

REMARKS

The Applicant again thanks the Examining Attorney for her thorough review of the present application. The Examining Attorney has issued a supplemental office action raising several new grounds of rejection that were inadvertently omitted from the previous office action, to which the Applicant filed a prior response. In the supplemental office action, the Office has issued a new 2(d) rejection, limited to classes 025 and 035, as well as a descriptiveness rejection of Applicant's class 041 services, and an objection to its class 041 and 028 identifications.

The Applicant believes it has traversed the rejections and objections through the below amendments and arguments, as well as its prior response, which is incorporated by reference, and respectfully requests that all classes be passed to publication.

Request to Divide

The Applicant notes that it filed a request to divide its class 028 and 041 goods and services into a separate application and published. Applicant reiterates its request.

Amendment to Goods/Services

The Office has lodged objections to the use of the term "novelty items" in the Applicant's class 028 goods, and to its "media" and "membership" related services in class 041. Without conceding to the objections, the Applicant has amended the identification to clarify its goods and services as follows.

IC 028 - Toys; games; plush toys and dolls; ~~novelty items~~

IC 041 - Providing recreational areas in the nature of children's play and interactive play areas; ~~interactive educational, entertainment, and media services; educational and entertainment services, namely, providing interactive children's stores; membership services, namely, providing memberships to indoor children's play places and amusement centers~~ members access to educational and play-based activities for children.

The amendments are clarifying and therefore permissible under TMEP 1402.06(b).

Section 2(d) Refusal – Likelihood of Confusion Limited to Classes 025 and 035

The Examining Attorney has refused the applied for mark CAMP in classes 025 and 035 under section 2(d) in view of U.S. Reg. Nos. 5427491 and 5427492 for the marks CAMP COLLECTION with design and CAMP COLLECTION standard characters, respectively. Both registrations are in class 035 for on-line retail store services featuring clothing, footwear, headwear, and accessories. For the reasons discussed below, the Applicant respectfully disagrees with the Office's determination. The Applicant notes that its arguments are limited to the rejections of its words-only mark in classes 025 and 035, and are not applicable to its mark, words-only or otherwise, as used in connection with its class 028 and 041 services, or for any other good or service outside of the rejected classes.

In assessing consumer confusion, the eight factors set forth in *Polaroid Corp. v. Polarad Electronics Corp.*, 287 F.2d 492, 495 (2d Cir. 1961) are instrumental. The factors are (1) strength of the trademark; (2) similarity of marks; (3) proximity of the products and their competitiveness with one another; (4) evidence that the senior user may bridge the gap by developing a product for sale in the market of the alleged infringer's product; (5) evidence of actual consumer confusion; (6) evidence that the imitative mark was adopted in bad faith; (7) respective quality of the products; and (8) sophistication of consumers in the relevant market. *Id.*

With respect to the first factor, the relative strength of a particular mark is generally determined in the context of the number and nature of similar marks in use in the marketplace in connection with similar services. See *Nat'l Cable Tel. Ass'n, Inc. v. Am. Cinema Editors, Inc.*, 937 F.2d 1572, 1579-80, 19 USPQ2d 1424, 1430 (Fed. Cir. 1991); *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973). Evidence of widespread third-party use of similar marks with similar services "is relevant to show that a mark is relatively weak and entitled to only a narrow scope of protection" in that particular industry or field. *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 1373-74, 73 USPQ2d 1689, 1693 (Fed. Cir. 2005); see *In re Coors Brewing Co.*, 343 F.3d 1340, 1345, 68 USPQ2d 1059, 1062-63 (Fed. Cir. 2003).

Here, the Applicant notes that there are literally hundreds of registrations containing the term CAMP, or a phonetic equivalent, e.g., KAMP, coexisting in classes 025 and 035. More specifically, there are six-hundred and sixty-two (622) such registrations and applications in class 025, 234 of which are live, and four hundred and thirty (430) in class 035, 223 of which are live. In its prior response, the Applicant attached listings of these registrations and applications in classes 025 and 035 as Exhibits A and B, respectively.

With respect to class 025, there are a multitude of registrations that evidence widespread third-party use of similar marks with similar services. For example, the following registrations, all having different registrants/owners, co-exist in class 025:

- Camp Collection, Reg. No. 4770379, for clothing, registered July 7, 2015;
- Kamp, Reg. No. 3443069, for clothing, registered June 3, 2008;
- The Camp, Reg. No. 4117468, for clothing, registered March 27, 2012;
- Camp Life, Reg. No. 4278224, for t-shirts, registered January 22, 2013; and
- Camp Vibes, Reg. No. 4341159, for t-shirts, registered May 28, 2013.

As will be appreciated, the above represents an extremely small sample of CAMP containing registrations and applications in class 025.

Regarding class 035, there are again numerous registrations that evidence widespread third-party use of similar marks with similar services. For example, the following registrations, all having different owners/registrants, co-exist in the class:

- Camp Collection, Reg. No. 5427491, for retail store services, registered March 20, 2018;
- The Camp, Reg. No. 4117468, for retail store services, registered March 27, 2012;
- You me Camp, Reg. No. 5392436, for retail store services, registered January 30, 2018;

- New England Camp, Reg. No. 5063530, for retail store services, registered October 18, 2016;
- Campman, Reg. No. 5391807, for retail store services, registered January 30, 2018;
- Camp, Reg. No. 4922613, for charitable services, registered March 22, 2016;
- Camp, Reg. No. 3582099, for business management services, registered March 3, 2009;
- Camps, Reg. No. 4803755, for advertising services, registered September 1, 2015; and
- Kamp, Reg. No. 3699586, for advertising services, registered November 11, 2008.

Again, this represents a small sample of CAMP containing registrations and applications in this class.

In view of the above, the Applicant believes that the cited registrations for CAMP COLLECTION in class 035 should be afforded a narrow scope of protection. As a result, given the differences between the goods and services in the cited registrations and the Applicant's, among other disparities, any likelihood of confusion is negligible. In particular, the Applicant's goods and services, as reflected in its amended identifications, are for babies, toddlers and children. As such, parents will be purchasing the Applicant's goods and partaking in its services on behalf of, for, or with their kids. Of note, many purchases of the Applicant's goods may occur through one of its stores, which are unique interactive experiential stores for kids. Additional information regarding the Applicant can be found at www.camp.com and <https://www.buzzfeed.com/louisekhong/camp-toy-store-nyc>.

In contrast, the cited registrations are for online retail store services featuring goods that are for adults. For at least this reason, the Applicant believes that the likelihood of confusion is negligible and respectfully requests that the Examining Attorney withdraw her 2(d) rejection.

Section 2(e)(1) Refusal – Class 041

The Examining Attorney refuses registration on the Principal Register stating that the proposed mark merely describes the Applicant's class 041 services. The Applicant respectfully disagrees with the Examining Attorney's determination and requests reconsideration.

In order for a mark to be merely descriptive, it must immediately convey information concerning a significant quality, characteristic, function, ingredient, attribute, or feature of the product or services in connection with which it is used, or intended to be used. *In re Abcor Development Corp.*, 200 U.S.P.Q. 215, 217-8 (C.C.P.A. 1978); *In re Engineering Systems Corp.*, 2 U.S.P.Q.2d 1075 (T.T.A.B. 1986). Significantly, the immediate idea must be conveyed with a “degree of particularity.” *In re TMS Corporation of the Americas*, 200 U.S.P.Q. 57, 59 (T.T.A.B. 1978).

Here, Applicant's class 041 services (as amended) are providing recreational areas in the nature of children's play and interactive play areas; educational and entertainment services, namely, providing interactive children's stores; membership services, namely, providing members access to educational and play-based activities for children.

CAMP does not immediately convey information concerning a quality of the above services, with the requisite degree of particularity to be ‘merely descriptive.’ For example, absent from the Applicant's mark are references to interactive stores or membership services that provide member access to activities, or any of Applicant's experiential retail services. Indeed, if some exercise of imagination, thought, or perception is required to reach a conclusion as to the nature of the goods or services, the mark is suggestive, not merely descriptive. *See Investacorp Inc. V. Arabian Investment Banking Corp.*, 931 F.2d 1519, 19 U.S.P.Q. 2d 1056, 1059 (11th Cir. 1991). In the present case, CAMP could refer to, among many other things, an actual camp, a store that offers wilderness or outdoor survival training, or a place that offers services that are “camp” or “campy”, i.e., pertaining to an aesthetic that is over the top or playful. As such, the Applicant's mark CAMP is suggestive of the Applicant's 041 services.

The Examining Attorney has further suggested that the Applicant's mark CAMP may be generic for its class 041 services. The Applicant strongly disagrees. The TTAB used a two-part factual inquiry to determine genericness: first, the genus, or category, of goods or services must be identified. Then, an analysis of whether the term that is sought to be registered is understood by the relevant public primarily to refer to that genus of goods or services. When determining the genus of the goods or services, the inquiry should focus on the description set forth in the application for registration. *In re Hotels.com LP*, 573 F.3d 1300, 91 USPQ2d 1532, 1535 (Fed. Cir. 2009).

The Office has defined "camp" as, *inter alia*, "a place usually in the country for recreation or instruction often during the summer." The Applicant is *not* a camp and does not offer "camping" services as defined by the Office. Rather, Applicant's class 041 services, often referred to as experiential retail, are rendered through and in its unique interactive stores, where children can play and attend workshops, and parents can purchase toys, clothing, and the like. Applicant's current store is in an urban location at 110 5th Avenue in New York City. Other stores are planned for additional urban locations such as Brooklyn, NY and Dallas, TX. Additional information regarding the Applicant's unique services can be found at <https://www.adweek.com/digital/a-new-kind-of-toy-store-arrives-in-new-york-from-buzzfeeds-chief-of-commerce>.

In view of the above, the Applicant's mark is not generic for its class 041 services.