

Response to Refusal under Trademark Act Section 2(d)

Registration of the applied-for mark was refused under Trademark Act Section 2(d) on the ground that there would be a likelihood of confusion with the mark in U.S. Registration No. 5442841, LITTLE NURSLING, which is registered in class 24 for nursing covers and baby blankets. Regarding the similarities between these marks, the Trademark Office found that the mark of the cited registration is highly similar to the applied-for mark because both marks contain the phonetic wording NURSE-SLING/NURSLING. The goods of the cited registration were also found to be similar on the ground that providers of nursing pillows also commonly provide infant blankets and nursing covers.

The conclusion that there would be a likelihood of confusion with the mark of the cited registration, however, is based on the assumption that "NURSLING" is the dominant portion of this mark, and also that nursing pillows are so closely related to infant blankets and nursing covers that the use of a similar-sounding term for these products would cause confusion. These assumptions, however, are not supported by the Trademark Register and the evidence of record.

Different Commercial Impressions. As an initial matter, the term "nursling" cannot be considered to be the dominant portion of the cited registration and therefore cannot be the sole basis for finding a likelihood of confusion with the mark of the present application. The Applicant respectfully points out that the word "nursling" was *disclaimed* from the cited registration for LITTLE NURSLING, and the issued registration therefore states that "No claim is made to the exclusive right to use the following apart from the mark as shown: 'NURSLING'." Since the scope of the cited registration cannot be expanded to include exclusivity over the use of the word "nursling," even for the goods of the cited registration, this word cannot be deemed to be the portion of the trademark LITTLE NURSLING which, by itself, would lead to consumer confusion.

Trademarks must of course be compared in their *entireties* when establishing a likelihood of confusion (TMEP 1207.01(b); In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973)), and a comparison of the applied-for mark with the mark of the cited registration shows that they are significantly different in sound and appearance when viewed in this way. The mark of the cited registration, LITTLE NURSLING, includes the word "nursling," which refers to a baby being nursed, and this meaning is reinforced by the word "little" in the mark, since "little" is commonly paired with the word "baby."

In contrast, the applied-for mark separates the words "nurse" and "sling," neither of which (alone or in combination) carries the meaning of a nursing infant. Instead, the word "sling" connotes a strap or belt, and although the word "nurse" can refer to the act of breastfeeding, combining this word with "sling" does not suggest breastfeeding, but instead is more likely to bring to mind the kind of sling used by a nurse to treat a broken arm. The present mark therefore suggests a very different meaning than the mark of the cited registration.

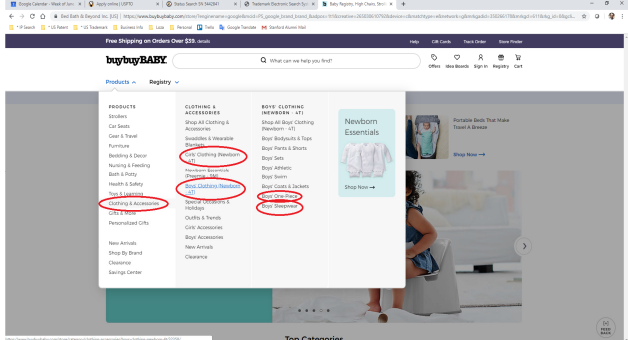
The present mark and that of the cited registration also look and sound differently when considered in their entireties. The mark of the cited registration includes the word "little" at the beginning, while the applied-for mark includes no similar sounding term, so that the sound of both marks is very different. The absence of "little" in the applied-for mark also changes its appearance, as does the separation of the

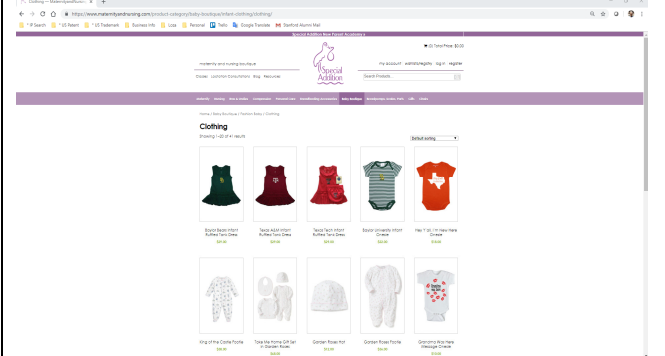
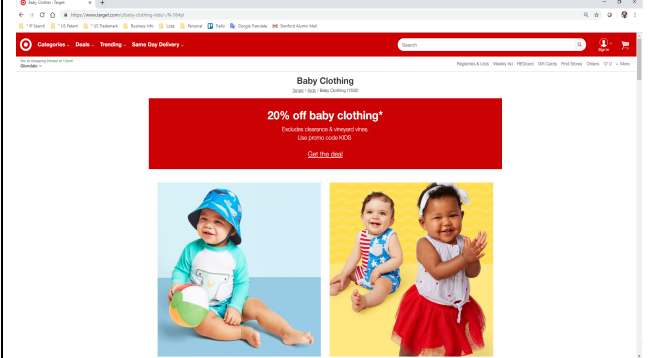
words “nurse” and “sling.” In view of the different meaning, sound and visual appearance of the present mark compared to that of the cited registration, these marks impart very different commercial impressions.

Relatedness of Goods. Other trademarks which include “nursling” have also been registered for infant-related products, so the goods of the present application are not so related to those of the cited registration as to preclude registration based only on the use of similar-sounding terms. The following registration which includes the term “nursling” has been registered even though it was filed after the filing date of the cited registration (August 23, 2017):

Trademark	Reg. No.	Filing Date	Description	Owner
LOVELY NURSLING	5539165	November 8, 2017	Children's and infant's apparel, namely, jumpers, overall sleepwear, pajamas, rompers and one-piece garments	Shenzhen YueCheng Trading Co., Ltd.

The goods of this registration are sold through the **same channels of trade** as the goods of the cited registration, as shown by evidence presented with the Office Action dated May 6, 2019. Such goods are therefore **as closely related** to those of the present application as the goods of the cited registration. Several of the providers included in the evidence that was included with the Office Action not only sell nursing pillows, infant blankets, and nursing covers, but they **also** sell infant clothing, which is the subject of Reg. No. 5539165 listed above. The table below lists the relevant providers and a screenshot from the providers’ websites showing that they also sell infant clothing:

Evidence from Office Action	Provider	Infant Apparel
Attachment 6	buybuyBABY (www.buybuybaby.com)	

Attachment 7	Special Addition (www.maternityandnursing.com)	
Attachments 9 & 10	Target (www.target.com)	

The existence of this registrations shows that the Trademark Office and consumers have come to distinguish between marks which include the term “nursling” for infant-related products but which are for different types of products. In view of this, the infant blankets and nursing covers of the cited registration are **not** so closely related to the nursing pillows of the present application that consumers would be confused by the use of a term that sounds like “nursling” in both marks.

As can be seen from the foregoing, the applied-for mark creates a different commercial impression compared with the mark of the cited registration, and the goods of the present application are not so closely related to those of the cited registration as to preclude the registration of other marks (LOVELY NURSLING) for infant products that include a term which sounds like “nursling.” In view of this, there is no likelihood of confusion between the applied-for mark and the mark of the cited registration. The Applicant therefore respectfully requests withdrawal of the refusal under Trademark Act Section 2(d).