

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

IN RE APPLICATION:

Mark: GO₂POC and Design
Applicant: Lincare Licensing Inc.
Serial No.: 88280407
Attorney File No: LNCR.18010

AMENDMENT B

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1415

Dear Sir:

In response to the Second, Nonfinal Office Action issued by the United States Trademark Office, please amend the above-identified Application as follows:

I. LIKELIHOOD OF CONFUSION

The registration of the subject mark has been initially refused under the Trademark Act Section 2(d), *15 U.S.C. § 1052(d)*, on the basis that the subject mark sought to be registered so resembles the marks shown in cited U.S. Registration Nos. 5700516 and 5877085 as to be likely, when used in connection with the identified services, to cause confusion, or to cause mistake or to deceive.

On August 26, 2019, Applicant submitted arguments in opposition to the Section 2(d) Refusals. However, the Examiner has maintained that a comparison of the respective parties' marks supports a finding of a likelihood of confusion. More

specifically, the Examiner argues that the Applicant's mark, GO₂POC and Design, and Registrant's marks, PURAIR THE GO₂ COMPANY and PURAIR THE GO² COMPANY marks are confusingly similar, because the "unique combination of the word "GO" with the letter '2' or '2' in each of the marks creates a common commercial impression and source identification for the marks related to oxygen on the go." Applicant respectfully disagrees with the Examiner for six (6) different reasons. First, the Examiner's description of the mark of U.S. Registration No. 5877085 as "PURAIR THE GO₂ COMPANY" is erroneous. United States Registration No. 5877085 depicts the number two as an exponent, not as a subscript. Accordingly, the sole similarity between the respective parties' marks and noted by the Examiner is, in fact, different.

Second, if the Examiner is correct that the "common commercial impression" of the wording is "related to oxygen on the go," the wording is clearly descriptive for oxygen in portable vessels. As a result, the wording is entitled to little, if any, protection in conjunction with the respective parties' oxygen services.

Third, if the wording O₂ relates to oxygen, as contended by the examiner, the wording GO₂ is at best descriptive, and at worst generic, for Registrant's services. More specifically, the wording GO₂ is a common abbreviation for "gaseous oxygen." Please see Exhibit A attached hereto which shows information from <https://acronyms.thefreedictionary.com/GO2#:~:text=Acronym,.com%2C%20All%20rights%20reserved> and <http://definitionmeaning.com/Governmental/go2> and <https://www.abbreviations.com/GO2> and <http://acronymsandslang.com/GO2-meaning.html>. The only similarity between the respective marks is either highly descriptive and/or generic for the relevant services, and entitled to little, if any, weight in

a likelihood of confusion analysis.

Next, the wording “GO2” or “GO TO” is frequently used, and registered, with the USPTO. As a result, the wording is likely diluted in the relevant fields. For example, please see Exhibit B.

Next, the descriptive wording “GO2” constitutes a small component of the respective parties’ marks; and the additional distinctive, and dominant, wording of each mark, i.e., POC and Design vs. PURAIR and THE COMPANY, clearly obviates confusion in the marketplace.

Finally, the cost of the respective parties’ services and the relevant sales conditions more fully described in Applicant’s August 26, 2019, response, minimizes any possibility of confusion in the marketplace.

The Trademark Office bears the burden of showing that a mark should not be registered.¹ Also, the Office has the burden of proving that a trademark falls within a prohibition of 15 U.S.C. 1052² Moreover, the *Trademark Act* does not prevent registration of a mark on the mere possibility of consumer confusion, but requires that confusion be likely.³ Here, Applicant submits that the Office has not satisfied its burden of showing a likelihood of confusion. Applicant respectfully requests that the Examiner withdraw the Section 2(d) Refusal.

¹ See 15 U.S.C. § 1052 (“No trademark... shall be refused registration ... unless...”).

² (No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it...); see also *In re Mavety Media Group Ltd.*, 31 U.S.P.Q. 2d 1923, 1925 (TTAB 1994).

³ *Bongrain International (American) Corporation v. Delice de France Inc.*, 811 F.2d 1479, 1 USPQ2d 1775, 1779; and *In re The Ridge Tahoe*, 221 USPQ 839, 840 (TTAB 1983). See also *Electronic Design & Sales Inc.*, 21 USPQ2d at 1391, citing *Witco Chemical Co. v. Whitfield Chemical Co., Inc.*, 418 F.2d 1403, 1405, 57 C.C.P.A. 804, 164 USPQ 43, 44-45 (CCPA 1969), *aff’g* 153 USPQ 412 (TTAB 1967) (“We are not concerned with mere theoretical possibilities of

II. SPECIMENS OF USE

Registration has been initially refused based on the contention that the specimens do not show the applied-for mark as actually used in commerce in connection with the services specified in Class 41. More specifically, the Examiner argues the following:

Applicant's specimens do not show the applied-for mark in use in connection with any of the specific services related to conducting courses or classes identified in the application. While educational services are referenced on the specimens, the educational services referenced are not courses and classes in the specific subject matters set forth in the identification. Thus, registration is refused because the specimens do not show the applied-for mark in use in commerce in connection with any of the services specified in International Class 41 in the application.

Applicant submits the direct association requirement of TMEP §1301.04 is satisfied. To be satisfied, the services need not be stated word for word in the specimen. A "sufficient reference" to the services themselves or a general reference to the trade, industry, or field of use is only required.⁴ The Examiner concedes that "educational services" are referenced on the specimens. Applicant submit, like the *In re Ralph Mantia Inc.* case, the word "education" alone is sufficient to create in the minds of purchasers an association between the mark and Applicant's educational services. Applicant requests that the Examiner withdraw this basis for rejection.

confusion, deception, or mistake or with de minimis situations but with the practicalities of the commercial world, with which the trademark laws deal.").

⁴ TMEP § 1301.04(f)(ii); *In re Monograms Am., Inc.*, 51 USPQ2d 1317, 1318 (TTAB 1999); *In re Ralph Mantia Inc.*, 54 USPQ2d 1284, 1286 (TTAB 2000) (reversing the specimen refusal since the term "design" appeared on applicant's letterhead stationery, envelope, and business cards and stating "[i]t is not necessary that the specific field of design, i.e., commercial art, also appear [on the specimen]. Here, the word 'design' alone is sufficient to create in the minds of purchasers an association between the mark and applicant's commercial art services."); *In re Monograms Am., Inc.*, 51 USPQ2d at 1318; see also TMEP §1301.04(h).

Applicant and the undersigned attorney thank the Examining Trademark Attorney for the helpful suggestions that have assisted in the preparation of this response. The Applicant respectfully submits that the above amendments to the trademark application have overcome the objections set forth in the outstanding office action and the application is ready for approval. Favorable action is respectfully submitted. The undersigned attorney of record cordially invites any telephonic communications from the Examining Attorney which may assist in the allowance and publication of the subject mark.

Respectfully submitted,

FRIJOUF, RUST & PYLE, P.A.



October 15, 2020

Date

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