

TAB

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Applicant : Capo, Inc.  
Trademark : ACCENTS John M. Gartner  
Serial No. : 75/593,680 Trademark Attorney  
Filing Date : November 23, 1998 Law Office 102

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Sir:

**NOTICE OF APPEAL**  
**UNDER 37 C.F.R. § 2.141**

PLEASE TAKE NOTICE that Applicant hereby appeals to the Trademark Trial and Appeal Board from the final rejection of the Trademark Attorney, dated April 3, 2002.

A check in the amount of \$100, representing the appeal fee, is enclosed.

02 OCT 15 PM 5:30  
TRADEMARK TRIAL AND APPEAL BOARD

10/11/2002 ZCARRITH 00000003 75593680

01 FC:378 100.00 BP

Dated: October 3, 2002

Respectfully submitted,

  
\_\_\_\_\_  
Vincent A. Sireci  
Morgan, Lewis & Bockius LLP  
101 Park Avenue  
New York, New York 10178

Attorneys for Applicant

TRADEMARK LAW OFFICE 102

Serial Number: 75/593680

Mark: ACCENTS

\*\*Please Place on Upper Right Corner\*\*

\*\*of Response to Office Action ONLY \*\*

Dkt.

10-03-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #26

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Capo, Inc.  
Trademark : ACCENTS John M. Gartner  
Serial No. : 75/593,680 Trademark Attorney  
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Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Sir:

REQUEST FOR RECONSIDERATION

Applicant hereby responds to the Office Action dated April 3, 2002, in connection with the above-pending application.

Reconsideration is respectfully requested of the refusal to register Applicant's trademark pursuant to Trademark Act Section 2(d), 15 U.S.C. § 1052(d), on the ground of confusing similarity to the trademark shown in U.S. Registration No. 1,835,284 (SOLAR ACCENTS). Applicant once again respectfully submits that there is no likelihood of confusion with the cited mark.

Likelihood Of Confusion Refusal

Applicant is seeking to register the trademark ACCENTS for sunglass cords and related accessories for sunglasses, namely, cases and repair kits comprised of a screwdriver and screws, in

international class 9. The cited registration, SOLAR ACCENTS, is for sunglasses in international class 9.

Applicant submits that there is no likelihood of confusion with the cited mark. First, the marks at issue look different and have different connotations. Second, the goods at issue are different.

In determining likelihood of confusion under Section 2(d), the Examining Attorney must base his determination on the goods as described in the application or registration cited against it, T.M.E.P. § 1207.01, and his inquiry is whether the goods are so related that the consuming public is likely to believe that one's goods emanates from or are sponsored by the other. In re Hal Leonard Publishing Corp., 15 U.S.P.Q.2d 1574, 1575 (T.T.A.B. 1990). Competition is not necessary, but if there is no competition, confusion is much less likely. Time, Inc. v. T.I.M.E., Inc., 102 U.S.P.Q. 275, 283 (S.D. Cal. 1954). There is no monopoly in a mark as applied to all goods or services. Anheuser-Busch, Inc. v. Major Mud & Chemical Co., Inc., 221 U.S.P.Q. 1191 (T.T.A.B. 1984).

Applicant has reviewed the attachments included by the Examining Attorney referencing a number of registrations by third-parties for both sunglasses and sunglass accessories. Applicant submits that it is the combination of the visual and phonetic differences in the marks at issue, coupled with the differences in

goods, that serve to distinguish the marks and prevent confusion. Thus, the citation to third party marks has little evidentiary relevance to the instant matter.

Applicant's mark is ACCENTS while the cited registration is SOLAR ACCENTS. Although, as the Examining Attorney points out, the term "ACCENTS" is referenced in each of the marks at issue, the term "SOLAR" is not merely incidental and does visually distinguish the cited registration from Applicant's mark. Moreover, the marks produce different sounds when they are pronounced. These differences effect a unique commercial impact for each mark precluding any confusion among consumers. Applicant submits that there is no likelihood of confusion between the cited registration and Applicant's mark due to the difference in appearance, connotation and sound of the marks. In re Electrolyte Laboratories, Inc., 929 F.2d 645, 16 U.S.P.Q.2d 1239, 1240 (Fed. Cir. 1990). (K+ and design for dietary potassium supplement not likely to be confused with K+EFF (stylized) for dietary potassium supplement).

In the present case, Applicant's goods, sunglass cords and related accessories for sunglasses, namely, cases and repair kits comprised of a screwdriver and screws, do not compete with the goods of the cited registration, namely, sunglasses, so confusion is not likely.

The Examining Attorney has characterized Applicant's goods generally as being similar and traveling in the same trade channels as the goods of the cited registration. Products and services which fit into the same general broad categories, however, are not necessarily related. See, e.g., In re Quadram Corp., 228 U.S.P.Q. 863, 865 (T.T.A.B. 1985) (computers); In re British Bulldog, Ltd., 224 U.S.P.Q. 854, 856 (T.T.A.B. 1984) (wearing apparel); Mason Tackle Co. v. Victor United, Inc., 216 U.S.P.Q. 197, 203 (C.D. Cal. 1982) (sporting goods); Astra Pharm. Prods., Inc. v. Beckman Instr., Inc., 220 U.S.P.Q. 786, 790, 792 (1st Cir. 1983) (medical products).

Thus, in the present case, rather than characterizing the respective goods generally in the broad and diverse field of sunglasses and accessories, the specific goods at issue should be compared, and the analysis of likelihood of confusion should be weighed in light of the differences in the appearance of the marks. Such comparison reveals that the likelihood of consumer confusion with regard to the marks at issue is low.

Accordingly, it is respectfully requested that the Examining Attorney withdraw his citation of Reg. No. 1,835,284.

If any fee is deemed necessary in connection with this

response, please charge Deposit Account No. 08-2776.

Respectfully submitted,

Dated: October 3, 2002

  
\_\_\_\_\_  
Vincent A. Sireci  
Morgan, Lewis & Bockius LLP  
101 Park Avenue  
New York, New York 10178  
(212) 209-6000

Attorneys for Applicant

I hereby certify that this correspondence is being deposited with the United States Postal Service as "Express Mail" in an envelope addressed to Commissioner of Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

on \_\_\_\_\_

Name \_\_\_\_\_

Signature \_\_\_\_\_

Express Mail No. \_\_\_\_\_

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant : Capo, Inc. John M. Gartner  
Serial No. : 75/593,680 Trademark Attorney  
Filed : November 23, 1998 Law Office 102  
Trademark : ACCENTS  
International Class : 009

New York, New York  
October 3, 2002

Trademark Trial and Appeal Board  
Box TTAB Fee  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

**EXPRESS MAIL CERTIFICATE OF MAILING**

Dear Sir:

I hereby certify that this correspondence is being deposited with the United States Postal Service on the date shown below as Express mail in an envelope addressed to Trademark Trial and Appeal Board, Box TTAB Fee, 2900 Crystal Drive, Arlington, Virginia 22202-3513, or (ii) are being transmitted to the U.S. Patent & Trademark Office in accordance with 37 CFR § 1.6(d).

DATE: October 3, 2002

NAME: Rita Robkoff Akgun

SIGNATURE: 

EXPRESS MAIL LABEL NO. EL772830752US

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C O U N S E L O R S   A T   L A W

10-03-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #26

Vincent A. Sireci  
(212) 309-2117  
vsireci@morganlewis.com

October 3, 2002

**VIA EXPRESS MAIL**

Trademark Trial and Appeal Board  
Box TTAB Fee  
2900 Crystal Drive  
Arlington, Virginia 22203-3513

Re: ACCENTS, Serial No. 75/593,680  
Our Ref: 56137-5037

Dear Madam:

In connection with the above-referenced application, we enclose a Notice of Appeal, together with a check in the amount of \$100 for the filing fee. We have also attached a copy of a Request for Reconsideration as filed today with the Commissioner for Trademarks.

Any deficiency or overpayment should be debited from or credited to Deposit Account No. 08-2776.

Thank you for your assistance with this matter.

Sincerely,

  
Vincent A. Sireci

VAS  
Enclosures

02 OCT 16 PM 9:20  
TRADEMARK TRIAL AND  
APPEAL BOARD