

In response to the office action with a mailing date of July 30, 2019 the examining attorney refused registration of Applicant’s mark under Trademark Act Section 2(d), 15 U.S.C. § 1052(d) for likelihood of confusion with the marks in U.S. Registration Nos. 5400428 owned by LED Baseline, Inc. for “LED BASELINE” in Class 20 covering “shelves” (“LED BASELINE Registration”) and U.S. Registration No. 2465053 owned by Children’s Factory, LLC for “BASELINE” in Class 20 covering “institutional furniture for children for nursery schools, day care centers and elementary schools” (“School Furniture BASELINE Registration”) (collectively the “Cited Registrations”).

First, Applicant has amended the description of goods to delete general furniture and chairs from the description leaving only “office furniture” in Class 20. Office furniture is undoubtedly different from the lighted display shelves and institutional furniture specifically for children and specifically for nursery schools, day care centers and elementary schools as identified in the Cited Registrations. As a result, and in view the relevant *Du Pont* factors discussed below, the Applicant respectfully disagrees with the examining attorney’s finding that a likelihood of confusion exists between the Applicant’s mark and the Cited Registrations and respectfully requests that the Section 2(d) refusal be withdrawn and the application be passed to publication. *See In re E.I. Du Pont de Nemours & Co.*, 177 U.S.P.Q. 563 (CCPA 1973).

Applicant’s mark differs from the LED BASELINE mark in appearance, sound, connotation, and commercial impression. *Id.* When comparing the marks, “[a]ll relevant facts pertaining to appearance, sound, and connotation must be considered before similarity as to one or more of those factors may be sufficient to support a finding that the marks are similar or dissimilar.” *Recot, Inc. v. M.C. Becton*, 54 USPQ2d 1894, 1899 (Fed. Cir. 2000). In the instant case, “LED” creates an immediate and obvious visual and audible difference from the word BASELINE alone. As for connotation, “LED” has a known meaning as “a semiconductor diode that emits light when a voltage is applied to it and that is used especially in electronic devices (as for an indicator light)”. *See* Exhibit 1. Although the word “LED” is disclaimed in the LED BASELINE Registration, the inclusion of “LED” in the mark LED BASELINE directly communicates the nature of the goods to the relevant consumer and creates a particular commercial impression. As the relevant purchasing public is unaware of the registrant’s disclaimer of “LED” from the complete mark, the inclusion of “LED” will be noted by consumers. *See Giant Food, Inc. v. Nation's Foodservice*, 218 UPSQ2d 390, 392 (Fed. Cir. 1983) (“Such disclaimers are not helpful in preventing likelihood of confusion in the mind of the consumer, because he is unaware of their existence. Therefore, the disclaimed portions of the mark must be considered in determining the likelihood of confusion and sufficiently prevents likelihood of confusion with Applicant’s.”); *see also In re RSI Systems LLC*, 88 USPQ2d 1445 (TTAB 2008). Additionally, as more fully explained below, the goods associated with the LED BASELINE Registration specifically deal with lighted display shelves. *See* Exhibit 2, the specimen of use submitted in connection with the LED BASELINE Registration. Accordingly, the “LED” in the LED BASELINE Registration provides a notably different commercial impression from BASELINE alone, particularly in conjunction with the LED BASELINE Registrant’s shelves, which suggests to consumers that the Registrant’s shelves are back-lit along the base of the shelf or shelves with LED lighting.

Applicant’s mark BASELINE also provides a different commercial connotation than the School Furniture BASELINE Registration. This is because the word “baseline” has a particular meaning with respect to toddlers and elementary school age children as it refers to a standard in academic assessments, the “baseline” being the student’s current level of knowledge and abilities from where the child’s educational growth is measured. *See* Exhibit 3. The word BASELINE also refers to the imaginary line on which the bottoms of primary letters align when children are learning to write letters. *See* Exhibit 4. The word BASELINE as used for children’s furniture, therefore, suggests to the relevant consumers that the furniture is made for children’s use in school where they can learn and grow physically and educationally. In contrast, the commercial impression provided by Applicant’s use of BASELINE in connection with office furniture is related to business as a clearly defined starting point. *See* Exhibit 5. For example, a “baseline” project plan “is a document that presents the baseline that will be used or considered for a particular project so that objective, organized, and well-detailed planning can be made.” *See* Exhibit 6. As such, consumers will view Applicant’s mark BASELINE as referring to office furniture that suggests it is a starting point for the employees and business to be objective, organized and detailed planners.

The differences in the commercial connotation of the Applicant’s mark and those of the Cited Registrants is, as described above, colored by the differences in Applicant’s goods and the Cited Registrant’s goods. The Trademark Trial and Appeal Board (“TTAB”) has rejected the “per se” approach that all goods are related. *See In re Quadram Corp.*, 228 USPQ 863 (TTAB 1985); *Reynolds and Reynolds Co. v. I.E. Systems Inc.*, 5 USPQ2d 1749, 1751 (TTAB 1987) (noting that there must be some similarity between the goods and services at issue beyond the fact that each involve use of computers). Accordingly, the goods at issue in this case must be examined in the context of the entire description and record to determine if the Applicant’s goods and the goods identified in the Cited Registrations are in fact related.

Applicant’s goods as amended are “office furniture.” The function and purpose of Applicant’s goods is furnishing corporate offices and workspaces. On the other hand, LED BASELINE brand shelves are customized lighted display shelves that are intended to “spotlight merchandise” and “contribute to both décor and ambiance”. *See* Exhibit 7. The School Furniture BASELINE Registration encompasses children’s furniture for use in nursery schools, day care centers, and elementary schools. *See* Exhibit 8. The Applicant’s office furniture and chairs do not overlap with and are for different consumers than the lighted display shelves and children’s furniture identified in the Cited Registrations. Offices do not use “shelves” that are lit with LED lights such as in a bar, and offices do not use or buy children’s furniture that does not fit the adults employed there.

The differences in the goods is further emphasized by the difference in relevant consumers. Applicant’s typical consumers are purchasing office furniture for corporate offices and workspaces, for example, business managers and office purchasing departments. In contrast, typical consumers of LED BASELINE shelves are purchasing lighted, decorative shelves to prominently display merchandise and create a particular ambiance through the “captivating” colors emitted by the LED lights embedded within the shelf. *See* Exhibit 2. It follows that the typical consumers of LED BASELINE shelves are bars and restaurants. *See* Exhibit 9 which shows that the registrant’s clientele includes the Hard Rock, the House of Blues, TGI Friday’s, among other

well-known bars and restaurants. Thus, LED BASELINE consumers are purchasing decorative, lighted display shelves to use in bars and restaurants, not regular, functional shelves that are commonly used in offices. Similarly, consumers of institutional furniture for children associated with the School Furniture BASELINE Registration are teachers, administrators, programs, and parents for use specifically “for children for nursery schools, day care centers and elementary schools.” *See* Exhibit 10 and the description of goods for the School Furniture BASELINE Registration. These consumers are purchasing furniture for small children, not office furniture for adults. *See Id.* Thus, the Applicant’s goods are for a different classes of purchasers in a particular industry that is distinct from the Cited Registrations.

In sum, Applicant’s mark “BASELINE” is noticeably, visually and verbally distinguishable from the Registered mark “LED BASELINE, and it conveys a very different commercial impression than the Cited Registrations. Applicant’s mark is also used with very different goods, and the Applicant and both Cited Registrant’s sell to distinctly different and specific classes of consumers. Also notable is that the two Cited Registrations co-exist, and based on the differences in the Applicant’s mark, goods and relevant consumers, so too can Applicant’s mark co-exist with the Cited Registrations.

For the reasons stated herein, the Applicant respectfully requests the registration refusal based on likelihood of confusion with the Cited Registrations be withdrawn. Should the examining attorney be of the opinion that a telephone interview would facilitate the prosecution of the application, please call the undersigned.