


IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

<p>Applicant: K-9 Services, LLC</p> <p>Serial Number: 88/327,984</p> <p>Filed: March 6, 2019</p> <p>Mark: K9 GOLD COAST SEMPER PARATUS EST. 1991 (& DESIGN)</p> 	<p>Tyler M. Seling Examining Attorney</p> <p>Law Office 112</p>
---	---

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

RESPONSE TO OFFICE ACTION

I. Identification of Goods and Services

The Examining Attorney has advised that portions of the identifications of goods and services in Classes 18, 41 and 45 are indefinite and must be clarified and/or reclassified. In response, Applicant has added Class 9, deleted Class 25 and amended the identifications of goods and services as follows:

Class 9: Dog training equipment, namely, quick release tools in the nature of a retractable folding bar inserted into the mouth of a dog to cause it to release its bite; e-collars for bark control and training purposes; protective bite sleeves; and protective bite suits.

Class 18: Dog training equipment, namely, collars, harnesses and leads.

Class 41: Dog training; training of dogs for others; educational services, namely, providing courses of instruction dealing with and training dogs; providing information in the field of dog training; training dogs in the field of narcotics detection, guns and explosives detection, mobile odor detection, bed bug detection, and home protection.

Class 45: Security services for the protection of property and individuals, namely, providing dog detection services in the nature of providing canine teams that detect guns, explosives, narcotics and mobile odors associated with guns, explosives or narcotics.

II. Request for Disclaimer

The Examining Attorney has requested that Applicant disclaim the wording “K9” and “EST. 1991” Applicant agrees:

No claim is made to the exclusive right to use “K9” and “EST. 1991” apart from the mark as shown.

The Examining Attorney also contends that a disclaimer of “GOLD COAST” is necessary because the phrase is a generally known geographic place or location. However, as Applicant noted in connection with U.S. Application Serial No. 88/327,973, “GOLD COAST K9” has become distinctive of Applicant’s goods and services by virtue of Applicant’s substantially exclusive and continuous use of the mark for more than 15 years. Given the foregoing, Applicant respectfully submits that a disclaimer of “GOLD COAST” is unwarranted.

III. Specimen Refusal

A. DRAWING REFUSAL, SPECIMEN ILLEGIBLE

The Examining Attorney has refused registration on grounds that the specimens submitted for Classes 18, 25, 31, 41 and 45 are unreadable or illegible, and fail to show the mark in the drawing in use in commerce. To address the Examining Attorney’s concerns, Applicant has submitted a verified substitute specimen for Classes 9, 31, 41 and 45, and amended the filing basis for Class 18.

B. DEFICIENT WEBPAGE DISPLAY FOR GOODS.

The Examining Attorney contends that the specimens submitted for Classes 18, 25, and 31 are mere advertising material and are not acceptable displays associated with the goods. However, as the Office Action correctly points out, webpage displays are acceptable if they include: “(1) a picture or sufficient textual description of applicant’s goods that (2) shows the mark associated with the goods, and (3) a way of ordering the goods (e.g., a “shop online” or “shopping cart” button or link, an order form, or a telephone number for placing orders).” TMEP § 904.03(i) (internal citations omitted). The substitute specimens submitted by Applicant—which

contain a telephone number for placing domestic and international orders, and/or an “add to cart” button that enable consumers to make online purchases—satisfy all of these conditions. Therefore, Applicant respectfully requests that this basis for refusal be withdrawn.

V. Trademark Act Section 2(d), Likelihood of Confusion

The Examining Attorney has refused registration of the applied-for mark on grounds that applied-for mark is likely to be confused with U.S. Trademark Registration No. 4,838,374 for GOLD COAST (the “Cited Registration”). Applicant believes no reasonable likelihood of confusion exists and respectfully requests that the Examining Attorney reconsider the refusal in light of the following remarks.

The basic principle in evaluating likelihood of confusion is that marks must be compared in their entireties and must be considered in connection with the particular goods and services for which they are used. *In re National Data Corp.*, 224 U.S.P.Q. 749, 750–51 (Fed. Cir. 1985). As the Examining Attorney noted, the factors for determining likelihood of confusion are set forth in the seminal case, *In re E.I. DuPont de Nemours & Co.*, 476 F.2d 1357, 1361; 177 U.S.P.Q. 563 (Fed. Cir. 1973). However, the factors are not necessarily all relevant or given equal weight in every case. *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315 (Fed. Cir. 2003); *In re Dixie Restaurants, Inc.*, 105 F.3d 1405, 1406–07 (Fed. Cir. 1997). In the present case, the factors most relevant for assessing likelihood of confusion are: (1) dissimilarity of the services; (2) weakness of the Cited Registration; (3) consumer sophistication and the conditions of purchase; and (4) lack of overlap among the respective trade channels; and (5) lack of actual confusion.

A. DISSIMILARITY OF THE SERVICES

In support of the 2(d) refusal, the Examining Attorney points to two entities—American Kennel Club and Maximum K-9 Nutrition—that offer a combination of dog training equipment and aids in Class 18, apparel and clothing in Class 25, dogs and dog food in Class 31, dog training services in Class 41, and dog detection services in Class 45. However, it is commonplace for a single entity to offer some or all of these products and services. As a result, it is not something that consumers are likely to focus on. In fact, the USPTO has routinely concluded that aforementioned products and services, when offered under virtually-identical marks, are not likely to cause consumers to mistakenly believe that the respective products and services emanate from a single source. For example, on at least 25 different occasions, the USPTO has

allowed or permitted the registration of a mark (for dog training equipment, dogs, apparel, and/or training services) in which the mark, or the first term of the mark, is identical to the first or dominant term of another registration for “food for animals” [see **Exhibit A** and below]:

No.	Mark	USPTO No.	Class	Applicable Products / Services
1	AMERICAN PRIDE	5,588,148	31	Pet treats in the nature of bully sticks; edible pet treats; edible chewing bones for dogs; edible chews for animals; animal foodstuffs.
	AMERICAN PRIDE DACHSHUNDS	88/266,693	31	Live animals, namely, dogs.
2	AMIGO	4,532,493	31	Foodstuffs for animals, namely, pet foods, animal foodstuff concentrates, animal foodstuff preserves and animal reward foodstuffs; pet food consisting of fresh meat and frozen meat; digestible chewing bones for dogs.
	AMIGO	4,797,274	18	Leashes for dogs.
3	BEAMS	4,682,196	31	Pet food, namely, treats.
	BEAMS	4,190,870	25	Clothing, namely, neckties, scarves, jackets; knitwear, namely, sweaters; pants, shirts, sweaters, vests socks; footwear, namely, shoes; headgear, namely, caps and hats.
4	BEYOND	3,948,306	31	Pet food.
	BEYOND	4,504,303	25	Shirts, pants, trousers, overalls, rainproof pants, waterproof pants, wind pants, snowboard pants, hunting pants, jackets, coats, parkas, vests, rainproof jackets, waterproof jackets, shell jackets, wind jackets, snowboard jackets, hunting jackets, ski wear; headwear; underwear; base layer bottoms, base layer tops.
	BEYOND BLISS DOODLES	88/316,411	31	Dogs.
5	BLOSSOM	5,765,838	31	Pet food; pet treats.
	BLOSSOM	1,928,361	25	Women’s underwear and sleepwear.
	BLOSSOM BREEZE	5,352,040	18	Pet clothing; pet products, namely, pet restraining devices consisting of leashes and harnesses.
6	CLEVER	4,903,937	31	Animal feed, namely, pet food.
	CLEVER COLLAR	3,852,674	18	Dog collars; dog collars and leads.
	CLEVERPET	4,973,611	41	Automated pet training services via computer algorithms over a computer

No.	Mark	USPTO No.	Class	Applicable Products / Services
				network.
7	CANINE CAFÉ	4,955,530	31	Pet food; pet treats.
	CANINE COACH	4,316,304	18	Electronic pet collars as an integral part of a dog training system.
	CANINE COMPANY	4,277,546	41	Behavior training of domestic animals; pet obedience training services.
8	COMPANION	1,944,450	31	Pet food, namely, dog food.
	COMPANION	4,026,285	18	Dog collars and leads; leashes for animals; rawhide chews for dogs.
9	DIAMOND	1,961,637	25	Clothing, namely, hats and t-shirts.
	DIAMOND CARE	5,097,202	31	Pet food.
	DIAMOND DOGS	3,254,852	18	Belts and animal accessories made of precious or semi-precious gemstones or metals or crystal, namely, dog collars, dog leads, dog harnesses, dog jackets, cat collars, and brow bands.
10	EXCLUSIVE	2,645,949	18	Pet food.
	EXCLUSIVE PET SERVICES	5,823,794	41	Pet training services; pet exercise services.
11	EXPLORER	5,800,926	31	Pet food.
	K9 EXPLORER	4,545,956	18	Pet collars, leads and harnesses
12	FREEDOM	4,243,233	31	Cat food; cat treats; dog biscuits; dog food; dog treats; pet beverages; pet food; pet treats; cat litter, kitty litter, animal litter.
	FREEDOM AERIAL DOG RUNS	5,108,130	18	Pet products in the nature of a restraining device, namely, tie-out chains and cables.
13	HALO	3,338,946	31	Pet food, namely, dog food, cat food, edible dog treats; edible cat treats.
	HALO	5,433,585	18	Dog collars.
	HALO	5,859,304	25	Clothing, namely, shirts, pants, hats, shoe, tights, parkas, baseball caps, t-shirts, jackets, sports bras, shorts, sweat pants, hoodies, fleece tops, anoraks, flight suits, sport coats, sport shirts, combative sports uniforms, sports caps and hats, moisture wicking shirts, moisture wicking sports bras, athletic pants, athletic shorts, athletic shirts, leisure suits, rain wear; footwear; headwear.
	HALO K9	4,625,472	41	Dog training.

No.	Mark	USPTO No.	Class	Applicable Products / Services
14	HAPPY HIPS	3,457,532	31	Pet food.
	HAPPY K9 ACADEMY	5,204,159	41	Dog training.
15	HOPE	5,571,218	31	Pet food.
	THERE'S HOPE	4,546,169	41	Educational services, namely, conducting workshops in the field of pet training and distribution of educational materials in connection therewith.
16	HUNTER	3,765,551	31	Animal feed; pet food.
	HUNTER	2,740,877	25	Footwear.
	HUNTERPET	2,746,362	18	Pet products, namely, dog collars, animal leashes, animal harnesses, pet leads and muzzles.
17	INSTINCT	3,552,082	31	Pet food and pet treats.
	INSTINCT	3,658,507	25	Clothing and headwear, namely, bathing suits, bottoms, boxer shorts, fleece tops, fleece pullovers, hats, headgear, namely, baseball caps, beanies, and caps, shirts, shorts, sport shirts, sweat tops, sweatshirts, swimwear, t-shirts, tops.
	INSTINCT DOG & BEHAVIOR	3,971,483	41	Dog training; dog behavior modification; dog walking.
18	JOLLY	2,542,031	31	Animal feed, pet food and bird seed.
	JOLLYPAW	5,663,565	18, 31	Leather and nylon leashes and leads for animals, in particular tracking leashes, hands-free leashes, cycling and jogging leads, training leads, extension leads and show leads; food for animals; pet food featuring chews of various types; animal feed; edible horse treats; fish food; dog biscuits; bird treats; pet treats; edible chews for animals; catnip; cuttlebones for birds; animal litter; animal foodstuffs; wood shavings for animal bedding.
19	KING DOG	5,398,720	31	Pet food.
	KING K9 ACADEMY ** "K9 Academy" Disclaimed"	5,384,189	41	Kennel services, namely, dog training services.
20	LIBERTY	5,056,319	31	Pet food; pet treats.
	LIBERTY	3,940,998	25	Clothing, namely, overalls.
	LIBERTY K9 LLC	5,065,952	41	Dog training.
	LIBERTY SERVICE DOGS	4,878,122	31	Dogs.

No.	Mark	USPTO No.	Class	Applicable Products / Services
21	MAGIC	4,461,302	31	Foodstuffs for animals, namely, pet foods, animal foodstuff concentrates, animal foodstuff preserves and animal reward foodstuffs; pet food consisting of fresh meat and frozen meat; beverages for pets; digestible chewing bones for dogs.
	MAGIC	1,652,469	25	Hosiery, footwear, t-shirts, sweat shirts, sweatpants, tank tops, jerseys, shorts, pajamas, sport shirts, sweaters, belts, nightshirts, hats, warm-up suits, jackets, bibs, head bands and wrist bands.
	MAGIC DOG	5,685,014	18	Collars for animals; harness for animals; leather leads; muzzles.
22	MAX	1,810,994	31	Pet food, namely, cat and dog food.
	MAX	3,492,755	25	Hats; headgear, namely, caps, hats and visors.
	MAX (Stylized)	3,344,994	18	Dog leashes, dog collars; electronic pet collars; collars for pets bearing medical information; dog leas; dog harnesses; pet clothing.
23	NATIVE	3,412,140	31	Pet foods.
	NATIVE PUP	5,412,284	18	Pet products, namely, pet restraining devices consisting of leashes, collars, harnesses, restraining straps, and leashes with locking devices.
24	RETRIEVER	3,257,566	31	Pet food.
	RETRIEVER LIFE	5,284,005	41	Providing online magazines, online non-downloadable articles and a website featuring online non-downloadable articles in the field of dogs, dog shows, dog training, and pet photography

No.	Mark	USPTO No.	Class	Applicable Products / Services
25 ¹	STARDOG	4,439,057	31	Foodstuffs for animals, namely, pet foods, animal foodstuff concentrates, animal foodstuff preserves and animal reward foodstuffs; non-medicated food supplements for animals; pet food consisting of fresh meat and frozen meat; beverages for pets; digestible chewing bones for dogs.
	STARDOGS CLUBHOUSE	5,654,310	41	Dog training services.

A quick search also revealed several other allowed applications, federal registrations and common law marks that overlap, and are peacefully coexisting with, similarly-named pet food products or companies. *See Exhibits C and D.*

No.	Mark / Name	Reg. No.	Products / Services and URL
1	ADVANCED NUTRITION FORMULA	2,337,257	Pet foods.
	ADVANCED SERVICES	N/A	Dog training services; detection dogs. http://ad-canine.com/
2	CHAMPION BREED	3,986,818	Pet products and accessories, namely, leashes, collars and leads, and rawhide for pets.
	CHAMPION BLEND	3,681,812	Dog food.
	CHAMPION DOG TRAINING	N/A	Dog training services. http://championdogtraining.com/
	CHAMPION PETFOODS	N/A	Pet food. https://www.championpetfoods.com/en-us/
3	DIAMOND	1,792,835	Cat and dog food.
	DIAMOND FRENCH BULLDOGS	88/080,318	Kennel services, namely, dog breeding services
	DIAMOND IN THE RUFF	N/A	Dog training services. http://www.dogshines.com/About-Us.html
	DIAMOND PET FOODS	N/A	Pet food. https://www.diamondpet.com/
4	MAXIMUM BALANCE	4,599,683	Dog food sold through grocery stores.
	MAXIMUM K-9	N/A	Dog training equipment; dogs; dog food; dog training; and dog detection services. http://maximumk9service.com/

¹ These registrations are also peacefully coexisting with Star Dog Obedience, LLC, a Florida-based business that provides dog training and dog detection services for schools, businesses, and residential homes. *See Exhibit B.*

No.	Mark / Name	Reg. No.	Products / Services and URL
5	METRO DADE K-9	4,197,975	Retail store services featuring dogs, namely, police dogs, canines, home protection dogs, execution protection dogs, puppies and German Shepards.
	METRO PAWS	3,187,309	Online retail store services featuring pet goods, namely, pet clothes, pet costumes, pet tutus, pet carriers, pet beds, pet collars and leashes, pet toys, and food bowls and feeders.
	METRO PET PREMIUM PET FOOD	N/A	Pet food. https://metropetservices.com/
	METRO K9 DETECTION SERVICES	N/A	Dog detection services for businesses, schools and residential homes. http://metrok9detectionservices.com/
6	PET'S HEALTHY CHOICE	3,961,170	Cat food; dog food; pet food.
	PETS CHOICE	N/A	Pet food and training services. https://www.petschoicenh.com/dogs/dog-more/
	PETS CHOICE	N/A	Pet food. https://www.petschoice.co.uk
7	PREMIER PET COLLARS	5,038,174	Dog collars and leads; dog leashes.
	PREMIER	3,004,506 2,436,247	Pet collars, pet leashes, pet harnesses and pet clothing; dog collars Dog training equipment. https://www.premierpet.com/the-premier-pet-story/
	PREMIER DOG TRAINING AND BOARDING	N/A	Dog training services. http://thedogtrainingpro.com/
8	ROCKY MOUNTAIN FELINE	3,831,868	Pet food.
	ROCKY MOUNTAIN CANINE	N/A	Dog training and dog detection services. http://www.rockymountaincanine.com/
9	SOLID GOLD DOG TRAINING	N/A	Dog training services. https://bit.ly/2NzNs0X
	SOLID GOLD HEALTH PRODUCTS FOR PETS	N/A	Pet food. https://solidgoldpet.com/

The longstanding and concurrent use of these marks and names, and the registrations set forth above, strongly suggest that the products and services offered by Applicant and Fromm Family Foods, LLC (“Fromm”)—owner of the Cited Registration—are not so closely related such that consumer confusion is likely to arise.

B. WEAKNESS OF THE CITED REGISTRATION

Where, as here, the common elements of the marks in question are suggestive or otherwise weak, the other distinguishing elements may carry more significance with respect to the commercial impressions created by the marks. TMEP § 1207.01(b)(vii); *See e.g., In re Bed & Breakfast Registry*, 229 U.S.P.Q. 818 (Fed Cir. 1986) (BED & BREAKFAST REGISTRY for making lodging reservations held not likely to be confused with BED & BREAKFAST INTERNATIONAL for room booking agency services); *see also Knapp-Monarch Co. v. Poloron Products, Inc.*, 134 U.S.P.Q. 414 (TTAB 1962) (finding no likelihood of confusion between THERM-A-JUG and THERMEX on the basis that “THERM” is suggestive of a heat-insulating product).

Applicant respectfully submits that the terms GOLD and COAST are weak indicators of source and that Fromm’s GOLD COAST mark should be construed narrowly. TMEP § 1207.01(d)(iii) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee en 1772*, 396 F.3d 1369, 1373-74 (Fed. Cir. 2005) (“If the evidence establishes that the consuming public is exposed to third-party use of a similar mark on similar goods [or services], it ‘is relevant to show that a mark is relatively weak and entitled to only a narrow scope of protection.’”)). The weakness of these terms is evidenced by the fact that there are several similar GOLD and COAST registrations peacefully coexisting on the Principal Register:

1. **COAST** [Registration No. 4,540,961] – A federal registration owned by Coast Fashions Limited that is used in connection clothing, namely, dresses, skirts, trousers, pants, t-shirts, blouses, jumpers, cardigans, coats, jackets, scarves, gloves, suits, bras, lingerie, knickers, panty-hose, tights, jeans, slacks, night dresses, dressing gowns, nightwear, namely, robes, night shirts and pajamas; footwear and headwear.
 2. **COAST & HARBOUR** [Registration No. 4,664,691] – A federal registration owned by BodyBody Provincetown, Inc. that is used in connection with men’s apparel, namely, shirts, sweaters and shorts.
 3. **COAST-WIDE** [Registration No. 4,467,946] – A federal registration owned by Brand Sense Partners, LLC that is used in connection with men’s and women’s apparel, namely, blouses, caps, coats, dresses, has, jackets, jeans, knit tops, loungewear, pants, scarves, shirts, shorts, skirts, sweaters, sweatpants, sweatshirts, t-shirts, tank tops, vests and woven tops.
- COAST + RANGE** [Registration No. 5,788,364] – A federal registration owned by Coast and Range, Inc. that is used in connection with pet food; dog food; edible dog treats.

4. **COAST TO COAST K9** [Registration No. 5,020,651] – A federal registration owned by ITC Capital Partners, LLC that is used in connection with education services, namely, course, online training and training in the field of canine handling, including online and other forms of distance education, for the purpose of certification of canines and patrol teams to operate in the fields of narcotics detection, bed bug detection, weapons detection, mine detection, and explosives detection for use in special assignments and for public safety purposes.
5. **SOUTHERN COAST K9 INCORPORATED** [Registration No. 4,492,824] – A federal registration owned by Southern Coast K9, Inc. that is used in connection with dog training.
6. **GOLD BALANCE** [Registration No. 4,642,313] – A federal registration owned by The Phoenix Company LLC that is used in connection with dog food.
GOLD PAW [Registration No. 3,952,035] – A federal registration owned by Zephyr Farm LLC that is used in connection with animal harnesses; collars for pets; leashes for animals; pet clothing.
7. **GOLD DOG (& Design)** [Registration No. 5,840,316] – A federal registration owned by Golddog, LLC that is used in connection with pet accessories, namely, bandannas, collars, and service dog vests; clothing and accessories, namely, shirts, sweatshirts, shorts, socks, hats, visors, and headbands.
8. **GOLDCUP** [Registration No. 4,439,059] – A federal registration owned by Saturn Petcare GmbH that is used in connection with foodstuffs for animals, namely, pet foods, animal foodstuff concentrates, animal foodstuff preserves and animal reward foodstuffs; pet food consisting of fresh meat and frozen meat; beverages for pets.
9. **GOLD-PLATED GUNDOGS** [Registration No. 4,514,140] – A federal registration owned by Brian J. Szczech that is used in connection with dog training.

See **Exhibit E**.

An online search also revealed at least nine different uses of GOLD COAST in connection with products or services that overlap with, or are closely related to, those listed in the subject application and Cited Registration [see **Exhibit F** and below]:

1. **THE GOLD COAST DOG** (dog training services)
<https://www.thegoldcoastdog.com/>
2. **GOLD COAST K9 ACADEMY** (dog boarding and obedience services)
<http://goldcoastk9academy.com/services/>
2. **GOLD COAST ANIMAL HOSPITAL** (education, boarding, grooming, therapy and diagnostic services for animals) See <https://www.thegoldcoastah.com>

3. **GOLD COAST PET CARE** (pet care services)
See <https://www.goldcoastpetcare.com/>
4. **GOLD COAST INGREDIENTS, INC.** (flavor and color manufacturing services for animal food products and medicines)
<https://goldcoastinc.com/industries/pet-animal/>
5. **GOLD COAST MOBILE VETERINARY SERVICES** (veterinary services)
<https://goldcoastmobilevet.com/services-we-offer/>
6. **GOLD COAST MOBILE VETERINARY CARE** (veterinary services)
<http://goldcoastmobilevetcare.com/>
7. **GOLD COAST KENNEL** (dog boarding services)
<https://goldcoastkennel.com/>
8. **GOLD COAST** (apparel, namely, socks, belts, slippers and robes).
<https://bit.ly/2oCavjl>

Based on the foregoing, it is reasonable to infer that subsisting GOLD, COAST, and GOLD COAST trademarks have managed to coexist without confusion because of the marketplace dilution, the differences among the respective products and services, and/or the distinguishing matter in each mark. *American Hosp. Supply Corp. v. Air Products Chemicals, Inc.*, 194 U.S.P.Q. 340 (TTAB 1997) (noting that widespread usage of a term or common feature indicates that a term has a normally understood meaning or suggestiveness in the trade, and that marks containing the term or feature have been registered for the same or closely related goods or services because the remaining portions of the marks are sufficient to distinguish the marks as a whole from one another). The peaceful coexistence of several GOLD, COAST and GOLD COAST trademarks also strongly suggests that no one entity can claim broad rights in these terms, and that registration of Applicant's GOLD COAST K9 mark is unlikely to be confused with the Cited Registration.

Applicant further submits that the Examining Attorney has discounted the importance of the other elements in Applicant's mark. *In re National Data Corp*, 224 U.S.P.Q. 749 (Fed. Cir. 1985) ("It is improper to dissect the marks and focus on one portion instead of the total commercial impression."). To begin with, the marks have a different number of words (7 vs. 2) and syllables (13 vs. 2), both of which create differences in how the marks sound and are pronounced—especially since there is no overlap among the majority of the terms, namely, SEMPER, PARATUS, EST. and 1991. The term K9 is also suggestive of the dogs for which

Applicant's products and services are intended. As the Examining Attorney acknowledges, "K9" is a designation for police dogs, or dogs that are specifically trained to assist with searches for drugs, weapons, explosives, missing persons, or crime scene evidence. See **Exhibit G**. There are also specific breeds of dogs that are commonly associated with the term "K9." *Id.* As such, and because K9 is the largest and dominant feature of the applied-for mark, consumers are not likely to ascribe the same meaning to the GOLD COAST and K9 GOLD COAST (& Design) marks, or assume that they refer to a single source. The prominent stylization and design element in Applicant's mark also creates a meaningful visual distinction—especially compared to the commercial manner in which Fromm displays its GOLD COAST mark. See **Exhibit H**; see also *Spice Islands, Inc. v. Frank Tea & Spice Co.*, 505 F.2d 1293, 1295 (C.C.P.A. 1974) noting that it is improper to ignore any portion of a composite mark); *In re Electrolyte Labs., Inc.*, 920 F.2d 645, 647 (Fed. Cir. 1990) ("[T]here is no general rule as to whether letters or designs will dominate in composite marks; nor is the dominance of letters or design dispositive of the issue.").

Given these phonetic, definitional, and visual differences, the crowded field of similar GOLD, COAST and GOLD COAST marks, and the fact that numerous prior decisions have held no likelihood of confusion to exist in circumstances similar to those here, Applicant respectfully submits that the differences in the marks themselves are sufficient to preclude any reasonable likelihood of confusion. See *e.g.*, *M2 Software, Inc. v. M2 Communications, Inc.*, 78 U.S.P.Q.2d (Fed. Cir. 2006) (finding no likelihood of confusion between M2 and M2 Communications, even with the disclaimer of "communications," for interactive CD-ROMS); *In re Digigrad Corp.*, 45 U.S.P.Q.2d 1841 (TTAB 1998) (finding no likelihood of confusion between DIGIRAY and DIGIGRAD for products within the field of medical diagnostic equipment); See generally *In re Electrolyte Laboratories*, 920 F.2d 645 (holding "K+ and Design" for a dietary potassium supplement not confusingly similar to "K+EFF" for a dietary potassium supplement).

C. THE CONDITIONS OF PURCHASE AND THE CARE OF THE RELEVANT CONSUMERS SUPPORTS A FINDING OF NO LIKELIHOOD OF CONFUSION.

In further support of its position, Applicant wishes to draw the Examining Attorney's attention conditions of purchase. The relevant products and services, namely, dogs, dog training equipment, dog detection and dog training services, and dog food are not purchased regularly

and/or impulsively. Rather, because: (a) Applicant’s dogs, training programs, and detection services cost thousands of dollars²; (b) Applicant’s training equipment, training services, and dog detection services serve very specific functions (e.g., bite release, bark control, identification of specific odors); (c) pet food contains ingredients, vitamins, allergens or chemicals that can be hazardous to animals if used inappropriately, consumers are likely to exercise great care and diligence before making a purchasing decision. See **Exhibit I**. In fact, because of the health concerns posed by pet food, the Food and Drug Administration (“FDA”) requires that all pet food products clearly feature the name of the product, a net quantity statement, the name place of business of the manufacturer or distributor, and a list of all ingredients from most to least, based on weight. See **Exhibit J**. It is therefore reasonable to assume that pet food consumers—including Registrant’s—quickly learn with whom they are dealing and the source of the products offered.³ The same is true for Applicant’s consumers. As a result, and because there is no overlap among the parties’ sales channels,⁴ a likelihood of confusion is improbable.

D. CONCURRENT USE FOR A SUBSTANTIAL PERIOD OF TIME WITHOUT ANY ACTUAL CONFUSION SUPPORTS A FINDING OF NO LIKELIHOOD OF CONFUSION.

While a possibility of confusion always exists, what may be possible may be not all probable, and if not probable, it is not likely. See *MTD Products, Inc. v. Universal Tire Corp.*, 193 U.S.P.Q. 56, 60 (TTAB 1976). As the former Court of Customs and Patent Appeals aptly stated in *Witco Chemical Company, Inc. v. Whitfield Chemical Company, Inc.*:

We are not concerned with mere theoretical possibilities of confusion, deception or mistake or with de minimus situations but with the practicalities of the commercial world, with which the trademark law deals.

164 U.S.P.Q. 43, 44–45 (C.C.P.A. 1969). Considering the differences in appearance among the marks, the existing marketplace dilution, the care exercised by the relevant portion of the

² Each of Applicant’s dogs costs tens of thousands of dollars. In fact, the starting price of Applicant’s home protection dogs is \$30,000 USD. See **Exhibit I** at pg. 1.

³ Consistent with FDA regulations, Registrant’s GOLD COAST food products prominently feature the FROMM FAMILY name, identify the products as being made in Wisconsin, specify that the products are specifically intended for weight loss, include a quantity statement, and identify the active ingredients.. See **Exhibit K**.

⁴ Applicant’s products and services are available for purchase on Applicant’s website, at Applicant’s facility in Ventura, CA, or by contacting Applicant directly. See **Exhibit L**. The GOLD COAST products offered by Fromm, by contrast, are available at independent pet specialty stores. See **Exhibit M**.

consuming public, the conditions of purchase, and the lack of overlap among the parties' respective sales channels, Applicant submits that the opportunity for confusion arising from the K9 GOLD COAST (& Design) mark and the Cited Registration is, at best, *de minimis*. The aforementioned distinctions are cogent factors which, in the practicalities of the commercial marketing world, serve to preclude any real chance of confusion between parties' respective products and services.

Moreover, Applicant and Registrant have been peacefully coexisting and using their respective GOLD COAST and K9 GOLD COAST (& Design) marks in connection with the identified goods and services for more than two years (since at least as early as October 24, 2017).⁵ Accordingly, there has been ample opportunity for consumer confusion to arise. However, to date, Applicant is aware of no confusion in the marketplace with the Fromm's GOLD COAST mark or products. Such a significant time lapse without actual confusion is probative evidence that there is no "likelihood" of confusion. *See e.g., Aktiebolaget Electrolux v. Armatron Int'l, Inc.*, 999 F.2d 1, 27 U.S.P.Q.2d 1460 (1st Cir. 1993) ("[A]n absence of actual confusion, or a negligible amount of it, between two products after a long period of coexistence on the market is highly probative in showing that little likelihood of confusion exists.").

VI. Conclusion

In view of the foregoing, and having responded to all issues raised in the Office Action, this application is believed to be in condition for publication, and reconsideration and favorable action are respectfully requested.

⁵ As Applicant noted in connection with Application Serial No. 88/327,973, the parties' GOLD COAST and GOLD COAST K9 marks have been peacefully coexisting for nearly five years (since at least as early as February 9, 2015). In fact, Applicant's use of the GOLD COAST K9 mark actually predates Fromm's claimed date of first use by 24 years. As the evidence of record reflects, Applicant has been using the GOLD COAST K9 mark in connection with dogs, dog training and related informational services since at least as early as December 31, 1991. *See Exhibits N and O.*