

ESTTA Tracking number: **ESTTA699161**

Filing date: **09/30/2015**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

| | |
|---------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| Name | Samuel Katzin-Simon |
| Granted to Date of previous extension | 09/30/2015 |
| Address | 228 Park Avenue South, #25697 New York, NY 10003 UNITED STATES |
| Attorney information | SUSAN UPTON DOUGLASS FROSS ZELNICK LEHRMAN & ZISSU PC 866 UNITED NATIONS PLAZA NEW YORK, NY 10017 UNITED STATES sdouglass@frosszelnick.com |

Applicant Information

| | | | |
|--------------------------------|-------------------------------------------------|---------------------------------|------------|
| Application No | 79124364 | Publication date | 06/02/2015 |
| Opposition Filing Date | 09/30/2015 | Opposition Period Ends | 09/30/2015 |
| International Registration No. | 1145603 | International Registration Date | 08/12/2012 |
| Applicant | Ido Yehuda Gov Ari 21 Dafna street ISRAEL | | |

Goods/Services Affected by Opposition

| |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Class 025. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Synthetic fabric body shapers, silicone nipple covers in the nature of pasties, anti wrinkle silicone body shapers, bras |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Grounds for Opposition

| | |
|--------------------------------------------------|-----------------------------------------------------|
| Priority and likelihood of confusion | Trademark Act section 2(d) |
| <i>Torres v. Cantine Torresella S.r.l. Fraud</i> | 808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986) |
| Other | Lack of intent to use -- Trademark Act Section 1(b) |

Mark Cited by Opposer as Basis for Opposition

| | | | |
|----------------------|----------|------------------|------------|
| U.S. Application No. | 85780604 | Application Date | 11/15/2012 |
|----------------------|----------|------------------|------------|

| | | | |
|---------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|------|
| Registration Date | NONE | Foreign Priority Date | NONE |
| Word Mark | CHEEKI | | |
| Design Mark |  | | |
| Description of Mark | The mark consists of the term "Cheeki" in a stylized font, with the dot of the lowercase letter "i" being comprised of a heart design, centered within an oval pinched in the center at two locations. | | |
| Goods/Services | Class 025. First use: First Use: 2012/10/02 First Use In Commerce: 2012/10/02 Underwear | | |

| | |
|-------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Attachments | 85780604#TMSN.png(bytes) CHEEKY - Notice of Opposition (F1783112x96B9E).pdf(175762 bytes) Exhibit A (F1782305x96B9E).pdf(136720 bytes) Exhibit B (F1782307x96B9E).pdf(1162058 bytes) Exhibit C (F1782309x96B9E).pdf(1959821 bytes) |
|-------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

| | |
|-----------|----------------------|
| Signature | /sud/ |
| Name | Susan Upton Douglass |
| Date | 09/30/2015 |

3. On August 12, 2012, Applicant, Ido Yehuda Gov Ari, filed a Madrid Extension

application to register the mark  (the "CHEEKY Logo") for "synthetic fabric body shapers, silicone nipple covers in the nature of pasties, anti wrinkle silicone body shapers, bras." This application was assigned Serial No. 79124364.

4. During the course of prosecution of Applicant's CHEEKY Logo, the application was refused under Section 2(d) based on eleven prior registrations for marks containing the term CHEEKY and one prior mark with the term CHEEKI. In response to these blocking citations, the attorney for the Applicant argued that the design element served to distinguish the Applicant's mark from the twelve other marks. Despite his concession as to the weakness of his mark, Applicant has taken the position that Opposer's CHEEKI Logo, which is distinguishable from Applicant's mark, nonetheless is confusingly similar to Applicant's mark.

5. Applicant also claimed to the U.S. Patent and Trademark Office that his application in Class 25 was limited to "silicone body shapers and nipple covers," in an attempt to distinguish the application from the prior blocking marks. A copy of the initial Office Action dated February 4, 2013 is attached as Exhibit B, and the Applicant's Response dated March 5, 2013, is attached as Exhibit C.

6. Opposer's application has been suspended due to a potential bar under Section 2(d) based on Applicant's prior filed application. Further, Applicant has claimed that there is a likelihood of confusion caused by Opposer's mark. As such, Opposer has standing to oppose.

7. Applicant does not claim any use of the mark in commerce. On information and belief, Applicant has not made use in U.S. commerce of his CHEEKY Logo prior to Opposer's first use date of May 23, 2012. Therefore, Opposer has priority.

8. Applicant claims in his Response to Office Action (Exhibit C) that his only goods in Class 25 under the CHEEKY Logo mark are “silicone body shapers and nipple covers.” On information and belief, Applicant has no intent to use the mark for “bras” and lacked such intention at the time the CHEEKY Logo application was extended to the United States. The goods identified as silicone body shapers and nipple covers are “novelty” items.

First Claim for Relief

9. Applicant contends that the CHEEKI Logo for underwear is confusingly similar to the CHEEKY Logo owned by Applicant.

10. Opposer commenced use of his CHEEKI Logo prior to Applicant’s filing date and prior to any date on which Applicant can rely.

11. Accordingly, based on Applicant’s contentions, Applicant’s mark should be refused registration.

12. By reason of the foregoing, Opposer will be damaged by registration of the CHEEKY Logo by Applicant.

Second Claim for Relief

13. On information and belief, the only goods for which Opposer’s CHEEKY Logo is used or is intended to be used for Class 25 goods are silicone body shapers and nipple covers.

14. Accordingly, the application is void ab initio under Section 1 of the Trademark Act, 15 U.S.C. § 1051.

15. Applicant’s signed declaration of intent to use as to all goods listed in the application is false, was known by Applicant to be false at the time it was made, and was made willfully and in bad faith. This constitutes fraud and renders the application invalid in its entirety. Applicant’s

false statement is material and has been relied on by the Examining Attorney. Had Applicant not made such claims, this application would have been limited.

16. Opposer's prior common law rights will be damaged by Applicant's fraudulent or void application.

17. By reason of the foregoing, Opposer will be damaged by the registration of the CHEEKY Logo mark to Applicant.

WHEREFORE, it is respectfully requested that this opposition be sustained and that the registration sought by Application Serial No. 79124364 be denied.

Dated: New York, New York
September 30, 2015

Respectfully submitted,

FROSS ZELNICK LEHRMAN
& ZISSU, P.C.

By: 

Susan Upton Douglass
Attorneys for Opposer
866 United Nations Plaza
New York, New York 10017
(212) 813-5900

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by prepaid, first-class mail upon the Applicant as identified in the records of the U.S. Patent and Trademark Office, Ido Yehuda Gov Ari, 21 Dafna Street, Yavne, Israel. In addition, although the undersigned has been advised that the non-U.S. correspondent identified in the records of the U.S. Patent and Trademark Office no longer represents the Applicant, a copy of the foregoing was served by prepaid, first-class mail to Avd. Yonatan Drori, 23 Menachem Begin Street (Levinstein Tower), Tel Aviv, Israel, this 30th day of September 2015.


Susan Upton Douglass

EXHIBIT A

Attorney of Record

Attorney Name: Susan Upton Douglass
Attorney Primary Email Address: sdouglass@frosszelnick.com

Docket Number: KATZ 1207019
Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: SUSAN UPTON DOUGLASS
 FROSS ZELNICK LEHRMAN AND ZISSU, P.C.
 866 UNITED NATIONS PLZ
 NEW YORK, NEW YORK 10017-1822
 UNITED STATES

Phone: 212-813-5900

Fax: 212-813-5901

Correspondent e-mail: sdouglass@frosszelnick.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

| Date | Description | Proceeding Number |
|---------------|-----------------------------------------------------------|-------------------|
| Sep. 28, 2015 | APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED | 88888 |
| Sep. 28, 2015 | TEAS CHANGE OF OWNER ADDRESS RECEIVED | |
| Sep. 09, 2015 | REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED | |
| Mar. 09, 2015 | REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED | |
| Sep. 08, 2014 | REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED | |
| Mar. 07, 2014 | REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED | 59554 |
| Mar. 06, 2014 | ASSIGNED TO LIE | 59554 |
| Sep. 04, 2013 | NOTIFICATION OF LETTER OF SUSPENSION E-MAILED | 6332 |
| Sep. 04, 2013 | LETTER OF SUSPENSION E-MAILED | 6332 |
| Sep. 04, 2013 | SUSPENSION LETTER WRITTEN | 70729 |
| Sep. 04, 2013 | TEAS/EMAIL CORRESPONDENCE ENTERED | 67287 |
| Sep. 04, 2013 | CORRESPONDENCE RECEIVED IN LAW OFFICE | 67287 |
| Aug. 28, 2013 | ASSIGNED TO LIE | 67287 |
| Aug. 23, 2013 | TEAS RESPONSE TO OFFICE ACTION RECEIVED | |
| Mar. 12, 2013 | NOTIFICATION OF NON-FINAL ACTION E-MAILED | 6325 |
| Mar. 12, 2013 | NON-FINAL ACTION E-MAILED | 6325 |
| Mar. 12, 2013 | NON-FINAL ACTION WRITTEN | 70729 |
| Mar. 11, 2013 | ASSIGNED TO EXAMINER | 70729 |
| Nov. 27, 2012 | NOTICE OF DESIGN SEARCH CODE MAILED | |
| Nov. 26, 2012 | NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM | |
| Nov. 19, 2012 | NEW APPLICATION ENTERED IN TRAM | |

TM Staff and Location Information

TM Staff Information

TM Attorney: DELANEY, ZHALEH SYBIL

Law Office Assigned: LAW OFFICE 116

File Location

Current Location: TMO LAW OFFICE 116

Date in Location: Mar. 07, 2014

Proceedings

Summary

Number of Proceedings: 1

Type of Proceeding: Cancellation

Proceeding Number: [92057717](#)

Filing Date: Aug 14, 2013

Status: Terminated

Status Date: Apr 23, 2015

Interlocutory Attorney: YONG OH (RICHARD) KIM

Defendant

Name: Ambrea C. Hanson

Correspondent Address: AMBREA C HANSON
PO BOX 2751
Madison WI , 53701
UNITED STATES

Correspondent e-mail: Twentysixam@icloud.com

Associated marks

| Mark | Application Status | Serial Number | Registration Number |
|--------|----------------------------------------|-----------------|---------------------|
| CHIEKI | Cancelled - Section 18 Plaintiff(s) | <u>77698033</u> | <u>3738107</u> |

Name: Samuel Katzin-Simon

Correspondent Address: SUSAN UPTON DOUGLASS
FROSS ZELNICK LEHRMAN & ZISSU PC
866 UNITED NATIONS PLAZA
NEW YORK NY , 10017
UNITED STATES

Correspondent e-mail: mc@fzlz.com

Associated marks

| Mark | Application Status | Serial Number | Registration Number |
|--------|-------------------------------------------------------------|-----------------|---------------------|
| CHEEKI | Report Completed Suspension Check - Case Still Suspended | <u>85780604</u> | |

Prosecution History

| Entry Number | History Text | Date | Due Date |
|--------------|------------------------------------------|--------------|--------------|
| 1 | FILED AND FEE | Aug 14, 2013 | |
| 2 | NOTICE AND TRIAL DATES SENT; ANSWER DUE: | Aug 21, 2013 | Sep 30, 2013 |
| 3 | PENDING, INSTITUTED | Aug 21, 2013 | |
| 4 | D MOT FOR EXT W/O CONSENT | Oct 02, 2013 | |
| 5 | D CHANGE OF CORRESP ADDRESS | Oct 02, 2013 | |
| 6 | D MOT FOR EXT W/O CONSENT | Oct 07, 2013 | |
| 7 | TRIAL DATES RESET | Nov 13, 2013 | |
| 8 | ANSWER | Dec 13, 2013 | |
| 9 | P MOT TO COMPEL DISCOVERY | Mar 14, 2014 | |
| 10 | SUSP PEND DISP OF OUTSTNDNG MOT | Apr 08, 2014 | |
| 11 | PROCEEDINGS RESUMED | May 23, 2014 | |
| 12 | CHANGE OF CORRESP ADDRESS | Sep 22, 2014 | |
| 13 | D MOT TO SUSPEND | Sep 23, 2014 | |
| 14 | D MOT TO SUSPEND (DUPLICATE) | Sep 23, 2014 | |
| 15 | P OPP/RESP TO MOTION | Oct 01, 2014 | |
| 16 | STIP FOR EXT | Oct 17, 2014 | |
| 17 | EXTENSION OF TIME GRANTED | Oct 17, 2014 | |
| 18 | SUSP PEND DISP OF OUTSTNDNG MOT | Oct 29, 2014 | |
| 19 | P MOT FOR SANCTIONS | Mar 09, 2015 | |
| 20 | BD DECISION: GRANTED | Apr 22, 2015 | |
| 21 | COMMR ORDER CANCELLING REG | Apr 23, 2015 | |
| 22 | TERMINATED | Apr 23, 2015 | |

EXHIBIT B

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

U.S. APPLICATION SERIAL NO. 79124364

MARK: CHEEKY

79124364

CORRESPONDENT ADDRESS:

Avd. Yonatan Drori
23 Mechachem Begin st.
(Levinstein Tower)
Tel Aviv
ISRAEL

CLICK HERE TO RESPOND TO
<http://www.uspto.gov/trademarks/teas/r>

APPLICANT: Ido Yehuda Gov Ari

CORRESPONDENT'S REFERENCE/DOCKET NO :

N/A

CORRESPONDENT E-MAIL ADDRESS:

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

INTERNATIONAL REGISTRATION NO. 1145603

STRICT DEADLINE TO RESPOND TO THIS NOTIFICATION: TO AVOID ABANDONMENT OF THE REQUEST FOR EXTENSION OF PROTECTION OF THE INTERNATIONAL REGISTRATION, THE USPTO MUST RECEIVE A COMPLETE RESPONSE TO THIS PROVISIONAL FULL REFUSAL NOTIFICATION **WITHIN 6 MONTHS** OF THE "DATE ON WHICH THE NOTIFICATION WAS SENT TO WIPO (MAILING DATE)" LOCATED ON THE WIPO COVER LETTER ACCOMPANYING THIS NOTIFICATION.

In addition to the Mailing Date appearing on the WIPO cover letter, a holder (hereafter "applicant") may confirm this Mailing Date using the USPTO's Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. To do so, enter the U.S. application serial number for this application and then select "Documents." The Mailing Date used to calculate the response deadline for this provisional full refusal is the "Create/Mail Date" of the "IB-1rst Refusal Note."

This is a **PROVISIONAL FULL REFUSAL** of the request for extension of protection of the mark in the above-referenced U.S. application. See 15 U.S.C. §1141h(c). See below in this notification (hereafter "Office action") for details regarding the provisional full refusal.

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

Search of Marks - Prior Pending Applications

Information regarding pending Application Serial Nos. 85685240, 79121415, 85603617, 85328312, and 85140120 is enclosed. The filing dates of the referenced applications precede applicant's filing date. There may be a likelihood of confusion under Trademark Act Section 2(d) between applicant's mark and the referenced marks. If one or more of the referenced applications registers, registration may be refused in this case under Section 2(d). 37 C.F.R. §2.83; TMEP §§1208 *et seq.* Therefore, upon entry of a response to this Office action, action on this case may be suspended pending final disposition of the earlier-filed applications.

If applicant believes that there is no potential conflict between this application and the earlier-filed applications, then applicant may present arguments relevant to the issue in a response to this Office action.

The election not to submit arguments at this time in no way limits applicant's right to address this issue at a later point.

Section 2(d) Refusal

Registration of the applied-for mark is refused because of a likelihood of confusion with the marks in U.S. Registration Nos. 4269804, 3416487, 4026006, 3950769, 4074462, 3438804, 3350403, 3393367, 3219660, 3330826, 3126529, and 3256940. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the enclosed registrations.

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely that a potential consumer would be confused, mistaken, or deceived as to the source of the goods and/or services of the applicant and registrant. *See* 15 U.S.C. §1052(d). In the seminal decision *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973), the court listed the principal factors to be considered when determining whether there is a likelihood of confusion under Section 2(d). *See* TMEP §1207.01. However, not all the factors are necessarily relevant or of equal weight, and any one of the factors may control in a given case, depending upon the evidence of record. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d 1344, 1355, 98 USPQ2d 1253, 1260 (Fed. Cir. 2011); *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); *see In re E. I. du Pont de Nemours & Co.*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks and similarity and nature of the goods and/or services. *See In re Viterra Inc.*, 671 F.3d 1358, 1361-62, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593, 1595-96 (TTAB 1999); TMEP §§1207.01 *et seq.*

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)-(b)(v). Similarity in any one of these elements may be sufficient to find the marks confusingly similar. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *see In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007); TMEP §1207.01(b).

Applicant's mark is CHEEKY. The registered marks all contain the term CHEEKY with other wording and/or designs. Marks may be confusingly similar in appearance where there are similar terms or phrases or similar parts of terms or phrases appearing in both applicant's and registrant's mark. *See Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689 (TTAB 1986), *aff'd sub nom. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat'l Ass'n*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987) (COMMCASH and COMMUNICASH); *In re Phillips-Van Heusen Corp.*, 228

USPQ 949 (TTAB 1986) (21 CLUB and “21” CLUB (stylized)); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985) (CONFIRM and CONFIRMCELLS); *In re Collegian Sportswear Inc.*, 224 USPQ 174 (TTAB 1984) (COLLEGIAN OF CALIFORNIA and COLLEGIENNE); *In re Pellerin Milnor Corp.*, 221 USPQ 558 (TTAB 1983) (MILTRON and MILLTRONICS); *In re BASF A.G.*, 189 USPQ 424 (TTAB 1975) (LUTEXAL and LUTEX); TMEP §1207.01(b)(ii)-(iii).

The mere deletion of wording from a registered mark may not be sufficient to overcome a likelihood of confusion. *See In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257 (Fed. Cir. 2010); *In re Optica Int'l*, 196 USPQ 775, 778 (TTAB 1977); TMEP §1207.01(b)(ii)-(iii). Applicant’s mark does not create a distinct commercial impression because it contains the same common wording as each of the registrant’s marks, and there is no other wording in the applicant’s mark to distinguish it from the registered marks.

The goods and/or services of the parties need not be identical or even competitive to find a likelihood of confusion. *See On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) (“[E]ven if the goods in question are different from, and thus not related to, one another in kind, the same goods can be related in the mind of the consuming public as to the origin of the goods.”); TMEP §1207.01(a)(i).

The respective goods and/or services need only be related in some manner or the conditions surrounding their marketing be such that they will be encountered by the same consumers under circumstances that would lead to the mistaken belief that the goods and/or services originate from the same source. *Gen. Mills Inc. v. Fage Dairy Processing Indus.*, 100 USPQ2d 1584, 1597 (TTAB 2012); TMEP §1207.01(a)(i); *see On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d at 1086, 56 USPQ2d at 1475; *In re Martin’s Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1566-68, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

Applicant’s goods are “Cosmetic nail stencils, cosmetic nail stickers, cosmetic nail decorations and stones, cosmetic nail art equipment, cosmetic stamping nail art, manicure and pedicure products, nail art products, nail polish, nail strengtheners, nail polish remover, fake nails, nail gel, comedone extractor, hair removal product, fake eyelashes, tweezers, makeup, makeup sponge, cotton rounds, ear sticks, eyeshadows, foundation, blush, makeup brushes, beauty boxes, lip balms, lipsticks, lip stickers, eyeliners, perfume atomisers, shower caps, bath lotions, shampoos, soaps, body cream, foot cream, hand cream, skincare products, bath salts, bath oils” and “Synthetic fabric body shapers, silicone nipple covers, anti wrinkle silicone shapers, silicone body protectors, hair extensions, hair decorations, bras, bra fillers.”

Applicant’s bras are encompassed by the registrant’s lingerie (U.S. Reg. No. 4269804), its bras are identical to registrant’s bras (U.S. Reg. No. 3416487), its body lotions and soaps are identical to registrant’s body lotions and soaps (U.S. Reg. No. 4026006), its soap is identical to registrant’s soap (U.S. Reg. No. 3350403), its make-up and blush is identical to registrant’s cosmetics and blush (U.S. Reg. No. 3219660), its bath lotions, soaps, bath oils, and make-up are identical to registrant’s cosmetics, soaps, and bath gels (U.S. Reg. No. 3330826), its skincare products encompasses registrant’s skin care tanning preparations (U.S. Reg. No. 3126529), its make-up encompasses registrant’s cosmetics (U.S. Reg. No. 3256940), and its body shapers and bras are related to the various registrant’s clothing goods because each is a type of clothing, and the body shapers are complementary products for clothing (U.S. Reg. Nos. 3950769, 4074462, 3438804, and 3393367). The attached web page evidence from Spanx and Leonisa shows that body shapers are sold and used with various clothing products.

Decisions regarding likelihood of confusion in the clothing field have found many different types of apparel to be related goods. *Cambridge Rubber Co. v. Cluett, Peabody & Co.*, 286 F.2d 623, 624, 128

USPQ 549, 550 (C.C.P.A. 1961) (women's boots related to men's and boys' underwear); *Jockey Int'l, Inc. v. Mallory & Church Corp.*, 25 USPQ2d 1233, 1236 (TTAB 1992) (underwear related to neckties); *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991) (women's pants, blouses, shorts and jackets related to women's shoes); *In re Pix of Am., Inc.*, 225 USPQ 691, 691-92 (TTAB 1985) (women's shoes related to outer shirts); *In re Mercedes Slacks, Ltd.*, 213 USPQ 397, 398-99 (TTAB 1982) (hosiery related to trousers); *In re Cook United, Inc.*, 185 USPQ 444, 445 (TTAB 1975) (men's suits, coats, and trousers related to ladies' pantyhose and hosiery); *Esquire Sportswear Mfg. Co. v. Genesco Inc.*, 141 USPQ 400, 404 (TTAB 1964) (brassieres and girdles related to slacks for men and young men).

The overriding concern is not only to prevent buyer confusion as to the source of the goods and/or services, but to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. See *In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt regarding a likelihood of confusion determination is resolved in favor of the registrant. TMEP §1207.01(d)(i); see *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1025 (Fed. Cir. 1988).

For the reasons set forth above, registration is refused based on the Trademark Act Section 2(d).

Entity

Applicant must specify its form of business or type of legal entity and its national citizenship or foreign country of organization or incorporation. See 37 C.F.R. §§2.32(a)(3)(i)-(ii), 7.25(a)-(b); TMEP §§803.03, 803.04, 1904.02(a). This information is required in all U.S. trademark applications, including those filed under Trademark Act Section 66(a) (also known as "requests for extension of protection of an international registration to the U.S."). See 37 C.F.R. §§2.32(a)(3)(i)-(ii), 7.25(a)-(b); TMEP §§803.03, 803.04, 1904.02(a).

Acceptable entity types include an individual, a partnership, a corporation, a joint venture, or the foreign equivalent thereof. See 37 C.F.R. §2.32(a)(3)(i)-(ii); TMEP §§803.03 *et seq.*

If applicant's entity type is an individual, applicant must indicate his or her national citizenship for the record. 37 C.F.R. §2.32(a)(3)(i); TMEP §803.04. If applicant's entity type is a corporation, association, partnership, joint venture, or the foreign equivalent, applicant must set forth the foreign country under whose laws applicant is organized or incorporated. 37 C.F.R. §2.32(a)(3)(ii); TMEP §§803.03(b)-(c), 803.04. For an association, applicant must also specify whether the association is incorporated or unincorporated. TMEP §803.03(c).

If applicant is organized under the laws of a foreign province or geographical region, applicant should specify both the foreign province or geographical region and the foreign country in which the province or region is located. See TMEP §803.04. To provide this information online via the Trademark Electronic Application System (TEAS) response form, applicant must (1) locate the "Entity Type" heading and select "Other;" (2) locate the "Specify Entity Type" heading and select "Other" under the Foreign Entity option, and enter in the free-text field below both applicant's entity type and the foreign province or geographical region of its organization (e.g., partnership of Victoria); and (3) locate the "State or Country Where Legally Organized" heading and select the appropriate foreign country (e.g., Australia) under the Non-U.S. Entity option. See *id.*

Identification

The wording “Cosmetic nail stencils, cosmetic nail decorations and stones, cosmetic nail art equipment, cosmetic stamping nail art, manicure and pedicure products, nail art products, comedone extractor, hair removal product, tweezers, makeup sponge, cotton rounds, ear sticks, makeup brushes, beauty boxes, lip stickers, perfume atomisers, shower caps, skincare products,” and “silicone nipple covers, anti wrinkle silicone shapers, silicone body protectors, hair extensions, hair decorations, bra fillers” in the identification of goods and/or services is indefinite or too broad and must be clarified because it is unclear. See 37 C.F.R. §2.32(a)(6); TMEP §§1402.01, 1402.03.

In the identification of goods, applicant must use the common commercial or generic names for the goods, be as complete and specific as possible, and avoid the use of indefinite words and phrases. TMEP §1402.03(a). If applicant uses indefinite words such as “accessories,” “apparatus,” “components,” “devices,” “equipment,” “materials,” “parts,” “systems,” or “products,” such words must be followed by “namely,” followed by a list of the specific goods identified by their common commercial or generic names. See TMEP §§1401.05(d), 1402.03(a).

In an application filed under Trademark Act Section 66(a), an applicant may not change the classification of goods and/or services from that assigned by the International Bureau in the corresponding international registration. 37 C.F.R. §2.85(d); TMEP §§1401.03(d), 1904.02(b). Further, in a multiple-class Section 66(a) application, an applicant may not transfer goods and/or services from one existing international class to another. 37 C.F.R. §2.85(d); see TMEP §§1402.07(a), 1904.02(c).

Therefore, any modification to this wording must identify goods and/or services in International Class 3 and 25, the classification specified in the application for these goods and/or services.

The following substitute wording is suggested, if accurate:

Class 3 –

Cosmetic nail stickers, nail polish, nail strengtheners, nail polish remover, fake nails, nail gel, fake eyelashes, makeup, eyeshadows, foundation, blush, lip balms, lipsticks, eyeliners, bath lotions, shampoos, soaps, body cream, foot cream, hand cream, bath salts, bath oils.

Class 25 –

Synthetic fabric body shapers, silicone nipple covers in the nature of pasties, anti wrinkle silicone body shapers, silicone body protectors for football, bras.

For assistance with identifying and classifying goods and/or services in trademark applications, please see the online searchable *Manual of Acceptable Identifications of Goods and Services* at <http://tess2.uspto.gov/netathtml/tidm.html>. See TMEP §1402.04.

Mark Description

Applicant must submit an accurate and concise description of the literal and design elements in the mark. 37 C.F.R. §2.37; see TMEP §§808.01, 808.02. The following is suggested, if accurate:

The mark consists of the term CHEEKY, with a flared design element on the second “E”.

WHO IS PERMITTED TO RESPOND TO THIS PROVISIONAL FULL REFUSAL: Any response

to this provisional refusal must be personally signed by an individual applicant, all joint applicants, or someone with legal authority to bind a juristic applicant (e.g., a corporate officer or general partner). 37 C.F.R. §§2.62(b), 2.193(e)(2)(ii); TMEP §712.01. If applicant hires a qualified U.S. attorney to respond on his or her behalf, then the attorney must sign the response. 37 C.F.R. §§2.193(e)(2)(i), 11.18(a); TMEP §§611.03(b), 712.01. Qualified U.S. attorneys include those in good standing with a bar of the highest court of any U.S. state, the District of Columbia, Puerto Rico, and other federal territories and possessions of the United States. *See* 37 C.F.R. §§2.17(a), 2.62(b), 11.1, 11.14(a); TMEP §§602, 712.01. Additionally, for all responses, the proper signatory must personally sign the document or personally enter his or her electronic signature on the electronic filing. *See* 37 C.F.R. §2.193(a); TMEP §§611.01(b), 611.02. The name of the signatory must also be printed or typed immediately below or adjacent to the signature, or identified elsewhere in the filing. 37 C.F.R. §2.193(d); TMEP §611.01(b).

In general, foreign attorneys are not permitted to represent applicants before the USPTO (e.g., file written communications, authorize an amendment to an application, or submit legal arguments in response to a requirement or refusal). *See* 37 C.F.R. §11.14(c), (e); TMEP §§602.03-.03(b), 608.01.

DESIGNATION OF DOMESTIC REPRESENTATIVE: The USPTO encourages applicants who do not reside in the United States to designate a domestic representative upon whom any notice or process may be served. TMEP §610; *see* 15 U.S.C. §§1051(e), 1141h(d); 37 C.F.R. §2.24(a)(1)-(2). Such designations may be filed online at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

/Tejbir Singh/
Trademark Attorney
Law Office 106
571-272-5878
571-273-9106 (fax)
Tejbir.Singh@uspto.gov (informal inquiries only)

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/ mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

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

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

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 <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the

Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

Print: Feb 4, 2013

76558777

DESIGN MARK

Serial Number

76558777

Status

REGISTERED

Word Mark

GET CHEEKY

Standard Character Mark

No

Registration Number

3416487

Date Registered

2008/04/29

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

Frederick's of Hollywood, Inc. CORPORATION DELAWARE 6608 Hollywood Boulevard Hollywood CALIFORNIA 90028

Goods/Services

Class Status -- ACTIVE. IC 025. US 022 039. G & S: Clothing, namely, women's panties, bras, underwear and lingerie. First Use: 2002/07/00. First Use In Commerce: 2002/07/00.

Colors Claimed

Color is not claimed as a feature of the mark.

Filing Date

2003/11/10

Examining Attorney

LE, K. MARGARET

Attorney of Record

Harold K. Kyle

GET CHEEKY 

Print: Feb 4, 2013

77013577

DESIGN MARK

Serial Number

77013577

Status

REGISTERED

Word Mark

CHEEKY BITZ

Standard Character Mark

Yes

Registration Number

3438804

Date Registered

2008/06/03

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

CHEEKY BITS PTY LTD CORPORATION AUSTRALIA MELBOURNE PORT BUSINESS
CENTRE LEVEL 1, 270 BAY STREET PORT MELBOURNE, VICTORIA AUSTRALIA 3141

Goods/Services

Class Status -- ACTIVE. IC 025. US 022 039. G & S: Athletic and sports clothing, namely, jogging outfits, jogging pants, t-shirts, sports singlets, shorts, sweatbands, tracksuits and track pants, beachwear, namely, bathing suits, beach cover-ups, beach shoes, casual clothing, namely, belts, blouses, cardigans, coats, culottes, dresses, jackets, jumpers, halter tops, pants, pullovers, sarongs, shirts, skirts, slacks, sweaters, t-shirts, tube tops and wrap-arounds, exercise and gym clothing, namely, gym shorts, gym suits and leotards, formal wear, namely, evening gowns, loungewear, sleepwear, swim wear, underwear, lingerie and intimate apparel, namely, boxer shorts, brassieres, briefs, bustiers, camisoles, chemises, corsets, crop tops, foundation garments, girdles, g-strings, knickers, panties and singlets; athletic footwear, footwear, footwear for track and field athletics; berets, hats and caps.

Foreign Country Name

AUSTRALIA

Print: Feb 4, 2013

77013577

Foreign Priority

FOREIGN PRIORITY CLAIMED

Foreign Application Number

1130646

Foreign Filing Date

2006/08/21

Foreign Registration Number

1130646

Foreign Registration Date

2006/08/21

Foreign Expiration Date

2016/08/21

Filing Date

2006/10/04

Examining Attorney

MARTIN, JENNIFER

Attorney of Record

Kathleen Cooney-Porter

CHEEKY BITZ

Print: Feb 4, 2013

77546858

DESIGN MARK

Serial Number

77546858

Status

REGISTERED

Word Mark

CHEEKY BUTT

Standard Character Mark

Yes

Registration Number

4074462

Date Registered

2011/12/20

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Abercrombie & Fitch Trading Co. CORPORATION OHIO 6301 Fitch Path Attn:
Jacob Kramer New Albany OHIO 43054

Goods/Services

Class Status -- ACTIVE. IC 025. US 022 039. G & S: Bottoms. First
Use: 2011/08/00. First Use In Commerce: 2011/08/00.

Filing Date

2008/08/14

Examining Attorney

HENRY, NAKIA

Attorney of Record

Susan M. Kayser

CHEEKY BUTT

Print: Feb 4, 2013

78541818

DESIGN MARK

Serial Number

78541818

Status

REGISTERED

Word Mark

NATURALLY CHEEKY

Standard Character Mark

Yes

Registration Number

3256940

Date Registered

2007/06/26

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

BeautyBank Inc. CORPORATION DELAWARE 767 Fifth Avenue New York NEW YORK 10153

Goods/Services

Class Status -- ACTIVE. IC 003. US 001 004 006 050 051 052. G & S: Cosmetics. First Use: 2006/07/01. First Use In Commerce: 2006/07/01.

Filing Date

2005/01/04

Examining Attorney

CHARLON, BARNEY

Attorney of Record

Rita Odin

NATURALLY CHEEKY

Print: Feb 4, 2013

78554998

DESIGN MARK

Serial Number

78554998

Status

REGISTERED

Word Mark

FRESH & CHEEKY

Standard Character Mark

Yes

Registration Number

3330826

Date Registered

2007/11/06

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

BeautyBank Inc. CORPORATION DELAWARE 767 Fifth Avenue New York NEW YORK 10153

Goods/Services

Class Status -- ACTIVE. IC 003. US 001 004 006 050 051 052. G & S: Cosmetics; fragrances for personal use; non-medicated skincare preparations; haircare preparations; toiletries, namely, bath and body soaps, skin cleansers, bath gels, lotions for the face and body, skin creams; non-medicated sun care preparations. First Use: 2006/06/01. First Use In Commerce: 2006/06/01.

Filing Date

2005/01/27

Examining Attorney

BELENKER, ESTHER

Attorney of Record

Rita Odin

FRESH & CHEEKY

Print: Feb 4, 2013

78696532

DESIGN MARK

Serial Number

78696532

Status

SECTION 8 & 15-ACCEPTED AND ACKNOWLEDGED

Word Mark

CHEEKY BROWN

Standard Character Mark

Yes

Registration Number

3126529

Date Registered

2006/08/08

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Australian Gold, Inc. CORPORATION INDIANA 6270 Corporate Drive
Indianapolis INDIANA 46278

Goods/Services

Class Status -- ACTIVE. IC 003. US 001 004 006 050 051 052. G & S:
Skin care preparations, namely, non-medicated indoor and outdoor
tanning preparations. First Use: 2004/11/01. First Use In Commerce:
2004/11/01.

Filing Date

2005/08/19

Examining Attorney

CLARK, ROBERT C.

Attorney of Record

Charles J. Meyer

CHEEKY BROWN

Print: Feb 4, 2013

78740188

DESIGN MARK

Serial Number

78740188

Status

REGISTERED

Word Mark

GET CHEEKY

Standard Character Mark

Yes

Registration Number

3219660

Date Registered

2007/03/20

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

MALLYGIRL LLC LIMITED LIABILITY COMPANY DELAWARE 901 Dulaney Valley
Road, Suite 902 Towson MARYLAND 21204

Goods/Services

Class Status -- ACTIVE. IC 003. US 001 004 006 050 051 052. G & S:
Cosmetics; blush. First Use: 2006/01/28. First Use In Commerce:
2006/01/28.

Filing Date

2005/10/25

Examining Attorney

RITTNER, HANNO

Attorney of Record

Ronald E. Shapiro

GET CHEEKY

Print: Feb 4, 2013

78922192

DESIGN MARK

Serial Number

78922192

Status

REGISTERED

Word Mark

CHEEKY BANANA

Standard Character Mark

No

Registration Number

3393367

Date Registered

2008/03/04

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

Fleming, Lesley INDIVIDUAL UNITED STATES 8816 Braceridge Road Raleigh
NORTH CAROLINA 27613

Goods/Services

Class Status -- ACTIVE. IC 025. US 022 039. G & S: Children's
clothing, namely, shirts, pants, tops, dresses, sweaters and coats;
adult clothing, namely, women's dresses, skirts, tops, sweaters, and
coats; men's shirts. First Use: 2006/08/31. First Use In Commerce:
2006/08/31.

Description of Mark

The mark consists of the design of a smiling banana wearing sunglasses
with polka-dotted banana skin, leaning against a palm tree under the
sun. Gray is not a feature of the mark.

Colors Claimed

Color is not claimed as a feature of the mark.

Filing Date

2006/07/04

Print: Feb 4, 2013

78922192

Examining Attorney
KIM, JANICE

Attorney of Record
Daniel S. Porper



Print: Feb 4, 2013

78956938

DESIGN MARK

Serial Number

78956938

Status

REGISTERED

Word Mark

CHEEKY CLEAN

Standard Character Mark

Yes

Registration Number

3350403

Date Registered

2007/12/04

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

B.N.G. Enterprises, Inc. CORPORATION ARIZONA 3312 E. Broadway Road
Phoenix ARIZONA 85040

Goods/Services

Class Status -- ACTIVE. IC 003. US 001 004 006 050 051 052. G & S:
Soap, namely, body wash. First Use: 2007/03/29. First Use In
Commerce: 2007/03/29.

Filing Date

2006/08/21

Examining Attorney

LAVACHE, LINDA

Attorney of Record

Charles H. Knull

CHEEKY CLEAN

Print: Feb 4, 2013

79121415

DESIGN MARK

Serial Number

79121415

Status

NON-FINAL ACTION - MAILED

Word Mark

CHEEKI BUNNI

Standard Character Mark

No

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Owner

Andrew Bourke UNKNOWN NOT PROVIDED 86 Carbine Street DONCASTER EAST
VIC 3109 AUSTRALIA

Owner

Onore Pty Ltd COMPANY NOT ON LIST 86 Carbine Street DONCASTER EAST VIC
3109 AUSTRALIA

Goods/Services

Class Status -- ACTIVE. IC 016. US 002 005 022 023 029 037 038 050.
G & S: Adhesive materials in the form of stickers (non-textile);
adhesive printed stickers; adhesive stickers; bumper stickers; car
stickers; paper stickers (decalcomanias); plastic stickers
(decalcomanias); printed stickers; sticker activity books; stickers
(decalcomanias); stickers (stationary); stickers for cars; stickers of
paper; stickers of plastic; vehicle bumper stickers; window stickers;
bags (envelopes, pouches) of paper or plastics, for packaging; bags
made of paper for packaging; bags made of plastics for packaging; bags
made of plastics materials for packing; bags of paper in the form of
pouches; polythene bags for packaging; polythene bags for wrapping;
souvenir plastic bags; souvenir plastic carrier bags; bags (envelopes,
pouches) of paper or plastics, for packaging; bags of paper in the
form of envelopes; bags of plastics in the form of envelopes; bottle
envelopes of cardboard or paper; diskette envelopes of card; diskette
envelopes of cardboard; diskette envelopes of paper; envelopes
(stationery); envelopes of cardboard for bottles; envelopes of paper
for bottles for packaging; paper pouches (envelopes) for wrapping
purposes; plastic envelopes; address books; appointment books;

artists' sketch books; book covers; book jackets; booklets; booklets for information; books; books for children; books for colouring purposes; books for holding photographs; books relating to business; children's books; colouring books; cookery books; display books; drawing books; hardbound books; non-fiction books; photo books; picture books; sketch books; souvenir booklets; sticker activity books; travel guide books; wallpaper pattern books; writing books; writing or drawing books; non-adhesive labels (card); non-adhesive labels (paper); non-textile adhesive labels; price labels; self adhesive labels (not encoded or magnetic); self adhesive labels of paper; self adhesive labels of plastics.

Goods/Services

Class Status -- ACTIVE. IC 025. US 022 039. G & S: Beach clothes; clothes; apparel (clothing, footwear, headgear); anti-sweat underwear; shapewear (slimming underwear); slimming underwear; sweat-absorbent underclothing (underwear); underwear.

Colors Claimed

The color(s) black, white is/are claimed as a feature of the mark.

Part of Mark in Color

The mark consists of both black and white text; whole mark as one colour, either black or white.

Translation Statement

The English translation of the foreign word(s) in the mark is: Cheeky Bunny.

Filing Date

2012/05/31

Examining Attorney

KOZAK, EVIN LAURA

CHEEKi
BUNNI

Print: Feb 4, 2013

85115850

DESIGN MARK

Serial Number

85115850

Status

REGISTERED

Word Mark

CHEEKY CHAPS

Standard Character Mark

Yes

Registration Number

3950769

Date Registered

2011/04/26

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Cheeky Chaps PARTNERSHIP CALIFORNIA 1671 Avenida Guillermo Oceanside
CALIFORNIA 92056

Goods/Services

Class Status -- ACTIVE. IC 025. US 022 039. G & S: Belts; Chaps;
Footwear; Headwear; Jackets; Jeans; Pants; Shirts; Shorts;
Sweatshirts; Tank-tops; Tops. First Use: 2008/10/01. First Use In
Commerce: 2008/10/01.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CHAPS" APART FROM THE
MARK AS SHOWN.

Filing Date

2010/08/25

Examining Attorney

CHISOLM, KEVON

Cheeky Chaps

Print: Feb 4, 2013

85140120

DESIGN MARK

Serial Number

85140120

Status

THIRD EXTENSION - GRANTED

Word Mark

CHEEKY COUSIN

Standard Character Mark

Yes

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Abercrombie & Fitch Trading Co. CORPORATION OHIO Attn: Jacob Kramer
6301 Fitch Path New Albany OHIO 43054

Goods/Services

Class Status -- ACTIVE. IC 025. US 022 039. G & S: Belts; Bottoms;
Coats; Dresses; Footwear; Gloves; Headwear; Jackets; Leggings;
Scarves; Sleepwear; Swim wear; Tops; Undergarments.

Filing Date

2010/09/28

Examining Attorney

GOODMAN, WENDY

CHEEKY COUSIN

Print: Feb 4, 2013

85245212

DESIGN MARK

Serial Number

85245212

Status

REGISTERED

Word Mark

CHEEKYBUM

Standard Character Mark

Yes

Registration Number

4026006

Date Registered

2011/09/13

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Cheekybum, LLC DBA Cheekybum, LLC LIMITED LIABILITY COMPANY WASHINGTON
9806 S. 262nd Pl Kent WASHINGTON 98030

Goods/Services

Class Status -- ACTIVE. IC 003. US 001 004 006 050 051 052. G & S:
Aromatic body care products, namely, body lotion, shower gel, cuticle
cream, shampoo, conditioner, non-medicated lip balm, soap, body
polish, body and foot scrub and non-medicated foot cream; Beauty
creams; Beauty creams for body care; Beauty gels; Beauty lotions;
Beauty masks; Beauty milks; Beauty serums; Beauty soap; Body and
beauty care cosmetics; Essential oils for use in the manufacture of
scented products; Face and body beauty creams; Facial beauty masks;
Natural cocoa butter based personal care products, namely, body
lotion, shower gel, soap, body polish, body and foot scrub and
non-medicated skin creams; Non-medicated herbal body care products,
namely, body oils, salves, and lip balms. First Use: 2009/05/00.
First Use In Commerce: 2009/05/00.

Filing Date

2011/02/17

Print: Feb 4, 2013

85245212

Examining Attorney
FARRELL, ANNE

Cheeky Bum

Print: Feb 4, 2013

85328312

Issue: Feb 5, 2013

DESIGN MARK

Serial Number

85328312

Status

SU - REGISTRATION REVIEW COMPLETE

Word Mark

CHEEKY CHATS

Standard Character Mark

Yes

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

PEF Entertainment, LLC LIMITED LIABILITY COMPANY NEW YORK 201 East
87th Street, Suite 3D New York NEW YORK 10128

Goods/Services

Class Status -- ACTIVE. IC 025. US 022 039. G & S: T-shirts.
First Use: 2012/06/01. First Use In Commerce: 2012/06/01.

Filing Date

2011/05/24

Examining Attorney

BELLO, ZACHARY

Cheeky Chats

Print: Feb 4, 2013

85575602

DESIGN MARK

Serial Number

85575602

Status

REGISTERED

Word Mark

CHEEKY APRONS

Standard Character Mark

Yes

Registration Number

4269804

Date Registered

2013/01/01

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Coln, Ashlee INDIVIDUAL UNITED STATES 601 W. 11th Avenue, #804 Denver
COLORADO 80204

Goods/Services

Class Status -- ACTIVE. IC 025. US 022 039. G & S: Aprons, Aprons
with lingerie themes, Lingerie. First Use: 2012/04/09. First Use In
Commerce: 2012/04/09.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "APRONS" APART FROM THE
MARK AS SHOWN.

Filing Date

2012/03/21

Examining Attorney

SAPPENFIELD, ANN E.

Attorney of Record

Stephen Replin

CHEEKY APRONS

Print: Feb 4, 2013

85603617

DESIGN MARK

Serial Number

85603617

Status

NON-FINAL ACTION - MAILED

Word Mark

ROBIN CHEEKY

Standard Character Mark

Yes

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Titus, Tammi J. INDIVIDUAL UNITED STATES 32 Maureen Drive Smithfield
RHODE ISLAND 02917

Goods/Services

Class Status -- ACTIVE. IC 025. US 022 039. G & S: Robin Cheeky
goods, such as tshirts, books, bags, pencils, stickers; all good
pertaining to Robin Cheeky, including his cat Pluxie. First Use:
2010/05/01. First Use In Commerce: 2010/05/10.

Filing Date

2012/04/20

Examining Attorney

KEAN, AMY

Robin Cheeky

Print: Feb 4, 2013

85685240

DESIGN MARK

Serial Number

85685240

Status

NON-FINAL ACTION - MAILED

Word Mark

CHEEKY DEVIL

Standard Character Mark

Yes

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Strober, Dori A. INDIVIDUAL UNITED STATES 19 Jade Meadow Dr
Springfield NEW JERSEY 07081

Goods/Services

Class Status -- ACTIVE. IC 025. US 022 039. G & S: Apparel for dancers, namely, tee shirts, sweatshirts, pants, leggings, shorts and jackets; Bottoms; Capri pants; Clothing for athletic use, namely, padded shorts; Clothing, namely, knee warmers; Crop pants; Dance costumes; Fingerless gloves; Gloves; Gloves as clothing; Gloves for apparel; Gym pants; Gym shorts; Halter tops; Leg warmers; Leg-warmers; Leggings; Pants; Shirts and short-sleeved shirts; Short sets; Short-sleeved or long-sleeved t-shirts; Shorts; Sports pants; Stretch pants; Sweat pants; Tank tops; Tank-tops; Tap pants; Tops; Wearable garments and clothing, namely, shirts; Women's athletic tops with built-in bras; Women's tops, namely, camis; Wrist bands; Yoga pants. First Use: 2012/03/07. First Use In Commerce: 2012/04/17.

Filing Date

2012/07/24

Examining Attorney

WELLS, KELLEY

Cheeky Devil



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BY SARA BLAKELY[™]



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CATEGORIES

- Mid-Thigh Shapers
- Open-Bust
- Camis
- Bodysuits
- Slips
- Maternity
- Footless

SLIMMING LEVELS

- Medium
- Super
- Super-Duper

COLLECTIONS

- Spoil Me Cotton
- Undie-lectable[®]
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EXHIBIT C

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| Input Field | Entered |
|----------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| SERIAL NUMBER | 79124364 |
| LAW OFFICE ASSIGNED | LAW OFFICE 106 |
| MARK SECTION | |
| MARK FILE NAME | http://tess2.uspto.gov/ImageAgent/ImageAgentProxy?getImage=79124364 |
| LITERAL ELEMENT | CHEEKY |
| STANDARD CHARACTERS | NO |
| USPTO-GENERATED IMAGE | NO |
| OWNER SECTION (current) | |
| NAME | Ido Yehuda Gov Ari |
| STREET | 21 Dafna street |
| COUNTRY | Israel |
| OWNER SECTION (proposed) | |
| NAME | Ido Yehuda Gov Ari |
| STREET | 21 Dafna street |
| CITY | Yavne |
| COUNTRY | Israel |
| LEGAL ENTITY SECTION (current) | |
| TYPE | APPLICANT ENTERED NO DATA |
| STATE/COUNTRY WHERE LEGALLY ORGANIZED | XP |
| LEGAL ENTITY SECTION (proposed) | |
| TYPE | individual |
| COUNTRY OF | |

ARGUMENT(S)

Refusal on the basis of Trademark Act Section 2(d) Prior pending applications: 2. Under Trademark Act Section 2(d), No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it Consists of or comprises a mark which so resembles a mark registered in the USPTO, as to be likely to cause confusion, or to cause mistake, or to deceive. I strongly believe that there is no likelihood of confusion between designed international trademark 1145603 "Cheeky" and the following Pending applications:

A. 85685240 CHEEKY DEVIL (No logo) - Pending application 85685240 for the words "Cheeky Devil" and does not resemble the requested designed international trademark 1145603 "Cheeky", since it is designed and consists of only the word "cheeky" and not the words "cheeky devil", which are not designed. Also, the nature of goods for pending application 85685240 is completely different then the nature of goods requested for the designed international trademark 1145603 "Cheeky". While pending application 85685240 mainly concerns "Clothing for athletic use" and "Apparel for dancers" under class 25, the requested designed international trademark 1145603 mainly concerns beauty products under class 3 and silicone body shapers and nipple covers under class 25. For all these reasons, there is absolutely no potential conflict and no likelihood of confusion between pending application 85685240 and designed international trademark 1145603 under Trademark Act Section 2(d).

B. 79121415 CHEEKI BUNNI (with logo): Pending application 79121415 for the designed logo "cheeki bunni" and does not resemble the requested designed international trademark 1145603 "Cheeky", since they do not bear the same spelling of the term "Cheeky". Also, designed international trademark 1145603 consists solely of the word "Cheeky" while Pending application 79121415 consists of the words "Cheeki Bunni". the styling of the two trademarks is completely different and as international designed trademark 1145603 is written in "hand- writing" font with a little sparkle on the top of one of the E letters, the Pending application 79121415 design is made of two lines of bulky font with distinct differences between the width of the two words. Also, the nature of goods for Pending application 79121415 is completely different then the nature of goods requested for the designed international trademark 1145603 "Cheeky". While Pending application 79121415 mainly concerns goods in class 16, which is not requested for designed international trademark 1145603, and clothes under class 25, the requested designed international trademark 1145603 mainly concerns beauty products under class 3 and silicone body shapers and nipple covers under class 25. For all these reasons, there is absolutely no potential conflict and no likelihood of confusion between pending application 79121415 and designed international trademark 1145603 under Trademark Act Section 2(d).

Designed international trademark 1145603: Pending application 79121415: C. 85603617 Robin Cheeky (no logo) - Pending application 85603617 for the words "Robin Cheeky" and does not resemble the requested designed international trademark 1145603 "Cheeky", since it is designed and consists of the word "cheeky" and not the words "Robin Cheeky", which are not designed. Also, the nature of goods for pending application 85603617 is completely different then the nature of goods requested for the designed international trademark 1145603 "Cheeky". While pending application 85603617 mainly concerns memorabilia bearing the image of a fictional character named "Robin Cheeky" under class 25, the requested designed international trademark 1145603 mainly concerns beauty products under class 3 and silicone body shapers and nipple covers under class 25. For all these reasons, there is absolutely no potential conflict and no likelihood of confusion between pending application 85603617 and designed international trademark 1145603 under Trademark Act Section 2(d).

D. 85328312 Cheeky Chats (no logo)- Pending application 85328312 for the words "Cheeky chats" and does not resemble the requested designed international trademark 1145603 "Cheeky", since it is designed and consists of only the word "cheeky" and not the words " Cheeky chats ", which are not designed. Also, the nature of goods for pending application 85328312 is completely different then the nature of goods requested for the designed

international trademark 1145603 "Cheeky". While pending application 85328312 concerns only T-shirts under class 25, the requested designed international trademark 1145603 mainly concerns beauty products under class 3 and silicone body shapers and nipple covers under class 25. For all these reasons, there is absolutely no potential conflict and no likelihood of confusion between pending application 85328312 and designed international trademark 1145603 under Trademark Act Section 2(d). E. 85140120 Cheeky Cousins (no logo)- Pending application 85140120 for the words "Cheeky Cousins" and does not resemble the requested designed international trademark 1145603 "Cheeky", since it is designed and consists of only the word "cheeky" and not the words "Cheeky Cousins", which are not designed. Also, the nature of goods for pending application 85140120 is completely different then the nature of goods requested for the designed international trademark 1145603 "Cheeky". While pending application 85140120 concerns mainly which garments, footwear, accessories and sleepwear all under class 25, the requested designed international trademark 1145603 mainly concerns beauty products under class 3 and silicone body shapers and nipple covers under class 25. For all these reasons, there is absolutely no potential conflict and no likelihood of confusion between pending application 85140120 and designed international trademark 1145603 under Trademark Act Section 2(d). Registered Marks: 3. Under Trademark Act Section 2(d), no trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it Consists of or comprises a mark which so resembles a mark registered in the USPTO, as to be likely to cause confusion, or to cause mistake, or to deceive. We strongly believe that there is no likelihood of confusion between designed international trademark 1145603 "Cheeky" and the following marks: A. 85575602 CHEEKY APRONS (no logo): The Mark Registration No. 85575602 includes the words "Cheeky aprons" and does not resemble the requested designed international trademark 1145603 "Cheeky", since it is designed and consists of only the word "cheeky" and not the words "Cheeky aprons", which are not designed. Also, the nature of goods for Mark Registration No. 85575602 is completely different then the nature of goods requested for the designed international trademark 1145603 "Cheeky". While Mark Registration No. 85575602 mainly includes aprons with lingerie themes under class 25, the requested designed international trademark 1145603 mainly concerns beauty products under class 3 and silicone body shapers and nipple covers under class 25. For all these reasons, there is absolutely no potential conflict and no likelihood of confusion between pending application 85685240 and designed international trademark 1145603 under Trademark Act Section 2(d). B. 3416487 GET CHEEKY (with logo): The Mark Registration No. 3416487 for the designed logo GET CHEEKY and does not resemble the requested designed international trademark 1145603 "Cheeky", since designed international trademark 1145603 consists solely of the word "Cheeky" while Mark Registration No. 3416487 consists of the words GET CHEEKY. the styling of the two trademarks is completely different and as international designed trademark 1145603 is written in "hand- writing" font with a little sparkle on the top of one of the E letters, Mark Registration No. 3416487 design is made of a bulky and wide font with a sign of lips at the end of the writing . Also, the nature of goods for Mark Registration No. 3416487 is completely different then the nature of goods requested for the designed international trademark 1145603 "Cheeky". While Mark Registration No. 3416487 mainly concerns clothes under class 25, the requested designed international trademark 1145603 mainly concerns beauty products under class 3 and silicone body shapers and nipple covers under class 25. For all these reasons, there is absolutely no potential conflict and no likelihood of confusion between Mark Registration No. 3416487 and designed international trademark 1145603 under Trademark Act Section 2(d). Designed international trademark 1145603: Mark Registration No. 3416487: C. 4026006 Cheeky Bum (no logo): The Mark Registration No. 4026006 includes the words "Cheeky Bum" and does not resemble the requested designed international trademark 1145603 "Cheeky", since it is designed and consists of only the word "cheeky" and not the words "Cheeky Buns", which are not designed. Also, the nature of goods for Mark Registration No. 4026006 is completely different then the nature of goods requested for the designed international trademark 1145603 "Cheeky". While Mark Registration No. 4026006 mainly includes aromatic body care products

under class 3, the requested designed international trademark 1145603 mainly concerns beauty products under class 3 and silicone body shapers and nipple covers under class 25. For all these reasons, there is absolutely no potential conflict and no likelihood of confusion between Mark Registration No. 4026006 and designed international trademark 1145603 under Trademark Act Section 2(d). D. 3950769 Cheeky Chaps (no logo): The Mark Registration No. 3950769 includes the words "Cheeky Chaps" and does not resemble the requested designed international trademark 1145603 "Cheeky", since it is designed and consists of only the word "cheeky" and not the words "Cheeky Chaps", which are not designed. Also, the nature of goods for Mark Registration No. 3950769 is completely different then the nature of goods requested for the designed international trademark 1145603 "Cheeky". While Mark Registration No. 3950769 mainly includes cloths under class 25, the requested designed international trademark 1145603 mainly concerns beauty products under class 3 and silicone body shapers and nipple covers under class 25. For all these reasons, there is absolutely no potential conflict and no likelihood of confusion between Mark Registration No. 3950769 and designed international trademark 1145603 under Trademark Act Section 2(d). E. 4074462 Cheeky Butt (no logo): The Mark Registration No. 4074462 includes the words "Cheeky Butt" and does not resemble the requested designed international trademark 1145603 "Cheeky", since it is designed and consists of only the word "cheeky" and not the words "Cheeky butt", which are not designed. Also, the nature of goods for Mark Registration No. 4074462 is completely different then the nature of goods requested for the designed international trademark 1145603 "Cheeky". While Mark Registration No. 4074462 includes only bottoms under class 25, the requested designed international trademark 1145603 mainly concerns beauty products under class 3 and silicone body shapers and nipple covers under class 25. For all these reasons, there is absolutely no potential conflict and no likelihood of confusion between Mark Registration No. 4074462 and designed international trademark 1145603 under Trademark Act Section 2(d). F. 3438804 Cheeky Bitz (no logo): The Mark Registration No. 3438804 includes the words "Cheeky Bitz" and does not resemble the requested designed international trademark 1145603 "Cheeky", since it is designed and consists of only the word "cheeky" and not the words "Cheeky Bitz", which are not designed. Also, the nature of goods for Mark Registration No. 3438804 is completely different then the nature of goods requested for the designed international trademark 1145603 "Cheeky". While Mark Registration No. 3438804 includes mainly Athletic and sports clothing under class 25, the requested designed international trademark 1145603 mainly concerns beauty products under class 3 and silicone body shapers and nipple covers under class 25. For all these reasons, there is absolutely no potential conflict and no likelihood of confusion between Mark Registration No. 3438804 and designed international trademark 1145603 under Trademark Act Section 2(d). G. 3350403 Cheeky Clean (no logo): The Mark Registration No. 3350403 includes the words "Cheeky Clean" and does not resemble the requested designed international trademark 1145603 "Cheeky", since it is designed and consists of only the word "cheeky" and not the words "Cheeky Clean", which are not designed. Also, the nature of goods for Mark Registration No. 3350403 is completely different then the nature of goods requested for the designed international trademark 1145603 "Cheeky". While Mark Registration No. 3350403 includes only body wash under class 3, the requested designed international trademark 1145603 mainly concerns beauty products under class 3 and silicone body shapers and nipple covers under class 25. For all these reasons, there is absolutely no potential conflict and no likelihood of confusion between Mark Registration No. 3350403 and designed international trademark 1145603 under Trademark Act Section 2(d). H. 3393367 Cheeky Banana (with logo): The Mark Registration No. 3393367 for the designed logo Cheeky Banana does not resemble the requested designed international trademark 1145603 "Cheeky", since designed international trademark 1145603 consists solely of the word "Cheeky" while Mark Registration No. 3393367 consists of the words Cheeky Banana. Also, The styling of the two trademarks is completely different and as international designed trademark 1145603 is written in "hand- writing" font with a little sparkle on the top of one of the E letters, Mark Registration No. 3393367 design is made of a a drawing of a smiling banana wearing sunglasses and leaning on a palm tree with a drawing of a rounded sun on top. Also, the

nature of goods for Mark Registration No. 3393367 is completely different then the nature of goods requested for the designed international trademark 1145603 "Cheeky". While Mark Registration No. 3393367 mainly concerns clothing under class 25, the requested designed international trademark 1145603 mainly concerns beauty products under class 3 and silicone body shapers and nipple covers under class 25. For all these reasons, there is absolutely no potential conflict and no likelihood of confusion between Mark Registration No. 3393367 and designed international trademark 1145603 under Trademark Act Section 2(d). Designed international trademark 1145603: Mark Registration No. 3393367 I. 3219660 Get Cheeky (no logo): The Mark Registration No. 3219660 includes the words "Get Cheeky" and does not resemble the requested designed international trademark 1145603 "Cheeky", since it is designed and consists of only the word "cheeky" and not the words "Get Cheeky", which are not designed. Also, the nature of goods for Mark Registration No. 3219660 is completely different then the nature of goods requested for the designed international trademark 1145603 "Cheeky". While Mark Registration No. 3219660 includes mainly cosmetics under class 3, the requested designed international trademark 1145603 mainly concerns beauty products under class 3 and silicone body shapers and nipple covers under class 25. For all these reasons, there is absolutely no potential conflict and no likelihood of confusion between Mark Registration No. 3219660 and designed international trademark 1145603 under Trademark Act Section 2(d). J. 3330826 Fresh & Cheeky (no logo): The Mark Registration No. 3330826 includes the words "Fresh & Cheeky" and does not resemble the requested designed international trademark 1145603 "Cheeky", since it is designed and consists of only the word "cheeky" and not the words " Fresh & Cheeky ", which are not designed. Also, the nature of goods for Mark Registration No. 3330826 is completely different then the nature of goods requested for the designed international trademark 1145603 "Cheeky". While Mark Registration No. 3330826 includes mainly cosmetics under class 3, the requested designed international trademark 1145603 mainly concerns beauty products under class 3 and silicone body shapers and nipple covers under class 25. For all these reasons, there is absolutely no potential conflict and no likelihood of confusion between Mark Registration No. 3330826 and designed international trademark 1145603 under Trademark Act Section 2(d). K. 3126529 Cheeky Brown (no logo): The Mark Registration No. 3126529 includes the words "Cheeky Brown" and does not resemble the requested designed international trademark 1145603 "Cheeky", since it is designed and consists of only the word "cheeky" and not the words "Cheeky Brown", which are not designed. Also, the nature of goods for Mark Registration No. 3126529 is completely different then the nature of goods requested for the designed international trademark 1145603 "Cheeky". While Mark Registration No. 3126529 includes mainly non- medicated indoor and outdoor tanning preparations under class 3, the requested designed international trademark 1145603 mainly concerns beauty products under class 3 and silicone body shapers and nipple covers under class 25. For all these reasons, there is absolutely no potential conflict and no likelihood of confusion between Mark Registration No. 3126529 and designed international trademark 1145603 under Trademark Act Section 2(d). L. 3256940 Naturally Cheeky: The Mark Registration No. 3256940 includes the words "Naturally Cheeky" and does not resemble the requested designed international trademark 1145603 "Cheeky", since it is designed and consists of only the word "cheeky" and not the words "Naturally Cheeky", which are not designed. Also, the nature of goods for Mark Registration No. 3256940 is completely different then the nature of goods requested for the designed international trademark 1145603 "Cheeky". While Mark Registration No. 3256940 includes mainly cosmetics under class 3, the requested designed international trademark 1145603 mainly concerns beauty products under class 3 and silicone body shapers and nipple covers under class 25. For all these reasons, there is absolutely no potential conflict and no likelihood of confusion between Mark Registration No. 3256940 and designed international trademark 1145603 under Trademark Act Section 2(d). 4. Inductively, In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) sets out the main factors to determine likelihood of confusion. The two main factors are usually the similarity or dissimilarity of the marks and the relatedness of the goods or services. However, "Not all of the DuPont factors may be relevant or of equal weight in a given case, and 'any one of the factors may control a particular case"

(See, *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003)). 5. It seems like the basic principle in determining confusion between two trademarks is that marks must be compared in their entireties and must be considered in connection with the particular goods or services for which they are used: a. Relatedness of the Goods or Services: if the goods or services in question are not related or marketed in such a 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 (See, e.g., *Shen Manufacturing Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 73 USPQ2d 1350 (Fed. Cir. 2004, determining cooking classes and kitchen textiles not related; *Local Trademarks, Inc. v. Handy Boys Inc.*, 16 USPQ2d 1156 (TTAB 1990) determining LITTLE PLUMBER for liquid drain opener held not confusingly similar to LITTLE PLUMBER and design for advertising services, namely the formulation and preparation of advertising copy and literature in the plumbing field; *Quartz Radiation Corp. v. Comm/Scope Co.*, 1 USPQ2d 1668 (TTAB 1986) determining QR for coaxial cable held not confusingly similar to QR for various products (e.g., lamps, tubes) related to the photocopying field). The above mentioned applies on the requested designed international trademark 1145603. the goods linked to the registered marks and the pending requests specified above are not related or marketed in such a 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, hence, confusion is not likely. b. Similarity of the Marks: The first factor requires examination of "the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression." When considering the similarity of the marks, "[a]ll relevant facts pertaining to the appearance and connotation must be considered." *Recot, Inc. v. M.C. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1897 (Fed. Cir. 2000). The points of comparison for a word mark are appearance, sound, meaning, and commercial impression. *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondee en 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005). Similarity of the marks in one respect will not automatically result in a finding of likelihood of confusion even if the goods are identical or closely related. Rather, the rule is that taking into account all of the relevant facts of a particular case. Inductively, the requested designed international trademark 1145603 should be examined as a whole- the fact that the word cheeky is mentioned will not automatically result in a finding of likelihood of confusion even if the goods are identical or closely related. When referring to the designed registered marks and the pending designed requests mentioned above, the issue of the similarity of the marks must be decided primarily on the basis of visual similarity (See, e.g., *Red Carpet Corp. v. Johnstown American Enterprises Inc.*, 7 USPQ2d 1404 (TTAB 1988); *Ocean Spray Cranberries, Inc. v. Ocean Garden Products, Inc.*, 223 USPQ 1027 (TTAB 1984). Since none of the designed registered marks or pending designed requests mentioned above has visual similarity, there is no likelihood of confusion. 6. It should be mentioned that the comparison of composite marks must be done on a case-by-case basis without reliance on mechanical rules of construction. (See, e.g., *Spice Islands, Inc. v. The Frank Tea & Spice Co.*, 505 F.2d 1293, 184 USPQ 35 (C.C.P.A. 1974). Since there is no Per-Se Rule, The facts in each case vary and the weight to be given each factor may be different in light of the varying circumstances; therefore, there can be no rule that certain goods or services are per se related, such that there must be a likelihood of confusion from the use of similar marks in relation thereto (See, e.g., *Information Resources Inc. v. X*Press Information Services*, 6 USPQ2d 1034, 1038 (TTAB 1988); *Hi-Country Foods Corp. v. Hi Country Beef Jerky*, 4 USPQ2d 1169, 1171 (TTAB 1987); *In re Quadram Corp.*, 228 USPQ 863, 865 (TTAB 1985); *In re British Bulldog, Ltd.*, 224 USPQ 854, 855-56 (TTAB 1984). 7. Another factor that needs to be taken into account is the fame of the mark (See, *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973)). Famous marks enjoy a wide latitude of legal protection since they are more likely to be remembered and associated in the public mind than a weaker mark (See, *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondee en 1772*, 396 F.3d 1369, 1374, 73 USPQ2d 1689, 1694 (Fed. Cir. 2005); *Bose Corp. v. QSC Audio Products Inc.*, 293 F.3d 1367, 63 USPQ2d 1303 (Fed. Cir. 2002); *Recot, Inc.*

v. M.C. Becton, 214 F.3d 1322, 1327, 54 USPQ2d 1894, 1897 (Fed. Cir. 2000); Kenner Parker Toys Inc. v. Rose Art Industries, Inc., 963 F.2d 350, 352, 22 USPQ2d 1453, 1456 (Fed. Cir. 1992)). 8. Direct evidence of consumer recognition of a mark is not necessary. The "fame of a mark may be measured indirectly, among other things, by the volume of sales and advertising expenditures of the goods traveling under the mark, and by the length of time those indicia of commercial awareness have been evident." (See Bose, 293 F.3d at 1371, 63 USPQ2d at 1305). 9. Designed international trademark 1145603 was granted with protection in the European community and in Israel and is with no doubt famous world wide, with a an extremely successful on-line shop, approximately 6,000,000 results on Google, 300 reviews on YouTube and 10,000 followers on Facebook. 183 Evidences as to the fan of the designed international trademark 1145603 "Cheeky" is enclosed and marked appendix 1. 10. These facts all conclude that Designed international trademark 1145603 "Cheeky" should enjoy wide latitude of legal protection since it is more likely to be remembered and associated in the public mind than a weaker mark.

EVIDENCE SECTION

| EVIDENCE FILE NAME(S) | |
|-------------------------------------------|----------------------------------------------------------------------|
| ORIGINAL PDF FILE | <u>evi 7917618186-060021111 . cheeky nail plates - YouTube.pdf</u> |
| CONVERTED PDF FILE(S) (3 pages) | <u>\\TICRS\EXPORT16\IMAGEOUT16\791\243\79124364\xml7\ROA0002.JPG</u> |
| | <u>\\TICRS\EXPORT16\IMAGEOUT16\791\243\79124364\xml7\ROA0003.JPG</u> |
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| | <u>\\TICRS\EXPORT16\IMAGEOUT16\791\243\79124364\xml7\ROA0007.JPG</u> |
| | <u>\\TICRS\EXPORT16\IMAGEOUT16\791\243\79124364\xml7\ROA0008.JPG</u> |
| | <u>\\TICRS\EXPORT16\IMAGEOUT16\791\243\79124364\xml7\ROA0009.JPG</u> |

GOODS AND/OR SERVICES SECTION (003)(current)

| | |
|----------------------------|-----|
| INTERNATIONAL CLASS | 003 |
|----------------------------|-----|

DESCRIPTION

Cosmetic nail stencils, cosmetic nail stickers, cosmetic nail decorations and stones, cosmetic nail art equipment, cosmetic stamping nail art, manicure and pedicure products, nail art products, nail polish, nail strengtheners, nail polish remover, fake nails, nail gel, comedone extractor, hair removal product, fake eyelashes, tweezers, makeup, makeup sponge, cotton rounds, ear sticks, eyeshadows, foundation, blush, makeup brushes, beauty boxes, lip balms, lipsticks, lip stickers, eyeliners, perfume atomisers.

shower caps, bath lotions, shampoos, soaps, body cream, foot cream, hand cream, skincare products, bath salts, bath oils

GOODS AND/OR SERVICES SECTION (003)(proposed)

INTERNATIONAL CLASS

003

TRACKED TEXT DESCRIPTION

~~Cosmetic nail stencils, cosmetic nail stickers, cosmetic nail decorations and stones, cosmetic nail art equipment, cosmetic stamping nail art, manicure and pedicure products, nail art products, nail polish, nail strengtheners, nail polish remover, fake nails, nail gel, comedone extractor, hair removal product, fake eyelashes, tweezers, makeup, makeup sponge, cotton rounds, ear sticks, eyeshadows, foundation, blush, makeup brushes, beauty boxes, lip balms, lipsticks, lip stickers, eyeliners, perfume atomisers, shower caps, bath lotions, shampoos, soaps, body cream, foot cream, hand cream, skincare products, bath salts, bath oils;~~ Cosmetic nail design stencils, cosmetic nail stickers, cosmetic nail decorations, manicure and pedicure sets and tools, nail polish, nail treatments, nail polish dryer, nail polish remover, fake nails, nail gel, comedone extractor, cosmetic hair removal strips and tools, fake eyelashes, tweezers, makeup, makeup sponge, cotton rounds, ear sticks, eyeshadows, foundation, blush, makeup brushes, beauty boxes, lip balms, lipsticks, lip stickers, eyeliners, perfume atomisers, shower caps, lotions, shampoos, soaps, creams, skincare treatments, salts, oils, brushes and scrubbers.

FINAL DESCRIPTION

Cosmetic nail design stencils, cosmetic nail stickers, cosmetic nail decorations, manicure and pedicure sets and tools, nail polish, nail treatments, nail polish dryer, nail polish remover, fake nails, nail gel, comedone extractor, cosmetic hair removal strips and tools, fake eyelashes, tweezers, makeup, makeup sponge, cotton rounds, ear sticks, eyeshadows, foundation, blush, makeup brushes, beauty boxes, lip balms, lipsticks, lip stickers, eyeliners, perfume atomisers, shower caps, lotions, shampoos, soaps, creams, skincare treatments, salts, oils, brushes and scrubbers.

GOODS AND/OR SERVICES SECTION (025)(current)

INTERNATIONAL CLASS

025

DESCRIPTION

Synthetic fabric body shapers, silicone nipple covers, anti wrinkle silicone shapers, silicone body protectors, hair extensions, hair decorations, bras, bra fillers

GOODS AND/OR SERVICES SECTION (025)(proposed)

INTERNATIONAL CLASS

025

TRACKED TEXT DESCRIPTION

~~Synthetic fabric body shapers, silicone nipple covers, anti wrinkle silicone shapers, silicone body protectors, hair extensions, hair decorations, bras, bra fillers;~~ Synthetic fabric body shapers, silicone nipple covers in the nature of pasties, anti wrinkle silicone body shapers silicone body protectors for football, bras.

FINAL DESCRIPTION

Synthetic fabric body shapers, silicone nipple covers in the nature of pasties, anti wrinkle silicone body shapers silicone body protectors for football, bras.

SIGNATURE SECTION

RESPONSE SIGNATURE /Ido Yehuda Gov Ari/

SIGNATORY'S NAME Ido Yehuda Gov Ari

SIGNATORY'S POSITION Individual

SIGNATORY'S PHONE NUMBER 97236005572

DATE SIGNED 03/05/2013

AUTHORIZED SIGNATORY YES

FILING INFORMATION SECTION

SUBMIT DATE Tue Mar 05 06:15:54 EST 2013

TEAS STAMP

USPTO/ROA-79.176.18.186-2
0130305061554665684-79124
364-5009e90bdd2241cbdf9e8
e85bcae01c80f6716918081ad
c5735625cfacef9bb6-N/A-N/
A-20130305060021111839

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. **79124364** CHEEKY (Stylized and/or with Design, see <http://tess2.uspto.gov/ImageAgent/ImageAgentProxy?getImage=79124364>) has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

Refusal on the basis of Trademark Act Section 2(d) Prior pending applications: 2. Under Trademark Act Section 2(d), No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it Consists of or comprises a mark which so resembles a mark registered in the USPTO, as to be likely to cause confusion, or to cause mistake, or to deceive. I strongly believe that there is no likelihood of confusion between designed international trademark 1145603 "Cheeky" and the following Pending applications: A. 85685240 CHEEKY DEVIL (No logo) - Pending application 85685240 for the words "Cheeky Devil" and does not resemble the requested designed international trademark 1145603 "Cheeky", since it is designed and

consists of only the word "cheeky" and not the words "cheeky devil", which are not designed. Also, the nature of goods for pending application 85685240 is completely different then the nature of goods requested for the designed international trademark 1145603 "Cheeky". While pending application 85685240 mainly concerns "Clothing for athletic use" and "Apparel for dancers" under class 25, the requested designed international trademark 1145603 mainly concerns beauty products under class 3 and silicone body shapers and nipple covers under class 25. For all these reasons, there is absolutely no potential conflict and no likelihood of confusion between pending application 85685240 and designed international trademark 1145603 under Trademark Act Section 2(d).

B. 79121415 CHEEKI BUNNI (with logo): Pending application 79121415 for the designed logo "cheeki bunni" and does not resemble the requested designed international trademark 1145603 "Cheeky", since they do not bear the same spelling of the term "Cheeky". Also, designed international trademark 1145603 consists solely of the word "Cheeky" while Pending application 79121415 consists of the words "Cheeki Bunni". the styling of the two trademarks is completely different and as international designed trademark 1145603 is written in "hand-writing" font with a little sparkle on the top of one of the E letters, the Pending application 79121415 design is made of two lines of bulky font with distinct differences between the width of the two words. Also, the nature of goods for Pending application 79121415 is completely different then the nature of goods requested for the designed international trademark 1145603 "Cheeky". While Pending application 79121415 mainly concerns goods in class 16, which is not requested for designed international trademark 1145603, and clothes under class 25, the requested designed international trademark 1145603 mainly concerns beauty products under class 3 and silicone body shapers and nipple covers under class 25. For all these reasons, there is absolutely no potential conflict and no likelihood of confusion between pending application 79121415 and designed international trademark 1145603 under Trademark Act Section 2(d).

Designed international trademark 1145603: Pending application 79121415: C. 85603617 Robin Cheeky (no logo) - Pending application 85603617 for the words "Robin Cheeky" and does not resemble the requested designed international trademark 1145603 "Cheeky", since it is designed and consists of the word "cheeky" and not the words "Robin Cheeky", which are not designed. Also, the nature of goods for pending application 85603617 is completely different then the nature of goods requested for the designed international trademark 1145603 "Cheeky". While pending application 85603617 mainly concerns memorabilia bearing the image of a fictional character named "Robin Cheeky" under class 25, the requested designed international trademark 1145603 mainly concerns beauty products under class 3 and silicone body shapers and nipple covers under class 25. For all these reasons, there is absolutely no potential conflict and no likelihood of confusion between pending application 85603617 and designed international trademark 1145603 under Trademark Act Section 2(d).

D. 85328312 Cheeky Chats (no logo)- Pending application 85328312 for the words "Cheeky chats" and does not resemble the requested designed international trademark 1145603 "Cheeky", since it is designed and consists of only the word "cheeky" and not the words " Cheeky chats ", which are not designed. Also, the nature of goods for pending application 85328312 is completely different then the nature of goods requested for the designed international trademark 1145603 "Cheeky". While pending application 85328312 concerns only T-shirts under class 25, the requested designed international trademark 1145603 mainly concerns beauty products under class 3 and silicone body shapers and nipple covers under class 25. For all these reasons, there is absolutely no potential conflict and no likelihood of confusion between pending application 85328312 and designed international trademark 1145603 under Trademark Act Section 2(d).

E. 85140120 Cheeky Cousins (no logo)- Pending application 85140120 for the words "Cheeky Cousins" and does not resemble the requested designed international trademark 1145603 "Cheeky", since it is designed and consists of only the word "cheeky" and not the words "Cheeky Cousins", which are not designed. Also, the nature of goods for pending application 85140120 is completely different then the nature of goods requested for the designed international trademark 1145603 "Cheeky". While pending application 85140120 concerns mainly which garments, footwear, accessories and sleepwear all under class 25, the requested designed international trademark 1145603 mainly concerns beauty products under class 3 and silicone body shapers and nipple covers under class 25. For all these reasons, there is absolutely no potential conflict and no

likelihood of confusion between pending application 85140120 and designed international trademark 1145603 under Trademark Act Section 2(d). Registered Marks: 3. Under Trademark Act Section 2(d), no trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it consists of or comprises a mark which so resembles a mark registered in the USPTO, as to be likely to cause confusion, or to cause mistake, or to deceive. We strongly believe that there is no likelihood of confusion between designed international trademark 1145603 "Cheeky" and the following marks: A. 85575602 CHEEKY APRONS (no logo): The Mark Registration No. 85575602 includes the words "Cheeky aprons" and does not resemble the requested designed international trademark 1145603 "Cheeky", since it is designed and consists of only the word "cheeky" and not the words "Cheeky aprons", which are not designed. Also, the nature of goods for Mark Registration No. 85575602 is completely different than the nature of goods requested for the designed international trademark 1145603 "Cheeky". While Mark Registration No. 85575602 mainly includes aprons with lingerie themes under class 25, the requested designed international trademark 1145603 mainly concerns beauty products under class 3 and silicone body shapers and nipple covers under class 25. For all these reasons, there is absolutely no potential conflict and no likelihood of confusion between pending application 85685240 and designed international trademark 1145603 under Trademark Act Section 2(d). B. 3416487 GET CHEEKY (with logo): The Mark Registration No. 3416487 for the designed logo GET CHEEKY and does not resemble the requested designed international trademark 1145603 "Cheeky", since designed international trademark 1145603 consists solely of the word "Cheeky" while Mark Registration No. 3416487 consists of the words GET CHEEKY. the styling of the two trademarks is completely different and as international designed trademark 1145603 is written in "hand-writing" font with a little sparkle on the top of one of the E letters, Mark Registration No. 3416487 design is made of a bulky and wide font with a sign of lips at the end of the writing. Also, the nature of goods for Mark Registration No. 3416487 is completely different than the nature of goods requested for the designed international trademark 1145603 "Cheeky". While Mark Registration No. 3416487 mainly concerns clothes under class 25, the requested designed international trademark 1145603 mainly concerns beauty products under class 3 and silicone body shapers and nipple covers under class 25. For all these reasons, there is absolutely no potential conflict and no likelihood of confusion between Mark Registration No. 3416487 and designed international trademark 1145603 under Trademark Act Section 2(d). Designed international trademark 1145603: Mark Registration No. 3416487: C. 4026006 Cheeky Bum (no logo): The Mark Registration No. 4026006 includes the words "Cheeky Bum" and does not resemble the requested designed international trademark 1145603 "Cheeky", since it is designed and consists of only the word "cheeky" and not the words "Cheeky Buns", which are not designed. Also, the nature of goods for Mark Registration No. 4026006 is completely different than the nature of goods requested for the designed international trademark 1145603 "Cheeky". While Mark Registration No. 4026006 mainly includes aromatic body care products under class 3, the requested designed international trademark 1145603 mainly concerns beauty products under class 3 and silicone body shapers and nipple covers under class 25. For all these reasons, there is absolutely no potential conflict and no likelihood of confusion between Mark Registration No. 4026006 and designed international trademark 1145603 under Trademark Act Section 2(d). D. 3950769 Cheeky Chaps (no logo): The Mark Registration No. 3950769 includes the words "Cheeky Chaps" and does not resemble the requested designed international trademark 1145603 "Cheeky", since it is designed and consists of only the word "cheeky" and not the words "Cheeky Chaps", which are not designed. Also, the nature of goods for Mark Registration No. 3950769 is completely different than the nature of goods requested for the designed international trademark 1145603 "Cheeky". While Mark Registration No. 3950769 mainly includes cloths under class 25, the requested designed international trademark 1145603 mainly concerns beauty products under class 3 and silicone body shapers and nipple covers under class 25. For all these reasons, there is absolutely no potential conflict and no likelihood of confusion between Mark Registration No. 3950769 and designed international trademark 1145603 under Trademark Act Section 2(d). E.

4074462 Cheeky Butt (no logo): The Mark Registration No. 4074462 includes the words "Cheeky Butt" and does not resemble the requested designed international trademark 1145603 "Cheeky", since it is designed and consists of only the word "cheeky" and not the words "Cheeky butt", which are not designed. Also, the nature of goods for Mark Registration No. 4074462 is completely different then the nature of goods requested for the designed international trademark 1145603 "Cheeky". While Mark Registration No. 4074462 includes only bottoms under class 25, the requested designed international trademark 1145603 mainly concerns beauty products under class 3 and silicone body shapers and nipple covers under class 25. For all these reasons, there is absolutely no potential conflict and no likelihood of confusion between Mark Registration No. 4074462 and designed international trademark 1145603 under Trademark Act Section 2(d). F. 3438804 Cheeky Bitz (no logo): The Mark Registration No. 3438804 includes the words "Cheeky Bitz" and does not resemble the requested designed international trademark 1145603 "Cheeky", since it is designed and consists of only the word "cheeky" and not the words "Cheeky Bitz", which are not designed. Also, the nature of goods for Mark Registration No. 3438804 is completely different then the nature of goods requested for the designed international trademark 1145603 "Cheeky". While Mark Registration No. 3438804 includes mainly Athletic and sports clothing under class 25, the requested designed international trademark 1145603 mainly concerns beauty products under class 3 and silicone body shapers and nipple covers under class 25. For all these reasons, there is absolutely no potential conflict and no likelihood of confusion between Mark Registration No. 3438804 and designed international trademark 1145603 under Trademark Act Section 2(d). G. 3350403 Cheeky Clean (no logo): The Mark Registration No. 3350403 includes the words "Cheeky Clean" and does not resemble the requested designed international trademark 1145603 "Cheeky", since it is designed and consists of only the word "cheeky" and not the words "Cheeky Clean", which are not designed. Also, the nature of goods for Mark Registration No. 3350403 is completely different then the nature of goods requested for the designed international trademark 1145603 "Cheeky". While Mark Registration No. 3350403 includes only body wash under class 3, the requested designed international trademark 1145603 mainly concerns beauty products under class 3 and silicone body shapers and nipple covers under class 25. For all these reasons, there is absolutely no potential conflict and no likelihood of confusion between Mark Registration No. 3350403 and designed international trademark 1145603 under Trademark Act Section 2(d). H. 3393367 Cheeky Banana (with logo): The Mark Registration No. 3393367 for the designed logo Cheeky Banana does not resemble the requested designed international trademark 1145603 "Cheeky", since designed international trademark 1145603 consists solely of the word "Cheeky" while Mark Registration No. 3393367 consists of the words Cheeky Banana. Also, The styling of the two trademarks is completely different and as international designed trademark 1145603 is written in "hand- writing" font with a little sparkle on the top of one of the E letters, Mark Registration No. 3393367 design is made of a a drawing of a smiling banana wearing sunglasses and leaning on a palm tree with a drawing of a rounded sun on top. Also, the nature of goods for Mark Registration No. 3393367 is completely different then the nature of goods requested for the designed international trademark 1145603 "Cheeky". While Mark Registration No. 3393367 mainly concerns clothing under class 25, the requested designed international trademark 1145603 mainly concerns beauty products under class 3 and silicone body shapers and nipple covers under class 25. For all these reasons, there is absolutely no potential conflict and no likelihood of confusion between Mark Registration No. 3393367 and designed international trademark 1145603 under Trademark Act Section 2(d). Designed international trademark 1145603: Mark Registration No. 3393367 I. 3219660 Get Cheeky (no logo): The Mark Registration No. 3219660 includes the words "Get Cheeky" and does not resemble the requested designed international trademark 1145603 "Cheeky", since it is designed and consists of only the word "cheeky" and not the words "Get Cheeky", which are not designed. Also, the nature of goods for Mark Registration No. 3219660 is completely different then the nature of goods requested for the designed international trademark 1145603 "Cheeky". While Mark Registration No. 3219660 includes mainly cosmetics under class 3, the requested designed international trademark 1145603 mainly concerns beauty products under class 3 and silicone body shapers and nipple covers under class 25. For all these reasons, there is absolutely no potential conflict and no likelihood of

confusion between Mark Registration No. 3219660 and designed international trademark 1145603 under Trademark Act Section 2(d). J. 3330826 Fresh & Cheeky (no logo): The Mark Registration No. 3330826 includes the words "Fresh & Cheeky" and does not resemble the requested designed international trademark 1145603 "Cheeky", since it is designed and consists of only the word "cheeky" and not the words " Fresh & Cheeky ", which are not designed. Also, the nature of goods for Mark Registration No. 3330826 is completely different then the nature of goods requested for the designed international trademark 1145603 "Cheeky". While Mark Registration No. 3330826 includes mainly cosmetics under class 3, the requested designed international trademark 1145603 mainly concerns beauty products under class 3 and silicone body shapers and nipple covers under class 25. For all these reasons, there is absolutely no potential conflict and no likelihood of confusion between Mark Registration No. 3330826 and designed international trademark 1145603 under Trademark Act Section 2(d). K. 3126529 Cheeky Brown (no logo): The Mark Registration No. 3126529 includes the words "Cheeky Brown" and does not resemble the requested designed international trademark 1145603 "Cheeky", since it is designed and consists of only the word "cheeky" and not the words "Cheeky Brown", which are not designed. Also, the nature of goods for Mark Registration No. 3126529 is completely different then the nature of goods requested for the designed international trademark 1145603 "Cheeky". While Mark Registration No. 3126529 includes mainly non- medicated indoor and outdoor tanning preparations under class 3, the requested designed international trademark 1145603 mainly concerns beauty products under class 3 and silicone body shapers and nipple covers under class 25. For all these reasons, there is absolutely no potential conflict and no likelihood of confusion between Mark Registration No. 3126529 and designed international trademark 1145603 under Trademark Act Section 2(d). L. 3256940 Naturally Cheeky: The Mark Registration No. 3256940 includes the words "Naturally Cheeky" and does not resemble the requested designed international trademark 1145603 "Cheeky", since it is designed and consists of only the word "cheeky" and not the words "Naturally Cheeky", which are not designed. Also, the nature of goods for Mark Registration No. 3256940 is completely different then the nature of goods requested for the designed international trademark 1145603 "Cheeky". While Mark Registration No. 3256940 includes mainly cosmetics under class 3, the requested designed international trademark 1145603 mainly concerns beauty products under class 3 and silicone body shapers and nipple covers under class 25. For all these reasons, there is absolutely no potential conflict and no likelihood of confusion between Mark Registration No. 3256940 and designed international trademark 1145603 under Trademark Act Section 2(d). 4. Inductively, In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) sets out the main factors to determine likelihood of confusion. The two main factors are usually the similarity or dissimilarity of the marks and the relatedness of the goods or services. However, "Not all of the DuPont factors may be relevant or of equal weight in a given case, and 'any one of the factors may control a particular case" (See, In re Majestic Distilling Co., 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003)). 5. It seems like the basic principle in determining confusion between two trademarks is that marks must be compared in their entireties and must be considered in connection with the particular goods or services for which they are used: a. Relatedness of the Goods or Services: if the goods or services in question are not related or marketed in such a 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 (See, e.g., Shen Manufacturing Co. v. Ritz Hotel Ltd., 393 F.3d 1238, 73 USPQ2d 1350 (Fed. Cir. 2004, determining cooking classes and kitchen textiles not related; Local Trademarks, Inc. v. Handy Boys Inc., 16 USPQ2d 1156 (TTAB 1990) determining LITTLE PLUMBER for liquid drain opener held not confusingly similar to LITTLE PLUMBER and design for advertising services, namely the formulation and preparation of advertising copy and literature in the plumbing field; Quartz Radiation Corp. v. Comm/Scope Co., 1 USPQ2d 1668 (TTAB 1986) determining QR for coaxial cable held not confusingly similar to QR for various products (e.g., lamps, tubes) related to the photocopying field). The above mentioned applies on the requested designed international trademark 1145603. the goods linked to the registered marks and the pending requests specified above are not related

or marketed in such a 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, hence, confusion is not likely. b. Similarity of the Marks: The first factor requires examination of "the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression." When considering the similarity of the marks, "[a]ll relevant facts pertaining to the appearance and connotation must be considered." *Recot, Inc. v. M.C. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1897 (Fed. Cir. 2000). The points of comparison for a word mark are appearance, sound, meaning, and commercial impression. *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondee en 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005). Similarity of the marks in one respect will not automatically result in a finding of likelihood of confusion even if the goods are identical or closely related. Rather, the rule is that taking into account all of the relevant facts of a particular case. Inductively, the requested designed international trademark 1145603 should be examined as a whole- the fact that the word cheeky is mentioned will not automatically result in a finding of likelihood of confusion even if the goods are identical or closely related. When referring to the designed registered marks and the pending designed requests mentioned above, the issue of the similarity of the marks must be decided primarily on the basis of visual similarity (See, e.g., *Red Carpet Corp. v. Johnstown American Enterprises Inc.*, 7 USPQ2d 1404 (TTAB 1988); *Ocean Spray Cranberries, Inc. v. Ocean Garden Products, Inc.*, 223 USPQ 1027 (TTAB 1984). Since none of the designed registered marks or pending designed requests mentioned above has visual similarity, there is no likelihood of confusion. 6. It should be mentioned that the comparison of composite marks must be done on a case-by-case basis without reliance on mechanical rules of construction. (See, e.g., *Spice Islands, Inc. v. The Frank Tea & Spice Co.*, 505 F.2d 1293, 184 USPQ 35 (C.C.P.A. 1974). Since there is no Per-Se Rule, The facts in each case vary and the weight to be given each factor may be different in light of the varying circumstances; therefore, there can be no rule that certain goods or services are per se related, such that there must be a likelihood of confusion from the use of similar marks in relation thereto (See, e.g., *Information Resources Inc. v. X*Press Information Services*, 6 USPQ2d 1034, 1038 (TTAB 1988); *Hi-Country Foods Corp. v. Hi Country Beef Jerky*, 4 USPQ2d 1169, 1171 (TTAB 1987); *In re Quadram Corp.*, 228 USPQ 863, 865 (TTAB 1985); *In re British Bulldog, Ltd.*, 224 USPQ 854, 855-56 (TTAB 1984). 7. Another factor that needs to be taken into account is the fame of the mark (See, *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973)). Famous marks enjoy a wide latitude of legal protection since they are more likely to be remembered and associated in the public mind than a weaker mark (See, *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondee en 1772*, 396 F.3d 1369, 1374, 73 USPQ2d 1689, 1694 (Fed. Cir. 2005); *Bose Corp. v. QSC Audio Products Inc.*, 293 F.3d 1367, 63 USPQ2d 1303 (Fed. Cir. 2002); *Recot, Inc. v. M.C. Becton*, 214 F.3d 1322, 1327, 54 USPQ2d 1894, 1897 (Fed. Cir. 2000); *Kenner Parker Toys Inc. v. Rose Art Industries, Inc.*, 963 F.2d 350, 352, 22 USPQ2d 1453, 1456 (Fed. Cir. 1992)). 8. Direct evidence of consumer recognition of a mark is not necessary. The "fame of a mark may be measured indirectly, among other things, by the volume of sales and advertising expenditures of the goods traveling under the mark, and by the length of time those indicia of commercial awareness have been evident." (See *Bose*, 293 F.3d at 1371, 63 USPQ2d at 1305). 9. Designed international trademark 1145603 was granted with protection in the European community and in Israel and is with no doubt famous world wide, with a an extremely successful on-line shop, approximately 6,000,000 results on Google, 300 reviews on YouTube and 10,000 followers on Facebook. 183 Evidences as to the fan of the designed international trademark 1145603 "Cheeky" is enclosed and marked appendix 1. 10. These facts all conclude that Designed international trademark 1145603 "Cheeky" should enjoy wide latitude of legal protection since it is more likely to be remembered and associated in the public mind than a weaker mark.

EVIDENCE

Original PDF file:

[evi 7917618186-060021111 . cheeky nail plates - YouTube.pdf](#)

Converted PDF file(s) (3 pages)

Evidence-1

Evidence-2

Evidence-3

Original PDF file:

evi 7917618186-060021111 . cheeky nail - -Google.pdf

Converted PDF file(s) (1 page)

Evidence-1

Original PDF file:

evi 7917618186-060021111 . Nail Art - Cheeky.pdf

Converted PDF file(s) (4 pages)

Evidence-1

Evidence-2

Evidence-3

Evidence-4

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 003 for Cosmetic nail stencils, cosmetic nail stickers, cosmetic nail decorations and stones, cosmetic nail art equipment, cosmetic stamping nail art, manicure and pedicure products, nail art products, nail polish, nail strengtheners, nail polish remover, fake nails, nail gel, comedone extractor, hair removal product, fake eyelashes, tweezers, makeup, makeup sponge, cotton rounds, ear sticks, eyeshadows, foundation, blush, makeup brushes, beauty boxes, lip balms, lipsticks, lip stickers, eyeliners, perfume atomisers, shower caps, bath lotions, shampoos, soaps, body cream, foot cream, hand cream, skincare products, bath salts, bath oils

Original Filing Basis:

Filing Basis Section 66(a) , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

Proposed:

Tracked Text Description: ~~Cosmetic nail stencils, cosmetic nail stickers, cosmetic nail decorations and stones, cosmetic nail art equipment, cosmetic stamping nail art, manicure and pedicure products, nail art products, nail polish, nail strengtheners, nail polish remover, fake nails, nail gel, comedone extractor, hair removal product, fake eyelashes, tweezers, makeup, makeup sponge, cotton rounds, ear sticks, eyeshadows, foundation, blush, makeup brushes, beauty boxes, lip balms, lipsticks, lip stickers, eyeliners, perfume atomisers, shower caps, bath lotions, shampoos, soaps, body cream, foot cream, hand cream, skincare products, bath salts, bath oils;~~ Cosmetic nail design stencils, cosmetic nail stickers, cosmetic nail decorations, manicure and pedicure sets and tools, nail polish, nail treatments, nail polish dryer, nail polish remover, fake nails, nail gel, comedone extractor, cosmetic hair removal strips and tools, fake eyelashes, tweezers, makeup, makeup sponge, cotton rounds, ear sticks, eyeshadows, foundation, blush, makeup brushes, beauty boxes, lip balms, lipsticks, lip stickers, eyeliners, perfume atomisers, shower caps, lotions, shampoos, soaps, creams, skincare treatments, salts, oils, brushes and scrubbers.

Class 003 for Cosmetic nail design stencils, cosmetic nail stickers, cosmetic nail decorations, manicure and pedicure sets and tools, nail polish, nail treatments, nail polish dryer, nail polish remover, fake nails, nail gel, comedone extractor, cosmetic hair removal strips and tools, fake eyelashes, tweezers, makeup, makeup sponge, cotton rounds, ear sticks, eyeshadows, foundation, blush, makeup brushes, beauty boxes, lip balms, lipsticks, lip stickers, eyeliners, perfume atomisers, shower caps, lotions, shampoos, soaps, creams, skincare treatments, salts, oils, brushes and scrubbers.

Filing Basis Section 66(a) , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 025 for Synthetic fabric body shapers, silicone nipple covers, anti wrinkle silicone shapers, silicone body protectors, hair extensions, hair decorations, bras, bra fillers

Original Filing Basis:

Filing Basis Section 66(a) , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

Proposed:

Tracked Text Description: ~~Synthetic fabric body shapers, silicone nipple covers, anti wrinkle silicone shapers, silicone body protectors, hair extensions, hair decorations, bras, bra fillers;~~ Synthetic fabric body shapers, silicone nipple covers in the nature of pasties, anti wrinkle silicone body shapers silicone body protectors for football, bras.

Class 025 for Synthetic fabric body shapers, silicone nipple covers in the nature of pasties, anti wrinkle silicone body shapers silicone body protectors for football, bras.

Filing Basis Section 66(a) , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

APPLICANT AND/OR ENTITY INFORMATION

Applicant proposes to amend the following:

Current: Ido Yehuda Gov Ari legally organized under the laws of XP, having an address of
21 Dafna street

,
Israel

Proposed: Ido Yehuda Gov Ari, a citizen of Other, having an address of

21 Dafna street
Yavne,
Israel

SIGNATURE(S)

Response Signature

Signature: /Ido Yehuda Gov Ari/ Date: 03/05/2013

Signatory's Name: Ido Yehuda Gov Ari

Signatory's Position: Individual

Signatory's Phone Number: 97236005572

The signatory has confirmed that he/she is not represented by either an authorized attorney or Canadian attorney/agent, and that he/she is either (1) the applicant or (2) a person(s) with legal authority to bind the applicant; and if an authorized U.S. attorney or Canadian attorney/agent previously represented him/her in this matter, either he/she has filed a signed revocation of power of attorney with the USPTO or the USPTO has granted the request of his/her prior representative to withdraw.

Serial Number: 79124364

Internet Transmission Date: Tue Mar 05 06:15:54 EST 2013

TEAS Stamp: USPTO/ROA-79.176.18.186-2013030506155466

5684-79124364-5009e90bdd2241cbdf9e8e85bc

ae01c80f6716918081adc5735625cfac9f9bb6-N

/A-N/A-20130305060021111839

27/02/13

cheeky nail plates - YouTube

הבא 7 6 5 4 3 2 1

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מידע על עיתונות ובלוגים זכויות יוצרים יוצרים זשותפים פרסום מפתחים תפסים פרטיות בטיחות שלח משוב גסה משהו וודען

חיפוש במחיר נמוך cheeky nail



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Nail Art - Cheeky

www.cheeky-beauty.com/nail-art/ - תרגם דף זה
Stamping Nail Art Image Plates By Cheeky Beauty.

Stamping Nail Art Image Plates Set of 26 - Cheeky Beauty

www.cheeky-beauty.com/stamping-nail-art-image-plates-se... - תרגם דף זה
The Summer Collection Is Here!! Stamping Nail Art Image Plates Set of 26 Nailart
Image Plates with 161 Designs By Cheeky.

Nail Art Stamping Plates With 26 Different Nail Plates By Cheeky

www.cheeky-beauty.com/vibrant-collection-stamping-nail... - תרגם דף זה
Nail Art Stamping Plates With 26 Different Nail Plates By Cheeky.

Amazon.com: 2012 Cheeky Set of 26 Nail Art Nailart Polish Stamp ...

www.amazon.com Beauty Makeup Nails Nail Art - תרגם דף זה
Make sure to remove the protective cover on the plate before using. 2. Make sure you
are using new and thick enough nail polish that is suitable for stamping. 3.

Amazon.com: Nail Rhinestones Wheel- AMAZING VALUE BUNDLE ...

www.amazon.com Nail Tools Nail Art Equipment - תרגם דף זה
This set of nail rhinestones includes all the rhinestones you will ever need to design
your nail with. The variety is immense! So many colours shapes and sizes.

תמונות של cheeky nail - דוח על תמונות



Cheeky | Facebook

www.facebook.com/Cheekybeauty - תרגם דף זה
Make sure to use new and thick enough nail polish suitable for stamping. 3. Please
clean your nails using Cheeky's special nail art cotton rounds and apply ...

Catie at Cheeky Nails (cheekynails) on Pinterest

https://pinterest.com/cheekynails/ - תרגם דף זה
Not your mama's nail polish Catie At Cheeky Nails is using Pinterest, an online
pinboard to collect and share what inspires you.

First Impression on Cheeky's Nail Art - YouTube 6:46

www.youtube.com/watch?v=13L1P17icg - תרגם דף זה
11 באוק 2012 - הועלה על-ידי nshuh
Watch me try out a few images on the Cheeky's Nail Art Jumbo
... stamping plate D for the first time. My cheeky



Testing Cheeky plate D nail art stamping plates - YouTube

www.youtube.com/watch?v=b2bgtEHZrsw - תרגם דף זה
4 במרץ 2012 - הועלה על-ידי PlasmaSpeedio
i also have vids on plate A and intro to how big they are linked
... below.. http://www.youtube.com/watch?v



פרסומים נוספים עבור cheeky nail

Katsy Nail Crazy: [Review] Cheeky Nail Art Jumbo Plates

crazy-nail.blogspot.com/.../review-cheeky-nail-art-jumbo-p... - תרגם דף זה
A review of the Cheeky Beauty Jumbo image plates for stamping nail - 2012
27 באוגי art.

1 2 3 4 5 6 7 8 9 10 **הבא**

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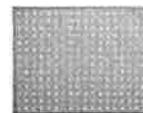
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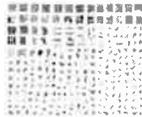
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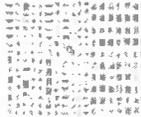
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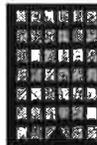
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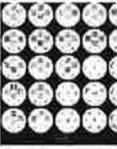
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