

From: Fickes, Jeri

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Subject: U.S. TRADEMARK APPLICATION NO. 86020768 - LAGOON - LAGO6002/TJM - 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. 86020768

MARK: LAGOON



CORRESPONDENT ADDRESS:

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GENERAL TRADEMARK INFORMATION:

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

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APPLICANT: Mytek International Inc.

CORRESPONDENT'S REFERENCE/DOCKET NO:

LAGO6002/TJM

CORRESPONDENT E-MAIL ADDRESS:

mail@baconthomas.com

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 10/24/2016

This Office action is in response to applicant's request for reconsideration filed on September 13, 2016.

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. §2.63(b)(3); TMEP §§715.03(a)(ii)(B), 715.04(a). The following requirement made final in the Office action dated March 15, 2016 is maintained and continue to be final: the requirement for an acceptable specimen of use. *See* TMEP §§715.03(a)(ii)(B), 715.04(a).

In the present case, 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. Applicant's substitute specimen is not acceptable because it does not show use of the mark in commerce as contemplated by Section 1(a) of the Trademark Act (use of a mark in connection with a store in a foreign country, even if frequented by U.S. citizens, is not a type of commerce that may be lawfully regulated by Congress). According to the Trademark Manual of Examining Procedure (TMEP) Section 901.03:

Use of a mark in a foreign country does not give rise to rights in the United States if the goods or services are not sold or rendered in the United States. *Linville v. Rivard*, 41 USPQ2d 1731 (TTAB 1996), *aff'd*, 133 F.3d 1446, 45 USPQ2d 1374 (Fed. Cir. 1998); *Aktieselskabet af 21. November 2001 v. Fame Jeans Inc.*, 77 USPQ2d 1861 (TTAB 2006); *Buti v. Impresa Perosa S.R.L.*, 139 F.3d 98, 45 USPQ2d 1985 (2d Cir. 1998); *Mother's Rests. Inc. v. Mother's Bakery, Inc.*, 498 F. Supp. 847, 210 USPQ 207 (W.D.N.Y. 1980); *see also Honda Motor Co., v. Winkelmann*, 90 USPQ2d 1660 (TTAB 2009).

Accordingly, the request is denied.

If applicant has already filed a timely notice of appeal with the Trademark Trial and Appeal Board, the Board will be notified to resume the appeal. *See* TMEP §715.04(a).

If no appeal has been filed and time remains in the six-month response period to the final Office action, applicant has the remainder of the response period to (1) comply with and/or overcome any outstanding final requirement(s) and/or refusal(s), and/or (2) file a notice of appeal to the Board. TMEP §715.03(a)(ii)(B); *see* 37 C.F.R. §2.63(b)(1)-(3). The filing of a request for reconsideration does not stay or extend the time for filing an appeal. 37 C.F.R. §2.63(b)(3); *see* TMEP §§715.03, 715.03(a)(ii)(B), (c).

Jeri Fickes

/Jeri Fickes/

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