

RESPONSE TO OFFICE ACTION  
IMLIVE, SN 88571948

**AMENDMENTS**

1. Please amend the basis of Class 35 to intent to use. The Request to Divide is being filed simultaneously to divide out Classes 38, 41, 42, and 45 based on use in commerce.
2. Please amend the list of services as follows:

Class 35: Advertising services, namely, **promoting** the goods and services of others via a global computer network; advertising and information distribution services, namely, providing advertising **services** and classified advertising **services** for others via a global computer network; promotional services, namely, promoting the goods and services of others over the Internet through the placement of third party advertisements and service advertisements on a website; **dissemination of advertising matter for others relating to adult entertainers via a global information network; providing on-line computer databases and on-line searchable databases featuring classified ad listings**

Class 38: ~~Dissemination of personal and business information for others via a global information network;~~ Providing on-line chat rooms permitting audio and video communication between individuals via a global information network; providing on-line electronic bulletin boards for transmission of messages among users in fields of mutual interest; **providing internet chat rooms in the nature of online facilities for real-time interaction with online adult entertainers of live sex shows and tease shows**

Class 41: ~~Entertainment services, namely, providing on-line adult entertainment, namely, an Internet video chat room whereby Internet users can interact with performers of live sex shows, tease shows, sexual recorded video and sexual pictures, via a global computer network;~~ **Entertainment services, namely, providing a website featuring adult entertainment, providing live performances by an adult entertainer, and providing a web site featuring non-downloadable adult-themed photographs and videos**

Class 42: ~~Computer services, namely, providing on-line computer databases and on-line searchable databases featuring classified listings and want ads;~~ Computer services, namely, hosting on-line web facilities for others for organizing and conducting on-line meetings, on-line interactive communications and on-line interactive discussions

Class 45: Personal and social services, namely, ~~providing information and databases featuring classified listings and want ads,~~ **arranging personal social introductions for entertainment purposes**

**ARGUMENTS**

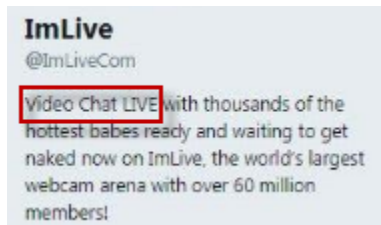
1. Specimen omitted in Class 35

In response to the refusal to register based on the omitted specimen in Class 35, Applicant requests to amend the basis of Class 35 to intent to use. The Request to Divide is being filed simultaneously to divide out Classes 38, 41, 42, and 45 based on use in commerce.

2. Specimen refusal in Class 45

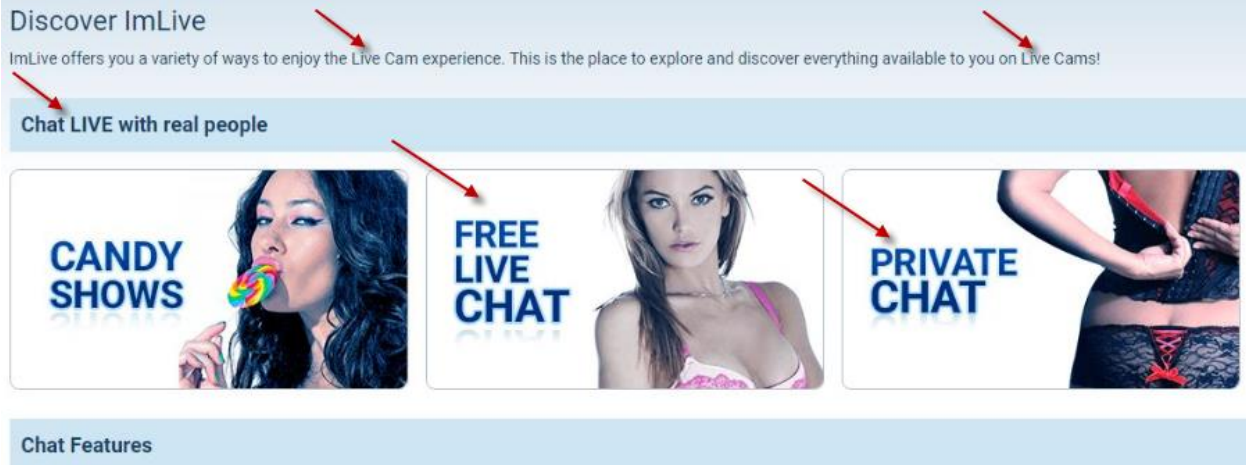
Registration is refused on the basis that the specimens submitted on August 8, 2019 at the time of filing the application do not show the applied-for-mark in use in commerce in connection with any of the Class 45 services. For the reasons set forth below, Applicant requests that the refusal be withdrawn.

As noted, Class 45 has been amended to “Personal and social services, namely, arranging personal social introductions for entertainment purposes.” For convenience, the Class 45 specimens of record are re-attached as **Exhibit A**, with pertinent excerpts shown below.



Additionally, the originally submitted specimens of record in Classes 38 and 41 are attached as **Exhibit B** to further provide the context in which Applicant is using the mark in connection with the identified services, specifically, arranging personal social introductions for entertainment purposes. Pertinent excerpts are shown below:





The screenshots of Applicant’s web pages clearly display the IMLIVE mark and advertise its live video chat services, an internet-based form of communication amongst users of the services. A quick Internet search easily shows that live video calls involving face-to-face time between individuals is considered to be a popular form of social introduction online. These screenshots of Applicant’s website, which display the mark and reference the services, are expressly authorized as appropriate specimens. TMEP Sec. 1301.04(h)(iv)(C). The below example set forth in TMEP Sec. 1301.04(i) is analogous to Applicant’s specimens:



The above “screenshot” for the mark INSITE TICKETING was accepted for the services, “application service provider (ASP), namely, hosting computer software applications for others

in the field of ticketing and related ticketing services,” on the basis that the wording “Technology by” next to the mark appropriately provides the context in which the services are rendered. The consumer is thus able to imply that the applicant provides software technology services.

So, too, in this case, the live video chat referenced multiple times on the screenshots of Applicant’s website provides the context in which the services are rendered, and appropriately establishes a direct association between the IMLIVE mark and the Class 45 services. The Examining Attorney is required to consider the context of the specimen as experienced by the customers to whom the services are offered. “To be acceptable, a service-mark specimen must show the mark sought to be registered used in a manner that demonstrates a direct association between the mark and the services.” TMEP Sec. 1301.04(f). This direct association “may be established textually, contextually, or logically.” TMEP Sec. 1301.04(f)(ii). It is also noted in the TMEP, “While the services need not be stated word for word, a ‘sufficient reference’ to the services themselves or general reference to the trade, industry or field is required.” *Id.* There is no requirement that Applicant use the exact words included in the identifications, such as “arranging personal social introductions,” on the specimen for it to be considered as acceptable use of the mark. Rather, the reference to the live video chat achieves the same effect by drawing a textual, contextual, and logical connection between the mark and the services. Therefore, Applicant’s use of the IMLIVE mark on the original specimens is sufficient to show use of the mark in commerce for the services in Class 45, namely, “Personal and social services, namely, arranging personal social introductions for entertainment purposes.”

### **CONCLUSION**

Applicant respectfully requests that the refusal to be withdrawn, the request to divide to be processed, and that the applications proceed to publication.