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Subject: U.S. TRADEMARK APPLICATION NO. 85013287 - SURFER - N/A -
Request for Reconsideration Denied - Return to TTAB - Message 1 of 6

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

APPLICATION SERIAL NO. 85013287

MARK: SURFER



CORRESPONDENT ADDRESS:
SCOTT J. SPOONER
SOURCE INTERLINK MAGAZINES, LLC
831 S DOUGLAS ST
EL SEGUNDO, CA 90245-4928

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

APPLICANT: Source Interlink Magazines, LLC

CORRESPONDENT'S REFERENCE/DOCKET NO:

N/A

CORRESPONDENT E-MAIL ADDRESS:

trademark@sorc.com

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 9/5/2011

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(s) and/or refusal(s) made final in the Office action dated February 8, 2011 are 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 applicant asserts that its other applications for the same mark have been allowed. Please note that each case must be considered on its own merits. An applied-for mark that is merely descriptive does not become registrable simply because other similar marks appear on the register. *In re Scholastic Testing Serv., Inc.*, 196 USPQ 517 (TTAB 1977); TMEP §1209.03(a).

A mark that describes an intended user or group of users of a product or service is merely descriptive. *E.g., In re Planalytics, Inc.*, 70 USPQ2d 1453 (TTAB 2004) (holding GASBUYER merely descriptive of intended user of risk management services in the field

of pricing and purchasing natural gas); *In re Camel Mfg. Co.*, 222 USPQ 1031 (TTAB 1984) (holding MOUNTAIN CAMPER merely descriptive of intended users of retail and mail order services in the field of outdoor equipment and apparel); *see* TMEP §1209.03(i).

The applicant argues that its apparel “is not for use in connection with surfing and is not designed for surfers.” The applicant further states that “[a]nyone can wear this apparel in any context and for reason” and it is not “manufactured with the interests of surfers in mind.”

Please note that registration was refused, in the alternative, because the applied-for mark is deceptively misdescriptive of applicant’s goods and/or services. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); *see* TMEP §1209.04.

Again, a mark is deceptively misdescriptive if it describes an ingredient, quality, characteristic, function or feature of the relevant goods and/or services, and the description conveyed by the mark is both false and plausible. *In re Woodward & Lothrop Inc.*, 4 USPQ2d 1412 (TTAB 1987) (holding CAMEO deceptively misdescriptive of jewelry); *In re Ox-Yoke Originals, Inc.*, 222 USPQ 352 (TTAB 1983) (holding G.I. deceptively misdescriptive of gun cleaning patches, rods, brushes, solvents and oils); TMEP §1209.04.

The Trademark Act does not prohibit the registration of misdescriptive terms unless consumers who encounter the mark are likely to believe the misrepresentation. *Binney & Smith Inc. v. Magic Marker Indus., Inc.*, 222 USPQ 1003 (TTAB 1984); TMEP §1209.04.

The test for deceptive misdescriptiveness has two parts: (1) whether the mark misdescribes an ingredient, characteristic, quality, function, feature, composition or use of the goods and/or services; and if so, (2) would consumers be likely to believe the misrepresentation. *See In re Berman Bros. Harlem Furniture Inc.*, 26 USPQ2d 1514 (TTAB 1993); *In re Woodward & Lothrop Inc.*, 4 USPQ2d 1412 (TTAB 1987); *In re Quady Winery, Inc.*, 221 USPQ 1213 (TTAB 1984); TMEP §1209.04.

In this case, the applicant states that the clothing items are not “for surfers.” However, consumers often encounter footwear, shorts, and t-shirts intended for surfers. See attached web pages displaying clothing intended for use by surfers and/or companies that manufacture or provide surf wear. As the consumers often encounter companies providing clothing for surfing and surfers, it is likely that consumers seeing the applicant’s goods would mistakenly believe that the clothing is to be worn by surfers or to identify surfing enthusiasts.

Additionally, consumers encountering the applicant’s magazine may believe its other products are targeted toward surfers. According to http://www.sourceinterlinkmedia.com/action_sports/surfer,

SURFER Magazine is dedicated to delivering witty, insightful, irreverent and refreshing reporting to surfing enthusiasts, fans, professionals, manufacturers and surf retailers everywhere. SURFER covers the entire spectrum of the sport from the most important amateur and professional competitions, along with profiles of the pros and soon-to-be pros, to far-ranging environmental concerns, and special coverage of female athletes in the sport.

Hence, the refusal based upon Section 2(e)(1) is continued and maintained.

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).

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Crocs



The latest rage in footwear is Crocs. These shoes are a step up from the equally popular flip flops. They are perfect for beach wear and anything involving water sports or activities. Crocs slip on in a second and can weather the wear and tear placed on feet throughout the course of an average day. They are more versatile than flip flops and provide a great deal more support as well.

One specific type of Croc that surfers should consider is the ace boating Croc. This Croc features an outside groove to it that moves water away from the surface area. At the back of the Croc are ventilation holes that drain water collected inside, keeping feet dry.

Perhaps the greatest Croc that a surfer should try is called the Hydro. This is considered by many to be Crocs water shoe. It is created from a neoprene upper material that is waterproof.


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Crocs Batali Bistro Professional/Inform Shoe Unisex
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The Crocs(tm) Batali Bistro provides Crocs(tm) signature styling and comfort in a design specifically for foodservice industry professionals. This Mario Batali signature shoe is crafted using the anti-microbial Croslite(tm) material that conforms to your foot for a custom fit.



Buy now!

Crocs Disney Beach Casual Shoe Women
\$19.96

The original Crocs(tm) model! This Crocs(tm) women's Disney(r) Beach Shoe is comfortable and cool, anti-microbial and odor-resistant. The wide, roomy footbed is made from Croslite(tm) PCCR material, which warms and softens from body heat and molds to your foot. Ergonomic Italian styling includes a supportive orthotic footbed, advanced ventilation system, built-in arch support, and contoured heel strap.



Buy now!

Crocs Hydro Aqua/Water Shoe Women
\$19.62

The original Crocs(tm) Hydro



Buy now!

Cayman (unisex) Clog By Crocs CAYMAN
\$19.95

The original Crocs(tm) Cayman

The women's Crocs(tm) Hydro water shoe is buoyant and can even function like a flipper. It's constructed with a waterproof neoprene upper, perfect for land and water. The Croslite(tm) PCCR material, which warms and softens from your body heat, molds to your foot to keep you comfortable.

The cayman is comfortable, cool, molds to your feet. Orthotic foot bed. Advanced toe-box ventilation system. Slip-resistant and non-marking soles. Anti-microbial and odor resistant, ergonomic Italian styling. Wide, roomy foot bed made with croslite PCCR material; buoyant. Weighs only ounces. Ventilation holes accommodate jibbitz® brand charm.



Buy now!

Crocs Alice Kids
\$19.99

The Crocs(tm) Alice kids' shoe delivers Crocs(tm)' signature comfort in a smart, slim-fitting Mary Jane styled shoe made especially for small feet. A stylish front strap holds the foot firmly in place for a great fit to allow the circulation nubs to stimulate blood flow. You can customize your shoe with Jibbitz(tm) shoe charms for a really cute look.



Buy now!

Crocs Athens Sandals Kids
\$19.99

The Crocs(tm) Athens kids' sandal is a comfortable slip-on that's perfect for summer! It's crafted using the Croslite(tm) PCCR material and an anti-microbial construction that prevents odor-causing bacteria from gaining a foothold on the shoe.

[Return from Crocs to Surf Clothing](#)

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January 18th, 2011

The Perfect Footwear for the Your Perfect Day



Do you plan to do outdoor activity or go to the beach with your family and friends? The first thing you have to prepare is ensure that your footwear fully supports your feet on your perfect day. Make sure your foot wear suits you the best so that you can feel comfortable in every single step.

If you want something more comfortable, you can be sure to wear the Reef Women's Fanning Sandal and [Sanuk Donna Sidewalk Surfer](#). The Reef Sandals are well-known for its durable rubber soles for years that make them as the legend of footwear [for surfers](#) and beach goers. Now, the same quality is delivered to you in the [Reef Womens Fanning Sandals](#). Arch-supporting footbed and 360 degree airbag cushioning in the heel will follow the contour of your feet and make your step more comfortable. Height in 1 inch thin rubber sole and put the stylish straps, these sandals are designed to bond your foothold strictly to ensure your safety from any slippery. What will surprise you more is that Reef Women's Fanning Sandals provide you with curch key to open soda bottles. Under the famous Sanuk brand, Sanuk Donna proudly presents the Sanuk Donna Sidewalk Surfer series. As Sanuk promised, you can find the perfect quality, fabric uses, and moreover, the most creative and original designs in Sanuk. Yet you can find more comfortable to



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moreover, the most creative and original designs in Sanuk. Yet, you can find more comfortable to find that the Sanuk Donna Sidewalk Surfers are more than sandals. Indeed, they are canvas shoes that make.

To meet their customer's individual need, the Sanuk Donna Sidewalk Surfers are now available with more lively colors and sizes.

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Friday, July 29, 2011

Ugg Boots for Men with a Touch of Style & Practicality

The Australian Ugg boots which began its journey from humble [footwear for surfers](#) in the beaches of Perth, is today a fashion accessory both men and women cannot do without. They have found place in the wardrobe of every fashionista, as fashion footwear that is worn even at high profile evening parties. Moreover, various Hollywood celebrities have flaunted them with élan.

At Uggavenue, we have a rich inventory of boots that are designed for fashionable adults. In this blog, you would get updates about stylish and comfortable Australian Uggs that are especially designed for male trendsetters.



Men Uggs Boots

Men's nomad lace up boots

These pair of Uggs offers great comfort not just to your feet but also the entire length of your leg till your calves. Stylish and elegant, they are suitable for all types of men without making you look feminine (which most men complain about long uggs). Buy earthy tones like brown, grey, and tan.

Men's Classic Short Boot

These never go out of fashion (are best sellers since 1933, when we began our operation). While men prefer to wear fashionable and stylish boots, they also look at the practicality of wearing such footwear. This is exactly the reason why the men's Classic Short Uggs are popular for. Imbued with high comfort quotient, they have wide tops which allows for easy and comfortable slip in and out during all times. Recently, even Titanic star Leonardo DiCaprio was spotted in Malibu wearing such a pair.

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