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

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| Applicant | PCS Petroleum LLC |
| Applied for Mark | KP QUIK STOP |
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**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: Jennifer D. Richardson
Law Office 113

APPLICANT'S EX PARTE APPEAL BRIEF

TABLE OF CONTENTS

TABLE OF CONTENTS ii

INDEX OF CITATIONS iii

PROSECUTION HISTORY4

SUMMARY OF EVIDENCE.....5

ARGUMENT.....9

 I. Applicant’s Mark is Dissimilar in Appearance, Sound, Connotation, and Commercial Impression..... 10

 II. The Shared Pronunciation of the Term “QUICK” is Weak and Diluted, Entitling Registrant’s Mark to a Narrower Scope of Protection. 13

 A. The Shared Terms “QUICK” and “STOP” Are Conceptually Weak and Highly Suggestive. 14

 B. The Term “QUICK” is Commercially Weak and Diluted..... 15

CONCLUSION.....22

INDEX OF CITATIONS

Cases:

| | |
|--|------------|
| <i>Bass Pro Trademarks, L.L.C. v. Sportsman’s Warehouse, Inc.</i> , 89 USPQ2d 1844 (TTAB 2008) | 11-12 |
| <i>Citigroup Inc. v. Capital City Bank Grp., Inc.</i> , 98 USPQ2d 1253 (Fed. Cir. 2011)..... | 14 |
| <i>G.H. Mumm & Cie v. Desnoes & Geddes, Ltd</i> , 16 USPQ2d 1635 (Fed. Cir. 1990) | 12 |
| <i>General Mills, Inc. v. Health Valley Foods</i> , 24 USPQ2d 1270 (TTAB 1992)..... | 18 |
| <i>In re Broadway Chicken Inc.</i> , 38 USPQ2d 1559 (TTAB 1996)..... | 15 |
| <i>In re Chippendales USA, Inc.</i> , 96 USPQ2d 1681 (Fed. Cir. 2010) | 13 |
| <i>In re E.I. du Pont de Nemours & Co.</i> , 177 USPQ 563 (CCPA 1973) | 10 |
| <i>In re Nat’l Data Corp.</i> , 753 F.2d 1056 (Fed. Cir. 1985)..... | 10, 11 |
| <i>Jack Wolfskin Ausrustung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.</i> , 116 USPQ2d 1129 (Fed. Cir. 2015)..... | 15 |
| <i>Juice Generation, Inc. v. GS Enterprises LLC</i> , 115 USPQ2d 1671 (Fed. Cir. 2015)..... | 10, 11, 15 |
| <i>King Candy Co. v. Eunice King's Kitchen, Inc.</i> , 182 USPQ 108 (CCPA 1974) | 23 |
| <i>Knight Textile Corp. v. Jones Inv. Co.</i> , 75 USPQ2d 1313 (TTAB 2005)..... | 13 |
| <i>Nat’l Cable Television Ass’n v. Am. Cinema Editors, Inc.</i> , 19 USPQ2d (BNA) 1424 (Fed. Cir. 1991) | 18 |
| <i>Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 17723</i> , 73 USPQ2d 1689 (Fed. Cir. 2003)..... | 11 |
| <i>Presto Prods., Inc. v. Nike-Pak Prods., Inc.</i> , 9 USPQ2d 1895 (TTAB 1988) | 11 |
| <i>Safer, Inc. v. OMS Invs., Inc.</i> , 94 USPQ2d 1031 (TTAB 2010)..... | 13-14 |
| <i>Standard Brands, Inc. v. RJR Foods, Inc.</i> , 192 USPQ 383 (TTAB 1976)..... | 22 |

Statutes:

| | |
|---|-------------|
| Trademark Act Section 2(d), 15 U.S.C. § 1052(d) | 4, 5, 9, 23 |
|---|-------------|

Other:

| | |
|-----------------------------|----|
| TMEP § 1207.01(b)(vi) | 23 |
|-----------------------------|----|

Applicant, PCS Petroleum, LLC, respectfully appeals the Examining Attorney’s refusal to



register Applicant’s mark, namely the mark in Application Serial No. 87/728,983 (“Applicant’s Mark”). The Examining Attorney’s refusal on the grounds that Applicant’s Mark, for use in connection with retail convenience stores in International Class 35 is likely to be confused with the registered KWIK STOP mark (Registration No. 2,597,731) for retail convenience store services featuring gasoline, other petroleum products and alcoholic beverages in International Class 35, pursuant to Trademark Act § 2(d), 15 U.S.C. § 1052(d), is inappropriate because the marks are distinguishable based on appearance, sound, and commercial impression. Further, the shared term “QUICK” is relatively weak, both conceptually and commercially, when used in connection with retail convenience store services,¹ and thus consumers will be able to differentiate the marks, demonstrating that confusion is unlikely.

PROSECUTION HISTORY

Applicant’s standard character mark application was filed on December 20, 2017,



seeking registration on the Principal Register for the mark (“KP QUIK STOP & Design Mark”) for use in connection with “[r]etail convenience stores” in International Class 35.

On April 6, 2018, the Examining Attorney issued an officiation, refusing to grant

¹ Note that Applicant is not attempting to collaterally attack the validity of the cited registration. Rather, Applicant merely asserts that the cited registration is entitled to only a narrow scope of protection due to the relatively weak and diluted nature of the shared term “QUICK.”

registration on the Principal Register under Section 2(d), 15 U.S.C. § 1052(d), with Registration No. 2,597,731 for KWIK STOP in standard characters for “[r]etail convenience store services featuring gasoline, other petroleum products and alcoholic beverages” in International Class 35. The Examining Attorney also required an identification of services amendment, color claim amendment, and mark description amendment. The Examining Attorney noted that prior pending Application Serial No. 87/322,488, if registered, may cause grounds for a potential refusal pursuant to Trademark Act Section 2(d).

On June 20, 2018, Applicant filed an Office Action response arguing against the Section 2(d) refusal, incorporating amended language for its identification of services, color claim, and mark description, and noting that prior pending Application Serial No. 87/322,488 was abandoned.

On July 12, 2018, the Examining Attorney issued a Final Office Action, maintaining the Section 2(d) refusal with the KWIK STOP registered mark. The Examining Attorney withdrew the potential refusal with respect to prior pending Application Serial No. 87/322,488.

On January 11, 2019, Applicant filed a Request for Reconsideration and a Notice of Appeal to the Board. In its Request for Reconsideration, Applicant incorporated additional evidence to demonstrate that its mark is distinguishable from the cited registration, including third-party registrations, and website use-based third-party evidence.

On February 1, 2019, the Examining Attorney denied the Request for Reconsideration.

SUMMARY OF EVIDENCE

Examining Attorney’s Evidence

1. Office Action of April 6, 2018

- Information for Registration No. 2,597,731 for the mark KWIK STOP in standard characters;

- Information for prior pending Application Serial No. 87/322,488 for the mark



2. Final Office Action of July 12, 2018

- Definition of “quick,” *Merriam-Webster.com*;
- Definition of “quick,” *Macmillandictionary.com*.

3. Reconsideration Letter of February 1, 2019

- Applicant notes that the Examining Attorney did not submit any evidence with the Reconsideration Letter.

Applicant’s Evidence

1. Office Action Response of June 20, 2018

- **Exhibit A:** Third-party Registration Certificate Nos. 2232976; 2259414; 2106684; 4512986; 2778265; 2854739; 2490372; 3504069; 3691040; 3587971; 3566430; 3722388; 2707063; 3148758; 4165271; 4419806; 4534669; 3900107; 5251402; 4920631; 4114584; 4671643; 4671645; 5112561; 5122110; 1593571; 4371479; 1288389; 1274616; 1853825; 2169971; 1637838; 1572423; 1309455; and 1962292.
- **Exhibit B:** *Home page*, QUICK SHOP, <http://www.qshop.us/> (last visited June 4, 2018).
- **Exhibit C:** *Facebook page for Quick Stop Groceries*, THE QUICKSTOP, <https://www.facebook.com/The-Quickstop-261273361530/?rf=131455390325660> (last visited June 4, 2018).
- **Exhibit D:** *About*, SUPER QUIK, [http://www.superquik.net/about\(1\).html](http://www.superquik.net/about(1).html) (last visited June 4, 2018).
- **Exhibit E:** *Home page*, QUICK DISPENSE INC., <http://quickdispense.com/category/convenience-store/> (last visited June 4, 2018).
- **Exhibit F:** *About*, QUIK-E, <http://quikefoods.com/about/> (last visited June 4, 2018).
- **Exhibit G:** *Home page*, QUIK SHOPPE FOOD STORES, <http://quikshoppe.com/> (last visited June 4, 2018).
- **Exhibit H:** *Home page*, AVON QUICK MART, <http://avonquickmart.com/> (last visited June 4, 2018).
- **Exhibit I:** *Home page*, SHOP QUICK, <http://shop-quick.business.site/> (last visited June 4, 2018).
- **Exhibit J:** *About Us*, DAD’S QUIK MART, <http://dadsquikmart.com/about-us/> (last visited June 4, 2018).
- **Exhibit K:** *Home page*, K & B KWIK STOP, <http://kbkwikstop.com/> (last visited June 4, 2018).
- **Exhibit L:** *Home page*, BELSCHES KWIK STOP, <http://www.belscheskwikstop.com/> (last visited June 4, 2018).

- **Exhibit M:** *About Us*, MIKE’S QUICK STOP, <http://mikesquickstop.com/aboutus.htm> (last visited June 4, 2018).
- **Exhibit N:** *Facebook page for Sam’s Quik Shop*, SAM’S QUIK SHOP, <https://www.facebook.com/SamsQuikShop919/> (last visited June 4, 2018).
- **Exhibit O:** *Facebook page for Sam’s Quick Stop*, SAM’S QUICK STOP, <https://www.facebook.com/Sams-Quick-Stop-1674867689417620/> (last visited June 4, 2018).

2. Request for Reconsideration of January 11, 2019

- **Exhibit P:** Definition of “quick,” *Merriam-Webster Online Dictionary*, <https://www.merriam-webster.com/dictionary/quick> (last visited Jan. 3, 2019).
- **Exhibit Q:** Definition of “stop,” *Merriam-Webster Online Dictionary*, <https://www.merriam-webster.com/dictionary/stop> (last visited Jan. 3, 2019).
- **Exhibit R:** Third-Party Registration Certificate No. 5,402,792.
- **Exhibit S:** *About*, KWIK STOP, <http://www.kwikstop.org/about/> (last visited Jan. 3, 2019).
- **Exhibit T:** *Home page*, FIELDSTONE QUICKSTOP, <http://www.fieldstonequickstop.com/> (last visited Jan. 4, 2019).
- **Exhibit U:** *John’s Qwik Stop*, PARISHES ONLINE, <https://www.parishesonline.com/find/johns-qwik-stop> (last visited Jan. 3, 2019).
- **Exhibit V:** *About Us*, JORDAN’S KWIK STOP, <http://www.jordanskwikstopinc.com/about/> (last visited Jan 3, 2019).
- **Exhibit W:** *Home page*, KD QUIK STOP, <http://www.kdquikstop.com/> (last visited Jan 3, 2019).
- **Exhibit X:** *KJ’s Kwik Stop*, KJ’S SUPER STORES, <https://kjsuperstores.com/kjs-kwik-stop/> (last visited Jan. 3, 2019).
- **Exhibit Y:** *Home page*, KWIK STOP FOODS, <https://www.kwikstopfoods.com/> (last visited Jan. 3, 2019).
- **Exhibit Z:** *Home page*, KWIK STOP MUFFLER AND BRAKE, <http://www.kwikstopmufflerandbrake.com/> (last visited Jan. 3, 2019).
- **Exhibit AA:** *Loomis Kwik Stop*, OKANOGAN COUNTRY, <https://www.okanogancountry.com/poi/loomis-kwik-stop> (last visited Jan. 3, 2019).
- **Exhibit BB:** *About Us*, QUICK STOP, <http://www.quickstopnj.com/about-us> (last visited Jan. 3, 2019).
- **Exhibit CC:** *Home page*, QUICK STOP DELI, <http://quickstopdeli.net/> (last visited Jan. 4, 2019).
- **Exhibit DD:** *Home page*, QUICK STOP DELI, <http://www.quickstopdelipa.com/> (last visited Jan. 3, 2019).
- **Exhibit EE:** *Quick Stop Market*, GATE CITY BUSINESS DIRECTORY,

<http://www.gcvabusiness.com/listings/quik-stop-market/> (last visited Jan. 3, 2019).

- **Exhibit FF:** *Home page*, QUIK-STOP PHARMACY, <https://www.qstoppharmacy.com/about-us> (last visited Jan. 3, 2019).
- **Exhibit GG:** *Qwik Stop II*, FACEBOOK, https://www.facebook.com/Qwik-Stop-ll-1418958135010340/?ref=page_internal (last visited Jan. 3, 2019).
- **Exhibit HH:** *Home page*, SCOTT'S QUIK STOP, <http://scottsquikstop.com/> (last visited Jan. 3, 2019).
- **Exhibit II:** *Surry Quick Stop*, CITGO, <http://gas-stations.citgo.com/va/surry/23883/11965-rolfe-hwy> (last visited Jan. 3, 2019).
- **Exhibit JJ:** *Home page*, UNDERWOOD QUIK-STOP & CAFÉ, <http://underwoodquikstop.com/> (last visited Jan. 3, 2019).
- **Exhibit KK:** Specimens for third-party Registration Nos. 5,402,792; 2232976; 2259414; 2106684; 4512986; 2778265; 2854739; 2490372; 3504069; 3691040; 3587971; 3566430; 3722388; 2707063; 3148758; 4165271; 4419806; 4534669; 3900107; 5251402; 4920631; 4671643; 4671645; 5112561; 5122110; 1593571; 4371479; 1288389; 1274616; 1853825; 2169971; 1637838; 1572423; 1309455; and 1962292.
- **Exhibit LL:** *Home page*, KWIKSHOP, <https://www.kwikshop.com/> (last visited Jan. 4, 2019).
- **Exhibit MM:** *Lukoil Kwik Farms*, YELP!, <https://www.yelp.com/biz/lukoil-kwik-farms-philadelphia> (last visited Jan. 4, 2019).
- **Exhibit NN:** *Kent Kwik*, THE KENT COMPANIES, <https://thekentcompanies.com/kent-kwik.php> (last visited Jan. 7, 2019).
- **Exhibit OO:** *Home page*, QUIK MART, <http://www.quikmartstores.com/> (last visited Jan. 4, 2019).
- **Exhibit PP:** *About Us*, JOHNNY QUIK FOOD STORES, <https://www.johnnyquik.com/about-us> (last visited Jan. 4, 2019).
- **Exhibit QQ:** *About Us*, DOUBLE QUICK, <https://www.doublequick.com/about-us/> (last visited Jan. 7, 2019).
- **Exhibit RR:** *About*, QUIKTRIP, https://www.quiktrip.com/About/About_QT (last visited Jan. 4, 2019).
- **Exhibit SS:** *Home page*, KWIK TRIP, <https://www.kwiktrip.com/> (last visited Jan. 4, 2019).
- **Exhibit TT:** *Redner's Quick Shoppe*, INDEED, <https://www.indeed.com/cmp/Redner's-Quick-Shoppe/reviews> (last visited Jan. 4, 2019).
- **Exhibit UU:** *Our Story*, QUICK CHEK, <https://quickchek.com/our-story/> (last visited Jan. 4, 2019).
- **Exhibit VV:** *Optima Quick Mart*, Foursquare, <https://foursquare.com/v/optima->

- quick-mart/4c363bc50a71c9b648c73cc9/photos (last visited Jan. 4, 2019).
- **Exhibit WW:** *Savings – Loyalty Programs – Kwik Bucks*, KWIK TRIP, <https://staging.kwiktrip.com/Savings/Loyalty-Programs/Kwik-Bucks> (last visited Jan. 4, 2019).
 - **Exhibit XX:** *B-Quik*, BENNY’S CAR WASH, <https://www.bennyscarwash.com/b-quik/> (last visited Jan 4, 2019).
 - **Exhibit YY:** *Rite Quik*, FOURSQUARE, <https://foursquare.com/v/rite-quik/519fb174498ee955c9a6332a> (last visited Jan. 4, 2019).
 - **Exhibit ZZ:** *Unbranded Fuel Distribution*, MARTIN EAGLE OIL, <https://www.martineagle.com/unbranded-fuel/> (last visited Jan. 4, 2019).
 - **Exhibit AAA:** *Home page*, KWIKER LIQUOR, <http://www.kwikerliquor.com/> (last visited Jan. 4, 2019).
 - **Exhibit BBB:** *Kwick Pantry Lombard*, FACEBOOK, <https://www.facebook.com/KwickPantryLombard/> (last visited Jan 4, 2019).
 - **Exhibit CCC:** *About Us*, GPM INVESTMENTS, <https://gpminvestments.com/about-us/> (last visited Jan. 4, 2019).
 - **Exhibit DDD:** *About Us*, QUICKLEE’S, <https://www.quicklees.com/about-us/> (last visited Jan. 4, 2019).
 - **Exhibit EEE:** *Home page*, KWIK FILL, <https://www.kwikfill.com/> (last visited Jan. 4, 2019).
 - **Exhibit FFF:** *Quik Serv*, WINE ENERGY, <https://www.wineenergyva.com/quikserv.html> (last visited Jan. 4, 2019).

ARGUMENT

The Examining Attorney has refused registration pursuant to Trademark Act § 2(d), 15 U.S.C. § 1052(d), on grounds that Applicant’s KP QUIK STOP & Design Mark for retail convenience store services is likely to be confused with the KWIK STOP registered mark for retail convenience store services featuring gasoline, other petroleum products and alcoholic beverages. Applicant’s mark is not likely to be confused with the cited registration, as Applicant’s mark is different in appearance, sound, and commercial impression, and Registrant’s KWIK STOP mark is entitled to a narrow scope of protection due to the widespread third-party use and registrations of marks containing the term “QUICK” for retail convenience store

services. For the following reasons, Applicant respectfully disagrees with the Examining Attorney's finding and requests that the Board reverse the statutory refusal and allow publication of the Application.

I. Applicant's Mark is Dissimilar in Appearance, Sound, Connotation, and Commercial Impression.

When determining whether marks are similar, it is important to compare the marks in their entireties "as to appearance, sound, connotation and commercial impression." *In re E.I. Du Pont de Nemours & Co.*, 177 USPQ 563, 567 (CCPA 1973). A finding of "likelihood of confusion cannot be predicated on dissection of a mark, that is, on only part of a mark." *See In re Nat'l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985). The Examining Attorney's finding that Applicant's and Registrant's marks are substantially similar not only fails to compare the marks in their entireties, but also fails to appreciate the significant differences in appearance, sound, connotation and commercial impression between the marks.

It is not enough to simply note that Applicant's KP QUIK STOP & Design Mark shares a component with Registrant's KWIK STOP mark. Rather, marks must be compared in their entireties to determine likelihood of confusion because likelihood of confusion depends on the overall impression of the marks. The Federal Circuit in *Juice Generation* stated as follows:

The Board paid insufficient heed to that important principle in analyzing the three-word combination "PEACE LOVE AND JUICE." The Board declared that "PEACE LOVE" is the "dominant" portion of that combination, compared that portion to GS's "PEACE & LOVE" phrase, found that they are "virtually identical," and then simply added that "the additional disclaimed word 'JUICE' . . . do[es] not serve to sufficiently distinguish" Juice Generation's mark from GS's marks. *GS Enters.*, 2014 WL 2997639, at *5-6. That analysis is inadequate. It does not display any consideration of how the three-word phrase in Juice Generation's mark may convey a distinct meaning—including by having different connotations in consumers' minds—from the two-word phrase used by GS. *Cf. Packard Press, Inc. v. Hewlett-Packard Co.*, 227 F.3d 1352, 1357 (Fed. Cir. 2000) ("To be sure, the Board stated that it had considered the marks in their entireties. But this statement, absent further explanation of the agency's reasoning, is simply

insufficient for proper review of PTO factfinding.” (citation omitted)).

Juice Generation, Inc. v. GS Enterprises LLC, 115 USPQ2d 1671, 1676 (Fed. Cir. 2015). In *Juice Generation*, the Federal Circuit held that the Board failed to give appropriate weight to the term JUICE in consideration of the relatedness of the PEACE LOVE JUICE & Design mark to the PEACE & LOVE mark in the cited registration, particularly with respect to the different commercial impressions conveyed by the marks due to the design element and additional term in Juice Generation’s mark. The decision in *Juice Generation*, therefore, indicates that the mark as applied for must be considered in its entirety.

Consumers are generally more inclined to focus on the first word, prefix or syllable in any trademark or service mark. *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 17723*, 73 USPQ2d 1689, 1692 (Fed. Cir. 2003); *see also Presto Prods., Inc. v. Nike-Pak Prods., Inc.* 9 USPQ2d 1895, 1897 (TTAB 1988)(“... it is often the first part of the mark which most likely to be impressed upon the mind of a purchaser and remembered. . .” when making purchasing decisions). One feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. *See In re Nat’l Data Corp.*, 753 F.2d at 1058.

Applicant’s KP QUIK STOP & Design Mark differs in appearance and sound from Registrant’s KWIK STOP mark. The first word in Applicant’s mark is “KP,” which differentiates Applicant’s mark from the cited registration. The addition of “KP” in Applicant’s mark is likely to be impressed upon a purchaser or user of Applicant’s services because it is the first word that appears in the mark and it is significantly larger in size with bolder font. *See Bass Pro Trademarks, L.L.C. v. Sportsman’s Warehouse, Inc.*, 89 USPQ2d 1844, 1857-58 (TTAB 2008) (finding that, although cancellation petitioner’s and respondent’s marks were similar by virtue of the shared

descriptive wording “SPORTSMAN’S WAREHOUSE,” this similarity was outweighed by differences in terms of sound, appearance, connotation, and commercial impression created by other matter and stylization in the respective marks). Applicant’s mark also contains a traffic sign design element, which creates a visual and phonetic impression that is absent from Registrant’s KWIK STOP mark. *See, e.g., G.H. Mumm & Cie v. Desnoes & Geddes, Ltd*, 16 USPQ2d 1635, 1638 (Fed. Cir. 1990) (finding that a determination of likelihood of confusion must include consideration of any design elements). The addition of the traffic sign design element makes a significant contribution, lessening any potential for confusion. Finally, the term “QUIK” in Applicant’s mark is spelled differently to the term “KWIK” in Registrant’s mark; Applicant’s spelling incorporates a “QU” and Registrant’s uses a “KW,” which makes the marks visually distinguishable. Consequently, consumers will differentiate Applicant’s KP QUIK STOP & Design mark from Registrant’s KWIK STOP mark due to the added term “KP” in Applicant’s mark, traffic sign design element, and the different spellings of the term “QUICK” as QUIK and KWIK respectively.

In addition, the marks differ in meaning and commercial impression. The traffic sign design element of Applicant’s mark playfully conveys two different commercial impressions. First, a quick one-stop shop for convenience store services. Second, Applicant’s mark 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. Alternatively, Registrant’s mark suggests that its retail convenience store is a place for swift stops and purchases of gasoline and alcoholic beverages. Registrant’s mark does not convey any playful allusion to road laws and following traffic signs.

A consumer who engages with the two marks is not likely to be confused on the bases of

appearance, connotation and commercial impression. The only commonality between the marks is highly suggestive and weak, so consumers will notice the sharp differences between the marks, including additional words, design elements, and various spellings. This factor conclusively weighs against the likelihood of confusion refusal, particularly in light of the weakness of the shared pronunciation of the term “QUICK,” as discussed *supra*.

II. The Shared Pronunciation of the Term “QUICK” is Weak and Diluted, Entitling Registrant’s Mark to a Narrower Scope of Protection.

The term “QUICK” (spelled differently in each mark as QUIK and KWIK respectively) shared by Applicant’s and the cited mark is weak, diluted, and only entitled to a narrow scope of protection. In evaluating the overall strength or weakness of a mark, courts consider both conceptual and commercial strength. *See In re Chippendales USA, Inc.*, 96 USPQ2d 1681, 1686 (Fed. Cir. 2010) (“A mark’s strength is measured both by its conceptual strength (distinctiveness) and its marketplace strength (secondary meaning).”). Along with direct dictionary evidence of a term’s meaning, it is well recognized that third-party registrations are of value to the extent they indicate that a particular word, feature, or design has been adopted and registered by others in a particular field (commercial weakness), and to the extent they demonstrate a word’s meaning in the relevant field (conceptual weakness). *Knight Textile Corp. v. Jones Inv. Co.*, 75 USPQ2d 1313, 1314 (TTAB 2005) (finding that twenty three third-party registrations of the term “essentials” helped prove that both others in the field and the USPTO have considered the word ESSENTIALS to have suggestive significance as applied to clothing).

The mere fact that two marks incorporate the same common term and are used on related goods or services does not necessarily lead to the conclusion that the marks are confusingly similar. *See, e.g., Safer, Inc. v. OMS Invs., Inc.*, 94 USPQ2d 1031, 1044-45 (TTAB 2010) (holding DEER-B-GON for animal repellent and DEER AWAY and DEER AWAY PROFESSIONAL also for

animal repellent, not likely to cause confusion, noting that “DEER” is descriptive as applied to the relevant goods and thus has no source-indicating significance). Consequently, when the shared element of two marks is highly suggestive in meaning, the distinguishing features of the marks need not possess a high degree of distinctiveness to avoid overall confusion. *See, e.g., Citigroup Inc. v. Capital City Bank Grp., Inc.*, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011) (affirming the Board’s finding that contemporaneous use of CAPITAL CITY BANK marks and CITIBANK marks, both for banking and financial services, is not likely cause confusion, based, in part, on findings that the phrase “City Bank” is frequently used in the banking industry).

When the evidence in the record (i.e., dictionary definitions and third-party use and registrations) are given their proper legal weight in evaluating the weakness of the shared term “QUICK” in the marks, there is no likelihood of confusion as consumers will distinguish the marks based on differences in appearance, sound, and commercial impression.

A. The Shared Terms “QUICK” and “STOP” Are Conceptually Weak and Highly Suggestive.

The terms shared between the marks, “QUICK” and “STOP,” have little or no source identifying significance because they are highly suggestive and descriptive. The term “QUICK” is defined as “done or taking place with rapidly” or “acting or capable of acting with speed.” *See* Applicant’s Request for Reconsideration (“RFR”) of January 11, 2019, Exhibit P. The term “QUICK” is, therefore, conceptually weak and very highly suggestive with respect to convenience store services. In that context, the term QUICK references that the experience inside the retail or convenience store will be brief, short, speedy, or fast. Indeed, the term QUICK and various spellings thereof, is highly used in retail or convenience store services to describe the purpose of the visit or experience. When combined with the term “STOP,” which is defined as “to cause to give up or change a course of action,” “to cease activity or operation,” and/or “to cease to move

on,” (see Applicant’s RFR of January 11, 2019, Exhibit Q), Registrant’s KWIK STOP mark merely describes the action that a potential customer is taking when using its convenience store services. Therefore, the term “QUICK” merely serves to describe the purpose or type of “STOP,” and therefore both terms in Registrant’s mark are conceptually weak. Essentially, potential customers of Registrant and Applicant will cease operation of their vehicles to rapidly grab some snacks, groceries, coffee, gas, or whatever else is available at the convenience store and then continue to their end destination. Therefore, the terms “QUICK” and “STOP” are conceptually weak and highly suggestive of convenience store services.

B. The Term “QUICK” is Commercially Weak and Diluted.

Applicant has shown that numerous third-parties use either the phrase “QUICK STOP” or the term “QUICK” in connection with convenience and/or retail store services. See Applicant’s Office Action Response of June 20, 2018, Exhibits B-O; Applicant’s RFR of January 11, 2019, Exhibits S-JJ, LL-FFF. Evidence of the extensive registration and use of a term by others can be “powerful” evidence of weakness. *Juice Generation*, 115 USPQ2d at 1674; *Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 116 USPQ2d 1129, 1136 (Fed. Cir. 2015). Widespread third-party use evidence of a term on or in connection with the same or similar services in the marketplace is inherently probative of the term’s weakness as a trademark. *In re Broadway Chicken Inc.*, 38 USPQ2d 1559, 1565–66 (TTAB 1996) (“Evidence of widespread third-party use, in a particular field, of marks containing a certain shared term is competent to suggest that purchasers have been conditioned to look to the other elements of the marks as a means of distinguishing the source of goods or services in the field.”).

The words “QUICK” and “STOP” (and various spellings thereof) are very common in connection with retail convenience store services. Applicant has provided website evidence of at

least 32 third-parties that use such marks with convenience store services actively in the marketplace. See Table 1 below, Applicant's Office Action Response of June 20, 2018, Exhibits B-O; Applicant's RFR of January 11, 2019, Exhibits S-JJ.

| <i>Table 1: Third-Party Common Law Marks</i> | |
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|---|--|
| <p>JOHN'S QWIK STOP (319) 472-5137 814 C Avenue</p> <ul style="list-style-type: none"> • Self Serve Gas • Cold Pop & Beer • Cigarettes • Proudly Serving Our Local Community |  |
|  <p>Kwik Stop Muffler & Brake</p> | <p>KD QUIK STOP</p> |
| <p><i>Quick Stop Deli</i></p> | <p>Surry Quick Stop</p> |
| <p>LOOMIS KWIK STOP</p>  <p>Home of the... World Famous CHICKEN STRIPPER</p> |  |
|  <p>Quick Stop</p> | <p>DELI GROCERY KWIK STOP FOODS GOSHEN, NY</p> |
|  <p>QUIK-STOP PHARMACY</p> | <p>UNDERWOOD QUIK-STOP & CAFE</p> |
| <p>JORDAN'S <i>Quik Stop</i></p> | <p>KJ'S KWIK STOP</p> |
|  | <p>Fieldstone QuickStop</p> |





Use by numerous third-parties in a market reduces the individual distinctiveness of similar marks and makes confusion unlikely. *See General Mills, Inc. v. Health Valley Foods*, 24 USPQ2d 1270, 1277 (TTAB 1992) (finding that the field of “FIBER” composite marks for foods is crowded, such that there is no likelihood of confusion between FIBER ONE and FIBER 7 FLAKES both for breakfast cereals high in fiber). Similar to *General Mills*, Applicant has provided evidence in the record demonstrating that the third-party marks using the phrase “QUICK STOP” are actually in use, such as KJ’S KWIK STOP, FIELDSTONE QUICKSTOP, KWIK STOP FOODS, SURRY QUICK STOP, K & B KWIK STOP, SCOTT’S QUIK STOP, JORDAN’S KWIK STOP, and SAM’S QUICK STOP. *See* Table 1, above. Such use conditions consumers to expect different sources for different services under a commonly used mark. *Nat’l Cable Television Ass’n v. Am. Cinema Editors, Inc.*, 19 USPQ2d (BNA) 1424, 1430 (Fed. Cir. 1991) (noting that terms such as PREMIUM, SUN, BLUE RIBBON, NATIONAL, GIANT, or AMERICAN are commonly used on numerous types of related goods and services and are thus “weak” terms).

Applicant has also made of record numerous third-party registrations² (including the most recently submitted specimens of use) in the convenience store services and retail store industry having the word “QUICK.” *See* Table 2, below, Applicant’s Office Action Response of June 20, 2018, Exhibit A; Applicant’s RFR of January 11, 2019, Exhibit R, KK.

Table 2: Third-Party Registrations for “QUICK” for Retail and/or Convenience Store Services

| Mark | Reg. No. | Retail/Convenience Store Services |
|-------------|----------|---|
| QUICK STUFF | 2232976 | Class 35: retail store services featuring convenience store items and gasoline |


² Of course third-party registrations are also relevant evidence of inherent or conceptual strength of a mark or term as they are probative of how terms are used in connection with the goods or services identified in the registrations.

| | | |
|---|---------|--|
|  | 2259414 | Class 35: Retail Convenient Store Services |
| QUIKSILVER | 2106684 | Class 35: retail store services in the fields of clothing, headwear, footwear, wetsuits, luggage, bags, sunglasses, watches, jewelry and accessories |
|  | 4512986 | Class 35: Retail convenience store services |
| OPTIMA QUICK MART | 2778265 | Class 35: retail convenience store services |
| KWIK BUCKS | 2854739 | Class 35: Retail store services featuring convenience store items and gasoline, and featuring a purchase point awards program with such points redeemable for merchandise or food for program members |
| QUICK CHEK | 2490372 | Class 35: RETAIL CONVENIENCE STORE SERVICES, RETAIL PHARMACY SERVICES, AND RETAIL LIQUOR STORE SERVICES |
| RITEQUIK | 3504069 | Class 35: retail convenience stores |
| QUICK CHEK | 3691040 | Class 35: Retail gasoline supply services; retail convenience stores |
| QUICKBUY | 3587971 | Class 35: ON-LINE RETAIL STORE SERVICES FEATURING GENERAL CONSUMER MERCHANDISE, VIA A GLOBAL COMPUTER NETWORK |
|  | 3566430 | Class 35: Retail gas station and convenience store services featuring gasoline, convenience items, and automotive and petroleum products |
| QUICK CHEK | 3722388 | Class 35: Retail pharmacy services; retail liquor store services |
|  | 2707063 | Class 35: Retail convenience store services |

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|---|---------|--|
| B-QUIK | 3148758 | Class 35: Retail convenience store services featuring convenience store items and gasoline |
| QUICK TIME DELI | 4165271 | Class 35: Retail convenience store services |
| KWICK PANTRY | 4419806 | Class 35: Retail store services featuring convenience store items and gasoline |
|  | 4534669 | Class 35: Retail convenience stores; Retail gasoline supply services; Retail store services featuring convenience store items and gasoline |
| THINK QUIK | 3900107 | Class 35: Retail stores featuring convenience store items and gasoline |
|  | 5251402 | Class 35: retail store services featuring convenience store items and gasoline |
| QUICK ZIP ZIP IN ZIP OUT | 4920631 | Class 35: Retail store services featuring convenience store items and gasoline |
| QUICK FIXIN' IDEAS | 4114584 | Class 35: Retail grocery store services |
| QUICK ON THE WAY | 4671643 | Class 35: Retail convenience stores; Retail store services featuring convenience store items and gasoline; Retail store services featuring coffee, deli, food items and novelty items |
|  | 4671645 | Class 35: Retail convenience stores; Retail store services featuring convenience store items and gasoline; Retail store services featuring coffee, deli, food items and novelty items |
|  | 5112561 | Class 35: Retail store services featuring convenience store items and food and beverage products for consumption on or off the premises; automobile station services |
|  | 5122110 | Class 35: Retail store services featuring convenience store items and food and beverage products for consumption on or off the premises; automobile station services |

| | | |
|---|---------|---|
|  | 1593571 | Class 42: RETAIL CONVENIENCE STORE SERVICES |
|  | 4371479 | Class 35: Retail liquor and alcohol stores |
|  | 1288389 | Class 42: Retail Convenience Grocery Store Services |
| KWIK-SHOP | 1274616 | Class 42: Retail Grocery Store Services |
| QUIKTRIP | 1853825 | Class 37: service station services and truck fleet fueling of gasoline and diesel fuel for others Class 42: retail truck stop services |
| REDNER'S QUICK SHOPPE | 2169971 | Class 42: retail convenience store services |
| DOUBLE QUICK | 1637838 | Class 42: convenience store services |
| QUIK MART | 1572423 | Class 37: RETAIL GASOLINE SERVICE STATION SERVICES |
|  | 1309455 | Class 42: Retail Convenience Food Store Services |
|  | 1962292 | Class 37: retail gasoline station services Class 42: retail convenience store services and restaurant services |
|  | 5402792 | Class 35: Retail convenience stores; retail store services featuring convenience store items, petroleum products, and transportation fuels; retail store services featuring food and beverage products |

In addition, Applicant has searched the Internet and found use in commerce with respect to a majority of these “QUICK” third-party registrations. *See* Applicant’s RFR of January 11, 2019, Exhibits LL-FFF. For example, the mark KWIK-SHOP (Reg. No. 1,274,616) has an active website that includes store locations, specials, clubs, and rewards for its members (*see id.* at

Exhibit LL), and the mark  (Reg. No. 1,309,455) is used in commerce in West Texas, selling gasoline and various groceries and snacks. *See id.* at Exhibit NN.³ Consequently, Applicant has provided use-based evidence for many of the third-party registrations that use the term “QUICK” in connection with retail store and convenience store services.

Since the term “QUICK” and the phrase “QUICK STOP” are both commercially weak, the mere fact that Applicant’s mark shares this term and phrase with the cited mark is not sufficient to support a likelihood of confusion refusal. Rather, more weight must be accorded to the differences between the relevant services and any unshared elements of the marks, such as meanings and connotations, the traffic stop design, the different spelling of the term “QUICK,” and the additional “KP,” which appears larger and more prominent in Applicant’s mark. The widespread third-party use evidence signifies that consumers already can and do distinguish between marks containing the term “QUICK” and/or the phrase “QUICK STOP” on similar convenience store services “on the basis of minute distinctions.” *Standard Brands, Inc. v. RJR Foods, Inc.*, 192 USPQ 383, 385-386 (TTAB 1976). Accordingly, the word “QUICK” and the phrase “QUICK STOP” is rather common and diluted as used with convenience store services and no likelihood of confusion can be based on the uses of these words with convenience store services.

CONCLUSION

In sum, the only intersection between the marks is the common use of the highly suggestive and diluted term “QUICK” and/or the phrase “QUICK STOP.” Given the weak nature of the common element of the marks, the relevant purchasers are not likely to assume that these

³ A full list and description of the use-based evidence that Applicant found for the third-party registrations can be found in its Request for Reconsideration.

marks indicate a single source. *King Candy Co. v. Eunice King's Kitchen, Inc.*, 182 USPQ 108, 110 (CCPA 1974) (holding that confusion is unlikely when marks are such that the public easily distinguishes slight differences in the marks under consideration). When the marks are viewed in their entireties, the commonality of the words “QUICK” and “STOP” is not enough to conclude that there will be a likelihood of confusion. As is often the case, similarity of marks is outweighed by “the presence in the marketplace of a significant number of similar marks in use on similar goods/services,” which indicates that consumers will be likely to focus on the significant unshared wording, meaning, appearance, and overall commercial impression of Applicant’s entire mark when considering the source of Applicant’s services. TMEP § 1207.01. The addition of the term “KP” in Applicant’s mark coupled with the traffic sign design element



is sufficient to distinguish Applicant’s mark from Registrant’s KWIK STOP mark.

WHEREFORE, Applicant respectfully requests that the Board REVERSE the statutory refusal pursuant to Trademark Act Section 2(d), 15 U.S.C. § 1052(d), and allow the Application to proceed to publication.

Dated this 8th day of April, 2019.

Respectfully submitted,

Handwritten signature of Erik M. Pelton.

Erik M. Pelton