UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

MAILED: **October 29, 2015**

IN RE:
Marcel's Gourmet Frozen Yoghurt (Pty) Lt d

SERIAL NO. **77816672**

APPEAL RECEIVED: **10/29/2015**

BRIEF DUE: **n/a**

JEFFREY A. SMITH
MILLEN, WHITE, ZELANO & BRANIGAN, P.C.
2200 CLARENDON BLVD STE 1400
ARLINGTON VA 22201-3360

ESTTA705555

The appeal and appeal fee in the above-entitled application were received on the date indicated above. Applicant has checked the request for reconsideration box on the ESTTA form, thereby indicating that it has filed or is filing today a request for reconsideration of the final refusal to register. Applicant should notify the Board immediately if it has not filed a timely request for reconsideration and does not intend to do so.

A request for reconsideration, which may or may not include an amendment, must be filed with the Trademark Examining Operation, and may be filed via TEAS, using the Response to Office Action form.[1]

In view of the filing of the request for reconsideration/amendment, the appeal is hereby instituted, but action on the appeal is suspended and the application is remanded to the examining attorney to consider the request for reconsideration/amendment.

If registrability is found on the basis of the request for reconsideration/amendment, the appeal will be moot. In the event the refusal of registration is maintained, and assuming that the request for reconsideration/amendment does not raise a new issue, the application will be returned to the Board, proceedings in the appeal will be resumed, and applicant will be allowed time in which to file an appeal brief. If the request for reconsideration/amendment raises a new issue, the examining attorney may not issue a final refusal until the applicant has been given an opportunity to respond. Upon issuance of a final refusal, proceedings in the appeal will be resumed, and applicant will be allowed time in which to file an appeal brief. An Amendment to Allege Use will be treated in the same manner as any amendment; if registrability is found on the basis of the AAU, the appeal will be moot; if the AAU raises a new issue, the examining attorney may not make a refusal final until applicant has been given an opportunity to respond.

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[1] (To maintain their status, TEAS Plus applicants must use TEAS for filing a request for reconsideration.)

Request to Divide

If, in addition to filing a notice of appeal and request for reconsideration/amendment, applicant has also filed a request to divide the application, the appeal is instituted, proceedings are suspended, and the application is remanded to the examining attorney. The examining attorney should forward the application to the ITU/Divisional Unit of the Office to act on the request to divide. After the request to divide is processed, the examining attorney should consider the request for reconsideration/amendment. If registrability is found on the basis of the request for reconsideration/amendment, the appeal will be moot. If the refusal of registration is maintained,[2] the divided file containing classes for which an appeal has been filed should be returned to the Board, and the Board will then resume proceedings in the appeal and allow applicant time to file an appeal brief. The file for which no appeal has been taken should be treated by the examining attorney in the same manner as any request for reconsideration/amendment where there has been no appeal.

[2] If the request for reconsideration/amendment raises a new issue, a final Office action may not issue until the applicant has had an opportunity to respond).