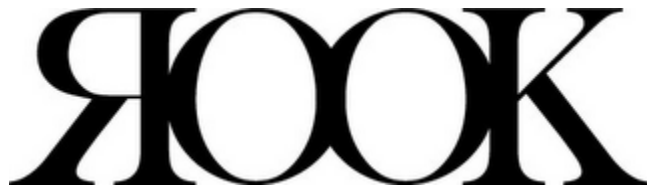


SECTION 2(d) REFUSAL

The Examining Attorney refuses registration because she states that applicant's mark, when used on or in connection with the identified goods, so resembles the marks in U.S. Registration Nos. 4637678, 4250495 and 4656924 as to be likely to cause confusion, to cause mistake or to deceive. Applicant respectfully traverses the rejections.

The cited registrations are as follows:

No. 4637678, issued November 11, 2014, for the mark



in the name of Rook Coffee Roasters Holding, LLC of Oakhurst, New Jersey, covering "paper products, namely, stickers," "clothing, namely, pants, dress shirts, t-shirts, jackets, tank tops, jerseys, shorts, sweaters; headwear, namely, hats and beanies" and "skateboard decks;

No. 4250495, for the same mark and also in the name of Rook Coffee Roasters Holding, LLC, covering "Clothing, namely, t-shirts, sweat shirts, jackets, tank tops, jerseys and knits, namely, pullovers; headwear, namely, hats"; and



No. 4656924 for the mark

in the name of Rook Clothing Company LLC of Huntington Beach, California, covering "Clothing, namely, t-shirts."

Applicant notes that Registration No. 4250495 was cancelled on June 28, 2019 and therefore cannot be used to refuse registration to this application. Applicant respectfully requests that the Examining Attorney remove that registration as a basis for refusal.

The Examining Attorney has cited two different registrants who each own a ROOK mark for clothing in class 25. It would seem that consumers are likely to be confused by the presence of two registrants providing clothing bearing a ROOK mark; yet the Office has determined that both parties could register their marks. Applicant submits that consumers are not likely to be confused as to source with applicant's use of ROOK for its backpacks.

The Examining Attorney maintains that the goods of the applicant and each registrant are related. The goods of the applicant, "Backpacks; Backpacks compatible with personal hydration systems, sold empty; Fanny packs" are distinct. It may be helpful to provide a brief explanation of the nature of applicant's goods. The applicant's mission is to create innovative high performance gear that reflects the company's love of adventure and devotion to the outdoors. Applicant's products must meet the demanding expectation of its most discerning customers and those customers are proud to use applicant's packs. Applicant's backpacks are high performance, and are fitted to the user. All backpacks that will bear the ROOK mark are designed to accept a hydration reservoir. Each pack has an "All Mighty Guarantee," free of charge, the company will repair any damage or defect in its product – whether it was purchased in 1974 or yesterday. If applicant is unable to repair the item, it will happily replace it. The All Mighty Guarantee covers any product, any reason, any era. Applicant's products have received many awards for their quality, design and durability, including Backpacker Magazine Editor's Choice Award in 1995, 2005 and 2009, Grand GG award from Outdoor Life Network in 2002, Outside Magazine Gear of the Year Award in 2003, 2006 and 2009, Good Design Award for the World's Best Design in 2009, Best of Adventure Award from National Geographic Adventure Magazine in 2010 and 2015, and more.

Applicant's ROOK backpack is distinct from the clothing of the registrants. Applicant provides technical backpacks, to make backpacking as easy as possible for the user. In an effort to make the user's walk in the woods as effortless as possible, applicant developed a pack that is capable, comfortable, innovative, and approachable. This backpack has lightweight performance from lightweight design with quality materials. The backpack includes a new adjustable torso system, a tensioned backpanel for a seamless fit that can be easily adjusted to fit a wide range of torso lengths while providing ventilation to reduce sweating. The frame transfers loads to the hipbelt, taking the pressure off the user's shoulders and delivers a stable, comfortable carry. The backpack includes an integrated raincover, and superb ventilation. The backpack's straightforward feature set, rugged construction, and super comfortable carrying system can accommodate backpackers of every ability. The backpacks cost about \$155 to \$165.

The differences in the applicant's products from those of the cited registrations, and the manner in which they are advertised and sold, will ensure that there will be no confusion as to the source of the goods should this application be allowed to register. Both registrants provide clothing. Applicant, on the other hand, is providing technical backpacks. When someone wants to purchase clothing, on the one hand, and technical backpacks, on the other hand, they will scrutinize the product for its features and for the name of its manufacturer, whether buying in person or through the internet. Applicant's products are not fashion items, they are technical,

expensive backpacks, which will further heighten the scrutiny that a purchaser or potential purchaser will conduct prior to purchase. With that scrutiny, members of the relevant consuming public are not likely to be confused as to the source of the respective goods sold under these marks.

The Examining Attorney asserts that parties such as LL Bean, and The North Face offer both clothing and backpacks, and therefore there will be confusion as to source if applicant's mark is allowed to register. Applicant submits that given (1) the technical nature of applicant's backpacks, (2) the manner in which someone will select and purchase the applicant's backpacks and (3) the cost of the backpacks, a purchaser or potential purchaser will not be confused that either registrant could or would provide applicant's backpacks. Neither registrant has registered its mark for backpacks or any class 18 goods, and no purchaser or potential purchaser is likely to seek those items from either registrant. There will be no confusion as to source. A purchaser or potential purchaser would not believe that either registrant could be the source of applicant's backpacks. It is unlikely that a person would seek backpacks of this nature from either registrant.

The difference between the nature of the goods of the registrant and the nature of applicant's goods and their purposes ensures that there will be no confusion as to the source of the goods should applicant's mark be allowed to register. It is respectfully requested that the Examining Attorney reconsider the rejection in light of the comments above, and approve the application and pass it to publication.

Applicant notes that the Examining Attorney has cited several prior pending applications which she states may be used to refuse registration to the present application should any of the prior applications mature to registration. Applicant reserves the right to address a rejection based on any of the cited applications until such time as it matures to registration and is used to reject the present application.