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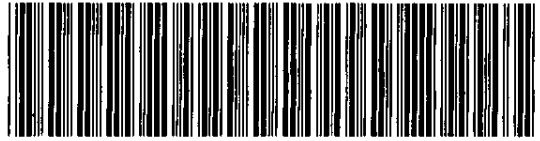
W08-56225

Special Instructions to Filing Officer:
Manuel Valencia **DATE**
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EXAM list

Office Use Only

FF \$175

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02/24/09--01001--017 **87.50

12/08/08--01048--025 **525.00

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS
09 FEB 20 PM 2:10

B. Tadlock FEB 26 2009



FLORIDA DEPARTMENT OF STATE
Division of Corporations

December 19, 2008

MANUEL R. VALCARCEL, ESQUIRE
GREENBERG TRAURIG
1221 BRICKELL AVE.
MIAMI, FL 33131

SUBJECT: ANNCO MAINTENANCE, INC. AND LOGO CONSISTING OF A BOX
WITH A PALM TREE WITHIN
Ref. Number: W08000056225

We have received your document for ANNCO MAINTENANCE, INC. AND LOGO CONSISTING OF A BOX WITH A PALM TREE WITHIN and your check(s) totaling \$87.50. However, the document has not been filed and is being retained in this office for the following:

The total amount due is \$175.00.

There is a balance due of \$87.50.

The specimens provided this office are not acceptable; we need three permanent specimens, **which may be the same or different**. We do not accept camera ready copies. We do not accept specimens which have been altered or defaced in any manner. In order to register your service mark, we need specimens from which we can determine the services being rendered. We will accept brochures, newspaper, or magazine advertisements, or business cards. If business cards are used, we must be able to determine from the business card the services offered. The mere mark, address, city, etc., on the business card, brochure, or advertisement is not acceptable -- we must be able to look at the specimens provided and be able to determine the services being rendered. We need specimens for each class of registration. We DO NOT accept letterhead, stationery, envelopes, invoices or mailing labels.

Please attach your specimens to a copy of this letter or to your corrected application, if it was returned to you for correction(s), and return it/them to this office for processing.

Pursuant to s. 495.035(5), F.S., this application will be considered abandoned if the applicant fails to reply or resubmit the corrected/amended application within three months from date of this letter.

If you have any questions concerning the filing of your document, please call (850) 245-6911.

Brenda Tadlock

Senior Section Administrator

Letter Number: 408A00061075

Greenberg Traurig

Manuel R. Valcarcel, Esq.
Tel 305-579-0812
Fax 305-961-5812
mrv@gtlaw.com

February 12, 2009

VIA EXPRESS MAIL

Florida Department of State
Division of Corporations
Post Office Box 6327
Tallahassee, Florida 32314
Attn: Brenda Tadlock, Senior Section Administrator

**Re: Florida Service Mark Registration Application for
ANNCO MAINTENANCE, INC. and logo
Ref. No. W08000056225**

Dear Ms. Tadlock:

Enclosed for your reference is a copy of your letter no. 408A00061075 indicating that the above-referenced application was being retained in your office for payment of an additional filing fee of \$87.50 and because the originally submitted specimens were found to not be acceptable.

Enclosed is a check payable to the Florida Department of State for \$87.50 in payment of the additional filing fee.

With regard to the specimens, the originally submitted specimens (a copy is enclosed) consist of the applicant's invoice form showing the use of the applicant's mark at the upper left and clearly indicating at the upper right the type of services that are provided using the mark: "Landscape contractors, landscape design, installation and maintenance..." The applicant respectfully submits that the originally submitted specimens are acceptable. Section 495.031(6) states that "Every application under this section shall be accompanied by three specimens or facsimiles showing the mark as actually used." The originally submitted specimens meet such requirements.

Additionally, Section 495.181 states that the intent of Chapter 495 of the Florida Registration and Protection of Trademarks Act, "is to provide a system of state trademark registration and protection substantially consistent with the federal system of trademark registration and protection under the Trademark Act of 1946, as amended. To that end, the construction given the federal act should be examined as persuasive authority for interpreting and construing this chapter." Fla.Stat. §495.181 (2008).

The federal trademark registration system is construed to accept business documents such as letterhead and invoices as specimens if they show the mark and refer to the relevant services, as is stated in the United States Patent and Trademark Office Trademark Manual of Examining Procedure at Section 1301.04 and 1301.04(c).

A copy of such sections is enclosed for reference. Section 1301.04(c) specifically states:

Fla. Dept. of State, Division of Corporations
Brenda Tadlock, Senior Section Administrator
February 12, 2009
Page 2


“Letterhead stationary, business cards or invoices bearing the mark may be accepted if they create an association between the mark and the services. To create an association between the mark and the services, the specimen does not have to spell out the specific nature or type of services. A general reference to the industry may be acceptable.” TMEP §1301.04(c).

The invoices submitted as specimens show the mark and indicate the services, creating an association between the mark and the services, and therefore should be considered acceptable specimens. Three additional specimens consisting of facsimiles of door tag notices showing use of the mark with the services are enclosed.

The applicant therefore respectfully requests that the originally submitted specimens be accepted and that the above-referenced application be approved. Nevertheless, should you have any remaining issues, objections or requirements, please contact the undersigned to discuss.

Sincerely,

GREENBERG TRAUIG, P.A.



Manuel R. Valcarcel, Esq.

MRV/mam
Enclosures

MIA 180,432,439v1

1301.04 Specimens of Use for Service Marks

A service mark specimen must show the mark as actually used in the sale or advertising of the services recited in the application. 37 C.F.R. §2.56(b)(2). Acceptable specimens may include newspaper and magazine advertisements, brochures, billboards, handbills, direct-mail leaflets, menus (for restaurants), and the like. However, printer's proofs for advertisements, publicity releases to news media, or printed articles resulting from such releases, are not accepted because they do not show use of the mark by the applicant in the sale or advertising of the services. Business documents such as letterhead and invoices may be acceptable service mark specimens if they show the mark and refer to the relevant services. See TMEP §1301.04(b).

See 37 C.F.R. §2.59 and TMEP §904.05 regarding substitute specimens.

1301.04(a) Specimens Must Show Use as a Service Mark

To show service mark usage, the specimen must show use of the mark in a manner that would be perceived by potential purchasers as identifying the applicant's services and indicating their source. *In re Universal Oil Products Co.*, 476 F.2d 653, 177 USPQ 456 (C.C.P.A. 1973) (term that identified only a process held not registrable as service mark, even though applicant was rendering services and the name of the process appeared in the same brochure in which the services were advertised); *In re A La Vieille Russie, Inc.*, 60 USPQ2d 1895 (TTAB 2001) (RUSSIANART perceived as informational matter rather than as service mark for art dealership services, where the term was displayed inconspicuously in the specimen brochure, in the same size and font as other informational matter); *In re Moody's Investors Service Inc.*, 13 USPQ2d 2043 (TTAB 1989) ("Aaa," as used on the specimen, found to identify the applicant's ratings instead of its rating services); *In re McDonald's Corp.*, 229 USPQ 555 (TTAB 1985) (APPLE.PIE TREE did not function as mark for restaurant services, where the specimen showed use of mark only to identify one character in a procession of characters, and the proposed mark was no more prominent than anything else on specimen); *In re Signal Companies, Inc.*, 228 USPQ 956 (TTAB 1986) (journal advertisement submitted as specimen showed use of ONE OF THE SIGNAL COMPANIES merely as an informational slogan, where the words appeared only in small, subdued typeface underneath the address and telephone number of applicant's subsidiary); *In re Republic of Austria Spanische Reitschule*, 197 USPQ 494 (TTAB 1977) (use of mark as one of many pictures in applicant's brochure would not be perceived as an indication of the source of the services); *Intermed Communications, Inc. v. Chaney*, 197 USPQ 501 (TTAB 1977) (business progress reports directed to potential investors do not show service mark use for medical services); *In re Restonic Corp.*, 189 USPQ 248 (TTAB 1975) (phrase used merely to advertise goods manufactured and sold by applicant's franchisees does not identify franchising services); *In re Reichhold Chemicals, Inc.*, 167 USPQ 376 (TTAB 1970)

(technical bulletins and data sheets on which mark was used merely to advertise chemicals do not show use as a service mark for consulting services).

See **TMEP §1301.02(a)** regarding matter that does not function as a service mark.

1301.04(b) Association Between Mark and Services

Where the mark is used in advertising the services, the specimen must show an association between the mark and the services for which registration is sought. A specimen that shows only the mark, with no reference to the services, does not show service mark usage. *In re Adair*, 45 USPQ2d 1211 (TTAB 1997) (tags affixed to decorated Christmas tree that bear the mark "TREE ARTS CO. and design" and the applicant's location, but make no reference to services, fail to show use for "design services in the nature of designing handcrafted, permanently decorated Christmas and designer trees"); *In re Johnson Controls, Inc.*, 33 USPQ2d 1318 (TTAB 1994) (labels affixed to packaging of valves do not show use of mark for custom manufacture of valves); *In re Duratech Industries Inc.*, 13 USPQ2d 2052 (TTAB 1989) (bumper stickers showing only the mark do not show use to identify "association services, namely promoting the interests of individuals who censor the practice of drinking and driving"); *In re Riddle*, 225 USPQ 630 (TTAB 1985) (cutouts showing mark with no reference to the services held unacceptable for automotive service center); *In re Whataburger Systems, Inc.*, 209 USPQ 429 (TTAB 1980) (iron-on transfer clothing patches in the form and shape of a cartoon animal mark, distributed as free promotional items to restaurant customers at counters, held insufficient to identify restaurant services). See also **TMEP §1301.04(c)** and cases cited therein.

A specimen that shows the mark as used in the course of performing the services is generally acceptable. Where the record shows that the mark is used in performing (as opposed to advertising) the services, a reference to the services on the specimen itself may not be necessary. *In re Metriplex Inc.*, 23 USPQ2d 1315 (TTAB 1992) (computer printouts showing mark GLOBAL GATEWAY found acceptable to show use of mark to identify data transmission services accessed via computer, because they show use of mark as it appears on computer terminal in the course of rendering the services); *In re Eagle Fence Rentals, Inc.*, 231 USPQ 228 (TTAB 1986) (photograph of rented fence held acceptable for rental of chain link fences, since it shows use of distinctive color scheme in the rendering services); *In re Red Robin Enterprises, Inc.*, 222 USPQ 911 (TTAB 1984) (photograph of costume worn by performer during performance of entertainment services held to be an acceptable specimen). In *Johnson Controls*, 33 USPQ2d at 1320, the Board distinguished *Metriplex* and *Eagle Fence*, noting that the labels were not used in the rendering of the services, as the custom manufacturing services were complete before purchasers ever see the mark.

In determining whether a specimen is acceptable evidence of service mark use, the examining attorney may consider applicant's explanations as to how the specimen is used, along with any other available evidence in the record that shows how the mark is actually used. See *In re International Environmental Corp.*, 230 USPQ 688 (TTAB 1986), in which a survey distributed to potential customers of applicant's heating and air conditioning distributorship services was held to be an acceptable specimen even though it did not specifically refer to the services, where the applicant stated that the sale of its services involved ascertaining the needs of customers serviced, and the record showed that the surveys were directed to potential customers and were the means by which applicant offered its distributorship services to the public.

1301.04(c) Letterhead

Letterhead stationery, business cards or invoices bearing the mark may be accepted if they create an association between the mark and the services. To create an association between the mark and the services, the specimen does not have to spell out the specific nature or type of services. A general reference to the industry may be acceptable. *In re Ralph Mantia Inc.*, 54 USPQ2d 1284 (TTAB 2000) (letterhead and business cards showing the word "Design" are acceptable evidence of use of mark for commercial art design services); *In re Southwest Petro-Chem, Inc.*, 183 USPQ 371 (TTAB 1974) (use of mark on letterhead next to the name SOUTHWEST PETRO-CHEM, INC. found to be sufficient to show use of the mark for "consulting and advisory services relating to the making and using of lubricating oils and greases," when used for letters in correspondence with customers).

Letterhead or business cards that bear only the mark and a company name and address are not adequate specimens (unless the mark itself has a descriptive portion that refers to the service), because they do not show that the mark is used in the sale or advertising of the particular services recited in the application. *In re Monograms America, Inc.*, 51 USPQ2d 1317 (TTAB 1999) (letterhead specimen showing the mark MONOGRAMS AMERICA and the wording "A Nationwide Network of Embroidery Stores" held insufficient to support registration for consulting services for embroidery stores).

If the letterhead itself does not include a reference to the services, a copy of an actual letter on letterhead stationery bearing the mark is an acceptable specimen of use if the content of the letter indicates the field or service area in which the mark is used. In *Monograms America*, the Board indicated that the letterhead specimen might have been accepted if the applicant had submitted a copy of a letter to a store owner describing the services. 51 USPQ2d at 1319.

APPLICATION FOR THE REGISTRATION OF A TRADEMARK OR SERVICE MARK
PURSUANT TO CHAPTER 495, FLORIDA STATUTES

TO: Division of Corporations
Post Office Box 6327
Tallahassee, FL 32314

Name & address to whom acknowledgement should be sent.

Manuel Valcarcel, Esq.

c/o Greenberg Traurig, P.A.

1221 Brickell Avenue

Miami, Florida 33131

Daytime Telephone Number: 305-579-0812

PART I

1. (a) Applicant's Name: Annco Maintenance, Inc.

(b) Applicant's Business Address: 7300 Havenhill Rd. N.

West Palm Beach, Florida 33407

City/State/Zip

(c) Applicant's Telephone Number: _____

- Individual Corporation Joint Venture Other: limited liability company
 General Partnership Limited Partnership Union

If other than an individual,

• (1) Florida registration number: P97000108513 (2) Domicile State: FL

(3) Federal Employer Identification Number: 650812165

2. (a) If the mark to be registered is a service mark, the services in connection with which the mark is used:
(i.e., furniture moving services, diaper services, house painting services, etc.)

Landscape, irrigation and real property maintenance services

(b) If the mark to be registered is a trademark, the goods in connection with which the mark is used:
(i.e., ladies sportswear, cat food, barbecue grills, shoe laces, etc.)

(c) The mode or manner in which the mark is used: (i.e., labels, decals, newspaper advertisements, brochures, etc.)

The mark is used in advertisements, signs and other promotional materials and in other diverse ways

customary in the trade.

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SECRETARY OF STATE
DIVISION OF CORPORATIONS

(d) The class(es) in which goods or services fall:

37 + 44

PART II

1. Date first used by the applicant, predecessor, or a related company (must include month, day and year):

(a) Date first used anywhere: at least as early as December 23, 1997 (b) Date first used in Florida: at least as early as December 23, 1997.

PART III

1. The mark to be registered is: (If logo/design is included, please give brief written description which must be 25 words or less.)

ANNCO MAINTENANCE, INC. and logo consisting of a box with a palm tree within

English Translation _____

2. DISCLAIMER (if applicable) No claim is made to the exclusive right to use the term(s) "Maintenance" and "Inc." apart from the mark as shown.

I, Tedd R. Annis, President of Annco Maintenance, Inc., a Florida corporation, being sworn, depose and say that I am the owner and the applicant herein, or that I am authorized to sign on behalf of the owner and applicant herein, and no other person except a related company has the right to use such mark in Florida either in the identical form or in such near resemblance as to be likely to deceive or confuse or to be mistaken therefor. I make this affidavit and verification on my/the applicant's behalf. I further acknowledge that I have read the application and know the contents thereof and that the facts stated herein are true and correct.

ANNCO MAINTENANCE, INC. a Florida corporation

By: Tedd R. Annis

Name: Tedd R. Annis

Title: President

STATE OF FLORIDA

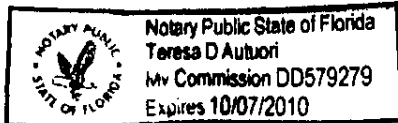
COUNTY OF PALM BEACH

On this 24 day of November, 2008, Tedd R. Annis, the President of Annco Maintenance, Inc., a Florida corporation, personally appeared before me,

who is personally known to me

whose identity I proved on the basis of

(Seal)



Teresa D. Autuori
Notary Public Signature

TERESA D. AUTUORI
Notary's Printed Name

My Commission Expires: 10-07-10

FEE: \$87.50 per class

