

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mark:	LIVE)	
)	
Serial No.:	97533409)	
)	
Applicant:	Action Front Unlimited, Inc.)	Examining Attorney: Diana Zarick, Esq.
)	
Class:	25)	Law Office: 126
)	
Att. Ref.:	119708.0001.1)	
)	

RESPONSE TO OFFICE ACTION

Applicant respectfully submits the following remarks in response to the non-final Office Action dated May 27, 2023, which:

1. noted that Applicant's Section 2(f) claim is unnecessary and offered Applicant the opportunity to withdraw it; and
2. refused registration in view of a purported likelihood of confusion with the marks shown in Registration Nos. 6350412, 5382083, and 5466854.

Both issues are addressed below, as is Applicant's proposed amendment to its mark.

I. Withdrawal of Unnecessary Section 2(f) Claim

Applicant thanks the Examining Attorney for pointing out the unnecessary Section 2(f) claim, and hereby requests that it be withdrawn.

II. Amendment to Applicant's Applied-for Mark




As shown in the TEAS form accompanying these remarks, Applicant respectfully proposes to amend its mark to the stylized version shown below:

LIVE

Applicant further respectfully submits that this amendment does not constitute a material alteration because the original applied-for mark LIVE in standard characters by its nature did not claim any particular font style, size, or color. In short, this amendment is essentially narrowing the scope of protection for the applied-for mark.

III. Likelihood-of-Confusion Refusals

Applicant seeks to register the amended mark **LIVE** for “hoodies; t-shirts” in Class 25. The Examining Attorney refused registration under Section 2(d) based upon a purported likelihood of confusion with the marks shown in Registration Nos. 6350412, 5382083, and 5466854. The particulars of the three cited registrations are shown below:

Mark	Goods (in relevant part)	Registration No.	Registrant
	<u>Class 25</u> Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms	6350412 ¹	Davina Hunt
	<u>Class 25</u> Hats; sweatshirts; t-shirts	5382083	Marcia Caster and Jacob Thomas Caster
	<u>Class 25</u> T-shirts; hooded sweatshirts	5466854	Student.com Ventures Limited

In refusing registration, the Examining Attorney stated as follows:

Applicant seeks broad protection by seeking standard character form for the applied-for mark. With standard character protection, there is nothing to prevent applicant from using its mark in the same stylization as the registered marks. A mark in typed or standard characters may be displayed in any lettering style; the rights reside in the wording or other literal element and not in any particular display or rendition.

As noted above, Applicant has proposed to amend its applied-for mark from LIVE in standard characters to the stylized version **LIVE**, which is appreciably different than any of the marks in the three cited registrations.

Additionally, Applicant would point out that two of the cited registrations – Nos. 5382083 and 5466854 – issued over Applicant’s now-cancelled Registration No. 2116106 for **LIVE** covering “clothing, namely, t-shirts, sweatshirts, caps, hats, tank tops and jackets” in Class 25, and the third cited registration – No. 6350412 – issued over the other two. Applicant readily

¹ This registration is on the Supplemental Register as opposed to the Principal Register.

acknowledges that these facts are not dispositive or in any way binding upon the Office, but Applicant does respectfully submit that Applicant's ownership of a prior registration for the same mark and goods weighs "in applicant's favor to a degree." *In re Davey Prods. Pty Ltd.*, 92 U.S.P.Q.2d 1198, 1206 (T.T.A.B. 2009). After all, the examining attorneys who examined the applications that ultimately matured into cited Registration Nos. 5382083 and 5466854 determined there was no likelihood of confusion with Applicant's then-registered mark **LIVE** for the same goods.

For the foregoing reasons, Applicant respectfully submits that there is no likelihood of confusion with any of the marks in the three cited registrations, and requests that the refusals be withdrawn.

IV. Conclusion

Having responded to all issues raised in the Office Action, Applicant respectfully requests that its application be approved for publication. The Examining Attorney is invited to contact the attorney of record with any questions.