

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

COPY

In the matter of

TELECOM (CHINA), LTD.,

Applicant.

Application Serial No. 87440925

Filing Date: May 11, 2017

Mark: DIRTY LAUNDRY

Law Office 113

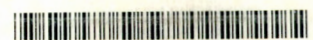
Examining Attorney K.G. Crennan

TTAB

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).



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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/

Robert N. Cook
Whitham & Cook, P.C. | W&C IP
11491 Sunset Hills Road, Suite 340
Reston, Virginia 20190
(703) 787-9400 (voice)
(703) 787-7557 (fax)

Attorney for Applicant
TELECOM (CHINA) LTD.

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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:

Kevin Gerard Crennan, Esq.
Trademark Examining Attorney
Law Office 113
U.S. Patent and Trademark Office
Madison Building
600 Dulany Street
Alexandria, Virginia 22314
kevin.crennan@uspto.gov

Date: January 4, 2019

Respectfully submitted,

/Robert N. Cook/

Robert N. Cook
Whitham & Cook, P.C. | W&C IP
11491 Sunset Hills Road, Suite 340
Reston, Virginia 20190
(703) 787-9400 (voice)
(703) 787-7557 (fax)
trademark@wcc-ip.com

Attorney for Applicant
TELECOM (CHINA) LTD.

Bob Cook

From: Bob Cook <bob@wcc-ip.com>
Sent: Friday, January 04, 2019 11:52 AM
To: 'kevin.crennan@uspto.gov'
Cc: 'trademark@wcc ip.com'
Subject: RE: Appliant's Appeal Brief, DIRTY LAUNDRY (App Ser No 87440925)
Attachments: DIRTY LAUNDRY - Reply Brief - 2019-01-04.pdf

Attached is a service copy of Applicant's Reply Brief which is being filed today in connection with the above-referenced matter.

Very truly yours,
-- Bob Cook

Robert N. Cook
Whitham & Cook, P.C. | W&C IP
11491 Sunset Hills Road, Suite 340
Reston, VA 20190
(703) 787-9400 (voice)
(703) 787-7557 (fax)
bob@wcc-ip.us

From: Bob Cook [<mailto:bob@wcc-ip.com>]
Sent: Friday, October 12, 2018 11:51 AM
To: 'kevin.crennan@uspto.gov'
Cc: 'trademark@wcc-ip.com'
Subject: RE: Appliant's Appeal Brief, DIRTY LAUNDRY (App Ser No 87440925)

Attached is a Request for Oral Hearing which is being filed today in connection with the above-referenced matter.

Please acknowledge receipt by reply email.

Very truly yours,
-- Bob

Robert N. Cook
Whitham & Cook, P.C. | W&C IP
11491 Sunset Hills Road, Suite 340
Reston, VA 20190
(703) 787-9400 (voice)
(703) 787-7557 (fax)
bob@wcc-ip.com

From: Bob Cook [<mailto:bob@wcc-ip.com>]
Sent: Monday, October 08, 2018 1:19 PM
To: 'kevin.crennan@uspto.gov'

Cc: 'trademark@wwc-ip.com'

Subject: Appliant's Appeal Brief, DIRTY LAUNDRY (App Ser No 87440925)

Attached is Applicant's Appeal Brief in connection with the above-referenced matter, which is being filed today.

Please acknowledge receipt by reply email.

Very truly yours,

-- Bob

Robert N. Cook

Whitham & Cook, P.C. | W&C IP

11491 Sunset Hills Road, Suite 340

Reston, VA 20190

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(703) 787-7557 (fax)

bob@wcc-ip.com