

From: Clayton, Cheryl

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To: TTAB EFiling

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Subject: U.S. TRADEMARK APPLICATION NO. 85489392 - GOURMET NUTRITION - PREC.0005 - Request for Reconsideration Denied - Return to TTAB - Message 1 of 5

Attachment Information:

Count: 3

Files: Evid1-1.jpg, Evid1-2.jpg, 85489392.doc

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

U.S. APPLICATION SERIAL NO. 85489392

MARK: GOURMET NUTRITION



CORRESPONDENT ADDRESS:

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RUBINSTEIN LAW

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SAN FRANCISCO, CA 94107-1618

GENERAL TRADEMARK INFORMATION:

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

APPLICANT: Precision Nutrition, Inc.

CORRESPONDENT'S REFERENCE/DOCKET NO:

PREC.0005

CORRESPONDENT E-MAIL ADDRESS:

trademarks@rublaw.com

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 5/1/2013

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 October 10, 2012 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.

In addition to the dictionary definitions and third party registrations attached to the two prior Office Actions, the examiner attaches here additional evidence that shows the descriptiveness of the mark in connection with the services. Specifically, attached is a description of the recipes and information provided via the applicant's book. This describes the applicant's book as including the "healthiest ingredients and whipped them into nearly 300 pages of delicious culinary creations that you can serve with confidence to the most discerning foodie -- or the most nitpicky nutritionist." The book and its gourmet recipes and nutrition information are all made available on the applicant's website, a sampling of webpage captures are attached.

In addition, the examiner has attached copies of sample recipes and information from the applicant's book, which are available via the applicant's website. These pages refer to the provision of information and recipes such as "Building Your Gourmet Kitchen", "Gourmet Recipes", and "Nutrition Facts".

As shown in the previous Office Actions, GOURMET is defined as "involving or purporting to involve high-quality or exotic ingredients and skilled preparation." In support of the finding of descriptiveness, the examiner has attached a sampling of recipes made available on applicant's website and from applicant's book, that show that the mark, GOURMET NUTRITION, merely describes the provision of cooking information, ingredients and recipes. Specifically, the applicant uses passages that suggest shopping in *specialty markets* and *spending more money to get better foods*; giving information about *flashy cooking techniques*; and recipes involving locations considered exotic, e.g., *Moroccan Chicken* and using ingredients considered to be exotic, e.g., *Venison Stew*. 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, (a)(2)(B), (a)(2)(E), (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)(2)(B), (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).

/Cheryl Clayton/

Cheryl Clayton

Trademark Examining Attorney

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 ★★★★★ (92) Prime

Dymatize Nutrition Elite Whey Protein Powder, Gourmet Vanilla, 5 Pound
 Buy new: \$166.49 **\$49.99**
 30 Used & new from \$42.99
 ★★★★★ (183)

Guy Gourmet: Great Chefs' Best Meals for a Lean & Healthy Body
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Gourmet Nutrition: The Cookbook for the Fit Food Lover [Paperback]

John Berardi (Author)

★★★★★ (25 customer reviews)

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Book Description

Publication Date: 2007

From the creators of Precision Nutrition comes a cookbook for people who love to eat great food, but hate that after-dinner guilt. For those who love to eat with style, but hate to look "indulgent." for those who love to entertain, but want to do it right. Enter Gourmet Nutrition: the cookbook for the fit food lover. We've taken the healthiest ingredients and whipped them into nearly 300 pages of delicious culinary creations that you can serve with confidence to the most discerning foodie -- or the most nitpicky nutritionist. We've included detailed cooking instructions and ideas for improvisation. And we've even photographed every recipe in beautiful color to show you just how appetizing healthy food can be. Gourmet Nutrition is the cookbook that's as friendly to your body as it is to your taste buds, and it's equally at home on your kitchen counter and your coffee table.

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Product Details

Paperback: 247 pages
Publisher: Precision Nutrition; 1st edition (2007)
Language: English
ISBN-10: 097743091X
ISBN-13: 978-0977430918
Product Dimensions: 9 x 1 x 9 inches
Shipping Weight: 2.6 pounds
Average Customer Review: ★★★★★ (25 customer reviews)
Amazon Best Sellers Rank: #67,773 in Books (See Top 100 in Books)

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Customer Reviews

★★★★☆ (25)
4.3 out of 5 stars

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