

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mark:	SEM	Applicant	ShenZhen Everbest Machinery Industry Co., Ltd.
Appln. No.:	88411699	Docket No.:	1008276.4002
Filed:	May 1, 2019	Examining Attorney:	Marcya N. Betts

Dear Trademark Examining Attorney:

Responsive to the Office Action dated July 31, 2019, where Trademark Examining Attorney refused registration of Applicant's mark SEM under Section 2(d) of the Trademark Act, 15 U.S.C. Section 1052(d), because of a likelihood of confusion with the mark in U.S. Registration No. 5263168, Applicant respectfully requests consideration of the following remarks and information.

"The basic principle in determining confusion between marks is that the marks must be *compared in their entirety* and must be considered *in connection with the particular goods or services* for which they are used." *In re National Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985); *see also Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 1007 (C.C.P.A. 1981). *Simply because two marks contain identical terms does not automatically render the marks similar for purposes of finding confusion.* *See Sears Mortgage Corp. v. Northeast Savings F.A.*, 24 U.S.P.Q.2d 1227 (T.T.A.B. 1992); *Interbank Card Ass'n v. U.S. Nat.'l Bank of Oregon*, 197 U.S.P.Q. 123 (TTAB 1977).

Further, there is no *per se* rule that goods or services sold in the same field or industry are similar or related for purposes of likelihood of confusion. See *Cooper Industries, Inc. v. Repcoparts USA, Inc.*, 218 USPQ 81, 84 (TTAB 1983); *Lloyd's Food Products, Inc. v. Eli's, Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993) (reversing likelihood of confusion cancellation of LLOYD'S for barbecued meats based on LLOYD's for restaurant services).

In response, Applicant has *deleted goods of "temperature indicators" and goods relating to "temperature indicators" in Class 009*. As such, the relevant goods of Applicant's mark in Class 009 are *neither identical to nor overlapping with* that of the cited Registration No. 5263168.

In addition, Applicant's mark is also for *Class 010* for relevant goods: *"thermometers for medical use, namely, body infrared thermometers, forehead infrared thermometers, and ear thermometers; electronic blood pressure monitors; electron clinical medical thermometers"*,

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which are not identified in the cited Registration No. 5263168. In other words, the identifications of goods of Applicant's mark in *Class 010* and the identification of goods of the cited Registration No. 5263168 are not related to a same or similar broad product category of goods.

Accordingly, applicant respectfully submits that the goods of Applicant's mark are distinctly dissimilar to that of the cited Registration No. 5263168, and respectfully requests *the Section 2(d) Refusal - Likelihood of Confusion*, be withdrawn.

In view of the foregoing, it is believed that Applicant's mark is in condition for allowance. Such allowance is respectfully requested.

If the Examining Attorney believes that there are any issues that can be resolved by a telephone conference, or that there are any informalities that can be corrected by an Examiner's amendment, please call the undersigned at 404-870-4688.

January 27, 2020

Respectfully submitted,
LOCKE LORD LLP



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