

This Response is submitted in response to an Office Action having a mailing date of March 29, 2019.

The Examining attorney has refused registration of Applicant's mark, PLANET LOVE, U.S. Application Serial No. 88260402, based on a likelihood of confusion with U.S. Registration No. 4441728 for PLANETLOVE for "Eco-friendly pet accessories, namely, pet beds; Eco-friendly pet accessories, namely, travel mats in the nature of a cushion; Eco-friendly household furnishings and accessories, namely, bean bag floor cushions, chairs, toss cushions."

Applicant respectfully submits that there is no likelihood of confusion between these marks based upon clear differences between Applicant and Registrant's goods.

Applicant's goods are as follows:

Class 3: bleaching preparations and other substances for laundry use; rinsing agents for laundry and tableware; stain removing preparations; cleaning, polishing, scouring and abrasive preparations; chemical agents for cleaning metal, enamelled sheet metal, wood, cork, porcelain, ceramic, glass, plastic, leather and textiles; spot remover; soaps not for personal use; perfumery; essential oils

Class 5: disinfectants and deodorizing agents, **except for human and animals**; air refreshing and air deodorizing agents

Class 21: Sponges; brushes, except paint brushes; cleaning cloths; articles for cleaning purposes; hand-operated cleaning articles; dispenser for sanitary cleaning agents, disinfectants and air freshener

As the Examining attorney notes, in order to find a likelihood of confusion, the goods need only be "related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that the goods emanate from the same source." *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)); TMEP §1207.01(a)(i). In the situation at hand, Applicant's goods are not related in any manner to Registrant's goods. TMEP Section 1207.01(a)(i) explains that even if the marks are identical, if the goods or services differ, then confusion is unlikely. "Conversely, 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. See, e.g., *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1371, 101 USPQ2d 1713, 1723 (Fed. Cir. 2012) (affirming the Board's dismissal of opposer's likelihood-of-confusion claim, noting "there is nothing in the record to suggest that a purchaser of test preparation materials who also purchases a luxury handbag would consider the goods to emanate from the same source" though both were offered under the COACH mark); *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); *In re Thor Tech, Inc.*, 113 USPQ2d 1546, 1551 (TTAB 2015) (finding use of identical marks for towable trailers and trucks not likely to cause confusion given the difference in the nature of the goods and their channels of trade and the high degree of consumer care likely to be exercised by the relevant consumers); *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)."

The Examining attorney states that Applicant's "cleaning preparations, including soaps, articles for cleaning, including sponges, brushes, and air freshening and air deodorizing agents, all presumably for pets or for use by pet owners, and the registrant's pet products, i.e. pet beds and pets cushions, are all goods likely to interest and be used by the same end pet owners rendering confusion likely in this instance. This is particularly true in that these types of goods can travel along the same channels of trade, as well as emanate from the same sources. See the attached Internet evidence in this regard. For example, see the attached Internet excerpts indicating that Pet Smart sells pet brushes, pet hair removing sponges, odor eliminators/air fresheners, as well as pet beds in trade."

This is a puzzling argument and when taken to its logical conclusion means that because cleaning products can be used to clean all types of things, including pet accessories, these cleaning products are deemed to be related goods to the types of products they might clean, and consumers will be confused. Thus, Class 3 cleaning products, for example, will be related goods to almost any other good: furniture, stoves, tables, countertops, linens, clothing, etc.

Applicant's cleaning products and air freshening products are clearly not related to pet accessories, regardless of whether companies exist that make cleaning products designed for pets and pet accessories. If Applicant's products were designed for the pet care industry, Applicant would have made this designation in its description of goods, as opposed to specifically excluding animals in its Class 5 goods. Further, Applicant's goods do not travel in the same channels of trade as Registrant's goods. Applicant's goods are sold in the cleaning aisle at grocery, drug, club stores and on the internet. Registrant's goods are presumably sold at pet stores and if they are sold at grocery, drug or club, then they will be sold in different aisles. Goods cannot be deemed to be related just because they are both sold at the grocery store or online.

The Office action also cites two pending applications that precede Applicant's filing date. Applicant respectfully points out that U.S. Application Serial No. 88052127 for PLANET LOVE was abandoned on May 17, 2019. Further, the above arguments regarding the marked differences in goods between cleaning products and pet accessories are applicable U.S. Application Serial No. 87901487 for PLANET LOVE for clothing.

Based upon the above arguments, Applicant respectfully requests that the application be approved for publication.