

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

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

The Applicant for trademark serial number 86/335,206 respectfully requests that the Commissioner enter the following response into the record

The Examining Attorney has refused registration of Applicant's mark based on a finding of likelihood of confusion as to the similarity of Applicant's VAPOR mark and the VAPOR APPAREL mark in cited registration 3,,554,188 (hereinafter the "Cited Registration"). Applicant respectfully submits that the likelihood of confusion is obviated by the difference in commercial appearance of the marks, the narrow scope of protection afforded to the Cited Registration and the separate channels of trade in which Applicant provides its goods.

Commercial Appearance

The overall commercial impression generated by the Applicants mark and the cited registration are distinct. While the Examiner refers to the Cited Registration as a word mark, the Cited Registration is in fact a color limited design mark (shown below). As a design mark, the overall commercial impression of the mark must include not only the word portions, but the design portions as well.



The Applicants mark is a word mark that is free of design elements and omits the term apparel. As such the commercial impression generated between the Applicants mark and the Cited Registration is quite distinct.

Channels of Trade

The channels of trade in which Applicant and Registrant provide their goods do not overlap, thus decreasing the likelihood of confusion among consumers. Applicant markets and sells its products and services via its own website and its thrift store outlets. Applicant does not sell its goods in retail establishments, such as Dick's Sporting Goods, or any other retail venue where clothing is sold. Further, Applicant's individual members promote Applicant's goods. It follows that when consumers view Applicant's mark through its infomercials, website, and members they do not see any third party marks. There is never any retail comparison. Consumers can never see the Applicant's mark and the mark in the Cited Registration together.

In contrast, the owner of the Cited Registration sells its apparel through limited distributors in the US (see Exhibit A taken from the Vapor Apparel website) and through various internet portals (see exhibit B). Furthermore, the goods marketed under the cited registration are marketed for the purpose of sublimation printing. Thus, Applicant's and Registrant's consumers never see the respective marks side-by-side.

Based on the foregoing, Applicant submits that its channels of trade are completely distinct from those used by Registrant, which significantly decreases any likelihood of confusion between Applicant's and Registrant's marks.

The Coexistence of the Cited Registration with multiple registrations for marks containing the term VAPOR demonstrates the narrow scope of protection afforded to the Cited Registration. Just as the Cited Registration can co-exist with multiple registrations for marks containing the term VAPOR in IC 025 without a likelihood of confusion, Applicants mark should also be able to co-exist.

4592925	BEVERLY HILLS VAPOR	Athletic shirts; Athletic shorts; Gloves; Hats; Scarves; Sports bra; Sweatbands; Sweatshirts; T-shirts; Tank tops; Yoga pants.
4246741	UVAPOR	Clothing, namely, shirts, pants, shorts, jackets, t-shirts, fleece jackets, fleece sweatpants, fleece shorts.
4632766	CHAMPION VAPOR	Pants
4591025	VAPORTEX	Fabric sold as an integral component of finished clothing items, namely, shirts, pants, shorts, skirts, blouses, dresses, jackets, sweatshirts and sweat suits; Fabric sold as an integral component of activewear including dancewear, tennis, golf, yoga, team sportswear, namely, leotards, pants, tops, tights, tutus, crop tops, unitards, leggings, dance pants and dance shorts; Fabric sold as an integral component of intimate apparel, namely, lingerie, bras, panties, babydolls, nightgowns, body shapers and corsets
4516478	VAPORTREAD	Footwear, namely, wading boots
4316569	CM CAFE MOTO VAPOR	t-shirts, hats, sweatshirts, and aprons.
4402459	DYE SUB CERTIFIED VAPOR APPAREL	Moisture-wicking sports shirts.
4126416	VAPORSTREAM	Fabrics, namely, two layer fabrics having an inner layer for wicking moisture from the skin and an outer layer to repel water and provides insulation sold as an integral component of base layer garments.
3976858	VAPORSKIN	Clothing for men, women, and children, namely, swimwear and shorts
3551862	VAPORWICK	Clothing, Headgear and footwear, namely, T-shirts, tops, shorts, pants, sweatshirts, jackets, parkas, vests, anoraks, hat, caps.
3773581	CHAMPION VAPOR	Clothing, namely, shirts, shorts, t-shirts
3551776	VAPORWICK	Clothing, Headgear and footwear, namely, T-shirts, tops, shorts, pants, sweatshirts, sweaters, jackets, hat, caps, and gloves.
3013771	VAPOR-DRY	Clothing, namely, shorts, pants, tights, and tops.

2392091	VAPRTHRM	clothing, namely, gloves, jackets, vests, pants and headwear.
2160498	V VAPORLOC	insoles and heel inserts for shoes, boots, slippers, and other footwear made from layered polymeric materials.
2075900	VAPOR-TECH	clothing, namely, socks.

Vapor Apparel's US Distributors - Windows Internet Explorer
 http://www.vaporapparel.com/us_dist.html



View [Vapor Apparel - US Distributors](#) in a larger map

Our premium US distributors are committed to having the sublimation apparel you need, in stock, when you need it. All of the above locations have a complete array of Vapor Apparel's dye sub certified styles ready for shipment. You can call on all of these locations for rapid response inventory.

USA Premium Distributors
 JDS Industries - (800) 843-8853 [All Locations]
 Johnson Plastics - (800) 869-7800 [MN]
 Conde Systems Inc. - (800) 826-6332 [AL&CA]
 Best Blanks - (888) 431-7385 [FL]



Vapor Apparel is also available at several specialty supply houses and value-added resellers. [Click here](#) for our latest catalog of Sublimation Certified apparel.

Full List of US Distributors (By State):

The screenshot shows a web browser displaying the Vapor Apparel website. The page features a navigation menu on the left with categories like 'Heat Transfers Supplies & Equipment', 'Sublimation Supplies & Equipment', and 'Heat Transfer Presses'. The main content area is titled 'Vapor Apparel - Mens' and includes a search bar, a product grid with images of various apparel items (Men's, Ladies, Youth, Baseballs, Socks, Fleece), and a detailed product view for 'Vapor Apparel Basic Men's T Short Sleeve'. The detailed view shows a white t-shirt and lists the product code 'A15JBB', material '100% Spun Polyester', and a description: 'Delivers look and feel of organic cotton with wickability of advanced poly-performance fabric. Great for: outdoor market, uniforms for heat-related environment, skateboard...'. The website also features a top navigation bar with contact information and a sidebar with a 'SUBLIMATION - HOME' menu.

CONCLUDING STATEMENTS

If the Examiner has any questions or comments, a telephone call is invited to Applicant's attorney of record, Thomas G. Peterson, Esq. at 205-521-8084. Applicant has fully reviewed the statements herein, and has diligently sought to comply with and respond to each requirement and issue raised by the Examining Attorney.

Thomas G. Peterson
Attorney for Applicant