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

Proceeding no.	91265658
Party	Plaintiff Turac Dis Ticaret Limited Sirketi
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Spearhead Inc)	Mark: STERLING
)	
)	Opp. 91265658 consolidated with Cancel. No. 92073765
)	
v.)	Appl.# 88619232, Reg.# 4774729
)	
Turac Dis Ticaret Limited Sirketi)	
	/	

TURAC DIS TICARET LIMITED SIRKETI'S OPENING BRIEF IN OPPOSITION

Turac Dis Ticaret Limited Sirketi ("Turac") files this this opening Brief in connection with Opposition against Spearhead Inc's ("Spearhead") Appl.# 88619232. This opposition is about whether a likelihood of confusion exists between Turac's Trademark Reg. No. 4774729 (the "'729 Registration") for the mark STERLING for "firearms" in Class 13 and Spearhead Trademark Serial No. 88619232 for STERLING for "ammunition" ("Spearhead 's Mark").

STATEMENT OF FACTS

1. On September 17, 2019 Spearhead filed a trademark Application Serial No. 88619232 ("Spearhead Mark") for STERLING for "ammunition".
2. On December 17, 2019 an office action was issued stating that Spearhead Mark is refused due to a likelihood of confusion with the mark U.S. Registration No. 4774729 for STERLING ("Turac Mark") for "Firearms, air guns, spring guns and their covers and slings; heavy weapons, namely, heavy guns, mortars, rockets; fireworks; sprays for personal defense purposes" owned by Turac.
3. On March 18, 2020 Spearhead filed a Petition for Cancellation No. 92073765 ("Cancellation") alleging abandonment of Turac Mark and suspending proceedings in connection with Spearhead Mark pending resolution on the Cancellation.
4. On May 16, 2020 a Notice of Default was issued as no Answer for Cancellation was filed by Turac. *See TTABVUE Cancel. #4.*

5. On July 20, 2020 the Cancellation was terminated. *Id.* #7
6. On July 21, 2023 Spearhead filed a Response to the Suspension in connection with Spearhead Mark stating that the Cancellation was terminated.
7. On August 21, 2020 Turac filed a Motion to Set Aside Default Judgment for good cause. *See TTABVUE Cancel.* #9, 10.
8. On September 9, 2020 Spearhead Mark was published for opposition.
9. On October 28, 2020 Turac filed a Notice of Opposition No. 91265658 (“Opposition”) against Spearhead Mark claiming likelihood of confusion with Turac Mark. On the same day Turac also filed a Motion to Consolidate Opposition and Cancellation. *See TTABVUE Cancel.* #13.
10. On November 4, 2020 The Board granted Turac’s Motion to Set Aside and the Motion to Consolidate. (*Id.* #14) and reinstated Turac Mark on November 5, 2020 (*Id.* #15).
11. During the course of the consolidated Opposition and Cancellation the parties were involved in discovery and settlement negotiations. From August 2021 until July 2022 and December 2023 the parties regularly suspended the proceedings pending settlement negotiations. *See TTABVUE Opp.* #9-17, 29.
12. On December 27, 2021 Turac filed a Declaration of Continued Use Under Section 71 for Turac Mark for “firearms”.
On July 18, 2022 Spearhead filed a Motion to Suspend the proceedings pending the disposition of the Declaration of Continued Use Under Section 71 for Turac Mark (*See TTABVUE Opp.* #18), the suspension was granted (*Id.* #19).
13. On April 12, 2023, the Section 71 declaration in connection with Turac’s U.S. Reg. No. 4774729 for “firearms” was accepted. *TTABVUE Opp.* #25 at 78.

LEGAL ARGUMENTS

Likelihood of Confusion Overview

According to *In re E.I. DuPont de Nemours & Co.*, 177 USPQ 563 (CCPA 1973)

likelihood of confusion in regard to Section 2(d) depends upon whether the purchasing public would mistakenly assume that an Spearhead 's goods originate from, are sponsored by, or are in some way associated with goods provided under one or more cited registrations. 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 and/or services. 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.

The Marks are identical

In a likelihood of confusion determination, the marks in their entireties are compared for similarities in appearance, sound, connotation, and commercial impression. *In re i.am.symbolic, llc*, 866 F.3d 1315, 1323, 123 USPQ2d 1744, 1748 (Fed. Cir. 2017); *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)); *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973); TMEP §1207.01(b)-(b)(v).

In the present case, Spearhead's mark is STERLING in standard character form and the Turac's mark is STERLING in standard character form. These marks are identical in appearance, sound, and meaning, “and have the potential to be used . . . in exactly the same manner.” *In re i.am.symbolic, llc*, 116 USPQ2d 1406, 1411 (TTAB 2015), *aff'd*, 866 F.3d 1315, 123 USPQ2d 1744 (Fed. Cir. 2017). Additionally, because they are identical, these marks are likely to engender the same connotation and overall commercial impression when considered in connection with Spearhead 's and Turac 's respective goods. *Id.*

Therefore, the marks are confusingly similar.

The Goods are related

Where the marks of the respective parties are identical or virtually identical, as in this case, the degree of similarity or relatedness between the goods and/or services needed to support a finding of likelihood of confusion declines. *See In re i.am.symbolic, llc*, 116 USPQ2d 1406, 1411 (TTAB 2015) (citing *In re Shell Oil Co.*, 992 F.2d 1204, 1207, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993)), *aff'd*, 866 F.3d 1315, 123 USPQ2d 1744 (Fed. Cir. 2017); TMEP §1207.01(a). Where the goods and/or services of an Spearhead and Turac 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 and/or services. *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).

When it comes to analyzing the goods in the parties’ respective registrations and applications, that determination is based on the description of the goods and/or services 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 identified in the application are “ammunition” in class 13 and the goods identified in the registration are “Firearms”, in class 13 are highly related and used together. Where evidence shows that the goods at issue have complementary uses, and thus are often used together or otherwise purchased by the same purchasers for the same or related purposes, such goods have generally been found to be sufficiently related such that confusion would be likely if they are marketed under the same or similar marks. *See In re Martin’s Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1567, 223 USPQ 1289, 1290 (Fed. Cir. 1984) (holding bread and cheese to be related because they are often used in combination and noting that “[s]uch complementary use has long been recognized as a relevant consideration in determining a likelihood of confusion”); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266,

1272 (TTAB 2009) (holding medical MRI diagnostic apparatus and medical ultrasound devices to be related, based in part on the fact that such goods have complementary purposes because they may be used by the same medical personnel on the same patients to treat the same disease).

Not only evidence on record demonstrates instances of the same company making and selling firearms and ammunition¹, but it also shows that Turac has been making and selling firearms and ammunition in US under the same mark STERLING². Clearly the ammunition and firearms and other weapon goods at issue have complementary uses and thus are always used together and are purchased by the same purchasers for the same or related purposes and often offered under the same mark. Therefore, it is presumed that the channels of trade and class(es) of purchasers are the same for these goods and/or services. *See Cai v. Diamond Hong, Inc.*, ___ F.3d ___, 27 USPQ2d 1797, 1801 (Fed. Cir. 2018) (quoting *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012)). Thus, Spearhead's and Turac's goods as written in the respective registrations and applications are related.

The overriding concern is not only to prevent buyer confusion as to the source of the goods and/or services, but to protect the Turac 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). In this case Spearhead is a "newcomer". Turac's Reg. No. 4774729 was filed on Feb. 19, 2014 and registered on Jul. 21, 2015. Not only Turac has priority in constructive use of the mark over Spearhead's filing date of September 17, 2019, but evidence of record also demonstrates actual use of the mark STERLING in commerce in US as early as 2016 for ammunition³, which predates Spearhead's filing date of September 17, 2019 or any other date of first use Spearhead will rely in this proceeding. As a representative example, see *See Aksahin Exhibit 1 – CONFIDENTIAL*, page 45/210, showing advertisement and sale of ammunition under STERLING mark at NATIONAL SHOOTING SPORTS FOUNDATION INC - SHOT SHOW 2019 on January 3, 2019.

¹ TTABVUE Opp. # 25 at 39-64

² TTABVUE Opp. # 25 at 92-103, 114-115

CONCLUSION

Considering marks of the respective parties are identical and the goods are very similar, Turac therefore requests judgment in its favor and granting the opposition.

Date: August 26, 2024

/alazouski/

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CERTIFICATE OF SERVICE

I hereby certify that according to TBMP §311.01 (c) and 37 CFR § 2.119(b) a true and complete copy of the foregoing has been served on Spearhead’s counsel by email jim@freship.com, nitasantiago@freship.com on August 26, 2024.

By: /alexander lazouski/

Alexander S. Lazouski

³ See *Aksahin Exhibit 1 – CONFIDENTIAL*, pages 43/210-48/210