

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Choice Spine, LP
Application No.: 87/863,126
Filed: April 4, 2018
Mark: BOOMERANG
TM Attorney: Sahar Nasserghodsi
Law Office: 115

RESPONSE A

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Sir:

This is in response to the Office Action dated August 2, 2018.

As requested by the Examining Attorney, Applicant has amended the description of goods. The goods now read:

--cervical plates for spinal surgery—

In response to the request for information, the applied for mark does not have any meaning or significance in the relevant trade or industry. The goods are not designed to treat boomerang deformities. The goods have the following appearance:



Turning to the rejection under 2(d), the mark **BOOMERANG** of the present application has been refused on the asserted ground that the mark is likely to cause confusion with respect to the following marks, **which do not appear to be commonly owned**:

Reg. No.	Mark	Goods
4,223,477	BOOMERANG	Splints for postoperative sinus surgery
4,215,426	BOOMERANG	Nasal gel pad cushion for respiratory ventilation devices

Applicant respectfully disagrees with the examining attorney's assertion of a likelihood of confusion in this case, and requests reconsideration.

As will be appreciated, the goods of the cited marks are much closer to one another than the goods of Applicant. The goods of Applicant are cervical plates for spinal surgery, which are wholly unrelated to the goods of the cited marks.

Furthermore, as the Trademark Office records show, both of the cited marks were registered over U.S. Reg. 2,805,885 for the mark BOOMERANG for a wedge device for spinal surgery, which registration was issued in 2004 and cancelled in 2014. The cited '477 registration was filed in 2012 and registered in 2012. The cited '426 registration was filed in 2011 and registered in 2012. Copies of the records for the '885 registration and the cited registrations are provided herewith. Thus, in each case the goods of the cited marks were determined to be different from one another and from spinal surgery goods.

Finally, it must be remembered that under the likelihood of confusion test, there must be a "probability" of source confusion as opposed to a mere possibility of source confusion. See, Sure-Fit Products Co. v. Saltzson Drapery Co., 117 USPQ 295 (CCPA 1958). In this case, considering the differences between the marks and other factors, applicant submits that confusion is not probable.

In view of the foregoing, it is apparent that the purchasing public is not likely to mistakenly assume that applicant's goods offered under the mark set forth in the application originate with, are sponsored by, or are in some way associated with the goods offered under the cited marks. Accordingly, withdrawal of the refusal is respectfully requested.

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The foregoing is submitted as a full and complete response to the above Office Action. It is submitted that the mark of the present application is in condition for publication and such action is respectfully requested.

Respectfully submitted,
LUEDEKA NEELY GROUP, P.C.

By: 

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September 24, 2018

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