

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE.

Applicant : Ionic Blu LLC  
Serial No. : 88/497,840 Examiner: Suzanne Blane  
Filed : July 2, 2019 Law Office: 114  
Mark : BLU

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

APPLICANT'S RESPONSE TO OFFICE ACTION DATED SEPTEMBER 26, 2019

Applicant respectfully disagrees with the Examiner's Section 2(d) refusal in which the registration for **RedoBlu** is cited. Applicant submits that the marks are different in sound, meaning and commercial impression, and the degree of care exercised by consumers of the Applicant's goods and those in the prior filed application is heightened to a degree that consumers will readily distinguish the marks.

Application Serial No. 86813903, for BLUE, has been abandoned. As such, Applicant requests that the prior pending application notice be withdrawn.

1. The Marks are Dissimilar and the Goods/Services are Unrelated


Applicant respectfully contends that BLU ("Applicant's Mark") for "Application software for mobile devices for connecting the mobile device with a Bluetooth enabled tooth brush for assisting the user with brushing their teeth" (the "Applicant's Goods") does not resemble in sound, appearance or commercial impression to the mark **RedoBlu** (the "Cited Mark") for among many other items "toothbrushes" (the "Cited Goods").

Nor is registration of Applicant's Mark likely to cause confusion, or to cause mistake, or to deceive. An examination of the relevant factors under TMEP §1207 and *In re E.I. du Pont de Nemours & Co.*, 177 USPQ 563, 567 (C.C.P.A. 1973), warrants the conclusion that Applicant's Mark cannot be said to so resemble the Cited Mark that it is likely to cause confusion, or to cause mistake, or to deceive given careful consideration of the differences between: (i) the marks themselves, especially in light of the differences in sound, appearance and commercial impression; (ii) the parties' respective goods; and (iii) the sophistication of the relevant consumers.

A. The Appearance of the Marks is Highly Dissimilar

Applicant's Mark is a single-word mark. The Cited Mark is a two-word mark that includes a distinctive design element and includes the description “The mark consists of the following: the words "RED" and "BLU" in the color black on either side of a circle and the circle with the left half in red and the right half in blue.”. The fact that both Applicant's Mark and the Cited Mark include a single common word, BLU, is an insufficient basis for finding a likelihood of confusion. It is well-settled that marks should be viewed in their entirety. *See, J Thomas McCarthy, McCarthy on Trademarks and Unfair Competition*, §23.41. The Board has repeatedly concluded that when viewed in their entirety, marks that share a common term are, nonetheless, found to be dissimilar.

B. Cited Mark Includes Additional Distinctive Matter

Applicant's Mark includes the term “RED” and a design of a circle and the circle with the left half in red and the right half in blue, ” which is a highly distinctive design and provides a significant visual difference and commercial impression. The circle further emphasizes the two colors of the word mark, red and blue. This further helps to avoid any likelihood of confusion.

Adding additional distinctive matter helps consumers to distinguish the Cited Mark and the Cited Applications from the Applicant's Mark. As such, the stylized elements to the Cited Mark obviates any likelihood of confusion concerns as it significantly assists customers in distinguishing the marks.

C. The Goods are Unrelated

Applicant's Goods are unrelated to the Cited Goods. Applicant's goods include application software for mobile devices for connecting the mobile device with a Bluetooth enabled tooth brush for assisting the user with brushing their teeth.

Upon investigation of the website for the Cited Mark, the company am.pm that owns this registration, does not offer toothbrushes for sale. Rather they offer only bathroom fixtures. As such, Applicant submits, given the commercial reality of the goods at issue, it is not just unlikely, but almost inconceivable that the respective relevant consumers would mistakenly believe that the parties' goods originate from the same source or that a connection or sponsorship exists when faced with the Cited Mark versus Applicant's Mark.