

ESTTA Tracking number: **ESTTA982102**

Filing date: **06/20/2019**

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

Proceeding	87728983
Applicant	PCS Petroleum LLC
Applied for Mark	KP QUIK STOP
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Submission	Reply Brief
Attachments	2019-06-20 KP QUIK STOP Logo Reply Brief - FINAL.pdf(573301 bytes)
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Date	06/20/2019

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

Serial No. 87/728,983

Applicant: PCS Petroleum, LLC



Mark:

Examining Atty: Dana Dickson
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APPLICANT'S *EX PARTE* REPLY BRIEF

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COMES NOW Applicant, PCS Petroleum, LLC, and hereby submits this Reply Brief in response to the Examining Attorney’s brief filed June 5, 2019. Applicant has appealed the



Examining Attorney’s refusal to register Applicant’s mark (“KP QUIK STOP & Design Mark”) on the grounds of a likelihood of confusion with the mark in Registration No. 2,597,731, KWIK STOP standard character mark, pursuant to Trademark Act § 2(d), 15 U.S.C. § 1052(d).

The term “KP” in Applicant’s KP QUIK STOP & Design Mark is significantly larger in size, thicker in appearance, and encompasses the majority of the mark, and thus it is likely that consumers will more easily see the term “KP” from afar, rather than the terms “QUIK” and



“STOP.”¹ Consumers encountering Applicant’s mark, therefore, are likely to shorten the mark to KP given its visibility and given the dilution of the terms “QUICK” and “STOP.” “[U]sers of language have a universal habit of shortening full names – from haste or laziness or just economy of words. Examples are: automobile to auto; telephone to phone; necktie to tie; gasoline service station to gas station.” *In re Abcor Development Corp.*, 200 USPQ 215, 219 (CCPA 1978) (J. Rich, concurring); *see also Giant Food, Inc. v. Nation’s Foodservice, Inc.*, 218 USPQ 390, 395 (Fed. Cir. 1983); *Marshall Field & Co. v. Mrs. Fields Cookies*, 25 USPQ2d 1321, 1333 (TTAB 1992); *Big M Inc. v. The United States Shoe Co.*, 228 USPQ 614, 616 (TTAB 1985). Under such circumstances, consumers are not likely to mistakenly believe

¹ The Examining Attorney mischaracterizes Applicant’s argument regarding the dominance of the term “KP.” *See* Examiner’s Brief at 4. Applicant asserts that the marks, viewed in their entireties, are distinguishable as the dominant portion of Applicant’s mark, KP, is not present in Registrant’s KWIK STOP mark. The Examining Attorney attempts to misinform the Board that Applicant believes its mark should be viewed as solely “KP.”

that Applicant's KP QUIK STOP & Design Mark is confusingly similar to KWIK STOP.

The Examining Attorney improperly focuses on the wording in Applicant's mark, without giving due consideration to the design, appearance, and commercial impression. In fact, the Examining Attorney concludes that the marks are confusingly similar because they "consist in large part or entirely of phonetic equivalents of the term "QUICK" (either "QUIK" or "KWIK") immediately followed by the term "STOP." Examiner's Brief at 4. As such, the Examining Attorney primarily focuses on the sound of the marks, not the appearance and commercial impression.² The traffic sign design element of Applicant's mark, however, catches the consumer's eye as it lightheartedly instructs consumers to stop at its retail convenience store, much like a traffic sign provides a road user with specific guidelines, such as the speed limit, indication of lanes merging, and stopping. *See, e.g., Parfums de Coeur Ltd. v. Lazarus*, 83 USPQ2d 1012, 1016 (TTAB 2007) ("...the design is very noticeable and has the effect of catching the eye and engaging the viewer before the viewer looks at the word BODYMAN."). The fact that the traffic sign design element is not entirely red or that its not in an octagonal shape does not affect the commercial impression of Applicant's mark.³

In addition, the Examining Attorney's assertion that the term "KP" in Applicant's KP QUIK STOP & Design Mark will be viewed as a house mark is without any evidentiary support. *See* Examiner's Brief at 4 ("Moreover, to the extent that **KP** will be viewed as a house mark, adding a house mark to an otherwise confusingly similar mark will not obviate a likelihood of confusion under Section 2(d).") (emphasis in original). There is no evidence in the record to support the proclamation that consumers would view the "KP" in Applicant's mark as a house

² Applicant notes that the marks, in their entireties, do not sound the same as Applicant's mark includes the unshared term "KP," and the remaining wording is weak and diluted.

³ The Examining Attorney's argument regarding the color and shape of the traffic sign design element lacks merit as the message of Applicant's mark, nevertheless, playfully connotes an association of a highway stop and traveling. *See* Examiner's Brief at 6.

mark. Nothing in the record suggests that the term “KP” is used in a manner that creates a commercial impression of a house mark.

Applicant introduced 36 third-party registrations to demonstrate that the term “QUICK” is weak and diluted for retail convenience store and gas services. Despite the Examining Attorney’s assertion to the contrary, active third-party registrations, are relevant to show that a mark **or a portion of a mark** (in this case, the word “QUICK”) is descriptive, suggestive, or so commonly used in a particular industry that the public will look to other elements to distinguish the source of the goods and services. *Juice Generation, Inc. v. GS Enters. LLC*, 115 USPQ2d 1671, 1675 (Fed. Cir. 2015). The number of third-party registered marks all owned by different entities indicates that “QUICK” is highly suggestive as applied to retail convenience store and gas services. The term “QUICK,” in this context alludes to services that are fast and speedy, such as filling up one’s gas tank, or grabbing coffee. Consequently, the Examining Attorney’s proclamation that “[n]one of the third-party registrations” establish that Registrant’s mark is weak and diluted lacks support.

Applicant further notes that it is not challenging the validity of the cited registration; rather, Applicant, through the submission of third-party use and registration evidence of marks containing the term “QUICK” and/or the phrase “QUICK STOP,” illustrates that Registrant’s KWIK STOP mark is entitled to a narrow scope of protection, such that Applicant’s mark can coexist on the Principal Register without any likelihood of confusion. The Examining Attorney attempts to invalidate the majority of Applicant’s third-party use and registration evidence, asserting that the evidence does not establish that the wording “QUICK STOP” is weak and diluted. However, a large portion of Applicant’s third-party use evidence shows third parties using the phrase “QUICK STOP” for related retail convenience store, gas and alcoholic beverage

services. See Table 1, below, Applicant’s RFR of January 11, 2019, Exhibits S-JJ.

<i>Table 1: Third-Party Common Law Marks</i>	
	
	
	
	
	
	
<p>JOHN'S QWIK STOP (319) 472-5137 bp 814 C Avenue</p> <ul style="list-style-type: none"> • Self Serve Gas • Cold Pop & Beer • Cigarettes • Proudly Serving Our Local Community  	
	

	
	
	
	

Applicant’s third-party use evidence shows 18 common law uses of marks containing the phrase “QUICK STOP” (with various spellings) for related retail convenience store, gas and alcoholic beverage services. “The purpose of a defendant introducing third-party uses it to show that customers have become so conditioned by a plethora of such similar marks that consumers ‘have been educated to distinguish between different such marks on the bases of minute distinctions.’” *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005). This evidence, therefore, is not only highly probative for purposes of demonstrating that there is no likelihood of confusion between the marks, but also indicates that consumers have become conditioned to encountering marks containing the phrase “QUICK STOP” and focusing on other features of the marks to determine source. Contrary to the Examining Attorney’s meritless assertions, the sixth *du Pont* factor, the number and nature of similar marks in use on similar goods, does **not** favor a finding of likelihood of confusion.

By reason of the arguments contained herein and those incorporated in Applicant's Appeal Brief, there is no likelihood of confusion between KP QUIK STOP & Design Mark and KWIK STOP. Applicant's mark is different from the cited mark in appearance, meaning, and overall commercial impression. "No mechanical rule determines likelihood of confusion, and each case requires weighing of the facts and circumstances of the particular mark." *In re Mighty Leaf*, 94 USPQ2d 1257, 1259 (Fed. Cir. 2010). Given the extensive evidence of third-party use of marks containing "QUICK STOP," consumers will rely on the other elements of the marks and their commercial impressions as a whole to distinguish the marks. *See Sure-Fit Products Co. v. Saltzon Drapery Co.*, 117 USPQ 295, 297 (CCPA 1958); *Puma-Sportschuhfabriken Rudolf Dassler KG v. Superga Spa*, 210 USPQ 316, 317 (TTAB 1980) (where plaintiff adopts a commonly used mark, "his competitors may come closer to his mark without violating his rights than would be the case with a strong mark").

WHEREFORE, Applicant respectfully requests that the Board REVERSE the statutory refusal pursuant to Trademark Act §2(d) and allow the Application to proceed to publication.

Dated this 20th day of June, 2019.

Respectfully submitted,



Erik M. Pelton