

From: Malashevich, Jason

Sent: 9/9/2016 1:58:26 PM

To: TTAB EFiling

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Subject: U.S. TRADEMARK APPLICATION NO. 86618200 - SNOWMASK - MR2685-340 - Request for Reconsideration Denied - Return to TTAB

Attachment Information:

Count: 3

Files: ttabvue-86618200-EXA-7_Page_1.jpg, ttabvue-86618200-EXA-7_Page_2.jpg, 86618200.doc

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

U.S. APPLICATION SERIAL NO. 86618200

MARK: SNOWMASK



CORRESPONDENT ADDRESS:

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GENERAL TRADEMARK INFORMATION:

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

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APPLICANT: AMOGREENTECH CO., LTD.

CORRESPONDENT'S REFERENCE/DOCKET NO:

MR2685-340

CORRESPONDENT E-MAIL ADDRESS:

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REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 9/9/2016

On July 13, 2016, Applicant filed a voluntary amendment making of record copies of two third-party registrations previously referenced, but not included, in Applicant's January 12, 2016 Response to Office Action. This voluntary amendment was filed prior to the filing of Applicant's Notice of Appeal, but after the issuance of the January 15, 2016, Final Office Action ("Final Action"), and thus should have been treated as a request for reconsideration. *See* TMEP § 715.03. Noting this, the Trademark Trial and Appeal Board suspended Applicant's appeal and remanded the case to the examining attorney so that he may examine and consider the voluntary amendment and materials attached thereto (collectively, "Request").

The trademark examining attorney has carefully reviewed Applicant's Request and is DENYING it for the reasons stated below. See 37 C.F.R. §2.63(b)(3); TMEP §§715.03(a)(ii)(B), 715.04(a).

The Final Action made final a refusal to register Applicant's mark, SNOWMASK, under Trademark Act Section 2(d) based on a likelihood of confusion with the mark ICE MASK in U.S. Registration No. 3277028. The examining attorney provided arguments therein explaining why the arguments made in Applicant's January 12, 2016 Response to Office Action were unpersuasive, and mentioned that several third-party registrations in that response had not been considered because they had not properly been made of record. *In re Jump Designs LLC*, 80 USPQ2d 1370, 1372-73 (TTAB 2006); *In re Ruffin Gaming*, 66 USPQ2d, 1924, 1925 n.3 (TTAB 2002); TBMP §1208.02; TMEP §710.03.

The Request does not include any new arguments, but includes copies of the registrations that Applicant had not made of record. One of these registrations, U.S. Registration No. 2280000, was cancelled on June 24, 2006, and thus has no probative value relevant to the Section 2(d) refusal. See *In re Datapipe, Inc.*, 111 USPQ2d 1330, 1336 n.11 (TTAB 2014); TBMP §704.03(b)(1)(A); *Action Temp. Servs. Inc. v. Labor Force Inc.*, 870 F.2d 1563, 1566, 10 USPQ2d 1307, 1309 (Fed. Cir. 1989). However, the other registration, U.S. Registration No. 4375066, is still valid. The examining attorney has reviewed this registration and Applicant's argument that referenced it, namely, the argument that AQUATIC MASK was registered over the cited ICE MASK registration notwithstanding the fact that both marks reference forms of water. On this basis, Applicant argues that its SNOWMASK mark should similarly be able to coexist with the cited ICE MASK registration.

The examining attorney respectfully disagrees. AQUATIC MASK, though technically referencing a form of water, is not nearly as close in meaning or connotation as the marks ICE MASK and SNOWMASK, both of which represent frozen water, and both of which involve or incorporate ice crystals by nature. Regardless, evidence comprising only a small number of third-party registrations for similar marks with similar goods and/or services, as in the present case, is generally entitled to little weight in determining the strength of a mark. See *AMF Inc. v. Am. Leisure Products, Inc.*, 474 F.2d 1403, 1406, 177 USPQ 268, 269 (C.C.P.A. 1973); *Richardson-Vicks Inc. v. Franklin Mint Corp.*, 216 USPQ 989, 992 (TTAB 1982).

Accordingly, the examining attorney finds that the Request does not resolve the Section 2(d) refusal, nor does it raise a new issue or provide any compelling evidence with regard to the Section 2(d) refusal. Accordingly, the Request is DENIED. The Section 2(d) refusal made final in the Office action dated January 15, 2016, is maintained and continues to be final. See TMEP §§715.03(a)(ii)(B), 715.04(a).

The Trademark Trial and Appeal Board will be notified to resume the appeal. See TMEP §715.04(a).

/Jason Malashevich/

Examining Attorney

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UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Mailed: September 7, 2016

In re Amogreentech Co., Ltd.

Serial No. 86618200

Filed: 5/4/2015

Ellen Yowell, Paralegal Specialist:

On July 14, 2016, the Board acknowledged Applicant's notice of appeal and set a date for Applicant to file its brief. It has come to the Board's attention that Applicant also filed on July 12, 2016, a document it identified as a voluntary amendment, prior to its notice of appeal.¹ The document requires consideration by the Trademark Examining Attorney.

In view thereof, action on the appeal is suspended and the file is herewith remanded to the Examining Attorney for review of the document filed by Applicant on July 12, 2016.

In the event registrability is found on the basis of the document, the appeal will be moot and the Board should be so informed. In the event the refusal of registration is maintained, the file should be returned to the Trademark Trial and

¹ Applicant is advised that when filing an electronic notice of appeal, if a request for reconsideration is also being filed, Applicant should indicate by checking the appropriate box. This will allow the Board's electronic system to suspend proceedings pending review of the request for reconsideration by the Trademark Examining Attorney.

Exparte Appeal No. 86618200

Appeal Board, proceedings will be resumed and Applicant will be allowed time in which to file a supplemental brief, after which, the Trademark Examining Attorney will be allowed time in which to file a brief.