

From: McMorrow, Ronald

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To: TTAB EFiling

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Subject: U.S. TRADEMARK APPLICATION NO. 77878602 - BETTER BUNS.
BETTER BURGER. - 3470.288 - Request for Reconsideration Denied - Return to TTAB

Attachment Information:

Count: 9

Files: 75093445P001OF002.JPG, 75093445P002OF002.JPG,
75095022P001OF003.JPG, 75095022P002OF003.JPG, 75095022P003OF003.JPG,
77831069P001OF003.JPG, 77831069P002OF003.JPG, 77831069P003OF003.JPG,
77878602.doc

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

APPLICATION SERIAL NO. 77878602

MARK: BETTER BUNS. BETTER BURGER.



CORRESPONDENT ADDRESS:

PAMELA B HUFF
COX SMITH MATTHEWS INCORPORATED
112 EAST PECAN STREET SUITE 1800
SAN ANTONIO, TX 78205

GENERAL TRADEMARK INFORMATION:
<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: LUBY'S FUDDRUCKERS
RESTAURANTS, LLC

CORRESPONDENT'S REFERENCE/DOCKET NO:
3470.288

CORRESPONDENT E-MAIL ADDRESS:
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REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 4/4/2011

This Office action is in response to applicant's communications filed on 3/15/11.

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. §2.64(b); TMEP §§715.03(a), 715.04(a). The requirement(s) and/or refusal(s) made final in the Office action dated 9/15/10 are maintained and continue to be final. *See* TMEP §§715.03(a), 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.

As additional evidence in support of the refusal, the examining attorney has attached copies of current Registration Nos. 2158076, 2168845 and pending application Serial No. 77/831069. These copies show that the Office has determined that the phrase BETTER INGREDIENTS. BETTER PIZZA to be descriptive when used in connection with restaurant services. Third-party registrations featuring the same or similar services as applicant's services are probative evidence on the issue of descriptiveness where the

relevant word or term is disclaimed, registered under Trademark Act Section 2(f) based on a showing of acquired distinctiveness, or registered on the Supplemental Register. *See Sweats Fashions, Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 1564-65, 4 USPQ2d 1793, 1797 (Fed. Cir. 1987); *In re Box Solutions Corp.*, 79 USPQ2d 1953, 1955 (TTAB 2006); *In re Finisar Corp.*, 78 USPQ2d 1618, 1621 (TTAB 2006).

The filing of a request for reconsideration does not extend the time for filing a proper response to a final Office action or an appeal with the Trademark Trial and Appeal Board (Board), which runs from the date the final Office action was issued/mailed. *See* 37 C.F.R. §2.64(b); TMEP §§715.03, 715.03(a), (c).

If time remains in the six-month response period to the final Office action, applicant has the remainder of the response period to comply with and/or overcome any outstanding final requirement(s) and/or refusal(s) and/or to file an appeal with the Board. TMEP §715.03(a), (c). However, if applicant has already filed a timely notice of appeal with the Board, the Board will be notified to resume the appeal when the time for responding to the final Office action has expired. *See* TMEP §715.04(a).

/Ronald McMorrow/
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