
To: Banom, Inc. (TRADEMARKS@CRBCP.COM)
Subject: TRADEMARK APPLICATION NO. 78869253 - DURAMAX - C1092/30039
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UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/869253

MARK: DURAMAX

CORRESPONDENT ADDRESS:
STANLEY H. COHEN, ESQ.
CAESAR, RIVISE, BERNSTEIN, COHEN &
POKOT
1635 MARKET ST
PHILADELPHIA, PA 19103-2217

GENERAL TRADEMARK INFORMATION:
<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Banom, Inc.

CORRESPONDENT'S REFERENCE/DOCKET
NO: C1092/30039
CORRESPONDENT E-MAIL ADDRESS:
TRADEMARKS@CRBCP.COM

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 8/29/2007

Applicant is requesting reconsideration of a final refusal issued/mailed February 16, 2007.

After careful consideration of the law and facts of the case, the examining attorney must deny the request for reconsideration and adhere to the final action as written since no new facts or reasons have been presented that are significant and compelling with regard to the point at issue.

In its request for reconsideration, the applicant provides that the mark at issue is diluted. As evidence, applicant provides copies of applications and registrations for the mark. However, applications are not material as to the diluted nature of a mark. Of the referenced registrations, none of the registrations (other than the cited mark) are for goods that are related to the goods of the applicant in the instant case such that the mark is not diluted with respect to gloves, boots or other items of clothing.

Applicant also provides that the evidence provided by the examining attorney, in the nature of third party registrations, is insufficient to show that the goods of the applicant and registrant in the instant case are of a type that may emanate from a common source. Applicant appears to constructively argue that a finding of a likelihood of confusion requires that the marks and the goods be identical. But that is not the test.

The test is whether an applied-for mark so resembles a registered mark that it is likely, when applied to the goods and/or services, to cause confusion, mistake or to deceive the potential consumer as to the source of the goods and/or services. TMEP §1207.01. The overriding concern is to prevent buyer confusion as to the source of the goods and/or services. *In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt as to the existence of a likelihood of confusion must be resolved in favor of the registrant. *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988); *Lone Star Mfg. Co. v. Bill Beasley, Inc.*, 498 F.2d 906, 182 USPQ 368 (C.C.P.A. 1974).

In some of the referenced third party registrations (U.S. Registration Nos. 1325482, 2622113, 2806370, 3205004, 3096615), the goods are nearly identical to those of the applicant and registrant in the instant case. Thereafter, the registrations provide evidence that entities that provide goods in the nature of, "protective gloves for industrial use," also provide goods in the nature of "industrial work shoes and boots." The attached webpages further evidence this fact. See the attached, www.magidglove.com; www.northern-safety.com, www.stihl.com.

Finally, (and as was provided in the Final Office Action), when the marks of the respective parties are identical, the relationship between the goods or services of the respective parties need not be as close to support a finding of likelihood of confusion as might apply where differences exist between the marks. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 877, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992), cert. denied 506 U.S. 1034 (1992); *In re Opus One Inc.*, 60 USPQ2d 1812, 1815 (TTAB 2001); *Amcor, Inc. v. Amcor Industries, Inc.*, 210 USPQ 70 (TTAB 1981); TMEP §1207.01(a). Here, the marks are identical and the goods are related.

Accordingly, applicant's request for reconsideration is denied. The time for appeal runs from the date the final action was issued/mailed. 37 C.F.R. Section 2.64(b); TMEP Section 715.03(c). If applicant has already filed a timely notice of appeal, the application will be forwarded to the Trademark Trial and Appeal Board (TTAB).

Paul C. Crowley
/Paul Crowley/
Trademark Attorney
Law Office 110

(571) 272-8846

Fax (formal responses only) (571) 273-9110

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

- Hand Protection
- Protective clothing
- Eye Protection
- Foot and Toe Protection
- Hearing Protection
- Respiratory Protection
- Emergency Response
- Facilities Maintenance
- Explosives

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Item Locator

1.

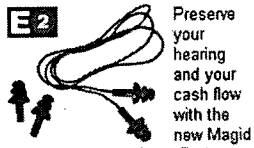
2.

3.

No Items in Order

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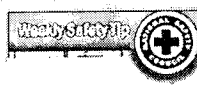


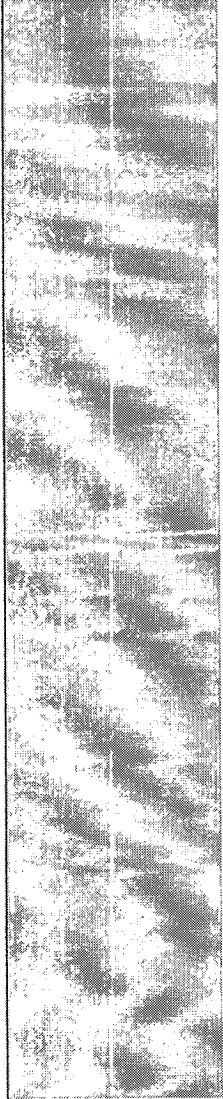
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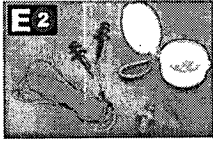




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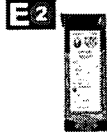
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