

Response to Office Action: Argument Against Likelihood of Confusion

Application Serial No.: 98866557
Mark: "MISS Q COFFEE" (Standard Character)
International Class: 030, 043

Cited Prior Registration - No.: 98697038
Cited Mark: "MISS Q" (Standard Character)
International Class: 05

1. Introduction:

This response addresses the Examining Attorney's refusal to register the applied-for mark, "MISS Q COFFEE" (Standard Character), based on a likelihood of confusion with a cited previously registered mark, Registration No. 98697038, "MISS Q" (Standard Character). It is respectfully submitted that, upon a comprehensive analysis of the relevant factors, there exists no likelihood of confusion between the marks. The significant differences in the marks themselves, coupled with the distinct nature of the goods and services offered clearly demonstrate that consumers are unlikely to be confused as to the source of the services.

2. Summary of Arguments

There is significant dissimilarity in the two marks despite the shared "MISS Q" element. More importantly, there are significant differences in the goods and services being offered which drastically reduces the likelihood of consumer confusion.

3. Dissimilarity of the Marks:

The Examining Attorney correctly identified that "MISS Q" is present in both marks. The addition of "COFFEE" in the applicant's mark is not merely a descriptive addition that fails to distinguish. Instead, it creates a distinct commercial impression and a different source identifier.

"COFFEE" is a key differentiator. "COFFEE" is a prominent and integral part of the applicant's mark significantly altering its overall commercial impression. It immediately directs consumers to a specific product category (coffee and related services) that is entirely distinct from the registrant's medicinal herbs and teas.

Thus, the applicant's mark creates a distinctive commercial impression. The mark "MISS Q COFFEE" conveys an impression related to a coffee business - perhaps a brand of coffee, a coffee shop, or coffee beverages. This is vastly different from

the impression conveyed by "MISS Q" alone, especially when considered in the context of medicinal products. Consumers encountering "MISS Q COFFEE" are unlikely to assume it originates from the same source as "MISS Q" for medicinal herbs.

While the Examining Attorney focuses on "MISS Q" as dominant, it's worth noting that for the prior registrant's goods (medicinal herbs/teas), "MISS Q" itself might be considered more suggestive or arbitrary, implying a particular quality or persona without being directly descriptive. However, when paired with "COFFEE," the combined mark immediately becomes descriptive of the goods/services, yet still distinctive enough to indicate a different source from a medicinal product.

4. Dissimilarity of Goods and Services:

The Examining Attorney's assertion that "Coffee" and "Coffee shop services" are closely related to "Herbal teas for medicinal purposes; Medicinal teas" is highly debatable.

Distinct Nature and Purpose of Goods:

Different Classes. The Applicant's mark is being registered under classes 030 and 043 . The cited prior registration was registered under class 05.

The Applicant's Goods/Services: "Coffee; Coffee and coffee substitutes; Coffee based beverages; Coffee beans; Coffee capsules containing coffee for brewing; Coffee capsules, filled; Coffee drinks; Coffee shop services."

These are primarily consumed for taste, enjoyment, and caffeine, typically as a beverage or a social experience.

Prior Registrant's Goods: "Medicinal herbs; Herbs for medicinal purposes; Medicinal herb extracts, other than essential oils; Plant and herb extracts, other than essential oils, for medicinal purposes; Preparation for the relief of pain; Pain relief medication; Muscle-rub preparations for the relief of pain; Herbal tinctures for medical purposes; Herbal teas for medicinal purposes; Medicinal teas; Moxa sticks for moxibustion"

These are health-related products, purchased for therapeutic, preventative, or pain-relief purposes.

5. Different Channels of Trade and Purchasers:

Coffee Products/Services: Typically sold in grocery stores (coffee beans, ground

coffee), cafes, restaurants, convenience stores, and online. The purchasers are general consumers looking for a beverage or a place to socialize.

Medicinal Herbs/Teas: Often sold in pharmacies, health food stores, specialty herbal shops, or by practitioners. The purchasers are typically individuals seeking remedies for ailments or specific health benefits. The purchasing decision often involves a health concern, rather than casual consumption.

6. No Overlap in Marketing or Advertising:

The marketing and advertising channels for coffee products/coffee shops are entirely different from those for medicinal herbs and teas. Consumers would not expect to find medicinal teas advertised alongside coffee beverages, nor would they anticipate a coffee shop selling pain relief medication.

7. Consumer Expectation:

Consumers would not reasonably expect the goods/services to originate from the same source. Given the stark contrast in product type, purpose, and distribution, it is highly unlikely that a consumer seeking medicinal herbs would be confused by a coffee brand or vice-versa, even with a shared "MISS Q" element. The context provided by "COFFEE" immediately directs the consumer to a different commercial space.

8. Precedent for Dissimilar Goods/Services:

There are numerous examples where similar marks coexist because the goods/services are sufficiently dissimilar (e.g., DELTA faucets vs. DELTA airlines; DOVE soap vs. DOVE chocolate). The differences here are even more pronounced than some of those examples. Medicinal products and recreational beverages occupy entirely different consumer needs and markets.

9. Conclusion:

In summary, despite the partial overlap in the marks, the addition of the highly descriptive and commercially significant term "COFFEE" creates a distinctly different commercial impression. More critically, the vast differences in the nature, purpose, channels of trade, and target consumers for the respective goods and services strongly negate any likelihood of confusion. Consumers are sophisticated enough to differentiate between a coffee brand/shop and a medicinal herb/tea product, especially when the marks clearly define the product categories. Therefore, the cited prior registration should not serve as a bar to registration of "MISS Q COFFEE."