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BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Ex Parte Appeal - Serial No.	79261503
Appellant	CARWIZ International d.o.o.
Applied for mark	C CARWIZ
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**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 REPLY BRIEF**

Dated: October 12, 2023

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## INTRODUCTION

For the reasons set forth and the evidence cited in Applicant's Appeal Brief and expanded upon below in reply to the Examining Attorney's arguments which urge this Board to ignore and dismiss the evidence of record, Applicant respectfully requests that the Board reverse the Examining Attorney's final refusal to register C CARWIZ (& design) 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 based on Section 2(d) for likelihood of confusion with Registrant's WIZZ marks.

## ARGUMENT

The Examining Attorney's Appeal Brief follows a pattern of ignoring and summarily dismissing the evidence of record in order to support a finding of a likelihood of confusion between Applicant's and Registrant's marks. When all evidence is accorded its appropriate weight and consideration, Applicant respectfully submits that the Examining Attorney has failed to establish that Applicant's Mark is confusingly similar to Registrant's Marks.

### **I. When Considered In Its Entirety, Applicant's C CARWIZ (& design) Mark Is Not Confusingly Similar To Registrant's WIZZ marks.**

Turning initially to the similarity of the marks, Applicant respectfully submits that the Examining Attorney's Appeal Brief improperly dissects Applicant's Mark and wholly ignores the design elements of Applicant's mark which are crucial in the commercial

impression consideration. A basic and fundamental principle in determining likelihood of confusion between marks is that the marks must be compared in their entireties in connection with the particular goods or services for which they are used. Shen Mfg. Co. v. Ritz Hotel, Ltd., 393 F.3d 1238 (Fed. Cir. 2004) (citing In re National Data Corp., 224 USPQ 749 (Fed. Cir. 1985)). Furthermore, “the commercial impression of a trademark is derived from it as a whole, not from its elements separated and considered in detail. For this reason, it should be considered in its entirety.” Estate of P.D. Beckwith, Inc. v. Commission of Patents, 252 U.S. 538 (1920).

Contrary to the Examining Attorney’s Appeal Brief, Applicant’s mark consists of a fanciful “C” design, followed by a space and then followed by the wording CARWIZ.



None of Registrant’s cited marks are similar in overall appearance to Applicant’s Mark.

WIZZ





None of Registrant's marks start with a shaded, fanciful letter or have more than a single syllable. Applicant's mark, when properly considered in its entirety, is also distinguishable in sound, connotation and commercial impression for the reasons set forth in Applicant's Appeal Brief.

**II. All Third-Party Registrations Cited By Applicant And All Third-Party Uses Cited By Applicant Are Relevant To Support A Narrow Scope of Protection For Registrant's Marks**

With respect to the third-party registrations cited by Applicant, the Examining Attorney's Appeal brief dismisses them as being insufficient and not related to the services at issue. Applicant respectfully submits that these registrations are all directly relevant and overall tend to show the common adoption of the word WIZ or WIZ formative by third parties to carry the suggestion that the goods and/or services are associated with skill.<sup>1</sup>

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<sup>1</sup> This argument is separate and apart from Applicant's position in its Appeal Brief at page 16 that the connotation and commercial impression of Registrant's WIZZ marks when taken into consideration with all of the services listed in Registrant's registrations, including the airline transportation services and its company name WIZZ AIR, give the impression of an object moving quickly or making a whizzing sound.

In determining the relevant services at issue, Applicant respectfully submits that the Examining Attorney did not specifically exclude any of Registrant's services when issuing the section 2(d) refusal.<sup>2</sup> As fully cited in Applicant's Appeal Brief, Registrant's services include:

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.

Contrary to the position taken on page 14 of the Examining Attorney's Appeal Brief, when considering all of Registrant's services, including the car parking and vehicle parking and storage services, the registration for PARKWHIZ for parking space reservation services is directly relevant and probative of a finding of conceptual weakness of Registrant's mark.

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<sup>2</sup> Nov. 5, 2022, Final Action, TSDR PDF p. 2-3

The Examining Attorney's Appeal Brief similarly completely dismisses the third-party uses of WIZ in connection with car rental services as being entitled to little weight in determining the strength of the mark. However, these third party uses of WIZ, all used in connection with car rental services, clearly demonstrate the commercial weakness of Registrant's WIZZ marks.<sup>3</sup> Similar marks in use on similar services is a DuPont factor which must be given due consideration. Registrant's marks are weak and entitled to only a narrow scope of protection.

### **III. Registrant's Website Makes Clear To Consumers In The Actual Marketplace That Applicant Is Not Associated With Registrant**

The evidence of record demonstrates that Registrant's website uses Registrant's own Mark as well as Applicant's mark and the marks of other well-known car rental companies, including Avis, Budget and Thrifty. Applicant's Exhibit B which are screenshots from Registrant's website shows Registrant's cited Mark on the top left portion of the first page.<sup>4</sup> Registrant's website also uses Applicant's mark<sup>5</sup> as well as the marks of over 12 other rental car companies.<sup>6</sup> The fact that Registrant already uses Applicant's mark on Registrant's website shows that these marks already peacefully co-exist in the marketplace and that any risk of confusion is very unlikely. Registrant is highly unlikely to use Applicant's Mark on its own website if consumer confusion was likely. This was and is Applicant's argument with respect to Registrant's website.

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<sup>3</sup> May 5, 2023, TEAS Request Reconsideration after FOA, TSDR PDF, pp. 73-122.

<sup>4</sup> May 5, 2023, TEAS Request Reconsideration after FOA, TSDR PDF, pp. 33-32.

<sup>5</sup> May 5, 2023, TEAS Request Reconsideration after FOA, TSDR PDF, pp. 33, 45.

<sup>6</sup> May 5, 2023, TEAS Request Reconsideration after FOA, TSDR PDF, pp. 33-61 and 62-72.

In an effort to denigrate Applicant’s argument, the Examining Attorney’s Appeal Brief initially tries to recast Applicant’s argument as a “relatedness determination”, then argues that a “relatedness determination” is not based on extrinsic evidence and, therefore, the Registrant’s website is not germane to the likelihood of confusion determination. It is clear, however, that Applicant’s reliance on Registrant’s website had nothing to do with a “relatedness determination”. The Examining Attorney’s strategy was to set up a straw man in the form of a “relatedness determination” which could easily be knocked down. This verbal sleight of hand serves no useful purpose and is contradicted by the Examining Attorney’s own statement that “In its Brief, applicant makes no arguments regarding the highly related and essentially identical services at issue.” (see last paragraph of section B, Examining Attorney’s Appeal Brief).

The first page of Registrant’s website provides a list of the different suppliers from which a customer can limit a search for available rental cars.<sup>7</sup> By checking one or more boxes under “Supplier”, a customer can choose to limit their search to one or more suppliers for available cars. Along with Avis and Budget, one of the identified suppliers is “Carwiz”. Subsequent pages show Applicant’s “C CARWIZ” Mark next to “Carwiz” and clearly indicate the supplier of the vehicle as “Supplied by:” CARWIZ.<sup>8</sup> Registrant’s website uses the “Supplied by:” designation when Registrant is not providing the car rental. The argument in the Examining Attorney’s Appeal Brief that “there is nothing in

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<sup>7</sup> May 5, 2023, TEAS Request Reconsideration after FOA, TSDR PDF, pp. 33-34.

<sup>8</sup> May 5, 2023, TEAS Request Reconsideration after FOA, TSDR PDF, pp. 45, 56, 58, 59.



the webpage screenshots submitted by applicant that indicate that the brand “C CARWIZ” is associated with a different source than the registrant” ignores what a customer actually sees when viewing Registrant’s website. Registrant’s website clearly distinguishes between cars supplied by Registrant and cars supplied by other rental car companies.

Consumers accessing Registrant’s website seeking a car rental would look at all of the pages in the search results and would see car rentals bearing Applicant’s mark C CARWIZ (& design) as well as Registrant’s WIZZ mark and other well-known car rental companies, including SURPRICE, GREEN MOTION, BUDGET, SIXT, ORYX, AVANTCAR, LAST MINUTE and THRIFTY.<sup>9</sup> As such, a consumer reviewing Registrant’s website could not reasonably believe that CARWIZ is related to Registrant. Furthermore, the position taken in the Examining Attorney’s Appeal Brief that consumers could believe that Registrant features more than one variation of its own WIZZ brand services is unsupported by the evidence. Moreover, none of Registrant’s Marks only have a single letter “Z” like Applicant’s Mark. Registrant’s website is both highly relevant and informative of the lack of any likelihood of confusion between Applicant’s and Registrant’s marks. Registrant’s website should not be ignored or dismissed in the determination of a likelihood of confusion.

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<sup>9</sup> May 5, 2023, TEAS Request Reconsideration after FOA, TSDR PDF, pp. 33-61, and see specifically, pp. 45.

## 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: October 12, 2023

Respectfully submitted,

/Georgia Damoulakis/\_\_\_\_\_

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