PTO Form 2194 (Rev 9/2005)
OMB No. 0651-0054 (Exp. 10/31/2017)

Petition To Revive Abandoned Application - Failure To Respond Timely To Office Action

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The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86382828
LAW OFFICE ASSIGNED	LAW OFFICE 116
DATE OF NOTICE OF ABANDONMENT	08/28/2015
PETITION	
PETITION STATEMENT	Applicant has firsthand knowledge that the failure to respond to the Office Action by the specified deadline was unintentional, and requests the USPTO to revive the abandoned application.
RESPONSE TO OFFICE ACTION	
MARK SECTION	
MARK	http://tmng-al.uspto.gov/resting2/api/img/86382828/large
LITERAL ELEMENT	BELMONT
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.
ARGUMENT(S)	

RESPONSE TO OFFICE ACTION

The Examining Attorney continues to refuse Applicant's registration of BELMONT for domestic plush, living-room furniture, namely, chairs, recliners, sofas, couches and ottomans based on the conclusion that there is a likelihood of confusion with U.S. Registration Nos. 0513425, 0732490 and 39060678. Applicant respectfully disagrees with this conclusion and maintains that the goods are not similar and are marketed to different members of the public. Applicant maintains the arguments presented in their previous Response and incorporates the arguments below.

Likelihood of Confusion

The Examining Attorney has refused Applicant's registration for domestic plush, living-room furniture,

namely, chairs, recliners, sofas, couches and ottomans under the Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), stating that the Applicant's mark, when used on or in connection with the identified goods, so resembles the marks in the above listed registered and marks as to be likely to cause confusion, to cause mistake, or to deceive. Applicant disagrees and believes that there is no likelihood that purchasers of the Applicant's goods and the Registrant's goods would believe that the goods emanate from a common source.

The facts in each case vary and the weight to be given each factor may be different in light of the varying circumstances; therefore, there can be no rule that certain goods or services are per se related, such that there must be a likelihood of confusion from the use of similar marks in relation thereto. See, e.g., Information Resources Inc. v. X*Press Information Services, 6 USPQ2d 1034, 1038 (TTAB 1988) (regarding computer hardware and software); Hi-Country Foods Corp. v. Hi Country Beef Jerky, 4 USPQ2d 1169, 1171 (TTAB 1987) (regarding food products); In re Quadram Corp. , 228 USPQ 863, 865 (TTAB 1985) (regarding computer hardware and software); In re British Bulldog, Ltd. , 224 USPQ 854, 855-56 (TTAB 1984) and cases cited therein (regarding clothing).

A. Confusion Must Be Probable, Not Possible

For confusion to be likely the confusion must be probable; it is irrelevant that confusion is merely possible. Electronic Data Sys. Corp. v. EDSA Micro Corp., 23 U.S.P.Q.2d 1460, 1465 (TTAB 1992) (standard is likelihood of confusion, "not some theoretical possibility built on a series of imagined horrors"); Rodeo Collection, Ltd. v. West Seventh, U.S.P.Q.2d 1204, 1206 (9th Cir. 1987) ("probable, not simply a possibility"). Trademark law is "not concerned with mere theoretical possibilities of confusion, deception, or mistake or with *de minimis* situations but with the practicalities of the commercial world, with which the trademark laws deal." Electronic Design & Sales Inc. v. Electronic Data Systems Corp., 21 U.S.P.Q.2d 1388 (Fed Cir. 1992), quoting Witco Chem. Co. v. Whitfield Chem. Co., 164 U.S.P.Q. 43, 44-45 (CCPA 1969), aff'g, 153 U.S.P.Q. 412 (TTAB 1967). Likelihood of confusion "is synonymous with 'probable confusion' it is not sufficient if confusion is merely possible." 2 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition § 23:3 (4th ed. 2007). Here, Applicant respectfully submits that there is no probability of confusion with the registered mark due to the fact that applicant's living room furnishings and the cited registration's mattress, box springs and children's furniture are very different in nature and sold to different consumers. In fact the registered marks are more closely related then applicant's mark, with BELLEMONT EMOTIONSESSENTIELLES including "beds for children" in its identification of goods. But no 2(d) finding was made when it was registered. How, a finding could now be made for applicants unrelated goods is illogical.

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 source, then, even if the marks are identical, confusion is not likely. Quartz Radiation Corp. v. Comm/Scope Co., 1 USPQ2d 1668 (TTAB 1986) (QR for coaxial cable not confusingly similar to QR for various products (e.g. lamps, tubes) related to photocopying field. Since the goods here are

being purchased by different consumers for unrelated purposes there is no probable likelihood of confusion.

B. Applicant's Goods and the Goods Listed in the Applications Are Distinct

When considering whether a likelihood of confusion exists, the Examiner is limited to determining relatedness in respect to the goods/services as identified in the registration. See United Drug v. Rectanus, 248 U.S. 90, 97 (Sup. Ct. 1918); University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., 217 U.S.P.Q. 505, 507 (Fed. Cir. 1983) (holding that "rights in gross . . . is contrary to principles of Trademark law"). Thus, this general trademark principle grants a trademark owner protection only in relation to the identified goods.

Rather than semantic generalization of the products, it is consumer perception that is significant for determining product relatedness. See, e.g., Electronic Data Systems Corp. v. EDSA Micro Corp., 23 U.S.P.Q.2d 1460, 1463 (TTAB 1992) ("the issue of whether or not two products are related does not revolve around the question of whether a term can be used that describes them both, or whether both can be classified under the same general category"); UMC Industries, Inc. v. UMC Electronics Co., 207 U.S.P.Q. 861, 879 (TTAB 1980) ("the fact that one term, such as 'electronic,' may be found which generally describes the goods of both parties is manifestly insufficient to establish that the goods are related in any meaningful way"); Harvey Hubbell, Inc. v. Tokyo Seimitsu Co., 188 U.S.P.Q. 517, 520 (TTAB 1975) ("in determining whether products are identical or similar, the inquiry should be whether they appeal to the same market, not whether they resemble each other physically or whether a word can be found to describe the goods of the parties").

The fact that the goods and services at issue can be categorized in the same broad "field" does not, of itself, provide a basis for regarding the goods and services as "related." See In re Digirad Corp., 45 U.S.P.Q.2d 1841 (ComrPats 1998) (holding that despite some industry "overlap," DIGIRAY and DIGIRAD not confusingly similar for high-tech medical diagnostic used to different ends); Cooper Industries, Inc. v. Repcoparts USA, Inc., 218 U.S.P.Q. 81, 84 (TTAB 1983) ("the mere fact that the products involved in this case (or any products with significant differences in character) are sold in the same industry does not of itself provide an adequate basis to find the required 'relatedness'").

Even where the marks are identical and the products can be marketed to the same customers, sufficient differences between the products negate a likelihood of confusion. TMEP § 1207.01(a)(i); *see also* Local Trademarks Inc. v. The Handy Boys Inc., 16 U.S.P.Q.2d 1156 (TTAB 1990) (holding no confusion between LITTLE PLUMBER for liquid drain opener and identical mark LITTLE PLUMBER for advertising services though both products were marketed to plumbing contractors). In re Sears, Roebuck and Co., 2 USPQ2d 1312, 1314 (TTAB 1987) (CROSS-OVER for bras held not likely to be confused with CROSS-OVER for ladies' sportswear); Electronic Design & Sales, Inc. v. Electronic Data Systems Corp., 954 F.2d 713, 21 USPQ2d 1388 (Fed. Cir. 1992) (no confusion between E.D.S. data processing services sold to medical insurers and EDS batteries and power supplies sold to makers of medical equipment). Likewise, Applicant submits that the unrelated nature of the parties' goods and services is more than sufficient to avoid a likelihood of confusion.

The goods and services listed for the cited applications are for "mattresses, box springs and children's

furniture". The identification of goods should be as complete and specific as possible and protection afforded by the cited registration is limited to only the identified goods and nothing broader. United Drug, 248 U.S. at 97; University of Notre Dame du Lac, 217 U.S.P.Q. at 507. In contrast, Applicant's proposed goods are: "domestic plush, living-room furniture, namely, chairs, recliners, sofas, couches and ottomans." Thus, there is no likelihood of confusion.

C. There Is No Likelihood of Confusion Because the Goods Are Directed to Different Target Markets

The same consumers are not likely to encounter the Applicant's goods and the goods of the cited application because the respective applicants target completely different sets of consumers. Even in cases of identical marks used in the same industry, to support a claim of confusion, there must be a reasonable basis for finding that the marks would be encountered by the same persons other than by chance. SeeBorg-Warner Chem., Inc. v. Helena Chem. Co., 225 U.S.P.Q. 222, 224 (TTAB 1983); In re Fresco Foods, Inc., 219 U.S.P.Q. 437, 438 (TTAB 1983) ("the recited goods are not so related that they would come to the attention of the same kinds of purchaser and, therefore, we agree with applicant that any likelihood of confusion is remote. This being the case, even identical marks would have little opportunity other than through accidental or chance confrontation, to create any confusion among customers or potential customers of either applicant or registrant. In this regards, the Board has not hesitated to find an absence of likelihood of confusion, even in the face of identical marks applied to goods used in a common industry, where such goods are clearly different from each other and there is insufficient evidence for assuming that the respective products and/or services, as identified by their marks, would be encountered by the same purchasers or parties"); In re Unilever, Ltd., 222 U.S.P.Q. 981, 982-83 (TTAB 1984); Murray v. Cable National Broadcasting Co., 39 U.S.P.Q.2d 1214, 1216 (9th Cir. 1996); Cooper Industries, Inc. v. Repcoparts USA, Inc., 218 U.S.P.Q. 81, 84 (TTAB 1983). In addition, it is well-settled that the likelihood of confusion is reduced where purchasers and potential purchasers of the products or services are sophisticated. See Electronic Design & Sales, Inc. v. Electronic Data Systems Corp., 954 F.2d 713, 718 (Fed. Cir. 1992) (no confusion between identical marks where, inter alia, both parties' goods and services "are usually purchased after careful consideration by persons who are highly knowledgeable about the goods or services and their source."). See also TMEP § 1207.01(d)(vii) (care in purchasing tends to minimize the likelihood of confusion).

"In making purchasing decisions regarding expensive goods, the reasonably prudent purchaser standard [that is normally applied in determining likelihood of confusion] is elevated to the standard of the 'discriminating purchaser.'" Weiss Associates v. HTL Associates Inc., 14 U.S.P.Q.2d 1840, 1841-42 (Fed. Cir. 1990). See also Chase Brass & Copper Co., Inc. v. Special Springs, Inc., 199 U.S.P.Q. 243, 245 (T.T.A.B. 1978) (finding no likelihood of confusion between the identical marks BLUE DOT, one for automotive springs and the other for brass rod, because "while it is clear from the record of the present case that the goods of both parties are sold in a common industry, even to the same automotive manufacturers, nevertheless, there is no evidence of record to show that the marks identifying the respective products of applicant and opposer would ever be encountered by the same persons in an environment where a likelihood of confusion could occur."); T.M.E.P. § 1207.01(a)(i) ("[I]f 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.")

The goods and services listed for the cited marks are for mattresses, box springs, and children's furniture. Applicant's goods are living-room furniture. The cited application's goods are directed to a completely different consumer market. The respective consumers would find the two goods entirely distinct and used in such separate markets that consumers would not believe the sources to be related. Applicant's goods are different, serve different purposes and are purchased by different customers. Applicant's products are different and serve a completely different purpose to furnish a house, not a children's room or bedroom. The goods are being purchased by different consumers for unrelated purposes. Accordingly, this factor weighs against a likelihood of confusion.

D. Dissimilarity of the Marks

The examining attorney indicated that there may be a likelihood of confusion between the Applicant's mark for "BELMONT" and Registration No. 3960678 for BELLEMONT EMOTIONSESSENTIELLES. However, there is no likelihood of confusion with Applicant's mark. Applicant's mark is visually and phonetically different the registered mark.

One of the primary considerations in testing for likelihood of confusion is the similarity or dissimilarity of the marks in their entireties as to appearance, sound and meaning or connotation. TMEP § 1207.01(b)(i). Applicant's mark is BELMONT and the mark in the cited registrations is BELLEMONT EMOTIONSESSENTIELLES. While the marks both have a few of the same letters, the registered mark is not only a completely different word but it also includes the word EMOTIONSESSENTIELLES. As a result, the applicant's mark is dissimilar in appearance and sound. TMEP § 1207.01(b)(i). The applicant respectfully submits that because the marks are dissimilar in appearance and sound that there is no likelihood of confusion between the marks.

Since likelihood of confusion is not probable, the respective goods are distinct, the marks and respective goods are directed to different target markets. Consequently, the differences between the respective marks in this case are more than enough to avoid confusion as to either source of origin or sponsorship. Applicant respectfully requests that there are no potential 2(d) rejections with respect to the current application.

Passage of the application to publication is respectfully requested.

ADDITIONAL STATEMENTS SECTION	
MISCELLANEOUS STATEMENT	A Notice of Appeal was filed concurrently with the filing of the Request for Reconsideration for this trademark case.
PAYMENT SECTION	
TOTAL AMOUNT	100
TOTAL FEES DUE	100
SIGNATURE SECTION	

PETITION SIGNATURE	/jgh/
SIGNATORY'S NAME	Jaye G. Heybl
SIGNATORY'S POSITION	Attorney of Record, CA bar member
SIGNATORY'S PHONE NUMBER	8053730060
DATE SIGNED	10/28/2015
RESPONSE SIGNATURE	/jgh/
SIGNATORY'S NAME	Jaye G. Heybl
SIGNATORY'S POSITION	Attorney of record, CA bar member
SIGNATORY'S PHONE NUMBER	8053730060
DATE SIGNED	10/28/2015
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Wed Oct 28 19:30:34 EDT 2015
TEAS STAMP	USPTO/POA-108.47.5.254-20151028193034503252-86382828-540dbcdb685dfe9145bbed221d9dc6ba82faa831f9dbada8d7f3088bcf8ea1374ce-DA-6047-20151028192313447468

PTO Form 2194 (Rev 9/2005)
OMB No. 0651-0054 (Exp. 10/31/2017)

Petition To Revive Abandoned Application - Failure To Respond Timely To Office Action

To the Commissioner for Trademarks:

Application serial no. **86382828** BELMONT(Standard Characters, see http://tmng-al.uspto.gov/resting2/api/img/86382828/large) has been amended as follows:

PETITION

Petition Statement

Applicant has firsthand knowledge that the failure to respond to the Office Action by the specified deadline was unintentional, and requests the USPTO to revive the abandoned application.

RESPONSE TO OFFICE ACTION

ARGUMENT(S)
In response to the substantive refusal(s), please note the following:

RESPONSE TO OFFICE ACTION

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living room furnishings and the cited registration's mattress, box springs and children's furniture are very different in nature and sold to different consumers. In fact the registered marks are more closely related then applicant's mark, with BELLEMONT EMOTIONSESSENTIELLES including "beds for children" in its identification of goods. But no 2(d) finding was made when it was registered. How, a finding could now be made for applicants unrelated goods is illogical.

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 source, then, even if the marks are identical, confusion is not likely. Quartz Radiation Corp. v. Comm/Scope Co., 1 USPQ2d 1668 (TTAB 1986) (QR for coaxial cable not confusingly similar to QR for various products (e.g. lamps, tubes) related to photocopying field. Since the goods here are being purchased by different consumers for unrelated purposes there is no probable likelihood of confusion.

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Even where the marks are identical and the products can be marketed to the same customers, sufficient differences between the products negate a likelihood of confusion. TMEP § 1207.01(a)(i); *see also* Local

Trademarks Inc. v. The Handy Boys Inc., 16 U.S.P.Q.2d 1156 (TTAB 1990) (holding no confusion between LITTLE PLUMBER for liquid drain opener and identical mark LITTLE PLUMBER for advertising services though both products were marketed to plumbing contractors). In re Sears, Roebuck and Co., 2 USPQ2d 1312, 1314 (TTAB 1987) (CROSS-OVER for bras held not likely to be confused with CROSS-OVER for ladies' sportswear); Electronic Design & Sales, Inc. v. Electronic Data Systems Corp., 954 F.2d 713, 21 USPQ2d 1388 (Fed. Cir. 1992) (no confusion between E.D.S. data processing services sold to medical insurers and EDS batteries and power supplies sold to makers of medical equipment). Likewise, Applicant submits that the unrelated nature of the parties' goods and services is more than sufficient to avoid a likelihood of confusion.

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reasonably prudent purchaser standard [that is normally applied in determining likelihood of confusion] is elevated to the standard of the 'discriminating purchaser.'" Weiss Associates v. HTL Associates Inc., 14 U.S.P.Q.2d 1840, 1841-42 (Fed. Cir. 1990). See also Chase Brass & Copper Co., Inc. v. Special Springs, Inc., 199 U.S.P.Q. 243, 245 (T.T.A.B. 1978) (finding no likelihood of confusion between the identical marks BLUE DOT, one for automotive springs and the other for brass rod, because "while it is clear from the record of the present case that the goods of both parties are sold in a common industry, even to the same automotive manufacturers, nevertheless, there is no evidence of record to show that the marks identifying the respective products of applicant and opposer would ever be encountered by the same persons in an environment where a likelihood of confusion could occur."); T.M.E.P. § 1207.01(a)(i) ("[I]f 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.")

The goods and services listed for the cited marks are for mattresses, box springs, and children's furniture. Applicant's goods are living-room furniture. The cited application's goods are directed to a completely different consumer market. The respective consumers would find the two goods entirely distinct and used in such separate markets that consumers would not believe the sources to be related. Applicant's goods are different, serve different purposes and are purchased by different customers. Applicant's products are different and serve a completely different purpose to furnish a house, not a children's room or bedroom. The goods are being purchased by different consumers for unrelated purposes. Accordingly, this factor weighs against a likelihood of confusion.

D. Dissimilarity of the Marks

The examining attorney indicated that there may be a likelihood of confusion between the Applicant's mark for "BELMONT" and Registration No. 3960678 for BELLEMONT EMOTIONSESSENTIELLES. However, there is no likelihood of confusion with Applicant's mark. Applicant's mark is visually and phonetically different the registered mark.

One of the primary considerations in testing for likelihood of confusion is the similarity or dissimilarity of the marks in their entireties as to appearance, sound and meaning or connotation. TMEP § 1207.01(b) (i). Applicant's mark is BELMONT and the mark in the cited registrations is BELLEMONT EMOTIONSESSENTIELLES. While the marks both have a few of the same letters, the registered mark is not only a completely different word but it also includes the word EMOTIONSESSENTIELLES. As a result, the applicant's mark is dissimilar in appearance and sound. TMEP § 1207.01(b)(i). The applicant respectfully submits that because the marks are dissimilar in appearance and sound that there is no likelihood of confusion between the marks.

Since likelihood of confusion is not probable, the respective goods are distinct, the marks and respective goods are directed to different target markets. Consequently, the differences between the respective marks in this case are more than enough to avoid confusion as to either source of origin or sponsorship. Applicant respectfully requests that there are no potential 2(d) rejections with respect to the current application.

Passage of the application to publication is respectfully requested.

ADDITIONAL STATEMENTS

Miscellaneous Statement

A Notice of Appeal was filed concurrently with the filing of the Request for Reconsideration for this trademark case.

FEE(S)

Fee(s) in the amount of $100 is being submitted.

SIGNATURE(S)

Signature: /jgh/ Date: 10/28/2015
Signatory's Name: Jaye G. Heybl
Signatory's Position: Attorney of Record, CA bar member
Signatory's Phone Number: 8053730060

Response Signature

Signature: /jgh/ Date: 10/28/2015
Signatory's Name: Jaye G. Heybl
Signatory's Position: Attorney of record, CA bar member

Signatory's Phone Number: 8053730060

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the owner/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the owner/holder has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner/holder's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

RAM Sale Number: 86382828
RAM Accounting Date: 10/29/2015

Serial Number: 86382828
Internet Transmission Date: Wed Oct 28 19:30:34 EDT 2015
TEAS Stamp: USPTO/POA-108.47.5.254-20151028193034503
252-86382828-540dbcdb685dfe9145bbed221d9
dc6ba82faa831f9dbada8d7f3088bcf8ea1374ce
-DA-6047-20151028192313447468

RAM SALE NUMBER: 86382828

RAM ACCOUNTING DATE: 20151029

INTERNET TRANSMISSION DATE:

2015/10/28

SERIAL NUMBER:

86/382828

Description	Fee Code	Transaction	Total Fees Paid
POA	7005	2015/10/28	100