

## **Disclaimer**

Applicant has made the requested disclaimer and thanks the Examining Attorney for the suggestion.

## **Section 2(d) Refusal – Likelihood of Confusion**

Applicant respectfully traverses the rejection over Reg. No. 4308050 (“the registration”), which covers a stylized design of the phrase “TRIPPY WIPES.”

When comparing the marks, “[a]ll relevant facts pertaining to appearance, sound, and connotation must be considered before similarity as to one or more of those factors may be sufficient to support a finding that the marks are similar or dissimilar.” *Recot, Inc. v. M.C. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1899 (Fed. Cir. 2000). As set forth below, comparing the marks in their entireties and considering all appearances, sounds, and connotations, the marks are dissimilar as to not cause a likelihood of confusion.

First, the connotations of the marks are different when the marks are compared in their entireties. The registration covers a stylized design of “TRIPPY WIPES,” with the word “TRIPPY” illustrated in a distorted fashion. This conveys a psychedelic connotation to the consumer, as evidenced by the commonly known definition of “trippy” - “of, relating to, or suggestive of a trip on psychedelic drugs or the culture associated with such drugs” (Exhibit 1 - <https://www.merriam-webster.com/dictionary/trippy>). This connotation is further evidenced by the channels in which registrant is using its mark – for use in cleaning vaporizers. (Exhibit 2 - <https://www.trippystix.com/products/trippy-wipes-alcohol-wipes>).

Applicant’s word mark for “TRIP WIPES,” on the other hand, would not have such a psychedelic connotation in the mind of a consumer. As one example, the mark may suggest an association with the act of going to a place and returning, such as a journey or voyage. (Exhibit 3 - <https://www.merriam-webster.com/dictionary/trip>).

Further, in the likelihood of confusion comparison, per the Federal Circuit, “[i]t is incorrect to compare marks by eliminating portions thereof and then simply comparing the residue.” *China Healthways Institute, Inc. v. Wang*, 491 F.3d 1337, 1340 (Fed. Cir. 2007), cert. denied, 128 S. Ct. 661 (2007). Therefore, we cannot just remove the dissimilar portions of the marks (the “-py” in the registration) and focus on their similarities.

Doing so would not adequately capture the full message of the registration. As set forth in *In re National Data Corp.*, 753 F.2d 1056, 1058, 224 U.S.P.Q. (BNA) 749, 751 (Fed. Cir. 1985), “Likelihood of confusion cannot be predicated on dissection of a mark, that is, on only part of a mark.” As also stated in *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1676 (Fed. Cir. 2015), “the message of a whole phrase may well not be adequately captured

by a dissection and recombination.” If we eliminate the “-py” from the registration, the psychedelic message is lost and the mark is not being considered in its true form.

Lastly, the words “trip” and “trippy” have a different sound.

In view of the above, comparing the marks in their entireties and considering all appearances, sounds, and connotations, the marks are dissimilar as to not cause a likelihood of confusion. Applicant respectfully requests the Examining Attorney to reconsider his position.

**Prior pending application**

Applicant notes that the time for the applicant of then pending application U.S. Application Serial No. 88464642 to respond to the outstanding office action has lapsed.

Respectfully Submitted,

**CARLSON, GASKEY & OLDS, P.C.**

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