

US Patent and Trademark Office

February 15, 2019

In the Matter of Trademark Application Serial Number: 88142220

Filed: Oct. 3, 2018

Mark: Bulb

Applicant: P JL Group, Inc.

Response to Office Action

The undersigned, P JL Group, Inc. (hereinafter referred to as the "Applicant"), the applicant of the Trademark "Bulb" Serial number: 88142220 (hereinafter referred to as the "The subject mark"), hereby submits response to the Office Action issued on January 18, 2019.

Section 2(d) Refusal-likelihood of Confusion

Applicant respectfully submits that the registrations cited by the Examiner, Waterbulb (U.S. Registration No. 4753699), will not cause confusion with the subject mark for the following reasons.

1. Comparison of the mark between "Bulb" and "Waterbulb"

It is well established that the ultimate conclusion to determine likelihood of confusion rests on consideration of the marks in their entireties. Accordingly, the commercial impression of the whole marks must be considered.

Similarity in Overall Impression

The office action states that the test is "whether the marks will create the same overall impression". Based on the class description of the registered mark, the registrant provides its goods in the areas of vases and bottles, sold empty; receptacles, namely, basins; containers for household use; water devices, namely, pressurized and gravity operated watering and nutrient feeding containers, sprinklers for watering flowers and plants, and plant syringes. These types of bottles are geared towards containing plants in general. On the other hand, applicant provides a unique design of a cup that resembles a bulb, and it is exclusively used for containing drinking liquids such as coffee, tea, flavored beverages, and etc.

The office action states that "the proper test is not a side-by-side comparison of the marks, but instead whether the marks are sufficiently similar in terms of their commercial impression such that consumers who encounter the marks would be likely to assume a connection between the parties." Applicant submits that the purchasing public is not likely to be confused that the marks

come from the same source as the registrant's product is marketed to those purchasers in the flower planting field and not standard drinking cup as provided by the applicant. The products of both marks are different from each other. The average consumer would find clear distinction between the brand that sells vase and bottle for flower planting and the brand that sells uniquely designed drinking cups. Therefore, these two marks should not be found to be similar enough to meet the standard of likelihood of confusion.

The applicant further points out that in *Shen Manufacturing Co. v. Ritz Hotel Ltd.* (393 F.3d 1238, 73 USPQ2d 1350 (Fed. Cir. 2004)) it was held that "if the goods or services in question are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source, then, even if the marks are identical, confusion is not likely"

2. Comparison of the goods between "Bulb" and "Waterbulb"

The examiner pointed out that the goods in the application and registration are identical in part because both cover "bottles, sold empty". As mentioned above, registrant's goods involve vases and bottles, sold empty; receptacles, namely, basins; containers for household use; water devices, namely, pressurized and gravity operated watering and nutrient feeding containers, sprinklers for watering flowers and plants, and plant syringes.

The applicant's goods involve in "bottles, sold empty, coffee cups, tea cups and mugs, cups, cups not of precious metal, drinking cups, drinking cups sold with lids therefor, plastic cups.

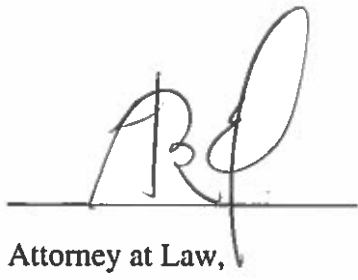
In comparison of these two goods, the average consumer would be able to determine that the goods associated with the registrant's mark and applicant's mark are different. The average consumer would also be able to determine that a bottle from the registrant is distinct and different brand from a bottle from the applicant. Since the goods are distinct, the consumers will less likely to be confused that these two goods associated with the registrant's and applicant's marks derive from the same source.

However, applicant understands that "when analyzing an applicant's and registrant's goods for similarity and relatedness, that determination is based on the description of the goods in the application and registration at issue, not on extrinsic evidence of actual use."

Therefore, applicant will respectfully remove the good "bottles, sold empty" from its application. The description of the remaining goods will be coffee cups, tea cups and mugs, cups, cups not of precious metal, drinking cups, drinking cups sold with lids therefor, plastic cups. The amendment will be made in the response section in conjunction with this request.

Conclusion

For the foregoing reasons, Applicant respectfully requests that the objections of the Examiner be withdrawn, the specification of goods amended as outlined above, and the subject application be allowed to proceed. Thank you so much for your consideration.

A handwritten signature in black ink, consisting of the letters 'K', 'F', and 'L' in a cursive style, positioned above a solid horizontal line.

Attorney at Law,

K. Freeman Lee