



MULLERLAW_{LLC}

TTAB

Chip Muller, Esq.

November 18, 2011

Trademark Trial and Appeals Board
United States Patent and Trademark Office
600 Dulany Street
Madison Bldg.
Alexandria, VA 22314

Re: **TriMed Media Group, Inc./ CMIO Trademark**

Dear Sir/Madam:

Enclosed please find a *Brief in Support of TriMed Media Group, Inc.'s Appeal of the U.S.P.T.O. Office Action* regarding the above-referenced matter.

Please contact me with any questions.

Sincerely,

A handwritten signature in cursive script that reads "Chip Muller" with a small flourish at the end.

Chip Muller, Esq.

Enc.



11-21-2011

U.S. Patent & TMO/c/TM Mail Rept Dt #01

**U.S. PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

In re: TriMed Media Group, Inc.,
Appellant.

Serial no. 77873425
ESTTA no. 431062

**BRIEF IN SUPPORT OF
TRIMED MEDIA GROUP, INC.'S APPEAL OF
THE U.S.P.T.O. OFFICE ACTION**

TABLE OF AUTHORITIES

Citation	Pages
<u>American Assoc. For the Advancement of Science v. The Hearst Corp.</u> , 498 F.Supp. 244, 256 (D.D.C. 1980).	5, 10, 13
<u>Basic American Medical, Inc. v. American Medical International, Inc.</u> , 649 F. Supp. 885, 892 (S.D. Ind. 1986).	13
<u>Gruner + Jahr USA Publishing v. Meredith Corp.</u> , 991 F.2d 1072, 1078 (2d Cir. 1993).	5, 7, 14
<u>In re E. I. Du Pont de Nemours & Co.</u> , 476 F.2d 1357, 1361 (C.C.P.A. 1973); <u>Polaroid Corp. v. Polarad Electronics Corp.</u> , 287 F.2d 492, 495 (2d Cir.), <u>cert. denied</u> , 368 U.S. 820 (1961).	4
<u>Lang v. Retirement Living Pub. Co.</u> , 949 F.2d 576, 581 (2d Cir. 1991).	5, 9
<u>McGraw-Hill Pub. Co. v. American Aviation Associates, Inc.</u> , 117 F.2d 293, 295 (D.C. Cir. 1940).	7, 9
<u>Outdoor Kids, Inc. v. Parris Mfg. Co.</u> , Cancellations Nos. 92045687 and 92046943, 2009 TTAB LEXIS 75 (T.T.A.B. 2009), <u>aff'd</u> , No. 2009-1405, 2010 U.S. App. LEXIS 14092 (Fed. Cir. July 9, 2010) (unpublished).	6, 7, 10, 13
<u>Salt Water Sportsman, Inc. v. B.A.S.S., Inc.</u> , No. 87-1144, 1987 U.S. Dist. LEXIS 9629, at * (D. Mass. Oct. 9, 1987).	9, 10
<u>Technical Pub. Co., Div. of Dun-Donnelley Pub. Corp. v. Lebharr-Friedman, Inc.</u> , 729 F.2d 1136, 1140 (7th Cir. 1984).	6
<u>The H. Marvin Ginn Corp. v. The Int'l Assoc of Fire Chiefs</u> , 782 F.2d 987, 990 (Fed. Cir. 1986).	6
<u>Time, Inc. v. Petersen Publishing Company</u> , 173 F.3d 113, 118 (2d Cir. 1999).	6, 7, 9

TriMed Media Group, Incorporated (“TriMed”), applicant for the proposed trademark **CMIO** hereby appeals the final refusal of the U.S. Patent and Trademark Office to register the mark, as communicated in the Office Action issued March 31, 2011 (“Office Action”), and states as follows:

I. BACKGROUND

TriMed is a multi-media publisher of specialized industry news for physicians, information technology experts, and executives in the medical information and medical device industries. This industry encompasses the computerized devices that physicians use to cure illness such as a magnetic resonance imaging (“MRI”) as well as the “backroom” medical data and personal information gathering, storage, and retrieval systems that are an integral part of every efficient medical practice or hospital.

TriMed is one of the nation’s leading publishers of print media, electronic media, websites, and electronic newsletters in this field. TriMed’s glossy, full color print magazines include Molecular Imaging Insight, Cardiovascular Business, Health Imaging and IT, and **CMIO**. A copy of the July, 2010, issue of **CMIO** has been submitted as a file entitled Exhibit A. Each magazine has an electronic version which can be browsed on line. The front page of a recent electronic version, with user navigation buttons displayed at the top, has been provided in a file entitled Exhibit B. Each TriMed publication also has a website which differs substantially from the print version and is updated every day by TriMed editors. Cf. molecularimaging.net, cardiovascularbusiness.com, healthimaging.com, and CMIO.net. A copy of typical pages from CMIO.net has been submitted as a file entitled Exhibit C. Finally, TriMed publishes an electronic newsletter for each publication containing the latest industry news

and information sent to subscribers via email on a regular basis. A copy of a **CMIO** News newsletter has been submitted as a file entitled Exhibit D. TriMed has over a dozen full-time employees, including journalists, writers, editors, salespeople, production staff, managers, executives, and a board of directors.

II. NO LIKELIHOOD OF CONFUSION BETWEEN “CMIO” AND “CMIO MAGAZINE”

In its Office Action, the USPTO refused registration of **CMIO** because of what the USPTO found to be the likelihood of confusion between **CMIO** and “**CMIO MAGAZINE**,” U.S. Registration No. 3623639. “**CMIO MAGAZINE**” was registered by Mr. Alex Johnas. According to records maintained by the Massachusetts Secretary of State, Mr. Johnas is a manager of consulting firm CEG Advisory LLC. On the side, he maintains a blog, an on-line journal of his thoughts, interviews, and observations entitled, “**CMIO MAGAZINE**” available at cmiomagazine.com. It has no commercial purpose. Mr. Johnas applied for and secured registration of the mark as an “individual.” U.S. Registration No. 3623639. According to Massachusetts’ Secretary of State’s database, “**CMIO MAGAZINE**” is not registered with the state of Massachusetts as a business entity of any kind. The only place where Mr. Johnas uses his mark is on his personal blog, “**CMIO MAGAZINE**.”

TriMed respectfully asks the TTAB to reverse the USPTO’s refusal of registration; there is no likelihood of confusion between “**CMIO MAGAZINE**” and **CMIO**. See In re E. I. Du Pont de Nemours & Co., 476 F.2d 1357, 1361 (C.C.P.A. 1973); Polaroid Corp. v. Polarad Electronics Corp., 287 F.2d 492, 495 (2d Cir.), cert. denied, 368 U.S. 820 (1961).

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