

Mailed:

**THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT
OF THE TTAB**

November 22, 2004
GDH/gdh

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **The Language Workshop for Children/Cercle Franco Americain,
Inc.**

Serial No. 75516045

Request for Reconsideration

Charles H Knull of Ullman, Shapiro & Ullman LLP for **The Language
Workshop for Children/Cercle Franco Americain, Inc.**

Toni Y. Hickey, Trademark Examining Attorney, Law Office 115
(Tomas Vlcek, Managing Attorney).

Before **Hohein, Chapman** and **Rogers**, Administrative Trademark
Judges.

Opinion by **Hohein**, Administrative Trademark Judge:

Applicant, by a certificate of mailing dated July 9, 2004, has filed a "MOTION FOR RELIEF FROM ORDER ABANDONING APPLICATION AND REQUEST TO RETURN APPLICATION TO EXAMINER." Such motion is construed as a request for reconsideration of the Board's August 14, 2003 decision, which reversed the refusal to register on the ground of failure of applicant's mark "FOR TOTS" to function as a service mark for its "educational services, namely, providing classes in foreign languages to children and

distributing course material in connection therewith," but affirmed the refusal to register the mark for such services on the ground of mere descriptiveness, including the insufficiency of the evidentiary showing with respect to the claim of acquired distinctiveness.

Applicant's request for reconsideration does not take issue with the Board's decision itself. Instead, such request is premised on its counsel's erroneous belief that, "[b]ased on the partial reversal, ... the application would be restored to the Examiner" for consideration of applicant's October 24, 2003 "Request for Continued Examination of the Application," which requested that the application be amended to the Supplemental Register.

Aside from the fact that applicant's request for reconsideration is untimely under Trademark Rule 2.144 in that such a request "must be filed within one month from the date of the decision," Trademark Rule 2.142(g) specifically provides, in relevant part, that "[a]n application which has been considered and decided on appeal will not be reopened except for the entry of a disclaimer under §6 of the Act of 1946." Applicant's request to amend its application to the Supplemental Register, which raises a new issue as to whether its mark is capable of registration thereon, is thus not permitted after the appeal was decided. See TBMP §1218 (2d ed. rev. 2004).

Accordingly, applicant's request for reconsideration is denied.