

BLAZIER CHRISTENSEN BROWDER & VIRR

A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS

JOHN C. BLAZIER
FLEUR A. CHRISTENSEN
THOMAS F. VIRR**
PAUL K. BROWDER
JUSTIN M. WELCH
JONATHAN S. CONNOR
JOHN P. FERGUSON

BARTON OAKS PLAZA
901 S. MOPAC EXPY., BLDG. V, STE. 200
AUSTIN, TEXAS 78746

WWW.BLAZIERLAW.COM

TELEPHONE (512) 476-2622
FACSIMILE (512) 476-8685

**BOARD CERTIFIED-TAX LAW, TEXAS BOARD
OF LEGAL SPECIALIZATION

writer's direct e-mail: jwelch@blazierlaw.com

June 13, 2017

Ms. In Pyo Lee
Trademark Examining Attorney
Law Office 114
P.O. Box 1451
Alexandria, Virginia 22313-1451

Via TEAS

Re: Proposed amendments for application, serial no. 76 / 719739, for the Mark BEC, on behalf of Bailey Elliott Construction, Inc..

Dear Ms. Lee:

Pursuant to your Office Action letter for the above Mark, please consider the following in support of issuing an approval for publication for the mark:

i. Likelihood of Confusion.

The Office Action letter refused registration because of a likelihood of confusion with the following marks, all registered to H.C. Beck Partners, Ltd., or its affiliates:

BECK (Reg. No. 2,256,113),

BECK TECHNOLOGY (Reg. No. 3,600,711),

THE BECK GROUP (Reg. No. 2,062,921), and



(Reg. No. 5,112,401, f/k/a Ser. No. 86 / 908204).

Note, the Office Action letter cites the fourth mark, which was a pending application at the time, as a *potential* conflict. It has now registered and will be addressed as such, below.

The Office Action letter contends that Applicant's and Registrants' marks "are phonetically identical or the dominant portion of the marks are phonetically identical, if not


highly similar.” Applicant respectfully disagrees for the reasons set forth below.

BEC is obviously an acronym formed from Applicant’s corporate name, “*Bailey Elliott Construction*”. This is especially clear from its specimen, displaying the mark as follows:





Therefore, it is likely to be pronounced by people as separate letters in rapid succession – “B”, “E”, “C” – and not phonetically as “bĕk”, which is how BECK is pronounced as described below. This is reinforced by the fact that “bec” is not a defined word in www.dictionary.com¹ or any other dictionary, so people are unlikely to try and pronounce it phonetically. That is, again, they are likely to pronounce it “B”, “E”, “C”.


In contrast, Registrant’s use of BECK is clearly as the surname, “Beck”, as shown in the Wikipedia printout for the name at Exhibit A. This is evidenced by Registrant’s business name – H.C. Beck Partners – which is obviously based on an individual’s name.² Indeed, the U.S. PTO

recognized this fact when it initially refused registration of Registrant’s logo , stating “[r]egistration is refused because the applied-for mark is primarily *merely a surname*.”³ This is significant for two reasons: First, consumers are likely to recognize it as the surname as intended, and not confuse it with BEC that is not even a word. Second, consumers are likely to pronounce it phonetically as “bĕk”.

It may be the PTO wishes Applicant to clarify its use of BEC as an acronym by submitting a special character drawing showing BEC in all capital letters. Although Applicant respectfully submits this is not necessary, it is allowable as a nonmaterial alteration of the mark under TMEP §807.04(b), 807.12(a)-807.12(a)(iii), and 807.14-807.14(f).

Finally, the Office Action letter argues similarity between BEC and the registrations for

 and , claiming “the letter ‘K’ in the cited registrations appears more as a design element, comprising a rotated chevron design, rather than the letter ‘K’.” Respectfully,

this is belied by two facts: First, Registrant self-described its logo , not as including a

¹ See definition at Exh. C from Dictionary.com (listing only definition for “bec” as abbreviation of “because” spelled with a period – “bec.” This would never be read phonetically as “bec”, but rather would be read as a whole – “because”).

² Note that the Registrant for BECK TECHNOLOGY is Beck Tech Resources, Ltd., that is an affiliate of H.C. Beck Partners as evidenced by its response to an office action letter claiming unity of control with H.C. Beck Partners over the BECK marks.

³ See PTO Wrapper for Reg. No. 5,112,401 at Exh. D, pp.000042-000044.

chevron, but as “the word BECK in white, stylized by forming the letter ‘K’ using the letter ‘C’...”⁴ The PTO accepted this description. Second, the definition of “chevron” from Webster’s that accompanies the Office Action letter describes the symbol as “two diagonal stripes meeting at an angle *usually with the point up,*” and “a figure, pattern, or object having the *shape of a V or an inverted V.*” That is, the point of the angle or “V” is generally up or down. Here, the angle points left. And, the bottom diagonal stripe is longer than the top, as frequently occurs with the letter “K”. Therefore, it is unlikely anyone would perceive the “K” in BECK as a chevron, including the Registrant that described it as a “K”; a description the PTO accepted. So, the distinction between BEC and BECK remains as described above.

ii. Amended Services Description.

The Office Action letter requests that Applicant amend its services description to be more specific. Applicant proposes the following:

“Construction services, namely, planning and construction of commercial structures in the nature of buildings” in International Class 037.

Please do not hesitate to call with questions or comments.

Sincerely,


Justin M. Welch
For the Firm

cc: client *via email*

⁴ See registration information attached to Office Action letter for Reg. No. 5,112,401, f/k/a Ser. No. 86 / 908204.