

The Examining Attorney has refused registration in view of several prior registrations for AIRWAVE in Class 09. The Examining Attorney has noted several third-party sources that sell multiple goods. Applicant respectfully submits that evidence of a third party selling both goods A and goods B cannot always mean that A and B are related goods for purposes of evaluating likelihood of confusion. For example, most U.S. consumers are aware that the website *Amazon.com* sells books, dog food, luxury watches, and computer printers. Yet no one would say that these are related goods. As a further example, the famous designer Ralph Lauren sells sportswear, books, artwork, barware, shoes, and candles. These cannot reasonably be considered to be related goods. Thus, the ruling of *In re Davey Prods* as cited by the Examining Attorney must be considered as merely suggestive of an approach, where third-party evidence may in some circumstances be considered sufficient to find goods and services to be related.

In the present case, Applicant's goods, as amended, are limited to a very specialized segment of camera mounts and stabilizing systems. These are typically purchased by professional photographers, film makers, or videographers who are very attentive to the source of the professional products that they purchase. In light of these points, Applicant submits that there is no likelihood of confusion and requests that the refusal under Section 2(d) be withdrawn,

The Examining Attorney has also requested answers to certain questions. These questions and Applicant's answers are provided below.

- (1) Identify the particular good(s) listed in the application for which the specimen(s) was submitted to show use of the mark.

The specimens show "Camera mounts and supports".

- (2) Was the specimen created for submission with this application? If so, specify the date each specimen was created. If applicant obtained the image(s) of the goods shown in the specimen(s) from a third-party website, provide the URL of the website and a digital copy of relevant webpage(s) for each image.

The specimens were not created for submission with this application. They were created as part of Applicant's ongoing sales and marketing efforts in the US and international markets. Applicant did not obtain the specimens from a third-party website but created them itself.

Applicant respectfully assures the Examining Attorney that the specimen was not digitally created or mocked up. To this end, Applicant submits with this response two video clips in which Applicant's goods are described and reviewed. The videos make clear that the goods exist and have the mark affixed in precisely the manner shown in the specimen that was submitted with the original application.

- (3) Provide information about and examples of how applicant's goods appear in the actual sales environment.
 - (a) If sold in stores, provide a representative sample of the name(s) of the stores and of photographs showing the goods for sale in the named stores, such as photographs of the sales displays or goods on shelves with the mark.
 - (b) If sold online, provide a representative sample of the name(s) of the online retailers, the website URL(s) for each named retailer, and a digital copy of the webpages showing the goods for sale on the named website.
 - (c) If sold in another type of sales environment (e.g., catalogs, trade shows), identify the environment and provide photographs and/or documentation showing the goods for sale in that environment.

Applicant's goods are generally sold online, either directly through Applicant's website, at <https://www.proaim.com/>, sample screen captures of which are provided with this response, or through other sites, specifically Amazon.com and eBay.com. Because Applicant is located in India, Applicant has used Amazon and eBay successfully to provide goods to the US market for many years. This submission includes a page listing items in the

Amazon “shop” operated by Applicant and a page listing items in the eBay “shop” operated by Applicant. The Proaim shops, website, and various related legal entities in multiple countries are all owned by Mr. Anuj Chawla and Applicant’s trademarks are used under appropriate licenses from Applicant.

Applicant has also recently started selling through these two third party websites:

<https://www.bhphotovideo.com/>

<https://www.adorama.com/>

These two sites are resellers, who purchase inventory from Applicant and resell to their customers.

- (4) If the information in question (3) about how the goods appear in the actual sales environment is not available to applicant, please describe how applicant’s goods are sold or transported and provide photographs and other documentation showing how applicant’s mark appears on the goods and/or its packaging when the goods are sold or transported to or within the United States.

Applicant believes that the answers to question 3 and the materials submitted with this response show that no further response is required to this question.

- (5) For each category of sales environment specified in response to questions (3) and (4), specify when the goods bearing the mark were first available for purchase within the United States, the date of the first sale of the goods to or within the United States, and whether the goods are still for sale to or within the United States in that environment.

Goods bearing the AIRWAVE trademark were first sold in the United States through

Ebay.com on May 16, 2018

Amazon.com on June 27, 2018

Proaim.com on May 30, 2018

- (6) For the goods identified in response to question (1), specify the dollar amount of sales with or within the United States and provide at least three invoices or other supporting documentation that show payments or other consideration made, redacting personal or private information of buyers as necessary.

Applicant provides with this response multiple invoices in which goods bearing the mark were shipped to customers in the United States.

Applicant respectfully declines to disclose the dollar amount of sales within the United States because this is commercially sensitive information which Applicant does not wish to make available to competitors, and which Applicant does not believe necessary in light of the extensive evidence provided with this response.