

ANTHEM & Design
Application No. 87741808
Office Action Response



I. INTRODUCTION

The Examining Attorney has refused Application No. 87741808 (the "Application") for the applied-for mark ANTHEM (the "Applicant's Mark") for use in connection with goods in Class 18 only. For reference, the Applicant's Mark includes the following applied-for goods:

Class 16: Posters

Class 18: Tote bags

Class 21: Mugs

Class 25: Clothing, namely, t-shirts, hats, sweatshirts, socks

Specifically, the Examining Attorney has refused Applicant's Mark based on a likelihood of confusion with one registration (the "Cited Mark"), as depicted below:

Reference	Cited Mark	Owner	Goods
Cited Mark	ANTHEM Reg. No. 2809451	TRAVELPRO PRODUCTS, INC.	Cl. 18: luggage

Applicant has filed a Request to Divide only Class 18 from the Application, and therefore no likelihood of confusion exists between Applicant's Mark in Classes 16, 21, and 25 and the Cited Mark. Thus, once the child application is created, Applicant respectfully requests that the Examining Attorney allow the ANTHEM mark to proceed to publication in Classes 16, 21, and 25.

II. LIKELIHOOD OF CONFUSION

For the reasons discussed herein, Applicant asserts that there is no likelihood of confusion and requests that the Application proceed to publication.

A. THE MARKS ARE DISSIMILAR SUCH THAT A LIKELIHOOD OF CONFUSION WILL NOT OCCUR WITH RESPECT TO THE CITED MARK

When considering the similarity of the marks, all relevant facts pertaining to the appearance, sound, meaning, and commercial impression must be considered. TMEP § 1207.01. *See Recot, Inc. v. M.C. Becton*, 214 F.3d 1322, 1329 (Fed. Cir. 2000). In evaluating the similarities between marks, the emphasis must be on the recollection of the average purchaser who normally retains a general, rather than specific, impression of the marks. *Id.* *See Sealed Air Corp. v. Scott Paper Co.*, 190 U.S.P.Q. 106, 108 (T.T.A.B. 1975). Furthermore, under the anti-dissection rule, the validity and distinctiveness of a composite trademark is determined by viewing the trademark as a whole, as it appears in the marketplace. *Official Airline Guides, Inc. v. Goss*, 6 F.3d at 1392; *California Cooler, Inc. v. Loretto Winery Ltd.*, 774 F.2d 1451, 1455 (9th Cir.1985). *See also 2 J.T. McCarthy, McCarthy on Trademarks and Unfair Competition*, Sec. 23.15[a], at 23-82, 83.

i. Appearance

When comparing Applicant's ANTHEM mark with the Cited Mark, Applicant respectfully notes the clear differences in the appearance of the Cited Mark and Applicant's Mark. Applicant's Mark consists of the stylized word ANTHEM with the letters "THE" underlined. The stylized component clearly differentiates Applicant's Mark from the plain text of the Cited Mark. As such, the marks at issue are sufficiently different in appearance and are not likely to be confused with each other.

B. THE GOODS COVERED UNDER THE MARKS AT ISSUE ARE DISSIMILAR SUCH THAT A LIKELIHOOD OF CONFUSION WILL NOT OCCUR WITH RESPECT TO THE CITED MARK

i. The Goods Covered Under the Marks at Issue are Separate and Distinct and are Directed to Separate Groups of Consumers

The goods offered by the Applicant and the goods offered by the owner of the Cited Mark are different, such that a likelihood of confusion will not occur. Applicant respectfully notes that the nature of the goods offered by the parties relate to separate and distinct spaces. Applicant's Mark is intended to be used in connection with merchandise to promote Applicant's entertainment services. The tote bags intended to be offered under Applicant's Mark are directed at parties who want to support Applicant's entertainment and music events. These consumers would readily understand that the goods being offered under Applicant's Mark emanate from Applicant rather than the Cited Mark, as the core goods and services are distinct. There is little chance that the relevant consumers would confuse the goods offered under the marks at issue.

Further, the tote bags offered under Applicant's Mark are available only through Applicant's website and its venue location. Applicant's Mark is intended to be used as promotional merchandise for its entertainment and music services featured in its own venue. Consumers are those interested in supporting Applicant and its venue. Such consumers are undoubtedly familiar with Applicant's core entertainment services, and are not likely to be confused as to the source of the promotional merchandise.

Importantly, the goods at issue are not in competition with each other. Applicant's entertainment venue is located in Washington, D.C., where such promotional clothing will emanate from. Because Applicant's goods and the goods offered under the Cited Mark are offered through discrete channels of trade, the relevant consumers are highly unlikely to encounter Applicant's goods and the goods offered under the Cited Mark at the same time or in the same context. Thus, because the goods will not even be offered to similar consumers or through the same channels of distribution, confusion is not likely in this case.

ii. The Goods Associated with the Cited Mark are Distinguishable from Applicant's Goods

As noted above, the goods intended to be offered under Applicant's Mark include merchandise such as clothing and accessories, including tote bags, for the purpose of promoting its core entertainment and musical services. The Cited Mark is registered for "luggage" in Class 18. Applicant recognizes that both marks include Class 18 for goods which can be used to transport items. However, Applicant asserts that its own tote bags are distinguishable from the Cited Mark's luggage.

Applicant is providing an example of its promotional tote bag. See The Anthem Tote Bag, <https://930-club.myshopify.com/collections/the-anthem/products/tote-bag> (last accessed May 13, 2019) (attached as **Exhibit A**). As seen in the attached exhibit, Applicant's tote bag is currently selling for \$5.00 and is meant for casually carrying items. The Cited Mark is owned by Travelpro Products, Inc. ("Travelpro"). Applicant respectfully notes that Travelpro is a popular luggage brand which offers suitcases, garment bags, backpacks, and laptop bags. The Examiner also provides several third-parties which offer both luggage and tote bags, including Samsonite, Columbia, and Tumi. Such luggage brands create products which are made to endure domestic and international travel for a number of years, and therefore can be equally expensive to the popular Travelpro products. Customers intending to purchase luggage are likely to have the specific intent to purchase high-end products for long-distance travel. Such customers would

undoubtedly be familiar with the higher cost of such luggage items, and exercise careful decision making prior to making a purchasing decision for the specific luggage item. Given that Applicant's tote bag is only available at Applicant's venue or online at its affiliated website and currently costs \$5, there is a low probability that a consumer would come across Applicant's tote bag and believe it is associated with the Cited Mark. Likewise, there is a low probability that a potential consumer would go to Applicant's venue or its affiliated website seeking to purchase luggage for long-distance travel.

Further, it is Applicant's understanding that Travelpro's ANTHEM mark is used for one product, and not an entire line of luggage items. See Travelpro Anthem Select 21" Expandable Mobile Office Spinner, <https://www.travelproluggageoutlet.com/travelpro-anthem-select-21-expandable-mobile-office-spinner/> (last accessed May 13, 2019) (attached as **Exhibit B**). Given that the Cited Mark's luggage item refers to only one item primarily branded as a Travelpro product, and Applicant's Mark is used for tote bags offered at its venue or affiliated website, there is no likelihood of confusion.

As noted above, Applicant's tote bag is intended to be merchandise to promote its core entertainment and music services. There is no likelihood of confusion with respect to the Cited Mark because the purpose of Applicant's promotional item and the Cited Mark's luggage are clearly distinguishable, consumers would exercise careful decision making prior to purchasing such items, and the goods at issue are offered via different channels of trade.

II. CONCLUSION

In light of the above, no likelihood of confusion exists between Applicant's Mark and the Cited Mark. Therefore, Applicant respectfully requests that the Examining Attorney withdraw the likelihood of confusion refusal, and allow the Application to proceed to publication.

Exhibit A

SEARCH

MERCH

ITEMS

9:30

MEREWETHER POST PAVILION

ANTHEM

LINCOLN THEATRE

ALL

SALE

THE ANTHEM TOTE BAG

THE ANTHEM



\$ 5.00

Add to cart

- *Reusable Shopping Bag
- *13"x15"x10" with Insert
- * Color: Black w/ blue imprint



LINKS


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[9:30](#)

[The Anthem](#)

[Merriweather Post Pavilion](#)

[Lincoln Theatre](#)

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Exhibit B



**Free Shipping
For USA Orders
Over \$100**

CATEGORIES

Shop By Collection

Travelpro® Collections

- Crew™ 11
- Crew™ 10
- Taos® Lite
- Platinum® Magna™ 2
- Maxlite® 4
- CREW™ EXECUTIVE
- CHOICE™
- Anthem® Select
- Tpro® Bold™ 2
- Nuance™
- VersaGlide™ Select
- Walkabout® Lite 3

Atlantic® Collections

Atlantic® Ultra® Lite 3

Shop By Style

Laptop Bags

Tote Bags

Duffel Bags

Carry On Luggage

Checked Luggage

Hardside Luggage

Luggage Sets

Spinner Luggage

Garment Bags

Special Sale Item

POPULAR BRANDS

Travelpro®

Atlantic®

[View all brands](#)



Travelpro® Anthem® Select 21" Expandable Mobile Office Spinner

~~\$240.00~~ \$119.99

(You save \$120.01)

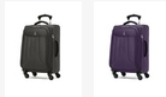
* COLOR:



QUANTITY:

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[ADD TO WISH LIST](#)



DESCRIPTION

REVIEWS

SIMILAR PRODUCTS

ALSO VIEWED

Travelpro® Anthem® Select 21" Expandable Mobile Office Spinner

SKU: TP5085T80

Dimensions: H 20.80" x L 14.0" x W 7.50"

Weight: 6.3 lbs

Color Options: Espresso or Lilac

SPECIFICATIONS:

- Only 6.3 pounds!
- Includes laptop sleeve and tablet sleeve
- Made of rugged polyester fabric with water repellent coating for greater stain and abrasion resistance
- Ultra lightweight design without compromising industry leading quality standards
- Patented ProGrip® provides more comfort and control when pushing spinner luggage
- Airline grade aluminum handle system with multiple stops to ensure a comfortable roll for users of different heights
- 4 spinner wheels rotate 360° providing superior maneuverability and a smooth glide in every direction
- Main body compartment has tapered expansion capability which maximizes packing and flexibility while keeping the center of gravity low
- Durable skid guard and corner guard protection on high wear points to protect against abrasion
- Neoprene cushioned top and side carry handles provide multiple carrying options
- Full size interior lid compartment and multiple accessory pockets offer intelligent packing flexibility
- Adjustable hold down straps with Duraflex® buckles keep contents secure

Disclaimer

Dimensions are for suitcase compartment only and do not include external components such as wheels, feet and handles. Weights are approximate.

DESCRIPTION:

The mobile office is designed to keep your electronics safe, with easy access pockets to get to your laptop table. Features a laptop and tablet sleeve to keep your items safe during transit.

Innovation throughout, including the patented ProGrip® that ensures effortless maneuverability and to help provide more comfort and control when pushing Spinner luggage.

Ensuring a long life cycle for our products is always top of mind in Travelpro collections and the corner guards and skid guards ensure protection from abrasion for this Travelpro Toplite Elite Spinner. Single 4-wheel spinners featuring larger rear wheels allow the product to transition easily from being pulled behind you to being pushed along side you. Wheels are tested over rough, high mileage surfaces and are built tough to offer the smoothest of rolls. Full size interior lid compartment and multiple accessory pockets offer intelligent packing flexibility.

In order to provide additional packing capacity, we have included a tapered expansion feature that can be accessed simply by the pull of a zipper, while maximizing packing flexibility and keeping the center of gravity low.

To ensure ease of mind we back our product with a Limited Lifetime Warranty.

RELATED PRODUCTS



TRAVELPRO® WINDSPEED SELECT
UNDERSEAT SPINNER CARRY-ON
~~\$119.99~~ \$59.99



TAOS® LITE 21" EXPANDABLE
SPINNER
\$340.00



TRAVELPRO® NUANCE™ 21"
EXPANDABLE SPINNER
~~\$360.00~~ \$99.99



TRAVELPRO® CREW™ 10 25"
EXPANDABLE SPINNER
~~\$540.00~~ \$269.99



TRAVELPRO® CREW™ 10 21"
EXPANDABLE SPINNER
~~\$440.00~~ \$162.99

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PROPOSITION 65
AIRLINE PERSONNEL LOGIN
LOCATE A STORE
PRIVACY POLICY
RETURNS AND EXCHANGES
CONTACT US
TERMS OF USE
SHIPPING POLICY
REGISTER PRODUCT
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