

Application No. 86914115
Mark: XPLOER

Applicant notes the Examining Attorney's refusal of registration on the basis of a Section 2(d) likelihood of confusion with registration No. 4298484 for "GRAND EXPLORER" in connection with "protective work gloves" in Class 9. Applicant respectfully disagrees and requests favorable reconsideration.

First, Applicant asserts that "safety glasses" has been removed from the identification of goods, which should remove any potential likelihood of confusion between Applicant's "sunglasses, clip-on sunglasses, reading glasses and eyeglasses" and the protective work gloves of the cited registration. In the Office Action, the Examining Attorney attached Internet evidence of screenshots from companies that produce work gloves, asserting that the evidence establishes that "the same entity commonly manufactures work gloves and Applicant's safety glasses, eyeglasses, and sunglasses and markets the goods under the same mark." However, Applicant asserts that just because work gloves and safety glasses *can* be sold together under the same mark, does not automatically mean that consumers are likely to be confused by two distinctly different marks used in connection with two completely different kinds of goods. Now that "safety glasses" has been removed from the identification of goods, Applicant asserts that any likelihood of confusion that *may* have existed between "safety gloves" and "safety glasses" (which we do not concede) is no longer a going concern. Applicant's remaining glasses do not serve any sort of safety function such that one would make a connection to safety gloves in their minds.

Under *TMEP* §1207.01, when determining whether or not a likelihood of confusion exists, the marks must be considered *in their entireties* as to appearance, sound, connotation and commercial impression. Applicant asserts that the marks are sufficiently different as to avoid any further potential for any likelihood of confusion between the two marks. Under *TMEP* §1207.01, "the issue is not whether the respective marks themselves, or the goods or services offered under the marks, are likely to be confused but, rather, whether there is a likelihood of confusion as to the source or sponsorship of the goods or services because of the marks used thereon." Here, Applicant asserts that the marks, when taken into consideration in their entireties, in and

of themselves are sufficiently different, and that consumers are not likely to be confused as to the source of the respective goods. First, Applicant's mark is spelled uniquely, without the "E" in "Explorer" – "XPLOER", which creates a specific and recognizable commercial impression in the minds of consumers. Additionally, the mark of the cited registration consists of two words "GRAND EXPLORER" (spelled conventionally), which together create a distinct commercial impression separate and apart from Applicant's "XPLOER" mark. While both marks contain the phonetic equivalent of "explorer", Applicant asserts that a consumer is not going to be confused between "GRAND EXPLORER" protective gloves, and "XPLOER" glasses.

In summary, based on the foregoing, Applicant respectfully submits that there is no likelihood of confusion between Applicant's mark and the mark of the cited registration, and Applicant respectfully requests that the Examining Attorney reconsider the refusal of registration, withdraw the cited registration as a Section 2(d) reference, and that the application now be accepted.