

To the Commissioner for Trademarks:

In reference to Application serial no. **87035472**: RG (stylized)
(see <https://tmng-al.uspto.gov/resting2/api/img/87035472/large>).

Applicant has revised the descriptions pertaining to its mark both to satisfy certain concerns of the Examining Attorney relating to the descriptions and to resolve issues related to likelihood of confusion with a number of registrations cited by the Examining Attorney.

AMENDMENT

In a timely-filed response to the Office Action issued on February 13, 2019, set to expire on August 13, 2019, Applicant respectfully requests that the Examining Attorney amend the description of goods in International Class 9 of the above-identified application by deleting the same in their entirety and substituting the following:

“Vehicle antennas, namely, protruding and conformal antennas embedded in and disposed on a part of the vehicle's body, namely, roof, glass pane, plastic pane, roof, mirror, trunk, hood, bumper, air deflector, visor, tire, and front and rear ends; Antennas for television; Wireless receivers of electronic signals, namely, satellite, cellular phone, and broadcasting signals for the transmission of voice and data between two points; Wireless transmitters of electronic signals, namely, satellite, cellular phone, and broadcasting signals for the transmission of voice and data between two points; Consumer electronic products, namely, audio and radio-frequency amplifiers, power converters, and power inverters.”

REMARKS

SECTION 2(d) REFUSAL – Likelihood of Confusion

The Examining Attorney has rejected the registration of the applied-for mark, “RG” (stylized), under section 2(d) of the Trademark Act, because of a likelihood of confusion with the following recently registered marks:

U.S. Registration No. 5045758: RG (stylized) used on “Plastic connectors for electrical applications; electrical connectors and junction boxes; electric connectors and couplings for conduits and wires,”

U.S. Registration No. 5082929: SMART/RG used on “computer hardware, namely, customized broadband modems and computer networking modems; electronic computer peripheral communications devices; remote controls for use in home automation, namely, for lighting, HVAC, security, safety, webcam activity monitoring, and other home monitoring and control applications,”

U.S. Registration No. 5521958: RG WIRE & CABLE, for use in connection with “Distributorship and Wholesale store services featuring: Cable connectors, Cables and fibers for the transmission of sound and images, Cables for electrical or optical signal transmission, Coaxial cables, Electric cables, wires, conductors and connection fittings therefor, Electrical and optical cables, Electrical cables and cordsets, Electrical interconnect cables, Fiber optic cables, Insulated copper electrical wire, Insulated copper wire, Optical cables, Optical fiber cables, Plastic covered electric wires, Rubber covered electrical wires, Telecommunication cables”

SECTION 2(d) REFUSAL – Likelihood of Confusion – Maintained

The Examining Attorney has rejected the registration of the applied-for mark, “RG” (stylized), under section 2(d) of the Trademark Act, by maintaining that there is a likelihood of confusion with the following registered marks:

U.S. Registration No. 3196728: RG (stylized) used on “electric solenoids, solenoid valves, electromagnets, electric solenoid coils, electric coils, electromagnetic switches,”

U.S. Registration No. 4801583: ARAYMOND RG (and design) used on “Apparatus and instruments for conducting, switching, transforming, accumulating, regulating, or controlling electric current,”

U.S. Registration No. 4133257: RG (and design) used on “Bags and carrying bags specially adapted for use with laptop computers and computer accessories,”

U.S. Registration No. 4623555: SMART RG (and design), U.S. Registration No. 4525440: SMARTRG, U.S. Registration No. 4623554: SMART RG (and design), U.S. Registration No. 4627379: SMART RG (and design), and U.S. Registration No. 4627378: SMART RG (and design), all used on “Computer hardware, namely, customized broadband modems and computer networking modems; electronic computer peripheral communications devices,” and

Applicant respectfully submits that there is no likelihood of confusion between the amended Applicant’s mark and the cited marks. Applicant requests that the Examining Attorney withdraw the refusal to register in view of the following:

In the seminal case involving §2(d), *In re E. I. du Pont de Nemours & Co.*, the U.S. Court of Customs and Patent Appeals discussed the factors relevant to a determination of likelihood of confusion. 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). In setting forth the factors, the court cautioned that, with respect to determining likelihood of confusion, “[t]here is no litmus rule which can provide a ready guide to all cases.” *Id.* at 1361, 177 USPQ at 567. Not all of the factors are relevant and only those relevant factors for which there is evidence in the record must be considered. *Id.* at 1361-62, 177 USPQ at 567-68; see also *In re Mighty Leaf Tea*, 601 F.3d 1342, 1346, 94 USPQ2d 1257, 1259 (Fed. Cir. 2010) (“Not all of the *DuPont* factors are relevant to every case, and only factors of significance to the particular mark need be considered.

“A mark should not be dissected but rather must be considered as a whole in determining the likelihood of confusion.” *MarCon, Ltd. V. Avon Products Inc.*, 4 U.S.P.Q.2d 1474 ([Trademark Trial and Appeal Board] TTAB 1987). Under this well-established concept of trademark law (also known as the anti-dissection rule,” 3 J. Thomas McCarthy, *McCarthy on*

Trademark and Unfair Competition, 4th ed. 2005 (“McCarthy”), §23:41), conflicting marks are not to be compared by breaking them up into their component parts.

In this case, the Examiner has noted that the following *DuPont* factors are the most relevant: the similarity of the marks, the similarity of the goods and/or services, and the similarity of trade channels of the goods and/or services.

1. Similarity of the Marks

This factor requires examination of “the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.” The test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison, but whether the marks are sufficiently similar that there is a likelihood of confusion as to the source of the goods or services. See *In re Iolo Techs., LLC*, 95 USPQ2d 1498, 1499 (TTAB 2010). When comparing the marks, “[a]ll relevant facts pertaining to appearance, sound, and connotation must be considered before similarity as to one or more of those factors may be sufficient to support a finding that the marks are similar or dissimilar.” *Recot, Inc. v. M.C. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1899 (Fed. Cir. 2000).

The Court of Appeals for the Federal Circuit has provided the following guidance for evaluating the marks:

“The basic principle in determining confusion between marks is that marks must be compared in their entireties and must be considered in connection with the particular goods or services for which they are used. It follows from that principle that likelihood of confusion cannot be predicated on dissection of a mark, that is, on only part of a mark. On the other hand, in articulating reasons for reaching a conclusion on the issue of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties. Indeed, this type of analysis appears to be unavoidable.”

In re Nat’l Data Corp., 753 F.2d 1056, 1058, 224 USPQ 749, 750-51 (Fed. Cir. 1985).

The points of comparison for a word mark are appearance, sound, meaning, and commercial impression. See *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 1371, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005) (citing *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973)). 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, similarity as to one factor alone may be insufficient to support a holding that the marks are confusingly similar. See *In re Thor Tech, Inc.*, 90 USPQ2d 1634, 1635 (TTAB 2009); *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988).

The recently registered U.S. Registration No. 5521958: RG WIRE & CABLE is a composite mark comprising multiple terms and the ampersand sign. In contrast, the Application contains the single mark and term “RG” (stylized), which when pronounced creates a significant different consumer impression. As such, Applicant submits that the marks are not phonetically equivalent. Furthermore, in terms of visual appearance, although the cited Registration contains the letters “RG” in plain format along with the wording “WIRE & CABLE.” On the other hand, the Application contains only the letters “RG” (stylized) in a significant different style in red color, which when observed creates a vastly different consumer impression. In particular, the backward “R” character, i.e., “Я,” in the Applicant’s “ЯG” mark creates a significantly different commercial impression from the cited Registrant’s mark. More specifically, the “Я” creates a strong impression that is clearly distinguishable from “RG WIRE & CABLE.” Thus, when the marks are viewed properly, in their entireties, it is clear that there is no likelihood of confusion between the Applicant’s mark, “RG” (stylized), and the cited “RG WIRE & CABLE” mark, because the marks differ in appearance such that consumers can distinguish between them. As such, Applicant submits that the marks not only are spelled differently, but are not phonetically equivalent or similar in their appearance to likely be confused by consumers. In light of the dissimilarity of the marks, Applicant submits that there is no likelihood of confusion.

Likewise, U.S. Registration No. 3814916, in terms of sight or visual appearance, is a composite mark comprising the terms “ARAYMOND RG”. On the other hand, the Applicant’s mark, “RG” (stylized), is a unitary mark. Moreover, the Application and cited Registration are not phonetically equivalent. In particular, the cited Registration contains two terms, “ARAYMOND” and “RG”, with the dominant, leading word being “ARAYMOND”. In contrast, the Application contains the single term “RG (stylized)”, which when pronounced creates a significant different consumer impression. Furthermore, in terms of visual appearance, although the cited Registration contains the letters “RG” (stylized) in blue color, it also includes

as the dominant component the wording “ARAYMOND.” On the other hand, the Application contains only the letters “RG” (stylized) in a significant different style in red color, which when observed creates a vastly different consumer impression. In particular, the backward “R” character, i.e., “Я,” in the Applicant’s “ЯG” mark creates a significantly different commercial impression from the cited Registrant’s mark. More specifically, the “Я” creates a strong impression that is clearly distinguishable from “ARAYMOND RG.” Thus, when the marks are viewed properly, in their entireties, it is clear that there is no likelihood of confusion between the Applicant’s mark, “RG” (stylized), and the “ARAYMOND RG” mark, because the marks differ in appearance such that consumers can distinguish between them. As such, Applicant submits that the marks not only are spelled differently, but also are not phonetically or visually equivalent to likely be confused by consumers. In light of the dissimilarity of the marks, Applicant submits that there is no likelihood of confusion.

Similarly, the recently registered U.S. Registration No. 5082929: SMART/RG and the previously cited registrations by the Examiner, namely, U.S. Registration No. 4623555: SMART RG (and design), U.S. Registration No. 4623554: SMART RG (and design), U.S. Registration No. 4627379: SMART RG (and design), and U.S. Registration No. 4627378: SMART RG (and design) are all composite marks comprising two terms, “SMART” and “RG,” wherein the dominant, leading word is “SMART”. On the other hand, the Application contains the single mark and term “RG” (stylized), which when pronounced creates a significant different consumer impression. As such, Applicant submits that the marks are not phonetically equivalent. Furthermore, in terms of visual appearance, although the cited Registrations contain the letters “RG” in plain format and green or black color, it also includes as the dominant component the word “SMART.” On the other hand, the Application contains only the letters “RG” (stylized) in a significant different style in red color, which when observed creates a vastly different consumer impression. In particular, the backward “R” character, i.e., “Я,” in the Applicant’s “ЯG” mark creates a significantly different commercial impression from the cited Registrant’s mark. More specifically, the “Я” creates a strong impression that is clearly distinguishable from “SMART RG” (and design) registrations. Thus, when the marks are viewed properly, in their entireties, it is clear that there is no likelihood of confusion between the Applicant’s mark, “RG” (stylized), and the “SMART RG” (and design) marks, because the marks differ in appearance such that consumers can distinguish between them. As such, Applicant submits that the marks

not only are spelled differently, but also are not phonetically or visually equivalent to likely be confused by consumers. In light of the dissimilarity of the marks, Applicant submits that there is no likelihood of confusion.

In the case of U.S. Registration No. 4525440, although the mark “SMARTRG” is unitary and contains a single term, the dominant, leading sound is “SMART”. On the contrary, the Application contains the single mark and term “RG” (stylized), wherein the dominant, leading sound is “R” or “RG” and when the entire mark is pronounced “RG” creates a significant different consumer impression. As such, Applicant submits that the marks are not phonetically equivalent. Furthermore, in terms of visual appearance, although the cited Registration contains the letters “RG” in plain format and black color, it also includes as the dominant component the word “SMART.” On the other hand, the Application contains only the letters “RG” (stylized) in a significant different style in red color, which when observed creates a vastly different consumer impression. In particular, the backward “R” character, i.e., “Я,” in the Applicant’s “ЯG” mark creates a significantly different commercial impression from the cited Registrant’s mark. More specifically, the “Я” creates a strong impression that is clearly distinguishable from “SMARTRG” registration. Thus, when the marks are viewed properly, in their entireties, it is clear that there is no likelihood of confusion between the Applicant’s mark, “RG” (stylized), and the “SMARTRG” mark, because the marks differ in appearance such that consumers can distinguish between them. As such, Applicant submits that the marks not only are spelled differently, but also are not phonetically or visually equivalent to likely be confused by consumers. In light of the dissimilarity of the marks, Applicant submits that there is no likelihood of confusion.

Referring to the previously cited registrations by the Examiner, namely, U.S. Registration No. 3196728: RG (stylized) and U.S. Registration No. 4133257: RG (and design), both are unitary and contain a single term, wherein the dominant, leading sound is “RG” like in the Applicant’s mark “RG” (stylized). However, they differ in appearance. Applicant’s stylization is critical in this regard. In particular, the backward “R” character, i.e., “Я,” in the Applicant’s “ЯG” mark creates a significantly different commercial impression from the cited Registrant’s mark. More specifically, the “Я” creates a strong impression that is clearly distinguishable from the “RG” (stylized) and “RG” design cited registrations. Moreover, the

stylized “RG” in black color in U.S. Registration No. 3196728 as well as the unique “RG” design in black color in U.S. Registration No. 4133257 create a distinguishable impression when compared to the unique and significantly distinctive style in red color of Applicant’s mark, which when observed creates a vastly different consumer impression. Thus, when comparing these registrations against the Applicant’s mark, in their entirety, it becomes clear that the differences between them will permit consumers to differentiate between goods using the registrants’ marks and goods using Applicant’s mark, because the marks differ in appearance such that consumers can distinguish between them. In light of the dissimilarity of the marks, Applicant submits that there is no likelihood of confusion.

Finally, in reference to the recently registered U.S. Registration No. 5045758: ЯG, there is a unitary term, wherein the dominant, leading sound is “RG” like in the Applicant’s mark “RG” (stylized). However, they differ in appearance. Applicant’s stylization is critical in this regard. In particular, the backward “R” character, i.e., “Я,” in the Applicant’s “ЯG” mark is separated from and have a different height of that of the “G” character, unlike the characters “Я” and “G” in the cited registration, which both merge and have the same heights. Moreover, the Applicant’s mark include two unique and significantly distinctive red dots in the upper section of the mark in between the characters “Я” and “G,” which resemble two “eyes” and are not present in the Registrant’s mark. This unique style of the Applicant’s mark creates a distinguishable impression when compared to the registered “ЯG” mark, which when observed creates a different consumer impression. Thus, when the marks are viewed properly, in their entirety, it becomes clear that the differences between them will permit consumers to differentiate between goods using the Registrants’ marks and goods using Applicant’s mark, because the marks differ in appearance such that consumers can distinguish between them. In light of the dissimilarity of the marks, Applicant submits that there is no likelihood of confusion.

However, even if these marks are somehow determined to be similar to the Applicant’s mark, “[t]he use of identical, even dominant, words in common does not automatically mean that two marks are similar.” *General Mills, Inc. v. Kellogg Co.*, 824 F.2d 622, 627, 3 U.S.P.Q.2d 1442, 1445 (8th Cir. 1987) (no likelihood of confusion between OATMEAL RAISIN CRISP and APPLE RAISIN CRISP), even though the goods in both cases relate to cereals.

In addition, there is substantial evidence that no likelihood of confusion is created when additional or substitute matter is present in one of the marks. See for example *Colgate-Palmolive Co. v. Carter-Wallace, Inc.*, 432 F.2d 1400, 167 U.S.P.Q. 529 (C.C.P.A. 1970) (no likelihood of confusion between PEAK and PEAK PERIOD); *In re Merchandising Motivation Inc.*, 184 U.S.P.Q. 364 (TTAB 1974) (no likelihood of confusion between MENSWEAR and MEN'S WEAR); *Dunfey Hotels Corp. v. Meridien Hotels Investments Grp., Inc.*, 504 F. Sipp. 371 (S.D.N.Y. 1980) (no likelihood of confusion between PARKER HOUSE and PARKER MERIDIEN for hotels); *Beech-Nut, Inc. v. Warner-Lambert Co.*, F.2d 801 (2d Cir. 1973) (BREATH PLEASERS and BREATH SAVERS not confusingly similar for breath mints). There is a vast amount of case law distinguishing between marks that share common words, even prominent words, and as such, it is difficult to conceive how Applicant's mark, "RG" (stylized), which have a different commercial appearance could fail to distinguish from the marks cited by the Examiner.

In particular, the U.S. Court of Appeals for the Federal Circuit in *M2 Software, Inc. v. M2 Communications, Inc.*, 450 F.3d 1378, 1384 (Fed. Cir. 2006) upheld the TTAB's decision that the mark "M2" as used on CD-ROMs in the pharmaceutical industry was not likely to be confused with the mark "M2 COMMUNICATIONS" as used on CD-ROMs in the music industry. "[W]hile the board found the 'M2' portion of the marks to be identical and that the disclaimed term [communications] did not create any significant difference in meaning or commercial impression, it did not err in finding that the marks, when considered as a whole, were not identical," and were not likely to be confused. Thus, when comparing Applicant's mark, "RG" (stylized), and the marks cited by the Examiner, it is not appropriate to focus solely on the common acronym "RG," while ignoring the clear differences between the Applicant's mark and the marks cited by the Examiner.

Furthermore, the Court of Customs and Patent Appeals applied similar reasoning in holding that the mark TIC TAC for candy was not confusingly similar to the mark TIC TAC TOE for ice cream and sherbet. *In re Ferrero*, 479 F.2d 1395 (C.C.P.A. 1973) (holding that "the board has made too much of the indisputable fact that TIC TAC is two-thirds of TIC TAC TOE and that TIC TAC would 'bring to mind' TIC TAC TOE. Neither fact determines the issue of likelihood of confusion.") In fact, in *Ferrero*, the Court of Customs and Patent Appeals noted

that the “very fact of calling to mind may indicate that the mind is distinguishing, rather than being confused by, two marks.” *Id.* at 1397.

Moreover, the U.S. Court of Appeals for the Second Circuit found that there was no likelihood of confusion between the marks KIK-IT and KICK’ER even when both were used on “similar tabletop games in which wooden figures, manipulated by the players, play a soccer game.” *In re Affiliated Hospital Products, Inc. v. Merdel Game Manufacturing Company*, 513 F.2d 1183, 1188 (2nd Cir. 1975). If the marks KIK-IT and KICK’ER could coexist without creating likelihood of confusion even when both mark are used on the same type of tabletop soccer games and the owners of the marks “compete for the same market,” then it would be reasonable that the Applicant’s mark, “RG” (stylized) can coexist with the marks cited by the Examiner.

Even further, the TTAB held that the marks NOBODY’S PERFECT, used in relation to apparel retail store services, and NO BODY’S PERFECT used in relation to feminine underwear, were unlikely to create confusion because they had sufficiently different commercial impression – even though the services and goods in question were “closely related.” *In re Nobody’s Perfect, Inc.*, 44 U.S.P.Q. 2d 1054, 1057 (TTAB 1997) (not reported). The “NOBODY’S PERFECT’ and “NO BODY’S PERFECT” marks are essentially phonetic and spelling equivalents, and are both used in regard to apparel, but the TTAB still found they created sufficiently distinct commercial impressions.

Accordingly, as the above-cited cases and decisions demonstrate, even slight differences in the marks can be sufficient to avoid a likelihood of confusion, even when the goods and services might be the same or closely related. As a result, Applicant submits that the addition, either before or after, of the words “ARAYMOND,” “SMART,” “WIRE & CABLE,” and “TECH” to the acronym “RG” create a distinct appearance, sound, and commercial impression, such that consumers would not be likely confused about the source, sponsorship, or affiliation of the goods and services offered under each of these marks. In addition, the specific styling and unique designs of the acronym “RG” (i.e., “ЯG” and the “RG” stylized designs) in the registrations cited by the Examiner provide at the least enough differentiation from the Applicant’s mark, “RG” (stylized) to prevent reaching the conclusion that these marks are similar.

2. Similarity of the Goods and/or Services

Even if the marks are identical, confusion is not likely if the goods or services in question are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source. See, e.g., *Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 1244-45, 73 USPQ2d 1350, 1356 (Fed. Cir. 2004) (reversing TTAB's holding that contemporaneous use of RITZ for cooking and wine selection classes and RITZ for kitchen textiles is likely to cause confusion, because the relatedness of the respective goods and services was not supported by substantial evidence); *Local Trademarks, Inc. v. Handy Boys Inc.*, 16 USPQ2d 1156, 1158 (TTAB 1990) (finding liquid drain opener and advertising services in the plumbing field to be such different goods and services that confusion as to their source is unlikely even if they are offered under the same marks); *Quartz Radiation Corp. v. Comm/Scope Co.*, 1 USPQ2d 1668, 1669 (TTAB 1986) (holding QR for coaxial cable and QR for various apparatus used in connection with photocopying, drafting, and blueprint machines not likely to cause confusion because of the differences between the parties' respective goods in terms of their nature and purpose, how they are promoted, and who they are purchased by).

There is no monopoly in a mark with respect to all goods or services, and similar or identical marks often coexist without confusion. In re *Quality Inns Int'l v. McDonald's Corp.*, 8 U.S.P.Q.2d 1633 (D. Md. 1988). In the context of a likelihood of confusion determination, goods are related only if they are likely to be encountered by the same customers under circumstances giving rise to the mistaken belief that the goods originate from, or are associated with, the same source. In re *Trademark Manual of Examining Procedure 1207.01(a)(i). On-Line Careline Inc. v. American Online, Inc.*, 56 U.S.P.Q.2d 1471 (Fed. Cir. 2000). "The facts in each case vary and the weight to be given each factor may be different, in light of the varying circumstances."

Moreover, the TTAB has noted that "there can be no rule that certain goods are *per se* related, such that there must be a likelihood of confusion from the use of similar marks in relation thereto." *The H.D. Lee Co., Inc.*, 87 U.S.P.Q.2d 1715 at *8 (TTAB 2008), citing *B.V.D. Licensing Corp. v. Rodriguez*, 83 U.S.P.Q.2d at 1506; *In re Shoe Works*, 6 U.S.P.Q.2d 1890, 1891 (TTAB 1988).

The Applicant has amended the description of goods in the present application to preclude identification of a variety of goods that may overlap or are presumed to be included in the registrations cited by the Examiner. In particular, the Applicant's mark, "RG" (stylized), is limited to vehicle and television antennas; satellite, cellular phone, and broadcasting transmitters and receivers; audio and radio-frequency amplifiers; and power converters and inverters. The registrations cited by the Examiner do not specifically identify any of the goods identified by the Applicant. Instead the cited registrations include the following goods.

U.S. Registration No. 5045758: RG (stylized) used on "Plastic connectors for electrical applications; electrical connectors and junction boxes; electric connectors and couplings for conduits and wires,"

U.S. Registration No. 5082929: SMART/RG used on "computer hardware, namely, customized broadband modems and computer networking modems; electronic computer peripheral communications devices; remote controls for use in home automation, namely, for lighting, HVAC, security, safety, webcam activity monitoring, and other home monitoring and control applications,"

U.S. Registration No. 5521958: RG WIRE & CABLE, for use in connection with "Distributorship and Wholesale store services featuring: Cable connectors, Cables and fibers for the transmission of sound and images, Cables for electrical or optical signal transmission, Coaxial cables, Electric cables, wires, conductors and connection fittings therefor, Electrical and optical cables, Electrical cables and cordsets, Electrical interconnect cables, Fiber optic cables, Insulated copper electrical wire, Insulated copper wire, Optical cables, Optical fiber cables, Plastic covered electric wires, Rubber covered electrical wires, Telecommunication cables."

U.S. Registration No. 3196728: RG (stylized) used on "electric solenoids, solenoid valves, electromagnets, electric solenoid coils, electric coils, electromagnetic switches,"

U.S. Registration No. 4801583: ARAYMOND RG (and design) used on "Apparatus and instruments for conducting, switching, transforming, accumulating, regulating, or controlling electric current,"

U.S. Registration No. 4133257: RG (and design) used on "Bags and carrying bags specially adapted for use with laptop computers and computer accessories," and

U.S. Registration No. 4623555: SMART RG (and design), U.S. Registration No. 4525440: SMARTRG, U.S. Registration No. 4623554: SMART RG (and design), U.S. Registration No. 4627379: SMART RG (and design), and U.S. Registration No. 4627378: SMART RG (and design), all used on “Computer hardware, namely, customized broadband modems and computer networking modems; electronic computer peripheral communications devices,”

In reference to U.S. Registration No. 5045758: RG (stylized), the applicant has deleted the wording “Electronic components, namely, transformers, baluns, and cables, all used in connection with cell phones, computers, computer peripheral devices, televisions, audio-video equipment, closed-circuit TV equipment, and telecommunications equipment;” which the Examiner pointed as being related to the goods identified in the cited registration used on “Plastic connectors for electrical applications; electrical connectors and junction boxes; electric connectors and couplings for conduits and wires,”. Applicant respectfully submits that the amended description of the goods does not overlap with the goods identified in the cited registration.

Concerning U.S. Registration No. 5082929: SMART/RG, the Applicant has deleted the text shown with strikethrough in “~~Electronic components, namely, transformers, baluns, and cables, all used in connection with cell phones, computers, computer peripheral devices, televisions, audio-video equipment, closed-circuit TV equipment, and telecommunications equipment; ... Receivers of electronic signals, namely, radio-frequency, audio, and data signals, comprised primarily of antennas, radio-frequency and computer hardware, and software for the transmission of voice and data between two points; Transmitters of electronic signals, namely, radio-frequency, audio, and data signals, comprised primarily of antennas, radio-frequency and computer hardware, and software for the transmission of voice and data between two points;~~” which the Examiner pointed as being related to the goods identified in the cited registrations, used on “computer hardware, namely, customized broadband modems and computer networking modems; electronic computer peripheral communications devices; remote controls for use in home automation, namely, for lighting, HVAC, security, safety, webcam activity monitoring, and other home monitoring and control applications.” In addition, the Applicant’s mark has been limited only to the use of receivers and transmitters of satellite, cellular phone,

and broadcasting signals, which does not overlap with the goods identified in the cited registration.

Referring to U.S. Registration No. 5521958: RG WIRE & CABLE, the applicant has deleted the text shown with strikethrough in “~~Electronic components, namely, transformers, baluns, and cables, all used in connection with cell phones, computers, computer peripheral devices, televisions, audio-video equipment, closed-circuit TV equipment, and telecommunications equipment...~~ Consumer electronic products, namely, audio and radio-frequency amplifiers, ~~audio speakers, audio and radio frequency receivers, electrical audio, radio frequency, and speaker cables and connectors, audio decoders, video decoders, speakers, power conversion devices,~~ power converters, and power inverters;” which the Examiner pointed as being related to the services identified in the cited registration in connection with “Distributorship and Wholesale store services featuring: Cable connectors, Cables and fibers for the transmission of sound and images, Cables for electrical or optical signal transmission, Coaxial cables, Electric cables, wires, conductors and connection fittings therefor, Electrical and optical cables, Electrical cables and cordsets, Electrical interconnect cables, Fiber optic cables, Insulated copper electrical wire, Insulated copper wire, Optical cables, Optical fiber cables, Plastic covered electric wires, Rubber covered electrical wires, Telecommunication cables.” Applicant respectfully submits that the amended description of the goods does not overlap with the services identified in the cited registration.

Regarding U.S. Registration No. 3196728: RG (stylized), the applicant has deleted the wording “~~Electronic components, namely, transformers, baluns, and cables, all used in connection with cell phones, computers, computer peripheral devices, televisions, audio-video equipment, closed-circuit TV equipment, and telecommunications equipment;~~” which the Examiner pointed as being related to the goods identified in the cited registration used on “~~electric solenoids, solenoid valves, electromagnets, electric solenoid coils, electric coils, electromagnetic switches.~~” Applicant respectfully submits that the amended description of the goods does not overlap with the goods identified in the cited registration.

With regards to U.S. Registration No. 4801583: ARAYMOND RG (and design), the applicant has deleted the text shown with strikethrough in “~~Electronic components, namely, transformers, baluns, and cables, all used in connection with cell phones, computers, computer~~

~~peripheral devices, televisions, audio-video equipment, closed-circuit TV equipment, and telecommunications equipment;... Consumer electronic products, namely, audio and radio-frequency amplifiers, audio speakers, audio and radio-frequency receivers, electrical audio, radio-frequency, and speaker cables and connectors, audio decoders, video decoders, speakers, power conversion devices, power converters, and power inverters;~~” which the Examiner pointed as being related to the goods identified in the cited registration used on “Apparatus and instruments for conducting, switching, transforming, accumulating, regulating, or controlling electric current.” Applicant respectfully submits that the amended description of the goods does not overlap with the goods identified in the cited registration.

Likewise, in consideration to U.S. Registration No. 4133257: RG (and design), the applicant has deleted the wording “Carrying cases, holders, protective cases, and stands featuring power supply connectors, adaptors, speakers, and battery charging devices, specially adapted for use with handheld digital electronic devices, namely, cell phones, receivers of electronic signals, and transmitters of electronic signals,” which the Examiner pointed as being closely related to the goods identified in the cited registration used on “Bags and carrying bags specially adapted for use with laptop computers and computer accessories.” Applicant respectfully submits that the amended description of the goods does not overlap with the goods identified in the cited registration.

Finally, in reference to U.S. Registration No. 4623555: SMART RG (and design), U.S. Registration No. 4525440: SMARTRG, U.S. Registration No. 4623554: SMART RG (and design), U.S. Registration No. 4627379: SMART RG (and design), and U.S. Registration No. 4627378: SMART RG (and design), the Applicant has deleted the text shown with strikethrough in “~~Electronic components, namely, transformers, baluns, and cables, all used in connection with cell phones, computers, computer peripheral devices, televisions, audio-video equipment, closed-circuit TV equipment, and telecommunications equipment; ... Receivers of electronic signals, namely, radio-frequency, audio, and data signals, comprised primarily of antennas, radio-frequency and computer hardware, and software for the transmission of voice and data between two points; Transmitters of electronic signals, namely, radio-frequency, audio, and data signals, comprised primarily of antennas, radio-frequency and computer hardware, and software for the transmission of voice and data between two points;~~” which the Examiner

pointed as being related to the goods identified in the cited registrations, all used on “Computer hardware, namely, customized broadband modems and computer networking modems; electronic computer peripheral communications devices.” In addition, the Applicant’s mark has been limited only to the use of receivers and transmitters of satellite, cellular phone, and broadcasting signals, which does not overlap with the goods identified in the cited registrations.

Applicant submits that the goods and services upon which the cited marks are used are distinct and serve a different purpose as compared to those described in the amended application. The amended description of goods in the present application prevents identification of a variety of goods and services that may overlap or are presumed to be included in the registrations cited by the Examiner. Thus, in light of the dissimilarity of the goods, Applicant submits that there is no likelihood of confusion in connection with the similarity of the goods and services.

3. Similarity of trade channels of the goods and/or services

Courts have held that very small distinctions can distinguish marks from each other. *In re NEC Electronics v. New England Circuit Sales, Inc.*, 722 F.Supp. 861, 863 (D. Mass, (1989) (holding that the mark NEC for manufacture and sales of integrated circuits and computer chips was not confusingly similar with the mark NECS for a computer chip sales business even though “[b]oth companies have advertised in the same trade publications” and “[b]oth companies use direct mail solicitations and conduct extensive business by phone.”). If marks that differ by only one letter exist in the same industry, while being advertised in the same channels with the same methods, can coexist without confusion, then the differences between Applicant’s mark, “RG” (stylized), and the cited registrations by the Examiner are sufficient to prevent any confusion between the Applicant’s mark and the referenced registrations.

Specifically, the goods identified in the present application are to be sold on the Internet and in specific retail markets, primarily focusing on antenna-related devices and systems, including wireless transmitters/receivers for satellite, cellular phones, and broadcasting applications and power conversion devices, and their corresponding trade channels.

In contrast, the registrations cited by the Examiner presumably sell the described products on the Internet and in markets focusing on trade channels distributing electrical connectors (U.S. Registration No. 5045758: ЯG); cables, connectors, and wires (U.S.

Registration No. 5521958: RG WIRE & CABLE); electric solenoids (U.S. Registration No. 3196728: stylized RG); apparatus and instruments for conducting, switching, transforming, accumulating, regulating, or controlling electric current (U.S. Registration No. 4801583: ARAYMOND RG); bags and carrying bags specially adapted for use with laptop computers and computer accessories (U.S. Registration No. 4133257: RG design); and computer modems and computer peripheral communication devices (U.S. Registration No. 5082929: SMART/RG, U.S. Registration No. 4623555: SMART RG, U.S. Registration No. 4525440: SMARTRG, U.S. Registration No. 4623554: SMART RG, U.S. Registration No. 4627379: SMART RG, and U.S. Registration No. 4627378: SMART RG).

Even if there is evidence showing that the Applicant's goods and the Registrants' goods and services cited by the Examiner are related because they may originate from a single source, this is insufficient to demonstrate that Applicant's goods are so related to Registrants' goods and services that confusion is likely. The TTAB has often held that simply because goods are sold under the same roof does not make them related. For example, Internet companies sell many different types of items. As opposed to a bricks and mortar store where, because of the proximity of items, customers would encounter one type of good while shopping for another, customers shopping at an Internet store will click directly on the item in which they are interested. *In re Sports Source, Inc.*, 2004 TTAB LEXIS 422 (TTAB July 20, 2004). In many cases, each of the products shopped on the Internet is on a separate page, making confusion highly unlikely. Thus, the mere fact that certain goods might be available at an Internet store is not sufficient to find a likelihood of confusion.

Accordingly, Applicant submits that the channels of trade would be dissimilar and not likely to cause consumer confusion. Furthermore, to the best of Applicant's knowledge, there is no established trade-channel for the goods of the cited registration, and as such, there can be no similarity between registered marks alleged established trade-channels and the potential trade-channels of the pending application. Thus, in light of the dissimilarity of the channels of trade, Applicant submits that there is no likelihood of confusion.

Conclusion

As demonstrated above, the differences between Applicant's mark, "RG" (stylized), and the registrations cited by the Examiner are sufficient to obviate any confusion between the marks. Moreover, the differences in the marks, combined with the differences in the goods and services, as well as the fact that several other registrations that use similar wording peacefully coexist, demonstrate that confusion is not likely in this case.

In summary, the use and purpose of the goods and services are not interchangeable and therefore not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source.

Based upon the foregoing remarks and amendment, Applicant respectfully requests that the rejection of the registration of the applied-for mark, "RG" (stylized), under section 2(d) of the Trademark Act, be withdrawn.

INFORMALITIES

IDENTIFICATION OF GOODS -- Repeated

The Examiner has indicated that the identification of goods remains unacceptable for the following reasons. The requirement for an acceptable identification of goods is therefore REPEATED.

Applicant has amended the wording in the identification of goods, as suggested by the Examiner, to address the noted indefiniteness.

Applicant respectfully requests that the Examining Attorney amend the identification of goods, consider the Remarks and approve the present Application and pass it to publication. In the event the Examining Attorney have any questions or comments, Applicant invites the Examining Attorney to email or call Applicant to discuss additional amendments. Applicant thanks the Examining Attorney for her time and assistance.

Respectfully submitted,

/Argy Petros/

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Note: This application is a variation of co-pending application for the mark “RGTECH”. See Application Serial No. 87035338, likewise refused under section 2(d) of the Trademark Act in view of existing U.S. Registered marks as indicated.