

THIS DISPOSITION IS  
NOT CITABLE AS  
PRECEDENT OF THE  
TTAB

Mailed:  
28 June 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

---

Trademark Trial and Appeal Board

---

In re Advertising Marketing Services, Inc.

---

Serial No. 76554285

---

Request for Reconsideration

---

Eric J. von Vorys of Shulman Rogers Gandal Pordy & Ecker,  
P.A. for Advertising Marketing Services, Inc.

Michael Webster, Trademark Examining Attorney, Law Office  
102 (Thomas V. Shaw, Managing Attorney).

---

Before Grendel, Rogers, and Drost, Administrative Trademark  
Judges.

Opinion by Drost, Administrative Trademark Judge:

On January 12, 2006, we affirmed the examining  
attorney's refusal to register applicant's mark on the  
ground that applicant must disclaim the merely descriptive  
term "Merchandiser." 15 U.S.C. §§ 1052(e)(1) and 1056.

The decision also provided that if applicant submitted an

appropriate disclaimer of the word "Merchandiser" within thirty days of the mailing date of the decision, the refusal to register would be set aside.

On February 13, 2006, applicant submitted an email communication that requested that the application be amended to indicate that "'MERCHANDISER' has become distinctive of the goods/services through the applicant's substantially exclusive and continuous use in commerce for at least the five years immediately before the date of this statement."<sup>1</sup>

Inasmuch as the paper was filed within one month of the board's decision and the examining attorney does not have jurisdiction of the application, we will consider the filing to be a request for reconsideration. 37 CFR § 2.144 ("Any request for rehearing or reconsideration, or modification of the decision, must be filed within one month from the date of the decision"). However, the communication only requests that the application be amended to indicate that the term "Merchandiser" has acquired distinctiveness. Trademark Rules provide that:

---

<sup>1</sup> While the board permits and encourages the filing of documents electronically (37 CFR § 2.126(c)), applicant did not use the board's ESTTA system (<http://estta.uspto.gov>). 37 CFR § 2.2(g) ("ESTTA means the Electronic System for Trademark Trials and Appeals"). Any further electronic correspondence intended for the board must be filed by using the ESTTA system.

An 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 or upon order of the Director, but a petition to the Director to reopen an application will be considered only upon a showing of sufficient cause for consideration of any matter not already adjudicated.

37 CFR § 2.142(g). Applicant's communication, to the extent that it is a request for reconsideration, is denied. Because we have construed applicant's filing as a request for reconsideration, the time to file any disclaimer has been reset, and applicant may file a disclaimer within thirty days of the mailing date of this decision on reconsideration.

If applicant did not intend its filing to be a request for reconsideration, but instead a request for reopening, we add that the Board is without authority to remand the case for further prosecution. See TBMP § 1218 (2d ed. rev. 2004) ("An application may not be 'reopened,' that is, an applicant may not amend its application, or submit additional evidence, at this stage, except in two very limited situations." See 37 CFR § 2.142(g)).

Entirely aside from the merits of appellant's request, the Board has no jurisdiction under the Trademark Rules of Practice to remand an application to the Examining Attorney after a final decision has been rendered where the purpose of such remand would be to reopen the application.

In re Johanna Farms, Inc., 223 USPQ 459, 460 (TTAB 1984).

**Ser. No.** 76554285

Inasmuch as applicant is not submitting a disclaimer, only the Director can reopen prosecution of this application. The decision dated January 12, 2006 stands.