

From: Wilson, Marynelle

Sent: 7/6/2016 10:05:23 AM

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Subject: U.S. TRADEMARK APPLICATION NO. 86525176 - DROPDEAD REDHEAD - TWIN-38425-U -
Request for Reconsideration Denied - Return to TTAB

Attachment Information:

Count: 6

Files: 1-1.jpg, 1-2.jpg, 1-3.jpg, 2-1.jpg, 2-2.jpg, 86525176.doc

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

U.S. APPLICATION SERIAL NO. 86525176

MARK: DROPDEAD REDHEAD



CORRESPONDENT ADDRESS:

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P O BOX 131709

DALLAS, TX 75313-1709

GENERAL TRADEMARK INFORMATION:

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

[VIEW YOUR APPLICATION FILE](#)

APPLICANT: Twin Restaurant IP, LLC

CORRESPONDENT'S REFERENCE/DOCKET NO:

TWIN-38425-U

CORRESPONDENT E-MAIL ADDRESS:

docket@hitchcockevert.com

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 7/6/2016

INTRODUCTION

This Office action is in response to applicant's communications filed on June 13, 2016, where applicant:

- Provided arguments against the final Section 2(d) Refusal
- Submitted an amendment alleging use of the mark in commerce

The trademark examining attorney has thoroughly reviewed applicant's response and has determined the following:

- Applicant's arguments are unpersuasive to overcome the final Section 2(d) refusal, and the request for reconsideration is **denied**
- Applicant's amendment to allege use is acceptable and made of record

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 refusal made final in the Office action dated December 11, 2015 are maintained and continue to be final: Section 2(d) Refusal.

In the present case, applicant's request has not resolved the outstanding issue, nor does it raise a new issue or provide any new or compelling evidence with regard to the outstanding issue in the final Office action. In addition, applicant's analysis and arguments are not persuasive nor do they shed new light on the issues.

Applicant's arguments concerning the differences in the marks—namely the difference between "BLONDE" and "REDHEAD"—miss the point. The marks DROP DEAD BLONDE and DROPDEAD REDHEAD create the same double meaning, at once referring describing type of beer and connoting an attractive woman with blonde or red hair. *See attached dictionary definitions:* http://www.oxforddictionaries.com/us/definition/american_english/blond and http://www.oxforddictionaries.com/us/definition/american_english/redhead. Applicant asserts that "BLONDE" and "RED" refer to types of beer, while "REDHEAD" does not. However, applicant's evidence disregards the examining attorney's evidence. The previously attached evidence demonstrates that "REDHEAD" is commonly used in a suggestive manner in connection with red ale. *See, e.g., the previously attached example of Firemans Brew, which includes "three hair-color-themed beers"—Blonde, Brunette, and Redhead, and the previously attached examples from Mayday Brewery, which include "Boro Blonde" and "Angry Redhead"*. Accordingly, applicant's and registrant's marks create the same overall commercial impression, which purchasers have encountered in connection with third-party goods as well. Thus, purchasers are likely to believe, mistakenly, that the goods emanate from the same source.

Applicant also argues that the marks are distinguishable as presented in commerce because they will be accompanied by different wording and particular contexts. However, the marks, *as registered and applied for*, do not include other wording or contexts. Applicant is improperly attempting to amend the marks to suit its circumstances. The registrant owns a registration for the mark DROP DEAD BLONDE, full stop. Registrant's inclusion of its house mark "Point" in other arenas does not limit its registration to such use. Similarly, applicant applied for the mark DROPDEAD REDHEAD, with no reference to "Twin

Peaks.” Moreover, applicant’s beer can specimen does not show the wording “Twin Peaks.” Applicant’s argument that purchasers will be able to distinguish between the source of the goods in commerce is belied by its on packaging, which shows no additional source-identifying wording.

Applicant argues that the applied-for mark is part of a family of marks and that the purchasing public’s familiarity with these marks obviates any likelihood of confusion. However, the Trademark Trial and Appeal Board has found that a family of marks argument is “not available to an applicant seeking to overcome a [likelihood of confusion] refusal.” *In re Cynosure, Inc.*, 90 USPQ2d 1644, 1645-46 (TTAB 2009). Specifically, an applicant’s ownership of other similar marks has little relevance in this context because the focus of a likelihood of confusion analysis in an ex parte case is on the mark applicant seeks to register, rather than other marks applicant has used or registered. *In re Cynosure, Inc.*, 90 USPQ2d at 1645-46; *In re Ald, Inc.*, 148 USPQ 520, 521 (TTAB 1965); TMEP §1207.01(d)(xi).

The labeling requirements for beer are not relevant to the likelihood of confusion analysis between the registered and applied-for marks. Marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1321, 110 USPQ2d 1157, 1160 (Fed. Cir. 2014) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F. 3d 1369, 1371, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005)); TMEP §1207.01(b)-(b)(v). This comparison is of the registered and applied-for marks, not the marks as applicant would wish them to be. See *In re Kiss My Face*, 2004 TTAB LEXIS 528, *8 (TTAB Sept. 10, 2004); *In re Scholastic Inc.*, 2003 TTAB LEXIS 352, *9 (TTAB July 24, 2003).

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).

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).

/Marynelle W. Wilson/

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home > US English > blond

Definition of *blond* in English:

blond

Pronunciation: /blɒnd/ 
(also **blonde**)



ADJECTIVE

1 (Of hair) fair or pale yellow:

'short-cropped blond hair'
'her hair was dyed blond'

[+ More example sentences](#)

1.1 (Of a person) having hair of a fair or pale yellow color:

'a slim blond woman'

[+ More example sentences](#)

1.2 (Of a person) having fair hair and a light complexion (especially when regarded as a racial characteristic).

[+ Example sentences](#)

1.3 (Of wood or another substance) light in color or tone:

- Most popular in the US
1. Brexit
 2. eponymous
 3. albatross
 4. copa
 5. super:alfragilisticexpialidocious
-  = trending



56 synonyms for 'talkative person'



Is there an English subjunctive?



Different than, different from, or different to?



'a New York office full of blond wood'

+ More example sentences

NOUN

A person with fair hair and skin.

+ Example sentences

Usage

The spellings **blonde** and **blond** correspond to the feminine and masculine forms in French. Although the distinction is often retained in Britain, American usage since the 1970s has generally preferred the gender-neutral **blond**. The adjective **blonde** may still refer to a woman's (but not a man's) hair color, although use of the noun risks offense ('see *that blonde over there?*'); the offense arises from the fact that the color of hair is not the person. The adjective applied to inanimate objects (such as 'wood' or 'beer') is typically spelled **blond**.

Derivatives

blondish
ADJECTIVE

+ Example sentences

blondness
NOUN

+ Example sentences

Origin

Late 15th century; from French *blond*, *blonde*, from medieval Latin *blundus* 'yellow', perhaps from Germanic.

For editors and proofreaders



Accept or except?



Taking a dip into the language of swimming

TEST YOURSELF

Full Stops

1) Which of the following is correct?

- They met in 1994.
- They met in 1994.

Next 0/0

WORD OF THE DAY

ichor

Related Words

- blond
- ash blond
- red-blond
- bottle blond
- eggshell blond

Syllabification: blond

Definition of blond in:

- [British & World English dictionary](#)
- [US English synonyms](#)

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strawberry blond

Nearby words

- [blokeish](#)
- [bloke](#)
- [blond](#)
- [blonde moment](#)
- [blonde ray](#)

English (US)

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home > US English > redhead

Definition of **redhead** in English:

redhead

Pronunciation: /ˈred,hed/ 



NOUN

- 1 A person with reddish hair.
[+ Example sentences](#)
- 2 A North American diving duck with a reddish-brown head, related to and resembling the pochard.
Aythya americana, family Anatidae.
[+ Example sentences](#)

Words that rhyme with redhead

bedhead, deadhead

For editors and proofreaders

Syllabification: red-head

Definition of redhead in:

- British & World English dictionary

Most popular in the US

- 1 Brexit
 - 2 eponymous
 - 3 alticeleste
 - 4 copa
 - 5 super: allfragilisticexpialidocious
-  = trending



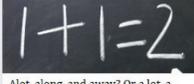
11 amazing words we should be using



Punctuational perplexities



Taking Portuguese idioms literally



Alot, along, and away? Or a lot, a long, and a way?

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Taking a dip into the language of swimming

TEST YOURSELF

Translating Americanisms

1) What is the British word for the American *alligator clip*?

- crocodile clip
- caiman clip

Next 0/0

WORD OF THE DAY

ichor

Nearby words

[Redgrave](#)
[Redgrave, Sir Steve](#)
redhead
[redhibition](#)
[redhibitory](#)

English (US)

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