

From: Cordova, Raul

Sent: 7/24/2015 7:46:34 PM

To: TTAB E Filing

CC:

Subject: U.S. TRADEMARK APPLICATION NO. 86185707 - BRODDCAST - 136252-01070 - Request for
Reconsideration Denied - Return to TTAB

Attachment Information:

Count: 1

Files: 86185707.doc

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

U.S. APPLICATION SERIAL NO. 86185707

MARK: BRODDCAST



CORRESPONDENT ADDRESS:

CANDICE E KIM

GREENBERG TRAURIG LLP

1840 CENTURY PARK E

LOS ANGELES, CA 90067-2101

GENERAL TRADEMARK INFORMATION:

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

[VIEW YOUR APPLICATION FILE](#)

APPLICANT: Fuel Industries Inc.

CORRESPONDENT'S REFERENCE/DOCKET NO:

136252-01070

CORRESPONDENT E-MAIL ADDRESS:

laipmail@gtlaw.com

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 7/24/2015

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 Decmebr 19, 2015 are maintained and continue to be final: Registration is refused because the applied-for mark merely describes a feature of applicant's goods under Trademark Act Section 2(e)(1),. 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.

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).

Applicant amendment of the identification to "Multimedia software for digital content creation of entertainment videos using electronic media; multimedia software for digital video recording, editing and playback of videos; multimedia; software for digital recording, editing and playback of entertainment videos; downloadable software for digital recording, editing and playback of entertainment videos" is duly noted. Nevertheless, the amendment does impact the refusal as applicant's software exits to create content for the purpose of BROADCAST.

Applicant has properly made of record third party registrations to and argues that the term BROADCAST has previously registered. The fact that third-party registrations exist that contain variations of applicant's mark is not conclusive on the issue of descriptiveness. See *In re Scholastic Testing Serv., Inc.*, 196 USPQ 517, 519 (TTAB 1977); TMEP §1209.03(a). An applied-for mark that is merely descriptive does not become registrable simply because other seemingly similar marks appear on the register. *In re Scholastic Testing Serv., Inc.*, 196 USPQ at 519; TMEP §1209.03(a).

It is well settled that each case must be decided on its own facts and the Trademark Trial and Appeal Board is not bound by prior decisions involving different records. See *In re Nett Designs, Inc.*, 236 F. 3d 1339, 1342, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001); *In re Datapipe, Inc.*, 111 USPQ2d 1330, 1336 (TTAB 2014); TMEP §1209.03(a). The question of whether a mark is merely descriptive is determined based on the evidence of record at the time each registration is sought. *In re theDot Commc'ns Network LLC*, 101 USPQ2d 1062, 1064 (TTAB 2011); TMEP §1209.03(a); see *In re Nett Designs, Inc.*, 236 F.3d at 1342, 57 USPQ2d at 1566.

Applicant also argues for registration since it claims that its mark is a double entendre. A "double entendre" is an expression that has a double connotation or significance as applied to the goods and/or services. TMEP §1213.05(c); see *In re Colonial Stores Inc.*, 394 F.2d 549, 552-53, 157 USPQ 382, 384-85

(C.C.P.A. 1968) (finding SUGAR & SPICE a double entendre and not descriptive for bakery products because it evokes the nursery rhyme “sugar and spice and everything nice”).

A mark that comprises a “double entendre” will not be refused registration as merely descriptive if one of its meanings is not merely descriptive in relation to the goods. TMEP §1213.05(c). However, the multiple meanings that make an expression a “double entendre” must be well-recognized by the public and readily apparent from the mark itself. See *In re Brown-Forman Corp.*, 81 USPQ2d 1284, 1287 (TTAB 2006) (finding GALA ROUGE not a double entendre in relation to wines and affirming requirement to disclaim ROUGE); *In re The Place, Inc.*, 76 USPQ2d 1467, 1470-71 (TTAB 2005) (finding THE GREATEST BAR not a double entendre in relation to restaurant and bar services and affirming refusal to register based on descriptiveness of the mark); *In re Ethnic Home Lifestyles Corp.*, 70 USPQ2d 1156, 1158-59 (TTAB 2003) (finding ETHNIC ACCENTS not a double entendre in relation to television programs in the field of home décor and affirming refusal to register based on descriptiveness of the mark). BRODDCAST is not seen as a readily apparent double entendre.

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).

/Raul Cordova/

Examining Attorney

Law Office 114

571-272-9448

Raul.Cordova@uspto.gov