

RESPONSE

This filing is in response to the Office Action mailed April 29, 2019, in which the Examining Attorney initially refused registration of Application Serial No. 88/300,366 for the mark AFTERSHOCK (“Applicant’s Mark”) under Section 2(d) of the Lanham Act on the grounds that the mark is likely to be confused with U.S. Trademark Registration Nos 2,250,131 for the mark PHANTOM and 2,004,578 for the mark AFTERSHOCK (hereinafter the “Cited Marks”).

REMARKS

I. APPLICANT’S MARK IS NOT LIKELY TO BE CONFUSED WITH THE CITED MARK.

Registration of Applicant’s Mark, AFTERSHOCK, for “shotguns and replacement parts thereof” in International Class 013, has been refused by the Examining Attorney over the Cited Mark, AFTERSHOCK in International Class 013, for the goods of “fireworks” (“Cited Mark”).

The Applicant respectfully submits that the Applicant’s Mark is not confusingly similar to the Cited Mark. In determining whether there is a likelihood of confusion, the court in *In re DuPont De Nemours & Co.*, 476 F.2d 1357, 177 U.S.P.Q. 563 (C.C.P.A. 1973) listed a number of factors to consider in making such a determination. The Examiner points out only two of these factors: The similarity of the marks, and similarity and nature of the goods, and similarity of the trade channels of the good. Applicant submits that when all of the DuPont factors are considered, the marks themselves and the goods are sufficiently dissimilar to eliminate a likelihood of confusion. Specifically, Applicant submits that careful consideration of several DuPont factors, such as:

(A) Dissimilarity of the goods;

(B) Dissimilarity similarity of the trade channels;

(C) The conditions in which the products are purchased

weigh toward a finding of no likelihood of confusion between the Applicant's Mark and the Cited Marks.

A. Dissimilarity of the Goods Weighs Toward a Finding of no Likelihood of Confusion.

While the office action provides a conclusory statement that the goods of Applicant's Mark and those of the Cited Mark are similar and such similarity weighs in favor of finding a likelihood of confusion, little evidence or argument was provided. Despite both goods being within international class 013, shotguns and fireworks are very dissimilar. Fireworks are consumables, while firearms and their component parts are durable in nature. Also, shotguns and fireworks are used in very different ways, and for different purposes.

The office action states that a search shows third-parties utilizing marks in a manner to show that shotguns and fireworks may emanate from the same source. However, upon reviewing the various specimens submitted in those registrations, Applicant did not see any reflecting use of the mark on firearms and fireworks. The descriptions of goods including fireworks and firearms all appear to be foreign originated marks that may likely have errors in the goods and services description. The one domestic mark, METAL STORM, in the list does not include fireworks but only weapons in the description of goods. Accordingly, Applicant asserts it is not likely that the goods would emanate from the same source.

B. Dissimilarity of the Channels of Trade Weighs Toward a Finding of no Likelihood of Confusion.

Applicants shotguns and shotgun parts are sold through federally licensed firearms dealers. These include gun stores, sporting goods stores, and other such sellers. Fireworks are rarely, if ever, sold by these sellers and consumers are not likely to confront the marks in a similar context. Accordingly, Applicant asserts that the goods are not likely to flow in the same or similar channels of trade.

CONCLUSION

Applicant has addressed all outstanding issues raised by the Examining Attorney. Applicant respectfully requests that the application be approved for publication and requests that the Examining Attorney take such action.