

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK EXAMINATION OPERATION

In re: U.S. Trademark Application

Serial No. 88/905,618  
For the Mark: SENTINEL  
Applicant: Amrapur Overseas, Inc.  
Application Filing Date: May 7, 2020

Docket No.: 1119.0104

Examining Attorney: Bridgett G. Smith  
Law Office: 115

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

RESPONSE TO OFFICE ACTION

Dear Commissioner:

The following is in response to the Office Action dated March 2, 2021 (the “Office Action”).

In the Office Action, the U.S. Patent & Trademark Office (the “USPTO”) withdrew the likelihood of confusion refusal as to U.S. Registration Nos. 5,130,498 and 5,323,153.

The Office Action, however, maintained the likelihood of confusion refusal with the following marks:

“SENTINEL XL” in U.S. Trademark Registration No. 3,363,401 (the “401 Mark”) for “Protective clothing; protective respirators, namely respirators other than for artificial respiration” in International Class 9;

“SENTINEL” in U.S. Trademark Registration No. 1,771,556 (the “556 Mark”) for “uniforms; namely, trousers, shirts” in International Class 25;

The Office Action also issued a notice regarding Applicant’s alleged misclassification of its identification of goods in International Class 25.

Applicant believes the following fully addresses all outstanding matters and refusals in the Office Action, and provides arguments and evidence supporting registration of the Mark on the Principal Register.

Withdrawal of the USPTO’s refusals is respectfully requested in light of this response.

## PROPOSED AMENDED IDENTIFICATION OF APPLICANT'S GOODS

The Office Action alleged that the goods in International Class 25 appears to be misclassified. The Office Action suggested that if body suits are intended for use a medical apparel, they may be properly classified into International Class 10.

Without conceding to the Office Action's allegations, Applicant has deleted International Class 25 and added International Class 10. The goods identified under International Class 10 is as follows.

*Body suits for use as medical apparel, namely, personal protective equipment.*

Applicant requests that this refusal be withdrawn.

## THE GOODS DESCRIBED IN THE '556 MARK ARE NOT RELATED

The Office Action refused registration of the Mark under Section 2(d) of the Trademark Act due to (1) perceived similarities between the marks in terms of sound, appearance, connotation and commercial impression, and (2) relatedness of the compared goods.

Specifically, the Office Action alleged that the goods in U.S. Registration No. 1,771,556 include uniforms and the proposed mark is used on body suits, and that neither the application nor the registration contains any limitations regarding trade channels for the goods and therefore it is assumed that registrant's and applicant's goods are sold everywhere that is normal for such items, i.e., clothing and department stores.

The Office Action further alleged that it can also be assumed that the same classes of purchasers shop for these items and that consumers are accustomed to seeing them sold under the same or similar marks.

Applicant respectfully disagrees.

While it is often cited per *In re Shell Oil Co.*, 992 F.2d 1204, 1207 (Fed. Cir. 1993) that "the more similar the marks at issue, the less similar the goods or services need to be to support a finding of likelihood of confusion", Applicant notes that a key consideration in such an analysis is whether substantial evidence supports the notion that "the goods are related or marketed in such a way that they would be encountered by the same persons *in situations that would create the incorrect assumption that they originate from the same source*". *Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238 (Fed. Cir. 2004) (emphasis added); *see also Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1371 (Fed. Cir. 2012).

In other words, even if goods may be related in some manner, but no substantial evidence is presented showing that the same classes of purchasers would encounter the marks in situations and circumstances leading to mistaken source confusion, even if the marks are identical, confusion is not likely. *See Shen*, 393 F.3d at 1244-45 (finding the fact that clothing such as fedoras and tailored gloves (for fashion) are worn on the same part of the body as protective clothing such as hardhats and barbeque mitts (used more like tools), to be insufficient evidence of relatedness); TMEP §1207.01(a)(i).

The classification has been changed from International Class 25 to International Class 10 to clarify that the goods pertain to body suits *for use as medical apparel, namely personal protective equipment*.

Applicant notes that medical apparel, such as personal protective equipment, cannot be found in department stores such as Target<sup>®</sup>. Instead, such products must be brought at medical specialty stores. See Exhibit A, which is a webpage demonstrating medical personal protective equipment. The webpage specifically demonstrates that regular consumers would not shop at a department store to purchase medical personal protective equipment, and similarly, the same consumer cannot buy regular body suits at such medical specialty stores.

Thus, the goods are not related, and that there is no likelihood of confusion with the ‘556 Mark.

#### THE GOODS IN APPLICANT’S MARK APPLICATION DO NOT OVERLAP WITH THOSE IN THE ‘401 MARK

In a similar vein, the Office Action again failed to present any evidence that the ‘401 Mark’s registration covers “personal protective equipment”.

If the goods or services in question are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source, then, *even if the marks are identical, confusion is not likely*. See, e.g., *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1371, 101 USPQ2d 1713, 1723 (Fed. Cir. 2012) (affirming the Board’s dismissal of opposer’s likelihood-of-confusion claim, noting “there is nothing in the record to suggest that a purchaser of test preparation materials who also purchases a luxury handbag would consider the goods to emanate from the same source” though both were offered under the COACH mark).

In the instant case, the ‘401 Mark registration expressly covers “protective clothing” and “protective respirators [other than for artificial respiration]”.

As such, Applicant believes the registrant’s goods in International Class 09 are narrowly described, and that it is not evident that the registrant’s goods overlap or encompass Applicant’s, or that they should be equated to “personal protective equipment” *per se*, especially as enumerated and clarified in Applicant’s Mark application for work gloves, protective face masks, safety goggles, ear-covering shields, and helmets.

This is further evidenced by the Office Action's lack of evidence to demonstrate that the goods identified in the Mark and the '401 Mark are related.

Thus, there is no likelihood of confusion with the '401 Mark.

----

For at least the foregoing reasons, Applicant believes that (1) the Mark is not confusingly similar with the marks in the cited registrations, and (2) that there is no relatedness in the relevant goods under *du Pont*.

Accordingly, Applicant respectfully requests that the USPTO withdraw its Section 2(d) refusal and permit registration of the Mark on the Principal Register.

Respectfully submitted,

Sheetal S. Patel /s/

July 7, 2021

---

Sheetal S. Patel

---

DATE

Attorney for Amrapur Overseas, Inc.