

ESTTA Tracking number: **ESTTA1155102**

Filing date: **08/24/2021**

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

Proceeding	92077125
Party	Plaintiff ASKM Inc.
Correspondence Address	JAMES MICHAEL FAIER FAIER & FAIER PC 566 W ADAMS ST SUITE 600 CHICAGO, IL 60661 UNITED STATES Primary Email: <a href="mailto:jmfaier@faier.com">jmfaier@faier.com</a> Secondary Email(s): <a href="mailto:ipdocket@faier.com">ipdocket@faier.com</a> 312-382-9400
Submission	Other Motions/Submissions
Filer's Name	James Michael Faier
Filer's email	<a href="mailto:jmfaier@faier.com">jmfaier@faier.com</a> , <a href="mailto:ipdocket@faier.com">ipdocket@faier.com</a>
Signature	/jmfaier/
Date	08/24/2021
Attachments	TTAB_92077125_Petitioner_Scrivener_Error.pdf(236597 bytes )



Board deems just. Petitioner attaches a copy of Petitioner's declaration, Declaration of Ahmed Qureshi.

#### Statement of Facts

Petitioner's Response to Respondent's Motion to Reopen Time to Answer was timely filed on August 19, 2021. Petitioner's counsel reviewed the Board's record for this matter yesterday and noted that the Petitioner's one-page declaration referenced in the Petitioner's filing was missing. Petitioner immediately called the paralegal and interlocutory attorney assigned to the proceeding to seek guidance. Unable to reach the paralegal or interlocutory attorney, Petitioner called the Board's general number. Petitioner spoke with an agent on the Board's help desk who stated he would speak with another agent and call attorney for Petitioner today. The reference number for that call was 1-770871710. As yet, attorney for Petitioner has not received a return call from the Board's agent. As yet, Petitioner's counsel has not received a return call from either the paralegal or interlocutory attorney. Petitioner seeks no change to the body of its filing. Petitioner's filing was properly signed by attorney for Petitioner and a copy of the filing was properly tendered to counsel for Respondent. Petitioner provided proper and signed Certificate of Service to counsel for Respondent. No one as yet has called to the attention of Petitioner the missing declaration. Attorney for Petitioner provides a declaration laying out the facts in this scrivener's error and attaches same.

#### Statement of Law

37 CFR Section 2.116 states that the Board, as to motion practice, operates under the Federal Rules of Civil Procedure. TBMP Section 502.01 recites that the Board makes available a broad array of motions, although no motion to correct a scrivener's error is listed. FRCP 11(a)

states that every pleading, motion or other paper must be signed by an attorney or party and the court must strike an unsigned paper unless it is promptly corrected after being called to the attention of attorney or counsel.

### Argument

The Board should allow Petitioner to correct its scrivener's error by allowing Petitioner to submit the signed one-page Declaration of Ahmed Qureshi referenced in the Statement of Facts in Petitioner's Response to Respondent's Motion to Reopen Time to Answer. Either this mistake was just that -- a mistake on a filing that the Board can allow Petitioner to correct -- or the missing declaration is akin to an unsigned paper. Petitioner's declaration is akin to an unsigned paper in that the statements in the declaration are already in the filing and they are referred to as coming from "Dec. of Qureshi." Essentially, the Board has no signed copy of the declaration. Petitioner's Response to Respondent's Motion to Reopen Time to Answer can stand on its own without the declaration. Petitioner notes that Respondent's Motion to Reopen Time to Answer was not accompanied by a declaration in support but, unlike Petitioner, Respondent makes no reference to a declaration. Indeed, the key material in this matter are the screen captures from Respondent's website on the closing of EVEREST tendered in the Petition to Cancel that are admitted in the proposed Answer. Petitioner has promptly attended to this matter of the declaration as the mistake came to light yesterday. In order to avoid any unfairness to Respondent, Petitioner consents to any enlargement of time for Respondent's reply brief that the Board deems just.

by:

*/jmfaier/*

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**James Michael Faier**  
*Attorney for Petitioner*

Date: August 24, 2021  
Faier & Faier P.C.  
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Chicago, IL 60661  
Telephone:(312) 382-9400  
Facsimile: (312) 382-9200  
Email: [jmfaier@faier.com](mailto:jmfaier@faier.com)

### CERTIFICATE OF SERVICE

I, James Michael Faier, state that I served a copy of the foregoing via email upon:

Antony J. McShane  
Neal, Gerber & Eisenberg LLP  
Two North LaSalle Street, Suite 1700  
Chicago, IL 60602-3801  
(312) 269-8000  
[amcshane@nge.com](mailto:amcshane@nge.com)

in accordance with Trademark Rules Sections 2.101 and 2.119, on August 24, 2021.  
/jmfaier/

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James Michael Faier

EXHIBIT  
DECLARATION OF AHMED QURESHI  
DECLARATION OF JAMES MICHAEL FAIER  
[see following two pages]

Declaration of Ahmed Qureshi

The undersigned declares,

1. My name is Mr. Ahmed Qureshi.
2. I am president of ASKM, Inc.
3. ASKM, Inc. focuses on frozen custard, bubble tea restaurant services under the service mark EVEREST since at least as early as March 2019.
4. On or about May 1, 2021, I visited the Everest Restaurant website and read that Everest Restaurant closed on December 31, 2020.
5. Based on knowing that Everest Restaurant closed, I authorized filing of an application to register EVEREST for Restaurant services; Restaurant services featuring frozen desserts and bubble tea; Restaurant services, including sit-down service of food and take-out restaurant services; Ice cream shop services in the nature of a restaurant; Take-out restaurant services.
6. ASKM, Inc. owns USPTO SN 90694730 for EVEREST.
7. I relied on Everest Restaurant's statement that it had closed in deciding to file my service mark application and the Petition to Cancel.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

Signature:



Ahmed Qureshi

Date:

8/17/2021

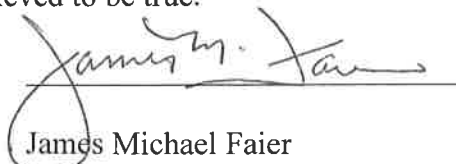
Declaration of James Michael Faier

The undersigned declares,

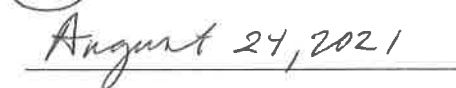
1. My name is James Michael Faier.
2. I am attorney for ASKM, Inc. in TTAB proceeding 92077125.
3. I received the Declaration of Ahmed Qureshi on August 17, 2021.
4. I made a scrivener's error forgetting to file the Declaration of Qureshi when I filed Petitioner's Response to Respondent's Motion to Reopen Time to Answer on August 19, 2021.
5. I noticed the missing declaration yesterday when reviewing TTABVUE for this matter. I immediately called the paralegal and interlocutory attorney assigned to this proceeding. Leaving my name, telephone number and proceeding number on the voice mail of the paralegal and interlocutory attorney, I then called the TTAB help desk. The help desk agent took my name, number and proceeding number and said he would speak to another agent and then call me today. The reference number for that call was 1-770871710. To date, I have heard from no one at the Board.
6. I have not intentionally delayed this proceeding.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

Signature:

  
James Michael Faier

Date:

  
August 24, 2021