

From: Hwang, John

Sent: 10/25/2014 4:55:20 PM

To: TTAB E filing

CC:

Subject: U.S. TRADEMARK APPLICATION NO. 85816025 - SLENDERIIX - N/A - Request for
Reconsideration Denied - Return to TTAB

Attachment Information:

Count: 1

Files: 85816025.doc

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

U.S. APPLICATION SERIAL NO. 85816025 MARK: SLENDERIIX	
CORRESPONDENT ADDRESS: TYLER B. JONES ARIIX, LLC 563 W 500 S STE 300 BOUNTIFUL UT 84010-8292	GENERAL TRADEMARK INFORMATION: http://www.uspto.gov/trademarks/index.jsp VIEW YOUR APPLICATION FILE
APPLICANT: Celebrus, LLC	
CORRESPONDENT'S REFERENCE/DOCKET NO: N/A CORRESPONDENT E-MAIL ADDRESS: tyler.jones@ariix.com	

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 10/25/2014

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 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. Allowance of applicant's mark based on the logic of its argument would result in a registry full of similar trademarks differentiated solely based on a blanket disclaimer that its goods are "exclusively marketed by applicant's direct salesforce;" e.g. applicant's logic is somewhat akin to an applicant, not Apple Corp., expecting to be able to obtain the registration of a mark such as "Apples" for mobile phones because it added the disclaimer in its ID that its goods are "sold exclusively through its direct salesforce."

The Trademark Act not only guards against the misimpression that the senior user is the source of the junior user's goods and/or services, but it also protects against "reverse confusion," that is, the junior user is the source of the senior user's goods and/or services. *In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993); *Fisons Horticulture, Inc. v. Vigoro Indust., Inc.*, 30 F.3d 466, 474-75, 31 USPQ2d 1592, 1597-98 (3d Cir. 1994); *Banff, Ltd. v. Federated Dep't Stores, Inc.*, 841 F.2d 486, 490-91, 6 USPQ2d 1187, 1190-91 (2d Cir. 1988).

The overriding concern is not only to prevent buyer confusion as to the source of the goods and/or services, but to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. See *In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt regarding a likelihood of confusion determination is resolved in favor of the registrant. TMEP §1207.01(d)(i); see *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988).

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 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. *See* TMEP §715.04(a).

/jcbh/

John Hwang

Law Office 114

571-272-9452

john.hwang@uspto.gov