Commissioner of Patents and Trademarks
Patent and Trademark Office (P.T.O.)

IN RE FERRERO S.P.A.
Serial No. 73/748,088
April 22, 1992

Raymond A. Kurz for applicant

Jerry L. Price

Senior Examining Attorney

***1** Law Office 14

(R. Ellsworth Williams, Managing Attorney)

Before Manbeck

Commissioner

Comer

Deputy Commissioner

Samuels

Assistant Commissioner

Sams

Chairman

Rice

Member

Opinion by Samuels

Assistant Commissioner

Request for Reconsideration

In a decision dated November 25, 1991, the Board reversed the Examining Attorney's refusal to register the mark EXTRA MILK-MILK CHOCOLATE for candy on the Supplemental Register. The Examining Attorney has requested reconsideration of the Board's decision. Applicant has opposed the request for reconsideration citing In re

McKee Baking Co., 219 USPQ 759, 760 (TTAB 1983), where the Board found that "it is a not proper procedure for an Examining Attorney to seek reconsideration of a decision rendered by the Board."

The CCPA has specifically upheld the practice of patent examiners requesting reconsideration of the Board of Appeals (now the Board of Patent Appeals and Interferences). In re Schmidt, 377 F.2d 639, 642, 153 USPQ 640, 642 (CCPA 1967). "The Patent Office must have the flexibility to reconsider and correct prior decisions that it may find to have been in error." In re Borkowski, 505 F.2d 713, 718, 184 USPQ 29, 33 (CCPA 1974) (quoting Schmidt with approval). There is no legal reason to deny the Office the same flexibility to correct possibly erroneous decisions of this Board in the same manner. Therefore, In re McKee Baking Co., supra, is expressly overruled.

The applicant has one (1) month from the date of this decision to respond to the merits of the Examining Attorney's request for reconsideration.

Harry F. Manbeck, Jr.

Commissioner

Douglas B. Comer

Deputy Commissioner

Jeffrey M. Samuels

Assistant Commissioner

J. David Sams

Chairman

Janet E. Rice

Member

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