

EXHIBIT 49

PTO Form 1957 (Rev 9/98)

OMB Control #0651-0009 (Exp. 08/31/2004)

Response to Office Action**To the Commissioner for Trademarks:**

Please amend application serial no. **75786491** as follows:

Arguments

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

This paper is in response to the Office Action dated March 4, 2002. Applicant respectfully disagrees with the examiner's conclusions regarding the marks cited by the Examiner. The goods of Registration No. 1723733 and the services of Applicant's mark are totally unrelated. Registrant's mark is for "Calendar handbooks." Similarly, the goods of Registration No. 2446634 are totally unrelated to the services of Applicant's mark. Registrant's mark is for "computer hardware and software used to support and create interactive, user-modifiable electronic books." Applicant's mark has nothing to do with calendar handbooks or computer hardware and software used to support and create interactive, user-modifiable electronic books. Applicant's mark is for "Books, namely, a series of fiction books; non-fiction books in the field of science." Applicant would respectfully like to point out that if the two cited registrations can co-exist, one in connection with calendar handbooks and the other in connection with electronic books, Applicant's mark in connection with fiction and non-fiction books should be able to co-exist with them. Each company owns the mark for its own particular type of book. Clearly, consumers are able to differentiate between the different IBOOKS marks. Additionally, applicant's mark has been in use since 1999 (an Allegation of Use will be filed shortly). Applicant's sales have been over \$5,154,493 through June 2002, nearly \$253,089 has been spent on advertising, and there has been no actual confusion. A Declaration in support of this information will be submitted shortly. In view of the foregoing, Applicant submits that its mark, when used on or in connection with the identified services, does not so resemble the marks cited by the Examiner as to be likely to cause confusion, to cause mistake, or to deceive. Registration was also refused on the basis of misdescriptiveness. Applicant respectfully submits that the mark must be viewed in connection with its services/goods. In this case, consumers, when seeing the mark on the books, will not think it is an electronic book found on the Internet. In conclusion, Applicant submits that the application is now in condition for publication and such publication is hereby respectfully requested.

Declaration

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. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and 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.

Declaration Signature

Signature: /JZ/ Date: 09/04/2002

Signatory's Name: Jacqueline Zion

Signatory's Position: Attorney

Response Signature

Signature: /JZ/ Date: 09/04/2002

Signatory's Name: Jacqueline Zion

Signatory's Position: Attorney

[Go Back](#)