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Subject: U.S. Trademark Application Serial No. 88228569 - RILSHOP - N/A - Request for Reconsideration Denied - Return to TTAB

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United States Patent and Trademark Office (USPTO)
Office Action (Official Letter) About Applicant's Trademark Application

U.S. Application Serial No. 88228569

Mark: RILSHOP

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Applicant: Ril Enterprises Inc

Reference/Docket No. N/A

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REQUEST FOR RECONSIDERATION
AFTER FINAL ACTION
DENIED

Issue date: **April 06, 2020**

Applicant's request for reconsideration is denied. *See* 37 C.F.R. §2.63(b)(3). The trademark examining attorney has carefully reviewed applicant's request and determined the request did not: (1) raise a new issue, (2) resolve all the outstanding issue, (3) provide any new or compelling

evidence with regard to the outstanding issue, or (4) present analysis and arguments that were persuasive or shed new light on the outstanding issue. TMEP §§715.03(a)(ii)(B), 715.04(a).

Applicant has submitted printed or electronic copies of third-party registrations for marks containing the wording “RIL” or “RYL” to support the argument that this wording is weak, diluted, or so widely used that it should not be afforded a broad scope of protection. These registrations appear to be for goods and services similar to those identified in applicant’s application.

The weakness or dilution of a particular mark is generally determined in the context of the number and nature of similar marks in use in the marketplace in connection with similar goods and services. See *Nat’l Cable Tel. Ass’n, Inc. v. Am. Cinema Editors, Inc.*, 937 F.2d 1572, 1579-80, 19 USPQ2d 1424, 1430 (Fed. Cir. 1991); *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973). Evidence of widespread third-party use of similar marks with similar goods and/or services “is relevant to show that a mark is relatively weak and entitled to only a narrow scope of protection” in that particular industry or field. *Omaha Steaks Int’l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 1324, 128 USPQ2d 1686, 1693 (Fed. Cir. 2018) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 1373, 73 USPQ2d 1689, 1693 (Fed. Cir. 2005)).

However, evidence comprising only a small number of third-party registrations for similar marks with similar goods and services, as in the present case, is generally entitled to little weight in determining the strength of a mark. See *In re i.am.symbolic, llc*, 866 F.3d 1315, 1328-29, 123 USPQ2d 1744, 1751-52 (Fed. Cir. 2017); *AMF Inc. v. Am. Leisure Products, Inc.*, 474 F.2d 1403, 1406, 177 USPQ 268, 269 (C.C.P.A. 1973). These few registrations are “not evidence of what happens in the market place or that customers are familiar with them.” *AMF Inc. v. Am. Leisure Prods., Inc.*, 474 F.2d at 1406, 177 USPQ at 269; *In re I-Coat Co.*, 126 USPQ2d 1730, 1735 (TTAB 2018). Thus, the few similar third-party registrations submitted by applicant are insufficient to establish that the wording “RIL” is weak or diluted.

Moreover, while applicant argues that the specimen of record in the registration shows that the marks are not confusingly similar, the marks are compared as they appear in the drawing of the application and in the registration; the USPTO does not consider how an applicant and registrant actually use their marks in the marketplace. *In re Aquitaine Wine USA, LLC*, 126 USPQ2d 1181, 1186 (TTAB 2018) (citing *In re i.am.symbolic, llc*, 866 F.3d 1315, 1324, 123 USPQ2d 1744, 1749 (Fed. Cir. 2017)).

Accordingly, the following refusal made final in the Office action dated June 17, 2019 are **maintained and continued**:

- Section 2(d) Refusal

See TMEP §§715.03(a)(ii)(B), 715.04(a).

If applicant has already filed an appeal with the Trademark Trial and Appeal Board, the Board will be notified to resume the appeal. See TMEP §715.04(a).

If applicant has not filed an appeal and time remains in the six-month response period, applicant has the remainder of that time to (1) [file another request for reconsideration](#) that complies with and/or overcomes any outstanding final refusal, and/or (2) [file a notice of appeal](#) to the Board. TMEP §715.03(a)(ii)(B). Filing a request for reconsideration does not stay or extend the time for filing an appeal. 37 C.F.R. §2.63(b)(3); see TMEP §715.03(c).

/Teague Avent/

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