

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of : **BIOZONE**
Serial No. : 79289579
Applicant : OTHREE MEDICAL CO., LTD.
Examiner : Michael P. Keating
Law Office : 101

Response to Office Action

The Examining Attorney has refused registration of the applied-for BIOZONE, U.S. Application No. 79289579, on the grounds that the mark is confusingly similar to BioZone, U.S. Registration No. 4289051. Applicant respectfully requests that the Examiner withdraw this objection for the following reasons:

1. The BIOZONE and BioZone goods are sold in completely different channels of trade.
2. Purchasers of both BIOZONE and BioZone are sophisticated consumers
3. BIOZONE is visually distinguishable from BioZone

Therefore, BIOZONE is not confusingly similar to BioZone and this application should therefore be allowed to proceed to registration.

I. BIOZONE and BioZone travel within different channels of commerce

Consumers are unlikely to be confused by BIOZONE and BioZone, as BIOZONE is sold to consumers working within the medical field while BioZone is sold to commercial building owners and developers. As indicated by the examiner, determining whether a likelihood of confusion is present requires a case by case analysis using the factors detailed in *In re E. I. du Pont de Nemours & Co.* 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973). One of these factors addresses whether the goods covered by each trademark travel within similar, established channels of trade. *Id.*

In this case, the Applicant uses the BIOZONE mark in conjunction with specialty goods used to disinfect medical equipment and reduce the risk of secondary infection within hospitals. The BioZone mark, on the other hand, is used with ozone generators adapted for use in combination with HVAC installations and ice makers to purify both air and water.

Due to the smaller, specialized nature of the BIOZONE goods, these products are exclusively going to be sold in medical supply storefronts given their focus on serving medical professionals. The BioZone ozone generators, on the other hand, are much larger and generalized in their applications. As a result, BioZone ozone generators are going to be marketed generally at owners of commercial buildings such as malls, businesses, and transportation hubs.

BioZone products will not appear near BIOZONE goods given their inability to sanitize smaller, specific types of equipment. Furthermore, the BioZone products are clearly marketed toward general air and water sanitization while BIOZONE is clearly developed with medical professionals in mind. Given the market focuses of each trademark, goods bearing the respective marks at issue are unlikely to be sold within close proximity to one another.

II. Purchasers of both BIOZONE and BioZone are sophisticated consumers

Due to the sophisticated nature of consumers buying BIOZONE and BioZone products, we believe that purchasers are unlikely to be confused when purchasing the respective goods sold under each mark. According to the “*du Pont* factors”, determining whether a likelihood of confusion exists requires analyzing the sophistication of consumers purchasing the relevant goods. *In re E. I. du Pont de Nemours & Co.* 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973). Consumer sophistication addresses the purchasing habits of consumers with regards to the relevant goods and services covered by an application. Specifically, this factor

takes into account whether consumers of a specific good are likely to make an impulse purchase or undergo serious, careful analysis before making a purchase. *Id.*

Given the medical applications of the BIOZONE mark, purchasers of these products are likely to be highly trained medical professionals with a great understanding of sterilizing procedures. Accordingly, these purchasers will be analyzing the effectiveness of these products with the great rigor to ensure they keep their patients healthy. The BioZone goods are installed in large scale settings such as universities and commercial buildings. Due to the costs involved in purifying the air of such large buildings, purchasers of the BioZone goods are also going to heavily weigh the effectiveness of the purifying system with the purchasing and installation costs involved.

Due to the stakes involved in purchasing BIOZONE or BioZone products, consumers will likely be able to distinguish both marks with relative ease. Purchasers looking for an ozone purifier for their building will easily differentiate BIOZONE with BioZone due to the smaller, more medical focused scale of the former mark. Similarly, medical professionals aiming to sanitize their tools will likely stray away from BioZone products due to their larger scale applications throughout entire buildings.

III. BIOZONE is visually distinguishable from BioZone

BIOZONE is visually distinguishable from BioZone based on the lack of distinct capitalization and inclusion of stylized elements. An additional “*du Pont* factors” used in likelihood of confusion analysis addresses similarities between marks at issue. *In re E. I. du Pont de Nemours & Co.* 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973). According to this factor, similarity address appearance, sound, connotation, and overall commercial impression of the marks.

Visually, the marks differ visually in two primary facets. While BioZone is a standard character mark, BIOZONE is a stylized mark only attempting to claim protection for a specific

design. Additionally, BIOZONE does not indicate contain any variance in capitalization while BioZone features capitalization of the letter “b” and “z”.

When viewing these differences in their entireties, the two marks create two distinct impressions from one another. Due to the capitalization found in “Bio” and “Zone”, consumers will naturally interpret BioZone as the combination of two words. BIOZONE, on the other hand, is more likely to be viewed as a unitary mark given the lack of varied capitalization. These differences in commercial impression are only further emphasized by the unique, stylized font of the BIOZONE mark.

IV. Conclusion

Applicant respectfully requests that the Examiner withdraws the §2(d) likelihood of confusion objection because 1) BIOZONE and BioZone are sold in completely different channels of trade; and 2) the sophisticated purchasers of both BIOZONE and BioZone will easily be able to differentiate between the goods based on their intended uses; and 3) BIOZONE is visually distinguishable from BioZone. As a result, there is no likelihood of confusion and the BIOZONE application should therefore be allowed to proceed to registration.