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**To:** Behr, Toni T. (tbehr@tampabay.rr.com)  
**Subject:** TRADEMARK APPLICATION NO. 78532440 - THE LOST MERLOT - N/A  
**Sent:** 9/29/2008 7:38:23 PM  
**Sent As:** ECOM112@USPTO.GOV  
**Attachments:**

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**UNITED STATES PATENT AND TRADEMARK OFFICE****SERIAL NO:** 78/532440**MARK:** THE LOST MERLOT**CORRESPONDENT ADDRESS:**

TONI T. BEHR  
318 BUTTWOOD LN  
LARGO, FL 33770-4045

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

**APPLICANT:** Behr, Toni T.**CORRESPONDENT'S REFERENCE/DOCKET  
NO:**

N/A

**CORRESPONDENT E-MAIL ADDRESS:**

tbehr@tampabay.rr.com

**REQUEST FOR RECONSIDERATION DENIED****ISSUE/MAILING DATE: 9/29/2008**

Applicant is requesting reconsideration of a final refusal issued/mailed August 7, 2008.

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.

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).

The applicant's proposed specimens have not been verified with a proper declaration.

The following requirement is maintained as FINAL and the applicant's request for reconsideration is *denied*: (1) the original refusal was for the drawing and specimens not agreeing. The applicant submitted an amendment that contains a specimen, **but was not properly verified with an affidavit or signed declaration under 37 C.F.R. §2.20 containing the following wording: "The substitute specimen was in use in commerce prior to the expiration of the time allowed applicant for filing a statement of use."** 37 C.F.R. §2.59(b)(2); TMEP §904.09. If submitting a specimen requires an amendment to the dates of use, applicant must also verify the amended dates. 37 C.F.R. §2.71(c). 37 C.F.R. §2.64(a).

**SOU PHASE – MARK DIFFERS ON DRAWING PAGE AND SPECIMEN**

The mark depicted on the drawing disagrees with the mark on the specimen. The mark on the drawing page must be a substantially exact representation of the mark that appears on the specimen. 37 C.F.R. §2.51.

In this case, the drawing displays the mark as THE LOST MERLOT, while the specimen shows the mark as THE LOST CARMEME'RE MERLOT.

Therefore, applicant must submit one of the following:

- (1) A new drawing of the mark that agrees with the mark on the specimen but does not materially alter the original mark. 37 C.F.R. §2.72(b); TMEP §§807.13, 807.13(a) and 807.14 et seq.; or
- (2) A substitute specimen showing the mark as it appears on the drawing, and the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: "The substitute specimen was in use in commerce prior to the expiration of the time allowed applicant for filing a statement of use." 37 C.F.R. §2.59(b)(2); TMEP §904.09. If submitting a specimen requires an amendment to the dates of use, applicant must also verify the amended dates. 37 C.F.R. §2.71(c). Applicant may not withdraw the statement of use. 37 C.F.R. §2.88(g); TMEP §1109.17.

/Warren L. Olandria/  
Trademark Attorney  
Law Office 112  
(571) 272-9718  
warren.olandria@uspto.gov

**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.

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**IMPORTANT NOTICE**  
**USPTO OFFICE ACTION HAS ISSUED ON 9/29/2008 FOR**  
**APPLICATION SERIAL NO. 78532440**

Please follow the instructions below to continue the prosecution of your application:

**VIEW OFFICE ACTION:** Click on this link [http://tportal.uspto.gov/external/portal/tow?DDA=Y&serial\\_number=78532440&doc\\_type=REC&mail\\_date=20080929](http://tportal.uspto.gov/external/portal/tow?DDA=Y&serial_number=78532440&doc_type=REC&mail_date=20080929) (or copy and paste this URL into the address field of your browser), or visit <http://tportal.uspto.gov/external/portal/tow> and enter the application serial number to **access** the Office action.

**PLEASE NOTE:** The Office action may not be immediately available but will be viewable within 24 hours of this notification.

**RESPONSE MAY BE REQUIRED:** You should carefully review the Office action to determine (1) if a response is required; (2) how to respond; and (3) the applicable **response time period**. Your response deadline will be calculated from **9/29/2008**.

**Do NOT hit "Reply" to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System response form at <http://www.uspto.gov/teas/eTEASpageD.htm>.**

**HELP:** For *technical* assistance in accessing the Office action, please e-mail [TDR@uspto.gov](mailto:TDR@uspto.gov). Please contact the assigned examining attorney with questions about the Office action.

**WARNING**

- 1. The USPTO will NOT send a separate e-mail with the Office action attached.**
- 2. Failure to file any required response by the applicable deadline will result in the ABANDONMENT of your application.**