

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/527093

MARK: ROOBI

CORRESPONDENT ADDRESS:

ROSEMARY S. TARLTON
MORRISON & FOERSTER LLP
425 MARKET ST FL 30
SAN FRANCISCO, CA 94105-2482

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

APPLICANT: Gastroceuticals, LLC

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

623186002000

CORRESPONDENT E-MAIL ADDRESS:

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE:

Applicant is requesting reconsideration of a final refusal issued/mailed March 18, 2009.

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.

Applicant has argued that the marks are not similar in appearance. While the examining attorney had not previously elected to emphasize the similarities in the appearance of the marks, the examining attorney notes that the marks are similar in appearance in that applicant's mark is ROOBI, and the registered mark is RUBYY, both containing the same consonants R and B in the same relation to each other and the vowels in the mark. Both marks are presented in standard character and could therefore appear in the same typeface and in the same stylization as each other. TMEP §1207.01(c)(iii); see 37 C.F.R. §2.52(a). Therefore, applicant's mark and the registered mark could be presented in the same manner of display. See, e.g., *In re Melville Corp.*, 18 USPQ2d 1386, 1387-88 (TTAB 1991); *In re Pollio Dairy Prods. Corp.*, 8 USPQ2d 2012, 2015 (TTAB 1988).

The examining attorney also points out that the mark does not need to be similar in appearance, sound, meaning and connotation and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973); TMEP §1207.01(b). Similarity in *any one of these elements* may be sufficient to find a likelihood of confusion. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1043 (TTAB 1987); see TMEP §1207.01 (b). The examining attorney has already discussed how applicant's mark is similar to the registered mark in the other elements.

Applicant has also argued that its consumers are sophisticated. However, this argument is not supported by the evidence provided.

Finally, with the request for reconsideration, applicant has included a printout of the search results page of a search of the U.S.PTO website. The examining attorney notes that applicant has not provided the registration records, but merely the search results. The mere submission of a list of registrations does not make such registrations part of the record. *See, e.g., In re Dos Padres Inc.*, 49 USPQ2d 1860, 1861 n.2 (TTAB 1998); *In re Broadway Chicken Inc.*, 38 USPQ2d 1559, 1561 n.6 (TTAB 1996).

To make third party registrations part of the record, an applicant must submit copies of registrations from USPTO records only. *E.g., In re Ruffin Gaming LLC*, 66 USPQ2d 1924, 1925 n.3 (TTAB 2002); *In re Carolina Apparel*, 48 USPQ2d 1542, 1543 n.2 (TTAB 1998); TBMP §1208.02; TMEP §710.03.

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. Section 2.64(b); TMEP Section 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).

/Fred Carl III/
Law Office 108
571 272 8867 voice
571 273 9108 fax for official communication only

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.