

Likelihood of Confusion

Applicant respectfully submits that, for the reasons elaborated on below, no likelihood of confusion exists between its own mark ARIES and the cited registration, 5,577,965 based their respective goods/services and significantly different and educated streams of commerce. Applicant, therefore, respectfully requests that the Examining Attorney reconsider their position. Application 88/024,131 is pending and not yet allowed.

NO LIKELIHOOD OF CONFUSION

In determining whether there is a likelihood of confusion between two marks, the Examining Attorney first compares the marks in their entirety and then turns to a comparison of the goods in issue. T.M.E.P. section 1207.01 states, "In considering what factors are relevant to a determination of likelihood of confusion, it is helpful to turn to the landmark decision in this area of the law, In re E. I. du Pont de Nemours & Co., 177 U.S.P.Q. 563 (C.C.P.A. 1973). The Court of Customs and Patent Appeals stated that in testing for a likelihood of confusion, the following factors are relevant to consider:

1. The similarity of the marks in their entirety;
2. The similarity and nature of the goods;
3. The similarity of trade channels;
4. The purchasing conditions of the goods;
5. The length of time the mark has been concurrently used;
6. The number and nature of similar marks in use; and
7. The extent of actual confusion.

In applying these relevant factors in the instant case, it is clear that the differences between the Applicant's mark ARIES and the cited registration, when viewed in their entirety, and as applied to the goods of their respective owners in the context of actual use, are more than sufficient to preclude a likelihood of customer confusion.

Dissimilarity of the Goods

Applicant's contend that their goods are neither identical nor competitive with the goods in the cited registration. The cited registration, 5,577,965 for "ARIES" recites "Injection syringes; Endoscopic equipment for medical purposes; Gastrosopes; Catheters; Urethral probe syringes; Tubing for use with catheters; Syringes for medical purposes; Surgical devices and instruments; Probes for medical purposes; Medical apparatus for introducing pharmaceutical preparations into the human body; Medical and surgical catheters; Injection needles; Injection instruments without needles; Disposable syringes; Medical devices for the treatment of gastroenterological diseases and to facilitate sedation for bronchoscopy and gastroenterological procedures; medical diagnostic instruments for the diagnosis and detecting of gastroenterological diseases; excluding goods relating to shockwave therapy devices and/or urological apparatus and devices" as the goods offered under the mark. Such goods may be employed only by a gastrologist.

In contrast, Applicant uses its marks in connection with "Spinal surgical implants comprising artificial material and associated surgical instrument sets" as amended. Applicant's goods are highly specialized items that are used for a particular purpose for particular doctors, Spinal surgeons in a hospital. Further, companies selling spinal surgery products are specialized companies and generally do not sell the goods recited in registration 5,577,965, they are never in the same stream of commerce or the same trade shows. "[W]here the goods in question are not identical or competitive, and are not related or marketed in such a way that they would be encountered by the same people in situations that could create the incorrect assumption that all the goods come from the same source ... even where the marks are identical, confusion is not likely." In re Unilever Ltd., 222 U.S.P.Q. 981, 982-83 (T.T.A.B. 1984). Accordingly, Applicant's goods and the

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goods in the cited registrations are so dissimilar that confusion among customers is not likely.

Further the consumers are highly sophisticated, Doctors and hospitals. The goods would also never be co-located or travel in the same trade channels. Further, Applicant's products are expensive not point of purchase goods and only ordered for use by Spinal Surgeons.

CONCLUSION

For the reasons set forth above, Applicant's mark and the cited registrations, when viewed in their entirety and in the context of their respective goods, are unlikely to cause confusion among the relevant classes of purchasers. Accordingly, Applicant respectfully submits that no likelihood of confusion exists between Applicant's mark and the marks in the cited registration, and requests that the mark be passed to publication without further delay. Should the Examining Attorney require further changes to the application that could be made by an Examiner's Amendment, he is requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,

Date: February 4, 2019

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