

From: Ferraiuolo, Dominic

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To: TTAB E filing

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Subject: U.S. TRADEMARK APPLICATION NO. 85919183 - CURRICULUM4SCHOOLS - 06300.79513 -  
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**

<b>U.S. APPLICATION SERIAL NO.</b> 85919183  <b>MARK:</b> CURRICULUM4SCHOOLS	
<b>CORRESPONDENT ADDRESS:</b> JOSEPH S. HEINO  DAVIS & KUELTHAU, S.C.  STE 1400  111 E KILBOURN AVE  MILWAUKEE, WI 53202	<b>GENERAL TRADEMARK INFORMATION:</b>  <a href="http://www.uspto.gov/trademarks/index.jsp">http://www.uspto.gov/trademarks/index.jsp</a>  <a href="#">VIEW YOUR APPLICATION FILE</a>
<b>APPLICANT:</b> Cooperative Educational Service Agency N ETC.	
<b>CORRESPONDENT'S REFERENCE/DOCKET NO:</b>  06300.79513  <b>CORRESPONDENT E-MAIL ADDRESS:</b>  jheino@dkattorneys.com	

**REQUEST FOR RECONSIDERATION DENIED**

**ISSUE/MAILING DATE: 9/18/2014**

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 February 28, 2014 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.

Applicant argues that the mark as a whole is not merely descriptive under Trademark Act Section 2(e)(1) because the applied-for mark CURRICULUM4SCHOOLS for "Computer software that provides web-based access to applications and services through a web operating system or portal interface", primarily based on the fact that the numeral "4" appears in the mark as the phonetic equivalent of the wording "for." However, page 2 of the office action dated August 7, 2013 is a copy of a dictionary definition of the wording "for" that shows its meaning is, as appears relevant to the context of its use in the mark, "used as a function word to indicate purpose." Citation to current case law shows that a novel spelling or an intentional misspelling that is the phonetic equivalent of a merely descriptive word or term is also merely descriptive if purchasers would perceive the different spelling as the equivalent of the descriptive word or term. See *In re Hercules Fasteners, Inc.*, 203 F.2d 753, 97 USPQ 355 (C.C.P.A. 1953) (holding "FASTIE," phonetic spelling of "fast tie," merely descriptive of tube sealing machines); *Andrew J. McPartland, Inc. v. Montgomery Ward & Co.*, 164 F.2d 603, 76 USPQ 97 (C.C.P.A. 1947) (holding "KWIXTART," phonetic spelling of "quick start," merely descriptive of electric storage batteries); *In re Carlson*, 91 USPQ2d 1198 (TTAB 2009) (holding "URBANHOUSING" phonetic spelling of "urban" and "housing," merely descriptive of real estate services); *In re State Chem. Mfg. Co.*, 225 USPQ 687 (TTAB 1985) (holding "FOM," phonetic spelling of "foam," merely descriptive of foam rug shampoo); TMEP §1209.03(j).

The specimen of record shows use of the mark on a series of web pages explaining the goods that state "CURRICULUM4SCHOOLS" Teachers and administrators can access and enhance curriculum content from any location. The specimens of record show that the goods are used for schools curriculum mapping and management. The registrations applicant cites in support of its request only show the numeral "4" used to replace the wording "for" as a phonetic equivalent in marks that as a whole are not merely descriptive due to suggestive or non-descriptive meaning as a whole. Here, the numeral "4" is the phonetic equivalent of the wording "for" and identifies that a purpose, feature or function use of the goods is curriculum software for schools to use. Therefore, the applied-for mark is not similar to the marks cited by applicant in support of registration but rather, viewed as a whole, merely descriptive of the goods.

The substitute specimens are not acceptable for the following reasons, and the final refusal of registration based on failure to provide an acceptable specimen of use of the mark in commerce is maintained. Refusal of registration is maintained because the specimen is not acceptable as a display associated with the goods and appears to be mere advertising material; 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). Specifically, the specimen consists of a web page that does not include the means for ordering the goods. *See In re Sones*, 590 F.3d 1282, 1286-89, 93 USPQ2d 1118, 1122-24 (Fed. Cir. 2009); *In re Azteca Sys., Inc.*, 102 USPQ2d 1955, 1957 (TTAB 2012); TMEP §§904.03(i) *et seq.* Without this feature, the specimen is mere advertising material, which is not acceptable as a specimen to show use in commerce for goods. *See In re Genitope Corp.*, 78 USPQ2d 1819, 1822 (TTAB 2006); *In re MediaShare Corp.*, 43 USPQ2d 1304, 1307 (TTAB 1997); TMEP §904.04(b), (c).

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).

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