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

Proceeding	92052942
Party	Defendant Griffin Media Group
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Submission	Opposition/Response to Motion
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Date	08/14/2012
Attachments	Opposition to Motion to Amend.081412.pdf (9 pages)(51614 bytes) Opposition to Motion to Amend.Exhibit 1.pdf (6 pages)(26700 bytes)

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

Brainjuicer Limited,)	Cancellation No. 92/052,942
)	
Petitioner,)	Serial No. 76/587,171
v.)	
)	Opposed Mark: E-MINDREADER.COM
Griffin Media Group,)	
)	
Registrant.)	
_____)	

**REGISTRANT’S OPPOSITION TO PETITIONER’S
MOTION FOR LEAVE TO FILE AMENDED PETITION TO CANCEL**

The Registrant, Griffin Media Group (“Registrant”), respectfully submits this opposition to Petitioner Brainjuicer Limited’s (“Petitioner”) Motion for Leave to File Amended Petition to Cancel (“Motion to Amend”). (Dkt. 26.)

I. INTRODUCTION

Throughout this proceeding the Petitioner has prejudiced the Registrant through its nonresponsiveness, delays, and legally unsound motions. First, the Petitioner’s disregard for the discovery process forced the Registrant to file a motion to compel. Then, the Petitioner filed a response to the motion to compel more than a week after its deadline and attempted to provide untimely discovery responses with objections, despite the fact that objections are waived for untimely discovery responses. *See* TBMP 405.04(a) and 406.04(a). The Petitioner later filed a legally unsound motion for summary judgment, seeking a ruling on an unpleaded claim. (Dkt. 25.) The Petitioner now brings this Motion to Amend as a second attempt at its failed summary judgment motion, despite the ongoing prejudice to the Registrant and the futile nature of its motion.

II. Relevant Factual Background

The Petitioner instituted this cancellation proceeding on August 26, 2010. (Dkt. 1.) The Registrant served its discovery requests on April 15, 2011. (*See* Dkt. 10.) The Registrant agreed to a one-week extension for the Petitioner to serve outstanding discovery responses. However, the Petitioner failed to provide any discovery responses in the agreed-upon time. The Petitioner then failed to respond to numerous inquiries by the Registrant into the whereabouts of the outstanding discovery responses. As a result, the Registrant was forced to file a motion to compel the discovery responses. Then, the Petitioner filed a response to the Motion to Compel more than a week after its deadline and attempted to provide untimely discovery responses with objections, despite the fact that objections are waived for untimely discovery responses. *See* TBMP 405.04(a) and 406.04(a).

On June 20, 2011, the Registrant served the expert report from Mr. Tom Pines and supplemented its earlier, timely response to the Petitioner's interrogatory asking for information on "the 'market analysis' offered by Registrant under Registrant's Mark." Dkt. 17, Exhibits A and B. The Registrant's full response, without including its objections, was:

The Registrant further states that the "market analysis" offered by the Registrant under the Registrant's Mark includes setting up methods for acquiring raw data, namely, setting up e-mails tailored for each customer that allows the e-mail recipients to view at least two topics, which are often related. Once set up and sent out, the Registrant uses a proprietary technology, owned by Real Magnet, that tracks the e-mail recipients' responses to the e-mail, including which information topics the recipients view. The Registrant then analyzes the tracked data. The Registrant sends out thousands of these e-mails for its customers each week.

Id. This response was a supplement to, and therefore included, the Registrant's original response, which stated:

[T]he “market analysis” offered by the Registrant under the Registrant’s Mark includes the use of a proprietary technology that allows the Registrant to review and analyze what information or different types of information an e-mail recipient views, including the length of time the recipient views the information or different types of information. The Registrant may also prepare and send its clients tracking and response reports.

(Dkt. 24, Exhibit 4, Response to Interrogatory No. 19.)

The Petitioner’s proposed identification of the Registrant’s services is taken from, but does not include the entirety of, the Registrant’s supplemental response to Interrogatory No. 19.

The Petitioner’s current identification of services in its applied-for mark, MINDREADER, is the result of a recent amendment that primarily deleted repetitive listing of similar services. (*See* Exhibit 1, July 29, 2012, Response to Suspension Inquiry or Letter of Suspension.) In the Final Office Action, which refused registration of the Petitioner’s applied-for mark due to a likelihood of confusion with the Registrant’s registered mark, the Examining Attorney provided a *DuPont* analysis explaining that the Parties’ “marks are highly similar in sound, appearance, meaning and connotation,” and that the Parties’ services are “the same (market analysis) and/or highly related (market analysis services performed ‘whether or not electronically’), and highly related marketing services.” (Dkt. 24, Exhibit 3, Office Action of February 28, 2010.) The Examining Attorney also addressed the Petitioner’s earlier attempts to argue a difference between the Parties’ services. Specifically, the Examining Attorney noted:

Applicant does not squarely address that both the applicant and registrant provide marketing services irrespective of the method of communication of these services. Moreover, it is confusing why applicant makes an issue of the fact that the registrant’s services are provided via e-mail because applicant’s services are provided “by computer networks, or online or by phone or via a database.” Accordingly, it is not clear what applicant’s basis is for asserting the services differ.

Id.

Mr. Tom Pines has provided his expert opinion that “Griffin Media’s services include market analysis, and this market analysis is provided in connection with the mark E-MINDREADER.COM.” (Dkt. 17, Exhibit B, para. 22.)

III. ARGUMENT

A. Registrant Will Be Prejudiced if Petitioner Is Allowed to Amend

The Registrant will be prejudiced if the Petitioner is allowed to amend its petition for cancellation. Grounds for denying a motion for leave to amend exist when the amendment would be prejudicial to the rights of the adverse party. TBMP 507.02. Here, the Registrant would be prejudiced if the Petitioner’s Motion to Amend is granted. This proceeding has been pending for almost two years. Other than a brief, thirty-day suspension for failed settlement negotiations, this case has been repeatedly suspended due to the actions, and inactions, of the Petitioner. In June 2011 the Registrant was forced to file a motion to compel discovery responses from the Petitioner, which were two months overdue at the time of the motion to compel. (*See* Dkt. 10). The Petitioner’s discovery responses were ultimately served three months after their deadline. (*See* Dkt. 14.) Then, in October 2011, the Petitioner filed a futile and legally unsound motion for summary judgment, causing further delay in the proceedings. (*See* Dkts. 17 and 25.) On June 15, 2012, the Board denied the Petitioner’s summary judgment motion since it was brought on an unpleaded claim. (Dkt. 25.)

The Petitioner did not file its Motion to Amend for more than a month afterwards, waiting until July 29, 2012. (Dkt. 26.) This date was more than a year after the Registrant provided the interrogatory response relied upon by the Petitioner in its Motion to Amend.

Indeed, the interrogatory response was served almost four months prior to the Petitioner's failed summary judgment motion.

The Petitioner has consistently delayed the proceedings in this matter for nearly a year through its failure to comply with discovery and filing of futile motions.¹ If the Motion to Amend is granted, the proceedings will be further delayed, as discovery would need to be re-opened. The result will be the pushing back, again, of the deadlines in this proceeding. This repeated delay will prejudice the Registrant, who uses the mark at issue on a daily basis. (Dkt. 24, Exhibit 4, Response to Interrogatory No. 20.) The ongoing delay in the resolution of this case will only result in a longer period of uncertainty for the Registrant and its mark.

The Board has noted that one party's history of delays and dilatory tactics can result in prejudice to the other party. *Baron Philippe de Rothschild, S.A. v. Styl-Rite Optical Mfg. Co.*, 2000 TTAB LEXIS 467, *19-20, 55 U.S.P.Q.2d 1848 (TTAB June 23, 2000). In *Baron Philippe de Rothschild* the prejudice suffered by the opposer due to the applicant's delays and dilatory tactics justified the sanction of an entry of judgment against the applicant. Here, the Registrant is seeking the less extreme relief of the denial of the Petitioner's Motion to Amend, in light of the Petitioner's history in this proceeding.

B. Petitioner's Proposed Amended Petition Is Futile

"Where the moving party seeks to add a new claim or defense, and the proposed pleading thereof is legally insufficient, or would serve no useful purpose, the Board will normally deny the motion for leave to amend." *Polaris Industries, Inc. v. DC Comics*, 2000 TTAB LEXIS 816, *4,

¹ As discussed *infra*, the instant Motion to Amend is also futile.

59 U.S.P.Q.2d 1798, 1798 (T.T.A.B. Nov. 30, 2000) (citing *Octocorn Systems Inc. v Houston Computer Services Inc.*, 918 F.2d 937 (Fed. Cir. 1990)).

Here, the Petitioner's new claim would serve no legal purpose. As an initial matter, the Petitioner's proffered amended identification of services for the Registrant is a selection of only part of the services identified by the Registrant in response to interrogatories. (*Compare* Petitioner's proposed restriction with Dkt. 24, Exhibit 4, Response to Interrogatory No. 19 and Dkt. 17, Exhibit A.) This distinction is important to note, since the Petitioner's proffered identification is taken solely from the Registrant's interrogatory response. This discrepancy is clear on the face of the interrogatory responses. One of the essential elements to a request to restrict a cancellation is that "the opponent is not using its mark on those goods or service that will be effectively excluded from the application or registration if the proposed restriction is entered." *Eurostar, Inc. v. "Euro-Star" Reitmoden GmbH & Co. KG*, 34 U.S.P.Q.2d 1266, 1994 TTAB LEXIS 29, *14 (T.T.A.B. Dec. 22, 1994).

More fundamentally, the Petitioner's proffered identification completely fails to prevent a likelihood of confusion. A proposed restriction must result in the avoidance of a likelihood of confusion. *Id.* The Petitioner's proposed restriction does not do this. While the Petitioner appears to suggest that the words "market analysis" be omitted entirely from the Registrant's registration, the services in the proposed restriction remain marketing analysis. The Petitioner's proposed restriction is not even an identification of services but is, rather, a description of how services may be completed. The services completed are still marketing analysis. The precise details of **how** non-downloadable e-mails provide market analysis have no bearing on the **fact** that market analysis is being provided by non-downloadable e-mails. In other words, the

Petitioner's proposed restriction does not offer any meaningful limitation or help to avoid a finding of a likelihood of confusion.

Therefore, the explanation of a likelihood of confusion provided by the Examining Attorney for the Petitioner's applied-for mark remains valid. The Parties' services are "the same (market analysis) and/or highly related (market analysis services performed 'whether or not electronically'), and highly related marketing services." (Dkt. 24, Exhibit 3, Office Action of February 28, 2010). Further,

both the applicant and registrant provide marketing services irrespective of the method of communication of these services. Moreover, it is confusing why applicant makes an issue of the fact that the registrant's services are provided via e-mail because applicant's services are provided "by computer networks, or online or by phone or via a database." Accordingly, it is not clear what applicant's basis is for asserting the services differ.

Id. The Petitioner's "new" identification of services makes no impact on asserting that the services differ, since the services remain fundamentally the same. Most importantly, the services remain marketing analysis services.

Indeed, there are numerous registrations that include both "market research" and "market analysis" in their identification of services. (*See* Dkt. 24, Exhibits 7 through 19.) Brainjuicer itself owns a registration that includes both "market research" and "market analysis." (Dkt. 24, Exhibit 20.)²

Finally, there is no legal need to restrict "market analysis" as an identification of services. "Market analysis" is specifically set forth in the U.S. Patent and Trademark Office's U.S.

ACCEPTABLE IDENTIFICATION OF GOODS AND SERVICES MANUAL (ID Manual). (*See* Dkt., 24,

² The Registrant does not provide a full likelihood of confusion analysis at this time and reserves the right to submit such an analysis in subsequent briefings if the Motion to Amend is granted.

Exhibit 21, printout of ID Manual.) “Market analysis” is simply “neither so broad and expansive a term as to ‘render Registrant’s recitation of services meaningless’ . . . nor is it so ‘ambiguous’ . . . as to require extrinsic evidence in order to comprehend it.” *Micro Nutrient LLC v. Thompson*, 2009 TTAB LEXIS 128 (T.T.A.B. Feb. 24, 2009) at *6 (citing *In re Trackmobile, Inc.*, 15 U.S.P.Q.2d 1152 (T.T.A.B. 1990)). Even if “market analysis” was broad or ambiguous, Griffin Media’s Mark already provides an explanation that the services are “provided by non-downloadable e-mails.” (See Dkt. 24, Exhibit 6.)

IV. CONCLUSION

The Registrant will suffer prejudice if the Petitioner’s Motion to Amend is allowed. Moreover, the Petitioner’s proposed amended petition for cancellation is legally insufficient and would serve no useful purpose. Therefore, the Petitioner’s Motion to Amend should be denied.

If the Board grants the Petitioner’s Motion to Amend, the Registrant requests a shortened discovery period on the Petitioner’s newly pled claim for the Registrant only. (See *Space Base Inc. v. Stadis Corp.*, 17 U.S.P.Q.2d 1216, n.1 (T.T.A.B. 1990) (allowing an amended pleading but only providing for additional discovery for the non-movant).)

Respectfully submitted,

14 August 2012
Date

/s/ Rebecca J. Stempien Coyle
Rebecca J. Stempien Coyle
LEVY & GRANDINETTI
1156 Fifteenth Street, N.W., Suite 603
Washington, D.C. 20005
Attorney for Registrant

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing REGISTRANT'S OPPOSITION TO
PETITIONER'S MOTION FOR LEAVE TO FILE AMENDED PETITION TO CANCEL was
served this date by e-mail, as agreed by the Parties, on the Petitioner's attorney:

James Menker
HOLLEY & MENKER PA
P.O, Box 331537
Atlantic Beach, Florida 32233
jmenker@holleymenker.com

14 August 2012
Date

/s/ Rebecca J. Stempien Coyle
Rebecca J. Stempien Coyle

EXHIBIT 1

Response to Suspension Inquiry or Letter of Suspension

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	79057768
LAW OFFICE ASSIGNED	LAW OFFICE 108
MARK SECTION (no change)	
CANCELLATION PROCEEDING(S)	
Cancellation No(s). 92052942 is/are still pending. The applicant hereby requests that the application be re-suspended.	
COMMENT(S)/REMARK(S)	
<p>Although the cancellation proceeding is still pending, Applicant respectfully requests reconsideration of the following refusal:</p> <p>Refusal – Likelihood of Confusion</p> <p>Applicant requests reconsideration of the likelihood of confusion refusal based on Reg. No. 3619661. As shown in the attached documents, the registrant’s services involve tracking responses to marketing emails. The Board has stated that when the description of goods or recitation of services for a cited registration is somewhat unclear, as in the case herein, “it is improper to simply consider that description in a vacuum and attach all possible interpretations to it when the applicant has presented extrinsic evidence showing that the description of goods [or services] has a specific meaning to members of the trade.” <i>In re Trackmobile Inc.</i>, 15 USPQ2d 1152, 1154 (TTAB 1990); <i>see also In re Radius Health, Inc.</i>, Serial No. 78797031 (October 27, 2009) [not precedential] (because the meaning of “product development” was unclear, the Board “considered the evidence of record to shed light on the significance of the identification of services in the cited registration; not to improperly limit the scope thereof”). The proffered evidence in this case explains the significance of the recitation of services in the cited registration.</p> <p>With a proper understanding of what the recitation of services in the cited registration, it is clear that the cited registration does not cover all “market analysis services”, but is instead restricted to a subset of such services. As a result, there is no overlap in the parties’ services, and it is clear that the circumstances surrounding the marketing of Applicant’s services, on the one hand, and the services set forth in the cited registration, on the other hand, are not such that relevant purchasers would mistakenly believe that the respective services originate from the same source, even if similar marks are used in connection with both.</p> <p>Although the Examining Attorney has proffered numerous third party registrations in support of the contention that the parties’ services are closely related, none of the third party registrations show any marks being used in connection with the registrant’s exact services and any of the services set forth in the instant application. To have probative value, third party registrations must specifically include the parties’ services as described in the</p>	

application and registration. *See In re Princeton Tectonics, Inc.*, 95 USPQ2d 1509, 1510-11 (TTAB 2010). Because the third party registrations proffered by the Examining Attorney do not show the use of any marks specifically in connection with both the services in the instant application and the services identified in the cited registration, they are not probative of whether the parties' services are closely related. Absent evidence that the parties' services are related, there is no basis for maintaining the likelihood of confusion refusal.

GOODS AND/OR SERVICES SECTION (035)(current)

INTERNATIONAL CLASS	035
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DESCRIPTION

Market research services; business data market analysis services; public opinion polling services; public opinion surveys; data processing services; compilation, retrieval and collection of data, statistics and business, marketing and market research information; business advice regarding marketing management; arranging marketing and promotional events for others; business research; business consultancy services; conducting market research survey services and marketing studies; development of marketing strategies and concepts; market research services, namely, interpretation of market research data; interviewing, namely, conducting public opinion polls for market research; business market analysis and assessment services; analysis of market research data and statistics, market research studies; market research services, namely, providing supply and demand forecasting; providing information in the field of market research; business market information services, namely, business advice and analysis of markets; market research data retrieval services, namely, compiling market research data; conducting marketing studies; preparation of marketing plans, namely, marketing plan development; producing promotional sound or video recordings for marketing purposes; computerized market research services; advisory, administration, analysis, consultancy and information services relating to the foregoing; expert opinions relating to companies and business; marketing and market research services provided by computer networks, or online or by phone or via a database

GOODS AND/OR SERVICES SECTION (035)(proposed)

INTERNATIONAL CLASS	035
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TRACKED TEXT DESCRIPTION

~~Market research services; business data market analysis services; public opinion polling services; public opinion surveys; data processing services; compilation, retrieval and collection of data, statistics and business, marketing and market research information; development of marketing strategies and concepts; business advice regarding marketing management; conducting marketing studies; arranging marketing and promotional events for others; preparation of marketing plans, namely, marketing plan development; business research; computerized market research services; business consultancy services; conducting market research survey services and marketing studies; market research services, namely, interpretation of market research data; interviewing, namely, conducting public opinion polls for market research; business market analysis and assessment services; analysis of market research data and statistics, market research studies; market research services, namely, providing supply and demand forecasting; providing information in the field of market research; business market information services, namely, business advice and analysis of markets; market research data retrieval services, namely, compiling market research data; producing promotional sound or video recordings for marketing purposes; advisory, administration, analysis, consultancy and information services relating to the foregoing; expert opinions relating to companies and business; marketing and market research services provided by computer networks, or online or by phone or via a database~~

FINAL DESCRIPTION

Market research in the nature of consumer research; public opinion polling services; public opinion surveys; data processing services; compilation, retrieval and collection of data, statistics and business, marketing and market research information; development of marketing strategies and concepts; conducting marketing studies; preparation of marketing plans, namely, marketing plan development; computerized market research services

GOODS AND/OR SERVICES SECTION (038)(no change)

SIGNATURE SECTION

RESPONSE SIGNATURE	/jmenker/
SIGNATORY'S NAME	James R Menker
SIGNATORY'S POSITION	Attorney of record, Virginia bar member
SIGNATORY'S PHONE NUMBER	904-247-2620
DATE SIGNED	07/29/2012
AUTHORIZED SIGNATORY	YES

FILING INFORMATION SECTION

SUBMIT DATE	Sun Jul 29 00:55:41 EDT 2012
TEAS STAMP	USPTO/RSI-67.190.194.84-2 0120729005541500458-79057 768-4905fe279666161bc87c1 7b763a61cf7-N/A-N/A-20120 729005135615822

**Response to Suspension Inquiry or Letter of Suspension
To the Commissioner for Trademarks:**

Application serial no. **79057768** has been amended as follows:

CANCELLATION PROCEEDING(S)

Cancellation No(s). 92052942 is/are still pending. The applicant hereby requests that the application be re-suspended.

Comment(s)/Remark(s):

Although the cancellation proceeding is still pending, Applicant respectfully requests reconsideration of the following refusal:

Refusal – Likelihood of Confusion

Applicant requests reconsideration of the likelihood of confusion refusal based on Reg. No. 3619661. As

shown in the attached documents, the registrant's services involve tracking responses to marketing emails. The Board has stated that when the description of goods or recitation of services for a cited registration is somewhat unclear, as in the case herein, "it is improper to simply consider that description in a vacuum and attach all possible interpretations to it when the applicant has presented extrinsic evidence showing that the description of goods [or services] has a specific meaning to members of the trade." *In re Trackmobile Inc.*, 15 USPQ2d 1152, 1154 (TTAB 1990); *see also In re Radius Health, Inc.*, Serial No. 78797031 (October 27, 2009) [not precedential] (because the meaning of "product development" was unclear, the Board "considered the evidence of record to shed light on the significance of the identification of services in the cited registration; not to improperly limit the scope thereof"). The proffered evidence in this case explains the significance of the recitation of services in the cited registration.

With a proper understanding of what the recitation of services in the cited registration, it is clear that the cited registration does not cover all "market analysis services", but is instead restricted to a subset of such services. As a result, there is no overlap in the parties' services, and it is clear that the circumstances surrounding the marketing of Applicant's services, on the one hand, and the services set forth in the cited registration, on the other hand, are not such that relevant purchasers would mistakenly believe that the respective services originate from the same source, even if similar marks are used in connection with both.

Although the Examining Attorney has proffered numerous third party registrations in support of the contention that the parties' services are closely related, none of the third party registrations show any marks being used in connection with the registrant's exact services and any of the services set forth in the instant application. To have probative value, third party registrations must specifically include the parties' services as described in the application and registration. *See In re Princeton Tectonics, Inc.*, 95 USPQ2d 1509, 1510-11 (TTAB 2010). Because the third party registrations proffered by the Examining Attorney do not show the use of any marks specifically in connection with both the services in the instant application and the services identified in the cited registration, they are not probative of whether the parties' services are closely related. Absent evidence that the parties' services are related, there is no basis for maintaining the likelihood of confusion refusal.

CLASSIFICATION AND LISTING OF GOODS/SERVICES

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

Current: Class 035 for Market research services; business data market analysis services; public opinion polling services; public opinion surveys; data processing services; compilation, retrieval and collection of data, statistics and business, marketing and market research information; business advice regarding marketing management; arranging marketing and promotional events for others; business research; business consultancy services; conducting market research survey services and marketing studies; development of marketing strategies and concepts; market research services, namely, interpretation of market research data; interviewing, namely, conducting public opinion polls for market research; business market analysis and assessment services; analysis of market research data and statistics, market research studies; market research services, namely, providing supply and demand forecasting; providing information in the field of market research; business market information services, namely, business advice and analysis of markets; market research data retrieval services, namely, compiling market research data; conducting marketing studies; preparation of marketing plans, namely, marketing plan development; producing promotional sound or video recordings for marketing purposes; computerized market research services; advisory, administration, analysis, consultancy and information services relating to the foregoing; expert opinions relating to companies and business; marketing and market research services provided by computer networks, or online or by phone or via a database

Original Filing Basis:

Proposed:

Tracked Text Description: ~~Market research services;~~ [Market research in the nature of consumer research;](#) ~~business data market analysis services;~~ public opinion polling services; public opinion surveys; data processing services; compilation, retrieval and collection of data, statistics and business, marketing and

market research information; development of marketing strategies and concepts; ~~business advice regarding marketing management~~; conducting marketing studies; ~~arranging marketing and promotional events for others~~; preparation of marketing plans, namely, marketing plan development; ~~business research~~; computerized market research services; ~~business consultancy services~~; ~~conducting market research survey services and marketing studies~~; ~~market research services, namely, interpretation of market research data~~; ~~interviewing, namely, conducting public opinion polls for market research~~; ~~business market analysis and assessment services~~; ~~analysis of market research data and statistics, market research studies~~; ~~market research services, namely, providing supply and demand forecasting~~; ~~providing information in the field of market research~~; ~~business market information services, namely, business advice and analysis of markets~~; ~~market research data retrieval services, namely, compiling market research data~~; ~~producing promotional sound or video recordings for marketing purposes~~; ~~advisory, administration, analysis, consultancy and information services relating to the foregoing~~; ~~expert opinions relating to companies and business~~; ~~marketing and market research services provided by computer networks, or online or by phone or via a database~~

Class 035 for Market research in the nature of consumer research; public opinion polling services; public opinion surveys; data processing services; compilation, retrieval and collection of data, statistics and business, marketing and market research information; development of marketing strategies and concepts; conducting marketing studies; preparation of marketing plans, namely, marketing plan development; computerized market research services

Response Suspension Inquiry Signature

Signature: /jmenker/ Date: 07/29/2012

Signatory's Name: James R Menker

Signatory's Position: Attorney of record, Virginia bar member

Signatory's Phone Number: 904-247-2620

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 applicant'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 applicant in this matter: (1) the applicant 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 applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant'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: 79057768

Internet Transmission Date: Sun Jul 29 00:55:41 EDT 2012

TEAS Stamp: USPTO/RSI-67.190.194.84-2012072900554150

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