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

Proceeding	87440925
Applicant	Telecom (CHINA) Ltd.
Applied for Mark	DIRTY LAUNDRY
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Submission	Reply Brief
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Date	01/04/2019

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

In the matter of

TELECOM (CHINA), LTD.,

Applicant.

Application Serial No. 87440925

Filing Date: May 11, 2017

Mark: DIRTY LAUNDRY

Law Office 113

Examining Attorney K.G. Crennan

APPLICANT’S REPLY BRIEF

Telecom (CHINA) Ltd. (the “Applicant”) herein replies to the Examiner’s Statement dated December 19, 2018. The Examiner’s Statement, like the Examining Attorney’s prior explanations of the refusal to register DIRTY LAUNDRY, is erroneous. The two prior registrations of DIRTY LAUNDRY (U.S. Trademark Registration Nos. 4117028 and 4275485), which are relied on to refuse registration, were granted to different owners, and there is no indication of common control. Neither of the prior registrations is for goods that are identical to Applicant’s goods; the refusal of registration depends on the similarity of the marks themselves in combination with the view that the goods are related to Applicant’s goods. However, the two registrations coexist with each other in the marketplace even though they cover goods at least as related to each other as either is to Applicant’s goods.

As discussed in the Appeal Brief, the Examining Attorney has incorrectly applied the *In re E.I. Du Pont de Nemours & Co.*, 476 F.2d 1357 (C.C.P.C. 1973), to this case, because the Examining Attorney has ignored *Du Pont* factor six, “number and nature of similar marks in use on similar goods,” *id.* at 1361, even though *Du Pont* factor six is expressly discussed as being applicable in this context by the Trademark Manual of Examination Procedure, Section 1207.01(d)(iii). (*See* Appeal Brief at 6-7).

The Examining Attorney has cited two prior registrations (U.S. Trademark Registration Nos. 4117028 and 4275485) as instances of identical marks on related goods. The evidence does not support the Examining Attorney's determination that the goods in question are so related to Applicant's goods that confusion is likely. Any of the 13 *Du Pont* factors "may from case to case play a dominant role," and in this case, the dominant *Du Pont* factor is factor six ("number and nature of similar marks in use on similar goods"), and not factor one or factor two as argued by the Examining Attorney. *In re E. I. Du Pont de Nemours & Co.*, 476 F.2d at 1361-62; *see also* Trademark Manual of Examination Procedure, Section 1207.01(d)(iii).

The question of whether the goods in question are related is a question of fact and must be considered on a case-by-case basis. In this case, U.S. Trademark Registration Nos. 4117028 and 4275485 already coexist in the marketplace without confusion, and they cover goods that are no less related to each other than either set of goods is to Applicant's goods. Accordingly, the same facts relied on to refuse registration actually show that the potential scope of coverage of the mark DIRTY LAUNDRY is inherently narrow and that Applicant's mark can coexist in the marketplace with U.S. Trademark Registration Nos. 4117028 and 4275485 without confusion.

Date: January 4, 2019

Respectfully submitted,

/Robert N. Cook/

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CERTIFICATE OF SERVICE

I certify that on January 4, 2019, I caused a true and correct copy of the foregoing APPLICANT'S REPLY BRIEF to be filed through ESTTA, which provides notice to the Examining Attorney. In addition, I caused a copy to be delivered by email and first-class mail to:

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