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

Proceeding	86227093
Applicant	ETONIC Holdings, LLC
Applied for Mark	DRX
Correspondence Address	WILLIAM H. COX GORDON, HERLANDS, RANDOLPH & COX LLP 355 LEXINGTON AVE FL 10 NEW YORK, NY 10017-6603 UNITED STATES wcox@gordonherlands.com, pvranum@gordonherlands.com
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Filer's Name	Peter J. Vranum
Filer's e-mail	pvranum@gordonherlands.com
Signature	/peter j. vranum/
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Applicant: Etonic Holdings, LLC
Trademark: DRX
Serial No. 86227093
Filed: March 20, 2014
Trademark Div.: 116
TM Attorney: Alice Benmaman, Esq.

APPLICANT'S APPEAL BRIEF

**Gordon, Herlands,
Randolph & Cox LLP
Counsel for Applicant
355 Lexington Avenue
New York, New York 10017
(212) 986-1200**

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APPLICANT'S APPEAL BRIEF

The Applicant is appealing the trademark examining attorney's refusal to register the DRX trademark on the ground that under Trademark Act Section 2(d), 15 U.S.C. §1052(d) a likelihood of confusion exists with U.S. Registration No. 3883054 for DRX ROMANELLI.

FACTS

Procedural History:

On March 20, 2014, the Applicant filed an application to register the subject trademark for "athletic footwear; footwear" in International Class 25. In an Office Action dated June 25, 2014, the Trademark Examining Attorney refused to register the Applicant's mark on the ground that under Trademark Act Section 2(d), 15 U.S.C. §1052(d) the application created a likelihood of confusion with respect to existing U.S. Registration Nos. 3883054 for DRX ROMANELLI and 3936551 for DRX. Applicant filed a response on November 22, 2014. The Examining Attorney then issued a Final Office Action dated December 22, 2014, withdrawing the refusal with respect to Reg. No. 3936551 and making the refusal final with respect to Reg. No. 3883054. On June 22, 2015, Applicant filed a notice of appeal and a request for reconsideration. The request for reconsideration was denied by action dated July 14, 2015.

ARGUMENT

THERE IS NO LIKELIHOOD OF CONFUSION BETWEEN APPLICANT'S MARK AND THE CITED MARK

Applicant respectfully submits that there is no likelihood of confusion between the Applicant's DRX mark and the cited mark, Registration No. 3883054 for DRX ROMANELLI for the reasons set forth below.

There is no likelihood of confusion between the cited mark, on the one hand, and the Applicant's mark, on the other hand because of the differences in the sound, appearance, meaning and/or applicable goods and as such the overall commercial impressions of the respective marks. One is immediately struck by the obvious differences in the terms themselves. Registration no. 3883054 includes the term ROMANELLI which the Applicant's mark does not. It is axiomatic that in determining whether a likelihood of confusion exists, the Examiner may not dissect the marks, but must consider the marks in their entireties. Estate of P.D. Beckwith, Inc. v. Commissioner of Patents, 252 U.S. 538, 545-46 (1920). The addition of the 4 syllable term ROMANELLI, which is a common Italian surname, gives Reg. No. 3883054 a different appearance and sound. ROMANELLI includes the term Roman and gives the cited mark an association with Italy or with an Italian family. DRX alone has no such meanings, associations or connotations.

Furthermore, the cited mark and the name ROMANELLI are associated with the well known designer, marketer and director Darren Romanelli. A printout of a wikipedia entry for Mr. Romanelli is attached to Applicant's request for reconsideration as Exhibit A. The existence

of the wikipedia entry is evidence of Mr. Romanelli's renown and makes it highly unlikely anyone would confuse Mr. Romanelli's DRX ROMANELLI mark, viewed in its entirety, with the Applicant's mark.

Applicable legal precedent holds that one feature of a mark may be recognized as more significant in creating a commercial impression. Greater weight is given to that dominant feature in determining whether there is a likelihood of confusion. In re National Data Corp., 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985); Tektronix, Inc. v. Daktronics, Inc., 534 F.2d 915, 189 USPQ 693 (C.C.P.A. 1976); In re J.M. Originals Inc., 6 USPQ2d 1393 (TTAB 1987); TMEP §1207.01(b)(viii). In this case the ROMANELLI term, which is must longer than the short DRX first term, is the dominant part of the mark and is significant in creating a distinct commercial impression. In such a case registration is proper. Shen Manufacturing Co. v. Ritz Hotel, Ltd., 393 F.3d 1238, 73 USPQ2d 1350 (Fed. Cir. 2004); In re Farm Fresh Catfish Co., 231 USPQ 4995 (TTAB 1986); In re Shawnee Milling Co., 225 USPQ 747 (TTAB 1985).

Further, the DRX ROMANELLI mark pertains only to clothing, whereas the Applicant's mark pertains only to athletic footwear and footwear. If the respective goods under the marks are not related or marketed in such 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. Shen Manufacturing Co. v. Ritz Hotel Ltd., 393 F.3d 1238, 73 USPQ2d 1350 (Fed. Cir. 2004). Here the respective products, clothing, on the one hand, and Applicant's athletic footwear, on the other hand, would be marketed and sold in distinct channels of trade so that consumer confusion is unlikely, particularly when one considers the phoentic and visual differences between the marks..

Given all of the differences between the appearance, sound and overall commercial impression of the respective marks, there is no likelihood of confusion between them. As such, Applicant's mark is registrable.

CONCLUSION

The subject mark is not likely to be confused with the cited registration. For the foregoing reasons, the refusal to register on the basis of Trademark Act Section 2(d), 15 U.S.C. §1052(d) should be withdrawn, and the Applicant's mark should be published for opposition.

Respectfully submitted,



Peter J. Vranum
Counsel for Applicant
Gordon, Herlands, Randolph
& Cox LLP
355 Lexington Avenue
New York, New York 10017
(212) 986-1200