

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

---

**In re Application of:** Gravity Industries Limited

<b>Serial No.:</b> 88/202,298	<b>Trademark Law Office:</b> 114
<b>Filing Date:</b> November 21, 2018	<b>Examining Attorney:</b> David I
<b>Mark:</b> GRAVITY	<b>Our File No.:</b> 3034.010

---

**RESPONSE TO OFFICE ACTION**

This paper is filed in response to Office Action dated March 7, 2019, in connection with the above-identified U.S. trademark application. The six-month period for response expires on September 7, 2019, which is a Saturday, thus making the response due by Monday, September 9, 2019. Accordingly, this response is timely filed.

**I. AMENDMENT**

Applicant requests that its identification of goods and services be amended as follows:

“Propulsion engines, namely aircraft engines; propulsion mechanisms, namely aeronautic engines; aeronautical engines, ~~blowing machines~~, compressed air engines not for land vehicles, control mechanisms for machines, engines or motors, namely, throttles, kill switches and joysticks; jet engines other than for land vehicles; engines, other than for land vehicles, namely, aircraft engines”, in Class 007.

“Flight control apparatus, namely, apparatus for checking flight parameters, throttles, kill switches and joysticks; computer controls, ~~robotics, computer hardware, computer firmware, downloadable computer software for gaming, augmented reality, virtual reality simulation and mixed reality systems~~; altimeters, ~~GPS units~~, speedometers, azimuth instruments, ~~barometers~~, directional compasses, protective clothing, namely articles of protective clothing for wear by pilots for protection against accident or injury, articles of protective clothing for protection against accidents and fire, and protective race suits for pilots or racing drivers; ~~protective gloves, protective masks~~, protective helmets for sports, speed indicators”, in Class 009.

“~~Vehicles~~; flying apparatus, namely, helicopters, aircraft, aeroplanes, jet powered equipment attached directly to the body for enabling a person to fly; civilian drones; parachutes; aeronautical apparatus, machines and appliances, namely jet aircraft, electrically and jet propelled apparatus for flying; ~~electric bicycles, driverless cars, ejector seats for aircraft, hot air balloons~~; remote control vehicles, other than toys, namely aircraft, aeroplanes, and jet powered

equipment attached directly to the body for enabling a person to fly, namely remote control kill switches for remotely assuming control of an aircraft; jet engines; turbines for land vehicles; vehicles for locomotion by land, air, or water or rail, namely, airplanes helicopters, aircraft, jet powered equipment attached directly to the body for enabling a person to fly; and Propulsion engines, namely, rocket, jet and internal combustion engines for land vehicle propulsion”, in Class 012.

“Clothing, namely wristbands, t-shirts, racing suits not in the nature of protective clothing, zipped hooded sweatshirts, footwear, and baseball hats and caps, headgear”, in Class 025.

“Training services; in the field of flying apparatus control training, pilot training, zipline training; entertainment services /sporting events namely racing events, flying demonstrations, air shows, and experience events relating to piloting aircraft and jet powered body-worn equipment; entertainment services, namely providing televised racing, flying, and air show events and demonstrations; Organizing arranging and conducting racing, flying sports, and aeronautical sports events; providing recreation facilities, providing sports facilities”; ~~all relating to flying and human propulsion~~”, in Class 041.

“Engineering services; research, design and development of jet engines, flying control apparatus and equipment, excluding research, design and development of computer software; computer system design”, in Class 042.

## **II. REMARKS**

### **A. Applicant’s Request for Amendment**

Applicant has made certain amendments to further clarify and specify the goods associated with the above-referenced mark. Applicant has not amended the identification of goods to add or broaden the scope of goods.

Applicant requests the below arguments addressing the Office Action’s Section 2(d) refusal be considered in view of the amended identification of goods and services.

### **B. No Likelihood of Confusion Between Applicant’s Mark and the Cited Registrations**

The Office Action refuses registration of Applicant’s mark GRAVITY (“Applicant’s Mark”) under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), because the Trademark Examining Attorney considered Applicant’s Mark, when used on or in connection with the identified goods and services, to so resemble the Cited Registrations (defined below).

Applicant respectfully requests that refusal to register on the basis of likelihood of confusion be withdrawn on grounds the differences in the marks, differences in the goods and services, and their trade channels, as well as the sophistication of prospective customers, obviate the finding of likelihood of confusion between the Cited Registrations and Applicant's mark.

In testing for likelihood of confusion under Section 2(d), the following factors must be considered:

- (1) The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.
- (2) The similarity or dissimilarity and nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use.
- (3) The similarity or dissimilarity of established, likely-to-continue trade channels.
- (4) The conditions under which and buyers to whom sales are made, i.e. "impulse" vs. careful, sophisticated purchasing.
- (5) The fame of the prior mark (sales, advertising, length of use).
- (6) The number and nature of similar marks in use on similar goods.
- (7) The nature and extent of any actual confusion.
- (8) The length of time during and conditions under which there has been concurrent use without evidence of actual confusion.
- (9) The variety of goods on which a mark is or is not used (house mark, "family" mark, product mark).
- (10) The market interface between applicant and the owner of a prior mark.
- (11) The extent to which applicant has a right to exclude others from use of its mark on its goods.
- (12) The extent of potential confusion, i.e., whether *de minimis* or substantial.
- (13) Any other established fact probative of the effect of use.

*In re E. I. DU Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (C.C.P.A. 1973). One or more of the *DuPont* factors may be more dominant than others in a particular case. *See In re Inspired Technologies, Inc.*, 2011 WL 526096 (T.T.A.B. January 19, 2011) (in certain situations, differences in the goods and the sophistication of the purchasers outweigh the purported similarities of appearance in the compared marks).

In considering each of the above factors, the Office must keep in mind that "[t]he fundamental inquiry mandated by Section 2(d) goes to the **cumulative effect** of differences in


the essential characteristics of the goods and differences in the marks.” *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (emphasis added); see also *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein. As described in more detail below, Applicant respectfully asserts that, given the cumulative effect of the above factors, there is no likelihood of confusion and Applicant’s Mark should proceed to registration.

**1. The Large Number of Registrations Cited against Applicant’s Mark Strongly Suggests That Sufficient Differences Exist among the Cited Registrations and Applicant’s Mark as to Allow Registration of Applicant’s Mark.**

It is well established that marks subject to extensive third-party use are less likely to be confused with another mark when differences in the mark and/or goods exist, as they do here.

*See Gruner+Jahr USA Publishing v. Meredith Corp.*, 991 F.2d 1072, 26 USPQ2d 1583 (2d Cir 1993). The Cited Registrations relied on in the Office Action are as follows:

US Reg. No.	MARK	GOODS/SERVICES
5047284	<b>Gravity Racing</b>	<p><u>Class 012</u>: Vans; trucks; sports cars; motor cars; cars powered by a combination of thermic and electrical energy; motorcycles; motorized scooters; all the aforementioned goods in relation with basic, sport and racing models</p> <p><u>Class 025</u>: Footwear, headgear, namely, caps, hats; motorists' clothing, namely, t-shirts, shirts, pullovers, sweaters, jackets, gloves, coats, jeans, pants, dresses; belts; sweaters; socks; boots for sports; shirts; chemisettes; combinations; neckties; clothing of leather, namely, t-shirts, shirts, pullovers, sweaters, jackets, gloves, coats, jeans, pants, dresses; clothing of imitations of leather, namely, t-shirts, shirts, pullovers, sweaters, jackets, gloves, coats, jeans, pants, dresses; cyclists' clothing, namely, t-shirts, shirts, pullovers, sweaters, jackets, gloves, coats, jeans, pants, dresses; sashes for wear; gloves; waistcoats; waterproof clothing, namely, t-shirts, shirts, pullovers, sweaters, jackets, gloves, coats, jeans, pants, dresses; skirts; coats; trousers; overcoats; parkas; pullovers; dresses; tee-shirts; jackets; sportswear for all kinds of sports, namely, t-shirts, shirts, pullovers, sweaters, jackets, gloves, coats, jeans, pants, dresses; suits, singlets, woven clothing, namely, t-shirts, shirts, pullovers, sweaters, jackets, gloves, coats, jeans, pants, dresses; chemisettes in the nature of shirt fronts, boots, hats, neckties, sashes for wear, vests, jackets, belts, suspenders in the nature of braces, headbands, sweaters, sweatshirts, polo shirts, blousons, overcoats, greatcoats, socks, scarves, underwear, pajamas, slippers, dressing gowns, shawls, jeans, clothing for children, namely,</p>

US Reg. No.	MARK	GOODS/SERVICES
		t-shirts, shirts, pullovers, sweaters, jackets, gloves, coats, jeans, pants, dresses; rain and wind-proof jackets, suits for men
2550182	GRAVITY	<u>Class 012:</u> Bicycle
5598476		<u>Class 025:</u> Hats; Shirts; Sweatshirts; Bottoms as clothing; Hooded sweatshirts; Jackets; Tops as clothing
5297729	GRAVITY ATHLETICA	<u>Class 025:</u> Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Athletic pants; Athletic shirts; Athletic shorts; Athletic skirts; Athletic tights; Body shirts; Body suits; Crop tops; Footwear for men and women; Hats; Head sweatbands; Hooded pullovers; Hooded sweatshirts; Jackets; Jogging pants; Jumpsuits; Leggings; Leotards; Long sleeve pullovers; Long sleeved vests; Moisture-wicking sports bras; Moisture-wicking sports pants; Moisture-wicking sports shirts; One-piece play suits; Outer jackets; Panties, shorts and briefs; Shapewear; Short-sleeved shirts; Shorts; Skirts; Socks; Sports bras; Sports caps and hats; Sports jackets; Sweat jackets; Swimwear; Tank tops; Undergarments; Unitards; Wetsuits; Women's athletic tops with built-in bras; Yoga pants; Yoga shirts; Panties, shorts and briefs
4655693	GRAVITY THREADS	<u>Class 025:</u> Clothing, namely, shirts, leggings, belts, money belts; and children's, toddler's and infant's apparel, namely, jumpers, sleepwear, pajamas, rompers and one-piece garments
3227383	GRAVITYGEAR	Clothing, namely, tank tops, pants, T-shirts, tops, sports jackets, short-sleeved or long-sleeved T-shirts, muscle tops, polo shirts, jackets, caps
5683252	GRVTY	<u>Class 025:</u> Clothing and apparel, namely, shirts, t-shirts, sweatshirts, and pants
5157125	GRAVITY	<u>Class 009:</u> Computer software and downloadable software in the nature of a mobile application for coordinating transportation services, namely, software for the automated scheduling and dispatch of motorized vehicles
5595513	GRAVITY SOFTWARE	<u>Class 042:</u> Cloud computing featuring software for use in accounting; Computer programming services for small business accounting software; Computer software development; Platform as a service (PAAS) featuring computer software platforms for accounting; Providing a web site featuring technology that enables users to perform accounting and bookkeeping; Software as a service (SAAS) services featuring software for accounting and financial management; Software as a service (SAAS) services, namely, hosting software for use by others for use by small businesses to perform accounting functions; Design and development of computer software
4965977	GRVTY	<u>Class 042:</u> Software as a service (SAAS) services featuring software that allows users to reset security features and login to business applications, receive security notifications for accounts, and connect to customer service

US Reg. No.	MARK	GOODS/SERVICES
4563308	GRAVITY FORMS	<p><u>Class 009:</u> Downloadable computer software for capturing, storing and managing leads, inventory management, facilitating e-commerce, reservation management, customer relationship management, email marketing, and creating, tracking and managing appointments, events, activities, and tours</p> <p><u>Class 042:</u> Application service provider featuring application programming interface (API) software for capturing, storing and managing leads, inventory management, facilitating e-commerce, reservation management, customer relationship management, email marketing, and creating, tracking and managing appointments, events, activities, and tours</p>

Applicant notes that there a total of eleven references cited against Applicant’s Mark. This fact, on its own, strongly weighs in favor of allowing Applicant’s Mark. This is especially the case, given that the Cited Registrations are more closely related to each other than they are to Applicant’s Mark. By way of example, at least four (4) of the Cited Registrations are in the field of “software” and each contain a version of the word GRAVITY. However, these registrations were allowed to register over one another and are able to co-exist without any confusion among customers. Clearly, the owners of these registrations are able to use their respective marks, which include the term “GRAVITY,” on products in the same or in related classes without creating a likelihood of confusion. Applicant thus submits it too is entitled to a registration based on the differences and amended description of goods and services set forth herein.

Applicant respectfully asserts that the Office Action assigns too much weight to the Cited Registrations when considering the similarity of the marks and goods/services. Where similar marks are used by numerous sources or third parties in connection with similar goods/services, the registered mark is entitled to only a narrow scope of protection. *Data Concepts, Inc. v. Digital Consulting, Inc.*, 150 F.3d 620 (6th Cir. 1998); *Sun Banks of Fla., Inc. v. Sun Fed. Sav. & Loan Ass’n*, 651 F.2d 311 (5th Cir. 1981) (extensive third-party use of the word “Sun” found to be impressive evidence that there would be no likelihood of confusion between Sun Banks and Sun Federal); *Amstar Corp. v. Domino’s Pizza, Inc.*, 615 F.2d 252 (5th Cir. 1980), *quoting*,

Restatement of Torts §729 (1938) (“The greater the number of identical or more or less similar trademarks already in use on different kinds of goods, the less is the likelihood of confusion.”).

The Cited Registrations in Class 009 are entitled to narrow protection. In addition to the Cited Registrations, a search through the U.S. Patent and Trademark Office’s (“USPTO”) online records identifies 50+ pending registrations for marks in Class 009 alone that include the word GRAVITY, but have been allowed to co-exist and register over one another. A sampling of these are shown below:<sup>1</sup>

<b>Mark</b>	<b>Goods/Class</b>	<b>Reg. No.</b>
GRAVITY	Audio amplifiers; Audio cassette and CD players; Audio cassette players; Audio electronic components, namely, surround sound systems; Audio equipment for vehicles, namely, stereos, speakers, amplifiers, equalizers, crossovers and speaker housings; Audio equipment for vehicles, namely, subwoofers; Audio speaker enclosures; Audio speakers. (009)	3707481
GRAVITY	Electric and electronic apparatus and instruments for recording, storing, processing, manipulating, combining, mixing, editing, transmission and reproduction of analogue and digital audio and video signals; electric and electronic apparatus and instruments for recording, storing, transmission and reproduction of sound, static images and moving images; audio and video mixing equipment, namely, sound mixers, audio mixers, image mixers, consoles and workstations; mixing boards, namely, audio mixing boards and sound mixing boards; and parts for all the aforesaid goods, the aforesaid goods excluding audio amplifiers, audio cassette and CD players, audio cassette players, audio electronic components, namely, surround sound systems, audio equipment for vehicles, namely, stereos, speakers, amplifiers, equalizers, crossovers and speaker housings, audio equipment for vehicles, namely, subwoofers, audio speaker enclosures, and audio speakers (009)	3882228
DATAGRAVITY	computer storage devices, namely, external disk drives; software for data storage management, data recovery, and database analytics for use in computer data centers; downloadable software for connecting storage devices to other software applications used in computer data centers; software for managing computer data centers for mobile devices; software for developing a disaster recovery plan for use in computer data centers (009)	4419383
GRAVITY MOBILE	Computer software, namely, software and software development tools for developing, providing and modifying mobile applications; mobile applications software for music recognition, identification, downloading, playing, storing and organization; mobile applications search engine software for use in searching via text, sound, speech, and musical queries; mobile applications software for management and distribution of multimedia content; software development tools; downloadable ringtones (009)	4172009

<sup>1</sup> See **Exhibit A**, attached hereto and incorporated herein. Applicant respectfully requests that the USPTO records be made a part of the record.

Marks comprised of words or terms widely used by third parties are limited to enjoining use of the mark on only the most similar, if not *identical*, goods or services. *See Baker Indus., Inc. v. Bowers*, 191 U.S.P.Q. 260, 264 (TTAB 1976) (“a narrow orbit of protection limited to the same or similar goods or services or possibly those closely related thereto”). Here, as explained in more detail herein, Applicant’s Mark is used in connection with flying apparatus and related goods/services. As such, the differences in the goods and services will avoid a likelihood of confusion.

The Cited Registrations in Class 025 are entitled to narrow protection. The Office Action cites to five (5) Cited Registrations<sup>2</sup> in class 025, each containing the word GRAVITY (or phonetic equivalent); yet each allowed to co-exist and register over one another. In addition, a search through the U.S. Patent and Trademark Office’s (“USPTO”) online records identifies 40+ pending registrations for marks in Class 025 alone that include the word GRAVITY, but have been allowed to co-exist and register over one another. A small sampling of these are listed below:<sup>3</sup>

Mark	Goods/Class	Reg. No.
GRAVITY AND YOU	Hats for infants, babies, toddlers and children; Shirts for infants, babies, toddlers and children; Athletic shirts; Baseball caps and hats; Graphic T-shirts; Hooded sweat shirts; Long-sleeved shirts; Short-sleeve shirts; Short-sleeved or long-sleeved t-shirts; Sports caps and hats; T-shirts; Tee shirts; Tee-shirts; Toques; Wearable garments and clothing, namely, shirts; Yoga shirts.	5656518

<sup>2</sup> US Trademark Reg. No. 5297729, 4655693, 3227383, 5598476, 5683252.

<sup>3</sup> See **Exhibit B**, attached hereto and incorporated herein. Applicant respectfully requests that the USPTO records be made a part of the record.



Mark	Goods/Class	Reg. No.
ORIGINAL GRAVITY	Clothing, namely, sportswear for men, women, and children, namely, blouses, shirts, tunics, tank tops, T-shirts, vests, camisoles, jackets, long pants, capri pants, shorts, Bermuda shorts, skirts, rompers, overalls, dresses, cover-ups, underwear, and undershirts, sleepwear for men, women, and children, night shirts, pajamas separates and sets; headwear and footwear	5765075
ENJOY GRAVITY	Belts; Blouses; Dresses; Hats; Jackets; Pants; Scarves; Shirts; Socks; Sweatshirts; Tank tops.	4922093

The differences between the Cited Registrations and the additional registrations above are slight, descriptive variations in the marks (e.g. the addition of a merely descriptive term).

However, because the Cited Registration’s GRAVITY component is so widely used, the public can easily distinguish *slight differences* in the marks even if the goods are related, and thus, as is the case here, consumer confusion is unlikely. *Gen. Mills, Inc. v. Kellogg Co.*, 824 F.2d 622, 626 (8th Cir. 1987). In view of Applicant’s narrowing amendments to the goods, and given that the Cited Registrations are entitled to a narrow scope of protection, the clear differentiation between the marks and the goods (as amended), along with differences in trade channels and sophistication of the consumers, will distinguish the Cited Registrations from Applicant’s Mark and eliminate any possibility of confusion.

**2. There Are Substantial Differences between the Goods Offered Under the Cited Registrations, and the Goods (as Amended) Offered by Applicant**

Applicant respectfully disagrees with the assertion that the goods covered by Applicant’s Mark encompass the goods covered by the Cited Registrations and are likely to cause confusion. Applicant submits that the nature of the goods are readily and discernibly different, especially taking into consideration the clarification of the goods that Applicant has proposed herein.

There are numerous differences between the goods offered under the Cited Registrations and the goods and services offered under Applicant’s Mark, as outlined below.

Registration No. 5047284 for the mark GRAVITY RACING covers land vehicles powered by a combination of thermic and electrical energy, motorcycles; motorized scooters and related clothing. Applicant's goods, as amended, are not for use in land vehicles but relate to flying apparatus.

Registration No. 2550182 for GRAVITY is limited to bicycles only. Applicant's goods do not include bicycles.

Registration No. 4965977 and 5683252 for GRVTY covers software for use in connection with security features and customer service, and related clothing. Applicant's mark, as amended, covers the very different *"downloadable computer software for gaming, augmented reality, virtual reality simulation and mixed reality system."* These goods are marketed in very different channels of trade.

Registration No. 5595513 for GRAVITY SOFTWARE covers cloud computing and software for use in accounting and bookkeeping. Applicant's mark, as amended, covers the very different *"downloadable computer software for gaming, augmented reality, virtual reality simulation and mixed reality system."* These goods are marketed in very different channels of trade, and this is not at all an area of interest to the Applicant nor is it the type of software that the Applicant provides to consumers.

Registration No. 4563308 for GRAVITY FORMS covers cloud computing and software for use in marketing, e-commerce, inventory, and CMR. Applicant's mark, as amended, covers the very different *"downloadable computer software for gaming, augmented reality, virtual reality simulation and mixed reality system."* These goods are marketed in very different channels of trade, and this is not at all an area of interest to the Applicant nor is it the type of software that the Applicant provides to consumers.

Registration No. 5157125 for GRAVITY covers mobile applications used to coordination transportation services. Applicant's mark, as amended, covers the very different

"downloadable computer software for gaming, augmented reality, virtual reality simulation and mixed reality system." These goods are marketed in very different channels of trade, and this is not at all an area of interest to the Applicant nor is it the type of software that the Applicant provides to consumers.

In sum, Applicant's products and services expressly pertain to flying apparatus and services; while none of the Cited Registrations do. Applicant respectfully submits that its goods are not at all so similar to the goods and services covered by the Cited Registrations as to cause a likelihood of confusion.

### **3. The Channels of Trade and Consumers Are Significantly Different**

Applicant provides flying apparatus, and related goods and services. These goods and services are readily distinguishable from the goods and services provided under the marks included in the Cited Registrations.

Applicant described the differences between Applicant's goods (as amended) and those provided by the Cited Registrations above. Thus, the products and services reside in different trade channels and are not related, and there can be no likelihood of confusion. *See du Pont*, 476 F.2d at 1361; *Electronic Data Systems*, 23 USPQ2d at 1460, 1462-63 (no likelihood of confusion where products reside in different trade channels). Furthermore, the owners of the Cited Registrations and Applicant are not competitors because they conduct business in completely different industries and to different consumers. Because the goods and 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, confusion is not likely. *See* TMEP 1207.01(a)(i); *Quartz Radiation Corp. v. Comm/Scope Co.*, 1 USPQ2d 1668, 1669-70 (TTAB 1986)(QR for coaxial cable held not confusingly similar to QR for various products, e.g. lamps, tubes, related to the photocopying field).

In view of the above arguments and evidence, it is highly unlikely that any confusion as to the source of origin would exist because the Cited Registrations' goods and Applicant's goods travel in very different channels of trade and further, would never be sold side by side or to the same audience. Analyzed as a whole, in the context of its trade channels and use in the marketplace, Applicant's Mark is entitled to registration.

#### **4. Prospective Customers are Sophisticated**

In this case, the consumers of the respective products are sophisticated and the products are not the type that induces impulsive purchasing, such that a potential consumer would not be confused as to the source of the products. Applicant's prospective customers would be prepared to differentiate between the various goods associated with flying apparatus, equipment, and services, and to select products or services that will meet their needs. Moreover, these types of goods and services are not subject to impulse purchases. Instead, Applicant's prospective customers would tend to be fully informed and aware of the type of products, the quality, the material and the different features of the goods purchased from Applicant. When a purchaser has expertise relative to particular goods, is "...more sophisticated with respect to ..." the goods at issue, or the goods are expensive, a higher standard regarding likelihood of confusion is proper. *See, e.g., Jet Inc. v. Sewage Aeration Sys.*, 165 F.3d 419, 422-23 (6th Cir. 1999) (explaining that "when a buyer has expertise or is otherwise more sophisticated with respect to the purchase of the services at issue, a higher standard is proper. Similarly, when services are expensive or unusual, the buyer can be expected to exercise greater care in her purchases. When services are sold to such buyers, other things being equal, there is less likelihood of confusion"). Accordingly, it is unlikely that the prospective customers of Applicant would be confused as to the source and origin of the relevant goods or services.

### III. PRIOR-FILED PENDING APPLICATIONS

Applicant acknowledges the Advisory citation by the Office of earlier-filed Application Serial Nos. 88047894, 88093859, 87561520, 88116046, 87373257 as potential references for a likelihood of confusion-based refusal. Applicant has examined these applications and their respective marks and respectfully submits that even were these references to issue as federal registrations, none present a likelihood of confusion for the same reasons set forth herein in view of Applicant's amendments to the goods and services.

### IV. FOREIGN REGISTRATION

Examiner asserts that Applicant must provide a foreign registration certificate. Applicant has not yet obtained a foreign registration certificate to submit. Applicant, however, intends to submit the Certificate once it does and respectfully requests suspension until then.

### V. CONCLUSION

Under the Lanham Act, a refusal to register under likelihood of confusion requires that such confusion as to the source of the goods must be not merely possible, but likely. A mere possibility of confusion is an insufficient basis for rejection under Section 2(d). *In re Massey-Ferguson, Inc.*, 22 U.S.P.Q. 367 (T.T.A.B. 1983). In view of the foregoing remarks, Applicant respectfully requests that the Examining Attorney refrain from refusing this application on the basis of the Cited Marks as to be likely to cause confusion, to cause mistake or to deceive.

Respectfully submitted,



Date: September 9, 2019

Alana M. Fuierer, Esq.  
HESLIN ROTHENBERG FARLEY & MESITI P.C.  
5 Columbia Circle  
Albany, New York 12203  
Telephone: (585) 288-4832  
Facsimile: (585) 288-2010  
*Attorneys for Applicant*