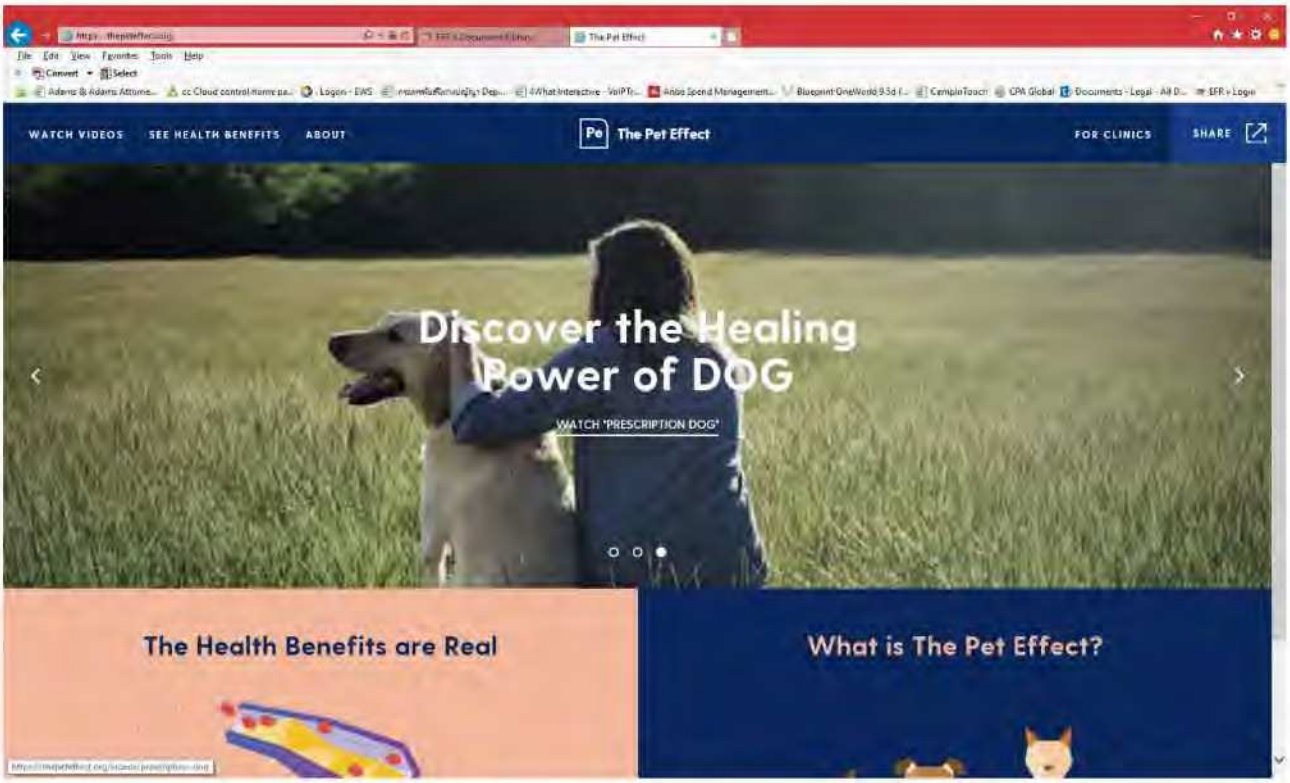
zoetis habri


facebook
The Pet Effect
Friend: Every creep I've ever dated didn't have a pet.
Me: Why would you ever date

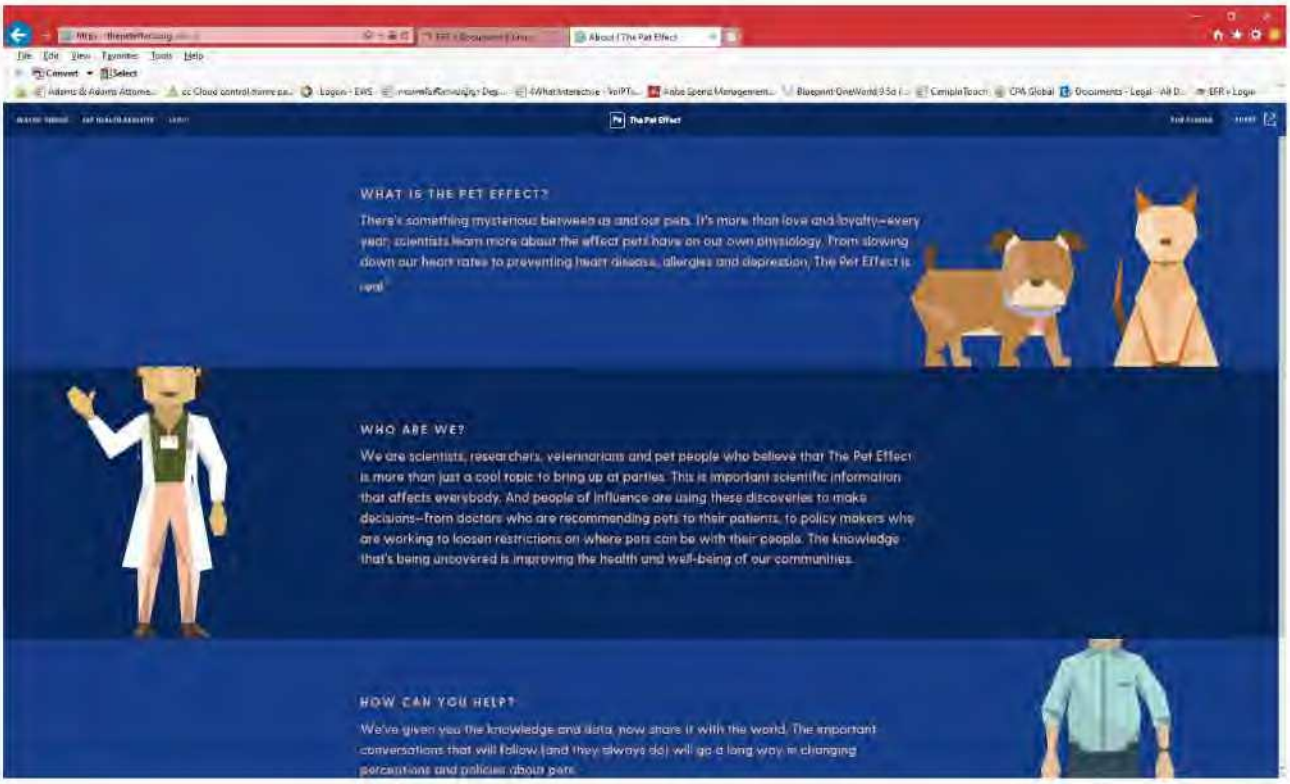
The Pet Effect



The Pet Effect



The Pet Effect



United States of America

United States Patent and Trademark Office

THE SHAKLEE EFFECT

Reg. No. 4,871,070

Registered Dec. 15, 2015

Int. Cls.: 16, 35, and 44

TRADEMARK

SERVICE MARK

PRINCIPAL REGISTER

SHAKLEE CORPORATION (DELAWARE CORPORATION)
4747 WILLOW ROAD
PLEASANTON, CA 94588

FOR: PRINTED MATTER, NAMELY, DIRECT SELLING AIDS AND SALES LITERATURE IN THE NATURE OF PRINTED FORMS, INFORMATIONAL BOOKLETS, BROCHURES, PAMPHLETS, BUSINESS KITS COMPRISED OF PRINTED LITERATURE, BROCHURES, FLYERS, INFORMATION SHEETS, PRODUCT BRIEFS, PRODUCT GUIDES, TECHNICAL BULLETINS, AND FACTS SHEETS, ALL RELATED TO DIETARY AND NUTRITIONAL SUPPLEMENTS, FOOD, TEA, NUTRITION, PERSONAL HEALTH, WEIGHT LOSS, PERSONAL HEALTH CARE MANAGEMENT, HEALTH CARE PRODUCTS, SKIN CARE, BEAUTY CARE, COSMETICS AND PERSONAL CARE PREPARATIONS, HOUSEHOLD CLEANING PREPARATIONS, LAUNDRY CARE PRODUCTS, DISHWASHING PRODUCTS, DISINFECTANTS, NON-MEDICATED SKIN CARE PRODUCTS, SKIN CARE PREPARATIONS, COSMETICS, HAIR CARE PREPARATIONS, DENTIFRICES, SUNSCREEN PREPARATIONS, AND/OR WATER PURIFICATION UNITS AND FILTERS; STATIONERY; LETTERHEAD PAPER; ENVELOPES; MEMO PADS; SHIPPING LABELS; DECALS; BUSINESS CARDS; ORDER FORMS; NEWSLETTERS FOR INDEPENDENT DISTRIBUTORS CONCERNING THE FIELDS OF FOOD, NUTRITION, WEIGHT LOSS, HEALTH, WELLNESS, THE ENVIRONMENT AND/OR MARKETING; MOTIVATIONAL OR INSTRUCTIONAL PRINTED MATTER, NAMELY, BROCHURES AND NEWSLETTERS IN THE FIELD OF PERSONAL HEALTH CARE MANAGEMENT AND PERSONAL HEALTH CARE PRODUCTS, DIRECTED TO INDEPENDENT DISTRIBUTORS FOR MARKETING GOODS AND SERVICES, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 8-1-2013; IN COMMERCE 8-1-2013.

FOR: RETAIL STORE SERVICES AND COMPUTERIZED ONLINE ORDERING SERVICES IN THE FIELDS OF FOOD SUPPLEMENTS, FOOD BARS, POWDERED DRINK MIXES, TEAS, NUTRITIONAL SUPPLEMENTS, DIETARY SUPPLEMENTS, VITAMINS AND MINERALS, COSMETICS, TOILETRIES, SKIN AND HAIR CARE PRODUCTS, HOUSEHOLD CLEANERS AND HOUSEHOLD CLEANING PRODUCTS, PERSONAL CARE PRODUCTS, WATER TREATMENT PRODUCTS, STATIONERY, LETTERHEAD, ENVELOPES, MEMO PADS, SHIPPING LABELS, DECALS, BUSINESS CARDS, ORDER FORMS; RETAIL SHOP-AT-HOME PARTY SERVICES AND SHOP-AT-OFFICE PARTY SERVICES IN THE FIELDS OF FOOD SUPPLEMENTS, FOOD BARS, POWDERED DRINK MIXES, TEAS, NUTRITIONAL SUPPLEMENTS, DIETARY SUPPLEMENTS, COSMETICS, TOILETRIES, SKIN CARE

Michelle K. Lee

Director of the United States
Patent and Trademark Office

Reg. No. 4,871,070 PRODUCTS, HAIR CARE PRODUCTS, HOUSEHOLD CLEANING PRODUCTS, PERSONAL CARE PRODUCTS, AND WATER TREATMENT PRODUCTS; PROMOTING THE RETAIL STORE AND ONLINE SERVICES OF OTHERS, NAMELY, INDEPENDENT DISTRIBUTORS, THROUGH THE DISTRIBUTION OF PRINTED PROMOTIONAL LITERATURE AND PLACING ADVERTISEMENTS, ADVERTISING QUESTIONNAIRES, AND INFORMATIONAL ADVERTISING BROCHURES ELECTRONICALLY ON A GLOBAL COMPUTER NETWORK; ON-LINE BUSINESS NETWORKING SERVICES; PROVIDING INCENTIVE COMMISSION REWARD PROGRAMS FOR INDEPENDENT DISTRIBUTOR SALES REPRESENTATIVES TO PROMOTE THE SALE OF FOOD SUPPLEMENTS, FOOD BARS, POWDERED DRINK MIXES, TEAS, NUTRITIONAL SUPPLEMENTS, DIETARY SUPPLEMENTS, COSMETICS, TOILETRIES, SKIN AND HAIR CARE PRODUCTS, HOUSEHOLD CLEANERS AND HOUSEHOLD CLEANING PRODUCTS, PERSONAL CARE PRODUCTS, WATER TREATMENT PRODUCTS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 8-1-2013; IN COMMERCE 8-1-2013.

FOR: PROVIDING INFORMATION IN THE FIELD OF DIET, NUTRITION, WEIGHT LOSS, PERSONAL HEALTH AND/OR WELLNESS, IN CLASS 44 (U.S. CLS. 100 AND 101).

FIRST USE 12-9-2014; IN COMMERCE 12-9-2014.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 85-887,850, FILED 3-27-2013.

GENE MACIOL, EXAMINING ATTORNEY

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Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see http://www.wipo.int/madrid/en/.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at http://www.uspto.gov.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at http://www.uspto.gov.

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Mark: THE SHAKLEE EFFECT

US Serial Number:	85887850	**Application Filing Date:**	Mar. 27, 2013
US Registration Number:	4871070	**Registration Date:**	Dec. 15, 2015
Register:	Principal		
Mark Type:	Trademark, Service Mark		
TM5 Common Status Descriptor:	LIVE/REGISTRATION/Issued and Active The trademark application has been registered with the Office.		

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Dec. 15, 2015

Publication Date: Jul. 01, 2014 **Notice of Allowance Date:** Aug. 26, 2014

Mark Information

Mark Literal Elements: THE SHAKLEE EFFECT

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: Printed matter, namely, direct selling aids and sales literature in the nature of printed forms, informational booklets, brochures, pamphlets, business kits comprised of printed literature, brochures, flyers, information sheets, product briefs, product guides, technical bulletins, and facts sheets, all related to dietary and nutritional supplements, food, tea, nutrition, personal health, weight loss, personal health care management, health care products, skin care, beauty care, cosmetics and personal care preparations, household cleaning preparations, laundry care products, dishwashing products, disinfectants, non-medicated skin care products, skin care preparations, cosmetics, hair care preparations, dentifrices, sunscreen preparations, and/or water purification units and filters; stationery; letterhead paper; envelopes; memo pads; shipping labels; decals; business cards; order forms; newsletters for independent distributors concerning the fields of food, nutrition, weight loss, health, wellness, the environment and/or marketing; motivational or instructional printed matter, namely, brochures and newsletters in the field of personal health care management and personal health care products, directed to independent distributors for marketing goods and services

International Class(es):	016 - Primary Class	**U.S Class(es):**	002, 005, 022, 023, 029, 037, 038, 050
Class Status:	ACTIVE		
Basis:	1(a)		
First Use:	Aug. 01, 2013	**Use in Commerce:**	Aug. 01, 2013

For: Retail store services and computerized online ordering services in the fields of food supplements, food bars, powdered drink mixes, teas, nutritional supplements, dietary supplements, vitamins and minerals, cosmetics, toiletries, skin and hair care products, household cleaners and household cleaning products, personal care products, water treatment products, stationery, letterhead, envelopes, memo pads, shipping labels, decals, business cards, order forms; retail shop-at-home party services and shop-at-office party services in the fields of food supplements, food bars, powdered drink mixes, teas, nutritional supplements, dietary supplements, cosmetics, toiletries,

skin care products, hair care products, household cleaning products, personal care products, and water treatment products; promoting the retail store and online services of others, namely, independent distributors, through the distribution of printed promotional literature and placing advertisements, advertising questionnaires, and informational advertising brochures electronically on a global computer network; on-line business networking services; providing incentive commission reward programs for independent distributor sales representatives to promote the sale of food supplements, food bars, powdered drink mixes, teas, nutritional supplements, dietary supplements, cosmetics, toiletries, skin and hair care products, household cleaners and household cleaning products, personal care products, water treatment products

International Class(es): 035 - Primary Class
U.S Class(es): 100, 101, 102
Class Status: ACTIVE
Basis: 1(a)
First Use: Aug. 01, 2013
Use in Commerce: Aug. 01, 2013

For: Providing information in the field of diet, nutrition, weight loss, personal health and/or wellness
International Class(es): 044 - Primary Class
U.S Class(es): 100, 101
Class Status: ACTIVE
Basis: 1(a)
First Use: Dec. 09, 2014
Use in Commerce: Dec. 09, 2014

Basis Information (Case Level)

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

Current Owner(s) Information

Owner Name: Shaklee Corporation
Owner Address: 4747 Willow Road
Pleasanton, CALIFORNIA UNITED STATES 94588
Legal Entity Type: CORPORATION
State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Lisa M. Caldwell
Docket Number: 6592-90355-0
Attorney Primary Email Address: ptotmdocket@klarquist.com
Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: LISA M. CALDWELL
KLARQUIST SPARKMAN, LLP
121 SW SALMON ST STE 1600
PORTLAND, OREGON UNITED STATES 97204-2988
Phone: 503 595 5300
Fax: 503 595 5301
Correspondent e-mail: ptotmdocket@klarquist.com
Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Dec. 15, 2020	COURTESY REMINDER - SEC. 8 (6-YR) E-MAILED	
Dec. 15, 2015	REGISTERED-PRINCIPAL REGISTER	
Nov. 13, 2015	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	

Nov. 12, 2015	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Oct. 30, 2015	TEAS/EMAIL CORRESPONDENCE ENTERED	74221
Oct. 30, 2015	CORRESPONDENCE RECEIVED IN LAW OFFICE	74221
Oct. 22, 2015	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Apr. 24, 2015	NOTIFICATION OF NON-FINAL ACTION E-MAILED	
Apr. 24, 2015	NON-FINAL ACTION E-MAILED	
Apr. 24, 2015	SU - NON-FINAL ACTION - WRITTEN	76508
Apr. 02, 2015	STATEMENT OF USE PROCESSING COMPLETE	71034
Feb. 23, 2015	USE AMENDMENT FILED	71034
Mar. 27, 2015	CASE ASSIGNED TO INTENT TO USE PARALEGAL	71034
Feb. 23, 2015	TEAS STATEMENT OF USE RECEIVED	
Aug. 26, 2014	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Jul. 01, 2014	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Jul. 01, 2014	PUBLISHED FOR OPPOSITION	
Jun. 11, 2014	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
May 26, 2014	LAW OFFICE PUBLICATION REVIEW COMPLETED	74221
May 20, 2014	APPROVED FOR PUB - PRINCIPAL REGISTER	
Apr. 25, 2014	EXAMINER'S AMENDMENT ENTERED	74221
Apr. 24, 2014	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Apr. 24, 2014	EXAMINERS AMENDMENT E-MAILED	6328
Apr. 24, 2014	EXAMINERS AMENDMENT -WRITTEN	76508
Apr. 16, 2014	PREVIOUS ALLOWANCE COUNT WITHDRAWN	
Mar. 17, 2014	WITHDRAWN FROM PUB - OG REVIEW QUERY	76621
Feb. 28, 2014	LAW OFFICE PUBLICATION REVIEW COMPLETED	74221
Feb. 24, 2014	APPROVED FOR PUB - PRINCIPAL REGISTER	
Feb. 06, 2014	EXAMINER'S AMENDMENT ENTERED	74221
Feb. 05, 2014	ASSIGNED TO LIE	74221
Feb. 04, 2014	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Feb. 04, 2014	EXAMINERS AMENDMENT E-MAILED	6328
Feb. 04, 2014	EXAMINERS AMENDMENT -WRITTEN	76508
Jan. 10, 2014	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Jan. 09, 2014	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Jan. 09, 2014	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Jul. 17, 2013	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Jul. 17, 2013	NON-FINAL ACTION E-MAILED	6325
Jul. 17, 2013	NON-FINAL ACTION WRITTEN	76508
Jul. 09, 2013	ASSIGNED TO EXAMINER	76508
Apr. 01, 2013	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Mar. 30, 2013	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION **Date in Location:** Nov. 12, 2015

Proceedings

Summary

Number of Proceedings: 1

Type of Proceeding: Opposition

Proceeding Number: 91268274 **Filing Date:** Mar 19, 2021

Status: Terminated **Status Date:** Nov 04, 2021

Interlocutory ANN LINNEHAN VOGLER

Attorney:

Defendant

Name: Dena Elkhatib

Correspondent Address: CHRISTINE WILSON FELLER
SCHIFF HARDIN LLP
1185 SIXTH AVENUE, SUITE 3000
NEW YORK NY UNITED STATES , 10036

Correspondent e-mail: cfeller@schiffhardin.com , trademarks@schiffhardin.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
SHAKLI	Registered	88837272	6585777

Plaintiff(s)

Name: Shaklee Corporation

Correspondent Address: KEVIN M. HAYES
KLARQUIST SPARKMAN, LLP
121 SW SALMON STREET, SUITE 1600, ONE WORLD TRADE CENTER
PORTLAND OR UNITED STATES , 97204

Correspondent e-mail: ptotmdocket@klarquist.com , lisa.caldwell@klarquist.com , kevin.hayes@klarquist.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
SHAKLEE PERFORMANCE	REGISTERED AND RENEWED	73788339	1576685
SHAKLEE LIFE	Registered	87959324	5869375
MASTER COORDINATOR SHAKLEE	REGISTERED AND RENEWED	74277332	1841099
SHAKLEEGUARD	REGISTERED AND RENEWED	73819569	1612613
SHAKLEE	REGISTERED AND RENEWED	72461310	1010096
SHAKLEE 180	Section 8 and 15 - Accepted and Acknowledged	85677102	4444728
SHAKLEE CONNECT	Registered	86710481	5196246
SHAKLEE FIBER PLAN	REGISTERED AND RENEWED	75178477	2181796
THE SHAKLEE DIFFERENCE	Registered	87093646	5429108
THE SHAKLEE EFFECT	Registered	85887850	4871070
SHAKLEE CREATING HEALTHIER LIVES INDEPENDENT DISTRIBUTOR	Section 8 and 15 - Accepted and Acknowledged	85721440	4305352
SHAKLEE SPORTS NUTRITION	Registered	86760529	5112072
SHAKLEE CARES	Registered	87457527	5525926
SHAKLEE PERFORMANCE	Registered	87713911	5891922
SHAKLEE	REGISTERED AND RENEWED	73089848	1094773
SHAKLEE FIBER PLAN	REGISTERED AND RENEWED	74190443	1756199
SHAKLEE INDEPENDENT DISTRIBUTOR	Section 8 and 15 - Accepted and Acknowledged	85721370	4305351

Prosecution History

Entry Number	History Text	Date	Due Date
11	TERMINATED	Nov 04, 2021	
10	BD DECISION: OPP DISMISSED W/O PREJ	Nov 04, 2021	
9	MOT TO AMEND APPLICATION	Nov 01, 2021	
8	SUSPENDED	Nov 01, 2021	
7	P MOT TO SUSP W/ CONSENT PEND SETTL NEGOTIATIONS	Nov 01, 2021	
6	ANSWER	Apr 28, 2021	
5	D CHANGE OF CORRESP ADDRESS	Mar 26, 2021	
4	D APPEARANCE / POWER OF ATTORNEY	Mar 26, 2021	
3	INSTITUTED	Mar 19, 2021	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Mar 19, 2021	Apr 28, 2021
1	FILED AND FEE	Mar 19, 2021	

Shaklee

SEARCH

Frontpage > The Shaklee Effect > The Shaklee Effect

The Shaklee Effect

CHANNELS

- The Shaklee Opportunity
- The Shaklee Effect
- Shaklee Products
- Shaklee Science
- Weight Management
- Education
- Shaklee Events
- Earth Day Every Day
- Shaklee Latino
- Shaklee Canada (français)
- Shaklee 普通话 (Mandarin)
- Shaklee 한국어 (Korean)

VIDEOS

- Most Recent
- Most Viewed

SUBSCRIBE

- Mail
- Podcast
- RSS

Tell us your Shaklee Effec...

In the 100 years since Dr Shaklee created Vitalized Minerals, his vision of health and wellness...

Robin's Shaklee Effect

Robin Reves-May heads a 50+ year-old Shaklee business founded by her grandmother. To date, five...

Shaklee 180® Laura's Story

With her husband deployed in the military and three kids to take care of, Laura's weight "just...

Jacqui's Journey

Jacqui McCoy set the record for the highest weight lost in reality TV history, but quickly found...

Shaklee 180®: Rachael's S...

As Rachael's weight grew, she found herself wondering what she was teaching her children about...

Ashley's Shaklee Effect

Ashley used Shaklee 180 to regain her shape and her confidence. She never expected what came next.

Jeanine's Shaklee Effect

Before her mom passed away, Jeanine promised her two things: to take better care of herself, and...

Matt & Dianna's Shaklee E...

Tell us your Shaklee Effec...

In the 100 years since Dr Shaklee created Vitalized Minerals, his vision of health and wellness...

Shaklee 180®: Scott's Stor...

As a fireman, Scott needs to stay in top physical condition, but over the years, his weight crept...

Shaklee 180®: Scott's Story

As a fireman, Scott needs to stay in top physical condition, but over the years, his weight crept...

Shaklee 180®: Rachael's S...

As Rachael's weight grew, she found herself wondering what she was teaching her children about...

1 2 3 **Next**
(35 in all)

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Mark: GREENEFFECTS

US Serial Number: 79311129

Application Filing Date: Feb. 03, 2021

Register: Principal

Mark Type: Trademark, Service Mark

TM5 Common Status Descriptor: LIVE/APPLICATION/Published for Opposition

A pending trademark application has been examined by the Office and has been published in a way that provides an opportunity for the public to oppose its registration.

Status: Application has been published for opposition. The opposition period begins on the date of publication.

Status Date: Apr. 12, 2022

Publication Date: Apr. 12, 2022

Mark Information

Mark Literal Elements: GREENEFFECTS

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

Related Properties Information

International Registration Number: 1591681

International Registration Date: Feb. 03, 2021

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: printed books in the field of investments and investment strategies; printed matter, flyers, prospectuses and periodicals in the field of investments and investment strategies

International Class(es): 016 - Primary Class

U.S Class(es): 002, 005, 022, 023, 029, 037, 038, 050

Class Status: ACTIVE

Basis: 66(a)

For: Financial analysis; financial consulting services, namely, expert analysis in finance; insurance consultancy; stock exchange quotations services; financial clearing houses; financing of loans; securities brokerage; factoring agencies; financial information; financing services; establishing mutual funds for others; capital investment; providing counseling and consulting in the field of healthcare insurance benefits; credit consultation; insurance consulting and offering in the field of life insurance and pension scheme; savings account services; trusteeships representatives; financial management; arranging of insurance; insurance information; insurance consultancy; insurance; management of buildings; management of real estate; real-estate appraisal; leasing of real estate; real-estate brokerage services; real-estate acquisition services; financial investment brokerage services; rent collection; renting of homes; renting

of flats and apartments

International Class(es): 036 - Primary Class

U.S Class(es): 100, 101, 102

Class Status: ACTIVE

Basis: 66(a)

For: Updating of computer software; database development services, namely development, updating and maintenance of computer software and database systems; research and development of new products for others

International Class(es): 042 - Primary Class

U.S Class(es): 100, 101

Class Status: ACTIVE

Basis: 66(a)

Basis Information (Case Level)

Filed Use: No

Currently Use: No

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: Yes

Filed 66A: Yes

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: SECURVITA Gesellschaft zur Entwicklung alternativer Versicherungskonzepte mbH

Owner Address: Lübeckertordamm 1-3
20099 Hamburg
GERMANY

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: GERMANY

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Deborah Shapiro

Attorney Primary Email Address: trademarks@mosessinger.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: Deborah Shapiro
Moses & Singer LLP
405 Lexington Avenue
The Chrysler Building
New York, NEW YORK UNITED STATES 10174

Phone: 212-554-7800

Fax: 212-554-7700

Correspondent e-mail: trademarks@mosessinger.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Apr. 12, 2022	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Apr. 12, 2022	PUBLISHED FOR OPPOSITION	
Mar. 23, 2022	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Mar. 09, 2022	APPROVED FOR PUB - PRINCIPAL REGISTER	
Mar. 08, 2022	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Mar. 08, 2022	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Mar. 08, 2022	TEAS RESPONSE TO OFFICE ACTION RECEIVED	

Oct. 04, 2021	REFUSAL PROCESSED BY IB	
Sep. 10, 2021	NON-FINAL ACTION MAILED - REFUSAL SENT TO IB	
Sep. 09, 2021	REFUSAL PROCESSED BY MPU	92867
Aug. 27, 2021	NON-FINAL ACTION (IB REFUSAL) PREPARED FOR REVIEW	
Aug. 26, 2021	NON-FINAL ACTION WRITTEN	69195
Aug. 26, 2021	ASSIGNED TO EXAMINER	69195
May 25, 2021	APPLICATION FILING RECEIPT MAILED	
May 21, 2021	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
May 20, 2021	SN ASSIGNED FOR SECT 66A APPL FROM IB	

International Registration Information (Section 66a)

International Registration Number: 1591681

International Registration Date: Feb. 03, 2021

Intl. Registration Status: REQUEST FOR EXTENSION OF PROTECTION PROCESSED

Date of International Registration Status: May 20, 2021

Notification of Designation Date: May 20, 2021

Date of Automatic Protection: Nov. 20, 2022

International Registration Renewal Date: Feb. 03, 2031

First Refusal Flag: Yes

TM Staff and Location Information

TM Staff Information

TM Attorney: FOSDICK, GEOFFREY A

Law Office Assigned: LAW OFFICE 111

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Mar. 10, 2022

Exhibit 4

EC

74 105039

[redacted]

7/12/99

16

.74105039.

CONTENTS

	Entry	Date	Initials
1.	Ltr Arrett #	FEB 14 1991	(49)
2.	Suspended	FEB 26 1991	
		AUG 12 1991	
3.			
4.	Ltr 24 OCT 1991	9-13-91	
5.	Suspended	OCT 28 1991	MB
		MAY 7 1992	MB
6.			
7.	Ltr. 17 JUN 1992	6.1.92	
8.	Suspended	JUN 18 1992	MB
9.	Ltr Cutoff For Rec 9 JUL 1992	6-25-92	
10.	Ltr Cutoff B 27 JUL 1992	JUL 9 1992	MB
11.	NOFP		
12.	SJC 8 & 15 filed	1-19-99	AB
13.	Section 8 & 9	2/3/03	JRH
14.	CA	APR 21 2003	
15.	Response	10/21/03	
16.			
17.			
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30.			

☐ See inside of file for additional entries.

OCT 13 1992

74 105039

PTO-102 (9-89)
U.S. DEPT. OF COMMERCE
Patent and Trademark Office

[redacted] **RENEWAL** FPI-LOM

DEC

1. REG. NO. 1752451	3. MARK THE BLACK DIAMOND EFFECT		4. SER. NO. 74/105039
2. REG. DATE FEB 16 1993			5. REGISTER PRINCIPAL
6. INTERNATIONAL CLASS 16	7. PRIOR U.S. CLASS 38	8. FILING DATE 10/09/90	9. LAW OFFICE 510

10. APPLICANT AND POST OFFICE
Gatsis, George Peter
19 Lord Roberts Drive
Scarborough, Onta, CANADA M1K 3W1
INDIVIDUAL CANADA CITIZEN

16. EXAMINING ATTORNEY
Lerner

17. TYPE OF MARK [redacted]
TRADEMARK

18. FIRST USE
ICL 016 00/00/0000

11. CORRESPONDENCE ADDRESS M-5115
Christina Maciw
Riches, McKenzie & Herbert
Suite 2900
2 Bloor Street East
Toronto, Ontario, Canada M4W 3J5

19. IN COMMERCE
ICL 016 00/00/0000

20. FOREIGN REG. AND APPL. DATA
CAX APP 658,204 05/23/90
Reg TMA 398,451 5/22/92
Exp 5-22-2007

12. DOMESTIC REPRESENTATIVE
Glasser, Griggs, et al.

13. APPLICANT'S ATTORNEY
Christina Maciw

15. GOODS--SERVICES
016-books and comic books
↳ Cartoon science fiction

21. OTHER DATA

PTO-102L (REV. 12/82) U.S. DEPT. OF COMMERCE--PATENT AND TRADEMARK OFFICE

22. AMENDED	PRINCIPAL REGISTER	25. Examiner	
		26. Section 1(C) Accepted	
		27. Section 1(D) Accepted	
23. AFFIDAVIT	Section 8 L. R. Ikell 2/16/03	28. Approved for Publication	
	F. A. Pfoll	29. Approved for Supplemental Registration	
	Section 15 F. A. Pfoll	30. O.G. Date 44(d) PUBLISHED NOV 24 1992	
24. RENEWAL	Approved for Renewal L. R. Ikell		
	Renewed From Feb. 16. 2003 ☐ Less Goods	Exp. 5 22 07	

USCOMM DC 89-

UNITED STATES PATENT AND TRADEMARK OFFICE

REGISTRATION NO: 1,752,451

APRIL 21, 2003

REGISTRANT: George Peter Gatsis

CORRESPONDENT ADDRESS:
PAUL HERBERT
RICHES MCKENZIE & HERBERT LLP
2 BLOOR STREET E STE 2900
TORONTO M4W 3J5
CANADA

RETURN ADDRESS:
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513
TMPostRegistration@uspto.gov

MARK: THE BLACK DIAMOND EFFECT

CORRESPONDENT'S REFERENCE/DOCKET NO: N/A

CORRESPONDENT EMAIL ADDRESS:
N/A

Please provide in all correspondence:

1. Registration date, registration number, mark and registrant's name.
2. Date of this Office Action.
3. Examiner's name and Post Registation Division.
4. Your telephone number and e-mail address.

POST REGISTRATION OFFICE ACTION

RE: Registration Number 1,752,451

The Combined Section 8 Affidavit and Section 9 Renewal Application was received on February 3, 2003. Renewal is granted. However, the Section 8 Affidavit is refused for the following reason(s):

Office records indicate the registration is owned by George Peter Gatsis not The Black Diamond Effect Inc., the party who filed the Section 8 Affidavit.

The Trademark Act requires that the current owner of the registration file the Section 8 Affidavit. 15 U.S.C. §1058. It is unclear whether the party who filed the Section 8 Affidavit is the current owner.

The party who filed the Section 8 Affidavit must establish current ownership of the registration at least as early as January 27, 2003, the date the Section 8 Affidavit was signed. 37 C.F.R. §2.161(a). Ownership may be established by (1) recording appropriate documents in the Assignment Services Division, (703) 308-9723, or (2) submitting proof of the transfer of title to the party who filed the Section 8 Affidavit. 37 C.F.R. §3.73(b).

(1) If the present owner chooses to establish ownership by recording appropriate documents in the Assignment Services Division, please notify the undersigned paralegal when the documents have been filed. .

(2) If the present owner chooses to establish ownership by submitting proof of the transfer of title, appropriate evidence, such as a copy of the document transferring ownership or a verified statement that a valid transfer of legal title has occurred, must be submitted. Please be advised that the Section 8 Notice of Acceptance will issue in the name of the original registrant or the last recorded assignee as recorded in the Assignment Services Division.

If the wrong party filed the Section 8 Affidavit and there is time remaining in the statutory filing period, the current owner may file a new affidavit. If the new affidavit is filed during the 6-month grace period, the owner must pay the filing fee for the Section 8 Affidavit plus the grace period fee. If the wrong party filed the Section 8 Affidavit, and there is no time remaining in the statutory filing period, the registration will be cancelled.

A COMPLETE RESPONSE MUST BE RECEIVED WITHIN 6 MONTHS FROM THE MAILING DATE OF THIS OFFICE ACTION. THE OWNER MUST RESPOND TO ALL INQUIRIES SET FORTH IN THIS LETTER TO AVOID CANCELLATION AND/OR EXPIRATION OF THE REGISTRATION.

PLEASE BE ADVISED THAT IF THE WRONG PARTY FILED THE SECTION 8 AFFIDAVIT, THE CURRENT OWNER MUST FILE A NEW AFFIDAVIT BEFORE THE GRACE PERIOD EXPIRES AND PAY THE FEE FOR FILING THE NEW AFFIDAVIT. THE OWNER MUST ALSO PAY THE GRACE PERIOD FEE, IF THE NEW AFFIDAVIT IS FILED DURING THE GRACE PERIOD.

C. R. Hill

Ms. Catherine R. Hill
Affidavit/Renewal Examiner
Post Registration Division
Office of Trademark Services
(703) 308-9500 Ext. 139
Fax (703) 746-3200

How to respond to this Office Action:

To respond formally via E-mail, visit **http://www.uspto.gov/web/trademarks/tmelecresp.htm** and follow the instructions.

To respond formally via regular mail, your response should be sent to the mailing Return Address listed above and include the registration number, the words 'Post Registration' and the examiner's name on the upper right corner of each page of your response.

To check the status of your application at any time, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at **http://tarr.uspto.gov/**

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINER.

#13

IN THE UNITED STATES PATENT AND TRADEMARKS OFFICE
APPLICATION FOR RENEWAL OF A TRADEMARK REGISTRATION, WITH DECLARATION

Trade Mark : **THE BLACK DIAMOND EFFECT**

Registration No. : 1752451

Registration Date : February 16, 1993

Registrant : THE BLACK DIAMOND EFFECT INC.

Class : 16

Agent's Ref. : T125790

02/05/2003 ZCARRITH 00000022 181350 1752451
01 FC:6205 100.00 OP
02 FC:6201 100.00 CH 300.00 OP

To: Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513
U.S.A.

THE BLACK DIAMOND EFFECT INC.
19 Lord Roberts Drive
Toronto, Ontario
M1K 3W1
Canada

1. The above-identified registrant for renewal requests that the above-noted registration granted on the above-noted date, shown by records in the Patent and Trademarks Office, be renewed in accordance with the provisions of Section 9 of the Trademarks Act of July 5, 1946.

2. The mark shown in the above-noted registration is still in use in commerce between Canada and the United States on or in connection with each of the following:

cartoon science fiction books and comic books.

3. A specimen showing current use of the mark is attached.

4. Also attached is an Appointment of Domestic Representative.

5. The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of United States Code, and that such willful false statements will jeopardize the validity of this application, declares that all statements made in this application are true and all statements on information and belief are believed to be true.

EXECUTED at Toronto, Ontario, Canada, this 27th day of JANUARY, 2003.

THE BLACK DIAMOND EFFECT INC.

By: _____

Name: George Peter Gatsis

Position: PRESIDENT / OWNER

IN THE UNITED STATES PATENT AND TRADE MARK OFFICE
COMBINED SECTION 8 AND 15 DECLARATION

ATTORNEY'S REF.	:	T125790
TRADE MARK	:	**THE BLACK DIAMOND EFFECT**
REGISTRATION NO.	:	1752451
REGISTRATION DATE	:	February 16, 1993
REGISTRANT	:	THE BLACK DIAMOND EFFECT INC.
CLASS	:	16

I, George Peter Gatsis, the PRESIDENT/OWNER of the above-noted registrant, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this document, declares that he/she owns the above identified registration issued, as shown by records in the Patent and Trade Mark Office; that the mark shown therein has been in continuous use in interstate commerce and commerce between Canada and the United States for five consecutive years from the date of the registration of the date of publication under Section 12(c) (6) to the present, on or in connection with each of the following:

cartoon science fiction books and comic books

which are stated in the registration; that such mark is still in use in interstate commerce and commerce between Canada and the United States that such mark is still in use as evidenced by

the specimens included showing the mark as currently used that there has been no final decision adverse to registrant's claim of ownership of such mark for such goods or services, or to registrant's right to register the same or to keep the same on the register; that there is no proceeding involving said rights pending and not disposed of either in the Patent and Trade Mark Office or in the courts; and that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

EXECUTED at Toronto, Ontario, Canada, this 27th day of January, 2003.

THE BLACK DIAMOND EFFECT INC.

By: _____
Name: George Peter Gatsis
Position: PRESIDENT/OWNER

DESIGNATION OF DOMESTIC REPRESENTATIVE

Trade Mark	: **THE BLACK DIAMOND EFFECT**
Registration No.	: 1752451
Registration Date	: February 16, 1993
Registrant	: THE BLACK DIAMOND EFFECT INC.
Agent's Ref.	: T125790

Robert Mallinckrodt of the firm of MALLINCKRODT & MALLINCKRODT, whose postal address is 10 Exchange Place, Suite 510, Salt Lake City, Utah, U.S.A., is hereby designated applicant's representative upon whom notice or process in proceedings affecting the mark may be served.

EXECUTED this 27th day of JANUARY, 2003.

THE BLACK DIAMOND EFFECT INC.

By: _____

Name: George Peter Gatsis
Position: PRESIDENT / OWNER

POWER OF ATTORNEY

IN THE MATTER OF U.S. trademark registration 1752451, registered on February 16, 1993 in the name of
THE BLACK DIAMOND EFFECT INC.

The undersigned, THE BLACK DIAMOND EFFECT INC., hereby appoints

Paul Herbert
RICHES, McKENZIE & HERBERT LLP
2 Bloor Street East
Suite 2900
Toronto, Ontario, Canada
M4W 3J5

as its attorney of record to transact all business in the Patent and Trademarks Office in connection with this registration and to receive the Certificate of Renewal thereof.

EXECUTED at Toronto, Ontario, Canada, this 27th day of JANUARY, 2003.

THE BLACK DIAMOND EFFECT INC.

By: _____
Name: GEORGE P. GATSIS
Position: PRESIDENT/OWNER

Incoming Correspondence Routing Sheet

To: Post Registration (PRU)

Word Mark: THE BLACK DIAMOND EFFECT

Reg. No.: 1752451

Serial No: 74105039

Mail Date: 02032003

Doc. Type: Combined Section 8 and 9

No Fee

RAM Mail Date: 020303

RICHES, McKENZIE & HERBERT LLP

BARRISTERS & SOLICITORS
PATENT & TRADE MARK AGENTS
PAUL HERBERT, B.SC.,PHM.,LL.B.
BRANT LATHAM, B.A.SC.(CHEM.ENG.),LL.B.,P.ENG.
DAN HITCHCOCK, B.ENG.,LL.B.,P.ENG.
GARY M. TRAVIS, B.SC.(GEOL.),LL.B.
JEFF PERVANAS, B.A.SC.(ENG.SCI.),LL.B.
JASON LEUNG, B.SC.(GENETICS),J.D.
PAUL E. THOMAS, B.A.SC.(CHEM.ENG.),M.A.SC.,LL.B.
PATENT & TRADE MARK AGENT
A. LEONARD GROVE

SUITE 1800
2 BLOOR STREET EAST
TORONTO, CANADA
M4W 3J5

TELEPHONE (416) 961-5000
FAX (416) 961-5081
E-MAIL riches@patents-toronto.com

CONTINUING THE PRACTICE OF
GEORGE H. RICHES AND ASSOCIATES
ESTABLISHED 1887

January 31, 2003

Box POST REG FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513
U.S.A.

TRADEMARK FEE PROCESS
RECEIVED
2003 FEB -3 P 3:04
US PATENT & TRADEMARK OFFICE
TRADEMARK OFFICE

Re: GEORGE GATSIS
Trade Mark Registration in U.S.A.
Trade Mark : **THE BLACK DIAMOND EFFECT**
Serial No. : 74/105039
Reg. No. : 1752451
Our Ref. : T125790

Dear Sirs:

Enclosed herewith for the renewal of the above noted United States trade mark registration are the following documents:

1. Application for Renewal with Declaration
2. Power of Attorney;
3. Appointment of Domestic Representation;
4. Specimens; and the
5. A cheque in the amount of $400.00 U.S. in respect of the renewal fee.

In the event that the enclosed funds are found to be insufficient, or if any additional fees are due with respect to this letter, the Commissioner is hereby authorized to charge such fees to our deposit Account No. 18-1350. A duplicate copy of this sheet is enclosed.

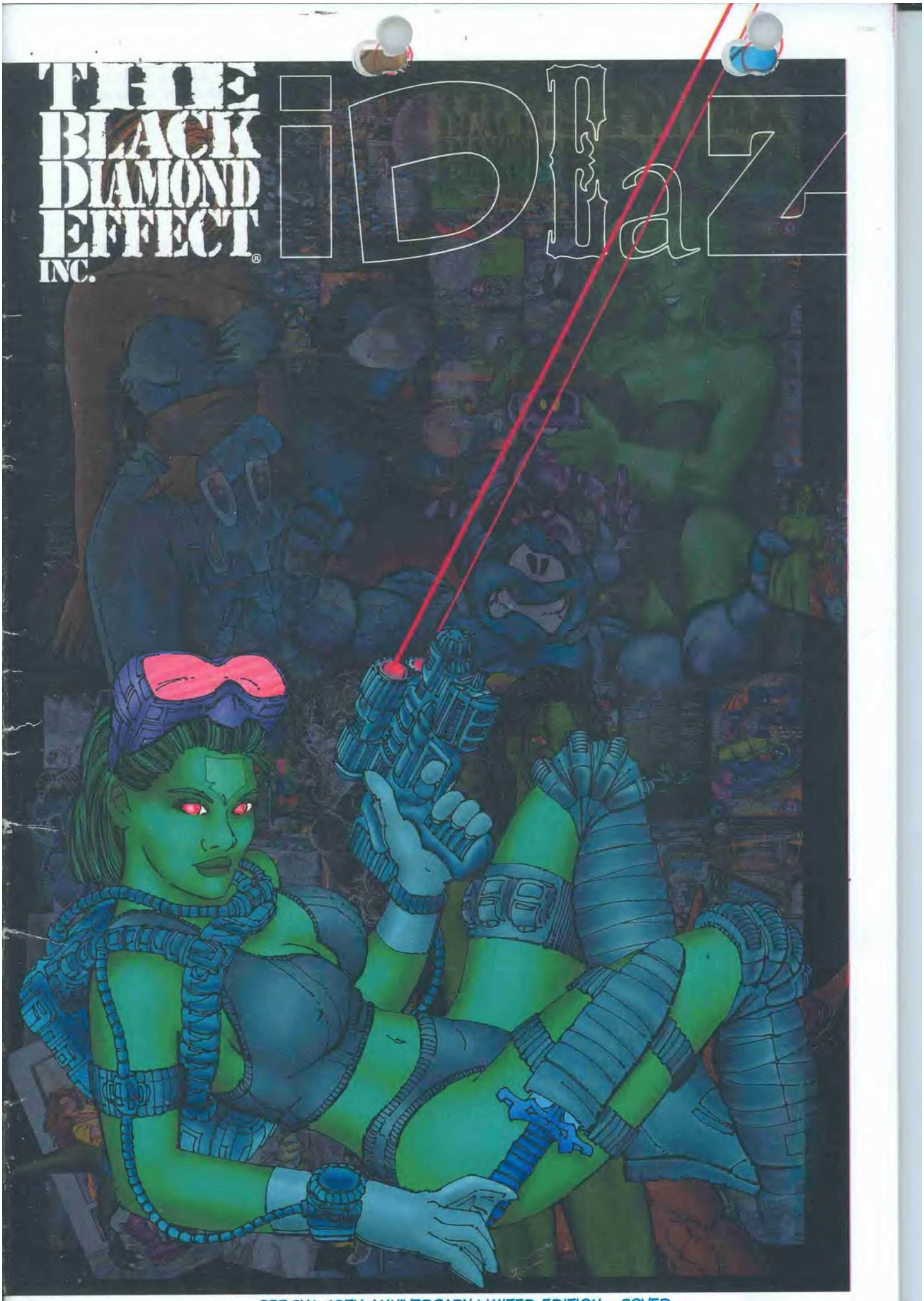
We look forward to the confirmation of the renewal in due course.

Yours very truly,

RICHES, McKENZIE & HERBERT LLP

Paul Herbert

PLH/las
Encl.
Ret. Ack. Card



SPECIAL 10TH ANNIVERSARY LIMITED EDITION - COVER

BACKCOVER - BACKISSUES - BOOKS 1 THRU 7 & 2 COVER VARIATIONS OF BOOK 8

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT COMMISSIONER FOR TRADEMARKS
2900 Crystal Drive
Arlington, VA 22202-3513

REGISTRATION NO. 1752451 SERIAL NO. 74/105039 PAPER NO.
MAILING DATE: Jul 19, 1999

MARK: THE BLACK DIAMOND EFFECT

REGISTRANT: Black Diamond Effect Inc., The

CORRESPONDENCE ADDRESS:
PAUL HERBERT
RICHES MCKENZIE & HERBERT
2 BLOOR STREET E STE 2900
TORONTO M4W 3J5
CANADA

TMPRU

Please furnish the following in all correspondence:

1. Your phone number and ZIP Code.
2. Mailing date of this action.
3. Affidavit-Renewal Examiner's name.
4. Mark all correspondence to the attention of "PRU" using the above address.
5. Registration No.

RECEIPT IS ACKNOWLEDGED OF THE SUBMITTED REQUEST UNDER:

SECTION 8 OF THE TRADEMARK STATUTE AND 37 CFR SECS. 2.161-2.166.

SECTION 15 OF THE TRADEMARK STATUTE AND 37 CFR SECS. 2.167-2.168.

YOUR REQUEST FULFILLS THE STATUTORY REQUIREMENTS AND HAS BEEN ACCEPTED.

FRANCES A. PFOHL
AFFIDAVIT-RENEWAL EXAMINER
TRADEMARK EXAMINING OPERATION
(703) 308-9500 EXT. 127

200/374 PRV

01-19-1999

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #10

UNITED STATES PATENT AND TRADE MARK OFFICE
COMBINED SECTION 8 AND 15 DECLARATION

8/12

MARK	: **THE BLACK DIAMOND EFFECT**
REGISTRATION NO.	: 1,752,451
REGISTRATION DATE	: February 16, 1993
REGISTRANT	: GEORGE PETER GATSIS
CLASS	: 16

I, **GEORGE PETER GATSIS**, registrant, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this document, declares that he/she owns the above identified registration issued, as shown by records in the Patent and Trade Mark Office; that the mark shown therein has been in continuous use in interstate commerce and commerce between Canada and the United States for five consecutive years from the date of the registration of the date of publication under Section 12(c) (6) to the present, on or in connection with each of the following:

cartoon science fiction books and comic books

which are stated in the registration; that such mark is still in use in interstate commerce and commerce between Canada and the United States that such mark is still in use as evidenced by

02/01/1999 JHARLEY 00000191 74105039
01 FC:374 200.00 OP

the specimens included showing the mark as currently used that there has been no final decision adverse to registrant's claim of ownership os such mark for such goods or services, or to registrant's right to register the same or to keep the same on the register; that there is no proceeding involving said rights pending and not disposed of either in the Patent and Trade Mark Office or in the courts; and that all statements made of his own knowledge are true and all statements made on information and belief are believed to be true.

EXECUTED at Toronto, Ontario, Canada, this 6th (Sixth) day of JANUARY, 1999.

George Peter Gatsis
Registrant

RICHES, McKENZIE & HERBERT

BA
PA
PA
BR
DAN ...
GARY M. TRAVIS, B.SC.(GEOL.),LL.B.
JEFF PERVANAS, B.A.SC.(ENG.SCI.),LL.B.
MARK D. PENNER, B.SC.(BIO.CHEM),M.SC.,LL.B.

PATENT & TRADE MARK AGENT
A. LEONARD GROVE

SUITE 2900
2 BLOOR STREET EAST
TORONTO, CANADA
M4W 3J5

TELEPHONE (416) 961-5000
FAX (416) 961-5081
E-MAIL
riches@patents-toronto.com

CONTINUING THE PRACTICE OF
GEORGE H. RICHES AND ASSOCIATES
ESTABLISHED 1887

01-19-1999

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #10

January 14, 1999

The Commissioner of Patents and Trademarks
Washington, D.C., U.S.A.
20231

Re: GEORGE PETER GATSIS
United States Trade Mark Registration

Trade Mark	:	**THE BLACK DIAMOND EFFECT**
Serial No.	:	74/105039
Reg. No.	:	1,752,451
Class	:	16
Our Ref.	:	T125790

Dear Sirs:

We are enclosing herewith:

1. A combined Section 8 and 15 declaration;
2. Five specimens showing the mark as used in the United States; and
3. The government fee of $200.00.

Please amend the address of the registrant to read as follows:

The Black Diamond Effect Inc.
99 Atlantic Avenue, Suite 214
Toronto, Ontario
M6K 3J8

We look forward to your confirmation in due course.

Yours very truly,

RICHES, McKENZIE & HERBERT

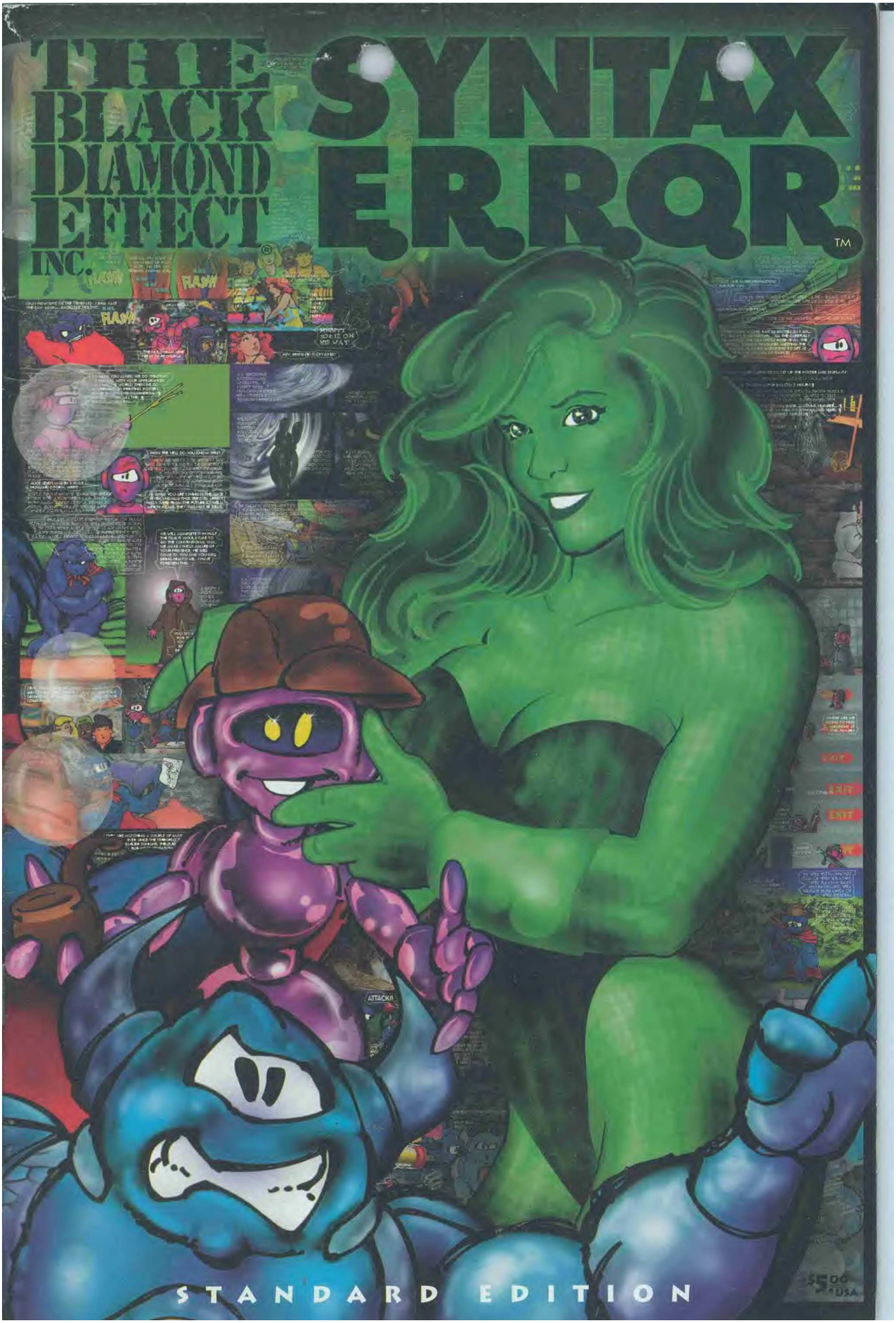
Paul Herbert
Reg. No. 27,278

PH/kmm
Encl.
Ret. Ack. Card

US PATENT & TRADEMARK OFFICE
1999 JAN 19 P 4:27
TRADEMARK FEE PROCESS.
RECEIVED

THE BLACK DIAMOND EFFECT INC.

SYNTAX ERROR™



STANDARD EDITION

$5.00 USA

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

NOTICE OF PUBLICATION UNDER 12(a)

1. Serial No.:
74/105,039

2. Mark:
THE BLACK DIAMOND EFFECT

3. Applicant:
Gatsis, George Peter

4. Publication Date:
NOV. 24, 1992

The mark of the application identified appears to be entitled to registration. The mark will, in accordance with Section 12(a) of the Trademark Act of 1946, as amended, be published in the Official Gazette on the date indicated above for the purpose of opposition by any person who believes he will be damaged by the registration of the mark. If no opposition is filed within the time specified by Section 13(a) of the Statute or by rules 2.101 or 2.102 of the Trademark Rules, the Commissioner of Patents and Trademarks may issue a certificate of registration.

Copies of the trademark portion of the Official Gazette containing the publication of the mark may be obtained at $9.50 each for domestic orders, or at $11.88 each for foreign orders from:

The Superintendent of Documents
U.S. Government Printing Office
Washington,D.C. 20402

By direction of the Commissioner.

Christina Maciw
Riches, McKenzie & Herbert
Suite 2900
2 Bloor Street East
Toronto, Ontario, Canada M4W 3J5

LICATION/REGISTRATION R... ...RK SHEET

Ms Lisa Venson LO-11 Date: 8/31/92 Serial No.

This application was reviewed for publication/registration. All information in the database matches all information contained in the file wrapper and no corrections to the database were required.

(Signature)

INSTRUCTIONS. If information in the data base does not match information in the file wrapper, the reviewer should check (√) in Column 2. After correction (text editing), Column 3 should be checked (√). **NOTE: RETAIN IN FILE WR**

1 Screen Code	2 Error √	3 Edited √	4 Error Found During Review Requiring Amendment of:
MK			Mark Words ( ) Drawing Code (t
AM			Mark Type:
			Register:
			Amended Register ? ( ) Date Register Amended:
CL			Prime Classification
			Class Status: Active ( ) Inactive ( ) Class Status Date:
	✓	✓	International Class: Add ( ) Delete ( ) Reclassify ( )
	✓	✓	U.S. Class: Add ( ) Delete (✓) Reclassify ( )
			Date of First Use:
			Date of First Use in Commerce:
AF			Use in Another Form: Prime Class ( )
GS			Goods and Services
CS			Certification Statement
AT			Attorney Name
CD			Correspondence: Name ( ) Internal & Street Address ( ) City & State or Country ( )
DR			Domestic Representative
CU			Concurrent Use Statement
DM			Description of Mark Statement
D1/DØ			Disclaimer
LS			Lining and Stippling Statement
NØ			Name/Portrait Description/Consent Statement
TF			Section 2(f): Entire Mark ( ) In Part ( ) Limitation Statement ( )
TR			Translation of Words in Mark Statement
FN			Foreign Entry Number:
			Country of Origin:
			Foreign Application Number: Filing Date:
	✓	✓	Foreign Registration Number: Registration Date: ✓
	✓		Foreign Registration Expiration Date:
			Renewed: Foreign Registration Number: Renewal Date:
			Renewed: Foreign Registration Expiration Date:
			Priority Claimed: Section 44(d)
NC99			Assignment or Name Change
PR			Prior U.S. Registrations: Registration Numbers:
PY			Applicant: Name
PY/EN			Applicant: Entity Type ( ) Entity Statement ( )
PY			Applicant: Citizenship
CO			Composed of Statement:
DB			Doing Business As (DBA) or Also Known As (AKA) Statement:
PY			Applicant: Address: Internal ( ) Street ( ) City ( ) State/Country ( ) Zip Co

Other:

yy 9/3/92

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

SERIAL NO.	APPLICANT	PAPER NO.
74/105039	Gatsis, George Peter	

MARK
THE BLACK DIAMOND EFFECT

ADDRESS
Christina Maciw
Riches, McKenzie & Herbert
Suite 2900
2 Bloor Street East
Toronto, Ontario, Canada M4W 3J5

ACTION NO. 04

MAILING DATE 07/09/92

REF. NO. M-5115

ADDRESS
COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

The address of all correspondence not containing fee payments should include the words "Box 5."

Please furnish the following in all correspondence:
1. Your telephone number and ZIP code.
2. Mailing date of this action.
3. Examining Attorney's name and Law Office number.

FORM PTO-1525 (5-90) U.S. DEPT. OF COMM. PAT. & TM OFFICE

TRADEMARK INTERVIEW AND AMENDMENT RECORD

EXAMINING ATTORNEY	PERSON CALLED/INTERVIEWED	
Howard B.Levine	Christina Maciw	☐ APPLICANT ☒ ATTORNEY

☐ PERSONAL INTERVIEW ☒ TELEPHONE CALL	INTERVIEW DATE	AREA CODE	TELEPHONE NUMBER
	7/9/92	416	961-5000

CALL RECORD

1. ☐ PRIORITY ACTION: To comply with stated application requirements, Applicant or Applicant's attorney has two months from the above mailing date for this case to be given priority as an amended case. If Applicant or Applicant's attorney does not respond within two months, a proper response must still be made within SIX MONTHS from the mailing date in order to avoid ABANDONMENT.

2. ☒ EXAMINER'S AMENDMENT: In accordance with the authorization granted by the above Applicant or attorney, the application has been amended as indicated below. No response is necessary unless there is an objection to the amendment.

3. ☐ The Examining Attorney has searched the Office records and has found no similar registered or pending marks which would bar registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052 (d) (1986).

The Section 1(b) basis is deleted from the application. Done

EXAMINING ATTORNEY SIGNATURE — *LAW OFFICE* 11 — *PHONE* (703) 308-9111 x38

Howard B. Levine
NAME

FORM PTO-1398 (REV. 9-89) U.S. DEPARTMENT OF COMMERCE-Patent and Trademark Office

Lisa Venson

RUCTION: If date in rmation must be amended, the R&A Clerk should k ( ) the "Amended" colu . The text Editor shou check ( ) the ered" column after the amendment has been entered in the data base.

.IN IN FILE WRAPPER 7-7-92

·een :de	Amended	Entered	Amendment To:
AM			Amended To-Register:
·Y			Applicant: ( ) Name ( ) Address ( ) Entity Type ( ) Citizenship/State of Inc.
:N			Entity Statement:
IC			Assignment or Name Change Statement:
AT			Attorney Name:
:S			Certification Statement:
:O			Composed of Statement:
:U			Concurrent Use Statement:
:D			Correspondence: ( ) Name: ( ) Address:
:L			Date of First Use:
:L			Date of First Use In Commerce:
DM			Description of Mark Statement:
DB			Doing Business As (DBA) or (AKA) Statement
1/DO			Disclaimer:
DR			Domestic Representative:
AM			Filing Date:
FN			Foreign Registration: ( ) Country: ( ) App. Date: ( ) Reg. Date: ( ) Renewal Date:
L/GS			Goods and Services:
CL			International Class:
LS			Lining and Stippling Statement:
MK			Mark Drawing C: New Drawing: Yes( ) No( )
AM			Mark Type
NO			Name/Portrait Description Statement:
PR			Prior U.S. Registrations:
TF			Section 2(f): ( ) Entire Mark ( ) In Part ( ) Limitation Statement
TR			Translation Statement:
CL			U.S. Class:
AF			Use in Another Form:

.er Information or Amendments:

NO AMENDING REQUIRED (X)

. indicted amendments have been entered in the data base in accordance :h the above instructions and text editing guidelines.

_____ Date: _____

SUS 6-18-92

TM 9

RICHES, McKENZIE & HERBERT

SUITE 2900
2 BLOOR STREET EAST
TORONTO, CANADA
M4W 3J5

TELEPHONE (416) 961-5000
FAX (416) 961-5081
CABLE "PATENTS TORONTO"
TELEX: 06-23677

BARRISTERS & SOLICITORS
PATENT & TRADE MARK AGENTS

PAUL HERBERT, B.SC.(PHM.), LL.B.
R. BRANT LATHAM, B.A.SC.(CHEM.ENG.), LL.B., P.ENG.
DAN HITCHCOCK, B.ENG., LL.B., P.ENG.
CHRISTINA D. MACIW, B.A., LL.B., LL.L.*
GARY M. TRAVIS, B.SC.(GEOL.), LL.B.
JEFF PERVANAS, B.A.SC.(ENG.SCI.), LL.B.

PATENT & TRADE MARK AGENT
C. BRIAN BARLOW, A.R.I.C., D.PHIL.

*ALSO OF THE BAR OF QUEBEC

CONTINUING THE PRACTICE OF
GEORGE H. RICHES AND ASSOCIATES
ESTABLISHED 1887

MAIL ROOM JUN 25 1992 TRADEMARK

June 22, 1992

U.S. Commissioner of Patents
and Trade Marks
Box 5
Washington, D.C., U.S.A.
20231

T.M.E.O. LAW OFFICE II RECEIVED 92 JUN 29 PM 2:34

Re: George Peter Gatsis
U.S. Trade Mark Application
Trade Mark: THE BLACK DIAMOND EFFECT
Serial No.: 74/105039
Examining Attorney: Howard B. Levine
Law Office II
Mailing Date of Action: October 28, 1991
Our Case : T125790

Dear Sirs:

Enclosed is the certified copy of the Canadian registration number 398,451.

Favourable consideration is respectfully requested.

Yours very truly,

RICHES, McKENZIE & HERBERT

Christina Maciw

Christina D. Maciw

CDM:njk
Encl.
Ret.Ack.Card

Consumer and Corporate Affairs Canada

Consommation et Corporations Canada

Trade-marks

Marques de commerce

MAIL ROOM
JUN 25 1992
67
PAT. & TRADEMARK OFF.

CERTIFICATE OF AUTHENTICITY

CERTIFICAT D'AUTHENTICITÉ

The undersigned hereby certifies that the attached is a true copy of the record of the registration of the trade-mark registered under No. 398,451 in accordance with the Trade-marks Act.

Le (la) soussigné(e) certifie par la présente que le document ci-joint est une copie authentique

In accordance with the provisions of the Trade-marks Act, this trade-mark is registered for 15 years from the registration date or the latest renewal date shown on the attached particulars of registration.

Conformément aux dispositions de la Loi sur les marques de commerce, la présente marque de commerce est enregistrée pour une période de 15 ans à compter de la date d'enregistrement ou de la dernière date de renouvellement indiquée sur la copie de l'enregistrement ci-jointe.

June 5, 1992

Date

E. Homick

Certifying Officer

Agent attitré

Canada

7530-21-936-3397 (11-91) 44

APPL'N/DEM. NO **658 204** REGISTRATION/ENREGISTREMENT NO **TMA398,451**

FILING DATE/DATE DE PRODUCTION: 23 MAY/MAI 1990
REGISTRATION DATE/DATE D'ENREGISTREMENT: 22 MAY/MAI 1992

REGISTRANT/PROPRIETAIRE ORIGINAL:

GEORGE PETER GATSIS,
19 LORD ROBERTS DRIVE,
SCARBOROUGH,
ONTARIO
M1K 3W1

REP FOR SERVICE/REP POUR SIGNIFICATION:
RICHES, MCKENZIE & HERBERT,
SUITE 2900,
2 BLOOR STREET EAST,
TORONTO
ONTARIO M4W 3J5

TRADE MARK/MARQUE DE COMMERCE:

THE BLACK DIAMOND EFFECT

WARES/MARCHANDISES:
(1) Comic books.

Declaration of use filed 08 APR/AVR 1992 on wares.

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

SERIAL NO.	APPLICANT	PAPER
74/105039	Gatsis, George Peter	

MARK
THE BLACK DIAMOND EFFECT

ADDRESS
Christina Maciw
Riches, McKenzie & Herbert
Suite 2900
2 Bloor Street East
Toronto, Ontario, Canada M4W 3J5

ACTION NO. 04

MAILING DATE 06/18/92

REF. NO. M-5115

ADDRESS
COMMISSIONER OF PATENTS
AND TRADEMARKS
Washington, D.C. 20231

The address of all correspondence not containing fee payments should include the words "Box 5."

Please furnish the following in all correspondence:
1. Your telephone number and ZIP code.
2. Mailing date of this action.
3. Examining Attorney's name and Law Office number.

FORM PTO-1525 (5-90) U.S. DEPT. OF COMM. PAT. & TM OFFICE

☐ 1. Action on this application is suspended pending the disposition of:

☐ Cancellation No. (s). _____ ☐ Opposition No. (s). _____
☐ Civil Action No. (s). _____ ☐ Concurrent Use No. (s). _____

Upon termination of the above, applicant, if a party thereto, should advise the Examining Attorney of the outcome of the proceeding.

☐ Application Serial No.(s) _____

Since applicant's effective filing date is subsequent to the effective filing date of the above-identified application(s), the latter, if and when it registers, may be cited against this application. See 37 C.F.R. §2.83. A copy of information relevant to this pending application(s) ☐ is attached ☐ was sent previously.

☒ 2. Action on this application is suspended pending receipt of a certification or a certified copy of the registration in the country of origin of applicant. If the registration is in a foreign language, an English translation must be submitted. The certification or certified copy of the registration should be forwarded to the Examining Attorney as soon as possible. If the foreign application is abandoned, the Examining Attorney should be so advised.

☐ 3. It is noted that an assignment involving this application is presently pending before the Office. Action is suspended on this application pending recordation of the assignment. This application will be removed from suspended status upon recordation of the assignment. Notification of recordation is normally done through Office channels. However, upon receipt of the reel and frame number of the assignment, applicant should so advise the Examining Attorney. See 37 C.F.R. §2.185.

☐ 4. The following refusals/requirements are continued:

EXAMINING ATTORNEY SIGNATURE	LAW OFFICE	PHONE
	11	(703) ~~557~~ 308-9111 x38

Howard B. Levine
NAME

FORM PTOL-373 (REV. 9-89) U.S. DEPARTMENT OF COMMERCE-Patent and Trademark Office

AMENDMENT WORK SHEET

Name KARON SELDON Ofc 12 Date 6.11.92 Serial No.

ISTRUCTION: If date information must be amended, the R&A Clerk should heck ( ) the "Amended" column. The text Editor should check ( ) the Entered" column after the amendment has been entered in the data base. TAIN IN FILE WRAPPER

Screen Code	Amended	Entered	Amendment To:
AM			Amended To-Register:
PY			Applicant: ( ) Name ( ) Address ( ) Entity Type ( ) Citizenship/State of Inc.
EN			Entity Statement:
NC			Assignment or Name Change Statement:
AT			Attorney Name:
CS			Certification Statement:
CO			Composed of Statement:
CU			Concurrent Use Statement:
CD			Correspondence: ( ) Name: ( ) Address:
CL			Date of First Use:
CL			Date of First Use In Commerce:
DM			Description of Mark Statement:
DB			Doing Business As (DBA) or (AKA) Statement
D1/D0			Disclaimer:
DR			Domestic Representative:
AM			Filing Date:
FN			Foreign Registration: ( ) Country: ( ) App. Date: ( ) Reg. Date: ( ) Renewal Date:
CL/GS			Goods and Services:
CL			International Class:
LS			Lining and Stippling Statement:
MK			Mark Drawing C: New Drawing: Yes( ) No( )
AM			Mark Type
NO			Name/Portrait Description Statement:
PR			Prior U.S. Registrations:
TF			Section 2(f): ( ) Entire Mark ( ) In Part ( ) Limitation Statement
TR			Translation Statement:
CL			U.S. Class:
AF			Use in Another Form:

ner Information or Amendments:

NO AMENDING REQUIRED ( )

l indicted amendments have been entered in the data base in accordance ch the above instructions and text editing guidelines.

Date:

ARD 5-7-92

MAIL ROOM 82 JUN 1 1992 PAT. & TRADE MARK OFF.

RICHES, McKENZIE & HERBERT

SUITE 2900
2 BLOOR STREET EAST
TORONTO, CANADA
M4W 3J5

TELEPHONE (416) 961-5000
FAX (416) 961-5081

CABLE "PATENTS TORONTO"
TELEX: 06-23677

BARRISTERS & SOLICITORS
PATENT & TRADE MARK AGENTS

PAUL HERBERT, B.Sc., PHM., LL.B.
R. BRANT LATHAM, B.A.Sc.(CHEM.ENG.), LL.B., P.ENG.
DAN HITCHCOCK, B.ENG., LL.B., P.ENG.
CHRISTINA D. MACIW, B.A., LL.B., LL.L.*
GARY M. TRAVIS, B.Sc.(GEOL.), LL.B.
JEFF PERVANAS, B.A.Sc.(ENG.SCI.), LL.B.

PATENT & TRADE MARK AGENT
C. BRIAN BARLOW, A.R.I.C., D.PHIL.

*ALSO OF THE BAR OF QUEBEC

CONTINUING THE PRACTICE OF
GEORGE H. RICHES AND ASSOCIATES
ESTABLISHED 1887

May 26, 1992

U.S. Commissioner of Patents
and Trade Marks
Box 5
Washington, D.C., U.S.A.
20231

T.M.E.O. LAW OFFICE 11
92 JUN -5 PM 3:09
RECEIVED

Re: George Peter Gatsis
U.S. Trade Mark Application
Trade Mark: THE BLACK DIAMOND EFFECT
Serial No.: 74/105039
Examining Attorney: Howard B. Levine
Law Office II
Mailing Date of Action: October 28, 1991
Our Case : T125790

Dear Sirs:

The Canadian application has proceeded to the registration stage and once we are in receipt of the registration, a certified copy will be ordered.

We will advise you accordingly.

Yours very truly,

RICHES, McKENZIE & HERBERT

Christina Maciw

Christina D. Maciw

CDM:njk
Encl.
Ret.Ack.Card

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

SERIAL NO. 74/105039	**APPLICANT** Gatsis, George Peter	PAPER NO.
MARK THE BLACK DIAMOND EFFECT		ADDRESS COMMISSIONER OF PATENTS AND TRADEMARKS Washington, D.C. 20231
ADDRESS Christina Maciw Riches, McKenzie & Herbert Suite 2900 2 Bloor Street East Toronto, Ontario, Canada M4W 3J5	**ACTION NO.** 04 **MAILING DATE** 05/07/92 **REF. NO.** M-5115	The address of all correspondence not containing fee payments should include the words "Box 5."
		Please furnish the following in all correspondence: 1. Your telephone number and ZIP code. 2. Mailing date of this action. 3. Examining Attorney's name and Law Office number.

FORM PTO-1525 (5-90) U.S. DEPT. OF COMM. PAT. & TM OFFICE

THIS APPLICATION WILL BE ABANDONED IF A PROPER RESPONSE TO THIS OFFICE ACTION IS NOT RECEIVED WITHIN SIX MONTHS FROM THE ABOVE MAILING DATE.

☒ Action on this application was suspended pending receipt of a certification or a certified copy of the Certificate of Registration in the country of origin of applicant. The applicant must indicate the status of the relevant foreign application.

☐ Action on this application was suspended pending termination of civil litigation. The applicant must indicate the status of the relevant civil litigation.

EXAMINING ATTORNEY SIGNATURE — *LAW OFFICE* 11 — *PHONE* (703) ~~557~~ 308-9111 ex. 58

NAME Howard B. Levine

FORM PTOL-372 (REV. 9-89) U.S. DEPARTMENT OF COMMERCE-Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

SERIAL NO.	APPLICANT	PAPER
74/105039	Gatsis, George Peter	
MARK		ADDRESS
THE BLACK DIAMOND EFFECT		COMMISSIONER OF PATENTS AND TRADEMARKS Washington, D.C. 20231
ADDRESS	**ACTION NO.** 04	The address of all correspondence not containing fee payments should include the words "Box 5."
Christina Maciw Riches, McKenzie & Herbert Suite 2900 2 Bloor Street East Toronto, Ontario, Canada M4W 3J5	**MAILING DATE** 10/28/91	Please furnish the following in all correspondence: 1. Your telephone number and ZIP code. 2. Mailing date of this action. 3. Examining Attorney's name and Law Office number.
FORM PTO-1525 (5-90) U.S. DEPT. OF COMM. PAT. & TM OFFICE	**REF. NO.** N-5115	

☐ 1. Action on this application is suspended pending the disposition of:

☐ Cancellation No. (s). _____ ☐ Opposition No. (s). _____
☐ Civil Action No. (s). _____ ☐ Concurrent Use No. (s). _____

Upon termination of the above, applicant, if a party thereto, should advise the Examining Attorney of the outcome of the proceeding.

☐ Application Serial No.(s) _____

Since applicant's effective filing date is subsequent to the effective filing date of the above-identified application(s), the latter, if and when it registers, may be cited against this application. See 37 C.F.R. §2.83. A copy of information relevant to this pending application(s) ☐ is attached ☐ was sent previously.

☒ 2. Action on this application is suspended pending receipt of a certification or a certified copy of the registration in the country of origin of applicant. If the registration is in a foreign language, an English translation must be submitted. The certification or certified copy of the registration should be forwarded to the Examining Attorney as soon as possible. If the foreign application is abandoned, the Examining Attorney should be so advised.

☐ 3. It is noted that an assignment involving this application is presently pending before the Office. Action is suspended on this application pending recordation of the assignment. This application will be removed from suspended status upon recordation of the assignment. Notification of recordation is normally done through Office channels. However, upon receipt of the reel and frame number of the assignment, applicant should so advise the Examining Attorney. See 37 C.F.R. §2.185.

☐ 4. The following refusals/requirements are continued:

H. B. James	11	(703) 308-9111 ex.78
EXAMINING ATTORNEY SIGNATURE	*LAW OFFICE*	*PHONE*
Howard B. Levine		
NAME		

AMENDMENT WORK SHEET

Name Robinson Ofc: Date: 10/8 Serial No.

INSTRUCTION: If data information must be amended, the R&A Clerk should check ( ) the "Amended" column. The text Editor should check ( ) the "Entered" column after the amendment has been entered in the data base. RETAIN IN FILE WRAPPER

Screen Code	Amended	Entered	Amendment To:
AM			Amended To-Register:
PY			Applicant: ( ) Name ( ) Address ( ) Entity Type ( ) Citizenship/State of Inc.
EN			Entity Statement:
NC			Assignment or Name Change Statement:
AT			Attorney Name:
CS			Certification Statement:
CO			Composed of Statement:
CU			Concurrent Use Statement:
CD			Correspondance: ( ) Name: ( ) Address:
CI			Date of First Use:
CL			Date of First Use In Commerce:
DM			Description of Mark Statement:
DB			Doing Business As (DBA) Or (AKA) Statement
DI/DO			Disclaimer:
DR			Domestic Representative:
AM			Filing Date:
FN			Foreign Registration: ( ) Country: ( ) App. Date: ( ) Reg. Date: ( ) Renewal Date:
CL/GS			Goods and Services:
CL			International Class:
LS			Lining and Stippling Statement:
MK			Mark Drawing C: New Drawing: Yes( ) No( )
AM			Mark Type
NO			Name/Portrait Description Statement:
PR			Prior U.S. Registrations:
TF			Section 2(f): ( ) Entire Mark ( ) In Part ( ) Limitation Statement
TR			Translation Statement:
CL			U.S. Class:
AF			Use in Another Form:

Other Information or Amendments:

NO AMENDING REQUIRED (✓)

All indicated amendments have been entered in the data base in accordance with the above instructions and text editing guidelines.

Date:

TM

MAIL ROOM
SEP 13 1991
52
PAT. & TRADEMARK OFF.

RICHES, MCKENZIE & HERBERT

BARRISTERS & SOLICITORS
PATENT & TRADE MARK AGENTS

PAUL HERBERT, B.Sc.,PHM.,LL.B.
R. BRANT LATHAM, B.A.Sc.(CHEM.ENG.),LL.B.,P.ENG.
DAN HITCHCOCK, B.ENG.,LL.B.,P.ENG.
CHRISTINA D. MACIW, B.A.,LL.B.,LL.L.*
GARY M. TRAVIS, B.Sc.(GEOL.),LL.B.

PATENT & TRADE MARK AGENT
C. BRIAN BARLOW, A.R.I.C.,D.PHIL.

*ALSO OF THE BAR OF QUEBEC

SUITE 2900
2 BLOOR STREET EAST
TORONTO, CANADA
M4W 3J5

TELEPHONE (416) 961-5000
FAX (416) 961-5081

CABLE "PATENTS TORONTO"

TELEX: 06-23677

CONTINUING THE PRACTICE OF
GEORGE H. RICHES AND ASSOCIATES
ESTABLISHED 1887

4

September 10, 1991

U.S. Commissioner of Patents
and Trade Marks
Washington, D.C., U.S.A.
20231

Re: George Peter Gatsis
U.S. Trade Mark Application
Trade Mark: THE BLACK DIAMOND EFFECT
Serial No.: 74/105039
Examining Attorney: Howard B. Levine
Law Office II
Mailing Date of Action: August 12, 1991
Our Ref. : T125790

Dear Sir:

This is to advise you that the Canadian application has been advertised, however, it has not yet proceeded to registration. A certified copy of the registration will be forwarded to you as soon as it is available.

Yours very truly,

RICHES, McKENZIE & HERBERT

Christina Maciw

Christina D. Maciw

CDM:njk
Encl.
Ret.Ack.Card

T.M.E.O.
LAW OFFICE 11
91 SEP 18 AM 9:45
RECEIVED

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

SERIAL NO. 74/105039	**APPLICANT** Gatsis, George Peter
MARK THE BLACK DIAMOND EFFECT	
ADDRESS Christina Maciw Riches, McKenzie & Herbert Suite 2900 2 Bloor Street East Toronto, Ontario, Canada M4W 3J5	**ACTION NO.** 03 **MAILING DATE** 08/12/91 **REF. NO.** M-5115

FORM PTO-1525 (5-90) U.S. DEPT. OF COMM. PAT. & TM OFFICE

PAPER NO.

ADDRESS

Commissioner of Patents
and Trademarks
Washington, D. C. 20231

The address of all correspondence not containing fee payments should include the words "Box 5."

Please furnish the following in all correspondence:
1. Your telephone number and zip code.
2. Mailing date of this action.
3. Examining Attorney's name and Law Office number.

Action on this application was suspended pending receipt of a certification or certified copy of the Certificate of Registration in the country of origin of applicant and/or termination of inter partes proceedings. Inquiry is made as to the status of prosecution of the foreign application and/or inter partes proceedings.

EXAMINING ATTORNEY Howard B. Levine	LAW OFFICE 11	PHONE (703) ~~557~~ 308-4111 ex.38

A proper response to this Office action must be received within 6 months from the date of this action in order to avoid ABANDONMENT.

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

SERIAL NO.	APPLICANT
74/105039	Gatsis, George Peter

MARK
THE BLACK DIAMOND EFFECT

ADDRESS
Christina Maciw
Riches, McKenzie & Herbert
Suite 2900
2 Bloor Street East
Toronto, Ontario, Canada M4W 3J5

ACTION NO. 02

MAILING DATE 02/26/91

REF. NO. M-5115

PAPER NO.

ADDRESS
COMMISSIONER OF PATENTS
AND TRADEMARKS
Washington, D.C. 20231

The address of all correspondence not containing fee payments should include the words "Box 5."

Please furnish the following in all correspondence:
1. Your telephone number and zip code.
2. Mailing date of this action.
3. Examining Attorney's name and Law Office number.

FORM PTO-1525 (5-90) U.S. DEPT. OF COMM. PAT. & TM OFFICE

☐ 1. Applicant's request for suspension of action by this Office is granted. Action is suspended for _____ months from the mailing date of this communication.

☐ 2. Action on this application is suspended pending the termination of

☐ Cancellation No(s). _____
☐ Civil Action No(s). _____
☐ Opposition No(s). _____

When the proceeding(s) is terminated, applicant, if a party thereto, should advise the Examining Attorney of the termination and the outcome of the proceeding. (Semi-annual inquiry may be made as to the status of the inter partes proceeding.)

☒ 3. Action on this application is suspended pending receipt of a certification or certified copy of the registration in the country of origin of the applicant. If the registration is in a foreign language, an English translation must be submitted. The certification or certified copy of the registration should be forwarded to the Examining Attorney as soon as possible. If the foreign application is abandoned, the Examining Attorney should be advised. (Semi-annual inquiry may be made as to the status of the foreign application.)

☐ 4. Action on this application is suspended pending the disposition of application No. _____

☐ 5. Since applicant's effective filing date is subsequent to the effective filing date of the application referred to in No. 4 above, the latter, if and when it matures into a registration, will be cited against this application. See 37 CFR §2.83. A copy of information relevant to this pending application is attached.

☐ 6. It is noted that an assignment, involving this application, is presently pending before the Office. Action is suspended on this application pending recordation of the assignment. This application will be removed from suspension upon recordation of the assignment. Notification of recordation will normally be done through Office channels. However, upon receipt of the Reel and Frame number of the assignment, applicant may advise the Examining Attorney.

Examining Attorney	Law Office	Phone
Howard R. Levine	7	(703) ~~557~~ 308 3334

PTOL-373 (Rev. 3-88)

AMENDMENT WORK SHEET

Name: Elsie BRADley Ofc: 7 Date: _____ Serial No. _____

INSTRUCTIONS: If data base information must be amended, the R&A Clerk should check (√) the "Amended" column. The text editor should check (√) the "Entered" column after the amendment has been entered in the data base. ***RETAIN IN FILE WRAPPER***

Screen Code	Amended √	Entered √	Amendment To:
AM			Amended To - Register:
PY			Applicant: [ ] Name [ ] Address [ ] Entity Type [ ] Citizenship/State of Incorporation
EN			Entity Statement:
NC			Assignment or Name Change Statement:
AT			Attorney Name:
CS			Certification Statement:
CO			Composed of Statement:
CU			Concurrent Use Statement:
CD			Correspondence: [ ] Name: [ ] Address:
CL			Date of First Use:
CL			Date of First Use in Commerce:
DM			Description of Mark Statement:
DB			Doing Business As (DBA) or Also Known As (AKA) Statement:
D1/D0			Disclaimer:
DR			Domestic Representative:
AM			Filing Date:
FN			Foreign Registration: [ ] Country: [ ] Application Date: [ ] Registration Date: [ ] Renewal Date:
CL/GS	√	√	Goods and Services:
CL			International Class:
LS			Lining and Stippling Statement:
MK			Mark Drawing Code: New Drawing: [ ] Yes [ ] No
AM			Mark Type:
NØ			Name/Portrait Description Statement:
PR			Prior U.S. Registrations:
TF			Section 2(f): [ ] Entire Mark [ ] In Part [ ] Limitation Statement
TR			Translation Statement:
CL			U.S. Class:
AF			Use in Another Form:

Other Information or Amendments:

All indicated amendments have been entered in the data base in accordance with the above instructions and text editing guidelines: LG (Text Editor) Date: 2/25/91

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

SERIAL NO. 74/105039	**APPLICANT** Gatsis, George Peter
MARK THE BLACK DIAMOND EFFECT	
ADDRESS Christina Maciw Riches, McKenzie & Herbert Suite 2900 2 Bloor Street East Toronto, Ontario, Canada M4W 3J5	**ACTION NO.** 01 **MAILING DATE** 02/14/91 **REF. NO.** M-5115

FORM PTO-1525 (5-90) U.S. DEPT. OF COMM. PAT. & TM OFFICE

PAPER NO.

ADDRESS
COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

The address of all correspondence not containing fee payments should include the words "Box 5."

Please furnish the following in all correspondence:
1. Your telephone number and ZIP code.
2. Mailing date of this action.
3. Examining Attorney's name and Law Office number.

Christi

TRADEMARK INTERVIEW AND AMENDMENT RECORD

EXAMINING ATTORNEY	PERSON CALLED/INTERVIEWED	
Howard B. Levine	Richard Schwartz	☐ APPLICANT ☒ ATTORNEY

☐ PERSONAL INTERVIEW ☒ TELEPHONE CALL	INTERVIEW DATE	AREA CODE	TELEPHONE NUMBER
	2/12/91	214	770-2400

CALL RECORD

1. ☐ PRIORITY ACTION: To comply with stated application requirements, Applicant or Applicant's attorney has two months from the above mailing date for this case to be given priority as an amended case. If Applicant or Applicant's attorney does not respond within two months, a proper response must still be made within SIX MONTHS from the mailing date in order to avoid ABANDONMENT.

2. ☒ EXAMINER'S AMENDMENT: In accordance with the authorization granted by the above Applicant or attorney, the application has been amended as indicated below. No response is necessary unless there is an objection to the amendment.

3. ☒ The Examining Attorney has searched the Office records and has found no similar registered or pending marks which would bar registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052 (d) (1986).

The identification of goods is amended to: cartoon science-fiction books and comic books 16/38

EXAMINING ATTORNEY SIGNATURE	7 *LAW OFFICE*	(703) ~~557~~ 308-3334 *PHONE*
Howard B. Levine *NAME*		

FORM PTO-1398 (REV. 9-89) U.S. DEPARTMENT OF COMMERCE-Patent and Trademark Office

1/0/spec

175,00-301-TM
74 105039

MAIL ROOM
60 OCT 9 1990
PAT. & TRADEMARK OFF.

IN THE UNITED STATES PATENT AND TRADE MARK OFFICE

APPLICATION FOR REGISTRATION OF A TRADE MARK/SERVICE MARK

MARK: **THE BLACK DIAMOND EFFECT**
INT. CLASS NO.: 16

TO: U.S. Commissioner of Patents
and Trade Marks
Washington, D.C., U.S.A.
20231

1. **APPLICANT**

Applicant's Name: George Peter Gatsis

Applicant's Business Address:

19 Lord Roberts Drive
Scarborough, Ontario M1K 3W1
Canada

Applicant's Entity:

Individual: Applicant's entity is as an individual who is a citizen of Canada.

2. **GOODS:**

The applicant hereby requests registration of the trade mark identified above, and shown in the accompanying drawing, in the United States Patent and Trade Mark Office on the Principal Register established by the Trademark Act of July 5, 1946 (15 U.S.C. 1051 et seq., as

amended) for the following goods:

(GS) 016

goods: Class 16: ~~books and comic books~~ SUBJECT MATTER NEEDED 16/38 KB

3. **BASIS FOR APPLICATION**

3.1 Intended Use: The applicant has a bona fide intention to use the mark in commerce on or in connection with the above identified goods [15 U.S.C. 1051(b), as amended].

The manner or mode of intended use of the mark on or in connection with the goods is:

labels, printed on the goods and on advertising and promotional material

3.2 Foreign Application: The applicant has a bona fide intention to use the mark in commerce on or in connection with the above identified goods/services, and asserts a claim of priority in accordance with 15 U.S.C. 1126(d), as amended, based upon a foreign application:

filed in : Canada

on a filing date of: May 23, 1990

under Serial Number: 658,204

4. **APPOINTMENT**

Applicant appoints the firm of:

RICHES, McKENZIE & HERBERT

and the following members thereof, namely:

R. Dale McKenzie
Paul Herbert
R. Brant Latham
P. Daniel Hitchcock
Christina Maciw

all of whom are members of the bar of the Province of Ontario, Canada to prosecute this application to register, to transact all business in the Patent and Trade Marks Office in connection therewith and to receive the Certificate of Registration.

Correspond wi~~th:~~

AI

CA

Christina Maciw
RICHES, McKENZIE & HERBERT
Suite 2900
2 Bloor Street East
Toronto, Ontario, Canada
M4W 3J5
Tel. (416) 961-5000

5. **REPRESENTATIVE**

DR

Glasser, Griggs and Schwartz and Richard Schwartz whose full post office address is Three Lincoln Centre, 5430 LBJ Freeway, Suite 1540, Dallas, Texas, 75240, United States of America, are hereby designated applicant's representatives upon whom service of notices or process in proceedings affecting the trade mark may be served.

6. **DECLARATION**

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or

imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trade mark sought to be registered, or, if the application is being filed under 15 U.S.C. 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the above identified mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Date

Sep 6/17/1990

Name: George Peter Gatsis

74 105039

MAIL ROOM
60 OCT 9 1990
PAT. & TRADEMARK OFF.

GLASER, GRIGGS & SCHWARTZ
ATTORNEYS AT LAW

THREE LINCOLN CENTRE
5430 LBJ FREEWAY, SUITE 1540
DALLAS, TEXAS 75240

(214) 770-2400

KENNETH R. GLASER
DENNIS T. GRIGGS
RICHARD L. SCHWARTZ
DANIEL V. THOMPSON
DANIEL RUBIN
W. KIRK MCCORD

PATENT, TRADEMARK
COPYRIGHT & RELATED MATTERS

FAX: (214) 770-2406
CABLE: GGSUSA

October 2, 1990

Commissioner of Patents
and Trademarks
Washington, D.C. 20231

Re: U.S. Trademark Application
"THE BLACK DIAMOND EFFECT"
International Class 16
Our File: M-5115

Dear Sir:

Enclosed for filing is an "intent to use" U.S. Trademark Application by George Peter Gatsis for registration of the trademark:

"THE BLACK DIAMOND EFFECT"

Enclosed with this application is one (1) drawing.

Our check in the amount of $175.00 in payment of the filing fee is also enclosed.

Please date stamp the enclosed postcard and return it to us for our records.

Very truly yours,

Richard L. Schwartz

AT

RLS:tdm

Enclosures

RLS\38000\M5115.LTR

TRADEMARK APPLICATION SERIAL NO. 74 105039

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
FEE RECORD SHEET

050 TP 10/18/90 74105039 0 301 175.00 CK

CODING SHEET FOR PSEUDO MARKS AND DESIGN SEARCH CODES

SERIAL NUMBER 74-105039

PSEUDO MARK (PM) _____

_____

DESIGN SEARCH CODE(S) (WIPO) MDC = 1

Verify word mark _____

Verify mark drawing code _____

FORM PTO-1562
(3-87)

TRADEMARK APPLICATION FILE DATA WORKSHEET

NOTES TO DATA ENTRY PERSONNEL

MARK DATA

1.	SERIAL NUMBER	74-105039
2.	FILING DATE	10-09-1990
3.	LAW OFFICE	1
4.	REGISTER TYPE	(1) - Principal 2 - Supplemental
5.	MARK DRAWING CODE	See Coding Sheet for Drawing, Pseudo Marks and Design.
6.	INTENT TO USE	(Y) N
7.	SECTION 2(f)-ENTIRE MARK	Y N
8.	MARK	The Black
9.	ATTORNEY REFERENCE NO	077-33475
10.	ATTORNEY	(AT) in margin, text in [ ].
11.	DOMESTIC REPRESENTATIVE	(DR) in margin, text in [ ].
12.	CORRESPONDENCE ADDRESS	(CA) in margin, text in [ ].

CLASS DATA

0

1.	INTERNATIONAL CLASS	016							
2.	COLLECTIVE TM OR SM	T	S	T	S	T	S	T	S
3.	FEE PAID	(Y)	N	Y	N	Y	N	Y	N
4.	PRIOR US CLASS(ES)	037,038							
5.	1ST USE DATE								
6.	1ST USE IN COMM DATE								
7.	IN ANOTHER FORM CODE	1	2	1	2	1	2	1	2
8.	IN ANOTHER FORM STATEMENT	AF (IAF code) in margin, text in [ ].							
9.	GOODS/ SERVICES	(GS) (International Class) in margin, text in [ ].							
10.	CERITFICATION STATEMENT	CS in margin, text in [ ].							

ENTRY ___ | ENTRY ___ | ENTRY ___ | ENTRY ___ []

(ONLY APPLICATIONS WITH JOINT OWNERS WILL HAVE ENTRY NUMBERS)

1.	NAME	Text in verticle lines. Double verticle lines and entry numbers separate joint owners.			
2.	ENTITY TYPE	01			
3.	ENTITY STATEMENT	EN (entry number) in margin, text in [ ].			
4.	COMPOSED OF STATEMENT	CO (entry number) in margin, text in [ ].			
5.	DBA/AKA/TA STATEMENT	DB (entry number) in margin, text in [ ].			
6.	INTERNAL ADDRESS	AA (entry number) in margin, text marked by verticle lines.			
7.	STREET ADDRESS	AA (entry number) in margin, text marked by verticle lines.			
8.	CITY	AA (entry number) in margin, text marked by verticle lines.			
9.	STATE/COUNTRY CODE	CAX			
10.	ZIP CODE	AA (entry number) in margin, text marked by verticle lines.			
11.	CITIZENSHIP	CAX			

FOREIGN DATA

[]

1.	PRIORITY CLAIMED 44(d)	Y N	Y N	Y N	Y N
2.	COUNTRY CODE	CAX			
3.	FOREIGN APPLICATION NO	658,204			
4.	FOREIGN FILING DATE	05-23-1990			
5.	FOREIGN REGISTRATION NO				
6.	FOREIGN REGISTRATION DATE				
7.	FOREIGN EXPIRATION DATE				
8.	RENEWAL REGISTRATION NO				
9.	RENEWAL DATE				
10.	RENEWAL EXPIRATION DATE				

PRIOR US REGIATRATION DATA

PRIOR US REGISTRATION	PR in margin, registration numbers in [ ].

ADDITIONAL TEXT DATA

TEXT TYPE CODES	CO CU DB DM D0 D1 LS N0 TF TR
TEXT	For PM: See Coding Sheet for Drawing, Pseudo Marks and Design. For all others: code in margin, text in [ ].

DESIGN SEARCH CODE(S) DATA

DESIGN SEARCH CODE(S)	See Coding Sheet for Drawing, Pseudo Marks, and Design.

Trademark Assignment Abstract of Title

Total Assignments: 1

Serial #: 74105039 **Filing Dt:** 10/09/1990 **Reg #:** 1752451 **Reg. Dt:** 02/16/1993

Registrant: Gatsis, George Peter

Mark: THE BLACK DIAMOND EFFECT

Assignment: 1

Reel/Frame: 2852/0634 **Received:** 10/29/2003 **Recorded:** 10/27/2003 **Mailed:** 05/19/2004 **Pages:** 3

Conveyance: ASSIGNS THE ENTIRE INTEREST

Assignor: GATSIS, GEORGE PETER

Exec Dt: 07/25/2002

Entity Type: INDIVIDUAL

Citizenship: NONE

31

Assignee: THE BLACK DIAMOND EFFECT INC.
19 LORD ROBERTS DRIVE
TORONTO, ONTARIO, CANADA M1K 3W1

Entity Type: CORPORATION

Citizenship: CANADA

Correspondent: RICHES MCKENZIE & HERBER LLP
PAUL HERBERT
2 BLOOR STREET EAST
SUITE 1800
TORONTO, ONTARIO, CAX M4W 3J5

Search Results as of: 8/19/2004 11:45:32 A.M.

If you have any comments or questions concerning the data displayed, contact OPR / Assignments at 703-308-9723
Web interface last modified: Oct. 5, 2002

Assignment Data Not Available

For Registration Number: 1752451

Search Results as of: 4/21/2003 12:15:31 P.M.

If you have any comments or questions concerning the data displayed, contact OPR / Assignments at 703-308-9723
Web interface last modified: Oct. 5, 2002

Assignment Data Not Available

For Registration Number: 1752451

Search Results as of: 4/19/2003 9:04:33 A.M.

If you have any comments or questions concerning the data displayed, contact OPR / Assignments at 703-308-9723
Web interface last modified: Oct. 5, 2002

Day : Sunday
Date:
6/13/1999
Time:
09:17:41

PALM INTRANET

Trademark Assignment Patent Number Information for 1752451

Total Assignments : 0

Serial Number : **74/105039**
Date Filed : **10/09/1990**
Related Registration Numbers:
Mark : **THE BLACK DIAMOND EFFECT**
Registrant(s) : **GATSIS, GEORGE PETER**
Reel/Frame(s) :

Registration Number : **1752451**
Date Registered : **02/16/1993**

Search Completed: No More Records to Display.

Search Another:

Serial# [ ] Search **or Registration#** [ ] Search **or Reel/Frame#** [ ] [ ] Search

(To Go BACK Use BACK Button on Your BROWSER Tool Bar)

Back to || ASSIGNMENT || PALM || OASIS || Home Page

MAIL ROOM
60 OCT 9 1990
PAT. & TRADEMARK OFF.

INT. CL. 16
PRIOR US CL. 37, 38

74 105039

THE DRAWING

Applicant's Name: George Peter Gatsis

Applicant's Business Address:

19 Lord Roberts Drive,
Scarborough, Ontario.
M1K 3W1 Canada

Foreign priority application:

Country: Canada Filing Date: May 23, 1990

Serial No.: 658,204

Goods:

books and comic books

THE BLACK DIAMOND EFFECT

PUBLISHED
NOV 24 1992

```
***** USER ID IS ex790120 *****
     # OF MARKS    # DISPLAYED  SEARCH
SS1:          1            1   PHRASCH /OW GATSIS GEORGE
SS2:       1827            3   PHRASCH :BLAC:^:BLAK:
SS3:       1206            3   PHRASCH :DIAMON:
SS4:         65            3   PHRASCH 2&3
SS5:         56           56   PHRASCH 4~DEAD/LD
SS6:        215            3   PHRASCH :EFFEC:^:AFFEC:
SS7:          1            1   PHRASCH 2&6
SS8:          1            1   PHRASCH 3&6
PROG:
TERMINAL SESSION FINISHED 02/07/91  3:48 P.M.  (EASTERN TIME)
ELAPSED TIME ON ACTIVE: 0.13 HRS.
ELAPSED TIME THIS TERMINAL SESSION: 0.13 HOURS.
PLEASE HANG UP YOUR TELEPHONE NOW.  GOOD-BYE!
```

MAIL ROOM
60 OCT 9 1990
PAT. & TRADEMARK OFF.

INT. CL. 16
PRIOR U.S. CL. 37, 38

74 105039

THE DRAWING

Applicant's Name: George Peter Gatsis

Applicant's Business Address:

19 Lord Roberts Drive,
Scarborough, Ontario.
M1K 3W1 Canada

Foreign priority application:

Country: Canada Filing Date: May 23, 1990

Serial No.: 658,204

Goods:

books and comic books

THE BLACK DIAMOND EFFECT

Exhibit 5

THIS OPINION
IS NOT A PRECEDENT OF
THE TTAB

Mailed: 7/28/11

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Bookriff Media Inc.

Serial No. 77537045

P. Jay Hines and Robyn S. Lederman of Cantor Colburn for Bookriff Media Inc.

Charles L. Jenkins Jr., Trademark Examining Attorney, Law Office 105 (Thomas G. Howell, Managing Attorney).

Before Quinn, Ritchie and Lykos, Administrative Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

Bookriff Media Inc. filed an application to register the mark BOOKRIFF (in standard character form) for "electronic publications, namely, fiction and non-fiction books featuring a variety of topics for use by purchasers in the field of self book publishing" (in Class 16); and "book publishing, custom books publishing and online publishing of books; providing a web site featuring on-line publications in the nature of fiction and non-fiction books on a variety of topics; providing a web-based system and

online portal featuring online downloadable and non-downloadable software tools that enables users to access written and visual materials for building books online, to create, share and print custom books, and to make available their own written and visual materials for other users to purchase and use in building custom books" (in Class 41).[1]

The trademark examining attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when applied to applicant's goods and/or services, so resembles the previously registered marks RIF (in typed form) for "newsletters dealing with reading" (in Class 16),[2] and CLUB RIF (in typed form) for "publications, namely, books, guides and lesson plans for use in conducting comprehensive reading and literacy programs which pair teens as mentors with younger children (in Class 16), and for "educational services, namely, conducting comprehensive reading and literacy programs which pair teens as mentors with younger children" (in Class 41),[3] as to be likely to cause confusion. Both registrations are owned by the same

---

[1] Application Serial No. 77537045, filed August 1, 2008, based on Canadian application no. 1383625 filed February 15, 2008; Canadian Registration No. TMA754832 issued December 8, 2009.
[2] Registration No. 1075006, issued October 11, 1977; renewed.
[3] Registration No. 2791448, issued December 9, 2003; combined Sections 8 and 15 affidavit accepted and acknowledged.

entity.

When the refusal was made final, applicant appealed. Applicant and the examining attorney filed briefs.[4]

After briefing, the Board determined that the appeal was not ripe for a final decision and, accordingly, the Board, on June 6, 2011, suspended proceedings on the appeal and remanded the application to the examining attorney. More specifically, the Board remanded the application to the examining attorney for formal consideration of amended identifications of goods and services. On remand, the examining attorney, on July 15, 2011, accepted the amended identifications (as set forth above), but essentially maintained the final refusal under Section 2(d). The Board, on July 18, 2011, resumed the appeal.

Applicant argues that its mark BOOKRIFF is readily distinguishable from registrant's marks RIF and CLUB RIF. The following statements essentially sum up applicant's argument regarding the marks:

> We know that the designation RIF in Registrant's marks stands for Reading Is Fundamental and relates to the reading and literacy programs that are

[4] Applicant submitted, for the first time with its appeal brief, copies of the specimens from the file of the cited registration. The examining attorney, in his brief, neither objected to nor considered the evidence. Applicant's submission is untimely, and we have not considered this evidence in making our decision. Trademark Rule 2.142(d). *See* TBMP §§1207.01 and 1207.03 (3d ed. 2011).

> the subject of Registrant's goods and services. We know that the designation RIFF in applicant's mark has no significance and that its goods and services have to do with self publishing. It is these differences that confer upon the marks different connotations and commercial impressions in the context of the goods and services identified. It follows that there is no reason for someone familiar with the Registrant's marks, upon encountering the Applicant's mark, to assume an affiliation, connection or association as to source. (Brief, p. 5).

Applicant also points to the different meanings between "riff" and "rif." As to the goods and/or services, applicant states that they "are arguably related only by a tenuous connection to books and reading." (response, 2/18/09). Applicant goes on to contend that the focus of its business is building books online, that is, self publishing, whereas registrant is a non-profit addressing reading and literacy with programs that pair teens as mentors with younger children. Applicant specifically points to the limitations recited in its identifications of goods and services, namely that they involve self book publishing and custom book publishing; as well as to the limitations in registrant's identifications, namely that the goods and services involve reading and literacy programs which pair teens as mentors with younger children.

In support of its position applicant submitted third-party registrations of marks comprising, in part, either "RIF" or "RIFF" for goods in Class 16 and services in Class 41; and dictionary definitions for the terms "rif" and "riff."

The examining attorney maintains that the marks are similar, asserting that the "RIFF" or "RIF" portion of the respective marks is dominant. The examining attorney also states that the goods are related because entities that offer electronic publications also offer printed publications like newsletters and books. Also noteworthy, the examining attorney argues, is that applicant's books, identified as covering a "variety of topics," may feature content about reading and lesson plans for use in conducting comprehensive reading and literacy programs that pair teens as mentors with younger children. In support of the refusal the examining attorney submitted several third-party registrations showing that the same entity registered the same mark for both books and newsletters, as well as other registrations covering both electronic publications and printed publications.

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d

1357, 177 USPQ 563 (CCPA 1973). *See also In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, however, two key considerations are the similarities between the marks and the similarities between the goods and/or services. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

We first turn to compare the marks in their entireties as to appearance, sound, connotation and commercial impression to determine the similarity or dissimilarity between them. *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005). The test, under the first *du Pont* factor, is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods and/or services offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *See Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

Applicant submitted dictionary definitions of the word "riff": "an ostinato phrase (as in jazz) typically supporting a solo improvisation; a rapid energetic often improvised verbal outpouring, especially one that is part of a comic performance; a succinct usually witty comment; a distinct variation or take." (www.merriam-webster.com) As for "rif," applicant contends that it is the acronym of registrant's name, "Reading Is Fundamental." Applicant also points out that it means "the act of dismissing an employee" and "a coastal region in N. Morocco. (Webster's New World College Dictionary).

We find that applicant's mark BOOKRIFF and registrant's marks RIF and CLUB RIF are somewhat similar in sound and appearance. All of the marks include "RIFF" or "RIF" which are identical in sound, and very similar in appearance.

As to meaning, applicant's mark BOOKRIFF may convey the idea that its goods and services present a distinct variation or take on publishing books. This idea is not directly conveyed by either of registrant's marks, although it may be that "RIF" will be perceived as a shortened form of "RIFF," likewise conveying the meaning that registrant's goods and services offer a distinct variation or take relative to the similar services of others. Suffice it to

say, we put no credence in applicant's notion that "RIF" means "dismissing an employee" or a geographical area in Morocco. These meanings of "rif" have no relevancy when considered in the context to registrant's goods and services. Similarly, while it is likely that "RIF" in registrant's mark stands for registrant's name, "Reading Is Fundamental," there is nothing in the record to indicate that relevant consumers will even know this or likely perceive it as such.

As to overall commercial impression, we recognize the presence of "BOOK" in applicant's mark, and "CLUB" in one of registrant's marks, as well as the differences in spelling between "RIFF" and "RIF." Nevertheless, we find that the similarities between the marks outweigh the differences, and that the marks engender similar overall commercial impressions.

The similarities between applicant's mark BOOKRIFF and registrant's marks RIF and CLUB RIF weigh in favor of a finding of likelihood of confusion.

Applicant argues that the number of third-party registrations of RIFF or RIF marks shows that the cited mark is entitled to a relatively narrow scope of protection. In this connection, applicant introduced copies of four third-party registrations of marks

comprising, in part, the word "RIFF" for goods in Class 16 or services in Class 41. In addition, there are copies of four third-party applied-for marks comprising, in part, the word "RIFF" (or, in one instance, "RIF") for which the Office has issued a Notice of Allowance. It is applicant's position that the coexistence of these marks mandates the registration of applicant's mark.

This evidence is not persuasive. Although we have considered the four third-party registrations, they are of limited probative value to support applicant's position because "[t]he existence of [third-party] registrations is not evidence of what happens in the market place or that consumers are familiar with them nor should the existence on the register of confusingly similar marks aid an applicant to register another likely to cause confusion, mistake or to deceive." *AMF Inc. v. American Leisure Products, Inc.*, 474 F.2d 1403, 177 USPQ 268, 269 (CCPA 1973); and *In re Max Capital Group Ltd.*, 93 USPQ2d 1243, 1248 (TTAB 2010). Moreover, the registrations pertain to goods and services in the field of music, different from the goods and services involved herein. *See In re Melville*, 18 USPQ2d 1386, 1388-89 (TTAB 1991) (registrations for goods and services unrelated to the goods and services at issue are irrelevant to the

likelihood of confusion analysis). With respect to the three third-party applications for which a Notice of Allowance has been issued, this evidence has no probative value except to show that the applications were filed. *In re Kysela Pere et Fils Ltd.*, 98 USPQ2d 1261, 1264 (TTAB 2011); and *In re Binion*, 93 USPQ2d 1531, 1535 n.3 (TTAB 2009).

In sum, the existence of the third-party registrations is a factor that is neutral in the *du Pont* analysis.

We next turn to compare applicant's goods and services with registrant's goods and services. It is well settled that the goods and/or services need not be identical or competitive, or even offered through the same channels of trade, to support a holding of likelihood of confusion. It is sufficient that the respective goods and/or services are related in some manner, and/or that the conditions and activities surrounding the marketing of the goods and/or services are such that they would or could be encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to the mistaken belief that they originate from the same source. *See Hilson Research, Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993); and *In re International Telephone & Telegraph Corp.*, 197 USPQ 910,

911 (TTAB 1978). The question of likelihood of confusion is determined based on the identification of goods and/or services in the application vis-à-vis the goods and/or services as set forth in the cited registration. *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1690 n.4 (Fed. Cir. 1993); and *In re Jump Designs, LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006). The issue, of course, is not whether purchasers would confuse the goods and/or services, but rather whether there is a likelihood of confusion as to the source of the goods and/or services. *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984).

The examining attorney's sole evidence bearing on the relatedness of the goods and/or services consists of several third-party registrations. "Third-party registrations which cover a number of differing goods and/or services, and which are based on use in commerce, although not evidence that the marks shown therein are in use on a commercial scale or that the public is familiar with them, may nevertheless have some probative value to the extent that they may serve to suggest that such goods or services are of a type which may emanate from a single source." *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988), *aff'd*, 864 F.2d 149 (Fed. Cir. 1988). *See also In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-

86 (TTAB 1993). The registrations show, not surprisingly, that the same entity has registered the same mark for both books and newsletters, or for publications, both in printed and electronic form. None of the registrations, however, appear to cover books or other publications being self-published by the user.

We find that the goods and services, as identified in the respective application and registrations, are distinctly different and noncompetitive. Each of the identifications contains limiting language, making any potential overlap less than likely. Applicant is essentially providing a web-based product that allows users to create customized books, either in print form or downloadable form, as well as online publishing services and ancillary online tools for facilitating the process of custom publication, whether in print or online. Thus, applicant's goods and services involve books and services about self publishing, whereas registrant's services involve reading and literacy with programs pairing teens as mentors with younger children.

The prospective customers for the goods and/or services would be different, with registrant's consumers seeking to create and publish their own books in print and online form, versus applicant's customers seeking reading

materials on literacy programs and educational/mentoring programs in the field of literacy.

The mere fact that applicant's and registrant's goods and services all fall under the broad category of books or related publication services is too tenuous a connection upon which to base a finding that they are sufficiently related for purposes of likelihood of confusion; we reiterate that the respective identifications include significant limitations regarding the specific nature of the goods and services. To demonstrate that the involved goods and/or services are related, it is not sufficient that a particular term (such as "book" or "publications") may be found which may broadly describe the goods and/or services. *See In re W.W. Henry Co.*, 82 USPQ2d 1213, 1215 (TTAB 2007). When we examine the involved identifications that include specific limitations, the goods and/or services do not appear to be related in a manner that would be likely to cause confusion.[5]

---

[5] In saying this, we recognize that one of applicant's services is "providing a web site featuring on-line publications in the nature of fiction and non-fiction books on a variety of topics." We find it unreasonable to assume, as the examining attorney has done, that these publications would encompass ones of such extremely limited scope, as in the case of registrant's guides and lesson plans for use in conducting comprehensive reading and literacy programs which pair teens as mentors with younger children. To the extent that this situation could occur, we agree with applicant that the chances are very de minimis.

In view of the above, we find that the goods and services of applicant and registrant are sufficiently different so that, even when sold under similar marks, consumers in the marketplace are not likely to be confused.

Based on the record before us, we see the likelihood of confusion refusal as amounting to only a speculative, theoretical possibility. In view of the specific differences between the goods and/or services, as clearly delineated in the involved identifications, we find that the examining attorney, by submitting only the third-party registrations that cover various publications in the broadest of terms, has not met his burden of establishing that confusion is likely to occur, even when similar marks are involved. Language by our primary reviewing court is helpful in resolving the likelihood of confusion issue in this case:

> We are not concerned with mere theoretical possibilities of confusion, deception, or mistake or with de minimis situations but with the practicalities of the commercial world, with which the trademark laws deal.

Electronic Design & Sales Inc. v. Electronic Data Systems Corp., 21 USPQ2d at 1391 (Fed. Cir. 1992), *citing Witco Chemical Co. v. Whitfield Chemical Co., Inc.*, 418 F.2d

1403, 1405, 164 USPQ 43, 44-45 (CCPA 1969), *aff'g* 153 USPQ 412 (TTAB 1967).

Decision: The refusal to register is reversed.

Exhibit 6

Citing Sources

#citations #citing #references

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Books - Format & Examples

Use this format for print books.

- One author
- Multiple authors (two)
- Multiple authors (more than two)
- Edited book - complete work. See Chapter in a Book for portions of a work.

[1]**NOTE: For APA citations that have multiple authors, cite all authors in your citation if there are 20 authors or less. For 21 or more authors, cite the first 19 authors, include an ellipses, and the final author's name.**

[2]**NOTE: For Turabian citations that have more than three authors, cite using First Author Last Name, First Author First Name et al. in the author portion of the citation.**

ONE AUTHOR

APA (7th) General Format	Author Last Name, Author Initials. (Year). *Title of book: Subtitle of book*. Publisher.
APA (7th) Example	Zusak, M. (2006). *The book thief*. Knopf.
MLA (9th) General Format	Author Last Name, Author First Name. *Title of Book: Subtitle of Book*. Publisher, year.
MLA (9th) Example	Zusak, Markus. *The Book Thief*. Knopf, 2006.
Turabian (9th) Notes-Bibliography Style General Format	Author Last Name, Author First Name. *Title of Book: Subtitle of Book*. Place of Publication: Publisher, Year.

Citation Managers

Turabian (9th) Notes-Bibliography Style Example	Zusak, Markus. *The Book Thief.* New York: Knopf, 2006.
Turabian (9th) Author-Date Style General Format	Author Last Name, Author First Name. Year. *Title of Book: Subtitle of Book*. Place of Publication: Publisher.
Turabian (9th) Author-Date Style Example	Zusak, Markus. 2006. *The Book Thief*. New York: Knopf.

BOOK BY TWO AUTHORS

APA (7th) General Format	First Author Last Name, First Author Initials, & Second Author Last Name, Second Author Initials. (Year). *Title of book: Subtitle of book*. Publisher.
APA (7th) Example	Mazur, D., & Danner, A. (2014) *Comics: A global history, 1968 to the present*. Thames & Hudson
MLA (9th) General Format	First Author Last Name, First Author First Name, and Second Author First Name Last Name. *Title of Book: Subtitle of Book*. Publisher, Year.
MLA (9th) Example	Mazur, Dan, and Alexander Danner. *Comics: A Global History, 1968 to the Present*. Thames & Hudson, 2014.
Turabian (9th) Notes-Bibliography Style General Format	First Author Last Name, First Author First Name, and Second Author First Name Last Name. *Title of Book: Subtitle of Book*. Place of Publication: Publisher, Year.
Turabian (9th) Notes-Bibliography Style Example	Mazur, Dan, and Alexander Danner. *Comics: A Global History, 1968 to the Present*. London: Thames & Hudson, 2009.
Turabian (9th) Author-Date Style	First Author Last Name, First Author First Name, and Second Author First Name Last Name. Year. *Title of Book: Subtitle of Book*. Place of

General Format	Publication: Publisher.
Turabian (9th) Author-Date Style Example	Mazur, Dan, and Alexander Danner. 2009. *Comics: A Global History, 1968 to the Present.* London: Thames & Hudson, 2009.

BOOK BY MULTIPLE AUTHORS (more than two)

APA (7th) General Format[1]	First Author Last Name, First Author Initials, Second Author Last Name, Second Author Initials, Third Author Last Name, Third Author Initials, & Fourth Author Last Name, Fourth Author Initials. (Year). *Title of Book*. Publisher.
APA (7th) Example[1]	Bell, I. McGrane, B., Gunderson, J., & Anderson, T. L. (2011). *This book is not required: An emotional and intellectual survival manual for students*. Sage.
MLA (9th) General Format	First Author Last Name, First Author First Name, et al. *Title of Book.* Publisher, Year.
MLA (9th) Example	Bell, Inge, et al. *This Book is Not Required: An Emotional and Intellectual Survival Manual for Students*. 4th ed. Sage, 2011.
Turabian (9th) Notes-Bibliography Style General Format[2]	First Author Last Name, First Author First Name, Second Author First Name Last Name, and Third Author First Name Last Name.*Title of Book.* Place of Publication: Publisher, Year.
Turabian (9th) Notes-Bibliography Style Example[2]	Bell, Inge, Bernard McGrane, John Gunderson, and Terri L. Anderson. *This Book is Not Required: An Emotional and Intellectual Survival Manual for Students*. 4th ed. Los Angeles: Sage, 2011.
Turabian (9th) Author-Date Style General Format[2]	First Author Last Name, First Author First Name, Second Author First Name Last Name, and Third Author First Name Last Name. Year. *Title of Book*. Place of Publication: Publisher.
Turabian (9th) Author-Date Style	Bell, Inge, Bernard McGrane, John Gunderson, and Terri L. Anderson. 2011. *This Book is Not Required: An Emotional and Intellectual Survival Manual for Students.* 4th ed. Los Angeles: Sage.

Example

EDITED BOOK - Complete Work

APA (7th) General Format	Editor Last Name, Editor Initials (Ed.) (Year). *Title of book: Subtitle of book*. Publisher.
APA (7th) Example	Dawidowicz, L. S. (Ed.). (1976). *A Holocaust reader*. Behrman House.
MLA (9th) General Format	Editor Last Name, Editor First Name, editor. *Title of Book*. Publisher, year.
MLA (9th) Example	Dawidowicz, Lucy S., editor. *A Holocaust Reader*. Behrman House, 1976.
Turabian (9th) Notes-Bibliography Style General Format	Editor Last Name, Editor First Name, ed. *Title of Book*. Place of Publication: Publisher, Year.
Turabian (9th) Notes-Bibliography Style Example	Dawidowicz, Lucy S., ed. *A Holocaust Reader*. New York: Behrman House, 1976.
Turabian (9th) Author-Date Style General Format	Editor Last Name, Editor First Name, ed. Year. *Title of Book: Subtitle of Book*. Place of Publication: Publisher.
Turabian (9th) Author-Date Style Example	Dawidowicz, Lucy S., ed. 1976. *A Holocaust Reader*. New York: Behrman House.

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Citing Sources

#citations #citing #references

Comic Books

Comics can appear in many formats. Typically, the citation formats for collected editions follow the pattern for books; individual stories or chapters from a collected edition, the pattern for chapters; and individual issues, the pattern for periodicals insofar as they should include issue numbers.

It is the rare comic that has a single author; all examples below are for multiple authors.

COLLECTED EDITION

APA (7th) General Format	Author Last Name, Author Initials. (Year). *Title of book: Subtitle of book*. Editor First Initial Editor Last Name (Ed.) Place of Publication: Publisher.
APA (7th) Example	Gaiman, N., Kieth, S., Dringenberg, M. and Jones, M., III. (1995). *Sandman: Preludes & nocturnes*. K. Berger (Ed.). New York: DC Comics.
MLA (9th) General Format	Author Last Name, First Name. *Title of Book: Subtitle of Book*. Edited by Editor First Name Editor Last Name. Publisher, Year.
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Turabian (9th) Notes-Bibliography Style Example	Gaiman, Neil, Mike Dringenberg, and Malcolm Jones III. *Sandman*, no. 8. New York: DC Comics, 1989.
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THE TRADEMARK FUNCTION OF AUTHORSHIP

GREG LASTOWKA*

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The use of authorial marks in relation to the sale of creative works, like the use of business trademarks in relation to the sale of goods and services, creates social benefits that deserve legal protection. Authorial attribution acts as an incentive to authorial production, provides valuable information to

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consumers, and provides additional social benefits that go beyond issues of market efficiency. However, the use of authorial marks, like the use of trademarks, can create social harms. Just as counterfeiters place illegitimate trademarks on goods, exploiters of entertainment markets may be tempted to misattribute authorship. In the United States, such deceptive practices were traditionally subject to the remedial mechanisms of trademark and unfair competition laws. However, in a 2003 decision, Dastar Corporation v. Twentieth Century Fox Film Corporation, *the United States Supreme Court held that federal trademark law does not address the misattribution of authorship. The* Dastar *decision stated that trademark protections were designed to protect the creators of tangible products sold in the marketplace. The Court stated that trademark law was not designed to protect the interests of those who originate creative ideas or communications.*

This article explores society's interests in ascertaining the authorship of creative works and explains how those interests both resemble and diverge from standard trademark interests. It concludes that as authorship marks are sufficiently analogous to trademarks, the Dastar *approach is misguided. Consumers can and should be protected from misattributions of authorship where such misattributions can easily be remedied by law and where the failure to provide such remedies is likely to lead to significant consumer harms.*

INTRODUCTION

A good name is better than precious ointment. [1]

The earliest known paintings in existence, the wall paintings in the cave of Chauvet, are marked with what seem to be the handprint signatures of the artists who created them over 30,000 years ago.[2] The intended meaning of these handprints is not clear, but they function to fuse an aspect of the artist's physical identity with the surface of the medium. In essence, they are signatures. Literary signature, which fuses a mark of authorial identity with a text, also has ancient roots. The earliest literary author to sign her name to a work was the ancient Mesopotamian high priestess Enheduanna, who wrote

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[1] *Ecclesiastes* 7:1 (King James). *See also* Scott Paper Co. v. Scott's Liquid Gold, Inc., 589 F.2d 1225, 1227 (3d Cir. 1978) ("In his classic 'Essay on Walking,' Thoreau expressed the notion that there is nothing in a name. This view has been vigorously rejected by both parties to this [trademark] litigation, not to mention almost all of mankind to whom a name is an important means of identification.") (citing *Ecclesiastes*).

[2] Corey Field, *Copyright, Technology, and Time: Perspectives on "Interactive" as a Term of Art in Copyright Law*, 50 J. COPYRIGHT SOC'Y U.S.A. 49, 52 (2003). The handprints were created by blowing pigment over the hand held against the rock surface, creating a "negative" print of the hand. Field leads his article with a photograph of the handprints, but he frames the handprints as a proto-copyright assertion of *ownership*, not signature. *Id.*

poems circa 2300 B.C.[3] Centuries later, a version of the Sumerian *Epic of Gilgamesh* was attributed to the scribe Sin-Leqi-Unninni.[4] The practice of artistic signature persists today. It is neither a recent nor an exclusively Western phenomenon.[5] Even where works are not signed by artists, one might argue that all artistic works are intimately bound up with the artist's identity, making the work itself a form of personal signature.[6] Works of artistic production generally bear traces that may betray the true identity of the creator.[7] In various small details, authors leave unconscious "fingerprints" on their works that, like handwriting, reveal their personal involvement with the creation.[8] Just as an actor's facial expressions, style of walking, or manner of speech may be unconsidered yet potentially expressive, so an artist's efforts at self-expression are at least partially governed by unconscious mannerisms.[9] And obviously, there are some conscious mannerisms that appear in authorial styles – certain skills, themes, interests, and ideologies are reliably associated with particular authors. It should be no surprise that computer-aided algorithmic analysis of handwriting, paint-strokes, and word usage can be used

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[3] ENHEDUANNA, INANNA, LADY OF LARGEST HEART: POEMS OF THE SUMERIAN HIGH PRIESTESS ENHEDUANNA (Betty De Shong Meador ed. & trans., 2001).

[4] SIN-LEQI-UNNINNI, GILGAMESH: TRANSLATED FROM THE SIN-LEQI-UNNINNI VERSION (John Gardner et al., trans. 1985). Sin-Leqi-Unninni's attributed version was merely a re-telling of the much older Gilgamesh story – it would be called a derivative work in the parlance of copyright law.

[5] *Cf.* Roberta Rosenthal Kwall, *The Attribution Right in the United States: Caught in the Crossfire Between Copyright and Section 43(a)*, 77 WASH. L. REV. 985, 985 (2002) ("The right of attribution recognizes a fundamental truth about human nature.").

[6] *See* Paul Edward Geller, *Toward an Overriding Norm in Copyright: Sign Wealth*, REVUE INTERNATIONALE DU DROIT D'AUTEUR, Jan. 1994, at 3, 21 ("Romantic critics [believed that] by virtue of the creative act . . . authors would necessarily leave the marks of their unique personalities on their works.").

[7] This is not to say that creating such traces is always a goal of artistic production. For instance, those who engage in artistic forgery seek essentially to replicate the known identity traces of another. *See* GIORGIO VASARI, THE LIVES OF THE ARTISTS 418, 423-24 (Julia Conaway Bondanella & Peter Bondanella trans., Oxford Univ. Press 1998) (1549) (recounting how Michelangelo forged old drawings so that he could return the forged copies and retain the originals, and reporting the infamous sale of a forged ancient Cupid for a seventy ducat premium). Also, it is impossible to speak categorically about "artists," some of whom make it a point to defy categorical claims about artistry. For instance, Michel DuChamp and Jeff Koons have simply found objects and duplicated or recontextualized them. *See, e.g.*, Rogers v. Koons, 960 F.2d 301, 305 (2d Cir. 1992) ("In his 'production notes' Koons stressed that he wanted 'Puppies' copied faithfully in the sculpture. For example, he told his artisans the '*work must be just like photo* – features of photo must be captured;' later, '*puppies need detail in fur.* Details – Just Like *Photo*!'").

[8] Noah Schactman, *Software Detects the True Artist*, WIRED NEWS, Nov. 22, 2004, http://www.wired.com/news/technology/0,1282,65794,00.html (explaining how the characteristics of an artist's brush strokes can identify the artist).

[9] *See id.*

to explore the veracity of claims of authorship.[10] Because society cares about ascertaining authorship, experts who police the veracity of claimed authorship attributions sometimes employ such techniques.[11]

But do the laws of intellectual property protect indicia of an author's identity? In a recent decision, *Dastar Corp. v. Twentieth Century Fox Film Corp.*, the United States Supreme Court essentially answered "no."[12] The Court in *Dastar* stated that trademark law does not protect against misattributions of authorship because such protections would bring trademark law into conflict with copyright law.[13] Copyright law is generally understood as the regulatory framework that speaks to artistic creation. Copyright law, however, says very little about the attribution of authorship.[14] Thus, shorn from trademark law by *Dastar* and ignored by copyright, markings of authorship are generally not protected by the two primarily federal laws of intellectual property that would conceivably regulate such marks. This does not mean that authorial markings are entirely beyond legal regulation. For instance, authors may use copyright as a lever to demand attributions of authorship.[15] To some extent, authors may also seek protections against the misuse of their names pursuant to rights of publicity (in states where such protections exist). Consumers deceived by authorial misrepresentations may still make claims of misrepresentation and fraud when they are harmed by false designations of authorship.[16] But these options create only a spotty, collateral patchwork of protection. In the two places one might reasonably expect to see markings of authorship regulated – the federal intellectual property laws of trademark and copyright – the law is essentially silent.

This article argues that Congress should amend the Lanham Act to reject the *Dastar* decision and once again apply trademark law to indications of authorship.[17] The article proceeds as follows: Part I argues that social benefits

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[10] *Id.* (describing how invisible pen and brush strokes in artistic works can be detected by computer imaging and attributed to specific artists through algorithmic analyses).

[11] *Id.* (chronicling a Dartmouth College team's effort to verify the authenticity of a painting). Admittedly, in the case of an artist like Koons, who essentially recontextualizes works and sometimes employs others to do this, such techniques would likely prove ineffective. *See supra* note 7.

[12] 539 U.S. 23, 36 (2003) (explaining that there is no legal recourse for complaints of plagiarism).

[13] *Id.* at 33.

[14] *See infra* Part II.C.

[15] *See infra* Part II.C.2.

[16] *See infra* Part II.D.

[17] *Cf.* Jane C. Ginsburg, *The Right to Claim Authorship in U.S. Copyright and Trademark Law*, 41 HOUS. L. REV. 263, 286-306 (2004) (suggesting that the *Dastar* decision should be remedied by legislative action with regard to moral rights); Laura A. Heymann, *The Birth of the Authornym: Authorship, Pseudonymity, and Trademark Law*, 80 NOTRE DAME L. REV. 1377, 1378 (2005) (observing that trademark designations and authorial attributions share common characteristics and arguing, from the standpoint of First

from practices of accurate authorial attribution largely track the social benefits provided by source attributions under trademark law. (By contrast, some recent commentary on the *Dastar* case has focused primarily on how authors benefit from attribution, discussing the "moral rights" of creators to claim rights of attribution.[18]) Part II discusses *Dastar* and explains how theories of trademark and copyright relate to interests in authorial attribution. Part III differentiates social concerns over practices of plagiarism and ghostwriting from issues raised by collaborative authorship. Part III proposes that trademark law should regulate indicia of authorship, but that the scope of authorial attribution protections under trademark law should be crafted as a conservative, non-traditional form of trademark protection.

I. AUTHORIAL ATTRIBUTION AND SOCIETY

In the room the women come and go
Talking of Michelangelo[19]

Why should trademark law speak at all to the issue of authorial attribution? In answer to this question, I would like to put aside one argument and advance three others. I would like to eschew the claim that trademark law should protect against authorial misattribution because society owes such protection to authors as an ethical, legal, or political imperative. In other words, I am not advocating here for a stripe of authorial "moral rights" protections in response to the *Dastar* decision.[20] This article does not oppose such arguments.[21]

Amendment law and literary theory, that the law must recognize "the essential pseudonymity of all statements of authorship").

[18] *See* Ginsburg, *supra* note 17, at 265 ("Reputation is critical to a person who follows a vocation dependent on commissions from a variety of clients. Success breeds success, but only if the first success is known to potential clients."); David Nimmer, *The Moral Imperative Against Academic Plagiarism (Without a Moral Right Against Reverse Passing Off)*, 54 DEPAUL L. REV. 1, 77 (2004) ("In sum, there is in the United States, and there should continue to be, a moral right against passing off. As a general matter, by contrast, the reverse should be limited to specialized settings, such as academe, where attribution lies at the core of the raison d'etre for the creation of works."); Justin Hughes, *American Moral Rights and the Dastar Decision* 3 (Cardozo Legal Studies, Working Paper No. 96, 2004), *available at* http://ssrn.com/abstract=618783 (understanding *Dastar* in the context of moral rights and the Berne Convention).

[19] T.S. ELIOT, *The Love Song of J. Alfred Prufrock*, *reprinted in* T.S. ELIOT, THE COMPLETE POEMS AND PLAYS 1909-1950 3, 4 (1952).

[20] The United States is required, by treaty, to protect such rights. *See* John T. Cross, *Giving Credit Where Credit Is Due: Revisiting the Doctrine of Reverse Passing Off in Trademark Law*, 72 WASH. L. REV. 709, 761-62 (1997) (discussing and critiquing U.S. efforts to comply with the requirements of the Berne Convention); Ginsburg, *supra* note 17, at 265 ("[T]he Berne Convention . . . requires that Member States protect other Members' authors' 'right to claim authorship.'"); Kwall, *supra* note 5, at 1003 (discussing attempts to

However, framing the authorial attribution question along these lines runs the risk of casting attribution as a struggle between the rights and interests of artists and the rights and interests of state and society. Attribution rights under such an analysis become a zero-sum game in which authors and artists must find some foothold (ethical, legal, or rhetorical) by which to obtain entitlements from society that are currently lacking. However, if we focus on the manner in which authorial attribution practices benefit society, we can move beyond the standard tug-of-war.

Along those lines, I would like to make three brief observations with regard to how the application of trademark to authorial attribution might benefit society. The first two benefits align fairly well with the benefits commonly associated with trademarks: facilitating the production of quality products and reducing consumer search costs.[22] A third argument is that accurate authorial attribution benefits society because it is a type of information that has a special social value.

A. *Attribution as Incentive*

With regard to the first argument, it is clear that authorial attribution can function much like a trademark interest. If artists seek riches, they must compete for patrons, prizes, and the favor of the public. In order to win in this competition, artists must attempt to ensure that their works are of high quality, and that prospective consumers will associate their new works with their established reputations. If artists can ensure attribution of their works, artists producing better quality will gain public goodwill and reap the benefits of their investments in producing works of higher quality.[23] This recognition and goodwill can lead to greater opportunities for employment and contractual leverage. Authorial attribution is thus a mechanism for ensuring that greater profits flow to those producing superior products.

But the incentive role of attribution is not merely financial, as generally

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secure attribution rights using the Lanham Act).

[21] Indeed, I generally agree with Jane Ginsburg, Roberta Kwall, and others who suggest that copyright law needs to be more attuned to protecting the interests of authors, not simply those who are currently benefiting from copyright entitlements. *See, e.g.*, Jane C. Ginsburg, *The Concept of Authorship in Comparative Copyright Law*, 52 DEPAUL L. REV. 1063, 1092 (2003) (criticizing the work for hire paradigm that secures rights on a basis other than authorship).

[22] *See* William M. Landes & Richard A. Posner, *Trademark Law: An Economic Perspective*, 30 J.L. & ECON. 265, 268-73 (1987) (applying a comprehensive economic model to many of the doctrines of trademark law in an attempt to understand its costs and benefits); *see also* Barton Beebe, *Semiotic Analysis of Trademark Law*, 51 UCLA L. REV. 621, 623-24 (2004) (identifying the Chicago School analysis as the dominant theory of trademark protection).

[23] *See* Stacey L. Dogan & Mark A. Lemley, *Trademarks and Consumer Search Costs on the Internet*, 41 HOUS. L. REV. 777, 787 (2004) ("Sellers benefit because they can invest in goodwill with the knowledge that others will not appropriate it.").

posited in the case of trademark protections.[24] In the case of authorship, the benefits reaped by artists from attribution are social and psychological as well.[25] In the past, these social and psychological benefits may have even been the *primary* reward provided in return for artistic production – simply because no other significant reward existed. A desire for the immortality of fame might have played some part in the creative efforts made by Enheduanna, Sin-Leqi-Unninni, and Homer. In the era of mass media and diffused corporate control of trademarks, we do not often think of attribution as providing this kind of benefit as an incentive to greater production. The legal academy generally continues to regard copyright law's *financial* incentives as the primary engine driving creative production, even though there are many reasons to be suspicious of this claim.[26] When copyright law is viewed against the panorama of artistic creativity throughout human history, it is revealed to be a very recent legal ordering birthed by technological revolution, fueled in its expansion by particular business models, and perhaps best explained as a means of providing incentives to distribute works through technologies of reproduction.[27] Indeed, some have argued that copyright is primarily attuned to protecting the interests of publishers, not the interests of authors as artists.[28]

Socially valuable artistic production obviously predated copyright's birth in the seventeenth century. Copyright was instituted, in a rather limited form, more than a century after Michelangelo's death.[29] This is not to say that the

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[24] *Cf.* Dogan & Lemley, *supra* note 23, at 799 n.84 (noting that "[n]oneconomic justifications for trademark law are rare").

[25] The strong allure of fame to artists does not require a lengthy footnote. Suffice it to say that a popular movie, song, and television series about a school for young performing artists was not entitled *Profit*. *See* Roberta Rosenthal Kwall, *Fame*, 73 IND. L.J. 1, 1 n.1 (1997) (citing the television series *Fame* and the associated movie and song). Many scholars have argued that the pursuit of fame motivates artistic creativity. *See* Cross, *supra* note 20, at 764-66 ("[M]any artists are unique in that they want recognition for recognition's sake .... [F]ame itself provides part, or maybe even all, of the motivation for creative activity."); Stuart P. Green, *Plagiarism, Norms, and the Limits of Theft Law: Some Observations on the Use of Criminal Sanctions in Enforcing Intellectual Property Rights*, 54 HASTINGS L.J. 167, 174 (2002).

[26] Dan Hunter & F. Gregory Lastowka, *Amateur-to-Amateur*, 46 WM. & MARY L. REV. 951, 991-92 (2005) (observing that copyright, ironically, is largely irrelevant to the production of legal scholarship).

[27] *Id.* at 979-985 (discussing the application of copyright law to various copying technologies); F. Gregory Lastowka, *Free Access and the Future of Copyright*, 27 RUTGERS COMP. & TECH. L.J. 293, 293-97 (2001) (describing modes of distribution and explaining changes resulting from digital technology).

[28] *See* Jane C. Ginsburg, *How Copyright Got a Bad Name for Itself*, 26 COLUM. J.L. & ARTS 61 (2002).

[29] *See* Stephen Breyer, *The Uneasy Case for Copyright: A Study of Copyright in Books, Photocopies, and Computer Programs*, 84 HARV. L. REV. 281 (1970). Indeed, copyright was extended to protect works of visual art only a little more than a century ago. EDWARD

quest for fame and attribution was the only thing that drove Michelangelo's efforts – the motivations for his work were complex.[30] As his artistic genius and reputation grew, his personal profits grew in equal measure.[31] Yet it is interesting to note how Michelangelo's desire for a perfect reputation, at various points in his life, eclipsed his desire to increase his wealth.[32] Giorgio Vasari, a contemporary of Michelangelo, explained how Michelangelo destroyed valuable works that he believed to be of inferior quality:

> [H]e often abandoned his works, or rather ruined many of them . . . just before his death he burned a large number of his own drawings, sketches, and cartoons to prevent anyone from seeing the labours he endured or the ways he tested his genius, for fear that he might seem less than perfect . . . .[33]

Michelangelo could certainly have sold off these inferior drawings and sketches in order to benefit himself or his friends. Instead, where his reputational interests and financial interests appeared to diverge, he protected his reputation.[34] Some might lament the loss of those destroyed drawings, and see Michelangelo's pursuit of a perfect reputation as excessive. But the paradox is that the reputation dynamic that drove Michelangelo to *destroy* his work was also the dynamic that drove him to strive for perfection and to *create* his most celebrated works. Michelangelo decided that only a certain quality of artistic work would further his reputational interests, and it was this type of work that he struggled to produce.[35] If reputation and attribution played a part in driving Michelangelo to create his celebrated works, society ultimately benefited from accurate authorial attribution practices.[36]

SAMUELS, THE ILLUSTRATED STORY OF COPYRIGHT 11-15 (2000); Paul Edward Geller, *Copyright History and the Future: What's Culture Got to Do With It?*, 47 J. COPYRIGHT SOC'Y U.S.A. 209, 215 (2000) (describing the origins of English copyright law in fifteenth-century monopolies on printing).

[30] GEORGE BULL, MICHELANGELO: LIFE, LETTERS, AND POETRY 28-73 (George Bull & Peter Porter eds. & trans., 1987) (translating and updating Ascanio Condivi's account).

[31] *Id.*

[32] Biographical accounts suggest that while Michelangelo was generally reclusive and sometimes a bit miserly, he was very concerned with his artistic reputation. VASARI, *supra* note 7. *See also* BULL, *supra* note 30, at 61-62 (translating Ascanio Condivi); DIANE STANLEY, MICHELANGELO 24, 39 (2000) (detailing how Michelangelo was a perfectionist in his work, but shunned riches). It is interesting to note that Michelangelo did not fix his name to his works, and signed only the *Pieta* statue. However, he signed that work not on the base, as was customary, but on the prominent ribbon that crosses the Virgin's chest at eye level. LAURIE ADAMS, ITALIAN RENAISSANCE ART 316 (2001).

[33] VASARI, *supra* note 7, at 472.

[34] *Id.* (describing how Michelangelo destroyed many of his own works).

[35] *Id.*

[36] *See supra* note 32.

B. *Attribution as Consumer Protection*

A second argument for regulation of authorial attribution is also closely related to the standard justifications for trademark regulation. Authorial attribution furthers the interests of consumers by reducing the costs of searching for creative content. As Mark Rose has noted, a mark of authorship functions much like a trademark – it signals a certain predictable quality and type of associated work.[37]

In the fiction sections of libraries and bookstores, books are generally arranged alphabetically by the last names of their respective authors. The names of these authors also appear on the covers and spines of the works, sometimes encompassing the entire top half of a book's cover.[38] Indicia of authorship must be conveying some form of valuable information to consumers. If they were not, the existence of these bold statements of authorship would be mysterious. For instance, other products for sale, including those protected by other species of intellectual property laws, are *not* generally emblazoned with the names of their creative originators and inventors. Arthur Fry, the creative inventor of Post-it® notes, certainly wouldn't mind being credited with his invention.[39] He surely would not object if office supplies were sorted by his last name (i.e., under "F" for Fry). Inventors like Fry likely share the same pride in their inventions that authors possess in the novels they write. But to emblazon inventor names on items for sale would probably strike us as absurd in the case of office products. Most of us just don't care who came up with the idea for the Post-it® note – the identity of the creator is severable from the product.

Yet works of creative authorship are different. In the case of creative works, indicia of authorship can provide special value to consumers. From a consumer standpoint, particular authors are believed to be associated with works possessing certain intrinsic qualities.[40] For example, consumers are likely to believe that all novels by the authors Tom Clancy and V.C. Andrews possess certain distinctive qualities. Like trademarks, these authorial attributions enable consumers who are searching for particular types and

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[37] MARK ROSE, AUTHORS AND OWNERS 1 (1993) (commenting that an author is "a kind of brand name, a recognizable sign that the cultural commodity will be of a certain kind and quality").

[38] *See, e.g.*, MICHAEL CRICHTON, CONGO (Avon Books 2003) (evidencing the importance of an author's name by displaying it as large as the title on the cover of a book).

[39] Arthur Fry and a colleague were responsible for the invention of 3M's Post-it® Notes. *See* U.S. Patent No. 5,194, 299 (filed Dec. 31, 1986); Mark F. Grady & Jay I. Alexander, *Patent Law and Rent Dissipation*, 78 VA. L. REV. 305, 331-32 (1992).

[40] *See* ROSE, *supra* note 37; Cross, *supra* note 20, at 762 ("[T]he artist's name provides some indication of the quality of the work."); Diana Elzey Pinover, *The Rights of Authors, Artists and Performers Under Section 43(a) of the Lanham Act*, 83 TRADEMARK REP. 38, 47 (1993) (acknowledging the converse proposition that an author's early work, or poorer quality work, may detract from the value of her name as a mark).

qualities of products to find those products that they consider more appealing.[41] While authors' names are not trademarks *per se* and not all consumers value authorial indicia in all instances, author names can act very much *like* trademarks by providing useful information to consumers selecting among competing products.[42]

C. *Attribution as Value*

While the prior two sections sought to justify the social value of authorial attribution by appealing to incentive effects or utility in reducing consumer search costs, there is another social value provided by attribution. Society has expressed an entirely independent, somewhat *sui generis* interest in demarcating and ascertaining authorship, unrelated to any instrumental and utilitarian effects that authorial attribution may have on markets and production.[43] In other words, a correct authorial attribution is a thing of value in itself.

To take the example of Michelangelo again, we can assume that the price of a drawing by Michelangelo will be higher than the price of a work by other artists who were his contemporaries. Are Michelangelo's drawings of a better quality? The answer is generally yes, but the interesting point to see here is that a hypothetical drawing attributed to Michelangelo would be valued more highly than a hypothetical work by one of his contemporaries even if the two hypothetical works were identical.[44] A lousy Michelangelo drawing is a valuable chattel – more valuable than the *same* lousy drawing that isn't attributed to Michelangelo. Michelangelo's attribution, therefore, does not simply convey information about the value of the work to which the attribution is attached. The attribution, to some extent, creates the value.[45]

One might argue that the value of the object in this case stems simply from the value of celebrity aura associated with a tangible artifact.[46] Michelangelo's

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[41] Cross, *supra* note 20, at 753-54 (positing that discovering the source of a product is a quick way for a consumer to evaluate the product).

[42] *See infra* Part II.A and Part III.

[43] *See infra* note 45 and accompanying text.

[44] Even Michelangelo's attempted forgeries, if recognized as such, would likely command a higher value today than they would were they authentic. *See supra* note 7.

[45] This tracks roughly with another, much less venerable and less accepted vein in trademark theory: the anti-dilution theories of trademark protection, codified in federal law at 15 U.S.C. § 1125(c) (2000). The general notion of these theories is that the law should protect a trademark signifier's value *in itself*, independent of its associative value which stems from linking the mark with a particular associated quality of underlying goods or services. *See* Beebe, *supra* note 22, at 684-87 (reviewing the anti-dilution theories as the basis for trademark protection); Frank I. Schechter, *The Rational Basis of Trademark Protection*, 40 HARV. L. REV. 813 (1927), *reprinted in* 60 TRADEMARK REP. 334, 336-38 (1970) (arguing that a trademark has value apart from the signification of a source).

[46] *See* WALTER BENJAMIN, *The Work of Art in the Age of Mechanical Reproduction*

celebrity could create similar value in paintbrushes and chisels that he employed to create his works. Artifacts that are associated with any figure of fame (say, Benjamin Franklin's eyeglasses or a dress worn by Marilyn Monroe[47]) often have a fetishistic or historical value to consumers that seems strangely disproportionate to any detached measure of the object's utility.[48] But the value created by authorship is not limited to tangible fetishes – a person who framed a supposed Michelangelo print might discount the value of the reproduction if the original was subsequently determined to be a forgery. The point here is that authorship matters to the public because it places a work in a particular social context. Indeed, even when objects are not for sale and artists and authors are long dead, society will often police issues of authorial attribution for their own sake. Was *De Doctrina Christiana* the work of Milton? Was *Titus Andronicus* the work of Shakespeare? We might ask why these questions even matter – but we can't deny that they *do* matter to many people and that many intelligent people engage in vigorous debates over these exact questions. In the case of Shakespeare, scholarly wrangling over authorship rises to the level of a recognized field of academic research.[49] This type of social interest in attribution admittedly isn't the rule for *most* artists and authors, but neither is it all that rare. The scholar Kathryn Lindskoog, for instance, devoted much of her life to exposing what she believed to be misattribution marring the reputation of C.S. Lewis.[50] The general point here

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(1937), *in* ILLUMINATIONS 219, 223 (Hannah Arendt ed., Harry Zohn trans., 1968) (1955) (discussing how mechanical reproduction transformed the nature of artistic objects by removing the aura of originality).

[47] *See, e.g.*, Brendan Walsh, *Collecting Marilyn: Blonde Bombshell Inspires Local Man's $10,000 Search*, CORPUS CHRISTI CALLER-TIMES (Tex.), Sept. 18, 2001, *available at* http://www.caller2.com/2001/september/18/today/fea-livi/11808.html ("At Christie's auction house in 1999, a two-day auction of Monroe's personal belongings netted more than $13.4 million. The most expensive item, the dress Monroe wore when she sang 'Happy Birthday' to President Kennedy in 1962, went for $1.26 million.").

[48] *Cf.* Margeret Radin, *Property and Personhood*, 34 STAN. L. REV. 957, 959 (1982) (commenting how the primary value of certain objects may derive from notions of self and personhood).

[49] James D.A. Boyle, *The Search for an Author: Shakespeare and the Framers*, 37 AM. UNIV. L. REV. 625, 627 (1988) (noting that "[t]here are some fifty-six claimants to Shakespeare's throne – some of whom are supposed to have worked alone, while others are supposed to have collaborated in the most unlikely assemblies"); *see also* The Shakespeare Fellowship, http://www.shakespearefellowship.org/index.html (last visited Sept. 9, 2005) (collecting internet resources on the issue of Shakespearean authorship). Even law reviews have recently joined the fray. *See* Thomas Regnier, Comment, *Could Shakespeare Think Like a Lawyer? How Inheritance Law Issues in Hamlet May Shed Light on the Authorship Question*, 57 U. MIAMI L. REV. 377, 377 (2002) (examining the use of legal terms in Shakespeare's works to ascertain the correct identity of the author).

[50] Lindskoog had alleged that the Lewis estate has tampered with the canon, most notably in the case of the posthumously published Lewis novel, *The Dark Tower* (1983), a

is that accurate authorial attribution can be relevant to people other than the authors of works. It can be relevant to society for reasons that cannot be captured in terms of market efficiencies.

These broader social interests in ascertaining and denoting authorship operate independently of the author, persist after the death of the author, and at times fly in the face of the "moral rights" approach that focuses on protecting the personal interests of the artist.[51] George Maciunas is a good example.[52] Maciunas was a twentieth-century modern artist who was ideologically opposed to what he saw as the tradition of the self-absorbed, privileged, bourgeoisie artist separated from the working class.[53] He attempted to destroy this division by forming a movement within which individual artistic attributions (and copyright) would be forbidden. He demanded that all artists in his revolutionary enterprise would produce under the name FLUXUS.[54] Commentators today, however, routinely identify George Maciunas as the artistic originator of the FLUXUS group, and point to the respective involvements of John Cage, Yoko Ono, June Paik, Al Hansen, and others.[55] The success of the FLUXUS movement in attracting attention was the cause of its failure to achieve its goals.[56]

As Giorgio Vasari's famous tome on the lives of his contemporaries indicates,[57] society is interested not only in the works of authors and artists, but also in exploring the personalities and lives of those who have created socially prominent works. The reader's impulse to learn about the author can and does operate against the interests of the author in some cases. Maciunas is one

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very strange work of science fiction. KATHRYN ANN LINDSKOOG, SLEUTHING C. S. LEWIS: MORE LIGHT IN THE SHADOWLANDS (2001); *see also* Scott McLemee, *Holy War in the Shadowlands*, THE CHRON. OF HIGHER EDUC., July 20, 2001, at A12 (describing Lindskoog's allegations of tampering by Lewis's estate).

[51] *See* Berne Convention for the Protection of Literary and Artistic Works, art. 6*bis*, Sept. 9, 1886, revised at Paris July 24, 1971, 25 U.S.T. 1341, 828 U.N.T.S. 221 (protecting the moral rights of artists by mandating rights of attribution and integrity).

[52] ERIKA DOSS, TWENTIETH-CENTURY AMERICAN ART 148 (2002) (discussing the work of George Maciunas).

[53] *Id.*

[54] As Maciunas explained in a letter to a friend in 1964, "Eventually we would destroy the authorship of pieces and make them totally anonymous – thus eliminating artist's 'ego.' Author would be FLUXUS." THEORIES AND DOCUMENTS OF CONTEMPORARY ART: A SOURCEBOOK OF ARTISTS' WRITINGS 725-28 (Peter Selz & Kristine Stiles eds., 1996) (letter from Maciunas to Thomas Schmit circa 1964).

[55] DOSS, *supra* note 52, at 148 (observing how Maciunas coined "Fluxus"); THOMAS HOVING, ART FOR DUMMIES 180 (1999) (noting "the Fluxus events of George Maciunas").

[56] *See* HOVING, *supra* note 55, at 180 (associating Fluxus with Maciunas despite Maciunas's desire for anonymity in his art).

[57] VASARI, *supra* note 7 (remarking on the personal lives of contemporary artists with whom Vasari was familiar).

prominent example, and J.D. Salinger presents another.[58] Readers have always been interested in exploring the personality of the artist as a means to appreciate and further explore the work.[59] The practice of exploring and appreciating literature by exploring the identity of the author was, prior to the last century, an acceptable academic practice. Only with the ascendancy of New Criticism was authorial hagiography denigrated.[60] New Criticism, partaking in the broader formalistic rigor of modernism, isolated the text from the author. The inevitable result of this effort was, perhaps unsurprisingly, the collapse of the concept of any fixed meaning in texts and the publication of an essay (authored by Roland Barthes) where the author was proclaimed dead.[61] Michel Foucault suggested that authorship acted as an interpretive construct primarily serving to limit the freedom of potential meanings in a text.[62] Yet throughout all this revolution and interpretive upheaval, the public still was buying *People* Magazine and reading about the personal lives of John Grisham, Steven King, and Tom Clancy. In some respects, new media made

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[58] Of course, one might question the true motives of Maciunas and Salinger. *See, e.g.*, Alex Beam, *J.D. Salinger, Failed Recluse*, SLATE, June 29, 1999, http://slate.msn.com/id/31263/ ("If Salinger really wants to be left alone, he is going about it in a very strange way. He doesn't live in a gated community. He summons perfect strangers into his hideaway. He sues people, and then phones the media to spread the story.").

[59] *See* Robert H. Rotstein, *Beyond Metaphor: Copyright Infringement and the Fiction of the Work*, 68 CHI.-KENT. L. REV. 725, 734-35 (1993) (explaining the historical importance to literary criticism of studying the life and personality of the author).

[60] *See id.* at 734-35 ("New Criticism . . . developed as a reaction to the Romantic notion of genius and the academic pre-eminence of historical study. In New Critical theory, 'work' replaced 'author' as the central unifying force in literary criticism. This version of modernist thought conceived of the creative work as autonomous and ahistorical."). While New Criticism is clearly an ideology of interpretation that might be disputed, romantic authorship (which might be aligned with a more central notion of authorship) has probably had a more pronounced effect on our system of intellectual property. It is equally susceptible to critique. *See* JAMES BOYLE, SHAMANS, SOFTWARE, AND SPLEENS: LAW AND THE CONSTRUCTION OF THE INFORMATION SOCIETY x-xi (1996); Boyle, *supra* note 49 (exploring the importance of determining the author of a work in order to interpret the meaning of his or her writing); Peter Jaszi, *Toward a Theory of Copyright: The Metamorphoses of "Authorship"*, 1991 DUKE L.J. 455 (commenting on how the notion of authorship has been used in the development of intellectual property law); David Lange, *At Play in the Fields of the Word: Copyright and the Construction of Authorship in the Post-Literate Millennium*, 55 LAW & CONTEMP. PROBS. 136 (1992) (describing how new technologies are eroding intellectual property and the constraints on authorship).

[61] ROLAND BARTHES, *The Death of the Author*, *in* IMAGE-MUSIC-TEXT (Stephen Heath, trans., 1978) (proclaiming that the reader, not the writer, should be at the center of criticism).

[62] *See* Michel Foucault, *What Is an Author?*, *in* THE FOUCAULT READER 101, 107 (Paul Rabinow ed., 1984) (asserting that the notion of "author" performs a classification and interpretative function for works, beyond a mere identification role).

the identity of the artist an even greater public concern. For instance, in the realm of music, MTV made the combination of image, celebrity, and marketing triumph over the pure appreciation of sound. From a societal perspective, the author never died – and she was never even seriously ill. Well-known post-authorship figures such as Michel Foucault and Jacques Derrida found their personalities and life histories deeply intertwined with prevalent social interpretations of their publications.[63] When society cares about a creative work, it cares about the work's author. Making the connection between personal identity and creative work has always been a natural move.

Perhaps the clearest evidence that society still cares very much about authorial attribution is our reactions to plagiarism. While credit-claiming for the words of others is a fairly common practice,[64] it is one that is generally censured by society. Social norms that condemn plagiarism are, essentially, social norms that strongly condemn authorial misattribution.[65] The conventional legal understanding of the term "plagiarism" is that it is not a violation of any law, but a violation of the norm of accurate authorial attribution.[66] Even in this postmodern era, anti-plagiarism norms remain quite

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[63] *See* Wikipedia: Michel Foucault, http://en.wikipedia.org/wiki/Michel_Foucault (last visited Aug. 12, 2005); Wikipedia: Jacques Derrida, http://en.wikipedia.org/wiki/Jacques_Derrida (last visited Aug. 7, 2005).

[64] *See* Roger Billings, *Plagiarism in Academia and Beyond: What Is the Role of the Courts?*, 38 U.S.F. L. REV. 391, 396 (2004) ("Almost everyone plagiarizes. Nearly every time a joke is told it is borrowed without attribution. Abraham Lincoln routinely retold jokes he borrowed from magazines. Ministers and pastors borrow sermons from each other without attribution; easily available collections of sermons all but invite plagiarism."); Lisa G. Lerman, *Misattribution in Legal Scholarship: Plagiarism, Ghostwriting, and Authorship*, 42 S. TEX. L. REV. 467, 468 (2001) ("It is as if admission to the bar is like walking through a looking-glass. On one side, plagiarism is considered to be the most egregious variety of dishonesty. On the other side, the use of the words and ideas of others without attribution is not regarded as raising any ethical concern.").

[65] Anonymous, *A Funny Thing Happened on the Way to the Web: A Cautionary Tale of Plagiarism*, 93 LAW LIBR. J. 525, 525 (2001) ("Like most of us who manage to get something we've written published, I am always gratified if my work is cited or found useful enough to be quoted by others. When confronted with this blatant theft of my work, however, I was shocked and genuinely hurt.").

[66] Randall P. Bezanson, *Speaking Through Others' Voices: Authorship, Originality, and Free Speech*, 38 WAKE FOREST L. REV. 983, 1075 (2003) ("Plagiarism consists of the conscious taking of another's specific words and ideas as one's own without any attribution."); Billings, *supra* note 64, at 392 ("Plagiarism is the borrowing of someone else's work without attribution."); Robert D. Bills, *Plagiarism in Law School: Close Resemblance of the Worst Kind?*, 31 SANTA CLARA L. REV. 103, 108 (1990) ("Borrowing from another's work with attribution does not constitute an act of plagiary because there is no pretense of originality."); Terri LeClercq, *Failure to Teach: Due Process and Law School Plagiarism*, 49 J. LEGAL EDUC. 236, 245 (1999) ("[F]ailure to attribute is key to plagiarism"); Lisa G. Lerman, *Misattribution in Legal Scholarship: Plagiarism, Ghostwriting, and Authorship*, 42 S. TEX. L. REV. 467, 475 (2001) ("To claim authorship of

strong.[67] When a public figure is charged with plagiarism, the public concern is not primarily about protecting the possessory interests of the "owner" of the stolen words. Instead, society sees itself as the victim of duplicity and is interested in passing judgment on the character of the plagiarist. Recent scandals relating to the authorship practices of Stephen Ambrose, Doris Kearns Goodwin, Laurence Tribe, and Charles Ogletree all demonstrate that the media is confident that the public wants to hear news about high-profile plagiarism.[68] The morality play is clearly the attraction here – in most of these cases, the average citizen is unlikely to have ever read the materials that were claimed to have been plagiarized.

II. LEGAL REGULATION OF AUTHORIAL ATTRIBUTION

Given social interests in attribution, we might expect the law of the United States to play some regulatory role in the realm of authorial attribution. At the turn of the last century, the law did play this role.[69] Social protections against

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work that was in fact authored by another is plagiarism."); Laurie Steans, *Copy Wrong: Plagiarism, Process, Property, and the Law*, 41 COPYRIGHT L. SYMP. 43, 58 (1998) ("Plagiarism is not necessarily copyright infringement, nor is copyright infringement necessarily plagiarism.").

[67] The gulf between literary theory and contemporary social intuitions with regard to misattributive practices is rather pronounced – New Critical approaches to textual interpretation don't seem to square well with modern cultural beliefs about inchoate rights to appropriate credit. *Compare, e.g.*, PERSPECTIVES ON PLAGIARISM AND INTELLECTUAL PROPERTY IN A POSTMODERN WORLD (Lise Buranen & Alice M. Roy eds., 1999) (arguing that prohibitions against plagiarism are problematic in light of contemporary literary theories), *and* K.K. RUTHVEN, FAKING LITERATURE i (2001) (arguing that "the production of a literary forgery is an act that reveals the spurious nature of literature itself"), *with* Lisa Lerman, *Misattribution in Legal Scholarship: Plagiarism, Ghostwriting, and Authorship*, 42 S. TEX. L. REV. 467, 492 (2001) ("This examination of the question of authorship suggests that there is no justification for a professor to take the work of a research assistant and publish it as his own."), *and* THOMAS MALLON, STOLEN WORDS: THE CLASSIC BOOK ON PLAGIARISM 243 (Harcourt, Inc. 1st ed. 2001) ("[A]cademics remain curiously willing to vaporize the whole phenomenon of plagiarism in a cloud of French theory.").

[68] Joseph Bottum, *Laurence Tribe and the problem of borrowed scholarship*, THE WEEKLY STANDARD, Oct. 4, 2004, *available at* http://www.weeklystandard.com/Content/Public/Articles/000/000/004/674eijco.asp (calling a book by Tribe on constitutional law "uncomfortably reliant" on another scholar's work); Chris Suellentrop, *Dead Man Writing: How to Keep Writing Your Late Father's Books*, SLATE, Feb. 20, 2003, http://slate.msn.com/id/2078980/ (stating that historian Stephen Ambrose employed members of his family to write portions of his books).

[69] *See* Lauren Wise, King v. Innovation Books*: An Analysis of Credit Attribution with Respect to the Lanham Act*, 1 VILL. SPORTS & ENT. L.J. 147, 147 (1994) (stating that "[a]uthors may sue under [the Lanham Act] when an erroneous credit is issued"); *see also* Smith v. Montoro, 648 F.2d 602, 608 (9th Cir. 1981) (finding Lanham Act cause of action where the plaintiff actor's name was omitted and his role attributed to another in film credits); Williams v. UMG Recordings, 2003 U.S. Dist. LEXIS 18400, at *17 (C.D. Cal.

deceptive authorial attributions were not well defined, but they did exist under the rubric of trademark law.[70] However, the Supreme Court's recent decision in *Dastar Corp. v. Twentieth Century Fox Film Corp.* has essentially eviscerated the primary basis of those protections.[71] In this Part, I will look at the law that addresses claims involving authorial attribution. First I will turn to trademark law. Then I will explain how the Supreme Court's decision in *Dastar* affected trademark protections. Following that, I will discuss copyright as an alternative basis for protection. Finally, I will consider how authorial attribution might still find some protections under various other regimes.

A. *Misattribution and Trademark Law*

1. Trademark's Purpose

Trademark law is a part of the broader law of unfair competition.[72] Contemporary trademark law originated in English common law, and the early trademark cases involved the regulation of products created by guilds and stamped with unique marks of origin.[73] These marks of a trade signaled that a particular collective or individual identity had manufactured a particular tangible product.[74] Trademark law evolved to protect the veracity of these

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Aug. 11, 2003) (holding that the Lanham Act claim to authorial attribution in the documentary credits is precluded by the Supreme Court's *Dastar* decision); Follett v. New American Library, 497 F. Supp. 304, 313 (S.D.N.Y. 1974) (granting plaintiffs' motion because "the Lanham Act was designed to prevent the presentation of an author's work to the public in a distorted form and to protect the public and artist from misrepresentations of the artist's contribution to a finished work").

[70] *See Smith*, 648 F.2d at 608; *Williams*, 2003 U.S. Dist. LEXIS 18400, at *17; *Follett*, 497 F. Supp. at 313.

[71] 539 U.S. 23, 38 (2003).

[72] Moseley v. V Secret Catalogue, Inc., 537 U.S. 418, 428 (2003) (declaring that "[t]raditional trademark infringement law is a part of the broader law of unfair competition").

[73] *See* Edward S. Rogers, *Some Historical Matter Concerning Trademarks*, 9 MICH. L. REV. 29, 33 (1910) ("As early as the thirteenth century, the copying of valuable marks became so common and so injurious that infringement was made a misdemeanor and in some cases even a felony and was punished in the barbarous manner characteristic of the times. The Elector Palatine in the Fourteenth Century [sic] issued an edict which, after reciting that the sale of spurious wine was the most outrageous form of deceit, punished by hanging any innkeeper who sold ordinary wine as Rudesheimer.").

[74] *See* FRANK L. SCHECHTER, THE HISTORICAL FOUNDATIONS OF THE LAW RELATING TO TRADE-MARKS (1925) (discussing the historical origin of trademarks for regulation as used by guilds); Sidney A. Diamond, *The Historical Development of Trademarks*, 65 TRADEMARK REP. 265, 280 (1975). *But see* Steven Wilf, *Who Authors Trademarks?*, 17 CARDOZO ARTS & ENT. L.J. 1, 1-2 (1999) (suggesting that Schecter's focus on the development of trademarks as guild marks ignores the importance of societal interests in trademark authorship).

attributions.[75] It thus protected primarily against a particular form of consumer fraud, the marking of trade goods with the mark of a competitor in a manner that deceived the public as to the source of the product for sale.[76] In 1946, the federal Lanham Act generally codified the common law of trademark.[77] The reach of the Lanham Act's federal interpretation extends beyond the federal sphere, however, because many state unfair competition laws are interpreted congruently with federal Lanham Act decisions.[78]

FIGURE 1

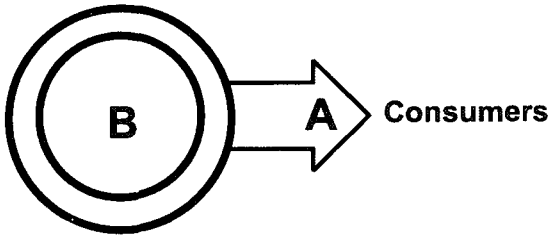

Figure 1 illustrates the most common situation of trademark infringement, "passing off."[79] A product is, in some sense, an essential "B" product (meaning it is produced by entity B, sponsored by entity B, or has qualities associated with B) and that product is deceptively marked "A" (suggesting it is produced by entity A, sponsored by entity A, or has qualities associated with A's goods). The business that uses (and/or has registered) trademark "A" sues party B, the sellers of the competing product.[80] A alleges that B's practices are

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[75] *See Dastar Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S. 23, 34 (2003) ("Federal trademark law . . . helps assure a producer that it and not an imitating competitor will reap the financial, reputation-related rewards associated with a desirable product."); *see also* Lee Burgunder, *Trademark and Copyright, How Intimate Should the Close Association Become?*, 29 SANTA CLARA L. REV. 89, 94 (1989).

[76] *See Dastar*, 539 U.S. at 34.

[77] *See* 15 U.S.C. §§ 1051-1127 (2000) (codifying sections 1 to 46 of the Lanham Act).

[78] *See, e.g.*, Williams v. UMG Recordings, 2003 U.S. Dist. LEXIS 18400, at **26 (C.D. Cal. Aug. 11, 2003) ("The Ninth Circuit has consistently held that state law unfair competition claims are 'congruent' with Lanham Act claims; Plaintiff's putative unfair competition claim would fail for the same reasons his Lanham Act claim fails.").

[79] *See Dastar*, 539 U.S. at 28 n.1 (defining passing off); RESTATEMENT (THIRD) OF UNFAIR COMPETITION § 4 (1995).

[80] There is a question of standing here. While the Lanham Act's broader provisions literally read that a claim is available to "any person who believes that he or she is or is likely to be damaged" by a misrepresentation, these provisions have been limited by some

likely to confuse consumers into believing that the B products are produced or sponsored by A. This damages A through lost sales and conceivably lost goodwill. It also damages consumers because they are not receiving the "A" sponsored or crafted product they desired. This is classic "passing off" – B is attempting to pass off its own product as A's product.[81] In order to prevail in a trademark infringement case, A must demonstrate that consumers are likely to be confused as to the source or origin of B's product.[82] A's rights are not limited to an exact reproduction of A's mark, but A may also prevail when B uses look-alike or sound-alike marks that are also likely to confuse consumers.[83]

As explained above, trademark protections are justified as creating incentives for businesses to produce quality goods (by protecting the usurpation of goodwill) and reducing the product search costs of consumers to enabling them to trust marks indicating source and origin.[84] A key point to observe is that trademark and unfair competition law are essentially dealing with the regulation of communicative behaviors.[85] Trademark "owners" possess certain rights to seek legal and equitable relief when their competitors engage in acts that create public deception.[86] The touchstone of trademark and

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courts to those parties that can show *competitive* harms. Halicki v. United Artists Communications, 812 F.2d 1213, 1214 (9th Cir. 1987); *see also* Conte Bros. Automotive v. Quaker State-Slick 50, Inc., 165 F.3d 221 (3d Cir. 1998).

[81] RESTATEMENT (THIRD) OF UNFAIR COMPETITION § 4 (1995); *see also Dastar*, 539 U.S. at 28 n.1.

[82] *See* 15 U.S.C. §§1117, 1125 (2000).

[83] *See id.* at § 1125 (setting likelihood of consumer confusion as the standard test for trademark infringement).

[84] *See, e.g.*, Elmer William Hanak III, *The Quality Assurance Function of Trademarks*, 43 FORDHAM L. REV. 363, 364 (1974); William M. Landes & Richard A. Posner, *Trademark Law: An Economic Perspective*, 30 J.L. & ECON. 265 (1987); David G. Post, *Pooling Intellectual Capital: Thoughts on Anonymity, Pseudonymity, and Limited Liability in Cyberspace*, 1996 U. CHI. LEGAL F. 139, 160.

[85] *See* Ringling Bros.-Barnum & Bailey Combined Shows, Inc. v. Utah Div. of Travel Dev., 170 F.3d 449, 459 (4th Cir. 1999) (rejecting the notion of trademarks as "property rights in gross"). Trademark *are*, however, commonly described as property interests of the intellectual variety. *See, e.g.*, Michael Carrier, *Cabining Intellectual Property Through a Property Paradigm*, 54 DUKE L.J. 1 (2004) (exploring the equation of intellectual property with the legal definition of property); Dan Hunter, *Cyberspace as Place and the Tragedy of the Digital Anticommons*, 91 CAL. L. REV. 439 (2003) (exploring the intersection of property concepts and information); Melissa B. Jacoby & Diane Leenheer Zimmerman, *Foreclosing on Fame: Exploring the Uncharted Boundaries of the Right of Publicity*, 77 N.Y.U. L. REV. 1322, 1344-45 & n.138 (noting that trademarks constitute valuable assets in bankruptcy proceedings); Mark A. Lemley, *Property, Intellectual Property, and Free Riding*, 83 TEX. L. REV. 1031, 1031-32 (suggesting that the equation of property with intellectual property creates misleading connotations).

[86] *See* Ann Bartow, *Likelihood of Confusion*, 41 SAN DIEGO L. REV. 721, 722 (2004) (asserting that "[c]onfusion among consumers is the grave iniquity against which trademark

unfair competition law is this presence of consumer confusion and deception. Without a likelihood of consumer confusion, there can be no cause of action for trademark infringement.[87]

Trademarks are pervasive today – packaging and advertising familiarize us with myriads of marks that are understood to indicate origin or sponsorship of the products on which they are affixed. The animating theory of trademark law is that these marks are providing us with some information value.[88] But the word "Nike" printed on a pair of sneakers clearly says nothing *directly* about the quality of the sneakers (at least to consumers not versed in mythology). In order for "Nike" to be recognized as a trademark, it must have some information value, and therefore it must have some meaning to consumers.[89] In other words, it must be recognized not as a word signifying what the word or symbol might ordinarily signify (a Greek goddess of victory, for instance), but instead as a mark denoting something about the origin, sponsorship, or approval of a good. "Apple" printed on a plastic bag containing apples has a non-trademark meaning. "Apple" printed on a computer has a secondary, trademark meaning denoting the source or origin of the computer. Through our commercial and media consumption, we associate certain marks with particular sources of goods and services and also learn about certain relevant qualities of particular objects associated with the marks.[90] Even if the public does not know what collective, corporate, socio-geographic, or other identity corresponds to a mark, there is a notion that such

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laws and jurisprudence are intended to guard").

[87] 15 U.S.C. §§ 1051-1150 (2000); Moseley v. V Secret Catalogue, Inc., 537 U.S. 418, 428 (2003) (observing that "[trademark law] broadly prohibits uses of trademarks, trade names, and trade dress that are likely to cause confusion about the source of a product or service"). *But see* Bartow, *supra* note 86, at 729-38 (criticizing the standard consumer protection rationale offered in support of trademark law).

[88] This theory has been criticized. *See* Bartow, *supra* note 86, at 737 ("Reflection on the ways in which trademarks are actually deployed and employed by commercial interests makes the assertion that trademarks protect consumers from being confused, mistaken, or deceived in their purchasing decisions almost laughable, and the contention that broadly protecting trademarks permits consumers to rely on trademarks as accurate source indicators is bizarre indeed.") (citations omitted).

[89] This is called "secondary meaning" in trademark law. The term, as others have observed, is an unfortunate bit of legal jargon. "Secondary" meaning is a good way to explain how Apple™ and Google™ have second meanings that differ from designations of a fruit and number, but the Nike swoosh, the word "Häagen-Dazs", and many other fanciful trademarks actually have no *primary* meaning. The word *secondary* is not important here – the particular type of meaning the word has, namely a trademark-type meaning, is important.

[90] *See* Graeme B. Dinwoodie, *The Death of Ontology: A Teleological Approach to Trademark Law*, 84 IOWA L. REV. 613, 614 (1999) (discussing the historic purpose of trademark law as giving meaning to names and symbols, thereby reducing consumer confusion).

a distinct identity does exist.

When trademark law allows the average consumer to discern that there is some distinction between various *things* connected via trademarks to three products marked with the words "Coke," "Pepsi," and "Acme Discount Cola," trademark law postulates that society is better off.[91] (At least, it postulates, the benefit of regulating permissible speech in this way exceeds any costs imposed by the regulation.[92]) It would seem that this is correct.[93] Were every producer entitled to place the label "Pepsi" or "Coke" on any drink produced, it seems logical that this would lead to a sub-optimal state of information affairs, with no particular beverage company having a sufficient incentive to invest in a superior product because all producers would simply adopt the most appealing mark.[94] Consumers would be subject to deceptive information practices in a world without protected trademarks: inferior producers would freely tag their products with the marks of superior producers. Indeed, this seems to be exactly what happens. If one visits a country where trademark laws are not enforced, one often encounters cheap counterfeits – substandard goods marked with brands that consumers erroneously believe have the same qualities as legitimate goods.[95]

In order to accept that this kind of consumer confusion is harmful, however, we must accept that trademarks generally signify *something* that is real and relevant to purchasing considerations. So what does the word "Nike" mean to the average consumer when it is affixed to a pair of sneakers? For the typical consumer, it is worth highlighting how very *little* information the average trademark conveys. In the case of Nike, consumers may have heard some things about the nature, history, geographic location, finances, employment practices, etc., of the business entity associated with the trademark. In most

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[91] *Id.* at 636 (describing how trademark law "promotes competitive values").

[92] *Id.* at 624 (describing trademark law as a balance of rights between producers and consumers).

[93] *But see* Bartow, *supra* note 86. I agree with Professor Bartow that there is copious information value that trademarks fail to provide and that there is a need for trademark reform in some areas. However, I believe the traditional view that consumers benefit from the regulation of trademarks is generally correct. The theoretical integrity of trademark law relies on the ability of trademarks to benefit consumers – if trademark law were to abandon consumer benefit as a foundation, there could simply be no plausible theoretical foundation for trademark regulation.

[94] *See* WILLIAM M. LANDES & RICHARD A. POSNER, THE ECONOMIC STRUCTURE OF INTELLECTUAL PROPERTY LAW 270 (2003); *see also* Stacey L. Dogan & Mark A. Lemley, *Trademarks and Consumer Search Costs on the Internet*, 41 HOUS. L. REV. 777, 787 n.29 (2004) (explaining that, without trademark law, free-riding would destroy any incentive to invest in a brand).

[95] Sandy Meng-Shan Liu, *After WTO Accession: China's Dilemma with the Trafficking of Fakes*, 93 TRADEMARK REP. 1153, 1157 n.19 (2003) (citing statistics on the amount of counterfeit goods sold in China and describing consumers' disappointment in the quality of those goods).

cases, however, a trademark will denote next to nothing to the average consumer other than its own existence – it is a *signifier* without much of a *signified.*[96]

And when we get down to it: what *is* Coca-Cola™, or Nike™, or Ford™? The words lack any clear signification. When used to refer to companies, the words point to multinational Byzantine structures involving geographically dispersed mazes of subsidiaries, parents, and affiliate entities with overlapping boards. For instance, if Hewlett-Packard were to have sold computers marked with the word "Compaq" in 1998, this would have unquestionably amounted to trademark infringement under the classic A sues B model. Today, however, because A *is* B in that particular situation, the two formerly distinct marks are policed by an integrated entity.[97] The oddness here is not unusual. Some trademark-holding companies such as Coca-Cola™ don't really *produce* anything, but simply license their mark to other producers.[98] Multiple trademarks are often owned and used by a single enterprise that builds separate brands in order to possess different shares of the market.

Well-known trademarks are often substantially unhinged from any associations with any particular *things* that consumers might know. Some have taken this absence of clear significance as a reason for questioning why we protect legal interests in trademarks.[99] I generally think that protection is sound, but clearly there is substantial complexity in claiming that trademarks provide the public with socially useful information. We should say instead that the Coca-Cola™ mark on a product, for instance, tells us something primarily of legal significance. The mark speaks of the complex web of private orderings and licensing that allowed it to be placed there. Trademarks are, in practice, almost exclusively signifiers of this type of legal ordering.

I say "almost" for two reasons. First, many trademarks do denote, whether or not the consumer knows it, particular concrete sources and persons that are relatively fixed. This reality should be significant for the way we think of trademark law. Second, even the most amorphous trademarks, those that are licensed, re-transferred, and detached from clear practical significance, are not completely unhinged as a legal matter from bearing significance about the nature of the sold object bearing the mark. For instance, Nike could not simply transfer its trademark to another company that would immediately sell inferior

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[96] The terms "signified" and "signifier" are used to distinguish the formal sign from the sign's social meaning. For an excellent overview of semiotics and thoughts on its application to trademark law, see Beebe, *supra* note 22, at 623-24.

[97] Michael Kanellos & Ian Fried, *HP to buy Compaq for $25 billion*, CNET NEWS.COM, Sept. 3, 2001, http://news.com.com/HP+to+buy+Compaq+for+$25+billion/2100-1001_3-272519.html.

[98] *See* Hughes, *supra* note 18 (noting how Sara Lee also licenses its trademark to other dessert producers).

[99] *See, e.g.*, ROSEMARY COOMBE, THE CULTURAL LIFE OF INTELLECTUAL PROPERTIES 1-6 (1998) (examining the cultural reappropriation of trademarks); Bartow, *supra* note 86.

shoes and brand them with the Nike™ mark, despite the fact that legal documents could easily be drawn that would purport to have that effect. An attempted sale of a trademark interest to a business without similar goodwill constitutes an abandonment of the mark.[100] Professor McCarthy explains:

> Use of the mark by the assignee in connection with a different good will and different product would result in a fraud on the purchasing public, who reasonably assume that *the mark signifies the same things, whether used by one person or another*. The law's requirement that good will always go with the trademark is a way of insuring that the assignee's use of the mark will not be deceptive, and *will not break the continuity of the thing symbolized by the assigned mark*.[101]

So, according to the case law on abandonment, as summarized by Professor McCarthy, trademark law is not a willy-nilly legal structuring of licenses for signifier uses. Other doctrine and statutory provisions in trademark law support this notion. Trademarks, in theory, should point to some substantive "thing symbolized by the assigned mark."

Another indicator of the existence of a meaningful signified is the viability of claims of "reverse passing off." Reverse passing off is essentially the same situation described in Figure 1 above. A product made by "B" is deceptively marked "A" and sold to the public. The only difference in "reverse passing off," as opposed to "passing off," is that it is B, not A, that brings the action for trademark infringement.[102] One might ask where the social harm accrues in instances of reverse passing off. After all, there is no requirement for the cause of action that A acquired the product of B through improper means. Given that A has possession of the good, if the marks A™ and B™ were devoid of legal meaning, where would be the harm if A marked goods that it rightfully owns with its own separate mark of "source"? Isn't A then the source of the product? For all we know, B might decide to license A to sell B's goods under the A™ mark even though A did not produce the good – thus turning a potential reverse passing off claim into a non-objectionable licensing arrangement.[103] Indeed, if A's mark is Coca-Cola™ or Sara Lee™, this is essentially what happens, with B essentially paying A for the privilege of using A™ and A contractually subjecting B to certain standards of product quality.[104]

But where such a licensing arrangement does not exist, and where A has removed or obscured B's mark and replaced it with A™, the law for some

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[100] J. THOMAS MCCARTHY, 2 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 18:2, at 18-6 (4th ed. 1999 & Supp. 2005).

[101] *Id.* (emphasis added); Fair Undercar Care, Inc. v. Wakefield, , at *16 (N.D. Ill. July 2, 1992) (quoting MCCARTHY).

[102] RESTATEMENT (THIRD) OF UNFAIR COMPETITION § 5 (1995).

[103] Cross, *supra* note 20, at 730 (explaining that a producer cannot sue for reverse passing off if the producer consented to the rebranding).

[104] *See* The Coca-Cola Company, http://www.coca-cola.com (last viewed August 9, 2005) (stating that the company's syrup is sold by local distribution companies worldwide).

reason finds a cause of action.[105] Why? One can explain the claim of reverse passing off by understanding how it presumes the notion that a trademark signifies some *thing*. The notion must be that B is the *true* producer of the good and that the accurate designation of B's mark has greater positive value to society than the use of A's mark.[106] B's actual production of the object, in the absence of a licensing arrangement with A, gives B the right to designate its production with its own mark – B's claim of attribution is more *true* because B is the actual producer of the product. Thus, A's act of replacing B™ with A™ is deceptive to society (at least *more* deceptive than B's intended marking) because A did not actually produce the product.[107] Again, this provides evidence of the promotion of truth as a goal of trademark law.

2. Authorship as Trademark

If one were, simply as a thought experiment, to equate authorial attributions with trademarks and works of authorship with all other goods, misattribution would capture a situation that seems generally analogous to trademark infringement.[108] Looking again at Figure 1, if John Doe ("B") were to claim his novel was the work of John Grisham ("A"), John Doe would be liable, in this thought experiment, for traditional "passing off." Consumers would be deceived as to the authorship of the work, mistakenly assuming that Grisham wrote the novel written by Doe.

Plagiarism, on the other hand, would be analogous to reverse passing off. [109] If John Grisham ("A") were to sell a novel written by John Doe ("B") and were to attribute authorship to himself, he would be liable (again – only in the context of this thought experiment) for "reverse passing off."[110] From the consumer perspective, as in the standard passing off situations, the result of Grisham's deception would be identical to the result of Doe's deception. Consumers would mistakenly assume that Grisham wrote the novel written by Doe. Because Doe would be the *true* author, society would be deceived. The only relevant difference in the two fact patterns would be in the identity of the party responsible for the consumer deception.

Importing theories of trademark to the realm of authorship appears facile at first. Just as trademarks familiarize us with words and logos, the packaging and advertising of movies, music, and even learned legal treatises familiarize

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[105] RESTATEMENT (THIRD) OF UNFAIR COMPETITION § 5 (1995).

[106] *See* Kwall, *supra* note 5, at 1005 (noting that one court found reverse passing off objectionable because it deceives consumers).

[107] *See id.*

[108] *See* RESTATEMENT (THIRD) OF UNFAIR COMPETITION § 5 (1995) (defining trademark infringement).

[109] *See* Green, *supra* note 25, at 203 ("The analogy between reverse palming off and plagiarism should be clear.").

[110] *See* RESTATEMENT (THIRD) OF UNFAIR COMPETITION § 5 (1995) (defining reverse passing off as marking another's goods with one's own trademark).

us with certain words that are the personal names of the authors and artists who created these works. These authorial tags, like trademarks, generally have little *initial* information value to consumers. Just as there is little or no *a priori* meaning or value in the connection of the four or five letters comprising "Dell" or "Pepsi" with computers and beverages, there is little value in the association of the strings of letters in "Steven Spielberg," "Marni Nixon," or "John Henry Wigmore" with works of film, music, or legal scholarship. Yet by tasting things marked as Pepsi™ and encountering the word Pepsi™ in social communications and the media, we assemble a mental construct of what Pepsi™ means. The same is true for authors. Regardless of our like or dislike of products marked with "Tom Clancy," most of us have some impression of what the word "Tom Clancy" denotes about the nature of a thing when the word is affixed to a novel. When we select among an array of possible choices in books, movies, and music, we base our decisions as to whether or not to purchase a Tom Clancy novel (at least in part) upon the qualities we have learned to associate with Tom Clancy.[111] Of course, those selling products are well aware of how we think about our purchases, and they know how particular authorial attributions, like particular trademark designations, can be used to sell music, books, and movies.[112]

The value of trademarks for cars, computers, and sneakers can wax and wane as brand reputations for quality and prestige fluctuate. Similarly, various author tags wax and wane in value over time, as a result of changing authorial outputs and shifting tastes. In 2004, Dan Brown was a "hot" author, just as the Apple iPod was a "hot" consumer gadget. When deciding whether or not to purchase the latest Steven King, Tom Clancy, or J.K. Rowling novel, the first question for most purchasers may be whether they (or a trusted friend) deemed recent novels by that author to be quality products.[113] The same is true for goods marked with trademarks.

3. Authorship vs. Trademark

My argument thus far may suggest that we can and should equate author names with traditional trademarks. Yet we can't and we shouldn't. Author names are not the same thing as "Nike" and "Coca-Cola". It is true that

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[111] *See* Pinover, *supra* note 40, at 38 ("Publishers, record companies, movie companies and the entertainment industry count on known names to sell their products, just as trademarks sell soap and cereal."); *see also* Dastar Corp. v. Twentieth Century Fox Film Corp., 539 U.S. 23, 33 (2003) (commenting that purchasers of novels are probably interested "primarily[] in the identity of the creator of the story").

[112] *See* Randolph Stuart Sergent, *Building Reputational Capital: The Right of Attribution Under Section 43 of the Lanham Act*, 19 COLUM. J.L. & ARTS 45 (1995).

[113] Karen L. Gulick, *Creative Control, Attribution and the Need for Disclosure: A Study of Incentives in the Motion Picture Industry*, 27 CONN. L. REV. 53, 97 (1994) ("[W]hen purchasing one-time experience goods, consumers frequently rely on the advice of family, friends, and occasionally, consumer magazines.").

personal names do transform into legally protected trademarks frequently. Some of the oldest and most famous trademarks originated with personal names, such as Disney™, Ford™, McDonald's™, DuPont™, Tiffany™, Calvin Klein™, Johnson & Johnson™, Macy's™, etc. Yet when we buy products marked with Ford™ and Disney™, we are not buying the authors Walt Disney and Henry Ford. We may no longer even make the mental association between the trademarks and the personal names that were their source. Whereas personal names are used to identify persons, trademarks are commercial marks used to identify the origins of goods or services.

If we were to equate names with trademarks, one problem would be that most personal names are not unique. Common first names (like James, Michael, or John) tend to be preferred for children.[114] Surnames are rarely original. Many parents conjoin a traditional name with a common surname and children are given names that are already in current use. If we were talking of trademarks, this kind of widespread use of identical marks would be *verboten*. In the context of personal names, identical names may cause confusion, yet it seems entirely appropriate that parents should have the freedom to name their children as they please without having to deal with the Patent and Trademark Office. If your surname is Ford and you have named your son Henry (a traditional name), it seems appropriate that this "new" Henry Ford should be free to denote his authorship of his school writing assignments without a license from a certain car company.

However, if young Henry Ford wants to use his personal name to sell automotive goods and services, trademark law will likely interfere. If prior entrants have already established public reputations associated with marks that are personal names, subsequent entrants attempting to use the same names may be barred from utilizing their personal names in association with the sale of goods in related markets.[115] The law does recognize that there is something vaguely unfair about this to the "new" Henry Ford that just wants to use his name to sell his automotive parts.[116] Judicial opinions sometimes express the view that people should have an assumed right to use their own names in relation with business ventures if these efforts are made in good faith and without improper motives – even if some degree of consumer confusion results

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[114] 1990 Census Bureau data indicates that over ten percent of males are named either James, John, Robert, or Michael. *See* FREQUENTLY OCCURRING FIRST NAMES AND SURNAMES FROM THE 1990 CENSUS, U.S. CENSUS BUREAU, http://www.census.gov/genealogy/names (last modified Mar. 31, 2005). Female name choices typically demonstrate a bit more flexibility. *See id.*

[115] *See* Quentin R. Wittrock, Note, *Use of Personal Names in Noncompeting Businesses – Doctrines of Unfair Competition, Trademark Infringement, and Dilution*, 70 IOWA L. REV. 995, 997 (1985) (concluding that current law may prevent a local business from using the same trademark as a business that operates nationally, even if the local trademark is the business owner's name).

[116] *See id.*

from the use.[117] Courts will therefore bend the strict rules of trademark to give some breathing room to business owners with personal names that might otherwise infringe trademarks. However, you have no *absolute* right to use your personal name in relation with your business.[118]

Perhaps this impediment to personal name use is ameliorated by the fact that birth names are often fairly dull trademarks and one does not have to choose a trademark for a business or product that is identical to one's personal name. And perhaps it is also ameliorated by the fact that that the marks we associate with our persons are flexible, from both a legal and social perspective. Authors and celebrities have regularly refashioned their identifying signs in order to facilitate self-marketing. Marion Morrison changed his name to John Wayne and Prince Rogers Nelson (who was formerly known as "Prince") changed his name to a symbol defying conventional articulation – reportedly in order to escape certain contractual restrictions.[119] Skimming a random sample of such substitutions reveals the unsurprising fact that when authors and celebrities adopt new symbols to identify themselves, they pick better trademarks: shorter, more memorable names with more appealing connotations.[120] It is probably also worth noting that this has often entailed the

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[117] *Id.*

[118] *Id.*

[119] Though the symbol defies articulation, it has the benefit of being registered as a trademark and also subject to copyright protection, unlike the vast majority of personal names. Judge Posner explained:

> The defendant, identified only as 'Prince' in the caption of the various pleadings, is a well-known popular singer whose name at birth was Prince Rogers Nelson, but who for many years performed under the name Prince and since 1992 has referred to himself by an unpronounceable symbol reproduced as Figure 1 at the end of this opinion. The symbol is his trademark but it is also a copyrighted work of visual art that licensees of Prince have embodied in various forms, including jewelry, clothing, and musical instruments.

Pickett v. Prince, 207 F.3d 402, 403 (7th Cir. 2000) (parenthetical comments omitted).

[120] Fabricated monikers include Woody Allen (Allen Konigsberg), Alan Alda (Alphonso D'Abruzzo), Anne Bancroft (Anna Maria Italiano), Pat Benatar (Patricia Andrejewski), Jack Benny (Benjamin Kubelsky), Mel Brooks (Melvin Kaminsky), George Burns (Nathan Birnbaum), Tom Cruise (Thomas Mapother IV), Tony Curtis (Bernard Schwartz), Kirk Douglas (Issur Danielovitch), Bob Dylan (Robert Zimmerman), Cary Grant (Archibald Leach), Elton John (Reg Dwight), Karl Malden (Mladen Sekulovich), Barry Manilow (Barry Alan Pincus), Ricky Martin (Enrique Martin Morales), Walter Matthau (Walter Matuschanskayasky), Chuck Norris (Carlos Ray), George Orwell (Eric Blair), Jack Palance (Walter Palanuik), Martin Sheen (Ramon Estevez), Ringo Starr (Richard Starkey), Sting (Gordon Sumner), and Mark Twain (Samuel Clemens). For more examples, see Nom de Guerre, http://go.to/realnames (last visited Sept. 16, 2005). Such monikers are not always voluntarily adopted. Some performers have been pressured to use stage names. This was allegedly the case with John Mellencamp (né John Mellencamp, but previously called Johnny Cougar, John Cougar, and John Cougar Mellencamp). *See* Wikipedia: John Cougar Mellencamp, http://en.wikipedia.org/wiki/John_Cougar_Mellencamp (last visited Aug. 7,

abandonment of names that signify association with an ethnic minority.[121]

The freedom to refashion a personal name is not unlimited or without some downside. While businesses may routinely invent new marks for themselves and their new products and services, prior personal names are more difficult to abandon. Abandoning a name entails a significant social network cost, as all spouses who have adopted new surnames after marriage know.[122] And modification is not always effective where the public has grown accustomed to a prior signifier: Prince Nelson is still called Prince.[123] Yet the flexibility to rename oneself is still employed for various purposes. Female authors often employ pseudonyms in order to mask their gender,[124] and it is not uncommon for authors to employ pen names for particular purposes, such as to write anonymously or in a form or genre with which they are not traditionally associated.[125]

The use of a personal name in relation to the sale of creative works of authorship, therefore, raises some interesting questions for trademark law. It would seem wise to avoid any simple equation of an author's name with a trademark interest – especially if we want to allow later authors who share the personal names of prior authors to use their given names.[126] Additionally, the requirement of secondary meaning is somewhat problematic. Personal names invariably speak to consumers of a personal identity. Whereas trademarks are inherently commercial and are theoretically associated with the qualities of

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2005). Not all celebrities take or are forced to take this course – for instance, Madonna and Britney Spears are well known for the hyper-fabrication of their popular images, but have retained their birth names: Madonna Louise Ciccone and Britney Jean Spears, respectively.

[121] *See* Nom de Guerre, *supra* note 120.

[122] And of course this can, in some cases, be a choice of both spouses. *See* Eric Schlacter Changes Name to Eric Goldman, Eric Goldman Homepage, Dec. 24, 1997, http://eric_goldman.tripod.com/personal/namechange.htm.

[123] *See supra* note 119. Any unilateral demand that a functioning signifier should be replaced with a new one pointing to an identical signified runs the risk of being ignored or creating some social problems. An interesting example was when, in 1966, the Chinese government tried to replace the standard traffic light "Red=Stop, Green=Go" signification with a new pro-Communist "Red=Go, Green=Stop" signification. After numerous accidents, the attempt was abandoned. *See* NICHOLAS D. KRISTOF, CHINA WAKES: THE STRUGGLE FOR THE SOUL OF A RISING POWER 70 (1994).

[124] Male author names, like non-minority celebrity names, are generally deemed to be more marketable, especially in genres where male adolescents may be purchasers. *See* Saul Levmore, *The Anonymity Tool*, 144 U. PA. L. REV. 2191, 2210-11 (1996) (discussing "cross-penning"). While some female authors employ male pseudonyms, others simply mask their gender identity by using initials rather than their first names. *See id.*

[125] *See id.* at 2207-15 (discussing pseudonymity). Professor Laura Heymann makes the observation that these "authornyms" share many of the qualities of trademarks. Heymann, *supra* note 17, at 1378.

[126] *See* Wittrock, *supra* note 115 (discussing when personal names may be used as trademarks despite their lack of uniqueness).

goods,[127] personal identities are neither of these things. Yet it is clear that names of authors can and do acquire the same type of commercial significance and secondary meaning that we associate with marks. Famous authors demonstrate that the personal name of an author or artist can accumulate the goodwill and selling power that is associated with a trademark. Pseudonyms and stage names demonstrate that personal names as *signifiers* can be made flexible and optimized for selling power, just as trademarks are.[128] In terms of the power of names to denote a real and meaningful *signified* that has information value to the public, personal names are arguably superior to trademarks because they point to actual persons. Thus, one might argue that they are more deserving of legal, trademark-type protections. Confronted by the strong reasons for recognizing some trademark-like interest in a personal name, courts historically allowed creative authors to pursue trademark-like actions where their names function much like unregistered trademarks.[129]

Where the marketing of a work created consumer confusion as to the authorial "source" of a work, trademark law provided a legal mechanism for authors to bring claims based upon the misattribution of their creative efforts. There are many examples, but a well-known case in this vein is *Follett v. New American Library*.[130] A publishing company, William Collins Sons & Company Ltd., had employed (then relatively unknown) author and journalist Ken Follett to make editorial revisions to a book named *The Heist of the*

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[127] *See* RESTATEMENT (THIRD) OF UNFAIR COMPETITION § 4 (1995).

[128] *See supra* note 120.

[129] Because personal names were rarely registered as trademarks, courts generally applied Section 43(a) of the Lanham Act, (codified at 15 U.S.C. § 1125(a)(1) (2000)), which states, in relevant part:

> Any person who, on or in connection with any goods or services . . . uses in commerce any word, term, name, symbol, or device . . . or any false designation of origin . . . which . . . is likely to cause confusion, or to cause mistake, or to deceive . . . as to the origin, sponsorship, or approval of his or her goods . . . shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

See also Pinover, *supra* note 40, at 40 ("Although artistic identity may not be thought of as a traditional trademark, it should not be surprising that Section 43(a) provides artists and authors protection for the proper attribution of their products. The trademarks or identifications of source are their names."); *id.* at 43-44 (discussing Follett v. Arbor House Publishing, 1980 US Dist. LEXIS 13287 (S.D.N.Y. Aug. 28, 1980)); *id.* at 44-45 (discussing Geisel v. Poytner Products, Inc., 283 F. Supp. 261 (S.D.N.Y. 1968)); *id.* at 45-46 (discussing Lamonthe v. Atlantic Recording Corp., 847 F.2d 1043 (9th Cir. 1988)); *id.* at 46-48 & n.30-35 (discussing other cases involving claims of artistic misattribution under the Lanham Act); Gulick, *supra* note 113, at 112-13 (recounting cases where the Lanham Act was used successfully to prevent instances of misattribution); Natalie C. Suhl, Note, *Moral Rights Protection in the United States Under the Berne Convention: A Fictional Work?*, 12 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 1203, 1218 (2002) ("Courts often interpret the prohibition against 'reverse passing off' in 43(a) as providing authors with a legitimate right to seek proper credit for their work.").

[130] 497 F. Supp. 304 (S.D.N.Y. 1980).

Century.[131] The book described a factual event: a bank robbery and subsequent trial. Three anonymous French journalists had collaborated in writing the book. It was to be published under the joint pseudonym "Rene Louis Maurice."[132] Follett made extensive revisions to the original work.[133] As a result of his editorial modifications, he requested a byline on the title and some copyright interest in the revised works. The copyright request was denied, but it was agreed that the novel would attributed to "Rene Louis Maurice with Ken Follett." The book was published in England in 1978 with "Rene Louis Maurice" alone listed on the cover, and "with Ken Follett" included on the title page. The book failed to find a publisher in America.[134]

Subsequently, Ken Follett published *Eye of the Needle*, which became a best seller in the United States.[135] As Follett's fame grew, an American publishing company, Arbor House, contracted with the owners of the copyright in *The Heist of the Century* to republish the book under the title *The Gentlemen of 16 July*. The jacket cover that was planned read: "by the author of TRIPLE and EYE OF THE NEEDLE: KEN FOLLETT with Rene Louis Maurice."[136] It was planned that Follett's name would be the only name on the spine of the book and would appear in letters roughly twice the size of the French authors' pseudonym on the cover. Follett learned of the plan and brought suit.

After dispensing with claims based on copyright and the New York state publicity laws, the court arrived at what it perceived to be the heart of the case. "The key issue, then, is whether the designation of authorship which Arbor House proposes to utilize on the cover of *The Gentlemen of 16 July* constitutes a violation of section 43(a) of the Lanham Act . . . ."[137] The court concluded that

> although Follett's revisions may have been more substantial than those which an editor would ordinarily perform . . . it is misleading to depict him as the principal author of *The Gentlemen of 16 July*. His contributions display none of the special creative attributes which are associated with authorship. Thus, the representation that Follett is the principal author of the book is literally false. . . . The Lanham Act . . . is designed . . . to protect the public and the artist from misrepresentations

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[131] *Id.* at 306.

[132] *Id.* at 305

[133] *Id.* at 306.

[134] *Id.*

[135] KEN FOLLETT, EYE OF THE NEEDLE (1978). *Eye of the Needle* was actually a re-publication of his novel *Storm Island,* which had already been printed in England in 1977. Ken Follett Library: Eye of the Needle, http://www.ken-follett.com/bibliography/eye.html (last visited Sept. 16, 2005).

[136] *Follett*, 497 F. Supp. at 308.

[137] *Id.* at 312-13.

of the artist's contribution to a finished work.[138]

Follett succeeded in invoking the Lanham Act to enjoin the publication of the book with the proposed misleading designation of authorship.[139] It should be noted that none of the cases like *Follett* that applied the Lanham Act to claims of authorial misattribution were capable of articulating a coherent theory of exactly what authorship was and how it intersected with the protections granted by trademark law. Indeed, the court in the *Follett* case declared at one point in the opinion that matters of authorship were difficult to theorize:

> The concept of authorship is elusive and inexact. Although I do not presuppose to offer a definitive analysis of qualities which give rise to authorship, some such definition is essential to a resolution of the issue before the court. The parties have cited no cases in which the concept of authorship has been carefully dissected, and this court has discovered none.[140]

Yet despite this admission, the court did not shy away from the issue, but instead sallied forth into the difficult task of ascertaining the truth of claims about authorship. *Follett* and similar cases were united by a common belief that designations of authorship, like trademarks, could be determined to be true or false designations, could mislead consumers as to salient qualities of goods, and that protection under trademark law was thus required.[141] However, all those cases are no longer reliable precedent after the Supreme Court's recent holding in *Dastar Corp. v. Twentieth Century Fox Film Corp.*,[142] which I will turn to next.

B. *The* Dastar *Decision*

The Supreme Court's most prominent intellectual property decision in the 2003 term was undoubtedly *Eldred v. Ashcroft*,[143] decided in January. In *Eldred*, a seven Justice majority of the Court upheld a Congressional extension of copyright terms by twenty years in the face of a constitutional challenge.[144] Turning to trademark law in March, the Supreme Court issued *Moseley v. V Secret Catalogue, Inc.*,[145] which, as a practical matter, severely limited the

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[138] *Id.*

[139] *Id.* at 313.

[140] *Id.* at 312.

[141] King v. Innovation Books, 976 F.2d 824, 831 (2d Cir. 1992) (locating the harm of misattribution in consumer deception); Geisel v. Poytner Prods, Inc., 295 F. Supp. 331, 348-53 (S.D.N.Y. 1969) (discussing whether any injury to the plaintiff or public deception occurred in the copyright context).

[142] 539 U.S. 23 (2003).

[143] Eldred v. Ashcroft, 537 U.S. 186 (2003).

[144] *Id.*

[145] 537 U.S. 418 (2003).

power of the poorly worded and controversial 1995 Federal Trademark Dilution Act.[146] In June, the Supreme Court trimmed back trademark law yet when it decided *Dastar*.

The factual background of the *Dastar* case is complex. In 1948, shortly after the end of World War II (and shortly before Eisenhower's successful presidential campaign in 1952), Doubleday & Company published Dwight D. Eisenhower's "personal account of World War II," entitled *Crusade in Europe*.[147] The attribution of authorship to Eisenhower was clearly an intended selling point for the book, just as the attribution to Follett was intended as a selling point of *The Gentlemen of 16 July*. The front of the dust jacket was taken up with a portrait of a serene and smiling Eisenhower in military uniform against a blank background. The back inside dust cover bore a ringing endorsement from Allan Nevins, described as an "eminent historian." Nevins informed the reader that one of the chief merits of the book was the identity of the author:

> Above all, [the book] expresses the personality of the author. Readers will feel this is General Eisenhower speaking. That fact, indeed, is one of the chief merits of the work. It has an air of genuineness, a ring of sincerity; the tone is that of a leader, a serene, highly sagacious leader pouring out his special knowledge with the heartiest desire to tell the truth about himself and others.[148]

Crusade in Europe sold very well – it was even a Book-of-the-Month Club® selection – and this created a demand for a video adaptation. Doubleday licensed exclusive television rights to an affiliate of Twentieth Century Fox so that a television series could be produced.[149] Fox contracted with Time, Inc. for the production, and the television series produced in 1949 was also called *Crusade in Europe*.[150] Time then assigned its copyright in the television series back to Twentieth Century Fox. Doubleday renewed its copyright in the *book* in 1975. Fox, however, failed to renew the copyright in the *video footage* in a timely manner.[151] Thus, while the copyright in the book continued, the copyright in the video expired in 1977.[152] *Crusade in Europe*

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[146] *See* 15 U.S.C. § 1125 (2000). The Supreme Court's requirement of a showing of "actual injury" to bring a cause of action for trademark dilution effectively checked the expansion of the dilution remedy into a broader property right. *See* Moseley v. V Secret Catalogue, Inc., 537 U.S. 418 (2003). Trademark dilution has always been a controversial doctrine and, as Professor McCarthy has noted, is often misinterpreted by district courts. 3 MCCARTHY § 24, *supra* note 100, at 24-108 to 24-112.

[147] *Id.* at 25-26.

[148] DWIGHT D. EISENHOWER, CRUSADE IN EUROPE (1948) (dust jacket) (on file with author).

[149] *Dastar*, 539 U.S. at 25-26.

[150] *Id.* at 26.

[151] *Id.* at 23.

[152] *Id.*

(the video) entered the public domain, that realm of information matter in which no copyright subsists.[153]

At the end of the twentieth century, there was a renewed interested in World War II accompanying the fiftieth anniversary of many of the war's events. The blockbuster film *Saving Private Ryan* was released along with a slew of other entertainment products. Dastar, a small Oregon corporation, saw an interesting opportunity in the public domain video footage of *Crusade in Europe*. It took the original footage (obtained from original copies), re-edited that footage slightly, and released it in 1995 as a seven-video set sold under the name *World War II Campaigns in Europe*.[154] Dastar must have recognized that the sale of a video that relied heavily on references and passages from a book, *Crusade in Europe*, would create potential copyright issues. So Dastar removed all video passages making references to the book. Dastar probably also feared that references to the original attributions of authorship to Twentieth Century Fox and Time might create trademark issues – so Dastar deleted the original film credits that appeared within the original video.[155] The Dastar version of the footage contained a new credit sequence, which was limited to the names of the Dastar editors. Each of the seven Dastar videos began with the words "Dastar Presents . . . ."[156]

Fox, also anticipating the anniversary of the World War, re-acquired the book's video adaptation rights and arranged for the re-release of *Crusade in Europe*.[157] Fox did not appreciate the competition from Dastar, which was essentially selling the same *Crusade in Europe* footage at half the price. Fox brought suit, alleging that by removing the original authorial credits to Twentieth Century Fox, Dastar had engaged in authorial misattribution, implicitly claiming that it had authored the video.[158] Fox alleged this violated federal trademark law by creating consumer confusion as to the source and origin of the video footage. Doubleday, co-plaintiff, alleged that the copies of the video footage were derivative works that infringed Doubleday's copyright in the original book.[159]

Both Fox and Doubleday prevailed in the district court. Fox's victory was directly attributable to the Ninth Circuit's "bodily appropriation" standard.[160]

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[153] *See* Jessica Litman, *The Public Domain*, 39 EMORY L.J. 965, 967 (1990) (characterizing the public domain as the stock of raw material from which most creative work is derived).

[154] WORLD WAR II: CAMPAIGNS IN EUROPE (Dastar 1995).

[155] *Id.*

[156] *Id.*

[157] *Dastar*, 539 U.S. at 26.

[158] *Id.* at 27.

[159] *Id.*

[160] *See* Cleary v. News Corp., 30 F.3d 1255, 1261 (9th Cir. 1994) (adopting the bodily appropriation test); Shaw v. Lindheim, 919 F.2d 1353, 1364 (9th Cir. 1990) (explaining the scope of the Lanham Act).

The standard was addressed particularly to the situation where trademark law was applied to claims involving the authorship of materials protected by copyright. A similar (slightly more expansive) standard was being used in the Second Circuit.[161] Essentially, both the Ninth Circuit's "bodily appropriation" and the Second Circuit's "substantial similarity" tests merged elements of copyright and trademark law by allowing a presumption of consumer confusion under trademark law where a substantial portion of a creative work of authorship was misattributed. Thus, an evidentiary showing of copyright-like similarity between creative works served to trigger a presumption of trademark infringement. The district court in *Dastar* found, pursuant to the applicable doctrine, Dastar's actions amounted to a willful violation of the federal Lanham Act.[162] It awarded Fox not only Dastar's profits of $1,567,213.66, but also attorney's fees totaling $1,481,898.[163] Doubleday was awarded statutory damages of $150,000 for copyright infringement.

On appeal, the Court of Appeals for the Ninth Circuit remanded Doubleday's copyright claim with regard to the book due to a factual question, but affirmed the ruling in Fox's favor with regard to the Lanham Act claim. [164] The Ninth Circuit decision was unpublished. The Supreme Court's grant of certiorari to Dastar's petition for review was therefore something of a surprise. Amicus parties generally assumed that the Supreme Court took the case in order to strike down the standards in use by the Ninth and Second Circuits. Because the standards were a judicial doctrine that amalgamated the subject matter of copyright and the mechanism of trademark, they did seem prone to legal challenge – clear support for the unique standard could be found in neither body of law.[165] Thus, a frequent argument in the amicus briefs was that the bodily appropriation standard (and the *Dastar* decision by extension) was

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[161] Waldman Publ'g Corp. v. Landoll, Inc., 43 F.3d 775, 783 (2d Cir. 1994); *see also* Kwall, *supra* note 5, at 1005 (describing the "bodily appropriation" test and the Second Circuit's substantially similar "substantial similarity" test).

[162] *Dastar*, 539 U.S. at 27-28.

[163] Twentieth Century Fox Film Corp. v. Dastar Corp., 2000 U.S. Dist. LEXIS 22064, at *34 (C.D. Cal. Nov. 27, 2000), *vacated sub nom.* Twentieth Century Fox Film Corp. v. Entm't Distrib., 2002 U.S. App. LEXIS 7426, at **315-16 (9th Cir. Apr. 19, 2002).

[164] The Ninth Circuit found there were triable issues of fact with regard to Doubleday's claims to copyright ownership. Doubleday argued that, under the copyright statute, it was the original "author" of the book because Eisenhower had produced the book as a "work for hire." *Twentieth Century Fox*, 2002 U.S. App. LEXIS 7426, at *314; *but see id.* ("The sale agreement between Eisenhower and Doubleday also gives no indication that the book was a work for hire."). The work for hire doctrine is discussed briefly in Part III.C. *infra*.

[165] Amicus briefs were filed by several interested parties, many of which made these arguments. *See, e.g.*, Brief of Malla Pollack and Other Law Professors on Question One Supporting Dastar Corp., *Dastar*, 539 U.S. 23 (No. 02-428); Brief of the American Intellectual Property Law Association in Support of Neither Party, *Dastar*, 539 U.S. 23 (No. 02-428); Brief of the American Library Association et al., *Dastar*, 539 U.S. 23 (No. 02-428); Brief of the International Trademark Association, *Dastar*, 539 U.S. 23 (No. 02-428).

erroneous as a matter of trademark doctrine because it failed to require evidence of consumer confusion.[166]

The Supreme Court ruled in favor of Dastar, as expected.[167] However, the Supreme Court's opinion did more than merely negate the aberrant hybrid doctrines. Instead, the Court made a sweeping statement about the scope and nature of trademark law. In language that has been cited by numerous district court opinions in the past two years, the Court stated that the scope of trademark law was limited to the misattribution of "the producer of the tangible product sold in the marketplace."[168] The implications of this pronouncement are startling. According to the Court, if Dastar had taken the Fox videotapes, removed an attribution to Fox and resold the tapes with a Dastar label, this type of misattribution would have been actionable pursuant to the Lanham Act as "reverse passing off."[169] However, because Dastar actually produced the *physical* videotape and only copied the *intangible expression*, the Court found that Dastar had not violated the Lanham Act by attributing the origin of the videotape to itself.[170] Query what difference this would actually make to consumers. Yet, bizarre as it may seem, that is what the opinion of the Court says.[171]

Though subsequent district courts have uniformly relied on this "tangible product" language, other interpretations of the case have been proffered in

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[166] *See supra* note 165; *see also* 3 MCCARTHY § 24.03[2], *supra* note 100, at 24-13.

[167] *Dastar*, 539 U.S. at 38.

[168] *Id.* at 31. District court opinions citing this language include Gen. Universal Sys., Inc. v. Lee, 379 F.3d 131, 149 (5th Cir. 2004); Smith v. New Line Cinema, 2004 U.S. Dist. LEXIS 18382, at *9 (S.D.N.Y. Sept. 8, 2004); Schiffer Publ'g, Ltd. v. Chronicle Books, 350 F. Supp. 2d 613, 617 (E.D. Pa. 2004); Larkin Group, Inc. v. Aquatic Design Consultants, Inc., 323 F. Supp. 2d 1121, 1129 (D. Kan. 2004); Bob Creeden & Assocs. v. Infosoft, Inc., 326 F. Supp. 2d 876, 879 (N.D. Ill. 2004); Tao of Sys. Integration, Inc. v. Analytical Servs. & Materials, Inc., 299 F. Supp. 2d 565, 572 (E.D. Va. 2004); Carroll v. Kahn, 68 U.S.P.Q.2D (BNA) 1357, at *16 (N.D.N.Y. 2003); Bretford Mfg., Inc. v. Smith Sys. Mfg. Co., 286 F. Supp. 2d 969, 971-72 (N.D. Ill. 2003); Boston Int'l Music, Inc. v. Austin, 2003 U.S. Dist. LEXIS 16240, at *4-5 (D. Mass. Sept. 12, 2003); and Williams v. UMG Recordings, 281 F. Supp. 2d 1177, 1182 (C.D. Cal. 2003).

[169] The Court stated that a claim for reverse passing off "would undoubtedly be sustained if Dastar had bought some of New Line's Crusade videotapes and merely repackaged them as its own." *Dastar*, 539 U.S. at 31. Oddly, this result was exactly the converse of what Professor John Cross (who joined an amicus brief on behalf of Dastar) had cogently argued was the proper policy direction to take for claims of reverse passing off. *See* Cross, *supra* note 20, at 766 ("In conclusion, then, the special characteristics of the artist justify granting a limited cause of action for reverse passing off to artists, but not to others."); *id.* at 772 ("The only case in which reverse passing off can be justified is when a work of art, literature, or music is involved.").

[170] *Dastar*, 539 U.S. at 31-32 (understanding "origin of goods" to refer to the producer of the physical videotape).

[171] The opinion spoke for eight Justices. Justice Breyer was recused. *Id.*

academic commentary. By far the most common interpretation of *Dastar* in law review articles and student Notes has been that the case constituted a victory for the public domain.[172] In other words, because the Supreme Court in *Dastar* failed to apply trademark law to prohibit the sale materials that had been previously protected by copyright but which had fallen into the public domain, the decision ensured that public domain materials would be maximally free for public use without being encumbered by restrictive intellectual property protections.[173] Professor Jane Ginsburg has suggested that some members of the Court may have seen *Dastar* as an act of contrition for *Eldred v. Ashcroft*, a decision that many criticized for failing to vigorously protect the public domain.[174]

Two amicus briefs submitted by groups of law professors in *Dastar* had

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[172] *See, e.g.*, Jessica Bohrer, *Strengthening the Distinction Between Copyright and Trademark: The Supreme Court Takes a Stand*, 2003 DUKE L. & TECH. REV. 23, 27-28 ("The Court . . . was rightfully concerned that allowing the line to blur in a case such as this would create a state of 'perpetual copyright protection' that could nullify the intent and effect of copyright and trademark law."); Hughes, *supra* note 18, at 32 ("Where *Eldred* accepted Congress's 20 year extension of copyright – thereby sharply curtailing what will go into the public domain for decades – *Dastar* shows the Court to be highly protective of the public domain."); Lynn McLain, *Thoughts On* Dastar *From a Copyright Perspective: A Welcome Step Toward Respite for the Public Domain*, 11 U. BALT. INTELL. PROP. J. 71, 91 (2003) ("It is to be hoped that the Court will continue the work that it has begun. The public domain's borders . . . must not be permitted to be truncated by other bodies of law . . . ."); Kurt M. Saunders, *A Crusade in the Public Domain: The* Dastar *Decision*, 30 RUTGERS COMPUTER & TECH. L.J. 161, 178 (2004) (calling the decision "wise" and stating that "[i]n the end, what *Dastar* teaches, if nothing else, is that unless a valid intellectual property right, such as a patent or copyright, protects something, it may be freely copied and distributed without attribution"); Richard Ronald, Note, Dastar Corp. v. Twentieth Century Fox Film Corp., 19 BERKELEY TECH. L.J. 243 (2004) ("[T]he *Dastar* Court frees manufactures [sic] to use public domain works without fear of a burdensome attribution requirement."); Joshua K. Simko, Comment, *"Every Artist Is a Cannibal, Every Poet Is a Thief": Why the Supreme Court Was Right To Reverse the Ninth Circuit In* Dastar Corp. v. Twentieth Century Fox Film Corp., 11 J. INTELL. PROP. L. 355, 356 (2004) (arguing that the Supreme Court correctly decided *Dastar*); Eugene Quinn, Dastar v. Fox*: Public Domain Wins in the U.S. Supreme Court*, JURIST (June 4, 2003), (calling the decision "a victory for . . . the public domain").

[173] With regard to the public domain, see generally James Boyle, *The Second Enclosure Movement and the Construction of the Public Domain*, 66 LAW & CONTEMP. PROBS. 33 (2003) (relating the English enclosure movement to intellectual property rights). *See also* Litman, *supra* note 153, at 996.

[174] Ginsburg, *supra* note 17, at 267 ("In what some might see as an act of contrition for having upheld copyright term extension in *Eldred v. Ashcroft*, [*Dastar* made clear] that a work's entry into the public domain precludes resort to another federal intellectual property statute, the Lanham Trademarks Act, to achieve a *de facto* prolongation of exclusive copyright-like rights.").

argued for reversal primarily based on public domain arguments.[175] These arguments did appear to have some influence on Justice Scalia's opinion: the Court explicitly stated that creating a right of authorial attribution under trademark law would have the detrimental effect of regulating the free use of public domain materials under a "species of mutant copyright law."[176] The public domain is generally equated with the absence of intellectual property regulations, so there is clearly some truth in seeing *Dastar* as a victory for the public domain. But in the case of intellectual property laws that prevent consumer deception, the absence of regulation does not always serve the public interest. In any event, the brief nod toward the public domain did not seem to be the driving force behind the *Dastar* decision.[177] No subsequent district court decisions have accorded this language much consequence and all courts to consider the issue have been willing to extend *Dastar*'s holding to works *not* in the public domain.[178]

A second notable view in the scholarly commentary is that the Court's opinion in *Dastar* rested on an erroneous conclusion of "amateur psychology," namely a faulty empirical belief that consumers didn't actually care about the

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[175] Professor Tyler T. Ochoa filed an amicus brief on behalf of himself and other law professors. *See* Tyler T. Ochoa, *Brief* Amici Curiae *of Intellectual Property Law Professors in Support of Dastar Corporation*, 24 WHITTIER L. REV. 931, 931 (2004). Professor Malla Pollack also submitted a brief on behalf of herself and nine legal scholars. *See* Pollack, *supra* note 165.

[176] The full sentence reads:

> Assuming for the sake of argument that Dastar's representation of itself as the "[p]roducer" of its videos amounted to a representation that it originated the creative work conveyed by the videos, allowing a cause of action under § 43(a) for that representation would create a species of mutant copyright law *that limits the public's "federal right to 'copy and to use,'" expired copyrights.*

Dastar, 539 U.S. at 34 (citations omitted and emphasis added). Note that "mutant copyright law" precedes the description of the effects of the putative monstrosity on the public domain. Evidently the "mutant copyright" language was borrowed from the petitioner's brief, which was co-authored by UCLA law professor David Nimmer. *See* Nimmer, *supra* note 18, at 60 ("Happily for Justice Scalia (as well as for the U.S. justice system), his own opinion in *Dastar* eliminates any right to maintain that those words in the Court's opinion represent reverse passing off, thus forestalling my colleagues and me from calling him to the bar!").

[177] *But see* Ginsburg, *supra* note 17, at 269 ("Despite this so-far unflinching application of *Dastar* to still-copyrighted works, one should recognize that the rationale behind the Supreme Court's rejection of attribution rights in copyright-expired works does not extend to copyright-protected works."); Patchen M. Haggerty, *Authors' Claims for Reverse Passing Off Under the Lanham Act after* Dastar Corp. v. Twentieth Century Fox Film Corp., FINDLAW, Mar. 22, 2004, http://library.findlaw.com/2004/Mar/22/133354.html ("As evidenced by the foregoing analysis of the rationale underlying the Court's *Dastar* decision, the Court's holding is only meant to preclude a claim for Reverse Passing Off under the Lanham Act for works that are in the public domain.").

[178] *See supra* note 168 (listing notable cases that have cited to *Dastar*).

creative authorship of the products they purchase.[179] The evidence generally cited is the following statement:

> The consumer who buys a branded product does not automatically assume that the brand-name company is the same entity that came up with the idea for the product, or designed the product – and typically does not care whether it is. The words of the Lanham Act should not be stretched to cover matters that are typically of no consequence to purchasers.[180]

This does seem strange. Obviously, from the perspective of those purchasing many works of authorship, this statement is simply wrong. Most fiction consumers do not purchase books based on the identity of the publishing house, they purchase on the basis of, among other things, the author. (Other factors may include the subject matter, the book reviews, and perhaps how pretty the cover is.) The problem with placing too much emphasis on amateur psychology here is that the Court itself acknowledges, in the very next paragraph, that the observation does not hold true in the case of communicative works. The Court's statement about the cares of consumers is probably missing a "generally" – it is true about the consumers of *most* products protected by trademark law. In the special case of creative works, however, the Court itself stated:

> *The purchaser of a novel is interested not merely, if at all, in the identity of the producer of the physical tome (the publisher), but also, and indeed primarily, in the identity of the creator of the story it conveys (the author).* And the author, of course, has at least as much interest in avoiding passing-off (or reverse passing-off) of his creation as does the publisher. For such a communicative product (the argument goes) "origin of goods" in § 43(a) must be deemed to include not merely the producer of the physical item (the publishing house Farrar, Straus and Giroux, or the video producer Dastar) but also the creator of the content that the physical item conveys (the author Tom Wolfe, or – assertedly – respondents).
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> *The problem with this argument according special treatment to communicative products is that it causes the Lanham Act to conflict with the law of copyright, which addresses that subject specifically.* [181]

The court further observed that

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[179] *See* Graeme B. Dinwoodie, *The Seventh Annual Honorable Helen Wilson Nies Memorial Lecture in Intellectual Property Law: The Trademark Jurisprudence of the Rehnquist Court*, 8 MARQ. INTELL. PROP. L. REV. 187, 204 (2004); Hughes, *supra* note 18, at 33 (observing that Justice Scalia "tells us a strange tale about the psychology of consumers"); Marshall Leafer, *Life After* Eldred*: The Supreme Court and the Future of Copyright*, 30 WM. MITCHELL L. REV. 1597, 1614 (2004) ("I am particularly interested in knowing the author's name and I suspect many others hold a similar view.").

[180] *Dastar*, 539 U.S. at 33.

[181] *Id.* at 33 (emphasis added).

> as used in the Lanham Act, the phrase "origin of goods" is in our view incapable of connoting the person or entity that originated the ideas or communications that 'goods' embody or contain. Such an extension would not only stretch the text, but it would be out of accord with the history and purpose of the Lanham Act and inconsistent with precedent.[182]

Clearly, the Court recognized that consumers often care about authorship, and that the purchaser of a creative artifact may even care *primarily* about authorship. However, the central holding of *Dastar* – and the holding understood by district court opinions applying *Dastar* – is that the "the producer of the physical tome" is permitted to look to trademark law for misattribution protections, whereas "the creator of the story it conveys (the author)" must use copyright law.[183]

A final notable argument found in the secondary commentary is that the *Dastar* ruling might be limited in scope because claims of "false advertising" might still be used to address authorial misattributions. My first concern with this possibility is that the Court speaks generally, throughout the opinion, of trademark law and the scope of "§ 43(a)." False advertising under the Lanham Act is a part of "§ 43(a)."[184] At one point, the opinion does state that a claim under § 43(a)(1)(B) might be viable under certain circumstances in relation to claims about the content of a communicative product.[185] But this language deserves careful attention, because it doesn't seem to go far enough to protect against authorial misattribution. The exact situation the Court identifies as actionable under § 43(a)(1)(B) is a situation where "the producer of a video that substantially copied the Crusade series were, in advertising or promotion, to give purchasers the impression that the video was quite different from that series."[186]

This hypothetical situation seems highly unlikely as a practical matter. Why would anyone, especially someone seeking to misattribute authorship, want to claim, in advertising or promotion of the work, that the misattributed work being offered is "quite different" from a prior work that is, in fact, nearly identical? Has there ever been any creative work, in any genre, promoted and advertised as being "quite different" from another particular work that is a nearly identical copy? The Court's hypothetical situation concerns an affirmative claim of "difference" that has little to do with reality. But more important, it has little to do with claims of authorship.

Yet, as stated previously, some very erudite commentators have held out the possibility that the issues presented by *Dastar* might be resolved by looking to

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[182] *Id.* at 32 (emphasis added).

[183] *Id.* at 33.

[184] *See* 15 U.S.C. § 1125(a)(1)(B) (2000).

[185] *Dastar*, 539 U.S. at 38.

[186] *Id.*

the niceties of pleading.[187] Fox should have claimed misattribution under the false advertising provisions of the trademark law, § 43(a)(1)(B), instead of section § 43(a)(1)(A), which addresses confusion over the origin of goods. While it is possible that some subsequent district court interpreting *Dastar* might take this approach, it hasn't happened yet. Instead, courts have spoken broadly about § 43(a) and *Dastar*'s tangibility limitations.[188]

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[187] *See* Nimmer, *supra* note 18, at 44 & n.255 (suggesting that affirmative authorial misattributions are still actionable pursuant to § 43(a)(1)(B) where the attribution claims made are of consequence to purchasers, and thanking Professor McCarthy for "elucidating this point"). *But see* Bretford Mfg., Inc. v. Smith Sys. Mfg. Co., 286 F. Supp. 2d 969, 972 (N.D. Ill. 2003) ("As a backup argument, Bretford contends that Smith was guilty of 'false advertising' . . . . But *Dastar* blocks that argument as well."); 2 MCCARTHY § 10.26.1, *supra* note 100, at 10-63 (rather carefully stating that after *Dastar*, "to trigger Lanham Act § 43(a) claims, false claims of creation of the intellectual property content of a product must fit within the false advertising prong of § 43(a)(1)(B)"); Ginsburg, *supra* note 17, at 269 ("Whether or not the actor or I can still allege false designation of *origin*, the *Dastar* Court's reference to subsisting section 43(a)(1)(B) claims . . . may in some instances preserve a Lanham Act right of action for authors and performers.").

[188] *See, e.g.*, Gen. Universal Sys., Inc. v. World Trade Sys., Inc., 379 F.3d 131, 149 (5th Cir. 2004) ("GUS has not accused HAL of taking tangible copies of its software, removing its trademarks, and selling them as its own. Rather, GUS asserts that HAL copied the ideas, concepts, structures, and sequences embodied in its copyrighted work . . . . *Dastar* makes clear that such claims are not actionable under § 43(a)."); Bob Creeden & Assocs. v. Infosoft, Inc., 326 F. Supp. 2d 876, 879-80 (N.D. Ill. 2004) (dismissing a Lanham Act claim based on misattribution of a software program because the system at issue was the allegedly infringing *copy* of the plaintiff's software system, not the original software itself); Tao of Sys. Integration, Inc. v. Analytical Servs. & Materials, Inc., 299 F. Supp. 2d 565, 572 (E.D. Va. 2004) (finding that misattributed ideas and concepts in a proposal did not violate the Lanham Act because the allegedly misattributive proposal was physically produced by the defendant); Larkin Group, Inc. v. Aquatic Design Consultants, Inc., 323 F. Supp. 2d 1121, 1126 (D. Kan. 2004) (finding unaccredited copying of proposals was not a violation of the Lanham Act, and commenting that "[e]ven if plaintiff authored some of the ideas and concepts embodied in those proposals, the Lanham Act does not provide protection for such plagiarism"); Smith v. New Line Cinema, 2004 U.S. Dist. LEXIS 18382, at **9-10 (S.D.N.Y. Sept. 8, 2004) ("As the Supreme Court recently made clear, the Lanham Act protects only 'the producer of the tangible goods that are offered for sale, and not . . . the author of any idea, concept, or communication embodied in those goods.' . . . In light of *Dastar*, Smith, as the alleged author of the screenplay embodied in the tangible good offered for sale, is not the originator of the film.") (citations omitted); Schiffer Publ'g, Ltd. v. Chronicle Books, LLC, 2004 U.S. Dist. LEXIS 16180, at *11 (E.D. Pa. August 11, 2004) ("[B]ecause Defendants are the physical producers – the fabricators, so to speak . . . they cannot be held liable under § 43(a)(1)(A) even if they are not the creators of the pictures at issue."); Carroll v. Kahn, 2003 U.S. Dist. LEXIS 17902, at **16-17 (N.D.N.Y. Oct. 9, 2003) (interpreting reverse passing off under the Lanham Act to be limited to cases involving the tangible goods actually produced by the plaintiff); Boston Int'l Music, Inc. v. Austin, 2003 U.S. Dist. LEXIS 16240, at *4 (D. Mass. Sept. 12, 2003) (finding "reverse passing off" to be limited to cases involving tangible goods and "declin[ing] to construe §

This brings us back to the language about tangibility. It is hard to accept that the Supreme Court could have meant to draw such a bright, radical, and theoretically destabilizing line between copyright and trademark, yet subsequent district court opinions suggest that *Dastar* has removed authorial attribution protections from the scope of trademark law – because authorship is intangible.[189] Perhaps the better reading of the opinion would be to limit it to cases involving "communicative products."[190] Perhaps the *best* subset of the possible scope of "tangibility" would be to restrict the limit of *Dastar* to information products potentially covered by *copyright* law. If *Dastar* is, at its core, about placing authorial misattribution concerns in the realm of copyright law (and this seems to be a plausible reading), this approach may be a way of cabining its scope. But if copyright now governs authorial attribution, what does that mean for society? The next section addresses this question.

C. *Misattribution and Copyright*

The [copyright] law was designed as a deterrent to plagiarism.[191]

According to the Supreme Court's opinion in *Dastar*, copyright law is the constitutional and statutory vehicle that addresses the attribution of works of creative authorship.[192] Justice Scalia said that copyright speaks to authorial attribution "specifically."[193] While Justice Scalia was clearly thinking of a

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43(a) of the Lanham Act to require attribution to plaintiff [and alleged co-author] Johnson for 'I Like It,' where the defendants here are the 'origin' of the product they recorded, produced, and sold on their own."); Williams v. UMG Recordings, 2003 U.S. Dist. LEXIS 18400, at *18 (C.D. Cal. Aug. 11, 2003) ("Plaintiff would have a claim if Defendants purchased copies of Plaintiff's goods (i.e. the film) and repackaged them as their own. By contrast, Plaintiff does not have a claim for his authorship and direction embodied in that film. His claim, therefore, is barred as a matter of law.").

[189] *See supra* note 188 (listing notable lower court interpretations of *Dastar*). There are many reasons this distinction makes no sense, but the most obvious is that trademark law regularly protects trademark rights in relation to the provision of services, which may be intangible.

[190] *But see Bretford Mfg.*, 286 F. Supp. 2d at 971-72 (finding that defendant's sale of a table that incorporated a leg from plaintiff's table was not reverse passing off because *Dastar*'s holding was not limited to "communicative products").

[191] Sheldon v. Metro-Goldwyn Pictures Corp., 309 U.S. 390, 393 (1940). The language is taken from the syllabus, though the opinion also seems to conflate those who infringe copyrights with plagiarists. *Id.* at 405 ("Petitioners stress the point that respondents have been found guilty of deliberate plagiarism . . . .").

[192] Dastar Corp. v. Twentieth Century Fox Film Corp., 539 U.S. 23, 33 (2003) (interpreting U.S. CONST. art. 1, § 8, cl. 8).

[193] *Id.* It is clear in the context of the opinion that Justice Scalia was thinking of the Visual Artists Rights Act, codified at 17 U.S.C. § 106A (2000), as the section of the copyright statute that "addresses that subject." As discussed in this section, that Act is a

narrow provision in the copyright statute – the Visual Artist Rights Act ("VARA") – it might not seem odd for a member of the public to think that copyright would be the proper statutory regime that would address the misattribution of authorship.[194] After all, copyright law is often associated in the popular mind with prohibiting and policing plagiarism. The writer of the syllabus in *Sheldon v. Metro-Goldwyn Pictures Corp.*, an often-cited Supreme Court copyright opinion from 1940, clearly believed this to be the case.[195]

Yet contrary to the impression one might gain from reading the many judicial opinions that conflate copyright infringement with plagiarism, there is actually no law prohibiting plagiarism and misattribution generally.[196] While the copyright statute spells out in voluminous (some might say agonizing) detail the specific quasi-proprietary rights related to the performance, reproduction, broadcast, and display of expressions via particular methods and technologies, it almost entirely ignores attribution interests.[197] Unlike European copyright regimes, which grant "moral rights" to authors, the copyright law of the United States ignores the attribution concerns of authors almost entirely.[198]

1. The Meaning of VARA

One significant exception to this is found in the provisions of VARA that Justice Scalia apparently had in mind. VARA is generally recognized as an effort on the part of the United States to come into greater compliance with "moral rights" treaty obligations pursuant to the Berne Convention for the Protection of Literary and Artistic Works.[199] On March 1, 1989, the United States was required to recognize and implement a legal order where,

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small exception to the general rule that copyright does not speak to attribution interests.

[194] *See* Green, *supra* note 25, at 200 (noting how "copyright infringement is sometimes loosely referred to by courts as 'plagiarism'").

[195] *Sheldon*, 309 U.S. at 393.

[196] *Dastar*, 539 U.S. at 36 (explaining that the courts have not recognized plagiarism generally as a prohibited act); Green, *supra* note 25, at 171; Kwall, *supra* note 5, at 955 (explaining that copyright law does not specifically protect against misattribution); *cf.* Saunders, *supra* note 172, at 161 (summarizing *Dastar* as follows: "[t]he Lanham Act does not provide a claim for trademark infringement for what is essentially an act of plagiarism"). Indeed, the absence of a clear remedy for "plagiarism" has been the case for quite a while. *See* Henry Goudy, *Plagiarism: A Fine Art*, 20 JURID. REV. 302, 302 (1909) ("In its modern sense plagiarism cannot be said to be a crime punishable either by English or Scottish law, or, so far as I am aware, by any European code.").

[197] 17 U.S.C. § 101-106 (2000) (setting forth exclusive rights).

[198] *See* Gulick, *supra* note 113, at 91-92 (comparing and contrasting European and American approaches to copyright); Neil Netanel, *Alienability Restrictions and the Enhancement of Author Autonomy in United States and Continental Copyright Law*, 12 CARDOZO ARTS & ENT. L.J. 1, 2 (1994); Suhl, *supra* note 129, at 1203-15 (comparing VARA with moral rights protections in European law).

[199] *See* Hughes, *supra* note 18.

independently of an author's economic rights, the law would protect an author's "right to claim authorship of the work" and certain other "moral rights."[200] VARA was enacted the subsequent year.[201] Clearly there is good reason to suspect a causal link here, and the legislative history of VARA fully supports such a connection.[202] It has been claimed that the enactment of VARA was needed for full compliance with the Berne Convention.[203] However, it has also been claimed that VARA was narrowly drafted because United States compliance with Berne had been substantially achieved though protections afforded by other regimes of law, most notably the trademark protections that existed prior to *Dastar*.[204] The current status of United States compliance with Berne is therefore unclear.[205]

But whatever the reasons for VARA's enactment, VARA protects authorial attribution and "moral rights" only for a very limited set of works: namely, original works by visual artists who produce single works, limited edition prints, or sculptural casting in editions of less than 200.[206] As a practical matter, this limitation essentially ensured that VARA would serve to protect the idealized "fine artists" who sell physically original paintings and sculptures in small galleries, but would leave the hugely profitable commercial copyright industries (e.g., publishing, film, music, and software) untouched.[207] Outside

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[200] *See* Berne Convention for the Protection of Literary and Artistic Works, *supra* note 51 ("Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation."); *see generally* Hughes, *supra* note 18.

[201] H.R. Rep. No. 101-514 at 24 (1990) (reporting bill's passage by the Judiciary Committee); Netanel, *supra* note 198, at 4.

[202] *See* H.R. Rep. No. 101-514 at 7-10 (describing how VARA was prompted by U.S. accession to the Berne Convention).

[203] *See, e.g.*, Suhl, *supra* note 198, at 1215 (summarizing VARA as a United States concession to Berne that "grants a bundle of Moral Rights to a limited group of visual artists").

[204] See Corey Field, Berne Goes to the Movies, COPYRIGHT WORLD, July-Aug. 2003, at 23, 24-25.

[205] This is an interesting issue that I will leave to others to explore. *See id.* (noting the potential conflict between the holding in *Dastar* and the Berne Convention); Hughes, *supra* note 18.

[206] *See* 17 U.S.C. § 101 (2000) (defining "work of visual art"); 17 U.S.C. § 106A (2000) (providing special protections for such works).

[207] Cross, *supra* note 20, at 735 ("[VARA] is too narrow to serve as a general source of Reverse Passing Off."). It should be noted that not all gallery artists are protected. For instance, the works of Thomas Kinkade, "Painter of Light," are reproduced in copious numbers and thus would probably not qualify as being "work[s] of visual art" under the statute despite the fact that they are displayed and sold in galleries. *See* 17 U.S.C. § 101; The Official Thomas Kinkade Website, http://www.thomaskinkade.com (last visited Aug. 12, 2005).

the limited context of VARA works, copyright law has not protected attribution interests at all.[208] Thus, Justice Scalia's statement that § 43(a) of the Lanham Act is incapable of speaking to authorial attribution because copyright "addresses that subject specifically" is a very powerful statement regarding the current status of attribution interests: it suggests that there are virtually no such protections (except for visual artists producing limited edition or unique works) and that this is by design.[209]

However, it is unclear exactly what Justice Scalia was saying when he spoke of the conflict between copyright and trademark. If he was attempting to interpret what Congress had intended when it passed or amended the Lanham Act, it is hard to follow how the Congressional passage of special attribution protections for a discrete subset of original artistic works in 1990 somehow illuminated the intent of Congress in the passage of the original version of § 43(a) of the Lanham Act in 1946 (or later major amendments to § 43(a) made in 1988). And if the notion was that VARA was intended to clarify the limited federal regulation of authorial attribution (and preempt any other efforts to regulate attribution), the legislative history of VARA makes this a very strange proposition. It has been cogently argued that the legislative history of VARA suggests that the Lanham Act § 43(a) protections were considered important to meeting the country's obligations under the Berne Convention.[210] The existence of alternative avenues of relief for authors makes a fairly good explanation for the very limited scope of VARA's attribution protections. There doesn't seem to be any support for the contention that Congress enacted VARA with the intent to entirely occupy the field of authorial attribution protections.[211]

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[208] Professor Jane Ginsburg and Justin Hughes have both suggested that the Digital Millennium Copyright Act may also protect attribution interests by outlawing intentional removals of "copyright management information" that is conveyed in connection with the work. *See* Ginsburg, *supra* note 17, at 283; Hughes, *supra* note 18, at 16; *see also* 17 U.S.C. 1202(c) (2000). This is an interesting observation, but, as of this writing, it has apparently not been utilized or endorsed by a court. *See* Ginsburg, *supra* note 17, at 283-86 (failing to cite any cases endorsing this approach).

[209] Dastar Corp. v. Twentieth Century Fox Film Corp., 539 U.S. 23, 33 (2003).

[210] *See* Ginsburg, *supra* note 17, at 281-82 (explaining U.S. obligations under the Berne Convention); Hughes, *supra* note 18, at 3 (describing the Lanham Act as the "keystone" of U.S. compliance with the Berne Convention).

[211] The most plausible (and, at the same time, the most radical) reading of the conflict would be one that did not focus on Congressional intent, but on some form of constitutional preemption instead. The import of this reading, however, would be extremely destabilizing for numerous other areas of law. For instance, it could conceivably affect other non-copyright schemes protecting authorship rights, including state laws concerning misappropriation and rights of publicity. *See, e.g.*, Toney v. L'Oreal, Inc., 406 F.3d 905, 908-09 (7th Cir. 2005) (finding that the Illinois right of publicity statute is not preempted by the Copyright Act based on Congressional intent, but not reaching the constitutional preemption analysis, which might have altered the outcome).

2. Copyright as Collateral Attribution Protection

Yet even if copyright doesn't explicitly speak to attribution outside of VARA, does this mean that copyright law does not address attribution? It might be argued that copyright protects attribution in a collateral fashion. By protecting works of creative authorship as property, copyright enables the contractual protection of attribution. If an author can control the dissemination and reproduction of her work pursuant to copyright law, copyright law will grant her the contractual leverage to protect her attribution interests. In fact, this doesn't follow nearly as neatly as one might assume, for two essential reasons. First, if we think attribution should be about providing incentives to authors, the fact is that copyright as property does not always provide any attribution-related incentives to people who we would ordinarily identify as authors. Second, social attribution interests are not necessarily aligned with or served by "attribution rights" that are exclusively granted to authors.

Taking the first issue, the Supreme Court in *Dastar* seemed to argue that there is an inherent difficulty in fixing credit for authorship. In refusing to hold that an author could be held to be the "origin" of a work under the Lanham Act, Justice Scalia stated:

> Without a copyrighted work as the basepoint, the word "origin" has no discernable limits. A video of the MGM film Carmen Jones, after its copyright has expired, would presumably require attribution not just to MGM, but to Oscar Hammerstein II (who wrote the musical on which the film was based), to Georges Bizet (who wrote the opera on which the musical was based), and to Prosper Mérimée (who wrote the novel on which the opera was based). In many cases, figuring out who is in the line of "origin" would be no simple task.[212]

The Court is right that determining authorship is "no simple task." But is this fatal to the project? Copyright law, by granting an initial monopoly reproduction and performance interest exclusively to "authors" who originate creative works has long had to struggle with the difficulty of determining who is an author that originates a work. In cases such as *Burrow-Giles Lithographic Co. v. Sarony*,[213] the Supreme Court had to determine who was the "author" of a photograph – the photographer or the subject. This was "no simple task," but it was managed.[214] The Supreme Court and lower courts

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[212] *Dastar*, 539 U.S. at 35. It is worth noting how closely Scalia's refusal to accept the very concept of original authorship in this passage seems to comport with the above-mentioned post-structuralist criticisms of authorship and originality. *See, e.g.*, Boyle, *supra* note 49, at 642-43 (questioning whether attempts to ascertain the intent of the framers can guide constitutional interpretation in light of post-structuralist critiques). This seems somewhat ironic given Justice Scalia's well-known hermeneutic inclinations.

[213] 111 U.S. 53 (1884).

[214] *Id.* at 58-59 (holding that the photographer, not the subject, was the author of a photograph).

have regularly engaged in non-simple tasks without throwing their hands in the air.

The end result of all this cogitation, however, has not led to anything simple. Instead, the result – predictably – has been to transform what was a vague social concept of authorship into a legal term of art that is governed largely by case law and statutory provisions. The legal definition of "author" has diverged substantially from its popular definition. A legal "author" may, in some cases, be an employer who hires an employee to create a work.[215] Copyright in such a case protects the employer-author's interest, but not the employee's interest. The definition of "author" is further clouded in the case of collectively authored works. A "joint work" under the copyright statute is "a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole."[216] However, because the statute does not define the term "author" in the first place, it is unclear how wide the circle of joint authorship should be drawn in copyright law. In some cases it is drawn, like the work for hire provisions, inconsistently with popular understandings of authorship.[217]

The divergence between legal and popular constructions of the notion of authorship is perhaps best illustrated by the Ninth Circuit case of *Aalmuhammed v. Lee*.[218] In that case, Spike Lee employed Denzel Washington to play the role of Malcolm X in the eponymous film.[219] Washington turned for advice to Muslim scholar Jefri Aalmuhammed, who eventually (and without a "work for hire" agreement), re-wrote passages of the

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[215] 17 U.S.C. § 101 (2000) (setting forth various definitions but failing to define "authors"); *cf.* 17 U.S.C. § 201 (2000) (stating that an employer can be "considered the author"); Cmty. for Creative Non-Violence v. Reid, 490 U.S. 730, 739 (1989) (defining a "work for hire" in terms of an author's employment status); Erickson v. Trinity Theatre, Inc., 13 F.3d 1061, 1067-69 (7th Cir. 1994); *see also* 17 U.S.C. §101 (defining a "joint work"): 17 U.S.C. § 201 ("In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of this title, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.").

[216] 17 U.S.C. § 101. Some courts have imposed an additional requirement that the contributions of each "joint author" should be sufficiently original and expressive to be subject to copyright separately. *See* Childress v. Taylor, 945 F.2d 500, 506-07 (2d Cir. 1991) (discussing cases that explore the concept of a "joint work"); Mary LaFrance, *Authorship, Dominance, and the Captive Collaborator: Preserving the Rights of Joint Authors*, 50 EMORY L.J. 193, 196 (2001) (presenting alternate tests to determine if a joint work exists).

[217] *See generally* F. Jay Dougherty, *Not a Spike Lee Joint? Issues in the Authorship of Motion Pictures Under U.S. Copyright Law*, 49 UCLA L. REV. 225 (2001).

[218] 202 F.3d 1227, 1235-36 (9th Cir. 1999) (establishing a narrow definition of "joint work" for motion pictures).

[219] *Id.* at 1229.

film script and added new scenes and characters.[220] Despite Aalmuhammed's clear creative contribution to the collective enterprise of the movie, the Ninth Circuit found that Mr. Aalmuhammed was not an author of the movie, because his role was too indirect to be considered "authorial."[221] The court found, instead, that the sole author of the film was the film company, pursuant to work for hire agreements.[222]

Many scholars have expressed discomfort with the result in *Aalmuhammed*.[223] For instance, Martha Woodmansee has suggested that the *Aalmuhammed* case demonstrates the continuing vitality of a "romantic notion of authorship" that ignores collaborative creativity and instead gives legal primacy to a quasi-mythological notion of the artist as a solitary genius.[224] Many others have criticized the mythology of the "romantic author" as a means to expose what they see as a flawed ideology animating the copyright statute.[225] Whatever one makes of these critiques, the *Aalmuhammed* case and the work for hire doctrine reveal that the notion of authorship in copyright law and the notion of authorship in popular culture can be incongruent. Copyright law at times seems willing to provide counter-intuitive determinations of who is a legal author, and thus entitled to legal ownership and proprietary control of creative works. If one believes there is a societal interest in accurate attribution, copyright's scheme of authorship ordering is obviously problematic because the legal author controlling attribution is not the person society views as the author.[226] Jefri Aalmuhammed clearly has no ability at this point, via copyright law, to control how Warner Brothers decides to attribute the scenes he authored (but did not *legally* author). Even thought he did not contribute to the film under the standard work for hire contract, he was still found to lack a

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[220] *Id.* at 1231-32.

[221] The court's reasoning was notably tautological. *See id.* at 1235 ("Too open a definition of author would compel authors to insulate themselves and maintain ignorance of the contributions others might make."). In other words, in order to effectively encourage authors to work together, not all authors can be authors.

[222] *Id.* at 1235 ("Warner Brothers required Spike Lee to sign a 'work for hire' agreement, so that even Lee would not be a co-author and co-owner with Warner Brothers.").

[223] *See* Dougherty, *supra* note 217, at 325 (discussing the unfairness and possible economic inefficiency of the joint authorship doctrine); Martha Woodmansee, *Response to David Nimmer*, 38 HOUS. L. REV. 231, 234-35 (2001) (critiquing the underlying theory of authorship in the *Aalmuhammed* case).

[224] *Id.* at 234 (using the case as an example in the course of "defend[ing] the continuing relevance of literary studies in the discourse of copyright").

[225] Theories regarding the intersection of romantic authorship, copyright, and literary theory enjoyed a heyday of sorts in the early 1990s. *See generally supra* note 60; *cf.* Jane Ginsburg, *Creation and Commercial Value: Copyright Protection of Works of Information*, 90 COLUM. L. REV. 1865, 1866 (1990) (critiquing various assertions with regard to the rationales animating copyright law).

[226] Gulick, *supra* note 113, at 66 ("What does it mean to have an author who is not the creator of his work?").

proprietary interest in his creative contributions to the film.

3. The Attribution/Copyright Mismatch

This is not to say that the *Aalmuhammed* case reached the wrong result as an issue of social policy. If the case is understood as deciding the proper proprietary control of the copyright in the film *Malcolm X*, it may well reach the right result. There are legitimate reasons, related to economic efficiency, that copyright law might attempt to shift copyright ownership from the hands of a diverse set of contributors (including those like Jefri Aalmuhammed) to single "dominant" employers and authors.[227] To the extent copyright law evinces a coherent theory, it is best understood in the United States as a system designed for the purpose of maximizing the generation and popular distribution of new works.[228] It can be argued that shifting ownership of copyright into the hands of an eager and well-financed exploiter that funds production is the best way of ensuring the distribution of the collaborative works to markets. If we see authorship simply as a system for efficiently parceling out proprietary ownership rights, the law should grant ownership (denoting it as "authorship") to the most efficient distributors and exploiters of works. Again, the problem with this model – from the standpoint of attribution – is that the non-statutory, non-dominant author lacks the control to secure attribution.

Even where authors have nominal control over the copyright in their work, the problem of misattribution is not solved. There are several reasons for this. First, authors may suffer from unequal bargaining power vis-à-vis publishers and distributors. Compared to the commercial publishers and exploiters of creative material, aspiring authors are generally impecunious and legally unsophisticated. The established industry players, secure veterans of the process, can generally exert their greater power to obtain written assignments of copyright in exchange for negotiated compensation. After an author alienates the copyright in a creative work, the United States copyright statute generally provides few mechanisms for that author to reclaim control over the exploitation of the work. (VARA is an exception to this rule.[229]) Again this accords well with a utilitarian, property-centric view of copyright. By minimizing encumbrances restricting subsequent exploitation, copyright, in

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[227] *But see* Dougherty, *supra* note 217, at 324-25 (arguing that a liability rule would be more efficient than a property rule).

[228] Tom W. Bell, *Authors' Welfare: Copyright as a Statutory Mechanism for Redistributing Rights*, 69 BROOK. L. REV. 229, 238 (2003) (arguing that "copyright aims to alleviate the market's failure to give adequate incentives for producing expressive works"); Green, *supra* note 25, at 202 (noting that copyright law protects primarily economic interests).

[229] 17 U.S.C. § 106A (2000). The mechanism of statutory termination rights are another way authors might reclaim proprietary control of their work, but the mechanism only comes into play several decades after the work's creation. *See* 17 U.S.C. §§ 203, 304(c) (2000) (allowing authors to reclaim rights during certain periods after having sold those rights).

theory, enables the alienation of a maximum amount of authorial interests in order to maximize authorial incentives. By maximizing the amount of control that authors may transfer, the law maximizes the value of the work that can be transferred for payment. Of course, in cases of unequal bargaining power, and in cases where third parties can suffer from the effects of private transactions, the simple goal of maximizing the power of free markets can be questioned.

A second problem with relying on authors to use copyright to obtain attribution is that a copyright exists only for a limited period.[230] When copyright lapses, the ability to police against misattribution also fades away. Even assuming Shakespeare once had a copyright that he would have asserted to protect against misattribution, the plagiarism of Shakespeare today would fall outside the scope of attribution protections. From the standpoint of incentives for Shakespeare to produce new works (the concern of copyright), this is just fine. Shakespeare is dead. From the standpoint of the social distribution of his works this is also fine. Fewer restraints will lead to greater distribution. But from the standpoint of consumer protection with regard to misattribution, it is a problem. This concern about the social effects of misleading communication is why trademark interests, unlike copyright interests, have no temporal limitations.[231]

Finally, and perhaps most seriously, policing attribution by using authorial control has a glaring structural defect. Authors often have incentives to misattribute creative authorship, deceiving society as to the authorship of creative work when this deception can provide them with benefits. This possibility will be explored in more detail in Part III.

D. *Misrepresentation and Other Legal Mechanisms*

Of course, even in the absence of copyright and trademark protections, there still exist private causes of action that regulate the use of authorial attributions in ways that contribute to the protection of societal interests. For instance, there are numerous state statutory vehicles that permit actions against parties that engage in commercial fraud or misrepresentation. In the case of consumer purchases of deceptively attributed works of authorship, such claims would hardly be worth the cost of a legal complaint for individual purchasers. If aggregated in a class action vehicle, however, they might have some chance of succeeding.[232]

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[230] U.S. CONST. art. 1, § 8, cl. 8; *Eldred v. Ashcroft*, 537 U.S. 186, 192-93 (2003) (citing the Constitution's Copyright Clause in upholding Congress's power to extend the term of copyright).

[231] *See* 3 MCCARTHY § 24.03[2], *supra* note 100, at 24-13 (describing the purposes of trademark law).

[232] The class action vehicle is obviously a whole issue of its own. It is worth noting, though, that in at least one case where a class action strategy was attempted to remedy an authorial misattribution, it proved unsuccessful. For a discussion of the misattributions of authorship engaged in by the band *Milli Vanilli*, see Freedman v. Arista Records, Inc., 137

The most obvious possibility, however, is one that has been employed successfully by authors in the past: rights of publicity.[233] Many state laws recognize a quasi-proprietary right of publicity that permits a cause of action in cases where a party makes an unauthorized use of a person's identity for commercial purposes.[234] These state rights of publicity could be effective in policing attributional concerns.[235] Where Party A claims that a seller has "passed off" a creative work by claiming that it was authored by A, when it was in fact authored by B, Party B appears to be exploiting Party A's identity for commercial benefit.[236] In instances where an author's name is used without

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F.R.D. 225, 227-28 (E.D. Pa. 1991):

> Stating that nowhere on the outer covering of the album package do the names of Morvan and Pilatus appear, [defendant] avers that plaintiffs have assumed incorrectly that 7,000,000 persons purchased albums because Morvan and Pilatus were perceived as the actual singers. Defendants submit that individual testimony of each class member would be necessary to determine on what basis he or she made the purchase because the gravamen of the complaint is fraud. Essential to the claim of fraud is proof of reliance which may vary greatly among purchasers.

See also id. at 229 ("What causes a person to respond positively to a performance is a complex matter, especially in these modern times where popular musical performances involve visual as well as auditory stimulation.").

[233] *See* Mark A. Lemley, *Rights of Attribution and Integrity in Online Communications*, 1995 J. ONLINE. L. art. 2.

[234] The theoretical foundation of the right of publicity is unclear. It originally stemmed from prohibitions against tortious invasions of privacy. Currently, it seems to sound in the proprietary concerns of copyright, but obviously can be employed in "sponsorship" circumstances highly similar to those which give rise to unfair competition claims. *See* J. Thomas McCarthy & Paul M. Anderson, *Protection of the Athlete's Identity: The Right of Publicity, Endorsements and Domain Names*, 11 MARQ. SPORTS L. REV. 195, 198 (2000) ("The right of publicity is not a kind of trademark. It is not just a species of copyright. And it is not merely another kind of privacy right. It is none of these things, although it bears some family resemblance to all three."). For a well-known critique of the right, see Michael Madow, *Private Ownership of Public Image: Popular Culture and Publicity Rights*, 81 CAL. L. REV. 125, 178-237 (1993). For a response, see Kwall, *supra* note 25, at 3.

[235] But this is not always a certainty by any means. For instance, in the *Follett* case, the New York Civil Rights law was found inapplicable to the situation, because Ken Follett gave permission to use his name and did not have a copyright in the underlying work. *See* Follett v. New Am. Library, Inc., 497 F. Supp. 304, 310 (S.D.N.Y. 1980). Another interesting possibility would be a claim of defamation, if the misattributed work was sufficiently damaging to an author's reputation.

[236] *See, e.g.*, Winterland Concessions Co. v. MacIntosh, 1992 U.S. Dist. LEXIS 9917, at *25 (E.D. Pa. July 14, 1992) (finding that the sale of t-shirts bearing performer names such as "John Cougar Mellencamp" violated both Section 43(a) and rights of publicity). *See also* David W. Melville & Harvey S. Perlman, *Protection for Works of Authorship Through the Law of Unfair Competition: Right of Publicity and Common Law Copyright Reconsidered*, 42 ST. LOUIS U. L.J. 363, 392-93 (1998) (noting the historical expansion of publicity rights to cover distinguishing features like a singer's voice); Pinover, *supra* note 40, at 54-63 (explaining the similarities and differences between state publicity rights and attribution

permission to sell a work of creative authorship that he did not create, authors can assert rights of publicity, and such claims have been successful.[237] Yet rights of publicity as a mechanism for attribution protection have problems similar to those addressed above with regard to copyright. Because rights of publicity are often conceived of as something in the nature of property interests, they can effectively allow name "owners" the freedom to manipulate usages of authorial attribution.[238] In other words, because concerns about consumer deception are not at all integral to the theory of rights of publicity,[239] it would raise no red flags under the right of publicity for A to license B to sell a book attributed to A but written by B. If one believes authorial attribution protections are simply a matter of parceling out certain absolute grants to authors, rights of publicity seem to protect authorial rights fairly effectively (at least in the case of direct "passing off"). Yet the protection of *societal* interests in accurate attribution is entirely ignored.

In Part III, I will briefly delve into the dilemmas raised by private market orderings of proprietary rights in attribution and credit. My concern is that such systems, post-*Dastar*, may come to dominate and displace trademark-based theories. Indeed, this is not so much a speculative concern as it is the current state of affairs. If we seek to protect social interests in accurate authorial attribution, no amount of copyright, rights of publicity, or proprietary "moral rights" will fully correct the problems raised by *Dastar*. Indeed, handing out more property rights to more authorial owners may ultimately make things worse for society. Until and unless we look to trademark's anti-deception theories to fix the result of *Dastar*, awarding new attribution "rights" will simply introduce a new stripe of property-like protection to an already crowded (arguably overcrowded, overcomplicated, and under-theorized) field of law.

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claims under the Lanham Act).

[237] *See, e.g.*, *Winterland Concessions*, 1992 U.S. Dist. LEXIS 9917, at *25.

[238] Pinover, *supra* note 40 ("Publicity rights do not have the same economic utility as trademarks. If consumers are not misled, there is no confusion in the product content conveyed to the consumer, and therefore, the consumer is not better able to predict anything about the product. Without consumer predictability, consistent quality in the product is not encouraged. . . . Courts are justifiably cautious when dealing with a celebrity monopoly in an image."); *id.* at 63 (arguing that consumer utility is enhanced by trademark protections for attribution, but is not enhanced by monopolistic proprietary schemes such as rights to publicity and moral rights).

[239] *See* Estate of V.C. Andrews v. United States, 850 F. Supp. 1279, 1292-96 (E.D. Va. 1994) (using the principle of publicity rights to determine the value of an estate, but not taking into account the use of the deceased Andrews's name by another author as part of the publicity rights analysis); McCarthy & Anderson, *supra* note 234, at 201 & n.39 (noting that "deception or false endorsement is not required to prove a case of infringement of the right of publicity").

III. AUTHORSHIP, CONSUMERS, AND COLLABORATION

How can we know the dancer from the dance? [240]

In this Part, I will be looking at specific practices of authorial misattribution and fluid crediting. There are three points that I wish to make. First, attribution-shifting practices often occur in the marketing of information products for simple economic reasons. Second, there is a real potential for consumer deception in such practices, because authorial attribution, unlike a trademark, often points directly to a particular and relevant factual proposition about the circumstances of production and the qualities of a product. Third, some degree of this type of credit shifting is inevitable simply because there are significant limits in how far trademark can and should protect attributions of authorship. In the case of large-scale collaborative productions and in the case of authorship confusion that is *intrinsic* to a work, misattributions of individual authorship are probably not worth the social effort of policing. However the "authorship" in such cases lacks much of the unique value that has been discussed previously in this article. The associations of the names of directors and actors with large-scale collaborative film projects is not so much an issue of authorial attribution as it is a standard trademark issue of sponsorship and branding.

In order to explore these points, I will look at a few specific instances of credit-shifting practices in the promotion and sale of copyright-protected works. I will start out with some examples of ghostwriting. Ghostwriting seems a paradigmatic example of the differences between authorship concerns and standard trademark law. Neither the application of property-based attribution "rights" nor the application of standard trademark principles seem to be a very good fit for the protection of social interests in ascertaining authorship.

A. *Ghostwriting*

Ghostwriting is perhaps as old as authorship itself. Of course, this doesn't mean it is a good thing. Mahesh Grossman's recent book, *Write a Book Without Lifting a Finger*, states that its target audience is anyone who "fantasizes about seeing their name on a real published book."[241] (Without lifting a finger, of course.) In its most aggressive form, where the attributed author writes nothing and the ghostwriter is completely unacknowledged, ghostwriting is pure plagiarism.[242] In return for literary labor, the ghostwriter

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[240] WILLIAM BUTLER YEATS, *Among School Children*, *reprinted in* THE COLLECTED POEMS OF W.B. YEATS 215 (Richard J. Finneran II ed., 2d ed. MacMillan 1996).

[241] MAHESH GROSSMAN, WRITE A BOOK WITHOUT LIFTING A FINGER (2003). Presumably, Mahesh Grossman wrote the book, but who knows?

[242] As stated above, plagiarism is essentially the misattribution of authorship. *See supra*

accepts financial compensation as a quid pro quo for a lack of credit.[243] For instance, in the case of Hillary Clinton's book *It Takes A Village*, a ghostwriter was allegedly paid $120,000 to provide literary services and, apparently in return, the existence of the ghostwriter was not disclosed on the book's cover or in the acknowledgements.[244] Acknowledgement may be granted to a ghostwriter, but since the whole premise of ghostwriting seems to be about the misattribution of authorship, the more credit the ghostwriter gets, the less the activity appears like ghostwriting and the more it appears like collaboration. Ghostwriting is popular because it makes abundant market sense for both parties in the transaction. The fame of a politician, an athlete, a five-star general, or some other celebrity, can create a public demand for works of authorship created by that person. However, creative authorship generally requires substantial time, effort, and some degree of writing skill. Celebrities may not possess the time or skill, or be willing to invest the effort to produce quality authorial works.[245] On the other hand, many skilled authors possess time and talent, but lack the popular appeal or fame that might allow them to sell their works to the public. So obviously, both the employer and the ghost have something worthwhile to gain from misleading the public as to the authorship of a literary work.

If one were to take an "authorial rights" approach to attribution and ghostwriting, it should be clear that the practice would be unproblematic. If a ghostwriter ("B") is paid to attribute her novel to the exclusive authorship of a well-known celebrity ("A"), this act is consensual among A and B. If the public is deceived by this misattribution of authorship, this is not problematic from the standpoint of either A or B.[246] Even under analogies to trademark law, this type of "name licensing" seems unexceptional. A is simply licensing B to produce certain goods bearing the A™ mark.[247] In order to say that any

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note 66.

[243] The *Follett* case, discussed *supra* Part II.A.3, gives a standard example of this kind of negotiation for authorial credit. Follett v. New Am. Library, 497 F. Supp. 304, 313 (S.D.N.Y. 1974)

[244] Charles Paul Freund, *Living Hillary: The Art of Ghost-Reading*, REASON ONLINE, June 17, 2003, http://reason.com/links/links061703.shtml (criticizing Clinton for her alleged use of a ghostwriter for the books *Living History* and *It Takes a Village*).

[245] Tomas Kellner, *Under Cover*, FORBES.COM, July 7, 2003, http://www.forbes.com/forbes/2003/0707/096.html ("Publishers covet celebrities, or even quasi-celebrities . . . who offer juicy stories and built-in brand recognition. Fame brings big bucks: Bill Clinton will earn a reported $10 million for his book, Whoopi Goldberg $6 million and Ozzy Osbourne's clan $3 million. The hitch: 'Very often these people don't have a clue how to read a book, much less to write one,' says Richard Pine, a New York book agent.").

[246] *See supra* note 97 and accompanying text (describing how commercial trademarks do not represent a single entity but a web of contractual relationships among producers of goods or services).

[247] *See id.*

harm is occurring here, we must assert that there is something about an inaccurate designation of authorship that can be misleading and potentially damaging to the public.[248] In the case of a claim of individual authorship, it is not difficult to see that this is the case. Where the author is claimed to be a person, and not an amorphous symbol, attribution posits some meaningful connection between signifier and signified. If a consistent style of authorship can be ascertained from a careful scientific analysis of a given work,[249] then to say that a person is an author is to point to a proposition that can be factually true or false. This proposition is arguably much more significant than any *thing* pointed to by a trademark. Thus, misattributions of authorship may create harms to consumers that are more serious than the harms created by the misleading use of trademarks.

Yet ghostwriting demonstrates that such deceptions are sometimes "licensed" by both the true and falsely credited authors. Even celebrated writers have ghostwriters. It may seem odd to think that those who gain their fame through the labors of literary art would be inclined to let others write under their names, but it happens. Tom Clancy, for example, is a world-famous author of spy thrillers such as *The Hunt for Red October*, *Patriot Games*, and *The Cardinal of the Kremlin*.[250] His success with these books has been leveraged into a multi-media empire of films, computer games, and television programs.[251] *Tom Clancy's Op-Center: Line of Control* is one book in an *Op-Center* series currently being sold in stores. The name "Tom Clancy" appears five times on the front and back cover of the paperback (including in 80-point type on the top of the cover).[252]

The *Op-Center* books, however, were all written by Jeff Rovin.[253] *Line of Control*'s cover does, in a very small typeface on the bottom of the front cover, declare it was "written by Jeff Rovin" – although only after it states (in addition to all the other Clancy marks) that the book was "Created by Tom Clancy and Steve Pieczenik." This is likely somewhat confusing to the average consumer. *Line of Control* was shelved at my local library, by author, in the "C" section.[254] (Perhaps this misshelving might be explained by the fact

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[248] *See* 3 MCCARTHY § 24.03[2], *supra* note 100, at 24-13 (characterizing the purpose of trademark law as the prevention of consumer confusion leading to inefficient purchasing).

[249] *See supra* note 8 (describing high-tech tools for determining the identities of authors and artists).

[250] Wikipedia: Tom Clancy, http://en.wikipedia.org/wiki/Tom_Clancy (last visited Aug. 12, 2005).

[251] *Id.* (reporting on Clancy's many novels, ghostwritten novels, films, and videogames).

[252] JEFF ROVIN, TOM CLANCY'S OP-CENTER: LINE OF CONTROL (2001) (displaying Clancy's name prominently on its cover).

[253] *Id.*

[254] I actually spoke briefly with my township librarian about this. She concluded that the book was technically misshelved. In subsequent visits, I've noticed that the book remains technically misshelved.

that the first six books in the *Op-Center* series reportedly did not indicate on the cover that Rovin was also the author of those books.[255])

Tom Clancy did not collaborate in writing the *Op-Center* books, at least as most consumers would understand that word. He apparently brainstormed a bit, in a telephone conversation, the basic concept of a television series upon which the books are based.[256] He then contracted to allow Rovin to write the *Op-Center* books under his name.[257] Many purchasers, however, were understandably unaware of the underlying circumstances of the "creation" of the book by Clancy. Instead, many purchasers seemed to read the *Op-Center* series with the mistaken impression that Tom Clancy actually wrote the books. On Amazon.com, some volunteer reviewers of *Tom Clancy's Op-Center: Line of Control* have praised the book as, e.g., "an excellent thriller by Tom Clancy" while others have panned the book by stating, e.g., that "Tom Clancy is clearly overreaching in this incoherent and rambling book set in Kashmir."[258] Other reviewers express disappointment with the quality of the writing coupled with a statement that the purchaser mistakenly believed that Tom Clancy had something to do with the book's authorship – but the reviewer has since grasped the truth.[259] According to recent news reports, Clancy is complaining that the Rovin-authored Clancy books are destroying his authorial reputation – yet he finds himself unable to escape from his contract with Rovin.[260] Of

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[255] *See* Roger Friedman, *Tom Clancy's Jack Ryan Replaced by Gen-X Version*, FOX NEWS, Aug. 1, 2003, http://www.foxnews.com/story/0,2933,93515,00.html (stating that Rovin's name did not appear on the first six installments of the *Op-Center* series).

[256] *See* Arthur Santana, *Judge Set to Rule on Clancy Venture*, WASH. POST, Sept. 12, 2004, at T3 (reporting that Clancy became interested in the "Op-Center" project as a planned miniseries).

[257] *See* Friedman, *supra* note 255.

[258] *See* Amazon.com Reviews of *Tom Clancy's Op-Center: Line of Control*, http://www.amazon.com (search "Line of Control," then follow "Line of Control" link in results list) (last viewed Aug. 12, 2005).

[259] The pseudonymous reviewer "Big Dog," from Christchurch, New Zealand, wrote:

> I based my purchase on two things. One, I thought Tom Clancy had something to do with it. And two, the blurb on the back seemed interesting. Well, I was mislead on both counts. I cannot for the life of me spot any influence from Tom Clancy – there is truly something wrong in the literary world when the cover of the book has the author in the smallest letters at the bottom.

Id. Something also might be read into the fact that used copies of *Tom Clancy's Op-Center: Line of Control* were on sale in 2004 on Amazon.com at the price of one penny (plus shipping). *Id.*

[260] *See* Nancy Kercheval, *Tom Clancy Seeks New Fans amid Turmoil with Ex*, THE DAILY RECORD, Aug. 30, 2004, *available at* http://www.mddailyrecord.net/pub/5_51_monday/businessnews/159181-1.html:

> Clancy . . . has branded several series, including the "Op-Center" series of 14 books and the video game 'Splinter Cell.' [T]he books . . . have declined from sales of 1.7 million to just under 600,000, despite commanding advances of $2.25 million for the next two installments . . . . Clancy's former wife . . . whom he divorced in 1999 after

course, this has led to litigation.[261]

Another world-famous author, Virginia Cleo Andrews, is also having books produced under her name. V.C. Andrews gained her fame by writing pulp horror novels involving troubled young girls surviving perverse torments inflicted by demented adults.[262] The appeal of this niche may be elusive to the adult reader – and publishers didn't see it at first either. *Flowers in the Attic*, Andrews's first novel, was rejected seven times before it found a publisher in 1977.[263] After publication, however, the book became a phenomenon, finding popularity with (of course) young girls.[264] A few years after *Flowers in the Attic* was published, V.C. Andrews was an international literary star, securing million-dollar advances for her novels.[265] However, she increasingly felt trapped in her "troubled children" niche. She made two efforts in the 1980s to break away from stories of suffering children and demented adults – but her publisher rejected both.[266] Little did she know how long she would be trapped in the profitable formula. In 2003, one could find copies of the new V.C. Andrews novel *Midnight Flight* for sale in bookstores everywhere – another story of "troubled girls" subject to mistreatment by demented adults.[267] The cover of *Midnight Flight* states that the book is "[t]he thrilling sequel to *Broken Wings* – from New York times bestselling author, V.C. Andrews." The name "V.C. Andrews" is emblazoned on the book in 160-point drop-shadow and relief letters.[268]

Yet V.C. Andrews did not write *Midnight Flight* or many other books attributed to her. She died in 1986.[269] After her death (and apparently without ever having ascertained her preferences in the matter) her publisher was suddenly struck with the idea of continuing to produce books attributed to the

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> 30 years, challenged his decision to withdraw his name from 'Tom Clancy's Op-Center' series, saying the books would be worthless . . . . Circuit Judge Warren J. Krug . . . ruled that Clancy's right to his own name is ambiguous, and therefore, allowed the lawsuit to proceed.

(on file with author).

[261] *Id.* (noting the judge's decision to allow the suit to go forward).

[262] *Estate of V.C. Andrews v. United States*, 850 F. Supp. 1279, 1281 (E.D. Va. 1994) (describing the characteristics of the genre and Andrews's success with it).

[263] *Id.*

[264] *Id.* (stating that the genre "was particularly appealing to teenagers and young women").

[265] *Id.*

[266] *Id.* at 1282.

[267] V.C. ANDREWS, MIDNIGHT FLIGHT (Pocket Star 2003).

[268] *Id.*

[269] *See Estate of V.C. Andrews*, 850 F. Supp. at 1281 (giving Andrews's date of death as December 19, 1986); David Streitfeld, *A Novelist's Tales from the Crypt: V.C. Andrews Died in 1986 but Her Horror Books Keep Coming*, WASH. POST, May 7, 1993, at A1 (concluding that Andrews has been "more prolific dead than alive").

authorship of V.C. Andrews.[270] Her agent independently arrived at the same idea. The estate also agreed that the death of the author shouldn't be an impediment to the life of profits.[271] Andrew Neiderman, an English teacher in New York, was recruited to be the undisclosed ghostwriter.[272] Neiderman received $250,000 of the original $1.5 million advance, while the rest went to the estate.[273] While this was obviously not a significant portion of the literary proceeds, $250,000 was several times greater than any previous advance Neiderman had received for his own works of horror fiction published under his own name.[274] Luckily for everyone (except, perhaps, V.C. Andrews), the Neiderman books continued to sell.[275] Subsequently, an IRS auditor learned of the immense profits that the Andrews estate was reaping from the continued exploitation of the V.C. Andrews name, and assessed the estate $649,201.77 in unpaid estate tax and interest on the $1,244,910.80 post-mortem value of the use of Andrews's name in conjunction with the misattributed novels.[276] This led to a courtroom battle and a judicial order slightly reducing the IRS assessment, in part due to the financial risks inherent in attempting to deceive the public into believing that a dead author was still writing books.[277] Today,

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[270] Jack Romanos, head of Simon & Schuster's mass market division, conceived the idea. He explains that after Andrews's death, "[w]e were sitting around and it occurred to me that it was possible if we could find a writer . . . who could mimic Virginia's style, that we might be able to continue to publish." Streitfeld, *supra* note 269, at A1. Andrews's literary agent had the same idea: "she never was a celebrity in this country, which made it easier for people to forget she was dead. It would be very difficult to do this with Danielle Steele." *Id.*

[271] *See id.* (noting that the estate has "profited handsomely" from the posthumous books).

[272] *Id.*

[273] *Id.*

[274] *Id.* (stating that Neiderman "had written some horror novels himself, although much less successfully than Andrews").

[275] But this doesn't mean that the customers are happy. Many volunteer reviewers on Amazon.com – even those who give *Midnight Flight* positive ratings – implore either the ghost-writer or the family to stop using the V.C. Andrew's name. For instance, "Stephanie" from Washington, D.C. liked the book, but writes:

> why can't he stop putting VCA as the author? It would make more sense now as I have more [ghostwritten] books on my shelf than [Andrews's books] because she wrote so few on her own. Use your own name[, ghostwriter]. It will be okay, and maybe better cause we can stop holding you up to VCA (The Queen).

The interestingly named "Gertrude Snuffenheimer" from Atlanta, on the other hand, writes: "[t]his is shameful. Poor V.C., rolling around in her grave as I write this. Why does the [ghostwriter] insist on driving her good name through the mud? I never even finished *Broken Wings*, and this one just tops off the true V.C. genius abuse." *See* Amazon.com Reviews of *Midnight Flight*, http://www.amazon.com (search "Midnight Flight," follow "Midnight Flight" link, then follow "See all customer reviews" link) (last visited Aug. 12, 2005).

[276] Estate of V.C. Andrews v. United States, 850 F. Supp. 1279, 1281 (E.D. Va. 1994).

[277] *Id.* at 1295 (reducing the tax assessment of the value of Andrews's name by thirty-

even after a *Washington Post* newspaper article, the misattribution of V.C. Andrews novels continues.[278]

Given the public's awareness of the ghostwriting in the cases of Clancy and Andrews, and the apparent nonchalance and lack of embarrassment of the parties engaged in the practice, one may well wonder how deep the rabbit-hole of ghostwriting goes in the publishing industry. Because the uses of Tom Clancy's and V.C. Andrews's names in the sale of books comport fairly well with theories of rights of publicity and even standard approaches to trademarks, there seems little reason to suspect that there are substantial checks being placed on ghostwriting practices.

But if we take a social perspective on the value of authorial attributions, none of this should sit well. Authorial "licensing" is made valuable by a form of consumer deception that is inimical to the traditional consumer protection rationale of trademark.[279] Misattribution of authorial identity is valuable to those who engage in it precisely *because* it deceives the public.[280] Even from the perspective of an incentives theory, it isn't at all clear that ghostwriting provides any public benefits. Has the sale of books by Clancy™ (Rovin) or V.C. Andrews™ (Neiderman) been beneficial to the public? It seems clear that traditional trademark law does not map neatly onto authorship in some instances. In order to protect the public interest, one would need to be much more restrictive in granting personal name "owners" the freedom to "license" their authorial attributions. This aligns with Professor McCarthy's observation that the law must "insur[e] that the assignee's use of the mark will not be deceptive, and will not break the continuity of the thing symbolized by the

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three percent to account for the risk involved).

[278] At some point, a tiny disclaimer was added to the copyright page of the book stating that Andrews is dead. V.C. ANDREWS, MIDNIGHT FLIGHT (2003). However, as in the Clancy example, this gesture at informational veracity is small, ambiguous, and hard to reconcile with the bold authorial attribution on the covers of the books, which everyone seems to admit is what drives the sale of the books. The Simon & Schuster web page for V.C. Andrews seems to fully recognize that readers are interested in the identity of the author. It contains many photos of Andrews, a brief biography of her early life, and a list of her current paperbacks for sale. However, it has no pictures of Andrew Neiderman; it fails to distinguish between the Neiderman and Andrews books; and it does not mention that V.C. Andrews died some years ago. *See* Simon Says: V.C. Andrews, http://www.simonsays.com/content/content.cfm?sid=33&pid=330975 (last viewed Aug. 12, 2005) (follow "Image Gallery" link).

[279] For some thoughts along these lines, see Green, *supra* note 25, at 190 ("[T]he author's consent should not be a defense to plagiarism."); Pinover, *supra* note 40, at 41 (observing that ghostwriting, which is essentially authorized reversed passing off, "does not cure the deception of the consuming public").

[280] *See Estate of V.C. Andrews*, 850 F. Supp. at 1284-85 (explaining that measures were taken to "maintain the illusion" that the ghostwritten books were Andrews' work, because "Andrews' name was central to the promotional effort").

assigned mark."[281] If authorial attribution interests are to be protected under trademark-type theories, they must be protected in a way that is unlike traditional trademark protections. Attribution must be bounded to some factual and socially valuable truth about the identity of the true author. In other words, in the case of authorial attribution, trademark law should ensure the reliability of consumer beliefs about the connection between claims of authorship and the true process of the work's creation. Consumer beliefs can vary according to the type of work at issue, as will be discussed in the next section.

B. *Collaborative Authorship and Social Value*

In ghostwriting, where the attributed author writes nothing and the existence of the ghostwriter is undisclosed, we clearly are faced with certain problems as set forth above. However, in some instances of ghostwriting, an attributed author will make *some* contribution to a literary production. Also, a ghostwriter occasionally obtains *some* acknowledgement for contributions. Collaborations between celebrities and skilled authors are sometimes truthfully marketed as such. Thus, the situation of ghostwriting simply marks one extreme position within a much broader spectrum of comparative attribution issues in cases where collaborators produce creative works. In instances of collaboration, the same dynamics that fuel ghostwriting will often lead to marketing strategies that promote to the public the reputation of the prominent author – even where the parties contribute equally. An example might be taken from the recent literary output of the Supreme Court. In the year before the decision in *Dastar*, Justice Sandra Day O'Connor published a book about her early childhood: *Lazy B: Growing Up on a Cattle Ranch in the American Southwest*.[282] She collaborated on the book with H. Alan Day, her brother. Day is a lifelong cattle rancher (and writer) who ran the Lazy B ranch for thirty years.[283] According to *USA Today*, Day provided O'Connor with the "material" for the book, which O'Connor then revised and reorganized.[284]

Just as Doubleday knew that Eisenhower's authorship could sell copies of

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[281] 3 MCCARTHY § 18:2, *supra* note 100, at 18-8 to 18-9; Fair Undercar Care, Inc. v. Wakefield, 1992 U.S. Dist. LEXIS 10120, at *16 (N.D. Ill. July 2, 1992) (citing MCCARTHY).

[282] SANDRA DAY O'CONNOR & ALAN DAY, LAZY B: GROWING UP ON A CATTLE RANCH IN THE AMERICAN SOUTHWEST (hardcover ed., Random House 2002).

[283] Deirdre Donahue, *Even Cowgirls Get to the High Court*, USA TODAY, Jan. 21, 2002, at 1D (reporting that Day "remained on the ranch, managing it for 30 years after graduating from the University of Arizona").

[284] According to USA Today, "[b]oth siblings agree that Day possesses more 'institutional memories.' He would write material for the book, then his sister would revise and reorganize his original drafts. They also would meet, correspond and compare their memories. O'Connor eliminated Day's chapter, 'My Sister Sandra.'" Donahue, *supra* note 283.

Crusade in Europe, publisher Random House surely knew that Justice O'Connor's authorship could sell copies of *Lazy B*. Indeed, just as *Crusade in Europe* was marketed as being Eisenhower writing about his memories of World War II, *Lazy B* was marketed as Justice O'Connor writing about her memories of childhood. O'Connor's authorial designation appears on the cover at roughly twice the size of her brother's (four times as large on the paperback), O'Connor's picture appears on the cover,[285] O'Connor reads aloud the audiobook version, and – perhaps most importantly – the book is written using the first person voice of Justice O'Connor.[286] Even chapters that deal primarily with Alan Day and his private thoughts are also written in the voice of O'Connor.[287] Given the collaborative nature of the book's production and its topic, there was obviously some inherent potential for consumer confusion as to the authorship of *Lazy B*. Some readers undoubtedly bought the book to gain a glimpse into the thinking of one of the most influential Supreme Court Justices of the last century. Instead, they found a great many details about cattle ranching. This is not to say that there was anything misleading about the book. But it does point out how the marketing of collaborative authorship is influenced by the gravitational pull of one author's celebrity. The mechanics of production may be influenced by other factors. Even where collaboration is fully disclosed, when consumers misestimate the type and degree of collaboration that can be expected, they may be disappointed.[288]

Yet many, perhaps most, entertainment products for sale today are produced by similar processes of collaborative authorship.[289] In the case of film, for

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[285] O'CONNOR & DAY, *supra* note 282; SANDRA DAY O'CONNOR & ALAN DAY, LAZY B: GROWING UP ON A CATTLE RANCH IN THE AMERICAN SOUTHWEST (paperback ed., Random House 2003).

[286] *See* O'CONNOR & DAY, *supra* note 282, at 6 (narrating in the first person).

[287] *Id.* at 213-225. For example, Chapter 20 is primarily about Day and his horse, Saber, and seems a strange fit with the first person voice of Justice O'Connor. The use of O'Connor's point of view requires Day's thoughts to be rendered in the third person. *See, e.g.*, *id.* at 224:

> Alan picked up a big half-Brahma cow that looked pretty athletic and decided to turn Saber loose on her. Alan had always held him back a little and had never really let him loose on a cow to run her and turn her back because he was so powerful and so fast. Alan always wanted to throttle him back a little. This time, just for fun, Alan turned the old cow up the fence. . . . He let the reins go slack and thought, "Well, let's see what happens here."

The excised "My Sister Sandra" chapter obviously would have been even more difficult to reconcile with O'Connor's first person voice. *See supra* note 284.

[288] There has been an interesting recent trend, in a similar family vein, of collaborations among parental authors and their children. In some cases, the children continue to write in the same literary genre of the parent. The family name "brand" of the parent is recognized by the public, the intellectual property licenses are probably not so hard to negotiate, and some degree of familiarity with the material might be reasonably presumed on the part of the child. Of course, one wonders if authorial expertise and talent are hereditary.

[289] *See* Hunter & Lastowka, *supra* note 26, at 979 (observing that many creative works

instance, there are often hundreds of authors. The film *Saving Private Ryan* was marketed as a "Steven Spielberg film," yet it involved the creative contributions of over 700 individuals.[290] The list of authors whose contributions created stylistic "fingerprints" on *Saving Private Ryan* is obviously extremely long. It is so long that it would clearly be beyond the interest, as well as beyond the ability, of the average consumer to remember the names of these individuals and to understand what each individual contributed to the film. It is unlikely that director Steven Spielberg knows who deserves personal credit for each aspect of the film. The *Dastar* Court was correct to recognize that consumers may not be interested in *all* information regarding authorship of collaborative creations.[291]

So how does this modify the conclusions in the previous section? Obviously, in cases involving more than two or three authors who contribute to a single work, consumer interests in ascertaining the details of a work's authorship can become much more diffused.[292] In the case of written works, if the public purchases a book it believes to be authored by Tom Clancy or V.C. Andrews, we can say that the public has been deceived if Tom Clancy or V.C. Andrews did not, in fact, make a substantial authorial contribution to the authorship of the purchased book. If the public purchases a "Steven Spielberg" movie, however, the public will not be deceived if it finds out that Spielberg did not personally write the script, create the costumes, compose the music, and act all the parts.[293] The public is aware that Spielberg instead supervised, partially controlled and had some *auteur* influence over various aspects of the movie.

Steven Spielberg's directorial role in *Saving Private Ryan* is clearly relevant to consumers. The fact that Spielberg could manage to get his name put on the film seems to validate the point that his authorial attribution provides some

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are now produced by committee).

[290] *See Saving Private Ryan*: Full Cast and Crew, The Internet Movie Database, http://www.imdb.com/title/tt0120815/fullcredits (last visited Sept. 17, 2005).

[291] An unidentified Justice stated during oral argument in the *Dastar* case that film credits are generally something that "no one ever reads." Transcript of Oral Argument at 51, Dastar Corp. v. Twentieth Century Fox Film Corp., 539 U.S. 23 (2003) (No. 02-428) ("I mean, the screen credits, you know, you're going to the refrigerator or reading cert petitions or something."); *cf. Dastar*, 539 U.S. at 35-36 ("We do not think the Lanham Act requires this search for the source of the Nile and all its tributaries.").

[292] This isn't to say that crediting in instances of large-scale collaboration is not of interest to some segment of the public. Within creative industries, credits can be extremely important. Indeed, it was the presumed importance of film credits to actors and the film industry that led the Ninth Circuit to adopt the "bodily appropriation" doctrine. *See* Cleary v. News Corp., 30 F.3d 1255, 1261 (9th Cir. 1994).

[293] Nor does copyright law grant much weight to screen credits. *See* Dougherty, *supra* note 217, at 313 ("A person is not an author under U.S. law simply because he is called the director or is credited as the director on screen. The fundamental question under U.S. law is: Who originated a particular expression?").

value. Again, Post-it™ Notes could be, but aren't, distributed with similar attributions.[294] Primary marketing attribution is often used as an additional form of incentive and compensation. Key parties in the film process will often wrangle and even litigate over their right to be promoted as the creative force behind a project.[295] The end result of this process (which is additionally regulated in minute detail by the various guilds and collective bargaining agreements) is a particular presentation and marketing of a film's "authorship" to the public. This marketing usually promotes a very small subset of actual authors – perhaps a director, a lead actor, and/or another significant contributor, such as the author of a book that is being adapted.[296] In the case of *Saving Private Ryan*, Steven Spielberg, Tom Hanks, and Matt Damon were the primary brands under which the film was marketed.[297]

For the public, this kind of personal "branding" of collaborative efforts, while it may not explain much about the details of the complicated process of authorship, can still provide important information in much the same way that a traditional trademark provides some useful information. As stated above, the word "Nike" on a sneaker generally means very little to a consumer in terms of actual information. Likewise, the fact that a certain *person* has been associated with a certain project may say very little about any personal involvement with the work's creation. But if that person has previously appeared in association with high quality creative works, this can be taken by the public as some indication that the new film's quality and characteristics will be the same as those previously associated with that actor or director.[298] Society certainly

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[294] Similarly, the end credits of a motion picture, even the most obscure ones, are not simply superfluous nonsense. They are surely relevant as a personal motivator to those engaged in film production, and may also be useful within the movie industry. Those professionals who understand the making of films may have an interest in knowing the identities of individuals behind creative contributions, and credits can help individuals secure work on later projects. MELVIN SIMENSKY ET AL., ENTERTAINMENT LAW 1005-1120 (3d ed. 2003). This is not to suggest, however, that these long lists of film credits provide much of value to the average consumer.

[295] *See generally* Gulick, *supra* note 113 (discussing attribution practices and negotiations in film crediting); *see also* SIMENSKY ET AL., *supra* note 294, at 1005-20 (discussing contractual disputes over credit obligations); Gulick, *supra* note 113 at 87 ("For directors such as Warren Beatty and Woody Allen, the granting of the [final cut] right is in the interests of the producers, who view it as a simple exchange for access to the proven economic success of the director's name and reputation.").

[296] One can get a sense of how marketing concerns, financial power, and artistic ego collide by looking at any group of movie posters and comparing the size and placement of the names of actors, producers, directors, and (in some cases) the novelists, playwrights, or other persons that provided the inspiration for the film.

[297] And, in turn, the film's success further promoted the strength of these brands.

[298] Gulick, *supra* note 113, at 100:

> When a consumer thinks of the author of a film, he thinks of its artistic, not legal, author. . . . For consumers, the attribution of a film's source to its director functions

recognizes the brand value of the participation of Julia Roberts or George Clooney with a film project. The public knows that these names and reputations are placed on the line by association with the project – if the project fails, the branded celebrity will suffer a loss of public reputation. Thus, practices of authorial attribution where certain personalities reap credit for the efforts of large collaborative teams operate in much the same way that trademark identifiers establish consumer associations with the collaborative production of business, corporate, and contractually licensed entities.[299] In the case of large-scale collaboration, the basis for trademark protection becomes much more analogous to the traditional reputation and endorsement dynamics.[300]

However, the difference between authorship and trademark in the case of collaborative enterprises also suggests that a deviation from normal trademark doctrine is warranted. Claims of reverse passing off are hard to justify where the choice of any particular personal association with a work of collective authorship is largely arbitrary. Because traditional trademarks designate *collective* enterprises, reverse passing off arguably promotes greater truth in communication in an economical fashion. In the case of large-scale projects, such as films, none of the myriad of authors clearly deserves to be one of the subset of persons who have their authorial identities explicitly advertised and promoted in association with the work. It would seem impossible to allow, for instance, each of several hundred contributors to a film to claim that a work was being "passed off" where they were not attributed with authorship in conjunction with the sale of the work. Additionally, as the *Dastar* court noted, the corporate publisher (the copyright "author") of a film and the manufacturer of the film's tangible medium are largely irrelevant to consumers – thus reverse passing off, as applied to those entities, will serve no socially useful purpose.[301] In the case of collaborative authorship, it seems the justification for the doctrine of reverse passing off falls away. The *Dastar* case reaches the right results, but for the wrong reasons.

The difference between collaborative and individual authorship with regard to reverse passing off is significant. The attribution of authorship, or the

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like a brand-name identifier. . . . There is a certain value to consumers to the extent that they form these associations, for they save on search and information costs.

[299] *See* Hughes, *supra* note 18 (discussing how common trademarks such as Sara Lee represent collaborations between several corporate entities).

[300] Indeed, some popular "authors" are artificial constructs. For instance, bands like *Alvin and the Chipmunks* and the contemporary band *Gorillaz* feature animated cartoons as musicians, essentially attributing musical talent to fictional authors that are collaboratively produced. *See* Gorillaz, http://www.gorillaz.com/ (last visited Aug. 12, 2005) (official website). For a high-tech take on the animated celebrity, see the recent film *Simone* (New Line Cinema 2002).

[301] Dastar Corp. v. Twentieth Century Fox Film Corp., 539 U.S. 23, 32 (2003) ("The purchaser of a novel is interested not merely, if at all, in the identity of the producer of the physical tome . . . .").

failure to attribute authorship, in the case of a singular author (or a small set of authors) carries with it some degree of socially important empirical truth. Thus, ghostwriting should be actionable as a form of reverse passing off. By contrast, large-scale collaborative efforts disassociate the authorship mark from any factually meaningful information about the product.

C. *The Limits of Attribution Protection*

Finally, I would like to suggest that any application of trademark law to works of authorship must be limited to marks that meet three criteria: 1) they should be prominently placed (or deserve to be placed) on the exterior of the work; 2) they should be placed (or deserve to be placed) there with the hope of establishing goodwill and driving sales of the product; and 3) they should serve to designate creative authorship to readers who would care about this authorship. None of these requirements is particularly unusual under traditional notions of trademark law. Trademark law has traditionally focused on extrinsic marks placed on the exteriors of products,[302] and has sought to protect consumers against confusion as to the source of products where such confusion will lead to ill-informed purchases.[303]

Yet in the current climate of trademark regulation, authorship protections could clearly extend beyond this point. Indeed, the Ninth Circuit case of *Smith v. Montoro*,[304] relied upon by the lower courts in the *Dastar* case and overruled by *Dastar*, was essentially an attempt to regulate the crediting of component parts of a work under a theory of trademark.[305] *Smith*, and courts that relied upon it, suggested that credit sequences of films were an appropriate concern of trademark law.[306] If one approaches trademark regulation from the standpoint of anti-plagiarism norms, moral rights arguments, or analogies to rights of publicity, one might argue that the result in *Smith v. Montoro* is justified. The criteria above, however, would not extend so far. I would suggest that if we regulate authorship designations pursuant to trademark law, we should do it in a way that comports with a very conservative approach to the goals of trademark regulation.

I make this qualification somewhat reluctantly. There are arguments to be made for broader protections. Consumer deception can certainly occur with regard to the authorship of component pieces of creative work. Our social norms against plagiarism do not just condemn the misattribution of entire works of authorship where those misattributions are made on the exterior surfaces of works sold in commerce. Instead, anti-plagiarism norms extend to

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[302] Rogers, *supra* note 73 (characterizing the origins of trademark law in the regulation of guild emblems on goods).

[303] *Dastar*, 539 U.S. at 34 (describing the purpose of trademark law).

[304] 648 F.2d 602 (9th Cir. 1981).

[305] *Id.* at 605 (finding that trademark law properly applied to the substitution of one actor's name for another in a film's credits and advertising).

[306] *See id.*

condemn much more fine-grained instances of misattribution, where authors borrow phrases or ideas without attribution. Plagiarism concerns itself with appropriate credit for the multiple bits and pieces of a work.[307] However, none of the recent plagiarism scandals mentioned in the introduction would run afoul of my proposed standard. Why not extend the standard further? To extend regulation of attribution as finely as plagiarism would reach would likely prove overly burdensome for authors, readers, and the court system. The burden of writing, reading, and regulating extensive footnotes and credit lists for every creative text sold to the public is not an obligation one would want to impose on the entertainment business or the purchasing public. Creativity itself is often merely a practice of finding bits and pieces of the works of others and assembling them into a new unified whole.[308] Because all words and symbols must refer to prior words and symbols simply in order to be intelligible, all new works must borrow from prior works to some degree.[309] To insert law into this process by regulating authorial attribution for the bits and pieces of authorship contained *inside* texts would almost certainly lead to the disclosure of more information than any consumer would care to know.

1. Extrinsic and Intrinsic Crediting: Vocal Dubbing

To show the effect of a conservative approach in practice, we might take, for example, the practice of vocal dubbing. In vocal dubbing, one person's voice is directly blended with the image of another person's vocalizing. One can see that vocal dubbing might easily raise concerns very similar to those raised by ghostwriting. If Tom Clancy, for instance, is credited (and shown on music videos) as the vocalist on an album of great Broadway show tunes, some of his admiring public may be inclined to purchase the album. If Jeff Rovin were actually singing the songs, however, this would be a deceptive designation of authorship.[310] Where the item for sale is a musical work, and the authorship of the vocal performance is clearly a primary concern of the purchaser, this type

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[307] *See generally* PERSPECTIVES ON PLAGIARISM AND INTELLECTUAL PROPERTY IN A POSTMODERN WORLD (Lise Buranen & Alice M. Roy eds., 1999); Malcolm Gladwell, *Something Borrowed*, THE NEW YORKER, Nov. 22, 2004, at 40 (describing how a psychiatrist tracked "thematic similarities" between her book and a play she alleged was plagiarized from it).

[308] There are many other words for this process, e.g., collage, collection, arrangement, found art, etc. For some thoughts on the importance of this process to art and its limits, see generally Gladwell, *supra* note 307 (discussing the work of playwright Bryony Lavery and her use of sources in the Broadway play *Frozen*).

[309] *See, e.g.*, Note, *Originality*, 115 HARV. L. REV. 1988, 1990 (2002) (asserting that "all writing is, in some sense, rewriting").

[310] Ventriloquism and puppetry are essentially ancient technologies of dubbing. These uses do not strike most adults as deceptive, however, because they *must* take place within the realm of suspended disbelief. (We all know puppets can't talk.) Animation today is another popular and unproblematic use of dubbing.

of deception should be actionable under trademark law. My proposed line, however, would separate this hypothetical situation from more common instances of vocal dubbing. Vocal dubbing in a film, for instance, would likely not be actionable. As stated above, the consumer concerns over particular component pieces of authorship within a work are more diffuse.

Is there a public interest in preventing vocal dubbing in collaborative efforts? Consider the classic Hollywood film *Singin' in the Rain*.[311] The film is set during the revolutionary point in film history when the industry was being transformed from the era of silent film to the era of contemporary "talkies." In the movie, Gene Kelly plays the part of Don Lockwood, a former vaudevillian and stuntman turned celebrity actor.[312] When a major film project fails due to his co-star's poor vocal talents, Lockwood proposes that his love interest, the aspiring actress Kathy Selden (played by Debbie Reynolds) should provide the on-screen singing voice of the acoustically challenged Lina Lamont (played by Jean Hagen). Both Lockwood and Selden are aware that this practice will mislead the public as to Lamont's singing talents, and also won't do much to promote Selden's career. Yet Selden agrees to the arrangement in order to save Lockwood's career from ruin. What seems a perfect idea at first leads to predictable comedic complications: Lamont demands that Selden be required to dub her singing vocals permanently and threatens the head of the studio if he does not comply with her demands.[313] At the film's premiere, Lockwood and the owner of the film studio create a ruse to reveal the dubbing. They demand that Selden must sing for Lamont, live, behind a curtain while Lamont lip-synchs. Selden grows indignant, but complies. In the film's climax, Lockwood and the studio head literally raise the curtain on the undisclosed Selden/Lamont collaboration. This public disclosure of Selden's vocal dubbing for Lamont both humiliates Lamont and catapults Selden into Hollywood stardom.[314]

The moral of the film seems clear – Lamont's claiming credit for the work of Selden was deceptive. The film suggests that the public will hold the Lamonts of the world in contempt and will support the Seldens, the true and

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[311] SINGIN' IN THE RAIN (Metro-Goldwyn Mayer 1952). Perhaps the film is such a classic in Hollywood because it is all about Hollywood. It provides parodies of real personalities in the movie industry – language coaches, egomaniacal studio heads, aspiring starlets who profess to be concerned about high art, and venomous divas threatening to bankrupt studios.

[312] *See Singin' in the Rain*: Full Cast and Crew, The Internet Movie Database, http://www.imdb.com/title/tt0045152/fullcredits (last visited Aug. 12, 2005).

[313] Lamont explicitly evokes her legal and contractual rights:

> I had my lawyer go over my contract. . . . The studio's responsible for every word printed about me. If I don't like it, I can sue, I can sue. If you tell the papers about Kathy Selden, it would be detrimental and deleterious to my career. I could sue you for the whole studio.

SINGIN' IN THE RAIN (Metro-Goldwyn Mayer 1952).

[314] *Id.*

talented vocal authors. During the late 1980s, the pop music duo *Milli Vanilli* found themselves re-enacting this morality play. Charles Shaw, John Davis, and Brad Howe played the part of Selden.[315] The trio had vocal talent, but they were getting older and had been deemed (by their manager) unmarketable to the MTV generation. So their manager hired aspiring dancer/models Rob Pilatus and Fabrice Morvan to be Lamonts, lip-synching the trio's songs. The arrangement worked fantastically – everyone thought Pilatus and Morvan were actually singing the songs. In 1990, *Milli Vanilli* won a coveted Grammy Award for Best New Artist (beating out the *Indigo Girls* and rapper Tone-Loc).[316] Pilatus and Morvan were overnight celebrities. They pressed their manager to let them sing on their next album. The band's manager, apparently overwhelmed by orchestrating the deception and dealing with competing demands (much like the studio owner in *Singin' in the Rain*), raised the curtain on the lip-synching.[317] The public was appropriately shocked, the Grammy Award was revoked, and the band became a scapegoat for all that was inauthentic about popular music.[318] And yes, a lawsuit was filed on behalf of a wronged public.[319] Like Lamont before them, Pilatus and Morvan were disgraced.[320] (Unfortunately, the public of the MTV era did not catapult Shaw,

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[315] Wikipedia: Milli Vanilli, http://en.wikipedia.org/wiki/Milli_Vanilli (last visited Aug. 12, 2005).

[316] *Id.* (describing *Milli Vanilli* as the only group ever to have a Grammy Award revoked).

[317] *Id.*

[318] *Id.*

[319] A lawsuit was initiated based upon the claim that the public had been fraudulently deceived into purchasing *Milli Vanilli* albums by the misrepresentation that Morvan and Pilatus actually sang the vocals. *See* Freedman v. Arista Records, Inc., 137 F.R.D. 225 (E.D. Pa. 1991); Cross, *supra* note 20, at 709 & n.1.

[320] Of course, *Milli Vanilli* was not the first band to be accused of inauthenticity. The 1960's pop band *The Monkees*, for instance, is commonly criticized for being deceptively inauthentic. The group was the brainchild of two entertainment executives, Bob Rafelson and Bert Schneider, who created the band as a way to use television to cash in on the *Beatles* phenomenon. They recruited the band members (two actors and two musicians) from auditions involving hundreds of aspirants. Stephen Stills of Crosby Stills & Nash actually auditioned. A separate creative team wrote the *Monkees*' early songs and studio musicians were employed to play the musical instruments on the song tracks. At one point, it was even planned that the *Monkees* would simply lipsynch all their songs exactly as *Milli Vanilli* did, so that the band members would contribute nothing but their images and acting. Ultimately, however, some members of the band were allowed to add vocal tracks to the songs. While the band members were originally hired for $450 a week and less than 2 percent of the record royalties, they followed the normal path of leveraging their acquired fame to push for greater creative control. Those efforts were partially successful – records and singles by the *Monkees* at times topped sales of the *Beatles* – but greater creative control also heralded the band's decline. The group's chemistry, its public image, and its fame were largely attributable to the success of the syndicated television show and the "authorship" of the two creative managers. The individual members had to struggle – largely unsuccessfully

Davis, and Howe to stardom.) After a long downward career spiral – including a stint in prison – Rob Pilatus died of a drug overdose in Germany in 1998.[321]

The moral conclusions of both *Singin' in the Rain* and the *Milli Vanilli* affair might seem congruent. However, looking past the fiction of *Singin' in the Rain*, the making of the movie tells a completely different story. Kathy Selden actually had her own Kathy Seldens: Betty Noyes sang many of Debbie Reynolds's songs in the film and Gene Kelly actually dubbed some of Reynolds's tap dancing.[322] In the most interesting reversal – Jean Hagan (who played Lamont) dubbed Reynolds's speech in the scenes where Selden was dubbing the voice of Lamont.[323] Even in 1952, in a film marketed to the public as a story about the triumph of artistic authenticity, the makers of the film had very little interest in authenticity.[324] Hollywood filmmakers still dub vocal performances just as readily as they use stunt and body doubles to attribute greater prowess and beauty to the celebrities.[325] Marni Nixon is probably the most famous Kathy Selden figure in Hollywood.[326] She dubbed Deborah Kerr in the film version of *The King and I*, sang for Natalie Wood in *West Side Story*, and was Audrey Hepburn's voice in *My Fair Lady*.[327] Of course, few people know of her existence, and some undoubtedly think that Kerr, Wood, and Hepburn have remarkable singing voices.

My proposal would make the *Milli Vanilli* facts amenable to legal regulation, since the attributions of authorship to Pilatus and Morvan were used to promote and sell the work and were factually deceptive as to authorship.[328] The misattributions that are inherent in the public's reading of

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– to become something like the musical group that they played on television. For extended versions of this story, see ERIC LEFCOWITZ, THE MONKEES' TALE (2d ed. 1989); MICKEY DOLENZ & MARK BEGO, I'M A BELIEVER: MY LIFE OF MONKEES, MUSIC, AND MADNESS (2004). If you actually want to follow up on this footnote, I would recommend the Lefcowitz book. It's much easier to read.

[321] *See* VH1: Milli Vanilli, http://www.vh1.com/artists/az/milli_vanilli/bio.jhtml (last visited Aug. 12, 2005).

[322] Steven Cohan, *Case Study: Interpreting* Singin' in the Rain, *in* REINVENTING FILM STUDIES 59 (Christine Gledhill & Linda Williams eds., 2000).

[323] *Id.*

[324] Perhaps this is why Hollywood loves *Singin' in the Rain* so much – there's plenty of irony if you know the inside story.

[325] In the film, Don Lockwood breaks into the film industry by performing as another actor's stunt double.

[326] DOUGLAS R. HOFSTADTER, LE TON BEAU DE MAROT: IN PRAISE OF THE MUSIC OF LANGUAGE 62 (1998) (recounting Nixon's career as a "ghost" singer for several famous actresses).

[327] *Id.; see also* Wikipedia: Marni Nixon, http://en.wikipedia.org/wiki/Marni_Nixon (last visited Sept. 15, 2005).

[328] An interesting twist on the *Milli Vanilli* affair occurred recently. A 1980s-era band of aging punk rockers, *The Alarm*, drafted members of a much younger band to appear on screen, while the music of *The Alarm* was dubbed on top of the visuals. Apparently, this

Singin' in the Rain, however, should not be actionable because they are not made extrinsic to the work. Obviously, this is somewhat problematic. The dubbing in *Singin' in the Rain* creates the potential for public deception with regard to the singing talents of actors. The visually presented actor who is dubbed (i.e., Debbie Reynolds) almost certainly garnered a public reputational value that should have been properly attributed to an undisclosed collaborator (i.e., Betty Noyes). And just as in ghostwriting, this worked well from a marketing perspective – both Noyes and Reynolds benefited.

But the vocal dubbing deception in *Singin' in the Rain* isn't linked to the sale of the work or severable from the work. Perhaps more importantly, there would have been no way to correct the deception *within* the context of collaboratively produced work without disrupting the integrity of the movie. It would also seem unwise, and perhaps impossible, to attempt to "fix" the public confusion as to authorship in *Singin' in the Rain* without destroying the film or, in any event, providing the public with far more information than it would want or need in order to make purchasing decisions. And if we "fix" the misattribution in *Singin' in the Rain*, why stop there? We could require disclaimers for all potentially deceptive practices in film, e.g., special effects, body doubles, stuntmen, and digital editing. But accepting that the entertainment industry is premised on the creation and sale of *illusions*, there are sound reasons to be conservative in attempting to root out instances of consumer deception.

2. The Inherent Deceptions of Art

This last point – that the marketing of illusion is inherently deceptive – is worth a few additional comments. The goal of trademark law, in a very broad sense, is to promote truth in market communications. Yet art, as Picasso noted, is a lie.[329] Obviously there is some potential here for conflict. To illustrate the kind of misattribution that is inherent in the artistic form, we might look to Edmond Rostand's *Cyrano de Bergerac*. The play is essentially a story of authorial misattribution.[330] The interesting tension latent in the play is that the

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approach worked and the song gained a considerable amount of airplay. The band then raised the curtain *on itself* and explained that it had engaged in the duplicity because: "We wanted to make sure we are judged purely on the strength of the music, and not by our old hairstyles." *See* BBC Wales: The Alarm, http://www.bbc.co.uk/wales/music/profiles/pages/alarm.shtml (last visited Aug. 12, 2005) (describing *The Alarm* as one of the most internationally successful rock bands to come out of Wales).

[329] A lie that tells the truth, but a lie nonetheless.

[330] EDMOND ROSTAND, CYRANO DE BERGERAC (Brian Hooker trans., Bantam Classics 1950). In brief summary, Cyrano, who has a rather large and aesthetically unappealing proboscis, writes words for another suitor, Christian, to deliver to the lovely Roxane, who is also the object of Cyrano's affections. At the end of the play, after the passage of many years, the misattribution of Cyrano's words to Christian's authorship is revealed, and Roxane declares her love for Cyrano, the author. Cyrano dies of injuries moments later.

artifice of authorial misattribution that is condemned in the play is, in fact, integral to the dramatic form of the play itself. When watching the play, we suspend our disbelief in the identity of the actor and attribute the words of Rostand to the authority of the actor who plays Cyrano. Within and without the context of the performance, we are told that authorial misattribution runs the risk of fraud. Yet within the play, misattribution is inherent in the collaboration between playwright and actor in creating the fictional world.

Given our tendency to confuse the image with reality and the dancer with the dance, policing the line between fraud and entertainment can become problematic. Can we cleanly separate our beliefs about popular actors, for instance, from the roles that they play? When we see films, we suspend our disbelief of not only the spontaneity of the actor's performance, but also of the entire artifice of the play's constructed world. To some extent, after the film is over, we can mentally sever the identity of the actor from the special effects, the effects of editing, the contribution of collaborators, and all the other material we see on the screen. To some extent, though, we cannot. Arnold Schwarzenegger's recent success in the California gubernatorial election suggests the extent to which Hollywood can construct identity. Schwarzenegger's popular appeal was surely based, in substantial part, on his association with stern, indestructible cyborgs, barbarians, and maverick action heroes.[331] To some extent this was deceptive. His performances were the result of scripted fictions, and scripted fictions are inherently deceptive in at least two ways. First, the identity of the actor is merged with the identity of the fictional character. Second, the performer often reaps credit for the work of numerous other collaborative players: writers, composers, choreographers, and other contributors who are not obvious to those viewing the performance.

However, there are limits to what we can do with attempts to bring laws requiring truthful communication to the commercial enterprise of art. I would suggest that while the regulation of extrinsic authorial designations that are relevant to consumers will not generally intrude on art's deceptive nature, attempts to move past that point would be going too far. If we attempt to move beyond the truth of extrinsic designations and regulate the ways in which art intrinsically deceives and confuses the public, we run the risk of curtailing the illusions and deceptions that are inherent in art.

CONCLUSION

This article has suggested that there are good reasons to reverse the holding of *Dastar* through legislation and to reintroduce the role of trademark law into the regulation of designations of authorship, at least to some conservative extent. When we do this, however, we are also making a decision about the

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[331] *See* Actor Biography: Arnold Schwarzenegger, The Internet Movie Database, http://www.imdb.com/name/nm0000216 (last visited Aug. 12, 2005).

type of authorship that society obtains from the intellectual property system.[332] The decision between trademark law and proprietary-based schemes is also a question of cultural aesthetics. As noted before with regard to the lip-synching practice of *Milli Vanilli*, misattributive practices can lead to the creation of very marketable illusions.[333] To the extent trademark law requires honesty in attribution, it may make those illusions less likely to occur. Does our society profit from marketable illusions such as deathless and impossibly prolific authors, photogenic singers with angelic voices, and Hollywood-forged mythic political candidates? If people are willing to buy this stuff, isn't that how we should weigh social utility?

Perhaps society would actually be better off if Jeff Rovin and Andrew Neiderman were forced to publish novels under their own names, if not all our singers were photogenic, and if our system of politics was not so dependent on speechwriters and the business of illusion. Would the unknown authors Rovin and Neiderman be better off if trademark law cast a shadow on their respective enterprises? Probably not, but for every penny spent on a book written by a Neiderman or a Rovin, there are surely many other authors who are attempting to capture the public attention, retracing the steps of the fictional Kathy Selden in *Singin' in the Rain*, believing that there is some truth to the story of her success. This competition among artists and authors for our limited attention is a zero-sum game. The shelf space devoted to the latest V.C. Andrews™ (Neiderman) and Tom Clancy™ (Rovin) books in my library is shelf space that cannot be used by the lesser-known authors who actually write under their own names.

The law can provide no complete panacea for the business practices and marketing concerns that misallocate authorship. Even if trademark law can come to the rescue to some limited degree, the costs and mechanics of enforcement and the inherent difficulties in ascertaining the facts of authorship might mean that ghostwriting and other misattributive practices would continue largely unchecked. But it is justifiable to cast misattributive practices under a legal shadow. Trademark law should not countenance intentional and misleading public deception where it can serve as a remedy. Nor should our intellectual property laws simply concentrate on the goal of production, pumping out greater and greater quantities of expressive material for people to "consume." We should take account of the greater interests of society and the goals of all of this productive activity.

As was demonstrated with the example of Michelangelo in Part I, the artistic pursuit of quality, fueled by the desire to make a name for oneself and achieve personal goals, is sometimes at odds with the pursuit of quantity.[334] Trademark has a role to play in promoting quality by forcing each individual

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[332] *See supra* Part III.

[333] *See* Wikipedia: Milli Vanilli, *supra* note 315.

[334] VASARI, *supra* note 33, at 472 (describing how Michelangelo destroyed many of his own works that did not meet his standards).

author to stand on his or her own two feet and by discouraging practices where one author claims undue credit for the authorship of others. The goals of trademark align with social intuitions condemning plagiarism and popular conceptions of what intellectual property law is designed to do.[335] By restoring the trademark function of authorship and prohibiting deceptive misattributions of authorship that result in consumer harms, we might embrace what appears to be an increasingly radical concept in intellectual property law. Trademark and copyright are not simply laws intended to parcel out new private property rights – they are laws that should be designed to promote and protect the greater interests of society.

[335] *See* Anonymous, *supra* note 65 (illustrating the moral condemnation of plagiarism).

Exhibit 8

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THE BIRTH OF THE AUTHORNYM: AUTHORSHIP, PSEUDONYMITY, AND TRADEMARK LAW

*Laura A. Heymann**

Consumers in the marketplace of ideas are well acquainted with one aspect of the Foucauldian concept of the "author function": the way in which an author's name serves to organize both producer inputs—the various works the author wishes to have associated with his name—and consumer inputs—the readers' interpretive reactions to any particular body of work. Indeed, choosing to write under a pseudonym or under one's true name is the way in which an author exerts control over this function by grouping certain works (for example, scholarly pieces) under one name and other works (for example, mystery novels) under a different authorial name, thus segregating readers' responses to each of these bodies of work. Readers, in turn, respond to this decision by mirroring the choices made by the author—continuing, for example, to refer to certain works as being authored by "Mark Twain" even when the author's true name of "Samuel Clemens" is known or accepting that the Nancy Drew series was written by "Carolyn Keene" rather than by a series of different writers over time.

Borrowing from postmodern literary theorists Roland Barthes and Michel Foucault, and given that statements of authorship often tell readers very little, if anything, about the identity of the individual who put pen to paper, this Article proposes a separation of statements of authorship—what this Article terms "authornyms"—from facts of authorship. This construct

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leads to the conclusion that all authornyms are essentially branding choices, even if the brand that is chosen is the author's true name, and therefore that the "author function" is really a "trademark function." If this is the case, then—as in trademark law—we should seek to preserve the organizational system of the "authornym function" and to minimize the likelihood of reader confusion that occurs when a work is used unlawfully without attribution—in other words, when an author's choice of authornym is not preserved.

The Supreme Court's 1995 decision in McIntyre v. Ohio Elections Commission, *which granted First Amendment protection to pseudonymous speech, was an inherent acknowledgment of the trademark value that authornyms serve and the importance of controlling the author function by the choice of authornym. But in its decision in* Dastar Corp. v. Twentieth Century Fox Film Corp. *eight years later, the Supreme Court largely denied authors the ability to compel attribution of their works (and thereby preserve their authornymic choice) through the Lanham Act and thus denied readers the accurate attribution required for organized and efficient literary consumption. This Article contends that only by recognizing the essential pseudonymity of all statements of authorship—in other words, by decoupling the copyright-focused concept of authorship from the trademark-focused statement of authorship ("authornyms")—can we create room for the values that trademark law can promote in the marketplace of ideas.*

INTRODUCTION

The traditional explanation of why the law extends protection to trademarks is an economic, market-based one. Trademarks, the accepted story goes, are a shorthand designed to reduce consumers' search costs by ensuring that the goodwill attributable to a mark is not misplaced.[1] A consumer who enjoys the taste of Pepsi and who would like to buy more of the cola need not engage in a time-consuming tasting spree to find the drink that matches the qualities she experienced with her first purchase—she need only look for the Pepsi

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1 *See, e.g.*, Qualitex Co. v. Jacobson Prods. Co., 514 U.S. 159, 163–64 (1995).

> [T]rademark law, by preventing others from copying a source-identifying mark, "reduce[s] the customer's costs of shopping and making purchasing decisions," for it quickly and easily assures a potential customer that *this* item—the item with this mark—is made by the same producer as other similarly marked items that he or she liked (or disliked) in the past. At the same time, the law helps assure a producer that it (and not an imitating competitor) will reap the financial, reputation-related rewards associated with a desirable product.

Id. (quoting 1 J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 2.01[2] (3d ed. 1996)); United Drug Co. v. Theodore Rectanus Co., 248 U.S. 90, 98 (1918) (describing a trademark as "merely a convenient means for facilitating the protection of one's good-will in trade").

trademark. A competitor who interferes with this search process—who increases consumers' search costs by misleading use of another's trademark—is deemed to have infringed by diverting sales intended for the trademark holder.

While some have examined noneconomic bases for extending legal protection to trademarks,[2] the vast majority of commentators and courts root this protection in the marketplace.[3] It might seem odd, then, to consider trademark-like activity in a principally noneconomic context: the act of authorship. Authorship can, of course, be a commercial activity, although—such as with scholarly writing—the ability to directly monetize one's work is not always the primary goal. Accordingly, the creative endeavor of authorship is typically thought of as a copyright-related activity, where the question is who holds the rights to exploit the text, to what degree, and for how long.[4] Little attention has been paid, however, to a separate and distinct aspect of authorship: its trademark aspect.

Each time an author creates, she must decide what name to give to the author of the text, what name to identify to the public as the "author" of the work. In many, or perhaps most, cases, the author chooses to use her real name as the name of the author. But this is not always the case: An author may write under one or several pseudonyms, whether to hide her identity completely or to experiment with a different writing style from that associated with her real name. Even though there may be a strong bias in favor of using one's real name as a statement of authorship, the author must, consciously or unconsciously, make the choice each time she writes.

When the creation of the text is a corporate endeavor—either the work of more than one author or a work for hire—then the nature of this choice becomes more apparent. Because there is no default statement of authorship in such cases, no "real name" from which a pseudonym would be a deviation, the choice of a statement of authorship is almost certainly a conscious choice, whether preordained by contract or custom or decided after completion of the work.

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2 *See, e.g.*, Barton Beebe, *The Semiotic Analysis of Trademark Law*, 51 UCLA L. REV. 621 (2004); *see also* Stacey L. Dogan & Mark A. Lemley, *Trademarks and Consumer Search Costs on the Internet*, 41 HOUS. L. REV. 777, 799 n.84 (2004) (calling noneconomic justifications for trademark law "rare").

3 *See, e.g.*, Mark A. Lemley, *The Modern Lanham Act and the Death of Common Sense*, 108 YALE L.J. 1687, 1689–91 (1999).

4 I focus here on literary authorship (rather than authorship of films or music) because, as I hope to demonstrate, the branding exercise is more immediately apparent for literary texts than for other forms of authorship.

In either case, this choice of an author's name for each created work is a branding choice. To begin with, an author may—like a marketing team devising a brand for a new product—choose a statement of authorship that conveys certain qualities about the work to which it is attached. A writer of romance novels may choose a Victorian-sounding pseudonym; a female author of a war novel may choose a more masculine-sounding pen name to avoid biased readers. More important, however, is that the choice of an author's name, like a trademark, represents an attempt to reduce readers' search costs by ensuring that the goodwill attributable to the writer does not flow to another author. Rather than publishing works anonymously, a writer who chooses a statement of authorship corrals goodwill associated with that name to avoid diversion to competing authors. So, like the cola drinker mentioned above, the reader who enjoyed the first John Grisham novel and would like to read another does not have to spend time poring over books in the bookstore to find the one whose qualities match the first book she enjoyed. She can, rather, simply look to the author's name—the trademark-like "John Grisham"—to find such books instead.

"John Grisham" is, presumably, the writer's real name, but there is no legal imperative that requires the writer to make this choice. Mr. Grisham could have written his courtroom dramas under the name "John Smith," or "Mary Johnson"; he could have chosen "John Grisham" for his novels and another name altogether for his (hypothetical) foray into cookbooks. Because most readers know the name "John Grisham" only as an author and not otherwise, the fact that he has chosen "John Grisham" as his statement of authorship as opposed to "John Smith" is a distinction without a difference. Had he chosen "John Smith" his readers would undoubtedly evaluate his texts no differently; they would simply associate them with a different statement of authorship from the one with which they currently do.[5] The conventions of authorship (and of readership) require the author to make some choice, but they don't require any particular choice. Because an author must make this kind of branding decision each time she creates, and because the word "pseudonym" to describe this decision is too restrictive (in that its conventional meaning does not usu-

5 As I will describe more fully *infra*, we, as readers/consumers of cultural commodities, generally have no problem keeping two such appellations separate in our minds, even as we are fully aware of their genetic connection. For example, most readers of literature are aware of the fact that "Mark Twain" is a pseudonym for "Samuel L. Clemens" and yet feel no compulsion to attribute the works of Twain to Clemens and thereby eliminate the ability of "Mark Twain" to serve as a statement of authorship.

ally include the choice to write under one's real name), I offer here the word "authornym." An authornym, as I use the term, is the statement of authorship offered to the consuming public—in other words, the author's trademark.[6]

Thinking of an authornym as something akin to an author's trademark does not require a complete reinvention of trademark law. Quite the opposite: Just as trademark law is primarily concerned with consumer confusion but is otherwise agnostic as to the producer's choice of mark, trademark law should also be primarily concerned with reader confusion but should care little what authornym the writer chooses. Altria is free to use different brands for its cigarettes ("Marlboro") and macaroni-and-cheese mix ("Kraft") even though neither mark directly identifies the producer; Samuel Clemens is free to write under "Mark Twain" without ever telling the reader his true identity. To use postmodern literary theory terminology, the author statement as signifier is distinct from the writer as signified. To make sure that we get the next John Grisham novel, we need pay attention primarily to the signifier; the signified is largely irrelevant to this search.

The irrelevance comes from the anonymous source doctrine in trademark law, which tells us that so long as a particular trademark is linked to a single source of a good or service, the name of that source can remain unknown to the relevant consumer base.[7] This is what frees producers from the requirement of the single mark from the guild era and permits them to affirmatively choose an identity to be associated with their product. As a result, the mark may well suggest some quality about the product (or suggest a quality the producer wishes to convey about the product, whether or not it is empirically true), but it need not directly convey any information about the identity of the producer itself. So, too, an authornym enables a producer (here, of literary works) to affirmatively choose an identity to be associated with his work product that need not bear any resemblance to his "true" identity. The authornym can be as descriptive ("Dear Abby") or as fanciful ("Saki") as he likes, and can be distinctive

6 Others have used the term "signature." *See, e.g.*, PEGGY KAMUF, SIGNATURE PIECES: ON THE INSTITUTION OF AUTHORSHIP 39 (1988); *see also United Drug Co.*, 248 U.S. at 98 (referring to a trademark as a "commercial signature"); FRANK I. SCHECHTER, THE HISTORICAL FOUNDATIONS OF THE LAW RELATING TO TRADE-MARKS 156 (1925) (quoting Hanover Star Milling Co. v. Allen & Wheeler Co., 208 F. 513, 516 (7th Cir. 1913)).

7 *See, e.g.*, Graeme W. Austin, *Trademarks and the Burdened Imagination*, 69 BROOK. L. REV. 827, 844 n.70 (2004) (citing Manhattan Shirt Co. v. Sarnoff-Irving Hat Stores, Inc., 164 A. 246, 250 (Del. Ch. 1933)).

("Mark Twain") or not ("Anonymous"). So long as the chosen authornym serves the primary goal of reducing consumers'/readers' search costs—and, more pointedly, does not increase those costs by misdirecting consumers through misattribution—the law should not much care which authornym is chosen or whether it bears any resemblance to the author's true name.[8]

Although the authornym, like a trademark, carries a primarily economic justification—the aforementioned reduction of search costs—there is a noneconomic justification as well. Authors use particular authornyms not only to ensure that repeat customers can find subsequent works easily, but also to draw lines between canons, including some works and excluding others. The university professor who wants to write mystery novels on the side, for example, may write those novels under a pseudonym so that readers (and her tenure committee) do not think less of her scholarly work for the literary frolic. The well-known magazine writer who wants to write a political novel may refrain from doing so under his real name in the hope that readers will thereby approach the novel free from bias. The authornym is therefore a trademark not only in the marketplace of books, but also, as the literary theorists tell us, in the marketplace of ideas.

In order to acknowledge the trademark work that authornyms do, however, we must first separate the fact of authorship (the author's identity) from the statement of authorship (the author's name). The former is the province of copyright law; the latter is (or should be) the province of trademark law. As I will describe more fully later, the Supreme Court's 2003 decision in *Dastar Corp. v. Twentieth Century Fox Film Corp.*[9] is an example of courts' seeming reluctance to recognize this distinction. In *Dastar*, Twentieth Century Fox argued that unfair competition law required Dastar to provide authorial attribution for the work it was distributing but (according to Twentieth Century Fox) did not create. Twentieth Century Fox was not seeking (or, at least, should not have been seeking) to prevent

8 Although this Article is concerned only with literary endeavors as opposed to other forms of "authorship" or creative activity, there are parallels elsewhere in the creative world. Actors' Equity Association, the American actors' union, requires actors whose professional name is identical to that of another Equity member, "or similar enough to cause confusion," to change his or her name or to add a full middle name. Actors' Equity Association, *How Can I/Should I Change My Name?*, *at* http://web.actorsequity.org/faqpublic/QADetails.asp?locator=76 (last visited Feb. 9, 2005). In a similar vein, see Tara Bahrampour, *A Boy Named Yo, Etc.*, N.Y. TIMES, Sept. 25, 2003, at B1 (noting that New York regulations do not allow a resident to legally change his name to that of a public figure if doing so is likely to cause confusion).

9 539 U.S. 23 (2003).

Dastar from copying or distributing the work at issue—because the work was in the public domain, Dastar was free to copy and distribute as much or as little of the work as it desired.[10] Nevertheless, the Court rejected Twentieth Century Fox's attribution claims, characterizing them as an unwarranted expansion of copyright law.[11] But if the work was indeed misattributed, the harm was not a copyright harm but a trademark harm: a harm to the consumers of the creative product through the disruption of the organizational system of attribution that authornyms establish.

My contention in this Article is that once we recognize the essential pseudonymity of all statements of authorship—once we decouple the act of authorship inherent in copyright law from statements of authorship—it should not be difficult to recognize the congruence between authornyms and trademarks. From there, we can recognize the concept that the values that trademark law promotes—"reduc[ing] the customer's costs of shopping and making purchasing decisions" and "help[ing] assure a producer that it (and not an imitating competitor) will reap the financial, reputation-related rewards associated with a desirable product"[12]—are equally valid goals when the "customer" shops in the marketplace of ideas.[13] Authorship, in other words, has both copyright and trademark components, and the law should take account of both.

Part I of this Article provides a brief overview of the birth and death of the concept of authorship. It describes how the notion of the author-genius was both preceded and followed by periods in which statements of authorship were understood to be suspect or expected to be nonexistent. It continues by positing, in light of this indeterminacy of authorship and borrowing from literary theory, the ways in which all writing is essentially pseudonymous, even when the pseudonym is textually equivalent to the writer's true name, and introduces the term "authornym" to comprise these various nominative choices. Part II provides an analysis of the authornym as trademark. It begins

10 *Id.* at 33–34.

11 *Id.* at 37.

12 Qualitex Co. v. Jacobson Prods. Co., 514 U.S. 159, 163–64 (1995) (internal quotation marks and citation omitted).

13 As I describe more fully *infra*, the concept of authornym as trademark seems to have gained currency among literary critics but has fared less well among legal academics. *See, e.g.*, SIMON DURING, FOUCAULT AND LITERATURE: TOWARDS A GENEALOGY OF WRITING 124 (1992) ("In modernity there has been a shift of author function: the authorial name has become a *property* . . . ."); MARK ROSE, AUTHORS AND OWNERS: THE INVENTION OF COPYRIGHT 1 (1993) ("[T]he name of the author . . . becomes a kind of brand name, a recognizable sign that the cultural commodity will be of a certain kind and quality.").

by considering how the trademark is in fact a form of identity creation. It then builds on this concept by demonstrating how authornyms evince this kind of identity creation, both in the commercial context and, drawing on literary theory, in the literary context. Part II concludes by considering the Supreme Court's primary case addressing the First Amendment right to speak anonymously and demonstrates how this case was not truly about anonymous speech but rather was a validation of the right to make authornymic choices even when the disjuncture between the chosen authornym and the writer's true identity renders the choice a technically false statement. Part III then considers how best to preserve the organizational function of authornyms and explores, in light of the Court's opinion in *Dastar*, the availability of a reverse passing off claim such as that typically brought pursuant to section 43(a) of the Lanham Act. Part III concludes by contending that the Court's decision in *Dastar* resulted from looking at the case through the wrong lens—through an author-centric lens rather than a reader-focused one—and, in so doing, neglecting to consider the primary goal of trademark law: to eliminate the likelihood of consumer (here, reader) confusion. And finally, the Article concludes with some thoughts on how the limited function of the authornym might serve both authorial and reader/consumer goals.

I. AUTHORSHIP AND PSEUDONYMITY

A. *The Birth and Death of the Author*

For some time now in the legal literature, the trope of the Romantic author has held considerable sway. Although it has been subject to critical question over the years, the vision of the solitary genius working alone in the garret, giving birth to literary masterpieces, seems to have retained its place at the core of copyright law and policy.[14] To be sure, this vision has been considerably deconstructed in recent years to the point at which some give it virtually no weight in the formation of copyright law and policy. Nevertheless, when we talk about "the author" of a work, it is, I suspect, some sort of individual creator we have in mind: the person responsible for the words on the page and the person identified at the start of the work.

14 *See, e.g.*, James Boyle, *A Theory of Law and Information: Copyright, Spleens, Blackmail, and Insider Trading*, 80 CAL. L. REV. 1413, 1463–69 (1992) (describing the development of the "romantic author" vision of authorship); James D.A. Boyle, *The Search for an Author: Shakespeare and the Framers*, 37 AM. U. L. REV. 625, 628–33 (1988) [hereinafter Boyle, *The Search for an Author*] (describing the "romantic vision" of authorship).

But authorship has never been so simple or so solitary. The concept of authorship—particularly the Romantic concept—is a relatively recent development in the history of publication.[15] In times or societies where storytelling was accomplished through oral, rather than written, tradition, the concept of the author as we now know it was virtually nonexistent. Stories resided entirely in the public domain and the storyteller was simply the medium through which they were conveyed to the audience. Hence, the storyteller's talent was measured not by his creativity, but by his lack of creativity—his ability to re-present known texts.[16] Contrary to what U.S. copyright law acknowledges today as "authorship," this tradition recognized mimicry, not originality.

The move to written memorialization, rather than oral presentation, of narrative did not bring with it a determinate sense of authorship. The actual creator of a particular piece of writing was historically not the person identified as the author. Instead, a name was chosen that would lend the work prestige or facilitate distribution and acceptance.[17] Many Biblical scholars believe that the Gospels, for example, were written not by Matthew, Mark, Luke, and John, but in-

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15 *See, e.g.*, JAMES BOYLE, SHAMANS, SOFTWARE, AND SPLEENS: LAW AND THE CONSTRUCTION OF THE INFORMATION SOCIETY 53–54 (1996); Peter Jaszi & Martha Woodmansee, *Introduction* to THE CONSTRUCTION OF AUTHORSHIP: TEXTUAL APPROPRIATION IN LAW AND LITERATURE 1, 2–3 (Martha Woodmansee & Peter Jaszi eds., 1994) [hereinafter THE CONSTRUCTION OF AUTHORSHIP]; Martha Woodmansee, *On the Author Effect: Recovering Collectivity*, *in* THE CONSTRUCTION OF AUTHORSHIP, *supra*, at 15, 15.

16 *See, e.g.*, ROLAND BARTHES, *The Death of the Author*, *in* IMAGE, MUSIC, TEXT 142, 142 (Stephen Heath trans., 1977) ("[I]n ethnographic societies the responsibility for a narrative is never assumed by a person but by a mediator, shaman or relator whose 'performance'—the mastery of the narrative code—may possibly be admired but never his 'genius.'"); ALVIN KERNAN, THE DEATH OF LITERATURE 122 (1990); Donald E. Pease, *Author*, *in* CRITICAL TERMS FOR LITERARY STUDY 105, 105 (Frank Lentricchia & Thomas McLaughlin eds., 2d. ed. 1995) (noting that "auctor," the predecessor term to "author," represented "adherence to the authority of cultural antecedent"); James R. Kincaid, *Purloined Letters: Are We Too Quick to Denounce Plagiarism?*, THE NEW YORKER, Jan. 20, 1997, at 93, 98 ("The idea that words, ideas, texts were originated privately was not honored much in the classical world, and many have said that it was meaningless to the medieval, where writing was connected not to personality but to a total coherence provided by God.").

17 *See* DAVID G. MEADE, PSEUDONYMITY AND CANON: AN INVESTIGATION INTO THE RELATIONSHIP OF AUTHORSHIP AND AUTHORITY IN JEWISH AND EARLIEST CHRISTIAN TRADITION 1–2 (1986); David Lange, *At Play in the Fields of the Word: Copyright and the Construction of Authorship in the Post-Literate Millennium*, LAW & CONTEMP. PROBS., Spring 1992, at 139, 144 (quoting Tom G. Palmer, *Intellectual Property: A Non-Posnerian Law and Economics Approach*, 12 HAMLINE L. REV. 261, 271–73 (1989), who notes that such works are now often cited with the prefix "Pseudo" beside the name of the originally attributed author).

stead by early, and now anonymous, Church teachers and were later ascribed to the saints to gain legitimacy.[18] In the Shakespearean era, pseudonymous authorship was used as a means of suggesting the collaborative forces necessary to create a literary work.[19] In the 1700s and early 1800s, readers did not often expect authorial attribution on the work itself, either because such attribution was deemed unimportant or unseemly or because the author was well known and so needed no explicit mention.[20] And although the development of the printing press made wide distribution of publications logistically and economically feasible, it did not simultaneously engender the birth of the writer as author in the sense that U.S. copyright law assumes today. In early-eighteenth-century England, for example, it was typically the printer or stationer who was deemed the source of the publication and the entity legally responsible for its contents;[21] not surprisingly, it

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18 MEADE, *supra* note 17, at 13, 207; C. Jan Swearingen, *Originality, Authenticity, Imitation, and Plagiarism: Augustine's Chinese Cousins*, *in* PERSPECTIVES ON PLAGIARISM AND INTELLECTUAL PROPERTY IN A POSTMODERN WORLD 19, 33 (Lise Buranen & Alice M. Roy eds., 1999).

19 Marcy L. North, *Rehearsing the Absent Name: Reading Shakespeare's Sonnets Through Anonymity*, *in* THE FACES OF ANONYMITY: ANONYMOUS AND PSEUDONYMOUS PUBLICATION FROM THE SIXTEENTH TO THE TWENTIETH CENTURY 19, 23 (Robert J. Griffin ed., 2003) [hereinafter THE FACES OF ANONYMITY].

> In both print and manuscript, book producers and compilers [in Shakespeare's time] utilized a wide variety of conventions to present "authors" to their readers. Among the most popular were extensive prefatory materials, initials instead of full names, subscripts after authorial clusters, anagrams, the practice of attributing a miscellany to one prominent author, and, most important, anonymity. These conventions often obscured the intellectual claim of specific authors and called attention to the collaborative production of the text.

Id.; Peter Beal, Letter to the Editor, *Shall I Die?*, TIMES LITERARY SUPPLEMENT, Jan. 3, 1986, at 13 (describing the association of names with creative works in the Shakespearean era "for a variety of reasons besides simple authorship").

20 GÉRARD GENETTE, PARATEXTS: THRESHOLDS OF INTERPRETATION 43, 45 (Jane E. Lewin trans., 1997); Roger Chartier, *Figures of the Author*, *in* OF AUTHORS AND ORIGINS: ESSAYS ON COPYRIGHT LAW 7, 17 (Brad Sherman & Alain Strowel eds., 1994) [hereinafter OF AUTHORS AND ORIGINS]; *cf.* Michael W. Carroll, *Whose Music Is It Anyway?: How We Came to View Musical Expression as a Form of Property*, 72 U. CIN. L. REV. 1405, 1450 (2004) (detailing similar development in attribution of musical compositions). Of course, other authornyms took the place of the author's legal name in this era; Jane Austen ("by the author of *Sense and Sensibility*") and Walter Scott ("by the author of *Waverly*") are among the more well-known examples. Chartier, *supra*, at 17.

21 *See, e.g.*, Mark Rose, *The Author as Proprietor:* Donaldson v. Becket *and the Genealogy of Modern Authorship*, *in* OF AUTHORS AND ORIGINS, *supra* note 20, at 23, 27; David Saunders, *Dropping the Subject: An Argument for a Positive History of Authorship and the Law of Copyright*, *in* OF AUTHORS AND ORIGINS, *supra* note 20, at 93, 96, 107–08.

was also these publishers who were the major driving forces behind a push toward statutory copyright.[22]

Literary and legal historians seem to agree that the birth of the writer as author took place in the eighteenth century, when various historical threads—including the availability of mass distribution through the printing press and the decline of patronage—came together in a single cultural moment in which the author became both a creative and an economic progenitor.[23] With this Romantic vision of the individual author came a transformation of his literary output. Creativity was now valued over mimicry, and the author—no longer simply the medium through which others' tales were delivered—became a part of the work. In this worldview, the work was seen as an expression of the author's personality, and so the more known of the

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22 *See, e.g.*, Peter Jaszi, *On the Author Effect: Contemporary Copyright and Collective Creativity*, 10 CARDOZO ARTS & ENT. L.J. 293, 296 (1992). As Mark Rose has noted, the parties in the leading English copyright cases of the eighteenth century were booksellers, not writers. Rose, *supra* note 21, at 32 (citing Donaldson v. Becket, 98 Eng. Rep. 257 (K.B. 1774); Millar v. Taylor, 98 Eng. Rep. 201 (K.B. 1769); Tonson v. Collins, 96 Eng. Rep. 169 (K.B. 1760)).

23 *See, e.g.*, Chartier, *supra* note 20, at 17 ("The new place in writing in society supposed the full visibility of the author, the original creator of a work from which he could legitimately expect a profit."); Robert J. Griffin, *Anonymity and Authorship*, 30 NEW LITERARY HIST. 877, 877 (1999); Peter Jaszi, *Toward a Theory of Copyright: The Metamorphoses of "Authorship,"* 1991 DUKE L.J. 455; David Saunders & Ian Hunter, *Lessons from the "Literatory": How to Historicise Authorship*, 17 CRITICAL INQUIRY 479, 480 (1991); Martha Woodmansee, *The Genius and the Copyright: Economic and Legal Conditions of the Emergence of the "Author,"* 17 EIGHTEENTH-CENTURY STUD. 425 (1984). *But see* Carla Hesse, *Enlightenment Epistemology and the Laws of Authorship in Revolutionary France, 1777–1793*, 30 REPRESENTATIONS 109, 113–14 (1990) (contending that in late-eighteenth-century France, the creation of the author was a political, rather than economic, act, as it allowed the state to hold the author directly accountable); Peter Lindenbaum, *Milton's Contract*, *in* THE CONSTRUCTION OF AUTHORSHIP, *supra* note 15, at 175, 175 (commenting that the eighteenth-century recognition of the author had its genesis in the introduction of print in Western culture); Marjut Salokannel, *Film Authorship in the Changing Audiovisual Environment*, *in* OF AUTHORS AND ORIGINS, *supra* note 20, at 57, 57 (situating the idea of the modern artist as creative genius in the Italian Renaissance). In *What Is an Author?* Michel Foucault posited a reversal in attributional trends in the seventeenth or eighteenth century, in which scientific texts required no authorial attribution to gain credibility, while more literary writing required attribution, the reverse (claims Foucault) of the attributional trend previous to that time. Michel Foucault, *What Is an Author?*, *in* TEXTUAL STRATEGIES: PERSPECTIVES IN POST-STRUCTURALIST CRITICISM 141, 149–50 (Josué V. Harari ed., 1979). *But see* Chartier, *supra* note 20, at 21 (calling Foucault's hypothesis "fragile" and contending that the distinction is not between scientific and literary texts but between ancient texts (which typically depended on attribution for their authority) and the body of works in the vernacular, from which only a few "authors" (Dante, for example) initially emerged but which gained additional authors with time).

author's biography and intentions, the better the literary interpretation.[24] This Romantic vision of authorship was at some remove from the mechanistic "literatory" represented by the Grub Street press.[25] Here, the author was not simply the scrivener who put pen to paper (or, in later times, set type in rows) but rather the wellspring of intellectual activity from whence the words on the page sprung. The Romantic author thus embodied both aspects of the writing process—the conception of ideas and the evolution of those ideas into written text—even if, as today, the economic realities of the publication process (realities that permitted even the Romantic author to thrive) were far removed from this idealism.[26]

The burgeoning of postmodern literary theory and its cousin deconstructionism in the middle of the twentieth century began to call this image of the author into question.[27] Critics such as Roland Barthes and Michel Foucault took issue with the focus on the author as the source of all interpretive meaning in a text and proposed instead a more reader-focused method of literary interpretation. In the postmodernists' view, the primacy given to the author's interpretation (via biography or otherwise) was misplaced: Each reader brings his or her own meaning to a text, and each of those meanings is as equally valid as the author's, if not more so.[28] As Terry Eagleton has noted, "[f]or literature to happen, the reader is quite as vital as the author."[29] It is therefore not only the writer who has a claim to authorship of a text, but all those who have come before (for whom the writer functioned as reader) and all those who come after.

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24 *See, e.g.*, Rose, *supra* note 21, at 51.

25 The oral argument in *Dastar*, which suggests a consensus that Dastar's "arguably minor" alterations to the public domain work at issue in that case could be sufficient to constitute a work sufficiently "original" to be subject to its own copyright protection, *see* Transcript of Oral Argument, Dastar Corp. v. Twentieth Century Fox Film Corp., 539 U.S. 23 (2003) (No. 02-428), *available at* 2003 U.S. TRANS LEXIS 35; *see also* Dastar Corp v. Twentieth Century Fox Film Corp., 539 U.S. 23, 31 (2003), may suggest that we are closer to the literatory than to the Romantic ideal. *See also* Jaszi, *supra* note 22, at 300–02.

26 PAUL K. SAINT-AMOUR, THE COPYWRIGHTS: INTELLECTUAL PROPERTY AND THE LITERARY IMAGINATION 31 (2003).

27 TERRY EAGLETON, LITERARY THEORY: AN INTRODUCTION 74 (1983) ("Indeed one might very roughly periodize the history of modern literary theory in three stages: a preoccupation with the author (Romanticism and the nineteenth century); an exclusive concern with the text (New Criticism); and a marked shift of attention to the reader over recent years.").

28 *See, e.g.*, BARTHES, *supra* note 16, at 142; Foucault, *supra* note 23, at 145; Annabel Patterson, *Intention*, *in* CRITICAL TERMS FOR LITERARY STUDY, *supra* note 16, at 135, 135–36; Pease, *supra* note 16, at 112–16.

29 EAGLETON, *supra* note 27, at 74.

The postmodernists thus returned the concept of authorship to its pre-Romantic origins, in which all writers are readers, all readers are writers, and the "author" is simply the medium by which collective creation is presented. In such a world, where originality is a contested concept and where attribution was not prevalent or was known to be suspect, the savvy reader would have given little weight to the purported authorial biography or intention.[30] Indeed, given the collaborative nature of many writing endeavors, reliance on authorial intent is likely to be even more futile, as it is unclear which "author" we should be endeavoring to discover: for example, the claimed (often celebrity) author whose name is on the title page or the ghostwriter who was responsible for putting pen to paper.[31]

What is now perhaps the primary description of this deconstruction of authorship is Barthes's "death of the author."[32] As Barthes described it, any text "is made of multiple writings, drawn from many cultures and entering into mutual relations of dialogue, parody, contestation," all centering on the reader, who is "simply that *someone* who holds together in a single field all the traces by which the written text is constituted."[33] In Barthes's view, discovering the identity of the author—and with it his intentions or motivations—does nothing to

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30 *See* Jeffrey A. Masten, *Beaumont and/or Fletcher: Collaboration and the Interpretation of Renaissance Drama*, *in* THE CONSTRUCTION OF AUTHORSHIP, *supra* note 15, at 361, 362–63 (describing collaborative, "pre-anonymous" works as those works "without ascription of authorship" written at a time "before the word ['anonymous'] itself emerged with the author to describe their condition"); Virginia Woolf, *"Anon" and "The Reader": Virginia Woolf's Last Essays* (Brenda S. Silver ed.), 25 TWENTIETH CENTURY LITERATURE 356, 397 (1997) ("Anonymity was a great possession. It gave the early writing an impersonality, a generality. It gave us the ballads; it gave us the songs. It allowed us to know nothing of the writer: and so concentrate upon his song.").

It might be said that E.M. Forster anticipated the postmodernists by over a generation. In his essay *Anonymity: An Inquiry*, Forster decried the modern tendency to focus on the relation between an author's biography and his work:

> What's so wonderful about great literature is that it transforms the man who reads it toward the condition of the man who wrote, and brings to birth in us also the creative impulse. . . . Literature tries to be unsigned. . . . We are conscious only of the world [such authors] have created, and we are in a sense copartners in it.

E.M. Forster, *Anonymity: An Inquiry*, ATLANTIC MONTHLY, Nov. 1925, at 588, 592–93.

31 *See* Masten, *supra* note 30, at 372 ("A collaborative perspective also forces a re-evaluation of (and/or complicates) a repertoire of familiar interpretive methodologies—most prominently, biographical and psychoanalytic approaches—based on the notion of the singular author.").

32 BARTHES, *supra* note 16.

33 *Id.* at 148.

guide the reader to the "true" interpretation of a piece.[34] Rather, the meaning of a text is found in the reader (himself something of a construct), who brings his own experiences and values to the interpretive effort.[35] The end result is that a piece of writing has no single meaning but rather can support different and perhaps even conflicting interpretations.[36] The death-of-the-author theory thus lies in tension with a Romantic view of authorship. If "[t]he author is to his text as God, the *auctor vitae*, is to his world," then the death of the author

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34 *Id.* at 143 ("The *explanation* of a work is always sought in the man or woman who produced it, as if it were always in the end, through the more or less transparent allegory of the fiction, the voice of a single person, the *author* 'confiding' in us.").

35 *See* Robert H. Rotstein, *Beyond Metaphor: Copyright Infringement and the Fiction of the Work*, 68 CHI.-KENT L. REV. 725, 736 n.54 (1993) ("Textual identity turns on what the reader brings to the reading process, and because readers differ in their cultural, linguistic, and rhetorical background, texts will differ upon successive readings.").

36 SEÁN BURKE, THE DEATH AND RETURN OF THE AUTHOR: CRITICISM AND SUBJECTIVITY IN BARTHES, FOUCAULT AND DERRIDA 43 (1992). I should note that Burke rejects the death of the author as "a particularly acute form of critical blindness." *Id.* at 154. While Barthes generally decried the search for the author's true identity, that search is, of course, one of the primary goals of readers and critics of pseudonymous works, typically in a mistaken belief that the discovery of this identity will lead the reader further along the path to "true" meaning. *See* BARTHES, *supra* note 16, at 147.

> To give a text an Author is to impose a limit on that text, to furnish it with a final signified, to close the writing. Such a conception suits criticism very well, the latter then allotting itself the important task of discovering the Author . . . beneath the work: when the Author has been found, the text is 'explained'—victory to the critic.

Id.; DON FOSTER, AUTHOR UNKNOWN: ON THE TRAIL OF ANONYMOUS (2000) (describing his research in discovering the authors of pseudonymous or anonymous works); Foucault, *supra* note 23, at 149–50 ("[I]f a text should be discovered in an state of anonymity—whether as a consequence of an accident or the author's explicit wish—the game becomes one of rediscovering the author."); Masten, *supra* note 30, at 361 ("'It were . . . wisdome it selfe, to read all Authors, as *Anonymo's*, looking on the Sence, not *Names* of Books . . . .'" (quoting RICHARD WHITLOCK, ZOOTOMIA, OR, OBSERVATIONS ON THE PRESENT MANNERS OF THE ENGLISH: BRIEFLY ANATOMIZING THE LIVING BY THE DEAD 208 (London, Tho. Roycroft & Humphrey Moseley 1654))). Even in those instances, however, the search for meaning relies on the text. *See* FOSTER, *supra*, at 7.

> When asked, *Who wrote this document?*, I usually begin the inquiry by asking of text databases, *Where else can I find similar language and writing habits?* That question may not lead me to the author, but it's usually good for information about the author's age, religion, education, job, motivation, or ideology.

Id.

represents a "departure of belief in authority, presence, intention, omniscience and creativity."[37]

Barthes was not, of course, the last postmodern word on authorship. Indeed, Michel Foucault's *What Is an Author?*[38] provided a much-needed anchor for Barthes's rather unmoored author by restoring a limited, but important, organizational role for statements of authorship (what he termed a "classificatory function"[39]). But in whatever incarnation, it is fair to say that the fundamental difference between the postmodern view and the Romantic view of authorship is the willingness of the former to divorce the creator from his work. Whereas the Romantic vision of authorship features the solitary author from whom entire works emanate, the postmodern view recognizes the collaborative nature of authorship, both as part of the creative process and as part of the interpretive process. Both authorship and interpretation are indeterminate and variable no matter what name appears on the cover of the book.

This focus on the text rather than on the identity or persona of the author exists in legal as well as literary doctrine.[40] In contract law, for example, the starting interpretive position is the "four corners of the contract," and one moves to parol evidence only when the meaning of the text is ambiguous.[41] (Of course, a contract is only ambigu-

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37 BURKE, *supra* note 36, at 22–23; *see also* BARTHES, *supra* note 16, at 146–47 ("We know now that a text is not a line of words releasing a single 'theological' meaning (the 'message' of the Author-God) . . . . [T]o refuse to fix meaning is, in the end, to refuse God . . . .").

38 Foucault, *supra* note 23.

39 *Id.* at 147.

40 *See* RICHARD A. POSNER, LAW AND LITERATURE 211 (rev. ed. 1998).

> In the case of documents, whether literary or legal, "interpretation" just means reading to make whatever kind of sense one happens to be interested in. This might coincide with the writer's intended meaning, but equally it might be a sense that the reader wants to impress on the writing for reasons remote from anything the writer had in mind.

Id. As Annabel Patterson points out, legal interpretation, like literary interpretation, has long exhibited a tension between the desire to establish the meaning of a text by attempting to determine authorial intent and the recognition in practice that the meaning of any text can (and should) change over time. Patterson, *supra* note 28, at 135–36.

41 *See* POSNER, *supra* note 40, at 219.

> [The New Critics' approach to text corresponds] to the common practice of interpreting contracts without reference to "extrinsic" evidence such as testimony by the parties as to what they meant by ambiguous terms—that is, evidence other than the document itself and the cultural background necessary to understand the words and sentences in the document and the purposes of contract interpretation.

ous or unambiguous in the eyes of the reader.) Strict constructionists or proponents of the "plain meaning" rule in statutory interpretation[42] take a similar approach to legislation, refusing to resort to legislative history in interpreting the meaning of the text.[43] In determining the "meaning" of a judicial opinion, to take a third example, we typically treat the text of the opinion as sacrosanct. We (and I am including lower courts in this) do not formally inquire of the authoring judge to determine his intentions in writing a particular opinion or even conduct research into the judge's personal background or history or extrajudicial writings to give meaning to the words in the opinion. Rather, we focus solely on the words of the opinion, pondering the turns in the language and attempting to come up with our interpretation of its meaning.[44] The occurrence of circuit splits and the proliferation of law review articles only attest to the truth of the theory: that of multiplicity of meaning, depending on the reader. (And the Supreme Court functions both as the ultimate reader—as Justice Jackson famously noted "not final because [it is] infallible, but . . . infallible only because [it is] final"[45]—and as the ultimate author, engendering in its reading a new text to interpret.)

The one area in which the deconstruction of authorship might expect to find resistance is in copyright law, which centers its entire bundle of rights on a notion of authorship. In order to be protected by copyright, for example, a work must be sufficiently original and

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Id. Similarly, Robert Rotstein has noted that defamation law "also regards the text as a reader-dependent process" in that whether or not a particular statement is defamatory depends on how it is perceived by the audience deemed to be its recipient. *See* Rotstein, *supra* note 35, at 741 n.73.

42 William N. Eskridge, Jr. & Philip R. Frickey, *Law as Equilibrium*, 108 HARV. L. REV. 26, 97 (1994).

43 *See* STANLEY FISH, *Normal Circumstances, Literal Language, Direct Speech Acts, the Ordinary, the Everyday, the Obvious, What Goes Without Saying, and Other Special Cases*, *in* IS THERE A TEXT IN THIS CLASS: THE AUTHORITY OF INTERPRETIVE COMMUNITIES 268, 280 (1980).

> It is your specification of the makers' intention that tells you what is in the statute, not your literal reading of the statute that informs you as to its makers' intention. This would seem to suggest that one need only recover the makers' intention in order to arrive at the *correct* literal reading; but the documents (including even *verbatim* reports) that would give us that intention are no more available to a literal reading (are no more uninterpreted) than the literal reading it would yield.

Id.

44 *See, e.g.*, Mark Tushnet, *The Death of the Author, by Himself*, 70 CHI.-KENT L. REV. 111, 111 (1994).

45 Brown v. Allen, 344 U.S. 443, 540 (1953) (Jackson, J., concurring).

fixed in a tangible medium of expression,[46] which seems to suggest at least a nod to authorial intent.[47] But U.S. copyright law doesn't require that the creator of a work be the person identified as the work's "author." It is concerned not with identifying the true creator—the person who actually put pen to paper—but merely with the legal fiction of the author,[48] a statement of authorship subject only to ex post challenge and not to ex ante proof. Copyright's view of authorship allows an author to be identified with a pseudonym; it allows a celebrity author to claim authorship credit for a ghostwritten work; it permits works for hire, in which the creator's employer is deemed the legal author;[49] and it allows a writer to assign the copyright in any text he produces.[50] The courts, as Peter Jaszi has noted, comfort themselves that awarding copyright to an employer in a work-for-hire scena-

46 *See* 17 U.S.C. § 102(a) (2000); Feist Publ'ns v. Rural Tel. Serv. Co., 499 U.S. 340, 355 (1991) (quoting H.R. REP. NO. 94-1476, at 51 (1976)).

47 *See* Monroe E. Price & Malla Pollack, *The Author in Copyright: Notes for the Literary Critic*, *in* THE CONSTRUCTION OF AUTHORSHIP, *supra* note 15, at 439, 446–48 (contrasting three tests of authorship).

48 ROSE, *supra* note 13, at 136 ("In the discourse of copyright, then, the goal of protecting the rights of the creative author is proudly asserted even as the notion of author is drained of content."); Rose, *supra* note 21, at 46 (noting that the reaction of Lord Hailes to a claim that the Reverend Thomas Stackhouse's *History of the Holy Bible* was protected by common-law copyright was to contend that the claimants "were improperly conferring the name of 'original author' on a mere 'tasteless compiler'" (citing JAMES BOSWELL, THE DECISION OF THE COURT OF SESSION UPON THE QUESTION OF LITERARY PROPERTY 7 (Edinburgh, James Donaldson 1774); Saunders, *supra* note 21, at 96 ("Legal status and cultural standing, it can be said, were separate historical inventions, deriving not from a singular and fundamental process of subject-formation but from the organizational conditions obtaining in separate spheres of existence."); Saunders & Hunter, *supra* note 23, at 493 ("[The Statute of Anne] does not assume or require a necessary equivalence between the person of the copyright owner and the aesthetic persona of the writer, even on those occasions where the *writer* holds copyright.").

49 Dan L. Burk, *Intellectual Property and the Firm*, 71 U. CHI. L. REV. 3, 12 (2004) ("Under this doctrine, individual employees who create copyrightable works while operating within the scope of their employment are not considered to be the authors of those works. Rather, the institution employing the creator becomes the legally recognized author."). For another example of this phenomenon, see *Building Officials and Code Administrators v. Code Technology, Inc.*, 628 F.2d 730, 734 (1st Cir. 1980) ("The citizens are the authors of the law, and therefore its owners, regardless of who actually drafts the provisions, because the law derives its authority from the consent of the public, expressed through the democratic process.").

50 *See* 17 U.S.C. § 201(d) (providing for transfer of ownership); Griffin, *supra* note 23, at 889 (noting the lack of a "cause-and-effect relation" between ownership and the presence or absence of the author's name as a historical matter because "[n]aming and copyright protection operate on separate levels of discourse and involve separate sets of decisions on the part of the writer").

rio is consistent with the Romantic vision of authorship because it is the employer who provides the "inspiration" for creation,[51] but this seems entirely contrary to the patronage system against which the idea of the Romantic author developed.[52] U.S. copyright law thus (probably unconsciously) embodies a deconstructed view of authorship in which there is no presumption of unity between the individual or individuals responsible for creation and the person or entity identified to the public as the "author" of the work. Thus, as David Saunders has noted, "in the Romantic historicist model, it was always to be the role of copyright law to support the authorial personality required and enshrined by Romanticism"; in the post-structuralist model, "it was always to be the role of copyright law to support the illusion of the authorial personality, for instance as proprietor of copyright."[53]

B. *The Birth of the Authornym*

If the Romantic fiction of the author were indeed true, one might expect to see some sort of jealous guardianship of authorial identity. If we should give pride of place to the individual creator, we would want to discourage any identification of that creator that diminished recognition of his creative genius. Pseudonyms would be discouraged as an attempt to attribute the work to a (fictional) individual other than the true author, and corporate writing efforts, in which some other individual or entity is credited with the work of others, would be socially or legally disallowed.

But authorship doesn't function this way. Writers have not historically hesitated to, for example, attribute their work to a patron or other benefactor, or to another author, or to a pen name, or to no

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51 Jaszi, *supra* note 22, at 298; *see also, e.g.*, Picture Music, Inc. v. Bourne, Inc., 457 F.2d 1213, 1216 (2d Cir. 1972) (describing the employer as the motivating factor for the work).

52 *Cf., e.g.*, Mark A. Lemley, *Romantic Authorship and the Rhetoric of Property*, 75 TEX. L. REV. 873, 882–83 (1997) (book review) (noting the disconnect between the corporation and the individualistic view of romantic authorship).

53 DAVID SAUNDERS, AUTHORSHIP AND COPYRIGHT 216–17 (1992); *see also, e.g.*, ROSEMARY J. COOMBE, THE CULTURAL LIFE OF INTELLECTUAL PROPERTIES: AUTHORSHIP, APPROPRIATION, AND THE LAW 284–85 (1998). This may particularly be the case given that legal scholars are, of course, authors, who may well have a vested interest in preserving the Romantic view of authorship. *See, e.g.*, Tushnet, *supra* note 44, at 111 ("To be told that texts 'are'—or at the very least will become—what readers make of them is to deprive Romantic authors of something they believe to be at the core of their activity."). Of course, as Tushnet describes, texts are often taken to "mean" whatever the critical consensus concludes that they mean, notwithstanding authorial intent. *See id.* at 114.

source at all.[54] Ghostwriters do much of the work attributed to more famous "authors," including biographies, speeches, and press release "quotations." Research assistants and editors contribute text to many scholarly works. The benefits flowing from a work made for hire accrue to the corporate author and not to the individual employee who created the work.[55] If it were truly the case that the notion of authorship were as exalted as the Romantic proponents would have us believe, it would seem that the culture would not permit—or, at least, would not implicitly support—such a laxity in attribution values.

But our social and legal norms are based not on the author as a unified being, but rather on something of an accepted falsehood: that the name given as the author of the text is just a name. It may be the author's true name or it may be a pseudonym; it may identify a single author or mask a corporate writing effort. The name may, over time, become invested with biography or meaning, but it has none at its genesis because we cannot presume that it tells us anything factual about the genesis of the work with which it is associated. In this norm, then, the author is not a unified being but a dual one: the creator or creators of the work and the name to which the work is attributed.[56]

The separation between the fact of authorship and a statement of authorship allows authors relatively free choice among various forms

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54 For a historical view of pseudonymity in political authorship, see, for example, Jonathan Turley, *Registering Publius: The Supreme Court and the Right to Anonymity*, 2001–2002 CATO SUP. CT. REV. 57, 57–60; Comment, *The Constitutional Right to Anonymity: Free Speech, Disclosure and the Devil*, 70 YALE L.J. 1084, 1084–85 (1961). The literary theorist Gérard Genette describes seven types of historical pseudonymity: (1) complete omission of the name (anonymity); false attribution of the text to another author (apocrypha), either (2) with permission or (3) without permission; false attribution of another's text to oneself either (4) with permission (ghostwriting) or (5) without permission (plagiarism); (6) attributing the text to a fictional author (what Genette calls "imagining the author"); and (7) attributing the text to a name other than one's own (pseudonymity). GENETTE, *supra* note 20, at 47–48.

55 Burk, *supra* note 49, at 14.

> By erasing the identity of the natural creator, work made for hire removes from the natural author a reputational interest that is otherwise specific to the natural person, and not the firm. . . . Thus, an 'asset specificity' approach suggests that authorship and ownership should perhaps be bifurcated under work made for hire, allocating the reputational interest to the natural author even while assigning default ownership of the work to the firm.

Id.

56 And possibly not simply a dual being but a triadic one, if we include the fictional persona of the author to whom the name of the author at least metaphorically attaches. *Cf.* Beebe, *supra* note 2, at 646 (discussing the triadic structuration of the trademark).

of authorial attribution. A writer can write under her own name or under a pseudonym; if she chooses a pseudonym, she can choose one that is plain or exotic, gender neutral or gender suggestive. A group of authors writing collectively can choose to list each participant as an author or to devise a name for the group and attribute authorship to that entity. Samuel L. Clemens can write as "Mark Twain" without being accused of deception or falsehood and indeed, over time, may establish the pseudonym as a more accepted statement of authorship than his real name.

Although "pseudonym" is the word that comes to mind most readily to describe these choices of authorship statement, the word is not particularly apt. Typically when we refer to a "pseudonym" in the authorial context, we mean a pen name—a name under which the writer distributes his work, often sounding very much like a given name, with both first and last name components (or occasionally a single moniker like "Publius"), but that typically bears no resemblance to the author's real name. From the reader's perspective, however, a pseudonym is like any author's name, real or devised: a statement of authorship, the name that the reader is to credit with the work that he or she is reading. Thus, there is no difference in the reader's perception of authorship between "Mark Twain" and "John Grisham," even though the former is a pseudonym for Samuel L. Clemens and the latter is, presumably, the author's true name. In neither instance does the name serve to identify the person who put pen to paper; rather, the name identifies the "author" to whom the text should be attributed. Similarly, there is no significant difference between "Mark Twain" and "Samuel L. Clemens" from an authorship perspective. Except for the fact that the writer's choice between Twain and Clemens represents a conscious decision to associate certain works with the former and certain with the latter, there is no semiotic difference between the two such that, should the decision have been reversed, the reader would have been interpretatively poorer. If the typical reader's interaction with "Mark Twain" is wholly textual[57]—primarily through his work and secondarily through the works of others about him—then it matters not whether the name used to collect the various

57 The same considerations may not inhere in circumstances in which the interaction between writer and reader is both textual and physical. *See, e.g.*, David R. Millen & John F. Patterson, *Identity Disclosure and the Creation of Social Capital*, 2003 CHI NEW HORIZONS 720, 720–21 (describing the "thick trust" that developed on an online site for residents of a small community in which users were required to identify themselves using their real names), *available at* http://delivery.acm.org/10.1145/770000/765950/p720-millen.pdf?key1=765950&key2=3007989011&coll=GUIDE&dl=GUIDE&CFID=39874070&CFTOKEN=42822378.

strands of that interaction is "Mark Twain" or "Samuel Clemens," "John Grisham," or "John Smith."[58] Except in the probably very rare instance of truly anonymous speech—speech that is devoid not only of any label but also of any characteristics that enable us to align it with other instances of speech—the "search for truth" that is often given as the justification for disallowing pseudonymous speech is still achievable through what David Post has called the "reputational capital" that pseudonyms attain.[59] Hence, I introduce here the term "authornym"

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58 *See* Lee Tien, *Who's Afraid of Anonymous Speech?* McIntyre *and the Internet*, 75 OR. L. REV. 117, 161 (1996).

> Knowing that a message was written by John Smith is pretty meaningless unless you know who John Smith is, what he stands for, and so on. Once you know that a pro-tobacco message was written by a tobacco industry lobbyist, whether he is John Smith or Jane Jones is largely irrelevant.

Id. But see Seth F. Kreimer, *Sunlight, Secrets, and Scarlet Letters: The Tension Between Privacy and Disclosure in Constitutional Law*, 140 U. PA. L. REV. 1, 74 (1991) ("To the extent First Amendment rights are rooted in the 'marketplace of ideas,' disclosure of information cannot but contribute to the functioning of that marketplace. In a well-functioning market, more information moves the market to truth."); *id.* at 85.

> The identity of the speaker conveys information that improves the quality of discussion. An assertion by Carl Sagan regarding astronomy claims more credence than one by the neighborhood auto mechanic, not by virtue of Sagan's social position, but because of his proven judgment. If we do not know who is making an assertion, we must evaluate it from first principles, a burdensome approach indeed.

Id. Even if Kreimer's point is true as a relative matter, it still seems that, so long as the authornym "Carl Sagan" is used consistently by the same speaker, Kreimer's concerns should be fully addressed. From the perspective of literary criticism, which is concerned more with issues of interpretation than with issues of liability, the pseudonymous authornym and the legal authornym are essentially equivalent from the perspective of the effect each has on the reader. GENETTE, *supra* note 20, at 49.

59 *See* David G. Post, *Pooling Intellectual Capital: Thoughts on Anonymity, Pseudonymity, and Limited Liability in Cyberspace*, 1996 U. CHI. LEGAL F. 139, 152 (noting that, over time, pseudonyms build up "reputational capital" and that without these associations "there is indeed no meaningful difference between anonymity and pseudonymity"); *see also* JULIAN DIBBELL, MY TINY LIFE: CRIME AND PASSION IN A VIRTUAL WORLD 23 (1998) (noting that first-time "guest" visitors to a virtual world acted more brazenly than those with fixed characters who had made "the critical passage from anonymity to pseudonymity, developing the concern for their character's reputation that marks the attainment of virtual adulthood"); A. Michael Froomkin, *Anonymity and Its Enmities*, 1995 J. ONLINE L. art. 4, par. 35, *at* http://www.wm.edu/law/publications/jol/95_96/froomkin.html; Gary T. Marx, *What's in a Name? Some Reflections on the Sociology of Anonymity*, *at* http://web.mit.edu/gtmarx/www/anon.html (last visited Feb. 27, 2005) ("Persons making anonymous postings to a computer bulletin board may come to be 'known' by others because of the content, tone, or style of their communications."). *But see* Curtis E.A. Karnow, *The Encrypted Self: Fleshing Out the Rights of Electronic Personalities*, 13 J. MARSHALL J. COMPUTER & INFO. L. 1, 13 (1994) (concluding that electronic personae are not in need of free speech rights because "[w]hen we

to avoid the misperception that "pseudonym" causes and to encompass all statements of authorship, whether textually equivalent to the author's true name or invented.

Our experience with authorship reveals three kinds of authornyms. "One-to-many" authornyms are various statements of authorship used by a single individual to explore alternative authorial identities, whether those alternative identities are based in gender, race, sexual orientation, writing style, or some other attribute. Corporate authornyms, by contrast, are "many-to-one" authornyms; they are authornyms used to collate the works of several individuals, whether contemporaneously or over time. Corporate authornyms may take the name of an individual or an entity; in either case, they tend to feature a corporate style that unifies the works distributed under the authornyms. And finally, "one-to-one" authornyms describe what we would typically characterize as the author writing under his "real" name, despite the fact that the name is "real" to us only as a statement of authorship and not otherwise. All three types are in abundance not only in the traditional world of authorship but also online, which, as many have noted,[60] is a realm that fosters identity experimentation and so is a fruitful place to look for examples of authornymous writing.[61]

1. One-to-Many Authornyms

A single individual who chooses various identities through which to express himself or herself may have any one of a number of reasons for doing so. In some instances, the choice is one of gender morphing: the ability of a writer of one gender to brand himself (or, more typically, herself) as a writer assumed to be of the other gender. Sometimes this act of branding is described in heroic terms;[62] in other

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talk, we generally want to be recognized as the speaker, because we are proud of our thoughts and because others often do not take kindly to anonymous discourse: credibility and the power of the word are still frequently *ad hominem* affairs").

60 *See generally, e.g.*, SHERRY TURKLE, LIFE ON THE SCREEN: IDENTITY IN THE AGE OF THE INTERNET (1995); Jerry Kang, *Cyber-Race*, 113 HARV. L. REV. 1131 (2000).

61 Indeed, because communication via the Internet often requires a speaker to choose a "screen name" before he can begin speaking, the Internet may yield the clearest example of how a singular authornym is essentially pseudonymous. When there is no presumption that one's authorial identity will be the textual equivalent of one's true name, the choice of the singular authornym can be seen only as a conscious statement of authorship.

62 *See, e.g.*, 1 SANDRA M. GILBERT & SUSAN GUBAR, NO MAN'S LAND: THE PLACE OF THE WOMAN WRITER IN THE TWENTIETH CENTURY 185, 240–42 (1988) (describing shift in pseudonymity of women writers from the late nineteenth century to the early twentieth century as moving from a "mask behind which the female writer could hide her

instances, gender branding is a more defensive measure that allows the female writer to obtain an authorial freedom not available to her under her own name.[63] In still other instances, the choice is less a matter of individual identity fulfillment and more a matter of consumer expectations. As Saul Levmore has suggested, if readers of romance novels expect those novels to be written by female authors, publishers have an economic incentive to fulfill that expectation by creating a feminine sounding authornym for their male authors.[64] And this appears to be historically confirmed: At least one male writer seeking to appeal to a female audience of a certain type in the late seventeenth and early eighteenth centuries published his works under

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disreputable femininity" to one in which the pseudonym functioned as "the mark of a private christening into a second self, a rebirth into linguistic primacy").

63 *See, e.g.*, VIRGINIA WOOLF, A ROOM OF ONE'S OWN 54 (1929) ("It was the relic of the sense of chastity that dictated anonymity to women even so late as the nineteenth century."). Margaret Ezell questions the conventional wisdom that when early modern women authors engaged in pseudonymous authorship, it was because pseudonymity was "imposed, not selected":

> [I]f cultural sanction against women being on public display in print was so encompassing and if the function of selecting anonymity of a pseudonym was to disguise the gender of the author to permit her speak, what are we to make of the selection of "By a Lady" as being one of the period's more popular solutions, a label which confronts the reader with the writer's gender, often as part of the very title of the work? Why was the choice of women writing during this period not simply "Anon" or the strategy adopted by nineteenth-century women writers, the adoption of male names?
>
> . . . How well did such sobriquets function as a shield for the female author, hiding or disguising her identity and protecting her from acquiring a "reputation"? Could they serve more as a costume rather than as a disguise, a means to signify to the reader that a certain type of role was being performed, a type of personality was being staged, rather than being simply a way to hide the true identity of the individual?

Margaret J.M. Ezell, *"By a Lady": The Mask of the Feminine in Restoration, Early Eighteenth-Century Print Culture*, *in* THE FACES OF ANONYMITY, *supra* note 19, at 63, 64; *see also* Paula R. Feldman, *Women Poets and Anonymity in the Romantic Era*, 33 NEW LITERARY HIST. 279, 279–83 (2002) (contending that women poets during the period from 1770 to 1835 rarely published books of verse anonymously and never published under a male pseudonym). At least one study (albeit one now somewhat dated, given the pace of the online world) suggests that women are more likely than men to adopt cross-gender pseudonyms in the online world; interestingly, the study also found that the communicative equalization that resulted from this adoption occurred not because the pseudonymous "men" spoke in stereotypically male patterns of discourse but because the male participants in the study (using male-gendered pseudonyms) tended to speak in more feminized modes of discourse online. J. Michael Jaffee et al., *Gender, Pseudonyms, and CMC: Masking Identities and Baring Souls* (1995), *at* http://members.iworld.net/yesunny/genderps.html.

64 Saul Levmore, *The Anonymity Tool*, 144 U. PA. L. REV. 2191, 2213–14 (1996).

the feminine authornym of "a Lady" (as in "By a Lady") in order to attract the audience he sought.[65]

In other instances, the authornymous choice is used for a form of racial or ethnic masking, in which the author takes on not only a racialized authorial attribution but a racialized authorial identity in creating his text.[66] As in other instances, such authorial masking is often undertaken in order to permit the author to experiment with other identities,[67] to write in an area presumed to be off-limits,[68] or—in the case of early slave narratives authored by white writers—to gain authenticity for a particular political view that was deemed to be unachievable otherwise.[69] Because this particular choice of authornym inherently involves claimed (or presumed) membership in a racial or ethnic group, the reaction of the readership once the mask of the authornym is removed is sometimes one of betrayal or anger at what appears to be an act of cultural misappropriation. One such example is the novel *The Education of Little Tree*, which purported to be the biography of a Native American youth named Forrest Carter and was later

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65 Ezell, *supra* note 63, at 74; *see also* James Raven, *The Anonymous Novel in Britain and Ireland, 1750–1830*, *in* THE FACES OF ANONYMITY, *supra* note 19, at 141, 145 (noting that almost a third of all novels published in Britain and Ireland in 1785 and nearly a quarter in 1787 were "by a Lady").

As Susan Lanser has written, the gender implied by a gendered authornym is a "reading effect" that is not "a tautological equivalent to the real author, but an authorial *position* that the text wittingly or unwittingly assumes." Susan S. Lanser, *The Author's Queer Clothes: Anonymity, Sex(uality), and* The Travels and Adventures of Mademoiselle de Richelieu, *in* THE FACES OF ANONYMITY, *supra* note 19, at 81, 97.

66 *See, e.g.*, LAURA BROWDER, SLIPPERY CHARACTERS: ETHNIC IMPERSONATORS AND AMERICAN IDENTITIES (2000). Jerry Kang provides a consideration of this kind of masking in the Internet context and outlines three possibilities for race in cyberspace: abolition (in which race, and therefore racial identification, is nonexistent), integration (in which the geographic and class-straddling nature of the Internet enhances understanding among different racial groups), and transmutation (in which racial identification, and therefore racial characterization, is fluid). Kang, *supra* note 60, at 1154–205; *see also* Margaret Chon, *Erasing Race?: A Critical Race Feminist View of Internet Identity-Shifting*, 3 J. GENDER RACE & JUST. 439 (2000).

67 I thank Kirsten Carlson for inspiring me to note here that this literary device is not always used in support of authorial freedom; some writers have chosen to mask identity in order to create mocking or otherwise harmful caricatures of those in the same group as the new authorial identity.

68 *See, e.g.*, Elaine K. Ginsberg, *Introduction: The Politics of Passing*, *in* PASSING AND THE FICTIONS OF IDENTITY 1, 16 (Elaine K. Ginsberg ed., 1996) ("In its interrogation of the essentialism that is the foundation of identity politics, passing has the potential to create a space for creative self-determination and agency: the opportunity to construct new identities, to experiment with multiple subject positions, and to cross social and economic boundaries that exclude or oppress.").

69 BROWDER, *supra* note 66, at 272.

revealed to be the work of Asa Carter, an avowed segregationist and supporter of George Wallace.[70] When first published, *The Education of Little Tree* was hailed as a masterpiece of Native American literature, selling over half a million copies, and became a necessary inclusion on college reading lists for courses on Native American literature.[71] After the author's "true" identity was revealed, the same text (with nary a word changed) was reviled by many as a sham and a fraud, no longer worth reading except as a curiosity of cultural history.[72] Still another example is that of the award-winning 1983 novel *Famous All Over Town.* Set in a Los Angeles barrio, the novel, purported to be by the young Chicano author Danny Santiago and "hailed by Latino critics for its vibrancy and authenticity," was later revealed to be the work of Daniel L. James, a white, Yale-educated writer in his seventies who had "lost faith in his own ability to write" and had turned to "Danny Santiago" as "the only voice available to him."[73]

Conversely, a writer may choose an authornym to deracialize attribution, to release the text from the burdens of identity and of group membership and allow the text to stand on its own. Robert Post, in discussing the work of Jürgen Habermas, describes this instance of discourse as "functioning as pure communication," noting that in Habermas's ideal "public sphere," discourse is "removed from context of experience and action," leading inevitably to the conclusion that certain traditional criteria of evaluating speech, such as class (and

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70 *See, e.g.*, Dan T. Carter, *The Transformation of a Klansman*, N.Y. TIMES, Oct. 4, 1991, at A31; Henry Louis Gates, Jr., *"Authenticity," or the Lesson of Little Tree*, N.Y. TIMES BOOK REV., Nov. 24, 1991, at 1; Allen Barra, *The Education of Little Fraud*, SALON, Dec. 20, 2001, *at* http://dir.salon.com/books/feature/2001/12/20/carter/index.html. This may derive from the modern conception of race (albeit not always a historical one in the United States) as a matter of self-identification, such that an individual's desire to self-identify as a member of a particular race is typically taken at face value.

71 BROWDER, *supra* note 66, at 132; Gates, *supra* note 70.

72 Of course, the emotional context of the Forrest Carter/Asa Carter dichotomy detracts from the more fundamental question of authornymity at its core: whether Carter's efforts should be interpreted as an attempt to perpetuate a fraud on his readership or an attempt to engage his readership on themes he could not otherwise write about without the medium of a separate authornym. *See* Gates, *supra* note 70.

73 *Id.* ("Judging from the testimony of his confidant, John Gregory Dunne, Mr. James may well have felt that the attribution was the only just one; that 'Famous All Over Town' belonged to Danny Santiago before it quite belonged to Daniel James."). For a brief biography of Daniel James and his history as "Danny Santiago," see John Gregory Dunne, *The Secret of Danny Santiago*, N.Y. REV. OF BOOKS, Aug. 16, 1984, at 17; *see also* BROWDER, *supra* note 66, at 231–69.

race and gender, to add but two more categories), must be "bracketed out."[74]

In still other instances, writers may use authornyms to facilitate communication not otherwise possible given the constraints of their environment—a gay or lesbian individual who is not fully out, for example, may use one identity to communicate with those to whom he or she has come out and a separate identity for others. *McVeigh v. Cohen*[75] illustrates one such example. Timothy R. McVeigh—one must undoubtedly still add that he is no relation to the individual who bombed the Oklahoma City federal building—was serving aboard a nuclear submarine in the U.S. Navy.[76] The wife of one of McVeigh's colleagues was coordinating a toy drive for the crew members' children and McVeigh, interested in obtaining further information, sent her an e-mail from his AOL account. The e-mail was sent from the AOL screen name "boysrch," although the text of the e-mail was signed "Tim."[77] Not recognizing the screen name, the wife searched AOL's member profile directory,[78] which stated that "boysrch" was an AOL member named Tim who was in the military and lived in Honolulu, Hawaii. The profile listed the word "gay" in the space provided for the member to list his or her marital status, but it did not contain a name, address, or phone number.[79]

After viewing the AOL member directory entry, the woman forwarded the e-mail and the directory entry to her husband, McVeigh's colleague, who apparently forwarded it up the chain. Someone determined that McVeigh was likely the author of the e-mail (a conclusion bolstered by the Navy's unlawful retrieval of confirming information

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74 Robert C. Post, *The Constitutional Concept of Public Discourse: Outrageous Opinion, Democratic Deliberation, and* Hustler Magazine v. Falwell, 103 HARV. L. REV. 601, 639 (1990) (citing JÜRGEN HABERMAS, LEGITIMATION CRISIS (Thomas McCarthy trans., 1975); 2 JÜRGEN HABERMAS, THE THEORY OF COMMUNICATIVE ACTION (Thomas McCarthy trans., 1987)); *see also id.* at 640 (noting that this ideal is reflected in "the first amendment right to engage in public discourse anonymously, so that speakers can divorce their speech from the social contextualization which knowledge of their identities would necessarily create in the minds of their audience"). *But see* Kreimer, *supra* note 58, at 84 n.233 ("The problem in a less than ideal speech situation, like the political arena, where participants are motivated by considerations other than a search for the truth, is whether abstraction from identity will in fact aggravate the *defects*.").

75 983 F. Supp. 215 (D.D.C. 1998).

76 *Id.* at 217.

77 *Id.*

78 AOL's member profile directory is available to any AOL member and contains information supplied wholly by the member himself in response to certain categories set forth by AOL.

79 *McVeigh*, 983 F. Supp. at 217.

from AOL),[80] and McVeigh was eventually investigated for violation of the U.S. military's "don't ask, don't tell" policy.[81] McVeigh successfully obtained a preliminary injunction barring his discharge, arguing that the Navy had violated federal law in the way it had obtained the information from AOL, and ultimately settled both with the Navy and with the online service.[82]

Because the privacy violations were the cornerstone of McVeigh's challenge to the decision to discharge him, the opinion is largely viewed as reinforcing the right under federal privacy law to require certain legal process before personal online information can be revealed.[83] But during the course of the litigation, McVeigh understandably chose not to take this position. He did not challenge his discharge on the ground that the "don't ask, don't tell" policy was unconstitutional on its face or as applied,[84] nor did he take the position that he was not the writer of the e-mail (in other words, that someone else had used his AOL account to send the correspondence).[85] Instead, McVeigh took the position that he hadn't "told" anything—that the identity he had created under the name (or authornym) "boysrch" was simply a separate identity.[86] In interviews before the litigation concluded, McVeigh told reporters that he had used the word "gay" in the online profile as a signifier of sorts: "I did it basically because I have dedicated so much of my life to the military, I really didn't want to get married and be out to sea all the time. Nor did I want to have children and not be there to see them grow up."[87] In a later interview, McVeigh stated: "You can put in [your profile that you are] male or female, that you are green or blue or purple. That

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80 *Id.*

81 *Id.*; *see also* 10 U.S.C. § 654 (2000) (setting forth the military's policy).

82 *McVeigh*, 983 F. Supp. at 217–20. The court found McVeigh substantially likely to succeed on the merits of his argument that the government had violated 18 U.S.C. § 2703, part of the Electronic Communications Privacy Act of 1986 (ECPA), in requesting the information from AOL without appropriate process. *Id.* at 219–20.

83 *See, e.g.*, Paul M. Schwartz, *Privacy and Democracy in Cyberspace*, 52 VAND. L. REV. 1609, 1628–29, 1635–36 (1999).

84 As the district court suggested, this position had been taken unsuccessfully a number of times. *See McVeigh*, 983 F. Supp. at 218 (citing cases).

85 *See id.* at 217–18 ("At the hearing, the Plaintiff made an unsworn oral statement that explained the substance of his email to Ms. Hajne, and thus by inference confirmed his authorship of the correspondence.").

86 Plaintiff's Complaint at ¶¶ 64(C), 68(C), *McVeigh* (No. 98-116), *available at* http://dont.stanford.edu/cases/mcveigh/mcveigh.complaint.htm.

87 Gregg K. Kakesako, *Senior Chief Says Navy Wants to Kick Him Out, Saying He's Gay*, HONOLULU STAR BULLETIN, Nov. 26, 1997, at A1.

doesn't make it true."[88] While McVeigh's authornymic claim may have been motivated by litigation strategy, it did not go unnoticed by the court, which noted that "[p]articularly in the context of cyberspace, a medium of 'virtual reality' that invites fantasy and affords anonymity, the comments attributed to McVeigh do not by definition amount to a declaration of homosexuality. At most, they express 'an abstract preference or desire to engage in homosexual acts.'"[89]

A final expansion of identity through authornym is one that is focused solely on authorial identity, as opposed to any "real world" identity. In this technique, an author chooses an authornym not to experiment with gender, race, or sexuality, but rather to experiment with different modes of authorship.[90] Here, too, the decision to write pseudonymously in a different literary style may be motivated in part by a desire to compartmentalize reader reaction.[91] The late Columbia University humanities professor Carolyn G. Heilbrun, for example, published numerous mystery novels under the authornym "Amanda

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88 Gregg K. Kakesako, *Navy Insists Pearl Harbor Sailor Is Gay; Discharge Proceedings Are Set for Friday*, HONOLULU STAR BULLETIN, Jan. 14, 1998, at A5; *see also Don't Ask, Don't Tell* (National Public Radio broadcast, Jan. 19, 1998) (airing a statement of Ann Beeson, Staff Attorney, ACLU: "I could say [in an AOL profile] my name is Joe Blow and, you know, that I'm [a] 50-year-old male. And I may not be. That just is my profile on AOL.").

89 *McVeigh*, 983 F. Supp. at 219 (quoting DEP'T OF DEFENSE, GUIDELINES FOR FACT-FINDING INQUIRIES INTO HOMOSEXUAL CONDUCT, DEPARTMENT OF DEFENSE DIRECTIVE NO. 1332.14 (1993)); *see also* Schwartz, *supra* note 83, at 1657 ("For McVeigh, self-determination involved his finding a path between at least two aspects of his personality, the distinguished military veteran and 'boysrch,' whose AOL profile stated an interest in 'boy watching' and 'collecting pics of other young studs.'"). For a more general discussion of the *McVeigh* case, see Edward Stein, *Queers Anonymous: Lesbians, Gay Men, Free Speech, and Cyberspace*, 38 HARV. C.R.-C.L. L. REV. 159 (2003).

90 *See* Joyce Carol Oates, *Success and the Pseudonymous Writer: Turning Over a New Self*, N.Y. TIMES BOOK REV., Dec. 6, 1987, at 12 ("It may be that, after a certain age, our instinct for anonymity is as powerful as that for identity—or, more precisely, for an erasure of the primary self in that another (hitherto undiscovered?) self may be released.").

91 *See, e.g.*, Feldman, *supra* note 63, at 279 (noting that gentry during the late 1700s and early 1800s would publish anonymously so as not to diminish their social status "by appearing to be 'in trade'"); Donald W. Foster, *Commentary: In the Name of the Author*, 33 NEW LITERARY HIST. 375, 379 (2002) ("Anonymous publication was a fundamentally democratic activity that allowed writers from every social rank to publish and to seek recognition for their work, while shielding their dignity, modesty, or privacy from trespass, and their name from being too closely associated with the product of a moment's leisure."); Tien, *supra* note 58, at 133 ("By delinking message from messenger, both are decontextualized. An example might be a creative talent who wishes to experiment in a different genre. By not exhibiting her work under her true name, she risks less of herself.").

Cross" because, in part, she writes: "There was no question in my mind then, nor is there any now, that had those responsible for my promotion to tenure in the English department of the university where I teach known of the novels, they would have counted them heavily against me; I would probably have been rejected."[92] The Victorian novelist Walter Scott, to take another example, did not sign his name to *Waverly* because, he wrote: "In truth, I am not sure it would be considered quite decorous for me as a Clerk of Sessions to write novels. Judges being monks clerks are a sort of lay-brethren from whom some solemnity of walk and conduct may be expected."[93] The *Newsweek* columnist Joe Klein's authorship of *Primary Colors*, a thinly veiled fictionalized account of the presidential campaign of Bill Clinton, under the authornym "Anonymous" is another such example.[94]

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92 CAROLYN G. HEILBRUN, WRITING A WOMAN'S LIFE 110 (1988). Upon later reflection, Heilbrun expressed her choice in less deferential terms:

> I had a very good reason for secrecy, but as I now perceive, the secrecy itself was wonderfully attractive. Secrecy is power. True, one gives up recognition and publicity and fame, should any be coming one's way, but for me that was not difficult. . . . I think that secrecy gave me a sense of control over my destiny that nothing else in my life, in those pre-tenure, pre-women's-movement days, afforded.

Id. at 116–17.

93 Robert J. Griffin, *Introduction* to THE FACES OF ANONYMITY, *supra* note 19, at 1, 8; *see also* Feldman, *supra* note 63, at 286 (noting that Romantic-era poets would adopt pseudonyms when engaging in controversial subject matter or to distinguish statements of authorship directed at different audiences).

94 Of course, one might argue that "Anonymous" is a statement of anonymity rather than pseudonymity. But that would be wrong. As Klein no doubt intended, "Anonymous" became a persona in his own right, as would-be literary detectives tried to determine his "true" identity by identifying some of his characteristics. Klein himself has noted that he adopted the pseudonym to allow the novel to be judged on its own merits rather than by association with his other work. *See* Michael Cromartie, *Anonymous No More* (Nov. 1, 1996), *at* http://www.eppc.org/publications/pubID.91/pub_detail.asp; *see also* Anne Ferry, Anonymity: *The Literary History of a Word*, 33 NEW LITERARY HIST. 193, 194 (2002) (describing use of "Anon." as a shorthand statement of authorship when the name of the writer was unknown). Doris Lessing took a similar tack in writing *The Diaries of Jane Somers* as "Jane Somers" rather than under her well-known true name. *See* DORIS LESSING, THE DIARIES OF JANE SOMERS, at vii (2d ed. 1984) (stating that she did not want readers' judgment of the work to be tainted with judgments derived from reading the works of "Doris Lessing"); *id.* at viii (noting that as Jane Somers, Lessing "wrote in ways that Doris Lessing cannot"). The phenomenon has even spread to the music industry. *See* Tom Moon, *Welsh Rock Vets Pull a Fast One*, ARIZONA DAILY STAR (Tucson), Mar. 24, 2004, at E3 (describing how a 1980s rock group created a fake band with younger members to serve as the face for a new release so that "people [would get] behind the song on its merits"), *available at* http://www.azstarnet.com/dailystar/printDS/15010.php.

Of course, the foregoing discussion does not include the many other reasons for multiplicity of authorial identity—still others include the desire to subordinate identity to the broader purpose of the text (the Holocaust survivor who wishes his memoir to act as the voice of all victims)[95] or the desire to signal a particular textual interpretation to readers through the choice of authornym.[96] In all these examples, however, the authorial voice is multiplied, or fractured, but it is done with deliberateness. The writer who chooses to express himself through an authornym is making an affirmative, identity-creating decision, a *branding* of identity, in a way that a writer who simply scrawls graffiti on a wall is not: He is indicating his desire to have a particular set of creative expressions associated with a particular identity, albeit not always the one he uses for other pursuits.[97]

2. Many-to-One Authornyms

Besides the expansion of identity, which enables voice experimentation, authornyms also permit the contraction of identity—a "many-to-one" authorial voice, or what is often referred to as "corpo-

95 *See* Jeremy D. Popkin, *Ka-Tzetnik 135633: The Survivor as Pseudonym*, 33 NEW LITERARY HIST. 343, 344–46 (2002) (contrasting pseudonymous authorship of Holocaust narrative *Salamandra* (1946) with memoirists who wrote under their proper names as "a proof of endurance"); *see also, e.g.*, Ferry, *supra* note 94, at 197 (describing the use of anonymity by poets to "escape over-personal interpretations of their poems"); Henry Hazlitt, *The Cult of Anonymity*, 131 NATION 350, 350 (1930) (describing a group of writers in Paris who withheld their names from their writings "to curb the exploitation of personalities, and to establish 'the art as an ideal, not the ego'").

96 *See, e.g.*, Griffin, *supra* note 23, at 886 (discussing how author Mary Robinson's use of the pseudonym "Tabitha Bramble," the name of a character in Smollett's *Humphry Clinker*, "functions as a signal to the reader to expect a dramatized, and clearly fictional, point of view").

There are, of course, still other reasons why an author might write under a separate authornym. In the late eighteenth and early nineteenth centuries, some authors chose pseudonyms to "limit the appearance of overproduction." *See, e.g.*, Raven, *supra* note 65, at 158. A version of this effort can be seen today when online speakers in particular create distinct identities in order to present both sides of a debate more effectively and spark discussion in a way that might not be possible were both sides presented by a single "author." *See* Bill Flinn & Hermann Maurer, *Levels of Anonymity*, 1 J. UNIVERSAL COMPUTER SCI. 35, 39 (1995), *available at* http://www.jucs.org/jucs_1_1/levels_of_anonymity; Philip Giordano, *Invoking Law as a Basis for Identity in Cyberspace*, 1998 STAN. TECH. L. REV. 1, ¶ 12.

97 In this respect, the choice of an authornym might have one constant characteristic: the desire to bolster the effectiveness of the speech by presenting that speech under a particular brand (or, put differently, to increase the likelihood that readers/consumers will "buy" what is offered) as opposed to releasing textual product to the market without any indication of source (i.e., truly anonymously).

rate" authorship.[98] In this mode, writers use authornyms to collect the corporate efforts of a body of writers under the name of a single author. Works for hire, in which the corporation is the putative author,[99] are perhaps the most prevalent form, but we also see such corporate writing efforts occurring in popular literature as well:[100] The Nancy Drew series, for example, has been written for years by "Carolyn Keene," whose name masks a stable of authors trained in a corporate fictional style,[101] and the "Abby" of "Dear Abby" fame has been over the years both Abigail Van Buren (itself a pseudonym) and her daughter.[102] In some instances, as Peter Jaszi and Martha Woodmansee have noted, the corporate writing endeavor exists even when the public persona projected is one of the Romantic, solitary au-

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98 *See, e.g.*, POSNER, *supra* note 40, at 258; Griffin, *supra* note 93, at 10–11; Andrea A. Lunsford & Lisa Ede, *Collaborative Authorship and the Teaching of Writing*, *in* THE CONSTRUCTION OF AUTHORSHIP, supra note 15, at 417, 418. Indeed, as David Post points out, the effort may be truly "corporate." Post, *supra* note 59, at 158.

> [T]hough we do not generally think of corporate speech as an example of pseudonymous speech, it clearly falls within that category. When I receive an advertising flyer from my local McDonald's restaurant, identified only by a prominently placed corporate logo . . . the message is an "anonymous" one, inasmuch as it contains no information at all about the identity of the individual(s) who may have typed it up, reproduced it, or placed it under my door. But it is also clearly within the subset of pseudonymous messages because the presence of the logo provides a great deal of information about the recognizable (corporate) entity responsible for preparing and distributing the flyer.

Id.

99 *See* 17 U.S.C. § 201(b) (2000).

100 Although this Article is focused on literary works, other works subject to copyright (and therefore that have "authors") such as musical works, theater, and films are more obviously examples of corporate authorship. ROSE, *supra* note 13, at viii.

101 The "Stratemeyer Syndicate," a stable of ghostwriters founded by Edward Stratemeyer, was responsible for the Nancy Drew, Bobbsey Twins, and Hardy Boys series, among others. *See* Patricia Leigh Brown, *A Ghostwriter and Her Sleuth: 63 Years of Smarts and Gumption*, N.Y. TIMES, May 9, 1993, at E7; Susan Chira, *Harriet Adams Dies; Nancy Drew Author Wrote 200 Novels*, N.Y. TIMES, Mar. 29, 1982, at A1; Meghan O'Rourke, *Nancy Drew's Father*, THE NEW YORKER, Nov. 8, 2004, at 120.

102 *See, e.g.*, Amy Wilson, *Dear Abby and Daughter: Jeanne Phillips Is Now Co-Writer of Her Mother's Column*, WASH. POST, Aug. 22, 2001, at C11; *cf.* Alex Kuczynski, *"Ann Landers" May Write Again*, N.Y. TIMES, Feb. 2, 2003, § 9, at 7 (discussing the *Chicago Tribune*'s search to find a replacement for Eppie Lederer, who wrote as Ann Landers until her death). Early modern women writers also used this technique, often taking on a joint authornym that comprised some portion of each writer's first or last names. *See, e.g.*, Holly A. Laird, *The Coauthored Pseudonym: Two Women Named Michael Field*, *in* THE FACES OF ANONYMITY, *supra* note 19, at 193, 194–95.

thor.[103] Indeed, this many-into-one form of authornymity occurs frequently in legal writing. A federal judge who employs law clerks to assist him with the drafting of opinions will undoubtedly not be the "true" author of some of the words attributed to him, although each opinion issued out of his chambers bears his name, and each opinion tends to read in the same style (although whether this is due to editing or to law clerks' learning to assume the corporate style is undoubtedly variable in each case).[104] And a court may issue an opinion *per curiam*, without further attribution, even though it is the work of one or more judges on the panel and may bear the stylistic hallmarks of its author or authors such that more accurate attribution could be achieved.[105]

The modern consumer of cultural commodities is undoubtedly well familiar with the concept of corporate authorship. The political speechwriter, for example, is an invisible yet omnipresent author whose pseudonymous existence causes no particular consternation to the readers of his work.[106] The common use of screen names or user

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103 Jaszi & Woodmansee, *supra* note 15, at 3 (describing William Wordsworth's collaboration with Samuel Taylor Coleridge and reliance on writings of his sister Dorothy despite "the authorial persona he projects publicly—that of the secular prophet with privileged access to experience of the numinous and a unique ability to translate that experience for the masses of less gifted consumers"); Woodmansee, *supra* note 15, at 17 (noting that although history presents Samuel Johnson as "the very archetype of the modern author," most of his writing efforts were collaborative); *see generally* ALEXANDER LINDEY, PLAGIARISM AND ORIGINALITY (1952).

104 POSNER, *supra* note 40, at 258.

> Law clerks often prepare for their job by reading a bunch of their boss's old opinions (sometimes he tells them to do this), and they model their own style on that of the opinions they read. By this process a chambers style, not perhaps *very* distinctive but distinctive enough to be recognizable, evolves. All that this shows is that style, like intention, can be a corporate attribute.

Id.

105 On the use of per curiam opinions, see generally Richard Lowell Nygaard, *The Maligned Per Curiam: A Fresh Look at an Old Colleague*, 5 SCRIBES J. LEGAL WRITING 41 (1994–1995); Laura Krugman Ray, *The Road to* Bush v. Gore*: The History of the Supreme Court's Use of the Per Curiam Opinion*, 79 NEB. L. REV. 517 (2000). And, to take this point one level higher, the opinions of any single judge can also be described as issued under the authornym of the court on which she sits. Except in the case of certain "star" judges—not coincidentally, usually those with distinctive writing styles—most judicial opinions are referred to in common parlance as, for example, a "Ninth Circuit opinion" rather than as a "Judge X opinion."

106 Of course, this may not be true where political actors employ a "one-to-many" form of authorship as opposed to a "many-to-one" form. *See, e.g.*, Foster, *supra* note 91, at 380 (describing the uproar that resulted when the British tabloid *The Sun* published pro-British articles nominally written by the Japanese Prime Minister and Argentinean President that were believed to have been written by British Prime Minister

names in online communications also provides an example of corporate authorship. In any given communication under a screen name, there is no way to tell who is sitting at the keyboard, and so it is therefore possible for an online author's work product to in fact be the work of several individuals. Julian Dibbell, in his well-known piece *A Rape in Cyberspace,* describes one such instance in the context of a linguistic sexual assault of one character by another character in an online world. Although the perpetrator was known in the online community by the authornym "Mr. Bungle" and appeared to write in a consistent, characteristic mode, Dibbell later discovered that at one point in the online conversation (and perhaps at other, or even at all, times), Mr. Bungle's writing was the work of a group of college students gathered around the keyboard and feeding material to a designated typist.[107] More benignly, we see a "many-to-one" mode of online authorship through Wiki, a technology that allows any visitor to a Wiki-enabled webpage to create and edit content, including by deleting or erasing content left by others.[108] Thus, at any given moment, the "authorship" of any particular Wiki page is not only collaborative, but fluid, as text is added and deleted. (Indeed, the writer who deletes a piece of text previously contributed by another writer may have as much a claim to authorship in the entire piece—or even a greater one—as the first writer.)[109]

Tony Blair's press secretary); *id.* at 380–81 (describing Richard Nixon's efforts to place opinion pieces in major newspapers under pseudonyms or under the byline of a columnist "sympathetic to the administration").

107 *See* DIBBELL, *supra* note 59, at 30; *see also* Adam White Scoville, *Text Is Self: The Merger of Property and Identity,* 1999 B.C. INTELL. PROP. & TECH. F. 060507 ("The postmodern notion of communal Internet authorship presented by some on-line personae diverges radically from the romantic notion of authorship embodied in the copyright statute.").

108 *See, e.g.,* Cunningham & Cunningham, Inc., *Wiki Getting Started Faq, at* http://c2.com/cgi/wiki?WikiGettingStartedFaq (last edited Feb. 26, 2005); Cunningham & Cunningham, Inc., *Wiki Philosophy Faq, at* http://c2.com/cgi/wiki?WikiPhilosophyFaq (last edited Jan. 3, 2005).

109 *See, e.g.,* HARRY MATHEWS, IMMEASURABLE DISTANCES 20 (1991) (describing the process of writing as working "exclusively by what the writer leaves out"). Wiki's "document mode" is particularly designed for this kind of collaborative authorship, in which the text reflects the community consensus of the discussion. *See* Cunningham & Cunningham, Inc., *Document Mode, at* http://c2.com/cgi/wiki?DocumentMode (last edited Feb. 18, 2005) ("The piece of text is community property . . . ."). Of course, as the page itself points out (in a note of uncertain origin), so long as the page is hosted on a server controlled by some third-party entity, that entity will always have the ability to exercise ultimate control over the site's content. *Id.*

3. One-to-One Authornyms

The one-to-one authornym is any statement of authorship that is neither expansive nor corporate—in other words, any statement of authorship that purports to be neither the alter ego of an individual nor many individuals under one name. "John Grisham," despite its identity with the name that, we can suppose, appears on the writer's birth certificate, is in fact an authornym for the writer named John Grisham.[110] Just as the authornyms "Carolyn Heilbrun" and "Amanda Cross" tell us who should be attributed with the text they label, "John Grisham" tells readers that the "author" of a particular piece is to be known by "John Grisham," whatever the reality of the writing process. Grisham is choosing to write under "John Grisham" rather than "John Smith," even if that choice is not a conscious one.[111] The fact that

110 The concept of separating the function that a name performs when it is the name of the author from the function it performs elsewhere is a mainstay of postmodern literary criticism. Michel Foucault, most famously, has described the nature of the author's name as different from that of a proper name because a proper name's identifying quality does not vary with changes to the identified person's other characteristics. If, as Foucault describes, "Pierre Dupont does not have blue eyes, or was not born in Paris, or is not a doctor, the name Pierre Dupont will still always refer to the same person; such things do not modify the link of designation." Foucault, *supra* note 23, at 146. But authors are different: "[I]f we proved that Shakespeare did not write those sonnets which pass for his, that would constitute a significant change and affect the manner in which the author's name functions. . . . The author's name is not, therefore, just a proper name like the rest." Foucault, *supra* note 23, at 145. I sense in this description, and contend that there is in any event, a distinction between what I am referring to as an authornym and the proper name, even if the two are textually the same (i.e., the author "William Shakespeare" as distinct from the person named William Shakespeare). *See* ROSE, *supra* note 13, at 123 (describing the late-eighteenth-century "further step in the mystification of Shakespeare, the separation of the divine personality of the author of the plays from the human specificity of the actor-playwright-shareholder William Shakespeare"). Gérard Genette has coined the word "onymity" (as part of a troika of "anonymity" and "pseudonymity") to refer to the instance in which the author signs his work with his legal name. GENETTE, *supra* note 20, at 39. Even here, however, Genette acknowledges that "to sign a work with one's real name is a choice like any other, and nothing authorizes us to regard this choice as insignificant." *Id.* at 39–40. Genette further suggests, probably rightly so, that instances of onymity occur more often in historical or documentary works, in which the credibility of the work rests on the identity of the writer. *Id.* at 41.

111 On this point, see Oates, *supra* note 90, at 14.

> [T]he cultivation of a pseudonym might be interpreted as not so very different from the cultivation *in vivo* of the narrative voice that sustains any work of words, making it unique and inimitable. Choosing a pseudonym by which to identify the completed product simply takes the mysterious process a step or two further, officially erasing the author's (social) identity and supplanting it with the (pseudonymous) identity.

there is also an individual named "John Grisham" does not render this choice any more illusory—it simply illustrates the distinction between what Foucault has called the "author function" of a name and the purely nominative function, between "William Shakespeare" the playwright and "William Shakespeare" the man.[112]

The three categories of authornyms described above may overlap to some extent. Because "John Grisham" doesn't tell us whether Mr. Grisham alone is responsible for the text or whether an editor or some other individual contributed some piece of it, "John Grisham" might well be a many-to-one authornym rather than a one-to-one authornym. (Likewise, a judicial authornym may stand for the work of the judge alone or the judge and one or more law clerks.) In any event, the unifying characteristic of all these statements of authorship is that the name situated in the position of "author" is primarily, if not solely, an attributional device: It is the name that has been chosen by the work's writer (or editor, or publisher, or other controller of the publication rights) as the name with which the work in question shall be associated in the minds of its readers, without regard to whether that name has any identity whatsoever with the name of the person or persons responsible for the various stages of the writing process.[113]

The authornym, then, is the result of decoupling statements of authorship from the act of authorship. To reject this decoupling and say that "Amanda Cross" *was* Carolyn Heilbrun because Carolyn Heil-

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Id.

112 *See supra* note 110; *see also, e.g.*, Griffin, *supra* note 23, at 890.

> We should not assume that the aesthetic identity of the author . . . is a unified entity; rather it is split into multiple entities in the course of individual publications, whose nominal authors may have different names, and is collected together under the name of the empirical writer only after the fact.

Id.

113 My "authornym" is in some sense akin to Barthes's "modern scriptor":

> The [Romantic] Author, when believed in, is always conceived of as the past of his own book: book and author stand automatically on a single line divided into a *before* and *after*. . . . [T]he modern scriptor is born simultaneously with the text, is in no way equipped with a being preceding or exceeding the writing, is not the subject with the book as predicate; there is no other time than that of the enunciation and every text is eternally written *here* and *now*.

BARTHES, *supra* note 16, at 145; *see also* Griffin, *supra* note 23, at 890.

> Authors, in many cases, have had the option of selecting out of all the things they write and publish those which they will sign, and those which they will not sign or will issue under a pseudonym. In this situation, the author's name is another artifact, at a distance from the empirical writer and part of the semiotics of the text, even when the legal name is given.

Id. (footnote omitted).

brun was the name of the individual who put pen to paper is to reject the specific and affirmative choice Professor Heilbrun made in writing under Amanda Cross's name, a choice that purposefully denied authorship to "Carolyn Heilbrun." And even the reader who is aware that "Amanda Cross" and "Carolyn Heilbrun" coalesce in the same physical body will almost certainly continue to keep separate the various reader reactions to the bodies of work of each of these authornyms. The fact that the author of the Amanda Cross mysteries was an English professor at Columbia University is likely to be regarded as a critical curiosity and not as a fact that informs (or, perhaps, should inform) interpretation of either the mysteries or Professor Heilbrun's scholarly works. So, too, with "Mark Twain," "Carolyn Keene," and even "John Grisham"—while speaking in the traditional terminology of Romantic authorship, each is only an attributional device and understood by its relevant readership as such. In the online world, the use of screen names or other online identities to mediate communication is now wholly accepted, as is the idea that an online moniker might well bear no relation to the speaker's "true" identity.[114] Like an offline statement of authorship, a screen name is an organizational label for the various online speech acts that together constitute one's online identity.[115] Thus, the name of the author of a creative work is really a convenient shorthand, what Judge Posner has called a "functional rather than a natural designation";[116] it enables us to categorize other works attributed to that same author, but it is not designed to offer us any truth about the identity of the creator of the work.

II. THE AUTHORNYM AS TRADEMARK

The description offered in the previous Part of an attributional device used to label created product does not, of course, apply only to

114 *See* Anne Wells Branscomb, *Anonymity, Autonomy, and Accountability: Challenges to the First Amendment in Cyberspaces*, 104 YALE. L.J. 1639, 1640 (1995); Rob Kling et al., *Assessing Anonymous Communication on the Internet: Policy Deliberations*, 15 INFO. SOC'Y 79 (1999); Marx, *supra* note 59 (contrasting settings in which participants expect the use of pseudonyms with "other contexts of personal relations," in which "embedded 'identity norms' about authenticity in personal interaction" are present).

115 Froomkin, *supra* note 59, par. 35 ("Most people we interact with online are just a name and an e-mail address, plus whatever impression we have formed of them by what they say."); Giordano, *supra* note 96, ¶ 14 ("An individual's online identity is thus the sum of when, where and how she speaks, and what she says.").

116 POSNER, *supra* note 40, at 381 (noting that "the attribution of specific works to specific individuals as authors, with all the ethical, interpretive, and legal implications of that attribution, is . . . a cultural artifact").

what I am calling authornyms. A trademark serves an identical purpose: to convey a designation of source to consumers, even if the actual source of the product remains unknown to any particular consumer. In this Part, I briefly discuss the history of trademarks and their protection and consider how the authornym is, in fact, a literary trademark. I am aided in this endeavor by the work of postmodern literary theorists who, albeit not directly, describe the author in particularly trademark-like terms.

A. *Trademarks and Identity*

As others have well documented,[117] the trademark was originally a simple, and immediately correlative, statement of product creation. In a world in which goods were traded face to face, trademarks were unnecessary, as the buyer satisfied with a previous purchase could simply return to the seller of those goods to engage in further transactions.[118] Once the sphere of commerce expanded to the point at which face-to-face transactions became impractical, marks of origin—typically identifying a single artisan—were placed on handmade artifacts, such as pottery, and served to identify to the consumer the individual to whom complaints of shoddy handiwork could be directed.[119] As Benjamin Paster notes, the direct correlation between mark and artisan typically prohibited any multiplicity of identity: A master craftsman was required by his guild to "choose a mark . . . to use it on all goods he produced, and to retain it his entire life."[120]

Trademarks were not solely concerned with poor workmanship, however. Producers naturally wanted to encourage repeat purchases and needed a way of enabling consumers who might never meet the manufacturer in person to find the goods they desired. Trademarks facilitate the search of a repeat consumer; in today's parlance, they reduce the search costs for such a consumer by conveying information about the source of a product that is not otherwise easily ascertaina-

117 *See, e.g.*, SCHECHTER, *supra* note 6, at 20–37; Sidney A. Diamond, *The Historical Development of Trademarks*, 65 TRADEMARK REP. 265 (1975); Daniel M. McClure, *Trademarks and Unfair Competition: A Critical History of Legal Thought*, 69 TRADEMARK REP. 305 (1979); Benjamin G. Paster, *Trademarks—Their Early History*, 59 TRADEMARK REP. 551, 551–52 (1969).

118 Paster, *supra* note 117, at 551–52.

119 *In re* Wood, 217 U.S.P.Q. (BNA) 1345, 1348–49 (Trademark Tr. & App. Bd. 1983) ("Indeed, it is difficult to draw a distinction from the early marks of identification of potters and other artisans used in connection with their artistic and commercial products and an artist's name affixed to his or her work of art."); Paster, *supra* note 117, at 553.

120 Paster, *supra* note 117, at 556.

ble. A consumer who is satisfied with the fit of Levi's jeans and wishes to buy another pair need not spend the day in the dressing room in search of a pair of jeans exhibiting the same qualities as the first pair; rather, she can rely on the Levi's trademark to direct her to a pair of jeans produced by the same manufacturer. The law grants protection to trademarks to ensure the reliability of these source indicators and, relatedly, to encourage companies to produce goods of consistent quality under a particular mark.[121]

There is no longer any requirement, however, that producers limit themselves to a single mark. As Frank Schechter noted eighty years ago, "[t]he modern manufacturer may use a mark or several marks or no mark just as he pleases."[122] Producers are now free to invent marks that differ from their corporate names and to devise different marks for different products. So long as each mark is correlated with a single producer in a way that is not confusing to the relevant consumer market, the mark need not reflect that producer's corporate name.[123] In trademark law, this is known as the "anonymous source" doctrine, by which we mean that as long as a consumer understands a trademark to convey that the same producer is behind a particular product each time the mark is used in connection with that product, the consumer need not be able to name that producer. To take a modern example, trademarks allow the company now known as Altria to market cigarettes under the brand Marlboro and to market macaroni-and-cheese mix under the brand Kraft. It need not

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121 Of course, the "source" that is indicated by a trademark is today probably more theoretical than actual, as the actual manufacturer of a particular good may not be the one suggested by the mark. *See, e.g.*, James Brooke, *Factory Jobs Move Overseas as Japan's Troubles Deepen*, N.Y. TIMES, Aug. 31, 2001, at A1 (quoting the chief economist for Merrill Lynch Japan, who referred to the "Nike model," in which "you do the brand management in Seattle and the manufacturing in Indonesia").

122 SCHECHTER, *supra* note 6, at 122. As Schechter points out, some courts were slow to recognize this modern development in trademark law. *See id.* at 147; *see also* Candee, Swan & Co. v. Deere & Co., 54 Ill. 439, 457 (1870).

> A trade mark denotes the origin of the article. No one man can have more than one mark or brand . . . . If the owner could have more than one mark by which to distinguish his property, great confusion and uncertainty would be produced, to such an extent as to defeat the object in view.

Id.

123 This requirement is typically stated as requiring that the trademark "identify" a single source. *See, e.g.*, Qualitex Co. v. Jacobson Prods. Co., 514 U.S. 159, 163–64 (1995). But a mark that is not textually equivalent to a producer's corporate name does not "identify" the producer in the way that we usually use the word. The mark DORITOS, for example, does not "identify" Frito-Lay, Inc., but it is uniquely correlated with that company. It is more accurate, therefore, to say that trademarks "distinguish" sources, rather than "identify" them. *See id.* at 164.

use the name Altria for any of its products, and it need not choose a trademark that directly informs consumers that Altria is the source of any particular product.[124]

Thus, whereas the trademark once served to inform the consumer of the name of the producer, the modern trademark serves as a form of identity creation. The goal of the modern trademark is the same—reduction of consumer search costs—but the method has changed. There need no longer be an obvious genealogical line between the name of the mark and the name of the producer; rather, the producer can create as many corporate identities as it has products and name them as it wishes.[125] A producer might choose this multiplicity of identity to avoid spreading a brand too thin or for more strategic reasons, such as to obfuscate the fact that two different types of products share a common source. The modern trademark thus not only enables producers to associate some products with one set of meanings by grouping them under a single brand and thereby to dissociate others, but also enables consumers to more easily channel their goodwill toward particular products from a particular producer without being required to allow that goodwill to spill over to others of that producer's products.[126] To the consumer who takes trademarks at face value, "Marlboro" is a separate identity from "Kraft"; "Altria" is a reinvention of the former "Phillip Morris."[127] Consumers who want to maintain the identity fiction that trademarks enable can thereby safely buy Altria's macaroni-and-cheese mix while they disdain Altria's cigarettes.

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124 Indeed, "companies have an incentive to maintain the value of their brands, and in a competitive market they are unlikely to expand the reach of a single trademark so far that consumers are confused rather than enlightened by the use of the brand name." Dogan & Lemley, *supra* note 2, at 800.

125 Provided, of course, that the name does not infringe another's trademark or is not otherwise unlawful.

126 In this sense, a mark is a repository for consumer goodwill. *See, e.g.*, Inwood Labs., Inc. v. Ives Labs., Inc., 456 U.S. 844, 854 n.14 (1982) ("By applying a trademark to goods produced by one other than the trademark's owner, the infringer deprives the owner of the goodwill which he spent energy, time, and money to obtain." (citing S. REP. NO. 79-1333, at 3 (1946))).

127 For Altria's own take on its corporate identity, see Altria, Inc., *Corporate Identity*, *at* http://www.altria.com/about_altria/01_01_corpidenchange.asp (last visited Feb. 12, 2005) ("By changing its name, Altria Group will clarify its identity as to what it is: a parent company to both tobacco and food companies that manage some of the world's most successful brands.").

B. *The Authornym as Commercial Trademark*

As suggested earlier in this Article, authornyms, like trademarks, serve the goal of reducing consumer search costs while also facilitating identity creation. The reader who enjoyed her first John Grisham novel and would like to purchase more from the same author need not spend the day in her local bookstore poring over books to find ones with the same qualities as the first book. As with her Levi's, she can simply look for the name "John Grisham" on the cover of the book and trust that the source of this text is the same as the source of the novel she has already read.[128] This is why particularly famous authornyms are used as promotional tags, often appearing in larger type on the cover than does the title.

The search-facilitating function of an authornym, like that of a trademark, comes about largely because of the authornym's ability to serve as a repository of goodwill. The authornym acts as a signal to the reader to associate particular bodies of work with a particular brand, both in terms of future purchases ("this is another John Grisham novel") and in terms of accretion of quality ("this John Grisham novel will be of the same quality as his previous one").[129] The "Richard Posner" brand likewise identifies certain judicial opinions as emanating from a single source/author (even if to some small degree corporate) and serves as a shorthand for identifying (and encouraging) the quality of the product under that mark. An author who wants to segregate these symbols of goodwill will engage in one-to-many authornymous writing. Just as Altria can, by its selection of different brand names, keep the Marlboro goodwill and the Kraft goodwill separate, the author can, by her selection of different

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128 Like Levi's, the authornym "John Grisham" may be used for a variety of different products within a single genre. The fact that the product for which the consumer searches may not be identical to the one previously purchased (low-cut jeans instead of baggy, *The Pelican Brief* rather than *The Firm*) does not reduce the source-distinguishing value of either mark.

129 *See* Kreimer, *supra* note 58, at 85.

> In one dimension, the identity of a speaker is a proxy for previous communications. [The astronomer Carl] Sagan *could* preface each remark with an account of his entire previous corpus, but, even in an academic seminar, it seems simpler just to sign his name. Conversely, identification makes other communications available to listeners. When evaluating an argument of Richard Posner regarding 'efficiency,' it is useful to be able to refer to his other work.

Id.

authornyms, keep her scholarly goodwill and her fiction goodwill separate, creating different currencies of intellectual capital in each.[130]

This streamlining of search through symbol does not require direct identification of the producer. The anonymous source doctrine works just as well for authornyms as it does for trademarks. It is not necessary for a consumer to know that Kimberly-Clark makes "Huggies" to evaluate the worth of the diapers and associate them with the brand; similarly, it is not necessary for a reader to know that Amanda Cross mysteries were written by a Columbia humanities professor in order to enjoy the writing (indeed, they may well prefer not to know), or to know that "Dear Abby" is now written by Abigail Van Buren's daughter to trust in her advice (although her daughter would probably be well-advised not to depart from the stylistic characteristics readers have come to associate with the mark). So too online: Because authornymity is one of the organizing principles of Internet communication, the creation of intellectual capital associated with an online pseudonym is particularly important. But it need not be necessary—indeed, it probably happens fairly infrequently—that the reader knows the "true" identity behind any particular pseudonym. In other words, an online participant doesn't have to know that "BusinessGuy@aol.com" is actually John Smith of Akron, Ohio, in order to evaluate the worth of his message board postings and to accord the appropriate amount of trust to future postings based on the worth of his past comments.[131]

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130 *See, e.g.*, Post, *supra* note 59, at 142 ("Pseudonymous speech is valuable in a way that anonymous speech is not and cannot be, because it permits the accumulation of reputational capital and 'goodwill' over time in the pseudonym itself, while simultaneously serving as a liability limitation insulating the speaker's 'true identity' from exposure.").

131 Some screen names and domain names—like some trademarks—tell us at the very least where in cyberspace the owner of that name "lives." For example, from "BusinessGuy@aol.com," we know that this speaker "lives" at aol.com—that is, he is a subscriber to America Online's service—and from www.genericlawschool.edu, we know that whatever "Generic Law School" is, it is most likely an educational institution, because it resides in the .edu top-level domain (TLD). The second level domain (and probably the TLD as well) is often interpreted in a trademark sense in that certain reputation-enhancing (or reputation-detracting) characteristics are associated with it. *See, e.g.*, Peter Kollock, *The Production of Trust in Online Markets*, *in* 16 ADVANCES IN GROUP PROCESSES 99, 107–11 (E.J. Lawler et al. eds., 1999); Tamarah Belczyk, Note, *Domain Names: The Special Case of Personal Names*, 82 B.U. L. REV. 485, 490 (2002). And in one recent instance, the personal (trademark) is political: Witness the employee of the animal rights group People for the Ethical Treatment of Animals who had her name legally changed to the URL for PETA's website, GoVeg.com. *See* People for the Ethical Treatment of Animals, *Hello. My Name Is . . .*

This concept of the authornym as trademark may not be fully developed in legal doctrine[132] or legal scholarship,[133] but it is one that literary critics have recognized, in various forms, for some time—perhaps not surprising given the received story that "authorship" was birthed from a desire for commercialization. Mark Rose, for example, has noted that the "author-work relation" is "institutionalized in our system of marketing cultural products," in which the name of the au-

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GoVeg.com!, *at* http://www.goveg.com/feat/l-govegname.html (last visited Feb. 12, 2005).

One aspect that distinguishes online trademarks such as screen names and domain names is their strong functional aspect, quite separate from their source- or quality-indicating aspect. In other words, the screen name "boysrch" not only served as a way for Timothy McVeigh to express a particular personality, it also functioned quite simply as an address—as a way for correspondents to reach him (via boysrch@aol.com). There are, of course, analogues in the offline world: "30 Rockefeller Plaza" is not only an address, but is well known as the headquarters for NBC; "1600 Pennsylvania Avenue" is not only the location of the U.S. President's home, but is also shorthand for the governmental Office of the White House. And yet the trademark quality of an e-mail address is undoubtedly the reason why users are much more loath to give up a particular screen name than they are a telephone number or street address.

132 *See, e.g.*, *In re* Michael S. Sachs, Inc. v. Cordon Art B.V., 56 U.S.P.Q.2d (BNA) 1132 (Trademark Tr. & App. Bd. 2000); *In re* Wood, 217 U.S.P.Q. (BNA) 1345, 1348–49 (Trademark Tr. & App. Bd. 1983) (noting that the name of an artist on a work of art "serves a trademark function in that it identifies the source of the product and distinguishes it from the goods of another . . . [as well as] denotes consistency of the quality of the goods sold under the mark"); *Ex Parte* Grandma Moses Props., Inc., 117 U.S.P.Q. (BNA) 366 (Comm'r Patents & Trademarks 1958) (noting that "Grandma Moses" functioned as a mark for fabric created in the style of her paintings). *But see In re* Chicago Reader Inc., 12 U.S.P.Q.2d (BNA) 1079, 1080 (Trademark Tr. & App. Bd. 1989) ("A nom de plume or pseudonym of a writer is not generally regarded as a trademark for the writing."). In general, the courts have accorded a personal name trademark status only upon a finding of secondary meaning. Once a personal name acquires trademark status, the likelihood of confusion analysis is the same as it would be for any other trademark. *See, e.g.*, Flynn v. AK Peters, Ltd., 377 F.3d 13, 20 (1st Cir. 2004); Peaceable Planet, Inc. v. Ty, Inc., 362 F.3d 986, 989 (7th Cir. 2004); E. & J. Gallo Winery v. Gallo Cattle Co., 967 F.2d 1280, 1288 (9th Cir. 1992); 2 J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION §§ 13:2, 13:12 (4th ed. 2004).

133 Jaszi & Woodmansee, *supra* note 15, at 8. This is not to say that legal scholars have been completely absent from this debate; the work of scholars such as Peter Jaszi, David Lange, and James Boyle, among others, has been seminal. *See, e.g.*, BOYLE, *supra* note 15; Boyle, *The Search for an Author*, *supra* note 14, at 625–27; Jaszi, *supra* note 23, at 456; Lange, *supra* note 17, at 139. The idea also hovers in some of the more doctrinal literature. *See, e.g.*, Diamond, *supra* note 117, at 289; Edward S. Rogers, *The Lanham Act and the Social Function of Trade-Marks*, 14 LAW. & CONTEMP. PROBS. 173, 173–74 (1949) (equating the identification functions of trademarks and personal names).

thor "becomes a kind of brand name, a recognizable sign that the cultural commodity will be of a certain kind and quality."[134] Gérard Genette has described the effect the choice of a particular authornym has on a reader and how the typical reader can quite easily keep the writer's authornym distinct from the writer's legal name as well as the images and reactions associated with each.[135] (To take a familiar example, most readers continue to refer to the author of *The Adventures of Tom Sawyer* as "Mark Twain" long after learning that the author's legal name is Samuel L. Clemens; the same holds true for "Lewis Carroll" and "Charles L. Dodgson," and for many other similar pairs.) Margaret Ezell, to take a third example, cites various examples of seventeenth-century titles ("*Six familiar essays upon marriage, crosses in love, sickness, death, loyalty, and friendship, written by a lady*" (1696)), which, in their obvious prolixity, function as "a promotional advertisement for the volume," an advertisement that typically includes a consistent authornym ("by a lady") as part of the advertisement.[136]

C. *The Authornym as Literary Trademark*

The traditional economic justification for trademark protection—to reduce consumers' search costs—means that the value of a trademark lies in its commerciality. The "search" that we talk about is one that is usually assumed to end with a purchase, a choice between alternatives that is made easier by the information a trademark conveys. But not every search guided by trademarks is commercial in the sense that money flows from the consumer to (ultimately) the producer. The "post-sale confusion" cases are one example, in which the confused consumer is not the purchaser of the product but some third person who sees the misbranded product and thereby forms an opinion of the brand that may or may not guide future purchases.[137] The merchandising cases are another example, where the value of the trademark is in the mark itself, not in the article of clothing to which it is attached.[138] Cybersquatting cases are yet another example, where

134 ROSE, *supra* note 13, at 1. Publishers' names have also historically served this function. *See, e.g.*, Woodmansee, *supra* note 23, at 441.

135 GENETTE, *supra* note 20, at 50.

136 Ezell, *supra* note 63, at 72; *cf.* Griffin, *supra* note 23, at 880 (describing a similar role for the phrase "by the author of"). "By a lady" is in one sense a one-to-many authornym in that it enabled male writers to write in the feminine voice, and in another sense a corporate authornym in that it was shared by many writers over time, each aspiring to a typical "feminine" style.

137 *See, e.g.*, Gucci Am., Inc. v. Daffy's, Inc., 354 F.3d 228, 234–35 (3d Cir. 2003).

138 The most well-known of these cases is probably *Boston Professional Hockey Ass'n v. Dallas Cap & Emblem Manufacturing*, 510 F.2d 1004, 1008 (5th Cir. 1975).

the use of a mark is deemed confusing not because it causes consumers to purchase a product they didn't intend to buy, but because it causes web page viewers to associate a particular viewpoint with the trademark holder.[139] In these types of cases, trademark infringement occurs (say the courts) not because the defendant is selling goods misbranded with the plaintiff's trademark, but because the defendant is misattributing a concept (the quality of the post-sale good, the authorization to sell the logo-emblazoned T-shirt, the content of the website) to the plaintiff via use of the plaintiff's mark. Under this theory, the trademark serves not as indication of source of goods so much as it does an indication of sponsorship or authorization.

The authornym serves this function as well. The use of an author's name to brand a particular piece of writing—or, conversely, the attribution of a particular piece of writing to a particular author's name—is a mark of authorization. To say that "John Grisham is the author of this work" is not only to say, "This work emanates from the same source as the last John Grisham work," but is also to say, "This is an authorized John Grisham work." The former statement allows consumers in the economic marketplace to find desired goods more easily; the latter statement allows consumers in the marketplace of ideas to build coherent interpretive structures. This reduction of interpretive costs is what allows "Carolyn Heilbrun" to write simultaneously and yet separately from "Amanda Cross," and why both readers and the law permit her to do so.

Here, again, the literary theorists presage this development. It was Barthes, as I described earlier, who formalized the concept of the "death of the author," under which the author has no claim to primacy in the interpretation of the work but rather must contend with the interpretation each reader brings. The "death of the author" describes not only the state of authorship under U.S. copyright law, where the individual or entity deemed the "author" need not be the creative source of the text, but also the state of authorship under U.S. trademark law, where the anonymous source doctrine pushes the author/producer to the background and focuses attention on the authornym/brand. For example, as the Seventh Circuit famously noted in 1904, the trademark "Baker" used in connection with chocolate products could be maintained even though the court could "safely take it for granted that not one in a thousand knowing of or desiring to purchase 'Baker's Cocoa' or 'Baker's Chocolate' know of

139 *See, e.g.*, People for the Ethical Treatment of Animals v. Doughney, 263 F.3d 359, 362 (4th Cir. 2001).

Walter Baker & Co., Limited."[140] The anonymous source is *l'auteur mort.*

But the death of the author does not require the death of the authornym. As discussed earlier, Michel Foucault, in *What Is an Author?*,[141] picked up where Barthes left off in describing how an author's name "performs a certain role with regard to narrative discourse, assuring a classificatory function" that "permits one to group together a certain number of texts, define them, differentiate them from and contrast them to others"[142]—the very work of trademarks.[143] To Foucault, an authornym's meaning comes not from bi-

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140 Walter Baker & Co. v. Slack, 130 F. 514, 518 (7th Cir. 1904); *see also* Fleischmann Distilling Corp. v. Maier Brewing Co., 314 F.2d 149, 155 (9th Cir. 1963).

> Of course there may not be one in a hundred buyers of this whisky who knows that it is made by Buchanan or wholesaled by Fleischmann. Probably all that such buyers know is that Black & White Scotch whisky has satisfied them in the past or that they have heard of it. . . . It is not material whether he would think that the makers of the Scotch whisky were actually brewing and bottling this beer, or whether it was being produced under their supervision or pursuant to some other arrangement with them. He would probably not concern himself about any such detail.

Id.; 1 McCarthy, *supra* note 132, §§ 3:7, 3:9; Frank I. Schechter, *The Rational Basis of Trademark Protection*, 40 Harv. L. Rev. 813, 814–15 (1927).

141 Foucault, *supra* note 23, at 141–60.

142 *Id.* at 147; *see also* Chartier, *supra* note 20, at 10; Hazlitt, *supra* note 95, at 351 (describing the "practically indispensable advantage of the signature" as allowing readers "to view any artist's work as a unit"); *cf.* Foster, *supra* note 91, at 375 (describing skeptically how through "well-worn" "Foucauldian goggles" the "literary landscape from smallest shrub to mightiest oak looks more or less the same" and "[t]he particular name by which each plant is called hardly matters—except, of course, as a signifier of relative market value").

143 Robert Griffin makes this point more fully:

> [T]he relation of filiation between texts obtains even when the author is a fiction. More than that, filiation exists even when the author remains unknown, as in the example of texts that are signed "by the author of." . . . The phrase "by the author of," it should be noted, refers us not so much to a situated person as to a previous performance and acts as a kind of advertisement. . . . In these cases, a relation is established between two texts according to their authorship and yet the author remains nameless. In fact, a book can have several of the characteristics of the author-function as Foucault defines it—status, copyright, relation to other books by the same author, and so on—and yet not have a named author. This is because the author-function describes precisely a function that may be fulfilled by a name but does not require one. It is first of all an empty function, a structural blank space, which may be signed or unsigned depending on the circumstances. And when signed, of course, the name may just as easily be a pseudonym. . . . The author's name is another artifact, at a distance from the empirical writer, a signifier within the semiotics of the text that can be manipulated strategi-

ography but from the reader, who brings to the text certain cultural assumptions and a reader's history, but does not bring, except in the very rarest of circumstances, knowledge of the author that derives from anything other than a textual relationship.[144] Although Foucault's essay focused on what he termed the "author function," it might alternatively have focused on what one commentator has called the "attribution function"[145] (or, here, an "authornym"). If Barthes called for the disappearance of the author, Foucault restores a limited "author function" that—while not promoting a biographical or intentional approach to interpretation—acknowledges the legal and interpretive utility that authors' names serve.[146] This is not a system in which meaning cannot accumulate (indeed, it accumulates in the authornym itself, the main value of which is as a repository for meaning), but is one in which authorial biography rests in no position of preeminence. Like a trademark, an authornym need only describe a particular, and singular, claim to authorship—whether individual or corporate. So long as the fan of Grisham's novels can identify those novels branded with Grisham's authornym and distinguish them from others, he need not know any details of Grisham's "true" identity—indeed, "John Grisham" can be female or a nonlawyer or a collective

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> cally. . . . Signing one's legal name is not an automatic choice, but part of a strategy for associating only certain pieces with a projected persona.

Griffin, *supra* note 93, at 9–10; *see also* DURING, *supra* note 13, at 123 ("[For Foucault,] the concept 'author' is a means of grouping and valuing writing: 'Homer' or 'Hippocrates' are authors despite doubts as to their actual existence."); Griffin, *supra* note 23, at 882 (describing how an author's name "operates in discourse independently of its possible reference to an empirical person").

144 *See, e.g.*, Lanser, *supra* note 65, at 83–84, 97 (noting that authorship is "inferred continuously and mostly subliminally as a reader processes a text"). Lanser refers to both the Danny Santiago and the Forrest Carter episodes, discussed *supra* notes 70–73 and accompanying text, as examples of "the potential gap between real and implied authorship" that exploits the reader's expectation of authorship derived from the text. Lanser, *supra* note 65, at 84.

145 Foster, *supra* note 91, at 377 (calling "the attribution function" the "practice of assigning a name, initials, or pseudonym to a circulated text").

146 *See, e.g.*, Pease, *supra* note 16, at 113.

> [In Foucault's view,] [c]ritical language (its vocabulary of accusation, defense, judgment) depends on the legal system (and the cultural systems affiliated with it) for its warrant. . . . The name of the author turns discourse into legal property, and the notion of legal property in turn supports and is supported by related discourses concerning entitlements, liberties, duties, rights, constraints, impediments, obligations, and punishment. . . . [T]he name of the author turns otherwise unrelated discursive practices into a coherent cultural realm over which it maintains jurisdiction.

Id.

authorial endeavor so long as the authornym allows the reader/consumer to locate both the work and his responses to it.

Trademark law reinforces this view not only by pushing the true identity of the source to the background in favor of the trademark, but also by largely devaluing the source's intent as a guide to trademark meaning. While it is certainly true that a producer intends to convey a certain meaning when it selects a trademark for a particular good or service, the producer cannot prevail in a challenge to a mark's status simply by claiming primacy for its intended meaning. Courts do not, for example, inquire as to the company's motivation in selecting a particular trademark or give probative weight to testimony on what the creator intended to convey by the choice of one word over another.[147] Rather, courts act as readers, deriving an interpretation that makes the best sense to them and then imposing that interpretation on the text of the trademark.

In short, a trademark has no meaning on its own. Whatever meaning it does have takes its cues not from authorial intent or biography but rather from the context in which it sits and the interpretation of that mark in context by consumers.[148] The meaning of any trademark depends not on the intent of its creator—although the creator may attempt to guide meaning through investment, both creative

147 *See, e.g.*, Co-Rect Prods., Inc. v. Marvy! Adver. Photography, Inc., 780 F.2d 1324, 1332 (8th Cir. 1985) ("[D]esires or intentions of the creator . . . are irrelevant. Instead, it is the attitude of the consumer that is important."); Seabrook Foods, Inc. v. Bar-Well Foods Ltd., 568 F.2d 1342, 1345 (C.C.P.A. 1977) ("[R]egardless of [the mark owner's] intentions, it is the association, by the *consumer*, of the . . . design with [the mark owner] as the source that is determinative."); Plastilite Corp. v. Kassnar Imps., 508 F.2d 824, 827 (C.C.P.A. 1975) (holding that in determining distinctiveness, "it is the association of the mark with a particular source by the ultimate consumers which is to be measured—not [the applicant's] intent" in adopting the mark). The likelihood-of-confusion test operates in a similar fashion when courts turn to such evidence as consumer surveys, which merely represent the collective "readers'" interpretation of the mark, rather than to any authorial view of the mark's meaning. *Cf.* Steven Wilf, *Who Authors Trademarks?*, 17 CARDOZO ARTS & ENT. L.J. 1, 10 (1999) ("[T]he public forms an interpretive community whose reading of trademark symbolism casts it in the role of creating authorial-like meanings about the mark itself.").

148 COOMBE, *supra* note 53, at 8; *cf.* Barton Beebe, *Search and Persuasion in Trademark Law*, 103 MICH. L. REV. (forthcoming Aug. 2005) ("Trademarks exist only to the extent that consumers perceive them as designations of source. Infringement occurs only to the extent that consumers perceive one trademark as referring to the source of another. The most 'intellectual' of the intellectual properties, trademarks are a property purely of consumers' minds."); Foster, *supra* note 91, at 394 ("Though modern writers in a free society . . . can choose how and indeed whether to attribute their own work, it remains the critic's prerogative, not the author's, to determine the meaning of an attribution.").

and financial, in the mark—but on the collective "multiple writings, drawn from many cultures" that Barthes describes as central to literary interpretation.

I do not intend by this to dismiss out of hand the response that there are reasons we might want to limit the reach of the "anonymous source" theory in literary interpretation—that it is, in fact, important to know the source of a piece of written work in order to evaluate its true merit.[149] This may be particularly true when the chosen authornym suggests a racial, gendered, or ethnic claim to the text.[150] We may not much care if, for example, the mystery author "Amanda Cross" turns out to be a professor at Columbia University, but we do care when the young Latino author "Danny Santiago" is revealed to be a white man in his seventies or when Native American author "Forrest Carter" turns out to be a white supremacist because the value of these texts seems to depend in great measure on their "authenticity."[151]

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149 *See, e.g.*, Foster, *supra* note 91, at 376 ("[O]ne cannot safely construct a reading of the elegy without a coherent, relatively stable, and widely shared notion of the 'W.S.' whose 'I' is referenced on the title-page and dedication, as well as in the first-person text." (describing the contested authorship of "W.S."'s February 1612 *Funerall Elegye*)); *id.* at 382 (describing the outrage of early-eighteenth-century subscribers to Alexander Pope's translation of Homer's *Odyssey* when they discovered that two previously unnamed individuals had collaborated with Pope); Mark A. Lemley, *Rights of Attribution and Integrity in Online Communications*, 1995 J. ONLINE L. art. 2, par. 30, *at* http://www.wm.edu/law/publications/jol/95_96/lemley.html.

> The implications of online impersonation are quite troubling. In a context where communication is still largely verbal, readers have very few cues to the identity or intention of the author of the message except what the author actually posts. If authorial claims of identity are readily hackable and thus untrustworthy, all the social and legal rules that depend on identity—liability for defamation or copyright infringement, the effectiveness of flaming or other forms of social sanctions, etc.—are thrown into doubt.

Id.

150 BROWDER, *supra* note 66, at 3 (noting that the ethnic autobiography "[has] traditionally been written and read as a means of helping frame the complex cultural relationships of a multiethnic society").

151 *See, e.g.*, Foster, *supra* note 91, at 384–85 (suggesting that whether the author of a feminist text is a woman or "a male polemicist who's having a hoot passing himself off as a discontented woman" does indeed "affect the meaning and valuation of the text"); *id.* at 391–92 (suggesting by adopting the pseudonym "Ka-Tzetnik" in writing his Holocaust memoir, the writer Yehiel Feiner "tainted his work with the stigma of fictionalization"); *id.* at 394 (contending that, particularly when the text is part of a racial discourse, knowing when a text is "an exercise in literary artifice" is important). For his part, Daniel James, the alter ego of "Danny Santiago," offered the following response when asked if he thought he had participated in a hoax: "He shrugged and said the book itself was the only answer. If the book were good, it was good under whatever identity the author chose to use . . . ." Dunne, *supra* note 73, at 27. Gilbert

The same is true with trademarks: A consumer may wish to know that the same corporation that makes Kraft macaroni and cheese also makes Marlboro cigarettes in order to make a decision about where her food budget is spent. Thus, the argument goes, there is a significant cost to this kind of experimentation in that it leads readers to assume a greater degree of distrust in identity and reliability than is socially beneficial in community discourse.[152]

Postmodernists would suggest that this concern is inappropriate—that the writing or the product should rise or fall on its own merits, regardless of the intentions, motivations, or characteristics of its source. And there is a risk that in unmasking an authornym, we prevent ourselves from making these sorts of unbiased judgments—precisely the reason why many creators adopt an authornym in the first place.[153] The fact that a newly discovered text thought to be authored by Shakespeare would be regarded differently if its authorial lineage could be confirmed does not undermine a postmodern view of interpretation; rather, the revelation's value is in the ability to add this text to the others attributed to the Shakespearean authornym and evaluate

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Larochelle provides a stark literary example along these same lines: "For example, had *Mein Kampf* been written by Mother Teresa, rather than Adolf Hitler, the reading of the work would change radically, indeed it would command a closer look at the historical data that could help clarify its meaning." Gilbert Larochelle, *From Kant to Foucault: What Remains of the Author in Postmodernism*, *in* PERSPECTIVES ON PLAGIARISM AND INTELLECTUAL PROPERTY IN A POSTMODERN WORLD, *supra* note 18, at 121, 129.

152 *See* Levmore, *supra* note 64, at 2208–09.

> The author's defense [to the use of pseudonymity] is that a reader's biases are exposed by the deception, but inasmuch as that is true of many successful deceptions it seems fair to conclude that the cost of deception, in terms of reducing the signal of (all) authorship, is perceived to exceed the gain from testing the value of these signals with false signals.

Id.

153 *See, e.g.*, LESSING, *supra* note 94, at vii (stating that she did not want readers' judgment of the work to be tainted with judgments derived from reading of works of "Doris Lessing"); Cromartie, *supra* note 94 (reporting an interview with Joe Klein, author of *Primary Colors*).

> "But [the anonymity] was necessary. People who have reviewed the book have since said to me, 'If I had known it was you, I never could have reviewed it that way.' I wanted the book to have a clean read, to be judged on its own merits without any baggage."

Id. (quoting Klein); Tien, *supra* note 58, at 145.

> [T]he very utility of reputation as a proxy for judgment also carries costs for speech in the form of bias. If we know that a statement comes from an esteemed scholar, we may overvalue it for that reason and suspend our critical faculties. Conversely, if we know the statement is by a person we don't like, we may ignore it despite its value.

Id.

it against other such texts.[154] Finally, given the common experience of ghostwriters and other corporate writing endeavors, and licensing and outsourced production, it's unclear what value the "identity" of the creator contributes to interpretation or evaluation in any event. Does it help, for example, to know the "true" identity of a pseudonymous writer if he is not actually the person responsible for putting pen to paper, or the identity of a corporate trademark owner whose products are made by an overseas assembly line managed by a foreign corporation?[155]

But none of this should obscure the fact that the anonymous source doctrine simply says we need not know the identity of the "source," not that we are barred from endeavoring to discover it. "John Grisham" is a brand whether or not we know his biography, and we could ultimately assign that same biography to "John Smith" instead. In fact, for readers/consumers who care about source, preservation of authors' branding choices reinforces this consumer preference. The fact that the initial choice of authornym—like all brands—may not be particularly illuminating should be of no moment. Indeed, as noted earlier, consumers of cultural commodities in the modern era are familiar with the indeterminacy of authorship. They are conversant in the taxonomy of pen names and stage names; they know the President hasn't written every word of his speeches; they understand how it is possible that "Abigail Van Buren" still pens "Dear Abby" long after Pauline Phillips has put down her pen.[156] In the same way that books like *Famous All Over Town* "teach[ ] us [the]

154 Although I suspect he derives a different conclusion, Seán Burke states likewise when he writes:

> The discovery of a text like Freud's "Project for a Scientific Psychology" will modify psychoanalysis if and only if it is a text by Freud. Over and above the text's contents, the fact of attribution—in and of itself—is the primary factor in establishing its significance for the psychoanalytic field.

BURKE, *supra* note 36, at 93; *see also* Foucault, *supra* note 23, at 157 n.3. Contrary to Burke's implication, there is no disjuncture between according a newly discovered text significance because it can authoritatively be attributed to Freud and maintaining that—as with the works already reposited in the Freudian canon—the addition of this new work does not provide newly discovered justification for retreating to authorial intention in interpretation; it merely reconfirms that texts are interpreted against other texts.

155 Judge Posner raises the same point with respect to judges and their law clerks: "For judges active in the modern era of ghostwriting by law clerks, an attempt must be made to separate the judge's work from that of his ghosts; the polite fiction that all judges are the authors of all their opinions must be dropped, certainly for purposes of scholarly analysis." POSNER, *supra* note 40, at 377.

156 *See* Wilson, *supra* note 102.

futility" of reading ethnic autobiography "to find out the definitive truth of a group's experience,"[157] the Internet has rendered readers more distrustful of claims to authorship—perhaps even in an interpretatively beneficial way—in that it has not only conditioned readers to accept screen names and the like as statements of authorship but also typically provided avenues (i.e., hyperlinks) through which the claims being made can be evaluated.[158]

Those who would still claim that this kind of brand/identity creation is inherently fraudulent need only look to the Supreme Court's decision in *McIntyre v. Ohio Elections Commission*.[159] Although the decision ultimately stands for the First Amendment right against compelled self-identification—the right, in certain circumstances, to speak anonymously—the case is at its core an authornymity case rather than an anonymity case, standing not simply for the right to refrain from any statement of authorship at all but, more important, for the right to prefer one statement of authorship over another.

The case involved Margaret McIntyre, who distributed leaflets opposing a proposed school tax levy in the town of Westerville, Ohio. Some of her leaflets identified her as the author; others carried the pseudonym "Concerned Parents and Tax Payers."[160] The Assistant Superintendent of Elementary Education in the school district saw Mrs. McIntyre distributing her leaflets, and five months after the levy's passage, he filed a complaint and affidavit with the Ohio Elections Commission, alleging that Mrs. McIntyre had violated an Ohio state statute prohibiting any person from, among other things, writing or distributing "any . . . form of general publication" that was designed to "promote the adoption or defeat of any issue, or to influence the voters in any election" unless the name and address of the author were listed on the publication.[161] The Court ultimately found such a ban to be unconstitutional.

The Court's justification for so concluding was more literary than instrumental. After tracing the pseudonymous history of the authors of the *Federalist Papers*, Mark Twain, and O. Henry, the Court concluded that, rather than occupying a special interpretive position, the identity of the author is "no different from other components of the

157 BROWDER, *supra* note 66, at 269.

158 Donald Foster further suggests that the anonymous writing standard on the Internet tends to devalue the need for "writer-recognition" and heighten the value in "eyeballs engaged." Foster, *supra* note 91, at 385.

159 514 U.S. 334 (1995).

160 *Id.* at 337.

161 *Id.* at 338 & n.3 (quoting OHIO REV. CODE ANN. § 3599.09(A) (Anderson 1988)).

document's content that the author is free to include or exclude."[162] The Court was unconcerned with the author's motivation for choosing pseudonymity—although it could conceive of a number of reasons for so doing—noting that whatever the author's motivation, "at least in the field of literary endeavor, the interest in having anonymous works enter the marketplace of ideas unquestionably outweighs any public interest in requiring disclosure as a condition of entry."[163]

As the Court acknowledged, the content of a pseudonymously authored publication could violate the law—by, for example, including libelous material or fraudulently misleading the public. It was for this reason that Ohio had argued that author identification was necessary to enable readers to evaluate the worth of the statement being made.[164] One might therefore argue, as Justice Scalia suggested in dissent, that a disclosure requirement would aid in identification of the alleged malfeasants so that appropriate corrective measures could be enforced.[165] But the majority seemed unconcerned by this prosecution problem, noting that "the absence of the author's name on a

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162 *Id.* at 348; *see also id.* at 342 ("Accordingly, an author's decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the First Amendment.").

163 *Id.* at 342. While the Court confined this sweeping statement to "the field of literary endeavor," it thereafter noted that the "freedom to publish anonymously extends beyond the literary realm" and that both types of authors could be motivated by the desire to disassociate any bias attributable to their true identity. *See id.* ("Anonymity thereby provides a way for a writer who may be personally unpopular to ensure that readers will not prejudge her message simply because they do not like its proponent.").

Justice Scalia, in dissent, took issue with the majority's implicit assertion that greater truth would result where a publication was required to stand or fall on its content alone.

> I am sure, however, that (1) a person who is required to put his name to a document is much less likely to lie than one who can lie anonymously, and (2) the distributor of a leaflet which is unlawful because it is anonymous runs much more risk of immediate detection and punishment than the distributor of a leaflet which is unlawful because it is false. Thus, people will be more likely to observe a signing requirement than a naked "no falsity" requirement; and, having observed that requirement, will then be significantly less likely to lie in what they have signed.

Id. at 382 (Scalia, J., dissenting).

164 *Id.* at 343–44.

165 *Id.* at 385 (Scalia, J., dissenting) ("[Anonymity] facilitates wrong by eliminating accountability, which is ordinarily the very purpose of the anonymity."). Justice Clark took a similar view in *Talley v. California*, 362 U.S. 60, 71 (1960) (Clark, J., dissenting) ("All that Los Angeles requires is that one who exercises his right of free speech through writing or distributing handbills identify himself just as does one who speaks

document does not necessarily protect either that person or a distributor of a forbidden document from being held responsible for compliance with the Election Code"[166]—suggesting, in essence, that the "identification" of an author on a particular piece of writing is simply text, no more true than not true as to the identity of the true "author."

Granted, the *McIntyre* Court's indifference to authorial identity cannot be taken at pure face value. If, as the *McIntyre* Court says, one's identity truly is "no different from other components of the document's content that the author is free to include or exclude," it would be difficult to imagine many circumstances in which the government, via subpoena or otherwise, could compel disclosure of identity, for the First Amendment "is deeply hostile to content-based regulation."[167] Similarly, it seems difficult to reconcile the *McIntyre* Court's broad approval of authornymous speech with its conciliatory approach, in other cases, to governmental regulation of false speech,[168] which the statement "Concerned Parents and Tax Payers" technically is.

And yet we can take from the case the choice that the Court's decision preserved, even elevated to constitutional status: a choice, not about an omission of authorship, but about a particular statement

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from the platform. The ordinance makes for the responsibility in writing that is present in public utterance.").

166 *McIntyre*, 514 U.S. at 352; *see also id.* at 352–53 ("Nor has the State explained why it can more easily enforce the direct bans on disseminating false documents against anonymous authors and distributors than against wrongdoers who might use false names and addresses in an attempt to avoid detection."); *id.* at 348–49 ("Moreover, in the case of a handbill written by a private citizen who is not known to the recipient, the name and address of the author add little, if anything, to the reader's ability to evaluate the document's message."); Tr. of Oral Argument, *McIntyre* (No. 93-986), *available at* 1994 WL 665265, at *38–39.

> Well, your argument, basically I guess you make two arguments. One is that you will either deter fraud, or you'll make it easier to detect and prosecute fraud, and you will allow voters to evaluate what is said on the kind of the theory of, from whence it comes. What do you say about the argument that somebody who really wants to thwart those interests is simply not only going to lie once but lie twice, and put down the wrong name and address?

Id.

167 Post, *supra* note 74, at 663 n.314. The impact of the Court's decision in *McConnell v. Federal Election Commission*, 540 U.S. 93 (2003), on *McIntyre*—at least with respect to election-related speech—remains to be seen.

168 *Cf.* People v. Duryea, 351 N.Y.S.2d 978, 988 (Sup. Ct. 1974) ("Calculated falsehood is never protected by the First Amendment." (citing Time, Inc. v. Hill, 385 U.S. 374, 389–90 (1967))); Post, *supra* note 74, at 663 n.314 ("The Constitution is not hostile to the regulation of false assertions of fact, although such regulation is manifestly content-based.").

of authorship different from the one we might otherwise demand were we concerned about the possibility of audience deception.[169] Thus, as the Court suggests in *McIntyre*, a statement of authorship is an attributional device rather than a conveyer of truth; the author may be given as "Mrs. McIntyre" or as "Concerned Parents and Tax Payers," variably, without changing the meaning of the text of the handbill. Thus, although the statement of pseudonymous authorship in this case can technically be seen as false speech—because no such group existed except in its pseudonymous role as author of the handbills—the Court's privileging of this statement as protected speech under the First Amendment recognizes a value in identity creation, in a particularly Barthesian sense.[170] What motivated Mrs. McIntyre to use an authornym for her handbills was not the fear of retribution but a deliberate construction of identity, a desire to have the viewpoints in her handbill attributable to an identity other than her "true" identity. (Perhaps she hoped to take advantage of what she believed to be a reader's tendency to give greater weight to corporate authorship, even if unknown ("Concerned Parents and Tax Payers"), as opposed to authorship by a little-known individual.)[171] So too with more literary

169 *See* Kreimer, *supra* note 58, at 78 (discussing the school of thought that believes that "[a]nonymity allows a speaker to pretend to be something that she is not, and to convince her interlocutor under false pretenses").

170 To my mind, Justice Holmes's oft-cited theory on the "marketplace of ideas" is a paradigmatic example of judicial Barthesian theory. *See* Abrams v. United States, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting) ("[T]he best test of truth is the power of the thought to get itself accepted in the competition of the market . . . ."); *see also Duryea*, 351 N.Y.S.2d at 996.

> Don't underestimate the common man. People are intelligent enough to evaluate the source of an anonymous writing. They can see it is anonymous. They know it is anonymous. They can evaluate its anonymity along with its message, as long as they are permitted, as they must be, to read that message. And then, once they have done so, it is for them to decide what is "responsible," what is valuable, and what is truth.

Id.; Kreimer, *supra* note 58, at 69–70.

> [E]xposure as the author of an action or statement links that action to our identity; the broader the exposure, the more indissoluble the link and the harder it is to disavow it. Forcing citizens to publicly link themselves to identities they are constitutionally entitled to eschew is a violation of the constitutionally protected autonomy—their right to define themselves.

Id.; ACLU v. Miller, 997 F. Supp. 1228, 1230–32 (N.D. Ga. 1997) (preliminarily enjoining enforcement of a law criminalizing the knowing transmission of data though a computer network "if such data uses any individual name . . . to falsely identify the person"). For a recent contrary view, see *Majors v. Abell*, 361 F.3d 349, 352 (7th Cir. 2004); *cf. id.* at 357–58 (Easterbrook, J., *dubitante*).

171 On the similar *Talley v. California* case, 362 U.S. 60 (1960), see Post, *supra* note 74, at 640 n.213.

writers: History doesn't suggest that Samuel Langhorne Clemens, for example, chose "Mark Twain" to avoid retribution or that the authors of the *Federalist Papers* intended that readers would never discover their true identities. So if the author who writes under cover of pseudonymity is not typically concerned with preserving true anonymity, then the pseudonym must be doing different work from that which the literature typically describes. I contend here that the choice is motivated not from fear but from a desire to create a brand identity, one that does not rely on biography for meaning but relies instead on reader (or consumer) interpretation.

Barthes describes the reader as the vessel for all these meanings—"that *someone* who holds together in a single field all the traces by which the written text is constituted."[172] The same holds true in trademark law, which focuses on the potentially confused consumer who must similarly hold together the various cultural and commercial meanings associated with a particular trademark; who must, for example, be able to hold separate Continental Airlines and Continental Bank (without any semantic assistance from the marks themselves) and hold together Nike running shoes and Nike apparel.[173] Yet in

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> The breadth of *Talley*'s holding is therefore better justified by . . . the same principle that causes prestigious scientific journals to circulate proposed articles anonymously for peer review. The hope is that by withholding the identity of the manuscript's author, journals will obtain an impartial evaluation of the contents of the article, rather than a reflection of the status of its author.

Id. Post's justification does not fully describe the import of these cases because neither Mrs. McIntyre nor Mr. Talley circulated the writing at issue anonymously. Thus, rather than endeavoring to eliminate any construction of authorship, both individuals deliberately endeavored to create a new one. *See* ACLU v. Heller, 378 F.3d 979, 994 (9th Cir. 2004).

> [I]n many instances, requiring publishers to include the names of business or social organizations or legal entities responsible for publishing an election-related communication is unlikely to supply much useful information. As the Court noted in *McConnell* [*v. FEC*, 540 U.S. 93 (2003)], individuals and entities interested in funding election-related speech often join together in ad hoc organizations with creative but misleading names.

Id.; Yes for Life Political Action Comm. v. Webster, 74 F. Supp. 2d 37, 40 n.6 (D. Me. 1999) ("*McIntyre* would have reached the same conclusion protecting anonymity for Mrs. McIntyre even if the text of the handbills had actually been composed (authored) by, say, Mrs. McIntyre's teenaged son and then distributed by her as (authorized) statements.").

172 BARTHES, *supra* note 16, at 148.

173 Roland Barthes, in *The Death of the Author*, refers to Jean-Pierre Vernant's *Mythe et Tragédie en Grèce Ancienne* (1972) in a similar vein:

> [Vernant] has demonstrated the constitutively ambiguous nature of Greek tragedy, its texts being woven from words with double meanings that each

both fields the reader cannot efficiently serve as vessel without some sort of system with which to organize these "traces."[174] Fortunately, both fields supply a solution to this lacuna: In trademark law, it is the trademark itself that serves as the label; in literature, it is the authornym.

III. AUTHORNYMS AND TRADEMARK LAW

It is not enough simply to conclude that authornyms serve a trademark purpose; we must also consider the legal ramifications of that conclusion. If we have described a world in which the authornym serves two functions, that of organizing producer inputs (particular literary works) and that of organizing consumer inputs (goodwill), then we must then consider the legal mechanism through which the integrity of this bidirectional system can be preserved. The most useful model is, not surprisingly, federal unfair competition law, which has in place well-developed doctrines to address misattribution of source.

A. *Authornyms and Passing Off*

In the typical trademark case, the trademark holder claims that the defendant has used the plaintiff's trademark on goods not produced by the trademark holder—in other words, that the defendant has "passed off" goods made by the defendant as goods made by the plaintiff.[175] To take a usual example, the street vendor who sells handbags marked GUCCI is likely engaging in the type of trademark infringement known as "passing off."

> character understands unilaterally (this perpetual misunderstanding is exactly the "tragic"); there is, however, someone who understands each word in its duplicity and who, in addition, hears the very deafness of the characters speaking in front of him—this someone being precisely the reader (or here, the listener).

BARTHES, *supra* note 16, at 148.

174 *Cf., e.g.*, John T. Cross, *Giving Credit Where Credit Is Due: Revisiting the Doctrine of Reverse Passing Off in Trademark Law*, 72 WASH. L. REV. 709, 762 (1997) (contending that the name of the artist is not a useful tool when shopping for art because physical inspection is a better gauge of quality). This view, while somewhat Barthesian in nature, ignores that the value of creative endeavor is not judged in a vacuum but is most usefully judged in comparison to other works by the same artist.

175 This is true whether the plaintiff asserts claims under 15 U.S.C. § 1114 for a registered trademark or under 15 U.S.C. § 1125 for an unregistered trademark (what is usually called an unfair competition claim). I use "trademark" here as a convenient shorthand for both.

While passing off in the authorship context may occur relatively infrequently—a piece of writing branded with the name of a well-known author who was not in fact its source[176]—there is no reason to think that when this does happen an infringement-like action should not be available to the author. A publisher who brands a particular text with the name of an author who has not authorized that branding has probably done so precisely to gain consumers/readers who would not be attracted to the text absent the lure of the well-known author. Such claims can only succeed, however, if the courts are willing to separate out the two aspects of authorship—if, in other words, they can draw a distinction between the copyright aspect of authorship and the trademark aspect. The question of "who is the author?" arises in both contexts, but the answer to that question differs. In the copyright context, the answer tells us who is eligible to claim the bundle of rights afforded under copyright law: the right to copy, to distribute, to make derivative works, and so forth. In the trademark context, the answer tells us the name of the brand: the person or entity identified to the public as the author, regardless of whether that is the same answer to the copyright question.

But the courts have not always drawn this distinction because they tend to think of authorship as solely a creation of copyright law. They are assisted in this viewpoint by the litigation strategies of many plaintiffs ostensibly seeking protection under trademark law whose ultimate goal is to restrain publication of public domain works as opposed to merely obtaining attribution. In the "Mark Twain case" of 1883,[177] Samuel Clemens challenged Belford, Clark & Company's publication of a number of Clemens's works written as "Mark Twain" and in the public domain at the time of publication. In light of the works' public domain status, the court held that the publisher was free to publish the works in any form it chose, including by (accurately) stating the name of the author on the compilation.[178] Likewise, the court rejected Clemens's claim that "Mark Twain" served a function akin to a trademark and that the unauthorized publication of the works under that mark served to dilute the strength of the mark:

176 Relatively infrequently, but not never. *See, e.g.*, George Carlin, *Don't Blame Me, at* http:///www.georgecarlin.com/home/dontblame.html (last visited Feb. 12, 2005) (disavowing authorship of material attributed to "George Carlin" on the Internet); Barbara Mikkelson & David P. Mikkelson, Urban Legends Reference Pages, *Kurt Vonnegut, at* http://www.snopes.com/quotes/Vonnegut.htm (last visited Feb. 12, 2005) (concluding that Kurt Vonnegut was not the author of a commencement speech widely attributed to him).

177 Clemens v. Belford, Clark & Co., 14 F. 728 (C.C.N.D. Ill. 1883).

178 *Id.* at 732.

> [A]n author cannot, by the adoption of a *nom de plume*, be allowed to defeat the well-settled rules of the common law in force in this country, that the "publication of a literary work without copyright is a dedication to the public, after which any one may republish it." No pseudonym, however ingenious, novel, or quaint, can give an author any more rights than he would have under his own name.[179]

As a matter of trademark law, the court would seem to have been only half right: There is no reason why "Mark Twain" should not be considered as serving a trademark function, but it is difficult to conclude how the publication of works truthfully branded with that mark would cause harm to the reading public.[180] If authornyms are essentially trademarks, then there is no reason why these facts shouldn't give rise to a cause of action for infringement.[181] The harder (and probably more frequent) case is one in which a writer's chosen authornym has been discarded by a subsequent writer incorporating his work, and for this we look to the doctrine of "reverse passing off" as found in section 43(a) of the Lanham Act.

B. *Authornyms and Reverse Passing Off*

A thorough review of the case law in this area both is beyond the scope of this Article and has been ably accomplished by others;[182] hence, only a brief overview is in order. "Reverse passing off" is the

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179 *Id.*

180 *See* Kohler Co. v. Moen Inc., 12 F.3d 632, 639 n.9 (7th Cir. 1993).

> The [*Clemens*] court did not rule out trademark protection to the author's use of his pen name. Rather, the court simply held that because Twain had not obtained a copyright in his works, his writings had been dedicated to the public and anyone could publish them if they properly identified the writings as Twain's. Twain's trademark infringement claim was a loser because he did not (and could not) allege that the defendants had falsely identified the origin of the published works. There was minimal risk that the public would be confused as to the source because the defendants clearly identified Mark Twain as the author; Twain simply resented that the publisher would profit due to his failure to obtain copyright protection.

Id.

181 Examples of plaintiffs bringing such claims unsuccessfully (i.e., where the court found no likelihood of confusion) include *Chamberlain v. Columbia Pictures Corp.*, 186 F.2d 923, 923–24 (9th Cir. 1951) (ruling against a challenge by heirs of Samuel Clemens to a description of a movie based on a public domain story described, inter alia, as "Mark Twain's Favorite Story"), and *Geisel v. Poynter Products, Inc.*, 295 F. Supp. 331, 333 (S.D.N.Y. 1968) (ruling against a challenge to production of dolls described as "based on" Dr. Seuss cartoons).

182 *See, e.g.*, William M. Borchard, *Reverse Passing Off—Commercial Robbery or Permissible Competition?*, 67 TRADEMARK REP. 1 (1977); Cross, *supra* note 174; Lori H. Freedman, *Reverse Passing Off: A Great Deal of Confusion*, 83 TRADEMARK REP. 305 (1993);

term given when a seller removes the original trademark on a good or service and substitutes its own; as contrasted with "passing off," in which the seller represents that its goods are those of another, the "reverse passing off" seller is representing that another's goods or services are in fact his own.[183]

Reverse passing off is typically further divided into two types of claims: express passing off, in which the defendant removes the trademark on another party's good and sells the good under the defendant's own trademark, and implied passing off, in which the defendant removes the trademark on another party's good and sells the good without any brand at all.[184] Although in the typical reverse passing off case, the plaintiff cannot claim lost sales because consumers are not being led to the defendant's good by the use of the plaintiff's mark (as contrasted with a forward passing off case), the plaintiff usually articulates the harm suffered as a loss of goodwill—that the plaintiff is being deprived of the social capital its product or service would otherwise have engendered but for the defendant's misattribution.[185]

In the field of literary endeavor, this loss of goodwill constitutes the lion's share of the harm. While one commentator has argued that as to reverse passing off claims generally a defendant selling a good

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Roberta Rosenthal Kwall, *The Attribution Right in the United States: Caught in the Crossfire Between Copyright and Section 43(a)*, 77 WASH. L. REV. 985 (2002).

183 *See* Cleary v. News Corp., 30 F.3d 1255, 1261–62 (9th Cir. 1994) (declining to find a reverse passing off claim where subsequent work did not constitute a "bodily appropriation" of earlier work); Lamothe v. Atl. Recording Corp., 847 F.2d 1403, 1407–08 (9th Cir. 1988) (finding a reverse passing off claim where the defendant attributed authorship to fewer than all joint authors of a musical composition); Smith v. Montoro, 648 F.2d 602, 605–07 (9th Cir. 1981) (finding the same as to a claim brought by an actor whose work in a film was attributed to another actor); Borchard, *supra* note 182, at 1–2; Freedman, *supra* note 182, at 305. One commentator has cited *Smith v. Montoro* as an "instrumental [factor] in giving life to the cause of action." Cross, *supra* note 174, at 716–17.

184 2 MCCARTHY, *supra* note 132, §§ 25:6, 25:8.

185 *See* Borchard, *supra* note 182, at 18; Cross, *supra* note 174, at 757; Freedman, *supra* note 182, at 321 (describing the harm to the producer as the loss of a head start in the market). Cross argues that this argument "proves too much" because the defendant, who is "engaged in competition with the plaintiff," has not "lied to or coerced customers," but has "merely failed to provide one item of information that customers might find useful." Cross, *supra* note 174, at 757–58. It is difficult to see, however, how a statement of authorship that is untrue is not a form of deception of the relevant reader/consumer base. For a discussion of this point in the Internet context, see Scoville, *supra* note 107 (discussing the possibility of online identity theft as an unfair competition claim). Note, again, that an authornym is not false because it is pseudonymous; it is false only if it represents an act of misbranding.

under its own name is making a false statement "only if consumers perceive it as a representation concerning the actual origin of the product,"[186] it is almost certain that a writer falsely offering a particular piece of writing as his own is likely to be viewed as the author of the piece or, as this commentator continues, "the party most responsible for the ultimate quality of that product."[187]

As in any trademark case, the touchstone of a reverse passing off claim should be whether there is a likelihood of consumer confusion from the misattribution or failure to attribute at issue.[188] But courts considering section 43(a)-type claims as applied to literary works (pre-*Dastar*) have tended to stray from this traditional test of consumer confusion, instead presuming it from the similarity of the works and thus inappropriately muddling trademark and copyright law.[189] The two leading standards to determine whether a failure to credit constituted a false designation of origin under section 43(a) of the Lanham Act emerged from the Second and Ninth Circuits, and both were derived from copyright law principles. The Second Circuit's standard turned on whether the defendant's work was "substantially similar" to the plaintiff's work such that failure to credit the plaintiff constituted a section 43(a) violation.[190] The Ninth Circuit, by contrast, took the view that it was not enough for the misattributed material to be "substantially similar" to the original work; rather, its requirement was that there must be "bodily appropriation."[191] In both cases, however, the touchstone was how much of the work had been copied, not the effect of the misattribution on the reader/consumer. One could conceive, for example, of an argument that wholesale appropriation of William

186 Cross, *supra* note 174, at 753.

187 *Id.* at 754.

188 *Id.* at 722 ("That [consumer] deception cannot exist if customers, knowing all of the facts, would still consider defendant the origin. Therefore, a court must determine origin from the perspective of the customer, not the scientist or engineer."). *But see, e.g.*, Freedman, *supra* note 182, at 312–13, 325–26 (contending that consumer confusion in the reverse passing off situation does not lead to consumer harm because the consumer is not being led to purchase the product at issue based on the use of the plaintiff's mark).

189 I refer here to a "section 43(a)-type claim" because the goal of this Article is merely to suggest that such a claim should be available in the authornym context, as it is for other branding efforts, not to explore every doctrinal issue associated with such a claim.

190 *See, e.g.*, Waldman Publ'g Corp. v. Landoll, Inc., 43 F.3d 775, 783 (2d Cir. 1994). *Waldman* involved two works based on stories in the public domain but, the court found, "[t]he similarities between the books extend beyond the underlying story which is in the public domain." *Id.*

191 *See, e.g.*, Cleary v. News Corp., 30 F.3d 1255, 1261 (9th Cir. 1994).

Shakespeare's *Hamlet*, published under another brand, would not, in fact, cause confusion because the work is so well known that the misbranding would be all but disregarded (i.e., the reader would be in on the joke).

And yet the near unanimity among the lower courts prior to *Dastar* belied a critical flaw in the analysis: a failure to fully recognize that an action for reverse passing off (i.e., trademark infringement) in the creative context is wholly separate from an action for copyright infringement. The author alleging that his work has been published under the moniker of another is not, in that claim, attempting to control the reproduction or distribution of the work qua work; he is, however, challenging the consumer (here, reader) confusion that is likely to result from the failure to credit him as the original author (in other words, the breakdown of the organizational scheme that lets readers associate certain works with a particular authornym).[192] This is where both the Second Circuit and the Ninth Circuit approaches inappropriately diverge from a traditional Lanham Act analysis.[193] While it may be the case that the similarity between the defendant's work and the plaintiff's work—whether "substantial similarity" or "bodily appropriation"—is a factor in determining whether the relevant readership is likely to be confused as to source, that conclusion cannot be reached without a complete analysis as would be done in any trademark case.

Dastar Corp. v. Twentieth Century Fox Film Corp.[194] is another example of this doctrinal conflation. As described in the Court's opinion,

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192 *See, e.g.*, Cross, *supra* note 174, at 724.

193 In the case often seen as the genesis for misappropriation claims, *International News Service v. Associated Press*, 248 U.S. 215 (1918), the Court made the same mistake, declining to modify a district court injunction that prohibited publication of the work at issue rather than, as Justice Holmes suggested in concurrence, recognizing that the more appropriate remedy would be "stating the truth; and a suitable acknowledgement of the source is all that the plaintiff can require." *Id.* at 248 (Holmes, J., concurring); *see also Waldman Publ'g Corp.*, 43 F.3d at 785 (holding that the remedy for a reverse passing off violation is an injunction against misrepresentation of authorship, not a limitation on the reproduction of the work); Richard A. Posner, *Misappropriation: A Dirge*, 40 HOUS. L. REV. 621, 628 (2003).

> Justice Holmes was on to something . . . [in *International News Service* because] . . . [i]f AP were properly credited, newspapers would be willing to incur costs to remain members of AP even if they could get INS copies of the news in AP's dispatches for nothing, because their readers would realize they were getting the news from the horse's mouth, as it were, rather than at one remove.

Id.; *id.* at 639 (suggesting that the reverse passing off claim in *International News Service* was "a viable theory of false advertising and one consistent with *Dastar*").

194 539 U.S. 23 (2003).

Twentieth Century Fox had, at one time, the exclusive rights for a television series based on a book by Dwight D. Eisenhower that told the story of the Allied campaign in Europe during World War II. The copyright on the television series that was eventually developed, which included government and pool footage, expired in 1977 when Fox failed to renew it, rendering the television series to the public domain. Dastar then purchased tapes of the television series, copied and edited the source material, added some minimum amount of new material, and sold the new package to the public as its own product, which competed in the market with a re-release of the original series by a licensee of Fox. At issue in the case before the Supreme Court was whether Fox could assert a reverse passing off claim against Dastar for selling its repackaged series without authorial credit to the Fox series.[195]

The case turned on section 43(a)(1)(A) of the Lanham Act, which prohibits the use in commerce of any mark, "false designation or origin, false or misleading description of fact, or false or misleading representation of fact" that is likely to cause confusion as to the "origin" of the goods or services at issue.[196] Fox's claim, in essence, was that in marketing its videotapes without acknowledging "its nearly wholesale reliance on the [Fox] television series," Dastar had misled the buying public as to the "origin" of its goods.[197] The Court concluded, however, that the phrase "origin of goods" referred only to "the producer of the tangible product sold in the marketplace"—here, the physical videotape sold by Dastar—and not "the person or entity that originated the ideas or communications that 'goods' embody or contain."[198] Accordingly, Dastar had not misled the consuming public because it correctly identified itself as the source of the videotapes it sold and, moreover, was not required to provide any credit to the source of the creative content those videotapes contained.[199]

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195 *Id.* at 25–27. Again, "passing off" occurs when a producer represents that his product has been made by someone else; "reverse passing off" occurs when a producer represents that he has made someone else's product. *Id.* at 27 n.1.

196 15 U.S.C. § 1125(a)(1)(A) (2000).

197 *Dastar*, 539 U.S. at 31. The Ninth Circuit, relying on its "bodily appropriation" theory of reverse passing off, which "subsumes the less demanding consumer confusion standard," affirmed the district court's award of summary judgment on the section 43(a) claim in favor of Fox. Twentieth Century Fox Film Corp. v. Entm't Distrib., 34 Fed. Appx. 312 (9th Cir. 2002) (internal quotation marks omitted).

198 *Dastar*, 539 U.S. at 31–32. In the Court's view, Fox would have had a viable claim if Dastar had purchased tapes of the television series as reissued by Fox's licensee and repackaged those physical tapes as its own. *Id.* at 31.

199 4 McCarthy, *supra* note 132, § 27:77.1.

In rejecting Fox's Lanham Act claim, the Court took pains to outline the differences between copyright and patent law, which are designed to encourage creativity and invention, and trademark law, which is designed to eliminate consumer confusion and ensure that a producer reaps the benefit of the seeds of goodwill he has sown. Once the copyright on material has expired and the material is in the public domain, anyone may freely and legally copy that material. This is the crux of the bargain inherent in the Copyright Act. In the Court's view, to permit an author to expand his copyright through trademark law would be a subversion of that bargain.[200] The Court's interpretation of the scope of that bargain, however, included not only the right to copy as much or as little of material in the public domain as desired but also "to copy without attribution."[201] A conclusion, then, that Dastar misrepresented that it was the creative entity behind the videotapes' contents would, in the Court's view, "create a species of mutant copyright law" that would eliminate the very benefits accrued to the public in the copyright bargain.[202]

> This key holding of the *Dastar* case means that Lanham Act § 43(a)(1)(A)'s prohibition on false claims of origin cannot be extended to false claims of the creation of inventive or communicative works. Thus "reverse passing off" claims brought under Lanham Act § 43(a)(1)(A) cannot focus on allegedly false claims of authorship, invention or creation.

Id. (footnote omitted). Lower courts after *Dastar* have taken the Court's holding at face value. *See, e.g.*, Gen. Universal Sys., Inc. v. Lee, 379 F.3d 131 (5th Cir. 2004); Zyla v. Wadsworth, 360 F.3d 243 (1st Cir. 2004); Smith v. New Line Cinema, No. 03 Civ. 5274, 2004 U.S. Dist. LEXIS 18382 (S.D.N.Y. Sept. 13, 2004); Schiffer Publ'g, Ltd. v. Chronicle Books, LLC, No. 03-4962, 2004 U.S. Dist. LEXIS 16180 (E.D. Pa. Aug. 11, 2004); Bob Creeden & Assocs., Ltd. v. Infosoft, Inc., 326 F. Supp. 2d 876 (N.D. Ill. 2004); Larkin Group, Inc. v. Aquatic Design Consultants, Inc., 323 F. Supp. 2d 1121 (D. Kan. 2004); Tao of Sys. Integration, Inc. v. Analytical Servs. & Materials, Inc., 299 F. Supp. 2d 565 (E.D. Va. 2004); Keane v. Fox Television Stations, Inc., 297 F. Supp. 2d 921 (S.D. Tex. 2004); Carroll v. Kahn, No. 03-CV-0656, 2003 U.S. Dist. LEXIS 17902 (N.D.N.Y. Oct. 9, 2003); Bretford Mfg., Inc. v. Smith Sys. Mfg. Co., 286 F. Supp. 2d 969 (N.D. Ill. 2003); Boston Int'l Music, Inc. v. Austin, No. 02-12148-GAO, 2003 U.S. Dist. LEXIS 16240 (D. Mass. Sept. 12, 2003); Williams v. UMG Recordings, Inc., 281 F. Supp. 2d 1177 (C.D. Cal. 2003).

200 *See, e.g.*, *Dastar*, 539 U.S. at 33 ("The right to copy, and to copy without attribution, once a copyright has expired, like the right to make an article whose patent has expired—including the right to make it in precisely the shape it carried when patented—passes to the public." (internal quotation marks and alterations omitted)).

201 *Id.* (citing TrafFix Devices, Inc. v. Mktg. Displays, Inc., 532 U.S. 23, 29 (2001)); *see also* Sears, Roebuck & Co. v. Stiffel Co., 376 U.S. 225, 230 (1964); Kellogg Co. v. Nat'l Biscuit Co., 305 U.S. 111, 121–22 (1938).

202 *Dastar*, 539 U.S. at 34. Section 43(a)(1)(B) of the Lanham Act targets anyone who, "in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services,

Although copyright law renders material in the public domain free for all to copy and use in creating new creative works, Fox's attribution claim did not require Dastar to stop making use of the source materials at issue in the case. Rather, the question was whether, as a matter of *trademark* law, Dastar had confused the consuming public by providing a particular statement of authorship with respect to the *material* on the videotape—the very product it was promoting to the public.[203] (To draw but one analogy, the *New York Times* trademark does

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or commercial activities." 15 U.S.C. § 1125(a)(1)(B) (2000). The *Dastar* court potentially left one door open when it suggested that a reverse passing off claim for creative works might be viable under section 43(a)(1)(B). *Dastar*, 539 U.S. at 38 (suggesting a cause of action might lie where "the producer of a video that substantially copied the [plaintiff's] series [gave,] . . . in advertising or promotion[,] . . . purchasers the impression that the video was quite different from that series"). But, as J. Thomas McCarthy has noted, "the 'commercial advertising or promotion' requirement is not an insignificant limitation on the application of § 43(a)(1)(B) because some courts define it in a fairly restrictive way." 4 McCarthy, *supra* note 132, § 27:77.1 (citing First Health Group Corp. v. BCE Emergis Corp., 269 F.3d 800 (7th Cir. 2001)); *see also* Freedman, *supra* note 182, at 306 (contending that reverse passing off claims should be brought under what is now section 43(a)(1)(B)); Posner, *supra* note 193, at 639 (suggesting that a reverse passing off claim in *International News Service v. Associated Press*, 248 U.S. 215 (1918), was "a viable theory of false advertising and one consistent with *Dastar*"). *But see* Kwall, *supra* note 182, at 1020 (contending that plaintiffs seeking "a remedy for reverse passing off are disserved through their forced reliance on section 43(a) to redress violations that should properly be addressed within the scope of an independent right of attribution"). In its brief to the Supreme Court, Dastar had argued that the 1988 revisions to the Lanham Act eliminated the ability to bring a reverse passing off claim pursuant to either section 43(a)(1)(A) or section 43(a)(1)(B). Brief for Petitioner at 38–40, *Dastar* (No. 02-428); *see also* Cross, *supra* note 174, at 736–42 (making the same contention). No other party took as broad a position. *See, e.g.*, Brief of Amicus Curiae United States at 6, 29, *Dastar* (No. 02-428) (suggesting the availability of relief for reverse passing off under subparagraph (B)); Brief of Amicus Curiae the International Trademark Association at 1, *Dastar* (No. 02-428) (suggesting a claim for reverse passing off under subparagraph (A) requires a finding of likely consumer confusion); Brief of Amicus Curiae the American Intellectual Property Law Association at 2, *Dastar* (No. 02-428) (same). In any event, as Dastar noted in its reply brief, Fox had elected to proceed only under subparagraph (A) and not subparagraph (B), and so the issue of subparagraph (B)'s applicability was not before the Court. Reply Brief for Petitioner at 5 n.2, *Dastar* (No. 02-428).

203 *Cf.* 2 McCarthy, *supra* note 132, § 10:26.1.

> In the author's view, preventing . . . false claims [as to the origination of an idea or concept] in no way protects ideas or concepts per se [contrary to copyright law doctrine]. The mere use of another's idea does not trigger the claim. Rather, the trigger is the false representation that B originated A's idea.

2 *id.* (discussing Attia v. Soc'y of N.Y. Hosp., 201 F.3d 50 (2d Cir. 1999)). It is irrelevant to the confusion analysis whether the work in question is under copyright or in the public domain, although the issue is likely to be moot in the former context be-

not convey to its readers the source of the newsprint on which its journalistic efforts are transmitted; it conveys the source of the articles for which its readers presumably pay subscription fees.)[204] *Dastar* involved a trademark dispute, not a copyright one, and so the question was whether Dastar was likely to cause confusion among consumers by appropriating authorial identity to itself rather than to the "true" author of the material on the tape (whether Fox or some other entity).

The *Dastar* Court claimed, however, that determining the "author" to whom attribution was due would pose "serious practical problems," as complicated as a "search for the source of the Nile and all its tributaries."[205] For example, the Court claimed:

> A video of the MGM film *Carmen Jones*, after its copyright has expired, would presumably require attribution not just to MGM, but to Oscar Hammerstein II (who wrote the musical on which the film was based), to Georges Bizet (who wrote the opera on which the musical was based), and to Prosper Mérimée (who wrote the novel on which the opera was based).[206]

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cause a copyright owner seeking to compel accurate attribution is likely simply to assert a copyright claim to prohibit distribution outright. *See* 4 *id.* § 27:77.1. What is an area of concern is the Court's "heads-I-win, tails-you-lose" dilemma. *See Dastar*, 539 U.S. at 36. Because an author is free to copy any portion of a public domain work he chooses and to make alterations to that work, that author may well become trapped between two attributional choices, both presumably equally unappealing to the plaintiff: publish the work without attribution or attribute a work to the plaintiff that has been altered from the original. While I don't intend to diminish the magnitude of this risk, it seems likely that attributional conventions (such as "based on") would develop to remedy this concern. *See* King v. Innovation Books, 976 F.2d 824, 829–31 (2d Cir. 1992) (considering "based upon" credit as a viable option).

204 Under the Court's reasoning, the viability of a Lanham Act claim depends entirely on how the communicative product is packaged. A defendant who rips the cover off a book and substitutes a cover with his name rather than the original author's is liable; a defendant who retypes the entire book to create a new "good" is not. The distinction becomes even more difficult to puzzle out in the electronic environment, where the "good" that serves as the vehicle for the communicative product is harder to define. *See, e.g.*, Do It Best Corp. v. Passport Software, Inc., No. 01 C 7674, 2004 U.S. Dist. LEXIS 14174 (N.D. Ill. July 28, 2004) (refusing to dismiss a Lanham Act claim, relying on *Dastar*, where defendant substituted its copyright notice for plaintiff's on a splash screen of a software program).

205 *Dastar*, 539 U.S. at 35, 36; *see also* Lisa Samuels, *Relinquish Intellectual Property*, 33 NEW LITERARY HIST. 357, 358 (2002) ("If intellectual property is transhistorical . . . shouldn't we credit all the writers who created the thought conditions for a writer of the present? How can we do that?").

206 *Dastar*, 539 U.S. at 35. The Court's description of multiple claims to authorship is likely to occur more frequently in theatrical works than in literary ones. *See, e.g.*, Aalmuhammed v. Lee, 202 F.3d 1227, 1233 (9th Cir. 2000); Randy Kennedy, *Who Was that Food Stylist? Film Credits Roll On*, N.Y. TIMES, Jan. 11, 2004, at A1.

The Court's emphasis in its example to a time "after [the work's] copyright has expired" seems to suggest a tenuous, yet dependent connection between a statement of authorship and copyright: Once the copyright on *Carmen Jones* expires, MGM no longer has the right to claim to be the author of the film. But while this may be true as a matter of copyright law—in other words, MGM would no longer have the ability to assert the rights granted to an author under copyright law—it is not at all true as a matter of trademark law, in which the authornym attached to a work (i.e., its "source") continues past the point at which the work ceases to be protected by copyright. William Shakespeare does not cease to be the author of *Hamlet* even though the play is in the public domain, and most readers would expect that singular attribution in any published edition of the work.[207]

One might argue, however, that even in a world that looks more like trademark than like copyright, the Court's criticism is still valid: How do we determine the "origin" of a work that has innumerable cultural influences? The authornym demonstrates that this question is a red herring. As has been discussed previously in this Article, trademark law does not concern itself with the actual source of any good or service (or its progenitors). It does not ask the names of the individual artisans who put hand to tool or the name of the advertising agency executive who devised the logo—indeed, the anonymous source doctrine tells us that we need never be concerned with actual source. Rather, trademark law concerns itself with maintaining the integrity of the organizational system, with ensuring that marks affirmatively selected by producers in the marketplace effectively segregate producer and consumer inputs in a way that is not likely to confuse. In authorship (or authornymic) terms, this means that we need not be concerned over whether "Amanda Cross" is really "Carolyn Heilbrun," or whether a particular autobiography is the work of a single individual or a gaggle of ghostwriters, or whether John Grisham the author is coeval with John Grisham the person.[208] We take the authornym-as-

207 Jane Ginsburg makes much the same point in her recent discussion of *Dastar*. Jane C. Ginsburg, *The Right to Claim Authorship in U.S. Copyright and Trademarks Law*, 41 HOUS. L. REV. 263, 270 (2004).

208 *See* JACQUELINE M.B. SEIGNETTE, CHALLENGES TO THE CREATOR DOCTRINE: AUTHORSHIP, COPYRIGHT OWNERSHIP AND THE EXPLOITATION OF CREATIVE WORKS IN THE NETHERLANDS, GERMANY AND THE UNITED STATES 110–12 (1994) (stating that recognition of the right to attribution would not necessarily conflict with the copyright holder's exploitation interests). In trademark law, of course, the corollary to the "anonymous source" principle is that infringement can still take place even if the true identity of the manufacturer is unknown to the consumer: It is the trademark that is infringed, not the corporate or other identity of the underlying company. Schechter, *supra* note 140, at 815 ("A person whose name is not known, but whose mark is imi-

trademark on its face, recognizing the *statement* of authorship for purposes of trademark law and leaving the *fact* of authorship to copyright law.[209]

Thus, because reader-consumer confusion is the touchstone, the parodist need not fear being subject to a reverse passing off claim for failing to provide attribution for his source material. The successful parody, after all, depends on the reader's recognition of the target *without* attribution; the unsuccessful parodist, by contrast, may well be an infringer.[210] Similarly, this would not mean, contrary to the

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tated, is just as much injured in his trade as if his name was known as well as his mark." (quoting Powell v. Birmingham Vinegar Brewing Co., 13 Rep. Pat. Cas. 235, 250 (1896))).

209 One practical example of this distinction can be seen in the use of the Creative Commons license, which allows authors to cede particular rights available under copyright law (as opposed to an all-or-nothing regime). As Anupam Chander and Madhavi Sunder point out, almost all authors releasing works pursuant to the Creative Commons license—including the ones who have little or no copyright-based restrictions on distribution of their work—require attribution. Anupam Chander & Madhavi Sunder, *The Romance of the Public Domain*, 92 CAL. L. REV. 1331, 1361 (2004).

210 *See, e.g.*, Dr. Seuss Enters. v. Penguin Books USA, Inc., 109 F.3d 1394, 1405 (9th Cir. 1997) ("In a traditional trademark infringement suit founded on the likelihood of confusion rationale, the claim of parody is . . . merely a way of phrasing the traditional response that customers are not likely to be confused as to the source, sponsorship or approval." (citing Mut. of Omaha Ins. Co. v. Novak, 648 F. Supp. 905, 910 (D. Neb. 1986), *aff'd*, 836 F.2d 397 (8th Cir. 1987))); Anheuser-Busch, Inc. v. L & L Wings, Inc., 962 F.2d 316, 321 (4th Cir. 1992) ("[A]lthough parody necessarily evokes the original trademark, effective parody also diminishes any risk of consumer confusion."); Cliffs Notes, Inc. v. Bantam Doubleday Dell Publ'g Group, 886 F.2d 490, 494 (2d Cir. 1989).

> A parody must convey two simultaneous—and contradictory—messages: that it is the original, but also that it is *not* the original and is instead a parody. To the extent that it does only the former but not the latter, it is not only a poor parody but also vulnerable under trademark law, since the customer will be confused.

Id.; 5 MCCARTHY, *supra* note 132, § 31:153 ("A non-infringing parody is merely amusing, not confusing."). This is no less true when the mark the parodist seeks to invoke is one textually equivalent to another's personal name. *See, e.g.*, NYSE, Inc. v. Gahary, 196 F. Supp. 2d 401, 411–13 (S.D.N.Y. 2002) (denying plaintiff's motion for summary judgment where defendant's claimed impersonation of the NYSE Chairman on an Internet message board was a parody). Of course, interpretation in this regard will not always be perfect, thus rendering the line between "parody" and "misappropriation" (or even "hoax") somewhat hazy. *See, e.g.*, David Streitfeld, *Spoof, Hoax or Freudian Slip?*, WASH. POST, Apr. 6, 1989, at B5 (describing outrage among Freud scholars when a purported 1900 review of Freud's *The Interpretation of Dreams* was revealed to have been penned by Peter Gay, the Yale historian who claimed to have discovered it; Gay claimed the review was "a parody"). Moreover, the absence of likelihood of confusion is not limited to parodies. *See, e.g.*, Int'l Ass'n of Machinists & Aerospace Workers v. Winship Green Nursing Ctr., 103 F.3d 196 (1st Cir. 1996) (rejecting a Lanham

Court's specter in *Dastar*, that authors would be precluded from borrowing themes, ideas, or even characters from other writers: Leonard Bernstein's *West Side Story* need not credit William Shakespeare and Bizet's *Carmen* need not credit Prosper Mérimée. As with parody, the reader's understanding of thematic continuity is part of the conceit. It is therefore not likely to be confusing for readers and critics to recognize that the film *Clueless* echoes Jane Austen's *Emma* even though the author fails to make this statement directly.[211] But where a subsequent author adopts the work of a previous author wholesale and passes it off as his own, the passing off is almost certainly not part of the conceit, and attribution is warranted to allow readers to appropriately organize their interpretive reactions.[212]

Act claim where recipients of anti-union literature featuring a union logo understood the literature to be propaganda).

Although "plagiarism" may be a useful shorthand to describe the unsuccessful parodist, the roots of this Article's proposal are slightly different from those underlying a ban against plagiarism. Plagiarism, like other offenses against an author's moral rights, is typically seen as an affront to the author—a larceny of the textual property that the author's skills and individualism have created and a conversion to one's own literary purpose. In this respect, plagiarism may be a particularly Western concept, given the more elevated status in other cultures for tradition and replication. *See, e.g.*, Samuels, *supra* note 205, at 359 (describing Islamic devaluing of "original thinking"). And like other violations of moral rights, plagiarism does not depend on whether the plagiarized work is protected by copyright or in the public domain even though the antiplagiarism movement, like copyright, depends for its strength on the concept that an author's creative output has property-like characteristics that lead it to be owned and, subsequently, "stolen." *See* SAINT-AMOUR, *supra* note 26, at 173; SAUNDERS, *supra* note 53, at 81 (describing the seventeenth-century French view of plagiarism as "larceny"); Debora Halbert, *Poaching and Plagiarizing: Property, Plagiarism, and Feminist Futures*, *in* PERSPECTIVES ON PLAGIARISM AND INTELLECTUAL PROPERTY IN A POSTMODERN WORLD, *supra* note 18, at 111, 111; Swearingen, *supra* note 18, at 21; *Plagiarism—A Symposium*, TIMES LITERARY SUPP., Apr. 9, 1982, at 413. While trademark law has a certain sense of the creator's protecting its goodwill—its own creative (albeit commercial) effort—trademark doctrine still continues to hew to the idea that the focus of the regulatory efforts—and the person whose rights are truly at issue—is the confused consumer. Here, too, the attributional right, while perhaps having the side effect of protecting the author's "good name"—the trademark value in the authornym—is at its core intended to eliminate interpretive confusion in the reader.

211 *Cf.* Paul Edward Geller, *Must Copyright Be For Ever Caught Between Marketplace and Authorship Norms?*, *in* OF AUTHORS AND ORIGINS, *supra* note 20, at 159, 197 (arguing for a "moral *right to reference*" to all authors of a given work as well as to "prior works consciously transformed in generating the overall fabric of a new work").

212 In this sense, it may be the case that the more distinctive an author's work is, the less confusion among the reading public reverse passing off will cause. It is unlikely, for example, that the publisher of "John Smith's *Hamlet*" is likely to confuse many readers into concluding that Shakespeare's tragedy is his own. *See, e.g.*, Waldman Publ'g Corp. v. Landoll, Inc., 43 F.3d 775, 784 n.7 (2d Cir. 1994) (finding that a

CONCLUSION: AUTHORNYMITY, TRADEMARKS, AND MORAL RIGHTS

The call for authorial attribution is, of course, one of the bundle of rights of authorship traditionally termed "moral rights"—the others are typically described as the "right of integrity" (which prohibits alteration of the work that destroys its essential nature), the "right of disclosure" (which vests solely with the author the decision as to whether and when to publish), and the "right of withdrawal" (which permits the author to end the dissemination or display of a published work).[213] As promulgated in French and German law, the right of attribution comprises the right of identification (including the right not to be identified, or to be identified using a pseudonym) and the right against misattribution (which itself comprises both, in trademark terms, passing off and reverse passing off)[214]—or, in more literary terms, a prohibition against piracy and a prohibition against plagiarism.

This Article is not a call for moral rights.[215] If the authornym and its corresponding attributional right are to inhere somewhere in the

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"secondary meaning" determination is inappropriate in a literary reverse passing off case because the plaintiff's contention is that lack of the work's secondary meaning will lead consumers to believe the work was created by the defendant); *cf.* Kwall, *supra* note 182, at 1022 (positing that if the plaintiff's work "is not sufficiently well-known to trigger public recognition," a reverse passing off act may not cause confusion).

213 *See, e.g.*, Jaszi, *supra* note 23, at 496–97; Roberta Rosenthal Kwall, *Preserving Personality and Reputational Interests of Constructed Personas Through Moral Rights: A Blueprint for the Twenty-First Century*, 2001 U. ILL. L. REV. 151, 152–53; Neil Netanel, *Alienability Restrictions and the Enhancement of Author Autonomy in United States and Continental Copyright Law*, 12 CARDOZO ARTS & ENT. L.J. 1, 24 (1994).

214 *See* Netanel, *supra* note 213, at 34.

215 U.S. copyright law recognizes moral rights only in a very limited sense through the Visual Artists Rights Act of 1990 (VARA). *See* 17 U.S.C. § 106A (2000); *see also* Netanel, *supra* note 213, at 45–48. Despite scholarly calls for expansion of VARA's protections to other creative works, *see, e.g.*, Kwall, *supra* note 213, at 154, no further recognition of moral rights appears to be on the legislative horizon.

The difference in recognition of moral rights between the U.S. copyright system and the Continental copyright system inheres in the core justification for the scope of the author's right: In the U.S. the copyright is based on an economic desire to encourage both creativity and access to that creativity by the public; in France the copyright is based on a concept of creativity as motivated by (and related to) personality. *See, e.g.*, Gilliam v. Am. Broad. Co., 538 F.2d 14, 24 (2d Cir. 1976); Netanel, *supra* note 213, at 7–23; Alfred C. Yen, *The Interdisciplinary Future of Copyright Theory*, 10 CARDOZO ARTS & ENT. L.J. 423, 426–27 & n.14 (1992). Jane Ginsburg has suggested that these approaches are not as historically divergent as traditionally believed. *See, e.g.*, Jane C. Ginsburg, *A Tale of Two Copyrights: Literary Property in Revolutionary France and America*, *in* OF AUTHORS AND ORIGINS, *supra* note 20, at 130 (comparing early French and American copyright schemes). *But see, e.g.*, SAUNDERS, *supra* note 53, at 237 (rejecting the denial of a "great divide" between copyright law and moral rights doctrine).

spectrum of U.S. intellectual property rights, the place to which to anchor them lies toward the trademark end of the spectrum, not the copyright end. The concept of moral rights is a copyright concern, arising out of the Romantic notion of authorship and the belief that creative product is an expression of the individual author. Moral rights therefore seek to preserve this genetic bond by prohibiting actions by subsequent authors that deny the Romantic author his prominence.[216] A necessary part of this doctrine—the source of the term "moral" in its name and, as David Saunders and Ian Hunter have described, what distinguishes literary writing "from all those other forms of human labour in which the product has not been classified by the law as part of its producer's person"[217]—would therefore seem to be a belief that there is a singular authorial identity with which one's work is associated. The moral claim would weaken significantly if a single writer were to write under several authornyms.

By contrast, authornymic attribution is not a matter of authorial justice, but rather a matter of organizational integrity. It preserves the organizational framework that authornyms create such that reader responses will be informed and minimizes the likelihood of confusion a consumer of creative commodities might otherwise experience. What I am describing, then, is not quite a doctrine of moral rights for authors so much as it is a doctrine of moral rights for readers—a right that, like trademark law, takes a reader-centered view of authorship as opposed to copyright's writer-centered view.[218] The right does not demand attribution where none existed at the work's genesis—in other words, an author's choice to publish truly anonymously is retained,[219]

216 *See, e.g.*, SAUNDERS, *supra* note 53, at 195 (discussing the work of French jurist Bernard Edelman); Edward J. Damich, *The Right of Personality: A Common-Law Basis for the Protection of the Moral Rights of Authors*, 23 GA. L. REV. 1, 4 (1988); Jaszi, *supra* note 23, at 496, 500; Kwall, *supra* note 182, at 985–86; *see also* Lemley, *supra* note 52, at 894 (suggesting that the "extremely limited success of moral rights theories in the United States" is evidence of the failure of Romantic authorship).

217 Saunders & Hunter, *supra* note 23, at 499.

218 Many commentators who call for explicit recognition of the right of attribution in U.S. law proffer the protection of the creative spirit as a justification. *See, e.g.*, Kwall, *supra* note 182, at 1020–21. My proposal, focused on the needs of the reader in an interpretive and economic guise rather than on the author's desire for acknowledgment, is detached from any such considerations.

219 *See, e.g.*, Damich, *supra* note 216, at 54 (suggesting that an author who wished to remain anonymous but whose work, although published with his consent, contained an unwanted (yet accurate) attribution, "would have causes of action for public disclosure of private facts and appropriation of his name"); Kreimer, *supra* note 58, at 69–70 ("Forcing citizens to publicly link themselves to identities they are constitutionally entitled to eschew is a violation of their constitutionally protected autonomy—their right to define themselves."); *cf.* Cross, *supra* note 174, at 726 (noting that a

just as no producer is forced to brand its goods. Nor is it terribly concerned with identifying the "true" author of a piece so much as it is ensuring that the original attribution survives republication. This is contrary to the Continental view of the right of attribution, which, for example, denies any paternity right to the individual under whose name a ghostwritten book is published and awards the right instead to the writer who put pen to paper, regardless of any ordering of these rights provided by contract.[220]

From a literary theorist's perspective, then, the authornym as trademark mediates between copyright law's Romantic vision of authorship and the poststructuralist's authorless texts. Like the values transmitted by copyright, attribution links a text to an author without prohibiting use of that text once it enters the public domain. And like the poststructuralist's reader's exercise, attribution serves only to preserve an interpretive organizing framework without infusing that exercise with biographical or other Romantic details.[221]

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reverse passing off claim is not actionable unless the plaintiff can show that absent the defendant's misattribution, credit would have come to plaintiff instead, thus barring such claims for anonymous works).

220 *Cf., e.g.*, Cleary v. News Corp., 30 F.3d 1255, 1259–60 (9th Cir. 1994) ("[B]ecause the employer is considered the author of the work, once authorship rights are relinquished through a work for hire contract provision, the right to attribution is also relinquished unless that right is reserved explicitly in the contract."); Vargas v. Esquire, Inc., 164 F.2d 522, 525–26 (noting that the plaintiff divested himself of any claim to attribution in the work by conferring all rights in the work via contract); Jones v. Am. Law Book Co., 109 N.Y.S. 706 (App. Div. 1908) (same); Roddy-Eden v. Berle, 108 N.Y.S.2d 597 (Sup. Ct. 1951) (holding a ghostwriting agreement void and unenforceable as against public policy); *see also* Netanel, *supra* note 213, at 50. Netanel further notes that although, in a moral rights regime, a ghostwriter may not assign his attributional right to the stated author by contract, he may, in Germany but not in France, explicitly agree to waive his right to attribution. *Id.* at 52–53 & n.273.

221 Susan Lanser describes the mediating effect of attribution as creating a circularity between "the projects of authorial identification and textual interpretation":

> Although *Roxana* was originally an anonymous work called *The Fortunate Mistress*, I approach it today as a metonym of Daniel Defoe, who is already known to me as a set of texts . . . . At the same time that I create *Roxana* through Defoe, I (re)create Defoe through *Roxana*. When I then encounter a possible new 'Defoe'—say, a piece of unattributed journalism—my decision to accept or reject this work as Defoe's is likely, barring external evidence, to be predicated on my existing construction of the author; if the text fits, it gets added to the canon that, in turn, (re)constitutes Defoe. If I determine that Defoe could not have written the piece because he was a Whig or a Dissenter, the work is cast back to the oblivion of anonymity—and deprived of considerable cultural capital.

Lanser, *supra* note 65, at 82.

The authornym's place in the realm of trademark does not necessarily mean that it must lie in tension with copyright law. Opponents of such a right may argue that to require continued attribution past the time when copyright protection expires would be but an albatross around the collective neck of the creative commons, thwarting the effort to mine the public domain for works of new authorship.[222] But the authornym actually embraces the concept of the intergenerational relationship among authors by giving full voice and credence to the fact of borrowing even where (perhaps only where) such borrowing is legally permissible.[223] It does not detract from the volume of material in the public domain but rather requires that the material not be divested from the organizational structure in which it was originally created, and then only in cases in which such divestment is likely to thwart the interpretive effort.[224]

In this respect, this Article is but an additional step on what seems to be an increasingly trodden path away from the Romantic author-genius construct and toward a more complete conception of authorship. For if we are all authors in our fashion, we are undoubtedly readers first, and we cannot hope to be efficient literary consumers (in both senses of the word) without some confidence that the works

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222 *See, e.g.*, Alfred C. Yen, *The Interdisciplinary Future of Copyright Theory*, *in* THE CONSTRUCTION OF AUTHORSHIP, *supra* note 15, at 159.

223 A less flattering take on this response is to portray it as denying the concept of originality full stop—in other words, conceding that there is indeed "nothing new under the [literary] sun" and that all creative work, even that protected under copyright law, is essentially indebted to what has come before. *See, e.g.*, SAINT-AMOUR, *supra* note 26, at 37 ("The broad project of the defenses of plagiarism was to overhaul the Romantic mythology of original genius, remaking genius as a function of assimilation and recombination rather than a fountainhead of fresh invention."); *see also* RALPH WALDO EMERSON, *Quotation and Originality*, *in* LETTERS AND SOCIAL AIMS 175, 191 (1904).

> If an author give us just distinctions, inspiring lessons, or imaginative poetry, it is not so important to us whose they are. . . . We may like well to know what is Plato's and what is Montesquieu's or Goethe's part, and what thought was always dear to the writer himself; but the worth of the sentences consists in their radiancy and equal aptitude to all intelligence.

Id. It is not my intent in this Article to present an apologia for plagiarism; quite the contrary, in fact.

224 *See, e.g.*, Raven, *supra* note 65, at 144 (describing the use of pseudonymous "By the author of . . ." as an aid to linking works unattributable to a specific individual). An attribution right therefore differs significantly in this respect from proposals for an extended copyright term, which would deplete the public domain by restricting works from being used at all without permission, *see, e.g.*, SAINT-AMOUR, *supra* note 26, at 124, or from a complete extension of moral rights, which amounts to what David Saunders, using a phrase of Robert Gorman's, has termed an "aesthetic veto," *see* SAUNDERS, *supra* note 53, at 208.

that we read—and later draw on for our own creative activity—are situated within a coherent literary structure. The authornym—and, more particularly, the authornym-as-trademark—seems perfectly suited to the task: It maintains the integrity of author and reader inputs, but it rarely purports to represent itself as the gateway to any genetic meaning. That work is left to the reader/consumer of the text. It is only when we recognize this Barthesian/Foucauldian lack of meaning, the essential pseudonymity of all statements of authorship, that we can begin to move to this reader-focused version of authorship and create room for the values that trademark law can efficiently promote in the marketplace of ideas.

Exhibit 9

DePaul University
UNIVERSITY LIBRARIES

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Article 7

Libraries, Users, and the Porblems of Authorship in the Digital Age

Laura N. Gasaway

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LIBRARIES, USERS, AND THE PROBLEMS OF AUTHORSHIP IN THE DIGITAL AGE

*Laura N. Gasaway**

INTRODUCTION

The concept of authorship, so central to copyright law, also has very practical implications for libraries and their users for a number of reasons. First, the often-contentious relationship between copyright owners and librarians may be sharply contrasted with the relationship between libraries and authors. The latter is hugely positive. Libraries cannot exist without authors who produce the works that are housed in library collections. Authors often make extensive use of library collections to perform the necessary research for their works. In fact, many authors acknowledge and thank librarians for their assistance in helping to locate arcane information so crucial to their work. A perusal of the preface in many works reveals the high regard in which authors hold libraries and librarians who are often mentioned by name. Second, libraries even contribute to an author's reputation, not only by making their works available to various readers, but also by inviting them to present their works at public gatherings in the library, and featuring authors in newsletters and in library displays. An excellent example is the Chicago Public Library's *One Book, One Chicago* program where everyone in the community reads the same book and discusses it.[1] Libraries further enhance the reputation of authors by serving as the repositories of published works, organizing and preserving them, and making them available to users.[2] Third, in many foreign countries, library activity actually helps provide financial support for authors under the Public Lending Right, particularly European coun-

* Director of the Law Library and Professor of Law, University of North Carolina-Chapel Hill. The author wishes to thank the reference staff at the Kathrine R. Everett Law Library for their assistance, particularly Donna Nixon and Ed Beltz, for their invaluable help in locating library science materials for this Article.

1. In Chicago this effort was spearheaded by Mary Dempsey, a DePaul University College of Law alumnae and librarian. The first books were Harper Lee's *To Kill a Mockingbird* in the spring of 2002 and Willa Cather's *My Antonia* in the fall of 2002. *See* Chicago Public Library, *One Book, One Chicago*, *at* http://www.chipublib.org/003cpl/oboc/oboc.html (last visited Jan. 31, 2003).

2. In the United States, the first sale doctrine permits libraries to lend books and other materials to users. *See* 17 U.S.C. § 109(a) (2000).

tries, Canada, Australia, and New Zealand. Authors receive compensation when their works are lent by libraries, but often it is the country's government rather than the library or its users that actually compensates the authors.[3] Fourth, many authors feel a great love for libraries, and the reverse is certainly true. Library associations present many book awards to the "best" in a category each year to recognize outstanding authors. Examples include the American Library Association's Caldecott Award[4] for the best in children's picture books, its Newbery Award[5] for outstanding contribution to children's literature, and the Coretta Scott King Award presented to "authors and illustrators of African descent whose distinguished books promote an understanding and appreciation of the 'American Dream.'"[6] State library associations also present state and regional awards, especially for children's works and regional fiction.[7] Fifth, support of authors sometimes even involves litigation. Some of the national library associations filed an amicus brief on behalf of Tasini in *New York Times v. Tasini*,[8] a case in which freelance writers successfully sued publishers over their electronic rights. It is interesting that the American Library Association (ALA) and Association for Research Libraries (ARL) supported authors even though, in this instance, their closer interests may have been with the publishers. The resulting removal of articles authored by freelance writers from the *New York Times* database was not positive for libraries and their users, but both the ALA and ARL believed that their traditional support for authors could not be overlooked, and this compelled them to file an amicus brief on the side of writers.[9] Sixth, librarians also write books and articles, not solely dealing with library science or intellectual property,

3. *See The Public Lending Right*, *in* LAURA N. GASAWAY & SARAH K. WIANT, LIBRARIES AND COPYRIGHT: A GUIDE FOR THE 1990s, at ch. 10 (1994).

4. American Library Association, *Caldecott Medal Page*, *at* http://www.ala.org/alsc/caldecott.html (last visited Jan. 31, 2003).

5. American Library Association, *Newbery Medal Page*, *at* http://www.ala.org/alsc/newbery.html (last visited Jan. 31, 2003).

6. American Library Association, *Coretta Scott King Award*, *at* http://www.ala.org/srrt/csking/ (last visited Jan. 31, 2003).

7. An example is the California Young Readers Medal Program administered by the California Library Association; each year young readers are encouraged to read for recreation and actually vote on the best book of the year from the list of nominees. *See* California Library Association, *About the California Young Reader Medal Program*, *at* http://www.cla-net.org/groups/cyrm/about.html (last visited Jan. 31, 2003).

8. 533 U.S. 483 (2001).

9. American Library Association, Washington Office, *Court Cases*: New York Times v. Tasini, *at* http://www.ala.org/washoff/tasini.html (last visited Jan. 31, 2003). However, other library associations, such as the American Association of Law Libraries, Medical Library Association, and Special Libraries Association did not join in this brief; on the other hand, they did not file on the side of publishers either.

but also with a host of other subjects. Several mystery writers are reformed librarians,[10] and a number of authors set their mystery stories in libraries, such as Jo Dereske's *Miss Zukas* series. But library collections would not be very rich if the only works in the collections were works written by librarians. Libraries depend on authors, and they have always done so. Lastly, authors provide one of the standard elements of bibliographic control. Bibliographic control is the mastery over written and published records, which is provided by and for the purposes of bibliography. Bibliographic control is defined as:

> the process of describing items in the bibliographic universe and then providing name, title, and subject access to the descriptions, resulting in records that serve as surrogates for the actual items of recorded information. Bibliographic control further requires that surrogate records be placed into retrieval systems where they act as pointers to the actual information packages.[11]

The relationship between publishers and librarians is considerably more problematic by contrast. It is often a love-hate relationship, and yet libraries and publishers are very interdependent today. Libraries are often the only purchasers of expensive esoteric works and journals that are invaluable for serious research. Librarians are asked to suggest new titles and useful works that a publisher should consider producing. Publishers like to offer "deals" to libraries on purchases, sponsor events at library association meetings, and present librarians with small company gifts that advertise the company. But there are many antagonisms too, such as exorbitant journal pricing, not so much in law, but in science and technology.[12] Not only are journal prices excessively high, but often the library subscription rate is five to six times that of an individual subscription.[13] Commercial journal publishers unabashedly discuss the maximization of profits for their shareholders and view libraries as a huge market, a source of these profits. While library budgets have increased, they have not kept pace with the rate of inflation in publishing; further, the increasing volume of material published annually is overwhelming.

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10. Mystery writers who were formerly librarians include Miriam Grace Monfredo and John Breen. Sandra Kitt, currently a museum librarian who also writes award-winning romance novels, is one of the first African-Americans to write romance novels featuring African-American characters.

11. ARLENE G. TAYLOR, THE ORGANIZATION OF INFORMATION 235 (1999) (Glossary).

12. For example, the 2003 subscription rate for the journal *Brain Research*, published by Elsevier, is $20,000.

13. The individual subscription rate for the weekly journal *Nature*, published by the Nature Publications Group, is $159 per year for 2003, while it is $845 for libraries. For 2003, the Elsevier journal *Trends in Analytical Chemistry* costs libraries $1272, as opposed to $193 for an individual's subscription.

Moreover, librarians watch with alarm at what they view as the "great copyright grab," where publishers and producers are holding copyright in more and more of the works produced while at the same time seeking to restrict the rights of users to access these works and to use them. Librarians worry that publishers are moving toward a pay-for-use world, which will exacerbate the problems of the information poor.

In this Article, I will address authorship generally and then specifically as it relates to libraries, with a special focus on authors as the central element in bibliographic control. The Article contrasts the view of authorship as it is used in libraries with that in copyright law and concludes with particular problems for libraries associated with digital works and authorship.

II. AUTHORSHIP GENERALLY

What was it that made human beings first want to document their ideas and share their creative renderings? It may have begun with Paleolithic cave paintings, but it could have begun even earlier.[14] Some of the earliest cuneiform writing is from Sumeria recorded on clay tablets. Sumerian-Bablyonian epic poetry began as oral recitations that were eventually recorded around 1200 B.C. as the *Gilgamesh Epic*. The same migration from the oral to the written tradition occurred in ancient Greece as evidenced by the Homeric tales between 900-700 B.C., which eventually were preserved in written form as *The Iliad* and *The Odyssey*. Recorded by hand, these works were copied over and over again, and it was inevitable that errors would occur in this process of hand copying. Later manuscript copies likely bore little relation to the original, and earlier copies were considered to be more authoritative and accurate than were later copies. Around the seventh century, wood block printing developed in China and was used to produce books. Wood block printing was slow to be used in Europe, but by the 1300s it had been widely adopted.[15] Although Johann Gutenberg is credited with the invention of moveable type in Mainz, Germany in 1450, there is increasing evidence that it was known and used as early as 1234 in Korea.[16] Books were printed in Europe from the mid-fifteenth century forward, and printing made

14. Barbara B. Tillett, *Cataloguing Rules and Conceptual Models* (1996), *at* http://www.ifla.org/documents/libraries/cataloging/tilb1.htm (last visited Jan. 31, 2003) (citing DOUGLAS C. MCMURTIE, THE BOOK: THE STORY OF PRINTING & BOOKMAKING 1 (1943)).

15. *Id.*

16. *See* Science Timetable, *Appearance of Moveable Metal Types in 1234*, *at* http://www.scienceall.com/menu/time/t06.html (last visited Jan. 31, 2003).

it possible for print houses and publishers to develop and profit from producing books. Further, authors now had the ability to distribute their works widely to share their ideas.[17]

As a group of writers began to derive their livelihood from their writings, the concept of authorship in the modern sense arose.[18]

> The new conceptions of writing and reading entailed seeing the writer as an originator one who no longer produced texts as a cog in a publication machine, but instead created them as an "author." It is this emphasis upon creativity as the mark of authorship that informs current legal discussion of copyright.[19]

In the Romantic construct of authorship, there is a hierarchy that ranks works of the imagination higher than other works.[20] And copyright law presumes that authors who have created the property are entitled to special or unique rewards because of the social value of their creations.[21] The Statute of Anne[22] made the first reference to authors in copyright in England in the eighteenth century. Although the statute referred to authors, the real intention behind the statute was to protect the rights of booksellers and printers.[23] But gradually, the concept of authorship began to replace the interests of publishers in English law. The term "[author] took on a life of its own as individualistic notions of creativity, originality, and inspiration were poured into it. 'Authorship' became an ideology."[24]

> In the course of the last three centuries, the fiscal imperatives of copyright have become aesthetic and legal constructs, changing our definitions of texts, copyright and authors. In the case of copyright, what was once a law to ensure publishers' and proprietary rights to products is now an often unspoken belief that solitary authors have original ideas, and that those authors should be able to control those ideas as an expression of their originality.[25]

Yet, copyright is not the only way to support authors. They could be subsidized directly by the government, be awarded grants (such as

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17. Tillett, *supra* note 14.

18. Martha Woodmansee, *The Genius and the Copyright: Economic and Legal Conditions of the Emergence of the "Author"*, 17 EIGHTEENTH-CENTURY STUD. 426 (1984).

19. Jacqueline Rhodes, *Copyright, Authorship, and the Professional Writer: The Case of William Wordsworth*, *at* http://www.cf.ac.uk/encap/corvey/articles/cc08_n01.html (last visited Jan. 31, 2003).

20. Peter Jaszi, *Toward a Theory of Copyright: The Metamorphoses of "Authorship"*, 1991 DUKE L.J. 455, 462.

21. *Id.* at 466.

22. 8 Anne, c. 19 (Eng.).

23. Edward C. Walterscheid, *Authors and Their Writings*, 48 J. COPYRIGHT SOC'Y 729, 735 (2001).

24. Jaszi, *supra* note 20, at 468-71.

25. Rhodes, *supra* note 19.

from the National Endowment for the Arts),[26] or receive funds through a Public Lending Right.

Martha Woodmansee writes that society tends to idealize the lone author working to produce a copyrighted work.[27] Libraries also are likely to see authors that way and there certainly are many examples to support this view. We envision the author pecking away on the computer keyboard to produce excellent mystery novels, historical fiction, or legal tomes. This is the ideal author—a loner who watches people and gathers characters like most of us gather coat hangers, or the author is one who uses works of nonfiction just to uncover sufficient historical details to set the work more or less accurately in a period of history.

What of works of nonfiction? Are the writers of these works not authors too? Certainly they are, but we just do not idealize them to the same extent. We think of them as serious researchers working in dusty libraries to uncover little known facts to help support arcane arguments. Or we think of them as analyzing and synthesizing scientific writings to produce new works that will make a difference, which, in the best view, will make a difference in the world at large, and at worst, will at least support the author's quest for tenure at an institution of higher education. But creativity is not reserved solely for works of fiction, artistic and dramatic works.

A. *Importance of Authorship*

Copyright law provides that an author is the person or persons responsible for creating an original work of authorship that is fixed in a tangible medium of expression.[28] Solo authorship is normally what one envisions when thinking about who is an author. Some scholars even differentiate between writers and authors and define an author as one who more or less has a dialogue with the public, as opposed to a writer who just writes out words.[29]

The term "authorship" generally is used as a shorthand method to encompass the relationships between a person or persons and the content of an item, which denotes responsibility for either the creation or

26. Monroe E. Price & Malla Pollack, *The Author in Copyright: Notes for the Literary Critic*, 10 CARDOZO ARTS & ENT. L.J. 703, 713-14 (1992).

27. Martha Woodmansee, *On the Author Effect: Recovering Collectivity*, 10 CARDOZO ARTS & ENT. L.J. 279, 289-90 (1992).

28. 17 U.S.C. § 102(a) (2000).

29. *See* Marlon B. Ross, *Authority and Authenticity: Scribbling Authors and the Genius of Print in Eighteenth-Century England*, 10 CARDOZO ARTS & ENT. L.J. 495, 495 (1992).

modification of the intellectual or artistic content of the work.[30] For libraries, authorship is a very important key to grouping works or documents by subject matter, quality, and level of knowledge. In fact, the author often implies subject matter since authors tend to write in a limited number of subject fields or genre, and they possess different levels of knowledge even about the same matters. The author also tells readers about the quality of the knowledge the individual has or communicates. A reader may determine this herself or by reading reviews of the author's works. Further, the author tells the reader something about the level of the work, since some authors write only for adults or others only for children.[31]

There is a sort of magic in solo authorship because society honors and admires those authors who can produce great works as they labor alone. But that magic is not really related to copyright or library issues. Additionally, there are others who seek to be considered as authors.

Among professional indexers, for example, there is a movement to call themselves authors and to be credited with authorship for the scholarly work they perform in creating the index to a work. "The interpretation of text for an index is not unlike the process of sifting through hours of transcribed interviews and research materials gathered for a feature story. In both situations, it is necessary to pull the important topics out and make them explicit."[32] Members of the public seldom consider indexers to be authors, but the same may be said of many indexers themselves who fail to consider that they might be authors. Most indexers are anonymous, and at least one indexer has opined that if the indexer were identified at the first of each work, the quality of indexing itself would improve. Further, if editors realized that they were dealing with authors, then indexers would be given the same degree of editorial control that other authors receive.[33] If a stand-alone index meets the copyright requirements of originality and fixation, the index is copyrighted,[34] but those indexes that are described as "back of the book" indexes are not.

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30. *The Logical Structure of the Anglo-American Cataloging Rules—Part II*, Unofficial Notes on a Presentation by Tom Delsey to the Joint Steering Committee for the Revision of AACR, Leeds, England, Nov. 20-21, 1998, *at* http://www.libraries.psu.edu/iasweb/personal/jca/ccda/model2.html (last visited Jan. 31, 2003) [hereinafter *Logical Structure*].

31. Nicholas Carroll, *Cataloging of DKR Objects (By the Author or Creator)* (2001), *at* http://www.hastingsresearch.com/net/03-dkr-ir-metadata.shtml (last visited Jan. 31, 2003).

32. Nancy C. Mulvany, *Reflections on Authorship and Indexing*, *in* 19 INDEXER 241-42 (1995), *available at* http://www.bayside-indexing.com/author2.htm (last visited Jan. 31, 2003).

33. *Id.*

34. 17 U.S.C. § 102(a) (2000).

Translators are another example of contributors to a work who are not recognized as authors in library catalogs but may be so recognized in copyright law. "Translation is stigmatized as a form of writing, discouraged by copyright law, depreciated by the academy, exploited by publishers and corporations, [and] governments and religious organizations."[35] Since translations are defined as derivative works in the copyright law,[36] there is only a narrow area for translation.[37] The reason the role of the translator as an author is marginalized might be the prevailing concept of authorship, which focuses on originality and self-expression. Translation, on the other hand, is viewed solely as derivative. "Given the reigning concept of authorship, translation provokes the fear of inauthenticity, distortion, [and] contamination."[38] Moreover, because of its nature as a derivative work, translation challenges the notion of scholarship. It is impossible to produce a translation that is not somewhat slanted by cultural views, and yet, academic institutions venerate foreign language and literature, and do not even want to consider cultural conditions under which languages are taught.[39] While a translation is a derivative work, the copyright law recognizes this type of authorship, and a work is eligible for copyright if it meets the originality and fixation requirements. Nonetheless, a library will enter the work in the catalog, that is, "catalog" the work under the name of the author of the original work with only an added entry for the name of the translator, if there is any bibliographic entry for that individual at all. There are scholars who advocate for translation to be recognized as a distinct type of authorship, which involves collaboration between divergent groups as opposed to a form of personal expression.[40]

B. *Collaboration*

As stated above, the myth of the solitary author often is just that, a myth. In fact, most of the writing that is done in the professional setting in America is the result of collaboration.[41] Collaborative works have traditionally been more likely to be works of nonfiction rather

35. LAWRENCE VENUTI, THE SCANDALS OF TRANSLATION: TOWARDS AN ETHICS OF DIFFERENCE 1 (1998).

36. 17 U.S.C. § 101 (2000).

37. VENUTI, *supra* note 35, at 47-48.

38. *Id.* at 31.

39. *Id.* at 31-34.

40. *Id.* at 4.

41. Andrea A. Lunsford & Lisa Ede, *Collaborative Authorship and the Teaching of Writing*, 10 CARDOZO ARTS & ENT. L.J. 681, 682 (1992). The authors report that their eight-year study supports this contention. *Id.*

than fiction. Yet, collaborative works may be more valuable and contribute to the progress of science and the useful arts to a far greater extent than a novel, and yet it is difficult to feel warm and fuzzy about a collaborative group that develops a new legal encyclopedia. In some disciplines, collaboration is the norm rather than the exception. The ability to bounce ideas around a group and clarify both perception and presentation of the work is extremely useful, and in many scientific fields important papers have two, three, or many authors. So, joint authors are often the norm, especially for works of nonfiction, but there are also works of fiction that are co-authored.

The Copyright Act recognizes joint authorship when a work is prepared by two or more authors "with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole."[42] Many disputes have arisen between individuals who are involved in the production of a work over whether they should be considered joint authors.[43] Often, the dispute is over royalties and the desire of a contributor to receive continuing compensation for his contribution when the work is commercialized, especially if the work is commercially successful. Since the law provides that initial ownership of the copyright vests in the author, the importance of being a joint author is obvious.

Co-authorship also is quite common in the publishing industry. If the work is a work for hire, the employer is the author.[44] Publishers themselves may be the author under the work for hire doctrine.[45] A work for hire is defined as a work produced by an employee within the scope of her employment or a work that is ordered or commissioned for use as a collective work.[46] For this latter category, however, only certain types of contributions are defined as being a part of such a collective work. These include contributions to a motion picture, a translation supplementary work, a compilation, instructional text, a test or answer material for a test, or an atlas. Furthermore, the parties must agree in writing to the above arrangement.[47]

Collaboration on large research projects and the writing that summarizes the results present complicated issues for determining authorship, and the rules for such determination vary across academic

42. 17 U.S.C § 101 (2000).

43. *See* Childress v. Taylor, 945 F.2d 500 (2d Cir. 1991); Thomson v. Larson, 147 F.3d 195 (2d Cir. 1998).

44. 17 U.S.C. § 101 (2000).

45. For example, *West's Federal Practice Digest* and *West's Federal Forum*.

46. 17 U.S.C. § 101 (2000).

47. See *Community For Creative Non-Violence v. Reid*, 490 U.S. 730 (1989), for a discussion of the factors courts use to determine whether a work is a work for hire.

disciplines and fields. Since authorship determines tenure and promotion, it is an important issue for faculty members. Academia is replete with stories of young authors who are entirely omitted from the authorship line unfairly but who have little recourse if they want to preserve their jobs. While there are ethical guidelines for authorship in various disciplines, they do not always make much difference even though it is unethical conduct for a senior researcher to take credit for something produced by a younger colleague. Some researchers have even petitioned the federal government to develop better authorship rules for works produced with federal funding. Perhaps even more promising is that some research labs have decided to solve the problems caused over wrangling for authorship by publishing their work under the name of the lab as the author.[48]

If more writing is collaborative today, the electronic era is hastening the demise of the idea of the author working alone.[49] Moreover, various contributors to works may seek recognition as co-authors. For example, in December 1999, cinematographers from twenty-two European countries met in Torun, Poland and produced the Torun Declaration 99. The Declaration states that the work of cinematographers on films as works of art depend on their creative work as the author of the images. Therefore, European cinematographers seek recognition as co-authors of films and other audiovisual works, and they claim moral rights as authors.[50]

C. *Corporate Authorship*

The reality today is that more and more works are produced as works of corporate authorship, a concept with which libraries have always been familiar. Whenever I conduct copyright law workshops, not a single librarian attendee asks me to explain the meaning of corporate authorship. The same cannot be said for faculty members and law students who frequently ask. To some extent, corporate authorship is a fiction, since a corporate entity itself is incapable of writing. But certainly employees of the corporation are capable of the feat, and because of employment contracts, the corporation claims responsibility for writing the work. The relationship between a person or corporate body and the content of the item described in a biblio-

48. Bridget Murphy, *The Authorship Dilemma: Who Gets Credit for What? Psychologists Explore Better Ways to Define Research Authorship*, 29 APA MONITOR, Dec. 1998, *available at* http://www.apa.org/monitor/dec98/credit.html (last visited Jan. 31, 2003).

49. Woodmansee, *supra* note 27, at 289.

50. *See* Cinematographers Authorship, *Torun Declaration 99*, *at* http://www.imago.org/authorship/ (last visited Jan. 31, 2003).

graphic record is described as follows. An individual may be responsible for the creation of a work, for modifying, compiling, or performing it. A corporate body may be responsible for the emanation of the content.[51] If it is hard to feel warm and fuzzy about collaborative works, it is virtually impossible to so feel about corporate authorship, thus, the ideal of the solitary author continues.

III. AUTHORSHIP, LIBRARIES, AND BIBLIOGRAPHIC CONTROL

A. *General*

Librarians have a very practical view of what authorship means: it is a key element for bibliographic control. Depending on their job titles, assignments, and proclivities, librarians are more or less familiar with the detailed rules for determining authorship for bibliographic control. In fact, libraries were identifying works by the name of the author long before authors' rights developed in the seventeenth century.[52]

What does the concept of authorship mean to library users? If one were to ask them, probably not much. Most library users simply have not pondered the matter. If they were prodded about how they use the concept of authorship, they should be able to list the following as ways they use "author." First, the name of the author is an important way to locate materials in the library collection. Second, the author's name is the first part of a citation to indicate responsibility for the work, a concept with which law students should have particular familiarity. Third, users should know that the name of the author can serve as an indication of subject, quality, date, or importance of the work. Finally, "author" is a shorthand device to describe a style of writing, ideas conveyed, or a literary genre.

Some entire collections or portions of many library collections are simply arranged by author's last name. For example, the fiction collection in many libraries is not classified by subject, but is instead arranged alphabetically by author's last name. Many libraries still use the Cutter Tables, based on the alphabet, to assign alphanumeric call numbers that reflect last name of the author and shelve materials in this order.[53] Even the Library of Congress (LC) Classification scheme

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51. *Logical Structure*, *supra* note 30.

52. John Feather, *From Rights in Copies to Copyright: The Recognition of Authors' Rights in English Law and Practice in the Sixteenth and Seventeenth Centuries*, 10 CARDOZO ARTS & ENT. L.J. 455, 455 (1992). The "earliest glimmerings" of the recognition of the rights of authors does not occur in England before 1649. *Id.*

53. *See* CUTTER-SANBORN THREE-FIGURE AUTHOR TABLE (Swanson-Swift Revision 1969) (originally developed by Charles A. Cutter in the 1890s). For an explanation of how Cutter

arranges modern works of fiction in class P; they are then alphabetized by the last name of the author within broad time periods.[54] So, although an LC Classification number appears on the book's spine, a large part of that number is based on the last name of the author.

In addition to the library's catalog, there are other finding aids, such as bibliographies and indexes. The difference between a bibliography and a catalog is that the best bibliographies list every relevant item on a particular subject, or every item that is produced in a particular locale or is published during a certain period of time. Also, bibliographies typically do not provide a location for the materials listed. Catalogs, on the other hand, list and detail the holdings of a particular library or collection and include the location of the material through a call number or other location device.[55] An index usually provides access to portions of larger items, such as articles in periodical issues, poetry in collections, or chapters in books. By contrast, cataloging provides access to entire works, such as books, journal issues, and the like.[56] Early indexes also recognized the importance of author entries even as an adjunct to a subject index.[57]

For any library, the author catalog or author entries in a dictionary catalog, (that is, one that interfiles author, title, and subject headings), is an essential finding tool. The principles of authorship for the catalog are closely related to the concept of authorship in copyright law. The reasons that the author catalog is so important to libraries are both historical and practical. The first reason is that the name of the author is printed on the spine of the book and on the title page of the work, which makes it the most readily identifiable feature of a book. Second, if the library patron has spelled the author's name correctly, the author catalog is the only one from which she can determine whether the library has a particular title. In fact, early author catalogs were really an inventory of the bookstock of a library; in medieval libraries, this inventory feature was particularly important. A third reason for the importance of the author catalog is the assumption that library users will group books by author rather than by title, the other readily

numbers are assigned, see *Cutter Expansive Classification*, at http://www.wesleyan.edu/libr/cutter.htm.

54. *Library of Congress Classification Scheme*. Classes PN-PR cover English and American literature. *See* LC CLASSIFICATION ON-LINE, CONTENTS (6th ed. 2001), *available at* http://www.tlcdelivers.com/tlc/crs/LCSO0001.htm (last visited Jan. 31, 2003).

55. Susan E. Beck, *Classification of Information, Class Notes for LSC 311-02, Information Literacy* (1998), *at* http://lib.nmsu.edu/instruction/lsc311/beck/06notes.html (on file with the author).

56. *Id.*

57. JAMES A. TAIT, AUTHORS AND TITLES 17 (1969).

identifiable feature of books. But even these purposes are not the most important purpose of an author catalog. The most important reason is one that tracks the copyright concept of authorship, and that is to identify the person who has intellectual responsibility for the creation of work.[58] "The fact that a work is the embodiment of a person's thought is of supreme importance in relation to that work."[59] When it is not possible to identify an author, then libraries traditionally designate the title entry for a work as the main entry in the catalog. Thus, the two main criteria for the author catalog are identification and intellectual responsibility. The history of cataloging codes over the past 150 years demonstrates that the view about which of these two criteria is the most important has changed over time, but is somewhat related to what one considers the main purpose of the author catalog to be.[60]

The *Anglo-American Cataloguing Code* of 1908 defined author as "[t]he writer of a book, as distinct from translator, editor, etc. . . . . Corporate bodies may be considered the authors of a publication issued in their name or by their authority."[61] By 1967, the *Anglo-American Cataloging Rules* defined author similarly: "By author is meant the person or corporate body chiefly responsible for the creation of the intellectual or artistic content of as work." The definition of author from these codes broadens the definition to include editors and compilers.[62] The modern *Anglo-American Cataloging Rules 2d*, defines personal author as "the person chiefly responsible for the creation of the intellectual or artistic content of the work" and defines corporate author as "an organization or group of persons that is identified by a particular name and that acts, or may act, as an entity."[63] The concept of authorship in the *Anglo-American Cataloging Rules* is complex, and is likely to become more so. For library catalogs and other finding tools, some scholars have suggested that the term "author" be replaced with terms such as "originator," "agent," or "creator" as a way to express various facets of the concept of authorship.[64]

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58. *Id.* at 7-9

59. *Id.* at 9.

60. *Id.*

61. AMERICAN LIBRARY ASSOCIATION & THE LIBRARY ASSOCIATION, CATALOGING RULES: AUTHOR AND TITLE ENTRIES (1908).

62. TAIT, *supra* note 57, at 10-11.

63. JOINT STEERING COMMITTEE FOR REVISION OF THE AACR ET AL., ANGLO-AMERICAN CATALOGUING RULES 21.1B1 (2d ed. 2002) [hereinafter JOINT STEERING COMMITTEE].

64. Association for Library Collections and Technical Services, Cataloging and Classification Section, Committee on Cataloging: Description and Access, *Task Force on the Review of The Logical Structure of AACR, Final Report* (1999), *at* http://www.libraries.psu.edu/iasweb/personal/jca/ccda/tf-log3b.html#2:2 (last visited Jan. 31, 2003) [hereinafter *Final Report*].

B. *Early Libraries and Authorship*

It is impossible to know for sure how early libraries were arranged and whether there was any effort at bibliographic control. Most of these were private libraries maintained by wealthy individuals who purchased scrolls and tablets or they were temple libraries containing religious texts. The Babylonians were the first society to found libraries, but there is also some evidence of similarly old libraries in ancient Egypt. The oldest discovered library catalog is from the library of Edfu in Upper Egypt, which was engraved on the library walls.[65] As the size of collections increased, catalogs were necessary so that materials could be retrieved. Our nature as human beings is to impose order, so subject arrangement was developed, likely with author arrangement within each subject.

The first substantial non-private library about which something is known is the Great Library at Alexandria established in 290 B.C. by Ptolemy I. The library flourished under the Ptolemies and throughout the Roman period. The collection brought great fame to the city for which it is named; and because of the library, the city became famous as the literary and scientific capital of the Mediterranean and the intellectual capital of the Greek world. The number of tablets or scrolls is reported to have reached 532,000 or about the equivalent of 100,000 modern books.[66] There likely were three separate libraries in the city and not just one, so the Great Library at Alexandria may also be thought to be the first library system with branch libraries.[67]

Like any modern library, it held the store of knowledge, but in the delicate form known as papyrus scrolls. Ptolemy asked his fellow rulers around the known world to lend him texts, which he would have copied; it is rumored that he did so but sometimes kept the originals and returned the copies to the rightful owners! Additionally, when ships landed at the port of Alexandria, vessels were searched, not for contraband, but for books and maps. These were confiscated, copied, and then returned to their owners. The copies were added to the library.[68] A truly unique feature of this library is that it was not a pri-

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65. DOROTHY MAY NORRIS, A HISTORY OF CATALOGUING AND CATALOGUING METHODS 1100-1850: WITH AN INTRODUCTORY SURVEY OF ANCIENT TIMES 1-3 (1939).

66. Ellen N. Brundige, *The Library of Alexandria*, *at* http://www.perseus.tufts.edu/Greek-Science/Students/Ellen/Museum.html (last visited Jan. 31, 2003).

67. *Library of Alexandria*, *at* http://members.iinet.net.au/~nicke/library/library.htm (last visited Jan. 31, 2003).

68. As a librarian, I must comment that this method was a rather unusual type of collection development, but it apparently was quite effective.

vate library but instead was established by the state. The library was open to all, so it was, in effect, the first public library.

Destroyed in 415 A.D., the library was ransacked for gold and silver and burned, although the reasons for the destruction are conflicting and political in nature. What is clear, however, is that the library was destroyed. Today, several excavations have revealed scientific and historical documents that would have resulted in the industrial revolution having occurred 1500 years earlier. Among the lost documents included the methods used to build the pyramids and the Parthenon, alchemy, natural plant medicine, and utopian philosophy.[69] The legend of the destruction of the library by Christian monks who feared the pagan content of the library[70] offers interesting parallels to the Internet and modern attempts to control the content of what is accessible on the Internet, whether it be offensive material, material that is critical of certain governments, or works by alleged terrorists.

How were the materials in the Library at Alexandria arranged? The physical shelves may have been located in one of the outlying halls or even in the Great Hall itself. Contemporary descriptions indicate that the shelving consisted of pigeonholes or racks for the scrolls, the best of which were wrapped in linen or leather jackets in order to protect them.[71] Apparently, there was some systematic sorting, probably by classes of authors such as poets, philosophers, and orators, and then alphabetically by author within the class. Zenodotus of Ephesus (born ca. 335 B.C.), is identified as the first librarian at Alexandria, and he is credited with developing this system of collection arrangement.[72]

In Roman times, manuscripts started to be written in codex form, (i.e., in book format rather than a roll) and began to be stored in wooden chests called *armaria*. Materials were probably housed in these chests and shelves in the groups in which they were acquired. Callimachus of Cyrene (ca. 305-240 B.C.), the second and most famous librarian of Alexandria, created the first catalog listing of 120,000 scrolls, called the *Pinakes* or Tables, which listed Greek

69. *Library of Alexandria*, *supra* note 67; Bede's Library, *The Mysterious Fate of the Great Library of Alexandria*, *at* http://www.bede.org.uk/library.htm (last visited Jan. 31, 2003) [hereinafter Bede's Library].

70. Bede's Library, *supra* note 69.

71. Brundige, *supra* note 66.

72. RUDOLPH BLUM, KALLIMACHOS: THE ALEXANDRIAN LIBRARY AND THE ORIGINS OF BIBLIOGRAPHY 226 (Hans H. Wellisch trans., 1991). It is assumed that Aristotle arranged his library by classes of authors and then chronologically within the authorship class. The size of the collection at Alexandria prevented arrangement by this method. *Id.*

works.[73] It appears that the Callimachus divided authors into classes such as epic poets, orators, and historical writers, and then arranged the authors alphabetically within the classes or subclasses. Thus, from earliest times, authorship was important for bibliographic control. Biographical information was included for each author, when possible. Unfortunately, the library catalog did not survive the destruction of the library intact, but fragments do exist.[74] The scrolls were cataloged by author, if the author was known.[75] So, this is the first recorded use of the name of the author as a finding tool for recorded knowledge.

Most of the early listings of medieval library collections were not catalogs as we know them today but were bibliographies, (a compilation of lists of books). Some of these early listings also contained biographical information about the author of the work.[76] Monastic libraries were first developed in England by the Benedictines, but it was the Carthusians that made provision for books to be lent outside the monastery. By the eleventh century the Benedictines adopted the Carthusian plan and each monastery had two book collections, one from which books could be lent outside the monastery and the second consisted of books that were kept in secure spaces and were considered to be valuable property of the house. These libraries thus had what could be described as lending and reference collections. Books were generally stored in cupboards or wherever space could be found. The monk in charge of the library was the precentor, who was also the chief singer and archivist.[77]

The first catalogs of medieval monastic libraries were actually inventory lists often arranged in the order in which the manuscript was received by the monastery.[78] Early library catalogs included information such as title, author, location in library, and the name of scribe who copied the book listed on a card.[79] Some catalogs may have been organized broadly by form (literature, music) or by discipline, such as science, religion, law, or by authorship or title.[80] One of the earliest such catalogs is that of the Glastonbury Abbey Library, produced in 1017, which was primarily an inventory (and thus was author ar-

73. Brundige, *supra* note 66.

74. *See* Moustafa El-Abbadi, *The Library at Alexandria—Ancient and Modern*, *at* http://www.greece.org/alexandria/library/library1.htm (last visited Jan. 31, 2003).

75. NORRIS, *supra* note 65, at 4-5.

76. BLUM, *supra* note 72, at 1.

77. NORRIS, *supra* note 65, at 15-16.

78. TAIT, *supra* note 57, at 16.

79. Beck, *supra* note 55.

80. RUTH FRENCH CARNOVSKY, THE DEVELOPMENT OF SUBJECT ACCESS TO LITERATURE 3-4 (1969).

ranged). Its most famous catalog, however, was produced in 1247, and it adopted an unusual classification based on whether the value of the work was due to the author or its subject. No other library appears to have used this method of classification.[81] Christchurch, Canterbury produced its library catalog between 1313 and 1331, and it was a subject catalog with author arrangement under at least one subject, theology, the largest category.[82] The catalog at the Exeter Cathedral Library was compiled in 1327 and was an author catalog.[83] By the fifteenth century, some of the catalogs of cathedrals, monasteries, and universities were still author catalogs but the majority had adopted subject catalogs with listings under each subject by author.[84]

Although many would identify the nineteenth century effort to share the cataloging for journal literature as the first effort at cooperative cataloging, it actually was initiated several centuries earlier. In 1296 the *Registrum Librorum Angliae* was produced, probably the work of Franciscans. The *Registrum* lists 183 monastic establishments, each of which had a library and was assigned a sequential number. Following the list of libraries is the author catalog that lists ninety-four authors. Under each author's name there is a list of titles along with the list of libraries that held the item as indicated by the number that denotes the name of the library.[85] Thus, the earliest attempts at bibliographic control were dependent on author arrangement exclusively or on author arrangement within each subject heading.

Catalogs of private libraries are few, but many early collections that are detailed in wills and inventories of various estates indicate that some of these libraries were extensive. The inventory listings often are by author unless the listing was prepared by a valuator who cared little for books who may have listed the work as "X" number of volumes, bound in calfskin.[86] The first bookseller's catalog was produced in 1595, the *Catalogue of Andrew Maunsell*, which consisted of two parts, an author listing and a subject listing. The third part was to continue the subject listing but had not been completed at the time of Maunsell's death.[87]

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81. NORRIS, *supra* note 65, at 28-29.

82. *Id.* at 38-40.

83. *Id.* at 46.

84. *Id.* at 117.

85. *Id.* at 30-33.

86. *See* ROBERT J. FEHRENBACH, PRIVATE LIBRARIES IN RENAISSANCE ENGLAND (Elisabeth S. Leedham-Green ed., 2001) (listing over 1600 private libraries and their contents drawn primarily from probate inventories).

87. NORRIS, *supra* note 65, at 136-38.

In the Middle Ages, there were no public libraries, yet the needs of scholars and researchers led to the development of some of the principles from which the modern library developed. Likely the richest library was the private library of the King of France, which by about 1500 had nearly two thousand books, of which some two hundred were printed volumes.[88] The library at the University of Leyden dates from 1575, and early engravings show that it was a subject-classified library with a variety of authors in each section. At Oxford University, the library was completely destroyed in 1549; Sir Thomas Bodley proposed that he should refit and restock the library,[89] but he insisted on an author catalog for the new collection as opposed to a subject catalog.[90] The Bodleian Library at Oxford University dates from 1597 and was open to the public as early as 1602. The first librarian, Thomas James was instructed to compile lists and submit them to Bodley so that duplicates would not be purchased.[91] The first Bodleian catalog was published in 1605, and it was the first general catalog for a European library. It was divided into four subject groups: theology, law, medicine, and arts. Within each of the four subject divisions, the catalog was arranged by author. The books were not shelved in author order, however, but by size.[92] The second catalog was published in 1620 and it was the first general library catalog to be published in author order abandoning subject classification entirely, but the preface still advised librarians to arrange their collections by size.[93] During the seventeenth century the Bodleian catalog tried both author and classified arrangements, and found author to be more advantageous.[94] During the eighteenth century, several libraries continued to use author arrangement for their catalogs, including the Bodleian, and some used a chronological arrangement of works under the name of the author. Except for the dispute over author versus subject classification, cataloging was becoming more standardized by this time.[95]

C. *Importance of Author in Bibliographic Control*

The name of the author is the primary or "main entry" for a work. Although there are vagaries of how names appear on the works, these

88. HENRI BOUCHOT, THE BOOK 308-09 (1890).
89. NORRIS, *supra* note 65, at 142.
90. TAIT, *supra* note 57, at 17.
91. BOUCHOT, *supra* note 88, at 316-17.
92. NORRIS, *supra* note 65, at 142-44.
93. *Id.* at 147-49.
94. *Id.* at 157.
95. *Id.* at 197.

are far less significant than how the title of a work may be expressed over time. Title pages, as they are now known, do not occur in incunabula (i.e., early printed books), although a small number of fifteenth century printed books had such title pages. In fact, most of these early books followed the practice of medieval manuscripts, which begin with the text proper. It was a universal practice to include the name of the author and the title at the end of the printed book along with the name of the printer, place, and date. Because of the many homonymous names that were used in medieval times, in order to identify the author, library catalogs often included information such as the author's position or distinctive title (almost always religious).[96]

As library collections grew in size and complexity, library managers began to develop listings of these works, not only for inventory control but also to help locate the work when a user wanted to retrieve it. Early catalogs were in the form of book catalogs with entries for each work held by the library—cuneiform inventory lists, manuscript lists of holdings of monastery libraries, and lists of holdings in private collections. These tended to be arranged by author, if the author was known, and otherwise by title.[97]

In England, Sir Antonio Panizzi, keeper of printed books at the British Museum, created a set of cataloging rules to govern the listing of the growing collection at the British Museum. In 1841, he produced his "91 Rules," and he documented the practice of using "entries" and "references" to refer one to the main entry (i.e., author entry).[98] These rules are said to be the beginning of modern cataloging rules; prior to this time, each cataloger made his own rules, and often they were not committed to writing. The cataloging rules that were then developed in England and the United States were based on Panizzi's rules.[99] Panizzi refused to develop a subject classification scheme because he believed that the name of the author should form the basis for the arrangement of the catalog. He testified before the Trustees of the British Museum that a catalog arranged alphabetically by the author's last name was the most useful arrangement since stu-

96. BOUCHOT, *supra* note 88, at 326-27.

97. Tillett, *supra* note 14.

98. *Id.*

99. NANCY BRAULT, THE GREAT DEBATE ON PANIZZI'S RULES IN 1847-1849: THE ISSUES DISCUSSED 1 (1972). When Charles Ammi Cutter published his *Rules for a Printed Dictionary Catalog of Libraries* in 1876, he acknowledged that he incorporated the rules of Panizzi. Charles Coffin Jewett, the legendary Librarian at the Smithsonian, referred to them as the "famous 91 rules." *Id.* (citing CHARLES AMMI CUTTER, RULES FOR A PRINTED DICTIONARY CATALOGUE (1876)).

dents and other users would know the name of the author of the book they wished to peruse.[100] As late as the mid-nineteenth century the British Museum still used the author as the primary entry element when there was an identifiable author. If the author was unknown, then the primary entry was under the title. Multiple authors were listed depending on how many were credited with the title, just as is done today for citations in bibliographies.[101] Panizzi's rules continued to be used by the British Library, but they had been reduced to forty-one rules by 1936.[102] In many ways, Panizzi's code is both pragmatic and practical, and is as modern as any of its successors.[103] The British Library catalog continued to expand, and by 1975 the original 150 volume catalog had expanded to 2000 and would soon fill 3000 volumes; further, there was not sufficient room in the reading room to house the rapidly growing catalog.[104] Virtually all library catalogs in Britain were subject-classified catalogs by the mid-twentieth century with the exception of the British Museum. By this time, the trend also appeared to favor a dictionary catalog as opposed to a classified one.[105]

Panizzi's "91 Rules" and the principle of authorship formed the foundation of the Anglo-American cataloging tradition—now 161 years of tradition. "The importance of the concept of authorship, whereby libraries acknowledge the creator of a work, is a cornerstone of the Anglo-American cataloguing rules, since librarians believe that users identify a work with an author."[106] As indicated, the name of the author has been the primary entry and arranging device in library catalogs for centuries. A work is first identified by the name of the author, referred to today as the main entry, and carries forward through the bibliographic description on a catalog entry.[107] Panizzi recognized joint authorship and collective authorship but did not appear to differentiate between them, and he also recognized corporate authorship.[108] In the United States, Charles A. Cutter, who developed widely followed cataloging rules beginning in 1876, identified two purposes of a library catalog: (1) to provide an indication of whether a library has a particular title by a given author; and (2) to

100. BRAULT, *supra* note 99, at 13.
101. Tillett, *supra* note 14.
102. TAIT, *supra* note 57, at 21.
103. *Id.* at 145.
104. NORRIS, *supra* note 65, at 213.
105. *Id.* at 225, 228.
106. Tillett, *supra* note 14.
107. *Id.*
108. TAIT, *supra* note 57, at 22, 25.

indicate the library's holdings of books by a particular author.[109] The first function may be described as the finding list function and the second as the intellectual responsibility function, but both functions clearly support the importance of authorship to libraries and library users. Early library catalogs were in book form, but by the end of the nineteenth century, the card catalog was becoming the preferred format. Under the leadership of the Library of Congress, the standard entry for the card catalog was the main author entry, and it adopted Cutter's principles by using the main entry to describe the intellectual responsibility for the work.[110]

1. Authorship and Cataloging Rules

As bibliographic control grew, the desire for standardization in cataloging increased. Even before Panizzi, some libraries had their own cataloging rules. Panizzi's rules were published, however, evidencing the fact that librarians sought some uniformity from library to library so that the same book could be identified the same way in each library.

Cutter defined authorship for his cataloging rules, and the definition he used continued to be used in later cataloging codes:

> Author. In the narrower sense, is the person who writes a book; in a wider sense it may be applied to him who is the user of the book's existence by putting together the writings of several authors (usually called the editor, more properly to be called the collector). Bodies of men (societies, cities, legislative bodies, countries) are to be considered the authors of their memoirs, translations, journals, debates, reports, etc.[111]

The *Anglo-American Code* of 1908 (AA) was the result of cooperation between the ALA and the Library Association (Britain), which was first suggested by Melvil Dewey, the father of library science. In Britain, the AA remained the cataloging rules in force for more than fifty years. The AA was designed for large library collections and the primary difficulty for this code was reconciling the needs for card catalogs in the United States with Britain's book catalogs. Generally, entry is under the name of the author and under the title if there is no author who can be identified.[112] The definition of author is instructive and somewhat tracks the general definition in copyright law:

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109. *Id.* at 18 (citing CHARLES AMMI CUTTER, RULES FOR A DICTIONARY CATALOGUE 12 (4th ed. 1904)).

110. *Id.* at 18-19.

111. *Id.* at 39-40 (citing CHARLES AMMI CUTTER, RULES FOR A DICTIONARY CATALOGUE 14 (4th ed. 1904)).

112. *Id.* at 48-49.

> 1. The writer of a book, as distinguished from translator, editor, etc.
> 2. In a broader sense, the maker of the book or the person or body immediately responsible for its existence. Thus a person who collects and puts together the writings of several authors (compiler or editor) may be said to be the author of a collection. Corporate bodies may be considered the authors of publications issued in their name or by their authority.[113]

The AA recognized joint authorship and multiple authorship as well. For joint authors, the order is the order as it appears on the title page of the work.[114]

The 1949 *ALA Cataloging Rules*[115] were based very closely on the AA but were intended to reflect the best current practices in cataloging in the United States. At that time, most U.S. libraries used the Cutter principles or rules for the main entry and followed the Cutter definition of author as did the AA. Again, the choice of main entry was first, the name of the author, whether a personal author or a corporate body.[116] For works with multiple authors, the 1949 *ALA Cataloging Rules* continued to designate the person principally responsible for the intellectual content of the work as the author, which required some work on the part of the cataloger. The rules were complicated with sixteen separate rules dealing with authorship, and they followed the AA in departing from the principle of designating as the author the first name listed on the title page. Instead, now the author is the person responsible for the work whether her name appears on the title page or not. If more than three persons are listed on the title page, the title is the main entry.[117] The rules of corporate authorship are quite similar to those in the AA, in which four types of corporate bodies are recognized: societies, governments, institutions, and miscellaneous bodies.[118]

The long-awaited *Anglo American Cataloging Rules* (AACR)[119] was published in 1967, primarily to respond to the needs of large libraries, but the needs of smaller libraries are also taken into account. The AACR defines author as follows:

> By "author" is meant the person or corporate body chiefly responsible for the creation of the intellectual or artistic content of a work.

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113. AMERICAN LIBRARY ASSOCIATION & THE LIBRARY ASSOCIATION, CATALOGING RULES: AUTHOR AND TITLE ENTRIES, at xiii (Clara Beedle ed., 1908).

114. TAIT, *supra* note 57, at 52-55.

115. AMERICAN LIBRARY ASSOCIATION, CATALOGING RULES FOR AUTHOR AND TITLE ENTRIES (Clara Beedle ed., 1949).

116. TAIT, *supra* note 57, at 77-78.

117. *Id.* at 79-81.

118. *Id.* at 86.

119. AMERICAN LIBRARY ASSOCIATION, ANGLO-AMERICAN CATALOGUING RULES 1 (1967).

> Thus composers, artist, photographers, etc. are the "authors" of the works they create; chess players are the "authors" of their recorded games; etc. The term "author" also embraces an editor or compiler who has primary responsibility for the content of a work, e.g. the compiler of bibliography.[120]

The definition was clearly expanded to recognize other types of creators of copyrighted works. The structure of the code is different from earlier codes in that the focus is on a few basic rules for different types of publications, but the principle continued to be using the tradition of intellectual responsibility for the main entry. The AACR modified this principle, however, in that the author entry is normally based on the statements that appear on the title page of the work. This likely is because modern books all have title pages, unlike incunabula. The statement on the title page is not conclusive evidence of intellectual responsibility, however, since Rule 1A says that the work should be entered under the author whether the author is named on the title page or not. Rule 1B goes further and states that if the publication itself erroneously attributes authorship to someone who is not the author, the work should be entered under the name of the actual author.[121]

The *Anglo-American Cataloging Rules 2d* (AACR2) uses the following definition:

> A personal author is the person chiefly responsible for the creation of the intellectual or artistic content of a work. For example, writers of books and composers of music are the authors of the works they create; compilers of bibliographies are the authors of those bibliographies; cartographers are the authors of their maps; and artists and photographers are the authors of the works they create. In addition, in certain cases performers are authors of sound recordings, films, and videorecordings.[122]

The latest revision of the AACR2 seems to use roughly the same definition, but is less detailed. It defines personal author as "the person chiefly responsible for the creation of the intellectual or artistic content of the work" and defines corporate author as "an organization or group of persons that is identified by a particular name and that acts, or may act, as an entity."[123] The general rule is:

> Enter a work by one or more persons under the heading for the personal author . . . , the principal personal author . . . , or the probable personal author . . . . In cases of shared authorship and mixed

120. *Id.* at 9.

121. TAIT, *supra* note 57, at 123-25.

122. AMERICAN LIBRARY ASSOCIATION ET AL., ANGLO-AMERICAN CATALOGUING RULES R. 21.1A (2d ed. 1978).

123. JOINT STEERING COMMITTEE, *supra* note 63, at R. 21.1.

> personal authorship . . . enter under the heading for the person named first.[124]

2. *Indexing and Authorship*

Another form of bibliographic control is indexing. An index may be defined as a systematic arrangement of entries designed to enable users to locate information in a document. The process of creating an index is called *indexing*, and a person who does it is called an *indexer*.[125] There are many types of indexes and some are automatically generated, especially those for digital documents. Increasingly, authors are asked to provide the indexing, especially for nonfiction works. Almost all other forms of indexing also rely heavily on the author as the primary indexing term. Multiple access points likely mean that other individuals who had something to do with the production of the work may be named, but indexers do not consider these individuals to be authors either.[126]

D. *Personal Authors Versus Corporate Authorship*

The term "authorship" is used in the AACR2 only with reference to works of personal authorship. The term would appear to encompass those relationships mentioned earlier between that person and responsibility for the work. Presumably the other relationships between a person or persons and the content of an item (e.g., responsibility for performance in editing) fall outside the scope of "authorship." Most notoriously, entry under the heading for a collaborator in a work of shared responsibility is made only if there are no more than three principal authors or three persons responsible; this is the so-called "rule of three." While it certainly would be possible to include entries for more authors, at some point a decision was made to limit the number to three. In an era of card catalogs, this made absolute sense because there was a need to restrict the size of any library's card catalog since the physical space demands could be enormous. Moreover, the work to file the cards and to maintain the entries was very expensive. In the digital age, however, these space restrictions are considerably reduced, and no card filing is required, therefore, the rule of three is of questionable utility.[127] Some maintenance work is still required to

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124. *Id.* at R. 21.1A2.

125. American Society of Indexers, *Frequently Asked Questions*, *at* http://asindexing.org/site/indfaq.shtml (last visited Jan. 31, 2003).

126. Mulvany, *supra* note 32.

127. *See Final Report*, *supra* note 64.

clarify the form of certain names, but this can be done globally via electronic means as opposed to manually.

Normally, in published works, authorship is fairly easy to determine and verify, but not always. Archival materials, manuscripts, and early printed works present different challenges. Anonymous and pseudonymous works also present problems. For years, libraries have been in the business of trying to uncover pseudonyms and to assign responsibility for anonymous works. Perhaps librarians do not like uncertainty, but eliminating this uncertainty about particular works has been a considerable boon to researchers. It seems today that there are many fewer anonymous works produced, and authors who write under pseudonyms often reveal their identities within a few years after the work appears, so neither of these issues creates the problems for catalog librarians that they once did.

Libraries treat authors of any work alike whether they are artists, photographers, playwrights, or composers. But what if the author or artist is truly unknown? Libraries often identify the work by how closely an unidentified artist worked with an identified artist highlighted by expressions, such as "school of Rembrandt" or "copyist of Rodin," which indicates an influence. This is often referred to as "shadowy authorship" and occurs more frequently as librarians catalog more art objects and surrogates of art objects such as slides, photographs, and digitized images.[128]

Typical corporate authors may be companies, universities, other institutions, or publishers. The concept for bibliographic control in libraries is to credit the entity responsible for the creation of the work. Unlike patents, the named responsible party does not have to be an individual. Thus, if the work is a work for hire, the copyright law establishes that the employer is the author.[129] Libraries accept this, not because of the copyright law, but because usually multiple individuals within the corporation are somehow responsible for that work, or the company itself has accepted responsibility for the work of some unsung hero and listed itself on the title page of the work as the author.

Authorship generally is not attributed to editors, translators, performers, and the like in library catalogs. These individuals may be referenced in the bibliographic record but not as an author. This is similar to the way these individuals are treated in copyright law, usu-

128. Art Libraries Society of North America, *Cataloging Advisory Committee, Anonymous Artist Relationships in the MARC 21 Bibliographic Format* (May 1999), *at* http://www.loc.gov/marc/marbi/dp/dp115.html (last visited Jan. 31, 2003).

129. 17 U.S.C. § 101 (2000).

ally they are not credited as being an author; but note that translators may be authors if the work evidences sufficient creative authorship.

Ownership of the copyright is a tremendously important issue in copyright law because it determines who may exercise the exclusive rights. However, it is unimportant for library bibliographic control purposes. Responsibility for the work is a real issue. Many reference works are compilations, and most often the publisher owns the copyright in these works of corporate authorship. The work may have an individual editor, but that person is not the author, and the main entry likely will be under title and not under the name of the publisher.

E. Authority Control

Determining name variants and problems of misspelling may seem mundane, but libraries are trying to create a permanent record of works produced by an author. Inaccuracies in the name mean that researchers may not be able to identify all of the works that the library has by the author, or that by using the catalogs of multiple libraries, a researcher may not locate all of the works by a particular author. Ensuring this uniformity is done through what is called authority control or authority records, which is now centralized at the Library of Congress but is actually a large cooperative project.[130] Authority control is defined as "the consistent use and maintenance of the forms of names, subjects, uniform titles, etc., used as headings in a catalog. Since this process creates a link between bibliographic records and the authority file, authority control provides the underlying structure of the catalog."[131] This philosophy of using a single authorized form of an author's name provides unity and order to an individual catalog. It also helps with international records of the author. The classic example is Mark Twain/Samuel Clemens, but soon could include popular icons such as Madonna and Sting. Further, authority files can resolve alternate or incorrect spellings of an author's name. The Name Authority File at the Library of Congress governs the headings for persons, corporate bodies, conferences, and geographic entities, such as governments that are capable of authorship.[132]

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130. Gary L. Strawn, *Accessing and Distributing Authority Files*, Proceedings of the Taxonomic Authority Files Workshop, Wash., D.C., June 22-23, 1998, *at* http://calacademy.org/research/informatics/taf/proceedings/Strawn.html (last visited Jan. 31, 2003).

131. *Authority Control: A Basic Glossary of Terms*, *at* http://ublib.buffalo.edu/libraries/units/cts/ac/def.html (last visited Jan. 31, 2003).

132. John J. Riemer, *Overview of Library Authority File Record Structure, Format, Content, and Processes*, Proceedings of the Taxonomic Authority Files Workshop, Wash., D.C., June 22-23, 1998, *at* http://research.calacademy.org/taf/proceedings/Riemer.html (last visited Jan. 31, 2003).

Because of this crucial need for accuracy in order for authority control to function, errors must be corrected—which often means that libraries all over the world are constantly correcting and updating their records. If scholars ultimately prove that Shakespeare indeed did not write all of the plays attributed to him, library records worldwide will be amended to so reflect. The magnitude of that effort would rival that required to be made in various statutes mandated by changes in the tax code or the PATRIOT Act and all of the volumes of the U.S. Code that have to be revised and/or replaced because of the significant changes made in many statutes by a single comprehensive act of Congress.

In the analog world, authorship was finite. Once it was determined and the bibliographic record created, the record was complete (absent errors that had to be corrected). This may not be the reality in the digital world.

IV. THE DIGITAL ENVIRONMENT: COMPLICATIONS FOR LIBRARIES RELATING TO AUTHORSHIP

There certainly are unique problems for libraries in dealing with the concept of authorship in the digital environment, but the problem solving techniques from the analog world may be successfully imported to ease some of the difficulties. The problems for copyright are at least as complicated as those for libraries. "Around the complex and muddy doctrine of copyright, spurred by the legal efforts of the culture industries, the web is being articulated to support and reaffirm a corporate, commercial system of cultural distribution, to the exclusion of important alternatives."[133] By contrast, users of the Internet show scant concern for copyright and its economic rationale, and the real power of the Internet is the potential for dialogue and exchange between users. Interactivity between the reader and the author through hypertext on the web is an example of this change.[134] This will certainly affect libraries and the bibliographic control of digital objects. "Currently, cyberspace is a place where commodification is unimportant. However, traditional authors and traditional industries see a vast market ready for their 'goods.' In making this market safe for proprietary goods the possibilities for an alternative may die

133. Tarleton Gillespie, The Digital Renovation of Authorship (unpublished Ph.D. dissertation, University of California, San Diego), *at* http://communication.ucsd.edu/people/g_gillespie.html (last visited Jan. 31, 2003).

134. Deborah Halbert, Weaving Webs of Ownership: Intellectual Property in an Information Age ch. 8 (draft of Ph.D. dissertation, University of Hawaii, Hawaii Research Center for Futures Studies), *at* http://www.futures.hawaii.edu/dissertation/chapter8.html (last visited Jan. 31, 2003).

out."[135] By contributing commentary to a digital file, the reader has become an author. Some scholars advocate a move toward interchange and away from individual ownership of works on the web.[136]

A. *Search Engines*

The name of the author is one of the primary search terms people use on the Internet, and search engines[137] are able to recognize author's names. Search engines do not deal well with variants of names, however, because there is neither real "authority control" on the web nor the useful "see" and "see also" references one finds in library catalogs to direct users to related name variants.

Search engines rely on metadata, which may be defined as information about information. Metadata consists of three types of data: (1) administrative metadata—information about rights, authorship, and ownership; (2) structural metadata—used by viewing software; and (3) content metadata—description and title.[138] Metadata is useful for resource, resource discovery, authentication, management, provenance, version control, resource system use, and also the tracking of users. It will become especially important for developing interoperable library systems. Metadata also has some similarity to Copyright Management Information,[139] but it is much more extensive. Already there is automated indexing of digitized files based on metadata using metadata standards.[140]

> Until such time as artificial intelligence is perfected, dynamic knowledge repositories will benefit from "adding in" human intelligence to the metadata. Authors or creators of objects are probably the cheapest and most available source of metadata, and they are often quite familiar with their intended audience, whether their information is about cooking, flying, or flying saucers.[141]

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135. *Id.*

136. *Id.*

137. A search engine is defined as "[a] program that searches documents for specified keywords and returns a list of the documents where the keywords were found." WEBOPEDIA, *at* http://www.webopedia.com/TERM/s/search_engine.html (last visited Jan. 31, 2003).

138. For an excellent explanation of metadata, see *Metadata Chart*, at http://www.getty.edu/research/institute/standards/intrometadata/index.html.

139. *See* 17 U.S.C. § 1201 (2000).

140. Some of these standards are EAD, *Encoded Archival Description*, *at* http://www.loc.gov/ead/ (last visited Jan. 31, 2003); *Dublin Core Metadata Initiative*, *at* http://dublincore.org/ (last visited Jan. 31, 2003); *MARC Standards for Machine-Readable Cataloging Records*, *at* http://www.loc.gov/marc/ (last visited Jan. 31, 2003).

141. Carroll, *supra* note 31.

Level is another element of authorship. Regardless of the degree of sophistication, most writers address the majority of their works to a particular level of sophistication. This means that the author's name is an important variable for extracting information for metadata that relates to the user's sophistication level.[142] Other attributes of an author that provide useful metadata information are position, rank, and honors, which would be useful as a searchable field. In some countries, authors do not want to write under their own names for fear of retribution, thus alias is another important attribute of an author that provides useful information for metadata. Since people post documents about personal matters such as family, pets, and travel, as well as about professional or business matters, metadata that would permit filtering out the personal matter would also be useful. Another aid would be the affiliation of the author to include organizations or associations.[143]

While metadata is the description given to indexing on the web, to some extent a library catalog is filled with metadata. Each card in the catalog or entry is filled with various elements of metadata about a particular work. Standards for describing digital works hold great promise for ways to address the huge number of documents on the web. But regardless of standards, it is likely that the author will continue to be the primary access point for digital works.

B. Particular Problems for Digital Works

As libraries increasingly offer access to on-line materials, they are adding bibliographic records for these Internet works to their catalogs. There is considerable debate about whether and how to catalog works that exist only on the Internet, especially since what is available increases exponentially. Not only that, but works that exist on the web disappear with some frequency; and for countless others, the location on the web simply changes. Thus, any attempt to add Internet resources to any library catalog is extremely complicated. "The easy availability of on-line materials, and the fact that digitized forms can be easily and cheaply created and altered by individuals, have shaken some of our fundamental concepts of intellectual property rights, authorship, publishing, and bibliographic control."[144] There is a need to assess whether additional relationships between persons and corporate bodies and the content of an item in the context of newly emerging forms of intellectual and artistic expression and multimedia

142. *Id.*
143. *Id.*
144. Tillett, *supra* note 14.

productions should be reflected in catalogs. For example, is it time to reconsider how libraries treat joint and multiple authors, especially for scientific journal articles? In other words, is it time to dump the rule of three?

What about sequential authorship? In the past, sequential authorship was manifested only in new editions of a work or in series of works, each complete in itself. By contrast, websites are constantly updated but not necessarily within the confines of the digital equivalent of an edition, and the responsibility for the intellectual content may change. For example, if a law professor creates course webpages she may turn them over to another professor who teaches the course in subsequent semesters. So now, there is a second author. Suppose that the second author makes extensive changes, and then he permits yet another faculty member to use the webpages, and that third author also makes numerous additions and changes. Who then is the author? Perhaps all three are authors, but they never exactly agreed to be joint authors, much less agreed in writing. Further, at some time, the content has changed to such an extent that the only contribution of the first author was the idea to create course webpages, an unprotectable contribution. All of the content as well as the design may bear little relation to the original. At present, there is simply no way with bibliographic control to deal with what may become a norm for digital works; thus, bibliographic control may have to develop fluidity to meet the challenge of sequential authorship.

A related question is, when is a work finished or complete so that the bibliographic record can be completed? With digital works, how will libraries and others know when a work is complete? With printed works it was clear when the work was complete: the point at which the publisher distributed copies to the public. Even in the legal world, titles were published in looseleaf format and continuously updated, but the work was considered complete only when a new edition was published. In the digital environment, a work may never be complete. Even for authors who create their own original works or permit others to digitize their analog works, there are questions of when an on-line product is final. Since digital renditions can easily be corrected and updated, libraries need better ways of identifying which version a user is viewing on the screen as well as which versions catalogers will want to describe, and which library selectors will want to obtain and preserve for the future.

Coupled with the problem of sequential authorship or even overlapping authorship, new solutions will have to be found to the problems of authentication. The easy availability of on-line materials, and the

fact that digitized formats can be easily and cheaply created and altered by individuals, have shaken some of the fundamental concepts of intellectual property rights, authorship, publishing, and bibliographic control. Individuals can self-publish on the web. Moreover, it is far too easy to capture someone else's work and modify it to be one's own without paying the original creator for that right or receiving permission.[145] How can one determine whether a digital work is authentic? To some extent, this is hardly a new problem that originated with the Digital Age. Texts in manuscript form that were copied over and over again, were certainly subject to corruption.[146] Who is the author, and who published the work? Can the authors and publishers be trusted (are they worthy of one's research time)? Is the rare e-book what it purports to be? Is the manuscript actually by the person to whom it is attributed, and is its date accurate? These questions are now being asked more openly of objects that originate in digital form because libraries have not yet adopted practices or standards for providing ready answers to them.[147]

Deciding what is required to authenticate digital objects may be informed from past practices with non-digital objects. Because digital objects bear less evidence of "authorship, provenance, originality and other commonly accepted attributes than do analog objects, they are subject to additional suspicion. Tests must be devised and administered for authentication."[148] When objects originate in electronic form, it may be even more difficult to certify that the object is the product of its author. Absent a deliberate and distinctive marking (such as a digital watermark) implemented by the author, a mark that could not be guessed by another or altered by anyone, it may be impossible to authenticate an electronic document beyond doubt.[149]

If authors of files or images do not take steps to establish authorship of their work, a library's only alternative for cataloging is to accept the assertions of others. There simply will not be the same type of evidence that might exist for a physical object such as handwriting, marginal notes, ink, or binding, and the work is more changeable, either intentionally or accidentally.[150] On the other hand, it is possible to fight false authorship with traditional tools such as having the au-

145. *Id.*

146. Ross, *supra* note 29, at 497 (citing 1 ELIZABETH EISENSTEIN, THE PRINTING PRESS AS AN AGENT OF CHANGE 10 (1979)).

147. Charles T. Cullen, *Authentication of Digital Objects: Lessons from a Historian's Research*, *at* http://www.clir.org/pubs/reports/pub92/cullen.html (last visited Jan. 31, 2003).

148. *Id.*

149. *Id.*

150. *Id.*

thor register the work with a third party,[151] or register the work for copyright. For scholars and historians who use digital objects in their research, authentication will continue to be a huge issue, and authorship is one of the principal issues to be authenticated. Electronic files created by someone who has taken no steps to establish authorship are problematic, and the cataloger will be the one to establish authorship. In the case of a digital object, this is more difficult than if it were an analog object due to the lack of physical evidence provided by analog objects—evidence that offers the means to test the cataloger.[152]

The problem of locating missing authors is even more difficult for digital works. It is hard enough in the analog world, but it is much more difficult in the digital environment. Anyone who uses the web to any extent has found an article or other object on the web and been absolutely unable to identify who wrote it. If there is an indication that the work came from the *New York Times*, then there is a possibility of identifying the author through the publisher. But what if there is absolutely no information, even in the metatags? Then the dearth of clues to help identify the author probably means that it cannot be done, and the bibliographic and indexing information will just remain incomplete without authorship attribution.[153]

Reversion of the copyright to the author or her heirs between the thirty-fifth and fortieth year[154] may have interesting implications for digital works that are included in electronic databases. The U.S. Copyright Act provides that during this five-year window, when the author has transferred rights to the work to a third party such as a publisher, the rights revert to the author or to his heirs during this time period. How will this impact the ability to track and identify authors? It could result in a problem similar to that experienced when freelance authors were recognized by the United States Supreme Court as holding the electronic rights in their articles which had not been specifically transferred.[155] Some publishers that had included articles by freelancers in electronic databases felt they had no choice but to remove these articles systematically. Certainly, publishers could have paid royalties to freelance writers, but the publishers elected not to do so, claiming that it was almost impossible to do and would not

151. Roberto Zamparelli, *Copyright and Global Libraries: Going with the Flow of Technology*, FIRST MONDAY, *at* http://www.firstmonday.dk/issues/issue2_11/zamparelli/ (last visited Jan. 31, 2003).

152. Cullen, *supra* note 147.

153. *But see* The Short Story Page, *Missing Authors*, *at* http://www.jdedge.com/story/missing.htm (last visited Jan. 31, 2003).

154. *See* 17 U.S.C. § 203 (2000).

155. *Tasini*, 533 U.S. 483.

be cost effective. Further, each author would receive very little in the way of compensation.[156]

Suppose that the author has assigned the copyright to a publisher that has included the digital work in a database. When the copyright reverts to the author, if the author exercises the reversion right, then the database owner would have to renegotiate with the author for the right to continue to include the work in the database. Under these conditions, databases of digital objects may not have the stability that was once thought.

Transfers of copyright also raise issues. Normally, the transfer of copyright in a work does not affect authorship at all concerning the responsibility for digital works, thus it should not matter for bibliographic control. However, if the work is one that continues to be supplemented or changed, then the transfer might actually affect authorship if the updating is done by someone else.

C. Alternative Methods for On-line Bibliographic Control

There are several possible on-line alternatives to using the name of the author as the main entry for any catalog or index, but none of them works quite as well. For example, the title might become the main entry as is done when the author is unknown. Title searching in an on-line catalog or on Amazon.com is not easy, however. It is difficult because the title search requires one to use the full title with words in the exact order, and often, a user either does not know the full title or gets it slightly wrong, which results in an inability to find the item.

Keywords are very useful for searching databases of digital works, but they only identify entries that use those words or contain the words in the metatags. Thus, keyword searching is generally useless for identifying all of the works by an author. The strong point for keyword searching is that they are easy to conduct and one needs no subject heading guide or thesaurus, so it is easy for users to locate materials.

Another possible substitute for author as main entry is to somehow rely on the Digital Object Identifiers (DOIs). Today, publishers are adopting new alphanumeric systems known as DOIs to attach to digital information to serve as a tag of sorts in indexing. The DOI index would then be linked to the full-text of the work. The DOI will stay with the object regardless of whether the publisher sells the digital

156. *See* Richard Wiggins, *The* Tasini *Decision: A Victory for No One*, LAW LIB. RESOURCE EXCHANGE (Aug. 15, 2001), *at* http://www.llrx.com/features/tasini.htm (last visited Jan. 31, 2003).

work, but there are some concerns about DOIs since the content providers would control not only the indexing, but also access to the indexing and through the index, access to the digital object itself. Access to the indexing would be available to users only through licensing arrangements.[157] Thus, when a scholar wants to cite an article using a DOI, it would become an inaccessible reference to anyone who does not have access through a license to one of the publisher's systems in the consortium. Neutral third party indexing and abstracting will be a thing of the past, and one may not even be able to ascertain whether a particular work even exists on the web.[158]

The final alternative exists only for archival collections. Because manuscript and archival cataloging is done primarily at the collection level, there most often exists an adjunct finding aid called a collection register that is not incorporated in the cataloging record at all. This collection register often includes a box and folder description that gives far greater detail about the specifics of the content of the collection. The collection register may also include an index with locators to the box and folder, and increasingly these are maintained in digital form. For archival collections, however, author continues to be the primary entry.[159]

V. CONCLUSION

It is difficult to predict how all of this will affect library users as they increasingly rely on digital works. Will the user become a co-author when she uses an electronic book and makes extensive notes on her digital copy? Does she have any rights to further publish this work by posting it on a website? Will these personally annotated versions be valuable for library collections? Likely, this would depend on who is doing the note taking. So, fame of an individual could make this annotated digital work valuable to a library, or perhaps even if the individual has some sort of outstanding ability.

Authorship probably will continue to be the primary finding point for materials in libraries and on the Internet. Authorship also has other uses in libraries. For example, even in a library or archival col-

157. Kelly McCollum, *Publishers of On-Line Journals Plan to Link Millions of Science Footnotes*, CHRON. HIGHER EDUC. (Nov. 17, 1999), *at* http://chronicle.merit.edu/free/99/11/99111701t.htm (last visited Jan. 31, 2003).

158. For a discussion of DOIs, see Laura N. Gasaway, *Values Conflict in the Digital Environment: Librarians Versus Copyright Holders*, 24(1) COLUM.-VLA J.L. & ARTS 115, nn.194-212 (2000).

159. ARLIS/NA Guidelines for Catalog Art Exhibition Publications, *Determining Main Entry of an Exhibition Catalog*, *at* http://www.stanford.edu/%7Ekteel/guidelines_mainentry.html (last visited Mar. 10, 2003).

lection that is not cataloged, books and materials may be arranged alphabetically by author name. This is especially true for collections of fiction, poetry, and the like. Of course, it works more successfully for smaller libraries than for larger ones, and there is even a classification scheme of sorts based on the author's last name, such as through the use of the Cutter Tables.

Whatever the model that is ultimately developed for expanded bibliographic control of digital works, it will be somewhat more complicated than in the analog environment. The relationship between the author and the work may also be different as large numbers of collaborators could be involved; and it may be much more difficult to determine when a work is complete or finished. Further, in the past there was considerable emphasis on what may be called the physical package (i.e., whether the work was in microform, on videotape, etc.), but in the future, it is likely that more attention should be paid to the intellectual content itself.[160] The current system of cataloging bundles together the idea of authorship and the nature of the contribution of that author. The first question that must be asked for digital works is, who is the person responsible for the intellectual content, and then, is it necessary to tell users what the nature of that relationship might be?[161] In other words, is it important to indicate whether the individual credited with authorship is the author, editor, or performer? In earlier times, catalogers used to provide "relators" such as "joint author," "editor," and the like, but all have been dropped today except in music cataloging. For the digital world, relators may need to be reinstated.

Authorship is a concept of considerable importance to society, for copyright law purposes and for libraries and their users. Libraries are examining at their practices and trying to ensure that digital works continue to be available and can be retrieved through excellent bibliographic control and indexing. The author's name remains the key.

160. Tillett, *supra* note 14.
161. *Id.*