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

Proceeding	86544008
Applicant	Highland Ridge RV, Inc.
Applied for Mark	ROAMER
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In Re Application of:	)	
Highland Ridge RV, Inc.	)	
	)	Law Office: 101
Serial No.           86/544,008	)	
Filed:               February 24, 2015	)	Examining Attorney:
Mark:                ROAMER	)	Michael P. Keating
Attorney Docket:   64266-57832	)	

**APPLICANT'S BRIEF**

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

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## **APPLICANT'S APPEAL BRIEF**

Highland Ridge RV, Inc. ("Applicant") submits this brief in support of its appeal from the Examining Attorney's Final Refusal to register ROAMER under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), and respectfully requests that the Trademark Trial and Appeal Board reverse this refusal to register.

### **I. BACKGROUND**

On February 24, 2015, Applicant applied to register the trademark ROAMER in standard character form on the Principal Register ("Applicant's Mark"). On June 3, 2015, the Examining Attorney issued an Office Action refusing registration of Applicant's mark on the grounds of a likelihood of confusion with U.S. Registration No. 3,068,323 for EARTHROAMER.

On November 30, 2015, Applicant responded to the June 3, 2015, Office Action, addressing all of the outstanding issues. Namely, Applicant argued that confusion was not likely between Applicant's Mark and Registration No. 3,068,323 for the mark EARTHROAMER. Applicant specifically argued that (1) the respective marks are readily distinguishable in sound and appearance; (2) the respective goods are sufficiently distinguishable to negate a likelihood of confusion; (3) the consumers are sophisticated and will take great care in purchasing Applicant's and Registrant's goods; and (4) the burden of proof to find a likelihood of confusion has not been met.

On December 21, 2015, the Examining Attorney issued a Final Office Action. The December 21, 2015 Final Action continued and maintained the likelihood of confusion refusal with Registration No. 3,068,323 for the mark EARTHROAMER.

Applicant filed its Notice of Appeal on June 16, 2016, after the issuance of the Final Refusal. Applicant is appealing the decision of the Final Refusal on the basis that there is no likelihood of confusion with the registered mark EARTHROAMER.

## II. ISSUE ON APPEAL

The question presented is whether Applicant's Mark ROAMER for use with "*Recreational vehicles, namely, travel trailers and fifth wheel travel trailers*" in International Class 12 ("Applicant's Goods") is likely to be confused with EARTHROAMER, registered in connection with "*Vehicles, namely expedition vehicles in the nature of land vehicles, four-wheel drive vehicles, all terrain vehicles, trucks, campers, off-road capable campers, camper shells and structural parts associated with all of the foregoing*" in Class 12 ("Registrant's Goods").

## III. ARGUMENT

Applicant appeals the Examining Attorney's final refusal that its application for ROAMER ("Applicant's Mark") for "*Recreational vehicles, namely, travel trailers and fifth wheel travel trailers*" in International Class 12 is confusingly similar to U.S. Registration No. 3,068,323 for EARTHROAMER ("Registrant's Mark") for "*Vehicles, namely expedition vehicles in the nature of land vehicles, four-wheel drive vehicles, all terrain vehicles, trucks, campers, off-road capable campers, camper shells and structural parts associated with all of the foregoing*" in International Class 12 ("Registrant's Goods").

It is the Examining Attorney's burden to make out a prima facie case of likelihood of confusion supported by evidence and, in this case, the evidence does not support the decision that confusion is likely between ROAMER and EARTHROAMER. For the reasons discussed below, Applicant respectfully requests the Board reverse the refusal to register.

A. **Relevant Law**

A determination under Trademark Act § 2(d) is based on an analysis of the probative facts in evidence that are relevant to the factors bearing on a likelihood of confusion. *See In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 U.S.P.Q. 563 (CCPA 1973). *See also Palm Bay Imp., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 U.S.P.Q.2d 1689 (Fed. Cir. 2005). Although the weight given to the relevant *du Pont* factors may vary, the following two factors are key considerations in any likelihood of confusion determination: (1) the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation, and commercial impression; and (2) the relatedness of the goods or services as described in the application and registration(s). *See, e.g., Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103, 192 U.S.P.Q. 24, 29 (C.C.P.A. 1976) (in considering the evidence of record on these factors, “[t]he fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”); *In re Iolo Techs., LLC*, 95 U.S.P.Q.2d 1498, 1499 (TTAB 2010); *In re Max Capital Grp. Ltd.*, 93 U.S.P.Q.2d 1243, 1244 (TTAB 2010); *In re Thor Tech, Inc.*, 90 U.S.P.Q.2d 1634, 1635 (TTAB 2009).

The following factors must also be considered in an *ex parte* likelihood of confusion determination if there is pertinent evidence in the record: the similarity or dissimilarity of established, likely-to-continue trade channels, and the conditions under which and buyers to whom sales are made, i.e., “impulse” purchasing versus careful, sophisticated purchasing. *See, e.g., In re E.I. du Pont de Nemours & Co.*, 476 F.2d at 1362-63, 177 U.S.P.Q. at 568-69; *In re Davey Prods. Pty Ltd.*, 92 U.S.P.Q.2d 1198, 1203-04 (TTAB 2009). In this case, it is not only the similarity or dissimilarity of the marks and relatedness of the goods that are key to the likelihood of confusion determination, but also the sophistication of the purchasers and

conditions of sale and the dissimilarity of trade channels, based on the pertinent evidence in the record.

B. **The DuPont Factors**

(i) **Consumer Sophistication and Conditions of Purchase**

The Federal Circuit has made it clear that purchaser “sophistication is important and often dispositive because sophisticated consumers may be expected to exercise greater care.” *Electronic Design & Sales*, 21 USPQ2d at 1392 (Fed. Cir. 1992). Applicant’s and Registrant’s goods are expensive and only purchased by sophisticated consumers—not on impulse or on a whim—but only after careful consideration, thereby preventing any likelihood of confusion. “[T]here is always less likelihood of confusion where goods are expensive and purchased after careful consideration.” *Astra Pharmaceutical Products, Inc. v. Beckman Instruments, Inc.*, 718 F.2d 1201, 1206 (1st Cir. 1983).

In the December 21, 2015 Final Office Action, the Examining Attorney argued that customer sophistication does not necessarily mean the customers are immune from source confusion. However, while the fact that purchasers are sophisticated or knowledgeable in a particular field does not necessarily mean that they are immune from source confusion, *circumstances suggesting care in purchasing does tend to minimize the likelihood of confusion.* TMEP § 1207.01(vii). In the present case, it is clear that consumers will exercise great care when purchasing both Applicant's and Registrant's goods. Applicant's goods sold under the ROAMER mark have a retail price range of approximately \$38,000 to \$63,000. According to the Registrant’s website at <http://earthroamer.com/xv-lt/pricing/> (as pointed out and cited in Applicant’s November 30, 2015 Office Action Response), its EARTHROAMER goods range from about \$350,000 to \$575,000. In addition, the respective goods are specialized and highly customizable and, thus, typically something the purchaser will keep for a significant

period of time, making the purchasing decision that much more important as such purchases are not made with great frequency. These are not every day “impulse” purchases, but rather special purchases in which consumers can be expected to pay particular attention and make a careful examination of the product before buying. These types of products, at these high prices, clearly would only be purchased by sophisticated purchasers after great care and deliberation. *Standard Knitting Ltd. v. Toyota Jidosha Kabushiki Kaisha*, 77 U.S.P.Q.2d 1917 (TTAB 2006) (“[I]t is clear that automobiles are expensive and would only be purchased after careful consideration, thereby reducing the risk of confusion.”). In making purchasing decisions regarding such important and expensive goods, “the reasonably prudent person standard is elevated to the standard of the ‘discriminating purchaser.’” *Weiss Associates, Inc. v. HRL Associates, Inc.*, 902 F.2d 1546, 14 USPQ2d 1840, 1841 (Fed. Cir. 1990).

As the court explained in *Du Pont*, where a prospective purchaser is likely to exercise a high degree of care or sophistication when selecting goods or services, there is less chance that confusion, mistake, or deception will occur between two or more competing marks. *See also TCPIP Holding Co., Inc. v. Haar Communications, Inc.*, 244 F.3d 88, 102 (2d Cir.2001) (“The more sophisticated the consumers, the less likely they are to be misled by similarity in marks.”); *Cadbury Beverages, Inc. v. Cott Corp.*, 73 F.3d 474, 480 (2d Cir.1996) (“The sophistication factor recognizes that the likelihood of confusion between the products at issue depends in part on the sophistication of the relevant purchasers.”). Furthermore, the degree of care factor plays a significant role in minimizing potential confusion where the subject goods fail to constitute “impulse” goods. *See, e.g., Astra Pharm. Prods. Inc. v. Beckman Instruments, Inc.*, 718 F.2d 1201, 1206 (1st Cir. 1983) (finding that blood analyzers that cost between \$35,000 to \$60,000 require careful consideration likely to result in added consumer scrutiny and

examination). Accordingly, it is highly unlikely that any purchaser of Applicant's or Registrant's goods would be confused as to the source of these important and expensive goods that are purchased with a high level of discrimination.

As such, and as described further below, despite the fact that these goods could be categorized within the broad category of "vehicles," the required level of sophistication and exercise of a high degree of care, coupled with the differences in the marks in their entireties and the differences in the respective goods and their advertising and trade channels, helps to assure that no confusion is likely.

**(ii) The Respective Goods, Their Purposes, and the Channels of Marketing and Trade Are Sufficiently Distinct to Negate a Likelihood of Confusion**

Confusion is also unlikely because of the differences in Applicant's and Registrant's respective goods. Applicant's goods are "*Recreational vehicles, namely, travel trailers and fifth wheel travel trailers.*"

An examination of the application and registration reveals that, while the Applicant and Registrant share some connection to the broad-spectrum category of vehicles, the Applicant and Registrant occupy different fields within that category given the specific and clearly articulated nature and purposes of the respective goods. Courts have held that the mere fact that "two products or services fall within the same general field . . . does not mean that the two products or services are sufficiently similar to create a likelihood of confusion." *Matrix Motor Co. v. Toyota Jidosha Kabushiki Kaisha*, 290 F. Supp.2d 1083, 1092 (2003), *aff'd* 120 Fed. Appx. 30 (9th Cir. Cal. 2005) (*citing Harlem Wizards Entm't Basketball, Inc. v. NBA Props.*, 952 F. Supp. 1084, 1095 (D.N.J. 1997)). The U.S. Trademark Office must show something more than the fact that both Applicant and Registrant sell a type of what might arguably be considered "vehicles."

**(a) Applicant's and Registrant's Respective Goods and their Purposes Are Readily Distinguishable**

The cumulative effect of differences in the essential characteristics of the goods and services involved is a fundamental inquiry mandated by Section 2(d) of the Trademark Act. *Interstate Brands Corp. v. Celestial Seasonings, Inc.*, 198 U.S.P.Q. 151, 153 (C.C.P.A. 1978). Applicant submits that its travel trailers are sufficiently distinguishable from Registrant's expedition vehicles so as to make confusion unlikely. Applicant further submits that the Examining Attorney improperly discounted the qualifying and limiting language in Applicant's and Registrant's identifications of goods, which highlight the disparate nature and purposes of the respective goods in this case. In the December 21, 2015 Final Office Action, the Examining Attorney discounted the limiting language in both Applicant's and Registrant's identifications of goods and lumped Applicant's "travel trailers" in with Registrant's claimed "land vehicles" because "they are designed to transport persons or things on land."

Applicant offers "Recreational vehicles, *namely*, travel trailers and fifth wheel travel trailers" under the mark ROAMER. As indicated in Applicant's qualified and limiting identification of goods, Applicant's goods consist specifically of travel trailers. Applicant's travel trailers are non-motorized units that are towed and transported by hitching them to a truck or car; they cannot move on their own and, indeed, only move at all when being pulled behind a motorized vehicle. Further, Applicant's travel trailers are designed primarily for on-road travel, not what is traditionally understood as "off-road" use.

In stark contrast, Registrant provides specifically *expedition vehicles*, which cannot be described as a trailer or "travel trailer" in any capacity. Registrant's goods are more specifically and narrowly identified as land vehicles, four-wheel drive vehicles, trucks, off-road campers and the like--which are motorized and move on their own rather being hitched and pulled by another

vehicle. Registrant's goods are provided to consumers seeking a high-end, *motorized* vehicle that is built for more than just being towed on the road and parking at a campsite; they are specially designed and built for off-road travel. Registrant even states on its website that its goods create a new vehicle category of their own – the expedition vehicle – and explains its goods as intended for “rough road, stand-alone operation,” *emphasizing its distinction from the recreational vehicle industry* of which Applicant's goods form a part. (See Exhibit A attached to Applicant's November 30, 2015 Office Action Response).

In view of the specific distinctions between Applicant's goods and Registrant's goods, particularly the readily distinguishable nature and utility of each, the respective goods, though arguably falling within the broad category of “vehicles,” cannot be considered so similar as to create a likelihood of confusion, especially when considering the consumer sophistication and conditions of purchase involved here. Indeed, one cannot presume confusing similarity between goods merely because the goods represented by the marks fall into the same broad category or because the goods can be described generally by a single term. *See*, TMEP 1207.01(a)(iv) (noting that there can be no rule certain goods or services are per se related, such that there must be a likelihood of confusion due to the use of similar marks in relation thereto). *See also*, *UMC Indus., Inc. v. UMC Elecs. Co.*, 207 U.S.P.Q. 861, 879 (T.T.A.B. 1980) (“[T]he fact that one term, such as ‘electronic,’ may be found which generally describes the goods of both parties is manifestly insufficient to establish that the goods are related in any meaningful way.”); *John L. Armitage & Co. v. National Industries, Inc.*, 166 USPQ 504 (TTAB 1970) (ARMORCLAD for use in connection with finishing paints for, among other items, furniture held unlikely to be confused with ARMORCLAD & Helmet Design for cabinets, panels, tables, chairs, desks, and other pieces of furniture); *Season-All Sales Corp. v. Benjamin Moore & Co.*, 134 USPQ 587

(TTAB 1962) (TEMP-GARD for use in connection with mixed aluminum paints unlikely to be confused by purchasers with TEMP-GARD for use in connection with aluminum storm windows and doors); *Machine Head v. Dewey Global Holdings, Inc.*, 61 U.S.P.Q.2d 1313, 1318 (N.D. Cal. 2001) (“The fact that both products could broadly be described as relating to music is not sufficient to find that the products have a similar use or function.”) (internal citation omitted). Though both Applicant and Registrant’s relevant goods “overlap” in the sense that they both in some way ultimately relate to “vehicles,” they do not overlap in nature, function, or purpose, as described above. As such, and particularly given the sophistication of the relevant purchasers and increased level of consumer care exercised in this case, the goods and their purposes are sufficiently distinct to negate a likelihood of confusion.

In sum, Applicant submits that the respective goods are sufficiently different to assure that confusion is not likely.

**(b) The Relevant Channels of Marketing and Trade Are Sufficiently Distinct**

Moreover, even identical marks can coexist without confusion when the consumers and relevant markets are sufficiently distinct. *Electronic Design & Sales, Inc. v. Electronic Data Systems*, 954 F.2d 713, 716, 21 U.S.P.Q.2d at 1392 (Fed. Cir. 1992) (reversing a TTAB finding of likelihood of confusion between EDS for computer hardware components and E.D.S. for data processing services).

Applicant’s goods are purchased by consumers needing a trailer to pull behind their vehicle for recreational purposes. These products are sold through Applicant’s authorized dealer network. It is highly unlikely that the sophisticated consumers purchasing Applicant’s travel trailers for pulling behind their vehicle via a trailer hitch would also assume that these travel trailers could be used as expedition off-roading vehicles. Conversely, someone purchasing

Registrant's off-roading expedition vehicles would not buy them for pulling behind another vehicle; indeed, they cannot even be used in this manner. Accordingly, because the goods identified in the application and the prior cited registration are qualified and limited and because the respective goods differ significantly in their nature and purpose, it would be erroneous to presume that the goods would move in the same channels of trade. *See Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 U.S.P.Q.2d 1813 (Fed. Cir. 1987). Therefore, the nature of the goods ensures that the likely purchasers and channels of marketing and trade are distinct, and the Examining Attorney has not provided sufficient evidence to establish otherwise. The Examining Attorney's evidence purporting to show third parties sell both Applicant's and Registrant's goods is of little value given none of the evidence of record shows third parties selling Registrant's expedition vehicles, and only one of the four third-party websites submitted with the December 21, 2015 Office Action show the same entity offering both Applicant's travel trailer goods and a motorized vehicle, specifically, motorhomes. Such motorhomes are exactly the kind of recreational vehicles that Registrant distinguishes from its expedition vehicles on its website discussed above.

In sum, Applicant's and Registrant's goods are distinct and travel in distinctly different channels of marketing and trade. Further, both Applicant's and Registrant's identifications contain limiting language, eliminating any remaining perceivable overlap.

**(iii) Applicant's and Registrant's Marks are Not Similar in Sound, Appearance, or Commercial Impression**

Applicant has provided sufficient evidence that its ROAMER mark and Registrant's EARTHROAMER mark are not similar in sound, appearance, or commercial impression. In comparing Applicant's ROAMER mark and Registrant's Mark, the TMEP § 1207.01(b)(i) specifically provides:

The points of comparison for a word mark are appearance, sound, meaning, and commercial impression. See *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 1371, 73 U.S.P.Q.2d 1689, 1691 (Fed. Cir. 2005) (citing *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973)). **Similarity of the marks in one respect – sight, sound, or meaning – will not automatically result in a determination that confusion is likely even if the goods are identical or closely related.**

*In re Lamson Oil Co.*, 6 USPQ2d 1041, 1043 (TTAB 1987) (emphasis added).

The complete appearance and sound of the respective marks and the differences in their appearances must be considered in conjunction with the differences in their commercial impressions. Even marks that are identical in sound and/or appearance may also be sufficiently different in commercial impression that no likelihood of confusion exists. See, e.g., *In re Sears, Roebuck and Co.*, 2 USPQ 2d 1312 (TTAB 1987) (CROSS-OVER for bras held not likely to be confused with CROSSOVER for ladies' sportswear); *In re British Bulldog, Ltd.*, 224 USPQ 854 (TTAB 1984) (PLAYERS for men's underwear held not likely to be confused with PLAYERS for shoes); *In re Sydel Lingerie Co., Inc.*, 197 USPQ 629 (TTAB 1977) (BOTTOMS UP for ladies' and children's underwear held not likely to be confused with BOTTOMS UP for men's clothing). Certainly, if in the immediately preceding cases, where the marks were *identical* in appearance and sound, the marks were deemed able to co-exist without confusion, then so can Applicant's and Registrant's Marks, which are far from identical in appearance and sound and completely different in commercial impression. Although each mark incorporates the common term "ROAMER," the marks are different in appearance, sound, and commercial impression in a meaningful way.

For the purposes of determining a likelihood of confusion, a trademark must be considered in its entirety and not dissected into component parts. *Estate of P.D. Beckwith Inc. v. Comm'n of Patents*, 252 U.S. 538 (1920); *In re Bed & Breakfast Registry*, 791 F.2d 157, 229 U.S.P.Q. 818 (Fed. Cir. 1986) (emphasis added). It is true that the test is not whether the marks

can be distinguished in a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods or services offered under the respective marks is likely to result. *Midwestern Pet Foods, Inc. v. Societe des Produits Nestle S.A.*, 685 F.3d 1046, 1053, 103 U.S.P.Q.2d 1435, 1440 (Fed. Cir. 2012). It is also true that the proper focus is on the recollection of the average customer who retains a general rather than specific impression of trademarks. *United Global Media Grp., Inc. v. Tseng*, 112 U.S.P.Q.2d 1039, 1049 (TTAB 2014). *See also L'Oreal S.A. v. Marcon*, 102 U.S.P.Q.2d 1434, 1438 (TTAB 2012); TMEP §1207.01(b)(i). Thus, the determination must be based on the entire marks, not just part of the marks. *In re Nat'l Data Corp.*, 753 F.2d 1056, 224 U.S.P.Q. 749 (Fed. Cir. 1985).

The Examining Attorney has improperly dissected the marks rather than considering the marks in their entireties, as is required for a likelihood of confusion analysis. *Franklin Mint Corp. v. Master Mfg. Co.*, 667 F. 2d 1005, 212 U.S.P.Q. 233, 234 (C.C.P.A. 1981) ("It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion.").

The court in *In re Electrolyte Laboratories Inc.*, held that the TTAB erred by not considering the marks in their entireties. 913 F.2d 930, 16 USPQ2d 1239, 1240 (Fed. Cir. 1990) ("We conclude that the TTAB erred in its dominant focus on the K+ in both marks, to the substantial exclusion of the other elements of both marks"). Similarly, in the instant case, it is improper in considering likelihood of confusion to focus solely on the individual term ROAMER found in both Applicant's and Registrant's marks to the complete exclusion of the other elements found in the marks, namely the beginning portion—EARTH—in Registrant's unitary mark EARTHROAMER.

The TTAB and courts have found no likelihood of confusion in numerous cases where one mark is comprised of another mark plus an additional term, *even for marks involving identical or similar goods and services*. See, *Time, Inc. v. Petersen Pub. Co. L.L.C.*, 173 F.3d 113, 50 USPQ2d 1782 (TTAB 2002) (no likelihood of confusion between TEEN and TEEN PEOPLE, both for magazines aimed at teenagers); *Jet, Inc. v. Sewage Aeration Systems*, 165 F.3d 419, 49 USPQ2d 1355 (6th Cir. 1999) (no likelihood of confusion between JET and AEROB-A-JET, both for sewage and waste water treatment systems for homes); *Mr. Hero Sandwich Systems, Inc. v. Roman Meal Co.*, 781 F.2d 884, 228 USPQ 364 (Fed. Cir. 1986) (no likelihood of confusion between ROMAN and ROMANBURGER, both for food products); *Plus Products v. General Mills, Inc.*, 188 USPQ 520 (TTAB 1975) (no likelihood of confusion between PLUS for food supplements for breads, rolls, and buns and PROTEIN PLUS for cereal); *In re Ferrero*, 479 F.2d 1395, 178 USPQ 167 (CCPA 1973) (no likelihood of confusion between TIC TAC and TIC TAC TOE, both for junk food); *Lever Bros. Co. v. Barcolene Co.*, 463 F.2d 1107, 174 USPQ 392 (CCPA 1972) (no likelihood of confusion between ALL and ALL CLEAR, both for household cleaning products); and *Colgate-Palmolive Co. v. Carter-Wallace, Inc.*, 432 F.2d 1400, 167 USPQ 529 (CCPA 1970) (no likelihood of confusion between PEAK and PEAK PERIOD, both for personal care products). Similarly, there is no likelihood of confusion between Applicant's ROAMER and Registrant's EARTHROAMER marks.

ROAMER and EARTHROAMER are unitary marks that are intended to be read and viewed *as a whole*. When properly considered in their entireties, as is required, Applicant's ROAMER mark is clearly distinguishable from Registrant's EARTHROAMER mark both aurally and visually.

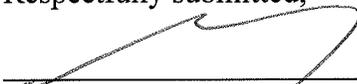
The respective marks are not phonetically similar, and the differing elements leave a lasting impression on the consumer. Indeed, it has been held that it is the first word of a mark that is “most likely to be impressed upon the mind of a purchaser and remembered.” *Presto Products Inc. v. Nice-Pak Products, Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988); *Palm Bay 73 USPQ2d at 1692*; *Wet Seal Inc. v. FD Mgmt. Inc.*, 82 USPQ2d 1629, 1639 (TTAB 2007). The beginning of Registrant’s Mark is “EARTH,” which is entirely distinct in appearance and sound from Applicant’s ROAMER mark. The Examining Attorney seems to have improperly discounted the difference this distinction makes. Consumers will not pronounce the respective marks the same way, and their respective pronunciations sound nothing alike. The beginnings of the respective marks, which are most likely to be impressed on the purchaser’s minds, are vastly different in appearance and sound and meaning, thereby making the overall marks in their entireties vastly different.

Thus, despite the shared use of the element ROAMER in the respective marks, a proper comparison of the marks *in their entireties, as required*, reveals the visual and aural distinctions between Applicant’s and Registrant’s respective marks, which create readily distinguishable overall commercial impressions, thereby preventing any likelihood of confusion.

#### IV. CONCLUSION

Because the Examining Attorney has failed to establish a prima face case of likelihood of confusion, the Examining Attorney’s refusal of the registration of Applicant’s Mark must be reversed. Applicant respectfully submits that under the standards maintained by the courts and the TTAB for analysis of Lanham Act Section 2(d) inquiries, the foregoing discussion demonstrates that source confusion is not likely and thus the refusal to register ROAMER based on Section 2(d) should be reversed.

Respectfully submitted,



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Dated: \_\_\_\_\_

8/15/16