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Atty Docket No. AIM 3165

U.S. Patent & TMO/TM Mail Rpt Dt. #47

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HEET

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

(Rev. 0-9-93)
OMB No. 0651-0011 (exp. 4/94)

MRD 3/1/99

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D

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof

1. Name of conveying party(ies):

AIMCOR Consumer Products L.L.C.

- Individual(s)
- General Partnership
- Corporation-State Delaware
- Other
- Association
- Limited Partnership

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

Execution Date: December 21, 1998

2. Name and address of receiving party(ies)

Name: PROFILE Products LLC

Internal Address: Suite 440

Street Address: 750 Lake Cook Road

City: Buffalo Grove State: Illinois ZIP: 60089

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State Delaware
- Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No

(Designations must be a separate document from assignment)
Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

SEE ATTACHED SCHEDULE A

B. Trademark Registration No.(s)

SEE ATTACHED SCHEDULE A

Additional numbers attached? Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Maria Franek Angileri, Esq.

Internal Address: Brooks & Kushman P.C.

Street Address: 1000 Town Center, 22nd Floor

City: Southfield State: MI Zip: 48075

6. Total number of applications and registrations involved:

29

7. Total fee (37 CFR 3.41)

\$ 740.00

- Enclosed
- Authorized to be charged to Deposit Account

8. Deposit Account number:

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Maria Franek Angileri
Name of Person Signing

Maria Franek Angileri

Signature

January 29, 1999
Date

Total number of pages including cover sheet, attachments, and document: 8

Mail documents to be recorded with required cover sheet information to:

TRADEMARK
REEL: 1869 FRAME: 0405

SCHEDULE A

Registrations:

Mark: SPORTS DESIGN
Reg. No.: 1,742,589
Issued: December 29, 1992
Ref. No.: AIM 0101 TUS

Mark: SCOOP'N LITTER
Reg. No.: 1,783,585
Issued: July 20, 1993
Ref. No.: AIM 0104 TUS

Mark: SCOOP IN CIRCLE DESIGN
Reg. No.: 1,776,015
Issued: June 8, 1993
Ref. No.: AIM 0105 TUS

Mark: NEAT SCOOP
Reg. No.: 1,832,371
Issued: April 19, 1994
Ref. No.: AIM 0106 TUS

Mark: MOUNDMASTER
Reg. No.: 2,150,081
Issued: April 14, 1998
Ref. No.: AIM 0128 TUS

Mark: GROUNDS CREW
Reg. No.: 2,134,884
Issued: February 3, 1998
Ref. No.: AIM 0129 TUS

Mark: TURFACE PROFESSIONAL MOUND CLAY
Reg. No.: 2,197,477
Issued: October 20, 1998
Ref. No.: AIM 0135 TUS

Mark: NEAT KITTY
Reg. No.: 1,649,623
Issued: July 2, 1991
Ref. No.: AIM 0141 TUS

Mark: THE NATURAL ADVANTAGE
Reg. No.: 1,669,048
Issued: December 24, 1991
Ref. No.: AIM 0164 TUS

Mark: CAT NEAT
Reg. No.: 1,135,248
Issued: May 13, 1980
Ref. No.: AIM 0165 TUS

Mark: ZORB-ALL
Reg. No.: 687,368
Issued: October 27, 1959
Ref. No.: AIM 0166 TUS

Mark: CARBOOSTER
Reg. No.: 1,500,076
Issued: August 16, 1988
Ref. No.: AIM 0167 TUS

Mark: ACTIZORB
Reg. No.: 1,798,470
Issued: October 12, 1993
Ref. No.: AIM 0168 TUS

Mark: DOUBLE FRESH
Reg. No.: 1,656,980
Issued: September 10, 1991
Ref. No.: AIM 0169 TUS

Mark: TURFACE
Reg. No.: 696,610
Issued: April 26, 1960
Ref. No.: AIM 0170 TUS

Applications:

Mark: TURFACE PROLEAGUE
Serial No.: 75/475,226
Filed: April 27, 1998
Ref. No.: AIM 0147 TUS

Mark: PROFILE
Serial No.: 75/464,982
Filed: April 9, 1998
Ref. No.: AIM 0148 TUS

Mark: PROFILE
Serial No.: 75/464,993
Filed: April 9, 1998
Ref. No.: AIM 0149 TUS

Mark: TURFACE
Serial No.: 75/510,064
Filed: June 29, 1998
Ref. No.: AIM 0153 TUS

Mark: TURFACE
Serial No.: 75/512,337
Filed: July 2, 1998
Ref. No.: AIM 0154 TUS

Mark: PROFIELD
Serial No.: 75/509,970
Filed: June 29, 1998
Ref. No.: AIM 0155 TUS

Mark: PROFIELD
Serial No.: 75/510,063
Filed: June 29, 1998
Ref. No.: AIM 0156 TUS

Mark: TURFACE ALL SPORT
Serial No.: 75/510,062
Filed: June 29, 1998
Ref. No.: AIM 0157 TUS

Mark: GAME SAVER
Serial No.: 75/510,065
Filed: June 29, 1998
Ref. No.: AIM 0158 TUS

Mark: TURFACE QUICK DRY
Serial No.: 75/509,972
Filed: June 29, 1998
Ref. No.: AIM 0159 TUS

Mark: TURFACE MVP
Serial No.: 75/509,971
Filed: June 29, 1998
Ref. No.: AIM 0160 TUS

Mark: PROFIELD ALL SPORT
Serial No.: 75/510,066
Filed: June 29, 1998
Ref. No.: AIM 0161 TUS

Mark: MVP
Serial No.: 75/509,974
Filed: June 29, 1998
Ref. No.: AIM 0162 TUS

Mark: QUICK DRY
Serial No.: 75/510,068
Filed: June 29, 1998
Ref. No.: AIM 0163 TUS

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "AIMCOR CONSUMER PRODUCTS L.L.C.", CHANGING ITS NAME FROM "AIMCOR CONSUMER PRODUCTS L.L.C." TO "PROFILE PRODUCTS LLC", FILED IN THIS OFFICE ON THE TWENTY-FIRST DAY OF DECEMBER, A.D. 1998, AT 9 O'CLOCK A.M.



A handwritten signature in cursive script that reads "Edward J. Freel".

Edward J. Freel, Secretary of State

AUTHENTICATION: 9538693

DATE: TRADEMARK

REEL: 1869 FRAME: 0410

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CERTIFICATE OF AMENDMENT

OF

AIMCOR CONSUMER PRODUCTS LLC

1. The name of the limited liability company is AIMCOR Consumer Products LLC.
2. The Certificate of Formation of the limited liability company shall be and is hereby amended as follows:

FIRST: The name of the limited liability company is PROFILE Products LLC.
3. This Certificate of Amendment shall be effective as of January 1, 1999.

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Amendment of AIMCOR Consumer Products LLC this 14th day of December, 1998.


Charles P. Gallagher, Manager


Wayne C. Kocourek, Manager



03-01-1999

U.S. Patent & TMO/c/TM Mail RcptDt. #47

**LAW OFFICE 101
SERIAL NO. 75/475,226
MARK: PRO LEAGUE**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: PROFILE Products LLC (formerly known as AIMCOR
Consumer Products L.L.C.)
Mark: PRO LEAGUE
Serial No.: 75/475,226
Filed: April 27, 1998
International Class: 31
Trademark Atty: Jennifer D. Richard
Law Office No.: 101
Attorney Ref.: AIM 0147 TUS

RESPONSE TO OFFICE ACTION NO. 1

Box RESPONSE - NO FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Sir:

This document is being filed in response to Office Action No. 1, mailed September 1,
1998.

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.10

EXPRESS MAIL LABEL NO. EI407987828US DATE OF DEPOSIT March 1, 1999

I hereby certify that this paper is being deposited with the United States Postal Service "Express Mail Post Office To Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to: Box RESPONSE - NO FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

Maria Franek Angileri
(Typed Name of Person Mailing)

Maria Franek Angileri
(Signature of Person Mailing)

**TRADEMARK
REEL: 1869 FRAME: 0412**

RESPONSE

The Examining Attorney has refused registration of Applicant's mark under 15 U.S.C. § 1052(d) on the ground that the mark "**PRO LEAGUE**" is likely to be confused with the marks "MINOR LEAGUE," Registration No. 2,081,819, and "MAJOR LEAGUE," Registration No. 1,931,841.

Applicant respectfully disagrees and requests the Examiner to reconsider her refusal to register the Applicant's mark and hereby submits the following arguments in support of registration.

A. Applicant's Mark Has A Distinct Commercial Impression And Is Registrable Under 15 U.S.C. §1052.

Applicant's mark "**PRO LEAGUE**" as a whole is capable of identifying the source of Applicant's soil conditioner product, and acts as a valid trademark to distinguish its product from others, including International Seeds, Inc. and Major League Baseball Properties, Inc. both selling grass seed products under the marks "MINOR LEAGUE" and "MAJOR LEAGUE" respectfully.

Applicant's mark "PRO LEAGUE" does not create the same commercial impression as the cited marks "MINOR LEAGUE" and "MAJOR LEAGUE." The appearance, sound, connotation and commercial impression of the marks are different.

It is axiomatic that a mark should not be dissected, but rather must be considered as a whole in determining the likelihood of confusion. *See Franklin Mint Corp. v. Master*

Manufacturing Co., 667 F.2d 1005, 212 U.S.P.Q. 233, 234 (C.C.P.A. 1981). The Federal Circuit has instructed that marks must be viewed in their entireties when measuring likelihood of confusion under Section 2(d), and "dissecting the respective marks and comparing only common elements is improper." *Opryland U.S.A., Inc. v. The Great American Music Show, Inc.*, 970 F.2d 847, 23 U.S.P.Q.2d 1471 (Fed. Cir. 1992). As the Federal Circuit stated: "When it is the entirety of the marks that is perceived by the public, it is the entirety of the marks that must be compared." 23 U.S.P.Q.2d at 1473. The complete commercial context cannot be ignored.

The marks are clearly distinguishable in sight, sound and appearance, and are not likely to be confused in the reality of the marketplace.

Applicant also notes that both of the marks cited by the Examiner are for the same products, yet owned by different companies. This is a clear indication from the Trademark Office that these marks are not confusingly similar and not likely to cause confusion. Yet, it is obvious that the marks "MINOR LEAGUE" and "MAJOR LEAGUE" both registered for the identical goods are more closely related in sight, sound and appearance than the applicant's "PRO LEAGUE" mark. If these two registered marks can co-exist on the federal register, applicant's mark should not be denied registration when it is substantially different in sight, sound and meaning.

Further, these registrations are an acknowledgment from the United States Trademark Office that various applications of the word "LEAGUE" are capable of acting as separate and distinct source indicators. When there are several registrations incorporating the

word "LEAGUE," it mandates that each mark should be granted a narrow scope of exclusivity confined to use of the identified mark on related goods.

Finally, the Examiner argues that all of the marks "PRO LEAGUE," "MINOR LEAGUE," and "MAJOR LEAGUE" are similar in commercial impression since they evoke thoughts of baseball, although she supplies no evidence to support this position. It is applicant's position that while "MINOR LEAGUE" and "MAJOR LEAGUE" may evoke thoughts of baseball, "PRO LEAGUE" does not. This term as it refers to a sporting activity could relate to a number of different sports, other than baseball, including, football, soccer, etc.

D. Informalities Raised By The Examiner

1. Identification Of Goods

Please amend the goods to read as follows:

Soil conditioners for use on athletic fields

2. Classification Of Goods

Please classify the goods in International Class 1.

3. **Entity Type**

AIMCOR Consumer Products, L.L.C. recently changed its name to Profile Products LLC. See attached documents filed with the United States Trademark Office. Profile Products LLC, is a limited liability company organized in Delaware.

II. CONCLUSION

In view of the foregoing arguments and submissions, Applicant believes that the application is now in form suitable for publication and respectfully requests such action.

If the Examiner has any further questions or comments, she is requested to contact the undersigned counsel.

Respectfully submitted,

**PROFILE PRODUCTS LLC, formerly known as
AIMCOR CONSUMER PRODUCTS, L.L.C.**

BROOKS & KUSHMAN P.C.

By: 

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(248) 358-4400

Dated: March 1, 1999