

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Identity Pet Nutrition, LLC
Serial No. : 88412020
Filing Date : May 1, 2019
Mark : BELIEVE
Examining Attorney : Udeme U. Attang
Law Office : 115

RESPONSE TO OFFICE ACTION

Commissioner For Trademarks
P.O. Box 1451
Arlington, Virginia 22313-1451

Dear Commissioner,

Identity Pet Nutrition, LLC (“Applicant”) seeks registration on the Principal Register of the mark BELIEVE for “Cat food; Dog food; Pet food; Edible cat treats; Edible dog treats,” in International Class 031.

In the Office Action dated July 15, 2019, the Trademark Examining Attorney has refused registration of Applicant’s mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), contending that Applicant’s use of their BELIEVE mark for the identified goods is likely to cause confusion with the marks in U.S. Registration No. 4401237 is BELIEVE IN PETS in standard character form for “On-line retail store services featuring pet supplies and accessories; Retail store services featuring pet supplies and accessories accessible on-line and by telephone, facsimile and mail order”, and U.S. Registration No. 4312573 is WE BELIEVE IN DOG. in standard character form. This second cited mark is no longer a valid basis for refusal since it has been canceled. Applicant respectfully disagrees with this determination and offers the following arguments in support of registration.

I. SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION

The determination under Trademark Act § 2(d) is based on an analysis of the probative facts in evidence that are relevant to the factors bearing on a likelihood of

confusion. See *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973); see also *Palm Bay Imp., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005); *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003); and *In re Dixie Rests. Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

The Examining Attorney is respectfully reminded that in considering the evidence of record on these factors, one must keep in mind that “[t]he fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.” *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); see also *In re Azteca Rest. Enters., Inc.*, 50 USPQ2d 1209 (TTAB 1999).

Confusion is not likely because of a number of crucial differences between the marks. In comparing the marks, the Examining Attorney is respectfully reminded that “[T]he proper test is not a side-by-side comparison of the marks, but instead ‘whether the marks are sufficiently similar in terms of their commercial impression’ such that persons who encounter the marks would be likely to assume a connection between the parties.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012) (citation omitted). While one must consider the marks in their entireties, it is entirely appropriate to accord greater importance to the more distinctive elements in the marks. See *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

First, the marks are visually and aurally different. Applicant’s mark is a single word comprised of seven letters and pronounced [bih-leev]. The cited mark is longer - being three words long and comprising thirteen letters and is pronounced [bih-leev in petz].

Second, the overall commercial impressions of the marks are decidedly different. Applicant’s mark, BELIEVE, has a simple but very nebulous meaning. The definition of BELIEVE is “to have confidence in the truth, the existence or the reliability of something”. See the below screenshot of the definition obtained on January 15, 2020 from an online dictionary. Does applicant’s mark mean that the consumer should

believe that applicant's Cat food; Dog food; Pet food; Edible cat treats; Edible dog treats are healthy, are fresh, are prepared with utmost care, or are somehow better for the consumer's pet? There is no answer to this question, thus, the mark is nebulous in meaning vis-a-vis the goods.



The screenshot shows the Dictionary.com website. The browser address bar displays "https://www.dictionary.com/browse/believe?s=t". The page header includes "Dictionary.com" and "Thesaurus.com" links, along with the Dictionary.com logo and a search bar containing the word "believe". Below the header, the word "believe" is prominently displayed in a large, bold font, followed by its phonetic transcription "[bih-leev]" and a "SHOW IPA" button with a speaker icon. A link below the word reads "SEE SYNONYMS FOR believe ON THESAURUS.COM".

verb (used without object), be-lieved, be-liev-ing.

- 1 to have confidence in the truth, the existence, or the reliability of something, although without absolute proof that one is right in doing so:
Only if one believes in something can one act purposefully.

BELIEVE IN PETS, on the other hand, clearly points to what the consumer is to put their confidence in - namely, their pets. Thus, besides the obvious differences in pronunciation and appearance, the connotations of the marks are distinctly different.

In this instance the first du Pont factor, the differences between the marks, clearly outweighs any of the other factors. *See Champagne Louis Roederer S.A. v. Delicato Vineyards*, 148 F.3d 1373, 47 USPQ2d 1459, 1460-61 (Fed. Cir. 1998) (Federal Circuit affirmed Board finding of no likelihood of confusion between mark CRYSTAL CREEK for wine and marks CRISTAL for wine and CRISTAL CHAMPAGNE for champagne, where Board relied solely on dissimilarity of marks); *Kellogg Co. v. Pack'em Enterprises Inc.*, 951 F.2d 330, 21 USPQ2d 1142, 1145 (Fed. Cir. 1991) ("We know of no reason why, in a particular case, a single du Pont factor may not be dispositive").

Applicant reserves the right to argue any and all of the other du Pont factors in case the Examining Attorney maintains the 2(d) refusal.

II. CONCLUSION

The differences between the marks, as discussed above, clearly outweighs any of the other similarities and leads to a conclusion that confusion between the marks is not apt to occur. In view of the foregoing, Applicant respectfully requests that the present application now be approved for publication. Applicant again expresses thanks for the attention provided to this application and looks forward to receiving the Notice of Publication for this application.

DATED: January 15, 2020

Respectfully submitted,
TDFoster – Intellectual Property Law

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