

THIS DISPOSITION IS  
NOT CITABLE AS  
PRECEDENT OF THE TTAB

Mailed:  
January 17, 2006

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re Elegant Headwear Co., Inc.

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Serial No. 76536428

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Request for Reconsideration

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Myron Amer of Myron Amer, P.C. for Elegant Headwear Co.,  
Inc.

Tejbir Singh, Trademark Examining Attorney, Law Office 106  
(Mary I. Sparrow, Managing Attorney).

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Before Hairston, Drost, and Kuhlke, Administrative  
Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On August 10, 2005, the board affirmed the examining  
attorney's refusal to register applicant Elegant Headwear  
Co., Inc.'s mark BABY'S FIRST under Section 2(d) of the  
Trademark Act. 15 U.S.C. § 1052(d).

Applicant subsequently sought an extension of time to  
request reconsideration, which was granted.

Now, applicant has timely filed a request for  
"Reconsideration of Decision on Ex Parte Appeal Pursuant to

37 C.F.R. § 2.144." In this paper (pp. 1-2), applicant submits:

The decision affirming a Section 2(d) refusal to grant registration of BABY'S FIRST to appellant was based on Registration No. 2,39[6],712, the filing of Section 8 and Section 15 Affidavits for said registration being required on or before October 24, 2006.

Applicant makes of record the enclosed industrial investigator's report that the registrant, Trimfoot Company, is no long[er] using BABY'S FIRST.

Based on said industrial investigator's report, it is respectfully requested that the Section 2(d) refusal based on Registration No. 2,39[6],712 be overruled.

Alternatively, it is requested that the Board suspend proceedings of appellant's application Serial No. 76/536,428 for one month beyond October 24, 2006...

Obviously, a cited registration is presumed valid and an applicant in an ex parte proceeding cannot collaterally attack the cited registration. See In re Dixie

Restaurants, Inc., 105 F.3d 1405, 41 USPQ2d 1531, 1534

(Fed. Cir. 1997):

Dixie's argument that DELTA is not actually used in connection with restaurant services amounts to a thinly-veiled collateral attack on the validity of the registration. It is true that a prima facie presumption of validity may be rebutted... However, the present ex parte proceeding is not the proper forum for such a challenge... Cosmetically Yours, Inc. v. Clairol Inc., 424 F.2d 1385, 1387, 165 USPQ 515, 517 (CCPA 1970)... In fact, Cosmetically Yours held that "it is not open to an applicant to prove abandonment of [a] registered mark" in an ex parte registration proceeding; thus, the "appellant's argument... that [a registrant] no longer uses the registered mark ... must be disregarded." 424 F.2d at 1387, 165 USPQ at 515.

Thus, applicant's request for reconsideration is denied.

Applicant has also requested an extension of almost a year to determine if the registrant files a Section 8 affidavit. We note that even if no affidavit was filed by October 24, 2006, it would not be clear if the registration would be cancelled. Registrant would still have until April 24, 2007, to file the affidavit with a surcharge. There is no reason to further delay this proceeding. Therefore, applicant's request for another extension of time is denied.