

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	79148833
LAW OFFICE ASSIGNED	LAW OFFICE 105
MARK SECTION	
MARK FILE NAME	http://tmng-al.uspto.gov/resting2/api/img/79148833/large
LITERAL ELEMENT	HTRAC
STANDARD CHARACTERS	NO
USPTO-GENERATED IMAGE	NO
ARGUMENT(S)	
<p>Applicant, Hyundai Motor Company (“Applicant”) respectfully submits this Request for Reconsideration of the Examining Attorney’s final refusal to register Applicant’s HTRAC mark for “Wheelchairs; parachutes; tractors; vessels, namely, boats and ships; aeroplanes; locomotives; automobiles; cycles, namely, motorcycles; bicycles; hand cars, namely, carts; baby carriages; shock absorbers for automobiles; brake systems for vehicles; tractors for agricultural purposes; engines for land vehicles; transmissions for land vehicles; bearings for land vehicles, namely, axel bearings and wheel bearings; motors for land vehicles” under Section 2(d) of the Trademark Act in light of Registration No. 1,323,070 for the mark H-TRAK for “tires for vehicle.”</p> <p>Applicant submits that while its motor vehicle related goods are considered related by the Examining Attorney to the goods in the cited registration, they are not so closely related as to cause a likelihood of confusion in this case. In <u>In re Hyundai Motor America</u>, 2009 WL4086577, the Board, in reversing a refusal to register under Section 2(d), found that there was no likelihood of confusion between the identical marks ECHELON for automobiles and ECHELON for automotive tires. The Board reasoned that although the marks were identical, the respective goods were not closely related goods. Id. at *6. The Board noted that merely because two products are attached or used together does not necessarily mean that they are closely related and there was nothing in the record showing a single source for automobiles and tires. Applicant respectfully asserts that the facts of the instant case are similar. There is no evidence of record showing a single source for the respective goods. Further, the marks are not identical. Although the Internet references cited by the Examining Attorney in support of the final office action may show that it is possible for goods that are of the same type as the respective goods to emanate from the same source, there is no dispositive evidence that the actual respective goods emanate from such sources in a way that makes confusion in this case likely.</p> <p>Applicant further submits that the likelihood of confusion analysis does not end with a comparison of the marks and goods. Indeed, other DuPont factors must be considered as a part of the analysis when</p>	

made of record. Confusion is less likely where goods are expensive. Weiss Associates Inc. v. HRL Associates, Inc., 902 F.2d 1546, 14 U.S.P.Q.2d 1840, 1841 (Fed. Cir. 1990). Further, purchaser sophistication is often dispositive because sophisticated consumers may be expected to exercise greater care in purchases. Electronic Design & Sales v. Electronic Data Systems, 954 F.2d 713, 21 U.S.P.Q.2d 1388, 1392 (Fed. Cir. 1992) In this case, the Applicant's goods are vehicles and related accessories that would be considered relatively expensive. Consumers of these goods, vehicle purchasers, are therefore likely to take great care in their selection and purchase and as a result there is a decreased likelihood of confusion.

Further, the Applicant's HTRAC goods are distributed through a network of authorized distributors and dealers and are not available at discount retail stores or outlets. This further lessens the likelihood of confusion as the sophisticated purchasers of the goods are making their purchasing decisions at specialty retailers with the help of more knowledgeable sales consultants.

Applicant respectfully submits that when the cost of the goods, purchaser sophistication, and conditions of sale are considered that there is no likelihood of confusion.

For the above reasons, Applicant therefore respectfully requests that the Section 2(d) refusal be withdrawn and that the application be allowed to proceed to publication.

SIGNATURE SECTION

RESPONSE SIGNATURE	/jeffrey morgan/
SIGNATORY'S NAME	Jeffrey Morgan
SIGNATORY'S POSITION	Attorney of record, Texas bar member
SIGNATORY'S PHONE NUMBER	713.571.3400
DATE SIGNED	08/11/2015
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO

FILING INFORMATION SECTION

SUBMIT DATE	Tue Aug 11 17:15:33 EDT 2015
TEAS STAMP	USPTO/RFR-99.7.229.67-201 50811171533585608-7914883 3-5405ffa97a7b14727251b13 4d3ae3a93cdfbc7dd36b1d6b8 371e3484b13c5ac-N/A-N/A-2 0150811170843079048

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To the Commissioner for Trademarks:

Application serial no. **79148833** HTRAC (Stylized and/or with Design, see <http://tmng-al.uspto.gov/resting2/api/img/79148833/large>) has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

Applicant, Hyundai Motor Company (“Applicant”) respectfully submits this Request for Reconsideration of the Examining Attorney’s final refusal to register Applicant’s HTRAC mark for “Wheelchairs; parachutes; tractors; vessels, namely, boats and ships; aeroplanes; locomotives; automobiles; cycles, namely, motorcycles; bicycles; hand cars, namely, carts; baby carriages; shock absorbers for automobiles; brake systems for vehicles; tractors for agricultural purposes; engines for land vehicles; transmissions for land vehicles; bearings for land vehicles, namely, axel bearings and wheel bearings; motors for land vehicles” under Section 2(d) of the Trademark Act in light of Registration No. 1,323,070 for the mark H-TRAK for “tires for vehicle.”

Applicant submits that while its motor vehicle related goods are considered related by the Examining Attorney to the goods in the cited registration, they are not so closely related as to cause a likelihood of confusion in this case. In In re Hyundai Motor America, 2009 WL4086577, the Board, in reversing a refusal to register under Section 2(d), found that there was no likelihood of confusion between the identical marks ECHELON for automobiles and ECHELON for automotive tires. The Board reasoned that although the marks were identical, the respective goods were not closely related goods. Id. at *6. The Board noted that merely because two products are attached or used together does not necessarily mean that they are closely related and there was nothing in the record showing a single source for automobiles and tires. Applicant respectfully asserts that the facts of the instant case are similar. There is no evidence of record showing a single source for the respective goods. Further, the marks are not identical. Although the Internet references cited by the Examining Attorney in support of the final office action may show that it is possible for goods that are of the same type as the respective goods to emanate from the same source, there is no dispositive evidence that the actual respective goods emanate from such sources in a way that makes confusion in this case likely.

Applicant further submits that the likelihood of confusion analysis does not end with a comparison of the marks and goods. Indeed, other DuPont factors must be considered as a part of the analysis when made of record. Confusion is less likely where goods are expensive. Weiss Associates Inc. v. HRL Associates, Inc., 902 F.2d 1546, 14 U.S.P.Q.2d 1840, 1841 (Fed. Cir. 1990). Further, purchaser sophistication is often dispositive because sophisticated consumers may be expected to exercise greater care in purchases. Electronic Design & Sales v. Electronic Data Systems, 954 F.2d 713, 21 U.S.P.Q.2d 1388, 1392 (Fed. Cir. 1992) In this case, the Applicant’s goods are vehicles and related accessories that would be considered relatively expensive. Consumers of these goods, vehicle purchasers, are therefore likely to take great care in their selection and purchase and as a result there is a decreased likelihood of confusion.

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SIGNATURE(S)

Request for Reconsideration Signature

Signature: /jeffrey morgan/ Date: 08/11/2015

Signatory's Name: Jeffrey Morgan

Signatory's Position: Attorney of record, Texas bar member

Signatory's Phone Number: 713.571.3400

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the owner's/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the owner/holder in this matter: (1) the owner/holder has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 79148833

Internet Transmission Date: Tue Aug 11 17:15:33 EDT 2015

TEAS Stamp: USPTO/RFR-99.7.229.67-201508111715335856

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