

From: Dubois, Michelle

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Subject: U.S. TRADEMARK APPLICATION NO. 85775410 - SOLIS TEK DIGITAL LIGHTING - N/A - Request for Reconsideration Denied - Return to TTAB - Message 1 of 3

Attachment Information:

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Files: a-1.jpg, a-2.jpg, a-3.jpg, a-4.jpg, 85775410.doc

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

U.S. APPLICATION SERIAL NO. 85775410

MARK: SOLIS TEK DIGITAL LIGHTING



CORRESPONDENT ADDRESS:

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THE TRADEMARK COMPANY

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GENERAL TRADEMARK INFORMATION:

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

APPLICANT: Solis Tek, Inc.

CORRESPONDENT'S REFERENCE/DOCKET NO:

N/A

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REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 6/5/2014

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 10/7/13 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.

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).

Please note that with respect to applicant's and registrant's goods and/or services, the question of likelihood of confusion is determined based on the description of the goods and/or services stated in the application and registration at issue, not on extrinsic evidence of actual use. See, e.g., *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369-70, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012); *Octocom Sys. Inc. v. Hous. Computers Servs. Inc.*, 918 F.2d 937, 942, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990).

Absent restrictions in an application and/or registration, the identified goods and/or services are "presumed to travel in the same channels of trade to the same class of purchasers." *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1268, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002)). Additionally, unrestricted and broad identifications are presumed to encompass all goods and/or services of the type described. See *In re Jump Designs, LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006) (citing *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981)); *In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992).

In this case, the identification set forth in the application and registration(s) has no restrictions as to nature, type, channels of trade, or classes of purchasers. Therefore, it is presumed that these goods and/or services travel in all normal channels of trade, and are available to the same class of purchasers. Further, the application uses broad wording to describe the goods and/or services and this wording is presumed to encompass all goods and/or services of the type described, including those in registrant's more narrow identification.

Even despite applicant's broad identification, evidence has been attached to show that registrant's identification could logically encompass lighting for gardening purposes. Several websites have been attached to show that LED lamps are used in gardening.

Finally, it is repeated that adding a term to a registered mark generally does not obviate the similarity between the compared marks nor does it overcome a likelihood of confusion under Section 2(d). *See, e.g., In re Chatam Int'l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944 (Fed. Cir. 2004); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266 (TTAB 2009); *In re El Torito Rests., Inc.*, 9 USPQ2d 2002 (TTAB 1988). The only exceptions are when (1) the matter common to the marks is merely descriptive or diluted, and not likely to be perceived by purchasers as distinguishing source, or (2) the compared marks in their entireties convey a significantly different commercial impression – neither of which is the case here. TMEP §1207.01(b)(iii); *see, e.g., Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 73 USPQ2d 1350 (Fed. Cir. 2004); *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 94 USPQ2d 1645 (TTAB 2010). Applicant's evidence does not support that the common wording in the parties' marks, "SOLIS", is descriptive or diluted. The third-party registrations attached as evidence in the request for reconsideration do not show use of the word "SOLIS." If anything, the registrations demonstrate that the word "TEK" or variations thereof, is diluted. As a result, this wording in applicant's mark has lesser source-indicating significance and merely reinforces that "SOLIS" is the dominant term. Please note that the weakness or dilution of a particular mark is generally determined in the context of the number and nature of *similar* marks in use in the marketplace in connection with similar goods and/or services. *See Nat'l Cable Television Ass'n, Inc. v. Am. Cinema Editors, Inc.*, 937 F.2d 1572, 1579-80, 19 USPQ2d 1424, 1430 (Fed. Cir. 1991); *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973).

Therefore, based on the entirety of arguments and evidence submitted, the final Section 2(d) refusal must be maintained.

/Michelle E. Dubois/

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