

From: Doninger, Chris

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Subject: U.S. TRADEMARK APPLICATION NO. 77705566 - 6489/073 - SU - Request for Reconsideration
Denied - Return to TTAB

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

U.S. APPLICATION SERIAL NO. 77705566

MARK:



CORRESPONDENT ADDRESS:

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GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/trademarks/index.jsp>

APPLICANT: ALPARGATAS S.A.

CORRESPONDENT'S REFERENCE/DOCKET NO:

6489/073

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REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 6/27/2014

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)(2)(B), (a)(2)(E), 715.04(a). The requirement(s) and/or refusal(s) made final in the Office action dated 6/6/13 are maintained and continue to be final. See TMEP §§715.03(a)(2)(B), (a)(2)(E), 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.

Applicant has previously claimed acquired distinctiveness based on more than 5 years use but failed to provide a declaration in support thereof; in its request for reconsideration, it sets forth in detail the use, the units, sold etc. with a declaration but fails to actually set forth a claim of acquired distinctiveness. Thus the refusal as to the mark being merely ornamental and a nondistinctive repetitive design have not been overcome, though they both could be with a proper and complete claim of acquired distinctiveness combining the necessary statutory language supported by a declaration along with the evidence set forth in the declaration of Marco Junqueira Lete.

Additionally, applicant has failed to address in any way the requirement for either a substitute drawing or specimen so that they are in agreement and accurately reflect the mark and its use. Were the applicant to amend the drawing to show a sole-shaped dotted outline, representing the foot bed of the shoe, covered with the pattern in question, with the ovals on the horizontal plane, with the general sole shape dotted out so that it is clear that the applicant does not claim ownership of the shape but is only using it to properly represent placement of the mark on the goods, that would cure this issue.

Thus, with a proper 2f claim and a substitute drawing, the application could be approved for registration.

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, (a)(2)(B), (a)(2)(E), (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)(2)(B), (c). However, if applicant has already filed a timely notice of appeal with the Board, the Board will be notified to resume the appeal. *See* TMEP §715.04(a).

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