

## REMARKS

The Office has initially refused registration under Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d), on the ground that Applicant's mark **VENUM & Design** (depicted below) is likely to cause consumer confusion with the following previously registered trademarks: **VENOM** (Registration No. 4466064), **VENOM** (Registration No. 4160703), **VENOM** (Registration No. 2887768), **VENOM** (Registration No. 3858110), **VENOM** (Registration No. 4045855), **VENOM** (Registration No. 3795390), **VENOM DATA** (Registration No. 4121033), and **VENOM POWER** (Registration No. 3066058) (collectively referred to hereafter as the "cited registrations" or the "cited marks"). The Office has also warned of a potential likelihood of consumer confusion with marks subject of four prior-pending applications. Applicant reserves its right to respond to 2(d) refusals based on the marks subject of the prior-pending applications should those marks be granted registration and the Office maintains its position on likelihood of confusion.

The Office has deemed that Applicant's mark is confusingly similar to the marks subject of the cited registrations based on a perceived similarity between the marks and relatedness of the goods. Applicant submits that, especially in light of the amended identification of goods submitted herewith, consumer confusion is unlikely because Applicant and Registrants' marks taken as a whole create completely different overall commercial impressions are used in connection with distinguishable product types.

### ***Marks Are Not Confusingly Similar Based On Difference In The Marks Themselves***

Applicant submits that there is no likelihood of confusion between its mark and the marks subjected to the cited registrations, because the marks make distinguishable visual commercial impressions. First, the cited marks all use the traditional spelling of the term "Venom."

Applicant's mark, on the other hand, features a fanciful spelling by replacing the letter "o" with the letter "u." Not only does this difference create a distinguishable visual commercial impression, it will also trigger consumers association between the applied-for mark and Applicant's existing registrations (entered in the record herewith) that also use the same fanciful spelling. Accordingly, consumer will easily associate the source of the applied-for goods with Applicant.

Furthermore, Applicant's mark makes distinguishable visual commercial impression because it is a composition of words and design. The applied-for mark consists of the word VENUM and a prominent and distinctive snake head design (below).



None of the cited marks feature a design component. Based solely on its unique visual impact, Applicant submits that there is no likelihood of confusion between its mark and the mark subject to the cited registrations.

***Marks Are Not Confusingly Similar Based On Difference In Goods***

More specifically, as to each of the cited registrations, Applicant submits that its amended statement of goods (also entered herewith) has eliminated all goods that may have appeared overlapping or related to those identified in the cited registrations. Applicant address each cited registration below.

1. **VENOM** (Registration No. 4466064) for “batteries and battery chargers; rechargeable electric batteries” in Class 9; and **VENOM POWER** (Registration No. 3066058) for “disposable batteries, rechargeable batteries and battery chargers for model air and surface vehicles,” in Class 9 by Vertical Partners West, LLC.

**Response:** Applicant has deleted the potentially related goods “apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity” and has only maintained “spectacles; sunglasses; protective goggles for sports; protective helmets for combat sports” in Class 9. Applicant submits there is no likelihood of confusion between Registrant’s goods and the goods remaining in the application.

2. **VENOM** (Registration No. 4160703) for “head and face protection devices, namely, face-protection shields, protective head guards for industrial purposes and protective visors” in Class 9 by Gateway Safety, Inc.

**Response:** Applicant’s amended identification in Class 9 maintains “protective helmets for combat sports.” Applicant submits that there is no likelihood of confusion between its sport helmets and Registrant’s industrial head guards. The goods are completely different and have different applications. Accordingly, the consumer of the respective goods are distinct and the goods will not be purchased under circumstance that would engender confusion. Applicant’s sporting goods will be sold to ordinary retail consumers while Registrant’s goods would likely be purchased by procurement departments in industrial companies. Even if the same channels of trade are presumed, the goods would never be sold in the same store or be purchased by the same consumers. For these

reasons Applicant submits there is no likelihood of confusion.

3. **VENOM** (Registration No. 2887768) for “audio equipment...” in Class 9 by Directed Electronics, Inc.

**Response:** This record has been cancelled. Applicant respectfully requests that the 2(d) refusal as to this registration be withdrawn.

4. **VENOM** (Registration No. 3858110) for “riflescopes” in Class 9 by Sheltered Wing, Inc.

**Response:** Applicant has deleted “scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signaling, checking (supervision), life-saving and teaching apparatus and instruments” from its Class 9 identification. Applicant submits there is no likelihood of confusion between Registrant’s goods and the goods remaining in the application.

5. **VENOM** (Registration No. 4045855) for “eau de toilette and eau de cologne; perfumes and aftershaves” in Class 3 by YZY Inc.

**Response:** Applicant has deleted all Class 3 goods from the application. Applicant submits there is no likelihood of confusion between Registrant’s goods and the goods remaining in the application.

6. **VENOM** (Registration No. 3795390) for “non-alcoholic, non-carbonated and carbonated fruit flavored drinks, energy drinks and syrups and concentrates for making same” in Class 32 by Dr. Pepper/Seven Up, Inc.

**Response:** Applicant has deleted all Class 32 goods from the application. Applicant

submits there is no likelihood of confusion between Registrant's goods and the goods remaining in the application.

7. **VENOM DATA** (Registration No. 4121033) for "computer hardware and peripherals" in Class 9 by Ryan L. Maxwell.

**Response:** Applicant has deleted "computers; software" and other similar goods in Class 9. Applicant submits there is no likelihood of confusion between Registrant's goods and the goods remaining in the application.

### Conclusion

Through the remarks and amendments submitted herewith, Applicant has fully complied with the Examining Attorney's requests and has presented adequate evidence to overcome the initial refusals to register. Applicant therefore respectfully request that the Office withdraw the §2(d) grounds for refusal and either suspend the application until final disposition of the prior pending applications or pass the application to publication.