

ESTTA Tracking number: **ESTTA1153123**Filing date: **08/13/2021**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91270550
Party	Defendant Service Champions, LLC
Correspondence Address	JONATHAN A. HYMAN KNOBBE MARTENS OLSON AND BEAR, LLP 2040 MAIN STREET, 14TH FLOOR IRVINE, CA 92614 UNITED STATES Primary Email: efiling@knobbe.com Secondary Email(s): jonathan.hyman@knobbe.com 310-551-3450
Submission	Answer and Counterclaim
Filer's Name	David G. Kim
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Signature	/David G. Kim/
Date	08/13/2021
Attachments	2021-08-13 Applicant_s Answer Affirmative Defenses and Counter Claim - SERCH.050M.pdf(432709 bytes) Exhibits A-G - SERCH.050M.pdf(6185307 bytes) Exhibits H-K - SERCH.050M.pdf(5205439 bytes)

Registration Subject to the submission

Registration No.	5362969	Registration date	12/26/2017
Registrant	Hiller, LLC 915 MURFREESBORO RD NASHVILLE, TN 37217 UNITED STATES		

Goods/Services Subject to the submission

Class 037. First Use: 2016/01/09 First Use In Commerce: 2016/01/09

All goods and services in the class are requested, namely: Air conditioning apparatus installation and repair; Air conditioning contractor services; Electrical contracting; Electrical contractor services; Electrical repairs, maintenance, and installation of electrical wiring, outlets, light fixtures, and electrical panels; HVAC contractor services; Plumbing; Plumbing contractor services; Plumbing services; Installation and repair of air conditioning apparatus; Installation and repair of heating, ventilating and air conditioning equipment; Installation and replacement service for heating, ventilating and air conditioning systems

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

Hiller, LLC,

Opposer/Respondent,

v.

Service Champions, LLC,

Applicant/Petitioner.

Opposition No.: 91270550

Serial No.: 88/946,386

Mark:



APPLICANT'S ANSWER TO NOTICE OF OPPOSITION,
AFFIRMATIVE DEFENSES, AND COUNTER CLAIM

Commissioner for Trademarks
 P.O. Box 1451
 Alexandria, VA 22313-1451

Dear Sir or Madam:

Applicant Service Champions, LLC ("Applicant"), a California limited liability company, located and doing business at 3150 East Birch St., Brea, CA 92821, hereby answers the Notice of Opposition filed by Hiller, LLC ("Opposer") against Application Serial No. 88/946,386 ("the '577 Application") as follows:

1. Applicant denies that Opposer would be damaged by the registration on the Principal Register of Applicant's Mark. Applicant lacks sufficient knowledge or information to determine the truth or falsity of the remaining allegations in Paragraph 1 of the Notice and, on that basis, denies the allegations.

2. Admitted.

3. Applicant lacks sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 3 of the Notice and, on that basis, denies the allegations.

4. Applicant admits that Exhibit A to the Notice appears to be a printout of U.S. Registration No. 5,362,969 showing that Registration No. 5,362,969 was filed on January 10, 2017 in International Class 37. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 4, and on that basis denies the allegations.

5. Denied.

6. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6, and on that basis denies the allegations.

7. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7, and on that basis denies the allegations.

8. Denied.

9. Admitted.

10. Denied.

11. Denied.

12. Admitted.

13. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13, and on that basis denies the allegations.

14. Applicant admits Applicant's Mark comprises a smiley face. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14, and on that basis denies the allegations.

15. Applicant admits Applicant's Mark comprises a smiley face. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15, and on that basis denies the allegations.

16. Denied.

17. Admitted.

18. Applicant denies there is a likelihood of confusion between Opposer's Mark and Applicant's Mark. Applicant lacks sufficient knowledge or information to determine the truth or falsity of the remaining allegations in Paragraph 18 of the Notice and, on that basis, denies the allegations.

19. Applicant admits that Applicant seeks to register Applicant's Mark for "HVAC contractor services; heating contractor services; Heating equipment installation and repair; installation, repair and maintenance of heating equipment; Installation and repair of heating, ventilating and air conditioning equipment; Installation and replacement service for heating, ventilating and air conditioning systems; air duct cleaning services; plumbing; plumbing contractor services; plumbing services; Electrical repairs and installation of heating and air conditioning equipment." Applicant lacks sufficient knowledge or information to determine the truth or falsity of the remaining allegations in Paragraph 19 of the Notice and, on that basis, denies the allegations.

20. Applicant admits that Applicant seeks to register Applicant's Mark for and Opposer's Mark appears to be registered for "HVAC contractor services," "Installation and repair of heating, ventilating and air conditioning equipment," "Installation and replacement service for heating, ventilating and air conditioning systems," "Plumbing," "Plumbing contractor services," and "Plumbing Services," among other goods and services. Applicant denies the remaining allegations of Paragraph 20.

21. Applicant lacks sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 21 of the Notice and, on that basis, denies the allegations.

22. Denied.

23. Denied.

24. Applicant lacks sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 24 of the Notice and, on that basis, denies the allegations.

25. Paragraph 25 of the Notice contains legal conclusions to which no answer is required. To the extent an answer is required Applicant denies the allegations in Paragraph 46 of the Notice.

WHEREFORE, Applicant prays that this Opposition be denied in its entirety and that the Application Serial No. 88/946,386 be permitted to register.

COUNTERCLAIM FOR CANCELLATION

Applicant and Counterclaimant Service Champions, LLC (“Applicant”), a California limited liability company, located and doing business at 3150 East Birch St., Brea, CA 92821, believes that it has been and will continue to be damaged by the continued registration of U.S.



Registration No. 5,362,969 for the mark (“the ’969 Registration”) in International Class 37 and relied upon by Hiller, LLC (“Opposer”) in its opposition. As grounds for cancelling the ’969 Registration, Applicant alleges as follows:

1. Applicant has used the



mark since at least as early as 2019.

2. Applicant filed Application Serial No. 88/946,386 for the



mark.

3. Opposer has opposed Application Serial No. 88/946,386 based on the '969



Registration for the mark .

4. Applicant has a real interest regarding the continued registration of the '969 Registration because such registration would damage Applicant by interfering with its right to the lawful descriptive or generic use of the smiley face design, as well as its applications for its



mark.

5. Applicant has been, and continues to be, damaged in that Opposer has filed a Notice of Opposition against Applicant's U.S. Application Serial No. 88/946,386 for the



Mark on the basis of Opposer's '969 Registration.

Allegations Common to all Counts

6. Opposer alleges that it provides heating and air conditioning services under the



mark .



7. Opposer's is a generic design and has enjoyed widespread use in many different contexts for a long period of time. Indeed, in the January 31, 2017 Office Action for the '969 Registration, the Examiner describes "the ubiquitous smiley face" and its common use

“to convey a message of boosting morale, lifting spirits, smile more, be happy and the like.” Ex. A at 2.

8. The smiley face was likely created in or around 1963 and “has led to tens of thousands of variations and has appeared on everything from pillows and posters to perfume and pop art.” Ex. A at 12.

9. Many other companies, including numerous companies in the same industry as Opposer, use an almost identical mark as shown in the '969 Registration.

10. For example, a company called Happy Heaters uses the following mark to



advertise its heating and air conditioning services: . Ex.

B (<http://www.happyheaters.com>).

11. As a second example, a company called Happy Heating and Cooling uses the following mark to advertise its heating and cooling services:



. Ex. C (<https://www.happyheatcool.com/service-areas/black-forest-co>).

12. As a third example, a company called Affordable Heating and Cooling uses the following mark to advertise its heating and cooling services:



. Ex.

D (<http://www.affordable-hvac.com/hvac-maintenance-program>).

13. As a fourth example, a company called Happy Air uses the following mark to



advertise its heating and air conditioning services:

. Ex. E

(<http://www.happyairac.com/services.php>).

14. As a fifth example, a company called Air Joe, Inc. uses the following mark to



advertise its heating and air conditioning services:


. Ex. F


(Certificate of Registration for Trademark No. 4342061).

15. In addition, many other companies in other industries use the smiley face mark. *See, e.g.*, Ex. G (Certificate of Registration for Trademark No. 3,885,827); Ex. H (Certificate of Registration for Trademark No. 4,772,322); Ex. I (Certificate of Registration for Trademark No. 5,394,791).


Count I: Cancellation of Registration No. 5,362,969—No Acquired Distinctiveness

16. Applicant realleges and incorporates by reference, as if fully set forth herein, the allegations of the preceding paragraphs as set forth above.

17. Opposer's  mark is not an inherently distinctive design. The '969 Registration claims acquired distinctiveness under Section 2(f). Ex. J ('969 Certificate of Registration). Under Section 1212.02(b) of the Trademark Manual of Examining Procedure, Opposer's claim of distinctiveness under Section 2(f) "may be construed as conceding that the matter to which it pertains is not inherently distinctive and, thus, not registrable on the Principal Register absent proof of acquired distinctiveness". Indeed, in its July 31, 2017 Response to Office Action, Opposer conceded that "the smiley face is a 'ubiquitous, non-inherently distinctive design'" Ex. K at 1.

18. Opposer has not made substantially exclusive and continuous use of the  as a mark on Opposer's services. As alleged above, many companies have used a


smiley face mark, including numerous companies in the same industry as Opposer. As a result,


Opposer's  is incapable of distinguishing Opposer's goods from the goods of others.


19. Accordingly, the mark is not inherently distinctive and has not acquired distinctiveness pursuant to Trademark Act Sections 1, 2 and 45, 15 U.S.C. §§ 1051, 1052, 1053, and 1127 and section 2(f), 15 U.S.C. § 1052(f). Therefore, the mark should be canceled.


Count II: Cancellation of Registration No. 5,362,969—Failure to Function as a Mark

20. Applicant realleges and incorporates by reference, as if fully set forth herein, the allegations of the preceding paragraphs as set forth above.

21. Opposer's  mark should be canceled because it is incapable of distinguishing Opposer's goods from the goods of others and therefore cannot function as a trademark and an indicator of source.


22. The  mark is a common and generic design, including in Opposer's trade or industry.

23. The  mark is used and has been used by numerous entities in the United States, including entities in Opposer's trade or industry, on goods that do not emanate from Opposer.

24. Accordingly, the  mark fails to function as a mark pursuant to Trademark Act Sections 1, 2 and 45, 15 U.S.C. §§ 1051, 1052, 1053, and 1127. Therefore, the mark should be canceled.

Count III: Cancellation of Registration No. 5,362,969—Failure to Police

25. Applicant realleges and incorporates by reference, as if fully set forth herein, the allegations of the preceding paragraphs as set forth above.



26. Upon information and belief, Opposer has abandoned the  mark by failing to adequately police it.

27. Opposer has knowingly allowed numerous companies to use a smiley face mark.

28. In the January 31, 2017 Office Action issued against the '969 Registration, the Examining Attorney stated that “[s]ince its inception, the iconic smiley face has been used on goods and in connection with services in a decorative manner.” Ex. A at 2.

29. Upon information and belief, Opposer has never instituted any prior infringement actions, despite knowledge of other companies’ use of a smiley face mark.

30. Opposer’s failure to take legal action and subsequent use of the smiley face mark by numerous companies has become so widespread that the public does not and cannot associate

the  mark with Opposer. Therefore, the  mark has become generic, fails to function as a mark, and/or has been abandoned, and the mark should be cancelled.

WHEREFORE, Applicant respectfully requests that U.S. Registration No. 5,362,969 be cancelled and that Applicant's Counter Petition to Cancel be sustained in its entirety in favor of Applicant.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: August 13, 2021

By: /David G. Kim/

Jonathan A. Hyman

Brian C. Horne

Hans D. Mayer

David G. Kim

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Attorneys for Applicant, Service Champions, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **APPLICANT'S ANSWER TO NOTICE OF OPPOSITION, AFFIRMATIVE DEFENSES, AND COUNTER CLAIM** has been served on the Opposer's counsel of record on August 13, 2021 via electronic mail to:

Timothy L. Capria, Esq.
BRADLEY ARANT BOULT CUMMINGS LLP
nashvilleipdocketing@bradley.com, pwalker@bradley.com,
tcapria@bradley.com, rswor@bradley.com

Signature: 

Name: Doreen P. Buluran

Date: August 13, 2021

53822188

Exhibit A

To: Hiller, LLC (NashvilleIPDocketing@bradley.com)
Subject: U.S. TRADEMARK APPLICATION NO. 87295138 - 210011301041
Sent: 1/31/2017 12:40:07 PM
Sent As: ECOM116@USPTO.GOV
Attachments: [Attachment - 1](#)
[Attachment - 2](#)
[Attachment - 3](#)
[Attachment - 4](#)
[Attachment - 5](#)
[Attachment - 6](#)
[Attachment - 7](#)
[Attachment - 8](#)
[Attachment - 9](#)
[Attachment - 10](#)
[Attachment - 11](#)
[Attachment - 12](#)

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 87295138

MARK:

87295138

CORRESPONDENT ADDRESS:

PHILLIP E. WALKER
BRADLEY ARANT BOULT CUMMINGS, LLP
1600 DIVISION STREET, SUITE 700
NASHVILLE, TN 37203

CLICK HERE TO RESPOND TO THIS LETTER:

http://www.uspto.gov/trademarks/teas/response_forms.jsp

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APPLICANT: Hiller, LLC

CORRESPONDENT'S REFERENCE/DOCKET NO :

210011301041

CORRESPONDENT E-MAIL ADDRESS:

NashvilleIPDocketing@bradley.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW. A RESPONSE TRANSMITTED THROUGH THE TRADEMARK ELECTRONIC APPLICATION SYSTEM (TEAS) MUST BE RECEIVED BEFORE MIDNIGHT **EASTERN TIME** OF THE LAST DAY OF THE RESPONSE PERIOD.

ISSUE/MAILING DATE: 1/31/2017

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

Search Results

The trademark examining attorney has searched the Office's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; *see* 15 U.S.C. §1052(d).

Sections 1, 2, 3 and 45 Refusal – Failure to Function as a Service Mark

Registration is refused because the applied-for mark is a universal symbol that merely conveys an informational social, political, religious, or similar kind of message; it does not function as a trademark or service mark to indicate the source of applicant's services and to identify and distinguish them from others. Trademark Act Sections 1, 2, 3, and 45, 15 U.S.C. §§1051-1053, 1127; *see In re Eagle Crest, Inc.*, 96 USPQ2d 1227, 1229-31 (TTAB 2010); *In re Volvo Cars of N. Am., Inc.*, 46 USPQ2d 1455, 1460-61 (TTAB 1998); TMEP §1202.17(c)(i)(A), (c)(iii).

The applicant's mark consists of the ordinary smiley face design which is a single line circle containing two ovals for eyes and an upturned curved line for a mouth. It is shown in the colors yellow and black, the colors most commonly associated with the design.

Determining whether a symbol functions as a trademark or service mark involves considering (1) the significance of the symbol, (2) the nature of the symbol's use in the relevant marketplace, and (3) the impression created when the mark is used in connection with the identified goods or services. TMEP §1202.17(c)(i); *see In re Eagle Crest, Inc.*, 96 USPQ2d at 1229; *In re Aerospace Optics, Inc.*, 78 USPQ2d 1861, 1862 (TTAB 2006). A common universal symbol that is frequently displayed by many different parties in connection with various services is not likely to be viewed as a source indicator but rather will be purchased for the message the symbol conveys. *See* TMEP §1202.17(c)(i)(A).

The attached evidence from an online dictionary shows that the symbol refers to a "smiley face" which is defined as "a stylized representation of a smiling face, typically a yellow circle with dots for eyes and a curved line for a smile, used as in a memo to suggest approval, a joking tone." *Collins English Dictionary*, (2017) at www.collinsdictionary.com. See attachment 1 "smiley1". Further, the attached evidence from *Smithsonian.com* provides a history of the ubiquitous smiley face and shows this symbol was and is commonly used to convey a message of boosting morale, lifting spirits, smile more, be happy and the like. See attachment 2 "smiley2" from www.smithsonian.com. Since its inception, the iconic smiley face has been used on goods and in connection with services in a decorative manner. Because consumers are accustomed to seeing this symbol commonly used in everyday communications by many different sources, the public will not perceive the symbol as a trademark or service mark that identifies the source of applicant's services but rather only as the ubiquitous symbol that is used to convey happiness, positive feelings, boost morale, etc.

Here, the applicant uses the smiley face design adjacent to the wording "HILLER PLUMBING, HEATING, COOLING & ELECTRICAL". However, it appears to be used as decorative graphic art or clip-art and not necessarily as a source indicator. It also appears that the applicant has put either "tm" or "sm" next to the smiley design to indicate its trademark significance. Use of the symbol "SM" next to the mark on the specimen merely shows applicant's intent to claim the applied-for mark as a service mark and is not an indicator of whether the mark is actually perceived by the public as a source-indicator. *See In re Remington Prods. Inc.*, 3 USPQ2d 1714, 1715 (TTAB 1987); *In re Anchor Hocking Corp.*, 223 USPQ 85, 88 (TTAB 1984); *In re Indus. Washing Mach. Corp.*, 201 USPQ 953, 955 (TTAB 1979); TMEP §1301.02.

The ordinary nature of the mark and its widespread use by others in many different contexts weighs against the mark being perceived by others as a source indicator. The evidence simply does not support the perception of the mark as a source indicator.

Based on the above, the examiner finds the mark fails to function as a service mark and registration is refused under Sections 1, 2, 3 and 45 of the Trademark Act.

Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

If applicant responds to the refusal(s), applicant must also respond to the requirement(s) set forth below.

Drawing – Color Location Statement

Applicant has submitted a color drawing and provided a color claim, but has not provided a full description specifying where all color appears in the literal and design elements in the mark. *See* 37 C.F.R. §§2.37, 2.52(b)(1); TMEP §807.07(a)-(a)(ii).

Generic color names must be used to describe the colors in the mark, e.g., magenta, yellow, turquoise. TMEP §807.07(a)(i)-(ii). If black, white, and/or gray are not being claimed as a color feature of the mark, applicant must exclude them from the color claim and include in the mark description a statement that the colors black, white, and/or gray represent background, outlining, shading, and/or transparent areas and are not part of the mark. *See* TMEP §807.07(d).

Therefore, applicant must provide a mark description that specifies where all the colors appear in the literal and design elements in the mark. *See* TMEP §807.07(a)(ii). The following is suggested, if accurate:

The mark consists of a yellow smiley face with black eyes and a black upturned mouth.

TEAS PLUS OR TEAS REDUCED FEE (TEAS RF) APPLICANTS – TO MAINTAIN LOWER FEE, ADDITIONAL REQUIREMENTS MUST BE MET, INCLUDING SUBMITTING DOCUMENTS ONLINE: Applicants who filed their application online using the lower-fee TEAS Plus or TEAS RF application form must (1) file certain documents online using TEAS, including responses to Office actions (see TMEP §§819.02(b), 820.02(b) for a complete list of these documents); (2) maintain a valid e-mail correspondence address; and (3) agree to receive correspondence from the USPTO by e-mail throughout the prosecution of the application. *See* 37 C.F.R. §§2.22(b), 2.23(b); TMEP §§819, 820. TEAS Plus or TEAS RF applicants who do not meet these requirements must submit an additional processing fee of \$125 per class of goods and/or services. 37 C.F.R. §§2.6(a)(1)(v), 2.22(c), 2.23(c); TMEP §§819.04, 820.04. However, in certain situations, TEAS Plus or TEAS RF applicants may respond to an Office action by authorizing an examiner's amendment by telephone or e-mail without incurring this additional fee.

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §§2.62(c), 2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. *See* TMEP §§705.02, 709.06.

/Karen Bracey/
Examining Attorney
Law Office 116
(571) 272-9132
karen.bracey@uspto.gov

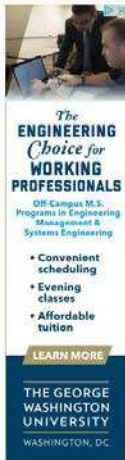
TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/mailling date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.



Definition of 'smiley face'

smiley face in American English

1. a stylized representation of a smiling face, typically a yellow circle with dots for eyes and a curved line for a smile, used as in a memo to suggest approval, a joking tone, etc.
2. a combination of typed characters, as :-), :) , or ; -) , used, as in e-mail, for such a representation



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Example sentences containing 'smiley face'

On the side of the van was painted a devil with a **smiley face** and skeletons and they were throwing people into fire.
Womack, Jack RANDOM ACTS OF SENSELESS VIOLENCE

Nearby words of 'smiley face'

Smiles
smilelet



Word of the day:

Up-Helly-Aa

a midwinter festival held in January in Shetland , originally a fire festival, but now a celebration of Shetland's Norse heritage , involving the ceremonial burning of a newly built Viking ship

[See full definition](#)

Jan 31, 2017

smiley
smiley face
smilingly
smilodon
smir

All ENGLISH words that begin with 'S'

Source

Definition of **smiley face** from the Collins English Dictionary

Comments

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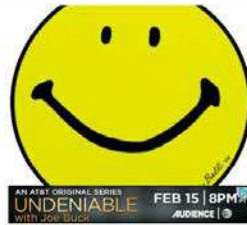


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Smithsonian.com





An original Harvey Ball smiley face (image: The World Smiley Foundation)

In the 1994 Robert Zemeckis film, Forrest Gump stumbles into the history books as he runs across the country.

At one point, he meets a poor T-shirt salesman who, Gump recalls, “wanted to put my face on a T-shirt but he couldn’t draw that well and he didn’t have a camera.” As luck would have it, a truck drives by and splashes Gump’s face with mud. He wipes his face on a yellow T-shirt and hands it back to the down-on-his-luck entrepreneur, telling him to “have a nice day.” The imprint of Gump’s face left a perfect, abstract smiling face on the bright yellow t-shirt. And thus, an icon was born.

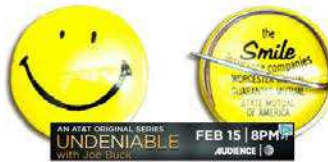




As you probably expect, that was *not* how the iconic smiley face was created. There was no cross-country runner or struggling t-shirt salesman, there was no truck or mud puddle. There was, however, a graphic designer, some devious salesmen, and an ambitious newspaper man – all add up to a surprisingly complex history for such a simple graphic.

It's largely accepted that the original version of the familiar smiley face was first created 50 years ago in Worcester, Massachusetts by the late Harvey Ross Ball, an American graphic artist and ad man. Ball came up with the image in 1963 when he was commissioned to create a graphic to raise morale among the employees of an insurance company after a series of difficult mergers and acquisitions. Ball finished the design in less than 10 minutes and was paid \$45 for his work. The State Mutual Life Assurance Company (now Allmerica Financial Corporation) made posters, buttons, and signs adorned with the jaundiced grin in the attempt to get their employees to smile more. It's uncertain whether or not the new logo boosted morale, but the smiling face was an immediate hit and the company produced thousands of buttons. The image, ~~UNDENIABLE~~ endlessly imitated but according to Bill Wallace, Executive Director of the Worcester Historical Museum, the authentic Harvey Ball-designed smiley face could always be identified by its distinguishing features: the eyes are narrow ovals, one larger than the other, and the mouth is not a perfect arc but "almost like a Mona Lisa Mouth."

Neither Ball nor State Mutual tried to trademark or copyright the design. Although it seems clear that Ball has the strongest claim to the second most iconic smile in history, there's much more to the story.



Harvey Ball's smiley pin for The State Mutual Life Assurance Company (Image: The Smiley Company)

In the early 1970s, brothers Bernard and Murray Spain, owners of two Hallmark card shops in Philadelphia, came across the image in a button shop, noticed that it was incredibly popular, and simply appropriated it. They knew that Harvey Ball came up with the design in the 1960s but after adding the slogan "Have a Happy Day" to the smile, the Brothers Spain were able to copyright the revised mark in 1971, and immediately began producing their own novelty items. By the end of the year they had sold more than 50 million buttons and countless other products, turning a profit while attempting to help return a nation's optimism during the Vietnam War (or provide soldiers with ironic ornament for their helmets). Despite their acknowledgment of Harvey's design, the brothers publicly took credit for icon in 1971 when they appeared on the television show "What's My Line."



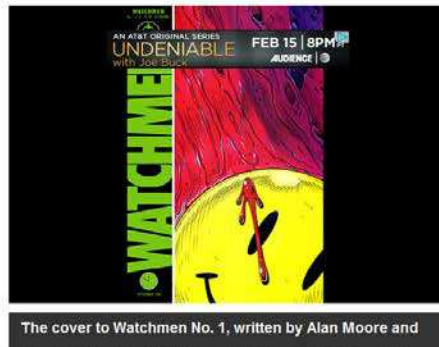
The smiley face AN ATAT ORIGINAL SERIES UNDENIABLE FEB 15 | 8PM AUDIENCE | newspaper

In Europe, there is another claimant to the smiley. In 1972 French journalist Franklin Loufrani became the first person to register the mark for commercial use when he started using it to highlight the rare instances of good news in the newspaper *France Soir*. Subsequently, he trademarked the smile, dubbed simply "Smiley," in over 100 countries and launched the Smiley Company by selling smiley T-shirt transfers.

In 1996, Loufrani's son [Nicolas](#) took over the family business and transformed it into an empire. He formalized the mark with a style guide and further distributed it through global licensing agreements including, perhaps most notably, some of the earliest graphic emoticons. Today, the [Smiley Company](#) makes more than \$130 million a year and is one of the top 100 licensing companies of the world. The company has taken a simple graphic gesture and transformed it into an enormous business as well as a corporate ideology that places a premium on "positivity." As for the American origin of the smiley, Nicolas Loufrani is skeptical of Harvey's claim on the design even though, as evident in the above image, his father's original newspaper icon is almost identical to Ball's mark, idiosyncrasies and all. Loufrani argues [UNDENIABLE](#) FEB 15 | 8PM AUDIENCE | 9 [his father's first smiley face](#), a stone carving found in a French cave that dates to 2500 BC, as well as a smiley face graphic used for promotion by a New York radio station in 1960.

Copyright and trademark issues are complicated, and despite their views toward Ball's design, when the Smiley Company attempted to trademark the image in the United States in 1997, they became embroiled in a legal battle with Walmart, which started using the smiley face as a corporate logo in 1996 and tried to claim ownership of it (because of course they did.) The law suit lasted 10 years and cost both companies millions of dollars. It was settled out of court in 2007 but its terms remain undisclosed.

In 2001, Charlie Ball tried to reclaim the optimistic legacy of his father's creation from unbridled commercialization by starting the [World Smile Foundation](#), which donates money to grass-roots charitable efforts that otherwise receive little attention or funding.



Illustrated by David Gibbons (published by DC Comics)



The simple yellow smiley face created in 1963 (probably) has led to tens of thousands of variations and has appeared on everything from pillows and posters to perfume and pop art. Its meaning has changed with social and cultural values: from the optimistic message of a 1960s insurance company, to commercialized logo, to an ironic fashion statement, to a symbol of rave culture imprinted on ecstasy pills, to a wordless expression of emotions in text messages. In the groundbreaking comic *Watchmen*, a blood-stained smiley face motif serves as something of a critique of American politics in a dystopian world featuring depressed and traumatized superheroes. Perhaps *Watchman* artist Dave Gibbons best explains the mystique of the smiley: "It's just a yellow field with three marks on it. It couldn't be more simple. And so to that degree, it's empty. It's ready for meaning. If you put it in a nursery setting...It fits in well. If you take it and put it on a riot policeman's gas mask, then it becomes something completely different."

Sources:

"Smiley's People," BBC Radio, <http://www.bbc.co.uk/programmes/bo1bh91h>; Smiley Company, <http://www.smileycompany.com/shop/>; Thomas Crampton, "Smiley Face is Serious to Company," *The New York Times*, <http://www.nytimes.com/2002/07/07/arts/07smiley.html>; "Smiley Face," Wikipedia, http://en.wikipedia.org/wiki/Smiley_face



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Jimmy Stamp is a writer/researcher and recovering architect who writes for Smithsonian.com as a contributing writer for design.

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Jacks at Cabo Pulmo

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Subject: U.S. TRADEMARK APPLICATION NO. 87295138 - 210011301041
Sent: 1/31/2017 12:40:09 PM
Sent As: ECOM116@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

**IMPORTANT NOTICE REGARDING YOUR
U.S. TRADEMARK APPLICATION**

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED
ON **1/31/2017** FOR U.S. APPLICATION SERIAL NO. 87295138

Please follow the instructions below:

(1) TO READ THE LETTER: Click on this [link](#) or go to <http://tsdr.uspto.gov>, enter the U.S. application serial number, and click on "Documents."

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

(2) TIMELY RESPONSE IS REQUIRED: Please carefully review the Office action to determine (1) how to respond, and (2) the applicable response time period. Your response deadline will be calculated from **1/31/2017** (*or sooner if specified in the Office action*). A response transmitted through the Trademark Electronic Application System (TEAS) must be received before midnight **Eastern Time** of the last day of the response period. For information regarding response time periods, see <http://www.uspto.gov/trademarks/process/status/responsetime.jsp>.

Do NOT hit "Reply" to this e-mail notification, or otherwise e-mail your response because the USPTO does NOT accept e-mails as responses to Office actions. Instead, the USPTO recommends that you respond online using the TEAS response form located at http://www.uspto.gov/trademarks/teas/response_forms.jsp.

(3) QUESTIONS: For questions about the contents of the Office action itself, please contact the assigned trademark examining attorney. For *technical* assistance in accessing or viewing the Office action in the Trademark Status and Document Retrieval (TSDR) system, please e-mail TSDR@uspto.gov.

WARNING

Failure to file the required response by the applicable response deadline will result in the ABANDONMENT of your application. For more information regarding abandonment, see <http://www.uspto.gov/trademarks/basics/abandon.jsp>.

PRIVATE COMPANY SOLICITATIONS REGARDING YOUR APPLICATION: Private companies **not** associated with the USPTO are using information provided in trademark applications to mail or e-mail trademark-related solicitations. These companies often use names that closely resemble the USPTO and their solicitations may look like an official government document. Many solicitations require that you pay "fees."

Please carefully review all correspondence you receive regarding this application to make sure that you are responding to an official document from the USPTO rather than a private company solicitation. All official USPTO correspondence will be mailed only from the "United States Patent and Trademark Office" in Alexandria, VA; or sent by e-mail from the domain "@uspto.gov." For more information on how to handle private company solicitations, see http://www.uspto.gov/trademarks/solicitation_warnings.jsp.

Exhibit B



Emergency Service Available

Register Your Bryant System

775-674-2779

775-674-2779



Reno/Sparks HVAC

Happy Heating and Air Conditioning is a heating and air conditioning contractor that is locally owned and serves the Reno, Sparks and greater Northern Nevada area. If you need a furnace install, air conditioning repair or a heating install, give us a call to see how we can help.

Our expert technicians are NATE certified and we all pride ourselves in providing the highest



Services we Offer

quality of service with every single job we do. Our experts have perfected their craft and can perform heating repairs effortlessly.

We’re not just about repairing or installing HVAC systems (although we are experts at heating installs, air conditioning repairs and Reno Sparks furnace repairs). We also provide manual J duct designs, safe rooms, Sparks and Reno indoor grow rooms, bomb shelters, heat gain/loss calculations and so much more.

FIND OUT MORE

Our Services

Heating & Air Conditioning

Happy Heating and Air Conditioning has the highest-quality equipment available to roll out for your commercial and residential needs. We also work closely with suppliers to ensure that we can get you the best possible prices on the market.

Water heaters and Boilers

Nobody wants to be without hot water! We are here to get your family back into a WARM shower! Reno water heaters have it ruff. Water in Northern Nevada is very harsh and just wreaks havoc on residential water heaters and boilers. We can repair, repair and replace most residential water heating systems within 24 hours!! Over the phone pricing available on most systems.

Service & Repair

If you have a heating or air conditioning system that wasn’t installed efficiently or optimized correctly, then it could be doing very little to maintain the temperatures in your home. We offer air conditioning repair and heating repair, as well as maintenance if it isn’t broken but could use a revamp. Our NATE certified technicians can be at hand to help you.

Contact Info

Contact the Happy HVAC Experts

Happy Heating and Air Conditioning strive to not only meet your expectations, but exceed them exponentially. You won’t be left disappointed, regardless of what your needs might be. Give us a call or schedule an appointment with us directly from our site (You can find all the information at the very top of this page).

Schedule an Appointment

Your name

Phone

Type of Service

Your email

☐ Phone

☐ Email

☐ Address

Our Contact Phone:

775-MR-HAPPY
775-674-2779

Our Contact Email:

info@happyheaters.com

Our Office Location:

800 Apple Blossom
Sparks, NV 89433

All fields are obligatory

Schedule an Appointment

.embellishment-
61155e8e5eba8{



Exhibit C



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- SINCE 1994 -

[Financing Available](#)

SCHEDULE SERVICE



[Home](#) / [Service Town](#)

Heating and Air Conditioning in Black Forest, CO

You want to know you can trust any heating and cooling company you hire in Black Forest, CO. Happy Heating & Cooling is an experienced and certified HVAC contractor with more than 24 years of history. We're leaders in the community and our focus is on delivering the best in residential repair and replacement services. Our famous 2.5 Hour Super Tune-Up will keep your equipment in great shape.

All our work is backed by 5-year guarantees, and we also offer a 100% satisfaction guarantee. That's why our slogan is "We're not happy until you're happy!" Make an appointment with one of our design specialists today.

**Free Service Call
for Any Repair Over \$250**

SEE MORE PROMOS

“Very pleased with the work JD did at my home. He was professional, knowledgeable, and provided some agreed upon follow-up in a timely manner.

- Steve G.

READ MORE REVIEWS

We Serve The Following Zip Codes in Black Forest, CO:

80908

Air Conditioning

[A/C service](#) is something every home needs at some point, whether it's an air conditioning installation, an air conditioning replacement, or regular maintenance. You only want professionals like those at Happy Heating & Cooling to handle a job like an A/C replacement or A/C installation—or really *any* air conditioning service that you may require for your house. We're the residential air conditioning experts in the area to call. We have a proven track record of success and we guarantee all our work.

AC Repairs & Tune-Ups

When you have a malfunctioning cooling system, call us for the [A/C repair](#) work to fix the problem. Along with fast and accurate air conditioning repair, we offer A/C tune-up service that will keep your air conditioner humming away summer after summer. Our air conditioning maintenance plan will catch potential problems, improve system energy efficiency, and give you valuable peace of mind. Call us to find out more about A/C maintenance and repair services for Black Forest, CO.

Heating

Happy Heating & Cooling is the [heating service](#) to call to keep your family warm, no matter the temperature outdoors. Our service technicians offer heating installation and heating replacement for a range of units: furnaces, heat pumps, boilers, and more. We're certified carbon monoxide and combustion analyst specialists, so we know how to keep a heater running safely. If you're looking for a new heating system or want to know if it's time to replace the aging one currently in your house, call us.

Heater Repair & Tune-Ups

One of the most important jobs we do for customers in Black Forest, CO is [heating maintenance](#). With our famous 2.5 Hour Super Heater Tune-Up, we'll see you have a heater in great shape with few problems and energy saving performance. Of course, heater maintenance and the best heating tune-up won't stop all potential heating repair issues. We've got your back there as well! Our service specialists are trained and equipped to see any heating repair you need gets done right.

Indoor Air Quality

If the air in your home feels dry, dusty, or stale, call Happy Heating & Cooling and we'll help out with our [indoor air quality](#) services. Our specialists handle many types of jobs and installations to purify and clean your air, as well as to improve circulation through the ventilation system. We install air purifier and air purification systems, air filtration systems, and whole-house humidifiers. Don't forget to arrange for duct cleaning to not only make the air healthier, but to improve HVAC performance.

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Happy Service Club

Just like your vehicle, your air conditioning and heating systems need routine maintenance to keep them running their best. Without regular servicing, heating and cooling systems waste energy and are likely to break down more frequently. It's all about saving you money and extending the life of your heating and cooling system. Typical service agreements charge you top dollar for priority service and repairs. With the Affordable Heating and Cooling Preferred Club Members Maintenance Agreement, you not only get priority



service at a discount, but we work diligently to prevent breakdowns from happening, saving you money in the process.

1 Year *Happy Service Club* Member Maintenance Agreement

- ☒ Annual Maintenance Inspection

☒ Qualified Technicians

☒ Priority Service over NON-MEMBER Customers

☒ Preferred 24 hour Emergency Same Day Service for equipment failure

☒ Maintain & Validates Manufacturer Warranties

☒ Reduce the Risk of Costly Breakdowns

☒ Increase Efficiency Operation

☒ Reduce Energy Costs

☒ Maintain Safe Operation

☒ Improve Comfort & Reliability

☒ 15% Discount on Parts and Labor

Maintenance Pricing per Year

\$64.95

year

Boiler System
(1 seasonal Fall inspection)

Contact Us to Sign Up

\$109.95
year

Geothermal System - 1 Seasonal Inspection (Spring or Fall)

Contact Us to Sign Up

\$119.95
year

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Contact Us to Sign-Up

Additional Options

4" or 5" Filter – Merv 8 \$19.95 – Merv 10 \$24.95 – Merv 16 \$84.95 plus tax



Pure Air Maintenance System \$175.00 plus tax (16 Merv Filter/2 UV light/Charcoal Filter)

Additional System at same address - 30% Discount plus tax

Water Heater at same location – clean pilot, burner & flash \$44.95 each plus tax

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Iowa City
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9910
Anamosa
- 319-462-
3638

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Exhibit E



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Providing residential and commercial heating & air conditioning service.

We Will Make You Smile!

Reliable A/C Repair Services

When your air conditioner has a problem, you want it fixed, the first time. Happy Air will be ready to come out to your home or business anywhere in the Woodlands to fix your cooling system.

Air conditioners are not maintenance-free devices. With the high usage they get here in southeast Texas during the 100 degrees or hotter summers, sooner or later, you will need AC repair. The AC repair services provided by Happy Air for commercial and residential air conditioners will always be done to your satisfaction. We endeavor to repair your air conditioner with the highest level of service possible; so once we finish, you will be happy with Happy Air.

[Back to top](#)

A/C Replacement Services

Air conditioning units are not a one-size fits all item. These appliances must be carefully fit to the area to be cooled. The wrong air conditioner in your home or business can run inefficiently and waste money on electric bills in the long run.

The Right A/C Unit For Your Home or Office

Our professional staff at Happy Air in the Woodlands will advise you on the right AC replacement unit for your home or business. A properly selected and installed replacement air conditioner will get you through those 100-degree days in the summer.

Happy Air will work with you to find and install the right commercial or residential air conditioner you need to keep your cool this year and for many years to come.

[Back to top](#)

Furnace Repair and Central Heating Services

Modern furnaces are more complex than their predecessors, running off a computer system rather than mechanical. A typical homeowner will likely be unable to service his own furnace and will need to call in an expert. The professionals at Happy Air are known for their high-quality AC repair services, but they are also well versed in servicing central heating units.

Our technicians will come out to examine your heating system. In many instances furnace repair can be done the same day.

When you need heater repair for your home or business anywhere in the Woodlands, contact Happy Air for a fast, reliable fix for your central heating system.

[Back to top](#)

Commercial HVAC Maintenance Services

Inefficient HVAC systems do more than just make your business uncomfortable. Maintaining the air quality inside your business starts with proper commercial HVAC maintenance.

Happy Air is not just for residential systems. The professional technicians at Happy Air also provide HVAC maintenance for businesses around the Woodlands, TX. Regular service and maintenance of an HVAC system increases the longevity of the system, and lowering replacement costs over the lifetime of the building. A well-maintained heating and cooling system works more efficiently and will lower energy bills.

For commercial heating and cooling repair or maintenance, Happy Air will provide the professional, reliable service you demand for your commercial building.

[Back to top](#)

Rooftop HVAC Unit Repair

Today's commercial air conditioning units have come a long way from older models both in technology and design. Modern HVAC systems built to handle the heavy requirements of commercial buildings are typically installed outside on the roof. To keep the outdoor elements from hampering the system's efficiency, heavy layers of insulation are added to the ducts and interior walls. This insulation makes today's high-tech systems better able to operate when the condenser is located outside.

Happy Air provides rooftop HVAC unit repair to service and help maintain the operating of your business's cooling system. Our professionals will provide you with high-quality HVAC repair services anywhere in the Woodlands to keep your rooftop HVAC unit in proper working order.

[Back to top](#)

Rooftop HVAC Unit Replacement

The decision to replace a large, commercial HVAC unit should be carefully considered, but when you choose to have an HVAC replacement, Happy Air will be available. Older HVAC systems become less efficient over time, costing your business more in energy bills. Constant repairs to an older rooftop HVAC system will waste money. A new unit will operate at maximum efficiency to create the highest possible level of indoor air quality for your business.

Indoor Air Quality Professionals

Happy Air in the Woodlands has a staff of professional cooling and heating technicians who provide a high level of service for replacing your rooftop HVAC system to your satisfaction. Lower your HVAC repairs and energy bills by electing to have a new HVAC system installed.

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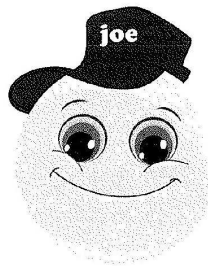
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Exhibit F

United States of America

United States Patent and Trademark Office



Reg. No. 4,342,061

Registered May 28, 2013

Int. Cl.: 37

SERVICE MARK

PRINCIPAL REGISTER

AIR JOE, INC (ILLINOIS CORPORATION)
STE D
1775 W CORTLAND CT
ADDISON, IL 60101

FOR: ELECTRICAL CONTRACTOR SERVICES; INSTALLATION AND REPAIR OF HEATING, VENTILATING AND AIR CONDITIONING EQUIPMENT; PLUMBING SERVICES, IN CLASS 37 (U.S. CLS. 100, 103 AND 106).

FIRST USE 7-20-2012; IN COMMERCE 7-20-2012.

THE STIPLING IS FOR SHADING PURPOSES ONLY.

THE MARK CONSISTS OF A ROUND SMILEY FACE WITH THIN EYEBROWS WEARING A MECHANIC/PAINTER HAT AND BRIM SHIFTED TO ONE SIDE OF THE FACE. THE STYLIZED TEXT "JOE" IS CENTERED ON THE FRONT OF THE HAT.

SER. NO. 85-737,653, FILED 9-25-2012.

TRICIA SONNEBORN, EXAMINING ATTORNEY



Lisa Street Lee

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>.

Exhibit G

United States of America

United States Patent and Trademark Office



Reg. No. 3,885,827

Registered Dec. 7, 2010

Int. Cl.: 37

SERVICE MARK

PRINCIPAL REGISTER

DUANE BLANTON PLUMBING, SEWER & DRAINAGE, INC. (ILLINOIS CORPORATION)
600 LONG LAKE DRIVE
ROUND LAKE, IL 60073

FOR: DRAIN AND SEWER CLEANING AND ROOTERING SERVICES; PLUMBING;
PLUMBING AND GAS AND WATER INSTALLATION; PLUMBING CONTRACTOR SER-
VICES; PLUMBING SERVICES, IN CLASS 37 (U.S. CLS. 100, 103 AND 106).

FIRST USE 3-21-2010; IN COMMERCE 3-21-2010.

THE MARK CONSISTS OF A BLACK OUTLINED SMILEY FACE CIRCLE FILLED WITH
YELLOW IN THE CENTER. THE RIGHT EYE (OR LEFT EYE IF FACING THE SMILEY) OF
THE SMILEY IS WINKING. ON THE LOWER, LEFT SIDE OF THE SMILEY, PARTIALLY
OVERLAPPING THE BLACK OUTLINED OF THE CIRCLE IS A RED PLUMBER'S WRENCH
WITH A GREY HINGE AND THREE GREY TRIANGLES ABOVE THE WRENCH.

THE COLOR(S) YELLOW, BLACK, GREY, AND RED IS/ARE CLAIMED AS A FEATURE
OF THE MARK.

SER. NO. 85-013,629, FILED 4-14-2010.

KRISTIN DAHLING, EXAMINING ATTORNEY



David J. Kypos

Director of the United States Patent and Trademark Office

Exhibit H

United States of America

United States Patent and Trademark Office



Reg. No. 4,772,322

Registered July 14, 2015

Int. Cl.: 37

SERVICE MARK

PRINCIPAL REGISTER

THE HAPPY HANDYMAN, LLC (FLORIDA LIMITED LIABILITY COMPANY)
PO BOX 110881
NAPLES, FL 34108

FOR: HANDYMAN SERVICE, NAMELY, BUILDING REPAIR AND MAINTENANCE, IN
CLASS 37 (U.S. CLS. 100, 103 AND 106).

FIRST USE 1-15-2013; IN COMMERCE 1-15-2013.

THE MARK CONSISTS OF A YELLOW HAPPY FACE CHARACTER WITH WHITE EYES
AND TEETH AND A RED TONGUE. THE CHARACTER IS GIVING THE THUMBS UP SIGN
AND WEARING A BLUE HAT WITH THE LETTERS "HH" IN YELLOW. THE CHARACTER
IS HOLDING A BLACK HAMMER AND WEARING A BROWN TOOL BELT WITH A GRAY
BUCKLE AND GRAY TOOLS WITH RED HANDLES.

THE COLOR(S) YELLOW, BLUE, BLACK, RED, GRAY, BROWN AND WHITE IS/ARE
CLAIMED AS A FEATURE OF THE MARK.

SER. NO. 86-445,961, FILED 11-5-2014.

DAVID TAYLOR, 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>.

Exhibit I

United States of America

United States Patent and Trademark Office



Reg. No. 5,394,791

Registered Feb. 06, 2018

Int. Cl.: 37, 40

Service Mark

Principal Register

Sewer Service Companies, Inc. (MINNESOTA CORPORATION), DBA Smilie's Sewer Service

23893 Pomroy Ave N
Scandia, MINNESOTA 55073

CLASS 37: Maintaining septic systems

FIRST USE 5-4-2016; IN COMMERCE 5-4-2016

CLASS 40: Environmental remediation services, namely, treatment of waste

FIRST USE 5-4-2016; IN COMMERCE 5-4-2016

The color(s) green, yellow, orange and black is/are claimed as a feature of the mark.

The mark consists of a yellow smiley face design outlined in black and orange and wearing a green cap outlined in black. Below this appears the stylized wording "SMILIE'S SEWER SERVICE" in green color.

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

SER. NO. 87-476,956, FILED 06-06-2017



Joseph Matol

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>.

Exhibit J

United States of America

United States Patent and Trademark Office



Reg. No. 5,362,969

Registered Dec. 26, 2017

Int. Cl.: 37

Service Mark

Principal Register

Hiller, LLC (TENNESSEE LIMITED LIABILITY COMPANY)
915 Murfreesboro Rd
Nashville, TENNESSEE 37217

CLASS 37: Air conditioning apparatus installation and repair; Air conditioning contractor services; Electrical contracting; Electrical contractor services; Electrical repairs, maintenance, and installation of electrical wiring, outlets, light fixtures, and electrical panels; HVAC contractor services; Plumbing; Plumbing contractor services; Plumbing services; Installation and repair of air conditioning apparatus; Installation and repair of heating, ventilating and air conditioning equipment; Installation and replacement service for heating, ventilating and air conditioning systems

FIRST USE 1-9-2016; IN COMMERCE 1-9-2016

The color(s) yellow and black is/are claimed as a feature of the mark.

The mark consists of a yellow smiley face with black eyes and a black upturned mouth.

SEC.2(F)

SER. NO. 87-295,138, FILED 01-10-2017



Joseph Matol

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>.

Exhibit K

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	87295138
LAW OFFICE ASSIGNED	LAW OFFICE 116
MARK SECTION	
MARK FILE NAME	https://tmng-al.uspto.gov/resting2/api/img/87295138/large
STANDARD CHARACTERS	NO
USPTO-GENERATED IMAGE	NO
COLOR(S) CLAIMED (If applicable)	The color(s) yellow and black is/are claimed as a feature of the mark.
DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of a yellow smiley face slightly tilted to the right.
ARGUMENT(S)	
<p>Registration of Applicant's smiley face design mark stands refused for the reason that the Office contends that the applied-for mark is a universal symbol that cannot function as a trademark or service mark. Applicant respectfully disagrees, as elucidated below.</p> <p>Applicant's smiley face mark is capable of functioning, and in fact does function, as a service mark for Applicant's associated services., <i>i.e.</i>, "Air conditioning apparatus installation and repair; Air conditioning contractor services; Electrical contracting; Electrical contractor services; Electrical repairs, maintenance, and installation of electrical wiring, outlets, light fixtures, and electrical panels; HVAC contractor services; Plumbing; Plumbing contractor services; Plumbing services; Installation and repair of air conditioning apparatus; Installation and repair of heating, ventilating and air conditioning equipment; Installation and replacement service for heating, ventilating and air conditioning systems." Despite the fact that the smiley face is a "ubiquitous, non-inherently distinctive design," it is nonetheless capable of acquiring secondary meaning such that it can serve as a trademark or service mark, registerable on the Principal Register. (<i>See Wal-Mart Stores, Inc.</i>, 91152145, 2009 WL 873129, at *5 (Mar. 20, 2009) (non-precedential) (Opposition Nos. 91150278; 91154632; 91152145)). As can be seen by <i>Wal-Mart</i>, factors, such as extensive advertising of the smiley face design through marketing materials, display of the smiley face design in connection with Applicant's services, and lack of use by others in Applicant's industry heavily weigh in favor of a finding of acquired distinctiveness of the smiley face design, and thus, registrability. (<i>Id.</i> at *7 (Mar. 20, 2009)).</p> <p>First, Applicant extensively advertises its smiley face design in connection with its services in a source identifying manner. All of Applicant's television and digital advertising includes the smiley face design in connection with the offering of its services. Applicant estimates that it spends approximately \$4 million annually in advertising that bears, and in most instances is based on, the applied-for mark. Aired television advertisements make extensive use of, and in fact frequently thematically revolve around, Applicant's smiley face design. (<i>See</i> aired advertisements at https://vimeo.com/20757062, retrieved July 30, 2017; and https://www.youtube.com/watch?v=wt3MzuY_VLc, retrieved July 20, 2017). Applicant also has, for example, taken out front page newspaper advertisements, such as from the <i>Murfreesboro Post</i> (enclosed as Exhibit A and Exhibit B), and interstate billboard advertisements, all conspicuously showing the mark. Moreover, Applicant's</p>	

website, www.happyhiller.com, prominently displays the smiley design mark in connection with Applicant's services. (www.happyhiller.com, retrieved July 30, 2017). Applicant also submits herewith a still screen of a television advertisement for Applicant, where Applicant's smiley face mark stands by itself and not with the words, "HILLER PLUMBING, HEATING, COOLING & ELECTRICAL," and is accompanied by a phone number for potential consumers to purchase Applicant's services. (Exhibit C). The marketing and advertising materials included and discussed herein are representative of Applicant's use of the smiley design since Applicant began use of the mark, and heavily weigh in favor of the acquired distinctiveness, and *ergo* registrability, of Applicant's smiley face design mark.

Second, likewise to how customers were confronted with the smiley design by Wal-Mart signs and Wal-Mart employees' vests carrying Wal-Mart's smiley face in the *Wal-Mart* case, consumers of Applicant's services are similarly confronted by Applicant's mark. (*Wal-Mart Stores, Inc.* at *7). Indeed, Hiller has a fleet of approximately 420 trucks that prominently display Applicant's smiley face design. (*See*, for example, Exhibits D-G). Furthermore, Hiller service technicians wear a patch on their shirts which bear the mark. (*See* a representative image as Exhibit H). These uses reinforce the acquired distinctiveness of Applicant's smiley face design mark with the associated services, and cut in favor of registrability of the applied-for mark.

Third, Applicant has been using a smiley face design in connection with its services for at least approximately 15 years. (*See*, for example. U.S. Reg. No. 4,336,958 for "HVAC contractor services; Plumbing; Plumbing contractor services," Exhibit I (First Use Date of 2002)). Indeed, Hiller has developed substantial brand recognition and distinctiveness by the use of its smiley face mark. For example, consumers have given social media reviews providing that "Hiller's is [sic] truly the "Happy Face Truck" (Exhibit J), "If you want the reassurance of dealing with a professional company with true technicians, call the happy face trucks!" (Exhibit K), and "We want to use Hiller again as well as Dustin! We love the happy face truck." (Exhibit L). As can be seen by these reviews, consumers associate the "happy face" with Hiller's services. This, too, weighs in favor of a finding of acquired distinctiveness of Applicant's smiley face design mark.

Furthermore, a finding of unregistrability of Applicant's smiley face design application would severely harm Applicant, and could possibly lead to consumer confusion. As can be seen by the above evidence, Applicant has invested substantial resources, including time and money, in associating its services with its smiley face design mark to consumers. A finding by the USPTO that Applicant's substantial efforts (*e.g.*, marketing in the millions of dollars per year for multiple years) are insufficient to create acquired distinctiveness would harm Applicant's investment in Applicant's mark, as Applicant would be unable to avail itself to the protections of federal trademark registration in preventing confusion caused by others, if others adopt Applicant's mark. Indeed, if a nefarious third party was to adopt and use Applicant's mark, or a confusingly similar mark, consumers would potentially be misled into thinking the third party's usage was emanating from or somehow endorsed by Hiller. Thus, equity and fairness support finding Applicant's smiley face design to have acquired distinctiveness, and as such, be registrable on the Principal Register.

EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
JPG FILE(S)	\\TICRS\EXPORT17\IMAGEOUT17\872\951\87295138\xml5\ ROA0002.JPG
	\\TICRS\EXPORT17\IMAGEOUT17\872\951\87295138\xml5\ROA0003.JPG
	\\TICRS\EXPORT17\IMAGEOUT17\872\951\87295138\xml5\ROA0004.JPG
	\\TICRS\EXPORT17\IMAGEOUT17\872\951\87295138\xml5\ROA0005.JPG
	\\TICRS\EXPORT17\IMAGEOUT17\872\951\87295138\xml5\ROA0006.JPG

	\\TICRS\EXPORT17\IMAGEOUT17\872\951\87295138\xml5\ROA0007.JPG
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	\\TICRS\EXPORT17\IMAGEOUT17\872\951\87295138\xml5\ROA0012.JPG
	\\TICRS\EXPORT17\IMAGEOUT17\872\951\87295138\xml5\ROA0013.JPG
	\\TICRS\EXPORT17\IMAGEOUT17\872\951\87295138\xml5\ROA0014.JPG
ORIGINAL PDF FILE	evi_431203250-20170731182418123768_. Exhibit_I.pdf
CONVERTED PDF FILE(S) (2 pages)	\\TICRS\EXPORT17\IMAGEOUT17\872\951\87295138\xml5\ROA0010.JPG
	\\TICRS\EXPORT17\IMAGEOUT17\872\951\87295138\xml5\ROA0011.JPG
DESCRIPTION OF EVIDENCE FILE	exhibits in support of and referenced by Applicant's argument
GOODS AND/OR SERVICES SECTION (current)	
INTERNATIONAL CLASS	037
DESCRIPTION	
Air conditioning apparatus installation and repair; Air conditioning contractor services; Electrical contracting; Electrical contracting; Electrical contractor services; Electrical repairs, maintenance, and installation of electrical wiring, outlets, light fixtures, and electrical panels; HVAC contractor services; Plumbing; Plumbing contractor services; Plumbing services; Installation and repair of air conditioning apparatus; Installation and repair of heating, ventilating and air conditioning equipment; Installation and replacement service for heating, ventilating and air conditioning systems	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 01/09/2016
FIRST USE IN COMMERCE DATE	At least as early as 01/09/2016
GOODS AND/OR SERVICES SECTION (proposed)	
INTERNATIONAL CLASS	037
TRACKED TEXT DESCRIPTION	
Air conditioning apparatus installation and repair; Air conditioning contractor services; Electrical contracting; Electrical contracting ; Electrical contractor services; Electrical repairs, maintenance, and installation of electrical wiring, outlets, light fixtures, and electrical panels; HVAC contractor services; Plumbing; Plumbing contractor services; Plumbing services; Installation and repair of air conditioning apparatus; Installation and repair of heating, ventilating and air conditioning equipment; Installation and replacement service for heating, ventilating and air conditioning systems	
FINAL DESCRIPTION	
Air conditioning apparatus installation and repair; Air conditioning contractor services; Electrical contracting; Electrical contractor services; Electrical repairs, maintenance, and installation of electrical wiring, outlets, light fixtures, and electrical panels; HVAC contractor services; Plumbing; Plumbing contractor services; Plumbing services; Installation and repair of air conditioning apparatus; Installation and repair of heating, ventilating and air conditioning equipment; Installation and replacement service for heating, ventilating and air conditioning systems	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 01/09/2016
FIRST USE IN COMMERCE DATE	At least as early as 01/09/2016
ADDITIONAL STATEMENTS SECTION	
DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of a yellow smiley face with black eyes and a black upturned mouth.
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Timothy L. Capria/

SIGNATORY'S NAME	Timothy L. Capria
SIGNATORY'S POSITION	Associate Attorney, Bradley Arant Boult Cummings LLP, Tennessee bar member
SIGNATORY'S PHONE NUMBER	6152523811
DATE SIGNED	07/31/2017
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Jul 31 18:53:18 EDT 2017
TEAS STAMP	USPTO/ROA-X.XX.XXX.XXX-20 170731185318203222-872951 38-510b180e86c0a9200e54da f6e998fb376f1ad69f195596f ee4cc366c787af6222-N/A-N/ A-20170731182418123768

Under the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless it displays a valid OMB control number.
PTO Form 1957 (Rev 10/2011)
OMB No. 0651-0050 (Exp 07/31/2017)

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. **87295138** (Stylized and/or with Design, see <https://tmng-al.uspto.gov/resting2/api/img/87295138/large>) has been amended as follows:

ARGUMENT(S)

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

Registration of Applicant's smiley face design mark stands refused for the reason that the Office contends that the applied-for mark is a universal symbol that cannot function as a trademark or service mark. Applicant respectfully disagrees, as elucidated below.

Applicant's smiley face mark is capable of functioning, and in fact does function, as a service mark for Applicant's associated services., *i.e.*, "Air conditioning apparatus installation and repair; Air conditioning contractor services; Electrical contracting; Electrical contractor services; Electrical repairs, maintenance, and installation of electrical wiring, outlets, light fixtures, and electrical panels; HVAC contractor services; Plumbing; Plumbing contractor services; Plumbing services; Installation and repair of air conditioning apparatus; Installation and repair of heating, ventilating and air conditioning equipment; Installation and replacement service for heating, ventilating and air conditioning systems." Despite the fact that the smiley face is a "ubiquitous, non-inherently distinctive design," it is nonetheless capable of acquiring secondary meaning such that it can serve as a trademark or service mark, registerable on the Principal Register. (*See Wal-Mart Stores, Inc.*, 91152145, 2009 WL 873129, at *5 (Mar. 20, 2009) (non-precedential) (Opposition Nos. 91150278; 91154632; 91152145)). As can be seen by *Wal-Mart*, factors, such as extensive advertising of the smiley face design through marketing materials, display of the smiley face design in connection with Applicant's services, and lack of use by others in Applicant's industry heavily weigh in favor of a finding of acquired distinctiveness of the smiley face design, and thus, registrability. (*Id.* at *7 (Mar. 20, 2009)).

First, Applicant extensively advertises its smiley face design in connection with its services in a source identifying manner. All of Applicant's television and digital advertising includes the smiley face design in connection with the offering of its services. Applicant estimates

that it spends approximately \$4 million annually in advertising that bears, and in most instances is based on, the applied-for mark. Aired television advertisements make extensive use of, and in fact frequently thematically revolve around, Applicant's smiley face design. (See aired advertisements at <https://vimeo.com/20757062>, retrieved July 30, 2017; and https://www.youtube.com/watch?v=wt3MzuY_VLc, retrieved July 20, 2017). Applicant also has, for example, taken out front page newspaper advertisements, such as from the *Murfreesboro Post* (enclosed as Exhibit A and Exhibit B), and interstate billboard advertisements, all conspicuously showing the mark. Moreover, Applicant's website, www.happyhiller.com, prominently displays the smiley design mark in connection with Applicant's services. (www.happyhiller.com, retrieved July 30, 2017). Applicant also submits herewith a still screen of a television advertisement for Applicant, where Applicant's smiley face mark stands by itself and not with the words, "HILLER PLUMBING, HEATING, COOLING & ELECTRICAL," and is accompanied by a phone number for potential consumers to purchase Applicant's services. (Exhibit C). The marketing and advertising materials included and discussed herein are representative of Applicant's use of the smiley design since Applicant began use of the mark, and heavily weigh in favor of the acquired distinctiveness, and *ergo* registrability, of Applicant's smiley face design mark.

Second, likewise to how customers were confronted with the smiley design by Wal-Mart signs and Wal-Mart employees' vests carrying Wal-Mart's smiley face in the *Wal-Mart* case, consumers of Applicant's services are similarly confronted by Applicant's mark. (*Wal-Mart Stores, Inc.* at *7). Indeed, Hiller has a fleet of approximately 420 trucks that prominently display Applicant's smiley face design. (See, for example, Exhibits D-G). Furthermore, Hiller service technicians wear a patch on their shirts which bear the mark. (See a representative image as Exhibit H). These uses reinforce the acquired distinctiveness of Applicant's smiley face design mark with the associated services, and cut in favor of registrability of the applied-for mark.

Third, Applicant has been using a smiley face design in connection with its services for at least approximately 15 years. (See, for example. U.S. Reg. No. 4,336,958 for "HVAC contractor services; Plumbing; Plumbing contractor services," Exhibit I (First Use Date of 2002)). Indeed, Hiller has developed substantial brand recognition and distinctiveness by the use of its smiley face mark. For example, consumers have given social media reviews providing that "Hiller's is [sic] truly the "Happy Face Truck" (Exhibit J), "If you want the reassurance of dealing with a professional company with true technicians, call the happy face trucks!" (Exhibit K), and "We want to use Hiller again as well as Dustin! We love the happy face truck." (Exhibit L). As can be seen by these reviews, consumers associate the "happy face" with Hiller's services. This, too, weighs in favor of a finding of acquired distinctiveness of Applicant's smiley face design mark.

Furthermore, a finding of unregistrability of Applicant's smiley face design application would severely harm Applicant, and could possibly lead to consumer confusion. As can be seen by the above evidence, Applicant has invested substantial resources, including time and money, in associating its services with its smiley face design mark to consumers. A finding by the USPTO that Applicant's substantial efforts (e.g., marketing in the millions of dollars per year for multiple years) are insufficient to create acquired distinctiveness would harm Applicant's investment in Applicant's mark, as Applicant would be unable to avail itself to the protections of federal trademark registration in preventing confusion caused by others, if others adopt Applicant's mark. Indeed, if a nefarious third party was to adopt and use Applicant's mark, or a confusingly similar mark, consumers would potentially be misled into thinking the third party's usage was emanating from or somehow endorsed by Hiller. Thus, equity and fairness support finding Applicant's smiley face design to have acquired distinctiveness, and as such, be registrable on the Principal Register.

EVIDENCE

Evidence in the nature of exhibits in support of and referenced by Applicant's argument has been attached.

JPG file(s):

[Evidence-1](#)
[Evidence-2](#)
[Evidence-3](#)
[Evidence-4](#)
[Evidence-5](#)
[Evidence-6](#)
[Evidence-7](#)
[Evidence-8](#)
[Evidence-9](#)
[Evidence-10](#)
[Evidence-11](#)

Original PDF file:

[evi_431203250-20170731182418123768_..Exhibit_1.pdf](#)

Converted PDF file(s) (2 pages)

[Evidence-1](#)
[Evidence-2](#)

CLASSIFICATION AND LISTING OF GOODS/SERVICES

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

Current: Class 037 for Air conditioning apparatus installation and repair; Air conditioning contractor services; Electrical contracting; Electrical contracting; Electrical contractor services; Electrical repairs, maintenance, and installation of electrical wiring, outlets, light fixtures, and electrical panels; HVAC contractor services; Plumbing; Plumbing contractor services; Plumbing services; Installation and repair of air conditioning apparatus; Installation and repair of heating, ventilating and air conditioning equipment; Installation and replacement service for heating, ventilating and air conditioning systems

Original Filing Basis:

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 01/09/2016 and first used in commerce at least as early as 01/09/2016 , and is now in use in such commerce.

Proposed:

Tracked Text Description: Air conditioning apparatus installation and repair; Air conditioning contractor services; Electrical contracting; ~~Electrical contracting~~; Electrical contractor services; Electrical repairs, maintenance, and installation of electrical wiring, outlets, light fixtures, and electrical panels; HVAC contractor services; Plumbing; Plumbing contractor services; Plumbing services; Installation and repair of air conditioning apparatus; Installation and repair of heating, ventilating and air conditioning equipment; Installation and replacement service for heating, ventilating and air conditioning systems

Class 037 for Air conditioning apparatus installation and repair; Air conditioning contractor services; Electrical contracting; Electrical contractor services; Electrical repairs, maintenance, and installation of electrical wiring, outlets, light fixtures, and electrical panels; HVAC contractor services; Plumbing; Plumbing contractor services; Plumbing services; Installation and repair of air conditioning apparatus; Installation and repair of heating, ventilating and air conditioning equipment; Installation and replacement service for heating, ventilating and air conditioning systems

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 01/09/2016 and first used in commerce at least as early as 01/09/2016 , and is now in use in such commerce.

ADDITIONAL STATEMENTS

Description of mark

The mark consists of a yellow smiley face with black eyes and a black upturned mouth.

SIGNATURE(S)

Response Signature

Signature: /Timothy L. Capria/ Date: 07/31/2017

Signatory's Name: Timothy L. Capria

Signatory's Position: Associate Attorney, Bradley Arant Boult Cummings LLP, Tennessee bar member

Signatory's Phone Number: 6152523811

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the owner's/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the owner/holder in this matter: (1) the owner/holder has filed or is

concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

Serial Number: 87295138

Internet Transmission Date: Mon Jul 31 18:53:18 EDT 2017

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8fb376f1ad69f195596fee4cc366c787af6222-N

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Deputies not sworn in: report

By SAM STOCKARD
sstockard44@gmail.com

The Rutherford County Sheriff's Office is correcting paperwork dealing with POST Commission training and swearing-in of deputies after finding a sergeant failed to complete several tasks involving new deputies.

But Sheriff Mike Fitzhugh says all deputies involved in the situation were commissioned for law enforcement work when they hit the streets.

Still, the sheriff's office found Sgt. Greg Wassom failed to finish several tasks before taking a leave of absence June 6, according to a report of action in his personnel file. Before taking leave, he sent an email to commanding officers, the contents of which are not available, because of federal law.

Incomplete work included the oath of office for at least two officers, entries into the Peace Officers Standards and Training Commission, changes of deputy

POLL QUESTION:

Should Sheriff's Deputies be allowed to serve before being sworn in?
Yes or no?

Vote online at
murfreesboropost.com

See RCSO on A4



Rutherford's best honored at Main Street Awards

Nearly 200 of Rutherford County's best met at The Grove at Williamson Place last week for the 2017 Main Street Awards sponsored by All Access Coach Leasing Finalists' Breakfast. More than 30,000 reader votes were cast in the 2017 Main Street Awards, and close to 350 local businesses were recognized as finalists. The list of winners and finalists will be published in a special section in the Monday, July 10 edition of the Murfreesboro Post and online at murfreesboropost.com. DALLUS WHITFIELD



MTSU students and staff observe the bottling of chocolate milk in the Stark Ag Center processing plant on campus.
MTSU photo by J. INTINTOLI

Farm to Campus

MTSU Creamery's white, chocolate milk bottles for sale

MTSU Communications

After a nearly 50-year hiatus, MTSU now offers bottles of whole white milk and one of the university's best-kept secrets – its whole chocolate milk – for sale.

Nearly 20 Middle Tennessee State University students wanted to be a part of Wednesday's formal celebration roll-

ing out the bottled milk products.

Senior animal science major Karyana Fonseca and other students work seven days a week, 365 days a year, often arriving at 3 and 4 a.m. and again 12 hours later to ensure a quality product from the farm and dairy in Lascassas, Tennessee, reaches the MTSU milk processing plant inside Stark Agribusiness Center on campus.

With the installation of new equipment complete, MTSU's School of Agribusiness and Agriscience unveiled its latest endeavor – the

See MTSU CREAMERY on A2

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MURFREESBORO POST

RUTHERFORD COUNTY'S LOCAL NEWSPAPER

MONDAY, MAY 22, 2017



An artist's rendering of the Captain Jeff Kuss USMC Memorial planned for Smyrna. **SUBMITTED**

Spirit in the sky

City memorial to feature F/A-18c Hornet in honor of Blue Angel Capt. Kuss

By DAN EPRIGHT
eprightd@earthlink.net

U.S. Marine Capt. Jeff Kuss died June 2, 2016, in Smyrna when his jet went down the day before The Great Tennessee Airshow.

Now the town will honor his memory and sacrifice with a memorial at Lee Victory Park featuring a retired Blue Angel aircraft, essentially a match of Capt. Kuss' Hornet.

The Memorial was announced May 18 at a press conference hosted by Smyrna Mayor Mary Esther Reed and attended by approximately 300 people, including first responders to the crash site, representatives from the Marines, Navy, Air Force and Army, state and local law enforcement, elected and business leaders and citizens.

"The Capt. Jeff Kuss USMC Memorial will celebrate the life and career of an American hero," Mayor Reed said. "Smyrna was home to Sewart Air Force Base from World War II through 1971 and our community has a strong connection to the military. We want the family of Captain Kuss to have a permanent tribute to his life that they can be proud of for many years to come."

Support for memorial been 'great'

A spontaneous candlelight vigil of several hundred people was held in Lee Victory park the night of Kuss' death. The desire for a more permanent honor for Kuss was first whispered about during The Great Tennessee Airshow at the Smyrna/Rutherford County Airport, the day after his death.

At the grassroots level, the commu-



Captain Jeff Kuss, United States Marine Corps **SUBMITTED**

nity turned those whispers into an emphatic clamor town officials heard loud and clear. A committee was established.

The support has been "great," according to Navy officials involved in the planning and approval process. The Naval community is reportedly "overwhelmed with the energetic and responsive support from the Smyrna community."

See SPIRIT IN THE SKY on A22



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United States of America

United States Patent and Trademark Office



Reg. No. 4,336,958

Registered May 21, 2013

Int. Cl.: 37

SERVICE MARK

PRINCIPAL REGISTER

HILLER PLUMBING, HEATING & COOLING COMPANY, INC. (TENNESSEE CORPORATION)
1510 FORT NEGLEY BLVD
NASHVILLE, TN 37203

FOR: HVAC CONTRACTOR SERVICES; PLUMBING; PLUMBING CONTRACTOR SERVICES, IN CLASS 37 (U.S. CLS. 100, 103 AND 106).

FIRST USE 0-0-2002; IN COMMERCE 0-0-2002.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE YELLOW AND BLACK SMILING FACE AND "PLUMBING, HEATING & COOLING", APART FROM THE MARK AS SHOWN.

THE COLOR(S) YELLOW, BLACK, RED AND GRAY IS/ARE CLAIMED AS A FEATURE OF THE MARK.

THE MARK CONSISTS OF A YELLOW AND BLACK SMILING FACE, WITH THE WORDING "HILLER PLUMBING, HEATING & COOLING" IN RED WITH GRAY SHADOWING.

SER. NO. 85-312,829, FILED 5-5-2011.

ODESSA BIBBINS, EXAMINING ATTORNEY



Lisa M. Smith
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>.

Hiller's is truly...



Heather Ivie-Myles said on 6/21/2017

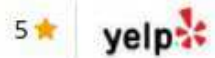
5 ★ | [facebook](#)

Hiller's is truly the "Happy☞Face Truck"! We were having serious issues to occur with our breaker! We were blessed enough to receive highly dependable service at the spare of the moment. Thanks to Jeff, the electrician, and the Hiller Family for your services. I will definitely recommend them to anyone, hands down!

You get what...



Dean F. said on 5/17/2017



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Dustin Coots did...



Ellen Watt said on 4/25/2017

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Dustin Coots did a great job! Very dependable and reasonably priced. We want to use Hiller again as well as Dustin! We love the happy face truck.