

To: Sean Owens(usptodock@whe-law.com)
Subject: U.S. Trademark Application Serial No. 97120798 - BREEZE - ESSTM-282
Sent: August 23, 2022 10:29:20 PM EDT
Sent As: tmng.notices@uspto.gov

Attachments

[6335418](#)

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

U.S. Application Serial No. 97120798

Mark: BREEZE

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Applicant: BSN Medical GmbH

Reference/Docket No. ESSTM-282

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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 23, 2022

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issues below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

SUMMARY OF ISSUES:

- Section 2(d) Refusal – Likelihood of Confusion
- Amendment to Identification of Goods Required

1. 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. 6335418. 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 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. *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.

Statement of Facts Specific to this Application:

Applicant's mark is BREEZE (standard characters) for “Surgical and medical instruments and apparatus, namely, orthopaedic splints; orthopaedic supports; orthopaedic bandages; orthopaedic hosiery; compression bandages; support bandages; medical compression garments, namely, compression stockings; compression tights; compression socks; support stockings; support tights; support socks; gloves for medical purposes” in International Class 010.

Registrant's mark is SKYBREEZE (standard characters) for “Medical examination gloves; Protective gloves for medical use; Surgical gloves; Nitrile gloves for medical use” in International Class 010.

Comparison 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 Fondée 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).

Incorporating the entirety of one mark within another 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 Wella Corp. v. Cal. Concept Corp.*, 558 F.2d 1019, 1022, 194 USPQ 419, 422 (C.C.P.A. 1977) (holding CALIFORNIA CONCEPT and surfer design and CONCEPT confusingly similar); *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 LANCER and design and BENGAL confusingly similar); *Double Coin Holdings, Ltd. v. Tru Dev.*, 2019 USPQ2d 377409, at *6-7 (TTAB 2019) (holding ROAD WARRIOR and WARRIOR (stylized) confusingly similar); *In re Mr. Recipe, LLC*, 118 USPQ2d 1084, 1090 (TTAB 2016) (holding JAWS DEVOUR YOUR HUNGER and JAWS confusingly similar); TMEP §1207.01(b)(iii).

In the present case, there is a likelihood of confusion because registrant’s mark SKYBREEZE incorporates the entirety of applicant’s mark BREEZE. The additional word in registrant’s mark, SKY, does not give its mark a significantly different commercial impression from applicant’s mark as it refers to a type of BREEZE. Thus, the marks are identical in part, which gives them a confusingly similar commercial impression.

Because the overriding concern is not only to prevent buyer confusion as to the source of the goods, 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). For the reasons set forth above, the examining attorney has determined that the marks are sufficiently similar in terms of their commercial impressions such that individuals who encounter the marks would be likely to assume a connection between the parties and thus confuse the source of the goods.

Relatedness of the Goods:

The goods are compared to determine whether they are similar, commercially related, or travel in the same trade channels. *See Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369-71, 101 USPQ2d 1713, 1722-23 (Fed. Cir. 2012); *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1165, 64 USPQ2d 1375, 1381 (Fed. Cir. 2002); TMEP §§1207.01, 1207.01(a)(vi).

The compared goods need not be identical or even competitive to find a likelihood of confusion. *See On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000); TMEP §1207.01(a)(i). They need only be “related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that [the goods] emanate from the same source.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)); TMEP §1207.01(a)(i).

Determining likelihood of confusion is based on the description of the goods 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 application uses broad wording to describe one of its goods as "gloves for medical purposes," which presumably encompasses all goods of the type described, including registrant's more narrow "Medical examination gloves," "protective gloves for medical use," "surgical gloves," and "nitrile gloves for medical use." *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)).

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 Viterro 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, in part.

After considering the similarity of the marks and relatedness of the goods, the examining attorney has determined that the applied-for mark is similar to the registered mark, and the goods are sufficiently related so that individuals would be likely to assume, upon encountering the goods under similar marks, that they originate from, are sponsored or authorized by, or are otherwise connected to the same source. Accordingly, the mark is refused registration under Section 2(d) of the Trademark Act.

Although applicant's mark has been refused registration, applicant may respond to the refusal by submitting evidence and arguments in support of registration. However, if applicant responds to the refusal, applicant must also respond to the requirement set forth below.

2. AMENDMENT TO IDENTIFICATION OF GOODS REQUIRED

The identification of goods must be amended because it includes wording that is indefinite, as further explained below.

Applicant used the following identification in its application:

International Class 010: Surgical and medical instruments and apparatus, namely, orthopaedic splints; orthopaedic supports; orthopaedic bandages; orthopaedic hosiery; compression bandages; support bandages; medical compression garments, namely, compression stockings; compression tights; compression socks; support stockings; support tights; support socks; gloves for medical purposes

Where indicated below, the wording in the identification of goods is indefinite and must be clarified because it does not make clear what the goods are. *See* 37 C.F.R. §2.32(a)(6); TMEP §1402.01.

The unacceptable descriptions in the identification are identified by the use of bracketed explanations that immediately follow such descriptions. If the examining attorney could deduce the nature of the

goods or services from the incomplete or indefinite description, comments and suggestions on how to make the description acceptable are provided. Applicant should note that any wording in **bold**, in *italics*, underlined and/or in ALL CAPS below offers guidance and/or shows the changes being proposed for the identification of goods and services. If there is wording in the applicant's version of the identification of goods which should be removed, it will be shown with a line through it such as this: ~~striketrough~~. When making its amendments, applicant should enter them in standard font, not in ALL CAPS.

Applicant may substitute the following wording, if accurate:

International Class 10:

Surgical and medical instruments and apparatus, namely, orthopaedic splints {**acceptable wording is “orthopaedic splints”**}

orthopaedic supports

orthopaedic bandages

orthopaedic hosiery

compression bandages

support bandages

medical compression garments, namely, compression stockings

compression tights

compression socks {**acceptable wording is “Compression garments, namely, compression socks”**}

support stockings {**acceptable wording is “Medical hosiery, namely, support stockings”**}

support tights {**acceptable wording is “Medical hosiery, namely, support tights”**}

support socks {**acceptable wording is “Medical hosiery, namely, support socks”**}

gloves for medical purposes

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). Additionally, for U.S. applications filed under Trademark Act Section 44(e), the scope of the identification for purposes of permissible amendments may not exceed the scope of the goods and/or services identified in the foreign registration. 37 C.F.R. §2.32(a)(6); *Marmark, Ltd. v. Nutrexpa, S.A.*, 12 USPQ2d 1843, 1845 (TTAB 1989) (citing *In re Löwenbräu München*, 175 USPQ 178, 181 (TTAB 1972)); TMEP §§1012, 1402.01(b).

Response guidelines. For this application to proceed, applicant must explicitly address each refusal and 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 and requirement 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.](#)

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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.

(4) STANDARD CHARACTER MARK

SKYBREEZE

Mark Punctuated

SKYBREEZE

Translation

Goods/Services

- IC 010. US 026 039 044.G & S: Medical examination gloves; Protective gloves for medical use; Surgical gloves; Nitrile gloves for medical use. FIRST USE: 20210100. FIRST USE IN COMMERCE: 20210100

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Design Code

Serial Number

87805068

Filing Date

20180221

Current Filing Basis

1A

Original Filing Basis

1B

Publication for Opposition Date

20180710

Registration Number

6335418

Date Registered

20210427

Owner

(REGISTRANT) O&M HALYARD, INC. CORPORATION VIRGINIA 9120 LOCKWOOD BOULEVARD
MECHANICSVILLE VIRGINIA 23116

Priority Date

Disclaimer Statement

Description of Mark

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

Attorney of Record

Andrea E. Bates

United States Patent and Trademark Office (USPTO)

USPTO OFFICIAL NOTICE

Office Action (Official Letter) has issued
on August 23, 2022 for
U.S. Trademark Application Serial No. 97120798

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: Edward Germick

Statistics for Case 97120798						
#	Search	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/Search Duration
1	97120798[sn]	1	0	0	0	0:00
2	"BSN Medical GmbH"[on]	117	0	2	2	0:00
3	*BR{"iey"1:2}{"sxz"}*[bi,ti]not dead[ld]	2600	0	0	0	0:00
4	*BR{"iey"1:2}z*[bi,ti]not dead[ld]	1385	0	0	0	0:00
5	*BR{"e"1:2}z*[bi,ti]not dead[ld]	1285	0	0	0	0:00
6	*BReez*[bi,ti]not dead[ld]	1207	0	0	0	0:01
7	6 and "010"[cc]	233	0	233	233	0:01
8	*BREEZE*[bi,ti]not dead[ld]	1038	0	0	0	0:01

Session started 08/23/2022 4:29 pm

Session ended 08/23/2022 4:35 pm

Total search duration 3.00

Session duration 6 minutes 12 seconds

Adjacency Level 1

Near Level 1