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Filing date: **12/13/2011**

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

Proceeding	92054629
Party	Defendant Wohali Outdoors, LLC
Correspondence Address	S MAX HARRIS DOYLE HARRIS DAVIS & HAUGHEY 1350 SOUTH BOULDER, SUITE 700 TULSA, OK 74119 UNITED STATES max.harris@1926blaw.com
Submission	Answer
Filer's Name	S. Max Harris
Filer's e-mail	max.harris@1926blaw.com, steve.harris@1926blaw.com
Signature	/S. Max Harris/
Date	12/13/2011
Attachments	1637-5. Wohali's Combined Resp to Not Default & Mot to file Answer - Final & Submitted.pdf (7 pages)(26753 bytes) 1637-5.Answer & Affirmative Defenses - Final & Submitted.pdf (67 pages)(3116379 bytes) 1637-5.Ex A.pdf (1 page)(504012 bytes) 1637-5.Ex B.pdf (61 pages)(3042916 bytes) 1637-5.Ex C.pdf (4 pages)(479104 bytes) 1637-5.Ex D.pdf (1 page)(468918 bytes) 1637-5.Ex E.pdf (2 pages)(571435 bytes) 1637-5.Ex F.pdf (2 pages)(872798 bytes) 1637-5.Ex G.pdf (2 pages)(788890 bytes) 1637-5.Ex H.pdf (4 pages)(767051 bytes)

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

In re Registration No. 3,904,929)	
)	
SHELTERED WINGS, INC.)	Cancellation No. 92054629
)	
Petitioner,)	
)	
v.)	
)	
WOHALI OUTDOORS, LLC,)	
)	
Respondent.)	
)	

**RESPONDENT WOHALI OUTDOORS, LLC’S COMBINED
RESPONSE TO NOTICE OF DEFAULT AND RESPONDENT’S
MOTION FOR LEAVE TO FILE ANSWER AND BRIEF IN SUPPORT¹**

COMES NOW the Respondent, Wohali Outdoors, LLC (“Respondent” or “Wohali”), and moves the Court to refrain from entering default judgment against Wohali, and instead permit Wohali to file its Answer and Affirmative Defenses submitted herewith.

Wohali did not receive the mailed “Notice”² setting Wohali’s answer deadline (Notice attached as Ex. C), and had no knowledge of same until Wohali’s counsel received a Notice of Default on December 8th (Notice of Default attached as Ex. D). (See Declarations of JT Griffin,

¹ Respondent has contacted Petitioner’s counsel prior to filing this response and motion. Petitioner’s counsel advises that Petitioner opposes this response and motion.

² “As provided by 37 CFR §2.105(a) and 37 CFR §2.113(a), in part, the Board’s notification of the filing of an opposition or petition to cancel “shall designate a time, not less than thirty days from the mailing date of the notification, within which an answer must be filed.” A defendant is under no obligation to file an answer to the complaint in an opposition or cancellation proceeding until it receives the Board’s notification setting the time for filing an answer.”

Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) Rule 301.03(a) (emphasis added).

Max Harris and Lesley James, attached as Ex. E, F and G showing Wohali did not receive notice to file its answer/response as provided for in 37 CFR §2.113(a) and TBMP Rule 301.03(a)).

I. PROCEDURAL HISTORY OF PARTIES PRIOR TO PETITIONER FILING ITS PETITION FOR CANCELLATION

1. On April 25, 2011, Petitioner, Sheltered Wings, Inc., filed suit in Federal Court³ seeking damages and injunctive relief premised on Wohali's use of the "STEEL EAGLE" mark (U.S. Registration No. 3904929 - the same mark Petitioner seeks to cancel here).

2. After receiving Wohali's Answer and Affirmative Defenses (filed 05/23/2011), Petitioner moved for a voluntary dismissal (filed 06/06/2011) and later informed the Court it intended to file this cancellation proceeding rather than pursue the Federal lawsuit.

3. On July 25, 2011, the Court dismissed Petitioner's suit without prejudice. (Order attached as Ex. H.)

II. DEFAULT JUDGMENT IS INAPPROPRIATE BECAUSE (1) WOHALI HAD NO OBLIGATION TO ANSWER (ITS FAILURE TO ANSWER WAS NOT FROM WILLFUL CONDUCT OR NEGLIGENCE); (2) PETITIONER WILL NOT BE SUBSTANTIALLY PREJUDICED; AND (3) WOHALI HAS MERITORIOUS DEFENSES

4. On October 10, 2011, Petitioner filed its Petition for Cancellation.

5. On October 12, 2011, the USPTO Trademark Trial and Appeal Board issued a Notice setting Wohali's answer deadline as November 21, 2011, and mailed same to Wohali. (This Notice will be referred to herein as the "October 12th Notice".) Wohali nor its legal counsel received the October 12th Notice. (See Declarations of JT Griffin, Max Harris and Lesley James, attached as Ex. E, F and G.)

³ *Sheltered Wings, Inc. v. Wohali Outdoors, LLC*, Case No. 11-CV-300, U.S. District Court for the Western District of Wisconsin.

6. On October 31st (at the request of Max Harris), Ms. James contacted the USPTO Trademark Trial and Appeal Board to determine when Wohali's answer was due and what (if anything) counsel could do to ensure they received notice of the answer deadline. Ms. James was informed that before a responsive pleading could be filed, a Cancellation No. must issue and that due to a back log of cases, that may not occur for six months to a year. (The information provided to Ms. James is supported by TBMP Rule 301.03(a) and 37 CFR §2.113(a)). Ms. James was not advised a Cancellation No. had already issued and an answer deadline was set. (Ex. G at para. 3-7.)

7. On December 8, 2011, Max Harris received a copy of the notice of default.⁴ Because the notice of default contained the Cancellation No., counsel was able to review the cancellation proceeding online for the first time and became aware of the October 12th Notice. (Ex. F at para. 4-6.) Mr. Griffin (a Wohali representative) was immediately contacted. Mr. Griffin confirmed Wohali was unaware of and had not received the October 12th Notice. (Ex. E.)

8. On December 8th, Max Harris spoke with Iris Snowden with the USPTO Trademark Trial and Appeal Board. Ms. Snowden stated it appeared the October 12th Notice was only mailed to Wohali's address. It was not sent to Wohali by any other means, nor was it sent to Wohali's legal counsel. (Ex. F at para. 7.)

9. TBMP Rule 301.03(a) states Wohali had no obligation to respond to the cancellation proceeding until it received a notice setting the deadline to answer.

“As provided by 37 CFR §2.105(a) and 37 CFR §2.113(a), in part, the Board's notification of the filing of an opposition or petition to cancel “shall designate a time, not less than thirty days from the mailing date of the notification, within which an answer must be

⁴ The notice of default (and envelope it was mailed in) reflect it was mailed on 12/5/2011 and addressed to S. Max Harris at the correct address.

filed.” A defendant is under no obligation to file an answer to the complaint in an opposition or cancellation proceeding until it receives the Board’s notification setting the time for filing an answer.”

TBMP Rule 301.03(a) (emphasis added). See also 37 CFR §2.113(a).⁵

10. A default judgment is inappropriate because: (1) Wohali’s failure to timely file its answer was not the result of willful conduct or gross neglect on the part of Wohali. Wohali never received the October 12th Notice mailed by the USPTO Trademark Trial and Appeal Board, and had no obligation to file an answer until actual receipt of the notice. See TBMP Rule 301.03(a). Wohali became aware of the October 12th Notice on December 8th (via its counsel) and immediately reacted. (2) Petitioner will not be substantially prejudiced by allowing Wohali to answer. Wohali’s answer was due less than thirty days prior to the filing of this pleading. If Petitioner was concerned about a delay, Petitioner would not have dismissed the previous Federal lawsuit. Default judgment is an unusual remedy that is harsh and inappropriate here. (3) Wohali has meritorious defenses, and is likely to succeed on the merits.⁶

⁵ “(a) When a petition for cancellation in proper form (see §§ 2.111 and 2.112), with proof of service in accordance with § 2.111(b), has been filed and the correct fee has been submitted, the Trademark Trial and Appeal Board shall prepare a notification which shall identify the title and number of the proceeding and the registration(s) involved and shall designate a time, not less than thirty days from the mailing date of the notification, within which an answer must be filed. If a party has provided the Office with an e-mail address, the notification may be transmitted via e-mail.”

37 CFR §2.113(a).

⁶ “Good cause why default judgment should not be entered against a defendant, for failure to file a timely answer to the complaint, is usually found when the defendant shows that (1) the delay in filing an answer was not the result of willful conduct or gross neglect on the part of the defendant, (2) the plaintiff will not be substantially prejudiced by the delay, and (3) the defendant has a meritorious defense to the action. . .

[T]he Board is very reluctant to enter a default judgment for failure to file a timely answer, and tends to resolve any doubt on the matter in favor of the defendant.”

TBMP Rule 312.02 (emphasis added).

“Because a default judgment is a harsh sanction, it should be employed only in extreme situations when other less drastic sanctions have proven unavailing. *C.K.S. Engineers, Inc. v. White Mountain Gypsum Co.*, 726 F.2d 1202, 1205 (7th Cir.1984). Here, the City had a legitimate basis for not filing a responsive pleading: it had not been served. The only case to decide whether Rule 81(c)'s pleading requirement applies in the absence of service, *Apache*, 145 F.R.D. 674, concluded that it did not. Moreover, under the plain language of Rule 81(c), the City was not required to file a responsive pleading because it had not been served with a summons. In addition the City’s failure to file a responsive pleading caused a minimal delay. . .”

Silva v. City of Madison, 69 F.3d 1368, 1377 (7th Cir. 1995) (emphasis added).

“The entry of judgment by default is a drastic remedy and should be resorted to only in extreme situations. *Pond v. Braniff Airways, Inc.*, 453 F.2d 347 (5th Cir. 1972); *Flaksa v. Little River Marine Construction Co.*, 389 F.2d 885, 887 (5th Cir. 1968). It is only appropriate where there has been a clear record of delay or contumacious conduct. *Id.* at 888.”

E.F. Hutton & Co., Inc. v. Moffatt, 460 F.2d 284, 285 (5th Cir. 1972) (emphasis added).

“The plaintiffs have not shown, nor do they even allege, any prejudice as a result of the defendants allegedly improper failure to respond to their ‘Amended Complaint.’ Consequently, the motion for entry of default judgment is denied.”

Georgia Power Project v. Georgia Power Co., 409 F.Supp. 332, 337 (N.D. Georgia 1975).

“b) Certificate as prima facie evidence

A certificate of registration of a mark upon the principal register provided by this chapter shall be prima facie evidence of the validity of the registered mark and of the registration of the mark, of the owner's ownership of the mark, and of the owner's exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the certificate, subject to any conditions or limitations stated in the certificate.”

15 U.S.C. §1057(b) (emphasis added). *See also Nasalok Coating Corp. v. Nylok Corp.*, 522 F.3d 1320, 1326 (Fed. Cir. 2008) (“[R]egistration of mark that has not yet become incontestable is prima facie evidence of validity.”)

The USPTO previously rejected Petitioner's claim when it denied Petitioner's Application Serial No. 85095903 based on Wohali's STEEL EAGLE mark (U.S. Registration No. 3904929).⁷ (Ex. B at p. 3-4 and 6-7.)

11. Wohali contested Petitioner's previous lawsuit (resulting in Petitioner moving the Court for a voluntary dismissal), and is contesting Petitioner's action filed here. Petitioner knew Wohali was represented by counsel and that this proceeding would likely be contested. On October 10th, Petitioner's counsel emailed Wohali's counsel a copy of the Petition for Cancellation. It would be fundamentally unfair to enter default judgment against Wohali for the reasons stated herein.

III. PRAYER

WHEREFORE, Wohali prays the Court refrain from entering default judgment against Wohali and instead permit Wohali to file its Answer and Affirmative Defenses (submitted herewith).

Respectfully Submitted,

/S. Max Harris/
Steven M. Harris, OBA #3913
S. Max Harris, OBA #22166
DOYLE HARRIS DAVIS & HAUGHEY
1350 South Boulder, Suite 700
Tulsa, OK 74119
(918) 592-1276
(918) 592-4389 (fax)
Attorneys for Respondent, Wohali Outdoors, LLC

⁷ Wohali's U.S. Registration No. 3904929 is attached as Ex. A.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of Respondent Wohali Outdoors, LLC's Combined Response to Notice of Default and Respondent's Motion For Leave To File Answer and Brief In Support was served by First Class Mail, postage prepaid, this 13th day of December, 2011, upon the following:

James D. Peterson
Jennifer L. Gregor
GODFREY & KAHN, S.C.
One East Main Street, Suite 500
Madison, Wisconsin 53701-2719

A copy of same was also sent via electronic mail, this 13th day of December, 2011, to the following:

James D. Peterson jpeterson@gklaw.com
Jennifer L. Gregor jgregor@gklaw.com

/s/ S. Max Harris/

S. Max Harris

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

In re Registration No. 3,904,929)	
)	
SHELTERED WINGS, INC.)	Cancellation No. 92054629
)	
Petitioner,)	
)	
v.)	
)	
WOHALI OUTDOORS, LLC,)	
)	
Respondent.)	
)	

**RESPONDENT WOHALI OUTDOORS, LLC’S
ANSWER AND AFFIRMATIVE DEFENSES**

COMES NOW the Respondent, Wohali Outdoors, LLC (“Respondent” or “Wohali”), and for its Answer and Affirmative Defenses, alleges and states as follows:

1. Wohali is without sufficient knowledge or information as to form a belief as to the truth of the allegations contained in paragraph 1 of the Petition, and therefore denies same.
2. Wohali is without sufficient knowledge or information as to form a belief as to the truth of the allegations contained in paragraph 2 of the Petition, and therefore denies same.
3. Wohali is without sufficient knowledge or information as to form a belief as to the truth of the allegations contained in paragraph 3 of the Petition, and therefore denies same.
4. Wohali is without sufficient knowledge or information as to form a belief as to the truth of the allegations contained in paragraph 4 of the Petition, and therefore denies same.
5. Wohali is without sufficient knowledge or information as to form a belief as to the truth of the allegations contained in paragraph 5 of the Petition, and therefore denies same.

6. Paragraph 6 of the Petition is admitted.

7. In response to paragraph 7 of the Petition, Wohali admits it owns Registration No. 3,904,929. The registration and application speak for themselves. To the extent Petitioner has made allegations inconsistent with the registration and/or application, those allegations are denied.

8. In response to paragraph 8, the registration speaks for itself. To the extent Petitioner has made allegations inconsistent or outside of the registration, those allegations are denied.

9. Paragraph 9 of the Petition is denied.

10. In response to paragraph 10 of the Petition, Wohali admits it owns the STEEL EAGLE mark (U.S. Registration No. 3904929) and that Petitioner's Application Serial No. 85095903 was denied. (See Ex. A and B.) All other allegations or inferences in paragraph 10 of the Petition are denied.

Wohali prays that all relief requested by Petitioner be denied.

AFFIRMATIVE DEFENSES

11. Petitioner's claim is barred by the statute of limitations.

12. Petitioner's claim is barred by the doctrines of unclean hands, ratification, waiver, laches, preemption, estoppel and/or equitable estoppel.

13. Petitioner's claim may be barred based on lack of jurisdiction.

14. Petitioner has failed to state a claim upon which relief can be granted.

15. Petitioner's claim is barred by the doctrines of issue preclusion and/or claim preclusion.

16. Petitioner's claim is barred based on Wohali's validly registered mark - U.S. Registration No. 3,904,929. (Ex. A.)

17. U.S. Registration No. 3,904,929 is prima facie evidence that Wohali's mark is valid. 15 U.S.C. §1057(b). *See also Nasalok Coating Corp. v. Nylok Corp.*, 522 F.3d 1320, 1326 (Fed. Cir. 2008).

18. Wohali's registration of "STEEL EAGLE" provides the presumptive, exclusive right to use the "STEEL EAGLE" mark for the goods identified in the registration.

19. Petitioner's claim is barred because Wohali's first use in commerce predates Petitioner's.

20. Petitioner's claim and rights (if any) are limited to the scope and subject matter set forth in the documents filed with the USPTO.

21. Petitioner's claim was previously addressed and rejected by the USPTO based on Wohali's mark. (Ex. B.)

22. Wohali has not breached any duty owed to Petitioner.

23. Petitioner has no damages.

24. To the extent Petitioner has damages (which Wohali denies), Wohali is not the cause of Petitioner's damages.

25. To the extent Petitioner has damages (which Wohali denies), Petitioner has failed to mitigate its damages.

26. Wohali alleges that said injuries, if any, sustained by Petitioner were wholly caused by persons, firms, corporations or entities other than Wohali.

27. The USPTO previously determined the EAGLE mark (identified in Application Serial No. 85095903) so resembles the mark in U.S. Registration No. 3904929 as to be likely to cause confusion, or to cause mistake, or to deceive. (Ex. B.)

28. Petitioner's mark "EAGLE" is similar in sound, appearance, connotation and commercial impression to Registration No. 3904929's mark "STEEL EAGLE." (Ex. B.)

29. Wohali reserves its right to add additional affirmative defenses as needed.

PRAYER

Wohali prays that all relief requested by Petitioner is denied, that Petitioner's claim is dismissed with prejudice, and that Wohali is awarded its attorney fees and costs, and any other relief Wohali demonstrates and proves it is entitled to.

Respectfully Submitted,

/S. Max Harris/

Steven M. Harris, OBA #3913

S. Max Harris, OBA #22166

DOYLE HARRIS DAVIS & HAUGHEY

1350 South Boulder, Suite 700

Tulsa, OK 74119

(918) 592-1276

(918) 592-4389 (fax)

Attorneys for Respondent, Wohali Outdoors, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of Respondent Wohali Outdoors, LLC's Answer and Affirmative Defenses was served by First Class Mail, postage prepaid, this 13th day of December, 2011, upon the following:

James D. Peterson
Jennifer L. Gregor
GODFREY & KAHN, S.C.
One East Main Street, Suite 500
Madison, Wisconsin 53701-2719

A copy of same was also sent via electronic mail, this 13th day of December, 2011, to the following:

James D. Peterson jpeterson@gklaw.com
Jennifer L. Gregor jgregor@gklaw.com

/s/ S. Max Harris/

S. Max Harris

United States of America

United States Patent and Trademark Office

STEEL EAGLE

Reg. No. 3,904,929

WOHALL OUTDOORS, LLC (OKLAHOMA LIMITED LIABILITY COMPANY)
1300 N. INDUSTRIAL BLVD.
CLAREMORE, OK 74017

Registered Jan. 11, 2011

Int. Cl.: 9

FOR: MAGNIFYING OPTICAL EQUIPMENT, NAMELY, RIFLE SCOPES AND BINOCULARS,
IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

TRADEMARK

FIRST USE 10-21-2009; IN COMMERCE 10-21-2009.

PRINCIPAL REGISTER

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PAR-
TICULAR FONT, STYLE, SIZE, OR COLOR.

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

SN 77-689,308, FILED 3-12-2009.

RONALD MCMORROW, EXAMINING ATTORNEY



Director of the United States Patent and Trademark Office

David S. K. [Signature]

To: Sheltered Wings, Inc. (trademark@langlotz.com)

Subject: U.S. TRADEMARK APPLICATION NO. 85095903 - EAGLE - VX-T67

Sent: 4/12/2011 10:22:24 AM

Sent As: ECOM108@USPTO.GOV

Attachments: [Attachment - 1](#)
[Attachment - 2](#)
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[Attachment - 55](#)

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

APPLICATION SERIAL NO. 85095903

MARK: EAGLE

85095903

CORRESPONDENT ADDRESS:

ANGELA V. LANGLOTZ
LANGLOTZ PATENT & TRADEMARK
WORKS, INC.
PO BOX 9650337585
WASHINGTON, DC 20090

CLICK HERE TO RESPOND TO THIS LETTER:

http://www.uspto.gov/trademarks/teas/response_forms.jsp

APPLICANT: Sheltered Wings, Inc.

**CORRESPONDENT'S REFERENCE/DOCKET
NO:**

VX-T67

CORRESPONDENT E-MAIL ADDRESS:

trademark@langlotz.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 4/12/2011

Action on this application had been suspended pending the disposition of Application Serial No. 77-689308. That application has matured into a registration. Accordingly, the examining attorney determines as follows.

Mark is Likely to Cause Confusion

The examining attorney refuses registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), because the applicant's mark, when used on or in connection with the identified goods, so resembles the mark in U.S. Registration No. 3904929 as to be likely to cause confusion, or to cause mistake, or to deceive. TMEP section 1207. See the enclosed registration.

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 or 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). The court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) 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 of the factors are necessarily relevant or of equal weight, and any one factor may be dominant in a given case, depending upon the evidence of record. *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); see *In re E. I. du Pont*, 476 F.2d at 1361-62, 177 USPQ at 567.

The examining attorney must analyze each case in two steps to determine whether there is a likelihood of confusion. First, the examining attorney must look at the marks themselves for similarities in appearance, sound, connotation and commercial impression. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Second, the examining attorney must compare the goods or services to determine if they are related or if the activities surrounding their marketing are such that confusion as to origin is likely. *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re International Telephone and Telegraph Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Products Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978).

Analysis of Applicant's Mark and Registered Mark

First, a comparison of the respective marks show that they are comprised either in whole or significant part of the term "EAGLE." The mere deletion of wording from a registered mark is not sufficient to overcome a likelihood of confusion under Section 2(d). See *In re Optical Int'l*, 196 USPQ 775 (TTAB 1977) (where applicant filed to register the mark OPTIQUE for optical wear, deletion of the term BOUTIQUE is insufficient to distinguish the mark, *per se*, from the registered mark OPTIQUE BOUTIQUE when used in connection with competing optical wear). Accordingly, the applicant's mark, "EAGLE," is similar in sound, appearance, connotation and commercial impression to Registration No. 3904929's mark "STEEL EAGLE." Similarity in any one of these elements alone is sufficient to find a likelihood of confusion. *In re Mack*, 197 USPQ 755 (TTAB 1977).

It is well settled that in some circumstances, it is appropriate to recognize that one component of a particular mark may, for some reason, have more significance than other components in determining the commercial impression which is generated by the mark. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). Although the determination of whether or not confusion is likely must be based on a comparison of the marks in their entireties, the dominance of such a significant element must be taken into account in resolving this issue. *Ceccato v. Manifattura Lane Gaetano Morzotto Figli S.p.A.*, 32 USPQ 1192 (TTAB 1994). Disclaimed matter is typically less significant or less dominant.

The registrant's mark is "STEEL EAGLE." In the comparison above, the mark was viewed and considered as a whole. "STEEL," however, is descriptive of the feature of the goods and is of less trademark significance than "EAGLE."

Analysis of Goods and Services

Second, the relationship of the goods is evident because both marks are for goods including rifle scopes and binoculars. The overlapping identifications evidence the relationship.

As to the registrant's other goods, it should be noted that third party registrations that do not cover a wide variety of goods might have some probative value in establishing a relationship between the goods. *In re Parfums Schiaparelli Inc.*, 37 USPQ2d 1864 (TTAB 1995). A search of Office records reveals a number of registrations for spotting scopes or binoculars and telescopes as goods being utilized under the same mark (See attached for random examples).

The examining attorney must also consider any goods or services in the registrant's normal fields of expansion to determine whether the registrant's goods or services are related to the applicant's identified goods or services under Section 2(d). *In re General Motors Corp.*, 196 USPQ 574 (TTAB 1977). Accordingly, the mark is likely to cause consumer confusion as to source.

TEAS PLUS APPLICANTS MUST SUBMIT DOCUMENTS ELECTRONICALLY OR SUBMIT FEE: Applicants who filed their application online using the reduced-fee TEAS Plus application must continue to submit certain documents online using TEAS, including responses to Office actions. *See* 37 C.F.R. §2.23(a)(1). For a complete list of these documents, see TMEP §819.02(b). In addition, such applicants must accept correspondence from the Office via e-mail throughout the examination process and must maintain a valid e-mail address. 37 C.F.R. §2.23(a)(2); TMEP §§819, 819.02(a). TEAS Plus applicants who do not meet these requirements must submit an additional fee of \$50 per international class of goods and/or services. 37 C.F.R. §2.6(a)(1)(iv); TMEP §819.04. In appropriate situations and where all issues can be resolved by amendment, responding by telephone to authorize an examiner's amendment will not incur this additional fee.

If the applicant has any questions or needs assistance in responding to this office action, please telephone the assigned examining attorney.

/Jason F. Turner/
Examining Attorney
Law Office 108
(571) 272-9353
(571) 273-9108 (Fax for Official Responses)
jason.turner@uspto.gov (Inqui

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 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 Trademark Applications and Registrations Retrieval (TARR) at <http://tarr.uspto.gov/>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, 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/teas/eTEASpageE.htm>.

DESIGN MARK

Serial Number

77689308

Status

REGISTERED

Word Mark

STEEL EAGLE

Standard Character Mark

Yes

Registration Number

3904929

Date Registered

2011/01/11

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Wohali Outdoors, LLC LIMITED LIABILITY COMPANY OKLAHOMA 1300 N.
Industrial Blvd. Claremore OKLAHOMA 74017

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Magnifying optical equipment, namely, rifle scopes and binoculars.
First Use: 2009/10/21. First Use In Commerce: 2009/10/21.

Disclaimer Statement

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

Filing Date

2009/03/12

Examining Attorney

MCMORROW, RONALD

Attorney of Record

Frank J. Catalano

STEEL EAGLE

DESIGN MARK

Serial Number

78515580

Status

REGISTERED

Word Mark

XTR

Standard Character Mark

Yes

Registration Number

3127957

Date Registered

2006/08/08

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

BUSHNELL INC. CORPORATION DELAWARE 9200 CODY OVERLAND PARK KANSAS
66214

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Lens coatings sold as a component of sports optics products, namely,
binoculars, riflescopes, spotting scopes, rangefinders, bore-sighters,
telescopes, and telescopic gun sights for pistols, rifles and
shotguns. First Use: 2005/01/00. First Use In Commerce: 2005/02/00.

Filing Date

2004/11/11

Examining Attorney

PAPPAS, MATTHEW

Attorney of Record

Michael Elbein

XTR

DESIGN MARK

Serial Number

78552204

Status

REGISTERED

Word Mark

PAUL BUNYAN

Standard Character Mark

Yes

Registration Number

3089724

Date Registered

2006/05/09

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

PRESS HOLDING'S INTERNATIONAL, INC. CORPORATION 116 West 23rd Street,
Suite 500 c/o Sherman & Blank Inc. New York NEW YORK 10011

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
binoculars; carpenter's levels; children's educational software;
children's video tapes; directional compasses; computer game software;
decorative magnets; electric switch plates; gloves for protection
against accidents; goggles for sports; photographic slide
transparencies; sound recordings featuring adventure, environmental
sciences, and folklore; spectacle cases; sports eyewear; sunglasses;
survival suits; telescopes; video recordings featuring adventure,
environmental sciences, and folklore; walkie-talkies. First Use:
1975/02/12. First Use In Commerce: 1975/02/12.

Prior Registration(s)

2025161;2049274;2071723;AND OTHERS

Name/Portrait Statement

The name(s), portrait(s), and/or signature(s) shown in the mark does
not identify a particular living individual.

Print: Apr 12, 2011

78552204

Filing Date

2005/01/22

Examining Attorney

HOLTZ, ALLISON

Paul Bunyan

DESIGN MARK

Serial Number

78552207

Status

REGISTERED

Word Mark

DANIEL BOONE

Standard Character Mark

Yes

Registration Number

3050501

Date Registered

2006/01/24

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

PRESS HOLDING'S INTERNATIONAL, INC. CORPORATION 116 West 23, Suite 500
c/o Sherman & Blank Inc. Millwood NEW YORK 10011

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Binoculars; carpenter's levels; children's educational software;
children's video tapes; compasses; computer game software; decorative
magnets; electric switch plates; gaming machines; gloves for
protection against accidents; goggles for use in fishing, hunting, and
snow sports; photographic slide transparencies; sound recordings
featuring adventure, exploration, and history; spectacle cases; sports
eyewear; sunglasses; survival suits; telescopes; video game
cartridges; video recordings featuring adventure, exploration, and
history; walkie-talkies. First Use: 1975/11/18. First Use In
Commerce: 1975/11/18.

Prior Registration(s)

1856781;1996967;2108572;AND OTHERS

Name/Portrait Statement

The name(s), portrait(s), and/or signature(s) shown in the mark does

Print: Apr 12, 2011

78552207

not identify a particular living individual.

Filing Date

2005/01/22

Examining Attorney

HARDY, TARA H

Daniel Boone

DESIGN MARK

Serial Number

78552262

Status

REGISTERED

Word Mark

PECOS BILL

Standard Character Mark

Yes

Registration Number

3116381

Date Registered

2006/07/18

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

PRESS HOLDING'S INTERNATIONAL, INC. CORPORATION PANAMA 116 West 23rd Street, Suite 500 c/o Sherman & Blank Inc. New York NEW YORK 10011

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S: binoculars; children's educational software; children's video tapes; decorative magnets; electric switch plates; goggles for sports; photographic slide transparencies; sound recordings featuring adventure and folklore; spectacle cases; sports eyewear; sunglasses; telescopes; video recordings featuring adventure and folklore; walkie-talkies. First Use: 1978/01/10. First Use In Commerce: 1978/01/10.

Prior Registration(s)

1872555;1886929;1896123;AND OTHERS

Name/Portrait Statement

The name(s), portrait(s), and/or signature(s) shown in the mark does not identify a particular living individual.

Filing Date

Print: Apr 12, 2011

78552262

2005/01/23

Examining Attorney
SINGH, TEJBIR

Pecos Bill

DESIGN MARK

Serial Number
78552588

Status
REGISTERED

Word Mark
MUELLER

Standard Character Mark
No

Registration Number
3063003

Date Registered
2006/02/28

Type of Mark
TRADEMARK

Register
PRINCIPAL

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

Owner
Mueller Optics LLC LIMITED LIABILITY COMPANY MICHIGAN 6544 Finnegan
Rd. Johannesburg MICHIGAN 49751

Goods/Services
Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Optical lens sights for firearms, binoculars, spotting scopes. First
Use: 2003/08/01. First Use In Commerce: 2003/08/01.

Filing Date
2005/01/24

Examining Attorney
LORENZO, GEORGE

Attorney of Record
Christopher J. Day



DESIGN MARK

Serial Number

78556531

Status

REGISTERED

Word Mark

LEGENDS OF THE WEST

Standard Character Mark

Yes

Registration Number

3054547

Date Registered

2006/01/31

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Geronimo Productions, Inc. CORPORATION DELAWARE 116 West 23rd Street,
Suite 500 c/o Sherman & Blank Inc. New York NEW YORK 10011

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Binoculars; children's educational software; children's video tapes;
computer game software; decorative magnets; electric switch plates;
downloadable electronic publications, namely, books featuring
adventure, folklore, and history; electronic publications, namely,
books featuring adventure, folklore, and history recorded on computer
media; gaming machines; goggles for sports; photographic slide
transparencies; sound recordings featuring adventure, folklore, and
history; spectacle cases; sports eyewear; sunglasses; telescopes;
video game cartridges; video recordings featuring adventure, folklore,
and history; walkie-talkies. First Use: 1979/06/02. First Use In
Commerce: 1979/06/02.

Prior Registration(s)

1923801;1945695;2036906;AND OTHERS

Filing Date

Print: Apr 12, 2011

78556531

2005/01/31

Examining Attorney
MCCAULEY, BRENDAN

Legends of the West

DESIGN MARK

Serial Number

78593915

Status

REGISTERED

Word Mark

MULTIZERO

Standard Character Mark

Yes

Registration Number

3129032

Date Registered

2006/08/15

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Kahles, GmbH CORPORATION AUSTRIA Zeillergasse 20-22 Vienna AUSTRIA
1170

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Optical apparatus and instruments, namely, telescopes, telescopic
sights, binoculars, and telescopic sights for firearms. First Use:
2005/03/11. First Use In Commerce: 2005/03/11.

Foreign Country Name

AUSTRIA

Foreign Priority

FOREIGN PRIORITY CLAIMED

Foreign Application Number

AM65672004

Foreign Filing Date

2004/09/24

Print: Apr 12, 2011

78593915

Foreign Registration Number

222273

Foreign Registration Date

2004/12/30

Foreign Expiration Date

2014/12/30

Filing Date

2005/03/24

Examining Attorney

MCDOWELL, MATTHEW

Attorney of Record

Anton P. Ness

MULTIZERO

DESIGN MARK

Serial Number

78596617

Status

REGISTERED

Word Mark

INDEX MATCHED LENS SYSTEM

Standard Character Mark

Yes

Registration Number

3125115

Date Registered

2006/08/01

Type of Mark

TRADEMARK

Register

SUPPLEMENTAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Leupold & Stevens, Inc. CORPORATION OREGON PO Box 688 Beaverton OREGON
970750688

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Optical lens sights for firearms; telescopic sights; rifle scopes;
telescopes; handgun scopes; optical lens scopes; spotting scopes;
binoculars. First Use: 2006/01/03. First Use In Commerce:
2006/01/03.

Disclaimer Statement

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

Filing Date

2005/03/28

Amended Register Date

2006/05/12

Examining Attorney

Print: Apr 12, 2011

78596617

SWAIN, MICHELE

Attorney of Record

Jere M. Webb

INDEX MATCHED LENS SYSTEM

DESIGN MARK

Serial Number

78603419

Status

REGISTERED

Word Mark

NEPTUNE

Standard Character Mark

No

Registration Number

3144658

Date Registered

2006/09/19

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

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

Owner

CANDO ENTERPRISES, INC. CORPORATION CALIFORNIA 14642 Central Avenue
Chino CALIFORNIA 91710

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
telescopes and binoculars. First Use: 2003/12/17. First Use In
Commerce: 2003/12/17.

Description of Mark

The mark consists, in part, of a design of three curved or arched
overlapping bands with a four-pointed star in the center. The mark
also consists of the term NEPTUNE in stylized form below the curved
band and star design. The middle dash of each letter E in the term
NEPTUNE is formed by a four-pointed star.

Filing Date

2005/04/27

Examining Attorney

DELANEY, ZHALEH

Print: Apr 12, 2011

78603419

Attorney of Record
Alfred H. Chan



DESIGN MARK

Serial Number

78616900

Status

REGISTERED

Word Mark

CANASCOPE

Standard Character Mark

Yes

Registration Number

3220669

Date Registered

2007/03/20

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Events Marketing LLC LIMITED LIABILITY CORPORATION NEVADA Suite 239
3315 Russell Road Las Vegas NEVADA 89120

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Telescopes and binoculars. First Use: 1999/08/00. First Use In
Commerce: 2000/08/00.

Filing Date

2005/04/26

Examining Attorney

CARRUTHERS, ALICE SUE

Canascope

DESIGN MARK

Serial Number

78651640

Status

REGISTERED

Word Mark

WOLLENSAK

Standard Character Mark

Yes

Registration Number

3123173

Date Registered

2006/08/01

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

VIRGINVILLE LENS COMPANY CORPORATION PENNSYLVANIA 1050 Maidencreek Road Fleetwood PENNSYLVANIA 19522

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S: Filters for optical devices; Optical glasses; Optical inspection apparatus for industrial use; Optical lens sights; Optical lenses; Optical or telescopic lens sights; Optical readers; Optical reflectors; Optical shutters; Scientific and technical apparatus, namely, optical mirrors; Prisms for scientific purposes; Prisms for telescopes; Reflectors for telescopes, Telescopes, Body-tubes for telescopes namely lens-barrels; Eyeglass lenses, Magnifying lenses, Ophthalmic lenses; Binoculars; Hunting binoculars; Laboratory equipment namely, spectrosopes; Adapter rings for attaching objectives on cameras; Camera cases; Camera filters; Cameras; Cameras shutters; Motion picture cameras; Photographic cameras; Range finders for cameras; Shutters for cameras; Viewfinders for cameras; Microscopes and parts thereof; Microscope condensers; Prisms for microscopes; Reflectors for microscopes; Microscopes. First Use: 1900/00/00. First Use In Commerce: 1900/00/00.

Print: Apr 12, 2011

78651640

Section 2f Statement
2(F) ENTIRE MARK

Filing Date
2005/06/15

Examining Attorney
DAHLING, KRISTIN

WOLLENSAK

DESIGN MARK

Serial Number

78661493

Status

REGISTERED

Word Mark

STARSEEKER

Standard Character Mark

Yes

Registration Number

3148049

Date Registered

2006/09/26

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Imaginova Corp. CORPORATION DELAWARE 470 Park Avenue South 9th Floor
New York NEW YORK 10016

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Optical goods, namely, telescopes, binoculars, lenses, and telescope
parts, namely lenses, lens filters, body tubes, eye pieces, prisms,
reflectors, mounts, computerized mounts, computerized hand controllers
used to control the movement of the telescope and astro-camera,
astro-cameras used to take pictures of images that are seen through
the telescope and tripods. First Use: 2003/09/00. First Use In
Commerce: 2003/09/00.

Filing Date

2005/06/30

Examining Attorney

LEWIS, MICHAEL

Attorney of Record

Lara A. Holzman, Esq.

STARSEEKER

DESIGN MARK

Serial Number

78766074

Status

REGISTERED

Word Mark

WYATT EARP

Standard Character Mark

Yes

Registration Number

3293671

Date Registered

2007/09/18

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Geronimo Productions, Inc. CORPORATION DELAWARE 116 West 23rd Street,
Suite 500 c/o Sherman & Blank Inc. New York NEW YORK 10011

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Binoculars; Cases for mobile phones; Cases for spectacles and
sunglasses; Chains for spectacles; Compasses; Decorative switch plate
covers; Electric switch plates; Goggles for sports; Sports eyewear;
Sunglasses; Telescopes; Telescopic sights. First Use: 1997/12/31.
First Use In Commerce: 1997/12/31.

Prior Registration(s)

1822807;1822817;1981170;AND OTHERS

Name/Portrait Statement

The name(s), portrait(s), and/or signature(s) shown in the mark does
not identify a particular living individual.

Filing Date

2005/12/03

Print: Apr 12, 2011

78766074

Examining Attorney
MCCAULEY, BRENDAN

Wyatt Earp

DESIGN MARK

Serial Number

78807217

Status

REGISTERED

Word Mark

GARRETT OPTICAL

Standard Character Mark

Yes

Registration Number

3222054

Date Registered

2007/03/27

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Garrett Optical LLC LIMITED LIABILITY COMPANY OKLAHOMA 11601 S. Lynn Lane Broken Arrow OKLAHOMA 740114022

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S: Binoculars; Golf scopes; Gun scopes; Hunting binoculars; Optical or telescopic lens sights; Rifle scopes; Spotting scopes; Telescopes; Tripods. First Use: 2005/04/01. First Use In Commerce: 2005/10/01.

Disclaimer Statement

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

Filing Date

2006/02/03

Examining Attorney

STRUCK, ROBERT

Garrett Optical

DESIGN MARK

Serial Number

78831844

Status

REGISTERED

Word Mark

KOWA

Standard Character Mark

No

Registration Number

3229361

Date Registered

2007/04/17

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

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

Owner

KOWA COMPANY, LTD. CORPORATION JAPAN 6-29, Nishiki 3-chome, Naka-ku Nagoya JAPAN

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S: Photographic machines and apparatus, and their parts and fittings, namely, digital cameras with zoom functions, optical lenses; optical apparatus and instruments, and their parts and fittings, namely, telescopes and binoculars, optical lenses. First Use: 2001/05/00. First Use In Commerce: 2001/05/00.

Description of Mark

The mark consists of Kowa in an oval.

Filing Date

2006/03/08

Examining Attorney

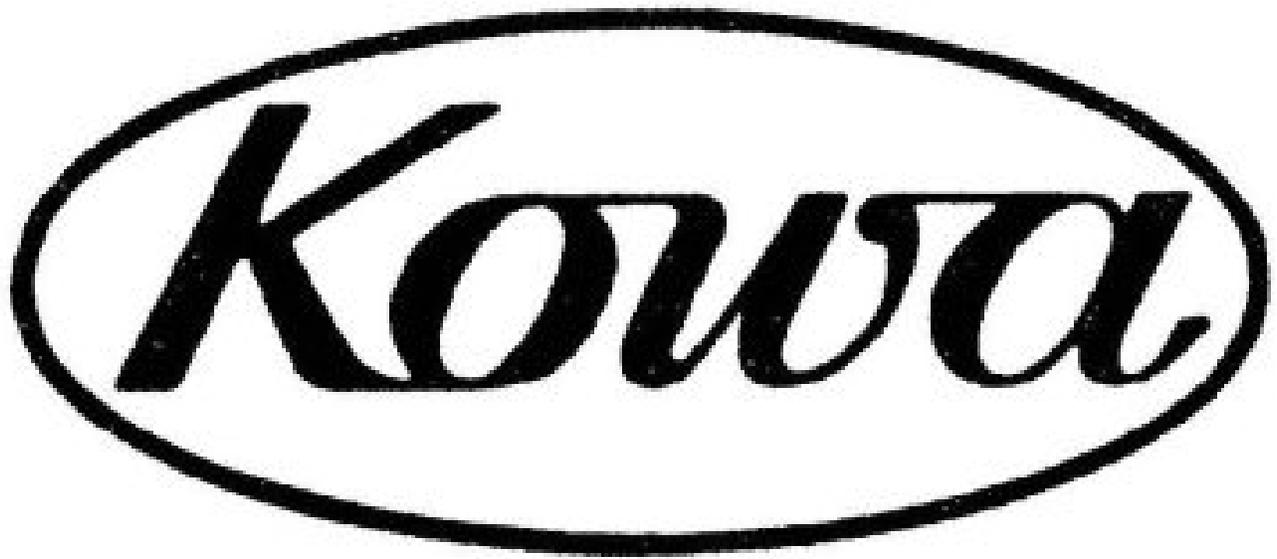
BENMAMAN, ALICE

Attorney of Record

Print: Apr 12, 2011

78831844

Thomas J. Moore



DESIGN MARK

Serial Number

78865804

Status

REGISTERED

Word Mark

STAR · INNOVATIONS

Standard Character Mark

No

Registration Number

3206242

Date Registered

2007/02/06

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

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

Owner

Imagine Nation Books Ltd CORPORATION COLORADO 4601 Nautilus Court
South Boulder COLORADO 80301

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
35mm cameras; Binoculars; Camera tripods; Cameras; Telescopes. First
Use: 2005/12/14. First Use In Commerce: 2006/02/15.

Description of Mark

The mark consists of the wording "STAR INNOVATIONS" with a raised
period between the words "star" and "innovations" in which the letter
"A" is formed by a star.

Filing Date

2006/04/20

Examining Attorney

RITTNER, HANNO

STAR • INNOVATIONS

DESIGN MARK

Serial Number

78895986

Status

REGISTERED

Word Mark

FAMOUS TRAILS

Standard Character Mark

Yes

Registration Number

3202203

Date Registered

2007/01/23

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Famous Trails CORPORATION CALIFORNIA 1580 N. Harmony Circle Anaheim CALIFORNIA 92807

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S: night vision goggles, binoculars, metal detectors, parabolic microphones, binocameras, telescopes and microscopes. First Use: 1999/12/01. First Use In Commerce: 1999/12/01.

Goods/Services

Class Status -- ACTIVE. IC 014. US 002 027 028 050. G & S: sport watches, watches containing heart rate monitors, watches containing remote control devices, watches containing digital cameras. First Use: 2003/08/01. First Use In Commerce: 2003/08/01.

Filing Date

2006/05/30

Examining Attorney

DEFORD, JEFF

Print: Apr 12, 2011

78895986

Attorney of Record

Lisa A. Sanderson, Esq.

Famous Trails

DESIGN MARK

Serial Number

78910322

Status

REGISTERED

Word Mark

XOTIC

Standard Character Mark

No

Registration Number

3233198

Date Registered

2007/04/24

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

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

Owner

Southwestern Firearms, Inc. CORPORATION TEXAS 420 Century Way, #100
Red Oak TEXAS 75154

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Binoculars; Rifle scopes; Spotting scopes. First Use: 2005/01/01.
First Use In Commerce: 2005/01/01.

Description of Mark

The mark consists in part of a rifle scope reticle formed in the "O"
of XOTIC.

Filing Date

2006/06/16

Examining Attorney

BELENKER, ESTHER

Attorney of Record

Eric Karich

XOTIC

DESIGN MARK

Serial Number

78955641

Status

REGISTERED

Word Mark

TRIGGER STICK

Standard Character Mark

Yes

Registration Number

3671097

Date Registered

2009/08/18

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Primos, Inc. CORPORATION MISSISSIPPI 604 First Street Flora
MISSISSIPPI 39071

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Tripods, bipods, and monopods for binoculars, cameras, and telescopes
used in outdoor recreation. First Use: 2008/12/22. First Use In
Commerce: 2008/12/22.

Goods/Services

Class Status -- ACTIVE. IC 013. US 002 009. G & S: Tripods,
bipods, and monopods for firearms used in hunting. First Use:
2008/12/22. First Use In Commerce: 2008/12/22.

Filing Date

2006/08/18

Examining Attorney

HETZEL, DANNEAN

Attorney of Record

Print: Apr 12, 2011

78955641

L. Grant Foster

TRIGGER STICK

DESIGN MARK

Serial Number

78961804

Status

REGISTERED

Word Mark

CRYSTAL CLEAR OPTICS

Standard Character Mark

No

Registration Number

3905824

Date Registered

2011/01/11

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

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

Owner

Kowa Company, Ltd. CORPORATION JAPAN 6-29, Nishiki 3-chome, Naka-ku
Nagoya JAPAN

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Photographic machines and apparatus, namely, digital cameras with zoom
functions, lenses and parts thereof; optical apparatus and
instruments, namely, telescopes, binoculars, lenses and parts thereof.
First Use: 2010/08/31. First Use In Commerce: 2010/08/31.

Goods/Services

Class Status -- ACTIVE. IC 010. US 026 039 044. G & S: Diagnostic
instruments, namely, tonometers, fundus cameras and slit-lamps for use
in ophthalmology. First Use: 2010/08/31. First Use In Commerce:
2010/08/31.

Disclaimer Statement

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

Colors Claimed

Print: Apr 12, 2011

78961804

Color is not claimed as a feature of the mark.

Filing Date

2006/08/28

Examining Attorney

CHISOLM, KEVON

Attorney of Record

Thomas J. Moore

Crystal Clear Optics

To: Sheltered Wings, Inc. (trademark@langlotz.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85095903 - EAGLE - VX-T67
Sent: 4/12/2011 10:22:30 AM
Sent As: ECOM108@USPTO.GOV
Attachments:

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

**USPTO OFFICE ACTION HAS ISSUED ON 4/12/2011 FOR
SERIAL NO. 85095903**

Please follow the instructions below to continue the prosecution of your application:

TO READ OFFICE ACTION: Click on this [link](#) or go to <http://portal.uspto.gov/external/portal/tow> and enter the application serial number to [access](#) the Office action.

PLEASE NOTE: The Office action may not be immediately available but will be viewable within 24 hours of this e-mail notification.

RESPONSE IS REQUIRED: You should carefully review the Office action to determine (1) how to respond; and (2) the applicable [response time period](#). Your response deadline will be calculated from **4/12/2011** (or sooner if specified in the office action).

Do NOT hit "Reply" to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System [Response Form](#).

HELP: For *technical* assistance in accessing the Office action, please e-mail TDR@uspto.gov. Please contact the assigned examining attorney with questions about the Office action.

WARNING

Failure to file the required response by the applicable deadline will result in the [ABANDONMENT](#) of your application.

United States of America

United States Patent and Trademark Office

STEEL EAGLE

Reg. No. 3,904,929

WOHALL OUTDOORS, LLC (OKLAHOMA LIMITED LIABILITY COMPANY)
1300 N. INDUSTRIAL BLVD.
CLAREMORE, OK 74017

Registered Jan. 11, 2011

Int. Cl.: 9

FOR: MAGNIFYING OPTICAL EQUIPMENT, NAMELY, RIFLE SCOPES AND BINOCULARS,
IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

TRADEMARK

FIRST USE 10-21-2009; IN COMMERCE 10-21-2009.

PRINCIPAL REGISTER

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PAR-
TICULAR FONT, STYLE, SIZE, OR COLOR.

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

SN 77-689,308, FILED 3-12-2009.

RONALD MCMORROW, EXAMINING ATTORNEY



Director of the United States Patent and Trademark Office

David S. K. [Signature]

To: Sheltered Wings, Inc. (trademark@langlotz.com)

Subject: U.S. TRADEMARK APPLICATION NO. 85095903 - EAGLE - VX-T67

Sent: 4/12/2011 10:22:24 AM

Sent As: ECOM108@USPTO.GOV

Attachments: [Attachment - 1](#)
[Attachment - 2](#)
[Attachment - 3](#)
[Attachment - 4](#)
[Attachment - 5](#)
[Attachment - 6](#)
[Attachment - 7](#)
[Attachment - 8](#)
[Attachment - 9](#)
[Attachment - 10](#)
[Attachment - 11](#)
[Attachment - 12](#)
[Attachment - 13](#)
[Attachment - 14](#)
[Attachment - 15](#)
[Attachment - 16](#)
[Attachment - 17](#)
[Attachment - 18](#)
[Attachment - 19](#)
[Attachment - 20](#)
[Attachment - 21](#)
[Attachment - 22](#)
[Attachment - 23](#)
[Attachment - 24](#)
[Attachment - 25](#)
[Attachment - 26](#)
[Attachment - 27](#)
[Attachment - 28](#)
[Attachment - 29](#)
[Attachment - 30](#)
[Attachment - 31](#)
[Attachment - 32](#)
[Attachment - 33](#)
[Attachment - 34](#)
[Attachment - 35](#)

[Attachment - 36](#)
[Attachment - 37](#)
[Attachment - 38](#)
[Attachment - 39](#)
[Attachment - 40](#)
[Attachment - 41](#)
[Attachment - 42](#)
[Attachment - 43](#)
[Attachment - 44](#)
[Attachment - 45](#)
[Attachment - 46](#)
[Attachment - 47](#)
[Attachment - 48](#)
[Attachment - 49](#)
[Attachment - 50](#)
[Attachment - 51](#)
[Attachment - 52](#)
[Attachment - 53](#)
[Attachment - 54](#)
[Attachment - 55](#)

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

APPLICATION SERIAL NO. 85095903

MARK: EAGLE

85095903

CORRESPONDENT ADDRESS:

ANGELA V. LANGLOTZ
LANGLOTZ PATENT & TRADEMARK
WORKS, INC.
PO BOX 9650337585
WASHINGTON, DC 20090

CLICK HERE TO RESPOND TO THIS LETTER:

http://www.uspto.gov/trademarks/teas/response_forms.jsp

APPLICANT: Sheltered Wings, Inc.

**CORRESPONDENT'S REFERENCE/DOCKET
NO:**

VX-T67

CORRESPONDENT E-MAIL ADDRESS:

trademark@langlotz.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 4/12/2011

Action on this application had been suspended pending the disposition of Application Serial No. 77-689308. That application has matured into a registration. Accordingly, the examining attorney determines as follows.

Mark is Likely to Cause Confusion

The examining attorney refuses registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), because the applicant's mark, when used on or in connection with the identified goods, so resembles the mark in U.S. Registration No. 3904929 as to be likely to cause confusion, or to cause mistake, or to deceive. TMEP section 1207. See the enclosed registration.

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 or 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). The court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) 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 of the factors are necessarily relevant or of equal weight, and any one factor may be dominant in a given case, depending upon the evidence of record. *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); see *In re E. I. du Pont*, 476 F.2d at 1361-62, 177 USPQ at 567.

The examining attorney must analyze each case in two steps to determine whether there is a likelihood of confusion. First, the examining attorney must look at the marks themselves for similarities in appearance, sound, connotation and commercial impression. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Second, the examining attorney must compare the goods or services to determine if they are related or if the activities surrounding their marketing are such that confusion as to origin is likely. *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re International Telephone and Telegraph Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Products Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978).

Analysis of Applicant's Mark and Registered Mark

First, a comparison of the respective marks show that they are comprised either in whole or significant part of the term "EAGLE." The mere deletion of wording from a registered mark is not sufficient to overcome a likelihood of confusion under Section 2(d). See *In re Optical Int'l*, 196 USPQ 775 (TTAB 1977) (where applicant filed to register the mark OPTIQUE for optical wear, deletion of the term BOUTIQUE is insufficient to distinguish the mark, *per se*, from the registered mark OPTIQUE BOUTIQUE when used in connection with competing optical wear). Accordingly, the applicant's mark, "EAGLE," is similar in sound, appearance, connotation and commercial impression to Registration No. 3904929's mark "STEEL EAGLE." Similarity in any one of these elements alone is sufficient to find a likelihood of confusion. *In re Mack*, 197 USPQ 755 (TTAB 1977).

It is well settled that in some circumstances, it is appropriate to recognize that one component of a particular mark may, for some reason, have more significance than other components in determining the commercial impression which is generated by the mark. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). Although the determination of whether or not confusion is likely must be based on a comparison of the marks in their entireties, the dominance of such a significant element must be taken into account in resolving this issue. *Ceccato v. Manifattura Lane Gaetano Morzotto Figli S.p.A.*, 32 USPQ 1192 (TTAB 1994). Disclaimed matter is typically less significant or less dominant.

The registrant's mark is "STEEL EAGLE." In the comparison above, the mark was viewed and considered as a whole. "STEEL," however, is descriptive of the feature of the goods and is of less trademark significance than "EAGLE."

Analysis of Goods and Services

Second, the relationship of the goods is evident because both marks are for goods including rifle scopes and binoculars. The overlapping identifications evidence the relationship.

As to the registrant's other goods, it should be noted that third party registrations that do not cover a wide variety of goods might have some probative value in establishing a relationship between the goods. *In re Parfums Schiaparelli Inc.*, 37 USPQ2d 1864 (TTAB 1995). A search of Office records reveals a number of registrations for spotting scopes or binoculars and telescopes as goods being utilized under the same mark (See attached for random examples).

The examining attorney must also consider any goods or services in the registrant's normal fields of expansion to determine whether the registrant's goods or services are related to the applicant's identified goods or services under Section 2(d). *In re General Motors Corp.*, 196 USPQ 574 (TTAB 1977). Accordingly, the mark is likely to cause consumer confusion as to source.

TEAS PLUS APPLICANTS MUST SUBMIT DOCUMENTS ELECTRONICALLY OR SUBMIT FEE: Applicants who filed their application online using the reduced-fee TEAS Plus application must continue to submit certain documents online using TEAS, including responses to Office actions. *See* 37 C.F.R. §2.23(a)(1). For a complete list of these documents, see TMEP §819.02(b). In addition, such applicants must accept correspondence from the Office via e-mail throughout the examination process and must maintain a valid e-mail address. 37 C.F.R. §2.23(a)(2); TMEP §§819, 819.02(a). TEAS Plus applicants who do not meet these requirements must submit an additional fee of \$50 per international class of goods and/or services. 37 C.F.R. §2.6(a)(1)(iv); TMEP §819.04. In appropriate situations and where all issues can be resolved by amendment, responding by telephone to authorize an examiner's amendment will not incur this additional fee.

If the applicant has any questions or needs assistance in responding to this office action, please telephone the assigned examining attorney.

/Jason F. Turner/
Examining Attorney
Law Office 108
(571) 272-9353
(571) 273-9108 (Fax for Official Responses)
jason.turner@uspto.gov (Inqui

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 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 Trademark Applications and Registrations Retrieval (TARR) at <http://tarr.uspto.gov/>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, 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/teas/eTEASpageE.htm>.

DESIGN MARK

Serial Number

77689308

Status

REGISTERED

Word Mark

STEEL EAGLE

Standard Character Mark

Yes

Registration Number

3904929

Date Registered

2011/01/11

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Wohali Outdoors, LLC LIMITED LIABILITY COMPANY OKLAHOMA 1300 N.
Industrial Blvd. Claremore OKLAHOMA 74017

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Magnifying optical equipment, namely, rifle scopes and binoculars.
First Use: 2009/10/21. First Use In Commerce: 2009/10/21.

Disclaimer Statement

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

Filing Date

2009/03/12

Examining Attorney

MCMORROW, RONALD

Attorney of Record

Frank J. Catalano

STEEL EAGLE

DESIGN MARK

Serial Number

78515580

Status

REGISTERED

Word Mark

XTR

Standard Character Mark

Yes

Registration Number

3127957

Date Registered

2006/08/08

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

BUSHNELL INC. CORPORATION DELAWARE 9200 CODY OVERLAND PARK KANSAS
66214

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Lens coatings sold as a component of sports optics products, namely,
binoculars, riflescopes, spotting scopes, rangefinders, bore-sighters,
telescopes, and telescopic gun sights for pistols, rifles and
shotguns. First Use: 2005/01/00. First Use In Commerce: 2005/02/00.

Filing Date

2004/11/11

Examining Attorney

PAPPAS, MATTHEW

Attorney of Record

Michael Elbein

XTR

DESIGN MARK

Serial Number

78552204

Status

REGISTERED

Word Mark

PAUL BUNYAN

Standard Character Mark

Yes

Registration Number

3089724

Date Registered

2006/05/09

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

PRESS HOLDING'S INTERNATIONAL, INC. CORPORATION 116 West 23rd Street,
Suite 500 c/o Sherman & Blank Inc. New York NEW YORK 10011

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
binoculars; carpenter's levels; children's educational software;
children's video tapes; directional compasses; computer game software;
decorative magnets; electric switch plates; gloves for protection
against accidents; goggles for sports; photographic slide
transparencies; sound recordings featuring adventure, environmental
sciences, and folklore; spectacle cases; sports eyewear; sunglasses;
survival suits; telescopes; video recordings featuring adventure,
environmental sciences, and folklore; walkie-talkies. First Use:
1975/02/12. First Use In Commerce: 1975/02/12.

Prior Registration(s)

2025161;2049274;2071723;AND OTHERS

Name/Portrait Statement

The name(s), portrait(s), and/or signature(s) shown in the mark does
not identify a particular living individual.

Print: Apr 12, 2011

78552204

Filing Date

2005/01/22

Examining Attorney

HOLTZ, ALLISON

Paul Bunyan

DESIGN MARK

Serial Number

78552207

Status

REGISTERED

Word Mark

DANIEL BOONE

Standard Character Mark

Yes

Registration Number

3050501

Date Registered

2006/01/24

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

PRESS HOLDING'S INTERNATIONAL, INC. CORPORATION 116 West 23, Suite 500
c/o Sherman & Blank Inc. Millwood NEW YORK 10011

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Binoculars; carpenter's levels; children's educational software;
children's video tapes; compasses; computer game software; decorative
magnets; electric switch plates; gaming machines; gloves for
protection against accidents; goggles for use in fishing, hunting, and
snow sports; photographic slide transparencies; sound recordings
featuring adventure, exploration, and history; spectacle cases; sports
eyewear; sunglasses; survival suits; telescopes; video game
cartridges; video recordings featuring adventure, exploration, and
history; walkie-talkies. First Use: 1975/11/18. First Use In
Commerce: 1975/11/18.

Prior Registration(s)

1856781;1996967;2108572;AND OTHERS

Name/Portrait Statement

The name(s), portrait(s), and/or signature(s) shown in the mark does

Print: Apr 12, 2011

78552207

not identify a particular living individual.

Filing Date

2005/01/22

Examining Attorney

HARDY, TARA

Daniel Boone

DESIGN MARK

Serial Number

78552262

Status

REGISTERED

Word Mark

PECOS BILL

Standard Character Mark

Yes

Registration Number

3116381

Date Registered

2006/07/18

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

PRESS HOLDING'S INTERNATIONAL, INC. CORPORATION PANAMA 116 West 23rd Street, Suite 500 c/o Sherman & Blank Inc. New York NEW YORK 10011

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S: binoculars; children's educational software; children's video tapes; decorative magnets; electric switch plates; goggles for sports; photographic slide transparencies; sound recordings featuring adventure and folklore; spectacle cases; sports eyewear; sunglasses; telescopes; video recordings featuring adventure and folklore; walkie-talkies. First Use: 1978/01/10. First Use In Commerce: 1978/01/10.

Prior Registration(s)

1872555;1886929;1896123;AND OTHERS

Name/Portrait Statement

The name(s), portrait(s), and/or signature(s) shown in the mark does not identify a particular living individual.

Filing Date

Print: Apr 12, 2011

78552262

2005/01/23

Examining Attorney
SINGH, TEJBIR

Pecos Bill

DESIGN MARK

Serial Number

78552588

Status

REGISTERED

Word Mark

MUELLER

Standard Character Mark

No

Registration Number

3063003

Date Registered

2006/02/28

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

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

Owner

Mueller Optics LLC LIMITED LIABILITY COMPANY MICHIGAN 6544 Finnegan Rd. Johannesburg MICHIGAN 49751

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S: Optical lens sights for firearms, binoculars, spotting scopes. First Use: 2003/08/01. First Use In Commerce: 2003/08/01.

Filing Date

2005/01/24

Examining Attorney

LORENZO, GEORGE

Attorney of Record

Christopher J. Day



DESIGN MARK

Serial Number

78556531

Status

REGISTERED

Word Mark

LEGENDS OF THE WEST

Standard Character Mark

Yes

Registration Number

3054547

Date Registered

2006/01/31

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Geronimo Productions, Inc. CORPORATION DELAWARE 116 West 23rd Street,
Suite 500 c/o Sherman & Blank Inc. New York NEW YORK 10011

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Binoculars; children's educational software; children's video tapes;
computer game software; decorative magnets; electric switch plates;
downloadable electronic publications, namely, books featuring
adventure, folklore, and history; electronic publications, namely,
books featuring adventure, folklore, and history recorded on computer
media; gaming machines; goggles for sports; photographic slide
transparencies; sound recordings featuring adventure, folklore, and
history; spectacle cases; sports eyewear; sunglasses; telescopes;
video game cartridges; video recordings featuring adventure, folklore,
and history; walkie-talkies. First Use: 1979/06/02. First Use In
Commerce: 1979/06/02.

Prior Registration(s)

1923801;1945695;2036906;AND OTHERS

Filing Date

Print: Apr 12, 2011

78556531

2005/01/31

Examining Attorney
MCCAULEY, BRENDAN

Legends of the West

DESIGN MARK

Serial Number

78593915

Status

REGISTERED

Word Mark

MULTIZERO

Standard Character Mark

Yes

Registration Number

3129032

Date Registered

2006/08/15

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Kahles, GmbH CORPORATION AUSTRIA Zeillergasse 20-22 Vienna AUSTRIA
1170

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Optical apparatus and instruments, namely, telescopes, telescopic
sights, binoculars, and telescopic sights for firearms. First Use:
2005/03/11. First Use In Commerce: 2005/03/11.

Foreign Country Name

AUSTRIA

Foreign Priority

FOREIGN PRIORITY CLAIMED

Foreign Application Number

AM65672004

Foreign Filing Date

2004/09/24

Print: Apr 12, 2011

78593915

Foreign Registration Number

222273

Foreign Registration Date

2004/12/30

Foreign Expiration Date

2014/12/30

Filing Date

2005/03/24

Examining Attorney

MCDOWELL, MATTHEW

Attorney of Record

Anton P. Ness

MULTIZERO

DESIGN MARK

Serial Number

78596617

Status

REGISTERED

Word Mark

INDEX MATCHED LENS SYSTEM

Standard Character Mark

Yes

Registration Number

3125115

Date Registered

2006/08/01

Type of Mark

TRADEMARK

Register

SUPPLEMENTAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Leupold & Stevens, Inc. CORPORATION OREGON PO Box 688 Beaverton OREGON
970750688

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Optical lens sights for firearms; telescopic sights; rifle scopes;
telescopes; handgun scopes; optical lens scopes; spotting scopes;
binoculars. First Use: 2006/01/03. First Use In Commerce:
2006/01/03.

Disclaimer Statement

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

Filing Date

2005/03/28

Amended Register Date

2006/05/12

Examining Attorney

Print: Apr 12, 2011

78596617

SWAIN, MICHELE

Attorney of Record

Jere M. Webb

INDEX MATCHED LENS SYSTEM

DESIGN MARK

Serial Number

78603419

Status

REGISTERED

Word Mark

NEPTUNE

Standard Character Mark

No

Registration Number

3144658

Date Registered

2006/09/19

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

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

Owner

CANDO ENTERPRISES, INC. CORPORATION CALIFORNIA 14642 Central Avenue
Chino CALIFORNIA 91710

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
telescopes and binoculars. First Use: 2003/12/17. First Use In
Commerce: 2003/12/17.

Description of Mark

The mark consists, in part, of a design of three curved or arched
overlapping bands with a four-pointed star in the center. The mark
also consists of the term NEPTUNE in stylized form below the curved
band and star design. The middle dash of each letter E in the term
NEPTUNE is formed by a four-pointed star.

Filing Date

2005/04/27

Examining Attorney

DELANEY, ZHALEH

Print: Apr 12, 2011

78603419

Attorney of Record
Alfred H. Chan



DESIGN MARK

Serial Number

78616900

Status

REGISTERED

Word Mark

CANASCOPE

Standard Character Mark

Yes

Registration Number

3220669

Date Registered

2007/03/20

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Events Marketing LLC LIMITED LIABILITY CORPORATION NEVADA Suite 239
3315 Russell Road Las Vegas NEVADA 89120

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Telescopes and binoculars. First Use: 1999/08/00. First Use In
Commerce: 2000/08/00.

Filing Date

2005/04/26

Examining Attorney

CARRUTHERS, ALICE SUE

Canascope

DESIGN MARK

Serial Number

78651640

Status

REGISTERED

Word Mark

WOLLENSAK

Standard Character Mark

Yes

Registration Number

3123173

Date Registered

2006/08/01

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

VIRGINVILLE LENS COMPANY CORPORATION PENNSYLVANIA 1050 Maidencreek Road Fleetwood PENNSYLVANIA 19522

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S: Filters for optical devices; Optical glasses; Optical inspection apparatus for industrial use; Optical lens sights; Optical lenses; Optical or telescopic lens sights; Optical readers; Optical reflectors; Optical shutters; Scientific and technical apparatus, namely, optical mirrors; Prisms for scientific purposes; Prisms for telescopes; Reflectors for telescopes, Telescopes, Body-tubes for telescopes namely lens-barrels; Eyeglass lenses, Magnifying lenses, Ophthalmic lenses; Binoculars; Hunting binoculars; Laboratory equipment namely, spectrosopes; Adapter rings for attaching objectives on cameras; Camera cases; Camera filters; Cameras; Cameras shutters; Motion picture cameras; Photographic cameras; Range finders for cameras; Shutters for cameras; Viewfinders for cameras; Microscopes and parts thereof; Microscope condensers; Prisms for microscopes; Reflectors for microscopes; Microscopes. First Use: 1900/00/00. First Use In Commerce: 1900/00/00.

Print: Apr 12, 2011

78651640

Section 2f Statement
2(F) ENTIRE MARK

Filing Date
2005/06/15

Examining Attorney
DAHLING, KRISTIN

WOLLENSAK

DESIGN MARK

Serial Number

78661493

Status

REGISTERED

Word Mark

STARSEEKER

Standard Character Mark

Yes

Registration Number

3148049

Date Registered

2006/09/26

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Imaginova Corp. CORPORATION DELAWARE 470 Park Avenue South 9th Floor
New York NEW YORK 10016

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Optical goods, namely, telescopes, binoculars, lenses, and telescope
parts, namely lenses, lens filters, body tubes, eye pieces, prisms,
reflectors, mounts, computerized mounts, computerized hand controllers
used to control the movement of the telescope and astro-camera,
astro-cameras used to take pictures of images that are seen through
the telescope and tripods. First Use: 2003/09/00. First Use In
Commerce: 2003/09/00.

Filing Date

2005/06/30

Examining Attorney

LEWIS, MICHAEL

Attorney of Record

Lara A. Holzman, Esq.

STARSEEKER

DESIGN MARK

Serial Number

78766074

Status

REGISTERED

Word Mark

WYATT EARP

Standard Character Mark

Yes

Registration Number

3293671

Date Registered

2007/09/18

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Geronimo Productions, Inc. CORPORATION DELAWARE 116 West 23rd Street,
Suite 500 c/o Sherman & Blank Inc. New York NEW YORK 10011

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Binoculars; Cases for mobile phones; Cases for spectacles and
sunglasses; Chains for spectacles; Compasses; Decorative switch plate
covers; Electric switch plates; Goggles for sports; Sports eyewear;
Sunglasses; Telescopes; Telescopic sights. First Use: 1997/12/31.
First Use In Commerce: 1997/12/31.

Prior Registration(s)

1822807;1822817;1981170;AND OTHERS

Name/Portrait Statement

The name(s), portrait(s), and/or signature(s) shown in the mark does
not identify a particular living individual.

Filing Date

2005/12/03

Print: Apr 12, 2011

78766074

Examining Attorney
MCCAULEY, BRENDAN

Wyatt Earp

DESIGN MARK

Serial Number

78807217

Status

REGISTERED

Word Mark

GARRETT OPTICAL

Standard Character Mark

Yes

Registration Number

3222054

Date Registered

2007/03/27

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Garrett Optical LLC LIMITED LIABILITY COMPANY OKLAHOMA 11601 S. Lynn Lane Broken Arrow OKLAHOMA 740114022

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S: Binoculars; Golf scopes; Gun scopes; Hunting binoculars; Optical or telescopic lens sights; Rifle scopes; Spotting scopes; Telescopes; Tripods. First Use: 2005/04/01. First Use In Commerce: 2005/10/01.

Disclaimer Statement

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

Filing Date

2006/02/03

Examining Attorney

STRUCK, ROBERT

Garrett Optical

DESIGN MARK

Serial Number

78831844

Status

REGISTERED

Word Mark

KOWA

Standard Character Mark

No

Registration Number

3229361

Date Registered

2007/04/17

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

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

Owner

KOWA COMPANY, LTD. CORPORATION JAPAN 6-29, Nishiki 3-chome, Naka-ku Nagoya JAPAN

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S: Photographic machines and apparatus, and their parts and fittings, namely, digital cameras with zoom functions, optical lenses; optical apparatus and instruments, and their parts and fittings, namely, telescopes and binoculars, optical lenses. First Use: 2001/05/00. First Use In Commerce: 2001/05/00.

Description of Mark

The mark consists of Kowa in an oval.

Filing Date

2006/03/08

Examining Attorney

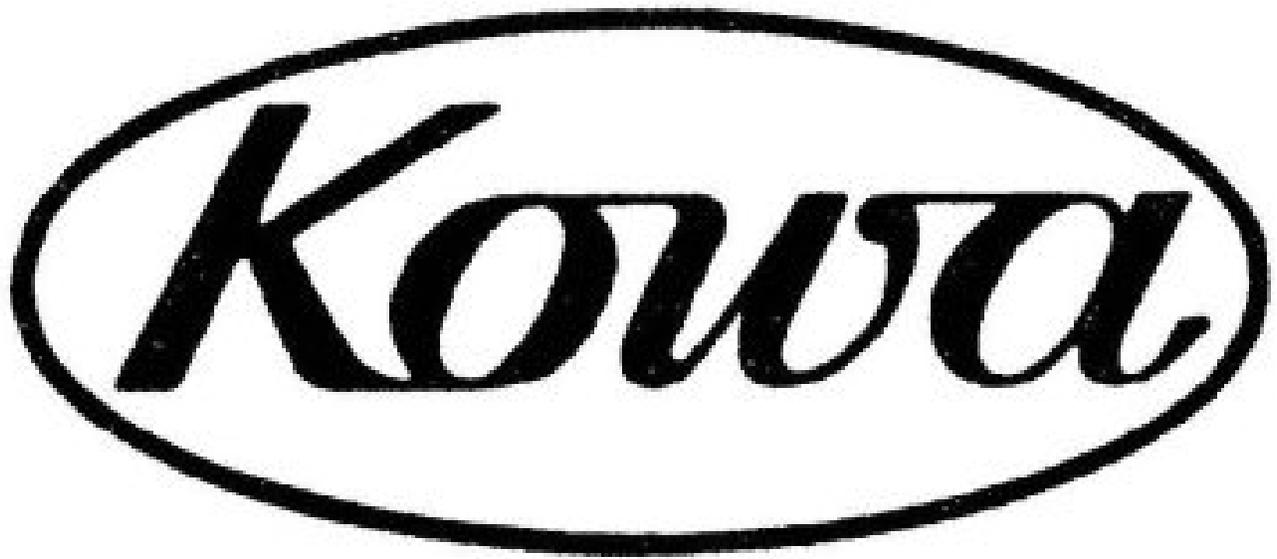
BENMAMAN, ALICE

Attorney of Record

Print: Apr 12, 2011

78831844

Thomas J. Moore



Kowda

DESIGN MARK

Serial Number

78865804

Status

REGISTERED

Word Mark

STAR · INNOVATIONS

Standard Character Mark

No

Registration Number

3206242

Date Registered

2007/02/06

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

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

Owner

Imagine Nation Books Ltd CORPORATION COLORADO 4601 Nautilus Court
South Boulder COLORADO 80301

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
35mm cameras; Binoculars; Camera tripods; Cameras; Telescopes. First
Use: 2005/12/14. First Use In Commerce: 2006/02/15.

Description of Mark

The mark consists of the wording "STAR INNOVATIONS" with a raised
period between the words "star" and "innovations" in which the letter
"A" is formed by a star.

Filing Date

2006/04/20

Examining Attorney

RITTNER, HANNO

STAR • INNOVATIONS

DESIGN MARK

Serial Number

78895986

Status

REGISTERED

Word Mark

FAMOUS TRAILS

Standard Character Mark

Yes

Registration Number

3202203

Date Registered

2007/01/23

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Famous Trails CORPORATION CALIFORNIA 1580 N. Harmony Circle Anaheim CALIFORNIA 92807

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S: night vision goggles, binoculars, metal detectors, parabolic microphones, binocameras, telescopes and microscopes. First Use: 1999/12/01. First Use In Commerce: 1999/12/01.

Goods/Services

Class Status -- ACTIVE. IC 014. US 002 027 028 050. G & S: sport watches, watches containing heart rate monitors, watches containing remote control devices, watches containing digital cameras. First Use: 2003/08/01. First Use In Commerce: 2003/08/01.

Filing Date

2006/05/30

Examining Attorney

DEFORD, JEFF

Print: Apr 12, 2011

78895986

Attorney of Record

Lisa A. Sanderson, Esq.

Famous Trails

DESIGN MARK

Serial Number

78910322

Status

REGISTERED

Word Mark

XOTIC

Standard Character Mark

No

Registration Number

3233198

Date Registered

2007/04/24

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

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

Owner

Southwestern Firearms, Inc. CORPORATION TEXAS 420 Century Way, #100
Red Oak TEXAS 75154

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Binoculars; Rifle scopes; Spotting scopes. First Use: 2005/01/01.
First Use In Commerce: 2005/01/01.

Description of Mark

The mark consists in part of a rifle scope reticle formed in the "O"
of XOTIC.

Filing Date

2006/06/16

Examining Attorney

BELENKER, ESTHER

Attorney of Record

Eric Karich

XOTIC

DESIGN MARK

Serial Number

78955641

Status

REGISTERED

Word Mark

TRIGGER STICK

Standard Character Mark

Yes

Registration Number

3671097

Date Registered

2009/08/18

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Primos, Inc. CORPORATION MISSISSIPPI 604 First Street Flora
MISSISSIPPI 39071

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Tripods, bipods, and monopods for binoculars, cameras, and telescopes
used in outdoor recreation. First Use: 2008/12/22. First Use In
Commerce: 2008/12/22.

Goods/Services

Class Status -- ACTIVE. IC 013. US 002 009. G & S: Tripods,
bipods, and monopods for firearms used in hunting. First Use:
2008/12/22. First Use In Commerce: 2008/12/22.

Filing Date

2006/08/18

Examining Attorney

HETZEL, DANNEAN

Attorney of Record

Print: Apr 12, 2011

78955641

L. Grant Foster

TRIGGER STICK

DESIGN MARK

Serial Number

78961804

Status

REGISTERED

Word Mark

CRYSTAL CLEAR OPTICS

Standard Character Mark

No

Registration Number

3905824

Date Registered

2011/01/11

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

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

Owner

Kowa Company, Ltd. CORPORATION JAPAN 6-29, Nishiki 3-chome, Naka-ku
Nagoya JAPAN

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Photographic machines and apparatus, namely, digital cameras with zoom
functions, lenses and parts thereof; optical apparatus and
instruments, namely, telescopes, binoculars, lenses and parts thereof.
First Use: 2010/08/31. First Use In Commerce: 2010/08/31.

Goods/Services

Class Status -- ACTIVE. IC 010. US 026 039 044. G & S: Diagnostic
instruments, namely, tonometers, fundus cameras and slit-lamps for use
in ophthalmology. First Use: 2010/08/31. First Use In Commerce:
2010/08/31.

Disclaimer Statement

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

Colors Claimed

Print: Apr 12, 2011

78961804

Color is not claimed as a feature of the mark.

Filing Date

2006/08/28

Examining Attorney

CHISOLM, KEVON

Attorney of Record

Thomas J. Moore

Crystal Clear Optics

To: Sheltered Wings, Inc. (trademark@langlotz.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85095903 - EAGLE - VX-T67
Sent: 4/12/2011 10:22:30 AM
Sent As: ECOM108@USPTO.GOV
Attachments:

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

**USPTO OFFICE ACTION HAS ISSUED ON 4/12/2011 FOR
SERIAL NO. 85095903**

Please follow the instructions below to continue the prosecution of your application:

TO READ OFFICE ACTION: Click on this [link](#) or go to <http://portal.uspto.gov/external/portal/tow> and enter the application serial number to [access](#) the Office action.

PLEASE NOTE: The Office action may not be immediately available but will be viewable within 24 hours of this e-mail notification.

RESPONSE IS REQUIRED: You should carefully review the Office action to determine (1) how to respond; and (2) the applicable [response time period](#). Your response deadline will be calculated from **4/12/2011** (or sooner if specified in the office action).

Do NOT hit "Reply" to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System [Response Form](#).

HELP: For *technical* assistance in accessing the Office action, please e-mail TDR@uspto.gov. Please contact the assigned examining attorney with questions about the Office action.

WARNING

Failure to file the required response by the applicable deadline will result in the [ABANDONMENT](#) of your application.

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: October 12, 2011

Cancellation No. 92054629
Registration No. 3904929

WOHALI OUTDOORS LLC
1300 N INDUSTRIAL BLVD
CLAREMORE OK 74017
UNITED STATES

Sheltered Wings, Inc.

v.

Wohali Outdoors, LLC

JENNIFER L GREGOR
GODFREY & KAHN SC
ONE EAST MAIN STREET SUITE 500
MADISON WI 53703
UNITED STATES

Tyrone Craven, Paralegal Specialist:

A petition to cancel the above-identified registration has been filed. A service copy of the petition for cancellation was forwarded to registrant (defendant) by the petitioner (plaintiff). An electronic version of the petition for cancellation is viewable in the electronic file for this proceeding via the Board's TTABVUE system:
<http://ttabvue.uspto.gov/ttabvue/>.

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations ("Trademark Rules"). These rules may be viewed at the USPTO's trademarks page: <http://www.uspto.gov/trademarks/index.jsp>. The Board's main webpage (<http://www.uspto.gov/trademarks/process/appeal/index.jsp>) includes information on amendments to the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to the Board's manual of procedure (the TBMP).

Plaintiff must notify the Board when service has been ineffective, within 10 days of the date of receipt of a returned service copy or the date on which plaintiff learns that service has been ineffective. Plaintiff has no subsequent duty to investigate the defendant's whereabouts, but if plaintiff by its own voluntary investigation or

through any other means discovers a newer correspondence address for the defendant, then such address must be provided to the Board. Likewise, if by voluntary investigation or other means the plaintiff discovers information indicating that a different party may have an interest in defending the case, such information must be provided to the Board. The Board will then effect service, by publication in the Official Gazette if necessary. See Trademark Rule 2.118. In circumstances involving ineffective service or return of defendant's copy of the Board's institution order, the Board may issue an order noting the proper defendant and address to be used for serving that party.

Defendant's ANSWER IS DUE FORTY DAYS after the mailing date of this order. (See Patent and Trademark Rule 1.7 for expiration of this or any deadline falling on a Saturday, Sunday or federal holiday.) **Other deadlines the parties must docket or calendar are either set forth below (if you are reading a mailed paper copy of this order) or are included in the electronic copy of this institution order viewable in the Board's TTABVue system at the following web address: <http://ttabvue.uspto.gov/ttabvue/>.**

Defendant's answer and any other filing made by any party must include proof of service. See Trademark Rule 2.119. **If they agree to, the parties may utilize electronic means, e.g., e-mail or fax, during the proceeding for forwarding of service copies.** See Trademark Rule 2.119(b)(6).

The parties also are referred in particular to Trademark Rule 2.126, which pertains to the form of submissions. **Paper submissions, including but not limited to exhibits and transcripts of depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.**

Time to Answer	11/21/2011
Deadline for Discovery Conference	12/21/2011
Discovery Opens	12/21/2011
Initial Disclosures Due	1/20/2012
Expert Disclosures Due	5/19/2012
Discovery Closes	6/18/2012
Plaintiff's Pretrial Disclosures	8/2/2012
Plaintiff's 30-day Trial Period Ends	9/16/2012
Defendant's Pretrial Disclosures	10/1/2012
Defendant's 30-day Trial Period Ends	11/15/2012
Plaintiff's Rebuttal Disclosures	11/30/2012
Plaintiff's 15-day Rebuttal Period Ends	12/30/2012

As noted in the schedule of dates for this case, the parties are required to have a conference to discuss: (1) the nature of and basis for their respective claims and defenses, (2) the possibility of settling the case or at least narrowing the scope of claims or defenses, and (3) arrangements relating to disclosures, discovery and introduction of evidence at trial, should the parties not agree to settle the case. See Trademark Rule 2.120(a)(2). Discussion of the first two of these three subjects should include a discussion of whether the parties wish

to seek mediation, arbitration or some other means for resolving their dispute. Discussion of the third subject should include a discussion of whether the Board's Accelerated Case Resolution (ACR) process may be a more efficient and economical means of trying the involved claims and defenses. Information on the ACR process is available at the Board's main webpage. Finally, if the parties choose to proceed with the disclosure, discovery and trial procedures that govern this case and which are set out in the Trademark Rules and Federal Rules of Civil Procedure, then they must discuss whether to alter or amend any such procedures, and whether to alter or amend the Standard Protective Order (further discussed below). Discussion of alterations or amendments of otherwise prescribed procedures can include discussion of limitations on disclosures or discovery, willingness to enter into stipulations of fact, and willingness to enter into stipulations regarding more efficient options for introducing at trial information or material obtained through disclosures or discovery.

The parties are required to conference in person, by telephone, or by any other means on which they may agree. A Board interlocutory attorney or administrative trademark judge will participate in the conference, upon request of any party, provided that such participation is requested no later than ten (10) days prior to the deadline for the conference. See Trademark Rule 2.120(a)(2). The request for Board participation must be made through the Electronic System for Trademark Trials and Appeals (ESTTA) or by telephone call to the interlocutory attorney assigned to the case, whose name can be found by referencing the TTABVue record for this case at <http://ttabvue.uspto.gov/ttabvue/>. The parties should contact the assigned interlocutory attorney or file a request for Board participation through ESTTA only after the parties have agreed on possible dates and times for their conference. Subsequent participation of a Board attorney or judge in the conference will be by telephone and the parties shall place the call at the agreed date and time, in the absence of other arrangements made with the assigned interlocutory attorney.

The Board's Standard Protective Order is applicable to this case, but the parties may agree to supplement that standard order or substitute a protective agreement of their choosing, subject to approval by the Board. The standard order is available for viewing at: <http://www.uspto.gov/trademarks/process/appeal/guidelines/stndagmnt.jsp>. Any party without access to the web may request a hard copy of the standard order from the Board. The standard order does not automatically protect a party's confidential information and its provisions must be utilized as needed by the parties. See Trademark Rule 2.116(g).

Information about the discovery phase of the Board proceeding is available in chapter 400 of the TBMP. By virtue of amendments to the Trademark Rules effective November 1, 2007, the initial disclosures and expert disclosures scheduled during the discovery phase are required only in cases commenced on or after that date. The TBMP has not yet been amended to include information on these disclosures and the parties are referred to the August 1, 2007 Notice of Final Rulemaking (72 Fed. Reg. 42242) posted on the Board's webpage. The deadlines for pretrial disclosures included in the trial phase of the schedule for this case also resulted from the referenced amendments to the Trademark Rules, and also are discussed in the Notice of Final Rulemaking.

The parties must note that the Board allows them to utilize telephone conferences to discuss or resolve a wide range of interlocutory matters

that may arise during this case. In addition, the assigned interlocutory attorney has discretion to require the parties to participate in a telephone conference to resolve matters of concern to the Board. See TBMP § 502.06(a) (2d ed. rev. 2004).

The TBMP includes information on the introduction of evidence during the trial phase of the case, including by notice of reliance and by taking of testimony from witnesses. See TBMP §§ 703 and 704. Any notice of reliance must be filed during the filing party's assigned testimony period, with a copy served on all other parties. Any testimony of a witness must be both noticed and taken during the party's testimony period. A party that has taken testimony must serve on any adverse party a copy of the transcript of such testimony, together with copies of any exhibits introduced during the testimony, within thirty (30) days after the completion of the testimony deposition. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing after briefing is not required but will be scheduled upon request of any party, as provided by Trademark Rule 2.129.

If the parties to this proceeding are (or during the pendency of this proceeding become) parties in another Board proceeding or a civil action involving related marks or other issues of law or fact which overlap with this case, they shall notify the Board immediately, so that the Board can consider whether consolidation or suspension of proceedings is appropriate.

ESTTA NOTE: For faster handling of all papers the parties need to file with the Board, the Board strongly encourages use of electronic filing through the Electronic System for Trademark Trials and Appeals (ESTTA). Various electronic filing forms, some of which may be used as is, and others which may require attachments, are available at <http://estta.uspto.gov>.

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: December 5, 2011

Cancellation No. 92054629

Sheltered Wings, Inc.

v.

Wohali Outdoors, LLC

George C. Pologeorgis,
Interlocutory Attorney:

Answer was due in this case on November 21, 2011. Inasmuch as it appears that no answer has been filed, nor has respondent filed a motion to extend its time to answer, notice of default is hereby entered against respondent under Fed. R. Civ. P. 55(a).

Respondent is allowed until thirty days from the mailing date of this order to show cause why judgment by default should not be entered against respondent in accordance with Fed. R. Civ. P. 55(b).

Proceedings are otherwise suspended.

and I discussed them.)

October 12, 2011. (Max Harris emailed me a copy of each that day so I could review while he received that day and inquired whether I had received the "notice" allegedly mailed to Wohali on 3. On December 8, 2011, Max Harris called me about the notice of default he

was important that he immediately receive a copy.

Petition. He stated Wohali should receive a "notice" setting Wohali's answer deadline, and it contacted me and requested I provide him with a copy of anything received related to the 2. Soon after October 10, 2011 (date Petition for Cancellation was filed), Max Harris

for the attorneys with Doyle Harris Davis & Haughey (Wohali's legal counsel).

1. I am a member of Wohali Outdoors, LLC ("Wohali") and am the primary contact

could and would competently testify as follows:

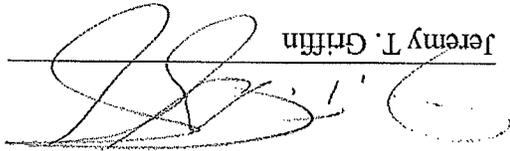
to make this declaration. The facts contained herein are within my personal knowledge, and I I, Jeremy T. Griffin, declare and state that I am over 18 years of age and fully competent

DECLARATION OF JEREMY T. GRIFFIN

)	
)	Respondent.
)	
)	WOHALI OUTDOORS, LLC,
)	
)	v.
)	
)	Petitioner,
)	
Cancellation No. 92054629)	SHELTERED WINGS, INC.
)	
)	In re Registration No. 3,904,929
)	

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

1637-5:mh



 Jeremy T. Griffin

Executed this 13th day of December, 2011.

above and foregoing statements are true and correct.

I, Jeremy T. Griffin, hereby declare, state and verify under penalty of perjury that the

(prior to December 8th).

representatives that Wohall did not receive the "notice" and was unaware of the answer deadline

deadline (or that an answer deadline had been set). Later I confirmed with other Wohall

4. December 8th was the first time I became aware of the "notice" setting the answer

deadline.

copy of everything issued/filed concerning the Petition, including the "notice" setting the answer
Registration No. 3904929 (STEEL EAGLE mark). This was to hopefully ensure I received a
3. On October 20, 2011, I became listed as the attorney associated with U.S.

Petition and requested that Wohali provide me a copy of anything received related to the matter.
(received October 10, 2011), I contacted JT Griffin (Wohali representative), informed him of the
2. After receiving a copy of the Petition for Cancellation from Petitioner's counsel

"Wohali", in the above referenced matter.

and have acted as legal counsel for Respondent, Wohali Outdoors, LLC ("Respondent" or
1. I am an attorney with the law firm of Doyle Harris Davis & Haughey ("DHDH")

and would competently testify as follows:

make this declaration. The facts contained herein are within my personal knowledge, and I could
I, S. Max Harris, declare and state that I am over 18 years of age and fully competent to

DECLARATION OF S. MAX HARRIS

Cancellation No. 92054629	Respondent.
	WOHALI OUTDOORS, LLC,
	v.
	Petitioner,
	SHELTERED WINGS, INC.
	In re Registration No. 3,904,929

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

4. On December 8, 2011, I received a copy of the notice of default issued in this

matter. The notice of default stated Wohali's answer was past due.

5. I immediately contacted JT Griffin and later he confirmed Wohali did not receive

(and was unaware of) the "notice" mailed October 12, 2011 setting Wohali's answer deadline.

6. I first became aware of the October 12th "notice" on December 8th after the matter

was researched by Lesley James (litigation assistant with DHDH) and myself. The same day I

informed Petitioner's counsel that Wohali did not receive the "notice" setting Wohali's answer

deadline, and that the first time Wohali or myself became aware of the answer deadline was

December 8th.

7. Also on December 8th, I spoke with Iris Snowden with the USPTO Trademark

Trial and Appeal Board regarding the October 12th "notice" and the notice of default. Ms.

Snowden stated it appeared the October 12th "notice" was only mailed to Wohali, and was not

sent via any other means. It was not sent to legal counsel.

I, S. Max Harris, hereby declare, state and verify under penalty of perjury that the above

and foregoing statements are true and correct.

Executed this 13th day of December, 2011.



S. Max Harris

1637-5:mh

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

	In re Registration No. 3,904,929
	SHELTERED WINGS, INC.
	Petitioner,
	v.
	WOHALI OUTDOORS, LLC,
	Respondent.

Cancellation No. 92054629

I, Lesley D. James, declare and state that I am over 18 years of age and fully competent to make this declaration. The facts contained herein are within my personal knowledge, and I could and would competently testify as follows:

1. I am a litigation assistant with the law firm of Doyle Harris Davis & Haughey ("DHDH"), and have worked on the above referenced matter.

2. My duties include ensuring deadlines are not missed and taking care of all case management issues (maintaining file, ensuring appropriate attorneys receive documents, labeling exhibits, etc.) These are the duties I have performed in the above matter.

3. Concerning the Petition for Cancellation, on October 31, 2011, I contacted the Trademark Trial and Appeal Board ("TTAB") to determine when Wohali's answer was due, and whether an answer could be filed before a cancellation number was assigned.

4. I was informed an Answer could not be filed until:

a. a cancellation number was assigned; and/or

b. we received the "notice" setting forth the answer deadline.

5. I was informed that due to a backlog of cases, the "notice" might not issue for six

months to one year from the filing date of the Petition for Cancellation.

6. On December 8, 2011, I reviewed the notice of default stating Respondent's

answer was past due.

7. Thereafter, I logged into the TTAB's TTABVue system and obtained a copy of

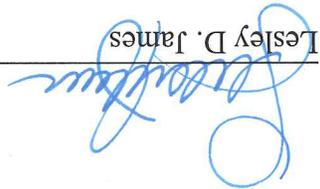
the "notice" purportedly mailed on October 12, 2011, setting the answer deadline. Before

December 8th, I was unaware an answer deadline had been set.

I, Lesley D. James, hereby declare, state and verify under penalty of perjury that the

above and foregoing statements are true and correct.

Executed this 13th day of December, 2011.


Lesley D. James

1637-5:mh

Plaintiff Sheltered Wings, Inc. has filed a motion to voluntarily dismiss this trademark infringement case without prejudice under Fed. R. Civ. P. 41(a)(2). In its motion, plaintiff explains that it brought this suit against defendant Wohall Outdoors, LLC after learning that defendant recently began to use the "Steel Eagle" mark in connection with the sale of optic equipment and that the mark is confusingly similar to the "Eagle," "Eagle Optics," "Strike Eagle" and "Golden Eagle" marks that plaintiff has used in connection with optics, including binoculars, spotting scopes and related equipment since 1987. Plaintiff alleges that it discovered defendant's Steel Eagle mark on April 12, 2011, when the Patent and Trademark Office rejected plaintiff's attempt to register its own Eagle trademark on the basis of a likelihood of confusion between defendant's registered Steel Eagle mark and plaintiff's Eagle

Defendant.

WOHALL OUTDOORS, LLC,

v.

Plaintiff,

SHELTERED WINGS, INC.,

11-cv-300-bbc

ORDER

FOR THE WESTERN DISTRICT OF WISCONSIN

IN THE UNITED STATES DISTRICT COURT

mark.

Believing that its own mark has priority over defendant's mark, plaintiff served its

complaint on defendant. The parties commenced settlement discussions, during which

plaintiff learned that only a small part of defendant's business involves use of the Steel Eagle

mark in connection with optics and that defendant's historic sales and inventories of optics

have been small. The parties were close to settling the case when defendant's insurer agreed

to defend the case, retained insurance defense counsel for that purpose, ceased settlement

negotiations and filed an answer to plaintiff's complaint. Although plaintiff was

disappointed that this case was not settled, it decided that defendant's impact on the optics

market and the potential monetary or injunctive relief is not sufficiently large to justify the

substantial cost to litigate this matter. Instead, plaintiff plans to resolve the parties' disputes

by seeking cancellation of defendant's Steel Eagle registration with the Patent and

Trademark office, a significantly less expensive proceeding.

Defendant does not dispute most of the facts recited by plaintiff. However, defendant

contends that plaintiff's case should be dismissed only *with* prejudice and on the conditions

that plaintiff pay defendant's costs and attorney fees and be prohibited from seeking

cancellation of defendant's mark before the Patent and Trademark Office. According to

defendant, the real reason plaintiff wishes to dismiss the case is because plaintiff knows it

lacks merit. In particular, defendant says that because the Patent and Trademark Office

rejected plaintiff's Eagle mark, plaintiff's trademark infringement case will fail.

Defendant's argument makes little sense. Plaintiff knew about the Trademark Office's rejection of its mark *before* it filed this lawsuit; in fact, the office action is what prompted this lawsuit. Plaintiff hoped for a speedy resolution of the dispute through settlement, which appeared to be imminent until defendant's insurer appeared in the case. A court can grant voluntary dismissal under Rule 41(a)(2) "on terms that the court considers proper." For example, the court may require that dismissal be with prejudice or

condition the dismissal on plaintiff's payment of costs and attorney fees. Cauley v. Wilson, 754 F.2d 769, 771 (7th Cir. 1985). In deciding whether to dismiss a claim with prejudice, a court may consider "[t]he defendant's effort and expense of preparation for trial, excessive delay and lack of diligence on the part of the plaintiff in prosecuting the action, insufficient explanation for the need to take a dismissal, and the fact that a motion for summary judgment has been filed by the defendant." Federal Deposit Insurance Corp. v. Knostman, 966 F.2d 1133, 1142 (7th Cir. 1992) (quotation omitted).

It is appropriate to dismiss this case without prejudice and without payment of fees and costs. The case is still in its early stages, no dispositive motions have been filed, no significant fees or costs have been incurred by either party and there is no evidence that plaintiff has acted in bad faith or with excessive delay. Additionally, plaintiff has presented a legitimate reason for seeking dismissal of this case, namely, that the cost of litigation will

likely outweigh the value of any monetary or injunctive relief plaintiff could recover. Id. at 1142-43 (noting that it was appropriate for district court to grant voluntary dismissal of FDIC's claims following FDIC's conclusion that it would not be cost effective to pursue them). Although plaintiff believes pursuing its claims would not be cost effective at this time, it should be allowed to preserve its rights to reinstate its claims or seek other remedies in the event defendant's market share changes. Finally, I will not enter an order prohibiting plaintiff from seeking cancellation of defendant's mark with the Patent and Trademark Office. Defendant cites no support for this request and I can think of no justification for such an extraordinary prohibition.

ORDER

IT IS ORDERED that plaintiff Sheltered Wings, Inc.'s motion to dismiss this case without prejudice and without payment of costs and fees under Fed. R. Civ. 41(a)(2) is GRANTED. The clerk of court is directed to close this case.

Entered this 25th day of July, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge