

LIKELIHOOD OF CONFUSION

The applicant's mark SUBZERO Trademark No. 87146889 was initially refused based on the Examiner's finding of likelihood of confusion with US Registration Nos. 4528242 and 5086697. The Applicant respectfully submits that there is no likelihood of confusion between the Cited Marks and the Applicant's Mark because of dissimilarity of goods.

One important factor in determining whether confusion is likely to happen is the similarity of the goods and services on which each mark is used. The key question is whether consumers are likely to be confused by the similarity of the goods and services. Applicant's mark SUBZERO is used in connection with goods under class 34 covering "tobacco; smoker's articles; matches". On the other hand, the mark SubZero with US Registration No. 4528242 is used in connection with goods and services under class 30 covering chemical flavorings in liquid form used to refill electronic cigarette cartridges. The other SUBZERO mark with US Registration No. 5086697 covers electronic cigarette liquid (e-liquid) comprised of propylene glycol; Electronic cigarette liquid (e-liquid) comprised of vegetable glycerin, under class 34. Since the types of goods on which each mark is used vary dramatically, confusion is less likely.

Prior-filed Application No. 87073053. Applicant elects not to submit arguments at this time and reserves the right to address this issue later if a refusal under Section 2(d) issues. In line with the foregoing reasons, Applicant requests that the Examining Attorney withdraw the likelihood of confusion refusal based on the Cited Marks.

In the event that Examining Attorney finds the arguments not persuasive enough, the applicant authorizes the deletion of "Tobacco; smoker's articles" from Applicant's Class 34 goods. With such removal, Applicant believes that it carries with it the removal of the likelihood of confusion.