This responsive to the Examining Attorney's Office Action dated May 14, 2019. Applicant's mark **PUREH20** has been refused registration under Section 2(d) of the Trademark Act because of a likelihood of confusion with the mark **PUREPLUS** in U.S. Registration Nos. 4,785,850 and 5,365,127 ("Cited Mark"). Applicant respectfully disagrees that its mark conflicts with the Cited Mark for the reasons discussed further below.

When properly considered in its entirety, Applicant's mark **PUREH20** is sufficiently different and distinct from the Cited Mark **PUREPLUS** in sound, appearance, connotation, and overall commercial impression so as to avoid a likelihood of confusion, and potential customers would not be confused or mistaken or deceived as to the source of the respective goods.

As the Examining Attorney is aware, confusion is ultimately to be decided on the basis of whether there is confusion as to source of the goods. *See* Globe-Union Inc. v. Raven Laboratories Inc., 180 U.S.P.Q. 469, 1973 WL 19729 (T.T.A.B. 1973). A refusal to register based upon confusing similarity should be made when a "likelihood", meaning "probability", of confusion has been established and not merely a "possibility" of confusion between use of the marks in question in conjunction with the goods. *See* 4 McCarthy on Trademarks and Unfair Competition, Section 23:3 (4th ed. 2010).

In the present case, Applicant submits that refusal to register its mark **PUREH20** is improperly based on perceived similarities in the appearance and/or sound *of dissected portions of Applicant's mark*—namely, the word portion "PURE"—overlooking the differences in the marks in their entireties, and the resulting differences in the connotation of the marks and their overall commercial impression. When all of these factors are

properly evaluated, the absence of likelihood of confusion is evident and the consuming public would no doubt appreciate the differences in the marks in look, sound and connotation.

While Applicant acknowledges that adding a term (e.g., "H20" in this case) to a registered mark generally does not obviate the similarity between the compared marks, additions or deletions to marks can be sufficient to avoid a likelihood of confusion *if the marks in their entireties convey significantly different commercial impressions*. Shen Mfg. Co. v. Ritz Hotel Ltd., 393 F.3d 1238, 1245, 73 USPQ2d 1350, 1356-57 (Fed. Cir. 2004) (reversing TTAB's holding that contemporaneous use of THE RITZ KIDS for clothing items [including gloves] and RITZ for various kitchen textiles [including barbeque mitts] is likely to cause confusion, because, *inter alia*, THE RITZ KIDS creates a different commercial impression).

Furthermore, similarity of the marks in one respect—sight, sound, or meaning—will not automatically result in a determination that confusion is likely even if the goods are identical or closely related; rather, taking into account all of the relevant facts of a particular case, dissimilarity as to one factor alone may be sufficient to support a holding that the marks are not confusingly similar. *See* In re Thor Tech, Inc., 90 USPQ2d 1634, 1635 (TTAB 2009).

In the present case, the addition of the word portion "H20" in Applicant's mark **PUREH20** creates a *clear and direct* association of the word "PURE" and the water filtered or "made pure" using Applicant's listed goods — "*water filters*" in Class 11. Applicant submits that this association is much less direct (if at all) in the Cited Mark, as the word "PURE" in **PUREPLUS** may refer instead to the listed filters or the filtering process.

Moreover, the alliteration of the Cited Mark **PUREPLUS** further distinguishes the marks in both sound and appearance.

For the reasons discussed above, Applicant submits that there is no likelihood of confusion, mistake or deception between Applicant's mark **PUREH20** and the Cited Mark **PUREPLUS** — notwithstanding the similarity of the respective goods. Accordingly, Applicant respectfully submits that its mark is entitled to registration and that there is no likelihood of confusion or conflict under Section 2(d) of the Trademark Act.