

September 14, 2005

THIS OPINION IS NOT CITABLE
AS PRECEDENT OF
THE T.T.A.B.

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Lynda Guber

Serial No. 76469243

Request for Reconsideration

Anthony M. Keats of Keats McFarland & Wilson for Lynda Guber.

Lourdes D. Ayala, Examining Attorney, Law Office 106 (Mary Sparrow, Managing Attorney).

Before Hanak, Hohein and Rogers, Administrative Trademark Judges.

Opinion by Hanak, Administrative Trademark Judge:

On June 22, 2005 Lynda Guber (applicant) filed a Request for Reconsideration asking that this Board reverse its decision of April 22, 2005 in which it affirmed the Examining Attorney's refusal to register CONTACT YOGA for "books and magazines on the subject of meditation and exercise, manuals on the subject of instruction, newsletters featuring

information about exercise, educational books and printed instructional, educational and teaching materials on the subject of meditation and exercise."

Applicant's Request for Reconsideration is denied because it is untimely. Trademark Rule 2.144 requires that any Request for Reconsideration "must be filed within one month from the date of the decision." Applicant's Request for Reconsideration was filed on June 22, 2005 which is two months after the Board's decision of April 22, 2005.

Applicant attempts to justify its delay in filing its Request for Reconsideration because on June 1, 2005 this Board issued a decision permitting applicant to register the same mark (CONTACT YOGA) for different goods. Applicant states that "applicant could not address these apparently irreconcilable differences [between the two decisions] within one month from the issuance of the April 22 Decision." (Applicant's Request for Reconsideration page 1).

Two comments are in order. First, applicant has not made "a showing of sufficient cause" for this Board to grant applicant a delay in filing its Request for Reconsideration. The issue in both cases was whether the mark CONTACT YOGA was merely descriptive pursuant to Section 2(e)(1) of the Trademark Act. However, it is fundamental that mere

descriptiveness is not judged in the abstract, but rather is judged in relationship to the goods or services for which the mark is sought to be registered. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 216 (CCPA 1978). The fact that this Board found that the term CONTACT YOGA was merely descriptive of one set of goods and yet was not merely descriptive of a different set of goods is by no means inconsistent, and it certainly does not justify applicant's delay in seeking reconsideration of this Board's decision of April 22, 2005.

Second, in any event, this Board is convinced that both decisions are correct on their merits. Thus, even if we were to reconsider our decision of April 22, 2005 we would reject applicant's Request for Reconsideration on its merits.

Decision: The Request for Reconsideration is denied.