

From: Look, Jeffrey J.

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To: TTAB EFiling

CC:

Subject: U.S. TRADEMARK APPLICATION NO. 86772769 - VAPECON - N/A - Request for Reconsideration Denied - Return to TTAB

Attachment Information:

Count: 18

Files: 85629480P001OF003.JPG, 85629480P002OF003.JPG, 85629480P003OF003.JPG,
85631612P001OF002.JPG, 85631612P002OF002.JPG, 85671714P001OF003.JPG,
85671714P002OF003.JPG, 85671714P003OF003.JPG, 86201381P001OF002.JPG,
86201381P002OF002.JPG, 86514353P001OF003.JPG, 86514353P002OF003.JPG,
86514353P003OF003.JPG, 86586177P001OF002.JPG, 86586177P002OF002.JPG,
86805623P001OF002.JPG, 86805623P002OF002.JPG, 86772769.doc

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

U.S. APPLICATION SERIAL NO. 86772769

MARK: VAPECON



CORRESPONDENT ADDRESS:

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GENERAL TRADEMARK INFORMATION:

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

[VIEW YOUR APPLICATION FILE](#)

APPLICANT: Vape International Partners

CORRESPONDENT'S REFERENCE/DOCKET NO:

N/A

CORRESPONDENT E-MAIL ADDRESS:

Paulo@PatelAlmeida.com

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 9/13/2016

This Office action is in response to applicant's communication filed on August 18, 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 August 18, 2016 are maintained and continue to be final: the refusal to register based on mere descriptiveness pursuant to Section 2(e)(1) of the Trademark, 15 USC Section 1052(e)(1). See TMEP §§715.03(a)(ii)(B), 715.04(a).

Applicant continues to argue that it is being treated inconsistently and unfairly as compared to others who have recently received registrations for marks which contain the syllable “Con” at the end of compound marks. However, applicant has overlooked the registrations attached to the Office Action of May 6, 2016 which included the following:

1. GARY CON, Reg. No. 3930591 – “Con” disclaimed for trade shows in the field of role-playing and war games;
2. SNEAKER CON, Reg. No. 4155959 – Registered on the Supplemental Register with “Con” disclaimed for trade fairs and exhibitions in the field of sneakers;
3. AUTOCON and Design, Reg. No. 4323265 – “Autocon” disclaimed for trade shows in the field of automotive marketing and sales;
4. METALCON, Reg. No. 4446645 – Registered on Principal Register pursuant to Section 2(f) for trade shows in the field of metal design;
5. STEEL CITY CON, Reg. No. 4517244 – Registered on Principal Register pursuant to Section 2(f) for toy and collectible convention in Pittsburgh, PA;
6. STEEL CITY CON and Design, Reg. No. 4586902 – Register on Principal Register pursuant to Section 2(f) for toy and collectible convention in Pittsburgh, PA;
7. DRAGON CON, Reg. No. 4711187 – “Con” disclaimed for trade shows and conventions for business purposes;
8. DRAGON CON and Design, Reg. No. 4711188 – “Con” disclaimed for trade shows and conventions for business purposes;
9. AUDIO CON, Reg. No. 4792266 – Registered on Supplemental Register with “Con” disclaimed for trade shows and business exhibitions;
10. NERD CON, Reg. No. 4850520 – “Con” disclaimed on Principal Register for trade shows and fairs for business and advertising purposes.

In addition to those registrations, the examining attorney is attaching additional registrations consistent with the treatment of “Con” as meaning a convention:

11. AUTOCON, Reg. No. 4287057 – Registered on Supplement Register for trade shows in the automotive industry;
12. SCHOLARCON, Reg. No. 4408723 – Registered on Supplemental Register for promoting the interests of college students;
13. EDI CON, Reg. No. 4531599 – Registered on the Principal Register with “Con” disclaimed for engineering and technology conventions;
14. CANNACON, 4657952 – Registered on Supplemental Register for trade shows and conventions for business purposes;
15. GAMEHOLE CON, Reg. No. 4770725 – Registered on Supplemental Register with “Con” disclaimed for live forums to demonstrate and promote new and innovative products;
16. WEDCON, Reg. No. 4930799 – Registered on Principal Register under Section 2(f) for business conferences;

17. PREPPERCON, Reg. No. 5005347 – Registered on Supplemental Register for trade shows and expositions in the field of emergency preparedness.

Even some of the third party registrations entered into the record by the applicant do not support applicant's contention. More specifically, Reg. No. 4858430 for SALT LAKE GAMING GON has had all of the wording disclaimed; Registration No. 4600861 for CAMMING CON has had "Con" disclaimed. The registrations for BEAUTYCON and FITCON are arguably not for trade show exhibitions and conventions as identified by applicant. Therefore, the fact that these are registered on the Principal Register are not supportive of applicant's position.

In any event, the fact that applicant can find some third party registrations in which "con" suffixed marks have been registered on the Principal Register does not justify registration of applicant's mark in this case. The fact that third-party registrations exist for marks allegedly similar to 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.

Here the evidence in the record shows that the term "Vape" refers to electronic cigarettes and "Con" means a convention. See the dictionary definitions from OXFORDDICTIONARIES.COM attached to the May 6, 2016 Office Action. Applicant's website clearly shows that it is holding a trade show and convention in the field of electronic cigarettes for consumers of such products. The combination of these two merely descriptive terms does not create an incongruous or bizarre meaning when used in connection with the identified services. The fact that the mark is spelled as one word as opposed to two words does not diminish this fact.

In the present case, applicant's request has not resolved all the outstanding issues, 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. 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).

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