

From: Kelley, Evelyn

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

**U.S. Application Serial No.** 88335947

**Mark:** MASTER RANCHER

**Correspondence Address:**

LINDSAY M R JONES

MERCHANT & GOULD PC

PO BOX 2910

MINNEAPOLIS, MN 55402-0910

**Applicant:** True Value Company, L. L. C.

**Reference/Docket No.** 14972715US10

**Correspondence Email Address:**

dockmpls@merchantgould.com

**EXAMINING ATTORNEY'S APPEAL BRIEF**

**INTRODUCTION**

The applicant has appealed the trademark examining attorney's final refusal to register the proposed trademark MASTER RANCHER, Serial No. 88335947, for "footwear" in International Class 25 on the ground that there is a likelihood of confusion with a registered mark RANCHMASTER, Registration

No. 4605257, for “footwear” in International Class 25 within the meaning of §2(d) of the Trademark Act, 15 U.S.C. §1052(d).

### **FACTS**

Applicant, True Value Company, L.L.C. (“Applicant”) filed a trademark application on March 12, 2019 for the mark “MASTER RANCHER”, in standard characters, (“Applicant’s Mark”), in International Class 25 for the following goods: “footwear”.

The trademark examining attorney reviewed the application, and on May 24, 2019, issued a Non-final Action with the following refusal: Section 2(d) Refusal for a likelihood of confusion with a registered mark. The registered mark that was cited was “RANCHMASTER”, in standard characters, (“Registrant’s Mark”) for the following goods: “footwear” in International Class 25. Attached to this Office action was the Registrant’s Mark, cited in the Section 2(d) refusal.

On August 15, 2019, Applicant, through their attorneys, filed a timely response to the Office action to the May 24, 2019 Non-final action. In the response, Applicant provided arguments against the Section 2(d) Refusal. In support of Applicant’s arguments against the Section 2(d) refusal, the response contained evidence in the nature of the following: a table of third-party registrations improperly embedded in the response with cancelled registrations listed therein. Upon reviewing the evidence and the arguments presented in the response, the trademark examining attorney maintained and made final, September 9, 2019, the Section 2(d) refusal for a likelihood of confusion with the Registrant’s Mark.

On January 30, 2020, Applicant, through their attorneys filed a Request for Reconsideration in which Applicant provided further arguments against the Section 2(d) refusal. The Request for Reconsideration contained evidence in the nature of exhibits that showed the following: screenshots of definitions for the wording of Applicant’s Mark and screenshots of third party registrations. Upon

reviewing the evidence and the arguments presented in the Request for Reconsideration, the trademark examining attorney maintained and continued the Section 2(d) refusal for a likelihood of confusion with the Registrant's Mark, thereafter which Applicant has timely filed a Notice of Appeal and brief.

**I. APPLICANT'S MARK "MASTER RANCHER" IS LIKELY TO CAUSE CONFUSION WITH REGISTRANT'S MARK "RANCHMASTER"**

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). 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). Any evidence of record related to those factors need be considered; however, "not all of the *DuPont* factors are relevant or of similar weight in every case." *In re Guild Mortg. Co.*, 912 F.3d 1376, 1379, 129 USPQ2d 1160, 1162 (Fed. Cir. 2019) (quoting *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1406, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997)).

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: the identical nature of the goods and the similarity of the marks. *See In re du Pont*, 476 F.2d 1357, 1361-62, 177 USPQ 563, 567-68 (C.C.P.A. 1973); *See also Zheng Cai v. Diamond Hong, Inc.*, \_\_\_ F.3d \_\_\_, 127 USPQ2d 1797, 1800 (Fed. Cir. 2018) ("Not all of the *DuPont* factors are relevant to every case, and only factors of significance to the particular mark need be considered." (quoting *In re Mighty Leaf Tea*, 601 F.3d 1342, 1346, 94 USPQ2d 1257, 1259 (Fed. Cir. 2010))); *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003) (citing *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1406-07, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997)); *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 946, 55 USPQ2d 1842, 1845 (Fed. Cir. 2000); TMEP §1207.01.

(A) Applicant's and Registrant's Goods are Identical

When analyzing an applicant's and registrant's goods for similarity and relatedness, that determination is based on the description of the goods in the application and registration at issue, not on extrinsic evidence of actual use. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1323, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014) (quoting *Octocom Sys. Inc. v. Hous. Computers Servs. Inc.*, 918 F.2d 937, 942, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990)).

In this case, the goods in the application and registration are identical: "footwear". Therefore, it is presumed that the channels of trade and class of purchasers are the same for these goods. *See Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 1372, 127 USPQ2d 1797, 1801 (Fed. Cir. 2018) (quoting *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012)). Thus, Applicant's and Registrant's goods are related.

Applicant has provided no argument as to the relatedness of goods of Applicant's Mark and Registrant's Mark. Therefore, the examining attorney maintains the goods and services are identical.

(B) Applicant's Mark and Registrant's Mark have Similar Wording and thus are Confusingly Similar

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)), *aff’d per curiam*, 777 F. App’x 516, 2019 BL 343921 (Fed. Cir. 2019); TMEP §1207.01(b).

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.*, 901 F.3d 1367, 1373, 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 (C.C.P.A. 1971)), *aff’d per curiam*, 777 F. App’x 516, 2019 BL 343921 (Fed. Cir. 2019); TMEP §1207.01(b).

Marks may be confusingly similar in appearance where similar terms or phrases or similar parts of terms or phrases appear in the compared marks and create a similar overall commercial impression. *See Crocker Nat’l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689, 690-91 (TTAB 1986), *aff’d sub nom. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat’l Ass’n*, 811 F.2d 1490, 1495, 1 USPQ2d 1813, 1817 (Fed. Cir. 1987) (finding COMMCASH and COMMUNICASH confusingly similar); *In re Corning Glass Works*, 229 USPQ 65, 66 (TTAB 1985) (finding CONFIRM and CONFIRMCELLS

confusingly similar); *In re Pellerin Milnor Corp.*, 221 USPQ 558, 560 (TTAB 1983) (finding MILTRON and MILLTRONICS confusingly similar); TMEP §1207.01(b)(ii)-(iii).

In this case, Applicant attempts to register the mark MASTER RANCHER, in standard character form. Registrant owns Registration No. 4605257 for RANCHMASTER, in standard character form. The two marks are confusingly similar because the marks are highly similar in sound, appearance, connotation, and commercial impression. Specifically, the literal elements of the marks are nearly identical and simply transposed. Applicant's Mark and Registrant's Mark share the common term: MASTER, as well as a variation of the term RANCH.

Although the terms do not appear in the same order, confusion is likely between two marks consisting of reverse combinations of the same elements if they convey the same meaning or create substantially similar commercial impressions. TMEP §1207.01(b)(vii); *see, e.g., In re Wine Soc'y of Am. Inc.*, 12 USPQ2d 1139, 1142 (TTAB 1989) (holding THE WINE SOCIETY OF AMERICA and design for wine club membership services including the supplying of printed materials likely to be confused with AMERICAN WINE SOCIETY 1967 and design for newsletters, bulletins, and journals); *In re Nationwide Indus. Inc.*, 6 USPQ2d 1882, 1884 (TTAB 1988) (holding RUST BUSTER for a rust-penetrating spray lubricant likely to be confused with BUST RUST for a penetrating oil).

Applicant argues in their brief that the marks are not similar in sight, sound, meaning, or commercial impression. *Applicant's Brief*, 8 TTABVUE at 3. Applicant argues that the applied-for mark has different spacing and terms in a different order to create a distinct commercial impression from Registrant's mark. *Id.* at 6-7. However, neither the slight differences in spacing, nor the transposition of the terms creates a distinctive commercial impression from the registered mark. And, as in this case, where the goods of an applicant and registrant are identical, the degree of similarity between the marks required to support a finding that confusion is likely declines. *See Cai v. Diamond Hong, Inc.*, 901 F.3d

1367, 1373, 127 USPQ2d 1797, 1801 (Fed. Cir. 2018) (quoting *In re Viterro Inc.*, 671 F.3d 1358, 1363, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012)); TMEP §1207.01(b).

Applicant highlights the differences in spacing and the terms of Applicant's mark and Registrant's Mark to support an argument that the consumer impressions are not similar. *Applicant's Brief*, 8 TTABVue at 6. Applicant contends that Registrant's use of the term RANCH instead of RANCHER, before the word MASTER, presented together as one word, RANCHMASTER, creates a significantly different impression than the mark MASTER RANCHER. *Id.* at 7. When assessing the likelihood of confusion between compound word marks, although each mark must be considered as a whole, it is appropriate to consider whether a portion of the mark is dominant in creating the mark's commercial impression. *See* TMEP §1207.01(b)(viii). In present case, Applicant's Mark and Registrant's Mark share the dominant terms of MASTER and RANCH/ER. Accordingly, the marks share similar dominant features. If two marks for related goods share identical or similar dominant features and the marks, when viewed in their entireties, create similar overall commercial impressions, then confusion is likely. *See, e.g., In re Cynosure, Inc.*, 90 USPQ2d 1644 (TTAB 2009) (holding CYNERGY for medical lasers for, *inter alia*, treatment of the face and skin, and SYNERGIE PEEL for medical devices for microdermabrasion, likely to cause confusion, noting that "SYNERGIE" is the dominant portion of the cited mark and "PEEL" is insufficient to distinguish the marks); *In re J.M. Originals Inc.*, 6 USPQ2d 1393 (TTAB 1987) (holding JM ORIGINALS (with "ORIGINALS" disclaimed) for various items of apparel, and JM COLLECTABLES for sport shirts, likely to cause confusion).

Additionally, Applicant argues that the transposition of the terms creates a distinctive commercial impression. *Applicant's Brief*, 8 TTABVue at 7. Marks with transposed wording are allowed mutual registration when the mark creates a distinctly different commercial impression. *See, e.g., In re Best Prods. Co.*, 231 USPQ 988, 989-90 (TTAB 1986) (holding BEST JEWELRY and design (with "JEWELRY" disclaimed) for retail jewelry store services, and JEWELERS' BEST for bracelets, not likely to cause

confusion). Applicant claims that the order of the wording affects the meaning of the terms. *Applicant's Brief*, 8 TTABVUE at 7. Specifically, Applicant alleges that the registrant uses MASTER as a noun while applicant uses the term as an adjective and proposes the presumptive meaning for Registrant's mark as "Man in charge of [a particular ranch]". *Id.*

However, Applicant's Mark and Registrant's Mark have a similar commercial impression. Applicant's interpretation of Registrant's mark, as well as its own mark, is not the only potential meaning nor does it evidence the general commercial impression of either mark by consumers. The term MASTER has several different meanings as a noun and an adjective as evidenced by Applicant's Exhibits A and B. *Applicant's Brief*, 8 TTABVUE at 26-27; *Applicant's Brief*, 8 TTABVUE at 28-29. Although Applicant claims that Applicant's mark means: "One having or showing very great skill or proficiency [in the practice of ranching]", it is just one of the possible consumer interpretations. *Applicant's Brief*, 8 TTABVUE at 8. Alternatively, with the wording MASTER as an adjective, Applicant's Mark could also be read to mean the "main" or "principal" rancher; a meaning similar to Applicant's interpretation of Registrant's Mark. *Applicant's Brief*, 8 TTABVUE 28-29; *Applicant's Brief*, 8 TTABVUE at 7. Registrant even uses the phrase "Master the Ranch" in reference to its goods, which suggests a commercial impression approximate to Applicant's mark MASTER RANCH/ER. See March 10, 2020, Action Denying Request for Reconsideration, TSDR p. 3-5.

Finally, consumer confusion has been held likely for marks that do not physically sound or look alike but that convey the same idea, stimulate the same mental reaction, or may have the same overall meaning. *Proctor & Gamble Co. v. Conway*, 419 F.2d 1332, 1336, 164 USPQ 301, 304 (C.C.P.A. 1970) (holding MISTER STAIN likely to be confused with MR. CLEAN on competing cleaning products); see *In re M. Serman & Co.*, 223 USPQ 52, 53 (TTAB 1984) (holding CITY WOMAN for ladies' blouses likely to be confused with CITY GIRL for a variety of female clothing); *H. Sichel Sohne, GmbH v. John Gross & Co.*, 204 USPQ 257, 260-61 (TTAB 1979) (holding BLUE NUN for wines likely to be confused with BLUE CHAPEL for

the same goods); *Ralston Purina Co. v. Old Ranchers Canning Co.*, 199 USPQ 125, 128 (TTAB 1978) (holding TUNA O' THE FARM for canned chicken likely to be confused with CHICKEN OF THE SEA for canned tuna); *Downtowner Corp. v. Uptowner Inns, Inc.*, 178 USPQ 105, 109 (TTAB 1973) (holding UPTOWNER for motor inn and restaurant services likely to be confused with DOWNTOWNER for the same services); TMEP §1207.01(b).

Applicant's Mark and Registrant's Mark share similar dominant terms and have the ability to engender the same suggestive connotations and therefore create a similar commercial impression. The marks are confusingly similar.

(C) Applicant's Prior Registrations Do Not Obviate a Likelihood of Confusion.

Applicant's previously registered marks have little weight in a likelihood of confusion analysis. Applicant claims to own a family of marks. *Applicant's Brief*, 8 TTABVUE at 8. A family of marks is defined as "a group of marks having a recognizable common characteristic, wherein the marks are composed and used in such a way that the public associates not only the individual marks, but the common characteristic of the family, with the trademark owner." *J & J Snack Foods Corp. v. McDonald's Corp.*, 932 F.2d 1460, 1462, 18 USPQ2d 1889, 1891 (Fed. Cir. 1991). The common element may be a term, a phrase, or a component in the nature of a prefix or suffix. In this case, the common term in Applicant's family of marks is MASTER. *Applicant's Brief*, 8 TTABVUE at 8. Applicant contends this common term and parallel phrasing in the family of mark serves as a mechanism by which consumers can distinguish Applicant's Mark from Registrant's Mark. *See Id.* at 7.

However, Applicant references the purported marks within the family but failed to properly make the registrations of record. Applicant has submitted new evidence with its appeal brief. Specifically, Applicant lists the following marks MASTER MECHANIC, MASTER ELECTRICIAN, and MASTER PLUMBER. *Applicant's Brief*, 8 TTABVUE at 8. The mere submission of a list of registrations does not

make such registrations part of the record. See *In re Peace Love World Live, LLC*, 127 USPQ2d 1400, 1405 n.17 (TTAB 2018) (citing *In re 1st USA Realty Prof'ls*, 84 USPQ2d 1581, 1583 (TTAB 2007); *In re Duofold Inc.*, 184 USPQ 638, 640 (TTAB 1974)); TBMP §1208.02; TMEP §710.03.

To make third party registrations part of the record, an applicant must submit copies of the registrations, or the complete electronic equivalent from the USPTO's automated systems, prior to appeal. *In re Star Belly Stitcher, Inc.*, 107 USPQ2d 2059, 2064 (TTAB 2013); TBMP §1208.02; TMEP §710.03. Because Applicant's new evidence was untimely submitted during an appeal, the trademark examining attorney objects to this evidence and requests that the Board disregard it. See *In re Inn at St. John's, LLC*, 126 USPQ2d 1742, 1744 (TTAB 2018), *aff'd per curiam*, 777 F. App'x 516, 2019 BL 343921 (Fed. Cir. 2019); *In re Fiat Grp. Mktg. & Corp. Commc'ns S.p.A*, 109 USPQ2d 1593, 1596 (TTAB 2014); TBMP §§1203.02(e), 1207.01; TMEP §710.01(c).

Notwithstanding, Applicant argues that the applied-for mark is part of a family of marks and that the purchasing public's familiarity with these marks obviates any likelihood of confusion. *Applicant's Brief*, 8 TTABVUE at 7-8. However, the Trademark Trial and Appeal Board has found that a family of marks argument is "not available to an applicant seeking to overcome a [likelihood of confusion] refusal." *In re Cynosure, Inc.*, 90 USPQ2d 1644, 1645-46 (TTAB 2009). Specifically, an applicant's ownership of other similar marks has little relevance in this context because the focus of a likelihood of confusion analysis in an ex parte case is on the mark applicant seeks to register, rather than other marks applicant has used or registered. *In re Cynosure, Inc.*, 90 USPQ2d at 1645-46; *In re Ald, Inc.*, 148 USPQ 520, 521 (TTAB 1965); TMEP §1207.01(d)(xi).

Additionally, Applicant notes the registration of MASTER RANCHER, U.S. Registration No. 5667470, for "gloves" in International Class 25. *Applicant's Brief*, 8 TTABVUE at 22. Applicant contends that the registration was acknowledgement that no likelihood of confusion exists because (1) applicant

owns a prior registration for a substantially similar or identical mark for identical or identical in part goods and/or services to those in the application, and (2) such registration has co-existed with the cited registration. *Id.* Applicant concludes there is no likelihood of confusion between the applied-for mark and registrant's mark; therefore, the trademark examining attorney should withdraw the Trademark Act Section 2(d) refusal. *Id.* at 23.

However, in *In re Strategic Partners, Inc.*, 102 USPQ2d 1397, 1399-1400 (TTAB 2012), the Trademark Trial and Appeal Board only reversed a Section 2(d) refusal based on an applicant's prior registration for the following unique set of facts: (1) the marks in applicant's prior registration and application were virtually identical ("no meaningful difference" existed between them, such that they were "substantially similar"); (2) the goods were identical in part; and (3) the prior registration had co-existed for at least five years with the cited registration (both being more than five years old and thus immune from attack on likelihood of confusion grounds). See TMEP §1207.01. The Board acknowledged these facts constituted a "unique situation," such that an applicant's prior registration would generally need to fit within these precise parameters to overcome a Section 2(d) refusal. *In re Strategic Partners, Inc.*, 102 USPQ2d at 1400; see *In re USA Warriors Ice Hockey Program, Inc.*, 122 USPQ2d 1790, 1793-94 (TTAB 2017); TMEP §1207.01.

In this case, by contrast, applicant's prior registration does not correspond to the facts set forth in *In re Strategic Partners, Inc.* See TMEP §1207.01. Specifically, Applicant's registration for the mark MASTER RANCHER for use in connection with gloves in International Class 25 is not for the same goods and has not co-existed for at least five years with the cited registration. Thus Applicant's registrations do not obviate the Section 2(d) refusal.

(D) Applicant's Evidence of Third-Party Registrations Bares Little Weight in a Similarity Analysis

The existence of transposed third-party registrations for similar or identical goods cannot obviate the likelihood of confusion with Registrant's mark or justify the registration of Applicant's Mark. Applicant has included evidence of sixteen third-party registrations transposed marks used in connection with identical or similar goods and services listed in a table and attached as Exhibit C. *Applicant's Brief*, 8 TTABVUE at 12-21; *Applicant's Brief*, 8 TTABVUE at 30-132. Applicant has also included in the record cancelled third-party registrations of marks with transposed wording. See January 30, 2020 Request for Reconsideration Letter, TSDR p. 33-49. Applicant contends that beyond the differences in sight, sound, meaning, and commercial impression, the registration of numerous transposed marks used in connection with identical or similar goods and services is precedential. *Applicant's Brief*, 8 TTABVUE at 11.

Third-party registrations are entitled to little weight on the issue of confusing similarity because the registrations are "not evidence that the registered marks are actually in use or that the public is familiar with them." *In re Midwest Gaming & Entm't LLC*, 106 USPQ2d 1163, 1167 n.5 (TTAB 2013) (citing *In re Mighty Leaf Tea*, 601 F.3d 1342, 1346, 94 USPQ2d 1257, 1259 (Fed. Cir. 2010)); see TMEP §1207.01(d)(iii). Moreover, the existence on the register of other seemingly similar marks does not provide a basis for registrability for the applied-for mark. *AMF Inc. v. Am. Leisure Prods., Inc.*, 474 F.2d 1403, 1406, 177 USPQ 268, 269 (C.C.P.A. 1973); *In re Total Quality Grp., Inc.*, 51 USPQ2d 1474, 1477 (TTAB 1999).

Applicant's Mark does not create a distinctly different commercial impression from Registrant's mark, therefore a likelihood of confusion still exists, and the third-party registrations are unpersuasive.

### **CONCLUSION**

Applicant's Mark, MASTER RANCHER, is confusingly similar to the Registrant's Mark, RANCHMASTER, because the marks share similar dominant terms and engender a similar overall commercial impression.

Moreover, Applicant's goods and Registrant's goods are identical. The goods are offered to the same class of purchasers through the same trade channels. Accordingly, the marks are confusingly similar and the goods are closely related, purchasers encountering these goods are likely to believe that they emanate from a common source.

The overriding concern is not only to prevent buyer confusion as to the source of the goods, but to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. *See In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt regarding a likelihood of confusion determination is resolved in favor of the registrant. TMEP §1207.01(d)(i); *see Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988).

For the foregoing reasons, the Examining Attorney respectfully requests that the refusal to register on the basis of §2(d) of the Trademark Act, 15 U.S.C. §1052(e)(1), for the reason that there is a likelihood of confusion between the Applicant's Mark and Registrant's Mark, should be affirmed.

Respectfully submitted,

/Evelyn Kelley/

Evelyn Kelley

Trademark Examining Attorney

Law Office 127

(571) 270-7321

evelyn.kelley@uspto.gov

Mark Pilaro

Managing Attorney

Law Office 127

571-272-1513

Mark.Pilaro@uspto.gov