

From: Hussain, Tasneem

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Subject: U.S. TRADEMARK APPLICATION NO. 85781691 - THE OFFICIAL PROPANE - 183431 - SU -
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**

U.S. APPLICATION SERIAL NO. 85781691

MARK: THE OFFICIAL PROPANE



CORRESPONDENT ADDRESS:

MELANIE MARTIN-JONES

PORTER WRIGHT MORRIS & ARTHUR LLP

41 S HIGH ST STE 2800

COLUMBUS, OH 43215-6194

GENERAL TRADEMARK INFORMATION:

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

APPLICANT: BOB LITTER'S FUEL AND HEATING CO., INC.

CORRESPONDENT'S REFERENCE/DOCKET NO:

183431

CORRESPONDENT E-MAIL ADDRESS:

mmartin-jones@porterwright.com

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 requirement(s) and/or refusal(s) made final in the Office action dated December 5, 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 resolved the Requirement for Drawing and Specimen to Match but has not resolved the outstanding issue regarding the Requirement for an Acceptable Specimen, 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.

Registration was refused because the specimen does not show a direct association between the applied-for mark and the identified services; thus the specimen fails to show the applied-for mark in use in commerce. 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

Specimens consisting of advertising or promotional materials generally must show a direct association between the mark and the services for which registration is sought. See *In re Universal Oil Prods. Co.*, 476 F.2d 653, 655, 177 USPQ 456, 457 (C.C.P.A. 1973); *In re HSB Solomon Assocs.*, 102 USPQ2d 1269, 1274 (TTAB 2012); TMEP §1301.04(b). While the exact nature of the services does not need to be specified in the specimen, there must be something which creates in the mind of the purchaser an association between the mark and the service. *In re Adair*, 45 USPQ2d 1211, 1215 (TTAB 1997) (quoting *In re Johnson Controls Inc.*, 33 USPQ2d 1318, 1320 (TTAB 1994)); see *In re Osmotica Holdings, Corp.*, 95 USPQ2d 1666, 1668 (TTAB 2010).

In the present case, the specimen shows no indication that applicant is using the mark THE OFFICIAL PROPANE in connection with fuel delivery services. Instead, it appears that applicant is using the wording to describe its propane and makes a reference for users to "become a customer" and to "find an authorized reseller near you" which implies Class 035 business services but not Class 039 delivery services. Consumers would not view the mark THE OFFICIAL PROPANE as source identifying matter showing applicant as the source of fuel delivery services. There is no mention of "delivery" at all on the specimen and no text to infer such services are offered.

An application based on Trademark Act Section 1(a) must include a specimen showing the applied-for mark in use in commerce for each international class of services identified in the statement of use. 15 U.S.C. §1051(a)(1); 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

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).

/Ms. Tasneem Hussain/

Trademark Examining Attorney

Law Office 105

tasneem.hussain@uspto.gov (preferred)

571.272.8273