

From: Besch, Jay

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To: TTAB EFiling

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Subject: U.S. TRADEMARK APPLICATION NO. 85477423 - ULTIMATE
EYEWEAR - N/A - Request for Reconsideration Denied - Return to TTAB

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

APPLICATION SERIAL NO. 85477423

MARK: ULTIMATE EYEWEAR



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

APPLICANT: U.S. Vision, Inc.

CORRESPONDENT'S REFERENCE/DOCKET NO:

N/A

CORRESPONDENT E-MAIL ADDRESS:

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REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 9/19/2012

This Office action is in response to applicant's communication filed on August 23, 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 February 23, 2012 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 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).

Applicant contends that there is no legal or factual basis to treat applicant's mark any different than selected registrations relating to eyewear containing the wording "ULTIMATE" and that are not on the Supplemental Register or Principal Register under a showing of acquired distinctiveness based on Section 2(f). Although these third party registrations exist, they are not controlling on whether applicant's mark is merely descriptive as was demonstrated in the Final refusal. Further, *In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001) is directly on point with respect to the use of the laudatory term "ULTIMATE", holding THE ULTIMATE BIKE RACK a laudatory, descriptive phrase that touts the superiority of applicant's bicycle racks. Applicant's mark is nearly identical in its structure containing the laudatory term "ULTIMATE" followed by a generic/highly descriptive term in relation to the goods (i.e., "EYEWEAR"). Thus, applicant's arguments are not persuasive.

/Jay C. Besch/
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