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Subject: U.S. TRADEMARK APPLICATION NO. 86693803 - VERANDA - TMB-7855 - Request for
Reconsideration Denied - Return to TTAB - Message 1 of 5

Attachment Information:

Count: 24

Files: 1-1.jpg, 1-2.jpg, 1-3.jpg, 2-01.jpg, 2-02.jpg, 2-03.jpg, 2-04.jpg, 2-05.jpg, 2-06.jpg, 2-07.jpg, 2-08.jpg,
2-09.jpg, 2-10.jpg, 3-01.jpg, 3-02.jpg, 3-03.jpg, 3-04.jpg, 3-05.jpg, 3-06.jpg, 3-07.jpg, 3-08.jpg, 3-09.jpg, 3-
10.jpg, 86693803.doc

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

U.S. APPLICATION SERIAL NO. 86693803

MARK: VERANDA



CORRESPONDENT ADDRESS:

JOHN S HALE

GIPPLE & HALE

6718 WHITTIER AVE STE 200

MCLEAN, VA 22101-4531

GENERAL TRADEMARK INFORMATION:

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

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APPLICANT: MARBLE SYSTEMS, INC.

CORRESPONDENT'S REFERENCE/DOCKET NO:

TMB-7855

CORRESPONDENT E-MAIL ADDRESS:

gipple.hale@verizon.net

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 10/26/2016

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. §2.63(b)(3); TMEP §§715.03(a)(ii)(B), 715.04(a). The following made final in the Office action dated March 25, 2016 are maintained and continue to be final: Section (d) Refusal – Likelihood of Confusion. See TMEP §§715.03(a)(ii)(B), 715.04(a).

In the present case, applicant's request has not 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.

Specifically, in its September 27, 2016 request for reconsideration, applicant argues, that registrant's "*non-metal building materials for use in building decks; non-metal fencing; non-metal lattices*" do not include the applied-for "*ceramic tiles; ceramic tiles for flooring, facing, lining and coverings; glazed ceramic tiles; mosaic art tiles made of marble; natural stone tiles*" because the term "decks" in the registrant's identification of goods does not include "covered patios or pool areas." Applicant also argues the goods of the registrant are "totally different" because "one does not or would not construct decks, fencing, and lattice of ceramic and/or mosaic tiles."

In the present case, the attached evidence from Merriam-Webster Dictionary, <http://www.merriam-webster.com/dictionary/deck>, and Wikipedia, <https://en.wikipedia.org/wiki/Deck> shows that a *deck* is a "flat a flat floored roofless area adjoining a house" or a "concrete or tile area surrounding a swimming pool" and a *patio* is an "area that adjoins a dwelling." Thus, the registrants "Non-metal building materials for use in building decks" encompasses and applies to building materials used in the building of outdoor areas adjoined to a house or dwelling.

Next, with respect to applicant's and registrant's goods, the question of likelihood of confusion is determined based on the description of the goods stated in the application and registration at issue, not on extrinsic evidence of actual use. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1323, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014) (quoting *Octocom Sys. Inc. v. Hous. Computers Servs. Inc.*, 918 F.2d 937, 942, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990)).

In this case, the identification set forth in the application and registration has no restrictions as to nature, type, channels of trade, or classes of purchasers. Therefore, it is presumed that these goods "travel in the same channels of trade to the same class of purchasers." *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1268, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002)). Further, the evidence demonstrates that the applicant's narrow "*ceramic tiles; ceramic tiles for flooring, facing, lining and coverings; glazed ceramic tiles; mosaic art tiles made of marble; natural stone tiles* are presumed to be encompassed within registrant's broad "*non-metal building materials for use in building decks.*" Specifically, the evidence shows entities commonly offer natural stone and ceramic tiles as an option for non-metal materials that can be used building decks. In addition to the evidence attached to the previous office actions, please see the additional attached evidence:

- Build Direct, <https://www.builddirect.com/p/Kontiki-Interlocking-Deck-Tiles-Elements-Earth-Series>, (entity offering natural stone tiles for building decks)(October 26, 2016);
- Floor & Décor, <https://www.flooranddecor.com/outdoor-tile>, (entity offering ceramic and natural stone tiles as material for outdoor decks)(October 26, 2016)
- Pavers and Decks, <http://www.paversanddecks.com>, (Offering natural stone tiles, namely, travertine, for use in building patios)(October 26, 2016);

Further, where the marks of the respective parties are identical, as in this case, the degree of similarity or relatedness between the goods needed to support a finding of likelihood of confusion declines. See *In re i.am.symbolic, LLC*, 116 USPQ2d 1406, 1411 (TTAB 2015) (citing *In re Shell Oil Co.*, 992 F.2d 1204, 1207, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993)); TMEP §1207.01(a).

Finally, applicant argues its goods are “expensive to purchase and are installed by sophisticated professionals, thereby reducing the likelihood of confusion.” The sophistication of potential consumer is not dispositive. When the relevant consumer includes both professionals and the general public, the standard of care for purchasing the goods is that of the least sophisticated potential purchaser. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1325, 110 USPQ2d 1157, 1163 (Fed. Cir. 2014); *Alfacell Corp. v. Anticancer, Inc.*, 71 USPQ2d 1301, 1306 (TTAB 2004). The additional evidence attached herein corroborates this interpretation. Specifically, the attached internet articles from Tile Lines, <http://www.tilelines.com/design/wainscoting/outdoor-applications/>, (offering instructions and tips for installing tile on outdoor decks and flooring)(October 26, 2016); Daltile, <http://www.daltile.com/inspiration-and-diy/>, (discussing how many homeowners choose natural stone or ceramic tiles for decks)(October 26, 2016); DIY Network, <http://www.diynetwork.com/how-to/rooms-and-spaces/floors/under-foot-outdoor-flooring-buyers-guide>, (listing tile and natural stone as options for homeowners in building their own decks)(October 26, 2016); Tiling Treasure, <http://www.tiling-treasures.com/interlocking-floor-tile.html>, (describing natural stone and ceramic tiles specially designed for exterior use)(October 26, 2016) shows the relevant consumer ranges from the experienced professional to amateur “do-it yourself” homeowners.

Even if consumers of the compared goods could be considered sophisticated and discriminating, it is settled that “even sophisticated purchasers are not immune from source confusion, especially in cases such as the present one involving identical marks and related goods [and/or services].” *In re i.am.symbolic, LLC*, 116 USPQ2d 1406, 1413 (TTAB 2015) (citing *In re Research & Trading Corp.*, 793 F.2d 1276, 1279, 230 USPQ 49, 50 (Fed. Cir. 1986)); see also *In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). The identity of the marks and the relatedness of the goods “outweigh any presumed sophisticated purchasing decision.” *In re i.am.symbolic, LLC*, 116 USPQ2d at 1413 (citing *HRL Assocs., Inc. v. Weiss Assocs., Inc.*, 12 USPQ2d 1819, 1823 (TTAB 1989), *aff’d*, 902 F.2d 1546, 14 USPQ2d 1840 (Fed. Cir. 1990)); see also *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1325, 110 USPQ2d 1157, 1163-64 (Fed. Cir. 2014).

In view of the above, the refusal under Trademarks Act Section 2(d) is maintained. If applicant has already filed a timely notice of appeal with the Trademark Trial and Appeal Board, the Board will be notified to resume the appeal. *See* TMEP §715.04(a).

If no appeal has been filed and time remains in the six-month response period to the final Office action, applicant has the remainder of the response period to (1) comply with and/or overcome any outstanding final requirement(s) and/or refusal(s), and/or (2) file a notice of appeal to the Board. TMEP §715.03(a)(ii)(B); *see* 37 C.F.R. §2.63(b)(1)-(3). The filing of a request for reconsideration does not stay or extend the time for filing an appeal. 37 C.F.R. §2.63(b)(3); *see* TMEP §§715.03, 715.03(a)(ii)(B), (c).

/Kara E. Jackson/


Kara E. Jackson

Examining Attorney

Law Office 120

(571)272-4358

Kara.Jackson@uspto.gov



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Deck

From Wikipedia, the free encyclopedia

Deck may refer to:

Look up **deck** in Wiktionary, the free dictionary.

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3.1 Fictional characters

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3.3 Games and gaming

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4 Sports

5 See also

A level or platform

Buildings and structures

• Deck (bridge), the roadway surface of a bridge

• Deck (building), an outdoor floor attached to a building made of only wood or woodlike

• Another name for a *strow*

Čeština
Dansk
Deutsch
Français
한국어
Íslenska
Nederlands
日本語
Norsk bokmål
Português
Svenska

Edit links

- Another name for a **storey**
- The concrete or tile area surrounding a **swimming pool**
- **Deck arch bridge**, a type of bridge
- **Observation deck**, a platform situated upon a tall architectural structure or natural feature
- **Orthotropic deck**
- **Roof deck**, the framing and sheathing to which roofing material is applied
- **Rooftop deck**, also called a **rooftop terrace**

Vehicles [edit]

- **Deck (ship)**, a floor of a ship
 - The **flight deck** of an aircraft carrier
 - **Gun deck**, a term originally referred to a deck aboard a ship that was primarily used for mounting a cannon
 - **Promenade deck**, a deck found at most passenger ships
 - **Well deck**, a deck that is low than decks fore and aft, usually at the main deck
- **Bus deck**, referring to the number of passenger levels on a **bus**

People [edit]

- **Deck (surname)**
- **Deck McGuire** (born 1989), American baseball player

Art, entertainment, and media [edit]

Fictional characters [edit]

- **Deck Afta**, a character from the anime *Space Runaway Ideon*

Audiovisual equipment [edit]

- **Cassette deck**, a type of tape machine for playing and recording compact cassettes
- **Head unit**
- **Phonograph turntable**
- **Tape deck**, a sound recording and playback device

Games and gaming [[edit](#)]

- [Deck \(cards\)](#), a collection of cards
- [Cama deck](#), a video game system

Journalism [[edit](#)]

- [Deck \(news\)](#), a phrase, sentence or several sentences near the title of an article or story

Stage productions [[edit](#)]


- [Stage \(theatre\)](#)

Sports [[edit](#)]

- [The flat surface of a skateboard](#)

See also [[edit](#)]

- [All pages beginning with "Deck"](#)
- [All pages with titles containing *Deck*](#)
- [Double decker \(disambiguation\)](#)
- [Deque - Double-ended queue](#)

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If an internal link led you here, you may wish to change the link to point directly to the intended article.*

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patio

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patio

noun pa-'tio \ 'pa-tē-, ō also 'pā-l

Simple Definition of PATIO

:
a flat area of ground that is covered with a hard material (such as bricks or concrete), is usually behind a house, and is used for sitting and relaxing

Source: Merriam-Webster's Learner's Dictionary

Full Definition of PATIO

plural

patios

1

:
COURTYARD; *especially*

:
an inner court open to the sky

Examples of PATIO in a sentence

<there's a *patio* in the center of the apartment complex>

Origin and Etymology of PATIO

PATIO Synonyms

Origin and Etymology of PATIO

Spanish

First Known Use: 1828

PATIO Synonyms

Synonyms

close, courtyard, enclosure (*also* inclosure), court, quad, quadrangle, yard

Other Architecture Terms

buttress, casita, cornice, fanlight, garret, lintel, parapet, pilaster, plinth

Phrases related to PATIO

Related Phrases

patio door

PATIO Defined for Kids

patio

noun pa-tio \ˈpa-tē-ō, ˈpā-l\

Definition of PATIO for Students

plural

patios

: an open area next to a house that is usually paved

Learn More about PATIO

Thesaurus: All synonyms and antonyms for *patio*

Spanish Central: Translation of *patio*

Nglish: Translation of *patio* for Spanish speakers

Britannica.com: Encyclopedia article about *patio*

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having a blissful appearance

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The New York Times reports on "Tru...

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When things don't make sense

nasty

An insult from the debate goes viral

swatch, swath

Did Trump say 'swatch' or 'swath'?

debunk

"to expose falseness"

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pathos

path-reversal principle

pathway

-pathy

» » »



WORD GAMES

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Which is a synonym of
hiegmatic?

hot-blooded

stoic

clandestine

flustered



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commonly misspelled words?

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'Breach' vs. 'Breach'

Mind the gap and hold on to your butts



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People used to really hate this word



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These grammarians are going places



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Hot Mess

"The public is a hot mess"



How to Use the Subjunctive in English

If I were you, I'd watch this



Irregardless

It is in fact a real word (but that doesn't mean you should use it).



Weird Plurals

One goose, two geese. One moose, two... moose. What's up



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deck

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¹
deck

noun \ˈdek\

Simple Definition of DECK

:
a flat surface that forms the main outside floor of a boat or ship

:
one of the levels on a bus, ship, etc.

:
one of the seating levels in a sports stadium

Source: Merriam-Webster's Learner's Dictionary

Full Definition of DECK

1
:
a platform in a ship serving usually as a structural element and forming the floor for its compartments

2
:
something resembling the deck of a ship: as
a

Examples of DECK in a sentence

We stood on the *deck* and watched dolphins swim near the ship.

A number of passengers had come *on deck*.

a seat on the streetcar's top *deck*

a cabin on B *deck*

We sat in the lower *deck*.

We ate out on the *deck*.

Origin and Etymology of DECK

Middle English *dekke* covering of a ship, from Middle Dutch **dec* covering, probably from Middle Low German *vordeck*, from *vordecken* to cover, from *vor* for + *decken* to cover akin to Old High

DECK Synonyms

Synonyms
balcony, sundeck, terrace

Related Words

Other Building Terms

batten, cistern, hearth, lath, transom, wainscot

²
deck
verb

Simple Definition of DECK

:
to decorate (something)
:
to knock (someone) down by hitting very hard

floral borders>. **BEAUTIFY** adds to **EMBELLISH** a suggestion of counterbalancing plainness or ugliness <will *beautify* the grounds with flower beds>. **DECK** implies the addition of something that contributes to gaiety, splendor, or showiness <a house all *decked* out for Christmas>. **GARNISH** suggests decorating with a small final touch and is used especially in referring to the serving of food <an entrée *garnished* with parsley>.

Phrases related to DECK

Related Phrases

decked out

hit the deck

observation deck

DECK Defined for Kids

¹
deck

noun \ˈdek\

Definition of DECK for Students

¹
: a floor that goes from one side of a ship to the other

2
: something like the deck of a ship <the *deck* of a house>

3
: a pack of playing cards

²
deck
verb

Definition of DECK for Students

decked

decking

: to dress or decorate especially in a fancy way <The house is *decked* out for the holidays.>

Learn More about DECK

Thesaurus: All synonyms and antonyms for *deck*

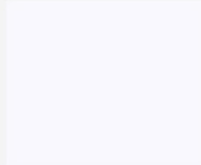
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swatch, swath

Did Trump say 'swatch' or 'swath'?

debunk

"to expose falseness"

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decimal system

decimate

decimating factor

decimeter

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hiegmatic?

stoic
flustered
hot-blooded
clandestine



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'Breach' vs. 'Breach'

Mind the gap and hold on to your butts



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People used to really hate this word



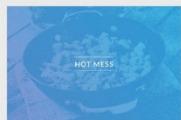
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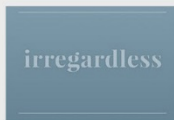
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If I were you, I'd watch this



Irregardless

It is in fact a real word (but that doesn't mean you should use it).

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100se moose moose
ie geese goose geese g
e moose moose mo
ose geese goose gees
100se moose moose
ose geese goose gees

Weird Plurals

One goose, two geese. One moose, two... moose. What's up



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True or False?