

# BROAD AND CASSEL

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Reply to  
MANUEL R. VALCARCEL, IV  
DIRECT LINE: (305) 373-9466  
DIRECT FAX: (305) 373-9407  
INTERNET: mvalcarc@broadandcassel.com

September 22, 1998

VIA EXPRESS MAIL

Florida Department of State  
Division of Corporations  
P.O. Box 6327  
Tallahassee, Florida 32314

300002648543--0  
-09/24/98-01097-004  
\*\*\*\*\*87.50 \*\*\*\*\*87.50

Re: Service Mark Registration Application  
"U.S. POOL"

Dear Sir or Madam:

Enclosed is an application to register the service mark "U.S. POOL" together with a check payable to the Florida Department of State in the amount of \$87.50 representing the filing fee for this application and three specimens evidencing use of "U.S. POOL" as a service mark, in the form of letterhead that indicates the types of services in connection with which the mark is used.

Also enclosed is a duplicate copy of this letter. Please confirm receipt of the enclosed documents by date stamping and returning the enclosed copy of this letter in the enclosed postage paid envelope.

Please direct all correspondence regarding the enclosed application to the undersigned.

Sincerely,

BROAD AND CASSEL

Manuel R. Valcarcel, IV

MRV:mr  
Enclosures  
cc: Mr. Leland Morris, Director  
U.S. Pool Corp.

789/1158/708/672

No Common

198-1396

198-22163

|                   |              |
|-------------------|--------------|
| Name              | Availability |
| Document Examiner | NJC          |
| Updater           | NJC          |
| Updater Verifier  | NJC          |
| Acknowledgment    | NJC          |
| Verifier          | NJC          |

9



FLORIDA DEPARTMENT OF STATE  
Sandra B. Mortham  
Secretary of State

September 29, 1998

MANUEL R. VALCARCEL, IV, ESQUIRE  
BROAD AND CASSEL, MIAMI CENTER, S-3000  
201 SO. BISCAYNE BLVD.  
MIAMI, FL 33131

SUBJECT: U.S. POOL  
Ref. Number: W98000022163

We have received your document for U.S. POOL and your check(s) totaling \$87.50. However, the enclosed document has not been filed and is being returned for the following correction(s):

It is apparent from the records of this office that the proposed mark is comprised of and resembles trade names used in this state which are likely, when applied to the goods or services of the applicant, to cause confusion or mistake in the minds of the purchasing public. To permit one person to exclusively appropriate a mark or words that are merely comprised of language ordinarily used with a particular class of goods or services would wrongly hinder others who deal in the same goods or services. Therefore, registration must be denied pursuant to section 495.021(1)(f), Florida Statutes.

Enclosed is an application for refund.

If you have any questions concerning the filing of your document, please call (850) 487-6918.

Nanette Causseaux  
Corporate Specialist Supervisor

Letter Number: 998A00048675

# BROAD AND CASSEL

ATTORNEYS AT LAW

BOCA RATON · FT. LAUDERDALE · MIAMI · ORLANDO · TALLAHASSEE · TAMPA · WEST PALM BEACH

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DIRECT FAX: (305) 995-6407  
INTERNET: mvalcarc@broadandcassel.com

October 21, 1998

*VIA EXPRESS MAIL*

Florida Department of State  
Division of Corporations  
P.O. Box 6327  
Tallahassee, FL 32314  
Attn: Nanette Causseaux, Corporate Specialist Supervisor

**Re: Florida Service Mark Registration Application**  
**Ref. Number: W98000022163**  
**"U.S. POOL"**

Dear Ms. Causseaux:

I am in receipt of your letter dated September 29, 1998 in which you returned the above-referenced application refusing registration of our client's "U.S. Pool" mark based on Section 495.021 (1)(f) of the Florida Statutes. In your letter you state that it is apparent from the records of your office that our client's "U.S. Pool" mark is comprised of and resembles trade names used in this state which are likely, when applied to the goods or services of our client, to cause confusion or mistake in the minds of the purchasing public. We respectfully disagree and request reconsideration of your refusal in view of the following discussion.

Section 495.021 (f) of the Florida Statutes states that a mark shall not be registered if it:

Consists of or comprises a mark which so resembles a mark registered in this state or a mark or trade name previously used in this state by another and not abandoned, as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive. Registration shall not be denied solely on the basis of reservation or registration by another of a corporate name or fictitious name that is the same or similar to the mark for which registration is sought.

Section 495.021 (f) specifically limits consideration of trade names previously used in this state to those *that have not been abandoned*. Because it is often impracticable to verify abandonment, Section 495.101 (4)(a)1. provides that "[a] mark shall be deemed "abandoned" when its use has been discontinued with intent not to resume such use. *Intent not to resume may be inferred from circumstances. Nonuse for 2 consecutive years shall be prima facie evidence of abandonment.*"

The Department of State records list trademark registrations, corporate names and fictitious names. Under Section 865.01 of the Florida Statutes, names other than corporate names and individual names under which one conducts business, including trade names, even if not registered as marks, must

be registered as fictitious names in order for the user to legally conduct business. Thus, the Department of State records (together with U.S. Patent and Trademark Office federal trademark registration records, which we note, include a pending application by our client for its mark) should (if a trade name is being used lawfully) constitute the complete listing of names to be considered in reviewing a trademark application. Your letter confirms that the refusal to register our client's mark is indeed based on the records of your office.

We have reviewed the records of your office and have found no trademark or service mark registrations for marks confusingly similar to our client's mark. Additionally, the records revealed only the following listed names that contain "U.S." and "Pool(s):" "U.S. Pool Corp.," which is our client's corporate name, our client's pending/refused servicemark registration application, "U.S. Pool Coatings, Inc.," which is an inactive corporation and has been so for more than two years, a trademark registration for "U.S. Poolplayers Association"-which obviously is used in connection with billiards, not pool services, three entries for corporations called "U.S. Pools, Inc.," each of which is inactive and has been inactive for over two years, and a listing for "U.S. Pool Supply and Services, Inc." which is actually a corporation that has been dissolved for over two years and furthermore changed its name in 1992 to Mike Rice Inc. A printout of the Department of State corporate listings is attached.

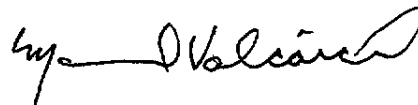
Also attached is a printout of your office's fictitious name listings which show only three entries containing the words "U.S." and "Pool(s)." One has been cancelled since 1997 and one ("U.S. Pool Service") has a dissolved corporation as its owner. Only one fictitious name is listed as active and as being owned by an active corporation, and even this fictitious name registration is not a legal basis for refusing registration of our client's mark under Section 495.021(f).

In sum, we respectfully submit that our client's servicemark application should not be refused on the basis of names that should be presumed abandoned, and furthermore, even if not abandoned, Section 495.021 (f) specifically states that *registration shall not be denied on the basis of the registration of a corporate name or fictitious name that is the same or similar to the mark for which registration is sought.* We therefore request on behalf of our client that its mark be granted registration. To do otherwise would be contrary to the specific provisions of Section 495.021 (f). The application is enclosed.

If you have any questions regarding the foregoing, please do not hesitate to contact the undersigned.

Sincerely,

BROAD AND CASSEL



Manuel R. Valcarcel, IV

MRV:pj  
Enclosures

BROAD AND CASSEL



FLORIDA DEPARTMENT OF STATE  
Sandra B. Mortham  
Secretary of State

November 2, 1998

MANUEL R. VALCARCEL, IV, ESQUIRE  
BROAD AND CASSEL, MIAMI CENTER, S-3000  
201 SO. BISCAYNE BLVD.  
MIAMI, FL 33131

SUBJECT: U.S. POOL  
Ref. Number: W98000022163

We have received your document for U.S. POOL and your check(s) totaling \$87.50. However, the document has not been filed and is being retained in this office for the following:

We will grant registration, however we must have better specimens.

The specimens provided this office are not acceptable; we need three permanent specimens, which may be the same or different. We do not accept photocopies or 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.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 487-6918.

Nanette Causseaux  
Corporate Specialist Supervisor

Letter Number: 798A00053465

# BROAD AND CASSEL

ATTORNEYS AT LAW

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MANUEL R. VALCARCEL, IV, ESQ.  
DIRECT LINE: (305) 373-9466  
DIRECT FAX: (305) 995-6407  
INTERNET: mvalcarc@broadandcassel.com

December 8, 1998

## VIA EXPRESS MAIL

Florida Department of State  
Division of Corporations  
P.O. Box 6327  
Tallahassee, Florida 32314  
Attn: Nanette Causseaux, Corporate Specialist Supervisor

Re: Servicemark Application for "U.S. POOL"  
Reference No. W98000022163

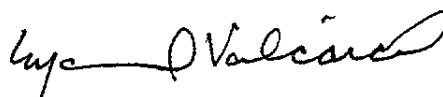
Dear Ms. Causseaux:

In response of your letter of November 2, 1998 requesting additional specimens for the above-referenced servicemark registration application, enclosed please find three specimens consisting of letterhead and advertisements showing use of the mark and from which the services can be readily identified and understood. Please issue the applicant its registration certificate for its mark and forward same to the undersigned at your earliest convenience.

Thank you very much for your assistance in this matter. Please feel free to contact the undersigned if you have any questions or need any further information or documentation.

Sincerely,

BROAD AND CASSEL



Manuel R. Valcarcel, IV, Esq.

MRV:pj  
Enclosures

**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 R. Valcarcel, Esquire  
Broad and Cassel  
201 S. Biscayne Blvd., Suite 3000, Miami, Florida 33131  
Daytime Telephone Number: (305) 373-9466

**PART I**

1. (a) Applicant's name: U.S. Pool Corp.  
1499 W. Palmetto Park Road  
(b) Applicant's business address: Suite 100  
Boca Raton, Florida 33486  
(c) Applicant's telephone number: (561) 368-6800
- ☐ Individual      ☒ Corporation      ☐ Joint Venture      ☐ Other \_\_\_\_\_  
☐ General Partnership      ☐ Limited Partnership      ☐ Union

If other than an individual,

- (1) Florida registration number: P98000078918 (2) Domicile State: Florida  
(3) Federal Employer Identification Number: Applied for

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.)  
Pool cleaning, maintenance and repair 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.)  
Advertisements, business cards, price lists, invoices and in other ways customary in the trade.
- (d) The class(es) in which the goods or services fall: Class 42

**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 9/14/98 (b) Date first used in Florida: at least as early as 9/14/98

## PART III

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

U.S. POOL

2. DISCLAIMER (if applicable)

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE THE TERM "POOL"

APART FROM THE MARK AS SHOWN.

I, LELAND MORRIS, Director of U.S. Pool Corp., 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.

U.S. POOL CORP.

Typed or printed name of applicant



Applicant's signature or authorized person's signature  
Leland Morris, Director

FILED  
98 DEC 14 AM 10:09  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

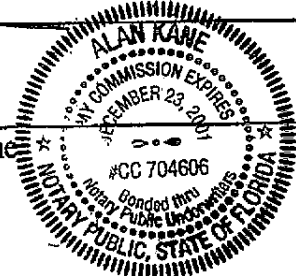
STATE OF FLORIDA )  
COUNTY OF PALM BEACH )

On this 18 day of September, 1998, LELAND MORRIS, Director of U.S. Pool Corp. personally appeared before me, ☒ who is personally know to me OR ☐ whose identity I proved on the basis of \_\_\_\_\_.

  
Notary Public Signature

Notary Public Printed Name

My commission expires:



FEE: \$87.50 per class



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# U.S. POOL

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& COMMERCIAL

SUPER CLEANING

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TAILORED TO FIT

YOUR BUDGET

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ACID WASHING • AUTO

CHLORINATORS • TILING •

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FENCING • EPOXY

FINISHING

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AND TRAINED SERVICE  
TECHNICIANS IN THE  
INDUSTRY

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EXPOSED AGGREGATE POOL FINISHES

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