

From: Reihner, David

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Subject: U.S. TRADEMARK APPLICATION NO. 85885460 - RH - 54066.00194 - 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. 85885460

MARK: RH



CORRESPONDENT ADDRESS:

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GENERAL TRADEMARK INFORMATION:

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

APPLICANT: Restoration Hardware, Inc.

CORRESPONDENT'S REFERENCE/DOCKET NO:

54066.00194

CORRESPONDENT E-MAIL ADDRESS:

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REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 6/26/2014

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 refusal made final in the Office action dated December 17, 2013, 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 neither resolved 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 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).

Argument for withdrawal of refusal to register and response

The Request for Reconsideration focuses upon the marks of the parties. Applicant asserts in its Request for Reconsideration that its mark, "RH", and the mark of registrant, "RH VINTAGE" in a fanciful script, are not similar because they stand for "something quite different" (Request for Reconsideration, pg. 2, par. 5). Registrant's letters "R.H." in the mark "R.H. VINTAGE" identifies "RON HERMAN, which is the house mark used in connection with a high-end retail clothing store" (Request for Reconsideration, pg. 2, par. 5). And applicant's mark, "RH", "stands for Restoration Hardware, which is the house mark for all goods sold by Applicant" (Request for Reconsideration, pg. 2, par. 5). Correspondingly, purchasers would understand that the commercial impression of each mark is distinct and weighs against any likelihood of purchaser confusion about the sources of the goods caused by the use of the marks.

In any likelihood of confusion determination, two key considerations are the similarity of the marks and similarity or relatedness of the goods. *In re Iolo Techs., LLC*, 95 USPQ2d 1498, 1499 (TTAB 2010). That is, the marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012). The consideration of the similarity of the marks in issue does not involve extraneous material of which purchasers would not necessarily be aware. How marks are used on certain goods or promoted vis-à-vis other trademarks or advertised for sale has no bearing on the present determination of whether the marks of the parties are similar. *In re Emulex Corp.* 6 USPQ2d 1312 (TTAB, 1987). The consideration of whether applicant's "RH" mark and registrant's "R.H. VINTAGE" mark are similar is what must be determined.

When comparing marks, confusion may be likely when a descriptive term is added to another's fanciful mark. Descriptive words are given little weight when determining the similarities between marks. See: *In re The Clorox Company*, 198 USPQ 337 (CCPA, 1978). This is so because descriptive matter, which is disclaimed, is less significant in forming a mark's commercial impression. *In re G.B.I. Tile and Stone Inc.*, 92 USPQ2d 1366 (Fed. Cir. 2009). Here (as applicant stated in its Request for Reconsideration pg. 2, par. 4), "'vintage' refers to a style that dates back to a different historical period." The commercial impression of registrant's mark would be that the source of registrant's goods "R.H." has a line of goods that refer back to a different historical period. It may be inferred that this line of goods would be different in style than registrant's other line or lines of goods that would be identified merely with the letters "R.H." Since the goods of applicant and registrant are similar, and in part identical, potential purchasers would mistakenly believe that the similar goods of the parties, distinguished only by style, when identified by the highly similar marks "RH" and "R.H." originate from the same producer. *In re Infinity Broadcasting Corp. of Dallas*, 60 USPQ2d 1214 (TTAB, 2001). Applicant's attention is also called to the case of *In re Mighty Leaf Tea*, 94 USPQ2d 1257 (Fed. Cir. 2010), in which the standard character mark "ML" was determined to be similar to the script depiction of the letters "ML" over the wording "MARK LEES." Correspondingly, the marks of the parties in issue here are similar, and a likelihood of purchaser confusion about the sources of the goods of the parties would be present when the parties would use their marks to identify their respective goods.

Applicant's argument has been determined to be unpersuasive and the request to withdraw the refusal to register has been denied.

/David C. Reihner/

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