

**To:** RUGGED & DAPPER LLC ([trademarks@fenwick.com](mailto:trademarks@fenwick.com))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 86534651 - RUGGED & DAPPER - N/A  
**Sent:** 5/17/2016 4:50:37 PM  
**Sent As:** ECOM104@USPTO.GOV  
**Attachments:**

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

U.S. APPLICATION SERIAL NO. 86534651

MARK: RUGGED & DAPPER

**\*86534651\***

**CORRESPONDENT ADDRESS:**

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APPLICANT: RUGGED & DAPPER LLC

CORRESPONDENT'S REFERENCE/DOCKET NO :

N/A

CORRESPONDENT E-MAIL ADDRESS:

trademarks@fenwick.com

**OFFICE ACTION**

**STRICT DEADLINE TO RESPOND TO THIS LETTER**

ISSUE/MAILING DATE: **5/17/2016**

**THIS IS A FINAL ACTION.**

On April 25, 2016 the Trademark Trial and Appeal Board (Board) suspended applicant's appeal and remanded the application to the trademark examining. Remand was granted for consideration of the consent agreement presented by the Applicant.

Pursuant to TMEP §1504.05, "[u]pon receipt of a remand from the Board, the examining attorney may not make a requirement or refuse registration **on a ground not specified in the Board's remand letter** or submit evidence relating to a requirement or ground not specified in the Board's remand letter. *In re Hughes Furniture Indus., Inc.*, 114 USPQ2d 1134, 1136 (TTAB 2015). In the order, the Board granted remand for consideration of the consent agreement. As such, this is the only ground being considered. The consent agreement has been reviewed by the examining attorney and found to be insufficient. As such, this subsequent final refusal is being sent to address the consent agreement.

## **OBJECTION TO REFERENCED EVIDENCE**

Applicant has submitted new evidence with its appeal brief. Specifically, in Exhibit C to its appeal the applicant has presented new website evidence concerning use of the term “RUGGED.”

The record in an application should be complete prior to the filing of an appeal. 37 C.F.R. §2.142(d); TBMP §§1203.02(e), 1207.01; TMEP §710.01(c). Because applicant’s new evidence was untimely submitted during an appeal, the trademark examining attorney objects to this evidence and requests that the Board disregard it. *See In re Fiat Grp. Mktg. & Corp. Commc’ns S.p.A*, 109 USPQ2d 1593, 1596 (TTAB 2014); *In re Pedersen*, 109 USPQ2d 1185, 1188 (TTAB 2013); TBMP §§1203.02(e), 1207.01; TMEP §710.01(c).

## **SUMMARY OF ISSUES MADE FINAL:**

- Section 2(d) Refusal – Likelihood Of Confusion

## **SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION**

Registration of the applied-for mark is refused because of a likelihood of confusion with the marks in U.S. Registration Nos. 3903332 and 4103613. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.*

Applicant has submitted a “Letter of Consent” from the owner of Registration 3903332. No such agreement was submitted with regard to registration 4103613.

The submitted consent agreement is a “naked consent” and is insufficient to overcome a likelihood of confusion refusal because it does not describe the arrangements undertaken by the parties to avoid confusing the public. *See In re Mastic*, 829 F.2d 1114, 1117-18, 4 USPQ2d 1292, 1295-96 (Fed. Cir. 1987); *In re Permagrain Prods., Inc.*, 223 USPQ 147, 149 (TTAB 1984); TMEP §1207.01(d)(viii). Without additional factors to support the conclusion that confusion is unlikely, naked consents are generally accorded little weight in a likelihood of confusion determination. *See In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1362, 177 USPQ 563, 568 (C.C.P.A. 1973).

The consent letter merely indicates that the consent is given because the “marks and their use with respect to the identified goods and the expected distribution of the RUGGED & DAPPER products on amazon.com and expected distribution through a website and in select boutiques are sufficiently different to avoid a likelihood of confusion...” Nothing in the consent makes clear that the registrant’s goods do not travel in these same channels. Further, nothing in the agreement indicates measures that will be taken to prevent confusion. As such, the Letter of Consent is insufficient to overcome the likelihood of confusion refusal.

Consent agreements are but one factor to be taken into account with all of the other relevant circumstances bearing on a likelihood of confusion determination. *In re N.A.D. Inc.*, 754 F.2d 996, 999, 224 USPQ 969, 971 (Fed. Cir. 1985); *In re E. I. du Pont*, 476 F.2d at 1361, 177 USPQ at 567; TMEP §1207.01(d)(viii).

Factors to be considered in weighing a consent agreement include the following:

- (1) Whether the consent shows an agreement between both parties;
- (2) Whether the agreement includes a clear indication that the goods and/or services travel in separate trade channels;
- (3) Whether the parties agree to restrict their fields of use;
- (4) Whether the parties will make efforts to prevent confusion, and cooperate and take steps to avoid any confusion that may arise in the future; and

(5) Whether the marks have been used for a period of time without evidence of actual confusion.

*See In re Four Seasons Hotels Ltd.*, 987 F.2d 1565, 1569, 26 USPQ2d 1071, 1073 (Fed. Cir. 1993); *In re Mastic*, 829 F.2d at 1117-18, 4 USPQ2d at 1295-96; cf. *Bongrain Int'l (Am.) Corp. v. Delice de Fr., Inc.*, 811 F.2d 1479, 1485, 1 USPQ2d 1775, 1779 (Fed. Cir. 1987).

Here, the agreement does not clearly indicate the goods of applicant and registrant travel in separate trade channels. Further, there is no indication the parties have agreed to restrict use. Lastly, there is no indication what actions will be taken to avoid confusion.

#### **APPEAL TO BE RESUMED**

Because applicant's response does not resolve all outstanding refusals nor otherwise put the application in condition for publication or registration, all issues are final. *See* 37 C.F.R. §§2.63(b), 2.142(d); TMEP §715.04(b).

The Board has been notified to resume the appeal. *See* TMEP §715.04(b).

#### **ASSISTANCE**

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §§2.62(c), 2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. *See* TMEP §§705.02, 709.06.

**TEAS PLUS OR TEAS REDUCED FEE (TEAS RF) APPLICANTS – TO MAINTAIN LOWER FEE, ADDITIONAL REQUIREMENTS MUST BE MET, INCLUDING SUBMITTING DOCUMENTS ONLINE:** Applicants who filed their application online using the lower-fee TEAS Plus or TEAS RF application form must (1) file certain documents online using TEAS, including responses to Office actions (see TMEP §§819.02(b), 820.02(b) for a complete list of these documents); (2) maintain a valid e-mail correspondence address; and (3) agree to receive correspondence from the USPTO by e-mail throughout the prosecution of the application. *See* 37 C.F.R. §§2.22(b), 2.23(b); TMEP §§819, 820. TEAS Plus or TEAS RF applicants who do not meet these requirements must submit an additional processing fee of \$50 per international class of goods and/or services. 37 C.F.R. §§2.6(a)(1)(v), 2.22(c), 2.23(c); TMEP §§819.04, 820.04. However, in certain situations, TEAS Plus or TEAS RF applicants may respond to an Office action by authorizing an examiner's amendment by telephone without incurring this additional fee.

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**All informal e-mail communications relevant to this application will be placed in the official application record.**

**PERIODICALLY CHECK THE STATUS OF THE APPLICATION:** To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at

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**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)**

**IMPORTANT NOTICE REGARDING YOUR  
U.S. TRADEMARK APPLICATION**

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ON **5/17/2016** FOR U.S. APPLICATION SERIAL NO. 86534651

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**(2) TIMELY RESPONSE IS REQUIRED:** Please carefully review the Office action to determine (1) how to respond, and (2) the applicable response time period. Your response deadline will be calculated from **5/17/2016** (or sooner if specified in the Office action). For information regarding response time periods, see <http://www.uspto.gov/trademarks/process/status/responsetime.jsp>.

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**(3) QUESTIONS:** For questions about the contents of the Office action itself, please contact the assigned trademark examining attorney. For *technical* assistance in accessing or viewing the Office action in the Trademark Status and Document Retrieval (TSDR) system, please e-mail [TSDR@uspto.gov](mailto:TSDR@uspto.gov).

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