

From: Howard, Parker

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Subject: U.S. TRADEMARK APPLICATION NO. 86511770 - JUICE CLUB - N/A - 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.** 86511770

**MARK:** JUICE CLUB



**CORRESPONDENT ADDRESS:**

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**GENERAL TRADEMARK INFORMATION:**

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

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**APPLICANT:** Jamba Juice Company

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

N/A

**CORRESPONDENT E-MAIL ADDRESS:**

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**REQUEST FOR RECONSIDERATION DENIED**

**ISSUE/MAILING DATE:** 6/3/2016

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(s) and/or refusal(s) made final in the Office action dated November 20, 2015 are maintained and continue to be final: Section 2(e)(1) Refusal for being merely descriptive. 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.

Essentially, applicant reiterates its basic argument that the wording "JUICE CLUB" is not merely descriptive of its Class 32 "Fruit juices and fruit drinks; vegetable juices and vegetable drinks; smoothies" and Class 43 "Restaurant services; snack bar services; juice bar services" because (a) "JUICE CLUB" does not merely describe a characteristic of applicant's goods and services given there is no dictionary definition of "JUICE CLUB" supporting such a meaning, (b) some imagination is required to understand the nature of the goods and services and therefore it is suggestive, and (c) the mark is not immediately descriptive of applicant's goods and services.

However, as explained in the previous Office actions supported with ample evidence, the wording "JUICE CLUB" is a combination of terms that merely describe characteristics of applicant's goods and services, namely, that the goods and services expressly involve juice and restaurants that feature juice. That "JUICE CLUB" is commonly used to describe juice goods and restaurants that services such goods is evidenced by 20 examples attached to the previous Office action.

Regarding applicant's argument that there is no dictionary definition showing "JUICE CLUB" as merely descriptive of juices and restaurants service juices, whether or not a term is not found in the dictionary is not controlling on the question of registrability when the word or term has a well understood and recognized meaning. *In re Orleans Wines, Ltd.*, 196 USPQ 516, 517 (TTAB 1977); TMEP §1209.03(b); see *In re Gould Paper Corp.*, 834 F.2d 1017, 1018, 5 USPQ2d 1110, 1111-12 (Fed. Cir. 1987); *In re Planalytics, Inc.*, 70 USPQ2d 1453, 1456 (TTAB 2004); *In re Tower Tech Inc.*, 64 USPQ2d 1314 (TTAB 2002).

The wording "JUICE CLUB" does not need to be immediately descriptive of some or all aspects of applicant's goods and services. "Whether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." *In re Am. Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985). The question is not whether someone presented only with the mark could guess what the goods and/or services are, but "whether someone who knows what the goods and/or services are will understand the mark to convey information about them." *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1254, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) (quoting *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002)); *In re Franklin Cnty. Historical Soc'y*, 104 USPQ2d 1085, 1087 (TTAB 2012). Here, the wording "JUICE CLUB" would clearly be descriptive to the average consumer when that consumer knows that juice and restaurants services juice products are involved since "JUICE" is generic for juice and "CLUB" has been shown to be commonly used to describe juice products themselves and restaurants that serve them.

Though applicant has disclaimed exclusive use to “JUICE”, registration on the Principal Register is not available unless acquired distinctiveness can be shown pursuant to Section 2(f). Alternatively, as explained in the previous Office actions, the Supplemental Register is available upon filing of an acceptable Amendment to Allege Use.

Accordingly, the request for reconsideration 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).

/Parker Howard/

Examining Attorney

U.S. Patent and Trademark Office

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