

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Trademark Application of)
Pride Manufacturing, LLC)
Serial No.: 88/470,607)
Mark: CHAMP)

RESPONSE TO OFFICE ACTION

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

This Response to Office Action relates to the Office Action issued on August 30, 2020.

REFUSAL TO REGISTER ON THE BASIS OF U.S. REG. NOS. 5,547,485 & 5,986,287

The Examining Attorney initially has refused registration of Applicant’s CHAMP trademark (the “Subject Mark”) based on a likelihood of confusion with the following registrations:

- U.S. Registration No. 5,547,485 for CHAMPKEY covering “Golf bags; Golf club grips; Golf club heads; Golf clubs; Golf gloves; Golf putter covers; Golf putters; Trolley bags for golf equipment; Covers for golf clubs; Grip tapes for golf clubs” in International Class 028; and
- U.S. Registration No. 5,986,287 for CLUB CHAMP covering “Golf putting cups, putting mats, chipping and driving mats and nets, tethered golf balls, golf bag covers, golf bag tags, golf ball retrievers, golf club grip tape, golf club hand grips, golf club head covers, golf tees, golf chipping nets, golf putting cups, golf club swing weights, golf bag travel covers; golf tees; golf ball markers; golf putting practice devices, namely, stroke improvement assemblies, ball returns, ball catchers, and ball setters; golf accessory kits comprised of golf tees and golf markers; golf practice nets” in International Class 028. (the “Cited Marks”).

Applicant respectfully disagrees with the Examining Attorney and contends that confusion is not likely between the Subject Mark and the Cited Marks for the reasons set forth below.

There are several factors considered when assessing whether a likelihood of confusion exists between two marks. *In re E. I. DuPont DeNemours & Co.*, 476 F.2d 1357, 1361, 177 U.S.P.Q. 563, 567 (CCPA 1973). Collectively, these factors are referred to as the “DuPont Test.” In this case, the most relevant factors include:

1. The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation, and commercial impression;
2. The number and nature of similar marks in use on similar goods; and
3. The conditions under which and buyers to whom sales are made.

Id. When evaluating whether a likelihood of confusion exists, all facts and information that are pertinent to the above-referenced categories should be considered and this determination should be made on a case-by-case basis. *Id.* Applicant maintains that when all pertinent facts and information are considered, it is unlikely consumers would be confused as to the source of the parties' respective goods and services.

The Subject Mark and the Cited Marks Are Very Different In Appearance and Convey Different Commercial Impressions

The most crucial consideration when performing a likelihood of confusion analysis is the similarity or dissimilarity of the marks in their entireties as to appearance, sound, and meaning. *In re E. I. DuPont DeNemours & Co.*, 476 F.2d 1357, 1361, 177 U.S.P.Q. 563, 567 (CCPA 1973). Applicant maintains that there is no likelihood of confusion between the Subject Mark and the Cited Marks as the marks are visually distinct. These differences create different overall commercial impressions that dispel any potential confusion between the Subject Mark and the Cited Marks.

When comparing two marks to determine if there is confusing similarity between them, it is well settled that they must be considered in their entireties and not dissected into their constituent parts. *See Massey Junior College v. Fashion Inst. of Tech.*, 181 U.S.P.Q. 399 (C.C.P.A. 1971); and *Food Tech., Inc. v. Sucrest Corp.*, 196 U.S.P.Q. 134 (T.T.A.B. 1977). In order to determine the similarity or dissimilarity of the marks, it is important to first determine what is to be compared. In *DuPont*, the Court stated that it was the marks "in their entireties" that must be compared. *Id.*; *see also Estate of P.D. Beckwith, Inc. v. Comm'r of Patents*, 252 U.S. 538, 545-546 (1920). As stated by the Federal Circuit, "[t]he basic principle in determining confusion between marks is that marks must be compared in their entireties and must be considered in connection with the particular goods or services for which they are used. It follows from that principle that likelihood of confusion cannot be predicated on dissection of a mark, that is, on only part of a mark." *In re National Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985) (internal citations omitted). Thus, "[c]onflicting marks must be compared in their entireties. A mark should not be dissected or split up into its component parts and each part then compared with corresponding parts of the conflicting mark to determine the likelihood of confusion." 5 J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 23:41 (2020). Although it is permissible to give different weight to different portions of a mark, an examiner may not simply ignore one portion of the mark to find confusion between other portions of other marks. *See id.* (emphasis added). This must be the case because "[i]t is the impression that the mark as a whole creates on the average reasonably prudent buyer and not the parts thereof, that is important." *Id.*; *see also Beckwith*, 252 U.S. at 545-46 (stating that "[t]he commercial impression of a trade-mark is derived from it as a whole, not from its elements separated and considered in detail. For this reason it should be considered in its entirety, and to strike out any considerable

part of it, certainly any conspicuous part of it, would be to greatly affect its value.” (internal citations omitted)).

The Examining Attorney improperly emphasizes the fact that the marks incorporate the term “CHAMP” (a commonly used and registered term). Courts have made clear that a mark that incorporates a portion or elements of another mark is not necessarily confusingly similar to the other mark. See *In Re Ferrero*, 178 U.S.P.Q. 167 (C.C.P.A. 1973); *Murray Corp. of America v. Red Spot Paint & Varnish Co.*, 126 U.S.P.Q. 390 (C.C.P.A. 1960). For example, the Court of Customs and Patent Appeals in *Colgate-Palmolive Co. v. Carter-Wallace, Inc.*, 167 U.S.P.Q. 529 (C.C.P.A. 1970) affirmed a decision of the Trademark Trial and Appeal Board holding that the mark PEAK PERIOD as applied to personal deodorant did not so resemble the registered mark PEAK as applied to a dentifrice as likely to cause confusion within the purview of Section 2(d) of The Trademark Act. As part of its opinion, the court stated: “We agree with the Board that the mere presence of the word ‘PEAK’ in the trademark ‘PEAK PERIOD’ does not by reason of that fact alone create a likelihood of confusion or deception. That determination is made from a consideration of the respective marks in their entireties. The difference in appearance and sound of the marks at issue is too obvious to render detailed discussion necessary. In their entireties they neither look nor sound alike.” *Id.*

Overall, the Cited Marks are clearly different than the Subject Mark:

CHAMP (Applicant’s Mark)	CHAMPKEY (Cited Mark)	CLUB CHAMP (Cited Mark)
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As can be seen above, each of the Cited Marks contains additional elements that help create a commercial impression that is distinct and separate from the Subject Mark. The addition of KEY or CLUB to CHAMP results in 3 very different marks. The result are marks that convey a visual effect that is very different from the Subject Mark and consumers will recall the term CHAMP as secondary to KEY or CLUB rather than a source-identifying term in and of itself.

Such distinct commercial impressions created by the marks is sufficient to overcome a likelihood of consumer confusion, especially where the common element is weak as discussed below. In *Coach/Braunsdorf Affinity, Inc. v. 12 Interactive, LLC*, the TTAB found that the common element of the marks, PERKS, was merely descriptive for discount buying programs and therefore, PERKSPOT was sufficiently different from PERKS and PERKSCARD to avoid confusion even though the services were legally identical. *Coach/Braunsdorf Affinity, Inc. v. 12 Interactive, LLC*, Cancellation No. 92051006 (TTAB 2014), *citing Rocket Trademarks Pty Ltd. v. Phard S.p.A.*, 98 U.S.P.Q.2d 1066 (TTAB 2011) (ZU ELEMENTS, stylized, not confusingly similar to ELEMENTS for identical apparel).

In addition to the considerable visual differences of the marks, the pronunciation of each mark is substantially dissimilar. The Cited Marks are both two syllables which creates a cadence that

very different from CHAMP on its own. Additionally, the sounds of the terms KEY and CLUB are sharp and create a broken multi-tone marks versus CHAMP on its own.

As a result, upon encountering the marks, consumer are not likely to presume that the goods with which the Cited Marks and Subject Mark are related, nor are they likely to mistakenly presume the Cited Marks and Subject Mark designate the same source. These differences in appearance, pronunciation, and meaning significantly change the connotation and overall commercial impression of each mark. Therefore, when all visual and auditory elements and the meaning of each mark are considered together, the commercial impression conveyed by each mark is distinct and, as a result, any potential confusion is eliminated.


CHAMP is Limited to a Narrow Scope of Protection

Applicant submits that CHAMP (which is short for CHAMPION) is widely used, including by various third parties for golf and related products services. Third-party use and registrations may be relevant to show that the mark or a portion of the mark is descriptive, suggestive, or so commonly used that the public will look to other elements to distinguish the source of the goods or services. *United Foods Inc. v. J.R. Simplot Co.*, 4 USPQ2d 1172, 1174 (TTAB 1987).

Specifically, use of the identical term KEEPSAFE has been registered by dozens of companies (and is used by dozens more). Moreover, use of the individual terms KEEP or SAFE for marks that cover products related to infants appear in well over 200 live U.S. Trademark Office records (and again is widely used in the marketplace). The following is a representative example of such marks that have been permitted to coexist just on the Principal Register alone:




Mark/Name	Status/Status Date	App. No./Reg. No.	Full Goods/Services	Owner Information
CHAMP	Renewed, March 26, 2015	RN: 1327086 SN: 73440494	Int'l Class: 25 (Int'l Class: 25) golf and athletic shoe spikes and parts therefor	Cleats LLC (Delaware Limited Liability Company) P.O. Box 1022 Marlborough Massachusetts 01752
CHAMP CATALYST	Registered 8 & 15, August 1, 2019	RN: 4547866 SN: 85151430	Int'l Class: 25 (Int'l Class: 25) golf cleats	Cleats LLC (Delaware Limited Liability Company) 155 Franklin Road, Suite 250 Brentwood Tennessee 37027
CHAMP SCORPION STINGER	Renewed, May 4, 2020	RN: 3786209 SN: 78234446	Int'l Class: 25 (Int'l Class: 25) spikes and cleats for golf shoes	Cleats LLC (Delaware Limited Liability Company) 155 Franklin Road, Suite 250 Brentwood



Mark/Name	Status/Status Date	App. No./Reg. No.	Full Goods/Services	Owner Information
				Tennessee 37027
CHAMP HELIX	Registered, March 21, 2017	RN: 5166696 SN: 86035195	Int'l Class: 25 (Int'l Class: 25) spikes and cleats for golf and athletic shoes, and parts therefor	Cleats LLC (Delaware Limited Liability Company) 140 Locke Drive, P.O. Box 735 Marlborough Massachusetts 01752
CHAMPKEY	Registered, August 21, 2018	RN: 5547485 SN: 87672650	Int'l Class: 28 (Int'l Class: 28) Golf bags; Golf club grips; Golf club heads; Golf clubs; Golf gloves; Golf putter covers; Golf putters; Trolley bags for golf equipment; Covers for golf clubs; Grip tapes for golf clubs	Zuosi Rao (China Citizen) No.12 Dajing Road Tangxia Town Dongguan City 523717 China
CLUB CHAMP	Registered, February 11, 2020	RN: 5986287 SN: 88408693	Int'l Class: 28 (Int'l Class: 28) Golf putting cups, putting mats, chipping and driving mats and nets, tethered golf balls, golf bag covers, golf bag tags, golf ball retrievers, golf club grip tape, golf club hand grips, golf club head covers, golf tees, golf chipping nets, golf putting cups, golf club swing weights, golf bag travel covers; golf tees; golf ball markers; golf putting practice devices, namely, stroke improvement assemblies, ball returns, ball catchers, and ball setters; golf accessory kits comprised of golf tees and golf markers; golf practice nets	Golf Gifts & Gallery, Inc. (Illinois Corp.) N. 1675 Powers Lake Road Powers Lake Wisconsin 53159
FRANKLIN FUTURE CHAMPS	Pending - Publication Review Complete, March 9, 2021	SN: 90175157	Int'l Class: 28 (Int'l Class: 28) Baseball batting tees; baseball pitching machines; baseball bat and ball sets; baseballs and softballs; sports balls; outdoor games, namely, outdoor activity game equipment sold as a unit	Franklin Sports, Inc. (Delaware Corp.) 17 Campanelli Parkway Stoughton Massachusetts 02072

Mark/Name	Status/Status Date	App. No./Reg. No.	Full Goods/Services	Owner Information
			<p>comprising three-dimensional game pieces, ropes, sacks, racing bands, component carrying bags, targets, and flags for playing tug-of-war, potato sack races, 3-legged racing, limbo games, and tic-tac-toe racing; dodge balls for playing games; bean bag toss games; knee hockey sport sets comprised of hockey sticks, hockey balls, and hockey goals; mini-golf set comprised of golf clubs, golf balls, flags, and targets; basketball hoop set comprised of basketball hoops, basketballs, and basketball backboards; inflatable self-stick archery set; soccer goals; soccer balls and pumps specially adapted for use with balls for games; backyard foot golf games comprised of soccer balls and flagged hole targets; hockey sets comprised of hockey sticks, hockey balls, and hockey goals; boxing gloves; punching bags and boxing glove sets; inflatable boxing bags; lacrosse sticks and balls; football target toss games comprised of footballs, and football targets; football goal and post sets; youth golf sets comprised of golf clubs, golf balls, golf tees, and golf bags</p>	
<p>FRANKLIN FUTURE CHAMPS and Design</p> 	<p>Renewed, October 3, 2015</p>	<p>RN: 1923827 SN: 74473717</p>	<p>Int'l Class: 28 (Int'l Class: 28) sporting goods and toys, namely, footballs; soccerballs; playground balls; basketballs; volleyballs; baseball and softball batting and fielding gloves; baseball and softball bats; baseballs; softballs; bowling pins and balls; throwing rings; basketball hoops, nets and backboards; teeball sets; street hockey sticks, pucks and balls; golf</p>	<p>Franklin Sports, Inc. (Stateless Corp.)</p>


Mark/Name	Status/Status Date	App. No./Reg. No.	Full Goods/Services	Owner Information
			clubs and balls; croquet sets; punching bags; boxing gloves; table top ball game; volleyball sets, nets, and balls; badminton sets, nets, shuttlecocks and racquets; tetherball sets; bocce sets; horseshoes; flying discs; ring toss; yard tennis racquets and balls; paddleball sets, paddles and balls; dart boards, darts and dart games; table tennis sets, paddles, balls and nets; and fishing rods and reels	
CHAMPION GOLF CLUBS' AMATEUR GOLF TOUR	Registered, November 3, 2015	RN: 4844001 SN: 86386702	Int'l Class: 41 (Int'l Class: 41) organizing, conducting and operating golf tournaments	Jintu Enterprise LLC (Louisiana Limited Liability Company) 940 Oneil Lane Baton Rouge Louisiana 70816
CHAMPION GOLFER OF THE YEAR	Registered Principal Register - Sec. 2(F), October 4, 2016	RN: 5052476 SN: 86693854	Int'l Class: 41 (Int'l Class: 41) organising sporting and cultural activities, namely, golf competitions, golf tournaments and golf events; organisation of sporting events and activities, namely, golf competitions, golf tournaments and golf events; organisation and conducting of golf tournaments and golf competitions	R&A Merchandising Limited (United Kingdom Limited Company) C/O Shepherd and Wedderburn LLP 1 Exchange Crescent, Conference Square Edinburgh Eh3 8UI United Kingdom
CHAMPIONS MADE HERE	Registered 8 & 15, June 26, 2018	RN: 4298517 SN: 78886327	Int'l Class: 41 (Int'l Class: 41) organizing sporting events, namely, basketball, soccer, volleyball, football, swimming, tennis, golf, baseball, softball, soccer, gymnastics, water polo, track, cross country and rowing; arranging and conducting athletic competitions	The Regents of the University of California (California Corp.) 111 Franklin Street Oakland California 94607
CHAMPIONSG	Renewed,	RN: 2656520	Int'l Class: 41	Cg Downtown

Mark/Name	Status/Status Date	App. No./Reg. No.	Full Goods/Services	Owner Information
ATE	December 3, 2012	SN: 76374883	(Int'l Class: 41) providing golf course facilities, providing golf instruction and entertainment in the nature of golf tournaments, and providing educational services, namely conducting seminars, workshops and classes in the field of golf	Associates, LLC (Delaware Limited Liability Company) 3120 Southwest Freeway, Ste. 200 Houston New York 77098
CITY OF CHAMPIONS	Renewed, June 8, 2020	RN: 3799999 SN: 77332241	Int'l Class: 25 (Int'l Class: 25) apparel promoting the athletic achievements of various cities, namely, a-shirts; baseball caps; bermuda shorts; board shorts; boxer shorts; button-front aloha shirts; camp shirts; cap visors; capri pants; caps; caps with visors; cargo pants; denims; fleece pullovers; fleece shorts; golf caps; golf shirts; gym shorts; hat bands; hats; head sweatbands; jogging pants; knit shirts; knitted caps; long-sleeved shirts; night shirts; open-necked shirts; pajama bottoms; pajamas; panties, shorts and briefs; pants; pique shirts; polo shirts; pullovers; rugby shirts; rugby shorts; shirts; short trousers; short-sleeved or long-sleeved t-shirts; short-sleeved shirts; shorts; skull caps; sleep shirts; small hats; snow pants; sport shirts; sports shirts; sports shirts with short sleeves; stretch pants; sweat pants; sweat shirts; sweat shorts; sweatbands; t-shirts; tee shirts; track pants; triathlon clothing, namely, triathlon tights, triathlon shorts, triathlon singlets, triathlon shirts, triathlon suits; underwear, namely, boy shorts; walking shorts; baby bibs not of paper	Cuban, Mark (United States Citizen) 5424 Deloache Avenue Dallas Texas 75220
CLUB CHAMPION	Registered, January 7,	RN: 5953056 SN: 88212545	Int'l Class: 41 (Int'l Class: 41)	Club Champion, LLC, DbA Club

Mark/Name	Status/Status Date	App. No./Reg. No.	Full Goods/Services	Owner Information
BETTER FIT...LOWER SCORES and Design 	2020		Fitting of golf clubs to individual users	Champion (Delaware Limited Liability Company) 825 75th Street Willowbrook Illinois 60527
DURA-PRO MULTI-CLUB CHAMPION WOODTEE GOLF MATS	Registered Principal Register - Sec. 2(F) 8 & 15, March 30, 2019	RN: 4353316 SN: 85748504	Int'l Class: 28 (Int'l Class: 28) golf hitting mats	Challenger Turf, Inc. (Georgia Corp.) 743 Hill Road Dalton Georgia 30721
IJGT INTERNATIONAL JUNIOR GOLF TOUR IN PARTNERSHIP WITH JCF TRAINING CHAMPIONS FOR LIFE. and Design 	Registered, June 23, 2020	RN: 6082943 SN: 88263421	Int'l Class: 41 (Int'l Class: 41) Golf instruction; Organisation of golf tournaments; Providing a website featuring information on golf and golf instruction	Junior Champions Foundation (South Carolina Non-Profit Corporation) 55 Hospital Center Common Hilton Head Island South Carolina 29926
MAJOR CHAMPIONS INVITATIONAL and Design 	Registered, June 4, 2019	RN: 5766903 SN: 87836806	Int'l Class: 41 (Int'l Class: 41) entertainment in the nature of golf tournaments; organisation of golf tournaments; organizing, conducting and operating golf tournaments; planning of professional golf tournaments	The Faldo Trust for Tomorrow's Champions, Inc. (Florida Corp.) Citadel 1 Building 5850 T.G. Lee Blvd., Suite 330 Orlando Florida 32822
MAJOR CHAMPIONS INVITATIONAL	Registered, June 4, 2019	RN: 5766905 SN: 87836812	Int'l Class: 41 (Int'l Class: 41) entertainment in the nature of golf tournaments; organisation of golf tournaments; organizing, conducting and operating golf tournaments; planning of professional golf tournaments	The Faldo Trust for Tomorrow's Champions, Inc. (Florida Corp.) Citadel 1 Building 5850 T.G. Lee Blvd., Suite 330 Orlando Florida 32822
PGA TOUR CHAMPIONS TOUR	Renewed Principal Register - Sec.	RN: 2827754 SN: 78162271	Int'l Class: 41 (Int'l Class: 41) entertainment services --	The Professional Golfers' Association of

Mark/Name	Status/Status Date	App. No./Reg. No.	Full Goods/Services	Owner Information
	2(F), March 30, 2014		namely organizing and conducting professional golf competitions	America (Florida Corp.) 100 Avenue of the Champions Palm Beach Gardens Florida 33410
PGA TOUR CHAMPIONS TOUR and Design 	Renewed, May 4, 2014	RN: 2838522 SN: 78186033	Int'l Class: 28 (Int'l Class: 28) sporting goods -- namely golf clubs, golf bags, golf gloves, golf bag tags, golf club headcovers, golf balls, golf ball markers and small golfers' utensils used for repairing turf damage during play	The Professional Golfers' Association of America (Florida Corp.) 100 Avenue of the Champions Palm Beach Gardens Florida 33410
PGA TOUR CHAMPIONS TOUR and Design 	Renewed Principal Register - Sec. 2(F), August 3, 2014	RN: 2869188 SN: 78186034	Int'l Class: 41 (Int'l Class: 41) entertainment services -- namely organizing and conducting professional golf competitions	The Professional Golfers' Association of America (Florida Corp.) 100 Avenue of the Champions Palm Beach Gardens Florida 33410
POCKETCAR CHAMPION	Registered, September 22, 2020	RN: 6155981 SN: 87475425	Int'l Class: 28 (Int'l Class: 28) butterfly nets; insect collecting implements, namely, butterfly nets; toys for domestic pets; ornaments for Christmas trees, except illumination articles and confectionery; fairground ride apparatus, namely, amusement park rides; playthings, namely, soft dolls, puzzles, balloons, return top toys, toy figures attachable to pencils, rubber balls, children's multiple activity toys, basketballs, bath toys, baseballs, beach balls, collectible toy figures, dolls, doll accessories, doll playsets, electric action toys, equipment sold as a unit for playing card games, footballs, mechanical toys, toy mobiles, toy vehicles, toy watches, and toy weapons;	Choi, Shin-Kyu (Republic of Korea Citizen) B-4101 (Mokdong, Trapalace Western Ave.) 299, Ohmok-Ro, Yangcheon-Gu Seoul 08001 Republic of Korea

Mark/Name	Status/Status Date	App. No./Reg. No.	Full Goods/Services	Owner Information
			<p>dolls; toys, namely, soft dolls, puzzles, balloons, return top toys, toy figures attachable to pencils, rubber balls, children's multiple activity toys, basketballs, bath toys, baseballs, beach balls, collectible toy figures, dolls, doll accessories, doll playsets, electric action toys, equipment sold as a unit for playing card games, footballs, mechanical toys, toy mobiles, toy vehicles, toy watches, and toy weapons; games namely, board game, arcade games, card games; sporting articles for athletic use, namely, skis, snowboards, sport gloves in the nature of batting gloves, wrist pads, elbow guards, shoulder pads, ankle pads, shin guards, knee guards; mountaineering equipment, namely, ascenders; climbers harness; golf bags with and without wheels; golf balls; golf gloves; golf equipment namely, balls, clubs, gloves, and club covers; fishing tackle; twirling batons; protective face masks, namely, catchers' masks, fencing masks, and kendo masks</p>	
WORLD CHAMPION SERIES	Registered Supplemental Register, December 5, 2017	RN: 5352266 SN: 86970633	Int'l Class: 41 (Int'l Class: 41) entertainment services in the nature of competition in the field of golf; and providing recognition and incentives by way of awards to demonstrate excellence in the field of golf	Curchod, Donald B. (Australia Citizen) 32 Cabarita Road Avalon Avalon, Nsw Australia
WORLD CHAMPIONS CUP	Pending - Initialized, November 9, 2020	SN: 90300038	Int'l Class: 41 (Int'l Class: 41) Organization, arranging and conducting of professional golf tournaments or competitions; Entertainment in the nature of golf tournaments;	Intersport, Inc. (Illinois Corp.) Suite 2200 303 East Wacker Drive Chicago Illinois 60601

Mark/Name	Status/Status Date	App. No./Reg. No.	Full Goods/Services	Owner Information
			Entertainment services, namely, conducting contests; Sweepstakes services; Entertainment services, namely, organizing a biennial world golf competition featuring international teams of golfers based on geography, age and career achievements; Entertainment services, namely, producing and distributing media related to the competition and player selection; Related promotions or sweepstakes services	
YO GOLF SWING PLAY LIKE A CHAMPION TODAY! and Design 	Pending - Publication Review Complete, March 30, 2021	SN: 88908901	Int'l Class: 28 (Int'l Class: 28) Golf swing training equipment, namely, golf swing trainers in the nature of weights for attachments to golf clubs for use as a golf swing aid, golf training aid in the nature of a brace worn on the hand and wrist to control flipping of the hand in a golf swing	Ray Seville Productions, LLC (Minnesota Limited Liability Company) 3951 Unity Ave N Robbinsdale Minnesota 55422

If helpful, Applicant is happy to provide detailed printouts of such records with current status information.

Weak marks are given a narrower range of protection than arbitrary, coined, and other strong marks. Similarly, the presence of other, similar marks limits the range of protection, particularly in crowded fields like real estate. See, *Carefirst of Maryland, Inc. v. FirstHealth of the Carolinas Inc.*, 77 U.S.P.Q.2d 1492, 1510 (T.T.A.B. 2005) (“in view of the third-party uses of [similar] marks . . . consumers likely are able to distinguish between entities based on distinctions among the marks”), *appeal dismissed*, 171 Fed. Appx. 838 (Fed. Cir. 2006). It is clear that KEEPSAFE should not be afforded an overly broad scope of protection.

Moreover, the TTAB has recognized that the addition to a weak mark of a distinctive element (such as KEY or CLUB with square and shield design in the Subject Mark) is sufficient to distinguish it from marks that otherwise would be confusingly similar:

[W]here there are some recognizable differences in the assertedly conflicting product marks or where the conflicting marks in question are highly suggestive . . . or play upon commonly used or registered terms, the addition of . . . material to

one of the marks has been held sufficient to render the marks as a whole distinguishable.

In re Shawnee Milling Co., 225 U.S.P.Q. 747, 748-49 (TTAB 1985). In *Shawnee Milling*, the Applicant's mark GOLDEN CRUST was initially refused registration because of the previously registered mark ADOLPH'S GOLD'N CRUST. *Id.* The TTAB reversed, holding that:

[I]t is clear that "GOLDEN CRUST" or its phonetic equivalent "GOLD'N CRUST" as applied to flour and/or to combination coating and seasoning is, at the very least, highly suggestive of a desired result of the use of the goods. As such, the scope of protection for such a suggestive or nonarbitrary term is less than that of a distinctive or arbitrary mark and we believe that the addition of the house mark "ADOLPH'S" to registrant's mark is sufficient to distinguish the marks as a whole and to avoid the prescription to the registration of Applicant's mark

Id. at 749. Similarly, in *In re Champion Oil Co.*, 1 U.S.P.Q. 2d 1920, 1921 (TTAB 1986), the TTAB held that, for car care products, the addition of the word TOP to the mark FORMULA-1 created a unique commercial impression which avoided confusion with the mark FORMULA-1. *See also, In re Farm Fresh Catfish Co.*, 231 U.S.P.Q. 495 (TTAB 1986) (no confusion would result from registration of the mark CATFISH BOBBER for edible fish nuggets, which created the distinct commercial impression of a fishing bob, and the mark BOBBER for restaurant services).


Even the addition of a descriptive element may be sufficient to distinguish weak marks that otherwise would be confusingly similar. As the TMEP notes, "[i]f the common element of two marks is "weak" in that it is generic, descriptive, or highly suggestive of the named goods or services, it is unlikely that consumers will be confused unless the overall combinations have other commonality. TMEP 1207.01(b)(viii). This is true even if the additional terms are weak or descriptive. *See, e.g., Juice Generation, Inc. v. GS Enters. LLC*, 115 USPQ2d at 1675 (remanded for consideration of whether and to what degree the phrase PEACE & LOVE was suggestive or descriptive in the food-service industry in assessing likely confusion with PEACE LOVE AND JUICE); *In re Bed & Breakfast Registry*, 791 F.2d 157, 159 229 USPQ 818, 819 (Fed. Cir. 1986) (reversing TTAB's holding that contemporaneous use of BED & BREAKFAST REGISTRY for making lodging reservations for others in private homes, and BED & BREAKFAST INTERNATIONAL for room booking agency services, is likely to cause confusion, because, inter alia, the descriptive nature of the shared wording weighed against a finding that the marks are confusingly similar); *U.S. Shoe Corp. v. Chapman*, 229 USPQ 74 (TTAB 1985) (holding COBBLER'S OUTLET for shoes, and CALIFORNIA COBBLERS (in typed and stylized forms) for footwear and women's shoes, not likely to cause confusion). In this case, the distinct commercial impressions created by the respective marks, ensures that there is no likelihood of confusion.

Applicant notes that Cleats LLC, owner of the CHAMP, CHAMP CATALYST, CHAMP SCORPION STINGER, and CHAMP HELIX registrations listed above is commonly owned by the parent company of Applicant. Overall, Applicant is part of an organization that sells golf

accessories, including cleats, tees, etc. under the CHAMP brand. Below are some examples from its catalog:

<https://macneill-pride.com/wp-content/uploads/2021/01/2021-PrideSports-Catalog-Web.pdf>

CLEATS





C
ZARMA TOUR® GOLF CLEATS

The Zarma Tour cleat has six flexible anti-clogging legs that offer grip and comfort. The patented performance webbing disperses energy to reduce cleat pressure for added support.




PRODUCT	PART NO.	MSRP
RESEALABLE BAG	11540 (18CT)	\$15.99
40OCT BOWL	11740	\$340.00



C
HELIX® GOLF CLEATS

The Helix golf cleat has soft material legs that minimize marks on the green and provide extra cushion to the golfer. The tour-inspired cleat offers maximum traction, durability and stability.



PRODUCT	PART NO.	MSRP
RESEALABLE BAG	17560 (20CT)	\$15.99
40OCT BOWL	17760	\$340.00




C
SCORPION STINGER® GOLF CLEATS

The Scorpion Stinger cleat has three soft, anti-clogging legs for extra comfort and traction. This cleat is an all-weather performance cleat, ideal for wet conditions.



PRODUCT	PART NO.	PART NO.	PART NO.	MSRP
RESEALABLE BAG	75640 (18CT)	75630 (16CT)	75610 (22CT)	\$15.99
40OCT BOWL	77640	77630	77610	\$340.00




C
ZARMA TOUR®/UNDER ARMOUR® COMBO DISK

The Zarma Tour/Under Armour combo disk includes both cleats. The Zarma Tour cleat has six flexible anti-clogging legs that offer grip and comfort. The patented performance webbing disperses energy to reduce cleat pressure for added support. The Under Armour cleat is fitted with the patented rotational resistance traction that is designed to resist rotation and prevent slippage during both the beginning phase of the swing and impact.



PRODUCT	PART NO.	MSRP
COMBO DISK	21540	\$17.00

*COMBO DISK INCLUDES 12 ZARMA TOUR CLEATS & 8 UNDER ARMOUR CLEATS



CHAMP ACCESSORIES

CHAMP



C
DUAL BRUSH™

The Champ Dual Brush has a comfortable grip that keeps your hands clear of cleats and dirt. The zip line pulls out 23" for ease of use and conveniently hooks to any golf bag. The brush has dual durometer of bristles; one side nylon and the other side brass to allow choices for cleaning golf clubs.

PART NO.	MSRP
87408	\$5.99



C
MAXPRO WRENCH™

The Champ MaxPro Wrench is the latest in cleat changing tools. It has a contoured, soft-touch dual density handle. The three-position ratchet for insertion makes removal of cleats simple. The MaxPro Wrench comes with two-point, six-point and eight-point bits.

PART NO.	MSRP
88401	\$9.99



C
PRO WRENCH™

The Champ Pro Wrench is an economically designed yet durable wrench featuring an ergonomic textured handle paired to a sturdy steel stem with extra-long, hardened steel pins.

PART NO.	MSRP
88404	\$5.99



C
TWO-PIN CLEAT WRENCH™

The Champ Two-Pin Cleat Wrench can remove and install most cleats with ease.

PART NO.	MSRP
PRTW6001	\$4.99



TEES

SPECIAL EDITION WOOD GOLF TEES

NEW

The PrideSports new Special Edition wood tees are available in three designs: Playing Cards, Shamrocks and Dollar Signs. These bright wood tees are designed to provide a more enjoyable day on the course.

SIZES: 2-3/4", 3-1/4"
COLORS: White

SIZE	TYPE	QTY	PART NO.	MSRP
2-3/4"	PLAYING CARD	45 TEES	PS23445C	\$5.99
	SHAMROCK	45 TEES	PS23445S	\$5.99
	DOLLAR SIGN	45 TEES	PS23445M	\$5.99
3-1/4"	PLAYING CARD	45 TEES	PS31445C	\$5.99
	SHAMROCK	45 TEES	PS31445S	\$5.99
	DOLLAR SIGN	45 TEES	PS31445M	\$5.99



RIPSTIXX® GOLF TEES

RipStixx Golf Tees are engineered and designed to provide maximum performance and durability.

SIZES: 2-1/8", 2-3/4", 3-1/4"
COLORS: Glacier White, Natural Oak, Onyx Black, Citrus Green, Citrus Orange, Citrus Pink, Midnight Blue, Majestic Purple, Mustang Red, Citrus Mix, Shiny Yellow

TYPE	QTY	MSRP
2-1/8" RIPSTIXX RETAIL BAGS	100 TEES	\$4.99
2-3/4" RIPSTIXX RETAIL BAGS	65 TEES	\$4.99
3-1/4" RIPSTIXX RETAIL BAGS	60 TEES	\$5.99



RESEALABLE BAGS

STEPSTIXX® GOLF TEES

Designed to promote a consistent tee height for golfers on the tee box, STEPSTIXX Golf Tees offer consistent ball placement, allowing the golfer to worry less about the height of their ball and more about their game.

SIZES: 1-3/8", 2-1/8", 2-3/4", 3-1/4"
COLORS: Glacier White, Natural Oak, Citrus Mix, Citrus Green, Citrus Orange, Citrus Pink

*1-3/8" only available in Glacier White, Natural Oak and Citrus Mix

TYPE	QTY	MSRP
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Applicant submits that its golf cleats and accessories are sold with other gold accessories, such as tees, that consumers would understand them all to emanate from the same source.

Further, as noted above, the Cited Marks include the distinct additional terms KEY or CLUB. Given the many other similar marks with "CHAMP" or even "CHAMPION," that coexist on the Register, the Subject Mark is no more likely to cause confusion than any of the other existing registrations or approved applications. For example, the Cited Marks CHAMPKEY and CLUB

CHAMP are permitted to coexist. In light of such coexisting marks incorporating the term “CHAMP” or “CHAMPION,” Applicant believes that the Examiner has afforded the Cited Marks a scope of protection beyond that to which it is entitled. The Examiner is well aware that “any doubt in determining the registrability of [a mark] is resolved in favor of an applicant on the theory that any person who believes that he would be damaged by the registration will have an opportunity . . . to oppose the registration of the mark and to present evidence.” *In re Merrill Lynch, Pierce, Fenner, and Smith Inc.*, 4 U.S.P.Q.2d 1141, 1144 (Fed. Cir. 1987) (quoting *In re Gourmet Bakers, Inc.*, 173 U.S.P.Q. 565 (TTAB 1972))

Consumers of Applicant’s and Registrant’s products make the decision to purchase after careful consideration which mitigates any potential confusion

Consumers of both Applicant’s and Registrant’s products are careful and discriminating consumers and therefore less likely to be confused as to the origin of those goods. There is always less likelihood of confusion where goods or services are purchased after careful consideration. *Electronic Design & Sales, Inc. v. Electronic Data Systems Corp.*, 954 F.2d 713, 718, 21 U.S.P.Q.2d 1388 (Fed. Cir. 1992) (finding that both opposer’s services and applicant’s goods are usually purchased after careful consideration by persons who are highly knowledgeable and thereby lessening the likelihood of confusion between EDS for computer programming services and EDS for power supplies and battery chargers), *citing Astra Pharmaceutical Prods. v. Beckman Instruments*, 718 F.2d 1201, 1206 (1st Cir. 1983).

Golf enthusiasts are notorious for carefully evaluating the quality of golf products instead of making a quick impulse purchase. They take great care in researching and selecting such products and make such decisions only after extremely careful consideration. Consumers are much less likely to be confused that Applicant’s goods originate from the same source as the Registrant’s goods, particularly where each of the respective marks conveys a separate and distinct commercial impression, as they do here, and are used on distinct and different goods in separate classes.

The Office Failed to Meet its Burden of Proof

As established by the Federal Circuit, the burden to show that there is a likelihood of confusion falls squarely on the USPTO. *See In re Pacer Technology*, 338 F.3d 1348, 1350, 67 U.S.P.Q.2d 1629, 1632 (Fed. Cir. 2003) (finding PTO was required to prove a prima facie case, i.e., a “reasonable predicate” for its position); *see also In re Mavety Media Group Ltd.*, 33 F.3d 1367, 1371, 31 U.S.P.Q.2d 1923 (Fed. Cir. 1994) (“The PTO has the burden of proving that a trademark falls within a prohibition of § 1052.”). Section 710.01 of the TMEP requires that the Office “must always support [its] action with relevant evidence.” TMEP § 710.01. Similarly, Section 706.01 confirms that the Office must establish a prima facie case for the refusal or requirement. TMEP § 706.01.

The only evidence offered by the Examining Attorney is three examples of Internet evidence that attempts to establish the relatedness of the goods covered by the Subject Mark and the Cited Marks. However, this evidence is of no consequence as Applicant provides similar evidence to show the relationship between the goods at issue to show how its CHAMP mark and the CHAMP marks used by the related Cleats LLC entity show such goods can emanate from a

common source. Without additional evidence, the Trademark Office has not met its burden to show there is a likelihood of confusion between the Cited Marks and the Subject Mark.

Conclusion

In view of the foregoing, Applicant submits that confusion will not result from registration of the Subject Mark, because the Subject Mark creates a commercial impression that is wholly unlike the commercial impression created by the Cited Marks; the common term CHAMP is weak and should only be afforded a very limited scope of protection; and consumers will only purchase Applicant's or Registrant's goods after careful consideration; and the Trademark Office failed to meet its burden of proof. Therefore, Applicant respectfully requests that the Examining Attorney withdraw the initial refusal to register, and approve the Subject Mark for publication.