

From: Reihner, David

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To: TTAB EFiling

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Subject: U.S. TRADEMARK APPLICATION NO. 85026331 - JIN-JA - 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.** 85026331

**MARK:** JIN-JA



**CORRESPONDENT ADDRESS:**

KIMBERLY N REDDICK  
RED IP LAW PLLC  
1701 PENNSYLVANIA AVE NW STE 300  
WASHINGTON, DC 20006

**GENERAL TRADEMARK INFORMATION:**  
<http://www.uspto.gov/trademarks/index.jsp>

**APPLICANT:** Canada Enterprises LLC

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

N/A

**CORRESPONDENT E-MAIL ADDRESS:**

kreddick@rediplaw.com

**REQUEST FOR RECONSIDERATION DENIED**

**ISSUE/MAILING DATE:** 12/31/2012

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)(2)(B), (a)(2)(E), 715.04(a). The refusal made final in the Office action dated February 28, 2012, is maintained and continued to be final. *See* TMEP §§715.03(a)(2)(B), (a)(2)(E), 715.04(a).

In the present case, applicant's request has not resolved all 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. Accordingly, the request is denied.

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, (a)(2)(B), (a)(2)(E), (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 refusal and to file an appeal with the Board. TMEP §715.03(a)(2)(B), (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).

### **Examiner's Reply to the Request for Reconsideration**

Applicant submitted to the Trademark Trial & Appeal Board (Board) October 20, 2012, a Request for Remand, which was approved and sent to the Trademark Examiner November 8, 2012. The material requested to be considered consisted of the lengthy prosecution history of U.S. Trademark Application no. 78-367,114 (*In re Sinpo Corp.*, Application no. 78-836,714, (TTAB, decided August 17, 2006)). In *Sinpo* the Trademark Trial & Appeal Board decided that there was no likelihood of confusion under Trademark Act § 2(d) between the applicant's service mark GINGER CAFE for restaurants featuring Asian cuisine and the registered mark, JINJA (U.S. Trademark Registration no. 2,670,215) for restaurants serving food and beverages. However, the decision in the case has been designated non-precedential.

While the Trademark Trial and Appeal Board has stated that decisions designated as not precedential are not binding upon the Board, they may be cited for whatever persuasive value they might have. TBMP §101.03; TMEP §705.05. Correspondingly, the decision will be considered in light of applicant's proposition favoring registration of the word.

The Board in *Sinpo*, supra, 11, relating to the similarity between the marks, stated that in their entireties, GINGER CAFE and JINJA did not have the same sound when pronounced. GINGER CAFE had four syllables and JINJA had two syllables and there was no similarity between the words GINGER and JINJA because GINGER ended in –GER and JINJA ended in –JA. As applied to the present application, applicant would argue that its JIN-JA mark would not be pronounced as GINGER and not be merely descriptive of an ingredient of applicant's herbal tea. If applicant were pronouncing JIN-JA using a rhotic pronunciation, it would probably be so; however, that is not the issue. The issue is whether JIN-JA, when pronounced using the non-rhotic pronunciation of the word, would be recognized as the misspelled, phonetic equivalent of ginger. This issue was neither raised nor addressed by either the applicant or the trademark examiner in the *Sinpo*, case. Correspondingly, applicant's reliance upon the cited decision is unpersuasive for the contention that JIN-JA (or JINJA) is not the phonetic equivalent of ginger, an ingredient and selling feature of applicant's herbal tea.

JIN-JA is merely descriptive of an ingredient (ginger) in applicant's herbal tea and is unregistrable on the Principal Register. Applicant's attention is called to the Supplemental Register.

/David C. Reihner/  
Examining Attorney  
Law Office 111, 571-272-9392  
571-273-9111, fax.  
David.Reihner@USPTO.gov