

From: Engel, Michael

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Subject: U.S. TRADEMARK APPLICATION NO. 85388236 - PIT BARREL COOKER - 10085-T-1 - Request for Reconsideration Denied - Return to TTAB

Attachment Information:

Count: 17

Files: 76681293P001OF002.JPG, 76681293P002OF002.JPG, 85674442P001OF002.JPG, 85674442P002OF002.JPG, 85677531P001OF002.JPG, 85677531P002OF002.JPG, 85696019P001OF002.JPG, 85696019P002OF002.JPG, 85702988P001OF003.JPG, 85702988P002OF003.JPG, 85702988P003OF003.JPG, 85858862P001OF003.JPG, 85858862P002OF003.JPG, 85858862P003OF003.JPG, 86027056P001OF002.JPG, 86027056P002OF002.JPG, 85388236.doc

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

U.S. APPLICATION SERIAL NO. 85388236

MARK: PIT BARREL COOKER



CORRESPONDENT ADDRESS:

ELLEN REILLY

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GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/trademarks/index.jsp>

APPLICANT: Pit Barrel Cooker Company LLC

CORRESPONDENT'S REFERENCE/DOCKET NO:

10085-T-1

CORRESPONDENT E-MAIL ADDRESS:

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REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 8/12/2013

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)(2)(B), (a)(2)(E), 715.04(a). The requirement(s) and/or refusal(s) made final in the Office action dated January 17, 2013 are maintained and continue to be final. See TMEP §§715.03(a)(2)(B), (a)(2)(E), 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.

As shown by the attached third-party applications and registrations which use "barbecue pits" in the identification of goods, the manufacturers of the goods in question generally understand the term pit as one of several generic terms for their goods. For example, the language "for use in barbecue grills, smokers, **barbecue pits**, and outdoor ovens" appears in five of the attached marks.

Despite the definition of pit as a hole in the ground, we cannot ignore the commercial context in which the term will be encountered. The evidence shows that barbecue pits is a generic identifier for outdoor cookers of various types, and that barrel cookers are a generic type of outdoor cookers devised from barrels.

Two major reasons for not protecting descriptive marks are (1) to prevent the owner of a descriptive mark from inhibiting competition in the marketplace and (2) to avoid the possibility of costly infringement suits brought by the trademark or service mark owner. *In re Abcor Dev. Corp.*, 588 F.2d 811, 813, 200 USPQ 215, 217 (C.C.P.A. 1978); TMEP §1209. Businesses and competitors should be free to use descriptive language when describing their own goods to the public in advertising and marketing materials. See *In re Styleclick.com Inc.*, 58 USPQ2d 1523, 1527 (TTAB 2001). In this case, competitors have the right to refer to their wares as barrel cooker barbecue pits.

Since 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 Engel/

Trademark Examining Attorney

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