

From: Phillips, Wendell

Sent: 7/16/2014 1:54:30 PM

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Subject: U.S. TRADEMARK APPLICATION NO. 85864287 - UNRATED - 13#629 - Request for
Reconsideration Denied - Return to TTAB - Message 1 of 2

Attachment Information:

Count: 9

Files: adidas1.jpg, adidas2.jpg, betseyjohnson1.jpg, betseyjohnson2.jpg, nike1.jpg, nike2.jpg, nike3.jpg,
nike4.jpg, 85864287.doc

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

U.S. APPLICATION SERIAL NO. 85864287

MARK: UNRATED



CORRESPONDENT ADDRESS:

ANDREW LAHSER

LAW OFFICE OF ANDREW P. LAHSER, PLC

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FOUNTAIN HILLS, AZ 85268-8408

GENERAL TRADEMARK INFORMATION:

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

APPLICANT: Shanon Preston

CORRESPONDENT'S REFERENCE/DOCKET NO:

13#629

CORRESPONDENT E-MAIL ADDRESS:

docket@lahserpatent.com

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 7/16/2014

INTRODUCTION

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 Section 2(d) refusal made final in the Office action dated January 13, 2014 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 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.

SUMMARY OF APPLICANT'S ARGUMENTS

In particular, applicant's amendment to the identification of goods to limit the trade channels of the goods does not obviate the refusal, since the cited registration has no limitations as to trade channels, so registrant's goods are presumed to be sold everywhere that is normal for such items, including online retail stores like that of applicant. Thus, it can also be assumed that the same classes of purchasers shop for these items and that consumers are accustomed to seeing them sold under the same or similar marks. See *Kangol Ltd. v. KangaROOS U.S.A., Inc.*, 974 F.2d 161, 23 USPQ2d 1945 (Fed. Cir. 1992); *In re Smith & Mehaffey*, 31 USPQ2d 1531 (TTAB 1994); TMEP §1207.01(a)(iii).

Furthermore, applicant's arguments regarding the dilution of the wording in the mark have already been addressed in the previous Office action. While applicant has provided evidence that "RATED" is a diluted term, applicant has not provided evidence that "UNRATED" or its phonetic equivalent "UNR8ED" are diluted, so this evidence does not show weakness or dilution of the relevant wording. Furthermore, as indicated previously, the Court of Appeals for the Federal Circuit and the Trademark Trial and Appeal Board have recognized that marks deemed "weak" or merely descriptive are still entitled to protection against the registration by a subsequent user of a similar mark for closely related goods. *In re Colonial Stores, Inc.*, 216 USPQ 793, 795 (TTAB 1982); TMEP §1207.01(b)(ix); see *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 1401, 182 USPQ 108, 109 (C.C.P.A. 1974).

To further illustrate the close relatedness of applicant's and registrant's goods, the trademark examining attorney is attaching hereto additional evidence of the same type previously submitted, namely, the

websites of entities who offer both footwear and the types of clothing items listed in applicant's identification of goods. Specifically, this evidence shows the following marks applied to both types of goods: ADIDAS; BETSEY JOHNSON; NIKE; OLD NAVY; REBECCA MINKOFF; and SPLENDID.

RESPONSE GUIDELINES

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).

/Wendell S. Phillips III/

Trademark Examining Attorney

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