

## Response to Office Action

**The table below presents the data as entered.**

Input Field	Entered
<b>SERIAL NUMBER</b>	87315742
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 121
<b>MARK SECTION (current)</b>	
<b>MARK FILE NAME</b>	https://tmng-al.uspto.gov/resting2/api/img/87315742/large
<b>STANDARD CHARACTERS</b>	NO
<b>USPTO-GENERATED IMAGE</b>	NO
<b>COLOR(S) CLAIMED (If applicable)</b>	Color is not claimed as a feature of the mark.
<b>DESCRIPTION OF THE MARK (and Color Location, if applicable)</b>	The mark consists of a stylized design of the American flag.
<b>MARK SECTION (proposed)</b>	
<b>MARK FILE NAME</b>	<a href="https://tcrs/export17/imageout17/87315742/87315742.xml5/ROA0002.JPG">\\TICRS\EXPORT17\IMAGEOUT 17\87315742\87315742.xml5\ ROA0002.JPG</a>
<b>STANDARD CHARACTERS</b>	NO
<b>USPTO-GENERATED IMAGE</b>	NO
<b>COLOR MARK</b>	YES
<b>COLOR(S) CLAIMED (If applicable)</b>	The color(s) grey is/are claimed as a feature of the mark.
<b>DESCRIPTION OF THE MARK (and Color Location, if applicable)</b>	The mark consists of a stylized design of the American Flag. The white area between the stripes and elsewhere in the drawing represents background and/or transparent areas and is not part of the mark.
<b>PIXEL COUNT ACCEPTABLE</b>	YES
<b>PIXEL COUNT</b>	800 x 566
<b>ARGUMENT(S)</b>	
<p>Applicant timely submits the following Response to the Office Action issued April 26, 2017. Applicant acknowledges with gratitude the Examining Attorney's search of the Office records and the finding of no similar registered marks that would bar registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d). I. SECTION 2(b) REFUSAL In the Office Action, the Examining Attorney refused registration of Applicant's Mark under Section 2(b) on the basis that Applicant's Mark includes a simulation of the flag of the United States. For the reasons set forth below, Applicant respectfully submits that its mark is registrable and requests that the refusal be withdrawn. In general, true representations of the flag of the United States cannot receive a trademark. However, the incorporation in a mark of individual or distorted features that are merely suggestive of flags does not bar registration under Section 2(b). See Knorr-Nahrmittel A.G. v. Havland Int'l, Inc., 206 USPQ 827, 833 (TTAB 1980) (holding flag designs incorporated in the proposed mark NOR-KING and design not recognizable as the flags of Denmark, Norway, and Sweden, the Board finding that "[a]ll that the record reflects is that the mark contains a representation of certain flags, but not the flag or flags of any particular nation"); In re Waltham Watch Co., 179 USPQ at 60 (finding mark comprising wording with the design of a globe and flags not to be a simulation of the flags of Switzerland and Great Britain, stating that "although the flags depicted in applicant's mark incorporate common elements of flag designs such as horizontal or vertical lines, crosses or stars, they are readily distinguishable from any of the flags of the nations alluded to by the examiner."). The examining attorney should consider the following factors to determine whether the design is perceived as a flag: (1) color; (2) presentation of the mark; (3) words or other designs on the drawing; and (4) use of the mark on the specimen(s). In re Family Emergency Room LLC, 121 USPQ2d 1886, 1888 (TTAB 2017) (discussing the factors to consider in determining whether matter in a mark will be perceived as the Swiss flag). Pursuant to TMEP 1204.01(b), if the flag</p>	

design fits one of the following scenarios, the examining attorney should not refuse registration under ?2(b): The flag design is used to form a letter, number, or design. The flag is substantially obscured by words or designs. The design is not in a shape normally seen in flags. The flag design appears in a color different from that normally used in the national flag. A significant feature is missing or changed. In this case, Applicant?s Mark has been amended to claim the color grey on a transparent background. As a result, its flag design appears in a color different from that normally used in the national flag (i.e., red, white and blue). This presentation is also clear from Applicant?s specimen. In addition, a significant feature is missing or changed. Applicant?s Mark does not contain stars anywhere on it, which is a mainstay of the U.S. flag. Rather, Applicant?s Mark is a distressed stylized flag made to look like it was created from a woodblock press. Marks containing elements of flags in a stylized or incomplete form are not refused under Section 2(b). TMEP 1204.01(b). The mere presence of some significant elements of flags, such as stripes, does not necessarily warrant a refusal. Id. Therefore, Applicant?s Mark is registrable. II. SUBSTITUTE DRAWING, COLOR CLAIM & DESCRIPTION OF THE MARK Applicant has submitted a new drawing which shows the mark in grey. Applicant has entered a claim of color and revised the description of its mark accordingly. III. SUBSTITUTE SPECIMEN The Examining Attorney has initially refused registration of Applicant?s Mark on the basis that that Applicant?s specimen is a printer?s proof. The Examining Attorney has requested that Applicant submit a substitute specimen. In accordance with the Examining Attorney?s request, Applicant is submitting a substitute specimen which reflects use of Applicant?s Mark in commerce with the Class 33 goods included in this application. The substitute specimen consists of a photo of Applicant?s wine. Applicant is also submitting a declaration under 37 C.F.R. ? 2.20 that the substitute specimen was in use in commerce at least as early as the filing date of this application. IV. CONCLUSION In view of the foregoing, Applicant respectfully requests that the Examining Attorney withdraw the refusal of Applicant?s Mark and pass this application to publication. The Examining Attorney is invited to contact Applicant?s attorney at (415) 882-3200 if further discussion on this application is warranted.

<b>GOODS AND/OR SERVICES SECTION (current)</b>	
<b>INTERNATIONAL CLASS</b>	033
<b>DESCRIPTION</b>	Alcoholic beverages, except beer
<b>FILING BASIS</b>	Section 1(a)
<b>FIRST USE ANYWHERE DATE</b>	At least as early as 12/10/2015
<b>FIRST USE IN COMMERCE DATE</b>	At least as early as 12/10/2015
<b>GOODS AND/OR SERVICES SECTION (proposed)</b>	
<b>INTERNATIONAL CLASS</b>	033
<b>DESCRIPTION</b>	Alcoholic beverages, except beer
<b>FILING BASIS</b>	Section 1(a)
<b>FIRST USE ANYWHERE DATE</b>	At least as early as 12/10/2015
<b>FIRST USE IN COMMERCE DATE</b>	At least as early as 12/10/2015
<b>STATEMENT TYPE</b>	<b>"The substitute (or new, or originally submitted, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application"</b> [for an application based on Section 1(a), Use in Commerce] <b>OR</b> <b>"The substitute (or new, or originally submitted, if appropriate) specimen(s) was/were in use in commerce prior either to the filing of the Amendment to Allege Use or expiration of the filing deadline for filing a Statement of Use"</b> [for an application based on Section 1(b) Intent-to-Use]. <b>OR</b> <b>"The attached specimen is a true copy of the specimen that was originally submitted with the application, amendment to allege use, or statement of use"</b> [for an illegible specimen].
<b>SPECIMEN FILE NAME(S)</b>	<a href="\\TICRS\EXPORT17\IMAGEOUT 17\873\157\87315742\xml5\ ROA0003.JPG">\\TICRS\EXPORT17\IMAGEOUT 17\873\157\87315742\xml5\ ROA0003.JPG</a>
	<a href="\\TICRS\EXPORT17\IMAGEOUT 17\873\157\87315742\xml5\ ROA0004.JPG">\\TICRS\EXPORT17\IMAGEOUT 17\873\157\87315742\xml5\ ROA0004.JPG</a>
<b>SPECIMEN DESCRIPTION</b>	photographs of Applicant's wine bottles
<b>SIGNATURE SECTION</b>	
<b>ORIGINAL PDF FILE</b>	<a href="#">HS_381406098-195915589_._Declarations.pdf</a>
<b>CONVERTED PDF FILE(S)</b> (2 pages)	<a href="\\TICRS\EXPORT17\IMAGEOUT17\873\157\87315742\xml5\ROA0005.JPG">\\TICRS\EXPORT17\IMAGEOUT17\873\157\87315742\xml5\ROA0005.JPG</a>
	<a href="\\TICRS\EXPORT17\IMAGEOUT17\873\157\87315742\xml5\ROA0006.JPG">\\TICRS\EXPORT17\IMAGEOUT17\873\157\87315742\xml5\ROA0006.JPG</a>

DECLARATION SIGNATURE	/Kathleen E. Letourneau/
SIGNATORY'S NAME	Diana V. Karren
SIGNATORY'S POSITION	Owner
DATE SIGNED	10/26/2017
SIGNATORY'S NAME	Charles Parker Karren
SIGNATORY'S POSITION	Owner
SIGNATORY'S NAME	Kathleen E. Letourneau
SIGNATORY'S POSITION	Attorney of record, California bar member
SIGNATORY'S PHONE NUMBER	415-882-3200
RESPONSE SIGNATURE	/Kathleen E. Letourneau/
SIGNATORY'S NAME	Kathleen E. Letourneau
SIGNATORY'S POSITION	Attorney of record, California bar member
SIGNATORY'S PHONE NUMBER	415-882-3200
DATE SIGNED	10/26/2017
AUTHORIZED SIGNATORY	YES
<b>FILING INFORMATION SECTION</b>	
SUBMIT DATE	Thu Oct 26 20:56:59 EDT 2017
TEAS STAMP	USPTO/ROA-XX.XXX.XX.XX-20 171026205659769188-873157 42-510a2fe3bfb928d897a10c 7a1bc85e65a47ed1e6698fc37 410b0616433b656e9-N/A-N/A -20171026195915589548

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PTO Form 1957 (Rev 10/2011)  
OMB No. 0651-0050 (Exp 09/20/2020)

## Response to Office Action

### To the Commissioner for Trademarks:

Application serial no. **87315742** (Stylized and/or with Design, see <https://tmng-al.uspto.gov/resting2/api/img/87315742/large>) has been amended as follows:

#### MARK

**Applicant proposes to amend the mark as follows:**

**Current:** (Stylized and/or with Design, see <https://tmng-al.uspto.gov/resting2/api/img/87315742/large>)

**Proposed:** (Stylized and/or with Design, see below )

)

The color(s) grey is/are claimed as a feature of the mark.

The mark consists of a stylized design of the American Flag. The white area between the stripes and elsewhere in the drawing represents background and/or transparent areas and is not part of the mark.

#### ARGUMENT(S)

**In response to the substantive refusal(s), please note the following:**

Applicant timely submits the following Response to the Office Action issued April 26, 2017. Applicant acknowledges with gratitude the Examining Attorney's search of the Office records and the finding of no similar registered marks that would bar registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d). I. SECTION 2(b) REFUSAL In the Office Action, the Examining Attorney refused registration of Applicant's Mark under Section 2(b) on the basis that Applicant's Mark includes a simulation of the flag of the United States. For the reasons set forth below, Applicant respectfully submits that its mark is registrable and requests that the refusal be withdrawn. In general, true representations of the flag of the United States cannot receive a trademark. However, the incorporation in a mark of individual or distorted features that are merely suggestive of flags does not bar registration under Section 2(b). See *Knorr-Nahrmittel A.G. v. Havland Int'l, Inc.*, 206 USPQ 827, 833 (TTAB 1980) (holding flag designs incorporated in the proposed mark NOR-KING and design not recognizable as the flags of Denmark, Norway, and Sweden, the Board finding that "[a]ll that the record reflects is that the mark contains a representation of certain flags, but not the flag or flags of any particular nation"); In re Waltham Watch Co., 179 USPQ at 60 (finding mark comprising wording with the design of a globe and flags not to be a simulation of the flags of Switzerland and Great Britain, stating that "although the flags depicted in applicant's mark incorporate common elements of flag designs such as horizontal or vertical lines, crosses or stars, they are readily distinguishable from any of the flags of the nations alluded to by the examiner."). The examining attorney should consider the following factors to determine whether the design is perceived as a flag: (1) color; (2) presentation of the mark; (3) words or other designs on the drawing; and (4) use of the mark on the specimen(s). In re Family Emergency Room LLC, 121 USPQ2d 1886, 1888 (TTAB 2017) (discussing the factors to consider in determining whether matter in a mark will be perceived as the Swiss flag). Pursuant to TMEP 1204.01(b), if the flag design fits one of the following scenarios, the examining attorney should not refuse registration under 2(b): The flag design is used to form a letter, number, or design. The flag is substantially obscured by words or designs. The design is not in a shape normally seen in flags. The flag design appears in a color different from that normally used in the national flag. A significant feature is missing or changed. In this case, Applicant's Mark has been amended to claim the color grey on a transparent background. As a result, its flag design appears in a color different from that normally used in the national flag (i.e., red, white and blue). This presentation is also clear from Applicant's specimen. In addition, a significant feature is missing or changed. Applicant's Mark does not contain stars anywhere on it, which is a mainstay of the U.S. flag. Rather, Applicant's Mark is a distressed stylized flag made to look like it was created from a woodblock press. Marks containing elements of flags in a stylized or incomplete form are not refused under Section 2(b). TMEP 1204.01(b). The mere presence of some significant elements of flags, such as stripes, does not necessarily warrant a refusal. Id. Therefore, Applicant's Mark is registrable. II. SUBSTITUTE DRAWING, COLOR CLAIM & DESCRIPTION OF THE MARK Applicant has submitted a new drawing which shows the mark in grey. Applicant has entered a claim of color and revised the description of its mark accordingly. III. SUBSTITUTE SPECIMEN The Examining Attorney has initially refused registration of Applicant's Mark on the basis that that Applicant's specimen is a printer's proof. The Examining Attorney has requested that Applicant submit a substitute specimen. In accordance with the Examining Attorney's request, Applicant is submitting a substitute specimen which reflects use of Applicant's Mark in commerce with the Class 33 goods included in this application. The substitute specimen consists of a photo of Applicant's wine. Applicant is also submitting a declaration under 37 C.F.R. 2.20 that the substitute specimen was in use in commerce at least as early as the filing date of this application. IV. CONCLUSION In view of the foregoing, Applicant respectfully requests that the Examining Attorney withdraw the refusal of Applicant's Mark and pass this application to publication. The Examining Attorney is invited to contact Applicant's attorney at (415) 882-3200 if further discussion on this application is warranted.

#### **CLASSIFICATION AND LISTING OF GOODS/SERVICES**

**Applicant proposes to amend the following class of goods/services in the application:**

**Current:** Class 033 for Alcoholic beverages, except beer

Original Filing Basis:

**Filing Basis: Section 1(a), Use in Commerce:** The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 12/10/2015 and first used in commerce at least as early as 12/10/2015, and is now in use in such commerce.

**Proposed:** Class 033 for Alcoholic beverages, except beer

**Filing Basis: Section 1(a), Use in Commerce:** The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 12/10/2015 and first used in commerce at least as early as 12/10/2015, and is now in use in such commerce. Applicant hereby submits one(or more) specimen(s) for Class 033. The specimen(s) submitted consists of photographs of Applicant's wine bottles.

**"The substitute (or new, or originally submitted, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application"** [for an application based on Section 1(a), Use in Commerce] **OR** **"The substitute (or new, or originally submitted, if appropriate) specimen(s) was/were in use in commerce prior either to the filing of the Amendment to Allege Use or expiration of the filing deadline for filing a Statement of Use"** [for an application based on Section 1(b) Intent-to-Use]. **OR** **"The attached specimen is a true copy of the specimen that was originally submitted with the application, amendment to allege use, or statement of use"** [for an illegible specimen]. [Specimen File1](#)  
[Specimen File2](#)

**SIGNATURE(S)**

**Declaration Signature**

**Original PDF file:**

[HS\\_381406098-195915589 . Declarations.pdf](#)

**Converted PDF file(s)** (2 pages)

[Signature File1](#)

[Signature File2](#)

Signature: /Kathleen E. Letourneau/ Date: 10/26/2017

Signatory's Name: Diana V. Karren

Signatory's Position: Owner

Signatory's Name: Charles Parker Karren

Signatory's Position: Owner

Signatory's Name: Kathleen E. Letourneau

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

Signatory's Phone Number: 415-882-3200

**Response Signature**

Signature: /Kathleen E. Letourneau/ Date: 10/26/2017

Signatory's Name: Kathleen E. Letourneau

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

Signatory's Phone Number: 415-882-3200

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.

Serial Number: 87315742

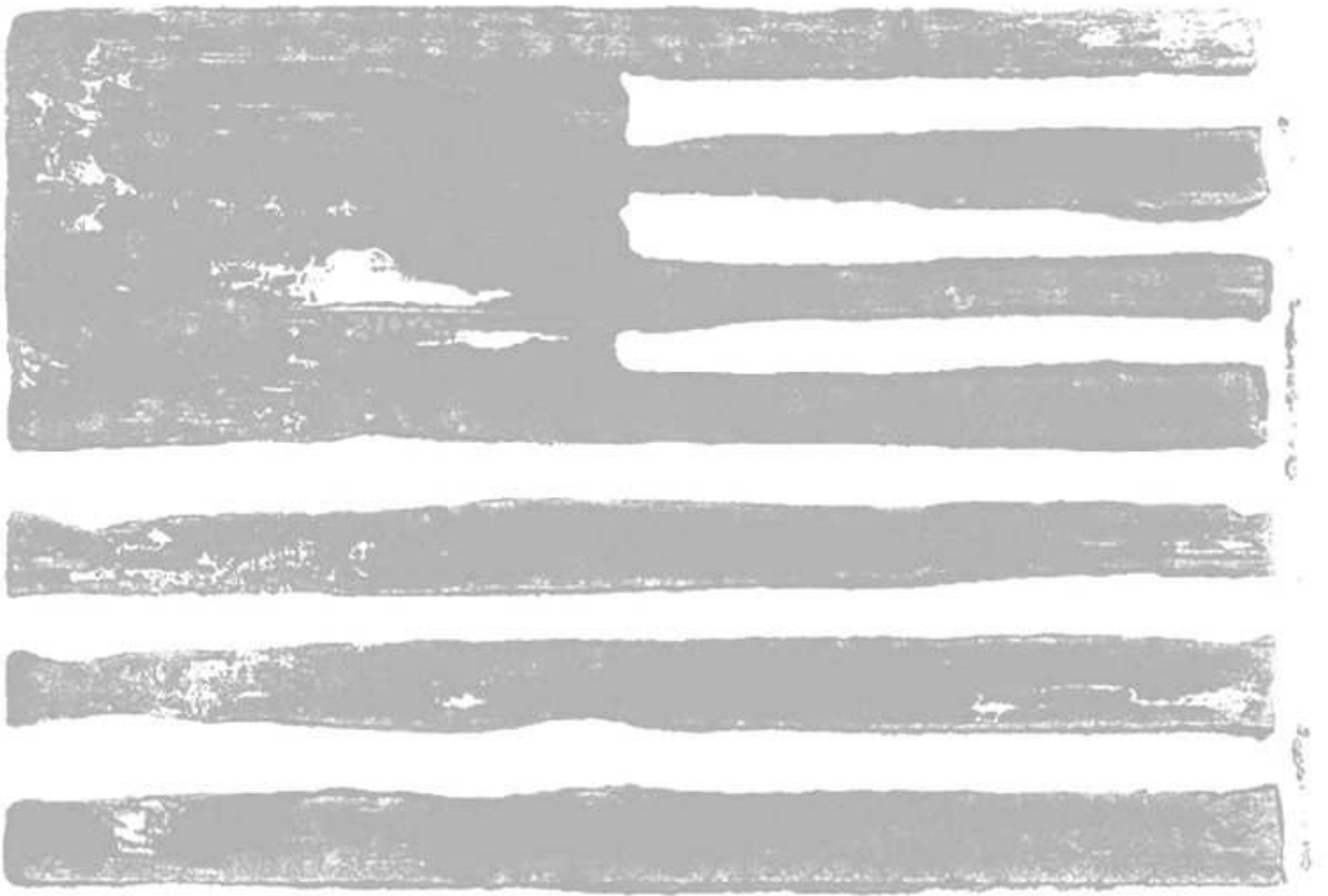
Internet Transmission Date: Thu Oct 26 20:56:59 EDT 2017

TEAS Stamp: USPTO/ROA-XX.XXX.XX.XX-20171026205659769

188-87315742-510a2fe3bfb928d897a10c7a1bc

85e65a47ed1e6698fc37410b0616433b656e9-N/

A-N/A-20171026195915589548







LAND of PROMISE

SONOMA COAST  
PINOT NOIR

2013

LAND of PROMISE

SONOMA COAST  
PINOT NOIR

2013

LAND of PROMISE

SONOMA COAST  
PINOT NOIR

2013



**LAND** *of* **PROMISE**

SONOMA COAST  
PINOT NOIR

2 0 1 3



**Declaration**

Read the following statements before signing. Acknowledge the statements by signing below.

• **If the applicant is filing the application based on use in commerce under 15 U.S.C. § 1051(a):**

- The signatory believes that the applicant is the owner of the trademark/service mark sought to be registered;
- The mark is in use in commerce on or in connection with the goods/services in the application;
- The specimen(s) shows the mark as used on or in connection with the goods/services in the application; and
- The facts set forth in the application are true.

**If the applicant is filing the application based on an intent to use the mark in commerce under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e):**

- The signatory believes that the applicant is entitled to use the mark in commerce;
  - The applicant has a bona fide intention to use the mark in commerce on or in connection with the goods/services in the application; and
  - The facts set forth in the application are true.
- To the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive.
- To the best of the signatory's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the allegations and other factual contentions made above have evidentiary support.
- The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

Signature: 

Signatory's Name: Diana V. Karren

Signatory's Position: Owner

Signatory's Phone Number: [not required]

Date Signed: 10/20/17

Signature: 

Signatory's Name: Charles Parker Karren

Signatory's Position: Owner

Signatory's Phone Number: [not required]

Date Signed: 10/20/17

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Diana V. Karren

Serial No.: 87/315,742

Filing Date: January 27, 2017




Mark:

Examining Attorney: Dustin T. Bednarz

Law Office: 121

**DECLARATION UNDER 37 C.F.R. §2.20  
IN SUPPORT OF SUBSTITUTE SPECIMEN**

I, the undersigned, being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements and the like may jeopardize the validity of the application or any registration resulting there from, declare that I am properly authorized to make this declaration and execute this document on behalf of Applicant; that *the substitute specimen was in use in commerce on or in connection with the goods and/or services listed in the application at least as early as the filing date of Applicant's Amendment to Allege Use*; all statements made of my own knowledge are true; and all statements made on information and belief are believed to be true.

Signature: 

Name: Kathleen E. Letourneau

Title: Attorney of Record

Date: October 26, 2017