


## REMARKS

Applicant seeks to register the mark REDLINE (the “Mark”) for “Communications headsets for use with communication radios, intercom systems, remote speaker microphones, and other communications network transceivers; Remote speaker microphones; Wireless compatible push to talk systems comprised primarily of electronic hearing protection headsets, wired push to talk assemblies and assorted radio accessory cables” in International Class 9, as amended in this Response to Office Action. The Examiner has refused Applicant’s application pursuant to Section 2(d), alleging that the Mark so resembles the mark shown in two U.S. Trademark Registrations as to be likely to cause confusion, to cause mistake, or to deceive. The registrations cited by the Examining Attorney are:

1. REDLINE COMMUNICATIONS, U.S. Trademark Reg. No. 2990887, for “broadband fixed wireless access hardware used to transmit and receive digital data by means of orthogonal frequency division multiplexing technology in non-line-of-sight conditions with extremely high data rates” in class 9, owned by Redline Communications, Inc. (the “Broadband Mark”); and

2.  , U.S. Trademark Reg. No. 0954945, for “speakers and speaker kits” in class 9, owned by Misco/Minneapolis Speaker Company, Inc. (the “Speaker Mark”, together with the Broadband Mark, the “Cited Registrations”).

For the reasons set forth below, we respectfully disagree with the Examiner’s position and submit that there is no likelihood of confusion between Applicant’s Mark and the Cited Registrations.

## SECTION 2(d) REFUSAL

### **CONFUSION IS NOT LIKELY BETWEEN APPLICANT’S MARK AND THE CITED REGISTRATIONS**

Under the Trademark Act, a refusal to register grounded on likelihood of confusion requires that confusion as to the source of the goods or services not be merely possible, but likely. A mere possibility of confusion is an insufficient basis for rejection under Section 2(d). As the Trademark Trial and Appeal Board stated in In re Massey-Ferguson Inc., 222 U.S.P.Q. 367, 368 (T.T.A.B. 1983), quoting Witco Chemical Co. v. Whitfield Chemical Co., Inc., 164 U.S.P.Q. 43, 44 (C.C.P.A. 1969):

“We are not concerned with mere theoretical possibilities of confusion, deception or mistake or with de minimis situations but with practicalities of the commercial world, with which trademark deals.”

Mere similarity between two marks will not alone serve to be determinative of likelihood of confusion. See McGregor-Doniger, Inc. v. Drizzle, Inc., 202 U.S.P.Q. 81, 89 (2d Cir. 1979). As the Court of Appeals for the Second Circuit has stated:

“First, even close similarity between two marks is not dispositive of the issue of likelihood of confusion. ‘Similarity in and of itself is not the acid test. Whether the similarity is likely to provoke confusion is the crucial question.’” (Citation omitted)

Id., 202 U.S.P.Q. at 89.

In the present situation, the possibility of confusion between Applicant’s mark and the Cited Registration is de minimis. Likelihood of confusion does not exist here because Applicant’s goods and the goods offered by the owners of the Cited Registrations are different, the prospective customers are sophisticated and capable of differentiating among the marks, the marks are not famous, and the Cited Registration was permitted to register even though it is no more different from pre-existing registrations than the Mark is from the mark shown in the Cited Registration. We submit that when the relevant factors articulated in In re E.I. DuPont de Nemours & Co., 476 F.2d 1357, 177 U.S.P.Q. 563 (C.C.P.A. 1973) are applied to this case, a finding that there is no likelihood of confusion under Section 2(d) of the Trademark Act is appropriate. We respectfully suggest that a finding of likelihood of confusion here ignores the practicalities of the commercial environment within which the respective marks are used.

**A. The goods of the Cited Registrations are different than the goods of Applicant**

The nature and scope of a party’s goods or services must be determined on the basis of the goods or services recited in the application or registration. See, e.g., In re Shell Oil Co., 992 F.2d 1204, 26 USPQ2d 1687, 1690 n. 4 (Fed. Cir. 1993); J & J Snack Foods Corp. v. McDonald’s Corp., 932 F.2d 1460, 18 USPQ2d 1889 (Fed. Cir. 1991); Octocom Systems Inc. v. Houston Computer Services Inc., 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1990); Canadian Imperial Bank of Commerce, N.A. v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987); Paula Payne Products Co. v. Johnson Publishing Co., 473 F.2d 901, 177 USPQ 76 (C.C.P.A. 1973).

Applicant’s goods, boiled down to their bare essentials, are (i) noise-canceling headphones that are also (ii) two-way-radio-compatible, which are different on their face from those set forth in the Cited Registrations.

i. Distinguishing the Broadband Mark.

Applicant’s goods are easily distinguished from those set forth in the identification of goods listed in the Broadband Mark. In clear contrast to applicant’s noise-canceling, two-way-radio-compatible headphones, the goods listed in the Broadband Mark are “broadband fixed wireless access hardware used to transmit and receive digital data by means of orthogonal frequency division multiplexing technology in non-line-of-sight conditions with extremely high data rates”. The key clause of the Broadband Mark’s identification of goods –

which modifies the entirety of the identification – is “broadband fixed wireless access hardware”, a specific term of art in the broadband wireless communications (cellular telephone) industry that refers to “last mile/first mile” telephonic connections. Applicant submits into the record the Wikipedia page for “wireless local loop”<sup>1</sup>, which Applicant notes is “Redirected from Fixed wireless access”, as Exhibit 1. According to Wikipedia, “Wireless local loop” is:

the use of a wireless communications link as the "last mile / first mile" connection for delivering plain old telephone service (POTS) or Internet access (marketed under the term "broadband") to telecommunications customers. Various types of WLL systems and technologies exist.

Other terms for this type of access include broadband wireless access (BWA), radio in the loop (RITL), fixed-radio access (FRA), fixed wireless access (FWA) and metro wireless (MW).

[https://en.wikipedia.org/wiki/Wireless\\_local\\_loop](https://en.wikipedia.org/wiki/Wireless_local_loop). As noted previously, this very specific type of goods offered in connection with the Broadband Mark is used only in connection with “last mile / first mile” wireless telephonic connections, a key portion of broadband infrastructure, but one not related to – and therefore distinguishable from – Applicant’s two-way-radio-compatible noise-canceling headphones.

ii. Distinguishing the Speaker Mark.

Applicant’s goods are also easily distinguished from the goods set forth in the identification of goods for the Speaker Mark. “Speakers and speaker kits” are not the same as Applicant’s two-way-radio-compatible noise-canceling headphones. Applicant concedes that it is possible (albeit unlikely, based on the business of the owner of the Speaker Mark, visible on the World Wide Web in general at <https://www.miscospeakers.com/about-us/history>) that Applicant itself could be a customer of Misco, the owner of the Speaker Mark, and thereby seek to incorporate Misco products in Applicant’s own two-way-radio-compatible noise-canceling headphones, such instance would not give rise to any material likelihood of confusion between the two marks.

Based on the foregoing, there are sufficient differences in the identifications of goods for the Mark and each of the Cited Registrations to allow the Mark to coexist on the Principal Register with the Cited Registrations.

**B. The goods are offered through different channels to different customers**

Applicant offers its goods primarily to police, first responder, and military quartermasters, and to retailers who specifically service the police, first responder, and military supply market. In contrast:

- i. Redline Communications, the proprietor of the Broadband Mark, appears to offer its goods to end consumers in the broadband infrastructure design

---

<sup>1</sup> [https://en.wikipedia.org/wiki/Wireless\\_local\\_loop](https://en.wikipedia.org/wiki/Wireless_local_loop)

and maintenance market. See, e.g., [https://en.wikipedia.org/wiki/Redline\\_Communications](https://en.wikipedia.org/wiki/Redline_Communications) (“Redline is a multinational wireless communications network designer and manufacturer... The company's networks are sold directly to end customers, and its wireless terminals are sold indirectly through [sic] resellers.”); and

- ii. Misco/Minneapolis Speaker Company, Inc., the proprietor of the Speaker Mark, appears to offer its goods to end consumers which either build loudspeakers, see, e.g., <https://www.miscospeakers.com/product-lines/soundscape>, or which use loudspeakers in connection with audio-related businesses, see, e.g., <https://www.miscospeakers.com/product-lines/misco-oem>.

The offer of two-way-radio-compatible noise-canceling headphones to police, first responder, and military quartermasters and retailers targeting the police, first responder, and military market can be distinguished on its face from the offer of broadband infrastructure equipment to the broadband infrastructure market, on the one hand, and the loudspeaker manufacture/audio business market, on the other.

**C. The consumers are sophisticated**

Police, first responder, and military quartermasters, the consumers of Applicant’s two-way-radio-compatible noise-canceling headphones, are highly-educated in the field due to the nature of such goods and the use cases presented by the specific markets. Such highly-sophisticated consumers are extremely unlikely to be confused by the offer of Applicant’s goods at the same time as the offer by the proprietors of the Cited Registrations of their disparate goods, and vice-versa.

**D. The marks are not famous**

None of the marks at issue are famous, thereby further decreasing the likelihood of confusion.

[Arguments continue on following page.]

**E. The Speaker Mark May Be Abandoned**

Applicant notes for the Examining Attorney's reference that there does not appear to be any reference to the Speaker Mark on the website operated by Misco/Minneapolis Speaker Company, leading Applicant to suspect that such mark may have been abandoned. Applicant therefore reserves the right to petition to cancel the Speaker Mark in the event that the Examining Attorney does not retract the portion of the Section 2(d) refusal which is based upon the Speaker Mark.

**CONCLUSION**

In view of the foregoing, Applicant respectfully submits that there is no likelihood of confusion between its Mark and the Cited Registrations and requests that its application should be approved for publication and thereafter registration.