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

Ex Parte Appeal - Serial No.	79261503
Appellant	CARWIZ International d.o.o.
Applied for mark	C CARWIZ
Correspondence address	DANIEL P. BURKE DANIEL P. BURKE & ASSOCIATES, PLLC 99 BLAIR ROAD OYSTER BAY, NY 11771 UNITED STATES Primary email: dburke@dpburke.com Secondary email(s): gdamoulakis@dpburke.com 516-802-0560
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Filer's name	Georgia Damoulakis
Filer's email	dburke@dpburke.com, gdamoulakis@dpburke.com
Signature	/Georgia Damoulakis/
Date	07/26/2023

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

Applicant: CARWIZ International d.o.o.
Serial No.: 79261503
Filed: March 20, 2019
Mark: C CARWIZ (& design)
Examining Attorney: Rhoda Nkojo
Law Office: 117

APPLICANT'S BRIEF ON APPEAL

Dated: July 26, 2023

Daniel P. Burke
Georgia Damoulakis
DANIEL P. BURKE & ASSOCIATES, PLLC
99 Blair Road
Oyster Bay, NY 11771
dburke@dpburke.com
gdamoulakis@dpburke.com
Phone: 516-802-0560
Attorneys of Applicant

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ISSUE ON APPEAL

Applicant hereby submits this brief in support of its appeal to the Trademark Trial and Appeal Board (“TTAB”) from the Examining Attorney’s final Section 2(d) likelihood of confusion refusal. The issue on appeal is whether there is a likelihood of confusion between Applicant’s Mark, C CARWIZ (& design) in standard character format for

“transportation services for passengers by road, especially transport of travellers by car, hired car; vehicle rental; chauffeur driven vehicle hire services; chauffeur services; rental of private vehicles; rental of vehicle roof racks; rental of automobile trailers” in International Class 39, and the four cited registrations owned by WIZZ Air Hungary Kft., namely,

U.S. Registration No. 6585636 (Reg. No. ‘636) for WIZZ (in standard character),

U.S. Registration No. 6044872 (Reg. No. ‘872) for WIZZ (stylized and featuring a design),

U.S. Registration No. 6044873 (Reg. No. ‘873) for WIZZ (stylized and featuring a design); and

U.S. Registration No. 6039631 (Reg. No. ‘631) for WIZZ (stylized and featuring a design), all for

“airline transportation services; transport of passengers; transport of goods; coordinating travel arrangements for travelers; travel agency services, namely, making reservations and bookings for transportation; airline transport; airline check-in services, namely, priority boarding, check-in, seating and reservation services for frequent air travelers; booking of air tickets for travel; booking of travel tickets in the nature of airline bookings; airline ticket services, namely, online transportation

reservation and travel ticket reservation services; booking of airport parking; airport services, namely, booking and arranging of access to airport lounges; car parking; car parking valet services; vehicle parking and storage; car rental; rental of car parking spaces; providing information relating to car rental services” in International Class 39.

PROSECUTION HISTORY

On June 20, 2019, Applicant filed a Request for Extension of Protection under §66(a) of International Registration No. 1386717 for C CARWIZ (& design). The application was assigned Applicant Serial No. 79261503 and received a filing date of March 20, 2019. On July 3, 2019, the Examining Attorney issued a provisional full refusal of the request for extension of protection of the mark and Applicant filed a timely response on January 23, 2020 amending the identification of services. A Suspension Notice issued on February 22, 2020. On March 24, 2022, the Examining Attorney issued a non-final Office Action refusing registration of Applicant’s Mark under §2(d) of the Lanham Act contending that Applicant’s Mark was confusingly similar to the above-mentioned four registrations owned by WIZZ Air Hungary Kft.

Applicant timely filed a response to the non-final Office Action on September 25, 2022 and argued against the likelihood of confusion rejection based upon the differences between the marks and the weakness of the cited marks, WIZZ.

On November 5, 2022, the Examining Attorney issued a Final Office Action rejecting Applicant’s arguments and evidence in support thereof, maintaining the likelihood of confusion rejection.

Applicant filed a Request for Reconsideration on May 5, 2023 again arguing against the likelihood of confusion rejection and submitting evidence showing that Applicant's C CARWIZ (& design) mark currently co-exists with Registrant's Marks in the marketplace, that Registrant's Marks are weak and only entitled to an extremely narrow scope of protection and that Applicant's C CARWIZ (& design) mark and Registrant's Marks are dissimilar. Applicant also filed a Notice of Appeal on May 5, 2023 to preserve its rights.

On May 27, 2023, the Examining Attorney denied Applicant's Request for Reconsideration. The TTAB proceeding resumed on May 27, 2023, and Applicant now files this brief in support of its appeal against the Section 2(d) refusal to register C CARWIZ (& design).

ARGUMENT

Applicant respectfully submits that the refusal to register C CARWIZ (& design) on the principal register is erroneous, and that Applicant's C CARWIZ (& design) Mark should be entitled to registration for the following reasons:

1. The third-party marks containing the term WIZZ (and variations thereof) and the numerous third-party actual marketplace uses of WIZZ (and variations thereof), for use in connection with car rental services support a finding that Registrant's Marks are weak and are only entitled to an extremely narrow scope of protection;

2. Applicant's C CARWIZ (& design) Mark currently coexists with Registrant's WIZZ Marks in the marketplace and consumers see Applicant's and Registrant's Marks on Registrant's website;
3. Applicant's C CARWIZ (& design) mark and Registrant's Marks are different in sound, appearance, connotation, and commercial impression.

1. The Third-Party Marks Containing the Term WIZZ (And Variations Thereof) And The Numerous Third-Party Actual Marketplace Uses of WIZZ (and Variations Thereof), For Use In Connection With Car Rental Services Support a Finding That Registrant's Marks Are Weak And Are Only Entitled To An Extremely Narrow Scope Of Protection

The prosecution record contains a sampling of six (6) distinct actual marketplace uses of WIZZ-formative marks (and variations thereof) for car rental services to establish that there is a crowded field of WIZZ containing marks (and variations thereof) in the marketplace for use in connection with car rental services and that Registrant's cited marks are only entitled to an extremely narrow scope of protection.¹

In order to demonstrate that Registrant's cited registrations are commercially weak and only entitled to a narrow scope of protection, Applicant previously submitted the below chart and corresponding internet evidence of actual marketplace uses that are owned by six different entities which are not affiliated with Registrant.

¹ May 5, 2023, TEAS Request Reconsideration after FOA, TSDR, pp. 7-8, 64-113. All citations to the TSDR database are to the downloadable .pdf versions of the documents in the USPTO TSDR Case Viewer.

EXHIBIT	ENTITY	WEBSITE ADDRESS(ES)
Exhibit D ²	WIZZ CAR HIRE	https://www.wizzcarhire.com/#/searchcars
Exhibit E ³	WIZZ RENTAL CAR	https://www.wizzrentalcar.com/#/searchcars
Exhibits F ⁴ , G ⁵ , H ⁶ , I ⁷	WHIZ CAR RENTALS	https://www.carrentals.com/Whiz-Car-Rentals-In-Freeport.d106324-c1117.Car-Rental-Guide-Suppliers https://www.travelocity.com/Amigo-Autos-Car-Rentals-In-Williamsburg.d175056-c1128.Car-Rental-Guide-Suppliers https://www.expedia.com/Amigo-Autos-Car-Rentals-In-Carlstadt.d6750-c1128.Car-Rental-Guide-Suppliers https://www.expedia.com/Amigo-Autos-Car-Rentals-In-North-Bergen.d9148-c1128.Car-Rental-Guide-Suppliers
Exhibit J ⁸	WHIZ CAR RENTAL	https://www.bookingcar-europe.com/cyprus/paphos/downtown/whiz_car_rental
Exhibit K ⁹	WHIZCARS	https://whizcars.com/en/cyprus/whiz/#/searchcars
Exhibit L ¹⁰	WIZZCARS.NET	https://wizzcars.net/
Exhibit M ¹¹	GWIZZ AUTO GROUP	https://gwizz.com/

² May 5, 2023, TEAS Request Reconsideration after FOA, TSDR, pp. 64-67.

³ May 5, 2023, TEAS Request Reconsideration after FOA, TSDR, pp 68-70.

⁴ May 5, 2023, TEAS Request Reconsideration after FOA, TSDR, pp. 71-73.

⁵ May 5, 2023, TEAS Request Reconsideration after FOA, TSDR, pp. 74-77.

⁶ May 5, 2023, TEAS Request Reconsideration after FOA, TSDR, pp. 78-80.

⁷ May 6, 2023, TEAS Request Reconsideration after FOA, TSDR, pp. 81-82.

⁸ May 5, 2023, TEAS Request Reconsideration after FOA, TSDR, pp. 83-87.

⁹ May 5, 2023, TEAS Request Reconsideration after FOA, TSDR, pp. 88-95.

¹⁰ May 5, 2023, TEAS Request Reconsideration after FOA, TSDR, pp. 96-105.

¹¹ May 5, 2023, TEAS Request Reconsideration after FOA, TSDR, pp. 106-113.

The Examining Attorney erroneously indicated that two of the identified third-party services were not provided in U.S. commerce. Contrary to the Examining Attorney's assertion, Applicant respectfully submits that these websites are accessible in the U.S. and that a U.S. consumer looking to book a rental car through wizzcars.net and whizcars.com is able to do so through these third-party websites. The Examining Attorney dismissed Applicant's evidence as "comprising a small number of third-party uses" and ignored that such evidence of the co-existence of marks containing highly similar terms in similar fields demonstrates that consumers are able to distinguish between the marks based on slight differences between them. *See Knight Textile Corporation v. Jones Investment Co., Inc.*, 75 USPQ2d 1313, 1316 (TTAB 2005). Indeed, in evaluating likelihood of confusion, marks should be compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *See Packard Press, Inc. v. Hewlett-Packard Co.*, 227 F.3d 1352, 56 USPQ2d 1351, 1353-54 (Fed. Cir. 2000). If the common element of conflicting marks is a term that is "weak," then this reduces the likelihood of confusion. *Gruner + Jahr USA Publishing v. Meredith Corp.*, 991 F.2d 1072, 26 USPQ2d 1583 (2d Cir. 1993) (no likely confusion between PARENTS vs. PARENTS DIGEST for magazines because the "parents" portion "was extremely weak"). In a crowded marketplace, customers will not be confused between any two of the crowd and have learned to carefully pick out one from the other. *See Primrose Retirement Communities, LLC v. Edward Rose Senior Living, LLC*, 122 U.S.P.Q.2d 1030, 1036, 2016 WL 7655551 (T.T.A.B. 2016) (No likelihood of confusion between opposer's PRIMROSE and applicant's ROSE SENIOR LIVING, both for senior

living facilities because extensive third-party use made the opposer's mark relatively weak. “[R]elevant customers have been exposed to so many different ROSE and ROSE-formative marks and names in connection with senior living communities that they likely have become alert to ‘minute distinctions’ among the various marks...”).

The numerous distinct third-party marketplace uses demonstrate commercial weakness, and show that consumers are conditioned to distinguish among the many marks and entities that include WIZZ (and variations thereof). WIZZ (and variations thereof), in connection with car rental services, travels in a crowded field. Based on the common usage of the term WIZZ (and variations thereof), in connection with car rental services, consumers have become so accustomed to seeing them in the marketplace that they have learned to distinguish among them just by minor differences.

In light of the many marketplace uses of WIZZ (and variations thereof), the public is unlikely to associate C CARWIZ (& design) with the cited Registrant.

Accordingly, Registrant's WIZZ marks are not entitled to such a broad scope of protection that they are a bar to the registration of every mark comprising in whole or in part, the term WIZZ (or variations thereof). If the third-party marks can co-exist with Registrant's cited marks, then Applicant's C CARWIZ (& design) mark is capable of the same.

The weakness of the term WIZZ is further exemplified by the third-party registrations submitted by Applicant. The below chart was submitted by Applicant to

identify registrations on the Principal register which include WIZZ (or variations thereof) that are related to transportation services.¹²

Exhibit	Mark	Reg. No.	Services and Class	Owner
Exh. N ¹³	PARKWHIZ	4279645	Parking space reservation service (Class 39)	Arrive Mobility Inc.
Exh. O ¹⁴	WHIZZRIDE	5345746	Providing a website featuring information regarding transportation services and bookings for transportation services (Class 39)	Whizzride LLC
Exh. P ¹⁵	TRAVEL-WIZZ	5771546	On-line retail store services featuring travel related goods (Class 35)	Cotuni Limited

As evidenced by the above co-existing issued registrations, it is apparent that the USPTO has established a history of allowing contemporaneous registrations for marks that comprise the term WIZZ (and variations thereof) for transportation related services. The USPTO’s allowance of more than one registration that includes the same mark component for related services clearly indicates that the USPTO has taken the position that WIZZ (and variations thereof) is an extremely weak mark component which is only entitled to a narrow scope of protection. *See, e.g. Primrose Retirement Communities, LLC v. Edward Rose Senior Living, LLC*, 122 U.S.P.Q.2d 1030, 1033-34, 2016 WL 7655551 (T.T.A.B. 2016) in which the TTAB found that evidence of third-party uses and registrations...to be powerful on its face” and that “such evidence of third-party use

¹² May 5, 2023, TEAS Request Reconsideration after FOA, TSDR, pp. 10-11, 114-116.

¹³ May 5, 2023, TEAS Request Reconsideration after FOA, TSDR, p. 114.

¹⁴ May 5, 2023, TEAS Request Reconsideration after FOA, TSDR, p. 115.

¹⁵ May 5, 2023, TEAS Request Reconsideration after FOA, TSDR, p. 116.

is relevant to show that a term ‘may have a normally understood and well-recognized descriptive or suggestive meaning, leading to the conclusion that that [term] is relatively weak.’... Furthermore, the weaker an opposer’s mark, the closer an applicant’s mark can come without causing a likelihood of confusion and thereby invading what amounts to its comparatively narrower range of protection.” *Id.*, citing *Juice Generations v. GS Enters.*, 115 USPQ2d 1671, 1674 (Fed. Cir. 2015).

With respect to the registration for PARKWHIZ¹⁶ for use in connection with parking space reservation service, Applicant respectfully points out that Registrant’s cited WIZZ registrations also include identical services, namely, booking of airport parking; car parking; vehicle parking and storage, as noted above. Despite the virtually identical services, the USPTO allowed Registrant’s WIZZ registrations to issue and exist with the PARKWHIZ registration, thereby taking the position that PARKWHIZ and WIZZ are not confusingly similar. If the USPTO found that there was no likelihood of confusion between PARKWHIZ and WIZZ for identical parking services, it would be inconsistent and unfair to hold that there is a likelihood of confusion between the cited registrations for WIZZ and Applicant’s mark C CARWIZ (& design), especially taking into consideration the narrow scope of protection that should be afforded to the Registrants WIZZ mark. If these registrations can coexist on the Federal Register, then Applicant’s mark should too be afforded the benefit of registration, since it is apparent that customers

¹⁶ May 5, 2023, TEAS Request Reconsideration after FOA, TSDR, p. 114.

have been educated to distinguish between different marks on the basis of minute distinctions.

Taking into consideration the relative weakness of WIZZ when used in connection with car rental services, and the crowded field of WIZZ-formative marks in the car rental industry, Applicant respectfully submits that there is no likelihood of confusion between Applicant's C CARWIZ (& design) mark and Registrant's Marks.

2. Applicant's C CARWIZ (& design) Mark Currently Coexists With Registrant's WIZZ Marks In The Marketplace And Consumers See Applicant's and Registrant's Marks On Registrant's website

Further support for Applicant's position that consumers are unlikely to be confused between Applicant's C CARWIZ (& design) mark and Registrant's Marks is the fact that these mark currently coexist in the marketplace as evidenced by Registrant's website¹⁷, images of which were made of record by Applicant.¹⁸ Registrant's website links consumers to a number of unrelated rental car companies including Applicant, CARWIZ. Through its website, Registrant provides consumers the opportunity to compare deals offered and supplied by many different car rental companies including Applicant. A U.S. consumer seeking to book a car through Registrant's website can enter the required information to conduct a search of available vehicles. Applicant's attorney conducted such search on Registrant's website and submitted a declaration in support with

¹⁷ The shading of Applicant's Mark on Registrant's website is slightly different.

¹⁸ May 5, 2023, TEAS Request Reconsideration after FOA, TSDR, p. 4-5, 16-17, 24-52.

screenshots of the results to help the Trademark Office understand how consumers view Applicant's C CARWIZ (& design) mark and Registrant's Marks on the same search result page.¹⁹ A single screenshot from Registrant's website shows a rental vehicle offered by Wizz Air (Registrant) and a second vehicle supplied by Carwiz (Applicant).²⁰ Additionally, if a prospective consumer using Registrant's website wishes to view all Carwiz supplied vehicles, they would click on the box next to "Carwiz" to check it and, the results would show all available Carwiz cars, just as they would be able to filter any other car rental supplier such as Avis, Budget and Green Motion.²¹ A thorough review of this internet evidence demonstrates that Registrant's WIZZ marks and Applicant's C CARWIZ (& design) mark currently coexist in the marketplace. As such, prospective consumers are already introduced to both Applicant's and Registrant's marks as separate and distinct marks that are not-related, thereby minimizing any likelihood of confusion.

3. Applicant's C CARWIZ (& design) mark and Registrant's Mark Are Different In Sound, Appearance, Connotation, And Commercial Impression

Applicant's C CARWIZ mark and Registrant's Marks differ in appearance, sound, connotation, and commercial impression.

¹⁹ May 5, 2023, TEAS Request Reconsideration after FOA, TSDR, p. 16-17, 36.

²⁰ May 5, 2023, TEAS Request Reconsideration after FOA, TSDR, p. 36.

²¹ May 5, 2023, TEAS Request Reconsideration after FOA, TSDR, p. 53-63.

A visual and audible comparison of Applicant's C CARWIZ (& design) mark and Registrant's mark WIZZ immediately imparts the material distinctions between them. With respect to the cited WIZZ registrations, there are clear differences in appearance when compared to Applicant's mark due to the presence of the distinctive stylized letter C, the prefix CAR, and the absence of the second letter Z. The presence of the initial letter C, the word CAR and the absence of the second Z clearly differentiate Applicant's design mark from Registrant's registrations for "WIZZ". Applicant's C CARWIZ (& design) mark is further distinguished from Registrant's marks in appearance due to Applicant's three-dimensional C-shape design feature which further obviates consumer confusion. Furthermore, when comparing Applicant's C CARWIZ (& design) mark and Registrant's marks as used in the marketplace, it would be fair for a consumer's recollection of Applicant to be the company whose mark starts with the fanciful letter C versus Registrant whose marks begin with the letter W.

An audible comparison also differentiates the respective marks since "C CARWIZ" has 3 syllables with a hard letter "c" sound at the beginning of the second syllable while Registrant's marks have a single syllable which start with a generally softer "w" sound. Similarity in sound between one syllable in the marks when juxtaposed against the weakness of the mark is not enough for a finding of likelihood of confusion.

Applicant's C CARWIZ (& design) mark and Registrant's Marks also convey unique connotation and commercial impressions. As noted by the Federal Circuit, "[e]ven where the marks at issue are identical, or nearly identical differences in

connotation can outweigh visual and phonetic similarity.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1368 (Fed. Cir. 2012); *see also Blue Man Prods., Inc. v. Tarmann*, 75 U.S.P.Q.2d 1811 (T.T.A.B. 2005) (“We consider these differences in the connotations and the commercial impressions of the marks to outweigh the visual and phonetic similarity.”).

The connotation and commercial impression of Applicant’s C CARWIZ (& design) mark is very different from the cited Registrant’s marks. The letters WIZ in Applicant’s C CARWIZ (& design) mark give the impression of someone who is an expert, e.g. “wizard”, in the field of cars since the mark includes the word CAR. On the other hand, the connotation and commercial impression of WIZZ in Registrant’s WIZZ marks give the impression of an object moving quickly or making a whizzing sound, particularly when taken into consideration with all of Registrant’s services, including airline transportation services, and especially since Registrant’s company name is Wizz Air and its website is wizzair.com.²²

Accordingly, Applicant respectfully submits that the Applicant’s mark and Registrant’s cited marks are dissimilar in sound, appearance, connotation and commercial impression.

²² May 5, 2023, TEAS Request Reconsideration after FOA, TSDR, p.18.

CONCLUSION

In view of the foregoing, it is respectfully submitted that there is no likelihood of confusion between Applicant's Mark and the cited registrations. Accordingly, Applicant respectfully requests that the Board reverse the final refusal to register Applicant's Mark and allow the application to proceed to publication.

Dated: July 26, 2023

Respectfully submitted,

/Georgia Damoulakis/_____

Daniel P. Burke
Georgia Damoulakis
DANIEL P. BURKE & ASSOCIATES, PLLC
99 Blair Road
Oyster Bay, NY 11771
dburke@dpburke.com
gdamoulakis@dpburke.com
Phone: 516-802-0560
Attorneys of Applicant