

Response to the Office Action

Mark: BETU (sn.88451879)

Applicant: Shenzhen BOKZIT Technology Co., Ltd.

This is the response to the refusal regarding likelihood of confusion between the mark BETU (sn.88451879) and BETU (rn.5602558). Applicant respectfully request the reconsideration for following reasons.

A. The goods are totally different

Applicant respectfully submits that the goods of the applied-for mark and the cited mark are totally different because they are not in competition nor complementary. As addressed in the Official Action, the goods of the applied-for mark are various toys, while the cited mark sells apparels. The examples the Examining Attorney found are rare cases among numerous brands regarding this issue. Average consumers would not go to toy shops to buy clothing, either go to clothing stores to buy toys. Either online or in physical store, toys and apparels would not commonly sell in the same department. As shown in the attached screenshot of several major shopping websites, when shopping online, toys and apparel are allocated to different categorizes. Therefore, although the applied-for mark shares the same wording with the cited mark, the names would not raise the likelihood of confusion for consumers.

For reference, the identification of the goods in the application BETU (sn.88451879):

Bubble making wand and solution sets; Chess games; Christmas tree ornaments and decorations; Controllers for game consoles; Controllers for toy cars, planes, ships, boats, drones, animals; Cube-type puzzles; Dice; Dolls; Electronic educational game machines for children; Electronic learning toys; Game apparatus, namely, bases, bats, and balls for playing indoor and outdoor games; Gaming equipment, namely, playing cards, chips, gaming tables and gaming cloths; Kites; Puzzles; Scale model kits; Talking dolls; Toy cameras; Toy cars; Toy drones; Toy models; Toy vehicles; Toys for domestic pets; Video game machines; Scale model airplanes; Toy building blocks.

The identification of the goods in the registration BETU (rn.5602558):

Anklets; Apparel for dancers, namely, tee shirts, sweatshirts, pants, leggings, shorts and jackets; Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Babies' pants; Babies' trousers; Baby tops; Belts; Bottoms as clothing; Bras; Business wear, namely, suits, jackets, trousers, blazers, blouses, shirts, skirts, dresses and footwear; Camisoles; Caps being headwear; Coats; Down jackets; Formalwear, namely, dresses, gowns, tuxedos, dinner jackets, trousers and footwear; Hats; Headwear; Jeans; Knitwear, namely, shirts, dresses, sweaters; Outerwear, namely, coats, hats, gloves; Pajamas; Pants; Scarves; Shapewear, namely, girdles, bras; Shawls and stoles; Shirts; Shoes; Skirts and dresses; Sun protective clothing, namely, shirts, pants; Sweaters; T-shirts; Thermal underwear; Tops as clothing.

B. Average consumer's degree of attention should be properly considered.

Toys and clothing are mass-consumption goods, the relevant public of which is made up of average consumers who are deemed to be reasonably well-informed, attentive, and circumspect. Because the goods of the application and the registration are displayed, sold in different departments, it should be clear that for average consumers, these two marks would not raise any likelihood of confusion.

C. The absolute protection of a name would be an interference to the healthy running of the market.

Denying registration on grounds of mere identical spelling, when the products under the marks are so different, would be a hindrance to a healthy competition. As stated above, the goods are not commonly related, competitive or complementary. The refusal of this application would be an allowance to a over broad protection of a name, which would result to monopoly and waste of resources.

On the reasons stated above, applicant respectfully request the reconsideration of the mark BETU (sn.88451879).