

ESTTA Tracking number: **ESTTA593546**

Filing date: **03/19/2014**

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

Proceeding	85748352
Applicant	Gamila Company
Applied for Mark	IMPRESS
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Submission	Reply Brief
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Date	03/19/2014

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

Applicant: Gamila Company
Mark: IMPRESS
Serial No.: 85/748,352
Filed: October 8, 2012

Attorney's Reference No.: T-4456.001-A

Honorable Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

APPLICANT'S REPLY TO THE EXAMINING ATTORNEY'S APPEAL BRIEF

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Attorneys for Applicant

Applicant has reviewed Examining Attorney's Appeal Brief filed on February 27, 2014 ("Examiner's Brief") and respectfully maintains that its mark IMPRESS ("Applicant's Mark" or the "Mark") is not likely to cause confusion with the registered mark IMPRESSA (the "Cited Mark"). Applicant submits the following remarks in reply to Examiner's Brief.

ARGUMENT

1. According to the Examining Attorney, her evidence from *Wikipedia* attached to the final Office action indicates that “coffeemakers or coffee machines are cooking appliances used to brew coffee.” Therefore, the applied-for “coffee extracting machines,” “non-electric coffee makers; non-electric coffee pots” and registered “electric coffee machines, espresso coffee machines and automatic espresso coffee machines” are all similar in nature because each is an appliance used to brew coffee. The Examining Attorney’s conclusion is so generalized that it is rather irrelevant to the likelihood of confusion determination.

2. The Examining Attorney stresses the importance of the evidence she submitted in the underlying office actions in support of her contention that “manufacturers of coffee makers frequently also sell thermal insulated containers.” This evidence, however, falls far short of showing that the circumstances surrounding the marketing of the respective goods would result in relevant purchasers mistakenly believing that the goods originate from the same source when the same mark is used on both types of goods.

3. If the goods 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, which is not the case here, confusion is not likely. See TMEP §1207.01(a)(i); see also *Quartz Radiation Corp. v.*

Comm/Scope Co., 1 U.S.P.Q.2d 1668 (TTAB 1986)(QR for coaxial cable held not confusingly similar to QR for various products (e.g., lamps, tubes) related to the photocopying field). In any event, there is no mechanical test for determining likelihood of confusion. The issue is not whether the actual goods are likely to be confused but, rather, whether there is a likelihood of confusion as to the source of the goods. See TMEP §1207.01; see also *In re Shell Oil Co.*, 26 U.S.P.Q.2d 1687, 1690 (Fed. Cir. 1993). Each case must be decided on its own facts. *Id.* When taken together, the fact that IMPRESSA and IMPRESS are not similar in appearance, sound, meaning, and commercial impression is sufficient to overcome the fact that some goods may be related.

4. The fact that Italian may be a “common modern language,” as the Examining Attorney accentuates, is not determinative of whether the doctrine of foreign equivalents is applicable here. Rather the test is whether an appreciable number of purchasers are likely to be aware that “impressa,” among other English words, translates also to “impress.” See *Palm Bay Imports, Inc.*, 73 U.S.P.Q.2d at 1696 (holding the average American purchaser would not stop and translate “VEUVE” into “widow” based on finding that “an appreciable number of purchasers are unlikely to be aware that VEUVE means ‘widow’ and are unlikely to translate the marks into English.”)

5. The Examining Attorney tries to invalidate Applicant’s evidence of how the Cited Mark is used by misconstruing as a collateral attack on the cited registration Applicant’s contention that Registrant’s coffee machines are so highly specialized that Registrant itself has chosen to always use its mark IMPRESSA with some additional wording. However, this is not the case. Applicant is simply arguing that Registrant’s coffee machines are so highly specialized that

the Registrant chose to distinguish between its different products by adding extra wording. On the other hand, Applicant's products are simple mechanic coffee brewers, which are directed to a very different purchasing public.

6. Applicant's Internet evidence is permitted in ex parte proceedings. Trademark Trial and Appeal Board Manual of Procedure ("TBMP") §1208.01 ("Material obtained through the Internet or from websites is acceptable as evidence in ex parte proceedings.")

7. Notwithstanding that the Examining Attorney's objection to the evidence submitted as Exhibit H, in all likelihood, will be honored by the Board, it is still not difficult to surmise that the Registrant's sophisticated coffee machines are sold for a rather high prices varying from couple of hundred to a couple of thousand dollars. Whereas, Applicant's "personal" coffee brewer is priced at only \$35.95. This factor further lowers the likelihood of confusion.

CONCLUSION

In light of foregoing, the Section 2(d) refusal of registration should be reversed and Applicant's mark passed to publication.

Dated: March 19, 2014

Respectfully submitted,

GAMILA COMPANY



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Milena S. Mishev