

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 88033803
Application of : Celebrity Cruises Inc.
Date Filed : July 11, 2018
Examining Attorney : Sung In
Law Office : 103
Docket : 11668-7 (342019)
Mark : OPUS

RESPONSE TO OFFICE ACTION

This response is submitted to the Office Action dated November 6, 2018, which issued a 2(d) likelihood of confusion refusal. As set forth below, the likelihood of confusion rejection should be withdrawn and the application published for opposition because (i) the services are different and (ii) the relevant consumers' sophistication level will prevent confusion.

I. The Section 2(d) Likelihood Of Confusion Refusal Should Be Reversed

The refusal to register based on a purported likelihood of confusion with Registration No. 3914976 should be withdrawn. It is well settled that the test for determining whether a likelihood of confusion under Section 2(d) exists includes any combination of the factors set forth in *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 U.S.P.Q. 563 (C.C.P.A. 1973). And, that test favors registration.

A. The Services Of The Cited Registration Are Different Than the Services Of The Applied-For Mark

Applicant's arranging of cruises; cruise ship services; transportation of passengers by cruise ship in Class 39, are narrowly tailored to Applicant's cruise ship industry. To the contrary, the cited mark, as confirmed by the specimen filed with the PTO, is used to "organize performance tours for choirs and orchestras around the world" by arranging for travel visas, passports and travel documents for persons traveling abroad; Arranging travel

tours; Coordinating travel arrangements for individuals and for groups; Escorting of travellers; Making travel and excursion arrangements for bands and orchestras; Organisation of travel; Organization of excursions, sightseeing tours, holidays, tours and travel; Organization of travel and boat trips; Provision of travel information; Reservation and booking of seats for travel; Travel agency services, namely, making reservations and bookings for transportation; Travel and tour information service; Travel and tour ticket reservation service; Travel booking agencies; Travel guide and travel information services; Travel guide services; Travel information; Travel information services, as excerpted from the specimen below.



OPUS
performance tours

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Our Promise: Unsurpassed Service

Opus Tours believes that performance music and international travel make perfect harmony.

That's one of the reasons why we organize performance tours for choirs and orchestras around the world. Whether it's Prague or Patagonia, Barcelona or Beijing, your Opus customized tour will feature unmatched musical experiences and vibrant cultural exchanges.

Opus Tours gives you personalized one-on-one

Such organization of performance tours for choirs and orchestras around the world, including the ancillary services thereto, are different than, and easily distinguishable from, cruise ship services.

Moreover, in light of these services, the cited mark is not entitled to such a broad scope of protection. As shown above, the cited OPUS mark is used in connection with “organizing performance tours for choirs and orchestras around the world.” One definition of “opus” is “a musical composition or set of compositions usually numbered in the order of its issue.” <https://www.merriam-webster.com/dictionary/opus>. The cited mark, having a meaning associated with *musical compositions* and which is used in connection with

organizing performance tours for *choirs and orchestras to play such musical compositions* should not be given such a wide scope of protection to prevent registration of narrowly tailored services in a different industry. In other words, because the cited mark's overall commercial impression is uniquely correlated to musical compositions and organizing performance tours of choirs and orchestras therefor, the difference in the services is sufficient to avoid a likelihood of confusion.

B. The Sophistication Of Consumers Prevents A Likelihood Of Confusion

Applicant respectfully submits that the relevant consumers of both party's services are sophisticated such that a likelihood of confusion is prevented. Consumers, who perform in choirs and orchestras and who purchase services to perform in choirs and orchestras on a tour, are sophisticated enough to know that such services are uniquely different than cruise ship services. Likewise, a purchaser of cruise ship services understands that (i) cruise ship services are not somehow related or ancillary to performance in choirs and orchestras on a tour and (ii) services for and related to performing in a choir or orchestra on a tour are different than cruise ship services.

II. Conclusion

For at least the reasons set forth above, withdrawal of the likelihood of confusion rejection and approval for publication is requested. Applicant invites the Examiner to call the undersigned if clarification is needed on any aspect of this response.

Respectfully submitted,

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Date: May 6, 2019

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