

From: Kon, Elissa Garber

Sent: 11/2/2015 7:36:13 AM

To: TTAB EFiling

CC:

Subject: U.S. TRADEMARK APPLICATION NO. 86113689 - SGT. OTTO - N/A - Request for Reconsideration  
Denied - Return to TTAB

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Attachment Information:

Count: 1

Files: 86113689.doc

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

**U.S. APPLICATION SERIAL NO.** 86113689

**MARK:** SGT. OTTO



**CORRESPONDENT ADDRESS:**

MATTHEW H. SWYERS

THE TRADEMARK COMPANY

344 MAPLE AVE W STE 151

VIENNA, VA 22180-5612

**GENERAL TRADEMARK INFORMATION:**

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

[VIEW YOUR APPLICATION FILE](#)

**APPLICANT:** Trautman, Lonnie

**CORRESPONDENT'S REFERENCE/DOCKET NO:**

N/A

**CORRESPONDENT E-MAIL ADDRESS:**

mswyers@thetrademarkcompany.com

**REQUEST FOR RECONSIDERATION DENIED**

**ISSUE/MAILING DATE:** 11/2/2015

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(s) and/or refusal(s) made final in the Office action dated April 28, 2015 are maintained and continue to be final: specimen for Class 9. See TMEP §§715.03(a)(ii)(B), 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.

The applicant seeks to register the wording SGT. OTTO in red with black outlines above the image of a stylized man in a green uniform pointing his finger. The applicant's newest specimens, submitted October 28, 2015, show two book covers, neither of which supports this mark. The first cover shows SGT. OTTO in red, with images of different looking characters. The second cover shows SGT. OTTO in red, above the white stylized wording FULL TRUTH DIET ADVICE, above the yellow stylized wording METHODS TO SAVE YOUR LIFE WITHOUT STARVING TO DEATH!, above the image of the man. There is too much visual separation, and other stylized wording, between the red words SGT. OTTO and the man for consumers to perceive that these two items together form one single mark. Therefore, the new specimen fails to support the identified goods.

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 goods identified in the application or amendment to allege 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).

Applicant may respond to this refusal by satisfying one of the following for each applicable international class:

- (1) Submit a different specimen (a verified ["substitute" specimen](#)) that (a) was in actual use in commerce at least as early as the filing date of the application or prior to the filing of an amendment to allege use and (b) shows the mark in actual use in commerce for the software identified in the application or amendment to allege use.
- (2) Amend the filing basis to [intent to use under Section 1\(b\)](#), for which no specimen is required. This option will later necessitate additional fee(s) and filing requirements such as providing a specimen.

For an overview of *both* response options referenced above and instructions on how to satisfy either option online using the Trademark Electronic Application System (TEAS) form, please go to <http://www.uspto.gov/trademarks/law/specimen.jsp>.

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).

The application will be returned to the Trademark Trial and Appeal Board to resume the appeal.

/Elissa Garber Kon/

Examining Attorney, Law Office 106

phone: 571-272-9181

email: [elissagarber.kon@uspto.gov](mailto:elissagarber.kon@uspto.gov)