RESPONSE TO OFFICE ACTION
APPLICATION NO. 86597141

The Examining Attorney has refused registration on the ground that Applicant's Mark G5 for archery equipment, namely, bows, quivers, non-telescopic bow sights, arrow rests, broadheads and broadhead components, arrowheads, arrow nocks and components is likely to cause confusion with registrations for G5, PING G5 and G5I all for golf clubs. Applicant respectfully submits that its Mark is not likely to cause confusion with the cited marks because of the differences in their respective goods.

Simply being in the same broad general category of goods is not enough to create a likelihood of confusion. Just because two sets of goods can be categorized as sporting goods does not make confusion likely. As the court noted in *Mason Tackle Co. v. Victor United, Inc.*, 216 U.S.P.Q. 197, 203 (C.D. Cal. 1982):

> The sporting goods field is a broad field encompassing a broad spectrum of goods differing widely with respect to physical characteristics, uses, market appeal, conditions and circumstances surrounding their sale and promotion. A prior user of a trademark in one segment of a broad field, such as sporting goods, should not be permitted to extend the use of his trademark or a similar mark to other segments of the broad field and should not be permitted to extend the use of his trademark or a similar mark to goods distinctly different from those with which he entered the market if the result could be a conflict with valuable intervening rights established by another through extensive use and/or registration of the same or a similar mark.

Such is the case here. As indicated in the Application, Applicant already owns Reg. Nos. 3689450 and 3485000 for its G5 Mark for archery equipment and accessories, namely, non-telescopic bow sights, arrow rests, and broadheads and broadhead components, arrowheads, arrow nocks and components, and for hunting clothing, namely, hunting shirts, t-shirts, jackets, and hats. Thus, Applicant already has a registration for some of the archery goods in the current Application. That registration has coexisted with the cited registrations for nearly six years and

the registrations of each side are now incontestable. Further, the goods have coexisted in the marketplace for nearly 10 years without confusion (the first use of the cited marks being August 2, 2005 and Applicant's first use being April 27, 2001). All of this clearly illustrates that no confusion is likely between Applicant's Mark and the cited marks. It would be absurd to allow Applicant's prior registration to coexist with the cited registrations and not allow the new Application which simply contains additional goods very closely related to the goods already registered and no closer to the cited goods than the existing registration goods.

The only evidence of confusion in the Office Action are ads from sporting goods stores showing that they sell both golf and hunting/archery equipment. It has long been held that the mere fact that two different items can be found in the same retailer of a certain category, such as a supermarket, department store, drugstore, sporting goods store or the like is not sufficient basis for a finding that the goods are related. *See Recot Inc. v. M.C. Becton,* 54 USPQ2d 1894, 1899 (Fed. Cir. 2000)("the law is that products should not be deemed related simply because they are sold in the same kind of establishments"); *see also Federated Foods, Inc. v. Fort Howard Paper,* 192 USPQ 24, 29 (CCPA 1976); *Shoe Factory Supplies Co. v. Thermal Engineering Company,* 207 USPQ 517, 526 (TTAB 1980). Archery equipment and golf clubs are very different in nature and purpose and consumers are not likely to be confused that such goods with the same or similar mark come from the same source simply because both products are in the same sporting goods store along with football, baseball, skiing, hockey, bowling, fishing, running, weightlifting and other totally unrelated sporting equipment.

For these reasons, Applicant respectfully submits that there is no likelihood of confusion between Applicant's use of its mark for archery equipment and the cited registrations for golf clubs and that the Application should be approved for publication.