

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

MIRAGE
MIRAGE

TRADEMARK:
SERIAL NO.: 88/058,219
FILING DATE: July 30, 2018
APPLICANT: Esquel Enterprises Limited
EXAMINING ATTORNEY: Michelle Ribaudó
LAW OFFICE: 126

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

RESPONSE TO NOVEMBER 1, 2018 OFFICE ACTION


Esquel Enterprises Limited ("Applicant") submits this response to the Office Action issued on November 1, 2018 concerning the above-referenced application to register

MIRAGE
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("Applicant's Mark"). The Examining Attorney preliminarily refused registration on the ground that Applicant's Mark may be confusingly similar with several prior registrations and applications (collectively, the "Cited Marks"), namely:

- A registration of MIRAGE (Reg. No. 4678514) for "shoes" owned by YGW Inc. of Brooklyn, New York.



- A registration of  (Reg. No. 4319568) for "swimwear" owned by Mirage Apparel, LLC of Keswick, Virginia.

- A registration of MIRAGE CAMO (Reg. No. 3794106) for "uniforms and related apparel, namely, shirts, pants, hats, gloves, socks, packs, sacks, for use by military personnel, Special Forces, and swat teams," owned by Bulldog Equipment, LLC of Ft. Lauderdale, Florida.
- A registration of MIRAGE (Reg. No. 1348006) for "Men's Outerwear-Namely, Parkas, Jackets and Overcoats," owned by Soho Fashion Ltd. of New York, New York.
- A pending, allowed application for MIRAGE ACTIVEWEAR (Ser. No. 87848603) for "women's workout apparel, namely, crop pants, jumpsuits, leggings, sports bras, tank-tops" owned by Golsa Sarabi DBA Mirage of Woodland Hills, California.
- Pending, allowed applications for MIRAGE AT HOME (Ser. No. 86804064) for "mattresses and pillows" and (Ser. No. 86804066) for "bed sheets, bed blankets, duvet covers, pillow cases, and bath towels," collectively owned by Mirage Resorts, LLC of Las Vegas, Nevada.
- A pending application for MIRAGE COLLECTION (Ser. No. 85932775) for "On-line retail store services featuring clothing and jewelry; retail store services featuring clothing and jewelry," owned by Mirage Fashion USA, Inc. of Artesia, California.
- A pending application for **MIRAGE** (Ser. No. 85932773) for "custom tailored women's clothing, namely, shirts, dresses, skirts, blouses," owned by Mirage Fashion USA, Inc. DBA Mirage Collection.

For the reasons stated below, Applicant respectfully submits that there is no likelihood of confusion with the Cited Marks because the Cited Marks co-exist with each other and the parties'

marks are distinct and convey different overall commercial impressions. In addition, the parties' products and services are very different and not related.

I. Amendment to Identification of Goods

Applicant amends its identification of goods as follows, with the underlined terms to be added and the items struck through to be deleted:

Class 24: Woven fabrics, knit fabrics; felt and non-woven textile fabrics; oilcloth; gummed waterproof cloth; vinyl ~~and coated~~ cloth textiles for use in the manufacture of clothing; rubberized cloth; personal articles of woven ~~textile~~ fabrics of nylon, cotton, basalt for textile use, namely, handkerchiefs and towels; mosquito nets; bed sheets; futon sheets and quilts; unfitted linen futon and quilts ~~cases covers not of paper~~; pillowcases; bed blankets; table napkins of textile; dish cloths; shower curtains; cloth banners and flags; fitted toilet seat covers of textile; unfitted seat covers of textile; wall hangings of textile; curtains; table cloth of textile; draperies; billiard cloth; labels of cloth; comforters; bed pads, pillow shams, quilts, quilts ~~cases covers~~; futon mattress ~~cover bags covers~~; bed and table covers made of cloth

Class 25: Clothing for men, women and children, namely, coats, jackets, pants, skirts, dresses, suits, shirts, t-shirts, sweaters, underwear, socks, stockings, gloves, ties as clothing, scarves, hats, pajamas, slippers, vests, uniforms, belts, ~~shoes~~, caps being headwear, ~~swimsuits, boots, footwear~~, headgear headwear, namely, hats and caps; athletic clothing, namely, warm-up jackets and warm-up pants; ~~dress clothing~~ Formalwear, namely, tuxedos and tuxedo shirts; casual clothing, namely, sweatpants.

II. The Registration of MIRAGE (Reg. No. 1348006) has Been Cancelled and the Pending Applications for MIRAGE AT HOME (Ser. No. 86804064) and (Ser. No. 86804066) Have Been Abandoned

Since the Examining Attorney issued the November 1st office action, the registration of MIRAGE (Reg. No. 1348006) for "Men's Outerwear-Namely, Parkas, Jackets and Overcoats," owned by Soho Fashion Ltd. of New York, New York was cancelled. *See* Exhibit A. Also, the pending applications for MIRAGE AT HOME (Ser. No. 86804064) and (Ser. No. 86804066) collectively owned by Mirage Resorts, LLC of Las Vegas, Nevada were abandoned for failure to file a statement of use. *See* Exhibit B. Accordingly, Applicant respectfully requests the Examining Attorney withdraw the potential refusal with respect to this registration and these applications.

III. There is no Likelihood of Confusion Between Applicant's Mark and the Cited Mark MIRAGE (Reg. No. 4678514) owned by YGW Inc.

It is well-established that "the question of confusion is not related to the nature of the mark" alone. *In re E.I. DuPont de Nemours & Co.*, 476 F.2d 1357, 1360 (C.C.P.A. 1973). Rather, in assessing likelihood of confusion, the "nature of the products themselves and the structure of the relevant market" are paramount. *Cadbury Beverages v. Cott Corp.*, 73 F.3d 474, 480 (2d Cir. 1996); *Vitarroz Corp. v. Borden, Inc.*, 644 F.2d 960, 967 (2d Cir. 1981). Even identical marks do not create a likelihood of consumer confusion when the parties' goods or services are sufficiently different. *See, e.g., Dynamics Research Corp. v. Langenau Mfg. Co.*, 704 F.2d 1575, 1576 (Fed. Cir. 1983) (affirming finding of no likelihood of confusion between DRC for "encoders and back gauges for press brakes" and DRC for "sheet metal fabric" because goods were "quite distinct"); *Checkpoint Sys., v. Check Point Software Techs., Inc.*, 104 F. Supp. 2d 427, 467-68 (D.N.J. 2000) (CHECKPOINT for firewall protection software held not confusingly similar to CHECKPOINT for computerized security systems for businesses); *In re Thor Tech.*, 113 U.S.P.Q.2d 1546, 1547 (T.T.A.B. 2015) ("[T]he identity of the marks alone is not sufficient to establish likelihood of confusion in the absence of probative evidence that the goods are related.").

Here, Applicant's Mark is for a variety of clothing and apparel items, and the description of goods offered under the Mark has been amended to delete "shoes," "boots," and "footwear." The goods under the Cited Mark MIRAGE are limited to "shoes." Consumers of shoes are seeking products for a very specific purpose, and are unlikely to be confused by Applicant's use of its Mark for different apparel items not including shoes or other footwear. This is also evidenced by the fact that the Cited Mark MIRAGE co-exists with numerous other MIRAGE marks for apparel items that are also cited against Applicant's Mark. Thus, as acknowledged by

the USPTO, the parties' respective products are unrelated and sold to a different type of consumer. Accordingly, because the parties' respective goods are so different, there is no likelihood of confusion between Applicant's Mark and the Cited Mark MIRAGE (Reg. No. 4678514) owned by YGW Inc.

IV. There is no Likelihood of Confusion Between Applicant's Mark and the Cited Mark MIRAGE APPAREL and Design (Reg. No. 4319568) owned by Mirage Apparel, LLC.

There is no likelihood of confusion between Applicant's Mark and the Cited Mark




(Reg. No. 4319568), owned by Mirage Apparel, LLC, because the parties' respective goods are distinguishable and the parties' marks are distinct.

It is well-established that marks must be compared in their entireties to determine if they are similar in terms of appearance, sound, and overall commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (C.C.P.A. 1973). The proper focus in evaluating the similarity of two marks is *not* "on certain prominent features that both parties' marks have in common, to the exclusion of others which cause the parties' marks as a whole to create in the minds of consumers quite different impressions." *Worthington Foods, Inc. v. Kellogg Co.*, 732 F. Supp. 1417, 1439 (S.D. Ohio 1990) (*citing Little Caesar Enterprises, Inc. v. Pizza Caesar, Inc.*, 834 F.2d 568, 571 (6th Cir. 1987)). Rather, "[i]t is the impression which the mark as a whole creates on the average reasonably prudent buyer and not the parts thereof which is important." *Id.*

In this case, the differences between the parties' marks outweigh any purported similarities and the parties' marks convey an overall different commercial impression.

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Applicant's Mark, , is a design mark with a distinctive elements such as the reflected image of the word portion of the mark, MIRAGE. The Cited Mark



is dominated by its distinctive design elements consisting of several triangles. Applicant's Mark contains no such similar elements. Further, the word portion of the Cited Mark, MIRAGE APPAREL, is much smaller than the design elements. Thus, the parties respective marks, when compared in their entirety, are highly dissimilar and so consumers are unlikely to be confused between the two marks.

Further evidencing a lack of likelihood of confusion are the differences between the parties' goods. The Cited Mark is registered for "swimwear." This is different and unrelated to Applicant's other non-swimwear apparel items in Class 25. Consumers seeking swimwear are doing so for a very specific purpose: for use in the beach, a pool, or other water-related activity. These are different from the consumers shopping for general apparel items. Moreover, the Cited



Mark  already co-exists on the Principal Register with numerous other MIRAGE marks, cited in the Examining Attorney's office action, for non-swimwear apparel items in Class 25.

Accordingly, because the USPTO has recognized that the parties' marks are distinguishable and used in connection with goods that are not related, there is no likelihood of



confusion between Applicant's Mark and the Cited Mark (Reg. No. 4319568).

V. There is no Likelihood of Confusion Between Applicant's Mark and the Cited Mark MIRAGE CAMO (Reg. No. 3794106) owned by Bulldog Equipment, LLC.

Again, the stark differences between the goods under the Cited Mark MIRAGE CAMO and Applicant's goods indicates that there is no likelihood of confusion between the marks. MIRAGE CAMO is registered for "uniforms and related apparel, namely, shirts, pants, hats, gloves, socks, packs, sacks, for use by military personnel, Special Forces, and swat teams." Thus, the MIRAGE CAMO uniforms serve a very specific and unique purpose for military personnel, Special Forces, and swat teams. Applicant's general apparel goods are sold for no such similar purpose.

Further indicative of the lack of likelihood of confusion between the marks is the overall different commercial impression. The meaning conveyed by the Cited Mark MIRAGE CAMO is that of camouflaging products. Thus, the meaning of the Cited Mark directly correlates to the nature of the goods offered under the mark: uniforms and related apparel for military personnel, Special Forces, and swat teams. As Applicant's Mark conveys no such similar impression, the parties' marks are distinguishable.

Accordingly, given the differences between the parties' marks taken with the fact that the goods offered by each party are unrelated to the other party's goods, there is no likelihood of confusion between Applicant's Mark and the cited MIRAGE CAMO registration (Reg. No. 3794106).

VI. There is no Likelihood of Confusion Between Applicant's Mark and the Cited Application MIRAGE ACTIVEWEAR (Ser. No. 87848603) owned by Golsa Sarabi DBA Mirage.

There is also no likelihood of confusion between Applicant's Mark and the Cited Mark MIRAGE ACTIVEWEAR that is the subject of application ser. no. 87848603 for "women's workout apparel, namely, crop pants, jumpsuits, leggings, sports bras, tank-tops" owned by Golsa Sarabi DBA Mirage. Consumers seek workout apparel for a very specific need, namely, for exercise, and thus require clothing of a particular quality and purpose different from and unrelated to general apparel items. These consumers are different from those consumers seeking Applicant's goods under Applicant's Mark, and thus are unlikely to be confused by the parties' respective marks.

Also, the marks are not identical. The Cited Mark MIRAGE ACTIVEWEAR contains the additional, distinguishing element "ACTIVEWEAR" that conveys an association with the goods offered under the Cited Mark, namely, women's workout apparel. Applicant's Mark

The logo for the word "MIRAGE" is displayed in a stylized, thin, uppercase font. The letters are widely spaced, and the 'I' and 'R' are connected at the top. Below the main text, there is a faint, mirrored reflection of the word "MIRAGE".

conveys no such similar commercial impression, and rather its distinctive design elements distinguish it from the Cited Mark MIRAGE ACTIVEWEAR.

Furthermore, if the Cited Mark MIRAGE ACTIVEWEAR is issued to registration, it will co-exist with numerous other MIRAGE marks for items in Class 25 that were cited in the Examining Attorney's office action. Indeed, the MIRAGE ACTIVEWEAR has already passed through publication and the USPTO issued a notice of allowance for the application. *See* Exhibit C. If the USPTO has already agreed that MIRAGE ACTIVEWEAR can co-exist with the

numerous other MIRAGE marks discussed herein, then it can also co-exist with Applicant's

Mark  .

As the parties offer unrelated goods under their respective, different marks, there therefore is no likelihood of confusion between Applicant's Mark and the MIRAGE ACTIVEWEAR mark (Ser. No. 87848603) owned by Golsa Sarabi DBA Mirage.

VII. There is no Likelihood of Confusion Between Applicant's Mark and Mirage Fashion USA's Pending Applications for MIRAGE COLLECTION (Ser. No. 85932775) and MIRAGE (stylized)(Ser. No. 85932773).

Finally, the Examining Attorney also cited as potentially conflicting with Applicant's Mark two pending applications collectively owned by Mirage Fashion USA:

- An application for MIRAGE COLLECTION (Ser. No. 85932775) for "On-line retail store services featuring clothing and jewelry; retail store services featuring clothing and jewelry."
- An application for  (Ser. No. 85932773) for "custom tailored women's clothing, namely, shirts, dresses, skirts, blouses."

Applicant respectfully submits that Mirage Fashion's retail services and custom tailored clothing products are distinguishable from Applicant's goods. Custom-tailored clothing and retail services related thereto are targeted to a specific consumer need because they are custom-ordered. The consumer seeking custom-ordered clothing are different from those purchasing the general apparel goods offered under Applicant's Mark.

Further, if the Cited Marks owned by Mirage Fashion are issued to registration, they will co-exist with numerous other MIRAGE marks for items in Class 25 that were cited in the Examining Attorney's office action. If the USPTO agrees that these Cited Marks can co-exist

with the numerous other MIRAGE marks discussed herein, then it can also co-exist with


Applicant's Mark  .

As the parties offer unrelated goods under their respective marks, there therefore is no likelihood of confusion between Applicant's Mark and Mirage Fashion's marks MIRAGE

COLLECTION (Ser. No. 85932775) and  (Ser. No. 85932773).

VIII. The Cited Marks Peacefully Co-Exist Together for Goods in Class 25.

As noted throughout, if the Cited Marks can peacefully co-exist together when they are also used in connection with different types of apparel goods in Class 25 and contain the term

MIRAGE, they can likewise co-exist with Applicant's Mark  .

IX. Description of the Mark

Applicant adopts the following description of the mark:

The mark consists of the word MIRAGE in stylized letters **with a reflection of the wording featured below.**

X. Conclusion.

Accordingly, because Applicant's Mark is distinguishable from many of the Cited Marks, the Cited Marks convey different commercial impressions, Applicant's goods are distinguishable from the goods and services offered under the Cited Marks, and the Cited Marks peacefully co-exist together, there is no likelihood of confusion between Applicant's Mark and the Cited

Marks. Applicant respectfully asks that the Examining Attorney withdraw the refusal and allow the Application to proceed to publication.

Dated: May 1, 2019

Respectfully submitted,

PATTISHALL, McAULIFFE, NEWBURY,
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EXHIBIT A

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Typed Drawing

Word Mark	MIRAGE
Goods and Services	(CANCELLED) IC 025. US 039. G & S: Men's Outerwear-Namely, Parkas, Jackets and Overcoats. FIRST USE: 19800107. FIRST USE IN COMMERCE: 19800107
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	73345595
Filing Date	January 15, 1982
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	April 30, 1985
Change In Registration	CHANGE IN REGISTRATION HAS OCCURRED
Registration Number	1348006
Registration Date	July 9, 1985
Owner	(REGISTRANT) Elliot Kastle, Inc. CORPORATION NEW YORK 411 5th Ave. New York NEW YORK 10016 (LAST LISTED OWNER) SOHO FASHION LTD. CORPORATION NEW JERSEY 625 BROADWAY, 11TH FLOOR NEW YORK NEW YORK 10012
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	ANGELO NOTARO
Prior Registrations	1209834
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20041218.
Renewal	1ST RENEWAL 20041218
Live/Dead Indicator	DEAD
Cancellation Date	December 31, 2018

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MIRAGE AT HOME

Word Mark	MIRAGE AT HOME
Goods and Services	(ABANDONED) IC 020. US 002 013 022 025 032 050. G & S: Mattresses and pillows
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	86804064
Filing Date	October 29, 2015
Current Basis	1B
Original Filing Basis	1B
Published for Opposition	February 2, 2016
Owner	(APPLICANT) MIRAGE RESORTS, LLC LIMITED LIABILITY COMPANY NEVADA 3600 LAS VEGAS BOULEVARD SOUTH LAS VEGAS NEVADA 89109
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Michael J. McCue
Prior Registrations	1870054;2054525;3195418
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	DEAD
Abandonment Date	April 29, 2019

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MIRAGE AT HOME

Word Mark	MIRAGE AT HOME
Goods and Services	(ABANDONED) IC 024. US 042 050. G & S: Bed sheets, bed blankets, duvet covers, pillow cases, and bath towels
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	86804066
Filing Date	October 29, 2015
Current Basis	1B
Original Filing Basis	1B
Published for Opposition	February 2, 2016
Owner	(APPLICANT) MIRAGE RESORTS, LLC LIMITED LIABILITY COMPANY NEVADA 3600 LAS VEGAS BOULEVARD SOUTH LAS VEGAS NEVADA 89109
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Michael J. McCue
Prior Registrations	1870054;2054525;3195418
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	DEAD
Abandonment Date	April 29, 2019

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EXHIBIT C

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Case Id: 87848603 | Document Description: 1. Notice of Allowance | Mail/Create Date: Nov. 06, 2018

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From: TMOfficialNotices@USPTO.GOV
Sent: Tuesday, November 6, 2018 00:08 AM
To: golsarabi@gmail.com
Cc: g.mirage@aol.com
Subject: Official USPTO Notice of Allowance: U.S. Trademark SN 87848603: MIRAGE ACTIVEWEAR

NOTICE OF ALLOWANCE (NOA)
ISSUE DATE: Nov 6, 2018

U.S. Serial Number: 87848603
Mark: MIRAGE ACTIVEWEAR
Docket/Reference Number:

No opposition was filed for this published application. The issue date of this NOA establishes the due date for the filing of a Statement of Use (SOU) or a Request for Extension of Time to file a Statement of Use (Extension Request). WARNING: An SOU that meets all legal requirements must be filed before a registration certificate can issue. Please read below for important information regarding the applicant's pending six (6) month deadline.

SIX (6)-MONTH DEADLINE: Applicant has six (6) MONTHS from the NOA issue date to file either:

- An SOU, if the applicant is using the mark in commerce (required even if the applicant was using the mark at the time of filing the application, if use basis was not specified originally); OR
- An Extension Request, if the applicant is not yet using the mark in commerce. If an Extension Request is filed, a new request must be filed every six (6) months until the SOU is filed. The applicant may file a total of five (5) extension requests. **WARNING: An SOU may not be filed more than thirty-six (36) months from when the NOA issued. The deadline for filing is always calculated from the issue date of the NOA.**

How to file SOU and/or Extension Request:
 Use the Trademark Electronic Application System (TEAS). Do **NOT** reply to this e-mail, as e-mailed filings will **NOT** be processed. Both the SOU and Extension Request have many legal requirements, including fees and verified statements; therefore, please use the USPTO forms available online at <https://www.uspto.gov/trademarks-application-process/filing-online> (under the "INTENT-TO-USE (ITU) FORMS" category) to avoid the possible omission of required information. If you have questions about this notice, please contact the Trademark Assistance Center at 1-800-786-9199.

For information on how to (1) divide an application; (2) delete goods/services (or entire class) with a Section 1(b) basis; or (3) change filing basis, see <https://www.uspto.gov/trademarks-getting-started/process-overview/additional-information-post-notice-allowance-process>.

FAILURE TO FILE A REQUIRED DOCUMENT OUTLINED ABOVE DURING THE APPROPRIATE TIME PERIOD WILL RESULT IN THE ABANDONMENT OF THIS APPLICATION.

REVIEW APPLICATION INFORMATION FOR ACCURACY

If you believe this NOA should not have issued or correction of the information shown below is needed, you must submit a request to the Intent-to-Use Unit. Please use the "Post-Publication Amendment" form under the "POST-APPROVAL/PUBLICATION/POST NOTICE OF ALLOWANCE (NOA) AMENDMENT FORMS" category, available at <https://www.uspto.gov/trademarks-application-process/filing-online/post-approval/publication/post-notice-allowance-noa>. Do **NOT** reply to this e-mail, as e-mailed filings will **NOT** be processed.

Serial Number: 87848603
Mark: MIRAGE ACTIVEWEAR
Docket/Reference Number:
Owner: Sarabi, Golsa
 5573 Mason Ave
 Woodland Hills, CALIFORNIA 91367
Correspondence Address: SARABI, GOLSA
 5573 MASON AVE
 WOODLAND HILLS, CA 91367

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