

To: Elizabeth Potts Weinstein(elizabeth@elizabethpw.com)
Subject: U.S. Trademark Application Serial No. 97119967 - NEXXUS BOWHUNTING
Sent: August 25, 2022 02:35:10 PM EDT
Sent As: tmng.notices@uspto.gov

Attachments

[nexxus](#)
[4984069](#)

**United States Patent and Trademark Office (USPTO)
Office Action (Official Letter) About Applicant's Trademark Application**

U.S. Application Serial No. 97119967

Mark: NEXXUS BOWHUNTING

Correspondence Address:

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Applicant: Nexxus Bowhunting Pty Ltd

Reference/Docket No. N/A

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NONFINAL OFFICE ACTION

The USPTO must receive applicant's response to this letter within six months of the issue date below or the application will be abandoned. Respond using the Trademark Electronic Application System (TEAS). A link to the appropriate TEAS response form appears at the end of this Office action.

Issue date: August 25, 2022

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a),

2.65(a); TMEP §§711, 718.03.

SUMMARY OF ISSUES:

- Identification of Goods
- Disclaimer
- Refusal - Likelihood of Confusion

Section 2(d) Refusal - Likelihood of Confusion

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 4984069. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* *See the attached registration.*

Trademark Act Section 2(d) bars registration of an applied-for mark that is so similar to a registered mark that it is likely consumers would be confused, mistaken, or deceived as to the commercial source of the goods and/or services of the parties. *See* 15 U.S.C. §1052(d). Likelihood of confusion is determined on a case-by-case basis by applying the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973) (called the “*du Pont* factors”). *In re i.am.symbolic, llc*, 866 F.3d 1315, 1322, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017). Any evidence of record related to those factors need be considered; however, “not all of the *DuPont* factors are relevant or of similar weight in every case.” *In re Guild Mortg. Co.*, 912 F.3d 1376, 1379, 129 USPQ2d 1160, 1162 (Fed. Cir. 2019) (quoting *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1406, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997)).

Although not all *du Pont* factors may be relevant, there are generally two key considerations in any likelihood of confusion analysis: (1) the similarities between the compared marks and (2) the relatedness of the compared goods and/or services. *See In re i.am.symbolic, llc*, 866 F.3d at 1322, 123 USPQ2d at 1747 (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103, 192 USPQ 24, 29 (C.C.P.A. 1976) (“The fundamental inquiry mandated by [Section] 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks.”); TMEP §1207.01.

In this case, the applicant's applied-for mark NEXXUS BOWHUNTING is similar in sound, appearance, and commercial impression to the mark NEXUS in the cited registration. Although marks are compared in their entireties, one feature of a mark may be more significant or dominant in creating a commercial impression. *See In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Nat’l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 751 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii). Disclaimed matter that is descriptive of or generic for a party’s goods and/or services is typically less significant or less dominant when comparing marks. *In re Detroit Athletic Co.*, 903 F.3d 1297, 1305, 128 USPQ2d 1047, 1050 (Fed. Cir. 2018) (citing *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997)); TMEP §1207.01(b)(viii), (c)(ii).

In this case, it is the wording NEXXUS in applicant's mark that is more significant or dominant in creating a commercial impression because the wording BOWHUNTING is less significant as disclaimed matter. *See discussion below regarding the required disclaimer of the wording*

"*bowhunting*." Further, there is no correct pronunciation of a mark; thus, consumers may pronounce a mark differently than intended by the mark owner. See *In re Vittera, Inc.*, 671 F.3d 1358, 1367, 101 USPQ2d 1905, 1912 (Fed. Cir. 2012) (citing *Interlego AG v. Abrams/Gentile Entm't, Inc.*, 63 USPQ2d 1862, 1863 (TTAB 2002)); TMEP §1207.01(b)(iv). In the present case, the wording NEXXUS in applicant's mark and NEXUS in the cited mark could clearly be pronounced the same. Such similarity in sound alone may be sufficient to support a finding that the compared marks are confusingly similar. *In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007) (citing *Krim-Ko Corp. v. Coca-Cola Bottling Co.*, 390 F.2d 728, 732, 156 USPQ 523, 526 (C.C.P.A. 1968)); TMEP §1207.01(b)(iv).

Further, the slight difference in the spelling of these marks is not sufficient to distinguish these marks from consumer confusion. Therefore, when the marks in this case are considered in their entireties, it is concluded that the applicant's mark and cited mark both share the confusingly similar appearing, identical sounding, and dominant wording NEXXUS and NEXUS.

Determining likelihood of confusion is based on the description of the goods and/or services stated in the application and registration at issue, not on extrinsic evidence of actual use. See *In re Detroit Athletic Co.*, 903 F.3d 1297, 1307, 128 USPQ2d 1047, 1052 (Fed. Cir. 2018) (citing *In re i.am.symbolic, llc*, 866 F.3d 1315, 1325, 123 USPQ2d 1744, 1749 (Fed. Cir. 2017)).

In this case, the registration uses broad wording to describe "archery equipment, namely, arrows," which presumably encompasses all goods of the type described, including applicant's more narrow "archery equipment, namely, arrow shafts." See, e.g., *In re Solid State Design Inc.*, 125 USPQ2d 1409, 1412-15 (TTAB 2018); *Sw. Mgmt., Inc. v. Ocinomled, Ltd.*, 115 USPQ2d 1007, 1025 (TTAB 2015). Thus, applicant's and registrant's goods are legally identical. See, e.g., *In re i.am.symbolic, llc*, 127 USPQ2d 1627, 1629 (TTAB 2018) (citing *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp., Inc.*, 648 F.2d 1335, 1336, 209 USPQ 986, 988 (C.C.P.A. 1981); *Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1745 (TTAB 2014); *Baseball Am. Inc. v. Powerplay Sports Ltd.*, 71 USPQ2d 1844, 1847 n.9 (TTAB 2004)).

Additionally, the goods of the parties have no restrictions as to nature, type, channels of trade, or classes of purchasers and are "presumed to travel in the same channels of trade to the same class of purchasers." *In re Vittera Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1268, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002)). Thus, applicant's and registrant's goods are related.

Further, the stated identifications of goods language in both the application and cited registration clearly show that both are providing archery equipment specifically pertaining to arrows. This evidence alone supports the conclusion that the applicant's goods and registrant's goods are related for the purposes of the likelihood of confusion analysis.

The overriding concern is not only to prevent buyer confusion as to the source of the goods and/or services, but to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. See *In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt regarding a likelihood of confusion determination is resolved in favor of the registrant. TMEP §1207.01(d)(i); see *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988).

Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

Identification of Goods - Clarification Required - Class 028

The wording "arrow components" in the identification of goods is indefinite and must be clarified because it is ambiguous and unclear. *See* 37 C.F.R. §2.32(a)(6); TMEP §1402.01. Applicant must amend this wording to specify the common commercial or generic name of the goods. *See* TMEP §1402.01. If the goods have no common commercial or generic name, applicant must describe the product, its main purpose, and its intended uses. *See id.*

Applicant may substitute the following wording, if accurate:

"Archery equipment, namely, arrow shafts; [*insert type of "arrow components," e.g., archery equipment in the nature of arrow components, namely, archery arrow points*], in **International Class 028**."

For assistance with identifying and classifying goods and services in trademark applications, please see the USPTO's online searchable [U.S. Acceptable Identification of Goods and Services Manual](#). *See* TMEP §1402.04.

Applicant may amend the identification to clarify or limit the goods and/or services, but not to broaden or expand the goods and/or services beyond those in the original application or as acceptably amended. *See* 37 C.F.R. §2.71(a); TMEP §1402.06. Generally, any deleted goods and/or services may not later be reinserted. *See* TMEP §1402.07(e).

Disclaimer

Applicant must disclaim the wording "BOWHUNTING" because it is merely descriptive of a characteristic or use of applicant's goods. *See* 15 U.S.C. §1052(e)(1); *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1251, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012); TMEP §§1213, 1213.03(a).

The attached evidence from Oxford Dictionary shows that this wording means The practice of hunting animals with a bow rather than a gun. Consumers encountering applicant's mark will immediately understand that the goods are used in and/or are marketed for bowhunting. Thus, this wording must be disclaimed.

Applicant may respond to this issue by submitting a disclaimer in the following format:

No claim is made to the exclusive right to use "BOWHUNTING" apart from the mark as shown.

For an overview of disclaimers and instructions on how to provide one using the Trademark Electronic Application System (TEAS), see the [Disclaimer webpage](#).

How to respond. [Click to file a response to this nonfinal Office action](#).

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RESPONSE GUIDANCE

- **Missing the response deadline to this letter will cause the application to [abandon](#).** The response must be received by the USPTO before midnight **Eastern Time** of the last day of the response period. TEAS maintenance or [unforeseen circumstances](#) could affect an applicant's ability to timely respond.
- **[Responses signed by an unauthorized party](#)** are not accepted and can **cause the application to [abandon](#)**. If applicant does not have an attorney, the response must be signed by the individual applicant, all joint applicants, or someone with [legal authority to bind a juristic applicant](#). If applicant has an attorney, the response must be signed by the attorney.
- If needed, **find [contact information for the supervisor](#)** of the office or unit listed in the signature block.



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US DICTIONARY

bowhunting



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Definition of bowhunting in English:

bowhunting



NOUN

North American

The practice of hunting animals with a bow rather than a gun.

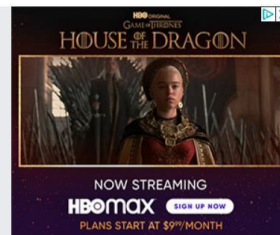
'Ask your gun customers if they bowhunt or would consider bowhunting.'

[+ More example sentences](#)

Pronunciation

bowhunting

/ˈboʊ.hʌn(t)ɪŋ/ /ˈboʊ.hʌn(t)ɪŋ/



WORD OF THE DAY

otherwhere

/ˈʌðəweɪ/
ADVERB

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☐ An arrest may lead to adverse publicity

NEXT

0/10

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2. decry
3. complaisant
4. ups and downs
5. booking

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(4) STANDARD CHARACTER MARK

NEXUS

Mark Punctuated

NEXUS

Translation

Goods/Services

- IC 028. US 022 023 038 050.G & S: archery equipment, namely, arrows and crossbow bolts. FIRST USE: 20160119. FIRST USE IN COMMERCE: 20160119

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Design Code

Serial Number

86403593

Filing Date

20140923

Current Filing Basis

1A

Original Filing Basis

1B

Publication for Opposition Date

20150224

Registration Number

4984069

Date Registered

20160621

Owner

(REGISTRANT) The Allen Company, Inc. CORPORATION COLORADO P.O. Box 445 525 Burbank Street
Broomfield COLORADO 80038

Priority Date

Disclaimer Statement

Description of Mark

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

Attorney of Record

Boyd D. Cox

United States Patent and Trademark Office (USPTO)

USPTO OFFICIAL NOTICE

Office Action (Official Letter) has issued
on August 25, 2022 for
U.S. Trademark Application Serial No. 97119967

A USPTO examining attorney has reviewed your trademark application and issued an Office action. You must respond to this Office action in order to avoid your application abandoning. Follow the steps below.

- (1) **[Read the Office action](#)**. This email is NOT the Office action.
- (2) **Respond to the Office action by the deadline** using the Trademark Electronic Application System (TEAS). Your response must be received by the USPTO on or before 11:59 p.m. **Eastern Time** of the last day of the response period. Otherwise, your application will be **[abandoned](#)**. See the Office action itself regarding how to respond.
- (3) **Direct general questions** about using USPTO electronic forms, the USPTO **[website](#)**, the application process, the status of your application, and whether there are outstanding deadlines to the **[Trademark Assistance Center \(TAC\)](#)**.

After reading the Office action, address any question(s) regarding the specific content to the USPTO examining attorney identified in the Office action.

GENERAL GUIDANCE

- **[Check the status](#) of your application periodically** in the **[Trademark Status & Document Retrieval \(TSDR\)](#)** database to avoid missing critical deadlines.
- **[Update your correspondence email address](#)** to ensure you receive important USPTO notices about your application.
- **[Beware of trademark-related scams](#)**. Protect yourself from people and companies that may try to take financial advantage of you. Private companies may call you and pretend to be the USPTO or may send you communications that resemble official USPTO documents to trick you. We will never request your credit card number or social security number over the phone. And all official USPTO correspondence will only be emailed from the domain “@uspto.gov.” Verify the correspondence originated from us by using your Serial Number in our database, **[TSDR](#)**, to confirm that it appears under the “Documents” tab, or contact the **[Trademark Assistance Center](#)**.

- **Hiring a U.S.-licensed attorney.** If you do not have an attorney and are not required to have one under the trademark rules, we encourage you to hire a U.S.-licensed attorney specializing in trademark law to help guide you through the registration process. The USPTO examining attorney is not your attorney and cannot give you legal advice, but rather works for and represents the USPTO in trademark matters.

User: Andrew Rhim

Statistics for Case 97119967						
#	Search	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/Search Duration
1	97119967[sn]	1	0	1	1	0:00
2	"nexus bowhunting"[bi,ti]	1	0	1	1	0:00
3	"nexus bowhunting"[bi,ti]	0	0	0	0	0:00
4	*ne{"ckqx"}\$1{v}{"sz"}*[bi,ti]	3376	0	0	0	0:01
5	*n{v}{"ckqx"}\$1{v}{"sz"}*[bi,ti]	7578	0	0	0	0:02
6	*bow*[bi,ti]	13038	0	0	0	0:00
7	*hunt*[bi,ti]	8573	0	0	0	0:00
8	5 and 6 and 7	1	0	1	1	0:01
9	5 and (6 or 7)	9	5	4	4	0:01
10	6 and 7	166	0	0	0	0:02
11	10 not dead	48	0	48	48	0:00
12	4 and "028"[cc]	2106	0	0	0	0:00
13	4 and ("028" or a or b or "200")[ic]	79	0	0	0	0:01
14	12 not dead	875	0	0	0	0:00
15	13 not dead	31	0	31	31	0:01
16	5 and "028"[cc]	4633	0	0	0	0:02
17	5 and ("028" or a or b or "200")[ic]	242	0	0	0	0:03
18	16 not dead	1770	0	0	0	0:01
19	17 not dead	94	0	0	0	0:01
20	19 not 15	63	0	63	63	0:02

Session started 08/25/2022 2:11 pm

Session ended 08/25/2022 2:17 pm

Total search duration 18.00

Session duration 6 minutes 35 seconds

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Near Level 1