

Memo

3149.07709

Remarks to Office Action- "BLUE Flex" Logo

November 14, 2019

A courtesy copy of these remarks is attached.

The Examiner refused registration based on a likelihood of confusion refusal based on Registration No. 4,783,880 ("reference mark"). Applicant respectfully traverses this refusal.

Before addressing the differences between the marks, Applicant discusses related applications and registrations.

Related Applications and Registrations

Applicant respectfully points out two other successfully examined "Blue Flex" applications by Applicant:

- 1) Serial No. 87617489 "BLUEFLEX" (the '489 application) for shaft couplings for machines, namely flexible, elastomeric couplings for use with misaligned shafts

During examination, the reference mark (Registration No. 4,783,880) was cited in support of a Section 2(d) refusal. Applicant provided rebuttal evidence and argument and the refusal was withdrawn.

This application has received a notice of allowance. The mark was published for opposition, opposed and that opposition recently terminated. The opposer was Komet Group GmbH, who relied on its Reg. No. 4065203. The parties settled the opposition.

- 2) Serial No. 88090278 "BLUE-FLEX" (the '278 application) for machine parts namely, flexible shaft couplings

This application was filed after the notice of publication was issued in the '489 application. The reference mark was not cited and Komet did not oppose (due to the settlement). The statement of use has been accepted.

Applicant provides herein the evidence and arguments of the '489 application.

In addition, Applicant owns several "___ Flex" registrations for couplings. These are:

Reg. No. 1607408 "Martin-Flex" logo for couplings

Reg. No. 1712605 "Quadra-Flex" for couplings

Reg. No. 1713065 "Martin-Flex" logo for couplings

The application has been amended to reference these registrations. These registrations were referenced in the '278 application.

No Likelihood of Confusion

In addition to the related applications and registrations, there is no likelihood of confusion with the reference mark because the marks and goods are different and the purchasers are sophisticated enough to know the differences.

Differences in the Marks

The marks are different. The marks must be compared in their entireties. The reference mark is "AR BlueFlex" and logo. The "AR" part is located in front of "BlueFlex" and inside of a three-sided shield. "AR" stands for the registrant, Annovi Reverberi. Because the cited mark begins with "AR", this is certainly a prominent part of the mark. In fact, all of the registrant's registrations are made up of the "AR" shield logo:

AR	Reg. No. 2145870
AR ANNONI REVERBERI	Reg. No. 3008291
AR NORTH AMERICA	Reg. No. 3010125
AR BLUE CLEAN	Reg. No. 3547052

(copies attached as Exhibits 1-4)

In all of these registrations, the "AR" shield is at the beginning of the overall mark. The clear intent is to focus customers on the AR shield logo of the marks.

Applicant's mark is "BLUE Flex" and logo. The logo is highly suggestive of the goods, which distinguishes the mark over the reference mark. The "B" and the "E" in "BLUE" are made up of a distinctive grid pattern that emulates a feature of the goods. As shown by the specimen already of record, the goods are couplings that have a flexible element referred to as a grid (the coupling is discussed in more detail below). This grid pattern is adopted in the "B" and the "E" of "BLUE". The "B" and the "E" are distinctive designs that are different from fonts. A customer viewing the logo connects the mark to the goods.

The use of the distinctive letter designs inhibits a customer making a quick read of the mark, as the "B" and the "E" are not immediately recognizable as such. Where a traditional "B" and "E" have 3 horizontal lines, Applicant's distinctive letters have 4 horizontal lines. When a customer realizes that the symbols are in fact a "B" and an "E", the customer is able to make the connection to the grid used in the coupling.

Furthermore, the "X" in "Flex" resembles flexed arms, suggesting strength. A strong flexible coupling is desired for long life of the product.

Thus, Applicant's highly suggestive mark has different connotations and impressions on customers than does the reference mark, even though both contain "Blue Flex".

Differences in the Goods

Furthermore, the goods are very different. Applicant's goods are flexible couplings used on shafts. The couplings are used between two shafts. One shaft is the driving shaft and is turned by, for example, an electric motor. The other shaft is the driven shaft and is connected to the load, such as a fan. The two shafts are aligned with one another so as to be coaxial; that is they share the same axis of rotation. Once a coupling is installed to bridge the two shafts, the motor rotates the driving shaft, which in turn rotates the driven shaft, via the coupling, and which in turn rotates the fan.

There are many different ways to couple the driving shaft to the driven shaft. One way is to use gears. The gears have interlocking teeth that transmit the rotation of the driving shaft to the driven shaft. However, gears may transmit the rotation too well, resulting in shock loads and vibrations. For example, a hard start of a motor or engine can produce a shock as the driven shaft is abruptly changed from stationary to quick rotation.

Applicant has amended its goods to specify flexible grid shaft couplings. The goods have a flexible grid element (see specimen already of record). Grid couplings are used to provide dampening (higher torsional flexibility) with high torque, compared to gear couplings. The coupling transmits the rotation of the driving shaft to the driven shaft, with a slight amount of "give". This "give" is provided by the grid.

Thus, Applicant's goods are specialized.

In contrast, the cited mark is for diaphragms for pumps. Such diaphragms are used in diaphragm pumps, a type of pump (Exhibit 5). A pump diaphragm is incapable of being used to couple two shafts together, much less a driving shaft to a driven shaft. Instead, the diaphragm is located in a chamber inside the pump. The diaphragm is moved in the chamber, alternately expanding the chamber to draw in liquid and then contracting the chamber to force the liquid out.

Just like a pump diaphragm cannot be used to couple two shafts together, a flexible shaft coupling cannot be used to pump liquid.

The Examining Attorney states that the goods are related because the goods are likely to travel in the same trade channels and be encountered by the same class of purchasers. However, the evidence of record does not show grid couplings. For example, the ASAP-Supply evidence shows a specialty flexible coupling used on a propeller shaft.

Of course, online retailers sell a wide variety of goods. For example, Amazon sells books and room lamps (Exhibits 6, 7). Lamps can provide light to read books by. But, customers understand that the goods, even though they are capable of being used together and are available from the same retailer, are very different. Likewise, even if a single retailer would sell both pump diaphragms and grid couplings, customers understand the difference between the two goods.

Furthermore, the companies cited by the Examining Attorney that sell pump diaphragms are Shurflo, Zama (for fuel pumps, a sub-specialty of diaphragm pumps), Wilden, Warren Rupp and Yamada. None of these companies make or sell flexible couplings (Exhibits 8-12). There are a small number of companies that make flexible grid couplings (e.g. TB Woods, Rexnord, ABB (Baldor), Regal, LoveJoy, Guardian, Ameridrives). The flexible grid couplings companies, including Applicant, do not make diaphragms for pumps (Exhibits 13-17).

Thus, the goods are very different.

Customers are Sophisticated Enough to Distinguish

Customers buying Applicant's goods are sophisticated. Maintaining industrial equipment requires technical know-how. Buying a grid coupling requires knowledge of the equipment. For example, a customer buying a grid coupling should know the horsepower or torque of the equipment, the running rpms, the specific application and equipment, the diameters of the two shafts and the gap between the two shafts, and any physical space limitations. (Exhibit 18) Grid couplings require periodic maintenance in the form of lubrication and thus access must be available.

In contrast to a grid coupling, a customer selecting a diaphragm for a pump considers very different factors. Such factors include the type of fluid being pump and chemical resistance of the diaphragm material to the fluid. Some fluids may be corrosive and shorten the life of the diaphragm. Also, some fluids may contain sand, scale or other abrasive particles and abrasion resistance of the diaphragm should be considered. Another factor is operating temperature ranges. Cold temperatures reduce the flexibility of the diaphragm and hot temperatures may shorten the life. The specific application may require sanitary standards, wherein the diaphragm cannot contaminate the fluid. Also lifting capability of the diaphragm in the pump should be considered. (Exhibit 19)

As a result, customers understand that a flexible grid coupling is very different than a diaphragm for a pump. Customers understand that a diaphragm for a diaphragm pump will not work as in flexible grid coupling and vice versa.

Conclusion

For the reasons stated herein, it is respectfully submitted that there is no likelihood of confusion between the two marks. Applicant respectfully requests that the refusal be withdrawn and the mark be passed on to publication.

List of Exhibits

Exhibit 1- Reg. No. 2145870

Exhibit 2- Reg. No. 3008291

Exhibit 3- Reg. No. 3010125

Exhibit 4- Reg. No. 3547052

Exhibit 5- Annovi Reverberi brochure

Exhibit 6- Amazon.com page of bestseller books

Exhibit 7- Amazon.com page of lamps

Exhibit 8- www.pentair.com/en/brands/shurflo webpage

Exhibit 9- www.zamacorp.com/product-ap241.html#Fuel webpage

Exhibit 10- www.psgdover.com/wilden webpage

Exhibit 11- www.warrenruppinc.com webpage

Exhibit 12- www.yamadapump.com webpage

Exhibit 13- www.tbwoods.com/products

Exhibit 14- www.lovejoy-inc.com/products

Exhibit 15- www.regalpts.com/products/Pages/allproducts.aspx

Exhibit 16- www.guardiancouplings.com/products

Exhibit 17- www.ameridrives.com/products

Exhibit 18- "Power Drive www.powerdrive.com Grid Coupling"

Exhibit 19- "How to Select Diaphragms for AODD Pumps" www.empoweringpumps.com/how-to-select-diaphragms-for-aodd-pumps/