

Set Design Apparel

MADE FOR SET

766 Brady Ave
#337
Bronx, NY
10462

October 20th 2020

RE:
Serial No. 88807247
Mark: **SET LIFE**
Applicant: Set Design Apparel INC

APPLICATION RESPONSE TO OFFICE ACTION

The following is the response to the Office Action sent via email on May 13th 2020 by Examining Attorney Sarah Hopkins.

LIKELIHOOD OF CONFUSION REFUSAL

The Examining Attorney has refused registration of Applicant's standard character SET LIFE mark pursuant to Trademark Act Section 2(d), 15 U.S.C. §1052(d), on the ground that the mark is likely to be confused with #SETLIFE in Registration No. 87551306. For the following reasons, Set Design Apparel respectfully disagrees with this finding and requests that the Examining Attorney reconsider the statutory refusal and allow registration of the mark.

Fig. 1 Sample of Goods already in use in commerce.



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Table 1: Relevant marks and registered Classes

APPLICANT'S MARK	CITED MARK
<p>SET LIFE</p>	<p>#SETLIFE</p>
<p>Class 25: Clothing for athletic use, namely, padded shirts; Clothing, namely, arm warmers; Clothing, namely, base layers; Graphic T-shirts; Hats; Leggings; Rain coats; Shirts; Shirts and short-sleeved shirts; Socks; Belts; Body suits for babies, adults, children, women, men; Bottoms as clothing; Camouflage shirts; Coats for babies, adults, children, women, men; Dance slippers; Gym pants; Headwear for babies, adults, children, women, men; Hooded sweatshirts for babies, adults, children, women, men; Hoodies; Hoods; Jackets; Jackets for babies, adults, children, women, men; Jerseys; Outer jackets; Over shirts; Pajamas for babies, adults, children, women, men; Pants for babies, adults, children, women, men; Scarfs; Shirts for babies, adults, children, women, men; Shoes for babies, adults, children, women, men; Shorts for babies, adults, children, women, men; Sweaters for babies, adults, children, women, men; Sweatpants for babies, adults, children, women, men; T-shirts for babies, adults, children, women, men; Ties as clothing; Tights; Tops as clothing; Trousers for babies, adults, children, women, men; Women's clothing, namely, shirts, dresses, skirts, blouses; Woven shirts for babies, adults, children, women, men; Wristbands as clothing; Yoga pants</p>	<p>Class 009: Eyewear and sunglasses</p> <p>Class 25: Clothing and footwear, namely, pants, bottoms, trousers, jeans, jackets, bomber jackets, blazers, tops, tshirts, sweatshirts, shirts, dresses, skirts, sweaters, rompers, jumpsuits, jogging outfits, and shoes</p>

Here it can be clearly seen that the standard character mark #SETLIFE distinctly varies from the Applicant's standard character mark SET LIFE. The mark #SETLIFE connotes to the phrase "hashtag set life" as one single word, whereas the applicant's mark can legibly be read as two separate words "Set Life." There is no likelihood that consumers will be confused as to the source of the goods in connection with each of these two marks because the Applicant's mark is different in sound and appearance. Further, the goods used in the cited mark though in similar classes are marketed towards different consumers and are therefore noncompetitive. Therefore, the Applicant respectfully requests the Examining Attorney withdraw his refusal and permit Applicant's mark to be published on the principal register.

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Balancing the Factors

In sum, the difference in appearance, sound, and commercial impressions between the Applicant's mark and the cited mark are sufficient to prevent a likelihood of confusion. Further, the applicant's goods, though similar, are marketed to completely different consumers and are not likely to be purchased by the same consumers. Accordingly, the applicant requests that the statutory refusal be withdrawn and that the application be permitted to proceed to publication.