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Subject: U.S. TRADEMARK APPLICATION NO. 79146834 - GO2OFFICE - N/A - Request for
Reconsideration Denied - Return to TTAB

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**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 79146834

MARK: GO2OFFICE



CORRESPONDENT ADDRESS:

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GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/trademarks/index.jsp>

APPLICANT: Lidl Stiftung & Co. KG

CORRESPONDENT'S REFERENCE/DOCKET NO:

N/A

CORRESPONDENT E-MAIL ADDRESS:

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE:

INTERNATIONAL REGISTRATION NO. 1202729

The trademark examining attorney has carefully reviewed applicant's request for reconsideration and is denying the request for the reasons stated below. See 37 C.F.R. §2.63(b)(3); TMEP §§715.03(a)(ii)(B),

715.04(a). The following requirement(s) and/or refusal(s) made final in the Office action dated May 27, 2015 are maintained and continue to be final: Section 2(d) Refusal – Likelihood of Confusion. See TMEP §§715.03(a)(ii)(B), 715.04(a). The following requirement(s) and/or refusal(s) made final in the Office action are satisfied: Identification of Goods. See TMEP §§715.03(a)(ii)(B), 715.04(a).

In the present case, applicant's request has not resolved all the outstanding issue(s), nor does it raise a new issue or provide any new or compelling evidence with regard to the outstanding issue(s) in the final Office action. In addition, applicant's analysis and arguments are not persuasive nor do they shed new light on the issues. Accordingly, the request is denied.

If applicant has already filed a timely notice of appeal with the Trademark Trial and Appeal Board, the Board will be notified to resume the appeal. See TMEP §715.04(a).

If no appeal has been filed and time remains in the six-month response period to the final Office action, applicant has the remainder of the response period to (1) comply with and/or overcome any outstanding final requirement(s) and/or refusal(s), and/or (2) file a notice of appeal to the Board. TMEP §715.03(a)(ii)(B); see 37 C.F.R. §2.63(b)(1)-(3). The filing of a request for reconsideration does not stay or extend the time for filing an appeal. 37 C.F.R. §2.63(b)(3); see TMEP §§715.03, 715.03(a)(ii)(B), (c).

THIS PARTIAL REFUSAL APPLIES TO CLASSES 16, 20 and 27 ONLY

SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION – FINAL – MAINTAINED AND CONTINUED

The stated refusal refers to International Classes 16, 20 and 27 only and does not bar registration in the other classes.

Registration of the applied-for mark is refused because of a likelihood of confusion with the marks in **U.S. Registration Nos. 4203685 and 4370395**. Trademark Act Section 2(d), 15 U.S.C. §1052(d); see TMEP §§1207.01 *et seq.* See the previously enclosed registrations.

Applicant has applied to register the mark **GO2 OFFICE** (stylized with design) for “Paper, cardboard; cardboard boxes; printed matter, namely, paper signs, books, manuals, curricula, newsletters, informational cards and brochures in the field of office management, running an office, and office organization; bookbinding material; photographs; paper stationery; unprinted paper labels and blank paper labels; printed paper labels; adhesive labels; address labels not of textiles; adhesives for stationery or household use; writing instrument, namely, pens, pencils, markers, stamping inks, and paper clips; stickers supplied in sheet and/or roll form; laminated paper, copying paper, carbon paper, tabulating paper, continuous paper, ink jet paper, laser paper; plotter paper, drawing paper, paper rolls for computers, fax machines and cash registers; paper for printing photographs and computer-generated and digital images; self-adhesive paper for use in laser printers; door and name plates of paper and cardboard; printable foils for ink jet printers, laser printers and copiers, excluding for use as packaging; document laminators for office use; bookbinding machines for office use; heat transfer adhesive labels; unprinted and partially printed paper self-adhesive labels, not of textile; paper for packaging; printed and unprinted paper and cardboard hang tags; printed and unprinted paper labels and tags; photograph albums; diaries, address books; poetry albums; calendars, appointment books; paper stationery, namely personal organizers, agendas, desk top organizers; booklets of printed forms; pads of paper, notepads, notebooks, stationery notes, shorthand scratch and scribble pads, school notebooks, drawing pads, writing pads, pads of printed forms; order forms; self-adhesive note pads, adhesive notelets and adhesive markers; note paper holders; office requisites, namely, printed paper and cardboard signs featuring names for use on doors and desks; printed aluminum foil laminated paper for printing purposes for ink jet printers, laser printers and copiers; bookbinding apparatus, namely, spiral binding machines for office use; paper shredders; plastic or paper bags for merchandise packaging; copy books; receipt books; burp pads of paper, blank note cards, shorthand memo pads, form legal pads; printed forms; block note pads, repositionable note papers; adhesive labels and paper hole reinforcements; release coated papers for copying, displays and label production; adhesive tape, adhesive glue sticks for stationary purposes, adhesive tape rollers, photo adhesives for stationary purposes; self-adhesive printing paper for labels and displays; adhesive letters, numbers and symbols for use in making signs and posters; office requisites except furniture, namely, envelope sealing machines, paper trimmers, staplers; glues for stationery or household purposes; adhesive tape holders, pressure-sensitive adhesives for stationery purposes; adhesive paper pouches for packaging; packaging strips being adhesive tape for household use, packaging tape of pvc for stationery or household use, packaging tapes for stationery or household use; pressure sensitive printing papers for labels and displays; holders for self-adhesive labels for adhering photographs to scrapbooks; office requisites, namely, adhesive shipping labels; adhesive-backed letters, numbers, and symbols for use in making binder pages, and documents; correction tape in a dispenser for use in correcting mistakes made in printing and handwriting; photo adhesives, namely, adhesive corners for photographs; strips of fancy paper for packaging; adhesive packing tape for stationery or household use; special adhesive packing tape for stationery or household use; writing paper; blank cards; envelopes; mailing paper bags; air cushion mailing paper bags for packaging; writing paper and display and index cards; packaging pouches for mails data, floppy-disk and protective mailing envelopes; business cards; desktop business card holders; business card holders, namely, business card files; transparent envelopes; paper envelope sleeves for holding and protecting paper displays and leaflets; self-adhesive paper bags for packaging purposes;

maps; memo boards; wall daily planners; glass panels, namely writing slates; folding blackboards; magnetic boards; binders, namely, hanging file binders; ring binders; presentation binders; storage binders, presentation folders; printable paper and plastic transparencies for overhead projectors; binder paper; business forms; message books; index marking tabs; stickers; subject dividers, namely, tabbed and untabbed dividers in the form of cardboard sheets for drawers for files; easel binders; folders for papers; folders; document portfolios; paper file folder fasteners; personal organisers and organisers for stationery use; ring binder inserts being index dividers; school writing books; writing instruments; stylographic pens, highlighter pens; double-ended writing instruments; colouring crayons, ballpoint pens and refills for ballpoint pens, gel pens and refills for gel pens, fineliner pens, roller ball pens, fibre pens, ink pens, permanent markers, cd marker pens; writing implements sets; erasers, square rulers, pencil sharpeners, electric pencil sharpeners, compasses for drawing, chalk; correction fluid, correction tape, correction pencils; rubber, date and postage stamps, staples, office hole and paper hole punchers, hole reinforcement for paper; paper knives, letter-openers, triangles being drawing instruments; rubber bands; drawing pins, steel push pins for notice boards; binder, letter and pen clips; letter trays; filing cases for paper products and stationery, file boxes for storage of forms and paper containers for storage of paper products and stationery; archive boxes of cardboard; desk organizers; writing tablets; desk sets; paper containers with drawers; desk files; file and memo sorters included in this class, namely, desktop filing units with drawers, document stands, plastic file boxes, collection folders, signature folders, adhesive file spine labels, notebook and index dividers, separating tabs, hanging file folders, storage folders, presentation folders; paper report covers; presentation document portfolios; paper folders for protecting paper sheets; presentation, reference and storage paper folders for protecting paper sheets; partitioned paper folders for protecting paper sheets; transparent-plastic binder pages for holding and displaying business cards and photographs; sheet protector index dividers; tabbed transparent plastic binder pages for holding documents; hanging folders, hanging folders for letters or for blueprints, paper pouches for packaging; paper pouches for mailing, file boxes for storage of hanging folders, letters or blueprints; painting templates; palettes for painters, paint boxes for use in schools, paint brushes; padfolios and pocket folders; paper labels” in International Class 16, “Office furniture; desks and work tables; filing cabinets, shelves, non-metal rolling file cabinets and other containers for storage purposes; plastic storage containers for commercial or industrial use; desk chairs and swivel chairs; seat cushions; foot stools; rotating columns for files being non-metal containers for storage of files; non-metal hardware, namely wall mounts for telephones” in International Class 20 and “Carpets, carpet underlays; floor mats” in International Class 27.

The cited registrations are U.S. Registration No. 4203685, **GO2** (in standard characters) for “Adhesives for stationery and household use” in International Class 16 and U.S. Registration No. 4370395, **GOTO** (in standard characters) for various goods and services in International Classes 11 and 42, and for “Furniture; mirrors; picture frames; office furniture; screens; room dividers; racks, namely, storage racks, shelves; cupboards, wardrobes; desks; drawers; chairs; tables; glass cabinets; furniture, mirrors and picture frames with integrated illumination” in International Class 20. The registrations are owned by Henkel Corporation and Lichtraeume Gercek und Muralter GbR Civil Law Partnership, respectively.

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely a potential consumer 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). A determination of likelihood of confusion under Section 2(d) is made on a case-by case basis and the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973) aid in this determination. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d 1344, 1349, 98 USPQ2d 1253, 1256 (Fed. Cir. 2011) (citing *On-Line Careline, Inc. v. Am. Online, Inc.*, 229 F.3d 1080, 1085, 56 USPQ2d 1471, 1474 (Fed. Cir. 2000)). Not all the *du Pont* factors, however, are necessarily relevant or of equal weight, and any one of the factors may control in a given case, depending upon the evidence of record. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d at 1355, 98 USPQ2d at 1260; *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); see *In re E. I. du Pont de Nemours & Co.*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity and nature of the goods and/or services, and similarity of the trade channels of the goods and/or services. See *In re Viterra Inc.*, 671 F.3d 1358, 1361-62, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593, 1595-96 (TTAB 1999); TMEP §§1207.01 *et seq.*

Comparison of the Marks

Marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1321, 110 USPQ2d 1157, 1160 (Fed. Cir. 2014) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1371, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005)); TMEP §1207.01(b)-(b)(v). "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014) (citing *In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007)); *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); TMEP §1207.01(b).

Applicant's mark GO2 OFFICE is highly similar in sound, appearance and overall commercial impression to registrants' marks, GO2 and GOTO. The marks are highly similar in that they all contain the identical term "GO2" or its phonetic equivalent, "GO TO." Use of the number "2" instead of the word "to" does not change the pronunciation of the marks and does not significantly change the similarities in sound appearance and overall commercial impression of the marks. The marks are essentially phonetic equivalents and thus sound similar. Similarity in sound alone may be sufficient to support a finding that the marks are confusingly similar. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); see *In re 1st*

USA Realty Prof'ls, Inc., 84 USPQ2d 1581, 1586 (TTAB 2007); TMEP §1207.01(b)(iv). Further, although marks are compared in their entireties, one feature of a mark may be more significant or dominant in creating a commercial impression. See *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 751 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii). Matter that is descriptive of or generic for a party's goods is typically less significant or less dominant in relation to other wording in a mark. See *Anheuser-Busch, LLC v. Innvopak Sys. Pty Ltd.*, 115 USPQ2d 1816, 1824-25 (TTAB 2015) (citing *In re Chatam Int'l Inc.*, 380 F.3d 1340, 1342-43, 71 USPQ2d 1944, 1946 (Fed. Cir. 2004)).

In the present case, the word "OFFICE" in applicant's mark is disclaimed because it is merely descriptive of or generic for applicant's goods, which are all used in an office. Thus, this wording is less significant in terms of affecting the mark's commercial impression, and renders the wording "GO2" the more dominant element of the mark, which is identical to registrants' marks.

Additionally, for a composite mark containing both words and a design, such as applicant's, the word portion may be more likely to be impressed upon a purchaser's memory and to be used when requesting the goods and/or services. *Joel Gott Wines, LLC v. Rehoboth Von Gott, Inc.*, 107 USPQ2d 1424, 1431 (TTAB 2013) (citing *In re Dakin's Miniatures, Inc.*, 59 USPQ2d 1593, 1596 (TTAB 1999)); TMEP §1207.01(c)(ii); see *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908, 1911 (Fed. Cir. 2012) (citing *CBS Inc. v. Morrow*, 708 F.2d 1579, 1581-82, 218 USPQ 198, 200 (Fed. Cir. 1983)). Thus, although such marks must be compared in their entireties, the word portion is often considered the dominant feature and is accorded greater weight in determining whether marks are confusingly similar, even where the word portion has been disclaimed. *In re Viterra Inc.*, 671 F.3d at 1366, 101 USPQ2d at 1911 (Fed. Cir. 2012) (citing *Giant Food, Inc. v. Nation's Foodservice, Inc.*, 710 F.2d 1565, 1570-71, 218 USPQ2d 390, 395 (Fed. Cir. 1983)).

The word portions of the marks are nearly identical in appearance, sound, connotation, and commercial impression; therefore, the addition of a design element does not obviate the similarity of the marks in this case. See *In re Shell Oil Co.*, 992 F.2d 1204, 1206, 26 USPQ2d 1687, 1688 (Fed. Cir. 1993); TMEP §1207.01(c)(ii).

Applicant previously argued that registrants' marks are both phrases with the specific meaning "always helpful: producing desired results or information when needed," while applicant's mark "would reasonably be perceived as an imperative." Applicant further argued that the phrase "GO-TO is simply too common in the every day lexicon to not realize that adding a word after 'Go to' changes the overall

commercial impression.” To illustrate this point, applicant attached an excerpt from TESS listing other registered marks containing the wording “GO TO” for business goods and services.

The trademark examining attorney found applicant’s arguments unpersuasive, explaining that the mere submission of a list of registrations or a copy of a private company search report does not make such registrations part of the record. *In re Promo Ink*, 78 USPQ2d 1301, 1304 (TTAB 2006); TBMP §1208.02; TMEP §710.03. To make third party registrations part of the record, an applicant must submit copies of the registrations, or the complete electronic equivalent from the USPTO’s automated systems, prior to appeal. *In re Jump Designs LLC*, 80 USPQ2d 1370, 1372-73 (TTAB 2006); *In re Ruffin Gaming*, 66 USPQ2d, 1924, 1925 n.3 (TTAB 2002); TBMP §1208.02; TMEP §710.03. In addition, although the term “go-to” appears in the dictionary and has a specific meaning, the addition of the generic term “OFFICE” does not sufficiently change the similarities in the sound, appearance and overall commercial impression of the marks. In fact, the addition of the word “OFFICE” further modifies the term “go-to” by implying that applicant’s goods are “always helpful” office goods.

Applicant also argued that the applied-for mark is part of a family of marks and that the purchasing public’s familiarity with these marks obviates any likelihood of confusion. However, the Trademark Trial and Appeal Board has found that a family-of-marks argument is “not available to an applicant seeking to overcome a likelihood-of-confusion refusal.” *In re Cynosure, Inc.*, 90 USPQ2d 1644, 1645-46 (TTAB 2009). Specifically, an applicant’s ownership of other similar marks has little relevance in this context because the focus of a likelihood-of-confusion analysis in an ex parte case is on the mark applicant seeks to register, rather than other marks applicant has used or registered. *In re Cynosure, Inc.*, 90 USPQ2d at 1645-46; *In re Ald, Inc.*, 148 USPQ 520, 521 (TTAB 1965); TMEP §1207.01(d)(xi).

Applicant now refers to *GS Enterprises LLC v. Juice Generation*, 115 USPQ2d 1671 (Fed. Cir. 2015), where the Federal Circuit Court vacated and remanded a decision by the Trademark Trial and Appeal Board (TTAB), after the TTAB found that there was a likelihood of confusion between the marks “PEACE LOVE AND JUICE” and “PEACE & LOVE” for similar food service services. Applicant argues that the present case is analogous to *GS Enterprises* because the marks must be viewed in their entirety, which the Trademark Examining Attorney failed to do. Applicant suggests that the marks should be compared side by side to determine whether “the consuming public, which is used to seeing GO TO or GO 2 used in marks for business or almost any other industry, would be confused.”

To support its arguments, applicant has also attached several third party registrations containing the wording “GO TO” for various services, and three for goods:

- (1) U.S. Registration No. 3757115, "THE GO-TO PEOPLE" (in standard characters) for "Accounting forms; Blank forms; Bookkeeping forms; Business cards; Business forms; Business record books; Cards not magnetically coded for use in business transactions; Order forms; Partially printed forms; Printed forms" in International Class 16, owned by Idaho Business Forms, Inc.
- (2) U.S. Registration No. 3791848, "GO2 GUIDES" (stylized with design) ("GUIDES" disclaimed) for "Guide books featuring travel information for children; Printed guides for travel information for children; Printed products, namely, product guides featuring travel information for children" in International Class 16, owned by Linda Cohen
- (3) U.S. Registration No. 4277001, "GO TO ZERO" (in standard characters) for "Massage chairs, electric massage chairs and massage recliners" in International Class 10 and "Furniture, namely, recliners" in International Class 20, owned by Human Touch, LLC.

The Trademark Examining Attorney also finds these arguments to be unpersuasive. In *GS Enterprises*, the Court vacated the TTAB's decision after considering a number of factors. In particular, it explained that "the Board gave inadequate consideration to the strength or weakness of [the registrant/opposing party's] marks" and "never inquired whether and to what degree the extensive evidence of third-party use and registrations indicates that the phrase 'PEACE & LOVE' carries a suggestive or descriptive connotation in the food service industry." 115 USPQ2d at 1674, 1675. The Court found these terms to be weak as it relates to the food service industry. *Id.* This case is different than *GS Enterprises* because the terms "GO TO" or "GO 2" are not weak in relation to applicant's and registrant's respective industries. Moreover, of those three third party registrations for which include goods similar to the applicant and registrants in this case, two include "GO TO" plus wording that is not generic or descriptive for the goods and form distinctive unitary phrases. As stated in the definition of "GO-TO" provided by applicant, this phrase can mean "a person who can be turned to for expert knowledge, advice, or reliable performance." Therefore, the mark "THE GO-TO PEOPLE" is a unitary phrase or slogan referencing people who someone can turn to for expert knowledge, advice, or reliable performance. In contrast, use of the phrase "GO TO" in the mark "GO TO ZERO" is more arbitrary or suggestive, as "ZERO" cannot be "always helpful" or who one can rely on for expert advice. Lastly, although the commercial impression of "GO2 GUIDES" is similar to applicant's and registrants' marks because it includes the wording "GO2" plus a disclaimed generic or descriptive word, it co-exists with registrant's mark "GO2" because the guidebook goods are dissimilar from adhesive goods. Therefore, these three marks have different commercial impressions or include distinguishable goods from applicant, which would not likely cause confusion between the marks.

Further, when comparing marks, the test is not whether the marks can be distinguished in a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods offered under the respective marks is likely to result. *Midwestern Pet Foods, Inc. v. Societe des Produits Nestle S.A.*, 685 F.3d 1046, 1053, 103 USPQ2d 1435, 1440 (Fed. Cir. 2012); *In re Davia*, 110 USPQ2d 1810, 1813 (TTAB 2014); TMEP §1207.01(b). The proper focus is on the recollection of the average purchaser, who retains a general rather than specific impression of trademarks. *United Global Media Grp., Inc. v. Tseng*, 112 USPQ2d 1039, 1049, (TTAB

2014); *L’Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1438 (TTAB 2012); TMEP §1207.01(b). Therefore, the Trademark Examining Attorney did not wrongfully dissect the terms of applicant’s mark, but considered the overall commercial impression of the marks and determined that confusion between the marks is likely.

Also, where the goods of an applicant and registrant are “similar in kind and/or closely related,” the degree of similarity between the marks required to support a finding of likelihood of confusion is not as great as in the case of diverse goods. *In re J.M. Originals Inc.*, 6 USPQ2d 1393, 1394 (TTAB 1987); see *Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 1242, 73 USPQ2d 1350, 1354 (Fed. Cir. 2004); TMEP §1207.01(b).

Comparison of the Goods

The goods of the parties need not be identical or even competitive to find a likelihood of confusion. See *On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) (“[E]ven if the goods in question are different from, and thus not related to, one another in kind, the same goods can be related in the mind of the consuming public as to the origin of the goods.”); TMEP §1207.01(a)(i).

The respective goods need only be “related in some manner and/or if the circumstances surrounding their marketing [be] such that they could give rise to the mistaken belief that [the goods and/or services] emanate from the same source.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)); TMEP §1207.01(a)(i).

U.S. Registration No. 4203685

Applicant’s and registrant’s goods are identical in that they both include adhesives for stationery or household use. Further, registrant’s “adhesives for stationery or household use” are related to applicant’s other goods. The trademark examining attorney refers applicant to the evidence in the initial Office Action and the final Office Action from the USPTO’s X-Search database, plus the additional attached evidence from the USPTO’s X-Search database consisting of a representative sample of third-party marks registered for use in connection with the same or similar goods as those of both applicant and registrant in this case. This evidence shows that the goods listed therein, namely adhesives for stationery or household use, stationery, labels, pens, pencils, markers, stamping inks, binders, paint

brushes and paper clips are of a kind that may emanate from a single source under a single mark. *See In re Anderson*, 101 USPQ2d 1912, 1919 (TTAB 2012); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988); TMEP §1207.01(d)(iii).

U.S. Registration No. 4370395

Applicant's and registrant's goods are identical in that they both include office furniture. In addition, registrant's "furniture" is also similar to applicant's other goods. The trademark examining attorney refers applicant to the evidence in the initial Office Action and the final Office Action from the USPTO's X-Search database, plus the additional attached evidence from the USPTO's X-Search database consisting of a representative sample of third-party marks registered for use in connection with the same or similar goods as those of both applicant and registrant in this case. This evidence shows that the goods listed therein, namely, furniture, carpet and floor mats, are of a kind that may emanate from a single source under a single mark. *See In re Aquamar, Inc.*, 115 USPQ2d 1122, 1126 n.5 (TTAB 2015) (citing *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988)); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); TMEP §1207.01(d)(iii).

Additionally the trademark examining attorney refers applicant to the Internet evidence in the initial Office Action and the Final Office Action, plus the additional attached Internet evidence, which consists of websites for companies that sell furniture, carpet and floor mats. This evidence establishes that the same entity commonly provides the relevant goods and markets the goods under the same mark. Therefore, applicant's and registrant's goods are considered related for likelihood of confusion purposes. *See, e.g., In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202-04 (TTAB 2009); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1268-69, 1271-72 (TTAB 2009).

Evidence obtained from the Internet may be used to support a determination under Section 2(d) that goods are related. *See, e.g., In re G.B.I. Tile & Stone, Inc.*, 92 USPQ2d 1366, 1371 (TTAB 2009); *In re Paper Doll Promotions, Inc.*, 84 USPQ2d 1660, 1668 (TTAB 2007). The Internet has become integral to daily life in the United States, with Census Bureau data showing approximately three-quarters of American households used the Internet in 2013 to engage in personal communications, to obtain news, information, and entertainment, and to do banking and shopping. *See In re Nieves & Nieves LLC*, 113 USPQ2d 1639, 1642 (TTAB 2015) (taking judicial notice of the following two official government publications: (1) Thom File & Camille Ryan, U.S. Census Bureau, Am. Cmty. Survey Reports ACS-28, *Computer & Internet Use in the United States: 2013* (2014), available at <http://www.census.gov/content/dam/Census/library/publications/2014/acs/acs-28.pdf>, and (2) The

Nat'l Telecomms. & Info. Admin. & Econ. & Statistics Admin., *Exploring the Digital Nation: America's Emerging Online Experience* (2013), available at [http://www.ntia.doc.gov/files/ntia/publications/exploring_the_digital_nation -
americas_emerging_online_experience.pdf](http://www.ntia.doc.gov/files/ntia/publications/exploring_the_digital_nation_-_americas_emerging_online_experience.pdf)). Thus, the widespread use of the Internet in the United States suggests that Internet evidence may be probative of public perception in trademark examination.

The marks are similar in appearance, sound, connotation and commercial impression and the goods are identical or closely related. It is likely that consumers will mistakenly believe the goods emanate from the same source. The overriding concern is not only to prevent buyer confusion as to the source of the goods, but to protect the registrants from adverse commercial impact due to use of a similar mark by a newcomer. See *In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt regarding a likelihood of confusion determination is resolved in favor of the registrant. TMEP §1207.01(d)(i); see *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988). Accordingly, registration is refused pursuant to Section 2(d) of the Trademark Act.

/Lauren E. Burke/

Examining Attorney

Law Office 106

(571) 272-2763

lauren.burke@uspto.gov

collection: TABLES • category: TABLES

Atipico

CHELE

design: Antonino Sciortino

information

colors:

signal white, jet black, ocean blue, beige gray, traffic yellow, turquoise-blue, ultramarine blue, traffic orange, honey yellow, pigeon blue and steel blue

size:

cm. 36x28xh30 - 68x43xh30 - 48x46h35 - 59x38xh40 - 56x29xh45 - 44x36xh50

composition:

baked-painted galvanized iron

(colors images are purely for information)

products

about

designers

magazine

app

store locations

press

contact



collection: AROUND • category: CARPETS

Atipico

- products
- about
- designers
- magazine
- app
- store locations
- press
- contact



TUNDRA

design: Atipicostudio

information

description:
carpets

colors:
black, olive, moss, coffee, sepia, honey, oil and berry

size:
cm 60x90 - 60x120 - 60x140 - 60x180 - 170x240

composition:
100% jute

(colors images are purely for information)



Looking for something?

Aki-Home

CART 0

Bed & Bath | Closet & Organization | Home Decor | Dining & Entertaining | Furniture | Kitchen | Laundry & Cleaning | Fitness

Home / Furniture

BROWSE BY

Category

- Living Room Furniture
- Dining & Kitchen Furniture
- Bedroom Furniture
- Home Office Furniture
- Accent Furniture

FURNITURE

Sort By: ↑

1-12 of 235 Show: ▶



FLY BAR STOOL - WHITE
\$79.00

SELECT STORES



FLY BAR STOOL - BLACK
\$79.00



BOOKCASE
\$49.00



MARKS COLLECTION FUTON - BLACK
\$349.00



MARKS COLLECTION FUTON - WHITE
\$349.00



PRESA SECTIONAL BANQUETTE SET - LEFT FACING, WHITE
\$799.00



DOUBLELINE SECTIONAL - RIGHT FACING
\$1,199.00
SELECT STORES



DOUBLELINE SECTIONAL - RIGHT FACING
\$1,199.00
SELECT STORES



DOUBLELINE SECTIONAL - LEFT FACING
\$1,199.00
SELECT STORES



DOUBLELINE SECTIONAL - LEFT FACING
\$1,199.00



HAMMER RECLINER & OTTOMAN - BLACK
\$199.00



DRAKE WORK STATION
\$99.00

Sort By: ↑

1-12 of 235 Show: ▶

Looking for something?

Aki-Home

CART 0

- Bed & Bath
- Closet & Organization
- Home Decor
- Dining & Entertaining
- Furniture
- Kitchen
- Laundry & Cleaning
- Fitness

Home / 30" x 18" Textured Kitchen Mat

30" x 18" Textured Kitchen Mat

SKU: 251020877700 | Availability: Select Stores

OVERVIEW

Machine washable, stylish mat for your kitchen floor.

Price
\$7.99

DESCRIPTION

Machine washable, stylish mat for your kitchen floor.

- Color : Red
- Dimensions : 30" x 18"

ADDITIONAL INFORMATION

REVIEWS

