

From: Goodman, Wendy

Sent: 10/13/2010 9:29:50 PM

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Subject: U.S. TRADEMARK APPLICATION NO. 77411069 - THE STOKED - RJ  
Museum - Request for Reconsideration Denied - Return to TTAB - Message 1 of 5

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Attachment Information:

Count: 9

Files: phillips-1.jpg, phillips-2.jpg, phillips2-1.jpg, phillips2-2.jpg, phillips3-1.jpg,  
phillips3-2.jpg, phillips4-1.jpg, phillips4-2.jpg, 77411069.doc

# UNITED STATES PATENT AND TRADEMARK OFFICE

**SERIAL NO:** 77411069

**MARK:** THE STOKED



**CORRESPONDENT ADDRESS:**

LISA N. KAUFMAN  
OFFICE OF LISA N. KAUFMAN  
2807 POINCIANA CIRCLE  
COOPER CITY, FL 33026

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

**APPLICANT:** Ron Jon Surf Shop of Fla., Inc.

**CORRESPONDENT'S REFERENCE/DOCKET NO:**

RJ Museum

**CORRESPONDENT E-MAIL ADDRESS:**

lnktm@hotmail.com

## REQUEST FOR RECONSIDERATION DENIED

**ISSUE/MAILING DATE: 10/13/2010**

Applicant is requesting reconsideration of a final refusal issued/mailed February 28, 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, with respect to Classes 18, 25 and 35, since no new facts or reasons have been presented that are significant and compelling with regard to the point at issue. The examining attorney has determined, however, that the refusal to register is withdrawn with respect to Classes 6 and 9, only.

Applicant has amended the identification of goods by restricting the channel of trade. However, this restriction does not obviate a likelihood of confusion in this case. If the cited registrations contain no limitations as to their channels of trade or classes of purchasers, then it is presumed that the registrant's goods move in all normal channels of trade and that they are available to all potential customers. *In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992); *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981); TMEP §1207.01(a)(iii). In this case, registrants' goods contain no limitations as to their channels of trade and may be sold anywhere, including applicant's museum stores. The examining attorney attaches internet evidence which demonstrates that it is common for the retail store of a museum to sell goods other than promotional items for the museum, itself. See attached web pages from the online stores of The Phillips Collection, The

Museum of Modern Art, The Art Institute of Chicago, The Museum of Fine Arts, Boston and The Field Museum. In each case, the museum sells jewelry, clothing and a variety of bags that are not promoting the particular museum. In fact, in most cases, these goods are manufactured by third parties and sold by the museum stores.

Accordingly, applicant's request for reconsideration is *denied* with respect to Classes 18, 25 and 35. 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).

/Wendy B. Goodman, Esq./  
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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.