

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Serial No.: 88032299  
Filing Date: July 10, 2018  
Mark: PROOF LABS  
Applicant: Class and Culture LLC  
Goods/Services: Class 9 and 21  
Examining Attorney: Cassandra Anderson  
Law Office: 103

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**RESPONSE TO OFFICE ACTION**

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

Dear Examining Attorney:

This is in response to the non-final Office Action dated October 29, 2018 (the “Office Action”) for which the final six-month response is due on April 29, 2019. Accordingly, this response is timely filed.

**I. Section 2(d) Refusal – Likelihood of Confusion**

Registration of the applied-for mark PROOF LABS (“Applicant’s Mark”) was refused based on a finding of a likelihood of confusion with U.S. Registration No. 3580164 PROOF LAB (hereinafter referred to as the “Cited Mark”) registered to Will D. Hutchinson and Nathan M. McCarthy (“Registrant”). For at least the following reasons, Applicant respectfully requires this refusal be withdrawn.

B. Applicant's Goods and Registrant's Goods are Different and Unrelated

Applicant submits that in light of the differences in the nature of the goods, registration of Applicant's PROOF LABS mark does not create a likelihood of confusion with the Cited Mark. Even when the respective marks are identical, the record must still evidence at least a "viable relationship" between the goods and/or services identified to support a finding of likelihood of confusion. *In re Concordia Int'l Forwarding Corp.*, 222 U.S.P.Q. 355, 356 (T.T.A.B. 1983). See T.M.E.P. § 1207.01(a)(i).

Applicant's applied-for Class 9 and Class 21 goods, namely accessories for tech products such as cell phones and smart watches, and protective sleeve holders for beverage bottles, are **materially different** from Class 25 goods, namely clothing, of the Cited Mark. Furthermore, not only are these not the same or similar goods, they are **not related** in any common-sense analysis. There is no evidence or analysis to support that there is a viable relationship between clothing and accessories for tech products, such as cell phones and smart watches, and protective sleeve holders for beverage bottles.

C. Evidentiary Support Provided Fails to Show That Applicant's Goods and Registrant's Goods Would Emanate from the Same Source

The Examining Attorney found that the Applicant's Goods were related to the goods in the Cited Marks because "a number of third-party marks registered for use in connection with the same or similar goods and/or services as those of both applicant and registrant in this case." However, here the Examining Attorney only provided six registrations that cover both cell phone covers/cases and clothing, of which four of them listed a diversity of unrelated goods and thus have little to no probative value. The Court in *In re Princeton*

found that six third-party registrations and copies of several webpages were not enough to show that the involved goods are related. *In re Princeton Tectonics, Inc.*, 95 USPQ2d 1509 (TTAB 2010). *See also In re Coors Brewing Co.*, 68 USPQ2d 1059 (TTAB 2003) (Court found evidence of “a few registrations” covering both the goods and services at issue insufficient). Similarly, in the instant matter, six third-party registrations showing both cell phone covers/cases and clothing are not enough to show that the involved goods are related. When you discount or remove the four registrations that list a diversity of unrelated goods leaving only two relevant registrations, it can hardly be said that this number is high enough to conclude that Applicant’s goods and registrant’s goods are related.

Regarding sleeve holders for beverage bottles, which have now been limited to “protective” sleeve holders to overcome the indefinite issue, none of the cited registrations include “protective” sleeve holders and therefore the cited third-party registrations are actually no longer relevant or probative. There are arguably no third party registrations that show a connection between the respective goods of Applicant and registrant.

Third-party registrations are only probative evidence that the goods are related if each registration is probative and the number of registrations is sufficient, along with other types of evidence, to establish that the types of goods at issue are related. Here, the cited third-party registrations are insufficient to support the claim that the Applicant’s goods should be considered related to the Registrant’s goods. Therefore, the provided third-party registrations are not probative of whether Applicant’s goods and Registrant’s goods are related.

Applicant further notes that there was no attached website evidence as suggested by the Office Action and argued that even if there were, Applicant expects that they would be likewise non-probative because of the lack of quantity

of such evidence to suggest relatedness or they most likely present a broad range of varied and unrelated goods and would not be considered probative evidence.

## **II. Conclusion**

Based on the foregoing, Applicant respectfully requests that the refusal be withdrawn and that the Application be approved for publication.