

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85908604
LAW OFFICE ASSIGNED	LAW OFFICE 101
MARK SECTION	
MARK	http://tess2.uspto.gov/ImageAgent/ImageAgentProxy?getImage=85908604
LITERAL ELEMENT	EMENU
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_701095314-145348339_.EMENU-Response_to_OA.pdf
CONVERTED PDF FILE(S) (3 pages)	\\TICRS\EXPORT16\IMAGEOUT16\859\086\85908604\xml5\ROA0002.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\859\086\85908604\xml5\ROA0003.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\859\086\85908604\xml5\ROA0004.JPG
DESCRIPTION OF EVIDENCE FILE	a .pdf of the arguments Applicant submits in response to the Office action dated August 6, 2013.
ADDITIONAL STATEMENTS SECTION	
SIGNIFICANCE OF MARK	eMenu appearing in the mark has no significance nor is it a term of art in the relevant trade or industry or as applied to the goods/services listed in the application, or any geographical significance.
SIGNATURE SECTION	
RESPONSE SIGNATURE	/avann/
SIGNATORY'S NAME	Antonio G. Vann
SIGNATORY'S POSITION	Attorney of Record Va Bar Member
SIGNATORY'S PHONE NUMBER	2025281787
DATE SIGNED	01/13/2014
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Jan 13 15:00:21 EST 2014
TEAS STAMP	USPTO/ROA-XX.XXX.XX.XX-20 140113150021973048-859086 04-5007a95f68e692eb78dc27 00-01-17-2014-140113150021973048-859086

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. **85908604** EMENU(Standard Characters, see <http://tess2.uspto.gov/ImageAgent/ImageAgentProxy?getImage=85908604>) has been amended as follows:

EVIDENCE

Evidence in the nature of a .pdf of the arguments Applicant submits in response to the Office action dated August 6, 2013. has been attached.

Original PDF file:

[evi_701095314-145348339_-_EMENU-Response_to_OA.pdf](#)

Converted PDF file(s) (3 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

ADDITIONAL STATEMENTS

Significance of wording, letter(s), or numeral(s)

eMenu appearing in the mark has no significance nor is it a term of art in the relevant trade or industry or as applied to the goods/services listed in the application, or any geographical significance.

SIGNATURE(S)

Response Signature

Signature: /avann/ Date: 01/13/2014

Signatory's Name: Antonio G. Vann

Signatory's Position: Attorney of Record Va Bar Member

Signatory's Phone Number: 2025281787

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: 85908604

Internet Transmission Date: Mon Jan 13 15:00:21 EST 2014

TEAS Stamp: USPTO/ROA-XX.XXX.XX.XX-20140113150021973

048-85908604-5007a95f68e692eb78dc2723e8b

74795a643241a30d9b28caafe28f633188e17-N/

A-N/A-20140113145348339409

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Atware Technologies, Inc.
Serial No.: 85/908604
Filed: April 18, 2013
Trademark Atty: Saima Makhdoom
Word Mark: eMenu

RESPONSE TO AUGUST 6, 2013 OFFICE ACTION

This Response is filed in reply to the Office Action e-mailed on August 6, 2013. The Applicant respectfully submits the following response. Applicant submits that the above-identified trademark application for eMENU is in condition for allowance to publication.

Incorrect Registration Cited

Examining Attorney Saima Makhdoom cites a potential section 2(d) refusal against U.S. Registration No. 3518624. This registration covers the mark "EMENUS AUTOMOTIVE." However, the registration certificate attached to the Office Action is Registration No. 3648978 for "EMENUS." Furthermore, majority of the language in the Office Action discusses a potential conflict with the mark EMENUS, not EMENUS AUTOMOTIVE. Therefore, Applicant is responding to the refusal under the assumption that Examining Attorney Makhdoom's refusal is based on Registration No. 3648978 for "EMENUS."

Potential Section 2(d) – Likelihood of Confusion

Applicant submits a preliminary response to the potential section 2(d) refusal; however, Applicant reserves all rights to provide a detailed and more descriptive response if Examining Attorney Saima Makhdoom raises a Section 2(d) refusal in a subsequent Office Action.

Applicant's Word Mark

eMenu
Class 035

The bringing together, for the benefit of others, of a variety of goods and services, enabling customers to conveniently view and purchase those goods and services from an Internet web site particularly specializing in the marketing of the sale of goods and services of others

Cited Registered Mark

EMENUS
Class 042

Providing temporary use of on-line non-downloadable software for data base management by hotels around the world to enable their clients and guests to see online menus and photos of meals to order

Preliminary Response with Reservation of Rights

The USPTO suggests that it will refuse registration of Applicant's mark, eMENU, "because of a likelihood of confusion with registered mark EMENUS, in U.S. Registration No. 3,648,978. The Examining Attorney has indicated that similarity of the marks, similarity of the goods and/or services, and similarity of trade channels of the goods and /or services are grounds for the 2(d) refusal of the Applicant's mark.

The Effect of the Mark Does Not Cause Confusion

"[T]he question of confusion is related not to the nature of the mark but to its effect 'when applied to the goods of the applicant.'" *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1360, 177 USPQ 563, 566 (C.C.P.A. 1973).

The Applicant offers services that are different than those offered under the cited registration. The Applicant offers a website that allows many different entities to promote their business, whereas the cited registration offers database management software for hotels. The services offered under the marks are different. The Applicant's website showcases and promotes the commercial activities of many businesses from different industries. The cited registration's software manages a database to be utilized by the hotel industry for the purpose of allowing guests to see food related menus.

The cited registration is a stylized mark. Although the Applicant has a 1(b) intent-to-use filing basis, the Applicant intends to use its mark in a manner that is visually distinct and different from the stylized elements in the cited registration.

The differences in how the marks [will] appear in connection with the differences in the services will give the Applicant's mark an effect that will eliminate any likelihood of confusion.

The Marks Share Terms But The Commercial Impressions Are Different

A similar phrase found in two marks is not dispositive of a confusing similarity between the marks when the marks give off different commercial impressions. *See Kellogg Co. v. Pack'em Enterprises, Inc.*, 951 F.2d 330 (Fed. Cir. 1991).

There can be no dispute that the marks in question give off different commercial impressions. The Applicant's website service is to be used by and offers advantages to many industries. However, the cited registration is a software for hotels, narrowly focused on meal management. Therefore, the similar phrase found in both marks is not dispositive of a likelihood of confusion analysis because the commercial impressions are different.

Third Party Registration of an "EMENU" related Trademark

The registration of an "emenu" related mark is possible without the likelihood of confusion occurring. A cursory review of the USPTO records reflects U.S. Registration No. 3518624 for EMENUS AUTOMOTIVE. This third party use of an "emenu" related mark is an indication that consumers are capable of distinguishing between such marks based on minor differences. *See, e.g., In re Broadway Chicken, Inc.*, 38 USPQ2d 1559 (TTAB 1996); *Plus Products v. Natural Organics, Inc.*, 204 USPQ 773 (TTAB 1979).

No Evidence Of Substantial Likelihood of Confusion

When determining whether an Applicant's mark creates a likelihood of confusion, with marks

covered by cited registrations "[a] showing of mere possibility of confusion is not enough; a substantial likelihood that the public will be confused must be shown." Omaha Natl. Bank, 633 F. Supp. at 234, 229 U.S.P.Q. at 52. Applicant respectfully asserts that no evidence has been presented to show that there is a substantial likelihood of confusion. Applicant has successfully argued that the commercial impression between the marks is different. Applicant has successfully identified another "emenu" related registration as a showing that registration of the Applicant's mark is possible without a likelihood of confusion occurring. Applicant has asserted that it will use the "eMENU" mark in a manner separate and distinct from the stylized elements of the cited registration. Based on the arguments given above, Applicant asserts that it has successfully overcome the 2(d) likelihood of confusion.

CONCLUSION

Applicant has fully responded to the August 6, 2013 Office Action. Applicant respectfully submits in good faith that all potential 2(d) refusals, rejections, and/or objections have been overcome and that the applied for mark is in condition for publication.

Respectfully submitted,
/Antonio G. Vann/
Antonio G. Vann (VSB # 79765)