

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Application of)
Intervention for Life, LLC) Trademark Law Office: 113
For: RAMPART) Attorney: Dana Dickson
Serial No. 88/249,187) Attorney Docket No. 23192.0001
Filed: January 3, 2019)

1901 Sixth Avenue North
2400 Regions/Harbert Plaza
Birmingham, AL 35203-2618
April 29, 2019

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

AMENDMENT

Dear Madame:

Responsive to the Office action mailed March 23, 2019, applicant proposes amending the above-referenced application as follows:

Replace the Identification of Goods and Services with the following:

- - X-ray radiation shields in the form of rigid panels constructed from leaded acrylic for placement between patients and medical staff, all in Class 010 - -

REMARKS

This is in response to the Office action mailed on March 23, 2019.

Applicant proposes amending the Identification of Goods and Services to more particularly describe the Applicant's goods.

The Trademark Examiner has refused registration of Applicant's mark under Trademark Act Section 2(d) on the grounds that there is a likelihood of confusion between Applicant's mark RAMPART ("Applicant's Mark") for X-ray radiation shields in the form of rigid panels constructed from leaded acrylic for placement between patients and medical staff, only (collectively, "Applicant's Goods") and U.S. Registration No. 2,782,885 ("Cited Registration") for personal protective garments made from textiles for biological and chemical warfare agents and other environmental contamination (collectively "Registrant's Goods"). The Examiner takes the position that because Applicant's RAMPART mark is identical to the mark of the Cited Registration and Applicant's Goods are related to Registrant's Goods, a likelihood of confusion exists between the marks. Applicant respectfully disagrees and argues below that there is no likelihood of confusion.

The test for determining the applicability of § 2(d) of the Trademark Act is whether an appreciable number of ordinarily prudent purchasers are likely to be misled or confused as to the source of the products or services. *McGregor-Doniger, Inc., v. Drizzle, Inc.*, 202 USPQ 81 (2nd Cir. 1979) (holding no likelihood of confusion between DRIZZLE for women's overcoats and DRIZZLER for golf jackets). In considering the issue of likelihood of confusion, the trademarks must be compared in their entireties and must be considered in conjunction with the particular goods and services with which they are used. *In re National Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985). Likelihood of confusion has been said to be synonymous with "probable"

confusion—it is not sufficient if confusion is merely “possible.” *See Rodeo Collection, Ltd. v. W. Seventh*, 812 F.2d 1215, 1217 (9th Cir. 1987) (stating that “[l]ikelihood of confusion requires that confusion be probable, not simply a possibility”); *see also* J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* (“McCarthy”) § 23:3, 16-17 (4th ed. 2004). Further, the Trademark Office must take into consideration the scope of protection to be accorded the marks.

Here, the parties’ respective goods are not related. Applicant’s goods are X-ray radiation shields in the form of rigid panels constructed from leaded acrylic for placement between patients and medical staff. Contrary thereto, Registrant’s goods are personal protective garments made from textiles for biological and chemical warfare agents and other environmental contamination. X-ray radiation shields in the form of rigid panels constructed from leaded acrylic for placement between patients and medical staff are not (i) personal protective garments, (ii) made from textiles, or (iii) made for protecting patients or medical staff from biological and chemical warfare agents and other environmental contamination. Likewise, Registrant’s protective garments made from textiles for biological and chemical warfare agents and other environmental contamination are not (i) X-ray radiation shields, (ii) in the form of rigid panels, (iii) constructed from leaded acrylic, OR (iv) for placement between patients and medical staff. As such, Applicant’s Goods and Registrant’s Good are entirely different.

In addition to the fact that the parties’ respective goods are different, the buyers of Applicant’s Goods are hospitals and medical clinics where diagnostic procedures involving the use of X-rays are performed, while the buyers of Registrant’s Goods are law enforcement and militaries. *See* <https://www.officer.com/tactical/ems-hazmat/environment-hazard-protection/product/10043348/gentex-corp-rampart-chemical-biological-defense-overgarment> and <http://approvedgasmasks.com/suit-rampart.htm>, attached hereto as **EXHIBITS A and B**,

respectively. These sophisticated purchasers are not likely to be confused as to source by the use of Applicant's RAMPART mark and the Cited Mark because the purchasers are knowledgeable about the specific types of goods they need. *See Blue Bell Bio-Med. v. Cin-Bad, Inc.*, 864 F.2d 1253, 1260 (5th Cir. 1989) (finding that when hospitals purchase medical carts, a mistaken purchase is unlikely due to the high degree of care with which such purchases are made); *Hewlett-Packard Co. v. Human Performance Measurement, Inc.*, 23 U.S.P.Q.2d 1390 (no confusion between the marks HP and HPM for medical equipment, in part, because the potential purchasers were "highly educated, sophisticated purchasers who [knew] their equipment needs and would be expected to exercise a great deal of care in [their] selection[s]").

The Trademark Trial and Appeal Board and the courts have held in a number of cases that even though trademarks may be similar *or the same* in sound and appearance, where the goods/ services are different, or the purchasers of the goods/ services are different, there will be no likelihood of confusion. *See Reedco Inc. v. Hoffmann-LaRoche Inc.*, 2 USPQ2d 1994 (1987) (finding TEGRIN for the over the counter medicated soaps and salves and TEGISON for oral prescription drugs for treating psoriasis not confusingly similar since, inter alia, products' forms, channels of trade and treatment uses make them distinguishable); *In re British Bulldog, Ltd.*, 224 USPQ 854 (TTAB 1984) (no likelihood of confusion found between PLAYERS in stylized form for men's underwear and PLAYERS for shoes); *In re Sydel Lingerie Co., Inc.*, 197 USPQ 629 (TTAB 1977) (no likelihood of confusion found between BOTTOMS UP for ladies' and children's underwear and BOTTOMS UP for men's suits, coats and trousers); *Morton-Norwich Products, Inc. v. N. Siperstein, Inc.*, 222 USPQ 735 (TTAB 1984) (holding use of FANTASTIC for paints not confusingly similar to FANTASTIK for spot remover, laundry starch cleaners); *Haydon Switch and Instrument Inc. v. Rexnord, Inc.*, 4 USPQ2d 1510 (D. Conn. 1987) (holding

no likelihood of confusion between PLANETGEAR for mechanical drum wheel digital display time counters and PLANETGEAR for planetary gear speed reducers and motor drive shafts).

Due to, *inter alia*, the differences in the parties' respective goods and relevant case law, it is clear that Applicant's Mark and the Cited Mark are not confusingly similar as an *appreciable number of ordinarily prudent purchasers* of the parties' respective services are not likely to be misled or confused as to the source of the respective services. Therefore, Applicant respectfully requests that the Trademark Examiner reconsider and withdraw the citation to the mark in the Cited Registration.

If the Trademark Examiner requires further information from the Applicant, it is respectfully requested that he contact the undersigned to expedite the matter.

Publication is respectfully requested.

Respectfully Submitted,

INTERVENTION FOR LIFE, LLC

/cbrandonbrowning/

By _____
C. Brandon Browning, Esq.
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CBB/te

Enclosures – Exhibits A and B

EXHIBIT A

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TACTICAL TRAINING & CAREERS ON THE STREET INVESTIGATIONS COMMAND/HQ PRODUCT GUIDE

Home // Tactical // EMS / HAZMAT // Environment & Hazard Protection // Rampart Chemical Biological Defense Overgarment

Rampart Chemical Biological Defense Overgarment

GENTEX CORP. — AUGUST 20, 2007

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Offered by Gentex Corp., the Rampart Chemical Biological Defense Overgarment is a two-piece system comprised of a coat and trousers designed to be worn as a duty uniform by tactical users, including SWAT and first responders. The Rampart Overgarment is comprised of Gentex's Lifetex CD-2560-4 fabric, which includes an outer layer of cotton/nylon woven ripstop fabric with a durable oil- and water-resistant finish. The coat features a functional hood, which interfaces with several respirators, including the MSA-Millennium, M40, M50, M53 and MCU-2P. The coat is specially tailored shorter than other tactical garments, preventing interference with wearer's utility belt. Waistband and wrists feature VELCRO tabs for further fitting adjustments. Zippered pockets on front chest area offer access and storage of essential tactical gear and accessories. The trousers feature high bib-style waist; extra-wide, adjustable suspenders; and zipper closures at leg bottoms. Flapped pockets at both hips offer tactical gear and accessories storage.

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EXHIBIT B

The screenshot shows a web browser window displaying the AGM Approved Gas Masks website. The browser's address bar shows the URL <http://approvedgasmask.com/mask-gas-powered.htm>. The website header includes the AGM logo, the text "APPROVED GAS MASKS", and "Chemical Protection Respiratory Protective Equipments Survival Supplies". A phone number "1877AGM1010" and a shopping cart icon are also visible. The navigation menu includes "Home", "About Us", "Sale", "Shipping Info", "FAQ's", and "Contact".

The main content area features a sidebar with navigation links under "Respiratory Protection", "Protective Clothing", "First Responder / EMS", and "Additional Links". The main product section is titled "HOME :: [Chemical Suits](#) :: Rampart Chemical Protective Outergarment CPO Chemical Suit". Below this, there is a link: "Looking for complete protection? [Click here to see our 'head-to-toe' protective kits](#)".

The featured product is the "Rampart CPO Chemical Protective Outergarment", described as "Chemical and Biological Protection for the Tactical User". A photograph shows a person wearing the dark blue, hooded suit. Text describes it as a two-piece system (coat and trousers) designed for duty uniforms, originally for the Department of Energy SWAT teams. It features an integral hood, FM12, M40, and MCU-2P respirator compatibility, a high bib-type waist, extra wide suspenders, and zipper closures at the leg bottoms. The standard color is solid navy, with other colors available on special order. The materials are similar to JSLIST garments, with an outer shell of 50% cotton/50% nylon ripstop poplin and a water-resistant finish. The liner is made of Lifetex CD2660. The system meets performance requirements similar to the JSLIST program, providing protection against chemical and biological agents in a lightweight, launderable system.

Below the main product image, there are links for "Rampart Suit \$382.25 - [Add to Cart](#)" and "Rampart Gloves \$98.17 - [Add to Cart](#)". A small image of a green glove is shown. Below this, a row of product thumbnails includes "Chemical Suit Tape", "Chemical Boots", "Chemical Gloves", "Gas Masks", and "Full Safety Kits".

At the bottom of the product section, there is a list of links: "Complete Kits | Gas Mask Selection | Escape Hoods | Gas Filters | Chemical Suits | Boots | Gloves | Police / SWAT Equipment | Emergency Management | Detectors / Meters | First Aid | Emergency Supplies". A footer line contains: "Legal Info | Old Mask/Filter Info | Mask Buying Guide | Shipping Info | View Cart/Checkout | Site Map".

A Facebook "Become a Fan!" button is located in the bottom left of the main content area. The browser's status bar at the bottom shows the URL <http://approvedgasmask.com/mask-gas-powered.htm>.