IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	:	Conmed Corporation
Serial No.	:	88/315,554
Mark	:	RELAY
Class	:	010
Filed	:	February 25, 2019

Examining Attorney:
Michael FitzSimons

Law Office:
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RESPONSE TO OFFICE ACTION

Applicant Conmed Corporation ("Applicant") hereby responds to the United States Patent and Trademark Office's Office Action dated April 17, 2019. In the Office Action, the Trademark Office refused registration of the application for the RELAY mark (the "applied-for mark") under Section 2(d). In view of the arguments and information supplied herein, Applicant respectfully requests that the refusal be withdrawn.

Section 2(d) Refusal – Likelihood of Confusion

The Trademark Office asserts that there is a likelihood of confusion between the applied-for mark (RELAY) and U.S. Trademark Reg. No. 3,056,357 for RELAY. Applicant respectfully submits that there is no likelihood for confusion between the registered marks and Applicant's applied-for mark.

a. Dissimilarity of the Goods

The goods offered under the Applicant's mark are dissimilar to the goods offered under the registered mark, and thus the marks are not likely to be confused. Applicant's RELAY mark is applied for in International Class 010. Applicant's listing of goods includes: medical devices for use in surgical and orthopedic procedures, namely, suture passers. The registered mark is registered in International Class 010 for: medical devices, namely, stents, vascular prostheses and thoracic stent grafts.

Applicant's goods are specialized surgical instruments for orthopedic procedures, while Registrant's goods include only devices for cardiovascular procedures. Although the goods used in conjunction with both Applicant's and Registrant's RELAY marks are used in the surgical procedures, they are used to repair completely separate parts of the body and that distinction is made clear in Applicant's list of goods.

Applicant's list of goods includes suture passers, which are used to repair the anatomy of the knee, ankle, hip, elbow, shoulder, and hand/feet, for example, in orthopedic procedures. Registrant's goods, the stent, vascular prostheses, and thoracic stent grafts, are used only in heart-related repairs. In the cited evidence, from the Cook Medical website, the Novapass Suture Passer is a specialized type of suture passer that is used for "open and laparoscopic abdominal procedures." The evidence also shows the NanoPass suture passer, from the Stryker website, which is specifically used "to pass suture through the labrum." The suture passers are shaped differently to suit the anatomical features of the abdominal region and the shoulder. Thus, this evidence shows that suture passers used in abdominal surgery are different from those used in shoulder (i.e., orthopedic) surgery. Therefore, Applicant's goods would not be used in the same procedures as Registrant's stents, prostheses, and grafts.

A skilled surgeon, who presumably has performed numerous orthopedic (or cardiovascular) procedures, or a hospital administrator, who researches new products for purchase, would have the knowledge to distinguish between a suture passer for an orthopedic surgery and a suture passer used in cardiovascular surgery despite any similarities between Applicant's mark and Registrant's mark.

Accordingly, due to the specialization of Applicant's goods and Registrant's goods, Applicant's goods are readily distinguished from the goods of the registered mark, and there is no likelihood of confusion between the marks.

b. <u>Conditions Under Which and Buyers to Whom Sales are Made</u>

As described above, Applicant's goods include suture passers for orthopedic surgery. Registrant's goods include only stents, prostheses, and grafts, which are used in cardiovascular surgery. A relevant consumer or buyer of Registrant's goods and Applicant's goods may be a skilled surgeon or a purchasing hospital administrator, for example. Surgeons and hospital administrators are more sophisticated than an average consumer because determining the type of

instrument to purchase for use in a live human body is a great responsibility that has effects on patient safety and healthcare provider (e.g., hospital) liability. As a result, the purchasing decisions, such as the source of goods, types of goods, quality of goods, and quantity of goods, are likely thoughtful and well researched.

Therefore, the consumers of Registrant's goods and Applicant's goods are likely to exercise the utmost care when making a purchase and are less likely to be confused as to the source of Applicant's goods as compared to Registrant's goods.

Conclusion

Accordingly, Applicant respectfully submits that there is no likelihood of confusion between Applicant's mark and the Registered mark for the issues set forth in the Office Action, and the rejection under Section 2(d) should be withdrawn.

In view of the foregoing remarks, Applicant respectfully submits that the application is in condition for allowance. If the examining attorney believes a phone conference with Applicant's attorney would expedite prosecution of this application, please contact the attorney of record.