

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86868731
LAW OFFICE ASSIGNED	LAW OFFICE 103
MARK SECTION	
MARK	https://tmng-al.uspto.gov/resting2/api/img/86868731/large
LITERAL ELEMENT	LIVE PHOTOS
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_204155226109-20170801125152430049_.LIVE_PHOTOS_request_for_reconsideration.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT17\IMAGEOUT17\868\687\86868731\xml6\RFR0002.JPG
ORIGINAL PDF FILE	evi_204155226109-20170801125152430049_.LIVE_PHOTOS_U.S._consent.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT17\IMAGEOUT17\868\687\86868731\xml6\RFR0003.JPG
DESCRIPTION OF EVIDENCE FILE	Applicant's arguments and accompanying consent agreement
SIGNATURE SECTION	
RESPONSE SIGNATURE	/ikc/
SIGNATORY'S NAME	Irene K. Chong
SIGNATORY'S POSITION	Attorney of Record, California bar member
DATE SIGNED	08/01/2017
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Tue Aug 01 13:00:27 EDT 2017
TEAS STAMP	USPTO/RFR-XXX.XXX.XXX.XXX -20170801130027905773-868 68731-5106c18d9374a5fddfb 68ecdc9bd41145f1b522d3acd 3975caebe93ee86261a3-N/A- N/A-20170801125152430049

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To the Commissioner for Trademarks:

Application serial no. **86868731** LIVE PHOTOS(Standard Characters, see <https://tmng-al.uspto.gov/resting2/api/img/86868731/large>) has been amended as follows:

EVIDENCE

Evidence in the nature of Applicant's arguments and accompanying consent agreement has been attached.

Original PDF file:

[evi_204155226109-20170801125152430049_.LIVE_PHOTOS_request_for_reconsideration.pdf](#)

Converted PDF file(s) (1 page)

[Evidence-1](#)

Original PDF file:

[evi_204155226109-20170801125152430049_.LIVE_PHOTOS_U.S._consent.pdf](#)

Converted PDF file(s) (1 page)

[Evidence-1](#)

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /ikc/ Date: 08/01/2017

Signatory's Name: Irene K. Chong

Signatory's Position: Attorney of Record, California bar member

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.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 86868731

Internet Transmission Date: Tue Aug 01 13:00:27 EDT 2017

TEAS Stamp: USPTO/RFR-XXX.XXX.XXX.XXX-20170801130027

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LIVE PHOTOS office action response (SN 86868731)

This responds to the final office action dated February 1, 2017 maintaining the examining attorney's refusal to register LIVE PHOTOS on the grounds that the mark is likely to be confused with the registered mark HP LIVE PHOTO owned by HP Hewlett-Packard Group LLC ("HP").

In response to the original refusal, Apple submitted a consent from HP. The examining attorney declined to withdraw the refusal on the grounds that HP's consent neither "(1) sets forth reasons why the parties believe there is no likelihood of confusion, nor (2) describes the arrangements undertaken by the parties to avoid confusing the public." The examining attorney also noted that Apple had not signed the consent, even though Apple was submitting it.

Although Apple believes that the initial consent was sufficient, it submits with this response a new, more detailed consent, which addresses and fulfills both requirements (1) and (2), and which includes both parties' signatures. In light of this new, more detailed consent, Apple respectfully requests that the examining attorney withdraw the Section 2(d) refusal to register and approve the LIVE PHOTOS application for registration.

Consent to Trademark Registration

HP HEWLETT-PACKARD GROUP LLC, a Delaware limited liability company with an address at 11445 Compaq Center Drive West, Houston, Texas 77070 USA ("HP"), is the owner of U.S. trademark registration No. 4452467 of HP LIVE PHOTO (the "HP Mark").

APPLE INC., a California corporation with an address at 1 Infinite Loop, Cupertino, California 95014 USA ("Apple"), has used the mark LIVE PHOTOS (the "Apple Mark") since September 2015 in connection with computer software for recording and displaying images, video, and sound, and the U.S. Patent and Trademark Office has refused Apple's U.S. application SN 86/868,731 for such goods (the "Application"), citing the HP Mark.

HP and Apple acknowledge and agree that they have encountered no confusion since Apple began using the Apple Mark in September 2015, and that confusion is unlikely to occur between their respective marks because of the presence of the HP house mark in HP's mark, and the differences in their respective goods and trade channels. Apple's software is provided to users as part of Apple's proprietary iOS operating software on Apple's iPhone and iPad mobile devices, and allows the user to transform a still photograph into a brief video that includes the moments just before and after the photo was taken. HP acknowledges that its software has different functionality, is not provided as part of any operating system, and is not available to iPhone or iPad users on Apple's App Store or on other app markets. Although HP and Apple have not encountered any confusion in the nearly two years that Apple has been using the Apple Mark, in the event that confusion occurs in the future, they have agreed to confer in good faith and address that confusion.

HP has agreed to the worldwide use and registration of the Apple Mark by Apple and its affiliates, licensees, successors, and assigns, and hereby agrees and consents to the U.S. registration of the Apple Mark by Apple for computer software.

Dated July 31, 2017

HP HEWLETT-PACKARD GROUP LLC

By: 

Name:

Title:

Francis Toldi
Manager

APPLE INC.

By: 

Name:

Title:

THOMAS R. LA PERLE
ASSISTANT SECRETARY

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