

06831.0304

Please place on Upper Right Corner
of Response to Office Action ONLY.

Examining Attorney: CAPSHAW, DANIEL
Serial Number: 76/365484



I hereby Certify that this Correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.
on December 2, 2002.

Barbara Haggerty

Name

Signature

December 2, 2002

Date of Signature

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Yosemite Concession Services Corporation

Serial No. 76/365484

Filed: January 31, 2002

For: YOSEMITE NATIONAL PARK

RESPONSE TO OFFICE ACTION

Commissioner for Trademarks
BOX RESPONSES - NO FEE
2900 Crystal Drive
Arlington, Virginia 22202-3513

Madam:

This Response is in reply to the Office Action mailed June 3, 2002 and is accompanied by:

- (1) A copy of a document evidencing an association between applicant and the National Park Service;
- (2) A Declaration Supporting Claim of Acquired Distinctiveness Under §2(f);
- (3) A substitute specimen for goods in Class 16; and
- (4) A Declaration for Substitute Specimen under 37 CFR §2.20.

cm

Identification of Goods

Please amend the identification of goods in the above-identified application to read as follows:

"Class 16 - pens, cases for pens, and stickers; Class 21 - coffee mugs; Class 25 - apparel, namely, t-shirts, sweatshirts, and golf shirts".

Substitute Specimen

Please replace the existing specimen in International Class 16 with the enclosed substitute specimen. A Declaration under 37 C.F.R. §2.20 accompanies the substitute specimen.

REMARKS

Association Between Applicant and National Park Service

The refusal to register based on false association is respectfully traversed because applicant Yosemite Concession Services Corporation is contractually associated with the National Park Service. Enclosed herewith is a redacted copy of a contract between the United States of America, acting by the Secretary of the Interior, through the Director of the National Park Service, and applicant Yosemite Concession Services Corporation. The contract, dated September 29, 1993, establishes applicant as a concessioner. The copy of the contract has been redacted to protect proprietary and trade secret information. In view of this, withdrawal of the refusal to register based on false association is respectfully requested.

Claim of Acquired Distinctiveness

Applicant hereby claims that the mark has become distinctive as applied to applicant's goods in commerce and thus is registrable on the Principal Register under §2(f) of the Trademark Act (15 U.S.C. §1052(f)). In support of this claim, applicant submits the enclosed Declaration stating applicant's substantially exclusive and continuous use of the mark in commerce for at least the five years immediately before the date of the Declaration. In view of the foregoing, the refusal to register based on the mark being primarily geographically descriptive is respectfully overcome, and withdrawal of the refusal is kindly sought.

Identification of Goods

Applicant has amended the identification of goods as suggested by the Examining Attorney in order to overcome problems of indefiniteness. The identification of goods is now believed to be acceptable.

Substitute Specimen

A substitute specimen showing actual use of the mark in International Class 16 is included herewith, and is accompanied by a Declaration under 37 C.F.R. §2.20 signed by applicant verifying that the substitute specimen was in use in commerce at least as early as the filing date of the present application. The substitute specimen is a photograph of a pen having the mark engraved thereon.

Conclusion

In view of the foregoing, favorable reconsideration of the present application is respectfully requested.

Respectfully submitted,

HODGSON RUSS LLP

By: 

George L. Snyder, Jr.

Reg. No. 37,729

Attorney for Applicant

One M & T Plaza
Suite 2000
Buffalo, New York 14203-2391
Telephone: (716) 856-4000
Dated: December 2, 2002

1 THIS CONTRACT made and entered into by and between the United States of
2 America, acting in this matter by the Secretary of the Interior, through the
3 Director of the National Park Service ("Secretary"), and Yosemite Concession
4 Services Corporation, a corporation organized and existing under the laws of
5 the State of Delaware ("Concessioner"):

6
7
8 WITNESSETH:

9
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]
29

30 WHEREAS, Delaware North Companies, Inc., a corporation incorporated
31 under the laws of the State of Delaware, has accepted from the National Park
32 Foundation ("NPF") the assignment of the NPF's rights and obligations under
33 a certain Agreement and Plan of Merger and Exhibits thereto (the "Purchase
34 Agreement") dated September 20, 1991, by and between NPF, MCA, Inc. ("MCA")
35 and the Yosemite Park and Curry Co. ("YPC&Co."); and
36

37 WHEREAS, the Concessioner is a wholly owned subsidiary of Delaware North
38 Companies, Inc. ("DNC"), and, pursuant to the Purchase Agreement has
39 effectuated a merger with the Yosemite Park and Curry Co. (hereinafter
40 "YP&CCo.") under which the Concessioner is the surviving entity but under
41 which all assets and liabilities of YPC&Co. remain, including, but not limited
42 to, certain environmental cleanup liabilities (as further described in part
43 in the DNC proposal which led to this contract) for which the Concessioner
44 remains responsible; and
45

46 WHEREAS, the Concessioner has executed certain documents pursuant to the
47 Purchase Agreement and the Purchase Agreement calls for this contract to

1 implement certain terms and conditions of the Purchase Agreement and such
2 executed documents; and

3
4 WHEREAS, this contract, particularly in Supplement 1 hereto which is
5 hereby made a part hereof, contains terms and conditions in partial
6 implementation of the Purchase Agreement;

7
8 NOW, THEREFORE, pursuant to the authority contained in the Acts of
9 August 25, 1916 (39 Stat. 535; 16 U. S. C. 1, 2-4), and October 9, 1965 (79
10 Stat. 969; 16 U. S. C. 20 et seq.), and other laws supplemental thereto and
11 amendatory thereof, the said parties agree as follows:

12
13
14 SECTION 1. TERM OF CONTRACT.

15
16 [REDACTED]
17
18
19

20
21 SECTION 2. ACCOMMODATIONS, FACILITIES, AND SERVICES.

22
23 (a)

24 [REDACTED]
25
26
27
28
29

30
31 (b)(1)

32 [REDACTED]
33
34
35
36
37

38 (b)(2)

39 [REDACTED]
40
41
42
43
44

45 (c)

46 [REDACTED]
47
48

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]

10 IN WITNESS WHEREOF, the parties hereto have hereunder subscribed their
11 names and affixed their seals at Yosemite National Park, this 29th day of
12 September, 1993.

13
14 YOSEMITE CONCESSION SERVICES CORPORATION UNITED STATES OF AMERICA

15
16
17
18 BY: [Signature]
19 President

BY: [Signature]
Roger G. Kennedy
Director
National Park Service

20
21
22 ATTEST:

23
24 BY: [Signature]

DATE: Sept. 29, 1993

25
26
27
28 TITLE: Secretary

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Yosemite Concession Services Corporation

Trademark Attorney: Daniel Capshaw

Law Office: 109

Serial No.: 76/365,484

Docket: 06831.0304

Filed: 01/31/2002

For: YOSEMITE NATIONAL PARK

**DECLARATION SUPPORTING CLAIM OF
ACQUIRED DISTINCTIVENESS UNDER § 2(f)**
(37 CFR §2.20)

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

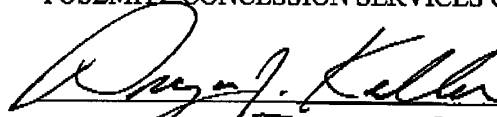
Madam:

The mark has become distinctive of the goods through the applicant's substantially exclusive and continuous use in commerce for at least the five years immediately before the date of this statement.

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

YOSEMITE CONCESSION SERVICES CORPORATION

11/21/02
(Date)


Name (printed): Bryan J. Keller
Title: Secretary

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Yosemite Concession Services Corporation

Trademark Attorney: Daniel Capshaw

Law Office: 109

Serial No.: 76/365,484

Docket: 06831.0304

Filed: 01/31/2002

For: YOSEMITE NATIONAL PARK

DECLARATION FOR SUBSTITUTE SPECIMEN
(37 CFR §2.20)

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

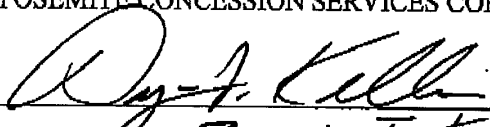
Madam:

One (1) substitute specimen showing the mark as actually used in connection with the goods in International Class 16 is presented herewith. The substitute specimen was in use in commerce since at least as early as the filing date of the present application, namely January 31, 2002.

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

YOSEMITE CONCESSION SERVICES CORPORATION

11/21/02
(Date)


Name (printed): Bryan J. Keller
Title: Secretary

Enclosure

