

From: Cantone, Keri

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Subject: U.S. TRADEMARK APPLICATION NO. 86534651 - RUGGED & DAPPER - N/A - Request for Reconsideration Denied - Return to TTAB

Attachment Information:

Count: 2

Files: ruggedwipes.jpg, 86534651.doc

**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



CORRESPONDENT ADDRESS:

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GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/trademarks/index.jsp>

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APPLICANT: RUGGED & DAPPER LLC

CORRESPONDENT'S REFERENCE/DOCKET NO:

N/A

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REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 2/19/2016

The trademark examining attorney has carefully reviewed applicant's request for reconsideration and is denying the request for the reasons stated below. See 37 C.F.R. §2.63(b)(3); TMEP §§715.03(a)(ii)(B), 715.04(a). The following refusal made final in the Office action dated July 23, 2015 is maintained and continue to be final: Section 2(d) Refusal – Likelihood Of Confusion. See TMEP §§715.03(a)(ii)(B), 715.04(a).

In the present case, applicant's request has not resolved all the outstanding issue(s), nor does it raise a new issue or provide any new or compelling evidence with regard to the outstanding issue(s) in the final Office action. In addition, applicant's analysis and arguments are not persuasive nor do they shed new light on the issues. Accordingly, the request is denied.

If applicant has already filed a timely notice of appeal with the Trademark Trial and Appeal Board, the Board will be notified to resume the appeal. See TMEP §715.04(a).

If no appeal has been filed and time remains in the six-month response period to the final Office action, applicant has the remainder of the response period to (1) comply with and/or overcome any outstanding final requirement(s) and/or refusal(s), and/or (2) file a notice of appeal to the Board. TMEP §715.03(a)(ii)(B); see 37 C.F.R. §2.63(b)(1)-(3). The filing of a request for reconsideration does not stay or extend the time for filing an appeal. 37 C.F.R. §2.63(b)(3); see TMEP §§715.03, 715.03(a)(ii)(B), (c).

SUMMARY OF ISSUES:

- 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.* See the enclosed registrations.

In any likelihood of confusion determination, two key considerations are similarity of the marks and similarity or relatedness of the goods and/or services. *In re Aquamar, Inc.*, 115 USPQ2d 1122, 1126 (TTAB 2015) (citing *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103, 192 USPQ 24, 29 (C.C.P.A. 1976)); *In re Iolo Techs., LLC*, 95 USPQ2d 1498, 1499 (TTAB 2010); see TMEP §1207.01. That is, the marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *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)-(v). Additionally, the goods and/or services are compared to determine whether they are similar or commercially related or travel in the same trade channels. See *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369-71, 101 USPQ2d 1713, 1722-23 (Fed. Cir. 2012); *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1165, 64 USPQ2d 1375, 1381 (Fed. Cir. 2002); TMEP §1207.01, (a)(vi).

Where the goods of an applicant and registrant are “similar in kind and/or closely related,” the degree of similarity between the marks required to support a finding of likelihood of confusion is not as great as in the case of diverse goods. *In re J.M. Originals Inc.*, 6 USPQ2d 1393, 1394 (TTAB 1987); *see Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 1242, 73 USPQ2d 1350, 1354 (Fed. Cir. 2004); TMEP §1207.01(b). Here, the goods of the parties are highly related, if not identical.

A. *Applicant argues the term RUGGED is diluted*

In *In re Broadway Chicken, Inc.*, the applicant submitted evidence of **hundreds** of companies utilizing the term BROADWAY as part of a service mark for restaurant services to support its dilution argument. 1996 TTAB LEXIS 2 (Trademark Trial & App. Bd. Mar. 26, 1996). In this instance, the evidence submitted by the Applicant is insufficient to establish that RUGGED is being used as a trademark in connection with personal care products such that the term is diluted.

Applicant has submitted printed or electronic copies of third-party registrations for marks containing the wording RUGGED 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. However, evidence comprising only a small number of third-party registrations for similar marks with similar goods, as in the present case, is generally entitled to little weight in determining the strength of a mark. *See AMF Inc. v. Am. Leisure Products, Inc.*, 474 F.2d 1403, 1406, 177 USPQ 268, 269 (C.C.P.A. 1973); *Richardson-Vicks Inc. v. Franklin Mint Corp.*, 216 USPQ 989, 992 (TTAB 1982). These few registrations are “not evidence of what happens in the market place or that customers are familiar with them.” *AMF Inc. v. Am. Leisure Prods., Inc.*, 474 F.2d at 1406, 177 USPQ at 269; *see Richardson-Vicks Inc. v. Franklin Mint Corp.*, 216 USPQ at 992. Thus, the few similar third-party registrations submitted by applicant are insufficient to establish that the wording RUGGED is weak or diluted.

The registration of these three marks, two of which exist by consent agreement, does not support applicant’s contention that the term RUGGED is diluted.

As is shown by the attached specimen of record, RUGGED WYPES are “industrial cleaning towels”- not “pre-saturated facial and body towel cleansers.” As such, these goods are distinguishable from the goods of the applicant.

Moreover, 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).

B. Applicant argues that the addition of the wording “& DAPPER” distinguishes the marks.

Adding a term to a registered mark generally does not obviate the similarity between the compared marks, as in the present case, nor does it overcome a likelihood of confusion under Section 2(d). TMEP §1207.01(b)(iii). In the present case, the marks are identical in part.

The identical portions of the marks convey the same commercial impression in relation to the goods. The addition of the term DAPPER does not create a double meaning or double entendre in connection with the goods at issue.

COMPARISON OF THE GOODS

In its request for reconsideration, the applicant has made no argument that the goods of the parties are not related.

As is shown by the previously attached third party registration and evidence from www.kiehls.com, www.getjackblack.com, www.baxterofcalifornia.com, www.dovemencare.us, www.aveda.com and www.lorealparis.ca and the same company commonly produces a variety of skin and haircare products. For example, Aveda produces shampoo, conditioners, hair oil, perfumery, cleaners and hand cream.

Thus, upon encountering applicant's and registrant's marks, consumers are likely to be confused and mistakenly believe that the respective goods emanate from a common source.

Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

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.

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