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Subject: U.S. TRADEMARK APPLICATION NO. 77225574 - CUPID - LA: 30682 -
SU - Request for Reconsideration Denied - Return to TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77225574

MARK: CUPID



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GENERAL TRADEMARK INFORMATION:
<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: THE ONLY CUPID, LLC

CORRESPONDENT'S REFERENCE/DOCKET NO:

LA: 30682

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REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 10/6/2010

Applicant is requesting reconsideration of a final refusal issued/mailed April 15, 2010.

After careful consideration of the law and facts of the case, the examining attorney must deny the request for reconsideration and adhere to the final action as written since no new facts or reasons have been presented that are significant and compelling with regard to the point at issue.

Accordingly, applicant's request for reconsideration is *denied*. The time for appeal runs from the date the final action was issued/mailed. 37 C.F.R. §2.64(b); TMEP §715.03(c). If applicant has already filed a timely notice of appeal, the application will be forwarded to the Trademark Trial and Appeal Board (TTAB).

MARK DIFFERS ON DRAWING AND SPECIMEN – MATERIAL

The mark on the specimen disagrees with the mark on the drawing. In this case, the specimen displays the mark in a shadowed form which obscures the details of the character's face, body and arm, while the drawing shows the mark with a clear rendering of the character's face, body and arm.

A statement of use must include a specimen showing the applied-for mark in use in commerce for each class of goods and/or services specified in the statement of use. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.56(a), 2.88(b)(2); TMEP §§904, 1109.09(b). The mark on the drawing must be a substantially exact representation of the mark as used on the specimen. 37 C.F.R. §2.51(b); TMEP §807.12(a); *see* 37 C.F.R. §2.72(b)(1).

The drawing of the mark can be amended only if the amendment does not materially alter the mark as originally filed. 37 C.F.R. §2.72(a)(2), (b)(2); *see* TMEP §§807.12(a), 807.14 *et seq.* However, amending the mark in the drawing to conform to the mark on the specimen would be a material alteration in this case because the mark on the specimen creates a different commercial impression from the mark on the drawing. Specifically, the shadowed form shown on the specimen deletes recognizable portions of the applicant's mark including the character's face, body, arm and hand.

Therefore, applicant must submit the following:

- (1) A substitute specimen showing use in commerce of the mark on the drawing. *See* 37 C.F.R. §2.59(b)(1); TMEP §904.05.; and
- (2) The following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: **“The substitute specimen was in use in commerce prior to the expiration of the deadline for filing the statement of use.”** *See* 37 C.F.R. §§2.59(b)(2), 2.193(e)(1); TMEP §904.05. If submitting a specimen requires an amendment to the dates of use, applicant must also verify the amended dates. 37 C.F.R. §2.71(c); TMEP §904.05.

Examples of specimens for goods are tags, labels, instruction manuals, containers, photographs that show the mark on the actual goods or packaging, or displays associated with the actual goods at their point of sale. *See* TMEP §§904.03 *et seq.* Examples of specimens for services are signs, photographs, brochures, website printouts or advertisements that show the mark used in the actual sale or advertising of the services. *See* TMEP §§1301.04 *et seq.*

Pending receipt of a proper response, registration is refused because the specimen does not show the applied-for mark in use in commerce as a trademark and/or service mark. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.56(a), 2.88(b)(2); TMEP §§904, 904.07(a).

Applicant may not withdraw the statement of use. 37 C.F.R. §2.88(g); TMEP §1109.17.

TEAS DECLARATION FOR A SUBSTITUTE SPECIMEN

To submit a verified substitute specimen online via the Trademark Electronic Application System (TEAS), applicant should do the following: (1) answer “yes” to the TEAS response form wizard question to “submit a new or substitute specimen;” (2) attach a jpg

or pdf file of the substitute specimen; (3) select the statement that “The substitute specimen(s) was in use in commerce prior to the expiration of the deadline for filing the statement of use.”; and (4) sign personally or enter personally his/her electronic signature and date after the declaration at the end of the TEAS response form. *See* 37 C.F.R. §§2.59(b)(2), 2.193(a), (c)-(d), (e)(1); TMEP §§611.01(c), 804.01(b). Please note that these steps appear on different pages of the TEAS response form.

If applicant experiences difficulty in submitting the required substitute specimen, supporting statement and/or declaration, please e-mail TEAS@uspto.gov for technical assistance regarding the TEAS response form.

/Blake Lovelace/
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STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.