

**THIS DISPOSITION  
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OF THE T.T.A.B.**

Paper No. 20  
HRW

10/4/00

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re 24 Hour Fitness, Inc.

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Serial No. 75/161,148

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Request for Reconsideration

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Donald L. Beeson for 24 Hour Fitness, Inc.

Steven R. Fine, Trademark Examining Attorney, Law Office  
107 (Thomas Lamone, Managing Attorney).

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Before Hairston, Wendel and Holtzman, Administrative  
Trademark Judges.

Opinion by Wendel, Administrative Trademark Judge:

The Board, in its decision of June 21, 2000, affirmed the refusal to register under Section 2(e)(1) and found the evidence submitted by applicant insufficient to demonstrate acquired distinctiveness under Section 2(f). Applicant, on July 20, 2000, has filed a request for reconsideration with respect to the Board's ruling on the insufficiency of the evidence to show acquired distinctiveness. Applicant

requests that the Board either reverse its decision with respect to the 2(f) evidence or, alternatively, modify its decision to the extent that the application would be remanded to the Examining Attorney so that applicant might submit additional evidence with respect to the separate use of the 24 HOUR and circle design.

While we have carefully considered applicant's arguments, we remain of the view that the evidence of record at the time of appeal is insufficient to establish that applicant's 24 HOUR and circle design has acquired distinctiveness. There is no dispute that the 24 HOUR and circle design portion of the composite mark shown in the applicant's evidence is not so integrated with the words FITNESS or NAUTILUS as to be incapable of creating a separate commercial impression. The issue, however, is whether applicant has promoted and/or separately used the 24 HOUR circle design, such that it has in fact become recognized by purchasers as an independent indication of source. This is the type of evidence necessary to establish acquired distinctiveness under Section 2(f). While the assertion of a 2(f) claim is not foreclosed, the evidence before us at the time of appeal is simply insufficient.

Although applicant states that it is prepared to submit additional evidence showing use of the 24 HOUR circle design in other contexts as well as recent separate use on the Internet, the present case must be decided on the evidence of record at the time of the appeal. If applicant wishes to rely upon more recent promotion and usages of its 24 HOUR circle design, applicant's recourse is to file a new application claiming acquired distinctiveness under Section 2(f) based on this new evidence.

Accordingly, the Board's decision with respect to the insufficiency of the evidence presented under Section 2(f) stands and applicant's alternative request for remand is denied.

P. T. Hairston

H. R. Wendel

T. E. Holtzman

Administrative Trademark Judges,  
Trademark Trial and Appeal Board

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