

OFFICE ACTION RESPONSE

U.S. Serial No. 88/064,492

Possible Refusal under Trademark Act Section 2(d) Based on Prior-Filed Applications

The Examining Attorney identified two prior-filed applications that, if registered, then Applicant's mark, LOCK n LOAD for "Aeration floor support system, namely, metal subfloors" in Class 6, may be refused registration under Trademark Act Section 2(d) because of a likelihood of confusion with the pending applications as follows:

1. U.S. App. No. 87/254,005 for the mark LODE N' LOK for "component parts for trailers, namely, metal deck latches" in Class 6 (the "'005 Cited Application"); and,
2. U.S. App. 87/879,729 for the mark "LOCK 'N' LOAD" for "Metal building materials for use in rooftop equipment support systems, metal building materials for use in HVAC-R support systems; frameworks of metal for use in rooftop equipment support systems, frameworks of metal for use in HVAC-R support systems; modular frameworks of metal for use in rooftop equipment support systems, modular frameworks of metal for use in HVAC-R support systems" in Class 6; and, "Non-metallic frameworks for use in rooftop equipment support systems, non-metallic frameworks for use in HVAC-R support systems; non-metallic modular frameworks for use in rooftop equipment support systems, non-metallic modular frameworks for use in HVAC-R support systems; non-metallic modular systems consisting of frameworks and supports, bases, anti-vibration mounts, mounts, brackets, joints and connectors for rooftop equipment support systems, non-metallic modular systems consisting of frameworks and supports, bases, anti-vibration mounts, mounts, brackets, joints and connectors for use in the support of HVAC-R systems, apparatus and equipment; non-metallic components for modular systems consisting of frameworks and supports, bases, anti-vibration mounts, mounts, brackets, joints and connectors for use in rooftop equipment support systems, non-metallic components for modular systems consisting of frameworks and supports, bases, anti-vibration mounts, mounts, brackets, joints and connectors for use in the support of HVAC-R systems" in Class 19 (the "'729 Cited Application") (collectively, the "Cited Marks").

For the following reasons, Applicant respectfully requests that the Examining Attorney consider the arguments submitted herein which clarify Applicant's goods in comparison to the goods offered by the applicant of the '005 Cited Application and the applicant in the '729 Cited Application and withdraw the potential citation against Applicant's mark. Applicant's goods are very specific in use and purpose; namely, metal sub-floor used in a grain bin and are not at all similar in use, purpose or function to the goods identified in either of the Cited Marks.

***Applicant's Goods Are Substantially Different than the Goods Referred to by the Cited Marks***

Applicant's goods are used as flooring for grain aeration and preservation in relation to grain bin storage. The goods of the Cited Marks are likewise used for very specific purposes. There are significant differences among the purposes, markets and consumers of the goods associated with the Applicant's mark and the Cited Marks such that confusion is unlikely. Attached hereto and incorporated by reference herein as **Exhibit A** is a brochure related to Applicant's goods.

Applicant's goods comprise a unique floor system for use in air drying or volume conditioning of grain and oilseed crops and consists of perforated flashing to permit aeration near the bin wall and floor to increase airflow circulation to the grain mass contained in the bins. These goods have a very exact purpose and are sold to very specific, knowledgeable and sophisticated consumer.

The goods in the '005 Cited Application are likewise very specific in purpose, function and market; namely, a locking mechanism for use on a flatbed trailer. Attached hereto and incorporated by reference herein as **Exhibit B** are photos showing the locking mechanism and its use in connection with the flatbed trailer. It is clear the uses of the LODE N' LOK locking mechanism are very different from and unrelated to Applicant's aeration flooring. Accordingly, the goods of the Applicant and the '005 Cited Application do not compete, are marketed via different channels of trade to different consumers.

Likewise, the goods in the '729 Cited Application are narrow and specific in purpose; namely, metal materials used in rooftop equipment support systems for use in connect with

HVAC support systems. Such use in HVAC systems is very different from use in connection with agricultural uses for grain storage. Attached hereto and incorporated by reference herein as **Exhibit C** is a brochure related to the goods associated with the '729 Application. Accordingly, the goods of the Applicant and the '729 Cited Application do not compete.

***The Consumers of Applicant's Goods and Consumers of the Goods in the Cited Marks Are Different***

As set forth above, the goods associated with Applicant's mark do not compete with the goods associated with the Cited Marks. The relevant consumer of the LODE N'LOK goods associated with the '005 Cited Application are specifically looking for a component locking mechanism for use on a very specific vehicle; namely, a flatbed trailer. *See Exhibit B.* Similarly, the relevant consumer of the LOCK N' LOAD goods associated with the '729 Cited Application are specifically looking for metal supports for rooftop HVAC systems, which will be purchased by a distinct type of consumer. *See Exhibit B.* Applicant's consumers are specific to the agriculture industry. Accordingly, the relevant marketplace and consumers for the Applicant and the consumers of the goods in the Cited Applications are dissimilar and do not overlap.

***The Consumers of Applicant's Goods and Consumers of the Goods in the Cited Marks Are Careful and Sophisticated Purchasers***

The consumers of Applicant's goods are careful and sophisticated purchasers. Applicant's metal sub floor goods are used in storage bins to preserve grains after harvest. Applicant's consumers are aware of the purpose of the aeration flooring and the high stakes of preserving valuable crops. The consumers of the goods in the '005 Cited Application are also discerning. The purpose of the locking mechanism is to ensure that the trailer is secured to the hauling vehicle. There is danger and risk associated with a mechanism that fails while a trailer is being hauled on public highways. As such the consumer of such locking mechanism is not likely to be confused into purchasing metal sub-flooring. Similarly, the consumers of the goods in the '729 Cited Application must be discerning. There is a safety component in supporting heavy HVAC systems on the rooftops of buildings. Failure of the metal support system is an obvious public safety concern. Thus, the conditions under which and buyers to whom sales are made for the goods associated with the three marks of concern are careful, discerning and sophisticated.

Thus, there is no likelihood of confusion of the source of the goods of the Cited Applications and the Applicant's mark.

***There are Many Similar Marks on the USPTO Registry for Similar Marks***

A search of the USPTO registry shows that there are a number of marks that contain "Lock", "Load" and variations of these words that are co-existing. Attached hereto and incorporated by reference herein as **Exhibit D** is a chart containing a sampling of live registrations on the USPTO registry that demonstrates that similar "Lock" and "Load" marks are co-existing. For example, "LOCK-N-LOAD," Reg. No. 5200589, in Class 12 for modular wall systems is co-existing with "LOAD LOK," Reg. No. 1614666, in Class 12 for truck bed liners both exist on the USPTO registry and in the marketplace. Also, "LOCK-N-LOAD," Reg. No. 3398895, in Class 28 for physical fitness equipment is co-existing with "LOCK-N LOAD," Reg. No. 4279328, in Class 28 for archery equipment. Likewise, "LOCK N LOAD," Reg. No. 2351506, in Class 7 for geological survey hardware is co-existing with "LOCK-N-LOAD," Reg. No. 2562910, in Class 7 for power tool accessories.

That these similar marks are co-existing in the same class for arguably different goods, marketed to different consumers through different channels of trade supports a finding of no likelihood of confusion in favor of allowance of Applicant's mark.

***There is no Likelihood of Confusion between the Cited Marks and Applicant's Mark***

In light of the foregoing, Applicant respectfully submits that there is no likelihood of confusion between the Cited Marks and Applicant's mark due to the dissimilarity of the goods associated with the mark, the distinct markets, the relevant consumers who are careful and sophisticated purchasers and the co-existence of similar marks in the same classes. Thus, Applicant respectfully requests that the potential citation of the '005 Cited Application and the '729 Cited Application against Applicant's mark be withdrawn.