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Subject: U.S. TRADEMARK APPLICATION NO. 87278358 - COMFORT ZONE - A_TM1180 - Request for Reconsideration Denied - Return to TTAB - Message 1 of 4

Attachment Information:

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Files: Wkippe-1.jpg, Wkippe-2.jpg, Wkippe-3.jpg, Wkippe-4.jpg, Wkippe-5.jpg, Wkippe-6.jpg, 87278358.doc

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 87278358

MARK: COMFORT ZONE



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GENERAL TRADEMARK INFORMATION:

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APPLICANT: Ansell Limited

CORRESPONDENT'S REFERENCE/DOCKET NO:

A_TM1180

CORRESPONDENT E-MAIL ADDRESS:

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REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 3/16/2018

The trademark examining attorney has carefully reviewed applicant's request for reconsideration and is denying the request for the reasons stated below. See 37 C.F.R. §2.63(b)(3); TMEP §§715.03(a)(ii)(B), 715.04(a). The Trademark act Section 2(d) refusal made final in the Office action dated September 14, 2017 is maintained and continues to be final. See TMEP §§715.03(a)(ii)(B), 715.04(a). All previous arguments and evidence, where applicable, are incorporated by reference herein.

In the present case, applicant's request has not resolved the outstanding issue, nor does it raise a new issue or provide any new or compelling evidence with regard to the outstanding issue in the final Office action. In addition, applicant's analysis and arguments are not persuasive nor do they shed new light on the issues. Accordingly, the request is denied.

In its February 20, 2018 Request for Reconsideration, applicant amended its identification. However, this amendment does resolve the Section 2(d) refusal. Applicant contends that its goods "are sold exclusively within the personal protective equipment sector." See Request at 1. Applicant states that this sector is "highly regulated by the United State Occupational Safety and Health Administration." See Request at 2. However, the attached article demonstrates that "personal protective equipment" refers to "protective clothing, helmets, goggles, or other garments or equipment designed to protect the wearer's body from injury or infection." See Wikipedia, attached. There are no limits as to what can be "personal protective equipment" except that it must protect the wearer. As such, the attached and previously attached evidence of gloves demonstrates that these gloves protect the wearers from injury or infection. See, e.g., 5.11, Blauer, Propper, Tact Squad, Galls, Rothco (attached), HW1 Tactical & Duty Designs (attached). As such these gloves are "personal protective equipment." Consequently, applicant's amendment narrowing the sector of use does not resolve the Section 2(d) refusal.

Applicant also contends that the goods of applicant and registrant are "very dissimilar." See Request at 2. Applicant contends that its gloves are "sold to industrial purchasers seeking to protect employees from industrial cuts or abrasive accidents, and are worn exclusively in industrial settings, such as factories or construction sites." See Request at 2. However, this is not what applicant's identification states. Applicant's amended identification says "Specialized protective work gloves for use within the personal protective equipment (PPE) sector; specialized protective gloves for industrial use within the personal protective equipment (PPE) sector." The only mention of "industrial" is in the second clause of the identification. Further, the attached evidence demonstrates that entities that provide law enforcement uniforms also provide industrial gloves. See e.g., Dickies, 221B Tactical (attached), TurtleSkin (attached), Radians (attached), and OccuNomix (attached). As such, this argument is not persuasive.

Applicant also contends that its purchasers are sophisticated because of the standards imposed by OSHA for personal protective equipment. See Request at 2-3. Applicant also argues that its goods "are not mass-market items ...[t]hese are expensive and sophisticated PPE goods, regulated by the federal government through OSHA, that are only marketed to and purchased by manufacturers for use in industrial settings." See Request at 3. However, applicant has not provided evidence of the cost of its gloves. Further, applicant's identification does not refer exclusively to industrial settings or to being regulated by OSHA. Therefore, applicant's attempts to narrow its identification are not persuasive.

Even if consumers of the compared goods could be considered sophisticated and discriminating, it is settled that "even sophisticated purchasers are not immune from source confusion, especially in cases

such as the present one involving identical marks and related goods.” *In re i.am.symbolic, llc*, 116 USPQ2d 1406, 1413 (TTAB 2015) (citing *In re Research & Trading Corp.*, 793 F.2d 1276, 1279, 230 USPQ 49, 50 (Fed. Cir. 1986)), *aff’d*, 866 F.3d 1315, 123 USPQ2d 1744 (Fed. Cir. 2017); *see also In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). The identity of the marks and the relatedness of the goods “outweigh any presumed sophisticated purchasing decision.” *In re i.am.symbolic, llc*, 116 USPQ2d at 1413 (citing *HRL Assocs., Inc. v. Weiss Assocs., Inc.*, 12 USPQ2d 1819, 1823 (TTAB 1989), *aff’d*, 902 F.2d 1546, 14 USPQ2d 1840 (Fed. Cir. 1990)); *see also Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1325, 110 USPQ2d 1157, 1163-64 (Fed. Cir. 2014).

Applicant’s arguments have been considered and found unpersuasive for the reasons set forth above. As such, the Trademark Act Section 2(d) refusal is continued and maintained.

If applicant has already filed a timely notice of appeal with the Trademark Trial and Appeal Board, the Board will be notified to resume the appeal. *See* TMEP §715.04(a).

If no appeal has been filed and time remains in the six-month response period to the final Office action, applicant has the remainder of the response period to (1) comply with and/or overcome any outstanding final requirement(s) and/or refusal(s), and/or (2) file a notice of appeal to the Board. TMEP §715.03(a)(ii)(B); *see* 37 C.F.R. §2.63(b)(1)-(3). The filing of a request for reconsideration does not stay or extend the time for filing an appeal. 37 C.F.R. §2.63(b)(3); *see* TMEP §§715.03, 715.03(a)(ii)(B), (c).

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Personal protective equipment

From Wikipedia, the free encyclopedia

"Safely helmet" redirects here. It is not to be confused with hard hat.

Personal protective equipment (PPE) refers to protective clothing, helmets, goggles, or other garments or equipment designed to protect the wearer's body from injury or infection. The hazards addressed by protective equipment include physical, electrical, heat, chemicals, biohazards, and airborne particulate matter. Protective equipment may be worn for job-related occupational safety and health purposes, as well as for sports and other recreational activities. "Protective clothing" is applied to traditional categories of clothing, and "protective gear" applies to items such as pads, guards, shields, or masks, and others.

The purpose of personal protective equipment is to reduce employee exposure to hazards when engineering controls and administrative controls are not feasible or effective to reduce these risks to acceptable levels. PPE is needed when there are hazards present. PPE has the serious limitation that it does not eliminate the hazard at the source and may result in employees being exposed to the hazard if the equipment fails.^[1]

Any item of PPE imposes a barrier between the wearer/user and the working environment. This can create additional strains on the wearer, impair their ability to carry out their work and create significant levels of discomfort. Any of these can discourage wearers from using PPE correctly, therefore placing them at risk of injury, ill-health or, under extreme circumstances, death. Good ergonomic design can help to minimise these barriers and can therefore help to ensure safe and healthy working conditions through the correct use of PPE.

Practices of occupational safety and health can use hazard controls and interventions to mitigate workplace hazards, which pose a threat to the safety and quality of life of workers. The hierarchy of hazard controls provides a policy framework which ranks the types of hazard controls in terms of absolute risk reduction. At the top of the hierarchy are elimination and substitution, which remove the hazard entirely or replace the hazard with a safer alternative. If elimination or substitution measures cannot apply, engineering controls and administrative controls, which seek to design safer mechanisms and coach safer human behavior, are implemented. Personal protective equipment ranks last on the hierarchy of controls, as the workers are regularly exposed to the hazard, with a barrier of protection. The hierarchy of controls is important in acknowledging that, while personal protective equipment has tremendous utility, it is not the desired mechanism of control in terms of worker safety.

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Drug Enforcement Administration (DEA) agents wearing Level B hazmat suits



Safety equipment and supervisor instructions at a construction site



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