

From: Souders, Michael

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Subject: U.S. TRADEMARK APPLICATION NO. 77858945 - FEIHE - N/A - 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**

APPLICATION SERIAL NO. 77858945

MARK: FEIHE



CORRESPONDENT ADDRESS:
AMERICAN DAIRY INC.
AMERICAN DAIRY INC.
2275 HUNTINGTON DR # 278
SAN MARINO, CA 91108-2640

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

APPLICANT: American Dairy Inc.

CORRESPONDENT'S REFERENCE/DOCKET NO:

N/A

CORRESPONDENT E-MAIL ADDRESS:

judytu@americandairyinc.com

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 3/4/2011

The applicant has submitted a request for reconsideration with a substitute specimen for International Classes 5 and 29. The substitute specimen is a photograph of a container displaying the mark. The container states that the goods are "infant formula." The specimen is acceptable for International Class 5. The refusal with respect to International Class 5 has been withdrawn.

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 made final in the Office action dated October 29, 2010 with respect to International Class 29 is 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.

The substitute specimen submitted by the applicant for International Class 29 is identical to the specimen submitted for International Class 5. The specimen is acceptable for International Class 5 because the mark is shown on a container for "infant formula."

“Infant formula” is the same as “food for infants” and is classified in International Class 5. The specimen does not demonstrate use of the mark with the “dairy products excluding ice cream, ice milk and frozen yogurt” identified in the application and classified in International Class 29. “Food for infants” is not encompassed by the identification of goods in International Class 29. As such, the substitute specimen showing the applied-for mark on a container of infant formula is not acceptable to demonstrate use of the mark on the goods identified in International Class 29.

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).

/Michael J. Souders/
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