

In the Office action, the Examining Attorney rejected the application based on a likelihood of confusion and descriptiveness.

The Examining Attorney states that the applied for mark STADRY is likely to cause confusion with registered marks:

- 1) U.S. Registration No. 0717211 – STAYDRY for “Panties”;
 - 2) U.S. Registration No. 2313280 - STA-DRI for goods that include “plastic tablecloths”;
- and
- 3) Pending Trademark Application No. 88155796 for “golf bags.”

Reg. No. 0717211 for STAYDRY for “panties” would be relevant if the goods at issue were actually panties. A review of the specimens for this mark reveals that the goods claimed are actually pull-up type diapers that are used for bedwetting. The mark is owned by McKesson Medical-Surgical Holdings Inc. A review of their website reveals that they are no longer using the mark with their “panties”/diapers. See Exhibit 1. To remove any doubt, applicant has also deleted “undergarments” from the listing of goods.

Reg. No. 2313280 for STA-DRI for plastic tablecloths is not a type of good that is likely to be confused with the goods identified in applicant’s application. Tablecloths are in class 24, but they are sold for kitchen/dining use. In contrast, the goods at issue are sold for bedroom use or are clothing. Tablecloths are not typically sold in the same location as bedding or clothing. Because of this, a consumer would not typically see applicant’s goods and the prior mark’s goods near each other in a store. In addition, the two marks look different: STA-DRI versus STADRY. While they sound the same, they do not look the same. A consumer who sees STA-DRI on a product would not think it’s the same thing as STADRY for this reason. Thus, applicant submits that applicant’s mark is not likely to be confused with the prior mark for tablecloths.

Trademark application No. 88155796 for STA-DRY is for “golf bags.” Golf bags are in class 28. Applicant submits that there is no likelihood of confusion between golf bags and bedding/pillows/clothing, in classes 20/24/25. A golf bag may “stay dry,” e.g., be waterproof, so use of the mark stay dry in connection with golf bags is descriptive. In contrast, as discussed below, STAY DRY, while typically meaning waterproof, can have other meanings. Golf bags are not sold next to bedding or clothing. Golf bags are typically sold in specialty golf shops or in sporting goods stores. While a sporting goods store may sell clothing, golf bags are displayed together, along with such things as golf balls, not with clothing. In addition, STA-DRY is different in appearance from STADRY because it includes a dash. Thus, these factors together weigh against a finding of likelihood of confusion.

Based upon the above arguments, applicant submits there is no likelihood of confusion between the applied for mark and the prior marks.

The Examining Attorney found that the applied for mark is merely descriptive. Applicant respectfully disagrees. Applicant would first like to point out that the applied for mark is a combination of STAY and DRY, minus the Y. The mark can mean:

- 1) products stay dry even when you are wet;
- 2) waterproof (keeps you dry with the introduction of water), like a raincoat; and
- 3) wicks moisture away from you so you stay dry.

The latter definition (3) is the function performed by the goods that are claimed in the present application. Thus, applicant submits that the applied for mark is open to more than one interpretation and represents a “double entendre.” A common meaning for STAY DRY is that the product is waterproof. Most of the registered marks for STAY DRY or variations describe products that are waterproof, like raincoats and tents, among other things. For example:

U.S. Registration No. 3651078 for STAY DRY PLUS is for “water repellant fabric for use in the manufacture of clothing worn by firefighters and utility, industrial and chemical workers.” In this context the meaning of STAY DRY is that it is water repellant to protect workers. (Exhibit 2).

U.S. Registration No. 3054560 for STAY DRY WHILE GETTING WET! is for “cover device for the protection of orthopedic casts and bandages from water damage in a shower of the like.” In this context, the meaning of STAY DRY is that is water proof to protect a cast in a shower. (Exhibit 3).

U.S. Registration No. 4498621 for StayDri is for “Pet bathing product, namely, an enclosed non-metal dog wash basin.” In the context of pet bathing products, the meaning of StayDri must mean that it helps to keep the user dry, e.g., its waterproof. (Exhibit 4).

U.S. Registration No. 5610980 for STAY DRY. STAY LONGER. is for “Canopies comprised primarily of tensile fabric membranes; Canopies of textile or synthetic materials; Tents.” Like the other uses of Stay Dry, this mark also relates to a water repellant material that keeps someone under it dry. (Exhibit 5).

In contrast, the primary meaning of STAY DRY does not apply to the goods at issue. The goods are not meant to be waterproof or water repellant. The goods at issue are meant to wick moisture away from you. Thus, the term STAY DRY or STADRY is a double entendre that is capable of more than one interpretation and should not be refused as merely descriptive if one of the meanings attributed to it is not merely descriptive in relation to the goods. Because applicant’s goods are not waterproof, the term is not merely descriptive.

Moreover, the applied for mark is not descriptive because it does not describe the product itself. It describes a function of the product to wick moisture away from the consumer. Since the common meaning of STAY DRY is that the product is waterproof, consumers would have to guess or infer the intended connected meaning. A mark is suggestive, and therefore, registrable, if imagination, thought or perception is required to reach a conclusion on the nature of the goods. Because of this, applicant submits that the mark is suggestive and not descriptive.

Based upon the above arguments, applicant submits that the applied for mark is registrable on the principal register.