

Applicant responds to the examiner's office action based on Section 2(d) likelihood of confusion and respectfully argues that confusion is not likely between Applicant's mark and the cited registrations because the examiner improperly provided undue weight to the "BOA" and "B.O.A" portions of the marks while ignoring the unique design elements of the composite marks and the fact that B.O.A. are initials.

When comparing composite marks that consist of both words and letters, "the fundamental rule in this situation is that the marks must be considered in their entireties." TMEP 1207.01(c)(ii) citing *Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 1371, 116 USPQ2d 1129, 1134 (Fed. Cir. 2015); *In re Shell Oil Co.*, 992 F.2d 1204, 1206, 26 USPQ2d 1687, 1688 (Fed. Cir. 1993); *Massey Junior Coll., Inc. v. Fashion Inst. of Tech.*, 492 F.2d 1399, 1402, 181 USPQ 272, 273-74 (C.C.P.A. 1974). In addition, when the only commonality between the marks is descriptive, confusion is much less likely to occur. See, e.g., *Citigroup Inc. v. Capital City Bank Group, Inc.*, 637 F.3d 1344, 1356, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011) (affirming TTAB's holding that contemporaneous use of applicant's CAPITAL CITY BANK marks for banking and financial services, and opposer's CITIBANK marks for banking and financial services, is not likely cause confusion, based, in part, on findings that the phrase "City Bank" is frequently used in the banking industry and that "CAPITAL" is the dominant element of applicant's marks, which gives the marks a geographic connotation as well as a look and sound distinct from opposer's marks); *Safer, Inc. v. OMS Invs., Inc.*, 94 USPQ2d 1031, 1044-45 (TTAB 2010) (holding DEER-B-GON for animal repellent used to repel deer, other ruminant animals, and rabbits, and DEER AWAY and DEER AWAY PROFESSIONAL for repellent for repelling deer, other big game, and rabbits, not likely to cause confusion, noting that "DEER" is descriptive as applied to the relevant goods and thus has no source-indicating significance); *Bass Pro Trademarks, L.L.C. v. Sportsman's Warehouse, Inc.*, 89 USPQ2d 1844, 1857-58 (TTAB 2008) (finding that, although cancellation petitioner's and respondent's marks were similar by virtue of the shared descriptive wording "SPORTSMAN'S WAREHOUSE," this similarity was outweighed by differences in terms of sound, appearance, connotation, and commercial impression created by other matter and stylization in the respective marks).

In the present case, the only commonality between the marks are the letters "B" "O" and "A". Applicant's mark and Registration No. 4829319 are both composite marks with unique graphical elements that are dominant. In addition, Registration No. 4829319 has disclaimed the "BOA" word. "If the common elements of two marks is 'weak' in that it is generic, descriptive, or highly suggestive of the named goods or services, it is unlikely that consumers will be confused." TMEP 1207.01(b)(viii) citing *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1338-40, 115 USPQ2d 1671, 1674-75 (Fed. Cir. 2015) (remanded for consideration of whether and to what degree the phrase PEACE & LOVE was suggestive or descriptive in the food-service industry); *In re Bed & Breakfast Registry*, 791 F.2d 157, 159 229 USPQ 818, 819 (Fed. Cir. 1986) (reversing TTAB's holding that contemporaneous use of BED & BREAKFAST REGISTRY for making lodging reservations for others in private homes, and BED & BREAKFAST INTERNATIONAL for room booking agency services, is likely to cause confusion, because, inter alia, the descriptive nature of the shared wording weighed against a finding that the marks are confusingly similar); *In re FabFitFun, Inc.*, 127 USPQ2d 1670, 1675 (TTAB 2018) (holding I'M SMOKING HOT for

cosmetics and related non-medical personal care items and SMOKIN' HOT SHOW TIME for cosmetics not likely to cause confusion based on a totality of the evidence showing that the shared wording is somewhat weak in view of its suggestiveness and that the marks overall convey different commercial impressions); *U.S. Shoe Corp. v. Chapman*, 229 USPQ 74 (TTAB 1985) (holding COBBLER'S OUTLET for shoes, and CALIFORNIA COBBLERS (in typed and stylized forms) for footwear and women's shoes, not likely to cause confusion); *In re Istituto Sieroterapico E Vaccinogeno, Toscano "SCLAVO" S.p.A.*, 226 USPQ 1035 (TTAB 1985) (holding ASO QUANTUM (stylized, with "ASO" disclaimed) for diagnostic laboratory reagents, and QUANTUM I for laboratory instruments for analyzing body fluids, not likely to cause confusion).

The fact that Registration Nos. 4829319 and 3047399 both coexist on the Federal Register supports Applicant's argument. As a result, Applicant respectfully requests that the examiner remove the Section 2(d) objection and permit Applicant's application to publish.

Respectfully Submitted,

/s/ Joshua Jones