

In the Office Action, the Examining Attorney asserted that Applicant's stylized UNIVERSAL mark was deemed to be confusingly similar to the registered mark UNIVERSAL (Reg. No. 0870041) ("the '041 UNIVERSAL mark"), allegedly owned by Kathleen Meshes and



(Reg. No. 4496645) ("the '645 E UNIVERSAL EXPERT Mark"), allegedly owned by a company known as Universal Expert LLP.

As the Examining Attorney is no doubt aware, the present standard for determining likelihood of confusion is based on an evaluation of the "DuPont factors." [In re E.I. duPont de Nemours & Co.](#), 476 F.2d 1357 (CCPA 1973). The DuPont factors are listed as follows:

1. The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.
2. The similarity or dissimilarity of and nature of the goods or services described in an application or registration or in connection with which a prior mark is in use.
3. The similarity or dissimilarity of established, likely-to-continue trade channels.
4. The conditions under which, and buyers to whom sales are made, *i.e.* "impulse" vs. careful, sophisticated purchasing.
5. The conditions under which, and buyers to whom sales are made.
6. The fame of the prior mark (sales, advertising, length of use).
7. The number and nature of similar marks in use on similar goods.
8. The nature and extent of any actual confusion.
9. The length of time during, and conditions under which there has been concurrent use without evidence of actual confusion.
10. The variety of goods on which a mark is or is not used (house mark, "family" mark, product mark).
11. The market interface between the applicant and the owner of a prior mark.


12. The extent to which applicant has a right to exclude others from use of its mark on its goods.
13. The extent of potential confusion, *i.e.*, whether *de minimis* or substantial.
14. Any other established fact probative of the effect of use.

The '041 Universal Mark

As the Examining Attorney is, of course, aware, while it may be true that Applicant's mark and the '041 Universal Mark both utilize the term Universal, Applicant's mark contains a unique stylized element. Further, Applicant notes that it is in the midst of ongoing negotiations with the owner of the cited registrations, and requests that the current application be held in abeyance pending the status of such settlement negotiations.

The '645 E UNIVERSAL EXPERT Mark

In addition, the Examining Attorney indicated that Applicant's mark is confusingly similar

to the registered mark . Applicant notes that the cited mark has multiple elements in it that differ from Applicant's mark. In addition, the first use of Applicant's mark in commerce commenced significantly before the filing date for the cited mark. On this basis, Applicant respectfully requests that the likelihood of confusion refusal be withdrawn.

Prior Pending Application

In addition, the Examining Attorney indicated that Applicant's mark is allegedly potentially

confusingly similar to the mark  filed under Serial No. 87665213. This

application was abandoned on December 16, 2013. As a result, it no longer poses an issue with respect to the registrability of Applicant's mark. Applicant, therefore, respectfully requests, the withdrawal of the prospective rejection on the basis of this mark.