

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: REPAC, CEDOMIR
MARK: SALAD CHEF
SERIAL NO.: 76/699,640
FILED: September 25, 2009
EXAMINER: William M. Rossman, Trademark Examining Attorney,
Law Office 109

**NOTICE OF APPEAL
AND
APPELLANT'S BRIEF**

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

Sir:

NOTICE OF APPEAL

Applicant appeals the final refusal of February 12, 2010 and requests that the appeal fee of \$100 be charged to Deposit Account No. 01-1174, a duplicate copy of this request being submitted herewith to implement this charge.

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APPELLANT'S BRIEF

Appellant seeks registration for its trademark-identified goods recited as "food storage device, namely, plastic food storage containers for household use".

The final refusal is based on goods recited as "electric hand-held mixer, in combination with a cruet, for mixing salad dressings and other food products".

The sole issue on appeal is whether the diversity of goods obviates the likelihood of confusion.



03-05-2010

Appellant argues that product diversity obviates the likelihood of confusion and to the end relies on TMEP 1207.01(a)(i) which, in pertinent part, provides:

“If the goods or services in question are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source, then, even if the marks are identical, confusion is not likely. (Citing *Local Trademarks, Inc. v. Handy Boys Inc.*, 16 USPQ2d 1156 (TTAB 1990), *Quartz Radiation Corp. v. Comm/Scope Co.*, 1 USPQ2d 1668 (TTAB 1986).”

Applicant's position is that on the record, it has not been established that the respective goods are marketed in a way that they would be encountered in a situation that would create the incorrect assumption that they originate from the same source (underlining added).

The trademark attorney argues to the contrary, and relies on printouts from the USPTO X -search database contending that it shows “third-party registrations of marks used in connection with the same or similar goods...as those of applicant and registrant”.

Appellant submits that the analysis of the USPTO X-search which follows demonstrates the lack of factual support being contended.

Registration 0578183

Goods/Services

Class Status -- ACTIVE. IC 019 021. US 033. G & S: [BREAKFAST, LUNCHEON AND DINNERWARE;] OPEN AND COVERED SERVING DISHES; [AND TRAYS;] BOWLS; OPEN AND COVERED JARS [AND [REDACTED] JUGS AND PITCHERS;] DRINKING GLASSES; GOBLETS; [AND MUGS;] DECANTERS; [COCKTAIL SHAKERS AND MIXERS; MUDDLERS, STIRRERS; POWDER BOXES AND PERFUME BOTTLES;] VASES [; DINNER BELLS; FLOWER PLATES; AND GLASS CONDIMENT

Comments

Aside from reference to “cruets” of cited registrant's goods does not have reference to “plastic food storage containers for household use” of applicant's goods.

Registration 0633394

Goods/Services

Class Status -- ACTIVE. IC 021. US 002. G & S: MOLDED PLASTIC TUMBLERS, CANISTERS, PITCHERS, DISPENSERS; EMPTY CONDIMENT HOLDERS-NAMELY, SALT, PEPPER [AND KETCHUP] SHAKERS; [EMPTY COMPACTS,] CREAM AND SUGAR CONTAINERS [AND DISPENSERS;] [EMPTY SOAP, HAIR MASSAGE] AND TOOTH BRUSH BOXES; [MASSAGE DISPENSERS, PLACE CARD HOLDERS,] BOWLS, CUPS [AND SAUCERS,] STORAGE CONTAINERS, [VACUUM JARS AND MIXERS,] COCKTAIL AND BEVERAGE SHAKERS, RECIPE BOXES, BREAD BOXES AND TRAYS, CAKE BOXES AND TRAYS, [BUTTER BOXES AND TRAYS,] REFRIGERATOR BOXES, PIE HOLDERS TO CONTAIN BAKED PIES, LUNCH BOXES, STATIONARY [AND REVOLVING TRAYS, CAPSULES]. First Use: 1950/03/03. First Use In Commerce: 1950/03/03.

Comments

Does not have reference to either of registrant's or applicant's goods.

Registration 2005592

Goods/Services

Class Status -- ACTIVE. IC 020. US 002 013 022 025 032 050. G & S: plastic clamps and plastic storage containers [REDACTED] First Use: 1980/01/31. First Use In Commerce: 1980/01/31.

Comments

The reference to applicant's "plastic storage containers" is for "commercial use" not for "household use". Also no reference to registrant's goods.

Registration 3125391

Goods/Services

Class Status -- ACTIVE. IC 007. US 013 019 021 023 031 034 035. G & S: [REDACTED] for household purposes, electric beaters, electric can openers, electric coffee grinders, electric fruit presses, electric food processors, electric food blenders, juicing machines, vacuum cleaners, sewing machines, kitchen machines, namely, mixers, knitting machines, electric can openers.

Comments

Aside from reference to "electric mixers" of cited registrant's goods does not have reference to applicant's goods.

Registration 3262116

Goods/Services

Class Status -- ACTIVE. IC 021. US 002 013 023 029 030 033 040 050.
G & S: Household or kitchen utensils and containers not of precious metal, namely, non-electric tea infusers, non-electric coffee pots, non-electric pots, jugs, tea jugs, bowls of non-precious metal, fruit cups, egg cups, soup bowls, mugs, saucers, rice bowls, butter dishes, goblets, dishes, tea caddies, tea cups, coffee cups, napkin rings, napkin holders, [REDACTED] toothpick holders, trays, tea balls, tea caddies, and coffee filters not made of paper; heat-resisting ceramic and glass pans; saucepans; non-electric heating pans; non-electric kettles; non-electric pressure cookers; non-electric clay pots for the extraction of Chinese medicine; non-electric frying pans; egg poachers; non-electric rice steamers; casseroles; double boilers; popcorn pans; koojulpan, namely Korean picnic boxes; lunch boxes; butter dish covers; small bowls; bowls, namely basins; opal glass; glass bowls; beverage glasses; drinking horns, picnic boxes; plastic cups; dinnerware, graters; non-electric household whisks; non-electric fruit presses; non-electric mixers; non-electric blender;

Comments

Aside from reference to "cruets" of cited registrant's goods does not have reference to applicant's goods.

Registration 3196039

Goods/Services

Class Status -- ACTIVE. IC 035. US 100 101 102. G & S: Retail store services in the field of new and used construction and industrial equipment, namely, pumps, generators, boom lifts, scissors lifts, personnel lifts, forklifts, compaction equipment, concrete equipment, excavators, backhoes, skid steers, air compressors, cranes, trenchers, bulldozers, loaders, and pressure washers, and general tools and equipment, namely, saws, [REDACTED] drills, grinders, hammers, welders, light towers, scaffolding, ladders, safety equipment, traffic safety signs and equipment, and parts thereof. First Use: 2004/11/30. First Use In Commerce: 2004/11/30.

Comments

Totally lacking the factual support contended by the trademark attorney.

For the reasons stated, it is respectfully requested that the final refusal be overruled.

Respectfully,

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Attorney for Applicant

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Dated: March 2, 2010