

From: Smiga, Howard

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To: TTAB EFiling

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Subject: U.S. TRADEMARK APPLICATION NO. 85216921 - CHEM PHREE -
09950003.000 - 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

APPLICATION SERIAL NO. 85216921

MARK: CHEM PHREE



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

APPLICANT: Spartan Brands, Inc.

CORRESPONDENT'S REFERENCE/DOCKET NO:

09950003.000

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REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 5/1/2012

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), 715.04(a). The descriptiveness refusal under Section 2(e)(1) of the Trademark Act, which were made final in the Office action dated September 26, 2011 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.

In its Request for Reconsideration, the applicant appears to provide two new contentions. Specifically, the applicant initially contends that the words CHEM and PHREE have multiple meanings and convey multiple commercial impressions. Response at 2-3. This argument carries no weight based on well-settled case law. Descriptiveness is considered in relation to the relevant goods. The fact that a term may have different meanings in other contexts is not controlling on the question of descriptiveness. *In re Chopper Indus.*,

222 USPQ 258, 259 (TTAB 1984); *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979); TMEP §1209.03(e).

Additionally, the applicant submits six third-party registrations in which the term “FREE” is used for hair care preparations or products whereupon FREE is not disclaimed. Based on these third-party registrations, the applicant contends that “FREE does not have any clear or obvious meaning.” Response at 3. This argument is also rejected based on well-settled case law. Third-party registrations are not conclusive on the question of descriptiveness. Each case must be considered on its own merits. An applied-for mark that is merely descriptive does not become registrable simply because other similar marks appear on the register. *In re Scholastic Testing Serv., Inc.*, 196 USPQ 517 (TTAB 1977); TMEP §1209.03(a). Additionally, all of the third-party registrations cited by the applicant could most certainly be considered unitary marks whereupon no disclaimer would have been required.

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).

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