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Sent: 2/12/2020 12:16:12 PM

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Subject: U.S. Trademark Application Serial No. 87584821 - GLAMOUR CAMPER - 12508.3706 -  
EXAMINER BRIEF

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**United States Patent and Trademark Office (USPTO)**

**U.S. Application Serial No.** 87584821

**Mark:** GLAMOUR CAMPER

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**Applicant:** MJ PRODUCTS ASSOCIATION

**Reference/Docket No.** 12508.3706

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**EXAMINING ATTORNEY'S APPEAL BRIEF**

**INTRODUCTION**

MJ PRODUCTS ASSOCIATION (hereafter "Applicant") appeals the trademark examining attorney's refusal to register the mark GLAMOUR CAMPER for insect repellent sunscreen creams in International Class 3 because of a likelihood of confusion with the mark CAMPER in U.S. Registration No. 4690397. Trademark Act Section 2(d), 15 U.S.C. §1052(d); TMEP §§1207.01 et seq.

**FACTS**

Pursuant to its application on August 25, 2017, and subsequent amendments, Applicant seeks registration of the standard character mark GLAMOUR CAMPER for “insect repellent sunscreen creams containing glitter” in International Class 3.

The examining attorney refused registration on December 1, 2017 (hereafter “Initial Office Action”), because of a likelihood of confusion under Section 2(d) of the Trademark Act with the mark CAMPER in U.S. Registration No. 4690397 and required a new verified declaration based on Applicant’s preliminary amendment of the application to a Trademark Act Section 1(b) basis. Applicant satisfied the declaration requirement on June 1, 2018 (hereafter “Applicant’s First Response”), and also amended its identification of goods from “sunscreen creams” to “insect repellent sunscreen containing glitter.” However, the examining attorney maintained the Section 2(d) refusal based on the cited registration and issued a new requirement based on the amended identification of goods that was beyond the scope of the original identification of goods in a new Non-Final Office Action of June 8, 2018 (hereafter “Second Office Action”).

Applicant responded to the Second Office Action on December 10, 2018 (hereafter “Applicant’s Second Response”), and amended its identification of goods from “sunscreen creams” to “insect repellent creams containing glitter.” However, the examining attorney maintained and made final the Section 2(d) refusal based on the cited registration and the requirement based on the amended identification of goods that was beyond the scope of the original identification of goods in a Final Office Action of December 20, 2018 (hereafter “Final Office Action”).

Request for Reconsideration was sought by Applicant on June 19, 2019 (hereafter “Applicant’s Request for Reconsideration”); the request was granted as to Applicant’s amended identification of goods being “insect repellent sunscreen creams containing glitter” but denied as to the Section 2(d) refusal by the examining attorney on October 8, 2019 (hereafter “Request for Reconsideration Denial”).

This appeal follows.

### **ISSUE**

The sole issue remaining on appeal is whether Applicant's applied-for mark is so similar to the registered mark in U.S. Registration No. 4690397 that, when used in connection with Applicant's goods, a likelihood of confusion exists.

### **ARGUMENTS**

- I. APPLICANT'S MARK IS SIMILAR TO THE REGISTERED MARK SUCH THAT A LIKELIHOOD OF CONFUSION EXISTS WHEN USED IN CONNECTION WITH THE INSECT REPELLANT/SUNSCREENS, COSMETICS, CREAMS, AND OILS AT ISSUE.

The Board should affirm the examining attorney's refusal to register Applicant's mark under Section 2(d) of the Trademark Act because Applicant's mark is so similar to the registered mark that a likelihood of confusion exists when used in connection with the insect repellent/sunscreens, cosmetics, and oils goods at issue. Trademark Act Section 2(d) bars registration of an applied-for mark that is so similar to a registered mark that it is likely consumers would be confused, mistaken, or deceived as to the commercial source of the goods of the parties. See 15 U.S.C. §1052(d).

Applicant's mark is GLAMOUR CAMPER in standard characters for use with the following goods: "Insect repellent sunscreen creams containing glitter."

The cited registration is CAMPER with stylization and design (U.S. Reg. No. 4690397) for use with the following relevant goods: "Aftershaves; after-shave cologne; bath gel; bath oil; bath salts; beauty masks; body creams; deodorants; body lotion for cosmetic use; oil for the body; body powders for cosmetic use; cosmetic creams; cosmetic crayons; cosmetics; cotton for cosmetic use; body deodorants; depilatory creams; eau de cologne; eau de parfum; perfumes; eye cream; eye makeup; eye makeup removing lotions; eyeshadow; liners; cream for the face; make-up; hair decolorants; hair care

preparations; hair conditioner; creams for the hair; hair lotions; hand cream; soaps; balms for the lips; lipsticks; make-up removing lotions; moisturizers; nail care preparations; cream for the nails; nail polish; nail polish removers; night creams; bath salts not for medical use; shampoos; shaving cream; shaving balms; skin cleaning lotions; skin cream; moisturizing cream for the skin; soaps for skincare; face paint; sun-tanning oils.”

Likelihood of confusion is determined on a case-by-case basis by applying the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973) (called the “*du Pont* factors”). *In re i.am.symbolic, llc*, 866 F.3d 1315, 1322, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017). Only those factors that are “relevant and of record” need be considered. *M2 Software, Inc. v. M2 Commc’ns, Inc.*, 450 F.3d 1378, 1382, 78 USPQ2d 1944, 1947 (Fed. Cir. 2006) (citing *Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 1241, 73 USPQ2d 1350, 1353 (Fed. Cir. 2004)); *see In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1744 (TTAB 2018). Although not all *du Pont* factors may be relevant, there are generally two key considerations in any likelihood of confusion analysis: (1) the similarities between the compared marks and (2) the relatedness of the compared goods. *See In re i.am.symbolic, llc*, 866 F.3d at 1322, 123 USPQ2d at 1747 (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103, 192 USPQ 24, 29 (C.C.P.A. 1976) (“The fundamental inquiry mandated by [Section] 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks.”); TMEP §1207.01. In this case, the following factors are the most relevant: similarity of the marks, similarity and nature of the goods, and similarity of the trade channels of the goods. *See* TMEP §§1207.01 *et seq.*

II. THE MARKS AT ISSUE ARE SIMILAR WHEN CONSIDERED IN THEIR ENTIRETIES.

Applicant's mark, GLAMOUR CAMPER, is highly similar in sound, appearance, and commercial impression to registrant's mark, CAMPER, when considered in their entireties. First, registrant's mark, CAMPER, is essentially entirely incorporated within Applicant's mark. The remaining wording in applicant's mark—GLAMOUR—appears as modifier of the shared word which is secondary to and separate from the commercial impression created by the more dominant shared word. Finally, the overall commercial impressions of the marks are nearly identical in light of the highly related goods in the application and registration.

Marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1321, 110 USPQ2d 1157, 1160 (Fed. Cir. 2014) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1371, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005)); TMEP §1207.01(b)-(b)(v). "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *In re Inn at St. John's, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) (citing *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)); TMEP §1207.01(b).

First, when evaluating a composite mark consisting of words and a design, the word portion is normally accorded greater weight because it is likely to make a greater impression upon purchasers, be remembered by them, and be used by them to refer to or request the goods. *In re Aquitaine Wine USA, LLC*, 126 USPQ2d 1181, 1184 (TTAB 2018) (citing *In re Viterro Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012)); TMEP §1207.01(c)(ii). Thus, although marks must be compared in their entireties, the word portion is often considered the dominant feature and is accorded greater weight in determining whether marks are confusingly similar. *In re Viterro Inc.*, 671 F.3d at 1366-67, 101 USPQ2d at 1911 (citing *Giant Food, Inc. v. Nation's Foodservice, Inc.*, 710 F.2d 1565, 1570-71, 218 USPQ2d 390, 395 (Fed. Cir. 1983)).

Additionally, incorporating the entirety of one mark within another does not obviate the similarity between the compared marks, as in the present case, nor does it overcome a likelihood of confusion under Section 2(d). See *Wella Corp. v. Cal. Concept Corp.*, 558 F.2d 1019, 1022, 194 USPQ 419, 422 (C.C.P.A. 1977) (finding CALIFORNIA CONCEPT and surfer design and CONCEPT confusingly similar); *In re Integrated Embedded*, 120 USPQ2d 1504, 1513 (TTAB 2016) (finding BARR GROUP and BARR confusingly similar); TMEP §1207.01(b)(iii). Similarly, adding a term to a registered mark generally does not obviate the similarity between the compared marks, as in the present case, nor does it overcome a likelihood of confusion under Section 2(d). See *Coca-Cola Bottling Co. v. Jos. E. Seagram & Sons, Inc.*, 526 F.2d 556, 557, 188 USPQ 105, 106 (C.C.P.A. 1975) (finding BENGAL and BENGAL LANCER and design confusingly similar); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1269 (TTAB 2009) (finding TITAN and VANTAGE TITAN confusingly similar); TMEP §1207.01(b)(iii). In the present case, the marks are identical in part.

Applicant's mark, GLAMOUR CAMPER, is highly similar in sound, appearance and commercial impression to registrant's mark, CAMPER. The marks are highly similar in that registrant's mark is essentially entirely incorporated within Applicant's mark, and Applicant has merely added a common modifier to registrant's mark. Registrant's mark is the only "CAMPER" mark currently registered for cosmetic, body cream, and sun-tanning oil-type goods, which indicates the strength of the mark. The addition of the wording GLAMOUR to the registrant's mark appears to indicate a different line of goods from the same source—a line of goods that is similar to registrant's current goods with something that makes them "glamorous." Specifically, even if potential consumers realize the apparent differences between the marks, they could still reasonably assume, due to the overall similarities in sound, appearance, connotation, and commercial impression in the respective marks, that Applicant's goods provided under the GLAMOUR CAMPER mark constitute a new or additional line of goods from the same source as the goods provided under registrant's CAMPER mark, and that Applicant's mark is merely a

variation of registrant's mark. *See, e.g., SMS, Inc. v. Byn-Mar Inc.* . 228 USPQ 219, 220 (TTAB 1985) (applicant's marks ALSO ANDREA and ANDREA SPORT were "likely to evoke an association by consumers with opposer's preexisting mark [ANDREA SIMONE] for its established line of clothing.").

Finally, a mark in typed or standard characters, such as Applicant's mark, may be displayed in any lettering style; the rights reside in the wording or other literal element and not in any particular display or rendition. *See In re Viterra Inc.*, 671 F.3d 1358, 1363, 101 USPQ2d 1905, 1909 (Fed. Cir. 2012); *In re Mighty Leaf Tea*, 601 F.3d 1342, 1348, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010); 37 C.F.R. §2.52(a); TMEP §1207.01(c)(iii). Thus, a mark presented in stylized characters and/or with a design element, such as registrant's mark, generally will not avoid likelihood of confusion with a mark in typed or standard characters because the word portion could be presented in the same manner of display. *See, e.g., In re Viterra Inc.*, 671 F.3d at 1363, 101 USPQ2d at 1909; *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 1041, 216 USPQ 937, 939 (Fed. Cir. 1983) (stating that "the argument concerning a difference in type style is not viable where one party asserts rights in no particular display").

Applicant argues that the addition of the word "GLAMOUR" to "CAMPER" significantly changes the commercial impression from that of just "CAMPER" because, according to Applicant, GLAMOUR CAMPER "is an oxymoron expressing contra-dictionally opposing mental terms in a human brain." See Applicant's Appeal Brief at pg. 7. However, this ignores the fact that "glamour camping," "glamorous camping," or, in short, "glamping" is a category of or type of camping. Specifically, the examining attorney provided evidence from HuffingtonPost.com, IDYourself.com, and Wikipedia.org which shows that "glamour camping" or "glamping" is a type of camping "with amenities and, in some cases, resort-style services not usually associated with 'traditional' camping." See Final Office Action, TSDR attachment pgs. 2-9. In other words, it is a type of camping that is related to, but slightly different than, "traditional" camping. As such, the connotation and commercial impression of the word "camper" is not significantly changed by the addition of the highly suggestive word "glamour"—at best, the addition

of the word “GLAMOUR” indicates goods that are related to, but slightly different than, the “CAMPER” goods. When comparing marks, “[t]he proper test is not a side-by-side comparison of the marks, but instead whether the marks are sufficiently similar in terms of their commercial impression such that [consumers] who encounter the marks would be likely to assume a connection between the parties.” *Cai v. Diamond Hong, Inc.*, \_\_\_ F.3d \_\_\_, 127 USPQ2d 1797, 1801 (Fed. Cir. 2018) (quoting *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1368, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012)); TMEP §1207.01(b). The proper focus is on the recollection of the average purchaser, who retains a general rather than specific impression of trademarks. *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) (citing *In re St. Helena Hosp.*, 774 F.3d 747, 750-51, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014); *Geigy Chem. Corp. v. Atlas Chem. Indus., Inc.*, 438 F.2d 1005, 1007, 169 USPQ 39, 40 (CCPA 1971)); TMEP §1207.01(b). Here, the general impression of the marks is that they both evoke images of camping in relation to various cosmetics, creams, and oils.

Therefore, Applicant’s arguments regarding the differences between the marks, with Applicant’s mark containing a highly suggestive modifying term added to registrant’s mark, are unpersuasive. The marks share a very similar commercial impression due to the shared wording, CAMPER, which is the entirety of registrant’s mark. The trademark examining attorney has made a sufficient showing that the marks are sufficiently similar in terms of their overall commercial impression to cause a likelihood of confusion. In contrast, Applicant asserts that the respective marks do not share the same commercial impression, but Applicant provides neither evidence nor convincing arguments to support its assertion. A Section 2(d) refusal requires a comparison of marks in their entireties, and the addition of a highly suggestive modifying term to registrant’s mark does not change the overall commercial impression between Applicant’s and registrant’s mark in this case. Finally, where the goods of an applicant and registrant are “similar in kind and/or closely related,” the degree of similarity between the marks required to support a finding of likelihood of confusion is not as great as in the case of diverse goods. *In*

*re J.M. Originals Inc.*, 6 USPQ2d 1393, 1394 (TTAB 1987); *see Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 1242, 73 USPQ2d 1350, 1354 (Fed. Cir. 2004); TMEP §1207.01(b).

III. THE GOODS AT ISSUE ARE RELATED BECAUSE THEY ARE OVERLAPPING AND OFTEN MANUFACTURED, PRODUCED, AND PROVIDED FROM THE SAME SOURCE.

Applicant's insect repellent sunscreen creams are related to registrant's various cosmetics, creams, and oils because these goods are highly overlapping and complementary goods that are often made, advertised, and sold by the same companies to the same consumers. First, comparing only the identifications themselves shows that the goods are significantly overlapping and/or highly complementary. Furthermore, even when comparing the various types of goods in the market, the evidence shows that the same companies make, advertise, and sell all of these types of goods.

The compared goods need not be identical or even competitive to find a likelihood of confusion. *See On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); TMEP §1207.01(a)(i). They need only be "related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that [the goods] emanate from the same source." *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)); TMEP §1207.01(a)(i).

Determining likelihood of confusion is based on the description of the goods stated in the application and registration at issue, not on extrinsic evidence of actual use. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 1307, 128 USPQ2d 1047, 1052 (Fed. Cir. 2018) (citing *In re i.am.symbolic, llc*, 866 F.3d 1315, 1325, 123 USPQ2d 1744, 1749 (Fed. Cir. 2017)).

In this case, the registration uses broad wording to describe "body creams; cosmetic creams; cosmetics," which presumably encompasses all goods of the type described, including Applicant's more

narrow “insect repellent sunscreen creams containing glitter.” See, e.g., *In re Solid State Design Inc.*, 125 USPQ2d 1409, 1412-15 (TTAB 2018); *Sw. Mgmt., Inc. v. Ocinomled, Ltd.*, 115 USPQ2d 1007, 1025 (TTAB 2015). Thus, these goods of Applicant and registrant are legally identical. See, e.g., *In re i.am.symbolic, llc*, 127 USPQ2d 1627, 1629 (TTAB 2018) (citing *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp., Inc.*, 648 F.2d 1335, 1336, 209 USPQ 986, 988 (C.C.P.A. 1981); *Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1745 (TTAB 2014); *Baseball Am. Inc. v. Powerplay Sports Ltd.*, 71 USPQ2d 1844, 1847 n.9 (TTAB 2004)).

Additionally, the goods of the parties have no restrictions as to nature, type, channels of trade, or classes of purchasers and are “presumed to travel in the same channels of trade to the same class of purchasers.” *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1268, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002)). Thus, Applicant’s and registrant’s goods are related.

Furthermore, Applicant’s goods are related to all of registrant’s goods because these goods are often made, advertised, and sold by the same companies to the same consumers. The examining attorney has entered into evidence websites for companies that provide sunscreen creams, including combination insect repellent/sunscreen creams, and various cosmetics, creams, and oils together. This evidence also establishes that the goods described in the respective identifications of goods are highly complementary because they are used for similar and often overlapping purposes. For purposes of evaluating a trademark, material obtained from the Internet is generally accepted as competent evidence. See *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 966, 82 USPQ2d 1828, 1833 (Fed. Cir. 2007); *In re Reed Elsevier Props., Inc.*, 482 F.3d 1376, 1380, 82 USPQ2d 1378, 1381 (Fed. Cir. 2007); TBMP §1208.03; TMEP §710.01(b).

The following is a list of the sources entered into evidence by the examining attorney:

- BadgerBalm.com

- Illustrative Use: Shows the offering of sunscreen creams, including those combined with insect repellants, and various cosmetic balms, moisturizers, oils, soaps, and pomades under the same mark, indicating that these goods are made, advertised, and sold by the same company. See Initial Office Action, TSDR attachment pgs. 5-12 and Request for Reconsideration Denial, TSDR attachment pg. 16.
- ClarinsUSA.com
  - Illustrative Use: Shows the offering of sunscreen creams and various cosmetic creams, lotions, serums, cleansers, moisturizers, makeup products, oils, and shaving products under the same mark, indicating that these goods are made, advertised, and sold by the same company. See Initial Office Action, TSDR attachment pgs. 13-25.
- Neutrogena.com
  - Illustrative Use: Shows the offering of sunscreen creams and various cosmetic creams, sun-tanning oils, cleansers, toners, moisturizers, serums, makeup products, shaving products, and shampoos under the same mark, indicating that these goods are made, advertised, and sold by the same company. See Initial Office Action, TSDR attachment pgs. 26-30.
- SunshineGlitter.com (Applicant's website)
  - Illustrative Use: Shows the offering of sunscreen creams, including those combined with insect repellants and those with and without glitter, and various cosmetic creams, after-sun lotions, lip gloss, lotions, and hair detanglers under the same mark, indicating that these goods are made, advertised, and sold by the same company. See Second Office Action, TSDR attachment pgs. 2-3.
- BeautyCounter.com
  - Illustrative Use: Shows the offering of sunscreen creams and various cosmetic creams, lotions, oils, balms, cleansers, soaps, makeup removers, facial masks, mists, body butters, shampoos, conditioners, scrubs, and makeup products under the same mark, indicating that these goods are made, advertised, and sold by the same company. See Final Office Action, TSDR attachment pgs. 10-21.
- HawaiianTropic.com
  - Illustrative Use: Shows the offering of sunscreen creams and various cosmetic lotions, balms, tanning lotions, tanning oils, and moisturizers under the same mark, indicating that these goods are made, advertised, and sold by the same company. See Final Office Action, TSDR attachment pgs. 22-25.
- Murad.com
  - Illustrative Use: Shows the offering of sunscreen creams and various cosmetic creams, serums, gels, masks, moisturizers, lotions, toners, and cleansers under the same mark, indicating that these goods are made, advertised, and sold by the same company. See Final Office Action, TSDR attachment pgs. 26-31.
- ULTA.com

- Illustrative Use: Shows the offering of sunscreen creams, including those containing glitter and, more specifically, applicant's own goods, and various cosmetics, skin care products, bath and body products, makeup, and fragrances in the same channels of trade. See Final Office Action, TSDR attachment pgs. 32-43.
- Avon.com
  - Illustrative Use: Shows the offering of sunscreen creams and other sunscreen products, including those combined with insect repellants, and various cosmetics, skin care products, bath and body products, makeup, and fragrances under the same mark, indicating that these goods are made, advertised, and sold by the same company. See Request for Reconsideration Denial, TSDR attachment pgs. 2-11.
- Babyganics.com
  - Illustrative Use: Shows the offering of sunscreen creams and other sunscreen products, including those combined with insect repellants, and various cosmetics, soaps, skin care products, creams, shampoos, lotions, body washes, moisturizers, oils, and ointments under the same mark, indicating that these goods are made, advertised, and sold by the same company. See Request for Reconsideration Denial, TSDR attachment pgs. 12-15.
- DeterOutdoor.com
  - Illustrative Use: Shows the offering of sunscreen products combined with insect repellants and various cosmetic lotions, balms, and soaps under the same mark, indicating that these goods are made, advertised, and sold by the same company. See Request for Reconsideration Denial, TSDR attachment pgs. 17-18.

Applicant argues that the goods are “completely unrelated” and then focuses only on registrant’s sun-tanning oils. See Applicant’s Appeal Brief at pgs. 8-9. Applicant does not address any of the evidence provided by the examining attorney that clearly shows relatedness of the goods and merely states that “[s]un-tanning oil is a completely different product, sold in a different market, for a different purpose, than insect repellent sunscreen creams with glitter.” See Applicant’s Appeal Brief at pg. 9. First, this is an improper limitation of the goods listed in the registration, which, as discussed above, includes the broadly worded body creams, cosmetic creams, and cosmetics. Additionally, as to the other non-encompassing goods, including sun-tanning oil, the fact that the goods of the parties differ is not controlling in determining likelihood of confusion. The issue is not likelihood of confusion between particular goods, but likelihood of confusion as to the source or sponsorship of those goods. *In*

*re Majestic Distilling Co.*, 315 F.3d 1311, 1316, 65 USPQ2d 1201, 1205 (Fed. Cir. 2003); *In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993); TMEP §1207.01.

Therefore, Applicant's First Response, Applicant's Second Response, Applicant's Request for Reconsideration, and Applicant's Appeal Brief do not, notably, contest the related nature of the goods at issue. The relatedness of these goods, when coupled with the similar marks at issue, results in a likelihood of confusion with the cited registration. When confronted by legally related goods bearing the similar marks at issue, consumers are likely to arrive at the mistaken conclusion that the goods originate from the same source.

### **CONCLUSION**

Applicant's and registrant's marks are confusingly similar in appearance, meaning, sound, and overall commercial impression, and Applicant and registrant share highly related goods. As such, Applicant's applied-for mark must be refused registration so as to avoid a likelihood of confusion with registrant's mark. In light of the foregoing, the examining attorney respectfully requests the Board affirm the examining attorney's refusal to register Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d).

Respectfully submitted,

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