

RESPONSE TO OFFICE ACTION

Serial Number: 88288406

Mark: POWER GEAR

Refusal for 2(d) Likelihood of Confusion

The USPTO should withdraw its refusal to register POWER GEAR in class 025 because the cited registration has been or will shortly be canceled. The owner of Registration No. 4306194 for WEST COAST POWER GEAR failed to submit a Declaration of Use by March 19, 2019, or by the end of the grace period on September 19, 2019. The maintenance status in TSDR indicates, “If the required filing was not submitted on or before September 19, 2019, the registration will be canceled in due course.”

Possible Confusion with Pending Mark

The USPTO should not cite the pending application for POWER (Serial No. 87304988) as grounds to refuse to register POWER GEAR in class 025. The pending application for POWER is for the name of a team in a 3-on-3 professional basketball league. POWER has a commercial impression that is distinct from the commercial impression of Applicant’s POWER GEAR. Additionally, the channels of trade are distinct. Applicant’s goods are sold in association with goods and services relating to recreational diesel trucks, but the goods for the pending application for POWER are sold in association with a professional basketball team. Additionally, because POWER in the pending application is the name of a basketball team, consumers would not anticipate that the professional basketball team would modify POWER to include “gear,” e.g., as POWER GEAR. Exhibit A, attached hereto, provides specimens of use submitted for the pending application for POWER on July 29, 2019. These specimens show that the pending application for POWER is limited to a professional basketball team.

Identification and Classification of Goods

As requested in the Office Action, Applicant has amended its identification of goods for class 025 to clarify that the “wristbands” are “wristbands as clothing.” The refusal for unacceptable identification and classification of goods should therefore be removed.

Disclaimer

As requested in the Office Action, Applicant has added a disclaimer for “GEAR.”

Exhibit A

July 29, 2019 Specimen for POWER Pending Application

BIG3 POWER BLACK T

\$25.00

X9CTBT149

Write the First Review

Size

Qty

ADD TO CART



YOU MIGHT ALSO LIKE

DETAILS

Black t-shirt featuring Power logo on the front and sleeve, as well as a Big3 logo on back neck.

Please allow 2 weeks for item processing.





2019 SEASON

ACCESSORIES

APPAREL

SALE

TEAMS

Home / Apparel / Hats / BIG3 POWER FLEX HAT

BIG3 POWER FLEX HAT

\$40.00

X9CHBT26

Write the First Review

Size

Qty

ADD TO CART



DETAILS

Black flex hat featuring embroidered Power logo on the front panel and Big3 logo embroidered on the back panel.

