

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): W. C. Bradley/Zebco Holdings, Inc. Serial No.: 88/235,710 Filed: December 19, 2018 Mark: RELIANCE	Law Office: 101 Examining Attorney: KATHERINE STOIDES
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RESPONSE TO SUSPENSION NOTICE

Box RESPONSES NO FEE
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

In the Suspension Notice, the Examining Attorney reported that a search of the Office records uncovered no similar registered or pending marks which would bar registration under Trademark Act §2(d). However, the Examining Attorney took the position that a mark which is the subject of a prior-filed pending application may present a bar to registration of Applicant's mark. Applicant respectfully requests reconsideration as set forth below.

ARGUMENTS AND AUTHORITIES

The Marks Are Not Confusingly Similar.

Whether a likelihood of confusion exists between two marks is determined on a case-by-case basis, aided, to the extent applicable, by the application of certain factors set out in *Application of E.I. DuPont DeNemours & Co.*, 476 F.2d 1357, 1361, 177 U.S.P.Q. 563, 567 (C.C.P.A. 1973). The *DuPont* factors are as follows: (1) the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression; (2) the similarity or dissimilarity and nature of the goods described in the application or registration of the mark, or in connection with which a prior mark is in use; (3) the similarity or dissimilarity of established, likely-to-continue trade channels; (4) the conditions under which and the buyers to whom sales are made; (5) the fame of the prior mark; (6) the number and nature of similar marks in use on similar goods; (7) the nature and extent of any actual confusion; (8) the length of time during and the conditions under which there has been concurrent use without evidence of actual confusion; (9) the variety of goods on which a mark is or is not used; (10) the market interface between the applicant and the owner of a prior mark; (11) the extent to which the applicant has a right to exclude others from use of its mark on its goods; (12) the extent of potential confusion; and (13) any other established fact probative of the effect of use. *See id.* *See On-line Careline, Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086-1087, 56 U.S.P.Q.2d 1471, 1474 (Fed. Cir. 2000).

The Goods and Consumers Are Different.

Applicant’s Goods (IC 028)	Goods of Cited Application - 88/227,293 (IC 025)
Fishing reels; Fishing rods	Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Athletic footwear; Athletic jackets; Athletic pants; Athletic shorts; Athletic tights; Athletic uniforms; Sports jerseys.

As discussed below, Applicant’s mark and the cited mark are used in connection with goods that are different and are provided to different discriminating customers, such that there is no likelihood of confusion. Applicant’s mark should be passed to publication. See *Dynamics Research Corp. v. Langenau Mfg. Co.*, 704 F.2d 1575, 1576, 217 U.S.P.Q. 649 (Fed. Cir. 1983) (“[The] goods of the respective parties are sufficiently distinct that their marketing under identical marks would not be likely to cause confusion, mistake, or to deceive.”). See also, *Elec. Design & Sales, Inc. v. Elec. Data Sys. Corp.*, 954 F.2d 713, 21 U.S.P.Q.2d 1388 (Fed. Cir. 1992).

The owner of the cited application, Nearfall, LLC, is in the business of selling wrestling apparel, such as for collegiate wrestling. The goods of the cited application are limited to athletic uniforms and related athletic apparel. Applicant’s goods are in a separate class and are limited to fishing reels and rods. Applicant’s goods do not compete with the goods of the cited application in any respect. The consumers for the respective goods are different and would not be confused when selecting between the goods of the cited application and Applicant’s goods.

The Range of Protection Is Narrow.

There are NO registrations, and only one other pending application in IC 028 for the mark Reliance. There are approximately 170 active registrations/applications on the U.S. register for marks containing the word “reliance” in other classes. There are approximately 53 such registrations/applications for the Reliance mark, without any other element included. See Exhibit “A.” In short, the USPTO Trademark Register demonstrates that the field is crowded and the range of protection for the mark in the cited application is exceedingly narrow.

The Mark in the Cited Application is Not Famous.

The owner of the cited application has apparently been utilizing the mark Reliance for a short period of time - since 2017. There is no evidence, or any indication, that the mark has become a famous mark in connection with the goods of the owner of the cited application.

Conclusion

In light of the above arguments and authorities, Applicant respectfully requests that its mark be passed to publication.



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	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
1	88288530	5834339	RELIANCE	TSDR	LIVE
2	88235710		RELIANCE	TSDR	LIVE
3	88227293		RELIANCE	TSDR	LIVE
4	88150163		RELIANCE	TSDR	LIVE
5	87505612		RELIANCE	TSDR	LIVE
6	87013016	5095123	RELIANCE	TSDR	LIVE
7	87219100	5703741	RELIANCE	TSDR	LIVE
8	87599861	5582071	RELIANCE	TSDR	LIVE
9	87688306		RELIANCE	TSDR	LIVE
10	87695341	5507752	RELIANCE	TSDR	LIVE
11	86528826	5492481	RELIANCE	TSDR	LIVE
12	86761102	5276975	RELIANCE	TSDR	LIVE
13	85930346	5570803	RELIANCE	TSDR	LIVE
14	85117344	4176254	RELIANCE	TSDR	LIVE
15	85060524	3897475	RELIANCE	TSDR	LIVE
16	78820573	3314390	RELIANCE	TSDR	LIVE
17	78872292	3297666	RELIANCE	TSDR	LIVE
18	78321150	3340835	RELIANCE	TSDR	LIVE
19	78321135	2979454	RELIANCE	TSDR	LIVE
20	78443607	3308206	RELIANCE	TSDR	LIVE
21	78446944	3174925	RELIANCE	TSDR	LIVE
22	77726334	3846100	RELIANCE	TSDR	LIVE

Exhibit "A"

23	77965214	3841475	RELIANCE	TSDR	LIVE
24	77726330	3733722	RELIANCE	TSDR	LIVE
25	77178763	3559557	RELIANCE	TSDR	LIVE
26	77297204	3448563	RELIANCE	TSDR	LIVE
27	76380427	3087916	RELIANCE	TSDR	LIVE
28	76100882	2948383	RELIANCE	TSDR	LIVE
29	76563120	2937405	RELIANCE	TSDR	LIVE
30	76537453	2866427	RELIANCE	TSDR	LIVE
31	76075931	2667746	RELIANCE	TSDR	LIVE
32	75769639	2582881	RELIANCE	TSDR	LIVE
33	75054711	2088334	RELIANCE	TSDR	LIVE
34	75224535	2125651	RELIANCE	TSDR	LIVE
35	74412839	1830488	RELIANCE	TSDR	LIVE
36	74369224	1841458	RELIANCE	TSDR	LIVE
37	74542671	2012367	RELIANCE	TSDR	LIVE
38	74236646	1713483	RELIANCE	TSDR	LIVE
39	74262795	1736413	RELIANCE	TSDR	LIVE
40	74340070	1811861	RELIANCE	TSDR	LIVE
41	73552079	1388977	RELIANCE	TSDR	LIVE
42	73304766	1244914	RELIANCE	TSDR	LIVE
43	73760339	1574625	RELIANCE	TSDR	LIVE
44	73775284	1552901	RELIANCE	TSDR	LIVE
45	73466830	1311499	RELIANCE	TSDR	LIVE
46	71529698	0504764	RELIANCE	TSDR	LIVE
47	71529693	0504578	RELIANCE	TSDR	LIVE
48	72154804	0756018	RELIANCE	TSDR	LIVE
49	71085936	0105775	RELIANCE	TSDR	LIVE
50	71035638	0077115	"RELIANCE"	TSDR	LIVE
51	72387151	0953179	RELIANCE	TSDR	LIVE
52	72188030	0782325	RELIANCE	TSDR	LIVE
53	71570634	0524233	RELIANCE	TSDR	LIVE

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