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A PROFESSIONAL LIMITED LIABILITY COMPANY

Patent, Trademark & Copyright Law

2046-C JEFFERSON DAVIS HIGHWAY
STAFFORD, VA 22554
PHONE: (540) 657-9344
FAX: (540) 657-9343

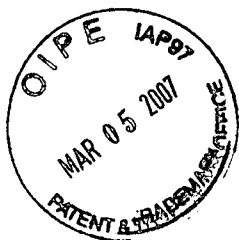
e-mail: commcenter@acupat.com

AFFILIATION
ACUPAT L.L.C.
STAFFORD, VA

WILLIAM L. KLIMA *

WALTER F. KLIMA, JR., Ph.D., Chemistry
Technical Consultant

* ADMITTED IN PENNSYLVANIA ONLY.



March 5, 2007

TTAB

Trademark Trial and Appeals Board
P. O. Box 1450
Alexandria, Virginia 22313-1450

Re: U.S. Trademark Application
Serial No.: 76/577,682; Filed: February 25, 2004
Mark: 4X
Int'l Class: 003
Applicant: Sprayex, L.L.C.

Sir:

The following documents are being forwarded herewith for appropriate action by the U.S. Patent and Trademark Office:

1. Appeal Brief
2. Return Filing Receipt

We respectfully request that you date stamp and return to our courier the attached return filing receipt.

The Commissioner is hereby authorized to charge the Appeal Fee, and any other fee, or credit any overpayment, to our Deposit Account No. 11-1243. A duplicate copy of this letter is enclosed.

Respectfully submitted,

William L. Klima
Attorney For Applicant
Registration No. 32,422

Enclosures
WLK:cac



03-05-2007

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DUPLICATE

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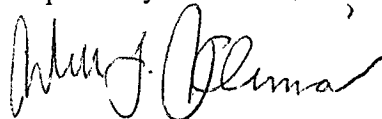
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William L. Klima
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: SPRAYEX, L.L.C. :
Trademark: Design :
Serial No.: 76/577,682 :
Attorney: William L. Klima :
Address: P.O. Box 2855 :
Stafford, VA 22555-2855 :

**BEFORE THE
TRADEMARK TRIAL
AND
APPEAL BOARD
ON APPEAL**

APPELLANT'S BRIEF

Appellant appeals the decision of the trademark examining attorney's final refusal to register the subject trademark on the ground that there exists a likelihood of confusion with the mark of Registration No. 2445741 under Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d).

FACTS

Appellant's mark is a design or logo, and is not the word mark "4X". Specifically, the number "4" is located on the left hand side of a circle, and the circle contains a cross symbol. The number "4" and the cross symbol are each provided with noticeable white circular dots located at corresponding intersections of crossing line portions of the number "4" and the cross symbol. A second partial circle shadows the dominant circle. The present mark factually is substantially unlike and dissimilar from the mark of Registration No. 2445741.

The mark of Registration No. 2445741 is a design or logo, and is not the word mark "4X". Specifically, the original application for the mark of Registration No. 2445741 (Exhibit A) provide the description "MARK: The design is consisted of a highlighted star figure, in which, the highlighted star figure is attached by a highlighted design of the number "4" on the outside of the bottom left of the star and a "x" design is located within the star figure." The dominant symbol of this mark is the STAR symbol, which is not contained or a portion of Appellant's mark. The mark of Registration No. 2445741 factually is substantially unlike and dissimilar from Appellant's mark.

ARGUMENT

The mark covered by Registration No. 2445741 is classified at the United States Patent and Trademark Office as the word mark "4 X", however, this mark is actually a design or logo. The classification of this mark as the word mark "4 X" does not take into account the dominating feature of this mark, which is the STAR symbol. The STAR symbol is clearly the dominating feature of the mark based on the description of the MARK in the originally filed application (i.e. "highlighted star figure", See Exhibit A), and based on its physical size and prominence relative to the other components of the mark, namely, the number "4" and suggest the visual impression and verbal pronunciation of this mark as "4 STAR" followed by the "x" design resulting in an overall visual impression and verbal pronunciation as "4 STAR x". The interpretation of the word mark as "4 X" covered by Registration No. 2445741 was either in error, or otherwise symbols other than letters and numbers (e.g. STAR) are ignored for classification purposes. In any event, a complete analysis of this mark for likelihood of confusion purposes must take into account the dominating STAR symbol of this mark when comparing it to Appellant's mark not containing the STAR symbol.

Appellant adopted the amended identification of goods suggested by the Examining Attorney in the Office action dated August 16, 2006. This amendment limited the goods to consumer or household type cleaners and cleaning preparations. The identification of goods set forth in Registration No. 2445741 are strictly limited to industrial, in particular heavy duty industrial type cleaning preparations never used by consumers, especially not for household uses. No consumer looking to purchase household cleaners and cleaning preparations will be considering let alone normally have access to those heavy industrial cleaners and cleaning preparations covered under Registration No. 2445741.

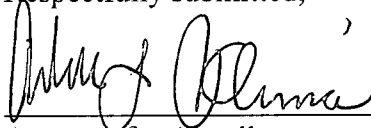
The Examining attorney in the Office action dated December 4, 2006 has provided evidence of Blue Star Cleaning Co., Ltd., Registrant of Registration No. 2445741 selling both "industrial and household cleaning agents, and evidence of Appellant Sprayex selling "commercial/industrial" cleaners, however, this evidence does not show the use of either mark by Registrant or Appellant. A proper analysis under likelihood of confusion must take into account the identification of goods of both marks, and the actual use of these marks by Registrant and Appellant. This evidence at most indicates that consumer cleaners and industrial cleaners can be sold through the same channel of trade (i.e. internet), however, this ignores the important fact that most consumer household cleaners and cleaning preparations are sold in grocery, drug and large department chain stores where no heavy industrial cleaners of the type set forth in the identification of goods of Registrant are to be found. Further, Registrant goods covered under the identification of good for Registration No. 2445741 are normally sold only directly to industrial cleaning services and supplies, and are not normally available or sold to consumers. These type of chemical cleaners tend to be highly toxic and dangerous for consumer handling and use, and are normally not available or sold directly to consumers due to the huge liabilities resulting from misuse, property and personal damage, injury and even death. This results in very different and bifurcated markets for these different types of cleaners and cleaning preparations, and no likelihood of confusion.

CONCLUSION

Appellants mark is totally different in appearance, design, connotation and commercial impression verses the mark of Registration No. 2445741, and the market for these indetified goods are totally different. In conclusion, there exists no likelihood of confusion of Appellant's mark verses Registrant's mark as to source.

For the foregoing reasons, the refusal to register on the basis of likelihood of confusion Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), for the reason that there exists no likelihood of confusion as to source, should be reversed.

Respectfully submitted,



Attorney for Appellant

William L. Klima

Reg. No. 32,422

March 5, 2007

Date

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