

From: Falk, Erin

Sent: 7/16/2012 12:42:40 PM

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Subject: U.S. TRADEMARK APPLICATION NO. 85262306 - SAGA - N/A - Request
for Reconsideration Denied - Return to TTAB - Message 1 of 2

Attachment Information:

Count: 7

Files: evid1-1.jpg, evid1-2.jpg, evid2-1.jpg, evid2-2.jpg, evid3-1.jpg, evid3-2.jpg,
85262306.doc

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

APPLICATION SERIAL NO. 85262306

MARK: SAGA



CORRESPONDENT ADDRESS:

Veronique Kherian
Higa & Gipson
55 New Montgomery Street Suite 510
San Francisco CA 94105

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

APPLICANT: Saga Swimwear LLC

CORRESPONDENT'S REFERENCE/DOCKET NO:

N/A

CORRESPONDENT E-MAIL ADDRESS:

vkherian@higagipsonllp.com

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 7/16/2012

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 1/6/12 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.

Specifically, applicant argues that the marks are dissimilar due to applicant's design feature. Specifically, applicant argues that its sail design conveys to consumers an impression of luxury, wealth and water in addition to a voyage. Moreover, applicant argues that the mark has personal significance since SAGA was the name of a sailboat owned by the parents of one of applicant's members, all of which results in the unique commercial impression of purchasing goods from a highly personalized boutique specializing in beach or swim related goods. The examining attorney respectfully disagrees and argues, to the contrary, that the marks are highly similar in view of both

parties' usage of the term SAGA. Although marks must be compared in their entireties, the word portion generally may be the dominant and most significant feature of a mark because consumers will request the goods and/or services using the wording. *See In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Max Capital Grp. Ltd.*, 93 USPQ2d 1243, 1247 (TTAB 2010). For this reason, greater weight is often given to the word portion of marks when determining whether marks are confusingly similar. *In re Dakin's Miniatures, Inc.*, 59 USPQ2d 1593, 1596 (TTAB 1999); TMEP §1207.01(c)(ii).

Applicant further argues in support of registrability in that the goods are not related and appeal to different markets. However, the examining attorney has submitted an abundance of evidence that reflects that the same parties offer the same goods as those of applicant and registrant herein utilizing the same mark, with the result that consumer confusion as to source would be likely if the goods of applicant and registrant were offered under the same or a substantially similar mark.

In addition, the attached Internet evidence consists of additional web pages from the Google search engine. This evidence establishes that the same entity commonly manufactures/produces/provides the relevant goods and/or services and markets the goods and/or services under the same mark and that the relevant goods and/or services are sold or provided through the same trade channels and used by the same classes of consumers in the same fields of use. Therefore, applicant's and registrant's goods and/or services are considered related for likelihood of confusion purposes. *See, e.g., In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202-04 (TTAB 2009); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1268-69, 1271-72 (TTAB 2009).

Evidence obtained from the Internet may be used to support a determination under Trademark Act Section 2(d) that goods and/or services are related. *See, e.g., In re G.B.I. Tile & Stone, Inc.*, 92 USPQ2d 1366, 1371 (TTAB 2009); *In re Paper Doll Promotions, Inc.*, 84 USPQ2d 1660, 1668 (TTAB 2007).

See

<http://www.oakley.com/store/products/women/apparel/swimwear>

<http://www.oakley.com/store/products/women/apparel/jackets-and-vests>

<http://www.oakley.com/store/products/men/apparel/jackets-and-vests>

http://store.nike.com/us/en_us/?cp=USNS_KW_0611081618&l=shop,home#!=shop,pw_p,c-1+100701/hf-10001+4294967024/t-Women's_Swimming

http://store.nike.com/us/en_us/?cp=USNS_KW_0611081618&l=shop,home#!=shop,pw_p,c-1+100701/f-4294967151/hf-10001+12002/t-Women's_Jackets

<http://www.championusa.com/workout-clothes/women/swimwear>

<http://www.championusa.com/workout-clothes/women/jackets---sweats>

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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