

This Opinion is Not a
Precedent of the TTAB

Mailed: May 2, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Shrinivas Sugandhalaya

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Serial No. 78691247

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Request for Reconsideration

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James L. Vana of Perkins Coie LLP,
for Shrinivas Sugandhalaya.

Jeffrey S. DeFord, Trademark Examining Attorney, Law Office 115,
John Lincoski, Managing Attorney.

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Before Zervas, Shaw and, Goodman
Administrative Trademark Judges.

Opinion by Shaw, Administrative Trademark Judge:

Applicant, Shrinivas Sugandhalaya, has filed a timely request for reconsideration of the Board's decision dated February 9, 2016, affirming the refusal to register the mark in application Serial No. 78691247 under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1).

The premise underlying a request for reconsideration of a Board decision under 37 C.F.R. § 2.144 is that based on the evidence of record and the prevailing

authorities, the Board erred in reaching the decision it issued. The request may not be used to introduce additional evidence, nor should it be devoted simply to a reargument of the points presented in the requesting party's brief. Rather, the request normally should be limited to a demonstration that based on the evidence properly of record and the applicable law, the Board's ruling is in error and requires appropriate change. *See* TBMP §§ 1219.01 and 543 and the authorities cited therein. *See also Amoco Oil Co. v. Amerco, Inc.*, 201 USPQ 126 (TTAB 1978).

Applicant argues that the Board "inappropriately weighted the evidence proffered by the examiner in support of the refusals and discounted the evidence of acquired distinctiveness provided by Applicant."¹ Specifically, Applicant alleges that a significant number of the internet articles and searches introduced by the Examining Attorney are of "limited probative value" because they do not reveal the source of the articles, were taken out of context, or were from collaborative sources.² We disagree.

Regarding the internet articles submitted by the Examining Attorney, the Board's decision specifically noted that the evidence was considered because it corroborated other evidence and because Applicant had failed to rebut the articles or show that they were inaccurate:

Applicant argues that much of the Examining Attorney's evidence is either of "dubious probative value" or it was "not obtained from a competent source." We disagree. We find the evidence accurately conveys the public's

¹ Applicant's Request for Reconsideration, p. 1.

² *Id.* at 2-3.

understanding of the meaning of the term NAG CHAMPA as a scent or fragrance.

With regard to the stories in wisegeek.com, ehow.com, and ebay.com, Applicant has not shown that these articles are inaccurate or do not reflect the public's understanding of the meaning of NAG CHAMPA. See *In re IP Carrier Consulting Grp.*, 84 USPQ2d 1028, 1032 (TTAB 2007). We find these articles corroborate the other evidence which shows the widespread use of NAG CHAMPA to refer to a scent. That is, we find these sites are “merely illuminative of shade and tone in the total picture confronting the decision maker.” *Interstate Brands Corp. v. Celestial Seasonings, Inc.*, 576 F.2d 926, 198 USPQ 151, 154 (CCPA 1978).³

More importantly, the internet articles are a small part of the entire evidentiary record. The Examining Attorney made of record nearly three-hundred pages of evidence identifying numerous third-party nag champa-scented products such as incense, soaps, candles, lotions, and oils.⁴ The Board's decision highlighted no fewer than seventeen other brands of incense scented with “nag champa” being sold by competitors.⁵ Even assuming, *arguendo*, that we accept Applicant's argument and discount the internet articles, the remainder of the record provides ample evidence that the term NAG CHAMPA is merely descriptive of incense sticks, and that Applicant's showing of acquired distinctiveness is insufficient.

The Board considered, in its original decision, all of the arguments and evidence discussed in Applicant's request for reconsideration. Applicant's request for

³ Board decision, p. 18.

⁴ *Id.* at 4-13.

⁵ *Id.* at 8-12.

reconsideration does not persuade us that the Board's decision was in error. Accordingly, the Board adheres to its finding that Applicant's mark is merely descriptive of incense sticks.

Decision: The request for reconsideration is denied and the Board's February 9, 2016 decision stands.