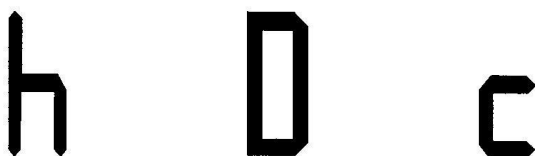


The Examining Attorney issued an office action refusing registration of Applicant's logo mark, HDC (the "Applicant's Mark"), shown at right, pursuant to Trademark Act Section 2(d), 15 U.S.C. §1052(d), on the grounds that the mark is allegedly likely to be confused with the mark in Registration No. 2857937, shown below (the "Cited Mark").



Applicant contends that the marks, when viewed in their entireties, are unlikely to result in confusion. For the reasons set forth in more detail below, Applicant respectfully disagrees with the Examining Attorney's conclusion and requests that Applicant's Mark be passed for publication.

A determination of likelihood of confusion under Section 2(d) is made on a case-by-case basis guided by the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). In addition to the factors considered by the Examining Attorney, namely, the similarity of the marks, and the relatedness of the goods, the relative strength of the Cited Mark is also an important factor in this case. Because the Cited Mark and Applicant's Mark are both stylized logos that are very different in appearance, the likelihood of confusion is remote. That is especially true since Applicant has revised its goods to explicitly exclude any overlap between them and the Cited Mark coexists with other more-similar marks.

A. THE MARKS ARE DISSIMILAR

In comparing the marks, the Examining Attorney focused entirely on the word portions of the marks and the allegation that they are identical. While true that each mark consists of the letters H, D, and C, the stylizations are completely different. In fact, Applicant's Mark is so unique that consumers would need to stop and analyze the mark to determine that the letters were HDC. Consumers familiar with Applicant, Heritage Distilling Company, would immediately recognize the mark as an acronym. Others, may not even know whether the mark is HDC (top down) or HCD (left-to-right).

The Cited Mark is a stylized letter mark with lower case "h" and "c" surrounding an upper case "D." Each letter has distinct corners with 45 degree angles in place of curves and tips formed by 90 degree angles. These visual elements should not be ignored. "The nature of stylized letter marks is that they partake of both visual and oral indicia, and both must be weighed in the context in which they occur." *In re TSI Brands, Inc.* 67 USPQ2d 1657 (TTAB 2002), citing *Georgia-Pacific Corp. v. Great Plains Bag Co.*, 614 F.2d 757, 760 (CCPA 1980).

In *In re TSI Brands Inc.*, the Board reversed the Examining Attorney’s refusal to register TSI Brands’ design mark, which incorporated the letters “AK.” Even though the TSI’s mark and the cited mark were both used for legally identical goods (clothing), the Board determined that the marks in their entireties were not confusingly similar.



This case demands a similar conclusion. The visual elements of the Cited Mark are distinct and completely different from the stylization of Applicant’s Mark. Applicant’s Mark consists of three interlocking letters. The right leg of the H forms the stem of the D which overlaps with the C. The letters are all capitalized and font looks nothing like the font of the letters in the Cited Mark. Even if they are phonetically similar, the marks, like the letter marks in *TSI Brands*, are visually distinct.

Importantly, the USPTO has determined time and time again that the Cited Mark is not likely to be confused with even standard character marks that are at least as similar as is Applicant’s Mark. As shown in the chart further below, there exist multiple registrations for apparel and footwear in Class 25 for the standard characters “HD” (or “H D” or “H-D”). In addition, there are standard character registrations for HDE and HDMC (among others) for use with clothing in Class 25. Since these marks were found not similar to the Cited Mark when used with goods in Class 25, then the same must be true for Applicant’s highly stylized interlocking logo.

Mark	Reg. No. Reg. Date	Class 25 Goods
H D	1596518 5/15/1990	Jackets, vests, gloves, t-shirts and caps
HD	2315877 2/8/2000	Shirts, jackets, vests, t-shirts, nightgowns, sweatshirts, nightshirts, gloves, hats, leather gloves
H-D	1775905 6/8/1993	Shirts, jackets, vests, t-shirts, nightgowns, sweatshirts, nightshirts, gloves, hats, leather gloves
HDE	4215123 9/25/2012	Clothing, namely, shirts, sweatshirts, sweaters, t-shirts, tops, shorts, underwear, socks, pants, belts, vests, parkas, coats, hats, footwear, gloves, jackets, headwear
HDMC	5653069 1/15/2019	Outer clothing, namely, coats, jackets, vests, sweaters; suspenders, scarves, bandannas, gloves, jeans, chaps, shirts,

		shorts, caps being headwear, hats, headwear, belts, wristbands as clothing, coveralls, hosiery, halter tops, neckties, night shirts, nightgowns, pajamas, trousers, pants, rain suits, rain coats, sweatshirts, sweat pants, tank tops, T-shirts, underwear, head bands, leg warmers, aprons, mittens, lingerie; leather clothing, namely, leather jackets, leather coats, leather pants; swimsuits, skirts, bibs; footwear, namely, shoes and boots, and parts of footwear, namely, boot tips, sole plates, heel guards
HDX	4974013 6/7/2016	Shoe covers for use when wearing shoes
HD2	5138919 2/7/2017	Hats; Hooded sweatshirts; Shoes; Socks; T-shirts
HDY	4930593 4/5/2016	Clothing for men, women and children, namely, shirts, tank tops, sweat shirts with and without hoods, sweaters, jackets, hats, caps, visors, head bands, scarves, shorts, pants, stretch pants, sweat pants, socks, bathing suits, briefs, thong underwear, under garments, and footwear
HDV	3749508 2/16/2010 *Canceled 9/23/2016; coexisted with Cited Mark for 6 years	Bathing suits; bathrobes; blouses; body suits; bra; dresses; dressing gowns; evening gowns; footwear; fur coats and jackets; gloves; gym suits; hand-knitted sweaters; head band; head wear; insoles; jackets; jeans; jogging suits; lingerie; night gowns; night shirts; pajamas; pants; rain coats; scarves; shirts; shorts; skirts; slacks; socks; suits; sportswear, namely, tops, shorts, and pants; sweaters; sweat pants; sweat suits; ties; t-shirts; and underwear
HDK	3316301 10/23/2007	Shoes

	*Canceled 5/30/2014; coexisted with Cited Mark for 7 years	
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B. THE CITED MARK IS NOT FAMOUS OR STRONG

The Cited Mark is not entitled to a broad scope of protection that would include another mark that consists of the letters HDC in a highly stylized format that clearly distinguishes the two marks. As set forth above, the USPTO has consistently determined that the Cited Mark can coexist with even standard character marks for use with clothing and footwear in Class 25. Thus, the field of arguably similar marks for use with clothing is sufficiently crowded that no one mark is entitled to a particularly broad scope of rights.

In fact, the USPTO registered another HDC mark for clothing in Class 25 (Reg. 4486727). While that registration was subsequently canceled in 2017, these two marks coexisted for several years. Even if not determinative of likelihood of confusion in this case, the coexistence of the Cited Mark with another HDC logo and many other similar standard character marks, all for use with clothing and footwear in Class 25, clearly shows that the Cited Mark does not enjoy strong rights.

C. THE GOODS AND SERVICES ARE SIGNIFICANTLY DIFFERENT

Finally, elsewhere in this response, Applicant has excluded “athletic clothing” from the scope of this application. The Cited Mark is registered only for specific “athletic clothing” and, as is shown in the specimens submitted with that mark, the Cited Mark is a patented technology for moisture management. Thus, the Cited Mark is used with an explicitly identified, narrowly defined scope of clothing within Class 25 which has been excluded from the application.

Given the significant differences in the marks themselves and the relatively modest scope of rights afforded this registration, consumers are unlikely to confuse these marks, even if the goods are identical. Here, the explicit exclusion of athletic clothing from the application mitigates any potential confusion. Consumers of athletic clothing featuring the patented technology associated with the Cited Mark will not encounter Applicant’s stylized logo, which is an acronym for Applicant’s trade name, in a manner likely to result in confusion.

CONCLUSION

The Cited Mark and Applicant’s Mark are visually distinct. When compared in their entireties, including the visual and phonetically element, the Cited Mark and Applicant’s Mark are not likely to be confused when used with different types of clothing. The USPTO has determined that the Cited Mark can coexist with many similar standard character marks for legally identical goods, Applicant contends that its stylized mark for use with clothing that excludes athletic clothing can likewise coexist. Thus, Applicant respectfully requests that the refusal be withdrawn.