

## Issue Presented

Is a chemical solution of urea and deionized water used for environmental compliance related to stamped, machined, and welded high performance motorcycle parts?

## Short Answer

Where there is no similarity of goods, there can be no likelihood of confusion.

For the reasons we will explain, this is not a case of complimentary products like toothbrushes and toothpaste, or even of arguably related products such as toothbrushes and water glasses. Instead, it is a case of products that are as different from one another as toothbrushes are from grass fertilizer.

## The Law

In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

But if the goods are completely dissimilar, there is no likelihood of confusion. As the Board noted in *Standard Knitting, Ltd. v. Toyota Jidosha Kabushiki Kaisha* Opposition No. 91116242, page 35:

We turn then to the question of whether applicant's goods and opposer's goods are sufficiently related and/or whether the circumstances surrounding the marketing of the goods are such that purchasers encountering them would, in view of the similarity of the marks, mistakenly believe that the goods emanate from the same source. See *Monsanto Co. v. Enviro-Chem Corp.*, 199 USPQ 590 (TTAB 1978); and *In re International Telephone & Telegraph Corp.*, 197 USPQ 910 (TTAB 1978). Even if the marks are identical, if these conditions do not exist, confusion is not likely to occur. See, e.g., *Nautilus Group Inc. v. ICON Health and Fitness Inc.*, 71 USPQ2d 1173, 1185 (Fed. Cir. 2004); *In re Unilever Limited*, 222 USPQ 981 (TTAB 1984); and *In re Fesco, Inc.*, 219 USPQ 437 (TTAB 1983).

In other words, if there is no similarity of goods, there can be no likelihood of confusion.

## No Similarity Of Goods

Applicant's goods are a chemical product used in diesel powered vehicles, primarily trucks, as an emission aftertreatment to convert nitrogen oxide into harmless nitrogen and water vapor. they are not used to treat gasoline emissions.

The registrant's goods are mufflers and exhaust pipes for high performance motorcycles.

The Examining Attorney has assumed that these products are "...similar or complimentary in terms of purpose of function.." In support of this assumption, the Examining Attorney refers to internet evidence, consisting of third party sites: SC Fuels and Discover DEF. While the Examiner's evidence discusses diesel exhaust fluid, it does so primarily in the context of heavy-duty trucks. Neither article relied on by the Examining to show relatedness of goods makes any

reference to motorcycles. And for good reason. Diesel engines produce too much vibration and they are too noisy for use in light vehicles, such as motorcycles.

Please refer to the following:

The screenshot shows a Google search for "diesel motorcycles". The search bar contains the text "diesel motorcycles". Below the search bar, there are three video thumbnails:

- 6 Stock Diesel-Powered Bikes You May Not Know** (5:56) by VisioRacer, YouTube - Aug 27, 2017.
- Crazy Turbo Diesel Motorcycle You have NEVER seen** (7:50) by Motorbikes Style, YouTube - Jun 16, 2019.
- Motorcycles with DIESEL Engines** (10:13) by Motorcycles Special, YouTube - Aug 30, 2017.

Below the video results is a "People also ask" section with the following questions and answers:

- Are there any diesel motorcycles?** (dropdown arrow)
- Why are there no diesel motorcycles?** (dropdown arrow)  
Due to the high compression ratio, the **diesel** engine produces more vibration and noise than the Petrol engine. It is not possible for a light vehicle to withstand these high vibrations and noise. This is why **diesel** engines are not used in a **motorcycle**.  
www.quora.com › Are-there-any-diesel-bikes-in-the-mark...  
[Are there any diesel bikes in the market now? If no, then why? - Quora](#)
- Do motorcycles use diesel or petrol?** (dropdown arrow)
- What happens if you put diesel in a motorcycle?** (dropdown arrow)

Since diesel engines are not used in high performance motorcycles, the goods are not complimentary.

Applicant's goods are liquid reducing agents composed of urea and water for use in selective catalytic reduction for diesel exhaust systems. They are chemical products manufactured in a chemical type facility where quality and chemical component risks can be tightly controlled.

Registrant's goods are high performance motorcycle parts, namely exhaust systems comprised of mufflers and exhaust parts. These products are stamped, machined, and welded. The manufacturing process creates debris and fire risks.

A chemical plant and a metal stamping facility are different operations. One utilizes scientific knowledge, while the other employs the mechanical arts. They are not interchangeable and they do not perform the same or even related processes. A chemical plant is as different from a metal stamping facility as fertilizer plant is from a toothbrush factory. There is no relationship between the producers of these products.

The lack of a relationship between these goods is confirmed by the USPTO's own records. In a search of the millions of filings on the USPTO database, we were unable to locate a single filing specifically claiming both motorcycle exhausts and diesel exhaust fluid. Put another way, according to our findings, never in the history of the USPTO has a single applicant specifically claimed Registrant's and Applicant's goods in the same application!

Here are details of our searches:

[LESS HOME](#)
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[BROWSE DICT](#)
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List At:  OR  to record:  **31 Records(s) found (This page: 1**

Refine Search

Current Search: S1:  docs: 31 occ: 547

	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
1	88284223	6040015	BLUE-POINT	TSDR	LIVE
2	88143460		D	TSDR	LIVE
3	88143418		DELPHI TECHNOLOGIES	TSDR	LIVE
4	88569435		M MOTOMASTER OEPLUS	TSDR	LIVE
5	88569428		M MOTOMASTER NAUTILUS	TSDR	LIVE
6	88569424		MOTOMASTER	TSDR	LIVE
7	88569417		M MOTOMASTER	TSDR	LIVE
8	88569394		M MOTOMASTER ELIMINATOR	TSDR	LIVE
9	88569597		M	TSDR	LIVE
10	86016381		WMTEC	TSDR	LIVE
11	86016371		WM	TSDR	LIVE
12	86906531		AUTOPRO	TSDR	LIVE
13	86206886	4740370	WPD	TSDR	LIVE
14	79119411	4402165	FIBA BASKETBALL WORLD CUP	TSDR	LIVE
15	79036533	3606147		TSDR	LIVE
16	79102247	4423458		TSDR	LIVE
17	79220137		VIDAXL.COM	TSDR	LIVE
18	79275217		A	TSDR	LIVE
19	79271035			TSDR	LIVE
20	79270582		SKODA	TSDR	LIVE
21	79009600	3587198	F 1	TSDR	DEAD
22	79036332	3676542	REHAU	TSDR	LIVE
23	79035928	3676540	REHAU	TSDR	LIVE
24	79036719	3673089	REHAU QUALITY	TSDR	LIVE
25	79154541	5061343	G-ENERGY	TSDR	LIVE
26	79202997	5563057	SEALEY	TSDR	LIVE

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Start List At:  OR Jump to record:  **30 Records(s) found (This page: 1**

Refine Search (motorcycle and diesel and exhaust and fluid)[gs] and  Submit

Current Search: S1: (motorcycle and diesel and exhaust and fluid)[gs] and "001"[ic] and "007"[ic] docs: 30 occ: 536

	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
1	88284223	6040015	BLUE-POINT	TSDR	LIVE
2	88143460		D	TSDR	LIVE
3	88143418		DELPHI TECHNOLOGIES	TSDR	LIVE
4	88569435		M MOTOMASTER OEPLUS	TSDR	LIVE
5	88569428		M MOTOMASTER NAUTILUS	TSDR	LIVE
6	88569424		MOTOMASTER	TSDR	LIVE
7	88569417		M MOTOMASTER	TSDR	LIVE
8	88569394		M MOTOMASTER ELIMINATOR	TSDR	LIVE
9	88569597		M	TSDR	LIVE
10	86016381		WMTEC	TSDR	LIVE
11	86016371		WM	TSDR	LIVE
12	86906531		AUTOPRO	TSDR	LIVE
13	86206886	4740370	WPD	TSDR	LIVE
14	79036533	3606147		TSDR	LIVE
15	79268094		ALCONA	TSDR	LIVE
16	79102247	4423458		TSDR	LIVE
17	79220137		VIDAXL.COM	TSDR	LIVE
18	79275217		A	TSDR	LIVE
19	79271035			TSDR	LIVE
20	79270582		SKODA	TSDR	LIVE
21	79009600	3587198	F 1	TSDR	DEAD
22	79036332	3676542	REHAU	TSDR	LIVE
23	79035928	3676540	REHAU	TSDR	LIVE
24	79036719	3673089	REHAU QUALITY	TSDR	LIVE

Accordingly, not only does the evidence produced by the Examining Attorney fail to show that Applicant’s chemical treatments and Registrant’s motorcycle parts are complimentary, but the USPTO records speak loudly and clearly to the lack of any relationship between the two lines.

Moreover, Registrant’s goods are sold to sophisticated consumers, For instance, nether the writer, nor – based on this Office Action – would the Examining Attorney have the first idea how to go about replacing a muffler or exhaust pipe on a high performance motorcycle. Accordingly, we can reasonably conclude that registrant’s motorcycle parts are the type of products purchased only by motorcycle mechanics and motorcycle enthusiasts. These knowledgeable consumers will understand that not only are Registrant’s goods not complimentary to Applicant’s, but they will appreciate that that there is no relationship between them.

Although not pcedental, In re Hyundai Motor America, Serial 7889340, the TTAB reached a decision on all fours with Applicant’s argument here and found that applicant’s automobiles were not related to registrant’s “automotive tires.” The Board noted,

“[w]e are not concerned with mere theoretical possibilities of confusion, deception, or mistake or with de minimis situations but with the practicalities of the commercial world, with which the trademark laws deal.” *Electronic Design & Sales Inc. v. Electronic Data Systems Corp.*, 954 F.2d 713, 21 USPQ2d 1388, 1391 (Fed. Cir. 1992).

#### Conclusion

While the marks themselves may be identical, the goods claimed are not used together and are not complimentary. They are not manufactured in the same facilities and there is no evidence that they emanate from the same sources. The purchasers of Registrant’s goods are sophisticated consumers who will understand the clear demarcation between these goods, their function, and their purveyors. For the foregoing reasons, even though the marks are identical, because the goods are as dissimilar as toothbrushes are from grass fertilizer, confusion is not likely to occur.

Applicant respectfully requests that the applied for mark be approved for publication.