

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re : GSH Trademarks Limited :
Serial No. : 88892731 : Mark Peisecki
Filed : Apr. 29, 2020 : Trademark Examining Attorney
Trademark : REACTOR : Law Office 105
Attorney Ref.: 8038-0121 :

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

RESPONSE TO OFFICE ACTION

This is in response to the Office Action dated July 18, 2020.

REMARKS

The Examining Attorney cites U.S. Registration No. 5778441 of the mark R REACTOR (Exhibit A) as a blocking mark. Applicant respectfully submits that confusion with the Applicant's mark is unlikely for the reasons discussed below.

**NO LIKELIHOOD OF CONFUSION BETWEEN APPLICANT'S MARK AND CITED
MARK**

In the refusal, the Examining Attorney relies upon a two-part analysis to determine likelihood of confusion: comparison of the marks for similarities in their appearance, sound, connotation and commercial impression; and the relatedness of the goods. When determining

likelihood of confusion, it is well settled that marks must be considered in their entirety, not dissected or split into component parts and each part compared with the other parts. *In re 1776, Inc.* 223 USPQ 186 (TTAB 1984). This is so because it is the entire mark which is perceived by the purchasing public, and therefore, it is the entire mark that must be compared to any other mark. *Genesco Inc. v. Martz*, 66 USPQ2d 1260, 1269 (TTAB 2003). In the marketplace, a potential shopper is confronted by a totality of circumstances which ought to be considered in determining whether there is a likelihood that confusion, mistake or deception will result. All relevant factors should be evaluated in their entirety as reflected by each mark and its respective product. *Nehi Corp. v. Mission Dry Corp.*, 213 F.2d 950 (3rd Cir. 1954). When viewed in their entirety, Applicant's mark and the cited mark are not confusingly similar as to sight or sound.

In determining whether there is a likelihood of confusion, the similarities and differences between the marks must be weighted. *Conde Nast Publications, Inc. v. Miss Quality Inc.*, 507 F.2d 1404, 184 USPQ 422, 424 (CCPA 1975). In that case, the Court of Customs and Patent Appeals analyzed the marks VOGUE and COUNTRY VOGUES for fashion-related goods. The Court weighted the similarities and dissimilarities between the marks and concluded that the dissimilarities in the overall impression of the marks weighted against a finding of likelihood of confusion. *Id.* at 425. Specifically, the Court decided that the presence of an additional term reduced the likelihood of confusion.

Similarly here, ordinarily prudent purchasers are not likely to be confused because there are multiple significant differences between Applicant's mark and the cited mark, when viewed in their entirety. These differences distinguish them and outweigh any likelihood of confusion resulting from a common element. Although both marks contain the term "REACTOR", this fact alone is insufficient to support a finding that, when considered in their entirety, the marks are

likely to be confused. *See Colgate-Palmolive Co. v. Carter-Wallace, Inc.*, 432 F.2d 1400, 167 USPQ 529, 530 (CCPA 1970). The court in that case found that the marks PEAK for a dentifrice and PEAK PERIOD for personal deodorants were not confusingly similar. The court stated:

[T]he mere presence of the word peak in the trademark ... does not by reason of that fact alone create a likelihood of confusion or deception. That determination must arise from a consideration of the respective marks in their entireties. The difference in appearance and sound of the marks in issue is too obvious to render detailed discussion necessary. In their entireties they neither look nor sound alike.

Id. [emphasis added].

Like VOGUE and COUNTRY VOGUES, and PEAK and PEAK PERIOD, Applicant's mark and the cited mark are visually and phonetically different. The cited mark consists of two terms, i.e., "R" and "Reactor." Further, the cited mark includes a distinctive design element. Applicant's mark consists of a single noun "Reactor." Thus, at least visually, phonetically and audibly, the Applicant's mark differs significantly from the cited mark.

GOODS ARE NOT RELATED

Applicant amended its identification of goods to recite that its mark is intended to be used in connection with "Alcoholic beverages, except beer and low alcohol content beverages." Registrant's goods are limited to "Beer." Thus, the goods covered under the Registrant's mark are specifically limited to low alcohol content beverages, and specifically excluded from Applicant's list of goods. Nothing in Registrant's description suggests that Registrant uses the mark on any high alcohol content beverages. As shown in the attached article "Alcohol by Volume: Beer, Wine, & Liquor,"¹ beer typically contains 5% of alcohol by volume (ABV), while hard liquor typically

¹ Accessed at <https://www.alcohol.org/statistics-information/abv/>

contains on average 40% ABV. *See* Exhibit B. Thus, Registrant's and Applicant's goods are markedly different.

Further, in most states, high alcohol content beverages are sold in separate stores, and cannot be purchased in the markets selling low-alcoholic beverages, like beer. Thus, not only the Applicant's and Registrant's goods are different, their trade channels and consumers are different also.

The Examiner included Internet evidence attempting to show relatedness of various alcoholic beverages and beer in the Office Action. Despite this showing, U.S. Trademark Office routinely allows Trademark Registrations of unrelated parties for marks including the same term for use on low alcohol content beverages and high alcohol content beverages. For example, Reg. No. 4195740 for the mark AMERICAN REVOLUTION for use on "Distilled Spirits," peacefully co-exists with Reg. No. 4917167 for the mark REVOLUTION WINES for "Hard Cider, Wine." *See*, Exhibits C-D. Reg. No. 5999614 for the mark FREEDOM HARD for use on "Whiskey," peacefully co-exists with Reg. No. 3004318 for the mark THE FREEDOM for "Wine." *See*, Exhibits E-F. While the undersigned recognizes that the above examples are not legal precedents, Applicant respectfully asks for the decision in the present Application to be consistent with the prior decisions of the Office.

CONSUMERS ARE SOPHISTICATED

Where the parties' customers are sophisticated and the purchase process requires close analysis by the buyer, confusion is often unlikely. *See Sara Lee Corp. v. Kayser-Roth Corp.*, 81 F.3d 455, 467 (4th Cir. 1996) ("In a market with extremely sophisticated buyers, the likelihood of consumer confusion cannot be presumed on the basis of similarity"). As shown in the attached

article " Can the gin market keep on growing?"², today's high ABV beverages consumers are increasingly selective and demand the highest quality of this alcoholic beverage. *See* Exhibit G. Sophisticated alcoholic beverage consumers spend time studying and examining the beverages. Accordingly, such consumers are sophisticated enough to understand that Applicant's use of the "REACTOR" mark on its high ABV beverages is not indicative of any affiliation with the Registrant's mark used for its beer. The C.A.F.C. has cautioned the PTO not to overlook the great importance of such consumer sophistication in deciding whether confusion is likely. In *Electronic design & Sales Inc. v. Electronic Data Systems Corp.*, 21 U.S.P.Q.2d 1388 (Fed. Cir. 1992), the C.A.F.C. strongly stressed that the sophistication of discriminating customers is an extremely important likelihood of confusion factor, even in cases where marks are identical. Indeed, the C.A.F.C. reversed the Board's finding of likely confusion because the Board "apparently failed to consider, and certainly failed to address, the sophistication of buyers." 21 U.S.P.Q.2d at 1392.

With the above, Applicant respectfully submits that confusion is unlikely.

Applicant believes that all questions are now answered and respectfully requests that the Examining Attorney withdraw the rejections and pass the mark to publication.

Dated: January 14, 2021
Staten Island, New York

Respectfully submitted,
/anna vishev/
Anna Vishev
Attorney for Applicant

**THIS CORRESPONDENCE IS BEING
FILED ELECTRONICALLY THROUGH
THE UNITED STATES PATENT AND
TRADEMARK OFFICE EFS FILING
SYSTEM ON January 14, 2021**

² Accessed at <https://www.thespiritsbusiness.com/2018/10/can-the-gin-market-keep-on-growing/>