RESPONSE TO OFFICE ACTION

This Response to Office Action is submitted in response to the office action having a mailing date of July 21, 2011, for which a response is due on or before September 21, 2011.

Response

This office action is the second office action issued under this application. The original office action required a disclaimer of the words PROVO BEACH RESORT. In its response, Applicant partially agreed and submitted a statement to disclaim the term PROVO. Applicant respectfully disputed the disclaimer requirement for the words BEACH RESORT and presented arguments in its favor.

The examining attorney has submitted a second office action again requiring disclaimers of the words PROVO and RESORT. Because Applicant was not opposed and even attempted to disclaim the word PROVO in its first response, Applicant again submits the following statement to disclaim the word PROVO:

"No claim is made to the exclusive right to use "PROVO" apart from the mark as shown."

However, Applicant again submits that the term RESORT is not descriptive of the services offered under this mark that are identified in this application. In the office action, the examining attorney stated that the term RESORT means "a place frequented by people for relaxation or recreation: a ski resort…[or] a customary or frequent going or gathering: a popular place of resort." The examining attorney further stated that the term RESORT is descriptive because it "merely describes the…types of services typically offered at beach resorts."

In this case, the services are identified as "restaurant services and juice bar services; fast food restaurant services; ice cream parlor." Applicant respectfully submits that while these services are certainly found at a typical resort, restaurants, ice cream parlors, and similar establishments are certainly not exclusive or unique to resorts. In fact, restaurants, juice bars, and ice cream parlors are found all throughout the United States in a variety of settings. Many are found at the local mall or in a strip mall. Others are centrally located in a metropolis or densely populated setting. Yet others are certainly located in rural areas. Furthermore, the term RESORT does not convey the image of a restaurant or ice cream parlor. The same could be said about restrooms, which are certainly located at resorts but anyone would find it difficult to argue that the term RESORT is descriptive of a restroom. Rather, Applicant respectfully submits that the word RESORT is not merely descriptive because it does not have the immediate effect of describing such services. Instead, Applicant again contends that the word requires imagination, thought, and perception to reach a conclusion as to the nature of the entertainment services. Such terms are not descriptive but suggestive and are capable of registration on the principal register. *See In re Quik-Print*, 616 F.2d at 525, 205 U.S.P.Q.

505. The term RESORT requires an imagination by the consumer to perceive that the services are something more than what is being provided. Accordingly, Applicant respectfully requests that the disclaimer of the term RESORT be withdrawn.

As stated above, the word RESORT of this mark does not refer to activities located at a resort. Instead, this word suggests or implies the type of experience a consumer will have by purchasing the services under this mark. In essence, the word RESORT suggests that the Applicant's services are different from those found at other restaurants or ice cream parlors and would provide the consumer a greater experience. This requires imagination, thought, and perception to associate the name of Applicant's services with the type of experience purchasers of Applicant's services will have. By definition, therefore, the word RESORT is not descriptive but is suggestive.

CONCLUSION

For the reasons set forth above, Applicant submits that the word RESORT is not merely descriptive but suggestive. Accordingly, Applicant respectfully submits that the Application, in light of the above response, is now in proper form for allowance and requests the withdrawal of the disclaimer requirement of the word RESORT.