

Please consider the following in response to the March 18, 2019 Office Action herein.

Likelihood of Confusion – In the Office Action, the Examining Attorney has refused registration under Trademark Act §2(d), alleging that Applicant's mark, when used with the identified goods, is likely to be confused with the mark COLORMAX, subject of prior U.S. Registration No. 2826363. Applicant respectfully traverses this refusal of registration, and offers the following information and argument in support of its position.

Applicant agrees with the Examining Attorney that likelihood of confusion may be determined in accordance with the factors set forth in the case of *In re E. I. duPont de Nemours & Co.*,¹ as applicable in a given situation. In the Office Action, the Examining Attorney suggests the following *duPont* factors are most relevant: 1) similarity of the marks; and 2) similarity of the respective goods. In addition, Applicant respectfully submits the trade channels, purchase conditions, and buyer sophistication for the respective goods are relevant. Further, Applicant respectfully submits its ownership of a relevant prior registration is probative herein. Accordingly, Applicant submits that when a *duPont* analysis is conducted in the instant matter, the refusal must be withdrawn.

Comparison of the Marks – In the Office Action, the Examining Attorney alleges Applicant's mark is confusingly similar to the cited mark because "the marks are identical in part with the common use of the first word COLORMAX." Admittedly, Applicant's mark shares COLORMAX with the cited mark; however, that alone does not mandate a finding of likely confusion.² The determinative issue is whether the marks in their entireties convey the same overall commercial impression.³ Hence, one must duly consider the distinguishing elements of the marks in the likelihood of confusion analysis.

With the above in mind, Applicant respectfully submits the marks at issue are visually and phonetically distinguishable. The presence of the term SYSTEMS renders one-half of Applicant's mark entirely dissimilar in appearance from the cited mark. Similarly, the term's presence alters the syntax, syllable count, and pronunciation of Applicant's mark compared to the cited mark. Considering this, Applicant respectfully submits the presence of SYSTEMS in the applied-for mark "create[s] a visual and phonetic impression that is absent from" the cited mark.⁴

Further, of course, similarity of the marks is but one factor to consider under a *duPont* analysis.

¹ 177 USPQ 563 (CCPA 1973).

² See *Colgate-Palmolive Co. v. Carter-Wallace, Inc.*, 167 USPQ 529, 530 (CCPA 1970) (explaining that the fact one mark includes the whole of another does "not *ipso facto* warrant a holding that the marks are confusingly similar").

³ *Odom's Tenn. Pride Sausage, Inc. v. FF Acquisition LLC*, 93 USPQ2d 2030, 2032 (Fed. Cir. 2010) (noting the visual distinctions in the marks at issue create "unquestionably different commercial impressions" that preclude a likelihood of confusion). See also, *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1042 n. 4 (TTAB 1987) (similarity as to one aspect of a mark does not automatically result in a likelihood of confusion).

⁴ *Jack Wolfskin Ausrüstung Fur Draussen GmbH v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 1371 (Fed. Cir. 2015; see also, *Juice Generation, Inc. v. GS Enterprises, LLC*, 794 F.3d 1334, 1341 (Fed. Cir. 2015) (reversing where "the Board did not set forth an analysis showing that it avoided the error of giving no significance to the term, which is impermissible notwithstanding that the term is generic and disclaimed").

Other factors can, and often do, outweigh similarity of the marks at issue. As *In re Fesco* informs us,

the Board has not hesitated to find an absence of likelihood of confusion, even in the face of identical marks applied to goods used in a common industry, where such goods are clearly different from each other and there is insufficient evidence to establish a reasonable basis for assuming that the respective products and/or services, as identified by their marks, would be encountered by the same purchasers or parties.⁵

Comparison of the Goods – One must analyze this second *duPont* factor based on a comparison of the identified goods in the cited registration and the application, not on extrinsic use evidence.⁶ In this instance, Applicant's goods are entirely distinct from the goods offered in connection with the cited mark.

Applicant's Goods -- Applicant seeks to register the applied-for mark for use with the following Class 7 goods:

Machines, namely, material conveyors; material handling machines in the nature of bulk material feeders, blenders, loaders and refillers; continuous and batch feeding systems; industrial agitators; mixers; conveying equipment, namely, blowers; cyclone separators; particle filters; industrial drying machines for use with bulk materials; rotary valves for use with material handling systems; replacement parts for the foregoing goods.

As the above identification indicates, Applicant's goods are generally in the nature of bulk material handling machines. In industrial applications, "bulk materials" are typically powdery, granular or lumpy in nature, and include coal, minerals, chemicals, ore, woodchips, sand, grain, and loose stone. Bulk material handling is an essential aspect of any industry that processes bulk ingredients in connection with the manufacture of goods such as chemicals, plastics, rubber, and food.⁷ Bulk material handling machinery is employed in connection with the unloading, transport, storage, and delivery of raw materials to the point of manufacture. For example, Applicant's "bulk material feeders" such as the example below are used in the food industry.⁸

⁵ 219 USPQ 437, 438 (TTAB 1983); *see also* TMEP § 1207.01(a)(i) (explaining that "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, then, even if the marks are identical, confusion is not likely").

⁶ *Coach Services, Inc. v. Triumph Learning LLC*, 101 USPQ2d at 1722; *Octocom Sys., Inc. v. Houston Computer Servs. Inc.*, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990).

⁷ *See* attached Wikipedia entry titled "Bulk material handling."

⁸ *See* attached brochure titled "Innovative Feeding and Material Handling Solutions for Food and Pet Food Processing."

Innovative Feeding Solutions

Feeding Solutions for Food Applications

Thousands of Coperton K-Tron feeders have been sold for a variety of food applications. Coperton K-Tron feeders specialize in the high accuracy addition of high value minor and micro ingredients to the batch or continuous process. Feeders can be used for both dry ingredients as well as liquid flavors and additives. Typical food type materials include cereals and breakfast foods, snack foods, pet/fish foods and feed, confectionary/chocolate products, coffee, flour/dough/bakery products, probiotics, trace elements, vitamin fortifiers, liquid flavors and aromatics. Volumetric and loss-in-weight feeders operate in accordance with the principles outlined on the sidebar for continuous proportioning to the downstream process. Processes such as extrusion, mixing, and milling can all be improved utilizing the superior design accuracy of Coperton K-Tron feeders.



Coperton K-Tron feeders in a snack food process

Feeder Models



Smart Weigh Belt Feeders

The Smart Weigh Belt Feeder is ideal for handling free-flowing or friable materials, particularly in large quantities. It is available with or without housing, in two sizes: 300 and 600 mm belt width.

Single Screw Feeders

Single screw feeders are ideal for handling free-flowing granular materials. Coperton K-Tron offers the KS60, S60 and S100 in either volumetric or gravimetric configurations. Feed Rates:

Microfeeder

The Microfeeder is specially designed for feeding free-flowing to difficult powders (e.g. lumpy, moist or bridge-building materials) at extremely low rates with extremely high accuracy and

As another example, Applicant's "particle filters" of the sort depicted below provide automatic material-from-air separation by means of cyclonic separation of material from the air stream:⁹



Registrant's Goods -- The cited registration claims "powder coating spray booths," in Class 7. *Powder coating* is an industrial *surface finishing process* that involves the electrostatic application of a thermoplastic or thermoset polymer powder to a surface to create a hard finish that is tougher than conventional paint.¹⁰ Powder coating is used primarily to coat metal items

⁹ See attached web page screenshot titled "Filter Receiver."

¹⁰ See attached Wikipedia entry titled "Surface finishing."

such as household appliances and automobile parts.¹¹ A *powder coating spray booth* is an enclosure designed to contain the powder coating during the application process. The booth includes a recovery system that pulls air into the booth to collect powder over spray, which may be reused.¹² The specimen of record in the cited registration depicts its powder coating spray booth, *viz.*,



Based on the identification language and information set forth above, Applicant respectfully submits its material handling machinery is distinguishable from and entirely unrelated to the cited registrant's powder coating spray booths. The respective goods are not identical, do not perform the same, similar, or inter-related functions, are not used together in a complimentary fashion, and do not compete in the marketplace.

The Examining Attorney must provide evidence showing that the goods are related to support a finding of likelihood of confusion.¹³ As the foregoing makes clear, however, there is no readily apparent similarity between Applicant's goods and the cited registrant's goods. In fact, the Examining Attorney does not argue otherwise in the Office Action. Accordingly, in an effort to support the present refusal, the Examining Attorney argues the respective goods at issue are related because they "encompass closely related material treatment machines." As support, the Examining Attorney has made of record four third party webpage screenshots which, she alleges, "establish[] that the same entity commonly produces the relevant goods and markets the goods under the same mark and that the goods are complementary in terms of purpose or function." Therefore, the Examining Attorney concludes, the relevant goods "are considered related for likelihood of confusion purposes. Applicant respectfully disagrees with the Examining Attorney's position, for the following reasons.

¹¹ See attached Wikipedia entry titled "Powder coating."

¹² See attached web page screenshots titled "Powder Coating Booth."

¹³ See, e.g., *In re White Rock Distilleries Inc.*, 92 USPQ2d 1282, 1285 (TTAB 2009).

First, most obviously, Applicant's identification does not claim the cited registrant's "powder coating spray booths," nor any goods related to the powder coating process. Considering this, there is no literal or implied overlap of the goods at issue.

Second, Applicant respectfully submits the characterization of Applicant's and the cited registrant's goods as "*material treatment machines*" in the Office Action is materially misleading, insofar as the Examining Attorney relies on this misleading claim as the basis for the Section 2(d) refusal herein. In reality, neither Applicant nor the cited registrant claim "material treatment machines," as follows. In manufacturing processes, the term "*material treatment*" typically refers to *heat treatment*, a group of industrial and metalworking processes used to alter the physical and/or chemical properties of a material. The process involves the use of heating or chilling to cause the treated material to undergo a fundamental structural change in atomic structure, in order to achieve a desired result.¹⁴ Material treatment techniques include annealing, case hardening, precipitation strengthening, tempering, carburizing, normalizing and quenching.¹⁵

Based on the foregoing, it is clear neither Applicant's material handling machines or the cited registrant's powder coating spray booths are properly classified as "material treatment machines." At most, one might broadly classify the relevant goods as "machines"; however, that is where any alleged similarity ends. The fact that the relevant goods may fall into such a broad category does not automatically determine that the goods are related.¹⁶ In determining whether goods are closely related, "[i]t is not enough that the products may be classified in the same category or that a term can be found that describes the product."¹⁷ Accordingly, Applicant submits the Examining Attorney's subjective characterization of the relevant goods as "material treatment machines" herein is improper, and cannot support the present refusal.

Third, Applicant respectfully submits *none* of the webpage printouts made of record by the Examining Attorney demonstrate that material handling machines of the sort Applicant offers and powder coating spray booths are "commonly" produced and offered by a single entity under the identical mark.¹⁸ In this regard, Applicant notes the text of each webpage printout mentions

¹⁴ See attached Wikipedia entry titled "Heat treating."

¹⁵ *Id.*

¹⁶ *Electronic Data Systems Corp. v. EDSA Micro Corp.*, 23 USPQ2d 1460, 1463 (TTAB 1992) (The issue of whether or not two products are related does not revolve around the question of whether a term can be used that describes them both, or whether they can be classified in the same general category.)

¹⁷ See, *Signature Brands, Inc. Substituted for Health O Meter, Inc. v. Dallas Technologies Corporation*, 1998 WL 80140 (TTAB 1998). See also, *Societe Civile Des Domaines, Dourthe Freres and Philippe Dourthe v. S.A. Consortium Vinicole De Bordeaux et De La Gironde*, 6 USPQ2d 1205 (TTAB 1988) ("the mere fact that a term may be found which encompasses the parties' activities does not mean the consumers will view such activities as related in the sense that they will assume that they emanate from or are associated with a common source"), citing, *General Electric Co. v. Graham Magnetics, Inc.*, 197 USPQ 690, 694 (TTAB 1977).

¹⁸For mutual convenience, here are links to the materials made of record:

<https://www.blastone.com/us/products/protective-coating/coating-facilities>

<https://www.blastone.com/us/resources-training/knowledge-library/material-handling-equipment>

<http://www.herrindustrial.com/material-handling-chain-conveyor-system.html>

either “*powder coating*” and/or “*spray booth*,” both of which appear in the cited registrant’s Class 7 identification, and all four relate generally to the offering of powder coating industry goods. Further all four printouts mention either “*material handling*” or “*conveyor*,” both of which appear in Applicant’s Class 7 identification. These observations suggest the Examining Attorney’s search focused on the mention of certain of Applicant’s goods in connection with the sale of powder coating related goods; however, Applicant submits the mere proximity of these terms to one another on a web page alone does nothing to suggest the respective goods are related, unless the *context* of each use is considered. With respect, Applicant notes the Office Action fails to consider use of the noted terms in the context of each cited reference.

When the uses of “*material handling*” and “*conveyor*” in the proffered references are considered *in context*, it is clear they relate to *powder coating*, an industrial process wholly unrelated to bulk material handling of the sort performed by Applicant’s goods, as follows.

BlastOne International – The Examining Attorney has attached to the Office Action three screenshots from this company’s web site. Two screenshots relate to the company’s offering of various powder coating spray booths. The third screenshot relates to a page titled “Material Handling Equipment.” The page appears in the “*Resources & Training*” portion of the company’s site, which it describes as devoted to *general education* in the powder coating field.¹⁹ There is *no* indication anywhere in this evidence that BlastOne offers any material handling equipment, let alone evidence that the company provides both powder coating spray booths and material handling machines under a single brand.

HERR Industrial, Inc. – The Examining Attorney has also attached two screenshots from HERR’s web site to the Office Action. The HERR web site indicates the company is engaged in the offer of industrial paint finishing systems. The specific page of record from HERR’s website is titled “Material Handling.” The page defines “*material handling*” in the powder coating context as “*the means by which the product is transported through the painting process.*” Hence, the HERR Industrial evidence of record demonstrates that, in the powder coating context, “*material handling*” refers to the transport of discrete items such as auto parts for treatment during the powder coating process. Conversely, the definition also makes clear that as used in connection with powder coating, “*material handling*” does *not* relate to the bulk material transport and storage functions served by Applicant’s material handling machines. Accordingly, Applicant respectfully submits the HERR web page evidence of record also fails to support the Examining Attorney’s position.

<https://www.pacline.com/solutions/paint-finishing-conveyor-systems/>

<https://www.carlisleleft.com/en/products/product/bgk-chain-on-edge-systems>

¹⁹ The site’s main “Training & Resources” page indicates,

BlastOne is dedicated to offering the largest available online industry knowledge and training library. Through years of industry experience BlastOne has witnessed many of the issues faced by blasting and coating professionals on the job today.

See attached webpage screenshot titled “BlastOne _ Blasting and Coating Professional Industry.”

PACLIN Overhead Conveyors -- As the third piece of evidentiary support, the Examining Attorney has attached to the Office Action three screenshots from a page on PACLINE's web site titled "Conveyors for Paint and Finishing Lines." As suggested by its title, this page indicates PACLINE provides "a variety of conveyors that offer excellent solutions for handling products *through paint and other finishing operations.*" Applicant respectfully submits workpiece transport conveyors for painting applications such as those PACLINE offers are entirely unrelated to Applicant's "material conveyors" and "conveying equipment, namely, blowers." Based on the foregoing, Applicant respectfully submits the PACLINE web page evidence of record fails to support the Examining Attorney's position.

Carlisle Fluid Technologies – Finally, the Examining Attorney has attached to the Office Action two screenshots from the Carlisle Fluid Technologies web site. The referenced page describes Carlisle's "BGK Spindle Master" chain-on-edge conveyor system, which the site indicates is designed to "*convey parts through coating booths, ovens and cool downs and features variable track height adjustment.*" The page does *not* indicate or suggest Carlisle also offers powder coating spray booths. Further, as with the PACLINE reference discussed above, Applicant respectfully submits the painting application conveyors Carlisle offers are unrelated to Applicant's bulk material conveyors. Therefore, Applicant respectfully submits this final web page evidence of record fails to support the Examining Attorney's position.

According to the Trademark Manual of Examining Procedure, the Examining Attorney:

must provide evidence showing that the goods and services are related to support a finding of likelihood of confusion. Evidence of relatedness might include news articles and/or evidence from computer databases showing that the relevant goods/services are used together or used by the same purchasers; advertisements showing that the relevant goods/services are advertised together or sold by the same manufacturer or dealer . . .²⁰

Applicant respectfully submits the Examining Attorney's evidence of record fails to meet this burden. As demonstrated, none of the evidence of record validates the Examining Attorney's assertion that the same entities "commonly" manufacture and provide both Applicant's material handling machines as well as powder coating spray booths. Accordingly, because the Examining Attorney has failed to present evidence suggesting Applicant's and cited registrant's goods are related, the refusal herein must fail.

The Goods Travel through Separate Trade Channels -- Applicant's goods are offered through separate and distinct trade channels from the goods of the cited registrant. Applicant's material handling machines are purchased by manufacturing operations for use in the intake, handling, storage and processing of bulk raw materials. The cited registrant's powder coating spray booths, on the other hand, would be purchased by material finishing operations. As demonstrated above, no evidence of record suggests the trade channels for industrial material handling machines and material finishing machines overlap.

²⁰ TMEP §1207.01(a)(vi), citations omitted.

Purchaser Sophistication Negates Any Likelihood of Confusion-- The fourth *duPont* factor considers whether buyers are likely to purchase products on impulse or through "careful, sophisticated purchasing." ²¹ Since all circumstances surrounding the sale of the goods should be considered, the level of purchaser sophistication is a significant factor in determining likelihood of confusion.²² The more sophisticated a customer is, the less likely that he or she will be confused as to the source of a product.²³

Applicant's goods are intended for a narrow group of purchasers who exercise extraordinary care in the planning and construction of manufacturing facilities. Similarly, the registrant's powder coating spray booths are specified and ordered by a discrete group of materials finishing industry purchasers. Hence, the relevant buyers for both applicant's goods and the registered services are sophisticated commercial buyers. As McCarthy states,

Where the relevant buyer class is composed of professionals or commercial buyers familiar with the field, they are sophisticated enough not to be confused by trademarks that are closely similar.²⁴

The Respective Goods at Issue are Costly – The higher the price, the more careful the potential purchaser will be, reducing the likelihood of confusion.²⁵ Because the goods of both parties are priced and sold individually and to specification, and for competitive reasons, exact pricing cannot be provided herein. However, based on the information and materials provided in this response, it is clear the goods of the respective parties are costly, starting in the high four figure range up through seven figures. There is always less likelihood of confusion where goods are expensive and purchased after careful consideration.²⁶

Purchase Conditions Minimize any Confusion Risk -- Due to their nature, neither Applicant's goods nor the cited registrant's goods would (obviously) be purchased on impulse, or on the basis of trademarks alone, in contrast to the "off the shelf" nature of typical consumer goods. Circumstances suggesting care in purchasing the goods may tend to minimize the likelihood of confusion. For instance, in *In re N.A.D.*, the Federal Circuit found no likely confusion where only sophisticated purchasers exercising great care would purchase the respective "apparatus for administration of anesthesia" and "anesthesia machines for use in surgery" sold under the marks NARCO and NARKOMED.²⁷

²¹ *duPont*, 476 F.2d at 1361.

²² See *Industrial Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 177 U.S.P.Q. 386 (C.C.P.A. 1973).

²³ See *Palm Bay Imports v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369 (Fed. Cir. 2005); *Electronic Design & Sales v. E.D.S.*, 954 F.2d 713, 718 (Fed. Cir. 1992).

²⁴ McCarthy on Trademarks, §23:101. For example, the marks PAYROLL PAYOFF and PAYCHECK PAYOFF as compared to PAYDAY CONTEST, to identify virtually identical goods, were not likely to be confused because, in part, the goods identified by the marks were sold to commercial buyers at radio stations. *CMM Cable Rep., Inc. v. Ocean Coast Properties, Inc.*, 888 F. Supp. 192, 200 (D. Me. 1995) ("Such purchasers [sophisticated commercial purchasers] are less likely to be confused as to the source or origin of a product than ordinary consumers of inexpensive goods or services.")

²⁵ See *Weiss Assoc., Inc. v. HRL Assoc., Inc.*, 902 F.2d 1546, 1548 (Fed. Cir. 1990) (in making purchasing decisions regarding expensive goods, the reasonably prudent person standard is elevated to the standard of the "discriminating purchaser")

²⁶ *Astra Pharmaceutical Prods. v. Beckman Instruments*, 220 USPQ 786, 790 (1st Cir. 1983).

²⁷ *In re N.A.D.*, 754 F.2d 996 (Fed. Cir. 1985). See also, TMEP §1207.01(d)(vii).

Unique Circumstances Mandate Registration -- The thirteenth *duPont* factor provides for consideration of “any other established fact probative of the effect of use.”²⁸ This factor “accommodates the need for flexibility in assessing each unique set of facts.”²⁹ The TTAB case of *In re Strategic Partners, Inc.*³⁰ exemplifies such a situation. In *Strategic Partners*, appellant owned a registered mark that had coexisted with the cited mark for over five years.³¹ Because appellant’s prior registration was over five years old, it was not subject to attack by the cited registrant based on a likelihood of confusion.³² In reversing the examining attorney’s refusal based on a finding of likely confusion, the Board explained as follows:

[T]he present case involves the unique situation presented by the coexistence of applicant’s existing registration with the cited registration for over five years, when applicant’s applied-for mark is substantially similar to its existing registered mark, both for identical goods. When we consider these facts under the thirteenth *duPont* factor, we find in this case that this factor outweighs the others and leads us to conclude that confusion is unlikely.³³

Section 1207.01 of the Trademark Manual of Examining Procedure sets forth guidelines indicating *Strategic Partners* may be applied and weighed against a §2(d) refusal where:

1. the applicant owns a prior registration for the same mark or a mark with no meaningful difference from the applied-for-mark;
2. the identifications of goods/services in the application and applicant’s prior registration are identical or identical in relevant part; and
3. the applicant’s prior registration has co-existed for at least five years with the registration being considered as the basis for the Section 2(d) refusal.³⁴

Applicant respectfully submits the facts herein are analogous to the facts in *Strategic Partners*, and that the applied-for mark herein meets the registration eligibility criteria set forth immediately above:

1. Applicant owns prior Reg. No. 4297278 for the mark K-TRON COLORMAX. As the Examining Attorney indicates in the Office Action, “[a]dding a term to a registered mark generally does not obviate the similarity between the compared marks ... nor does it

²⁸ *duPont*, 177 USPQ at 567.

²⁹ *In re Strategic Partners Inc.*, 102 USPQ2d 1397, 1399 (TTAB 2012).

³⁰ 102 USPQ2d 1397 (TTAB 2012).

³¹ 102 USPQ2d at 1399.

³² 102 USPQ2d at 1399.

³³ *Strategic Partners*, 102 USPQ2d at 1400.

³⁴ TMEP §1207.01.

overcome a likelihood of confusion under Section 2(d).” Accordingly, Applicant’s marks share the *identical dominant element* “COLORMAX.”³⁵

2. Applicant’s prior Reg. No. 4210505 claims the identical Class 7 goods claimed in the instant application, as originally filed.
3. Applicant’s prior K-TRON COLORMAX registration, issued March 5, 2013, has co-existed with the cited COLORMAX registration³⁶ for over five years, and is no longer subject to a cancellation action by the cited registrant based on likelihood of confusion. Applicant submits this represents a key factual circumstance identical to the situation presented in *Strategic Partners*.

Given the foregoing, Applicant respectfully submits it is highly unlikely consumers would be confused between the sources of Applicant’s and the cited registrant’s goods. Hence, Applicant respectfully requests that the §2(d) refusal of registration be withdrawn.

Identification and Classification of Goods – In the Office Action, the Examining Attorney has objected to significant portions of the identification as indefinite and possibly covering goods in other classes. Accordingly, the Examining Attorney has required amendments to the identification.

Applicant respectfully traverses this requirement. In support of its position, Applicant notes the USPTO has accepted identical or virtually identical identification language in at least *three* of Applicant’s previously-allowed registrations.³⁷ Further, certain of the identification language the Examining Attorney has refused appears in the USPTO Acceptable ID Manual. For instance, the rejected claim “material handling machines in the nature of bulk material feeders, blenders, loaders and refillers” falls within the scope of the accepted claim at TMNG ID No. 007-1607, copy attached. As the Board has noted, consistent and uniform treatment in examination is a goal of the Trademark Office.³⁸ Absent compelling reasons, therefore, Applicant respectfully asserts identification language the Trademark Office has previously found acceptable should remain acceptable.³⁹

Conclusion -- In light of the information and reasoning set forth above, Applicant submits there is no likelihood of confusion between its mark and the cited mark. The overall differences

³⁵ See, *In re Apparel Ventures, Inc.*, 229 USPQ 225, 226 (TTAB 1986) (applicant's mark SPARKS BY SASSAFRAS for clothing likely to cause confusion with SPARKS, noting "[t]hose already familiar with registrant’s use of its mark ... upon encountering applicant’s mark ... could easily assume that ‘sassafras’ is some sort of house mark that may be used with only some of the ‘SPARKS’ goods”); TMEP § 1207.01(b)(iii).

³⁶ Reg. No. 2826363.

³⁷ Reg. Nos. 4297277, 4297278, and 4745617, TSDR copies attached.

³⁸ See, e.g., *In re Rodale Inc.*, 80 USPQ2d 1696, 1700 (TTAB 2006); *In re Finisair Corp.*, 78 USPQ2d 1618, 1621 (T.T.A.B. 2006); see also, *In re Omega SA*, 83 USPQ2d 1541, 1544 (explaining, “the time and expense of complying with inconsistent applications burdens both the PTO and the public that depends on its services”).

³⁹ Applicant recognizes standards may change, and that once-acceptable identifications may no longer be acceptable. In the present instance, two of the registrations Applicant cites issued within the past few years. Considering this, Applicant submits it is highly unlikely standards regarding these identifications have so suddenly changed so as to make the language unacceptable.

between the marks, the differences between the cited registrant's powder coating spray booths and Applicant's material handling machines, the differences between the trade channels and buyers of the respective goods, and the sophistication of the professional purchasers of both Applicant's goods and the cited registrant's goods obviate any potential for confusion. For these reasons, Applicant respectfully requests that the Examining Attorney withdraw the refusal to register, and allow the subject application to proceed to publication.