

From: Crowley, Paul

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Subject: U.S. TRADEMARK APPLICATION NO. 85937986 - POP DENTAL - 17590.NEW - Request for  
Reconsideration Denied - Return to TTAB

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Attachment Information:

Count: 16

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77656206P001OF003.JPG, 77656206P002OF003.JPG, 77656206P003OF003.JPG,  
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85496524P002OF004.JPG, 85496524P003OF004.JPG, 85496524P004OF004.JPG,  
85803958P001OF003.JPG, 85803958P002OF003.JPG, 85803958P003OF003.JPG, 85937986.doc

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

<b>U.S. APPLICATION SERIAL NO.</b> 85937986  <b>MARK:</b> POP DENTAL	
<b>CORRESPONDENT ADDRESS:</b> JEFFREY R STONE  WINTHROP & WEINSTINE PA  225 S SIXTH ST CAPELLA TOWER SUITE 3500  MINNEAPOLIS, MN 55402-4601	<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> Pop Dental L.L.C.	
<b>CORRESPONDENT'S REFERENCE/DOCKET NO:</b>  17590.NEW  <b>CORRESPONDENT E-MAIL ADDRESS:</b>  trademark@winthrop.com	

**REQUEST FOR RECONSIDERATION DENIED**

**ISSUE/MAILING DATE: 10/21/2014**

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 refusal made final in the Office action dated March 28, 2014 is maintained and continue to be final. See TMEP §§715.03(a)(2)(B), (a)(2)(E), 715.04(a).

In its Request for Reconsideration, applicant has argued that its mark in the instant application ("POP DENTAL") should not be refused registration under Trademark Act Section 2(d) with respect to the mark in U.S. Registration No. 3554775 ("POPBRUSH"), because another of the applicant's marks (Application Serial No. 85937991, "POP YOUR SMILE"), has been approved for publication. The examining attorney has considered this argument carefully but found it to be unpersuasive. (The examining attorney also considered applicant's arguments with respect to U.S. Registration No. 4590629 for, in pertinent part, "cleaning brushes for household use." However, this registration is for a different mark for goods that are not related to the goods at issue in the instant case and is, consequently, not material to the instant determination.). The mark in Application Serial No. 85937991, "POP YOUR SMILE," conveys a distinctly different commercial impression than that of the registered mark.

On the other hand, the registered mark is "POPBRUSH" for, in part, "toothbrushes." Notwithstanding that the registered mark is unitary and not subject to a disclaimer of the term "brush," the fact remains that the goods are toothbrushes such that the suffix "brush" in the mark of the registrant is highly descriptive or generic for the goods. Consequently, the dominant portion of the mark of the registrant, with respect to the overall commercial impression created by its mark, is the prefix, "POP." A similar analysis applies to the mark of the applicant. The applicant also provides "toothbrushes" as well as attachments for electric toothbrushes. These are goods for dental use such that the term "dental," in the mark of the applicant, is highly descriptive or generic for its goods. Therefore, the dominant portion of the mark of the applicant, with respect to the overall commercial impression created by its mark, is the word, "POP."

Finally, as is evidenced by the attached third-party registrations, it is common for entities that provide toothbrushes to also provide electric or electronic toothbrushes and replacement accessories for such goods such that the goods are highly related.

The trademark examining attorney has attached evidence from the USPTO's X-Search database consisting of a number of third-party marks registered for use in connection with the same or similar goods as those of both applicant and registrant in this case. This evidence shows that the goods listed therein, namely toothbrushes, electric or electronic toothbrushes and replacement accessories for such goods, are of a kind that may emanate from a single source under a single mark. See *In re Anderson*, 101

USPQ2d 1912, 1919 (TTAB 2012); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988); TMEP §1207.01(d)(iii).

In sum, the dominant portions of the marks of the applicant and registrant, with respect to the overall commercial impressions created by the marks, is the word, or prefix, "POP." Further, the goods of the parties are identical in part and otherwise highly related. Therefore, there is a likelihood of confusion with respect to the marks and the goods.

Lastly, the applicant requests that, in the event its Request for Reconsideration is denied, action on the application be suspended pending the filing of maintenance documents by the registrant. However, suspension under such circumstances is only appropriate during the grace period for the filing of Section 8 renewal documents following the six year anniversary of the registration. TMEP 716.02(e), 1604.01. In the instant case, the cited registration was registered on December 30, 2008. Therefore, the registration is not within the grace period for the filing of its maintenance/renewal documents such that suspension is not appropriate.

In sum, applicant's request has not resolved the outstanding issue, 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.

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).

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark

examining attorney may not provide legal advice or statements about applicant's rights. See TMEP §§705.02, 709.06.

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