

Registration has been refused because of an alleged likelihood of confusion with the mark in U.S. Registration No. 5051085. Applicant respectfully disagrees. As noted in TMEP 1207.01(b)(iii), “if the dominant portion of both marks is the same, then the marks may be confusingly similar notwithstanding peripheral differences.” Applicant asserts that the dominant portion of its applied-for mark is TEAZZERS, and thus, the dominant portion of the applied-for mark is not the same as the mark in U.S. Registration No. 5051085. The word TEAZZERS is a strong distinctive term that is being used as the first word in Applicant’s mark. *See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1372-72 (Fed. Cir. 2005). Use of TEAZZERS as part of the mark helps customers distinguish the source of Applicant’s goods. *See In re Computer Sys. Ctr. Inc.*, 5 USPQ2d 1378, 1381 (TTAB 1987). As shown in the attached Sales Sheet for Teazzers Smart Brew (Exhibit A), the word “Teazzers” is the dominant portion of the mark, and the phrase “Smart Brew” is secondary, particularly as Teazzers would be considered the house mark. TEAZZERS is a well-known brand in connection with tea, particularly in the commercial marketplace. TEAZZERS is registered for a full line of products related to tea and tea brewing machines. *See Exhibit B*, U.S. Registration No. 2,309,717 (in connection with electric tea-brewing machines for commercial use, hot beverage dispensing units for dispensing beverages, namely, tea, brewed teas, and flavored teas), *Exhibit C*, U.S. Registration No. 3,769,216 (in connection with staple foods, namely, tea, tea-based beverages, flavored teas and tea-based beverages, and mixes for making tea-based beverages), *Exhibit D*, U.S. Registration No. 4,747,695 (in connection with electric beverage urns for commercial use), and *Exhibit E*, U.S. Registration No. 5,347,901 (in connection with drinking water; fruit-based beverages; fruit drinks and fruit juices; horchata; non-alcoholic beverages containing fruit juices; vegetable juices; vegetable-fruit juices; water beverages).

TMEP 1207.01(b)(iii) further states that “[a]dditions or deletions to marks may be sufficient to avoid a likelihood of confusion if: (1) the marks in their entireties convey significantly different commercial impressions; or (2) the matter common to the marks is not likely to be perceived by purchasers as distinguishing source because it is merely descriptive or diluted.” This may be similar to the case of *In re Shawnee Milling Co.*, 225 USPQ 747, 749 (TTAB 1985) which found that the common terms were highly suggestive as to the respective goods, and addition of the word “Adolph’s” was sufficient to distinguish the marks. *See also In re S.D. Fabrics, Inc.*, 223 USPQ 54, 55-56 (TTAB 1984) (holding DESIGNERS/FABRIC (stylized) for retail fabric store services, and DAN RIVER DESIGNER FABRICS and design for textile fabrics, not likely to cause confusion, noting that, because of the descriptive nature of "DESIGNERS/FABRIC" and "DESIGNER FABRICS," the addition of "DAN RIVER" is sufficient to avoid a likelihood of confusion). Applicant’s applied-for mark should be granted because this is not just an instance where the applied-for mark would appear with a house mark. Rather, the house mark of TEAZZERS is part of the applied-for mark. TEAZZERS would appear in the registration, should it be granted, so this is not a situation of considering how the marks would be used in the marketplace with additional wording or information. *See* TMEP 1207.01(b).

The applied-for mark and the mark in U.S. Registration No. 5051085 must be compared in their entireties and considered in connection with the particular goods or services for which they are used. *In re Nat’l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985). The goods associated with the marks differ. The goods associated with the mark in U.S. Registration No. 5051085 are electric kettles, while the goods associated with the applied-for mark are “automated tea brewing machines for commercial use.” Applicant respectfully disagrees that its application uses broad wording to describe the goods. Rather, Applicant submits that its wording is narrower than the

mark in U.S. Registration No. 5051085 because it is focused on tea brewing machines and also reflects that the tea brewing machines are automated, meaning that they use remote management for monitor/communicate. Further, there is no confusion as to the source of the goods for the reasons discussed earlier regarding the TEAZZERS house mark.

Moreover, Applicant respectfully asserts that the term “smart brew” as used in the applied-for mark as well as in the mark in U.S. Registration No. 5051085 has been somewhat diluted by the other registrations/uses of the mark. As an initial matter, in granting the mark in U.S. Registration No. 5051085, the trademark owner had to disclaim the word “smart.” Otherwise, numerous marks including “brew” have been registered in connection with kettles. For example, the mark Café Brew has been registered in connection with kettles. *See* Exhibit F, U.S. Registration No. 5,440,259. *See also* Exhibit G, U.S. Registration No. 5,459,265 (“Dial A Brew” in connection with Electric coffee brewers; Electric coffee machines; Electric coffee makers; Electric coffee pots; Electric espresso machines; Electric tea kettles; Electric tea pots); Exhibit H, U.S. Registration No. 4,852,984 (“Triple Brew” in connection with Electric coffee brewers; Electric coffee machines; Electric coffee makers; Electric tea kettles; Electric tea pots); Exhibit I, U.S. Registration No. 4,448,475 (“Steam Brew” in connection with Electric coffee brewers; Electric coffee machines; Electric coffee makers; Electric coffee percolators; Electric coffee pots; Electric espresso machines; Electric tea kettles; Electric tea pots); Exhibit J, U.S. Registration No. 1,363,440 (“Rapid Brew” in connection with Percolators; Glass and Stainless Steel Tea Kettles and Non-Electric Coffee Makers). Also, notwithstanding the disclaimer of “smart,” prior to the mark in U.S. Registration No. 5051085, the mark “Smartbrew” was registered in connection with commercial machinery for making beverages, including soda, ciders and beers, namely, aerated beverage making machines. *See* Exhibit K, U.S. Registration No. 4,185,153. Therefore, for all of

the above reasons, Applicant respectfully asserts that the Section 2(d) refusal should be withdrawn and the applied-for mark should be approved for publication.