

From: Stringer, Daniel

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Subject: U.S. TRADEMARK APPLICATION NO. 87208631 - DECLARATION OF INDEPENDENCE - TMB-7900
- 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. 87208631

MARK: DECLARATION OF INDEPENDENCE



CORRESPONDENT ADDRESS:

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GENERAL TRADEMARK INFORMATION:

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

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APPLICANT: THE ORDER OF THE FOUNDERS AND PATRIOTS O
ETC.

CORRESPONDENT'S REFERENCE/DOCKET NO:

TMB-7900

CORRESPONDENT E-MAIL ADDRESS:

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REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 3/7/2018

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 requirement(s) and/or refusal(s) made final in the Office action dated August 29, 2017 are maintained and continue to be final: Trademark Act Sections 1, 2, and 45 Refusals – Mark is Merely Ornamental. See TMEP §§715.03(a)(ii)(B), 715.04(a). The following requirement(s) and/or refusal(s) made final in the Office action are withdrawn: Trademark Act Sections 1, 2, and 45 Refusals – Goods are Not Goods in Trade. See TMEP §§715.03(a)(ii)(B), 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.

As stated in the previous Office actions, a proper response to the ornamental use refusal includes amending the application to seek registration on the Supplemental Register or amending the application to assert a claim of acquired distinctiveness under Trademark Act Section 2(f). *See* 15 U.S.C. §1052(f).

It is noted that while applicant referenced the possibility of amending the application to assert a claim of acquired distinctiveness, applicant never actually amended the application to assert a claim of acquired distinctiveness.

Applicant is advised though, should applicant assert a claim of acquired distinctiveness under Trademark Act Section 2(f), an allegation of five years' use alone would be insufficient to demonstrate that the applied-for mark has achieved acquired distinctiveness. *See* TMEP §1212.05(a). Actual evidence would be required to show that the mark is perceived as a mark for the relevant goods to establish distinctiveness. *See id.*

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).

Assistance

If applicant has questions regarding this reconsideration action, please telephone or e-mail the assigned trademark examining attorney.

/Daniel Stringer/

Trademark Examining Attorney

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