

**THIS OPINION IS NOT
A PRECEDENT OF
THE T.T.A.B.**

Mailed:
November 24, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re S.A. Establecimientos Vitivinícolas Escorihuela

Serial No. 78967315

Request for Reconsideration

Julie B. Seyler of Abelman, Frayne & Schwab for S.A.
Establecimientos Vitivinícolas Escorihuela.

Michael Litzau, Trademark Examining Attorney, Law Office
104 (Chris Doninger, Managing Attorney).

Before Rogers, Zervas and Ritchie de Larena, Administrative
Trademark Judges.

Opinion by Zervas, Administrative Trademark Judge:

On October 17, 2008, S.A. Establecimientos
Vitivinícolas Escorihuela ("applicant") filed a request for
reconsideration of the Board's decision issued on September
19, 2008, which affirmed the examining attorney's final
refusal under Section 2(d) of the Trademark Act to register



the mark . The Board also affirmed the examining attorney's requirements for a foreign registration in accordance with Trademark Act § 44(e), 35 U.S.C. § 44(e), and for a specimen of use that supports applicant's assertion under Trademark Act § 1(a), 35 U.S.C. § 1(a). (The application is based on both Section 1(a) and Section 44(e).)¹

As grounds for its request for reconsideration of the Board's Section 2(d) refusal, applicant points out (as it had in briefing the case) that it has a prior registration for the mark GASCON. According to applicant, this evidence "establishes Applicant's goodwill and continuous use of the trademark GASCON in commerce for over 10 years." Request at p. 2. First, this is reargument of a point that was raised in applicant's appeal brief and therefore not a proper subject of a request for reconsideration. See discussion below regarding reargument in a request for reconsideration. Second, applicant has not established the extent of association, if any, by the consuming public with applicant of the term GASCON and there is no proof of any

¹ We note and now correct an error in the original decision's discussion of these two requirements. Specifically, on page ten of the decision, in the fifth line, the words "the examining attorney" are deleted and replaced with "applicant."

goodwill associated therewith or of continuous use of the registered mark in commerce.

Applicant has also challenged the Board's weighing of the GASCON component of its mark, consideration of the term DON, and refusal to accept applicant's evidence untimely submitted with its appeal brief. The purpose of reconsideration is to point out errors made by the Board in making its decision, not to merely reargue the case or ask the Board to reweigh the evidence:

A motion that merely republishes the reasons that had failed to convince the tribunal in the first place gives the tribunal no reason to change its mind. It's as if the movant, when he appealed, had filed two copies of his appeal brief, and when his appeal was rejected asked us to read the second copy. Reconsideration is not an appropriate forum for rehashing previously rejected arguments

Ahmed v. Ashcroft, 388 F.3d 247, 249 (7th Cir. 2004)

(citations and internal quotations omitted. See also *In re Squaw Valley Development Co.*, 80 USPQ2d 1264, 1268 (TTAB 2006) ("The purpose of a request for reconsideration is to point out errors made by the Board in reaching its decision, based on the evidence of record and the prevailing authorities. It is not merely to allow either the applicant or the examining attorney to reargue the case.") The basis for the Board's decision is clearly articulated and we do not find any error in our analysis or

in our decision. While we will not repeat applicant's arguments in detail, we note that in our decision we recognized that GASCON is in applicant's mark, but pointed out that "by including DON MIGUEL in the manner it has, applicant's mark still suggests an association with or sponsorship by registrant." Decision at 7. With regards to the term DON, DON must not be considered alone and discounted, but in connection with the term MIGUEL and, more specifically, as part of the composite DON MIGUEL, as the Board did in its decision. In other words, it is significant not that the marks share the term DON or the term MIGUEL, but that they share the composite DON MIGUEL.

In view of the foregoing, applicant's request, inasmuch as it pertains to the Section 2(d) refusal, is denied.

Turning to the examining attorney's requirements, applicant maintains that it filed a copy of the Section 44(e) registration four days prior to the date of the Board's decision. First, while applicant did file the Section 44(e) registration, it did not include an English translation thereof, as required by the examining attorney in each of his Office actions.² Trademark Rule

² Applicant stated in its submission of the Section 44(e) registration that "The signed English translation will follow."

§2.34(a)(3)(ii), 37 C.F.R. §2.34(a)(3)(ii), provides that "[i]f the foreign registration is not in English, the applicant must provide a translation." See also TMEP §1004.01(b). Accordingly, applicant has not complied in full with the examining attorney's requirements regarding the Section 44(e) registration. Second, all requirements not the subject of an appeal should be complied with prior to the appeal. See Trademark Rule 2.142(c). In this case the appeal was filed and briefed without applicant having complied with the requirement. Submission of the registration under such circumstances should have been accompanied with a request for suspension of the appeal and remand of the application to the examining attorney, so that the submitted registration could have been considered. See Trademark Rule 2.142(d). Applicant's request for reconsideration, inasmuch as it pertains to the examining attorney's requirement regarding the Section 44(e) registration, is also denied.

Finally, we point out that applicant's request for reconsideration does not address the examining attorney's requirement for a specimen of use that supports applicant's

Despite its promise to send the translation two months ago, it has not done so but rather requested that "the refusal on this ground be reversed." Request for reconsideration at p. 5.

Ser No. 78967315

Section 1(a) basis for registration. Therefore, our
affirmance of the Section 1(a) specimen requirement stands.

Applicant's request for reconsideration is denied.