

In Re Application of)
Serial No. 88/768978)
)
Mark: HORIZON)
)
Applicant: 933460 Ontario Inc.)

RESPONSE TO OFFICE ACTION DATED APRIL 17, 2020

I. Introduction

933460 Ontario Inc. (hereinafter “Applicant”) submits this response to the United States Patent and Trademark Office Action dated April 17, 2020. Applicant respectfully requests that the Examining Attorney reconsider and withdraw his refusal to register Applicant’s above-referenced U.S. Trademark Application Serial No. 88/768978 (“Application”).

The Examining Attorney refused registration of Applicant’s applied-for-mark HORIZON (the “Mark”) for goods in International Classes 006, 020 and 022 for the following reasons: (1) pursuant to Section 2(d), the Mark creates “a likelihood of confusion with the marks in U.S. Registration Nos. 4998603, 5421182, 5501824 and 5690782” (referred to as the “Registered Marks”); and (2) the filing date of U.S. Trademark Application Serial No. 88576802 (“Prior-Filed Application”) precedes the filing date of the Application and if the Prior-Filed Application ultimately is granted registration it may be cited as a basis for refusing registration of the Mark because of a likelihood of confusion.

For the reasons set forth in detail below, Applicant respectfully submits that the

Mark is not likely to be confused with the (1) Registered Marks or (2) the mark applied for in the Prior-Filed Application.

II. No Likelihood of Confusion Exists Between the Mark and the Registered Marks

It is well settled that likelihood of confusion between two or more marks at the United States Patent and Trademark Office is determined by a review of all of the relevant factors under the DuPont test. In re E.I. du Pont de Nemours & Co., 476 F.2d 1357 (C.C.P.A. 1973). Though all DuPont factors must be considered, the Examining Attorney notes that “there are generally two key considerations in any likelihood of confusion analysis: (1) the similarities between the compared marks and (2) the relatedness of the compared goods and services.”

a. Differences in the Marks

In provisionally refusing registration under Section 2(d), the Examining Attorney stated that “Applicant’s mark is (1) identical to the mark in Registration No. 4998603, (2) phonetically equivalent to the mark in Registration No. 5421182 and also visually similar thereto because the only difference is the existence of spaces between the “R” and “I” and the “I” and “Z” in registrant’s mark and (2) highly similar to the marks in Registration Nos. 5501824 and 5690782 because they all begin with, or in the case of applicant’s mark, are entirely comprised of the term “HORIZON”.

However, as the Examiner has noted “the ultimate conclusion rests on consideration of the marks in their entireties.” In re National Data Corp., 224 U.S.P.Q. 749, 751 (Fed. Cir. 1985); see also TMEP 1207.01(b)(iv). Marks containing common elements are not likely to be confused if “(1) the marks in their entireties convey significantly

different commercial impressions, or (2) the matter common to the marks is not likely to be perceived by purchasers as distinguishing source because it is merely descriptive or diluted.” See In re Farm Fresh Catfish Co., 231 U.S.P.Q. 495 (TTAB 1986) (emphasis added); see also In re Shawnee Milling Co., 225 U.S.P.Q. 747 (TTAB 1985) (GOLDEN CRUST for flour held not likely to be confused with ADOLPH’S GOLD’N CRUST for coating and seasoning for food items).

There is no evidence in the record that the mark in Registration No. 5421182 is pronounced phonetically similarly to “horizon”, particularly in view of the existence of spaces between the “R” and “I” and the “I” and “Z” in registrant’s mark. Also, the Examiner notes “[f]urthermore, please note that merely omitting some of the wording from a registered mark, such as “COORDINATE” in Registration No. 5501824 and “HOUND” in Registration No. 5690782, may not overcome a likelihood of confusion. See *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257; *In re Optica Int’l*, 196 USPQ 775, 778 (TTAB 1977); TMEP §1207.01(b)(ii)-(iii). In this case, applicant’s mark does not create a distinct commercial impression from those registered marks because it contains some of the wording in the registered mark and does not add any wording that would distinguish it from that mark.” The significance of “COORDINATE” and “HOUND” as creating possible different commercial impressions is underplayed. Certainly adding “HOUND” or “COORDINATE” necessarily invites the consumer to consider and look for different connotations. A horizon hound arguably is a product looking to stretch the bounds of product function and a horizon coordinate could connote a product that is on the limit of product functionality, in each case rather than the edge of land and sky as visible to the human eye.

Instead of giving proper weight to this evidence, the Examiner summarily

dismissed it summarily. The Examiner's failure to properly weight the relative connotational differences of these aspects of the Registered Marks was erroneous. See, e.g., Packard Press, Inc. v. Hewlett-Packard Co., 227 F.3d 1352 (Fed. Cir. 2000) (Board's comparison of only common element of parties' marks constituted reversible error), later proceeding at, Hewlett-Packard Co. v. Packard Press, Inc., 281 F.3d 1261 (Fed. Cir. 2002).

In the present case, Applicant's Mark is not likely to be confused with the Registered Mark because, when considered in their entireties, both the Mark and the Registered Marks convey different commercial impressions. Although both the Mark and the Registered Marks contain the word "HORIZON", the variations discussed above mitigate any possible confusion. Further the only Registered Mark identical to the Mark covers "portable shelters, namely portable shelters having metal framework." Although the Examining Attorney asserts that the products covered by the Registered Marks including specifically "portable shelters" are for use in camping. The term in fact means something far from a camping tent. Rather portable shelters are fabric buildings that can store valuables or shelter equipment from the rain. See the attached evidence. Consequently, the only Registered Mark not capable of different connotation covers products unrelated to those covered by the Application.

Such differences in connotation and meaning are key factors in determining likelihood of confusion. In fact, differing connotations themselves can be determinative, even where identical words with identical meanings are used. Clarks of England, Inc. v. Glen Shoe Company, 465 F. Supp. 375, 379 (S.D.N.Y. 1960) (TREK and STAR TREK for shoes; TREK connotes hiking across the Himalayas; STAR TREK connotes

space travel).

b. Applicant's Goods Are Not So Closely Related To Those of The Registered Marks As to Create A Likelihood of Confusion

The Examining Attorney also provisionally refused registration of the Mark because Applicant's goods and those covered by the Registered Marks are "all goods used in connection with camping and, as such, are likely to emanate from the same source and/or be provided, marketed and/or used in connection with each other." The Examining Attorney is correct that some of these products are sometimes used together by those camping; however, the fact that they may be sold by the same retailer is not evidence of source nor endorsement. Notwithstanding the forgoing, Applicant does disagree that beds and mattresses are used in camping, otherwise what is the purpose of sleeping bags and air mattresses? Inflatable furniture is usually used with pool and pool-seed environment, rather than camping where sticks, stones and even roots would quickly render them incapable of holding air. Further, this slight connection should not establish relatedness nor a basis for likelihood of confusion given the sophistication of the average camping enthusiast.

There is no *per se* rule that holds that all products in a certain field are related. *See In Re White Rock Distilleries Inc.*, 92 USPQ2d 1282 (TTAB 2009) (VOLT A for caffeinated vodka was not likely to be confused with, or related to TERZA VOLTA, a wine product, even though they were sold on the same website, are both alcohol, and can both be made with grapes.); *G. H. Mumm & Cie v. Desnoes & Geddes Ltd.*, 917 F.2d 1292, 16 USPQ2d 1635 (Fed. Cir. 1990) (RED STRIPE and design for beer was not

confusingly similar to a design of a red stripe for wines and sparkling wines just because they are both alcohol); National Distillers and Chemical Corp. v. William Grant & Sons, Inc., 505 F.2d 719, 184 USPQ 34 (CCPA 1974) (DUET for prepared alcoholic cocktails, some of which contained brandy, and DUVET for French brandy and liqueurs not confusingly similar). *See also*, TMEP § 1207.01(a)(iv) (“there can be no rule that certain goods or services are per se related, such that there must be a likelihood of confusion from the use of similar marks in relation thereto”).

While Applicant’s goods may be considered, at most, tangentially related to the goods of the Registered Marks, Applicant respectfully submits that they are not so closely related as to create a likelihood of consumer confusion. Where the goods of an applicant and registrant are analogous, the Examining Attorney bears the burden of showing that the applicant’s and registrant’s goods would commonly be provided by the same source. In Re Shipp, 4 U.S.P.Q.2d 1174, 1176 (TTAB 1987) (Examining Attorney’s argument that a small segment of market would be familiar with both applicant’s use of PURITAN in connection with dry cleaning services and registrants’ uses of PURITAN in connection with dry cleaning equipment and dry cleaning chemicals rejected due to lack of proof of trade practices and failure to show likelihood, rather than possibility, of confusion; refusal reversed).

Here, there is no evidence of record that the respective goods are in any way sufficiently related for rejection under a likelihood of confusion analysis. Applicant respectfully submits that the Examining Attorney failed to meet the necessary burden to demonstrate a likelihood, rather than a possibility, of consumer confusion.

A stronger showing of a likelihood of confusion is required when the applicant’s

applied for mark is weak. Brookfield v. W. Coast, 174 F.3d 1036 (9th Cir. 1999). “Where a party uses a weak mark, his competitors may come closer to his mark than would be the case with as strong mark without violating his rights.” Kenner Parker Toys, Inc. v. Rose Art Indus., Inc., 963 F.2d 350, 353 (Fed. Cir. 1992). “Where a party chooses a trademark which is inherently weak, he will not enjoy the wide latitude of protection afforded the owners of strong trademarks.” Sure-Fit Products Co. v. Saltzson Drapery Co., 254 F.2d 158, 117 USPQ 295, 297 (CCPA 1958). Indeed, the Supreme Court has held that “some possibility” or “a certain degree of confusion” may be tolerated in this regard. KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc., 125 U.S. 5442, 550 (2004).

Therefore, Applicant respectfully submits that registration of the Mark may not be refused simply because some consumers may be familiar with the goods related to the Registered Marks. *In Re Shipp*, 4 U.S.P.Q.2d at 1174.

III. No Likelihood of Confusion Exists Between the Mark and the mark in the Prior-Filed Application.

a. The Inclusion of the word “SLEEP” in the mark covered by the Prior-Filed Application provides a different connotation to the consumer

The inclusion in the of the word “SLEEP in the mark subject to the Prior-Filed Application offers consumers a number of different connotations they might draw from it. For example, it could connote sleep flat instead of sitting up or that their mattresses are the most technologically advanced sleep products ----“reaching for the horizon.”

b. The Applicant’s Mark covers goods unrelated to the goods covered by the Prior-Filed Application

The goods that the Prior-Filed Application seeks to register, namely mattresses, are not designed for and would not stand up to use in camping and similar out-door environments. It would be far to cumbersome and unwieldy to attempt to travel with a mattress to a camping location, given the rigidity and dimension of even a twin-size mattress. Purchasers of each product type could not possibly mistake the goods of Applicant for those of the filer of the Prior-Filed Application.

CONCLUSION

Applicant has demonstrated that the Mark does not create a likelihood of confusion with the (1) the Registered Marks, or (2) the mark in the prior-Filed Application. If any doubt remains as to whether the mark creates a likelihood of confusion with the mark in U.S. Registration No. 4737569 or is merely descriptive, that doubt should be resolved in Applicant's favor in accordance with the Trademark Trial and Appeal Board's policy. Accordingly, Applicant respectfully requests that the Examining Attorney's refusal be withdrawn, and its Application be approved for publication.

Respectfully submitted,

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8 Benefits of Using Portable Shelter as A Temporary Storage Solution

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If you live in a house without a garage, you might ponder where to store your new pontoon, speed boat or bicycles. The chance is that you wind up in a situation where you have items that need to be stored away from the sun, the rain, the snow and different

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Portable shelters are quite versatile and can be utilized to store pretty much anything and for any sizes of items, you have around your home. From heavy-duty protection to added storage space, portable shelters can accommodate a variety of different needs for everyone. Since they are anything but difficult to move from one location to another, it means that you can take it down when needed to and construct it anywhere else.

What is a Portable Shelter?

You may have heard other terms for portable shelters such as temporary shelter, instant garage shelter, carport shelter, shelter garage, temporary fabric buildings, auto shelters and many more. It depends on what you need the portable shelter for. A portable shelter essentially is temporary building structures that provide heavy-duty protection and additional storage space for a wide range of needs structure that typically consists of just a steel frame with a fabric cover.

Keep in mind that although portable shelters are “temporary”, they provide a long-term solution for all your storage needs. The life expectancy of the cover for Cover-Tech Portable Shelter/Portable Garage is between 12-15 years for all Canadian made covers.

The many benefits of Portable Shelter or Portable Garage

1. Versatility

Portable Shelters offer spacious storage solutions and different function to suit your needs. It has a variety of styles, colors, and sizes to choose from and makes an excellent choice for a car/truck garage, wood shed, garden shed, workshop, storage building, and much more, at only a fraction of the price of a wooden or steel building.

And as mentioned above, since they are easy to move from one location to another, it means that you can take it down when needed to and construct it anywhere else.

2. Portability

If you need a temporary garage quickly then, this is the best way to get one. Say you are renting your property but you need a shelter to protect your vehicles, equipment or any other valuables. You don't have the rights unfortunately to construct a garage on the property you are renting. This makes portable shelters, the perfect solution for scenarios in which the garage is only needed temporarily.

And if you come to move to another location, then you will be able to disassemble and take them with you so you don't lose your investment. Most models take up very little space once they are completely folded. This makes it even easier to transport them.

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3. Multi-Purpose

Portable storage spaces such as portable shelters can be utilized to store pretty much anything and for any sizes of stuff, you have around your home where there is no other garage space available.

Portable shelter to store vehicles is probably the most popular use, including cars and trucks, campers, motorcycles, work vehicles, boats and more. It doesn't matter what you use, your temporary shelters will keep the weather off. This will increase the lifespan of your vehicles and large items by protecting them from damaging UV rays as well as moisture when it rains.

You can also consider using the place as a workshop, to store your firewood, to protect your equipment, to store livestock feed, off-season gear storage, bulk storage and even a disaster relief tents for simply an added workspace and storage.

4. Easy to Setup/Easy to Install

Portable shelters are rather simple to assemble compared to a permanent structure. It involves minimal tools and the tools required can be varied by the size of the temporary buildings. However, several combinations of wrenches, mallet, screwdrivers, cordless drills and a step ladder are typically required. Most of the portable shelters are of light-weight construction and need very few basic instructions and easy to handle.

These types of temporary buildings do not require permanent foundations. Almost any surface is suitable for their installation. Nevertheless, an even surface is recommended for stability purposes. Cover-Tech supply ground anchors for a standard installation on a gravel pad. This package can be substituted for cement anchors. **Contact Cover-Tech** to learn more.

5. Save Time and Money

The portable shelters take lesser time for installation when compared to a permanent garage or storage solution at a more affordable rate. These temporary building structures effectively store and protect your vehicles and other valuable items without the unwanted additional fees.

6. Durable Structure

Cover-Tech Canadian made portable garages are constructed of a 14-gauge, high tension galvanized steel that is clear coated for an anti-rub finish. Frame diameter will vary with building size. (1.315" - 2.375") and 14 oz, 23 mils rip-stop polyethylene cover with industrial welded seams (heaviest in the industry). **See sizes and pricing here** .

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A portable shelter is perfect for every day and seasonal use. Since these shelters are capable of tolerating drastic weather changes and provide protection against harmful sun's rays, you can be assured about the safety of your items.

Cover-Tech fabric has a 10 - 15-year UV treating and 10 Year UV Warranty prorated on fabric. This ensures that the shelter lasts longer and is able to protect the stored items from damage.

Cover-Tech innovative round top allows snow to slide off much easier than the conventional house style roof.

8. Low Maintenance

Once you have your portable shelter set up, maintenance and upkeep are fairly minimal. With a few extra precautions, most structures can last for years. Therefore, cost less money to maintain in the long run.

To learn more on how to do maintenance on your portable shelter or portable garages, click [here](#) .

With such important uses and also benefits like low costs and easy to set up, portable shelters are now a preferred alternative to storage solution by many people. Make a note of these points, and you will able to buy a good portable shelter that suits your requirements. But we say **Cover-Tech Portable Garage Shelter** is Your Best Option, of course! And if you need more reassurance, read our testimonials from our loyal customers [here](#).

When all is said and done, getting strong and durable portable shelter products from a reliable supplier can go a long way. Whether you need a place to protect your vehicles or just need some extra storage space, you really can take advantage of a portable garage shelter. Contact Cover-Tech team to help you with your storage needs.

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