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

Proceeding	86781046
Applicant	Timber Products Co. Limited Partnership
Applied for Mark	TP
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Submission	Appeal Brief
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Signature	/ David P. Cooper /
Date	08/07/2017

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

In re the Application of	)	
	)	
David P. Cooper	)	Law Office 124
Serial No. : 86/781,046	)	
Filed : October 7, 2015	)	Trademark Examining Attorney
For : TP (Stylized)	)	Mayur Vaghani
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**BRIEF FOR APPLICANT**

**Introduction**

Applicant hereby appeals from the Trademark Examining Attorney's August 10, 2016 final refusal to register applicant's above-identified mark ("the final Office action"), and respectfully requests the Trademark Trial and Appeal Board to reverse the Examining Attorney's decision.

**Applicant's Trademark**

Applicant seeks registration on the Principal Register of its mark:

TP (stylized)

for the following services:

- **Class 39:** trucking services, namely, hauling of lumber, wood products and freight.



**The Rejection**

The Examining Attorney finally refused registration of applicant's mark based on (1) a likelihood-of-confusion with U.S. Reg. Nos. 4208780 and 4216270; and (2) the requirement for an acceptable recitation of services.

## Argument

On August 10, 2016, the Examining Attorney made final his refusal to register applicant’s mark based upon his conclusion that there is a possible likelihood-of-confusion (LOC) with U.S. Reg. Nos. 4208780 and 4216270; and a requirement for an acceptable recitation of services. On May 10, 2017, applicant contemporaneously filed a Notice of Appeal and a Request for Reconsideration. On June 8, 2017, the Examining Attorney denied applicant’s Request for Reconsideration as to the LOC refusal, but held that applicant had satisfied the requirement for an acceptable recitation of services. The Appeal was resumed pursuant to the Board’s June 8, 2017 Order.

With respect to the merits, the Examining attorney maintained his prior two-part LOC refusal based upon the following two U.S. trademark registrations (“the Transit Pros Registrations”):

Mark / Reg. No.	Applicant / Location	Goods / Services
TP and Design  Reg. No. 4,208,780	Transit Pros, LLC Lee’s Summit, MO	Trucking services, namely, hauling of heavy equipment, freight relocation, namely, freight transportation by truck; warehouse storage; storage of goods
TP TRANSIT PROS NATIONAL HEAVY TRUCK & EQUIPMENT SPECIALIST and Design  Reg. No. 4,216,270	Transit Pros, LLC Lee’s Summit, MO	Arranging and coordinating the movement of equipment from pick-up to delivery for auctions, insurance companies, trucking companies and leasing companies

Earlier in prosecution, the Examining attorney made (in a first Office action) and then withdrew (in the Final Office action) an LOC refusal based upon applicant's unity-of-control statement. Specifically, in its Amendment and Response filed on July 19, 2016, Applicant noted that the registration shown below issued in 1999, had a first use of 1996, and Applicant controlled the use of that mark via its wholly owned subsidiary, TP Transportation, Inc., the record owner of that mark.

<b>Mark / Reg. No.</b>	<b>Applicant / Location</b>	<b>Goods / Services</b>
TP TRUCKING Reg. No. 2,246,321	TP Transportation, Inc. Central Point, OR	Freight transportation by truck and ship

Applicant's family-of-marks argument is not a collateral attack on the Transit Pros Registrations. Rather, Applicant argues there is no LOC because the marks **have coexisted** since at least 2010. That coexistence is via Applicant's family of TP marks, which include 1999 registration and 1996 first-use dates, and which predate by over a decade, the 2010 registration and first-use dates of the Transit Pros Registrations. Therefore there is no LOC. In addition, there are sufficient, cumulative differences between the marks and the services so that there is no LOC. For example, Applicant's services include hauling lumber and wood products.

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