

## I. Introduction

By Office Action letter issued on April 24, 2019, the Examining Attorney has refused registration for Applicant's trademark THE AUDACITY, Application Serial No. 88298317 ("Applicant's Mark") for use in connection with CI 25goods, namely footwear, based on a finding of likelihood of confusion with two registrations: for the trademark AUDACITY OF DOPE, Reg. No. 3972067 and for the trademark AUDACITY Reg. No. 4633921 (collectively the "Cited Marks"). It should be noted initially, that the Cited Marks are owned by different registrants and appear to be peacefully coexisting on the trademark register without confusion, which lends weight to Applicant's contention that the subject mark will likewise not cause confusion.

Applicant respectfully submits that for the reasons set forth below, there is no likelihood of confusion between Applicant's Mark and the Cited Marks.

## II. Likelihood of Confusion

Likelihood of confusion means that "confusion is not just possible but probable". *Scott Fetzer v. House of Vacuums Inc.* 381 F.3d 477, 483 (5<sup>th</sup> Cir. 2004). In determining whether there is a likelihood of confusion, courts look to many factors, including, as particularly relevant in this instance:

The similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation, and commercial impression: and

The sophistication of the purchasers of the goods or services and the conditions under which the goods or services are purchased (*i.e.* impulse buy or carefully considered purchase). *In re E.I Dupont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973).

Applicant will address each of the relevant factors.

### A. The Connotation of the Marks

The Cited Mark, AUDACITY OF DOPE, is a play on former president Barack Obama's 2008 campaign slogan "Audacity of Hope". The Cited Mark parodies that slogan in a reference to drugs rather than uplift in a very specific and direct manner. The meaning and connotation thus rendered, is quite distinct from the meaning and connotation of Applicant's Mark.

The Cited Mark, AUDACITY, connotes willingness to take bold risks, daring, fearlessness. In contrast, Applicant's Mark, THE AUDACITY, connotes rude or disrespectful behavior and impudence. (See, the Urban Dictionary). Applicant respectfully submits that in this instance, the additional wording sufficiently modifies the meaning so as to limit, if not obviate, the probability of confusion.

### B. The Nature of the Goods/ Channels of Trade/Sophistication of Purchasers

The question of likelihood of confusion between marks is "related not to the *nature* of the mark but to its effect 'when applied to the goods of the applicant.' The only *relevant* application is

made in the marketplace. The words ‘when applied’ do not refer to a mental exercise, but to all the known circumstances surrounding use of the mark.” *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1360-61 (C.C.P.A. 1973 (emphasis in original)).

Applicant respectfully asserts that the goods at issue and the consumers therefor are fundamentally and meaningfully dissimilar, thereby obviating any likelihood of confusion.

Applicant is Cole World, Inc., a company owned by the musical artist/entrepreneur J. Cole, which designs, creates and markets unique brands of American hip hop and youth street style footwear, clothing and tour merchandise under several trademarks, among which is THE AUDACITY. Applicant’s goods are sold via brick and mortar and online shops, and often at concert venues, that feature hip hop/street styles of footwear, apparel and jewelry, and cater to a specific cult consumer base – fans of rap music and urban street style. These consumers are sophisticated purchasers looking for unique status merchandise.

From the specimen attached to Registrant’s application to register AUDACITY, Registrant appears to be marketing a line of conservatively designed Indian inspired jewelry items. The designs are unremarkable and in no way reference or include imagery from the street style or music scenes. Neither do the specimens included in the application and affidavits for THE AUDACITY OF DOPE which in the first instance included a marijuana leaf and in the second a hang tag attached to an indiscernible item of clothing. The goods in connection with which both Cited Marks are used appear to be so different in design approach, look, feel and consumer appeal as to render them completely distinct from Applicant’s goods.

Further, Applicant has found no indication that either of the Registrants is a retailer like Express or Brooks Brothers or a global licensing behemoth like Ralph Lauren, whose reach extends across multiple classes of goods, as cited by Examiner as purveyors of a wide range of goods.

Applicant respectfully submits that because of the fundamental differences in the connotation and meaning of the respective Marks, the type and style of the respective goods, channels of trade and diverse consumer base and appeal, there is no likelihood of confusion.

### III. CONCLUSION.

Based on the fundamental and meaningful differences in the connotation and meaning, goods and channels of trade in connection with which of Applicant’s Mark and the Cited Marks are used, it is unlikely that the consumer will be confused as to the source or sponsorship of the goods marketed under the respective Marks. In view of the foregoing, Applicant respectfully requests that the Examining Attorney permit Applicant’s Mark to proceed to registration. If the Examiner has any further questions, please do not hesitate to contact the undersigned.