

From: Falk, Jonathan

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To: TTAB E filing

CC:

Subject: U.S. TRADEMARK APPLICATION NO. 86176293 - SINCE 1847 THAYERS NATURAL REMEDIES - 15643.15US01 - SU - Request for Reconsideration Denied - Return to TTAB

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Attachment Information:

Count: 1

Files: 86176293.doc

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

**U.S. APPLICATION SERIAL NO.** 86176293

**MARK:** SINCE 1847 THAYERS NATURAL REMEDIES



**CORRESPONDENT ADDRESS:**

BRENT E ROUTMAN

MERCHANT & GOULD PC

PO BOX 2910

MINNEAPOLIS, MN 55402-0910

**GENERAL TRADEMARK INFORMATION:**

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

[VIEW YOUR APPLICATION FILE](#)

**APPLICANT:** Henry Thayer Company

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

15643.15US01

**CORRESPONDENT E-MAIL ADDRESS:**

dockmpls@merchantgould.com

**REQUEST FOR RECONSIDERATION DENIED**

**ISSUE/MAILING DATE:** 8/20/2015

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 January

29, 2015 are maintained and continue to be final: specimens do not show use of the applied-for mark in commerce. 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.

Applicant's substitute specimens do not show the applied-for mark in the drawing in use in commerce in International Classes 3 and 5. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a), 1301.04(g)(i). Specifically, the specimen displays the mark as having the wording THAYERS NATURAL REMEDIES curving downwards from the center; however, the drawing displays the mark as having all wording being straight.

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 and/or services. 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 statement of 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). Examples of specimens for services include advertising and marketing materials, brochures, photographs of business signage and billboards, and webpages that show the mark used in the actual sale, rendering, or advertising of the services. See TMEP §1301.04(a), (h)(iv)(C).

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

- (1) Submit a [new drawing of the mark](#) that agrees with the mark on the specimen and, if appropriate, an amendment to the color claim and/or mark description that conforms to the new drawing.
  
- (2) Submit a different specimen (a verified [“substitute” specimen](#)) that (a) was in actual use in commerce prior to the expiration of the deadline for filing the statement of use and (b) shows the mark in actual use in commerce for the goods and/or services identified in the statement of use.

Applicant, however, may not withdraw the statement of use. *See* 37 C.F.R. §2.88(f); TMEP §1109.17.

Also, applicant may produce a higher resolution photograph of the goods in the specimens dated January 7, 2015 that shows what the circled goods are.

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/J3.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).

/Jonathan R. Falk/

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