

From: Kon, Elissa Garber

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To: TTAB EFiling

CC:

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

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:

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GENERAL TRADEMARK INFORMATION:

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

[VIEW YOUR APPLICATION FILE](#)

APPLICANT: Trautman, Lonnie

CORRESPONDENT'S REFERENCE/DOCKET NO:

N/A

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REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 1/28/2016

On January 12, 2016, the Trademark Trial and Appeal Board ("TTAB") remanded this application to the undersigned trademark examining attorney to reconsider the final refusal of registration based on the specimen, and to consider the new specimen[s] submitted by the applicant with its January 4, 2016 request for remand. Upon remand, the 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 requirement as to Class 9**. See TMEP §§715.03(a)(ii)(B), 715.04(a). All requirements have been satisfied as to Class 16.

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 has made no substantive arguments against this refusal/requirement or concerning its new specimens. Therefore, the examiner will only address the newly submitted physical specimens themselves.

The new specimens consist of images of two downloadable publications. The first is called "SGT. OTTO MAN DIET" and the second is called "SGT. OTTO FULL TRUTH DIET ADVICE." Both show the wording SGT. OTTO in the red stylized lettering across the top. The MAN DIET book does not show the image of the man immediately beneath the wording SGT. OTTO, as it appears on the drawing page. Therefore, the MAN DIET book does not satisfy this requirement. The TRUTH DIET ADVICE book also shows the wording SGT. OTTO in the red stylized lettering across the top, above the wording FULL TRUTH DIET ADVICE in a different color and different font, above a red dotted line, above the yellow wording METHODS TO SAVE YOUR LIFE WITHOUT STARVING TO DEATH! in a different font, with the image of the man offset below SGT. OTTO and the other design elements, rather than centered below SGT. OTTO. There is too much visual separation, and there are too many other distinct elements, between the wording SGT. OTTO and the image of the man for consumers to perceive those two elements as one single mark, as they appear on the drawing page. Therefore, as with earlier specimens, the new specimens do not show the mark shown on the drawing page used in commerce on the specimens for the Class 9 goods.

The drawing shows the mark sought to be registered, and must be a substantially exact representation of the mark as used on or in connection with the goods and/or services, as shown by the specimen. 37 C.F.R. §2.51(a); TMEP §807.12(a). Because the mark in the drawing is not a substantially exact representation of the mark on the specimen, applicant has failed to provide the required evidence of use of the applied-for mark in commerce on or in connection with applicant's goods in Class 9. See TMEP §807.12(a).

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 and/or services 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).

Examples of specimens for goods include tags, labels, instruction manuals, containers, photographs that show the mark on the actual goods or packaging, and displays associated with the actual goods at their point of sale. See TMEP §§904.03 *et seq.* Webpages may also be specimens for goods when they include a picture or textual description of the goods associated with the mark and the means to order the goods. TMEP §904.03(i).

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).

In this case, since the applicant has already filed a timely notice of appeal with the TTAB, the TTAB will be notified to resume the appeal. See TMEP §715.04(a).

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