

ESTTA Tracking number: **ESTTA704813**

Filing date: **10/27/2015**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Bernard Bedor		
Entity	Individual	Citizenship	UNITED STATES
Address	274 East Eau Gaillie Blvd., #308 Indian Harbour Beach, FL 32937 UNITED STATES		

Attorney information	Suzanne K. Ketler Roetzel & Andress 222 South Main Street Akron, OH 44308 UNITED STATES sketler@ralaw.com Phone:330.849.6641		
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Registration Subject to Cancellation

Registration No	2442735	Registration date	04/10/2001
Registrant	NAVAJO MANUFACTURING CO. 5330 FOX STREET DENVER, CO 80216 UNITED STATES		

Goods/Services Subject to Cancellation

Class 009. First Use: 1996/11/23 First Use In Commerce: 1996/11/23
All goods and services in the class are cancelled, namely: FASHION AND SPORT SUNGLASSES

Grounds for Cancellation

Abandonment	Trademark Act section 14
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Related Proceedings	None
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Attachments	Parallax - Pet for Canc.pdf(120329 bytes) Parallax Ex A.pdf(29619 bytes) Parallax Ex B.pdf(150791 bytes) Parallax Ex C Part 1.pdf(170176 bytes) Parallax Ex C Part 2.pdf(204534 bytes) Parallax Ex D.pdf(157731 bytes) Parallax Ex F.pdf(465809 bytes) Parallax Ex E.pdf(579235 bytes)
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Certificate of Service

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

Signature	/Suzanne K. Ketler/
Name	Suzanne K. Ketler
Date	10/27/2015

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

In re Registration No. 2,442,735, for PARALLAX, registered April 10, 2001.

BERNARD BEDOR,)	
)	
Petitioner,)	
)	Cancellation No. _____
v.)	
)	
NAVAJO MANUFACTURING CO.,)	
)	
Registrant.)	
)	

PETITION FOR CANCELLATION

Bernard Bedor, a United States individual having his principal place of business at 274 East Eau Gaillie Blvd., #308, Indian Harbour Beach, Florida, 32937 (“Petitioner”) has been damaged, and believes that he will continue to be damaged, by the continued registration of U.S. Registration No. 2,442,735 (registered on April 10, 2001, and referred to herein as the “Registration”), and hereby petitions to cancel the Registration pursuant to Section 14 of the Trademark Act (15 U.S.C. § 1064(3)), for the reasons set forth below.

The Registration identifies a PARALLAX mark, for use with “fashion and sport sunglasses” in International Class 009 (the “Cited PARALLAX Mark” or the “Cited Mark”). The application resulting in the Registration was originally filed on April 27, 2000, by Navajo Manufacturing Co., a Colorado corporation with a principal place of business at 5330 Fox Street, Denver, Colorado, 80216 (“Registrant”).

As grounds for its petition to cancel, Petitioner states as follows:

1. On December 22, 2014, Petitioner filed Application Serial No. 86/488,233 on an intent-to-use basis pursuant to 15 U.S.C. § 1051(b) for his PARALLAX mark (“Petitioner’s Application” and “Petitioner’s Mark”, respectively) for use with “clothing, namely, shirts, t-shirts, sweatshirts, hooded sweatshirts, sweaters, vests, jackets, pants, shorts, sweatpants, skirts, dresses, hats, caps, footwear, beachwear, and swimsuits” in International Class 025, and “retail store services and on-line retail store services featuring clothing, namely, shirts, t-shirts, sweatshirts, sweaters, vests, jackets, pants, shorts, sweatpants, skirts, dresses, hats, caps, footwear, beachwear, swimsuits, and accessories therefor” in International Class 035. Petitioner’s Application is attached hereto as Exhibit A.
2. On April 3, 2015, Examining Attorney Blohm (the “Examining Attorney”) issued an office action (“Office Action”) refusing Petitioner’s Application based on an alleged likelihood of confusion, pursuant to 15 U.S.C. § 1052(d), with the Cited Mark in the Registration. A copy of the Office Action is attached hereto as Exhibit B.
3. On September 8, 2015, and again on October 5, 2015, Petitioner contacted Registrant’s attorney of record via email to request consent to register Petitioner’s Mark, in order to overcome the Examining Attorney’s refusal in the Office Action. Petitioner’s emails to counsel for Registrant are attached hereto as Exhibit C.
4. As of today’s date, Petitioner has received no response to his September 8, 2015 and October 5, 2015 emails to Registrant’s attorney of record.

5. On or before October 3, 2015, Petitioner filed his response to the Office Action, and on October 23, 2015, the Examining Attorney issued a final office action (“Final Office Action”) making final her refusal of Petitioner’s Application based upon an alleged 2(d) likelihood of confusion with the Cited PARALLAX Mark in the Registration. A copy of the Final Office Action is attached hereto as Exhibit D.
6. In May 2015 and again in September 2015, Petitioner conducted on-line research and investigation to discover the extent of Registrant’s use of the Cited PARALLAX Mark, and in doing so, Petitioner uncovered no apparent use by Registrant of the Cited PARALLAX Mark.
7. Registrant’s website, located at <http://www.navajoinc.com/index.html>, contains no apparent use of the Cited PARALLAX Mark in connection with eyewear or any other goods or services. A print-out of Registrant’s webpage is attached hereto as Exhibit E.
8. Registrant’s on-line catalogs, including without limitation Registrant’s on-line eyewear catalog, contain no apparent use of the Cited PARALLAX Mark in connection with eyewear or any other goods or services. A print-out of the title page and table of contents page from Registrant’s on-line eyewear catalog is attached hereto as Exhibit F.
9. Upon information and belief, Registrant is branding its eyewear under the mark PIRANHA rather than the Cited PARALLAX Mark.
10. Upon information and belief, Registrant’s Cited PARALLAX Mark identified in the Registration is no longer in use in commerce with the goods identified in the Registration.

11. Upon information and belief, Registrant's Cited PARALLAX Mark identified in the Registration has not been in use in commerce with the goods identified in the Registration for more than two years.
12. Upon information and belief, Registrant's Cited PARALLAX Mark identified in the Registration has been abandoned due to non-use.
13. Although, on October 17, 2007, the Registration was declared "incontestable" pursuant to 15 U.S.C. § 1065, cancellation of an "incontestable" registration is permissible if the registered mark has been abandoned. See 15 U.S.C. § 1064(3).
14. The Final Office Action, based upon an alleged likelihood of confusion with the Cited PARALLAX Mark in the Registration, continues to block Petitioner's Application from being registered.
15. Because of the Final Office Action, based upon an alleged likelihood of confusion with the Cited PARALLAX Mark in the Registration, Petitioner has been, is being, and will continue to be damaged by the Registration if it is allowed to remain on the U.S. Patent & Trademark Office Register.
16. For the foregoing reasons, Petitioner has a direct and personal stake in the outcome of this proceeding, and as such, Petitioner has standing to petition to cancel the Registration.
17. Accordingly, Petitioner, Bernard Bedor respectfully requests that the Trademark Trial and Appeal Board grant this Cancellation, and that the Registration No. 2,442,735 be cancelled due to non-use and abandonment for the reasons set forth herein.

Respectfully submitted,

/Suzanne K. Ketler/

Suzanne K. Ketler (Ohio Bar No. 0073465)

Roetzel & Andress

222 South Main Street

Akron, OH 44308

Phone: (330)849-6641; Fax: (330)376-2700

Attorney for Petitioner, Bernard Bedor

CERTIFICATE OF MAILING

I hereby certify that the above Petition for Cancellation was transmitted to the United States Patent and Trademark Office, Trademark Trial and Appeal Board by electronic filing, ESTTA filing system, on October 27, 2015.

/Suzanne K. Ketler/

Suzanne K. Ketler

CERTIFICATE OF SERVICE

I hereby certify that the above Petition for Cancellation was transmitted to the attorney of record for Registrant, Simor L. Moskowitz, at Westerman Hattori Daniels & Adrian, 1250 Connecticut Avenue NW, Washington, DC 20036 via U.S. Mail on October 27, 2015.

/Suzanne K. Ketler/

Suzanne K. Ketler

Trademark/Service Mark Application, Principal Register

Serial Number: 86488233

Filing Date: 12/22/2014

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86488233
MARK INFORMATION	
*MARK	PARALLAX
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	PARALLAX
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Bernard Bedor
*STREET	274 E. Eau Gaillie Blvd., #308
*CITY	Indian Harbour Beach
*STATE (Required for U.S. applicants)	Florida
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	32937
LEGAL ENTITY INFORMATION	
TYPE	individual
COUNTRY OF CITIZENSHIP	United States
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	025
	Clothing, namely, shirts, t-shirts, sweatshirts,

*IDENTIFICATION	hooded sweatshirts, sweaters, vests, jackets, pants, shorts, sweatpants, skirts, dresses, hats, caps, footwear, beachwear, swimsuits.
FILING BASIS	SECTION 1(b)
INTERNATIONAL CLASS	035
*IDENTIFICATION	Retail store services and on-line retail store services featuring clothing, namely, shirts, t-shirts, sweatshirts, sweaters, vests, jackets, pants, shorts, sweatpants, skirts, dresses, hats, caps, footwear, beachwear, swimsuits, and accessories therefor.
FILING BASIS	SECTION 1(b)
ATTORNEY INFORMATION	
NAME	Suzanne K. Ketler
ATTORNEY DOCKET NUMBER	127711.0014
FIRM NAME	Roetzel & Andress
STREET	222 South Main Street
CITY	Akron
STATE	Ohio
COUNTRY	United States
ZIP/POSTAL CODE	44308
PHONE	330.376.2700
FAX	330.376.4577
EMAIL ADDRESS	sketler@ralaw.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
OTHER APPOINTED ATTORNEY	Terrence H. Link, II
CORRESPONDENCE INFORMATION	
NAME	Suzanne K. Ketler
FIRM NAME	Roetzel & Andress
STREET	222 South Main Street
CITY	Akron
STATE	Ohio
COUNTRY	United States

ZIP/POSTAL CODE	44308
PHONE	330.376.2700
FAX	330.376.4577
EMAIL ADDRESS	sketler@ralaw.com;dctrademark@ralaw.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	2
FEE PER CLASS	325
*TOTAL FEE DUE	650
*TOTAL FEE PAID	650
SIGNATURE INFORMATION	
SIGNATURE	/Suzanne K. Ketler/
SIGNATORY'S NAME	Suzanne K. Ketler
SIGNATORY'S POSITION	Attorney of Record, Ohio Bar Member
DATE SIGNED	12/22/2014

Trademark/Service Mark Application, Principal Register

Serial Number: 86488233

Filing Date: 12/22/2014

To the Commissioner for Trademarks:

MARK: PARALLAX (Standard Characters, see [mark](#))

The literal element of the mark consists of PARALLAX.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Bernard Bedor, a citizen of United States, having an address of

274 E. Eau Gaillie Blvd., #308

Indian Harbour Beach, Florida 32937

United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 025: Clothing, namely, shirts, t-shirts, sweatshirts, hooded sweatshirts, sweaters, vests, jackets, pants, shorts, sweatpants, skirts, dresses, hats, caps, footwear, beachwear, swimsuits.
Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

International Class 035: Retail store services and on-line retail store services featuring clothing, namely, shirts, t-shirts, sweatshirts, sweaters, vests, jackets, pants, shorts, sweatpants, skirts, dresses, hats, caps, footwear, beachwear, swimsuits, and accessories therefor.
Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

The applicant's current Attorney Information:

Suzanne K. Ketler and Terrence H. Link, II of Roetzel & Andress

222 South Main Street

Akron, Ohio 44308

United States

The attorney docket/reference number is 127711.0014.

The applicant's current Correspondence Information:

Suzanne K. Ketler

Roetzel & Andress

222 South Main Street
Akron, Ohio 44308
330.376.2700(phone)
330.376.4577(fax)
sketler@ralaw.com;dctrademark@ralaw.com (authorized)

A fee payment in the amount of \$650 has been submitted with the application, representing payment for 2 class(es).

Declaration

The signatory believes that: if the applicant is filing the application under 15 U.S.C. Section 1051(a), the applicant is the owner of the trademark/service mark sought to be registered; the applicant or the applicant's related company or licensee is using the mark in commerce on or in connection with the goods/services in the application, and such use by the applicant's related company or licensee inures to the benefit of the applicant; the specimen(s) shows the mark as used on or in connection with the goods/services in the application; and/or if the applicant filed an application under 15 U.S.C. Section 1051(b), Section 1126(d), and/or Section 1126(e), the applicant is entitled to use the mark in commerce; the applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the goods/services in the application. The signatory believes that to the best of the signatory's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of the application or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Declaration Signature

Signature: /Suzanne K. Ketler/ Date: 12/22/2014
Signatory's Name: Suzanne K. Ketler
Signatory's Position: Attorney of Record, Ohio Bar Member
RAM Sale Number: 86488233
RAM Accounting Date: 12/23/2014

Serial Number: 86488233
Internet Transmission Date: Mon Dec 22 16:33:42 EST 2014
TEAS Stamp: USPTO/BAS-66.61.12.182-20141222163342131
030-86488233-5005dffdfad8ad47b3332b95c7c
86a1bd2926fbd8466e737a6998e961c1c7804f-D
A-3658-20141222162450686397

PARALLAX

To: Bernard Bedor (sketler@ralaw.com)

Subject: U.S. TRADEMARK APPLICATION NO. 86488233 - PARALLAX - 127711.0014

Sent: 4/3/2015 11:23:58 AM

Sent As: ECOM110@USPTO.GOV

Attachments: [Attachment - 1](#)
[Attachment - 2](#)
[Attachment - 3](#)
[Attachment - 4](#)
[Attachment - 5](#)
[Attachment - 6](#)
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UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

U.S. APPLICATION SERIAL NO. 86488233

MARK: PARALLAX

86488233

CORRESPONDENT ADDRESS:

SUZANNE K. KETLER
Roetzel & Andress
222 S Main St Ste 400
Akron, OH 44308-1500

CLICK HERE TO RESPOND TO THIS LETTER
<http://www.uspto.gov/trademarks/teas/response>

[VIEW YOUR APPLICATION FILE](#)

APPLICANT: Bernard Bedor

CORRESPONDENT'S REFERENCE/DOCKET NO :

127711.0014

CORRESPONDENT E-MAIL ADDRESS:

sketler@ralaw.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: 4/3/2015

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

Refusal under Section 2(d): Likelihood of Confusion

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in **U.S. Registration No. 2442735**. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* 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 a potential consumer would be confused, mistaken, or deceived as to the source of the goods and/or services of the applicant and registrant. *See* 15 U.S.C. §1052(d). A determination of likelihood of confusion under Section 2(d) is made on a case-by case basis and the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) aid in this determination.

Citigroup Inc. v. Capital City Bank Grp., Inc., 637 F.3d 1344, 1349, 98 USPQ2d 1253, 1256 (Fed. Cir. 2011) (citing *On-Line Careline, Inc. v. Am. Online, Inc.*, 229 F.3d 1080, 1085, 56 USPQ2d 1471, 1474 (Fed. Cir. 2000)). Not all the *du Pont* factors, however, are necessarily relevant or of equal weight, and any one of the factors may control in a given case, depending upon the evidence of record. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d at 1355, 98 USPQ2d at 1260; *In re Majestic Distilling Co.*, 315

F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); *see In re E. I. du Pont de Nemours & Co.*, 476 F.2d at 1361-62, 177 USPQ at 567.

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

In any likelihood of confusion determination, two key considerations are similarity of the marks and similarity or relatedness of the goods and/or services. *Syndicat Des Proprietaires Viticulteurs De Chateauf-Du-Pape v. Pasquier DesVignes*, 107 USPQ2d 1930, 1938 (TTAB 2013) (citing *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103, 192 USPQ 24, 29 (C.C.P.A. 1976)); *In re Lolo Techs., LLC*, 95 USPQ2d 1498, 1499 (TTAB 2010); *see* TMEP §1207.01. That is, the marks are compared in their entirety for similarities in appearance, sound, connotation, and commercial impression. *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973)); TMEP §1207.01(b)-(b)(v). Additionally, the goods and/or services are compared to determine whether they are similar or commercially related or travel in the same trade channels. *See Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369-71, 101 USPQ2d 1713, 1722-23 (Fed. Cir. 2012); *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1165, 64 USPQ2d 1375, 1381 (Fed. Cir. 2002); TMEP §1207.01, (a)(vi).

The applicant's applied-for mark and the cited registrant's mark are identical: “**PARALLAX**”

The applicant's mark is in standard character form for:

- Clothing, namely, shirts, t-shirts, sweatshirts, hooded sweatshirts, sweaters, vests, jackets, pants, shorts, sweatpants, skirts, dresses, hats, caps, footwear, beachwear, swimsuits in International Class 025; and
- Retail store services and on-line retail store services featuring clothing, namely, shirts, t-shirts, sweatshirts, sweaters, vests, jackets, pants, shorts, sweatpants, skirts, dresses, hats, caps, footwear, beachwear, swimsuits, and accessories therefor.

The registrant's mark is in “typed” form for:

- fashion and sport sunglasses, in International Class 009.

When determining whether to issue a Section 2(d) refusal, the overriding concern is not only to prevent buyer confusion as to the source of the goods and/or services, but to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. *See In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt regarding a likelihood of confusion determination is resolved in favor of the registrant. TMEP §1207.01(d)(i); *see Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988).

Where the marks of the respective parties are identical, the relationship between the relevant goods and/or services need not be as close to support a finding of likelihood of confusion. *See In re Shell Oil Co.*, 992 F.2d 1204, 1207, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993); *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202 (TTAB 2009); *In re Thor Tech, Inc.*, 90 USPQ2d 1634, 1636 (TTAB 2009); TMEP §1207.01(a).

The Goods/Services

The goods and/or services of the parties need not be identical or even competitive to find a likelihood of confusion. *See On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475

(Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) (“[E]ven if the goods in question are different from, and thus not related to, one another in kind, the same goods can be related in the mind of the consuming public as to the origin of the goods.”); TMEP §1207.01(a)(i).

The respective goods and/or services need only be “related in some manner and/or if the circumstances surrounding their marketing [be] such that they could give rise to the mistaken belief that [the goods and/or services] emanate from the same source.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)); TMEP §1207.01(a)(i).

Clothing and sunglasses are commonly marketed under a common mark. The trademark examining attorney has attached evidence from the USPTO’s X-Search database consisting of a number of third-party marks registered for use in connection with the same or similar goods and/or services as those of both applicant and registrant in this case. This evidence shows that the goods and/or services listed therein, namely, a variety of clothing items, specifically those identified by the applicant, retail and online retail store services featuring clothing and sunglasses; and **sun**glasses, are of a kind that may emanate from a single source under a single mark. See *In re Anderson*, 101 USPQ2d 1912, 1919 (TTAB 2012); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988); TMEP §1207.01(d)(iii).

The fact that the Office classifies goods or services in different classes does not establish that the goods and services are unrelated under Trademark Act Section 2(d). See TMEP §1207.01(d)(v). The determination concerning the proper classification of goods or services is a purely administrative determination unrelated to the determination of likelihood of confusion. *Jean Patou, Inc. v. Theon, Inc.*, 9 F.3d 971, 975, 29 USPQ2d 1771, 1774 (Fed. Cir. 1993); *Nat’l Football League v. Jasper Alliance Corp.*, 16 USPQ2d 1212, 1216 n.5 (TTAB 1990).

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

/Linda E. Blohm/
Trademark Examining Attorney
Law Office 110
linda.blohm@uspto.gov
phone: 571.272.9129
Fax: 571.273.9110

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

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

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

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

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

Ketler, Suzanne

From: Ketler, Suzanne
Sent: Tuesday, September 08, 2015 11:36 AM
To: 'trademarkmail@whda.com'; 'dmccoy@whda.com'
Subject: Urgent - Request for Consent

To: Simor L. Moskowitz
Westerman Hattori Daniels & Adrian
1250 Connecticut Avenue NW
Washington, DC 20036

Via Email Only: trademarkmail@whda.com, dmccoy@whda.com

Dear Mr. Moskowitz:

I am writing concerning U.S. Trademark Registration No. 2,442,735, for PARALLAX, owned by your client, Navajo Manufacturing Company.

Your client's above-referenced PARALLAX registration, for use with "fashion and sport sunglasses" has been cited preliminarily against U.S. Application Serial No. 86/488,233, filed by my client, Bernard Bedor, for use with the following goods and services: (IC 025) "Clothing, namely, shirts, t-shirts, sweatshirts, hooded sweatshirts, sweaters, vests, jackets, pants, shorts, sweatpants, skirts, dresses, hats, caps, footwear, beachwear, swimsuits" and (IC 035) "Retail store services and on-line retail store services featuring clothing, namely, shirts, t-shirts, sweatshirts, sweaters, vests, jackets, pants, shorts, sweatpants, skirts, dresses, hats, caps, footwear, beachwear, swimsuits, and accessories therefor".

My client does not use, and has no intent to use, the PARALLAX mark with sunglasses or eyewear of any type. Furthermore, based upon a review of your client's website and on-line catalog, they do not appear to offer clothing of any type (other than work gloves, which my client also does not offer). In addition, upon review of your client's on-line eyewear catalog, it also appears that they are no longer branding sunglasses under the PARALLAX mark in any event, but instead are now using PIRANHA. Given the foregoing, it is clear that there is and will be no likelihood of confusion whatsoever between your client's PARALLAX mark, and that of my client.

Accordingly, I would kindly like to request your client's consent to my client's registration of PARALLAX, for the goods as set forth above. If your client wishes further assurances, my client would be happy to amend his above-listed goods to expressly exclude sunglasses. Assuming your client is amenable to this request, I will provide a brief consent agreement for their review and signature. Please note – my current deadline for response is **October 3, 2015**, so if you could provide your client's response within the next several weeks, I would be most grateful. Thank you for your consideration, and have a nice day.

Suzanne K. Ketler, Ph.D

 ROETZEL
222 S. Main St.
Suite 400
Akron, OH 44308
Direct Phone No.: 330.849.6641
Main Phone No.: 330.376.2700
Mobile: 330.606.5293
Fax No.: 330.376.4577
Email: sketler@ralaw.com
www.ralaw.com

Roetzel & Andress, A Legal Professional Association

Both Suzanne Ketter and Roetzel & Andress intend that this message be used exclusively by the addressee(s). This message may contain information that is privileged, confidential and exempt from disclosure under applicable law. Unauthorized disclosure or use of this information is strictly prohibited. If you have received this communication in error, please permanently dispose of the original message and notify Suzanne Ketter immediately at 330.849.6641. Thank you.

Ketler, Suzanne

From: Ketler, Suzanne
Sent: Monday, October 05, 2015 9:31 AM
To: 'trademarkmail@whda.com'; 'dmccoy@whda.com'
Subject: RE: Urgent - Request for Consent

Importance: High

Dear Mr. Moskowitz,

I am writing to follow up on the correspondence below. Please advise if your client is willing to provide the requested consent.

Thank you for your consideration.

Suzanne K. Ketler, PhD, JD



222 S. Main St.
Suite 400
Akron, OH 44308
Direct Phone No.: 330.849.6641
Main Phone No.: 330.376.2700
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From: Ketler, Suzanne
Sent: Tuesday, September 08, 2015 11:36 AM
To: 'trademarkmail@whda.com'; 'dmccoy@whda.com'
Subject: Urgent - Request for Consent

To: Simor L. Moskowitz
Westerman Hattori Daniels & Adrian
1250 Connecticut Avenue NW
Washington, DC 20036

Via Email Only: trademarkmail@whda.com, dmccoy@whda.com

Dear Mr. Moskowitz:

I am writing concerning U.S. Trademark Registration No. 2,442,735, for PARALLAX, owned by your client, Navajo Manufacturing Company.

Your client's above-referenced PARALLAX registration, for use with "fashion and sport sunglasses" has been cited preliminarily against U.S. Application Serial No. 86/488,233, filed by my client, Bernard Bedor, for use with the following goods and services: (IC 025) "Clothing, namely, shirts, t-shirts, sweatshirts, hooded sweatshirts, sweaters, vests, jackets, pants, shorts, sweatpants, skirts, dresses, hats, caps, footwear, beachwear, swimsuits" and (IC 035) "Retail store services and on-line retail store services featuring clothing, namely, shirts, t-shirts, sweatshirts, sweaters, vests, jackets, pants, shorts, sweatpants, skirts, dresses, hats, caps, footwear, beachwear, swimsuits, and accessories therefor".

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Suzanne K. Ketter, Ph.D



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To: Bernard Bedor (sketler@ralaw.com)

Subject: U.S. TRADEMARK APPLICATION NO. 86488233 - PARALLAX - 127711.0014

Sent: 10/23/2015 6:06:30 PM

Sent As: ECOM110@USPTO.GOV

Attachments: [Attachment - 1](#)
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**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 86488233

MARK: PARALLAX

86488233

CORRESPONDENT ADDRESS:

SUZANNE K. KETLER
Roetzel & Andress
222 S Main St Ste 400
Akron, OH 44308-1500

CLICK HERE TO RESPOND TO THIS LETTER
<http://www.uspto.gov/trademarks/teas/response>

[VIEW YOUR APPLICATION FILE](#)

APPLICANT: Bernard Bedor

CORRESPONDENT'S REFERENCE/DOCKET NO :

127711.0014

CORRESPONDENT E-MAIL ADDRESS:

sketler@ralaw.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: 10/23/2015

THIS IS A FINAL ACTION.

Applicant must respond within six months of the date of issuance of this final Office action or the application will be abandoned. 15 U.S.C. §1062(b); 37 C.F.R. §2.65(a). Applicant may respond by providing one or both of the following:

- (1) A response that fully satisfies all outstanding requirements and/or resolves all outstanding refusals.
- (2) An appeal to the Trademark Trial and Appeal Board, with the appeal fee of \$100 per class.

37 C.F.R. §2.63(b)(1)-(2); TMEP §714.04; *see* 37 C.F.R. §2.6(a)(18); TBMP ch. 1200.

In certain rare circumstances, an applicant may respond by filing a petition to the Director pursuant to 37 C.F.R. §2.63(b)(2) to review procedural issues. TMEP §714.04; *see* 37 C.F.R. §2.146(b); TBMP §1201.05; TMEP §1704 (explaining petitionable matters). The petition fee is \$100. 37 C.F.R. §2.6(a)(15).

This letter responds to the applicant's communication filed on October 05, 2015.

Section 2(d) Final Refusal 15 U.S.C. §1052(d); 37 C.F.R. §2.63(b).

For the reasons set forth below, the refusal under Trademark Act Section 2(d) is now made FINAL with respect to U.S. Registration No. 2442735.

In any likelihood of confusion determination, two key considerations are similarity of the marks and similarity or relatedness of the goods and/or services. *Syndicat Des Proprietaires Viticulteurs De Chateaufneuf-Du-Pape v. Pasquier DesVignes*, 107 USPQ2d 1930, 1938 (TTAB 2013) (citing *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103, 192 USPQ 24, 29 (C.C.P.A. 1976)); *In re Iolo Techs., LLC*, 95 USPQ2d 1498, 1499 (TTAB 2010); *see* TMEP §1207.01. That is, the marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973)); TMEP §1207.01(b)-(b)(v). Additionally, the goods and/or services are compared to determine whether they are similar or commercially related or travel in the same trade channels. *See Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369-71, 101 USPQ2d 1713, 1722-23 (Fed. Cir. 2012); *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1165, 64 USPQ2d 1375, 1381 (Fed. Cir. 2002); TMEP §1207.01, (a)(vi).

The applicant's applied-for mark and the cited registrant's mark are identical: "**PARALLAX**"

The applicant's mark is in standard character form for:

Clothing, namely, shirts, t-shirts, sweatshirts, hooded sweatshirts, sweaters, vests, jackets, pants, shorts, sweatpants, skirts, dresses, hats, caps, footwear, beachwear, swimsuits in International Class 025; and Retail store services and on-line retail store services featuring clothing, namely, shirts, t-shirts,

sweatshirts, sweaters, vests, jackets, pants, shorts, sweatpants, skirts, dresses, hats, caps, footwear, beachwear, swimsuits, and accessories therefor.

The registrant's mark is in "typed" form for:

fashion and sport sunglasses, in International Class 009.

The Goods/Services

Where the marks of the respective parties are identical or virtually identical, the relationship between the relevant goods and/or services need not be as close to support a finding of likelihood of confusion. *See In re Shell Oil Co.*, 992 F.2d 1204, 1207, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993); *In re House Beer, LLC*, 114 USPQ2d 1073, 1077 (TTAB 2015); *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202 (TTAB 2009); TMEP §1207.01(a).

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

The respective goods and/or services need only be "related in some manner and/or if the circumstances surrounding their marketing [be] such that they could give rise to the mistaken belief that [the goods and/or services] emanate from the same source." *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)); TMEP §1207.01(a)(i).

Clothing and sunglasses are commonly marketed under a shared mark. The trademark examining attorney has attached evidence from the USPTO's X-Search database consisting of a number of third-party marks registered for use in connection with the same or similar goods and/or services as those of both applicant and registrant in this case. This evidence shows that the goods and/or services listed therein, namely, a variety of clothing items, specifically those identified by the applicant, retail and online retail store services featuring clothing and sunglasses; and **sunglasses**, are of a kind that may emanate from a single source under a single mark. *See In re Anderson*, 101 USPQ2d 1912, 1919 (TTAB 2012); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988); TMEP §1207.01(d)(iii).

The attached websites are an example of entities offering both sunglasses and clothing under a single mark:

<https://www.papayaclimbing.com/p/sunglasses>

<https://www.papayaclimbing.com/p/clothing>

<http://www.revolveclothing.com/r/jewelry-accessories-sunglasses-eyewear/br/4c27de/>

<http://www.revolveclothing.com/clothing/br/3699fc/?navsrc=main>

Material obtained from the Internet is generally accepted as competent evidence. *See In re Nieves & Nieves LLC*, 113 USPQ2d 1639, 1644-47 (TTAB 2015) (accepting Internet evidence to show false suggestion of a connection and that a name identified a particular living individual whose written consent to register was required); *In re Jonathan Drew Inc.*, 97 USPQ2d 1640, 1641-42 (TTAB 2011) (accepting Internet evidence to show geographic location was well-known for particular goods); *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202-03 (TTAB 2009) (accepting Internet evidence to show relatedness of

goods in a likelihood of confusion determination); *In re Leonhardt*, 109 USPQ2d 2091, 2098 (TTAB 2008) (accepting Internet evidence to show descriptiveness); *In re Rodale Inc.*, 80 USPQ2d 1696, 1700 (TTAB 2006) (accepting Internet evidence to show genericness); *In re Joint-Stock Co. "Baik"*, 80 USPQ2d 1305, 1308-09 (TTAB 2006) (accepting Internet evidence to show geographic significance); *In re Gregory*, 70 USPQ2d 1792, 1793, 1795 (TTAB 2004) (accepting Internet evidence to show surname significance); TBMP §1208.03; TMEP §710.01(b).

The Internet has become integral to daily life in the United States, with Census Bureau data showing approximately three-quarters of American households used the Internet in 2013 to engage in personal communications, to obtain news, information, and entertainment, and to do banking and shopping. *See In re Nieves & Nieves LLC*, 113 USPQ2d at 1642 (taking judicial notice of the following two official government publications: (1) Thom File & Camille Ryan, U.S. Census Bureau, Am. Cmty. Survey Reports ACS-28, *Computer & Internet Use in the United States: 2013* (2014), available at <http://www.census.gov/content/dam/Census/library/publications/2014/acs/acs-28.pdf>, and (2) The Nat'l Telecomms. & Info. Admin. & Econ. & Statistics Admin., *Exploring the Digital Nation: America's Emerging Online Experience* (2013), available at http://www.ntia.doc.gov/files/ntia/publications/exploring_the_digital_nation_-_americas_emerging_online_experience.pdf). Thus, the widespread use of the Internet in the United States suggests that Internet evidence may be probative of public perception in trademark examination.

Classification

As was stated in the initial office action, the fact that the Office classifies goods or services in different classes does not establish that the goods and services are unrelated under Trademark Act Section 2(d). *See* TMEP §1207.01(d)(v). The determination concerning the proper classification of goods or services is a purely administrative determination unrelated to the determination of likelihood of confusion. *Jean Patou, Inc. v. Theon, Inc.*, 9 F.3d 971, 975, 29 USPQ2d 1771, 1774 (Fed. Cir. 1993); *Nat'l Football League v. Jasper Alliance Corp.*, 16 USPQ2d 1212, 1216 n.5 (TTAB 1990).

Channels of Trade

The above referenced response contains the following statement:

Applicant further believes that its goods travel through channels of trade that are different from the channels of trade through which the Cited Registrant's goods travel.

Applicant provides no evidence to demonstrate that the goods of the parties travel through different channels of trade.

Please see Registrant's website attached

<http://www.navajoinc.com/index.html>

The website provides the following:

Navajo Incorporated is a privately owned manufacturer, importer and distributor of consumer goods **for all channels of retail trade.**

[emphasis added]

The above referenced response also contains the following statement:

Applicant believes that its goods are offered in different markets and industries from the markets and industries in which the Cited Registrant's goods are offered.

Applicant provides no evidence to demonstrate that the goods of the parties are offered in different markets and industries.

For the reasons stated above the Section 2(d) refusal is maintained and made FINAL.

/Linda E. Blohm/
Trademark Examining Attorney
Law Office 110
linda.blohm@uspto.gov
phone: 571.272.9129
Fax: 571.273.9110

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

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

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

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

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



*Piranha*TM
EYEWEAR

**THE
LOOK BOOK**

EYEWEAR | DISPLAYS | ACCESSORIES



PIRANHA
EYEWEAR[®]

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COMPANY PROFILE

NAVAJO INC.

5330 Fox St. Denver, CO. 80216

PHONE: 800.525.5097 | FAX: 303.298.8059 | www.navajoinc.com

Navajo Inc., founded in 1978, has continued to grow its product offerings while building a respected reputation in the manufacturing and distribution industry both for quality and customer satisfaction. Located in Denver, Colorado, this privately-owned company boasts 200,000-plus sq. ft. of warehouse and manufacturing space, and employs more than 250 team members. Our facility meets FDA standards, and strictly adheres to CGMP (Current Good Manufacturing Practices).

Nearly 20 years ago, Navajo Inc. launched a sunglass line that has seen great success achieving double-digit growth each year. A full team, with expertise in all aspects of this specialized product line, are solely dedicated to the innovation and continued success of this exciting facet of Navajo Inc.

Utilizing the latest in technology, research and development, marketing and market analysis, Navajo is able to provide the highest standards and service our customers have come to expect.

Our overseas quality control team ensures that each product is inspected and meets our highest standards.

From Bling to Sport, Retro to Kids (and don't forget the Readers), Navajo offers an extensive selection of styles and fun designs that is sure to appeal to any consumer looking for exceptional eyewear at an affordable price.



Quality Program Solutions for All Channels of Trade



Navajo Incorporated is a privately owned manufacturer, importer and distributor of consumer goods for all channels of retail trade.

We Deliver the Highest Quality Brands in the Market...

For *Your* Market.

Navajo provides programs across four main categories:
Health Beauty and Wellness, Eyewear, Electronics, and General Merchandise.



<p>Health, Beauty & Wellness</p>	<p>Eyewear</p>	<p>Consumer Electronics</p>	<p>General Merchandise</p>

[View Our 2015 Catalogs](#)

Our Mission is Simple:

To Perfect the Creation, Development, and Delivery of Consumer Goods

Build Your Brick & Mortar with Navajo

Employment

5330 Fox Street
Denver, Colorado 80216
1-800-525-5097
sales@navajoinc.com

Office Hours:
Monday-Friday: 8am - 5pm MST

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