IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	IKOTE
Serial No. :	88230903
For :	Zeng Zhen
Examiner :	Collier L. Johnson II
Law Office :	123

RESPONSE TO OFFICE ACTION DATED April 9, 2019

This is responsive to Office Action dated April 9, 2019. The Applicant respectfully requests that the application be reconsidered.

BACKGROUND

Applicants Zeng Zhen seeks registration of IKOTE (in stylized characters) for "Face-protection shields; Computer anti-virus software; Computer game software; Computer hardware; Digital plotters; Electric cables and wires; Electric navigational instruments; Electrical plugs and sockets; Measuring rulers; Mobile applications for booking taxis" in International Class 009. The trademark-examining attorney has refused registration of the mark IKOTE under Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq*. alleging the applied for mark is likely to be confused with registration number 88042120 IKOTESUN brand "Audio cables; Cable connectors;Cable television converters; Computer cables; Computer network adapters, switches, routers and hubs; Computers and computer peripherals; Connection cables; Converters; Digital to analogue converters; Electric connections and connectors; Electronic equipment, namely, transformers, baluns, and cables, all used in connection with computers, computer peripheral devices, televisions, audio-video equipment, closed-circuit TV equipment and telecommunication equipment;

Electronic switchers for audio and video signals; Stereo cables; Television and video converters; USB hubs; Video cables" in International Class 009.

APPLICANT'S ARGUMENT IN SUPPORT OF REGISTRATION

Applicant respectfully disagrees with the Examining Attorney's decision for the reasons discussed below.

RESPONSE TO OFFICE ACTION DATED Jan 30, 2018.

The Standard for Determining Likelihood of Confusion

Determining likelihood of confusion is made on a case-by-case basis by applying the factors set forth in In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 1361, 177USPQ 563, 567 (C.C.P.A. 1973). In re i.am.symbolic, llc, 866 F.3d 1315, 1322, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017). The examining attorney is to apply each of the applicable fourteen factors set out in *In re E.I. DuPont DeNemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (CCPA 1973). The relevant *DuPont* factors as they relate to likelihood of confusion in this case are reviewed below.

The dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression;

In comparing two trademarks for confusing similarity, the Examining Attorney must compare the marks for resemblances in sound, appearance and meaning or connotation. *In re E.I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 U.S.P.Q. 563 (C.C.P.A. 1973). Similarity in one respect – sight, sound, or meaning – does not support a finding of likelihood of confusion, even where the goods or services are identical or closely related. TMEP §1207.01(b)(i).

It has long been established under the "anti-dissection rule" that "the commercial impression of a trademark 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." *Estate of P. D. Beckwith, Inc. v. Commissioner of Patents*, 252 U.S. 538,

545–46, 64 L. Ed. 705, 40 S. Ct. 414 (1920). It violates the anti-dissection rule to focus on the "prominent" feature of a mark, ignoring other elements of the mark, in finding likelihood of confusion. *Massey Junior College, Inc. v. Fashion Institute of Technology*, 492 F.2d 1399, 181 U.S.P.Q. 272 (C.C.P.A. 1974). *See Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 212 U.S.P.Q. 233 (C.C.P.A. 1981) ("It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion."); *Sun-Fun Products, Inc. V. Suntan Research & Development, Inc.*, 656 F.2d 186, 213 U.S.P.Q. 91 (5th Cir. 1981) (the test is "overall impression," not a "dissection of individual"

Here, the application trademark consist of the English character as IKOTE, prior-filled trademark is IKOTESUN, although two trademarks all include character IKOTE, application trademark has special features as follow. Firstly, the application trademark is in a standard character without any design, just a word mark, but prior-filled trademark is in a stylized character.

Secondly, pronunciation between applied trademark and prior-filled trademark is different. Due to different pronunciation, it is difficult for consumers to make confusions. Pronunciation is an important rule of examination, as we all know, when clients see a trademark, he or she will read this word, therefore pronunciation should be consider again. Thus, examiner should examine trademark in consisting, pronunciation, not just a signal word.

Different goods of different two goods

Although the international class of these two trademark is class 009, but the goods are not same totally, due to differences of consisting, pronunciation and meaning, there are very low possibilities for consumer to confuse. IKOTE has been used in commerce, especially USB related goods are popular that are major goods of IKOTE.

Due to high quality and safety, application trademark IKOTE become more popularly for these years, and has an important effect on the market. If just because the application trademark is same with registered trademark in same class, ignore the important goods, the application trademark is refused, it is unfair and unreasonable.

The dissimilarity of established, likely-to-continue trade channels

In some cases, a determination that there is likelihood of confusion may be inappropriate, even where the marks are similar and the goods or services are related, because these factors are outweighed by other factors, such as differences in the relevant trade channels of the goods or services.

Lead to the conclusion that confusion would arise under such conditions." 7- Eleven, Inc. v. HEB Grocery Company, LP, 83 U.S.P.Q.2d 1257 at *22 (TTAB 2007) (citations omitted). Take a step back, even if Applicant's goods and Registrant's private label goods were sold in the same online store, they would be displayed separately and apart. Applicant's goods would be sold alongside other home textiles products, whereas Registrant's goods would be sold alongside other personal care goods. Consequently, when the potential purchasers browse over the obviously different goods on various websites, they will not hold the mistaken belief that the goods emanate from the same source.

The dissimilarity of the conditions under which and buyers to whom sales are made;

Confusion in not likely to be caused because of the differences between the parties' respective goods in terms of their nature and purpose, how they are promoted, and who they are purchased by. *In re Thor Tech, Inc.*, 113 USPQ2d 1546, 1551 (TTAB 2015) . In this case, regardless of those substantial differences between the goods or service themselves and likely channels of trade, many of Applicant's and Registrant's

goods are specific in their intended use and thus purchased for different reasons. Applicant's medical facilities are aim to increase pain and help people invigorate health effectively. Although the registrant's goods are involved in medical facilities, but the goods are different from application trademark.

Given the specific and disparate use for which Applicant's goods and Registrant's goods is designed, consumers would be unlikely to confuse on Applicant's and Registrant's brands.

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CONCLUSION

Consequently, no matter visually,aurally or conceptually, it appears no possibility that the consumer will confuse the two marks together .

The registration permission of trademark "IKOTE"(Serial Number 88230903) is requested.

Applicant : Yang Yan

Dated : July 1 , 2019