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Subject: U.S. TRADEMARK APPLICATION NO. 85250061 - DASH - N/A - EXAMINER BRIEF

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# UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

<b>U.S. APPLICATION SERIAL NO.</b> 85250061  <b>MARK:</b> DASH	
<b>CORRESPONDENT ADDRESS:</b> JENNIFER KO CRAFT  GORDON & SILVER LTD  3960 HOWARD HUGHES PARKWAY NINTH FLOOR  LAS VEGAS, NV 89169	<b>GENERAL TRADEMARK INFORMATION:</b>  <a href="http://www.uspto.gov/trademarks/index.jsp">http://www.uspto.gov/trademarks/index.jsp</a>  <b>TTAB INFORMATION:</b>  <a href="http://www.uspto.gov/trademarks/process/appeal/index.jsp">http://www.uspto.gov/trademarks/process/appeal/index.jsp</a>
<b>APPLICANT:</b> Kimsaprincess Inc.	
<b>CORRESPONDENT'S REFERENCE/DOCKET NO:</b>  N/A  <b>CORRESPONDENT E-MAIL ADDRESS:</b>  trademarks@gordonsilver.com	

## EXAMINING ATTORNEY'S APPEAL BRIEF

Applicant has appealed the trademark examining attorney's final refusal to register the service mark DASH in standard character form. Registration was refused under Section 2(d) of the Trademark Act, 15 U.S.C. Section 1052(d), on the grounds that the applicant's mark, when used in connection with

the identified services, so resembles the mark in U.S. Registration Nos. 1807678 and 2670119 as to be likely to cause confusion, to cause mistake, or to deceive.

### **FACTS**

On February 23, 2011, applicants Kimsaprincess Inc., Khlomoney Inc., and 2Die4Kourt filed a use-based service mark application seeking registration on the Principal Register of the mark DASH in standard character form for “Retail store services featuring apparel, footwear, accessories, and variety of other goods.” In an Office Action mailed May 26, 2011, the examining attorney refused registration of the mark under Section 2(d) of the Trademark Act, 15 U.S.C. Section 1052(d). The examining attorney also cited prior pending applications that were potential bars to registration for the applicant’s mark should they register and required that the applicant amend the identification of services.

The applicant filed a response to the Office Action on November 28, 2011. The applicant amended the identification of services and stated that the U.S. Application Serial No. 85091560 had been assigned to the applicant. The applicant also argued against the refusal under Trademark Act Section 2(d).

On December 21, 2011, the examining attorney issued a Final Office Action. The examining attorney made final the refusal under Trademark Act Section 2(d) with respect to U.S. Registration Nos. 1807678 and 2670119. The examining attorney also withdrew the refusal under Section 2(d) with respect to the other cited marks and stated that the cited prior-filed marks no longer presented a bar to registration. Finally, the examining attorney also stated that the identification of services requirement had been satisfied.

The applicant noted the instant appeal on June 21, 2012 and filed a request for reconsideration. The examining attorney denied the request for reconsideration on July 20, 2012. The applicant filed a

request for remand on November 20, 2012 and the application was remanded back to the examining attorney on November 21, 2012. The application was assigned to the current examining attorney on November 26, 2012 and the examining attorney denied the request for reconsideration on November 27, 2012.

The applicant filed a motion to suspend the proceedings on January 18, 2013 to determine whether U.S. Registration No. 1807678 would be canceled for failure to file a timely Section 8 affidavit. On June 17, 2014, the proceedings were resumed after a Section 8 affidavit was accepted for U.S. Registration No. 1807678 on June 14, 2014.

The applicant filed their appeal brief on August 15, 2014. The file was forwarded to the examining attorney for statement on August 18, 2014.

### **ISSUE**

The only issue on appeal is whether applicant's mark, when used in connection with the identified services, so resembles the marks shown in U.S. Registration Nos. 1807678 and 2670119 as to be likely to cause confusion, to cause mistake, or to deceive under Trademark Act Section 2(d).

## ARGUMENT

**THE MARKS OF THE APPLICANT AND THE REGISTRANTS ARE IDENTICAL IN APPEARANCE, SOUND, MEANING AND OVERALL COMMERCIAL IMPRESSION AND THE GOODS AND SERVICES OF THE PARTIES ARE CLOSELY RELATED CREATING A LIKELIHOOD OF CONFUSION OR MISTAKE UNDER SECTION 2(d) OF THE TRADEMARK ACT.**

Trademark Act Section 2(d) bars registration where an applied-for mark so resembles a registered mark that it is likely, when applied to the goods and services, to cause confusion, mistake or to deceive the potential consumer as to the source of the goods. TMEP §1207.01. The Court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973), listed the principal factors to consider in determining whether there is a likelihood of confusion. Among these factors are the similarity of the marks as to appearance, sound, meaning and commercial impression, and the relatedness of the goods and services. The overriding concern is to prevent buyer confusion as to the source of the goods and services. *In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt as to the existence of a likelihood of confusion must be resolved in favor of the registrant. *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988); *Lone Star Mfg. Co. v. Bill Beasley, Inc.*, 498 F.2d 906, 182 USPQ 368 (C.C.P.A. 1974). Here, the marks of the applicant and the registrants are identical and the applicant's services are closely related to the goods provided by the registrants and are provided through the same channels of trade.

### **A. The Marks Are Identical**

In the present case, the applicant seeks registration of DASH in standard character form for "Retail store services featuring apparel, footwear, and fashion accessories, but excluding, eyewear, namely, eyeglasses, eyeglass frames, sunglasses and eyeglass cases." The registered marks are DASH in

typed form for “pants, shirts, sweatshirts, sweatpants, hosiery, jackets, shoes, waistcoats, T-shirts, shorts, hats, headbands, wristbands, leggings, shoulder belts, belts, sweaters, blouses, underwear, vest tops, blazers, and coats” and DASH in typed form for “Eyewear, namely eyeglasses, eyeglass frames, sunglasses and eyeglass cases.”

In a likelihood of confusion determination, the marks in their entireties are compared for similarities in appearance, sound, connotation, and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973); TMEP §1207.01(b)-(b)(v). In the present case, applicant’s mark is DASH in standard character form and the mark in the registrant’s mark is DASH in typed form. Thus, the marks are identical in terms of appearance and sound. In addition, the connotation and commercial impression of the marks do not differ when considered in connection with applicant’s and registrant’s respective goods and/or services. Therefore, the marks are confusingly similar.

The applicant argues that a likelihood of confusion does not exist because of the existence of numerous marks on the Register that include the wording DASH. Applicant has submitted printouts of third-party registrations for marks containing the wording DASH to support the argument that this wording is weak, diluted, or so widely used that it should not be afforded a broad scope of protection. The weakness or dilution of a particular mark is generally determined in the context of the number and nature of similar marks *in use in the marketplace* in connection with *similar* goods and/or services. See *Nat’l Cable Television Ass’n, Inc. v. Am. Cinema Editors, Inc.*, 937 F.2d 1572, 1579-80, 19 USPQ2d 1424, 1430 (Fed. Cir. 1991); *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973).

Evidence of weakness or dilution consisting solely of third-party registrations, such as those submitted by applicant in this case, is generally entitled to little weight in determining the strength of a

mark, because such registrations do not establish that the registered marks identified therein are in *actual use* in the marketplace or that consumers are accustomed to seeing them. *See AMF Inc. v. Am. Leisure Prods., Inc.*, 474 F.2d 1403, 1406, 177 USPQ 268, 269 (C.C.P.A. 1973); *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1204 (TTAB 2009); *In re Thor Tech, Inc.*, 90 USPQ2d 1634, 1639 (TTAB 2009); *Richardson-Vicks Inc. v. Franklin Mint Corp.*, 216 USPQ 989, 992 (TTAB 1982). Furthermore, the goods and services listed in the third-party registrations submitted by applicant are different from those at issue and thus do not show that the relevant wording is commonly used in connection with the goods and/or services at issue.

Furthermore, prior decisions and actions of other trademark examining attorneys in registering other marks have little evidentiary value and are not binding upon the USPTO or the Trademark Trial and Appeal Board. TMEP §1207.01(d)(vi); *see In re Midwest Gaming & Entm't LLC*, 106 USPQ2d 1163, 1165 n.3 (TTAB 2013) (citing *In re Nett Designs, Inc.*, 236 F.3d 1339, 1342, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001)). Each case is decided on its own facts, and each mark stands on its own merits. *See AMF Inc. v. Am. Leisure Prods., Inc.*, 474 F.2d 1403, 1406, 177 USPQ 268, 269 (C.C.P.A. 1973); *In re Binion*, 93 USPQ2d 1531, 1536 (TTAB 2009).

Additionally, even if the registrants' marks were considered to be weak, the Court of Appeals for the Federal Circuit and the Trademark Trial and Appeal Board have recognized that marks deemed "weak" or merely descriptive are still entitled to protection against the registration by a subsequent user of a similar mark for closely related goods and/or services. *In re Colonial Stores, Inc.*, 216 USPQ 793, 795 (TTAB 1982); TMEP §1207.01(b)(ix); *see King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 1401, 182 USPQ 108, 109 (C.C.P.A. 1974). This protection extends to marks registered on the Supplemental Register. TMEP §1207.01(b)(ix); *see, e.g., In re Clorox Co.*, 578 F.2d 305, 307-08, 198 USPQ 337, 340 (C.C.P.A. 1978); *In re Hunke & Jochheim*, 185 USPQ 188 (TTAB 1975).

The applicant also argues that a likelihood of confusion does not exist in this case because the commercial impression of the applicant's mark is different than the commercial impression of the registrant's marks. However, the marks are identical with respect to sound and appearance. Further, the connotation and commercial impression of the marks do not differ when considered in connection with applicant's and registrant's respective goods and services since the applicant is providing retail store services featuring apparel, footwear, and fashion accessories and the registrants are providing clothing goods and eyewear, respectively. Thus, the mark is arbitrary with respect to the services provided by the applicant and the goods provided by the registrants and, thus, the commercial impression is the same for the applicant's mark and the registrants' marks.

Given the fact that the marks are identical with respect to sound, appearance, and commercial impression, the marks are sufficiently similar to cause a likelihood of confusion in the marketplace under Trademark Act Section 2(d).

**B. The Goods and Services Of The Applicant and the Registrants Are Closely Related and Provided Through The Same Channels Of Trade**

The goods and services 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 and services 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 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)); *Gen. Mills Inc. v. Fage Dairy Processing Indus. SA*, 100 USPQ2d 1584, 1597 (TTAB 2011); TMEP §1207.01(a)(i).

In the Final Office Action dated December 21, 2011, the trademark examining attorney attached evidence from the USPTO’s X-Search database consisting of a number of third-party marks registered marks. This evidence shows that retail store services featuring apparel, footwear, and fashion accessories also sell the registrants’ goods. Thus, the applicant’s services and the registrant’s goods are provided through the same channels of trade. 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). The following are examples of the evidence provided by the examining attorney:

- DFA DUTY FREE AMERICAS (with a design element) for “Retail store services featuring duty free goods, namely, fragrances, cosmetics, and bath and body products, namely perfumes, colognes, facial treatments, makeup, lotions, powders, oils, soaps, deodorants, and hair, nail and skincare products; tobacco products, including but not limited to imported and domestic cigarettes, cigars, pipes, pipe tobacco, chewing tobacco, and smokers’ articles, namely, lighters, matches, cigar utensils, namely, humidors, clippers, cigar cases and ashtrays; alcoholic beverages, namely, imported and domestic liquors, mixers, beer, wine, champagne, liqueurs, and pre-mixed liquor drinks; food, confection and beverage products, namely chips, cookies, assorted nuts, chocolates, hard candy, chewing gum, assorted snack seeds, soft drinks, juices, water, hydration drinks and energy drinks; gourmet and specialty packaged food products,

including but not limited to smoked fish, caviar, mussels, sardines and eel; apparel accessories, namely, belts, scarves, ties, hats and gloves; fashion eyewear, sunglasses and athletic-oriented eyewear; purses and handbags; small leather goods, namely, wallets and briefcases; watches and clocks; jewelry; writing instruments; crystal gift items; novelty gifts and souvenirs, namely, plush toys, playing cards, magic tricks, key chains, drinking mugs, postcards, t-shirts and sweatshirts; electronics, cameras, calculators, computers, batteries and music; and travel-related products, namely, luggage, backpacks, duffel bags, shoulder bags, waist packs, money belts, toiletry kits, locks, tags, straps, converters and inflight comfort items.” (U.S. Registration No. 2984726)

- IBW INTERNATIONAL BONDED WAREHOUSES IMPORTS FROM AROUND THE WORLD (with a design element) for “Distributorship and retail store services featuring the following duty free and bonded goods: fragrances and cosmetics, namely, perfumes, colognes, makeup; alcoholic beverages, namely, imported and domestic liquors; fashion eyewear, sunglasses and athletic-oriented eyewear; purses and handbags; watches and clocks; jewelry; luggage, duffel bags, shoulder bags.” (U.S. Registration No. 3960283)
- SASSY GIRL GIFTS & SPECIAL THINGS (with a design element) for “Retail store and on-line retail store services featuring home décor and accessories, office accessories, handbags, wallets and handbag accessories, fashion eyewear and eyeglass cases, stationery, invitations, children and baby items, novelty gifts, artwork, books, collegiate items, furniture, candles, greeting cards, pet items, curling iron covers, travel bags, garment bags, briefcases, business bags, luggage, luggage tags, key chains, passport covers, overnight bags and tote bags, coin purses, ID cases, business card holders, key

fobs, wine glasses and wine accessories, computer cases, decals, stickers, flags, games and tail-gating accessories.” (U.S. Registration No. 3965049)

Furthermore, in the Final Office Action dated December 21, 2011, the examining attorney attached Internet evidence that consists of the websites of entities that provide the applicant’s services and sell the registrants’ goods and the websites of entities that provide the applicant’s services and the registrant’s goods. This evidence establishes that the same entity commonly manufactures/produces/provides the relevant goods and services and markets the goods and services under the same mark and that the relevant goods and services are sold or provided through the same trade channels and used by the same classes of consumers in the same fields of use. Therefore, applicant’s and registrants’ goods and services 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 Trademark Act Section 2(d) that goods and/or services 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 following are examples of the evidence provided by the examining attorney:

- The examining attorney attached evidence from Macy’s. Macy’s provides retail store services featuring apparel, footwear, and fashion accessories and sells the registrants’ goods through its retail store services.
- The examining attorney attached evidence from the website for Ann Taylor. This evidence shows that Ann Taylor provides the registrants’ goods (sunglasses and

apparel) and retail store services featuring apparel, footwear, and fashion accessories.

- The examining attorney attached evidence the website for Calvin Klein. This evidence shows that Calvin Klein provides the registrants' goods (sunglasses and apparel) and retail store services featuring apparel, footwear, and fashion accessories.
- The examining attorney attached evidence from the website for Michael Kors. This evidence shows that Michael Kors provides the registrants' goods (sunglasses and apparel) and retail store services featuring apparel, footwear, and fashion accessories.

Moreover, consumers are likely to be confused by the use of similar marks on or in connection with goods and with services featuring or related to those goods. TMEP §1207.01(a)(ii); *see In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988) (holding BIGG'S for retail grocery and general merchandise store services likely to be confused with BIGGS for furniture); *In re United Serv. Distribs., Inc.*, 229 USPQ 237 (TTAB 1986) (holding design for distributorship services in the field of health and beauty aids likely to be confused with design for skin cream); *In re Phillips-Van Heusen Corp.*, 228 USPQ 949 (TTAB 1986) (holding 21 CLUB for various items of men's, boys', girls' and women's clothing likely to be confused with THE "21" CLUB (stylized) for restaurant services and towels); *In re U.S. Shoe Corp.*, 229 USPQ 707 (TTAB 1985) (holding CAREER IMAGE (stylized) for retail women's clothing store services and clothing likely to be confused with CREST CAREER IMAGES (stylized) for uniforms); *Steelcase Inc. v. Steelcare Inc.*, 219 USPQ 433 (TTAB 1983) (holding STEELCARE INC. for refinishing of furniture, office furniture, and machinery likely to be confused with STEELCASE for office furniture and

accessories); *Mack Trucks, Inc. v. Huskie Freightways, Inc.*, 177 USPQ 32 (TTAB 1972) (holding similar marks for trucking services and on motor trucks and buses likely to cause confusion).

The use of similar marks on or in connection with both products and retail-store services has been held likely to cause confusion where the evidence showed that the retail-store services featured the same type of products. *See In re Thomas*, 79 USPQ2d 1021, 1023 (TTAB 2006) (holding the use of similar marks both for jewelry and for retail-jewelry and mineral-store services was likely to cause confusion); *In re Peebles Inc.*, 23 USPQ2d 1795, 1796 (TTAB 1992) (holding the use of nearly identical marks both for coats and for retail outlets featuring camping and mountain climbing equipment, including coats, was likely to cause confusion, noting that “there is no question that store services and the goods which may be sold in that store are related goods and services for the purpose of determining likelihood of confusion”); *In re U.S. Shoe Corp.*, 8 USPQ2d 1938, 1939 (TTAB 1988) (holding the use of nearly identical marks both for leather cowboy boots and for retail western-, outdoor-, and leisure-clothing-store services featuring boots was likely to cause confusion); TMEP §1207.01(a)(ii).

Finally, where the marks of the respective parties are identical or virtually identical, the relationship between the relevant goods and services need not be as close to support a finding of likelihood of confusion. *See In re Shell Oil Co.*, 992 F.2d 1204, 1207, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993); *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202 (TTAB 2009); *In re Thor Tech, Inc.*, 90 USPQ2d 1634, 1636 (TTAB 2009); TMEP §1207.01(a).

The applicant argues that a likelihood of confusion does not exist in this case because the applicant’s services target different consumers. However, neither the applicant nor the registrants have placed any limitation on the channels of trade in which they are provided. The presumption under Trademark Act Section 7(b), 15 U.S.C. §1057(b), is that the registrant is the owner of the mark and that use of the mark extends to all goods and services identified in the registration. The presumption also

implies that the registrant operates in all normal channels of trade and reaches all classes of purchasers of the identified goods and/or services. *In re Melville Corp.*, 18 USPQ2d 1386, 1389 (TTAB 1991); *McDonald's Corp. v. McKinley*, 13 USPQ2d 1895, 1899 (TTAB 1989); *RE/MAX of Am., Inc. v. Realty Mart, Inc.*, 207 USPQ 960, 964-65 (TTAB 1980); see TMEP §1207.01(a)(iii). Thus, it is presumed that the applicant's services and the registrants' goods are provided through all normal channels of trade and the evidence shows that those channels of trade would be the same for the applicant's services and the registrants' goods.

The applicant also argues that a likelihood of confusion does not exist because the applicant's services are distinguishable from the registrants' goods. However, the fact that the goods and services of the parties differ is not controlling in determining likelihood of confusion. The issue is not likelihood of confusion between particular goods, but likelihood of confusion as to the source or sponsorship of those goods. *In re Majestic Distilling Co.*, 315 F.3d 1311, 1316, 65 USPQ2d 1201, 1205 (Fed. Cir. 2003); *In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993); TMEP §1207.01.

Furthermore, as noted above, the goods and services 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 and services 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)); *Gen. Mills Inc. v. Fage Dairy Processing Indus. SA*, 100 USPQ2d 1584, 1597 (TTAB 2011); TMEP §1207.01(a)(i).

The applicant further argues that since the applicant's mark is known to consumers due to its connection with the applicants and their television show, consumers will not be confused because they will be sophisticated enough to distinguish between the applicant's services and the registrant's goods. The fact that purchasers are sophisticated or knowledgeable in a particular field, however, does not necessarily mean that they are sophisticated or knowledgeable in the field of trademarks or immune from source confusion. TMEP §1207.01(d)(vii); *see, e.g., Stone Lion Capital Partners, LP v. Lion Capital LLP*, \_\_\_ F.3d. \_\_\_, \_\_\_, 110 USPQ2d 1157, 1163 (Fed. Cir. 2014); *Top Tobacco LP v. N. Atl. Operating Co.*, 101 USPQ2d 1163, 1170 (TTAB 2011).

Finally, while the applicant has excluded "eyewear, namely, eyeglasses, eyeglass frames, sunglasses and eyeglass cases" in the identification of services, confusion is likely to occur "from the use of the same or similar marks for goods, on the one hand, and for services involving those goods, on the other." TMEP § 1207.01(a)(ii) (8th ed. 2011). *See also, In re Peebles Inc.*, 23 USPQ2d 1795 (TTAB 1992) (coats and retail outlets featuring camping equipment held related); *In re U.S. Shoe Corp.*, 8 USPQ2d 1938 (TTAB 1988) (cowboy boots and retail clothing stores featuring boots, related); *In re The United States Shoe Corporation*, 229 USPQ 707 (TTAB 1985) (clothing store services related to uniforms). Since the Internet evidence provided by the examining attorney shows that retail store services featuring apparel, footwear, and fashion accessories also commonly feature eyewear and sunglasses, a likelihood of confusion exists between the applicant's mark and the registrants' marks.

## **CONCLUSION**

For the foregoing reasons, the refusal to register on the basis of Section 2(d) of the Trademark Act, 15 U.S.C. Section 1052(d), on the grounds that the applicant's mark, when used on or in connection with the identified goods, so resembles the marks in U.S. Registration Nos. 1807678 and 2670119 as to be likely to cause confusion, to cause mistake, or to deceive, should be affirmed.

Respectfully submitted,

/Seth A. Rappaport/

Seth A. Rappaport

Trademark Examining Attorney

Law Office 103

Phone: (571) 270-1508

Fax: (571) 270-2508

email: [seth.rappaport@uspto.gov](mailto:seth.rappaport@uspto.gov)

Michael Hamilton

Managing Attorney

Law Office 103