

**To:** Tianyi Lei([tanyalei@tylawgp.com](mailto:tanyalei@tylawgp.com))  
**Subject:** U.S. Trademark Application Serial No. 97118975 - WOODEPOCH - TUS112233  
**Sent:** August 26, 2022 01:52:49 PM EDT  
**Sent As:** [tmng.notices@uspto.gov](mailto:tmng.notices@uspto.gov)

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**Attachments**

[2759668](#)  
[3481209](#)

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

**U.S. Application Serial No.** 97118975

**Mark:** WOODEPOCH

**Correspondence Address:**

TIANYI LEI  
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**Applicant:** Xu, Weihua

**Reference/Docket No.** TUS112233

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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 26, 2022

**Introduction**

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**

- Partial Refusal - Section 2(d) - Likelihood of Confusion

### **Partial Refusal - Section 2(d) - Likelihood of Confusion**

#### **THIS PARTIAL REFUSAL APPLIES ONLY TO THE GOODS SPECIFIED HEREIN**

Registration of the applied-for mark "WOODEPOCH" is refused because of a likelihood of confusion with the marks in U.S. Registration Nos. 2759668 ("EPOCH DESIGN") and 3481209 ("EPOCH"). Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* *See* the attached registrations.

This partial refusal applies **only** to the goods in International Class 020 identified as "Bamboo furniture; Bentwood furniture; ... Pet furniture in the nature of cat trees, cat condos; Placards of wood or plastics."

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.

Applicant has applied to register the mark WOODEPOCH in standard characters for "Bamboo furniture; Bentwood furniture; Bird houses; Decorative boxes made of wood; Decorative decoys made of plastic; Display cases for merchandise; Display racks for cosmetics; Garden ornaments in the nature of wooden whirligigs; Ornaments of plaster, plastic, wax, wood; Pet furniture in the nature of cat trees, cat condos; Placards of wood or plastics; Wood storage tanks; Wooden craft sticks; Wooden display stands; Works of art made of wood; Works of art of plastic" in International Class 020.

Registrant's mark is EPOCH DESIGN in typed characters for "FURNITURE" in International Class

020.

Registrant's mark is EPOCH in standard characters for "Non-metal goods made from lucite or wood, namely, trophies and plaques" in International Class 020.

### Similarity of the Marks

Marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1321, 110 USPQ2d 1157, 1160 (Fed. Cir. 2014) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1371, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005)); TMEP §1207.01(b)-(b)(v). "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *In re Inn at St. John's, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) (citing *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)), *aff'd per curiam*, 777 F. App'x 516, 2019 BL 343921 (Fed. Cir. 2019); TMEP §1207.01(b).

Here, applicant's mark, WOODEPOCH, is confusingly similar to the registered marks, EPOCH DESIGN and EPOCH.

### *WOODEPOCH* vs. *EPOCH DESIGN*

Consumers will likely perceive the marks as "WOOD EPOCH"/"EPOCH DESIGN", which means that consumers will perceive the marks as containing the identical wording "EPOCH."

Marks may be confusingly similar in appearance where similar terms or phrases or similar parts of terms or phrases appear in the compared marks and create a similar overall commercial impression. *See Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689, 690-91 (TTAB 1986), *aff'd sub nom. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat'l Ass'n*, 811 F.2d 1490, 1495, 1 USPQ2d 1813, 1817 (Fed. Cir. 1987) (holding COMMCASH and COMMUNICASH confusingly similar); *In re Corning Glass Works*, 229 USPQ 65, 66 (TTAB 1985) (holding CONFIRM and CONFIRMCELLS confusingly similar); *In re Pellerin Milnor Corp.*, 221 USPQ 558, 560 (TTAB 1983) (holding MILTRON and MILLTRONICS confusingly similar); TMEP §1207.01(b)(ii)-(iii).

Additionally, the fact that the marks contain the additional wording "WOOD"/"DESIGN" does not diminish the confusing nature of the marks because the shared wording "EPOCH" is the more distinctive wording in the marks.

Although there is no mechanical test to determine the dominant element of a mark, consumers would be more likely to perceive a distinctive term, even if suggestive, rather than a generic or descriptive term as the source-identifying feature of the mark. *Tao Licensing, LLC v. Bender Consulting Ltd.*, 125 USPQ2d 1043, 1059-60 (TTAB 2017) (citing *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1406-07, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997); *In re Binion*, 93 USPQ2d 1531, 1534 (TTAB 2009)).

In the present case, the additional wording "DESIGN" in the registrant's mark merely describes registrant's goods, as evidenced by the fact this wording is disclaimed. Likewise, the additional wording "WOOD" in the applicant's mark merely describes applicant's goods, as evidenced by the fact this wording appears in applicant's identification of goods ("**Bentwood** furniture; ... Decorative boxes made of **wood**; ... Garden ornaments in the nature of **wooden** whirligigs; Ornaments of plaster, plastic, wax, **wood**; ... Placards of **wood** or plastics; **Wood** storage tanks; **Wooden** craft sticks; **Wooden**

display stands; Works of art made of **wood**" (emphasis added)). Thus, because the more distinctive wording in applicant's mark, EPOCH, is identical to the more distinctive wording in registrant's mark, EPOCH, the marks create an overall similar commercial impression.

Accordingly, because the marks create the same commercial impression, the marks are considered similar for likelihood of confusion purposes.

#### *WOODEPOCH* vs. *EPOCH*

Consumers will likely perceive the marks as "WOOD EPOCH"/"EPOCH", which means that consumers will perceive the marks as containing the identical wording "EPOCH."

The fact that applicant's mark contains the additional wording "WOOD" does not diminish the confusing nature of the marks.

Adding a term to a registered mark generally does not obviate the similarity between the compared marks, as in the present case, nor does it overcome a likelihood of confusion under Section 2(d). *See Coca-Cola Bottling Co. v. Jos. E. Seagram & Sons, Inc.*, 526 F.2d 556, 557, 188 USPQ 105, 106 (C.C.P.A. 1975) (holding BENGAL and BENGAL LANCER and design confusingly similar); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1269 (TTAB 2009) (holding TITAN and VANTAGE TITAN confusingly similar); *In re El Torito Rests., Inc.*, 9 USPQ2d 2002, 2004 (TTAB 1988) (holding MACHO and MACHO COMBOS confusingly similar); TMEP §1207.01(b)(iii). In the present case, the marks are identical in part.

This is particularly true in the present case where the additional wording "WOOD" in applicant's mark is merely descriptive of applicant's goods. *See* above for an explanation of the descriptiveness of this wording.

Thus, because the more distinctive wording in applicant's mark, EPOCH, is identical to the entirety of registrant's mark, EPOCH, the marks create an overall similar commercial impression.

Accordingly, because the marks create the same commercial impression, the marks are considered similar for likelihood of confusion purposes.

#### Relatedness of the Goods

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)).

#### U.S. Registration No. 2759668 ("EPOCH DESIGN")

In this case, the registration uses broad wording ("FURNITURE") to describe the goods, which presumably encompasses all goods and/or services of the type described, including applicant's more narrow goods identified as "Bamboo furniture; Bentwood furniture; ... Pet furniture in the nature of cat trees, cat condos." *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 in part. *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)).

Accordingly, the goods and/or services are considered related for purposes of the likelihood of confusion analysis.

#### U.S. Registration No. 3481209 ("EPOCH")

In this case, the registration uses broad wording ("Non-metal goods made from lucite or wood, namely, trophies and plaques") to describe the goods, which presumably encompasses all goods and/or services of the type described, including applicant's more narrow goods identified as "Placards of wood or plastics." 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 in part. 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)).

Accordingly, the goods and/or services are considered related for purposes of the likelihood of confusion analysis.

#### Conclusion

Because the marks are similar and the goods and/or services are legally identical, there is a likelihood of confusion as to the source of applicant's goods and/or services, and registration is refused pursuant to Section 2(d) of the Trademark Act.

#### Response Options to Refusals

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

#### **Advisory regarding Partial Abandonment if Applicant Does not Respond**

If applicant does not respond to this Office action within the six-month period for response, the following goods and/or services in International Class 020 will be deleted from the application: "Bamboo furniture; Bentwood furniture; ... Pet furniture in the nature of cat trees, cat condos; Placards of wood or plastics."

The application will then proceed with the following goods and/or services in International Class 020 only: "Bird houses; Decorative boxes made of wood; Decorative decoys made of plastic; Display cases for merchandise; Display racks for cosmetics; Garden ornaments in the nature of wooden whirligigs; Ornaments of plaster, plastic, wax, wood; ... Wood storage tanks; Wooden craft sticks; Wooden display stands; Works of art made of wood; Works of art of plastic." See 37 C.F.R. §2.65(a)-(a)(1); TMEP §718.02(a).

**Response guidelines.** For this application to proceed, applicant must explicitly address each refusal and/or requirement in this Office action. For a refusal, applicant may provide written arguments and

evidence against the refusal, and may have other response options if specified above. For a requirement, applicant should set forth the changes or statements. Please see “[Responding to Office Actions](#)” and the informational [video “Response to Office Action”](#) for more information and tips on responding.

Please call or email the assigned trademark examining attorney with questions about this Office action. Although an examining attorney cannot provide legal advice, the examining attorney can provide additional explanation about the refusal(s) and/or requirement(s) in this Office action. *See* TMEP §§705.02, 709.06.

The USPTO does not accept emails as responses to Office actions; however, emails can be used for informal communications and are included in the application record. *See* 37 C.F.R. §§2.62(c), 2.191; TMEP §§304.01-.02, 709.04-.05.

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

/Daniel L. Flint/  
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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.

**Print: Thu Aug 25 2022**

**76249013**

**(1) TYPED DRAWING**

# EPOCH DESIGN

## **Mark Punctuated**

EPOCH DESIGN

## **Translation**

## **Goods/Services**

- (CANCELLED) IC 006. US 002 012 013 014 023 025 050.G & S: [ METAL LADDERS ]. FIRST USE: 20000000. FIRST USE IN COMMERCE: 20000000
- IC 020. US 002 013 022 025 032 050.G & S: FURNITURE [ ; NON-METAL LADDERS ]. FIRST USE: 19980605. FIRST USE IN COMMERCE: 19980605
- (CANCELLED) IC 028. US 022 023 038 050.G & S: [ KIDS TOYS, NAMELY, TOY BUILDING BLOCKS, PLAY SET BUILDINGS, TOY VEHICLES, TOY WEAPONS AND TOY TOOLS; PET TOYS; PLAY HOUSES ]. FIRST USE: 19991004. FIRST USE IN COMMERCE: 19991004

## **Mark Drawing Code**

(1) TYPED DRAWING

## **Design Code**

## **Serial Number**

76249013

## **Filing Date**

20010430

## **Current Filing Basis**

1A

## **Original Filing Basis**

1B

## **Publication for Opposition Date**

20020702

## **Registration Number**

2759668

## **Date Registered**

20030902

## **Owner**

(REGISTRANT) Epoch Design, L.L.C. LIMITED LIABILITY COMPANY WASHINGTON 17617 NE 65th Street Ste 2 Redmond WASHINGTON 98052

## **Priority Date**

## **Disclaimer Statement**

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "DESIGN" APART FROM THE MARK AS SHOWN

**Description of Mark**

**Type of Mark**  
TRADEMARK

**Register**  
PRINCIPAL

**Live Dead Indicator**  
LIVE

**Attorney of Record**  
Krista A. Wittman



(4) STANDARD CHARACTER MARK

EPOCH

**Mark Punctuated**

EPOCH

**Translation**

**Goods/Services**

- IC 020. US 002 013 022 025 032 050.G & S: Non-metal goods made from lucite or wood, namely, trophies and plaques. FIRST USE: 20080528. FIRST USE IN COMMERCE: 20080528

**Mark Drawing Code**

(4) STANDARD CHARACTER MARK

**Design Code**

**Serial Number**

77024816

**Filing Date**

20061019

**Current Filing Basis**

1A

**Original Filing Basis**

1B

**Publication for Opposition Date**

20070904

**Registration Number**

3481209

**Date Registered**

20080805

**Owner**

(REGISTRANT) O.C.Tanner Company CORPORATION UTAH 1930 South State Street Salt Lake City UTAH 84115

**Priority Date**

**Disclaimer Statement**

**Description of Mark**

**Type of Mark**

TRADEMARK

**Register**

PRINCIPAL

**Live Dead Indicator**

LIVE

**Attorney of Record**

Craig J. Madson

## United States Patent and Trademark Office (USPTO)

### USPTO OFFICIAL NOTICE

Office Action (Official Letter) has issued  
on August 26, 2022 for  
**U.S. Trademark Application Serial No. 97118975**

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.

# Note To The File

Serial Number: 97118975  
Date: 08/26/2022 1:42 pm  
Created by: Daniel Flint

WOODEPOCH

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## Changed

- Deleted Negative Translation Statement and Negative Consent Statement.

## Do Not Print

- Negative Translation Statement
- Consent of Living Individual