To:	SRI Sports Limited (trademark@sughrue.com)
Subject:	TRADEMARK APPLICATION NO. 78515789 - AD HYBRID - S-9194
Sent:	11/16/2006 7:15:27 PM
Sent As:	ECOM104@USPTO.GOV
Attachments:	Attachment - 1 Attachment - 2 Attachment - 3 Attachment - 4

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/515789

APPLICANT: SRI Sports Limited

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If no fees are enclosed, the address should include the words "Box Responses - No Fee."

MARK: AD HYBRID

CORRESPONDENT'S REFERENCE/DOCKET NO: S-9194

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Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address..

Serial Number 78/515789

Applicant is requesting reconsideration of a final refusal dated April 18, 2006.

After careful consideration of the law and facts of the case, the examining attorney withdraws the refusal of the mark pursuant to Section 2(d) of the Trademark Act as a result of U.S. Registration No. 2708360. However, the examining attorney must deny the request for reconsideration and adhere to the final action as written with respect to the refusal of the mark pursuant to Section 2(d) of the Trademark Act as a result of U.S. Registration Nos. 2369052 and 2635568 since no new facts or reasons have been presented that are significant and compelling with regard to the point at issue.

The examining attorney has considered the evidence submitted with the Motion for Reconsideration but is not persuaded by the evidence or arguments. The test under Trademark Act Section 2(d) is whether there is a likelihood of confusion. It is unnecessary to show actual confusion in establishing likelihood of confusion. *See Weiss Associates Inc. v. HRL Associates Inc.*, 902 F.2d 1546, 14 USPQ2d 1840 (Fed. Cir. 1990), and cases cited therein. *See also In re Kangaroos U.S.A.*, 223 USPQ 1025 (TTAB 1984), wherein the Board stated as follows:

> [A]pplicant's assertion that it is unaware of any actual confusion occurring as a result of the contemporaneous use of the marks of applicant and registrant is of little probative value in an ex parte proceeding such as this where we have no evidence pertaining to the nature and extent of the use by applicant and registrant (and thus cannot ascertain whether there has been ample opportunity for confusion to arise, if it were going to); and registrant has no chance to be heard (at least in the absence of a consent agreement, which applicant has not submitted in this case). *Id.* at 1026-1027.

With respect to the relatedness and similarity of the goods, the examining attorney encloses additional evidence located through a general search of websites in the golf industry via www.google.com. This evidence indicates that the goods of the parties are related and travel in similar channels of trade.

Accordingly, applicant's request for reconsideration is *denied*. The time for appeal runs from the date the final action was mailed. 37 C.F.R. Section 2.64(b); TMEP Section 715.03(c).

/Linda M. Estrada/
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