

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)	
)	
Fortran Traffic Systems Limited)	Examining Attorney
)	
Serial No.: 88/715,923)	James T. Griffin
)	
Filing Date: December 5, 2019)	Law Office 103
)	
Mark: VECTOR)	

AMENDMENT AND RESPONSE

This filing is responsive to the Examining Attorney’s Office Action dated March 4, 2020.

I. AMENDMENT TO THE IDENTIFICATION OF GOODS

Applicant hereby requests to amend the identification of goods to the following:

Class 9: Traffic detection hardware and traffic detection systems comprised of transponders and electronic terminals for tolling detection, high occupancy tolling and vehicle occupancy detection.

II. NO LIKELIHOOD OF CONFUSION BETWEEN THE SUBJECT APPLICATION AND THE CITED REGISTRATION

Registration was refused under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), on the grounds that Applicant's mark **VECTOR** for “Traffic detection hardware and systems namely, transponders, tolling detection, high occupancy tolling and vehicle occupancy detection” (Class 9) (“Applicant’s Mark”) so closely resembles U.S. Registration No. 4169365 for the mark the **VANTAGE VECTOR** used in connection with “Electronic traffic detection systems and equipment comprised of analog or digital cameras and radar detection systems, processors and input/output ports to detect the presence and motion characteristics of vehicles and traffic on roadways and intersections, and to provide outputs to traffic signal controllers, traffic management

systems, or traffic information systems.” (Class 9) (“Cited Mark”), as to be likely to cause confusion.

For the reasons set forth below, the Applicant respectfully disagrees with the refusal to register and requests that the Examining Attorney withdrawal the refusal.

In determining the issue of likelihood of confusion, the Trademark Office must consider the thirteen evidentiary factors listed in *In re E. I. DuPont DeNemours & Co.*, 476 F.2d 1357, 177 U.S.P.Q. 563, 567 (C.C.P.A. 1973) which are of record and pertinent to the case. Depending on the facts of the case, the weight given to each factor may vary. *Nina Ricci S.A.R.L. v. E.T.F. Enterprises, Inc.*, 889 F.2d 1070, 12 U.S.P.Q.2d 1901 (Fed.Cir. 1989), *rev'g*, 9 U.S.P.Q.2d 1061 (T.T.A.B. 1988); and *In re E. I. DuPont DeNemours & Co*, *supra*. In this case, the following factors listed in the *DuPont* case are relevant: 1) the similarity or dissimilarity between the marks; and 2) the similarity or dissimilarity of the goods.

A. The Dissimilarity of the Marks.

The Examiner cites the mark **VANTAGE VECTOR** (Reg. No. 4169365) as a bar to registration of Applicant’s **VECTOR** mark. However, the Cited Mark is sufficiently different in appearance and sound that there is no likelihood of confusion. The Examiner argues that “Applicant’s mark is identical to the VECTOR portion of the cited registration”(emphasis added). While the subject marks contain an identical term, the initial beginnings of the marks seen by the customer are different- i.e. VANTAGE vs. VECTOR. Case law is clear that merely having similar words in a mark does not necessarily make the overall marks similar. See *Mejia & Assoc. Inc. v. IBM Corp.*, 920 F. Supp. 540, 547 (S.D.N.Y. 1996) (“[M]arks are not ‘similar’ for purposes of assessing likelihood of confusion simply because they contain an identical or nearly identical word.”). More or less weight can be given to a particular part of a mark “provided the ultimate

conclusion rests on consideration of the marks in their entireties.” *In re National Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 750-751 (Fed. Cir. 1985). Thus, the additional word “VANTAGE” in the Cited Mark must be taken into account when evaluating a likelihood of confusion. It is significant that the **house mark** VANTAGE is located at the beginning of the Cited Mark, and this fact should not be simply ignored during a likelihood of confusion assessment. While the Examiner has added that VECTOR is a strong mark, it is without dispute that a house mark will be stronger and more memorable than an additional term added to the house mark. Moreover, the fact that the dominant part of the cited registrant’s mark is at the beginning of its mark, ensure that will be the memorable part of the Cited Mark. Since the cited registrant is clearly trying to establish a “family” of VANTAGE marks, this term will never be dropped from the Cited Mark, and accordingly, the risk of confusion is low.

Accordingly, the dissimilarity of the marks is a factor that weighs against a finding of a likelihood of confusion.

B. The Dissimilarity of the Goods.

The Examiner argues that “[t]he goods are identical, at least in part, as both applicant and registrant make traffic detection systems.” However, this assessment does not take into consideration that the parties’ traffic systems have different functions and purposes.

As should be made clear by the amendment to the identification of goods in the subject Application, the nature of the parties’ goods differ. The Cited Mark is used in connection with systems used by traffic signal controllers to use in traffic flow management, while Applicant’s Mark is intended to be used in connection with traffic detection systems with the purpose of vehicle occupancy detection and the related services of high occupancy tolling and tolling detection.

Thus, Applicant's goods differ from, and are not encompassed within, the goods listed in the cited registration. Moreover, the goods provide different information and are used for different purposes.

Accordingly, the dissimilarity of goods is a factor that weighs strongly against a finding of a likelihood of confusion.

III FOREIGN REGISTRATION

The foreign registration cited in Applicant's priority claim has not yet matured to registration. Accordingly, Applicant requests that the subject application be suspended until that registration has issued.

IV. CONCLUSION

Applicant respectfully submits that it has demonstrated that the Section 2(d) refusal should be withdrawn in this particular case, and requests that the refusal be withdrawn and the application be suspended pending submission of the foreign registration.

Respectfully submitted,

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