

The Examining Attorney has issued a refusal of registration based upon 2 prior registrations and 1 prior application. Reconsideration and withdrawal of this refusal is requested.

First, please note that Registration No. 3584632 has been cancelled.

Second, with respect to Registration No. 3237830, it is submitted that the combination of the differences between the goods and the differences between the marks is sufficient to preclude any likelihood of confusion.

First, these marks are not so similar in appearance, sound and commercial impression as



to be confused with one another. The applicant's mark is



mark is

The Examining Attorney has simply stated “both marks share the wording QI [sic] in common.” That is an oversimplification.

Both marks are logos/designs, and are only similar in that the applicant has described its mark as comprising the letters O and I. Applicant’s mark could easily be construed by consumers as a stylized letter “H” or just two semicircles connected near the top.

These marks are clearly different in appearance and commercial impression.

It is well-settled that in determining a likelihood of confusion, the Examining Attorney must look at the marks, in their entireties, for similarities in appearance, sound, connotation and commercial impression. In re E.I. du Pont de Nemours & Co., F.2d 1357, 177 USPQ 563 (CCPA 1973). As stated by the Court of Appeals for the Federal Circuit in the recent case In re Hearst Corp., 25 USPQ2d 1238,1239 (CAFC 1992) "Marks tend to be perceived in their entireties, and all components thereof must be given appropriate weight." In the Hearst case, the Court found that the trademarks VARGAS and VARGA GIRL, both for calendars, were

sufficiently different in sound, appearance, connotation and commercial impression to negate any likelihood of confusion.

Conflicting marks must be compared by looking at them as a whole, rather than breaking the marks up into their component parts, for comparison. It is the impression that the mark as a whole creates on the average reasonably prudent buyer and not the parts thereof, that is important. As the Supreme Court observed: "The commercial impression of a trademark is derived from it as a whole, not from its elements separated and considered in detail. For this reason, it should be considered in its entirety...." Estate of P.D. Beckwith, Inc. v. Commissioner of Patents, 252 U.S. 538 (1920).

It is respectfully submitted that when viewed in their entireties, the marks are not so similar as to cause confusion.

In comparing the marks in their entireties, the marks are at least as different from each other as were the marks VARGAS and VARGA GIRL in In re Hearst Corp., supra. Consumers viewing these marks are not going to view the cited mark and the applicant's mark as the same. The design element in the applicant's mark is also not *de minimis*. Rather, it is an equally prominent portion of the mark.

It is therefore respectfully submitted that when viewed in their entireties, the marks are sufficiently different such that confusion between the marks or as to the source of the goods offered under the marks will not occur.

Additionally, while in In re Hearst Corp., supra, the goods of the parties were identical, *i.e.*, both marks were for calendars; here, the goods of the parties are different.

It is axiomatic that likelihood of confusion must be determined on the basis of the goods and services as they are set forth in the application and cited registration. See e.g., Paula Payne Products, Co. v. Johnson Publishing Co., 177 USPQ 76 (CCPA 1973); In re Chalet Chocolates, Inc., 212 USPQ 968 (TTAB 1982); Ferdinand Mulhens v. Sir Edward Ltd., 214 USPQ 298 (TTAB) 1981; Ziebart International Corp. v. Northern Instruments Corp., 212 USPQ 537 (TTAB 1981).

The present application, as amended, now covers,

Home automation system, lighting control system and devices, video conferencing system and devices, data collaboration system and devices, audio conferencing system and devices, heating and air-conditioning control system and devices, curtain or blind rolling control system and devices, home photocopying system and devices, culinary and baking control system and devices, home cleaning and ventilation system and devices, central control system and switching

devices for remote control indoor and outdoor, sound control system and devices, home cinema system and devices, carrying bags and covers for home automation apparatus and devices, batteries, solar recharger for outdoor and indoor use, global positioning system, time recording apparatus, photoeigraphy apparatus, portable media players, in-ear headphones, USB devices, wires, connections cables, integrated circuits, plugs, sockets and other contact and electric connections, voltage stablizing power supply, alarms, protection devices for personal use against accidents and theft, wearable digital electronics devices in the forms of wristwatches, wristbands and eyeglasses,,walkie-talkies, bangle and spectacles for the wireless receipt, storage and /or transmission data messages

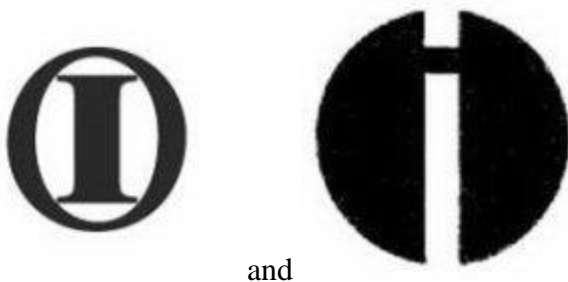
The registrant’s goods are “laptop computer bags.”

In order to maintain a rejection under Section 2(d), it is not sufficient if confusion is merely “possible.” A higher standard is required. Shatel Corp. v. Mao Ta Lumber & Yacht Corp., 697 F.2d 1352, n.2, 220 U.S.P.Q. 412 (11th Cir. 1983) (likelihood is synonymous with probability); Rodeo Collection, Ltd. v. West Seventh, 812 F.2d 1215, 2 U.S.P.Q.2d 1204, 1206 (9th Cir. 1987) (“Likelihood of confusion requires that confusion be probable, not simply a possibility.”); Blue Bell Bio-Medical v. Cin-Bad, Inc., 864 F.2d 1253, 9 U.S.P.Q.2d 1870, 1875 (5th Cir. 1989) (“[Plaintiff] must show, however, that confusion is probable; a mere possibility that some customers might mistakenly identify the [defendant's product] as [plaintiff's] product is not sufficient.”).

The court in Electronic Design & Sales, Inc., supra., held that it was “not concerned with mere theoretical possibilities of confusion, deception, or mistake or with de minimus situations but with the practicalities of the commercial world, with which the trademark laws deal.”

In the present case, the combination of the differences between the marks and the differences between the respective goods, as restricted, are, taken together, sufficient to preclude any type of confusion.

With respect to prior Application Serial No. 86/6599072, the same analysis applies. The marks are both logos, and are clearly different in image and commercial impression, i.e.,



Further, the goods and services listed in the cited registration are all in the field of “medicine, healthcare and/or cancer” i.e.,

IC 016. US 002 005 022 023 029 037 038 050. G & S: Publications, namely, magazines, journals, magazine and journal supplements, newsletters, monographs, and written articles in the fields of medicine, healthcare, and/or cancer

IC 041. US 100 101 107. G & S: Providing on-line publications in the nature of magazines, journals, magazine and journal supplements, newsletters, monographs, and articles in the field of medicine, healthcare, and/or cancer; Providing a website featuring non-downloadable magazines, journals, magazine and journal supplements, newsletters, monographs, and articles in the fields of medicine, healthcare, and/or cancer; Educational services, namely, conducting conferences, seminars, and meetings in the fields of medicine, healthcare, and/or cancer and distribution of materials in connection therewith

IC 044. US 100 101. G & S: Providing an internet website portal featuring medical and healthcare information

Clearly, once again the combination of the differences between the marks and the differences between the goods/services is more than sufficient to preclude any likelihood of confusion.

It is therefore respectfully requested that all refusals of registration be withdrawn, and that this mark be forwarded for publication in the *Official Gazette*.