

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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**In re Sejal Patel**

**Serial No. 88342239**

**Filed: April 13, 2020**

**For Mark: ARJA**

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**RESPONSE TO OFFICE  
ACTION DATED  
MARCH 13, 2020**

**Attention:** Inga Ervin, Esq., Examining Attorney, Law Office 111

**RESPONSE**

Sejal Patel (“Applicant”) hereby responds to the Office Action dated March 13, 2020, in connection with the above-referenced trademark application (“Applicant’s Application”) for the standard character mark ARJA (“Applicant’s Mark”).

**REMARKS**

Applicant thanks the Trademark Attorney for her review of the application on ARJA and for issuance of the above-mentioned Office Action. In the Office Action, the Examining Attorney has issued a refusal based on a likelihood of confusion with U.S. Registration No. 5958724 for the stylized mark with the literal elements ARGAMAKE MOMENTS COUNT (“the Cited Registration”). This written response addresses likelihood of confusion in light of Applicant’s amendments to her identification of goods and services, which were submitted electronically. For the reasons set forth below, Applicant respectfully submits that her “ARJA”

mark as applied to the amended identification of goods and services set forth in her response, is sufficiently different from the mark in the Cited Registration that confusion is not likely to occur.

In determining whether there is confusing similarity between two marks, a two-part test is applied. First, one must look at the marks themselves in their totality for similarities in appearance, sound, connotation, and commercial impression. *In re E.I. DuPont de Nemours & Co.*, 476 F.2d 1357 (C.C.P.A. 1973). Second, the goods must be compared to determine if they are related or if the activities surrounding their marketing are such that confusion as to origin, association, or sponsorship is likely. *In re August Storck K.G.*, 218 U.S.P.Q. 823 (T.T.A.B. 1983); *In re International Tel. and Tel. Corp.*, 197 U.S.P.Q. 910 (T.T.A.B. 1978); *Guardian Prods. Co. v. Scott Paper Co.*, 200 U.S.P.Q. 738 (T.T.A.B. 1978).

#### **I. The Marks Are Different**

Applicant submits there are important differences between the marks in appearance and sound that, when considered together, distinguish the overall commercial impressions and render confusion unlikely.

Applicant seeks registration of ARJA in standard characters. The registered mark is a stylized mark with literal elements. While Applicant's Mark and the literal elements of the registered mark have certain letters in common, the marks consist of entirely different words and are different in appearance. In particular, Applicant's Mark, ARJA, consists of one word totaling four letters. In contrast, the literal elements of the registered mark, ARGA MAKE MOMENTS COUNT, consist of four words totaling twenty letters. In addition, Applicant's Mark, ARJA, contains the distinguishing letter "J" in the third position. In contrast, the registered mark contains the entirely different word ARGA with a letter "G" in the third position. The Federal Circuit has held that when the spelling of a mark is different, it can create a different overall

commercial impression. *See Citigroup Inc., v. Capital City Bank Grp., Inc.*, 637 F.3d 1344 (Fed. Cir. 2011) (CITIBANK and CAPITAL CITY BANK are not similar enough to cause likelihood of confusion); *Champagne Louis Roederer, S.A. v. Delicato Vineyards*, 148 F.3d 1373, 1374-75 (Fed. Cir. 1998) (Finding no likelihood of confusion between CRISTAL and CRYSTAL CREEK). Likewise, here, the difference between the letter “J” in ARJA and the letter “G” in the ARGA portion of the registered mark are sufficient to avoid consumer confusion.

In addition to the differences in appearance discussed above, Applicant’s Mark and the registered mark are phonetically different. The first word of the registered mark, ARGA, has a “G” followed by an “A,” which, pursuant to English phonics rules, is pronounced with a hard “G” sound like “gas.” Applicant’s mark, ARJA, is pronounced entirely different, with a soft “J” sound like “jam.” Moreover, the registered mark contains the additional words MAKE MOMENTS COUNT, which significantly differentiate the pronunciation of these marks. As such, the respective marks are phonetically different.

In light of the visual and phonetic differences between Applicant’s Mark and the registered mark, Applicant submits that the overall commercial impressions of the respective marks can be easily distinguished by consumers.

## **II. The Respective Goods and Services Are Different**

The Applicant’s goods and services are not similar enough to the goods and services in the Cited Registration to create a likelihood of confusion. As made clear in Applicant’s amendments to her identification of goods and services, Applicant’s products are highly specialized plant-based, vegan non-medicated skin care preparations, beauty soap, and cosmetics for adults and children. The highly specialized nature of Applicant’s goods does not support a

likelihood of confusion given the other important factors weighing against likelihood of confusion discussed herein.

In addition, Applicant notes that the goods covered by the Cited Registration are likely to be designed for use in bathtubs, hot tubs, hydrotherapy baths, spa baths, and whirlpools as suggested by the Registrant, Jacuzzi Europe Spa Joint Stock Company Italy S.S., and the other classes of goods and services in the Cited Registration (International Class 11 for the following goods: “Bathtubs; Hot tubs; Hydrotherapy baths; Spa baths being vessels; Whirlpool-jet installations; Fittings for massage baths, namely, faucets... and International Class 35 for the following services: “Promoting the sale of bath tubs, hydromassage pools, hydrotherapy baths and spa baths through promotional contests and the distribution of related printed material”).

Although Applicant’s and the Cited Registration’s services are both in International Class 35, this class is very broad. Furthermore, there is no overlap between the services listed in Applicant’s description of services and the description of services in the Cited Registration.

The Cited Registration is for use in International Class 35 for the following services: “Promoting the sale of bath tubs, hydromassage pools, hydrotherapy baths and spa baths through promotional contests and the distribution of related printed material.” Applicant has amended the identification of her services in International Class 35 to “On-line wholesale and retail store services featuring plant-based, vegan non-medicated skin care preparations, beauty soap, and cosmetics for adults and children.” The description of services in the Cited Registration is very different than the description of Applicant’s services.

### **CONCLUSION**

Based on the foregoing, Applicant respectfully requests that the Examining Attorney pass the subject application to publication.

Date: April 13, 2020

Respectfully submitted,

/s/ Margaret Scoolidge

Margaret Scoolidge

*Attorney of Record*