

**RITCHISON LAW OFFICES, P.C.**

Patents, Trademarks and Business Law

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December 17, 2020

**SERIAL NO: 88843413**  
**Law Office 117**  
**Miah Rosenberg LaMont**

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Commissioner for Trademarks  
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From: **John D. Ritchison**, Attorney for the Applicant/ Respondent

**RE: Response to Office Action**

Dear **Miah Rosenberg LaMont**:

First, thank you for the consideration and first office action about this application. I am submitting the information and arguments below to respond and address the concerns in the latest action regarding the Trademark application for “**SPUR**”. This response is within the allotted time to respond.

**Summary:** Applicant currently owns a registration 5471641 in Class 025 that is on the Supplemental Registry because the mark was then considered ornamental. At the time, the applicant overcame a rejection under the (Simon) Spurr mark No. 3727591 to be allowed to be published. There was no opposition. Now, the same 3727591 mark is again cited with the other mark 5561254 from the San Antonio Spurs with the fanciful “U”. The Applicant’s mark is closer to distinctive with almost 4 years since it was first used.

Commercial changes with distribution channels such as Amazon and others make it more advantageous to hold registration on the Principal Registry so simply waiting to become fully distinctive was not advisable, hence applying for the Principal Registry with the non-ornamental configuration is the current action.

Applicant believes he will, however, successfully argue, show, and persuade the current Examiner that both of the cited and registered marks and the applicant’s mark vary greatly in the mark impression, uniqueness, product lines, channels of trade, and sophistication of the consumer/buyers of the goods.

**A. Particulars for the File are as follows:**

1. Filing Date: **2020-03-22**  
SERIAL NO: **88843413**  
MARK: **SPUR**

APPLICANT: **SPUR BRAND LLC**

2. Date of LAST Office Action: **06/19/2020**
3. Examining Attorney's name and Law Office number:  
**Miah Rosenberg LaMont**  
**Law Office 117**
4. Responding Attorney's telephone number, e-mail address, and attorney's office file:  
**(765) 640-4134**  
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**Attorney file: JR-2020-307**

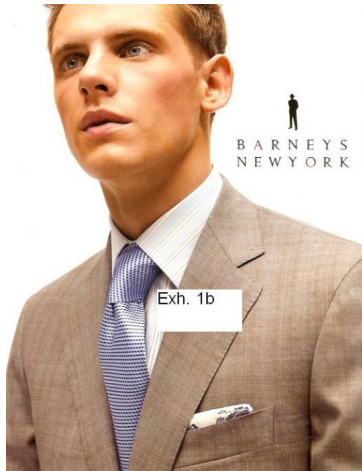
**B. Response to the Last Office Action Comments: Mark is likely to cause confusion, to cause mistake or to deceive. TMEP §§ 1207.1 et seq.**

This is a response in detail to the specific objection of being likely to cause confusion because of similarities of the Applicant's mark, "SPUR" – Serial Number **88843413** and previously registered mark literal word "SPURR" - Registration Number 3727591 and the design mark – Registration Number 5561254. The examining attorney issued a Refusal of Registration: Likelihood of Confusion. The examining attorney refusal is based under Trademark Act Section 2(d), 15 U.S.C. §1052(d), because the applicant's mark, when used on or in connection with the identified goods/services, so resembles another mark in as it is likely to cause confusion, to cause mistake, or to deceive. TMEP §§1207.01 et seq.

**The Registered and Applicant's Marks:**

The registered marks cited are:

U.S. Registration No. 3727591 and Serial No. 77676811. This is a literal word mark "SPURR". The application claims "The mark consists of standard character without claim to any particular font, style, size, or color." The mark is without the description of any design. The plural set of R's at the end of the word is without design. The mark was first used in August 2006. The mark is registered to Nydes-Spurr Group, LLC , a Delaware company and is in International Class 025 – Apparel, Clothing. The goods are described as "clothing and men's apparel, namely, shirts, sweaters, jackets, suits, ties, belts, jeans, and boots." And is related to the Simon Spurr branding. The specimen were various designer clothes of Simon Spurr



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HOW ME: **Spurr** [Favorite this search](#) Conditions: **New & Discovered** Sort By: **Relevance**

Cash Back

Showing 15 Spurr

Men / Clothing

- coats 2
- interview 2
- hirts 4
- uits 6
- 2

Choose a category first to see available options

Simon Spurr Spurr Cashmere...	Simon Spurr Spurr By V Neck...	Simon Spurr Spurr By Class...	Simon Spurr Spurr By Pipe J...
\$681.25	\$22.50	\$50.00	\$100.50

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AND

U.S. Registration No. 5561254 and Serial No. 87910469. This is a literal word mark "SPURS".  
With the following design:



The application claims, “The mark consists of the word "SPURS" with the letter "U" as a stylized horse spur with a star design at the bottom of the spur without claim to any particular font, style, size, or color.” The simple word SPURS with the unique and special design is what the examiner sees. The mark was first used in October 2017. The mark is registered to San Antonio Spurs, LLC, a Texas and is in International Class 025 – Clothing and apparel. The goods are described as “clothing, namely, hosiery, footwear, basketball shoes, basketball sneakers, T-shirts, shirts, polo shirts, sweatshirts, tank tops, jerseys, sport shirts, rugby shirts, sweaters, belts, ties, nightshirts, hats, caps being head-wear, visors being head-wear, warm-up tops, shooting shirts, jackets, wind resistant jackets, parkas, coats, head bands, wrist bands, woven and knit shirts, uniforms, sandals, beach sandals, beach hats, sun visors being head-wear, swim caps, bathing caps, novelty headwear with attached wig.” The specimen were socks hat and tee shirt –

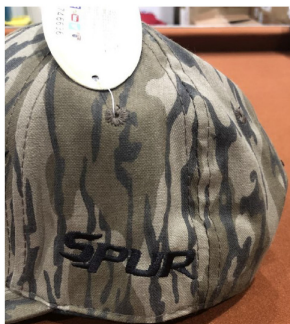


The goods shown are arguably ornamental in nature, however the mark is in place. They all show the fanciful U as a design for a western or cowboy spur.

**The Applicant’s Mark:**

The applicant mark cited is Serial No. **88843413**. This mark is a literal word mark without a combination of a word with design. The literal word: SPUR. The description: The

mark consists of the literal words Spur printed with block print, the print having small, curved points and the P and R having extended curved points resembling and signifying a spur on an animal such as a wild turkey. “Color is not claimed as a feature of the mark. The mark was first used in March of 2017. The mark is registered to SPUR BRAND LLC and is in International Class 018. The goods are described as “Belts; Footwear; Hoodies; Shirts; Shirts and short-sleeved shirts; Shirts for infants, babies, toddlers and children; Sweatshirts; Baseball caps and hats; Body shirts; Golf shirts; Hooded sweatshirts; Hunting jackets; Hunting shirts; Long jackets; Outer jackets; Polo shirts; Sports caps and hats; Sports shirts; Tee shirts; Women's clothing, namely, shirts, dresses, skirts, blouses.” The specimens were several, many in camo, including: - Hat, shirts, and jacket, all with the mark:



The Applicant owns other registered “SPUR” trademarks including: 5471641, 6173877, and 6173879, as well as several other pending “SPUR” applications.

### **Response to the Likelihood of confusion.**

This concept is well developed through studies and case expansions of interpreting *In re E.I DuPont Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). *In re E.I. DuPont de Nemours & Co.*, Id., sets out numerous *factors* relevant to reaching a decision as to whether a likelihood of confusion exists with regard to competing marks. Each of the *DuPont* factors presents a question of fact for various areas of comparison for substantial evidence when called into question on appeal. See *Recot Inc. v. Benton*, 214 F.3d 1322, 1326-27, 54 USPQ2d 1894, 1896-97 (Fed. Cir. 2000). Further, precedent establishes that the determination of a likelihood of confusion does not require examination and findings as to each and every *DuPont* factor. See *Kenner Parker Toys, Inc. v. Rose Art Indus., Inc.*, 963 F.2d 350, 352, 22 USPQ2d 1453, 1456 (Fed. Cir. 1992) (explaining that different *DuPont* factors may play dominant roles in determining likelihood of confusion depending on the evidence in each case). In practice, the scope of examination in any particular case will ordinarily be established by the record presented by the parties. That evidence and discussion from the applicant’s view is set forth for several of the separate *DuPont factors* as follows:

#### **Test for Likelihood of Confusion**

In determining likelihood of confusion under Section 2(d), the Office uses a 13-factor test originally enumerated by the CCPA in 1973. These factors (the "Du Pont" factors) and the argument as to this examination are:

**(1) The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation, and commercial impression:** The two cited and registered marks have some similarity but inherently different even to a casual eye. The marks need to be viewed as to what is claimed as well as the specimen.

The Registered mark 3727591 is a single typed word. It is the last name of a fashion creator, Simon Spurr – a person. The literal word is Spurr – two Rs. The application claims “The mark consists of standard characters, without claim to any particular font, style, size, or color.” There is no claim for a design feature. What the examiner sees is the single word with two Rs. Often the mark is used as Simon Spurr and Spurr New York. Always with the double

R. Phonetically the Italians roll “R” but the common American consumer would not necessarily pick up that distinction.

The Registered San Antonio basketball mark 5561254 claims “The mark consists of the word "SPURS" with the letter "U" as a stylized horse spur with a star design at the bottom of the spur without claim to any particular font, style, size, or color.” The simple word SPURS with the unique and special design is what the examiner sees.

The Applicant’s mark consists of a single word with several potential meanings – a spur on a Turkey the claw of other birds, a western spur such as a cowboy might prod a horse, or a sports mascot for a professional team or a college/university. However, the mark consists of the literal words Spur printed with block print, the print having small, curved points and the P and R having extended curved points resembling and signifying a spur on the back of the claws of a wild turkey. This is the design seen by the examiner. Color is not claimed as a feature of the mark.

Phonetically all the marks have the similar sounds since there is no mention that the foreign name has rolling of the double Rs.

Applicant has a design coupled with a word. The design is radically different from the basketball fanciful and ornate horse spur. Conclusion is that the applicant mark is different but not clearly distinct from the registered mark. However, the distinction of the pointed letters coupled with the goods and trade channels changes the commercial impression made by each of the marks.

Supporting precedence: In making her rejection as to confusing similarity, the examining attorney can point to only a portion of the mark, e.g., the phonetic similarity and a similar spelling. Therefore, this must be the main reasons used for rejection. However, applicant’s complete mark is a word with the points representing a turkey claw. The “points” are different from the registrants plain double R’s or fanciful horse spur that are included as part of the fully claimed design. As such *the mark must be reviewed for likelihood of confusion as a whole and should not be broken into component parts to reach a conclusion of confusing similarity.* In re Hearst Corp., 25 U.S.P.Q.2d 1238, 1239 (Fed. Cir. 1992) (“marks tend to be perceived in their entireties, and all components thereof must be given appropriate weight.”); In re Hearst Corp., 25 U.S.P.Q.2d 1238, 1239 (Fed. Cir. 1992) (“When GIRL is given fair weight, along with VARGA, confusion with VARGAS becomes less likely.”).

Conclusion: The overall impression is somewhat similar in sound and spelling but different because the Applicant has the additional design points versus no design or a fanciful horse spur. If the mark alone were the only factor, the rejection would be a closer call – but there are several additional factors to consider.

**(2) The similarity or dissimilarity and nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use:**

The Registered mark is for goods in the Clothing industry. The goods for the Registrant 3727591 are significantly different: clothing and men's apparel, namely, shirts, sweaters, jackets, suits, ties, belts, jeans, and boots. The 3727591 Register specimen are a fine men's sweater, a men's dress shirt, sweater, leather label on high fashion jeans, all accompanied with circulars and advertisements praising and showing fine men's dress ware - suits, sweaters, nice leather jackets and coats, shoes, and ties. Similarly, the Section 8 specimen are fancy close, high fashion and different from the applicant's line. The San Antonio Spurs basketball mark is offered in a plethora of clothing types. However, they trend toward ornamental styles and all show the fanciful horse spur. The Applicants goods are also in the Clothing, but the similarity ends there. The goods are: Camouflage jackets; Camouflage shirts; Camouflage vests; Tee shirts; Baseball caps and hats; Hunting jackets; Outer jackets. The applicant's main use and emphasis of the goods are apparel with and without camouflage and hunting outerwear apparel. Conclusion is that the applicant goods are significantly and distinctively different from the registered mark 3727591 with high fashion goods as well as most of the demonstrated sporting goods for the basketball fans with the fanciful horse spur.

Supporting Precedent. Since a comparison of the goods or services in applications is based solely upon the respective identifications, it is evident that applicant's goods differentiate its goods from those of the cited registration. Accordingly, the mark should be published for opposition. *Squirtco v. Tomy Corp.*, 216 U.S.P.Q.2d 937 (TTAB 1983).

**(3) The similarity or dissimilarity of established, likely-to-continue trade channels:**

The applicant sells its goods on the internet and at trade shows for hunters and sports people. The registered mark 3727591 goods appear to be through department stores, fine clothing, and clothing retailers. Higher priced goods catering to different consumers. For the basketball mark 5561254, the registered basketball products are associated with the fancy U on the spur or sporting goods related to the basketball activities. Fans would be drawn to clothes that would be at games and social events with other fans. Not likely camouflaged, outer wear for hunters and people ready to track and catch wild turkeys. The conclusion is that the applicant goods are significantly and distinctively different from the registered marks of goods for a basketball team and those in high fashion.



As to the internet sales, there may be some overlap but people who use the internet for sales have many options and now know how to distinguish different marks. The goods are dissimilar. The person looking for fine clothing would certainly have the knowledge to see the difference between hunter's apparel and high fashion suits, shoes, and ties. Further, the basketball fans would visit websites tied to the team and look/ seek team-oriented apparel and not hunting and sporting sites for turkey hunters. These differences leave little chance for confusion.

Supporting Precedence: The purchase of applicant's goods is by sophisticated purchasers who exercise extra care with regard to purchasing such goods. In re N.A.D. Inc., 224 U.S.P.Q. 969, 971 (Fed. Cir. 1985); In re Ship, 4 U.S.P.Q.2d 1174, 1176 (TTAB 1987). And - since applicant's goods are only purchased by sophisticated purchasers, the purchaser will take great care before making its purchase. In re N.A.D. Inc., 224 U.S.P.Q. 969, 971 (Fed. Cir. 1985); In re Ship, 4 U.S.P.Q.2d 1174, 1176 (TTAB 1987).

Conclusion is that the goods of all three marks are mostly in different trade channels or at least sought by consumers looking for specific goods – fine, high fashion apparel, team-oriented apparel or hunter/ sporting good apparel and are unlikely to be confused. There may be some overlap on the internet as a trade channel. However, no confusion is evident in this factor.

**(4) The conditions under which, and buyers to whom, sales are made, that is, “impulse” vs. careful, sophisticated purchasing:**

As stated in paragraph (3), people who use the internet for sales have many options and are used to needing to distinguish different marks. The serious buyers will exercise extra care about the purchase of hunting apparel and camouflaged clothing as opposed to fine men's wear or apparel with a basketball teams name and design thereon.

Conclusion – any confusion of the marks based on impulse buying is unlikely.

**(5) The fame of the prior mark (sales, advertising, length of use):**

None to argue currently. However, most of the men's clothing uses the Simon Spurr mark rather than the lone “Spurr” mark. Likewise, the apparel of the San Antonio Spurs bears the fanciful western spur. The hunters will and do readily recognize the applicant's design spur of the turkey claw.

**(6) The number and nature of similar marks in use on similar goods:**

A search on TESS reveals that Spur has 147 (in all classes and alive) . Spur and Spurr in class 025 have 27 marks in live/ IC 025 and 69 in alive or dead and IC 025. Spur has 454 marks (alive and dead) in all classes. The term Spur and Spurr appear to be a somewhat diluted mark but the Applicant's "points" design makes it more distinctive.

Supporting Precedence: The accompanying third-party registrations are probative to demonstrate that Spur has been adopted by a number of other users as a designation. In re Dayco Products-Eaglemotive Inc., 9 U.S.P.Q.2d 1910, 1911-12 (TTAB 1988) In re Broadway Chicken Inc., 38 U.S.P.Q.2d 1559, 1566 (TTAB 1996); In re Bed & Breakfast Registry, 229 U.S.P.Q. 818 (Fed. Cir. 1986); In re J.M. Originals Inc., 6 U.S.P.Q.2d 1393, 1394 (TTAB 1987).

Conclusion: Spurr should not prevent Spur from going forward.

**(7) The nature and extent of any actual confusion:**

None known.

**(8) The length of time during, and the conditions under which, there has been concurrent use without evidence of actual confusion:**

Registered mark 3727591 (Spurr) was first used in August, 2006. Registered mark 5561254 (Spurs with fanciful "U") was first used in August 2017 (after the Applicants 1<sup>st</sup> use of January 2017 and after the Applicant's first application for its Registration as 5471641 in Class 025 and in commerce in March 2017). The three marks have co-existed in class 025 without any known confusion or concern expressed by the registrant for almost 4 years. If they desire, the cited registered marks will have time once the Application is published to Oppose. Conclusion is that there is no likelihood of confusion.

**(9) The variety of goods on which a mark is or is not used (house mark, "family" mark, and product mark):**

Applicant's mark is primarily on hunting apparel – hats, shirts, and jackets. Registrants' is in fine Men's wear or basketball related apparel. This was argued above and needs no further discussion.

The type of goods is distinct. No confusion likely.

**(10) The market interface between applicant and the owner of a prior mark:**

**(a) A mere "consent" to register or use:**

No contact with Registrant.

**(b) Agreement provisions designed to preclude confusion, that is, limitations on continued use of the marks by each party:**

None to argue currently.

**(c) Assignment of mark, application, registration, and goodwill of the related business:**

None to argue currently.

**(d) Laches and estoppel attributable to owner of prior mark and indicative of lack of confusion:**

Almost 4 years of co-existence of the marks without confusion. No conclusion.

**(11) The extent to which applicant has a right to exclude others from use of its mark on its goods:**

Nothing to argue.

**(12) The extent of potential confusion, that is, whether de Minimis or substantial:**

Since no known confusion has occurred, it is believed any potential confusion is de Minimis.

**(13) and any other established fact probative of the effect of use:**

Nothing to argue.

**Conclusion:**

The applicant owns a mark in the supplemental registry for class 025. The design points as a design are not claimed by the Registrant. The goods are fairly distinct. Spur is already diluted with many other marks SPUR (27 live in class 025) . The trademark examining attorney apparently focused mostly on the term sound and spelling. Other factors are compelling. The trade channels differ. **As can be seen from evidence and argument under these factors there is no likelihood of confusion.**

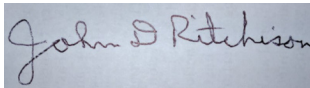
**C. Response to ownership of 5471641.** Declaration updated to include 5471641 6173877, and 6173879 for “Spur”.

**D. Request for consideration of the above information and Continuation of the Registration Process**

Applicant believes that now with the above explanations and arguments, the examining attorney's original action fails to rise to a prima facie showing of likelihood of confusion because of the significant difference in the type of goods, different trade channels, and the apparent dilution of the mark with many other Spur marks registered. Also, the additional points representing a wild turkey claw or spur distinguishes the Applicant's mark sufficiently to allow publication for opposition. Accordingly, the applicant requests the examining attorney withdraw this refusal. For the reasons stated above, this writer encourages the examiner to be persuaded to accept the mark for publication and to permit the process of registration to continue. Should the examining attorney have any questions, please feel free to telephone this writer direct if that will prove helpful.

Sincerely,

/John D Ritchison/



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JOHN D. RITCHISON

JDR/CA