

REMARKS

In response to the Office Action dated April 30, 2020, please enter this Amendment and reconsider this application in view of the amendments and the remarks provided herein. The April 30, 2020 Office Action raised the following issues, namely: (1) the definiteness of Applicant's identification of the goods; (2) an alleged likelihood of confusion issue with respect to the mark found in U.S. Trademark Registration No. 4777263; and (3) an information requirement about Applicant's goods. Applicant is addressing each of these issues raised in the Office Action by this response.

I. IDENTIFICATION OF THE GOODS ISSUE IS ADDRESSED.

Applicant expresses appreciation for the guidance in the Office Action regarding Applicant's identification of the goods. Applicant is amending its identification of the goods patterned after the suggestions made in the Office Action and to reflect terminology used in the marketplace, to be acceptably definite, and to satisfy the requirements raised in the Office Action. Thus, no further action by Applicant is believed necessary regarding Applicant's identification of the goods for this application.

II. ADDITIONAL EVIDENCE ESTABLISHES THERE IS NO LIKELIHOOD OF CONFUSION UNDER § 2(d) BETWEEN THE APPLIED FOR MARK AND THE MARK IN U.S. REGISTRATION NO. 4777263.

A. Confusion Between the Marks Must Be Probable, Not Just Possible

For confusion to be likely, the confusion must be probable. It is irrelevant that the confusion is merely possible. *Electronic Data Sys. Corp. v. EDSA Micro Corp.*, 23 U.S.P.Q.2d 1460, 1465 (T.T.A.B. 1992) and *Rodeo Collection, Ltd. v. West Seventh*, U.S.P.Q.2d 1204, 1206 (9th Cir. 1987) ("probable, not simply a possibility").

The Office Action presented no *evidence* that confusion between Applicant's HONEYBADGER mark and the Registrant's mark is probable. Applicant is now providing evidence that confusion is not probable, and for that reason Applicant respectfully requests the §2(d) refusal be withdrawn.

B. DuPont Factors

It will be appreciated that the registration of a trademark is determined by whether there is "likelihood of confusion" between the applied for mark and another previously registered trademark in the minds of the consuming public. A determination that there is a likelihood of confusion focuses on whether the purchasing public would mistakenly assume that the junior user's goods or services originate from the same source as, or are associated with, the goods or services of the senior user. That determination is made on a case-by-case basis, aided by the application of the factors set out in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Those *du Pont* factors are:

1. The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation, and commercial impression.
2. The similarity or dissimilarity and nature of the goods . . . described in an application or registration or in connection with which a prior mark is in use.
3. The similarity or dissimilarity of established, likely-to-continue trade channels.
4. The conditions under which and buyers to whom sales are made, i.e. “impulse” vs. careful, sophisticated purchasing.
5. The fame of the prior mark.
6. The number and nature of similar marks in use on similar goods.
7. The nature and extent of any actual confusion.
8. The length of time during and the conditions under which there has been concurrent use without evidence of actual confusion.
9. The variety of goods on which a mark is or is not used.
10. The market interface between the applicant and the owner of a prior mark.
11. The extent to which applicant has a right to exclude others from use of its mark on its goods.
12. The extent of potential confusion.
13. Any other established fact probative of the effect of use.

Not all of the DuPont factors may be relevant or of equal weight in a given case and “any one of the factors may control a particular case.” *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1406-07, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997). Although the weight given to the relevant *du Pont* factors may vary, the first two factors are key considerations in any likelihood of confusion determination, namely: (1) the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation, and commercial impression; and (2) the similarity or dissimilarity and nature of the goods . . . described in the application or registration. *See In re Iolo Techs., LLC*, 95 USPQ2d 1498, 1499 (TTAB 2010); *In re Max Capital Grp. Ltd.*, 93 USPQ2d 1243, 1244 (TTAB 2010). Applicant is now providing the following new facts and evidence that further demonstrates there is no likelihood of confusion between Applicant’s HONEYBADGER mark and registrant’s mark.

Applicant submits that due to the differences between (1) Applicant’s mark and Registrant’s mark, (2) Applicant’s goods and registrant’s goods, (3) the conditions under which and buyers to whom sales are made, i.e. “impulse” vs. careful, sophisticated purchasing, and (4) the channels of trade through which the goods move, there is no likelihood of confusion and the §2(d) refusal should be withdrawn. Still further, another established fact probative of the effect of use of the HONEYBADGER mark is that there are many coexisting trademark registrations for identical marks in International Class 12, where one mark is directed to a motor vehicle, while the other third-party mark is directed to a part of the motor vehicle. For the above reasons, there is no likelihood of confusion in this case.

Applicant’s applied for mark is HONEYBADGER for use in connection with “Land vehicles with electric drive trains; Trucks with electric drive trains; Pickup trucks with electric drive trains.”

The mark in Registration No. 4777263 is HONEYBADGER for use in connection with “Automobile bumpers; Steps for attachment to land vehicles.”

1. Comparison of the Marks

In comparing the marks under the first DuPont factor, the anti-dissection rule requires that marks must be compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1321, 110 USPQ2d 1157, 1160 (Fed. Cir. 2014) (*quoting Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1371, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005)); TMEP §1207.01(b)-(b)(v).

While Applicant’s HONEYBADGER mark and registrant’s HONEYBADGER mark may be viewed as being the same, the likelihood of confusion inquiry does not stop with that similarity. Applicant notes there are several other reasons and dissimilarities that avoid any potential for confusion.

Applicant notes that there are 56 trademark applications and registrations for marks containing the HONEY BADGER name across several International Classes. *See* Exhibit A. Accordingly, there is widespread use of HONEY BADGER formative marks that co-exist with each other without creating a likelihood of confusion in the marketplace.

For example, there are several HONEY BADGER RACING marks for use on a wide variety of goods and services, such as, *inter alia*, clothing, hats, decals, promotional sponsorship of auto racing activities, financial sponsorship of auto racing and sales, and providing a website featuring information relating to the sport of racing. Those HONEY BADGER RACING marks seem to peacefully co-exist with a HONEYBADGER mark that is registered for use in connection with, *inter alia*, advertising services, namely, promoting and marketing the goods and services of others through all public communication means; and advertising services, public relations and marketing services, namely, promoting and marketing the goods and services of others through all public communication means. The HONEYBADGER mark’s recitation of the services is broad enough to encompass “promoting sponsorship of auto racing activities,” which is registered in connection with the HONEY BADGER RACING marks. Despite that overlap, these marks co-exist on the Principal Register. Such comparisons could go on and on. As a result of the varied uses of the HONEY BADGER mark, each registrant using the HONEY BADGER mark is accorded a narrower scope of protection than would be afforded a fanciful or arbitrary mark with fewer third-party applications and registrations using the same mark. *See, e.g., In re Broadway Chicken Inc.*, 38 USPQ2d 1559, 1565-66 (TTAB 1996) (“Evidence of widespread third-party use, in a particular field, of marks containing a certain shared term is competent to suggest that purchasers have been conditioned to look to the other elements of the marks as a means of distinguishing the source of goods or services in the field.”); *Franklin Resources, Inc. v. Franklin Credit Management Corp.*, 988 F.Supp. 322, 328 (S.D.N.Y. 1997) (holding no likelihood of confusion between plaintiff’s “FRANKLIN” mark for mutual fund services vs. defendant’s “FRANKLIN CREDIT” mark for mortgage-related services in the context of multiple third party “FRANKLIN” marks, the court noting that third-party use “dilutes the strength of a trademark”); 4 MCCARTHY ON TRADEMARKS AND UNFAIR

COMPETITION, § 11:85 (“A mark that is hemmed in on all sides by similar marks on similar goods or services cannot be very ‘distinctive’ [...] [i]n a ‘crowded’ field of look-alike marks, each member of the crowd is relatively ‘weak’ in its ability to prevent use by others in the crowd.”); *One Idus., LLC v. Jim O’Neal Distrib., Inc.*, 578 F.3d 1154, 1164 (9th Cir. 2009) (“When similar marks permeate the marketplace, the strength of the mark decreases.”); *Eclipse Assocs. Ltd. v. Data Gen. Corp.*, 894 F.2d 1114 (9th Cir.1990)(“In a crowded field of similar marks, each member of the crowd is relatively weak in its ability to prevent use by others in the crowd.”).

Importantly and similar to the facts of this application, the TTAB held that where there are many related marks co-existing on the Principal Register, a mark in a similar field may co-exist with the other marks:

The co-existence of numerous related marks on the Principal Register demonstrates that the Trademark Office has implicitly recognized seagull/bird marks in Classes 25 and 35 represent a diluted field of marks. In this diluted field, marks are afforded only a narrow scope of protection. Variations among the marks, including different design features, the use of word versus design elements, ***or slight differences among the goods and services distinguish the marks***. Consumers rely on these variations and are able to successfully distinguish between the related bird marks When marks such as these have a narrow scope of protection, other uses in the same or similar field may come close to a weak mark and co-exist therewith. (Emphasis Added).

In Re Abercrombie & Fitch Trading Co., 2006 WL 1909820, at *5–6 (TTAB June 28, 2006); *see also, In re The Lucky Company*, 209 USPQ 422, 432 (TTAB 1980); *see also Jerrold Electronics Corp. v. The Magnavox Company*, 199 USPQ 751, 758 (TTAB 1978) (third-party registrations “reflect a belief, at least by the registrants, who would be most concerned about avoiding confusion and mistake, that various ‘STAR’ marks can coexist provided that there is a difference.”); *In Re Hartz Hotel Servs. Inc.*, 102 U.S.P.Q.2d 1150 (TTAB 2012)(“We presume that the owner of the cited registration did not have a problem with the registration of these third-party marks, as they all issued after the registration of the cited registrant’s registration without challenge by the registrant.”).

In this case, the USPTO is permitting many of the HONEY BADGER marks to co-exist with each other, despite the overlapping goods or services. Applicant respectfully submits it should not be treated differently. Thus, Applicant’s HONEYBADGER mark for use in connection with “Land vehicles with electric drive trains; Trucks with electric drive trains; Pickup trucks with electric drive trains should be allowed to co-exist with the HONEYBADGER mark for use in connection with “Automobile bumpers; Steps for attachment to land vehicles.”

2. Comparison of the Goods and Services

The second DuPont factor considers the differences between the goods and services at issue. TMEP 1207.01(a)(i) notes that “[t]he issue is not whether the goods and/or services will be

confused with each other, but rather whether the public will be confused as to their source. *See Recot Inc. v. M.C. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000).

Importantly, according to TMEP 1207.01(a)(i): “If the goods or services in question are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source, then, even if the marks are identical, confusion is not likely.” *See, e.g., Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1371, 101 USPQ2d 1713, 1723 (Fed. Cir. 2012) (affirming the Board’s dismissal of opposer’s likelihood-of-confusion claim, noting “there is nothing in the record to suggest that a purchaser of test preparation materials who also purchases a luxury handbag would consider the goods to emanate from the same source” though both were offered under the COACH mark); *Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 1244-45, 73 USPQ2d 1350, 1356 (Fed. Cir. 2004) (reversing TTAB’s holding that contemporaneous use of RITZ for cooking and wine selection classes and RITZ for kitchen textiles is likely to cause confusion); *In re Thor Tech, Inc.*, 113 USPQ2d 1546, 1551 (TTAB 2015) (finding use of identical marks for towable trailers and trucks not likely to cause confusion given the difference in the nature of the goods and their channels of trade and the high degree of consumer care likely to be exercised by the relevant consumers); *Local Trademarks, Inc. v. Handy Boys Inc.*, 16 USPQ2d 1156, 1158 (TTAB 1990) (finding liquid drain opener and advertising services in the plumbing field to be such different goods and services that confusion as to their source is unlikely even if they are offered under the same marks); *Quartz Radiation Corp. v. Comm/Scope Co.*, 1 USPQ2d 1668, 1669 (TTAB 1986) (holding QR for coaxial cable and QR for various apparatus used in connection with photocopying, drafting, and blueprint machines not likely to cause confusion because of the differences between the parties’ respective goods in terms of their nature and purpose, how they are promoted, and who they are purchased by).

In this case, Applicant’s goods are unique and are significantly different than registrant’s goods, which are also unique. Registrant’s HONEYBADGER mark is used in connection with “Automobile bumpers; Steps for attachment to land vehicles.” Notably, Applicant’s goods are “Land vehicles with electric drive trains; Trucks with electric drive trains; Pickup trucks with electric drive trains.” The nature of Applicant’s goods, namely vehicles that include electric drive trains, renders Applicant’s goods being significantly different than “Automobile bumpers; Steps for attachment to land vehicles,” which notably are not the same as vehicles with electric drive trains. Thus, there is no overlap nor is there any indication or evidence presented in the Office Action that vehicles with electric drive trains are related to “Automobile bumpers; Steps for attachment to land vehicles.” Thus, Applicant respectfully submits that the goods in this case are sufficiently unique and distinct from each other that they would not be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source, such that even if the marks are identical, confusion is not likely. *See, e.g., Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1371, 101 USPQ2d 1713, 1723 (Fed. Cir. 2012).

3. The Conditions under which and Buyers to whom Sales are made, “Impulse” vs. Careful, Sophisticated Purchasing

Another important DuPont factor considers the conditions under which and buyers to whom sales are made, i.e., “impulse” vs. careful, sophisticated purchasing. MPEP 1207.01(d)(vii) states that circumstances suggesting care in purchasing minimizes the likelihood of confusion. *See, e.g., In re N.A.D., Inc.*, 754 F.2d 996, 999-1000, 224 USPQ 969, 971 (Fed. Cir. 1985) (concluding that, because only sophisticated purchasers exercising great care would purchase the relevant goods, there would be no likelihood of confusion merely because of the similarity between the marks NARCO and NARKOMED); *Primrose Ret. Cmtys., LLC v. Edward Rose Senior Living, LLC*, 122 USPQ2d 1030, 1039 (TTAB 2016) (finding that, “even in the case of the least sophisticated purchaser, a decision as important as choosing a senior living community will be made with some thought and research, even when made hastily”); *In re Homeland Vinyl Prods., Inc.*, 81 USPQ2d 1378, 1380, 1383 (TTAB 2006).

The Federal Circuit has held, in *Dynamics Research Corp. v. Langenau Mfg. Co.*, 704 F.2d 1575, 217 USPQ 649 (Fed.Cir.1983), that “because the marks are used on goods that are ‘quite different’ and sold to different, discriminating customers, there is no likelihood of confusion” even though both parties used the identical mark “DRC.” Even in cases where the purchasers are the same, which is not the case in here, the sophistication of those purchasers is important and often dispositive because “[s]ophisticated consumers may be expected to exercise greater care.” *Pignons S.A. de Mecanique de Precision v. Polaroid Corp.*, 657 F.2d 482, 489, 212 USPQ 246, 252 (1st Cir.1981). There is always less likelihood of confusion where goods are expensive and purchased after careful consideration. *Astra Pharmaceutical Prods. v. Beckman Instruments*, 718 F.2d 1201, 1206, 220 USPQ 786, 790 (1st Cir.1983). Thus, the likelihood of consumer confusion is substantially reduced between marks where the goods and/or services are expensive and purchased after careful consideration. Sophisticated consumers are expected to exercise greater care in making purchasing decisions, particularly when the goods being purchased are expensive goods. The rationale is that consumers do not want to throw away their money seeking the wrong product or service or even a counterfeit product or service and because of that will exercise greater care in making an expensive purchasing decision. When a purchaser exercises greater care in making purchasing decisions it is more likely that purchaser will notice (1) the differences between marks and the goods or services, and (2) the respective sources of those goods or services. Therefore, it is less likely the purchaser will be confused into believing that the goods or services of one party originate from another party.

In this case, Applicant’s goods are “Land vehicles with electric drive trains; Trucks with electric drive trains; Pickup trucks with electric drive trains.” Electric vehicles are known to have a more expensive purchase price because of the technology in each vehicle is costly, namely the battery arrays used to provide power. Another reason for the expense is the technology leads to increased longevity, including fuel and maintenance savings over time compared to that of a combustion engine vehicle, which must be maintained at more regular intervals. For example, Applicant’s website advertises a pickup truck with an electric drive train that uses electric batteries with a starting sales price at \$60,000; and a fuel cell electric vehicle with a starting sales price at \$80,000. Many purchasers of such vehicles are professional and highly informed consumers that are not easily deceived. There is no evidence provided in the Office Action to the contrary.

Additionally, the consumers of the Registrant's mark cited in the Office Action are also sophisticated purchasers who take great care in making purchasing decisions. Registrant's goods cited in the Office Action are "Automobile bumpers; Steps for attachment to land vehicles," which are fairly expensive when compared to "impulse" products, such as food items or relatively low-priced items.

Further, the purchasers of Applicant's goods are substantially different than the purchasers of the goods associated with Registrant's mark cited in the Office Action. Applicant's consumers are purchasers of vehicles with electric drive trains. Conversely, Registrant's purchasers are either aftermarket enthusiasts or repair shop owners/employees who use bumpers or steps for attachment to land vehicles to fix or upgrade an automobile or land vehicle. Due to these differences, confusion among the relevant purchasing public is avoided because the respective purchasers and potential purchasers are different and are sophisticated and knowledgeable. Thus, under a proper analysis of all the DuPont factors, any likelihood of confusion is avoided.

4. The Channels of Trade through which the Goods and Services Move are Different

Another important DuPont factor considers the differences in the established, likely to continue trade channels of the respective goods and services. As previously noted, Applicant's goods are vehicles with an electric drive train. The trade channels associated with electric vehicles are distinct and are sold to consumers of such vehicles. Applicant's trade channels are consistent with trade channels for vehicles with electric drive trains, which are sold through Applicant or through Applicant's authorized specialty dealers to consumers.

Conversely, the trade channels for Registrant's HONEY BADGER mark are consistent with customary trade channels for "Automobile bumpers; Steps for attachment to land vehicles." These bumpers and steps are sold to repair shops and aftermarket car enthusiasts, whether sold online or through retail channels, the trade channels are very different from Applicant's trade channels for vehicles with electric drive trains sold through Applicant directly or through Applicant's authorized specialty dealers to consumers.

Thus, the trade channels are sufficiently different that there is little, if any, likelihood in the minds of consumers that the goods of each party originate from the same source.

5. Other Established Fact(s) Probative of the Effect of Use

Another important DuPont factors considers any other established fact that is probative of the effect of use of the HONEYBADGER mark. In this case, there are many coexisting trademark registrations for identical marks in International Class 12, where one mark is directed to a motor vehicle while the other third-party mark is directed to a part of the motor vehicle. Applicant submits that the result is that consumers are accustomed to seeing identical trademarks for motor vehicles and parts for motor vehicles that are owned by different parties. In other

words, consumers are not confused, even by identical marks, that are used in connection with vehicles and parts for vehicles.

More specifically, the following are probative evidence that there is no likelihood of confusion in this case.

- RAPTOR, US Registration No. 4224601 for “motor vehicle parts and accessories, namely, steering wheels, and steering wheel installation kits composed primarily of die-cast metal hubs and screws with trim pieces, steering wheel covers, steering wheel stickers, steering wheel horn buttons and steering wheel horn button trim pieces” (IC 12). Registrant – Raptor Trading LLC DBA Raptor Steering Wheels.
- RAPTOR, US Registration No. 4109043 for “pick-up trucks for highway use” (IC 12). Registrant – Ford Motor Company.
- VIPER, US Registration No. 2153975 for “tires for automobiles” (IC 12). Registrant – Cooper Tire & Rubber Company Corporation.
- VIPER, US Registration No. 1800654 for “automobiles and structural parts therefor” (IC 12). Registrant – Chrysler Corporation.
- VIPER, US Registration No. 1756693 for “vehicular anti-theft and security systems; namely, remotely actuated, electronically-energized security hardware comprising door locks, actuators, audible alarms and parts therefor” (IC 12). Registrant – Directed Electronics, Inc.
- CHALLENGER, US Registration No. 3538635 for “automobiles and structural parts therefor” (IC 12). Registrant – Chrysler LLC.
- CHALLENGER, US Registration No. 4048888 for “horns for vehicles” (IC 12). Registrant – Wolo Manufacturing Corp.
- COMPASS, US Registration No. 4866853 for “tires” (IC 12). Registrant – The Goodyear Tire & Rubber Company.
- COMPASS, US Registration No. 3096252 for “motor vehicles, namely, automobiles and structural parts thereof” (IC 12). Registrant – Daimler Chrysler Corporation.
- GLADIATOR, US Registration No. 3592942 for “motor vehicles, namely, passenger sport utility concept vehicles and structural parts therefor” (IC 12). Registrant – Chrysler LLC.
- GLADIATOR, US Registration No. 2703109 for “tires” (IC 12). Registrant – Vortex China Holdings Inc.
- TITAN, US Registration No. 5771187 for “fuel line hoses for vehicles” (IC 12). Registrant – Titan Fittings LLC.

- TITAN, US Registration No. 3007624 for “motor vehicles, namely, on-road passenger trucks and structural parts therefor, excluding batteries, power supplies, and related equipment and accessories” (IC 12). Registrant – Nissan Motor Co. LTD.
- ATLAS, US Registration No. 5202310 for “automobiles; automobile engines” (IC 12). Registrant – Volkswagen.
- ATLAS, US Registration No. 2799390 for “vehicle seats” (IC 12). Registrant – Sears Manufacturing Company.
- ENCORE, US Registration No. 6043729 for “wheels for motor vehicles” (IC 12). Registrant – DB Motoring Group.
- ENCORE, US Registration No. 4342824 for “motor land vehicles, namely, automobiles and sport utility vehicles, both for consumer use only and not for industrial or construction use and not including lift trucks, pallet trucks, towing tractors, fork lift trucks, platform lift trucks, special application lift trucks, or stock picker trucks” (IC 12). Registrant – General Motors LLC.
- ADVENTURE, US Registration No. 5392466 for “motor vehicles, namely, automobiles” (IC 12). Registrant – Toyota Sales, USA, Inc.
- ADVENTURE, US Registration No. 5167637 for “vehicle parts, namely, rearview mirrors and doors” (IC 12). Registrant – Quadratec, Inc.
- SWIFT, US Registration No. 3782567 for “connectors for windshield wiper blades” (IC 12). Registrant – Trico Products Corporation.
- SWIFT, US Registration No. 1553646 for “automotive passenger utility vehicles” (IC 12). Registrant – American Suzuki Motor Corporation.

In addition to the above, the TTAB has held that automobiles and tires for automobiles are not closely related goods: “We thus find that automobiles and automobile tires are not closely-related goods given the current marketing conditions for the replacement tire industry and the totally disparate channels of trade between tires and automobiles.” *In re Hyundai Motor America*, 2009 WL 4086577, *6 (TTAB 2009). In that case, the TTAB reversed the final refusal of the Trademark Examining Attorney to register the mark ECHELON for “automobiles” in Class 12 on the basis of a registration for the identical mark ECHELON for “automotive tires” in Class 12. The Board pointed out that merely because auto parts are connected, does not mean that confusion is likely:

However, merely because two products are attached or used together does not necessarily mean they are closely related. Consumers do not purchase an automobile without tires, and then later go looking for tires. Nothing in this record points to a single source for automobiles and tires. Accordingly, there is no reason to presume such a perception on the part of consumers of automobiles. We find

nothing in the record to support a conclusion that automobiles and their tires are “closely related,” as that term is used in the jurisprudence developed around likelihood of confusion.

Id. at *3. The Board also found that “some of the largest auto manufacturers and the most well-known tire manufacturers readily permit the same mark to coexist for automobiles and automobile tires,” including those identified below:

Automobile Mark (Owner)	Tire Mark (Owner)
CHARGER (Dodge)	CHARGER (Kelly Tire)
EXPLORER (Ford)	EXPLORER (Kelly Tire)
NAVIGATOR (Lincoln)	NAVIGATOR (Kelly Tire)
PILOT (Honda)	PILOT (Michelin)
CONTINENTAL (Ford)	CONTINENTAL (Continental AG)
ASTRA (Saturn)	ASTRA (Continental Tire)
AVALANCHE (GM)	AVALANCHE (Hercules Tire)
GENESIS (Hyundai)	GENESIS (Treadways)
GRAND PRIX (GM)	GRAND PRIX RADIAL G/T (TBC)
HIGHLANDER (Toyota)	HI-LANDER (Goodyear)
LARAMIE (Chrysler)	LARAMIE (Treadways)
LEGACY (Toyota)	LEGACY (Big O)
LEGEND (Honda)	LEGEND (Treadways)
MAXIMA (Nissan)	MAXIMA (Continental Tire)
ODYSSEY (Honda)	ODYSSEY (Treadways)
PATRIOT (Honda)	PATRIOT (Michelin)
LE SABRE (GM)	6 SABRE (Treadways)
TRACKER (GM)	TRACKER (Goodyear)
VIPER (Chrysler)	VIPER (Cooper)
WRANGLER (Chrysler)	WRANGLER (Goodyear)

Id. at *4-6. The Board allowed registration because “[t]he automobile and tire industries clearly permit co-terminus use and open coexistence on the federal Trademark Register of substantially identical marks for vehicles and tires without any evidence anyone has been confused thereby.”

Id. at *5.

In this case, the USPTO is permitting several HONEYBADGER marks to co-exist with each other, despite overlapping goods or services. Applicant respectfully submits it should not be treated any differently. In addition, within the automobile industry co-terminus use and open coexistence on the federal Trademark Register of substantially identical marks for vehicles and other components of vehicles, such as tires, bumpers, steps, or otherwise, without any evidence anyone has been confused. Thus, Applicant’s HONEYBADGER mark for use in connection with “Land vehicles with electric drive trains; Trucks with electric drive trains; Pickup trucks with electric drive trains should be allowed to co-exist with the HONEYBADGER mark for use in connection with “Automobile bumpers; Steps for attachment to land vehicles.”

For the above reasons, Applicant respectfully requests that there is no likelihood of confusion in this case when all the DuPont factors and probative evidence is considered.

III. REQUEST FOR INFORMATION.

The Office Action requested additional information from Applicant to permit proper examination of the application. In response, Applicant is submitting additional product information about Applicant's goods to allow the Office to properly examine this application. More specifically, Applicant is providing a website printout with an advertisement including factual details relating to Applicant's applied for goods. Thus, no further action by Applicant is believed necessary to satisfy this requirement.

CONCLUSION

Due to a number of co-existing HONEYBADGER marks on the Principal Register, the existing HONEYBADGER marks are afforded a narrower scope of protection than for arbitrary and fanciful marks with fewer third-party applications and registrations. Accordingly, even slight differences and variations among the goods, customers, conditions under which sales are made, and/or channels of trade at issue distinguishes the HONEYBADGER marks from each other.

In this case, there are significant differences between Applicant's goods, which are unique goods, and registrant's goods, which are also unique goods, as well as the buyers to whom and the conditions under which sales are made, and the channels of trade. All of the above are sufficient to distinguish one source from another, thereby avoiding any likelihood of confusion. Accordingly, both Applicant's and Registrant's mark should be allowed co-exist in view of the many other third party HONEYBADGER marks on the Principal Register.

For the above reasons, Applicant submits that the differences between (1) Applicant's mark and Registrant's mark, (2) Applicant's goods and Registrant's goods, (3) the customers seeking Applicant's goods and Registrant's goods, and (4) the channels of trade through which the respective goods move are such that there is no likelihood of confusion and the § 2(d) refusal should be withdrawn. Further, the established facts relating to co-existing third-party registrations for identical marks in International Class 12, where one mark is directed to a motor vehicle, while the other third-party mark is directed to a part of the motor vehicle. For the above reasons, there is no likelihood of confusion in this case.

Applicant respectfully submits that registration on the Principal Register is appropriate. If any impediment to passing this mark onto publication remains after entry of this Amendment and consideration of these remarks, the Examining Attorney is invited to initiate a telephone interview with the attorney of record.