

I. Section 2(d) Refusal.

The Examining Attorney has refused registration based on a likelihood of confusion with the mark in U.S.Reg.Nos. 5350358.

The mark in Reg.No. 5350358 is COOLTOPPERS in the following standard format:

**COOLTOPPERS**

The Applicant's mark is COOLTOP (SN.88268854) in the following stylized format:

**COOLTOP**

The COOLTOPPERS registration is registered in “Decorative three-dimensional balls and shapes for automobiles, namely, antenna toppers made of plastic and foam” in Int. Class 012.

Applicant's mark is COOLTOP (SN.88268854) and the identification is “Automobile windshield sunshades; Automotive windshield shade screens; Boat accessories, namely, canvas covers, enclosures and windows sold as a unit and affixed to the boat for recreational boating and marine use; Boats; Car window shades; Direction signals for vehicles; Fitted covers for boats and marine vehicles; Fitted covers for motorized golf cart vehicles; Fitted motorcycle covers; Fitted vehicle covers for motorcycles, automobiles, motorized golf carts used to protect against hail damage; Hoods for vehicle engines; Hoods for vehicles; Lorries; Luggage nets for vehicles; Motor homes; Motorized golf carts; Ships; Sun-blinds adapted for automobiles; Trailer hitches for vehicles; Trailers; Trucks; Turn signal levers for vehicles; Upholstery for vehicles; Wheel covers; Fitted car seat covers; Spare tire covers; Spare tyre covers; Spare wheel covers; Vessels” in Int. Class 012.

II. The DuPont Factors Weigh in Applicants Favor.

In *In re E. I. Du Pont de Nemours & Co.*, 476 F.2d 1357, 177 U.S.P.Q.

563 (C.C.P.A. 1973), the Court of Customs and Patent Appeals (CCPA) announced thirteen factors determining likelihood of confusion under §2(d). These factors are:

1. The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.
2. The similarity or dissimilarity and nature of the goods or services as described in an application or registration 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 buyers to whom sales are made, i.e., “impulse” vs. careful, sophisticated purchasing.
5. The fame of the prior mark (sales, advertising, length of use);
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 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 (house mark, “family” mark, product mark).
  10. The market interference between applicant and the owner of a prior mark: (a) a mere “consent” to register or use, (b) agreement provisions designed to preclude confusion, i.e., limitations on continued use of the marks by each party, (c) assignment of mark, application, registration and good will of the related business, or (d) laches and estoppel attributable to the owner of the prior mark and indicative of lack of confusion.
  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, i.e., whether de minimis or substantial.
  13. Any other established fact probative of the effect of use.
- See *In re E. I. Du Pont de Nemours & Co.*, 476 F.2d 1357, 177 U.S.P.Q. 563 (C.C.P.A. 1973).

No single factor is dispositive. However, Applicant believes that the Du Pont factors weigh in Applicant’s favor and requests the Examiner reconsider and withdraw the Section 2(d) refusal.

**A. The Marks Must Be Considered in their Entireties.**

When comparing Applicant’s mark with the Reg.’s marks, the marks must be compared in their entireties. A mark should not be dissected or split up into its component parts and each part then compared with corresponding parts of the conflicting mark to determine the likelihood of confusion. It is the impression that the mark as a whole creates on the average reasonably prudent buyer and not the parts thereof, that is important.

The trademark **ZIPPER** (U.S. Reg. No.3496957) has registered for “Tires” in Int. Class 012.

The trademark **ZIPP** (U.S. Reg. No.1579973) has registered for “COMPOSITE BICYCLE WHEELS” in Int. Class 012.

Such as the trademark **ZIPPER** (U.S. Reg. No.3496957). It consists of the word ZIPP and ER in Int. Class 012. The trademark ZIPPER (U.S. Reg. No.3496957) was registered following the **ZIPP** (U.S. Reg. No.1579973) in Int. Class 012, but it was not judged as the likelihood of confusion. Because the trademark stresses the portion ZIPPER (U.S. Reg. No. 3496957), which is different from the ZIPP (U.S. Reg. No.1579973) in Int. Class 012, in the word, in the sound, in the meaning and the design. Although two trademarks have the same word “ZIPP” it does not confuse

consumers to distinguish these two trademarks. So the additional word “ER” and the design of ZIPPER influenced deeply in the trademarks “ZIPPER” and “ZIPP”.

So the word “ER” should be considered as meaningful and outstanding character in the applicant’s mark “COOLTOPPERS”. the design of COOLTOP influenced deeply in the trademarks COOLTOP as well.

In a word, trademark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion.

More examples in Class 012 as below.

1. the trademark TRAMPER (U.S. Reg. No.1128957) and TRAM (U.S. Reg. No.2377955)
2. the trademark SNAPPER (U.S. Reg. No.5650096) and SNAP (U.S. Reg. No. 5005015)

# United States of America

United States Patent and Trademark Office

## SNAP

**Reg. No. 5,005,015**

**Registered Jul. 19, 2016**

**Int. Cl.: 12**

**Trademark**

**Principal Register**

Vantage Robotics, LLC (CALIFORNIA LIMITED LIABILITY COMPANY)  
225 Downey Street, #1  
San Francisco, CA 94117

CLASS 12: Drones for aerial filming; Unmanned aerial vehicles (UAVs); Drones in the nature of unmanned aerial vehicles for the purposes of aerial photography, aerial filming of sports, recreation, and outdoor event activities, aerial videography and sound recording; Drones for surveillance, reconnaissance, land surveying, and three-dimensional mapping

FIRST USE 9-3-2015; IN COMMERCE 9-3-2015

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

SER. NO. 86-745,756, FILED 09-02-2015

ROBERT C CLARK, EXAMINING ATTORNEY



*Michelle K. Lee*  
Director of the United States

# United States of America

United States Patent and Trademark Office

## SNAPPER

**Reg. No. 5,650,096**

**Registered Jan. 08, 2019**

**Int. Cl.: 7, 12**

**Trademark**

**Principal Register**

Briggs & Stratton Corporation (WISCONSIN CORPORATION)  
12301 West Wirth Street  
Wauwatosa, WISCONSIN 53222

CLASS 7: Chainsaws, electric snow shovels, power operated cultivators

FIRST USE 11-6-2018; IN COMMERCE 11-6-2018

CLASS 12: Powered wheel barrows

FIRST USE 11-6-2018; IN COMMERCE 11-6-2018

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

SER. NO. 87-436,352, FILED 05-04-2017



*Andrew L. Rosen*

Director of the United States

Int. Cls.: 9 and 12

Prior U.S. Cls.: 19, 21, 23, 26, 31, 35, 36, 38,  
and 44

Reg. No. 2,377,955

**United States Patent and Trademark Office** Registered Aug. 15, 2000

**TRADEMARK  
PRINCIPAL REGISTER**

**TRAM**

TRAM, INC. (MICHIGAN CORPORATION)  
47200 PORT STREET  
PLYMOUTH, MI 48170

FOR: ELECTRIC SWITCHES USED IN AUTO-  
MOBILES, MOTORCYCLES, FORKLIFTS AND  
EARTH MOVING EQUIPMENT, NAMELY, TURN  
SIGNAL SWITCHES, WINDSHIELD WIPER SWITCH-  
ES, RHEOSTAT LIGHT SWITCHES, DEFOGGER  
SWITCHES, HAZARD SWITCHES, GLOVE DOOR  
LAMP SWITCHES, POWER WINDOW SWITCHES,  
LIGHT SWITCHES, OUTER MIRROR SWITCHES,  
COURTESY LAMP SWITCHES, CRUISE CONTROL

SWITCHES, PATTERN SELECT SWITCHES, IN  
CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 1-5-1998; IN COMMERCE 1-5-1998.

FOR: AUTOMOBILE, MOTORCYCLE, AND FORK-  
LIFT PARTS, NAMELY, STEERING WHEELS AND  
DRIVE GEAR SHIFT LEVERS, IN CLASS 12 (U.S.  
CLS. 19, 21, 23, 31, 35 AND 44).

FIRST USE 1-5-1998; IN COMMERCE 1-5-1998.

SN 75-416,027, FILED 1-12-1998.

REBECCA GILBERT, EXAMINING ATTORNEY

Int. Cl.: 12

U.S. Cl.: 19

Reg. No. 1,128,957

**U.S. Patent and Trademark Office**

Reg. Jan. 8, 1980

**TRADEMARK  
Principal Register**

**TRAMPER**

Metzeler Kautschuk Ag (Fed. Rep. of Germany joint stock  
company)  
Westendstrasse 131  
8000 Munich 2, Fed. Rep. of Germany

For: Boats—Namely, Inflatable Boats—in Class 12. (U.S.  
Cl. 19).

First use 1969; in commerce Oct. 27, 1976.

Ser. No. 155,300. Filed Jan. 13, 1978.

A.D. HOOKS, Examiner

**Int. Cl.: 12**

**Prior U.S. Cl.: 19**

**United States Patent and Trademark Office** **Reg. No. 1,579,973**  
Registered Jan. 30, 1990

**TRADEMARK  
PRINCIPAL REGISTER**

**ZIPP**

COMPOSITECH, INC. (INDIANA CORPORATION)      FIRST USE 3-21-1988; IN COMMERCE  
8170 ZIONSVILLE ROAD      3-21-1988.  
INDIANAPOLIS, IN 46268      SER. NO. 73-803,116, FILED 5-30-1989.  
FOR: COMPOSITE BICYCLE WHEELS, IN      AMY C. BIXLER, EXAMINING ATTORNEY  
CLASS 12 (U.S. CL. 19).

**Int. Cl.: 12**

**Prior U.S. Cls.: 19, 21, 23, 31, 35, and 44**

**United States Patent and Trademark Office** **Reg. No. 3,496,957**  
Registered Sep. 2, 2008

**TRADEMARK  
PRINCIPAL REGISTER**

**ZIPPER**

EXCEL TIRE & WHEEL CORP. (CALIFORNIA CORPORATION)      THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.  
P.O. BOX 1044  
WALNUT, CA 91788      SN 78-388,720, FILED 3-22-2004.  
FOR: TIRES, IN CLASS 12 (U.S. CLS. 19, 21, 23, 31, 35 AND 44).      ASMAT KHAN, EXAMINING ATTORNEY  
FIRST USE 3-1-2003; IN COMMERCE 3-1-2003.

**B. The Marks Must Be Considered in their appearance**

Our mark consists of the stylized term "cooltop". This is very difference between our mark and registration's mark in appearance because of COOLTOPPERS registration's mark consists of the wording "COOLTOPPERS".

Obviously, there is a huge difference in monogram and design in “COOLTOP”, "COOLTOPPERS" and consumers are generally more inclined to focus on the design, prefix, or syllable in any trademark or service mark.

So, Applicant's COOLTOP mark must be viewed in its entirety. The look and impression of the mark " COOLTOP" is very different from Reg.'s mark COOLTOPPERS . They create different images towards customers.

### C. The Marks' Pronunciation and Meaning is Different

The pronunciation of applicant's mark COOLTOP is /'kūl 'tāp/ which is very different from the Registration's COOLTOPPERS /'kūl 'tā-pər //. And the meaning is also different. Our mark COOLTOP is just an Monogram and has no meaning in foreign language.

The image is a screenshot of a web browser displaying the Merriam-Webster dictionary page for the word "cool". The browser's address bar shows the URL "https://www.merriam-webster.com/dictionary/cool". The page header includes the Merriam-Webster logo, "SINCE 1828", and a search bar containing the word "cool". Below the search bar, there are tabs for "DICTIONARY" and "THESAURUS". The main content area features the word "cool" in a large font, followed by its phonetic transcription "\ 'kūl \". Underneath, it is identified as an "adjective". The "Definition of cool (Entry 1 of 4)" is listed with four numbered entries: 1. "moderately cold : lacking in warmth" with an example "The plant grows best in cool climates."; 2. "a : marked by steady dispassionate calmness and self-control" with an example "a cool and calculating businessperson"; "b : lacking ardor or friendliness" with an example "a cool impersonal manner"; "c of jazz : marked by restrained emotion and the frequent use of counterpoint (see COUNTERPOINT entry 1)"; "d : free from tensions or violence" with an example "We used to fight, but we're cool now."; 3. "—used as an intensive". To the right of the definitions, there are two "Ad closed by Google" notices, each with a "Stop seeing this ad" button and a "Why this ad?" link. Below these notices, the "WORD OF THE DAY" section displays the word "disbursement" with its definition: "the act of paying out money from a fund".



Merriam-Webster SINCE 1828

top

DICTIONARY THESAURUS

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**top** noun (t)  
\ ˈtɑp \

**Definition of top (Entry 1 of 5)**

- a (1) : the highest point, level, or part of something : SUMMIT, CROWN  
(2) : a garment worn on the upper body  
(3) : the head of a plant  
*especially* : the aboveground part of a plant having edible roots  
*//* beet tops  
(4) : the head or top of the head —used especially in the phrase *top to toe*
- b (1) : the highest or uppermost region or part  
(2) : the upper end, edge, or surface

2 : a fitted, integral, or attached part or unit serving as an upper piece, lid, or covering

3 a (1) : the highest position (as in rank or achievement)

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WORD OF THE DAY  
**disbursement**  
the act of paying out money from a fund

Merriam-Webster SINCE 1828

topper

DICTIONARY THESAURUS

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**topper** noun  
top-per | \ ˈtɑ-per \

**Definition of topper**

- : one that is at or on the top
- a : SILK HAT  
b : OPERA HAT
- : something (such as a joke) that caps everything preceding
- : a woman's usually short and loose-fitting lightweight outer coat
- : one that puts on or takes off tops

↓ Synonyms

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WORD OF THE DAY  
**disbursement**  
the act of paying out money from a fund

#### D. TRADE CHANNELS OF GOODS

The Trade Channels for Applicant's Goods and those of the registration mark is different. Application COOLTOP is sold on amazon but COOLTOPPERS is not being sold online. "The similarity or dissimilarity of established, likely-to-continue trade channels" is another factor used in determining the likelihood of confusion. Id. When put the keyword "COOLTOPPERS" in Amazon, no product result related "COOLTOPPERS" show to customers in Int. Class 012 with logo. Moreover, their specimens didn't show actual use of the mark in commerce. Please see the evidences of COOLTOPPERS application. <http://www.antennaballstore.com/simpsonssouthparkfamilyguy>

https://www.amazon.com/s?k=COOLTOPPERS&ref=nb\_sb\_noss

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COOLTOPPERS

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However, when search COOLTOP on our own website, all the results are related to application's identification in Class 012 directly. There is no basis to assume that the average purchaser looking for one would encounter the other. As such, it cannot be assumed that customers are accustomed to seeing the very different types of goods sold between these two marks.

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Solar LED String Lights

Cooltop Bass Boat Cover Bayliner Boat Cover Fits V-Hull Tri-Hull Fishing Ski Pro-Style, Trailerable Runabout Boat Cover, Heavy Duty 600D Polyester 14'~16'L

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**E. Dissimilarity of Nature of Goods**

Goods and services fall into three categories: (1) competitive, (2) non-competitive but related, and (3) non-competitive and non-related. Services in the last category are unlikely to be confused. *Murray v. Cable National Broadcasting Co.*, 86 F.3d 858,861 39 USPQ2d 1214 (9th Cir. 1996).

Applicant's goods are not competitive and not related to the goods of the cited mark. **Applicant provides the goods of Boat accessories, namely, canvas covers, enclosures and windows sold as a unit and affixed to the boat for recreational boating and marine use; Boats; Fitted covers for motorized golf cart vehicles; Fitted motorcycle covers; Motor homes;(COOLTOP in Class 012). In contrast,**

**the cited mark is used in connection with Decorative three-dimensional balls and shapes for automobiles, namely, antenna toppers made of plastic and foam (COOLTOPPERS in Class 012) .**

Although both Applicant's mark and Registrant's mark are filed in connection with goods that are broadly categorized in household items, they are neither competitive nor related. It is clear from the description of goods in the cited mark that the goods are just Decorative three-dimensional balls and shapes for automobiles, namely, antenna toppers made of plastic and foam (COOLTOPPERS in Class 012).

Applicant's associated goods are strictly for Boat accessories, namely, canvas covers, enclosures and windows sold as a unit and affixed to the boat for recreational boating and marine use; Boats; Fitted covers for motorized golf cart vehicles; Fitted motorcycle covers; Motor homes;(COOLTOP in Class 012). There is a vast difference in the types of goods and the consumers for whom the goods are produced in connection with Applicant's mark as in contrast with those of the cited mark.

Therefore, there is no likelihood that consumers would be confused as to the source of the goods of the cited Registered mark and the goods associated with Applicant's mark as the respective goods of Applicant and those of the Registrant are utilized by different, and sophisticated, consumers in each instance. The consumers of Registrant's and Applicant's goods are sophisticated purchasers and thus there is no likelihood of confusion between Applicant's mark and the cited mark.

Applicant submits that the Examiner has effectively removed these significant portions from its mark. When all portions of Applicant's mark are given proper consideration, Applicant contends that the two marks are sufficiently distinguishable in sight, sound and meaning to create distinguishable overall commercial impressions. Applicant believes that the foregoing fully and satisfactorily responds to all issues raised in the Office Action, and respectfully requests that the Examiner approve the mark for publication.