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Subject: U.S. TRADEMARK APPLICATION NO. 77314422 - CONSTRUCTION PLUS - N/A - SU - Request for Reconsideration Denied - Return to TTAB - Message 1 of 0

Attachment Information:

Count: 6

Files: hyphen1-1.jpg, hyphen1-2.jpg, hyphen1-3.jpg, hyphen1-4.jpg, Hyphen2-1.jpg, 77314422.doc

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

APPLICATION SERIAL NO. 77314422

MARK: CONSTRUCTION PLUS



CORRESPONDENT ADDRESS:

BARBARA J. GRAHN
OPPENHEIMER WOLFF & DONNELLY
45 S 7TH STREETSUITE 3300
MINNEAPOLIS, MN 55402

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

APPLICANT: The Travelers Indemnity Company

CORRESPONDENT'S REFERENCE/DOCKET NO:

N/A

CORRESPONDENT E-MAIL ADDRESS:

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE:

The trademark examining attorney has carefully reviewed applicant's request for reconsideration and is denying the request for the reasons stated below. *See* 37 C.F.R. §2.64(b); TMEP §§715.03(a), 715.04(a). The requirement(s) and/or refusal(s) made final in the Office action dated April 6, 2011 are maintained and continue to be final. *See* TMEP §§715.03(a), 715.04(a).

In the present case, applicant's request has not resolved all the outstanding issue(s), nor does it raise a new issue or provide any new or compelling evidence with regard to the outstanding issue(s) in the final Office action. In addition, applicant's analysis and arguments are not persuasive nor do they shed new light on the issues. Accordingly, the request is denied.

Material Alteration

In its request for reconsideration, Applicant cites TMEP §713 in support of its complaint that the Examining Attorney "failed to directly address Applicant's arguments and provided little support and no evidence to bolster his own arguments suggesting that the Examining Attorney did not carefully consider Applicant's arguments and supporting case law as required." Response at 2. Applicant's complaints are without merit. First, TMEP §713.03 states that the examining attorney must respond to applicant's

arguments. It does not state that the examining attorney must respond to *each and every* case cited by the Applicant.

Second, on February 05, 2010, after a discussion with Applicant's attorney, the Examining Attorney sought the opinion of his Senior Attorney regarding the addition of a "+" sign to the original mark. This is reflected in a "Note to the File" that was added to the application on that date. This suggests that the issue was *carefully* considered, even to the extent of getting a second opinion. (See bottom of Note under "Other"). The mere fact that the Examining Attorney did not agree with Applicant's arguments does not mean they were not carefully considered.

Applicant further complains that the Examining Attorney rejected the cases cited by Applicant as unresponsive "but then went on to mention *just one* of the cases Applicant cited in support of its argument." (Emphasis added). Applicant should note that it cited only *two* cases in support of its argument regarding the addition of the plus symbol. Therefore, the Examining Attorney discussed all but one of the cases cited by Applicant. Again, there is no requirement that the Examining Attorney discuss each case Applicant cites as relevant, particularly when one of the cases has very little relevance to the issue. In *In re R.J. Reynolds Tobacco Company*, 222 USPQ 552 (TTAB 1984), the issue was whether the typed mark shown in the drawing, namely, BE MORE YOU was a substantially exact representation of the mark as it appeared in the specimen with two hyphens, specifically, BE-MORE-YOU. This case is obviously and significantly different from the case at hand because hyphens are "a punctuation mark – used especially to divide or compound words." (See attached definitions). Punctuation such as hyphens generally does not significantly alter the commercial impression of the mark. TMEP §807.14(c). A hyphen contains no meaning in itself, and generally, does not change the meaning of a term when inserted between two words. See also the attached article from Wikipedia.com® which stated that hyphens were removed from over 16,000 dictionary entries without changing the definition of the term. Contrary to the hyphen, a plus sign (+) has a connotation alone. Specifically, it *denotes* "addition or a positive quality." (See attached definitions). Because the addition of a plus sign to the end of the wording does not function merely as interior punctuation or hyphens, the *R.J. Reynolds* case is clearly unrelated to this refusal and the Examining Attorney did not find the case worth discussing.

In the Final Action, the Examining Attorney distinguished Applicant's case from the non-precedential case *In re Flanders Corporations* (Serial No. 76475934). In its response, Applicant mischaracterizes the holding in *Flanders* by stating "the plus symbol in the *amended drawing* of SWISS+AIRE did *not* add to the commercial impression of the original mark." Response at 2. In that case, there was no amendment to the drawing, so the issues are not the same. The Board in *Flanders* concluded that "the mark on the drawing was not a *substantially exact representation* of the mark shown on the specimen." *Id.* at 15. (Emphasis added). Clearly, the addition of the plus symbol to the *end* of Applicant's mark does not function similarly to a hyphen *between* two words as suggested in *Flanders*. Additionally, the Board considered the question of the plus design "as part of the Swiss flag". *Id.* Neither hypothetical is identical to Applicant's

situation where the plus symbol is used at the end of mark and would be considered a plus symbol that adds meaning and connotation to the original mark, namely, “an added quantity” or “greater than that specified”. (See definitions).

The *R.J. Reynolds* and *Flanders* cases are not controlling in this case because the issue here is whether the addition to the drawing is a *material alteration* of the original mark. The issue in the cited cases was whether the specimen was a *substantially exact representation* of the mark on the drawing. These are not the same standards. Applicant’s proposed amendment is controlled by 37 C.F.R. §2.72. See TMEP §807.13. The issue in the cited cases is controlled by 37 C.F.R. §2.51. See TMEP §807.12. A more complete reading of *Flanders* reveals that the Board distinguished between the two issues citing *In re DeWitt International Corp.*, 21 USPQ2D 1620, 1623 (Comm’r 1991). *Flanders* at 12. In *DeWitt*, the Commissioner stated, “the question of whether a specimen supports a claim of current use of a registered mark is *different* from the question of whether an amendment to a mark is permissible under Section 7.” *Id.* at 1622. (Emphasis added). In deciding whether a globe design element inside the letter “D” in DE WITT’S could be added to the mark, the Commissioner stated, “[a]lthough the design element cannot be added to the mark under Section 7, it does not necessarily follow that a specimen showing use of a composite mark comprised of both word and design elements is insufficient to show current use of the registered mark.” *Id.* at 1623. The test for material alteration of the drawing is clearly articulated in *In re Who? Vision Systems Inc.*, 57 USPQ2d 1211, 1217-1218, a case that the Examining Attorney cited in the two previous Office actions. The Board in *Flanders* also cited *Who? Vision Systems* to distinguish between the tests. *Flanders*, 9-10. Consequently, not only do the *R.J. Reynolds* and *Flanders* cases provide different marks in different situations than the case at hand, the standard in those cases does not apply here. Deciding whether an addition to the mark is a material alteration is a different test than whether a proposed standard character mark creates a commercial impression apart from the design on the specimens. Again, Applicant’s cases do not support the proposed amendment of Applicant’s marks.

To support the refusal of Applicant’s proposed amendment to the mark, the Examining Attorney has stated that the addition of the plus symbol to the end of Applicant’s mark would require a further search. “As a general rule, the addition of any element that would require a further search will constitute a material alteration.” TMEP §807.14; *In re Pierce Foods Corp.*, 230 USPQ 307 (TTAB 2000). Applicant continues to incorrectly argue that another search is not necessary because a search for “PLUS” and the plus symbol has already been conducted and searching for the combination of the two “would only further narrow the search.” Response at 2. For the benefit of Applicant’s attorney, the Examining Attorney has attached below a copy of the original search report dated February, 7, 2008 because the attorney has apparently misread the report. The report is explained as follows.

On line 03 of the report the truncated term *{“ck”}onstru{“ck”}t* was entered. On line 04, the truncated term *plus*, the truncated symbol *+*, and the design code 241706 for the plus symbol were entered. Each search is clearly entered under the column titled “Search” at the top. The column titled “Total Marks” at the top is the total number of

marks retrieved from each search entered on each line. In line 04, the total number of marks retrieved from a search of *plus*, *+* and the design code for plus was 27,539. Also on line 04, under the column titled "Live Viewed Docs" is the number "0". This means that NO marks were viewed in that search. On line 05, the searches of lines 03 and 04 were combined to retrieve all marks that contain both terms those lines. All of the live marks from that search were viewed. Therefore, Applicant is incorrect in stating that a search for marks that include the term PLUS and the symbol + has already been conducted. The Examining Attorney is not expected to view over twenty-seven thousand marks containing the term "plus" or the plus symbol. Narrowing the search in 04 to only those marks in International Class 36, would have also resulted in over 3,000 hits. Still an overly large number of marks retrieved. Moreover, viewing the marks would not likely have resulted in a refusal under Section 2(d). As can be seen in the report, the Examining Attorney further searched the first term in the mark "CONSTRUCTION" alone because it is the primary term in the mark. If an additional character in the nature of the word "plus" or the plus symbol is added to the mark CONSTRUCTION PLUS, the Examining Attorney would have performed a search for the term PLUS adjacent to the plus symbol or adjacent to the word "plus". This would have retrieved all marks containing "plus +" or the equivalent mark "plus plus". Each search resulted in less than 200 hits. A sample of the marks retrieved from the search is attached.

Applicant has also provided an additional list of cases where the material alteration standard *was* at issue. The Examining Attorney has considered the cases but found them unpersuasive because each case contains a completely different situation or fact pattern from the case at hand. The addition of a plus symbol that provides additional meaning to the mark is not similar to cases where insignificant wording has been changed or altered in a way that does not change the commercial impression of the mark. Additionally, the Examining Attorney has provided definitions that show that the plus symbol has a defined connotation and is clearly not equivalent to a common geometric *background* design or punctuation. Further, regarding Applicant's citation of *In re Robert Fox, Inc.*, 2004 WL 2368458 (TTAB 2004) ("the addition of the exclamation point is clearly not a material alteration"), Applicant is directed to TMEP §807.14(c) which states, "punctuation may be incorporated into a mark in such a way that the commercial impression of the mark would be changed by the addition or deletion of such punctuation." *See Richards-Wilcox Mfg. Co.*, 181 USPQ 735 (Comm'r Pats. 1974) (proposed change of FYE[R-W]ALL and design to FYER-WALL in block letters denied as material alteration, in part, because brackets changed commercial impression of mark as the initial letters of applicant's name, "R" and "W," were no longer emphasized). The Examining Attorney need not address each case individually because it is unnecessary and Applicant has not stated how any of the cases relate to Applicant's mark.

Further, Applicant's reliance on inapplicable case law and her requirement that the Examining Attorney cite analogous TTAB decisions to show the addition of the plus symbol is a material alteration is misplaced. "Each case must be decided on its own facts . . . The controlling question is *always* whether the old and new forms of the mark create essentially the same commercial impression." TMEP §807.14. (Emphasis added). The Examining Attorney has cited the primary cases regarding material alteration of the

drawing (*In re Who? Vision Systems, Inc.* and *In re CTB Inc.*) and has applied the rules to the case at hand. The attached definitions further support the position that the addition of the plus symbol to the mark CONSTRUCTION PLUS will add meaning and change the connotation of the original mark. The Board will affirm or reverse this case based on whether it believes the addition of the plus symbol to *Applicant's* original mark materially alters the commercial impression of *Applicant's* mark. It will not be decided based on whether the typed word mark SWISS AIR makes a separate commercial from a design mark that includes a plus design in between the words.

Drawing Does Not Match Specimens

Applicant has submitted substitute specimens which show the proposed mark without the additional wording "TRAVELERS" and without a space between the wording "CONSTRUCTION" and "PLUS+". If the Board accepts the proposed amendment of the drawing to CONSTRUCTIONPLUS+, the specimen is acceptable. However, the mark on the specimen does not match the original drawing of the mark.

The filing of a request for reconsideration does not extend the time for filing a proper response to a final Office action or an appeal with the Trademark Trial and Appeal Board (Board), which runs from the date the final Office action was issued/mailed. *See* 37 C.F.R. §2.64(b); TMEP §§715.03, 715.03(a), (c).

If time remains in the six-month response period to the final Office action, applicant has the remainder of the response period to comply with and/or overcome any outstanding final requirement(s) and/or refusal(s) and/or to file an appeal with the Board. TMEP §715.03(a), (c). However, if applicant has already filed a timely notice of appeal with the Board, the Board will be notified to resume the appeal when the time for responding to the final Office action has expired. *See* TMEP §715.04(a).

If the applicant has any questions, please telephone the assigned examining attorney. Thank you.

/Michael Webster/

Michael Webster
Examining Attorney
USPTO Law Office 102
571-272-9266
michael.webster@uspto.gov

*** User:mwebster ***

#	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/ Search Duration	Search
01	1	0	1	1	0:01	77314422[SN]

02	119	8	111	58	0:06	"the travelers Indemnity"[on]
03	2313	N/A	0	0	0:05	*{"ck"}onstru{"ck"}t*[bi,ti]
04	27539	N/A	0	0	0:02	*plus*[bi,ti] or *+*[bi,ti] or 241706[dc]
05	14	5	9	6	0:01	3 and 4
06	5	N/A	0	0	0:01	contruction[bi,ti]
07	1831	N/A	0	0	0:02	construction[bi,ti]
08	123	50	73	56	0:03	7 and ("036" "a" "b" "200")[ic]
09	52	21	2	2	0:02	7 and ("property" or "casualty")[gs]
10	13	7	5	4	0:01	7 and ("property" or "casualty")[gs] and insurance[gs]

Session started 2/7/2008 4:26:42 PM

Session finished 2/7/2008 4:44:20 PM

Total search duration 0 minutes 24 seconds

Session duration 17 minutes 38 seconds

Default NEAR limit=1ADJ limit=1

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Origin of HYPHEN

Late Latin & Greek; Late Latin, from Greek, from *hyph'* *hen* under one, from *hypo* under + *hen*, neuter of *heis* one — more at [UP](#), [SAME](#)

First Known Use: circa 1620

Other Grammar and Linguistics Terms

[ablaut](#), [allusion](#), [anacoluthon](#), [diacritic](#), [gerund](#), [idiom](#), [infinitive](#), [metaphor](#), [semiotics](#), [simile](#)

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Steve Smith · Melbourne, Florida

Just checking the diff between hyphen and dash...this def didn't help much. Think I'll go to MSWord.

Reply · Like · July 14 at 5:42am



Jo FS

hyphen is within a word and dash is within a sentence far as i know :)

Reply · Like · September 12 at 7:16pm



Rachel Kelly Tipaldi · Moore mickens education center

My aunt used the term hyphen in lieu of dash when giving her email to a client, and when she never received any emails from that client, after talking on the phone about the problem, the client -who is probably at least 20 yrs younger than my aunt- claimed a hyphen was not a dash, but the small diagonal slash above a persons name that adds an accent of some sort to it according to culture. But my aunt claimed a hyphen was the horizontal slash between two words, because her name is hyphenated. So I, who love words, had to look up exactly what a hyphen really was defined as in this day and age.

Reply · 1 · Like · May 6 at 1:47pm



Rang Glad

okay good

Reply · Like · June 20 at 12:22am



Fernando Mauricio Gomez Villanueva · Federico Santa Maria Technical University

I wanted to know how to use it before and after some phrase. quote:

the client who is probably at least 20 yrs younger than my aunt claimed a hyphen was not a dash,...

Reply · Like · July 1 at 8:26am

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Article Discussion

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Hyphen

From Wikipedia, the free encyclopedia

This article is about the punctuation mark. For other uses, see Hyphen (disambiguation).

The **hyphen** (-) is a punctuation mark used to join words and to separate syllables of a single word. The use of hyphens is called **hyphenation**. The hyphen should not be confused with dashes (—, –, —, —), which are longer and have different uses, or with the minus sign (−) which is also longer. However, in environments that are restricted to ISO 646, and often in computing generally, the hyphen is represented by a *hyphen-minus* (-), which is well-known and easy to enter on keyboards.

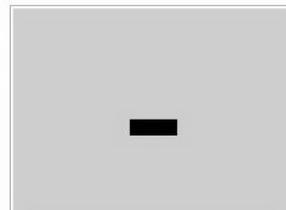
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Usage in English

[edit]

For Wikipedia's own standards for hyphen usage, see Wikipedia:Manual of Style#Hyphens

Hyphens are mostly used to break single words into parts, or to join ordinarily separate words into single words. Spaces should not be placed between a hyphen and either of the words it connects except when using a suspended or "hanging" hyphen (e.g. *nineteenth-*



Hyphen

Punctuation	
apostrophe	(')
brackets	([] , () , { } , ◻ ◻)
colon	(:)
comma	(,)
dash	(—, –, —, —)
ellipsis	(…, …, …)
exclamation mark	(!)
full stop/period	(.)
guillemets	(« »)
hyphen	(-)
hyphen-minus	(-)
question mark	(?)
quotation marks	(' ' , " " , ' ' , " ")
semicolon	(;)
slash/stroke	(/)
solidus	(⁄)
Word dividers	
space	() () () () () () () ()
interpunct	(·)
General typography	
ampersand	(&)
at sign	(@)