

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Trademark Application Serial No. .... 90/226,011  
Filing Date ..... September 30, 2020  
Applicant ..... GSI Outdoors, Inc.  
Examining Attorney ..... Manca, Alberto  
Law Office ..... 108  
Counsel of Record..... Shamus T. O'Doherty  
Attorney's Docket No. .... 45074-71  
Mark: ..... ESCAPE

**RESPONSE TO OFFICE ACTION**

In response to the Office Action dated March 8, 2021, Applicant respectfully submits the following remarks and arguments in support of allowing the Application to proceed to allowance and publication. This argument will focus on the following issues asserted by the Office:

- Section 2(d) Refusal – Likelihood of Confusion

Other remaining issues, such as amendments to the identification of goods, are addressed in the electronic form submitted herewith. For the reasons indicated herein, favorable action in consideration of this Response is respectfully requested.

**REMARKS**

In the Office Action, the Office initially refused the Application asserting that there is an alleged likelihood of confusion between the applied-for mark and U.S. Registration Nos. 3,375,692 and 3,632,387. In the electronic form submitted herewith, Applicant has amended the description of goods in class 21, at the request of the Examining Attorney, to narrow and clarify the nature of Applicant's goods. Applicant traverses the refusal asserted in the Office Action and in view of the arguments set forth below, Applicant respectfully requests reconsideration.

The Office refused the Application asserting that there is an alleged likelihood of confusion between the applied-for mark and U.S. Registration Nos. 3,375,692 and 3,632,387, all three of which seek to protect the standard character mark ESCAPE.

The determination of whether likelihood of confusion exists must be based on an analysis of all relevant and probative facts in evidence. This analysis must include consideration of the factors discussed in In re E.I. DuPont DeNemours & Co., 177 U.S.P.Q. 563 (C.C.P.A. 1973). See TMEP §1207.01. With respect, Applicant contends that after a full and complete analysis of the DuPont factors discussed herein, the Section 2(d) Refusal alleging likelihood of confusion should be withdrawn.

One of the most critical DuPont factor to consider the nature of the goods and the trade channels and purchasers of such goods. TMEP §1207.01(a). The distinguishing features of the goods, as described, must be acknowledged and given due consideration.

Applicant's goods are described as (as amended in the electronic form submitted herewith): "Cookware, namely, silicone pots and pans for camping and outdoor use; collapsible silicone pots and bowls for camping and outdoor use" in class 21.

The goods of cited Registration No. 3,632,387 are described as: "Plastic bottles, sold empty, for use in the food and beverage, household and personal care, and automotive industries" in class 21.

The goods of cited Registration No. 3,375,692 are described as: "paper-wrapped foam cups and containers" in class 21.

Comparison of Goods. A critical element in determining likelihood of confusion is the similarity or dissimilarity and the nature of the goods or services with which the marks are or will be used. Applicant respectfully suggests that, upon further examination of

Applicant's description of goods compared to the description of goods of the cited registration, the respective goods are sufficiently unrelated. The Office relied primarily on Applicant's description including a reference to cups; however Applicant has now removed cups from its description entirely. The amended goods description should assist in clarifying the nature of Applicant's goods. Clarifying the nature of Applicant's goods should also clarify how Applicant's goods and the goods of the cited registration are more different than they are similar. Applicant's goods and the goods of the cited registration are fundamentally different in their nature and in that they are made out of different material. The goods in Registration No. 3,375,692 are made of paper wrapped foam, and the goods in Registration No. 3,632,387 are made of plastic, while Applicant's goods are made of silicone. Applicant's goods are pots, pans, and bowls, none of which are found in the cited registration.

Additionally, the goods have drastically different uses. Applicant's goods are for camping and outdoor use, as identified in its amended description. The goods in Registration No. 3,632,387 are for household, personal care and the automotive industry, as identified in its description. The goods in Registration No. 3,375,692, by their very nature as paper wrapped foam are not intended to be used outdoors or while camping. Additionally, the goods travel in different channels of trade.

The present 2(d) refusal improperly expands the scope of the cited registrations. The two cited registrations are closer in relation to goods descriptions than the present application. These two registrations in the same class narrow the scope of protection for both cited registrations.

Applicant's goods are marketed to a fairly narrow segment of consumers. Applicant's silicone goods for outdoor use are at a much higher price point than plastic and

paper wrapped foam products and are sold in specialty outdoor retail locations, where the cited goods are not found. Applicant's purchasers are highly educated with sophisticated understanding of outdoor products.

In view of these arguments, Applicant respectfully requests the Office to reconsider and withdraw the Section 2(d) Refusal previously asserted, thus allowing the Application to proceed to allowance and publication.