

From: Mittler, Kevin

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To: TTAB E filing

CC:

Subject: U.S. TRADEMARK APPLICATION NO. 85681674 - CANDY BAR PIE - 39193324-000 - Request for Reconsideration Denied - Return to TTAB

Attachment Information:

Count: 1

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

U.S. APPLICATION SERIAL NO. 85681674

MARK: CANDY BAR PIE



CORRESPONDENT ADDRESS:

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GENERAL TRADEMARK INFORMATION:

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

APPLICANT: Ben & Jerry's Homemade, Inc.

CORRESPONDENT'S REFERENCE/DOCKET NO:

39193324-000

CORRESPONDENT E-MAIL ADDRESS:

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REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 12/19/2013

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 refusal made final in the Office action dated June 12, 2013 is maintained and continues 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 issues, nor does it raise a new issue or provide any new or compelling evidence with regard to the outstanding issue 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's disclaimer of CANDY BAR and answers to the inquiry, while fulfilling the request for information requirement, do not overcome the Section 2(e)(1) refusal for the mark being merely descriptive of the identified goods.

The examining attorney notes that applicant has included evidence that suggests the mark may now be in use in commerce. If so, applicant is advised that although an amendment to the Supplemental Register would normally be an appropriate response to overcome this refusal, such a response is not yet appropriate in the present case. The instant application was filed under Trademark Act Section 1(b) and is not eligible for registration on the Supplemental Register until an acceptable amendment to allege use meeting the requirements of 37 C.F.R. §2.76(b), (c) has been timely filed. 37 C.F.R. §2.47(d); TMEP §§816.02, 1102.03.

If applicant files an acceptable allegation of use and also amends to the Supplemental Register, the effective filing date of the application will be the date on which applicant met the minimum filing requirements of 37 C.F.R. §2.76(e) for the amendment to allege use. 37 C.F.R. §2.75(b); TMEP §§816.02, 1102.03. In addition, the undersigned trademark examining attorney will conduct a new search of the Office records for conflicting marks based on the later application filing date. TMEP §§206.01, 1102.03.

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. *See* TMEP §715.04(a).

/Kevin A. Mittler/

Examining Attorney

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