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

Proceeding	86535608
Applicant	Justin M Haggerty
Applied for Mark	BOYLSTON
Correspondence Address	JUSTIN M HAGGERTY 15 LINCOLN ST #121 WAKEFIELD, MA 01880-3001 UNITED STATES info@haggertynewengland.com
Submission	Reply Brief
Attachments	BOYLSTON-TTAB.pdf(3739810 bytes)
Filer's Name	Justin Haggerty
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Signature	/JH/
Date	10/29/2016

The **only** issue the examining attorney has addressed is a likelihood of confusion with internet searches because the registrant was an “on-line retail store featuring clothing” and included the word BOYLSTON in its name.

“When a consumer sees the BOYLSTON clothing brand, there is an expectation by that consumer to be able to purchase the clothing online through the clothing’s producer. When a consumer then searches for the applicant’s brand online and finds the online retailer BOYLSTON TRADING CO., that consumer would be confused and expect that the BOYLSTON brand of clothing is made available online through the BOYLSTON TRADING CO.” (Office Action Feb. 04, 2016)

Consumers **can** purchase the BOYLSTON clothing brand online through the clothing’s producer, the applicant. The website can be found on the applicant’s clothing tags as well as when searched for and boylstonclothing.com appears. If boylstonclothing.com and boylstontradingco.com both appeared in search results, consumers would click on boylstonclothing.com to find clothing by the applicant.

The examining attorney did not argue against this fact.

TRADING CO. is not a definitive description of a clothing brand. There are 290 marks containing TRADING CO. registered with the USPTO and they aren’t all selling clothing. There are 5,993 containing the word CLOTHING and they are **all** selling clothing.

Consumers would not type in the search bar BOYLSTON TRADING CO. when looking for the BOYLSTON clothing brand.

The examining attorney did not argue against this fact.

There is no need for consumers to have to search for clothing brands in the present day. All professional brands have their own .com addresses as shown by the examining attorney’s lists of brands and their websites in his Office actions. They are **all** the brand’s name followed by .com.

The examining attorney did not argue against this fact.

The applicant listed all domains in which they own in their Jan. 15, 2016 response and the examining attorney did not acknowledge, respond, or argue against this in their Office action dated Feb. 04, 2016.

The examining attorney needed to be **reminded** to respond to this key evidence and when he did it lacked acknowledgement and understanding.

The domains owned by the applicant are shop.justinhaggerty.com, justinhaggerty.com, haggertynewengland.com, haggertyne.com, boylstontrademark.com, boylstonclothing.com, boylstonclothingco.com, boylstonclothingcompany.com, boylstonofficial.com, and officialboylston.com.

“The applicant has asserted that he has provided evidence, including a number of web domains using the wording BOYLSTON, all of which direct back to the applicant’s website. However, none of the websites mentioned by the applicant show the wording BOYLSTON or use the wording BOYLSTON to identify the source of the applicant’s goods.” (Reconsideration Letter Aug. 24, 2016)

The examining attorney acknowledges the applicant has domains that include the word BOYLSTON, and in the next sentence says none of the websites show the wording BOYLSTON or use wording BOYLSTON to identify the source of the applicant’s goods. The word BOYLSTON is in six of the actual website addresses and the very specimen submitted with this application is on the Stockists page of the website.

“The evidence submitted by the applicant in his June 8, 2015 response shows the applicant offering his goods under the mark HAGGERTY and not the applied-for mark, BOYLSTON.” (Reconsideration Letter Aug. 24, 2016)

The applicant submitted evidence of using the BOYLSTON mark in the form of hang tags as a specimen along with their application on Feb. 15, 2015. The applicant then submitted on June 8, 2015 a neck tag bearing his own name and a registered trademark they own, Registration 4547672. Hang tags and neck tags are **both** acceptable locations used to identify the source of goods.

This was **never** argued against by the examining attorney in any of their Office actions. This is now the **fourth** time supplying this evidence.

“The issue is not if a likelihood of confusion exists between particular goods and services, but if a likelihood of confusion as to the **source** or sponsorship of those goods and services exists.” (Office Action Feb. 04, 2016)

The use of the BOYLSTON mark in conjunction with the owner’s name and a registered trademark resolves the outstanding issue.

The applicant:

- 1) Uses the mark BOYLSTON in conjunction with their own name and other registered marks
- 2) Owns domains shop.justinhaggerty.com, justinhaggerty.com, haggertynewengland.com, haggertyne.com, boylstontrademark.com, boylstonclothing.com, boylstonclothingco.com, boylstonclothingcompany.com, boylstonofficial.com, and officialboylston.com
- 3) Points all six domains containing BOYLSTON to a website that has the owner’s name and a registered mark they own on the main page
- 4) Has on their website upfront terms stating all brand names, graphics, and images are trademarks and copyrights and all merchandise is exclusive to this website
- 5) Also has a Stocklist that would list any other place they could find this merchandise and BOYLSTON TRADING CO. is not one of them
- 6) Includes on the Stockists page an image of the specimen submitted with this application on Feb. 15, 2015

The examining attorney has stated that BOYLSTON in both of the marks “has the same commercial impression of Boylston Street in Boston, Massachusetts.” First with a Wikipedia page, and now with Tripadvisor and Boston Globe pages, the examining attorney is using pages about this street to say the marks have the same commercial impression. None of these pages he has mentioned would be found by anyone searching for the BOYLSTON clothing brand or BOYLSTON TRADING CO., and none of these pages mention the applicant’s brand or the registrant’s store.

The examining attorney did not argue against this fact.

The registrant:

- 1) Does not have the word ST or STREET in their mark
- 2) Did not have their office address anywhere on their website
- 3) Never had their name on the outside of their office building
- 4) Was a known retailer of high end brands, not their own brand or the applicant’s
- 5) Is no longer in use and is no longer at that address
- 6) Was owned by a corporation that was bought by a company in California and relocated

The examining attorney did not argue against the applicant’s claim that the examining attorney did not know of Boylston Street in Boston, MA prior to seeing the listed address of the registrant. Therefore, the examining attorney did **not** know of the street prior.

The examining attorney has not argued against any of these facts listed above in all of his Office actions, and these facts all resolve the outstanding issue.



