RESPONSE TO OFFICE ACTION

Mark: **Snowflake**

Serial No: **88205573**

Applicant: **Phantom I.P., LLC**

FACTS

On November 26, 2018, Applicant Phantom I.P., LLC ("Phantom") filed an application to register the mark "Snowflake" (hereinafter, the "Mark") under the international classification 013, fireworks.

On February 15, 2019, the Examining Attorney refused the registration of the applied-for Mark citing likelihood of confusion with the mark "Snow Cone" registration number 4782977 owned by Ingram Enterprises, Inc.

ARGUMENT

Applicant respectfully disagrees that this Mark will likely be confused with the mark owned by Ingram Enterprises. A Snow Cone and a Snowflake are two entirely different descriptions. The sharing of the word "snow" is not enough to result in confusion. For example the term "household" and "house rabbit" would never be confused even though they both use the same word "house' in their designation. The same is true here.

The marks do not sound alike, nor are they visually similar. "Snow Cone" is two separate words. "Snowflake" is one single word. Neither word is a subset of the other, that is, one does not make the other. A snow cone is not made of snowflakes. A snow cone is edible, a food, something one eats. A snowflake relates to weather, to outdoors. The mere fact that they have in common the letters s-n-o-w does not mean consumers will be confused as to the source.

Additionally, the two words do not result in confusion as to their sources merely because they both have the word "snow" in them. The two words do not create the same general, commercial impression in the consuming public's mind. There is no evidence that they do.

In fact, on July 31, 2018, the USPTO has already allowed registration of the mark "Hevi-Snow" in the international class of 013 at Registration number 5530218.

On August 8, 2017, the USPTO also allowed the registration of the mark "Snow Peak" in the international classification 013 at Registration number 5259970.

The allowance of these two marks containing the word "snow" demonstrates that Applicant's Mark "Snowflake" should be allowed.

Although the Applicant filed this Mark under an Intent to Use classification, by now, a prototype of the item exists. A picture of Applicant's product bearing the Mark shows it as such:

A picture of the product bearing the mark cited by the examining attorney is as follows:

CONCLUSION

The two marks are not similar. The use of the marks could not be more dissimilar. A purchaser is not at all likely to confuse the two names, marks, products, or sources. The two marks do not create the same general, commercial impression in the consuming public's mind.

For these reasons, we respectfully disagree with the Examining Attorney's position and ask that Applicant's mark "Snowflake" be allowed.

Respectfully submitted,

Phantom I.P., LLC

Date: August 2, 2019

By: _____

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