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Subject: U.S. TRADEMARK APPLICATION NO. 85412346 - NOBRAND - 6836/002  
- Request for Reconsideration Denied - Return to TTAB - Message 1 of 3

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Attachment Information:

Count: 4

Files: Exhibit1-01.jpg, Exhibit1-02.jpg, Exhibit1-03.jpg, 85412346.doc

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

U.S. APPLICATION SERIAL NO. 85412346

MARK: NOBRAND



**CORRESPONDENT ADDRESS:**

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**GENERAL TRADEMARK INFORMATION:**

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

**APPLICANT:** Gustavo Stecher

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

6836/002

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**REQUEST FOR RECONSIDERATION DENIED**

**ISSUE/MAILING DATE: 1/26/2013**

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 requirement(s) and/or refusal(s) made final in the Office action dated June 5, 2012 are maintained and continue 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(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. The examining attorney maintains that there is a likelihood of confusion between applicant's mark **NO BRAND and DESIGN** for "Retail, wholesale and interactive retail store services rendered by means of global computer information network in the field of clothing, footwear, ceramics, key chains, cufflinks, jewelry, postcards, stationary, napkin holders, bookmarks, wallets, handbags, books, notebooks, book covers, aprons and novelty items," and the registrant's mark Non-Latin Characters (translation **NO BRAND GOODS**) (Registration No. 3314969) for goods and services, including, "On-line retail shops, retail shops, mail order services, and on-line retail store services featuring a wide variety of consumer goods of others, featuring clothing, household goods, office supplies, industrial supplies, business equipment, foods and drinks, cotton piece goods, clothing,

clothing accessories, stationery, furniture, interior furnishings, decorations, hardware, household daily necessities, pharmaceutical preparations, cultural and educational products, clocks and watches, glasses, electric and electronic appliances, jewelry, precious metals, photographic apparatus, cosmetics, entertainment and recreational products, mechanical apparatus, bicycles and their parts and components, tricycles and their parts and components, bath products, towels, bedroom products; advertising agencies, namely promoting goods and services via a global computer network; marketing research; import-export agencies; product planning, namely business consultation and management regarding marketing activities and launching of new products; merchandise packaging.”

As stated previously, the doctrine of foreign equivalents is applicable when it is likely that an ordinary American purchaser would “stop and translate” the foreign term into its English equivalent. *Palm Bay*, 396 F.3d at 1377, 73 USPQ2d at 1696; TMEP §1207.01(b)(vi)(A). The ordinary American purchaser refers to “all American purchasers, including those proficient in a non-English language who would ordinarily be expected to translate words into English.” *In re Spirits Int’l, N.V.*, 563 F.3d 1347, 1352, 90 USPQ2d 1489, 1492 (Fed. Cir. 2009); see *In re Thomas*, 79 USPQ2d at 1024 (citing J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* §23:26 (4th ed. 2006), which states “[t]he test is whether, to those American buyers familiar with the foreign language, the word would denote its English equivalent.”).

The doctrine of foreign equivalents applies to marks with Asian Characters. See ); *In re Tokutake Indus. Co.*, 87 USPQ2d 1697 (TTAB 2008) (Japanese); *In re Oriental Daily News, Ltd.*, 230 USPQ 637 (TTAB 1986) (Chinese). The courts have found that common, modern languages include Spanish, French, Italian, German, Chinese, **Japanese**, Russian, Polish, Hungarian, Serbian and Yiddish. See, e.g., *Weiss Noodle Co. v. Golden Cracknel & Specialty Co.*, 290 F.2d 845, 129 USPQ 411 (C.C.P.A. 1961) (Hungarian); *In re Tokutake Indus. Co.*, 87 USPQ2d 1697 (TTAB 2008) (Japanese); *In re Joint-Stock Co. “Baik,”* 80 USPQ2d 1305 (TTAB 2006) (Russian); *In re Perez*, 21 USPQ2d 1075 (TTAB 1991) (Spanish); *In re Oriental Daily News, Ltd.*, 230 USPQ 637 (TTAB 1986) (Chinese); *In re Ithaca Indus., Inc.*, 230 USPQ 702 (TTAB 1986) (Italian); *In re Jos. Schlitz Brewing Co.*, 223 USPQ 45 (TTAB 1983) (German); *In re Westbrae Natural Foods, Inc.*, 211 USPQ 642 (TTAB 1981) (Japanese); *In re Optica Int’l*, 196 USPQ 775 (TTAB 1977) (French); *In re Bagel Nosh, Inc.*, 193 USPQ 316 (TTAB 1976) (Yiddish); *In re Hag Aktiengesellschaft*, 155 USPQ 598 (TTAB 1967) (Serbian); *In re New Yorker Cheese Co.*, 130 USPQ 120 (TTAB 1961) (Polish). In addition, the examining attorney directs the applicant’s attention to the attached excerpt from the *Migration Policy Institute* as additional evidence of the common usage of the Japanese language by Americans. See, <http://www.migrationinformation.org/datahub/state2.cfm?ID=US>.

Potential purchasers encountering the registrant’s mark are likely to “stop and translate” the foreign term into its English equivalent. The marks share the identical dominant wording NO BRAND. Equivalence in meaning and connotation is sufficient to show that the marks are confusingly similar.

With respect to the similarity between the goods and services, the determination is based on the description of the goods and/or services stated in the application and registration at issue, not on extrinsic evidence of actual use. *See Octocom Sys. Inc. v. Hous. Computers Servs. Inc.*, 918 F.2d 937, 942, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990); *see also Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 1267, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002).

Absent restrictions in an application and/or registration, the identified goods and/or services are presumed to travel in the same channels of trade to the same class of purchasers. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d 1344, 1356, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d at 1268, 62 USPQ2d at 1005. Additionally, unrestricted and broad identifications are presumed to encompass all goods and/or services of the type described. *See In re Jump Designs*, 80 USPQ2d 1370, 1374 (TTAB 2006); *In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992).

In this case, the identification set forth in the application and registration(s) has no restrictions as to nature, type, channels of trade, or classes of purchasers. Therefore, it is presumed that these goods and/or services travel in all normal channels of trade, and are available to the same class of purchasers. Further, the application and registration use broad wording to describe the goods and/or services and this wording is presumed to encompass all goods and/or services of the type described, including those in applicant's and registrant's more narrow identification.

Accordingly, the request is denied.

Please note that the applicant has referenced a list of registration numbers in its request for reconsideration. However, the mere submission of a list of registrations or a copy of a private company search report does not make such registrations part of the record. *In re Promo Ink*, 78 USPQ2d 1301, 1304 (TTAB 2006); TBMP §1208.02; TMEP §710.03.

As stated in the prior FINAL office action, to make third party registrations part of the record, an applicant must submit copies of the registrations, or the complete electronic equivalent from the USPTO's automated systems, prior to appeal. *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 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 requirement(s) and/or refusal(s) and/or 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).

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## THE UNITED STATES

### Language & Education

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Other facts sheets for the United States:

- Social & Demographic
- Workforce
- Income & Poverty

The data below describe selected characteristics of the immigrant and native-born populations in the United States in 2010.

#### Data Highlights

For data on these topics, click on the link:

- Population by English Proficiency
- Educational Attainment
- English Proficiency by Citizenship
- Education by Language Spoken at Home
- English Proficiency by Language Group
- Detailed Tables
- Linguistically Isolated Households

#### Population by English Proficiency

**The foreign-born, limited English proficient (LEP) population age 5 and older in the United States increased by 30.6 percent between 2000 and 2010.**

Between 2000 and 2010, the number of foreign-born persons age 5 and older in the United States who were LEP increased from 15,672,816 to 20,473,818, representing a change of 30.6 percent. In comparison, the size of the foreign-born LEP population grew from 9,120,221 to 15,672,816 between 1990 and 2000, a difference of 71.5 percent.

**In 2010, 51.6 percent of immigrants age 5 and older in the United States were LEP.**

In 2010, 51.6 percent of the United States' total foreign-born population age 5 and older were LEP compared with 51.0 percent in 2000 and 47.0 percent in 1990. Only 1.9 percent of similarly aged native-born persons in the United States were LEP in 2010.

**In the United States, 77.0 percent of all children in families that spoke a language other than English reported having oral English proficiency.**

In 2010, 11,782,530 children between ages 5 and 17

#### Who Are the Foreign Born?

The term foreign born refers to people residing in the United States at the time of the census who were not US citizens at birth. The foreign-born population includes naturalized citizens, lawful permanent immigrants, refugees and asylees, legal nonimmigrants (including those on student, work, or other temporary visas), and persons residing in the country without authorization. By comparison, the term native refers to people residing in the United States who were US citizens in one of three categories: 1) people born in one of the 50 states or the District of Columbia; 2) people born in United States Insular Areas such as Puerto Rico or Guam; or 3) people who were born abroad to at least one US-citizen parent.

We use the terms immigrant and foreign born interchangeably.

#### What Does "Limited English Proficient" (LEP) Mean?

The White House defines LEP as follows: "Persons from

resided in homes in which members spoke a language other than English; of these children, 77.0 percent spoke English "very well."

Note: these families might or might not interact in English at home.

**English Proficiency by Citizenship**

**Naturalized citizens in the United States were less likely to be LEP than noncitizens.** Of the foreign born in the United States in 2010, 38.8 percent of naturalized citizens age 5 and older were LEP compared to 61.6 percent of noncitizens.

**English Proficiency by Language Group**

**Rates of limited English proficiency were higher among speakers of certain language groupings than among others.**

Among the foreign born older than 5 in the United States in 2010, 71.0 percent of those who spoke Spanish at home were LEP compared to 42.1 percent of those who spoke other Indo-European languages, 56.4 percent of those who spoke Asian and Pacific Island languages, and 40.2 percent of those who spoke other languages.

- Read more about the LEP population, its growth, and linguistic diversity in the nation and all 50 states in **Limited English Proficient Individuals in the United States: Number, Share, Growth, and Linguistic Diversity.**

In this fact sheet, and in any data from the decennial census or American Community Survey, the term **limited English proficient** refers to any person age 5 and older who reported speaking English "not at all," "not well," or "well" on their survey questionnaire. Persons who speak only English or who report speaking English "very well" are considered proficient in English.

**Language groupings**

**Indo-European languages** include French, Italian, Portuguese, German, Yiddish, other West Germanic languages, Scandinavian languages, Greek, Russian, Polish, Serbo-Croatian, other Slavic languages, Armenian, Persian, Gujarathi, Hindi, and Urdu.

**Asian and Pacific Island languages** include Chinese, Japanese, Korean, Mon-Khmer, Cambodian, Hmong, Thai, Laotian, Vietnamese, and Tagalog.

**Other languages** include Navajo, other Native North American languages, Hungarian, Arabic, Hebrew, and African languages.

**Linguistically Isolated Households**

**Of all of the households in the United States in 2010, 4.6 percent were linguistically isolated, meaning that all persons age 14 and over in the household were LEP.**

In the United States, 4.6 percent of all households (of both natives and the foreign born) were linguistically isolated in 2010, including 24.7 percent of Spanish-speaking households, 16.2 percent of households speaking other Indo-European languages, 26.9 percent of households speaking Asian and Pacific Island languages, and 16.8 percent of households speaking other languages.

**Educational Attainment**

**The number of immigrants in the United States with a college degree increased by 54.8 percent between 2000 and 2010.**

Between 2000 and 2010, the number of foreign-born persons in the United States older than 25 who had a bachelor's or higher degree increased from 5,862,756 to 9,077,204, representing a difference of 54.8 percent. In comparison, the foreign-born, college-educated population grew from 3,103,918 to 5,862,756 between 1990 and 2000, a difference of 88.9 percent.

**The number of immigrants in the United States with less than a high school diploma increased by 14.8 percent between 2000 and 2010.**

Between 2000 and 2010, the number of foreign-born persons older than 25 in the United States who had not completed high school increased from 9,297,557 to 10,673,605, or 14.8 percent. In comparison, the foreign-born population lacking a high school diploma increased from 6,285,122 to 9,297,557 between 1990 and 2000, a difference of 47.9 percent.

**In 2010, 27.0 percent of immigrants in the United States had a college degree, while 31.7 percent did not complete high school.**

In 2010, 27.0 percent of the United States' foreign-born population age 25 and older had a bachelor's or higher degree while 31.7 percent lacked a high school diploma. In comparison, 28.4 percent of native-born persons above age 25 had a bachelor's or higher degree in 2010, and 11.0 percent lacked a high school diploma. In 2000, 24.1 percent of the foreign born in the United States had a bachelor's or higher degree, and 38.7 percent had less than a high school diploma. In

