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

Proceeding	87120774
Applicant	Hy-Vee, Inc.
Applied for Mark	PEACEFUL PIRANHA
Correspondence Address	TIMOTHY J ZARLEY ZARLEY LAW FIRM PLC 400 LOCUST STREETCAPITAL SQUARE, SUITE 200 DES MOINES, IA 50309-2350 UNITED STATES Email: tzarley@zarleylaw.com, kconrad@zarleylaw.com
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Filer's Name	Timothy J. Zarley
Filer's email	tzarley@zarleylaw.com, kconrad@zarleylaw.com
Signature	/Timothy J. Zarley/
Date	11/14/2017

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPELLANT: Hy-Vee, Inc. :
TRADEMARK: PEACEFUL PIRANHA : BEFORE THE TRADEMARK
SERIAL NO.: 87/120,774 : TRIAL AND APPEAL BOARD
ATTORNEY: Timothy J. Zarley : ON APPEAL
ADDRESS: Capital Square :
400 Locust Street, Suite 200 :
Des Moines, Iowa 50309-2350 :

APPELLANT'S REPLY BRIEF

Box TTAB FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Dear Sir:

In support of its rejection for likelihood of confusion, the Office has impermissibly dissected Appellant's mark and admittedly ignored the effect the term "Peaceful" has on "Piranha" in creating the mark's overall commercial impression. *See Opryland USA Inc. v. Great American Music Show, Inc.*, 970 F.2d 87, 852 (Fed. Cir. 1992). In comparing the appearance and sound of Appellant's mark and the registered mark, the Office does not even mention the term "Peaceful." *See Sun Banks of Fla. v. Sun Fed. Sav. and Loan Assn.*, 651 F.2d 311, 317-19 (5th Cir. 1981)(noting that the Examining Attorney must look to the overall impression created by the marks and not merely compare individual features).

In dismissing the term "Peaceful," without explanation or basis, the Office makes a conclusory statement that the adjective does not change the mark from that of a fish. The cases cited by the Office do not support this claim as the terms "Bengal" and "Macho" were not cases where an adjective was added to a common noun. (Examining Attorney's Appeal Brief,

CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that this correspondence is being transmitted to the United States Patent and Trademark Office, Trademark Trials & Appeals Board via ESTTA-Web (Electronic System for Trademark Trials and Appeals web-based document submission) on this 14th day of November 2017.

Timothy J. Zarley, Reg. No. 45,253/
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pg 5). As for the term "Vantage," its addition to the term "Titan" described a better view of a titan; but not a different and opposite type of a titan. *Id.*

In addressing Appellant's arguments directly, the Office provides no argument, explanation or authority, and instead merely states that the Examining Attorney respectfully disagrees. When, however, the overall commercial impression of the marks are compared, as is required, the marks differ in sight, sound, and appearance. Accordingly, Appellant respectfully requests that the Office's refusal be reversed.

Respectfully submitted,

/Timothy J. Zarley, Reg. No. 45253/

Timothy J. Zarley, Reg. No. 45,253

ZARLEY LAW FIRM P.L.C.

400 Locust Street, Suite 200

Des Moines, Iowa 50309-2350

Telephone: 515-558-0200

Facsimile: 515-558-7790

TJZ/kc