

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 76/515657

APPLICANT: Hoss's Enterprises, Inc.

\*76515657\*

CORRESPONDENT ADDRESS: SHERRY H. FLAX SAUL EWING LLP 100 SOUTH CHARLES STREET BALTIMORE, MD 21201

RETURN ADDRESS: Commissioner for Trademarks 2900 Crystal Drive Arlington, VA 22202-3514

MARK: MARZONI'S

CORRESPONDENT'S REFERENCE/DOCKET NO : N/A

Please provide in all correspondence:

CORRESPONDENT EMAIL ADDRESS:

- 1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

FINAL OFFICE ACTION

TO AVOID ABANDONMENT, WE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF OUR MAILING OR E-MAILING DATE.

Serial Number 76/515657

This letter responds to the applicant's communication filed on June 3, 2004.

Mark is Primarily Merely a Surname - §2(e)(4) Refusal

Registration was refused under Trademark Act Section 2(e)(4), 15 U.S.C. §1052(e)(4), because the mark is primarily merely a surname. The examining attorney has considered the applicant's arguments carefully but has found them unpersuasive. For the reasons below, the refusal under Section 2(e)(4) is maintained and made FINAL.

The applicant applied to register MARZONI'S. As stated previously, the presentation of a surname in its plural or possessive form does not diminish its surname significance. See In re Woolley's Petite Suites, 18 USPQ2d 1810, 1812 (TTAB 1991) (WOOLLEY'S); In re Luis Caballero, S.A., 223 USPQ 355 (TTAB 1984) (BURDONS).

The surname MARZONI has no non-surname significance (see attached evidence supporting this claim), and the applicant failed to identify any non-surname significance.

The applicant argued that sufficient evidence was not provided to support the refusal based on the surname significance of the proposed mark, and further argued that the applicant coined the term "to evoke the impression of Italy."

Even a relatively rare surname is unregistrable under Trademark Act §2(e)(4), 15 U.S.C. §1052(e)(4), if its primary significance to purchasers is that of a surname. See In re Etablissements Darty et Fils, 759 F.2d 15, 225 USPQ 652 (Fed. Cir. 1985) (DARTY); In re Rebo High Definition Studio Inc., 15 USPQ2d 1314 (TTAB 1990) (REBO); TMEP §1211.01(a)(v). There is no minimum number of telephone directory listings needed to prove that a mark is primarily merely a surname. TMEP §1211.02(b)(i). Excerpts from the LEXIS-NEXISÒ research database are one type of credible evidence of the surname significance of a term. TMEP §1211.02(b)(ii). In addition to the telephone listings collected through LEXIS-NEXISÒ, which were attached to the first Office action, attached hereto are excerpts from articles from the database, including thirty (30) more uses of the surname MARZONI. See attachments.

Negative dictionary evidence (i.e., evidence that a term is absent from dictionaries or atlases) may demonstrate the lack of non-surname significance of a term. See In re Petrin Corp., 231 USPQ 902 (TTAB 1986). TMEP §1211.02(b)(v). Dictionary and thesaurus listings available at the following web addresses produced no meaning for the word MARZONI in either English or Italian:



<http://dictionary.reference.com/search?q=marzoni>; <http://thesaurus.reference.com/search?q=marzoni>;  
<http://www.yourdictionary.com/ahd/search?p=marzoni&searchmode=normal&x=49&y=7>;  
<http://www.m-w.com/cgi-bin/dictionary?book=Dictionary&va=marzoni&x=16&y=11>;  
<http://www.m-w.com/cgi-bin/thesaurus?book=Thesaurus&va=marzoni&x=18&y=10>;  
<http://www.onelook.com/?w=marzoni&ls=a>;  
<http://www.onelook.com/?w=marzoni&ls=c>;  
<http://dictionaries.travlang.com/ItalianEnglish/dict.cgi?query=marzoni&max=50>;  
<http://www.freedict.com/onldict/onldict.php>.

Copies of these web pages are attached hereto. See attachments.

In a search of the Internet using the GOOGLE search engine, over 1,800 hits were found for MARZONI. As evidenced by the excerpted first four (4) pages of hits retrieved using that search, reproduced and attached hereto, the listings show use of MARZONI as either a surname or in a restaurant name, which may or may not be referring the applicant's restaurant.<sup>[1]</sup> Two of the hits were for genealogy sites specifically addressing the surname MARZONI, and identifying it as such. See attachments.

Option to Amend to Seek Registration on the Supplemental Register

Although the examining attorney has refused registration on the Principal Register, the applicant may amend the application to seek registration on the Supplemental Register. Trademark Act Section 23, 15 U.S.C. Section 1091; 37 C.F.R. Sections 2.47 and 2.75(a); TMEP sections 202.02(b) and 1115.

**Please note that the mark in an application under Trademark Act Section 1(b), 15 U.S.C. §1051(b), is not eligible for registration on the Supplemental Register until an acceptable amendment to allege use under 37 C.F.R. §2.76 or statement of use under 37 C.F.R. §2.88 has been timely filed. 37 C.F.R. §2.47(c); TMEP §§815.02, 816.02 and 1102.03. When such an application is changed from the Principal Register to the Supplemental Register, the effective filing date of the application is the date of filing of the allegation of use. 37 C.F.R. §2.75(b); TMEP §§206.01 and 816.02.**

Options

Applicant may respond to this final action by:

- (1) submitting a response that fully satisfies all outstanding requirements, if feasible (37 C.F.R. §2.64(a)); and/or
- (2) filing an appeal to the Trademark Trial and Appeal Board, with an appeal fee of \$100 per class (37 C.F.R. §§2.6(a)(18) and 2.64(a); TMEP §§715.01 and 1501 *et seq.*; TBMP Chapter 1200).

In certain circumstances, a petition to the Director may be filed to review a final action that is limited to procedural issues, pursuant to 37 C.F.R. §2.63(b)(2). 37 C.F.R. §2.64(a). See 37 C.F.R. §2.146(b), TMEP §1704, and TBMP Chapter 1201.05 for an explanation of petitionable matter. The petition fee is \$100. 37 C.F.R. §2.6(a)(15).

/LGKovalsky/  
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(for informal inquiries only)

The United States Patent and Trademark Office issued the Third Edition of the *Trademark Manual of Examining Procedure* (TMEP), January, 2002, available at [www.uspto.gov/go/tmep](http://www.uspto.gov/go/tmep). References to the TMEP correspond to the Third Edition.

**CHANGE OF CORRESPONDENCE ADDRESS**

Applicants may now file changes of correspondence address via a new form on TEAS. Address changes may be performed on up to 20 cases at a time. The Trademark Office strongly encourages applicants to use this time-saving form which is available online at: <http://eteas.uspto.gov/V2.0/ca200/WIZARD.htm>

**How to respond to this Office Action:**

To respond formally using the Office's Trademark Electronic Application System (TEAS), visit <http://www.uspto.gov/teas/index.html> and follow the instructions.

To respond formally via regular mail, your response should be sent to the mailing Return Address listed above and include the serial number, law office and examining attorney's name on the upper right corner of each page of your response.

To check the status of your application at any time, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov/>

For general and other useful information about trademarks, you are encouraged to visit the Office's web site at <http://www.uspto.gov/main/trademarks.htm>

**FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY.**

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MAIL-IT REQUESTED: JULY 20, 2004 10083K

CLIENT: MARZON'S  
LIBRARY: NEWS  
FILE: US

YOUR SEARCH REQUEST AT THE TIME THIS MAIL-IT WAS REQUESTED:  
MARZONI

NUMBER OF STORIES FOUND WITH YOUR REQUEST THROUGH:  
LEVEL 1... 155

LEVEL 1 PRINTED

THE SELECTED STORY NUMBERS:  
2-3, 5, 7, 9-10, 12-13, 15-16, 18-19, 22, 24, 27, 31-32, 47, 49, 61, 84, 100, 103, 106, 116, 119, 123, 126, 149, 154

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June 27, 2004 Sunday

SECTION: LIVING; Pg. 3D

LENGTH: 203 words

HEADLINE: Sellers - Lee

BYLINE: ,Staff

BODY:

Parents of the bridegroom are Tim and Pam Sellers of Purvis.

Music was presented by pianist Cynthia McMahon and Patrick and Christian Holcomb.

Maids of honor were Sara Bond and Kelly Marzoni, cousin of the bride.

Bridesmaids were Lauren Hamilton, Anne Cameron, Jennifer Sandifer and Robin Sellers, all of Purvis.

Flower girls were Rachel Robbins, cousin of the bride, Caitlyn Lee, sister of the bride, and Madelyn Oliver.

Ring bearer was Luke Sellers, son of the ...

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The Tennessean

May 14, 2004 Friday Southeast Edition

SECTION: DAVIDSON AM; Pg. 1M

LENGTH: 418 words

HEADLINE: Celebrity golfers team up for second-chance school

BYLINE: KAREN JORDAN

BODY:

... provide a second chance to teenagers, some of whom have run out of options.

Now Vince Gill, former Titans player Frank Wycheck and other celebrities are teaming for Community High School's first "Serenity Scramble" Golf Tournament.

Jane Marzoni knows firsthand what a difference the school, designed to help teens recovering from alcohol and drug abuse, can make. Her son is a 1999 graduate.

... gratifying to hear that years later," Finch said...

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Copyright 2004 Little Rock Newspapers, Inc.  
Arkansas Democrat-Gazette (Little Rock)

May 11, 2004 Tuesday

SECTION: ARKANSAS

LENGTH: 618 words

HEADLINE: Bush today, Kerry tomorrow stumping in Arkansas Teachers complain of problems with No Child Left Behind law

BYLINE: BY LAURA KELLAMS ARKANSAS DEMOCRAT-GAZETTE

... education teacher at Fayetteville High School, said under the requirements of No Child Left Behind she's not "highly qualified" for her job although she has a master's degree, five different teacher certifications and 22 years' experience.

Dan Marzoni, a Fayetteville junior high teacher, said if Widder went back to school and got the extra certifications required under No Child Left Behind, she would get no financial help to do so and would get no extra money when she returns to her classroom.

"We don't leave children behind," Marzoni said of teachers. "We're trying to teach and bring up every child, but this is going to actually put us more behind."

Creamer said some of the law's requirements, especially those for special-education teachers, are "hard to meet and rather confusing..."

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Variety

May 3, 2004 - May 3, 2004

SECTION: FILM REVIEWS\*\*web

LENGTH: 288 words

HEADLINE: EVERY TIME YOU GO AWAY

BYLINE: Nick Vivarelli

BODY:

Screenplay, Antonio Piazza, Fabio Grassadonia, Fabio De Luigi, Cocchi. Camera (color, widescreen), Patrizio Patrizi; editor, Paolo **Marzoni**; music, Andrea Guerra; production designer, Eugenia Di Napoli; costume designer, Roberta Pontiggia. Reviewed at Cinema Adriano, Rome, April 19, 2004. Original title: Ogni volta che te ne vai. Running time: ...

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Hattiesburg American (Hattiesburg, MS)

February 27, 2004 Friday

SECTION: LOCAL; Pg. 5D

LENGTH: 129 words

HEADLINE: Public records

BYLINE: Staff

BODY:

... Joanne Lear

Mickey Lamar Hurt vs. Teresa Ann Hurt

Shelly Ann Stoll vs. James Kennedy Smith

Louis H. Dunn vs. Debra Dunn

Bonnie J. Kinsey vs. Richard Allen Kinsey

Carol **Marzoni** vs. Leo Thomas **Marzoni** IV

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Times-Picayune (New Orleans, LA)

February 8, 2004 Sunday

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