

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

Mailed: December 7, 2007

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

DBC, LLC

v.

Renaissance Herbs, Inc.

Opposition No. 91161992
to application Serial No. 78262554
on reconsideration

Ronald Spuhler of McAndrews, Held & Malloy, Ltd. for DBC,
LLC.

Richard Sybert of Gordon & Rees LLP for Renaissance Herbs,
Inc.

Before Walters, Bucher and Cataldo,
Administrative Trademark Judges.

Opinion by Cataldo, Administrative Trademark Judge:

On October 22, 2007, the Board issued a final decision in the above-captioned proceeding. In our October 22, 2007 decision, we granted opposer's May 4, 2006 motion to extend its testimony period, thus allowing opposer until July 8, 2006 in which to take the testimony deposition of its officer Mr. Bryan Davis and submit notices of reliance upon

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the registrations resulting from its pleaded applications.¹ However, opposer filed its notice of reliance upon Registration No. 3105298 on July 21, 2006, and thereafter filed its notice of reliance upon Registration No. 3104280 on August 23, 2006. As a result, we found that opposer's notices of reliance upon its resulting registrations were untimely and thus would be given no further consideration. We further deemed moot opposer's motion to amend its notice of opposition to plead ownership of such resulting registrations, as well as applicant's motion to strike opposer's untimely notices of reliance thereupon. In consequence thereof, and further because opposer failed to introduce any other admissible testimony or evidence that it has made any use of its asserted mark, we dismissed the opposition on the ground that opposer failed to establish its priority, and thus could not prevail on its claim of likelihood of confusion.

On November 20, 2007, opposer timely filed a motion for reconsideration of that decision. See Trademark Rule 2.129(c). Applicant has timely filed a brief in opposition thereto.² See *Id.*

¹ Opposer, in any event, did not take the testimony deposition of Mr. Davis.

² We note that the applicable Trademark Rules of Practice make no provision for the filing of a reply brief on a request for reconsideration of a decision issued after final hearing. See Trademark Rule 2.129(c).

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In its motion for reconsideration, opposer "requests that the Board treat the Motion to Amend as a request to make the registrations of record by extending the testimony period, based on the briefing in the May 2006 Motion for extension of time, which the Board has granted" (motion, p. 5). In other words, opposer requests that we construe its motion to amend the pleading as a further motion to make its registrations of record, and consider such registrations to be of record for purposes of establishing opposer's priority herein.

It has often been stated that the premise underlying a request for rehearing, reconsideration, or modification under Trademark Rule 2.129(c) is that, based on the evidence of record and the prevailing authorities, the Board erred in reaching the decision it issued. See TBMP §544 (2d ed. rev. 2004) and the authorities cited therein. The request may not be used to introduce additional evidence, nor should it be devoted simply to a reargument of the points presented in the requesting party's brief on the case. See *Amoco Oil Co. v. Amerco, Inc.*, 201 USPQ 126 (TTAB 1978). Rather, the request normally should be limited to a demonstration that, based on the evidence properly of record and the applicable law, the Board's ruling is in error and requires appropriate change. See, for example, *Steiger Tractor Inc. v. Steiner Corp.*, 221 USPQ 165 (TTAB 1984), *different results reached*

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on reh'g, 3 USPQ2d 1708 (TTAB 1984). *Cf. In re Kroger Co.*, 177 USPQ 715, 717 (TTAB 1973).

In this case, opposer points to no error on the part of the Board in our October 22, 2007 decision on final hearing. Rather, opposer disagrees with the result reached therein, and reargues points previously raised in support of its contention that we should consider its registrations to be of record. As a result, we remain of the opinion that our October 22, 2007 decision is correct.

Accordingly, opposer's motion for reconsideration is denied.