

I. Introduction

Owner respectfully disagrees with Examining Attorney's refusal of Owner's mark based on a likelihood of confusion, based on the below reasoning.

II. Owner's mark creates a different commercial impression from Registrant's mark.

Even when marks share a common portion, confusion is unlikely if they create different commercial expressions. In *Long John Distilleries, Ltd. Sazerac*, 426 F.2d 1406, 166 U.S.P.Q. 20 (CCPA 1970), it was held that although LONG JOHN and FRIAR JOHN shared a common portion, they conveyed different commercial expressions. The court in *In re Hearst Corporation*, 982 F.2d 493 (Fed. Cir. 1992) held that marks tend to be perceived in their entireties, and all components thereof must be given appropriate weight.

When viewed as a whole, Owner's mark is sufficiently different in sound, appearance and meaning from Registrant's mark. The wording preceding the term GARDEN is very different. When a consumer views the respective marks, Owner's mark is clearly a different brand. In trademark law, slight differences can enable two marks to operate in a distinctive manner. In *Standard Brands, Inc. v. Eastern Shore Canning Co.*, 172 F.2d 144 (4th Cir. 1949), cert. denied, 337 U.S. 925 (1949), no likelihood of confusion was found between V-8 vegetable juice and VA tomato juice, despite there being some similarities between the marks as in this case. This factor weighs against a finding of likelihood of confusion.

Although Owner and Registrant's marks share common wording, the wording ZEN MUSIC in Registrant's mark creates an entirely different commercial impression from Registrant's mark, which begins with SOUND. ZEN MUSIC and SOUND are utterly different terms such that it is very unlikely that consumers would confuse them as being from the same source.

Additionally, consumers are generally more inclined to focus on the first word, prefix or syllable in any trademark or service mark. *See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F. 3d 1369, 1372, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005); see also *Mattel Inc. v. Funline Merch. Co.*, 81 USPQ2d 1372, 1374-75 (TTAB 2006); *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) ("it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered" when making purchasing decisions).

The first two words in Owner's mark are utterly different from the first word in Registrant's mark, thus further differentiating Owner's mark.

IV. Conclusion.

For the above reasoning, Owner's mark should be approved for publication because there is no likelihood of confusion between the two marks.