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

Proceeding	79144067
Applicant	Vitakraft-Werke WÃ¼hrmann & Sohn GmbH & C
Applied for Mark	RING GO
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application of	)	
	)	
Vitakraft-Werke Wührmann & Sohn GmbH & Co. KG	)	SETH A. RAPPAPORT
	)	Trademark Examining Attorney
Serial No.: 79/144,067	)	Law Office 104
	)	
Filed: December 18, 2013	)	
	)	
Mark: RING GO	)	
	)	

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
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APPELLANT'S BRIEF

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I. INTRODUCTION

Further to the Notice of Appeal filed on September 15, 2015, Applicant Vitakraft-Werke Wührmann & Sohn GmbH & Co. KG[1] ("hereinafter referred to as "Appellant") appeals the Examining Attorney's refusal to register the trademark in Application Serial No. 79/144,067 filed December 18, 2013 as to the goods identified in Class 18, and respectfully requests that the Trademark Trial and Appeal Board reverse the Examining Attorney's decision and allow the mark the proceed to registration.

II. APPELLANT'S TRADEMARK

Appellant seeks registration on the Principal Register of its Mark RING GO for the following goods: Dog leashes; dog collars; harness for animals, in International Class 18.

III. PROCEDURAL SUMMARY

Appellant's mark, filed under Section 66(a) of the Act, was examined and initially provisionally refused registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d), because of a potential likelihood of confusion with pending Application Serial No. 85/223,979 which preceded the filing date of the Appellant's application. This Office Action was issued on April 1, 2014. Appellant challenged this refusal in a response to the Office Action filed on September 29, 2014. The Examining Attorney at the time was Gene V.J. Maciol, II.

The applied-for mark was refused registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d), because of a likelihood of confusion with U.S. Registration No. 4,585,793 for the mark RINGO issued by the Examining Attorney in a second Office Action dated October 29, 2014. Appellant challenged this refusal in a response to the Office Action filed on March 16, 2015. The Examining Attorney at the time was also Gene V.J. Maciol, II.

The refusal was maintained in a Final Office Action by the Trademark Examining Attorney with respect to U.S. Registration No. 4,585,793 for the mark RINGO for the goods

[1] It is noted that Appellant Vitakraft-Werke Wührmann & Sohn GmbH & Co. KG has changed its name to Vitakraft pet care GmbH & Co. KG. The USPTO records await updating from WIPO accordingly.

"toys, namely, toy vehicles, plush toys, stuffed toys, toy watches, toy musical instruments, toy banks, bath tub toys, **pet toys**, flying discs, skateboards, balls, sports balls, and inflatable bath, swimming and ride-on toys; games, namely, jigsaw puzzles, playing cards, card games and board games," in International Class 28. It is noted that the Examining Attorney Seth A. Rappaport assumed prosecution of the present application at the issuance of the Final Office Action.

Appellant filed a Notice of Appeal of the Final Office action on September 15, 2015. Multiple extensions of the appeal brief deadline were requested by the Appellant and granted by the Board to enable Appellant to negotiate and obtain a Consent Agreement from the Registrant, with a final deadline to submit its brief on July 5, 2016.

IV. THE EXAMINING ATTORNEY'S REFUSAL

The Examining Attorney has refused registration of Appellant's mark under Section 2(d) of the Act, U.S.C. § 1052(d), based upon the conclusion that the Appellant's Mark, RING GO, is identical to the Registrant's Mark with respect to sound and is highly similar to Registrant's Mark with respect to appearance (see Final Office action, page 2, paragraphs 4 and 5). The Examining Attorney also concludes that the respective goods are related to support a likelihood of confusion refusal. Specifically, the Examining Attorney concluded that "pet toys" of the Registrant's mark and the goods of the Appellant are of a kind that may emanate from a single source under a single mark (see Final Office action, page 3, paragraph 2). Evidence in support of this conclusion is attached to the Final Office Action by the Examining Attorney.

V. STATEMENT OF THE ISSUES

1. Whether there is a likelihood of confusion between Appellant's Mark (RING GO) and the Mark of Registration No. 4,585,793 (RINGO).

2. Whether the Examining Attorney's refusal to register was correct.

VI. ARGUMENT

A. The Standard of Review

On appeal, the Appeal Board's duty is to determine whether the underlying substantive refusal to register was correct. (*See, e.g., In re Sunmarks, Inc.*, 32 USPQ2d 1470, 1472 (TTAB 1994) (Section 20 of the Trademark Act, 15 U.S.C. §1070, gives the Board the authority and duty to decide an appeal from an adverse final decision of the Examining Attorney.")) Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely that a potential customer would be confused, mistaken or deceived as to the source of the goods and/or services of the applicant and registrant. (*See* 15 U.S.C. §1052(d)).

The long-standing test for likelihood of confusion used by the USPTO is set forth in *In re E.I. DuPont de Nemours & Co.,* 476 F.2d 1357, 177 U.S.P.Q. 563 (CCPA 1973). The factors to be considered are the following: 1) the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression; 2) the similarity or dissimilarity in the nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use; 3) the similarity or dissimilarity of established, likely to continue trade channels; 4) the condition under which and buyers to whom sales are made, i.e., impulse vs. careful, sophisticated buyers; 5) the fame of the prior mark (sales, advertising, length of use); 6) the number and nature of similar marks in use on similar goods; 7) the nature and etent of any actual confusion; 8) the length of time and conditions under which there as been concurrent use without evidence of actual confusion; 9) the variety of goods on which a mark is or us not used; 10) the market interface between Applicant and the owner of a prior mark; 11) the extent to which a prior user has a right to exclude others from use of its mark on its goods; 12) the extent of potential confusion, i.e., whether *de minimus* or substantial; and 13) any other probative factors.

All of the above factors point to the sole question: whether the honest use of a mark to be registered would be likely to cause confusion in trade or to likely deceive a purchaser. It is the Examining Attorney's burden to establish that the involved goods (or services) are related enough to support a finding of likelihood of confusion. *See, e.g., In re White Rock Distilleries Inc.,* 92

U.S.P.Q.2d 1282, 1285 (TTAB 2009). Further, in determining whether there is a likelihood of confusion, it has long been held that a mere possibility of confusion will not create a likelihood of confusion, and it must be further shown that confusion is probable. *See, e.g., Bongrain International (American) Corporate v. Delice de France, Inc.*, 1 U.S.P.Q.2d 1775 (Fed. Cir. 1987) [emphasis added].

B. Summary

The Trademark Examining Attorney's refusal should be reversed because the Appellant's Mark has a different visual and commercial impression from the cited registration. RINGO is simply not similar to the applied-for mark RING GO, and the refusal is based on an entirely improper dissection of the Registrant's Mark. The refusal likewise places too much emphasis on the "RING" portion of the cited Mark while ignoring the evidence of record that the Registrant's mark cannot be dissected in such a manner, nor that the relevant consumers would engage in such dissection and/or interpret the Registrant's Mark in such a manner.

C. Appellant's RING GO mark is not Similar to RINGO

The Appellant respectfully disagrees with the Examining Attorney's conclusion and does not believe that there is a likelihood of confusion between the mark of the cited registration and that of the present application if the present application were to proceed to registration. The Appellant strongly requests reconsideration of the Examining Attorney's refusal to register the mark on the grounds that the RINGO mark is likely to cause confusion, to cause mistake or to deceive pursuant to §2(d) of the Trademark Act. It is submitted that the mark sought to be registered is not confusingly similar to the mark in U.S. Registration No. 4585793 owned by Richard Starkey AKA Ringo Starr (the famous former member of The Beatles), but rather the applied-for mark might, at best, call to mind the RINGO mark. Merely calling to mind is an improper test and "calling to mind" is not enough to support a refusal to register. It is unlikely that consumers familiar with the RINGO trademark of the Registrant, when confronted with

goods sold under the RING GO trademark of the Appellant, would be likely to believe that those goods originate with or are sponsored by the Registrant.

As noted above, the Appellant is seeking to register the mark RING GO for "Dog leashes; dog collars; harness for animals," in International Class 18. The issue of likelihood of confusion typically revolves around the similarity or dissimilarity of the marks and the relatedness of the goods and/or services. The points of comparison for a word mark are appearance, sound, and meaning or connotation. Similarity of the marks in one respect – sight, sound or meaning – will not automatically result in a finding of a likelihood of confusion even if the goods are identical or closely related. Rather, the rule is that taking into account all of the relevant facts of a particular case, similarity as to one factor alone may be sufficient to support a holding that the marks are confusingly similar (emphasis added). *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1042 n.4 (TTAB 1987). The Court of Appeals has provided additional guidance:

> The basic principle in determining confusion between marks is that marks must be compared in their entireties and must be considered in connection with the particular goods or services for which they are used (citations omitted). It follows from that principle that likelihood of confusion cannot be predicated on dissection of a mark, that is, on only part of a mark (footnote omitted). *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 750-751 (Fed. Cir. 1985).

The Examining Attorney alleged that the respective marks are comprised of the same sounding combination of wording, namely, RINGO and RING GO and that Appellant has merely presented his mark as two separate terms whereas the Registrant has created a compound word mark by telescoping the wording. Consequently, according to the Examining Attorney, the marks are similar for likelihood of confusion purposes (see second Office action, page 2, second paragraph).

The Appellant strongly disagrees with this assertion. The Examining Attorney implies that the Registrant's mark RINGO has been arbitrarily selected as a telescoped version of the

terms "Ring" and "go" to form RINGO, in which case consumers would interpret "RINGO" as a version of "Ring Go" or vice-versa. There is simply no evidence in the record of the cited RINGO registration that the term RINGO is intended to be a telescoped version of "Ring" and "go," nor has the Examining Attorney provided any evidence whatsoever to support this conclusion. To the contrary, the record of the cited RINGO registration clearly shows that the trademark RINGO is not an arbitrary telescoped version of "Ring" and "go" but rather is the well-known name of the Registrant himself – Ringo Starr (see for example "Verification Declaration (Exhibit A) of the Office action response filed September 29, 2014). This clear understanding, connotation and commercial impression of RINGO would not be lost on consumers. It is highly unlikely that consumers of RINGO goods of the Registrant would dissect or otherwise mutilate RINGO to understand RINGO to mean "Ring Go."

The Examining Attorney has also cited a number of prior decisions in support of the position that the marks are virtually identical, such as SEAGUARD and SEA GUARD, BEEFMASTER and BEEF MASTER and STOCKPOT and STOCK POT (see second Office action, page 2, last paragraph – page 3, first paragraph). The Appellant strongly disagrees with the assertion that the cited RINGO trademark is merely an arbitrarily selected telescoped version of RING GO. Nevertheless, even if one were to consider that this were to be the case, the aforementioned identified examples of the Examining Attorney fail to support a position that RINGO and RING GO should be considered "virtually identical" since none of SEAGUARD and SEA GUARD, BEEFMASTER and BEEF MASTER and STOCKPOT and STOCK POT demonstrate telescoped versions of the respective trademarks. The aforementioned cases all combine two separate words as one word with no telescoping at all. In other words, such examples are clearly not germane to the present analysis.

The Examining Attorney also asserted the position in the second Office action that "the presence of the space and repetitive letter "G" in the Appellant's mark does not change the overall sound or appearance of the appropriated RINGO mark," as well as that "both RINGO and

RING GO are still comprised of the same letters, have the same number of syllables and the same overall sound" (October 30, 2014 Office action, page 2, paragraph 4). Additionally, the Examining Attorney argued that "the average consumer speaking the words to another would be hard pressed to hear a phonetic difference between the pronunciation of the Appellant's mark and the Registrant's mark" (October 30, 2014 Office action, page 2, paragraph 4). Still further, the Examining Attorney argued that "the average consumer viewing the marks would see the same four letter combination, 'RING' at the beginning of Appellant's and Registrant's marks, and the same two letter combination "GO", at the end of Appellant's and Registrant's marks" and that "the average purchaser normally retains a general rather than specific impression of trademarks" (October 30, 2014 Office action, page 2, paragraph 4). The Examining Attorney again reiterates that "the marks are essentially phonetic equivalents and thus sound similar" and that "similarity in sound alone may be sufficient to support a finding that the marks are confusingly similar" (October 30, 2014 Office action, page 2, paragraph 5).

The Appellant disagrees. Under the Trademark Act, a refusal to register, grounded in likelihood of confusion as to source of origin, requires that such confusion not merely be possible, but likely. A mere possibility of confusion is an insufficient basis for rejection under Section 2(d). "Confusion" means more than that the junior user's mark merely "calls to mind" the senior user's mark. (*McCarthy on Trademarks*, §23:8 (4th Ed.); *Application of Ferrero*, 479 F.2d 1395, 178 U.S.P.Q. 167 (C.C.P.A. 1973), *Accord Jacobs v. International Multifoods Corp.*, 668 F.2d 1234, 212 U.S.P.Q. 641 (C.C.P.A. 1982) ("Additionally, the fact that a mark may bring to mind another term, and not another mark, is further support for the conclusion that no confusion is likely.") 206 F.2d 744, 98 USPQ 367 (6th Cir. 1953). The Appellant submits that there should not be a concern with mere theoretical possibilities of confusion, deception or mistake or with *de minimis* situations but with the practicalities of the commercial world, with which trademark laws deal. *In re Massey-Ferguson Inc.*, 222 U.S.P.Q. 367, 368 (T.T.A.B. 1983) (*quoting Witco Chemical Co. v. Whitfield Chemical Co., Inc.*, 164 U.S.P.Q. 43, 44 (C.C.P.A.

1969)). *See also*, *Merritt Foods Co. v. Americana Submarine*, 209 U.S.P.Q. 591, 599 (T.T.A.B. 1980) and *In re P. Ferrero & C.S.p.A.*, 178 U.S.P.Q. 167, 168 (C.C.P.A. 1973) (that the goods "might both emanate from a single source [is not sufficient to establish that the marks are] likely to cause confusion as to the source, or to cause mistake, or to deceive."). Contrary to the findings of the Examining Attorney, the Appellant respectfully submits that the present trademark is not likely to cause confusion with the cited Mark because the marks are not similar when considered in their entireties.

As noted above, it is well settled that when comparing marks for confusing similarity, the marks must be considered in their entireties. See *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164 (Fed. Cir. 2002) ("The Board and this court determine likelihood of confusion based on the factors set forth in In re E.I. DuPont DeNemours & Co., 476 F.2d 1357, 1361, 177 U.S.P.Q. (BNA) 563, 567 (C.C.P.A. 1973)," wherein "the similarity or dissimilarity of the marks in their entireties is a predominant inquiry."). As stated by the Federal Circuit in *Mr. Hero Sandwich Systems, Inc. v. Roman Meal Co.*, 228 U.S.P.Q. 364, 366 (Fed. Cir. 1986): The basic principle in determining confusion between marks is that marks must be compared in their entireties and must be considered in connection with the particular goods or services for which they are used. *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058, 224 U.S.P.Q. 749, 750 (Fed. Cir. 1985). Accord, *Massey Junior College, Inc. v. Fashion Institute of Technology*, 181 U.S.P.Q. 272, 273-74 (C.C.P.A. 1974); and *In re 1776, Inc.*, 223 U.S.P.Q. 186, 187 (T.T.A.B. 1984). In examining the marks in their entireties, all elements that distinguish marks in appearance, sound and impression must be considered. In *The United States Shoe Corp v. Kiddie Kobbler, Ltd.*, 231 U.S.P.Q. 815, 820 (T.T.A.B. 1986) the Trademark Trial and Appeal Board, in finding that "KIDDIE KOBBLER" for retail shoe store services was not confusingly similar to "CALIFORNIA COBBLERS" for shoes, held: Comparing the marks . . . in their entireties, we fully agree with applicant's contention that they are easily distinguishable both in appearance and sound.

Therefore, in many instances, two marks will not be found to be confusingly similar even where they share a common or similar term. For example, In *In re Hearst Corp.,* the Court of Appeals for the Federal Circuit reversed the Trademark Trial and Appeal Board's decision under Section 2(d) of the Trademark Act to refuse registration to the mark "VARGA GIRL" for calendars on the ground of likelihood of confusion with the registered mark "VARGAS" for calendars. The Federal Circuit found that the Board had erred in giving too much weight to the term "VARGA" and too little weight to the term "GIRL" in finding confusing similarity. In so finding, the court stated: Although undoubtedly "varga" and "vargas" are similar, the marks must be considered in the way they are used and perceived. See In re Nat'l Data Corp., 753 F.2d 1056, 224 U.S.P.Q. 749 (Fed. Cir. 1985). Marks tend to be perceived in their entireties, and all components thereof must be given appropriate weight. See Opryland USA Inc. v. Great American Music Show, Inc., 970 F.2d 847, 23 U.S.P.Q.2d 1471 (Fed. Cir. 1992)., *Hearst*, 25 U.S.P.Q.2d 1238, 1239 (Fed. Cir. 1992).

Similarly, in *The Conde Nast Publications, Inc. v. Miss Quality, Inc.*, the court held that, COUNTRY VOGUES and VOGUE do not look or sound alike. The only similarity between them is that VOGUE is part of the mark COUNTRY VOGUES, and the dissimilarities between the marks, viewed in their entireties, outweigh this similarity to leave no doubt. (Footnote omitted.) *Conde Nast, 184 U.S.P.Q. 422, 425 (C.C.P.A. 1975).*

The Appellant submits that the respective trademarks look and sound completely different, and convey significantly different meanings. The cited prior mark is RINGO which is the first name of a well-known individual (Ringo Starr) whose consent is of record (see Exhibit A of the Office action response filed September 29, 2014). The present mark, on the other hand, is not a name and comprises two different and distinct words presented side-by-side, e.g., "ring" and "go," both of which have their own well-known meanings. "Ring," for example, means "a circular band for holding, connecting, hanging, pulling, packing or sealing" (see Exhibit B of the Office action response filed September 29, 2014) and is a noun but can also be a verb ("to ring").

"Go," for example, is an intransitive verb meaning "to move on a course" (see Exhibit C of the Office action response filed September 29, 2014). It is emphasized that neither term alone or in combination with each other conveys any meaning that would be remotely similar to RINGO (aka Ringo Starr).

As noted above, the respective marks also sound different aurally. The relevant consumers are likely to pronounce "Ringo" as a single flowing term without any pause or break between the syllables (i.e., there is just one single "hard 'g'" sound). On the other hand, the relevant consumers are likely to pronounce the present mark "Ring Go" as "ring" (pause) and "go" with a clear break or pause between the two distinct terms (i.e., there are two distinct "hard 'g'" sounds). In pronouncing "Ring Go," each word has a full and clear accent and annunciation, whereas in "Ringo" the accent is only on the first syllable. Consumers are quite likely to read, pronounce and hear the present trademark as two separate words side-by-side. Moreover, even if consumers of "Ring Go" were to pronounce and/or understand RING GO as RINGO, as alleged by the Examining Attorney, this is but one factor in the overall analysis that at most is a neutral factor. The other factors which undoubtedly weigh in favor of the Appellant clearly outweigh this particular neutral factor.

Thus, there should not be any confusion between the cited mark and the present mark because the marks, when considered in their entireties, are clearly extremely different in appearance, sound and commercial impression. The marks are not substantially similar and there is no likelihood of confusion at all. At most, the present mark might call to mind the cited mark, but "calling to mind" is simply not enough.

The overall impression and connotation of the cited RINGO trademark conveys to the average consumer would clearly be that of Ringo Starr – i.e., the Registrant who is also a very famous member of The Beatles. The Examining Attorney is required to look to the overall impression created by the marks, rather than merely comparing individual features. (*Mead Data Cent. V. Toyota Motor Sales, U.S.A., Inc.*, 875 F.2d 1026, 1029, 10 USPQ2d 1961 (2d Cir.

1989)). In this respect, the Examining Attorney must determine whether the total effect conveyed by the marks is confusingly similar, not simply whether the marks sound alike or look alike (*First Savings Bank F.S.B. v. First Bank System Inc.*, 101 F.3d at 645, 653, 40 USPQ2d 1865, 1870 (10th Cir. 1996) (recognizing that while the dominant portion of a mark is given greater weight, each mark still must be considered as a whole) (citing *Universal Money Centers, Inc. v. American Tel. & Tel. Co.*, 22 F.3d 1527, 1531, 30 USPQ2d 1930 (10th Cir. 1994)).

It is imperative to keep in mind that similarity is not limited to the eye or ear (*McCarthy on Trademarks*, §23:25 (4th Ed.)). In determining the meaning and connotation which the trademark projects, it is proper to look to the context of use, such as material on labels, packaging, advertising and the like (*McCarthy on Trademarks*, §24:26 (4th Ed.) (citing *In re Nationwide Industries, Inc.*, 6 USPQ2d 1882 (TTAB 1988); *Elvis Presley Enterprises Inc. v. Capece*, 141 F.3d 188, 46 USPQ2d 1737 (5th Cir. 1998) (district court was in error in determining the meaning of the defendant's mark without considering the advertising context into which defendant placed its mark); *Accord Morton-Norwich Products, Inc. v. S.C. Johnson & Son, Inc.*, 531 F.2d 561, 189 USPQ 413 (CCPA 1976)).

The meaning or connotation of a mark must be determined in relation to the named goods or services. <u>Even marks that are identical in sound and/or appearance may create sufficiently different commercial impressions when applied to the respective parties' goods or services so that there is no likelihood of confusion</u> (emphasis added). *See, e.g., In re Sears, Roebuck & Co.*, 2 USPQ2d 1312, 1314 (TTAB 1987); *In re British Bulldog, Ltd.*, 224 USPQ 854, 856 (TTAB 1984); *In re Sydel Lingerie Co.*, 197 USPQ 629, 630 (TTAB 1977) (TMEP 1207.01(b)(v)).

Conflicting marks must be compared in their entireties. A mark should not be dissected or split up into its component parts and each part then compared with corresponding parts of the conflicting mark to determine the likelihood of confusion. It is the impression that the mark as a whole creates on the average reasonably prudent buyer and not the parts thereof, that is important. As the Supreme Court observed: "The commercial impression of a trademark is derived from it as

a whole, not from its elements separated and considered in detail. For this reason it should be considered in its entirety." (*McCarthy on Trademarks*, §23:47 (4th Ed.); citing *Estate of P.D. Beckwith, Inc. v. Commission of Patent*, 252 U.S. 538, 545-46, 64 L. Ed. 705, 40 S. Ct. 414 (1920). Thus, "it is incorrect to compare marks by eliminating portions thereof and then simply comparing the residue." (*McCarthy on Trademarks*, §23:41 (4th Ed.); citing *China Healthways Institute, Inc. v. Wang*, 491 F.3d 1337, 83, U.S.P.Q. 2d 1123 (Fed. Cir. 2007), cert. denied, 128 S. Ct. 661 (2007).

To the contrary, the instant trademark RING GO clearly conveys no such connotation and overall impression upon the average consumer. It is respectfully submitted that the various Exhibits such as "Verification Declaration executed by Ringo Starr" and specimens of record in the cited RINGO registration, should be considered to understand the overall context of the cited RINGO trademark. This in turn supports the Appellant's position that the overall impression and connotation of the cited RINGO trademark conveyed to the average consumer would be that of Ringo Starr – i.e., the Registrant who is a very famous member of The Beatles. It should be clear that the average consumer when encountering the RINGO trademark would readily understand the connotation and overall impression that the RINGO trademark conveys which is that of Ringo Starr.

Because Appellant's mark combines two distinct terms that conjure up entirely different images from the cited mark RINGO, it is inconceivable that consumers will view Appellant's mark and the Registrant's mark as essentially the same mark. As already established, the cited mark RINGO conveys a meaning that would be readily understood by consumers as being associated with Ringo Starr and The Beatles. This meaning and association of the cited mark RINGO is bolstered by the specimens of record in the '793 registration (see Exhibits D1 and D2, filed with the Office action response of September 29, 2014). In short, the Appellant believes that the relevant consumers are quite likely to perceive the cited mark RINGO as not just calling to mind Ringo Starr and The Beatles but as drawing a direct and clear connection thereto.

On the other hand, the present trademark RING GO has no connection or meaning whatsoever with Ringo Starr or The Beatles. The present mark does not even remotely convey any meaning or connection to Ringo Starr or The Beatles, and it is submitted that such a meaning would in no way be conveyed upon consumers. In other words, the Appellant believes that consumers are highly unlikely to believe there is any connection at all with the cited mark RINGO and/or Ringo Starr or The Beatles. The commercial impressions are vastly different.

D. Number and Nature of Similar Marks on Similar Goods and/or Services and the Variety of Goods with which a Mark is used

The Appellant respectfully suggests that the commercial impression of marks involving words or phrases "in common use by many other sellers in the market" can only be deemed similar if the marks are identical, or nearly so. *McCarthy on Trademarks*, §23:48 (4th Ed.). For example, the marks VOGUE and COUNTRY VOGUE were held not to be confusingly similar when used for magazines and ladies' and misses' dresses, respectively. *Conde Nast Publications, Inc. v. Miss Quality, Inc.*, 507 F.2d 1404, 184 USPQ 422 (CCPA 1975).

The marks are not identical. Moreover, the registered term RINGO can be found in numerous other active records in the U.S. Trademark Electronic Search System (TESS) database for the same or related goods/services by itself or in combination with other terms. In particular, the RINGO trademark of the Registrant is registered by the Registrant for a wide variety of different goods and services as summarized below. In other words, consumers of the RINGO goods would recognize and associate RINGO with a wide variety of consumer products and not just pet products which are just one of many types of goods associated with the RINGO mark.

Moreover, numerous third party trademarks which include the same term RINGO are also registered for the same or related goods and services as the numerous ones of the Registrant. In accordance with TMEP 1207.01(d)(iii), soft copies of the registrations or the electronic equivalent thereof (i.e., printouts or electronic copies of the registrations taken from the electronic search records of the USPTO) have been submitted as Exhibit F (see Office action response filed

September 29, 2014). It is respectfully submitted that this large number of identical, or identical in part, co-existing third party marks registered for the term RINGO clearly establishes that the term RINGO is often-times used in connection with various types of consumer goods and so the non-identical applied-for mark RING GO should also be able to co-exist on the Principal Register without any issue of a likelihood of confusion.

Trademark	App. / Reg. No.	International Class/Goods/Services	Owner
RINGO	4585793	Class 28 – toys, namely, toy vehicles, plush toys, stuffed toys, toy watches, toy musical instruments, toy banks, bath tub toys, pet toys, flying discs, skateboards, balls, sports balls, and inflatable bath, swimming and ride-on toys; games, namely, jigshaw puzzles, playing cards, card games and board games	Richard Starkey, AKA Ringo Starr
RINGO	4767355	Class 14 – jewelry; fashion jewelry, namely, necklaces, pendants, charms, jewelry chains	Richard Starkey, AKA Ringo Starr
RINGO	4538594	Class 18 – purses; wallets; all purpose sports bags; carry-on bags; duffel bags; backpacks; fanny packs; luggage; umbrellas	Richard Starkey, AKA Ringo Starr
RINGO	3552187	Class 18 – BEACH BAGS, BOOK BAGS, TOTE BAGS	Richard Starkey, AKA Ringo Starr
RINGO	3213560	Class 9 – PRE-RECORDED COMPACT DISCS AND AUDIO CASSETTE TAPES FEATURING MUSIC; PRE-RECORDED VIDEODISCS AND VIDEOTAPES FEATURING MUSIC	Richard Starkey, AKA Ringo Starr
RINGO	3334665	Class 41 – ENTERTAINMENT SERVICES IN THE NATURE OF LIVE MUSICAL PERFORMANCES; ENTERTAINMENT, NAMELY, LIVE MUSIC CONCERTS; ENTERTAINMENT SERVICES, NAMELY, PROVIDING A WEB SITE FEATURING MUSICAL PERFORMANCES, MUSICAL VIDEOS, RELATED FILM CLIPS, PHOTOGRAPHS, AND OTHER MULTIMEDIA MATERIALS;	Richard Starkey, AKA Ringo Starr

		AND FAN CLUBS	
RINGO	3791597	Class 9 – DOWNLOADABLE SOUND RECORDINGS FEATURING MUSIC; AND DOWNLOADABLE VIDEO RECORDINGS FEATURING MUSIC, COMEDY, ACTION, ADVENTURE AND ANIMATION	Richard Starkey, AKA Ringo Starr
RINGO	77963998 (allowed application; now dead)	Class 41 – Entertainment services in the nature of an on-going reality-based and variety television series featuring animation, live action, adventure, music and comedy; educational and entertainment services in the nature of providing an on-going series of webisodes featuring previously broadcasted television animation, music and comedy series and reality-based and variety television series featuring live action and adventure via a global computer network for mobile phone devices; entertainment services, namely, providing a website featuring non-downloadable video clips of previously broadcasted television animation, music and comedy series and reality-based and variety television series featuring live action and adventure; entertainment services, namely, providing a website featuring news and information in the field of entertainment about a television program and related non-downloadable video clips and photographs	Richard Starkey, AKA Ringo Starr
RINGO	4748873	Class 30 – Biscuits; cookies	Barilla G. e R. Fratelli - Società per Azioni
RINGO'S OIL	86297222 (allowed application; now dead)	Class 5 – Medicated candies; Medicated chewing gum Class 35 – On-line retail store services featuring essential oils; retail store services featuring essential oils	GelStat Corporation
ringO Universal Mounting System	4027712	Class 6 – Common metals and their alloys; metal building materials, namely, soffits; transportable buildings of metal; non-electric	Vogel's Holding B.V.

		cables and wires of common metal; pipes and types of metal; goods of common metal not included in other classes, namely, metal ores; fasteners of metal, namely, bolts, nails, rivets and screws Class 9 – Audio, video and data processing equipment, namely, mounting brackets, supports and bases for loudspeaker boxes, monitors, television sets and keyboards and structural parts therefor; luminous signboards Class 20 – Furniture for storing and placing audio, video and data processing equipment; furniture made of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and plastics; non-metal clamps, namely, plastic fixing clamps for cables and pipes	
RINGO	85956085 (allowed application; now dead)	Class 34 – Cigar and cigarette boxes; Cigar and cigarette boxes not of precious metal; Cigar and cigarette boxes of precious metal; Cigar boxes; Cigar boxes not of precious metal; Cigar boxes of precious metal; Cigar cases; Cigar cases of precious metal; Cigar cutters; Cigar holders; Cigar holders of precious metal; Cigar humidifiers; Cigar lighters; Cigar tubes; Cigar wraps; Cigars; Electric cigars; Electronic cigars; Filtered cigars and cigarettes; Holders for cigar and cigarette of precious metal; Holders for cigars and cigarettes; Holders of cigars and cigarettes of precious metal; Non-electric cigar lighters not of precious metal; Smokeless cigar vaporizer pipes; Smokers' articles, namely, cigar glue; Smokers' articles, namely, cigar relighting liquid solution; Smokers' articles, namely, cigar storage tubes; Smokers' articles, namely, containment clips used to keep a cigar from falling apart; Smokers' articles, namely, outdoor cigar and cigarette disposal units; Smokers'	Assouline, Felix (INDIVIDUAL) Malek, Michel I. (INDIVIDUAL)

		articles, namely, outdoor receptacles for cigar and cigarette ash and waste; Tobacco, cigars and cigarettes	
RINGO MAXX	4260509	Class 5 – Dietary and nutritional supplements	Century Systems Inc.
JOHNNY RINGO	4166662	Class 25 – Footwear	Rod Patrick Inc.
RingoCap	3686369	Class 20 – Synthetic cork caps for wine and champagne bottles	FGM S.R.L.
RingO's (color)	3243713	Class 29 – Chicken	CCF BRANDS LLC
RINGO'S DONUTS	3827248	Class 30 – Donuts	KER, LLC DBA RingO's Donuts
RINGO HEAD	3728047	Class 9 – video camera supports and stabilizers, namely, an adapter for securing a video camera to a support structure	Kendall, Charles S. (INDIVIDUAL)
RINGO (color)	3930366	Class 30 – coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, bread substitutes and other bread products, namely, bread doughs; snacks made from cereals, namely, grain-based snack food; biscuits, pastry and confectionery, namely, pastilles; chocolate and chocolate-based products or products containing chocolate, namely, chocolate bars, chocolate pastes, chocolate-based ready-to-eat food bars; bakery products, namely, sweet bakery goods; snacks and sweet snacks, namely, chocolate based ready -to-eat snacks; preparations for making cakes, namely, flour, baking powder and flavourings; pizzas and preparations for pizzas, namely, pizza dough and pizza sauce; edible ices; honey, treacle; yeast, baking-powder; salt, mustard; vinegar, condiments, namely, sauces; spices; ice	Barilla G. e R. Fratelli - Società Per Azioni
RINGO	3489710	Class 28 – Lottery tickets	Scientific Games International

RINGO	2657134	Class 9 – Computer software for the engagement, schedule and time management of temporary workers and the invoicing associated therewith via the Internet or a global computer network	Ringo, LLC
RINGO	1889314	Class 25 – men's, women's, and children's clothing; namely, shirts, blouses, pants, shorts, hosiery, jackets, and underwear	HASELSON INTERNATIONAL TRADING, INC.
JOHNNY RINGO	0846420	Class 3 – preparation for cleaning, deodorizing, and disinfecting toilet bowls	DIVERSEY, INC.
RingoVino vegan food & wine (color)	86414666 (allowed application; now dead)	Class 41 – On-line journals, namely, blogs featuring reviews of vegan food and wine services, by educating readers about vegan food and wine through food recipes and wine pairing	Ringovino LLC

The Appellant believes it is relevant that pending application Serial No. 86199723 for the trademark RING-GO pertaining to "Dog collars and leads" (see Exhibit G of the September 14, 2014 response) was not refused registration under Section 2(d). The Appellant is aware that TMEP Section 1207.01(d)(vi) (Prior Decisions of Examining Attorneys) provides that "[e]ach case must be decided on its own merits. *E.g., In re Binion*, 93 USPQ2d 1531, 1536 (TTAB 2009). Nevertheless, the Appellant submits that it is worth pointing out that registration of the aforementioned '723 application for RING-GO was not refused in view of the cited RINGO registration or any other third party registration incorporating the term RINGO. In this regard, the Appellant submits that it would be inequitable that the same conclusion is not reached in the instant analysis.

E. <u>The conditions under Which and Buyers to whom sales are made are different</u>

On the other hand, the present trademark RING GO has no connection or meaning whatsoever with Ringo Starr or The Beatles. The present mark does not even remotely convey any meaning or connection to Ringo Starr or The Beatles, and it is submitted that such a meaning would in no way be conveyed upon consumers. In other words, the Appellant believes that

consumers are highly unlikely to believe there is any connection at all with the cited mark RINGO and/or Ringo Starr or The Beatles.

For sake of comparison, the Appellant's goods of the present mark include leashes in which the handle or grip is circular-shaped and in which the leash itself is extendable by a certain length, such as up to 5 meters and which can be opened for latching onto an object or structure (see Exhibit E of the September 29, 2014 Office Action response). It should be quite clear that the present mark in no way has any meaning in connection with that of the cited mark RINGO.

It is even further submitted that the respective customers in this instance would be different and that the respective goods would not be related or marketed in such a way that they would be encountered by the same persons in the marketplace. It is well established that "if the goods or services in question are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source, then, even if the marks are identical, confusion is not likely. *See, e.g., Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1371, 101 USPQ2d 1713, 1723 (Fed. Cir. 2012) (affirming the Board's dismissal of opposer's likelihood-of-confusion claim, noting "there is nothing in the record to suggest that a purchaser of test preparation materials who also purchases a luxury handbag would consider the goods to emanate from the same source" though both were offered under the COACH mark); *Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 1244-45, 73 USPQ2d 1350, 1356 (Fed. Cir. 2004) (reversing TTAB's holding that contemporaneous use of RITZ for cooking and wine selection classes and RITZ for kitchen textiles is likely to cause confusion, because the relatedness of the respective goods and services was not supported by substantial evidence); *Local Trademarks, Inc. v. Handy Boys Inc.*, 16 USPQ2d 1156, 1158 (TTAB 1990) (finding liquid drain opener and advertising services in the plumbing field to be such different goods and services that confusion as to their source is unlikely even if they are offered under the same marks); *Quartz Radiation Corp. v. Comm/Scope Co.*, 1 USPQ2d 1668, 1669 (TTAB 1986); (TMEP 1207.01(a)(i)).

In this case, it is already established that the respective marks are not identical. Furthermore, the cited mark RINGO would likely be sold to, marketed to and purchased by fans and enthusiasts of Ringo Starr and/or The Beatles. On the other hand, the goods of the applied-for mark would not likely be specifically sold to, marketed to and purchased by fans and enthusiasts of Ringo Starr and/or The Beatles, but rather would be sold to, marketed to and purchased by by general pet owners. As such, the respective channels of trade and types of consumers are not likely the same and the respective goods would not be related or marketed in such a way that they would be encountered by the same persons in the marketplace. Even if the respective goods were to be encountered by the same persons in the marketplace, the Appellant's position remains that purchasers would not be confused as to source due to the Registrant's clear connection to Ringo Starr and The Beatles.

Conclusion

Based on the foregoing, Appellant respectfully requests that the Examining Attorney's decision be reversed and that the applied-for mark RING GO of Appellant be allowed to pass to publication.

Respectfully submitted,

Date: July 5, 2016

By: /Sean F. Mellino/

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