

ESTTA Tracking number: **ESTTA571220**

Filing date: **11/15/2013**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Ansell Limited		
Entity	Corporation	Citizenship	Australia
Address	Level 3 Victoria Gardens 678 Victoria Street Richmond, 3121 AUSTRALIA		

Attorney information	Gwynne B. Sugg Moser Taboada 1030 Broad Street Shrewsbury, NJ 07760 UNITED STATES gsugg@mtiplaw.com, docketing@mtiplaw.com, ddoubt@mtiplaw.com Phone:732-917-6272
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Registration Subject to Cancellation

Registration No	4064021	Registration date	11/29/2011
Registrant	Custom LeatherCraft Mfg. Co., Inc. 10240 S. Alameda Street South Gate, CA 90280 CANADA		


Goods/Services Subject to Cancellation

Class 008. First Use: 2010/02/05 First Use In Commerce: 2010/03/08 All goods and services in the class are cancelled, namely: Tool aprons, Tool belts, Tool holders, Totes, tool suspenders, Tool pouches, tool pouches for attachment to tool belts
Class 009. First Use: 2010/02/05 First Use In Commerce: 2010/03/08 All goods and services in the class are cancelled, namely: Worker's non-disposable protective and safety apparel, namely, hats, caps, visors, gloves, mittens, belts, shirts, vests, jackets, coats, jumpsuits, pants and worker's kneepads
Class 018. First Use: 2010/02/05 First Use In Commerce: 2010/03/08 All goods and services in the class are cancelled, namely: Toolbags sold empty
Class 025. First Use: 2010/02/05 First Use In Commerce: 2010/03/08 All goods and services in the class are cancelled, namely: Weather resistant clothing, namely, wind and water resistant shirts, vests, jackets, pants, hats, caps, visors, and gloves

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	85880176	Application Date	03/19/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	HI-VIZ		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2001/01/02 First Use In Commerce: 2001/01/02 Gloves for protection against accidents; Protective gloves for industrial use; Protective work gloves		

Attachments	85880176#TMSN.jpeg(bytes) A_HIVIZUS - HI-VIZ - Petition for Cancellation - CLCMC - 15-Nov-2013.pdf(886514 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Gwynne B. Sugg/
Name	Gwynne B. Sugg
Date	11/15/2013

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

Ansell Limited,

Petitioner,

v.

Custom LeatherCraft Mfg. Co., Inc.,

Respondent.

Mark: HI-VIZ

Reg. No.: 4,064,021

Filed: March 13, 2010

Registered: November 29, 2011

PETITION FOR CANCELLATION

Ansell Limited, a corporation of Australia, with an address at Level 3 Victoria Gardens, 678 Victoria Street, Richmond, Australia, 3121 ("Petitioner"), believes that it will be damaged by the continued registration of the mark HI-VIZ, as shown in Registration No. 4, 064,021, registered in International Classes ("Class" or "Classes") 08, 09, 18 and 25 on May 18, 2010, and hereby petitions to cancel the registration.

1. Petitioner is a global corporation specializing in the manufacture and sale of safety and protective solutions for workers for many workplace applications, including but not limited to, the industrial, construction, healthcare, military, processing, oil, gas and mining fields within the United States.

2. Petitioner has long been using, and continues to use in interstate commerce, the term HI-VIZ in connection with its hand and upper-arm protective products for a wide spectrum of industrial applications.

3. Petitioner has used, and is using in interstate commerce, the term HI-VIZ continuously since as early as January 1, 2001, as a trademark, alone, and in conjunction with other terms and symbols, as trademarks.

4. Petitioner is the owner of the common law trademark HI-VIZ and has used the trademark in interstate commerce in association with a wide range of products, including gloves for protection against accidents, protective gloves for industrial use, protective work gloves for general use as well as protective sleeve products for protection against accidents, industrial use and general work use, among other protective products.

5. Upon information and belief, Respondent is the presumed owner of U.S. Registration No. 4,064,021 (Exhibit A) issued on November 29, 2011, in the mark HI-VIZ for goods described as:

Tool aprons, tool belts, tool holders, totes, tool suspender, tool pouches, tool pouches for attachment to tool belts in Class 8;

Worker's non-disposable protective and safety apparel, namely hats, caps, visors, gloves, mittens, belts, shirts vests, jackets, coats, jumpsuits, pants and worker's kneepads in Class 9;

Toolbags sold empty in Class 18;

Weather resistant clothing, namely, wind and water resistant shirts, vests, jackets, pants, hats, caps, visors, and gloves in Class 25;

6. On March 19, 2013 Petitioner filed federal trademark application Serial No. 85/880,176 for "Gloves for protection against accidents; Protective gloves for industrial use; Protective work gloves" in Class 09 ("Petitioner's Goods")(Exhibit B).

7. On May 18, 2013, Registration No. 4, 064,021 was cited in an Office Action issued by the USPTO as a bar under § 2(d) of the Trademark Act to the registration of Petitioner's Application Serial No. 85/880,176 for Petitioner's Goods (Exhibit C).

Grounds for Cancellation – Priority and Likelihood of Confusion

8. Upon information and belief, Respondent has not used the mark on Respondent's goods in the United States prior to its verified use in commerce date of February 2010.

9. Petitioner has been and continues to be engaged in the sale in interstate commerce of gloves for protection against accidents, for industrial use and general work use, among other of its goods as identified herein in connection with the trademark HI-VIZ since long prior to Respondent's filing date of March 13, 2010 or first use in commerce date of February 2010 for Respondent's goods.

10. Petitioner has, therefore, prior to Respondent's use in commerce and filing dates, used and is still using the trademark HI-VIZ in interstate commerce in connection with gloves for protection against accidents, for industrial use and general work use, among other of its goods as identified herein.

11. Upon information and belief, purchasers and prospective purchasers of the Respondent's goods, under the designation HI-VIZ and formatives thereof, will be confused, or mistaken, or deceived into the belief contrary to fact that such goods emanate from, are sponsored by or are authorized by Petitioner, all to Petitioner's irreparable damage.

12. Respondent's claimed trademark HI-VIZ is identical in sight, sound, and significance to Petitioner's mark HI-VIZ and will cause confusion, mistake or deception within the meaning of Section 2(d) of the Trademark Act of 1946, all to Petitioner's irreparable damage and loss of the goodwill symbolized by Petitioner's valuable marks.

13. Respondent's Goods are, or are likely to be, distributed, sold, and/or in coincident geographical areas through the same or commercially related channels of trade to the same classes of purchasers as that of Petitioner's Goods.

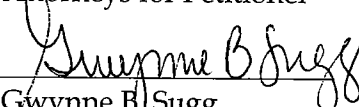
14. Purchasers and prospective purchasers of Respondent's Goods as sold under the designation of HI-VIZ will be confused, mistaken or deceived in the belief, contrary to fact, that Respondent's Goods originate with and/or are in some way sponsored or provided by Petitioner, all to Petitioner's irreparable damage and loss of its valuable mark.

15. Petitioner believes that it has been, continues to be and will be damaged by the continued registration of the mark to Respondent.

WHEREFORE, Petitioner prays that this petition be sustained and Registration No. 4,064,021 for the mark HI-VIZ be cancelled.

Please recognize as attorneys for Petitioner in this proceeding, MOSER TABOADA, maintaining offices at 1030 Broad Street, Shrewsbury, New Jersey 07702. All correspondence is to be directed to:

Date: November 15, 2013

MOSER TABOADA
Attorneys for Petitioner
By: 
Gwynne B. Sugg
Raymond R. Moser Jr.
Moser Taboada
1030 Broad Street
Shrewsbury, New Jersey 07702
P 732-917-6272 (Office)
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gsugg@mtiplaw.com

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Petition for Cancellation in the above-captioned matter has been served on Respondent's corporate correspondent and counsel by mailing said copy on November 15, 2013, via First Class Mail, postage prepaid to:

Michael Dancyger
President
Custom Leather Craft Mfg. Co., Inc.
10240 S. Alameda Street
South Gate, CA 90280

and

Mathew Noble
Custom Leather Craft Mfg. Co., Inc.
10240 S. Alameda Street
South Gate, CA 90280

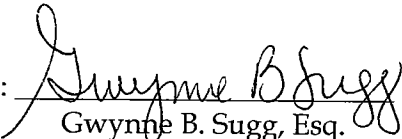
By: 
Gwynne B. Sugg, Esq.
Attorney for Petitioner
Moser Taboada
1030 Broad Street
Shrewsbury, New Jersey 07702
P 732-917-6272 (Office)
F 732-935-7122

EXHIBIT A

United States of America
United States Patent and Trademark Office

HI-VIZ

Reg. No. 4,064,021

Registered Nov. 29, 2011

Int. Cls.: 8, 9, 18, and 25

TRADEMARK

PRINCIPAL REGISTER

CUSTOM LEATHERCRAFT MFG. CO., INC. (CALIFORNIA CORPORATION)
10240 S. ALAMEDA STREET
SOUTH GATE, CA 90280

FOR: TOOL APRONS, TOOL BELTS, TOOL HOLDERS, TOTES, TOOL SUSPENDERS, TOOL POUCHES, TOOL POUCHES FOR ATTACHMENT TO TOOL BELTS, IN CLASS 8 (U.S. CLS. 23, 28 AND 44).

FIRST USE 2-5-2010; IN COMMERCE 3-8-2010.

FOR: WORKER'S NON-DISPOSABLE PROTECTIVE AND SAFETY APPAREL, NAMELY, HATS, CAPS, VISORS, GLOVES, MITTENS, BELTS, SHIRTS, VESTS, JACKETS, COATS, JUMPSUITS, PANTS AND WORKER'S KNEEPADS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 2-5-2010; IN COMMERCE 3-8-2010.

FOR: TOOLBAGS SOLD EMPTY, IN CLASS 18 (U.S. CLS. 1, 2, 3, 22 AND 41).

FIRST USE 2-5-2010; IN COMMERCE 3-8-2010.

FOR: WEATHER RESISTANT CLOTHING, NAMELY, WIND AND WATER RESISTANT SHIRTS, VESTS, JACKETS, PANTS, HATS, CAPS, VISORS, AND GLOVES, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 2-5-2010; IN COMMERCE 3-8-2010.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 77-958,342, FILED 3-13-2010.

HENRY S. ZAK, EXAMINING ATTORNEY



David J. Kyffas

Director of the United States Patent and Trademark Office

EXHIBIT B

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 85880176

Filing Date: 03/19/2013

*NOTE: Data fields with the * are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.*

The table below presents the data as entered.

Input Field	Entered
TEAS Plus	YES
MARK INFORMATION	
*MARK	<u>HI-VIZ</u>
*STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	HI-VIZ
*MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Ansell Limited
INTERNAL ADDRESS	Level 3
*STREET	Victoria Gardens, 678 Victoria Street
*CITY	Richmond
*COUNTRY	Australia
*ZIP/POSTAL CODE (Required for U.S. applicants only)	3121
PHONE	17323455303
FAX	17329785473

EMAIL ADDRESS	geralyn.monroe@ansell.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
WEBSITE ADDRESS	www.ansell.com
LEGAL ENTITY INFORMATION	
*TYPE	CORPORATION
* STATE/COUNTRY OF INCORPORATION	Australia
GOODS AND/OR SERVICES AND BASIS INFORMATION	
*INTERNATIONAL CLASS	009
*IDENTIFICATION	Gloves for protection against accidents; Protective gloves for industrial use; Protective work gloves
*FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 01/02/2001
FIRST USE IN COMMERCE DATE	At least as early as 01/02/2001
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT16\IMAGEOUT 16\858\801\85880176\xml1\ FTK0003.JPG
	\\TICRS\EXPORT16\IMAGEOUT 16\858\801\85880176\xml1\ FTK0004.JPG
SPECIMEN DESCRIPTION	a digital photo of the brand as used on a product hang tag; screen shot from a web site selling another product with the brand as used in commerce
ADDITIONAL STATEMENTS INFORMATION	
*TRANSLATION (if applicable)	
*TRANSLITERATION (if applicable)	
*CLAIMED PRIOR REGISTRATION (if applicable)	
*CONSENT (NAME/LIKENESS) (if applicable)	
*CONCURRENT USE CLAIM (if applicable)	
DOMESTIC REPRESENTATIVE INFORMATION	
NAME	Geralyn A. Monroe
FIRM NAME	Ansell Healthcare

INTERNAL ADDRESS	Suite 210
STREET	111 Wood Avenue, South
CITY	Iselin
STATE	New Jersey
COUNTRY	United States
ZIP CODE	08830
PHONE	732-345-5303
FAX	732-978-5473
EMAIL ADDRESS	geralyn.monroe@ansell.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
CORRESPONDENCE INFORMATION	
*NAME	Geralyn A. Monroe
FIRM NAME	Ansell Healthcare
INTERNAL ADDRESS	Suite 210
*STREET	111 Wood Avenue, South
*CITY	Iselin
*STATE (Required for U.S. applicants)	New Jersey
*COUNTRY	United States
*ZIP/POSTAL CODE	08830
PHONE	732-345-5303
FAX	732-978-5473
*EMAIL ADDRESS	geralyn.monroe@ansell.com
*AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	275
*TOTAL FEE PAID	275
SIGNATURE INFORMATION	
* SIGNATURE	/Geralyn A Monroe/
* SIGNATORY'S NAME	Geralyn A. Monroe

* SIGNATORY'S POSITION	Senior Manager, Global Intellectual Property
SIGNATORY'S PHONE NUMBER	732-345-5303
* DATE SIGNED	03/19/2013

EXHIBIT C

To: Ansell Limited (geralyn.monroe@ansell.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85880176 - HI-VIZ - N/A
Sent: 5/18/2013 2:31:43 PM
Sent As: ECOM113@USPTO.GOV
Attachments: Attachment - 1
Attachment - 2
Attachment - 3
Attachment - 4
Attachment - 5
Attachment - 6
Attachment - 7
Attachment - 8
Attachment - 9
Attachment - 10

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 85880176

MARK: HI-VIZ

85880176

CORRESPONDENT ADDRESS:

GERALYN A. MONROE
ANSELL HEALTHCARE
111 WOOD AVE S STE 210
ISELIN, NJ 08830-2700

CLICK HERE TO RESPOND TO
<http://www.uspto.gov/trademarks/teas/r>

APPLICANT: Ansell Limited

CORRESPONDENT'S REFERENCE/DOCKET NO :

N/A

CORRESPONDENT E-MAIL ADDRESS:

geralyn.monroe@ansell.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 5/18/2013

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

Section 2(d) - Likelihood of Confusion Refusal

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark(s) in U.S. Registration No(s). 4064021 and 3790210. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the enclosed registration(s).

Trademark Act Section 2(d) bars registration where an applied-for mark so resembles a registered mark that it is likely, when applied to the services, to cause confusion, mistake or to deceive the potential consumer as to the source of the services. TMEP §1207.01. The Court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973), listed the principal factors to consider in determining whether there is a likelihood of confusion. Among these factors are the similarity of the marks as to appearance, sound, meaning and commercial impression, and the relatedness of the services. The overriding concern is to prevent buyer confusion as to the source of the services. *In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt as to the existence of a likelihood of confusion must be resolved in favor of the registrant. *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988); *Lone Star Mfg. Co. v. Bill Beasley, Inc.*, 498 F.2d 906, 182 USPQ 368 (C.C.P.A. 1974).

Here, applicant applied for the mark **HI-VIZ** for “Gloves for protection against accidents; Protective gloves for industrial use; Protective work gloves”.

Registrants’ marks are **HI-VIZ** for “Worker's non-disposable protective and safety apparel, namely, hats, caps, visors, gloves, mittens, belts, shirts, vests, jackets, coats, jumpsuits, pants and worker's kneepads;” and **ATLAS HI-VIZ GRIP** for “Gloves for protection against accidents.”

Comparison of Marks

The goods and/or services of the parties need not be identical or even competitive to find a likelihood of confusion. *See On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) (“[E]ven if the goods in question are different from, and thus not related to, one another in kind, the same goods can be related in the mind of the consuming public as to the origin of the goods.”); TMEP §1207.01(a)(i).

The respective goods and/or services need only be “related in some manner and/or if the circumstances surrounding their marketing [be] such that they could give rise to the mistaken belief that [the goods and/or services] emanate from the same source.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)); *Gen. Mills Inc. v. Fage Dairy Processing Indus. SA*, 100 USPQ2d 1584, 1597 (TTAB 2011); TMEP §1207.01(a)(i).

Here, all of the marks contain the wording **HI-VIZ**. Applicant’s mark is identical to one of the registered marks, and merely deletes the wording “Atlas” and “grip” from the other cited registered mark. The

mere deletion of wording from a registered mark may not be sufficient to overcome a likelihood of confusion. See *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257 (Fed. Cir. 2010); *In re Optica Int'l*, 196 USPQ 775, 778 (TTAB 1977); TMEP §1207.01(b)(ii)-(iii).

Here, applicant's mark does not create a distinct commercial impression from the cited registered marks because it is identical to one mark, and because it contains the same common wording as the remaining registrant's mark, and there is no other wording to distinguish it from registrants' marks.

Comparison of Goods

The goods and/or services of the parties need ***not be identical*** or directly competitive to find a likelihood of confusion. See *Safety-Kleen Corp. v. Dresser Indus., Inc.*, 518 F.2d 1399, 1404, 186 USPQ 476, 480 (C.C.P.A. 1975); TMEP §1207.01(a)(i). Rather, it is sufficient to show that because of the conditions surrounding their marketing, or because they are otherwise ***related in some manner***, the goods and/or services would be encountered by the same consumers under circumstances such that offering the goods and/or services under confusingly similar marks would lead to the mistaken belief that they come from, or are in some way associated with, the same source. *In re Iolo Techs., LLC*, 95 USPQ2d 1498, 1499 (TTAB 2010); see *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1566-68, 223 USPQ 1289, 1290 (Fed. Cir. 1984); TMEP §1207.01(a)(i).

The goods in applicant's and registrants' identifications are as follows:

Applicant:

***"Gloves for protection against accidents; Protective gloves* for industrial use; *Protective work gloves*"**

Registrants:

"Worker's non-disposable protective and safety apparel, namely, hats, caps, visors, gloves, mittens, belts, shirts, vests, jackets, coats, jumpsuits, pants and worker's kneepads;" and

"Gloves for protection against accidents."

Applicant and registrants therefore all provide the same goods under their marks—protective gloves. Because the marks are similar and because the marks refer to closely related, if not the same, goods, consumers would be likely to mistakenly believe that the goods emanate from a single source. Accordingly, registration is refused under Trademark Section 2(d).

Prior Pending Application

The effective filing date of pending Application Serial No. 77320441 precedes applicant's filing date. See attached referenced application. If the mark in the referenced application registers, applicant's mark may be refused registration under Trademark Act Section 2(d) because of a likelihood of confusion between the two marks. See 15 U.S.C. §1052(d); 37 C.F.R. §2.83; TMEP §§1208 *et seq.* Therefore, upon receipt of applicant's response to this Office action, action on this application may be suspended pending final disposition of the earlier-filed referenced application.

Section 2(e)(1) - Descriptive Refusal

Registration is refused because the applied-for mark merely describes a feature of applicant's goods and/or services. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); *see* TMEP §§1209.01(b), 1209.03 *et seq.*

A mark is merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the specified goods and/or services. TMEP §1209.01(b); *see In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005); *In re Gyulay*, 820 F.2d 1216, 1217-18, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987). Moreover, a mark that identifies a group of users to whom an applicant directs its goods and/or services is also merely descriptive. TMEP §1209.03(i); *see In re Planalytics, Inc.*, 70 USPQ2d 1453, 1454 (TTAB 2004).

Applicant's proposed mark is "HI-VIZ." Applicant identifies its goods as "Gloves for protection against accidents; Protective gloves for industrial use; Protective work gloves."

The term "HI-VIZ" means "high visibility." See attached evidence from the Lexis® news database, using the term to mean "HI-VIZ" or an alternate phonetically equivalent spelling, "HI VIS," to refer to something that is easily seen, or "high visibility."

According to applicant's specimen of use, the applied- mark "HI VIZ" does describe a feature of the goods. Applicant's specimen features a description of the goods indicating they feature a " **highly visible** yellow, terry loop out acrylic liner."

The proposed mark is merely descriptive of applicant's goods, because it immediately conveys to prospective consumers a feature of applicant's goods, namely, that they feature highly visible or high visibility elements, or "HI-VIZ" features. Accordingly, registration is refused under Section 2(e)(1).

Supplemental Register

The applied-for mark has been refused registration on the Principal Register. Applicant may respond to the refusal by submitting evidence and arguments in support of registration and/or by amending the application to seek registration on the Supplemental Register. *See* 15 U.S.C. §1091; 37 C.F.R. §§2.47, 2.75(a); TMEP §§801.02(b), 816. Amending to the Supplemental Register does not preclude applicant from submitting evidence and arguments against the refusal(s). TMEP §816.04.

Please note that amending the application to seek registration on the Supplemental Register will not overcome the likelihood of confusion refusal under Section 2(d).

Response to Office Action

To expedite prosecution of the application, applicant is encouraged to file its response to this Office action online via the Trademark Electronic Application System (TEAS), which is available at <http://www.uspto.gov/trademarks/teas/index.jsp>. If applicant has technical questions about the TEAS response to Office action form, applicant can review the electronic filing tips available online at http://www.uspto.gov/trademarks/teas/e_filing_tips.jsp and email technical questions to TEAS@uspto.gov.

/kristindahling/

Kristin M. Dahling
Trademark Examining Attorney, LO113
kristin.dahling@uspto.gov
(571) 272-8277

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp.

Please wait at least 72 hours from the issue/ mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application.

For technical assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

TEAS PLUS APPLICANTS MUST SUBMIT DOCUMENTS ELECTRONICALLY OR SUBMIT FEE: Applicants who filed their application online using the reduced-fee TEAS Plus application must continue to submit certain documents online using TEAS, including responses to Office actions. *See* 37 C.F.R. §2.23(a)(1). For a complete list of these documents, see TMEP §819.02(b). In addition, such applicants must accept correspondence from the Office via e-mail throughout the examination process and must maintain a valid e-mail address. 37 C.F.R. §2.23(a)(2); TMEP §§819, 819.02(a). TEAS Plus applicants who do not meet these requirements must submit an additional fee of \$50 per international class of goods and/or services. 37 C.F.R. §2.6(a)(1)(iv); TMEP §819.04. In appropriate situations and where all issues can be resolved by amendment, responding by telephone to authorize an examiner's amendment will not incur this additional fee.

Time of Request: Thursday, May 16, 2013 13:28:24 EST

Client ID/Project Name:

Number of Lines: 253

Job Number: 2827:409589478

Research Information