

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86318538
LAW OFFICE ASSIGNED	LAW OFFICE 101
MARK SECTION	
MARK	http://tsdr.uspto.gov/img/86318538/large
LITERAL ELEMENT	LITTLE ADI + CO.
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_701095314-20141008101900730241_.LITTLE_ADI_CO.pdf
CONVERTED PDF FILE(S) (3 pages)	\\TICRS\EXPORT16\IMAGEOUT16\863\185\86318538\xml5\ROA0002.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\863\185\86318538\xml5\ROA0003.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\863\185\86318538\xml5\ROA0004.JPG
DESCRIPTION OF EVIDENCE FILE	arguments sufficient to overcome the 2(d) refusal for a likelihood of confusion.
GOODS AND/OR SERVICES SECTION (current)	
INTERNATIONAL CLASS	025
DESCRIPTION	
Babies' pants; Bottoms for children and babies; Children's and infants' cloth bibs; Hats; Headbands; Scarves; Shirts for children and babies; Shorts for children and babies; Sweatshirts; T-shirts; Tops for children and babies	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 01/10/2014
FIRST USE IN COMMERCE DATE	At least as early as 01/10/2014
GOODS AND/OR SERVICES SECTION (proposed)	
INTERNATIONAL CLASS	025
TRACKED TEXT DESCRIPTION	
Babies' pants; Tops for children and babies not sold in bridal specialty shops or boutiques; Bottoms for children and babies; Babies' pants not consisting of hosiery; Bottoms for children and babies not sold in bridal specialty shops or boutiques and not consisting of hosiery; Children's and infants' cloth bibs; Hats; Headbands; Shirts for children and babies; Scarves; Shorts for children and babies; Sweatshirts; T-shirts; Tops for children and babies	
FINAL DESCRIPTION	
Tops for children and babies not sold in bridal specialty shops or boutiques; Babies' pants not consisting of hosiery; Bottoms for children and	

babies not sold in bridal specialty shops or boutiques and not consisting of hosiery; Children's and infants' cloth bibs; Hats; Headbands; Scarves	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 01/10/2014
FIRST USE IN COMMERCE DATE	At least as early as 01/10/2014
SIGNATURE SECTION	
RESPONSE SIGNATURE	/abetz/
SIGNATORY'S NAME	Adrienne Betz
SIGNATORY'S POSITION	President
DATE SIGNED	10/08/2014
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Wed Oct 08 10:24:15 EDT 2014
TEAS STAMP	USPTO/ROA-XX.XXX.XX.XX-20 141008102415473614-863185 38-5003276a636a3d4e2aabf5 7fde4c029f5abdab5729a1ba3 0deee13f35eca91a31b-N/A-N /A-20141008101900730241

PTO Form 1957 (Rev 9/2005)
OMB No. 0651-0050 (Exp. 07/31/2017)

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. **86318538** LITTLE ADI + CO.(Standard Characters, see <http://tsdr.uspto.gov/img/86318538/large>) has been amended as follows:

EVIDENCE

Evidence in the nature of arguments sufficient to overcome the 2(d) refusal for a likelihood of confusion. has been attached.

Original PDF file:

[evi_701095314-20141008101900730241_.LITTLE_ADI_CO.pdf](#)

Converted PDF file(s) (3 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 025 for Babies' pants; Bottoms for children and babies; Children's and infants' cloth bibs; Hats; Headbands; Scarves; Shirts for children and babies; Shorts for children and babies; Sweatshirts; T-shirts; Tops for children and babies

Original Filing Basis:

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 01/10/2014 and first used in commerce at least as early as 01/10/2014 , and is now in use in such commerce.

Proposed:

Tracked Text Description: ~~Babies' pants;~~ [Tops for children and babies not sold in bridal specialty shops or boutiques;](#) ~~Bottoms for children and~~

[of hosiery](#); Children's and infants' cloth bibs; Hats; Headbands; ~~Shirts for children and babies~~; Scarves; ~~Shorts for children and babies~~; ~~Sweatshirts~~; ~~T-shirts~~; ~~Tops for children and babies~~

Class 025 for Tops for children and babies not sold in bridal specialty shops or boutiques; Babies' pants not consisting of hosiery; Bottoms for children and babies not sold in bridal specialty shops or boutiques and not consisting of hosiery; Children's and infants' cloth bibs; Hats; Headbands; Scarves

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 01/10/2014 and first used in commerce at least as early as 01/10/2014 , and is now in use in such commerce.

SIGNATURE(S)

Response Signature

Signature: /abetz/ Date: 10/08/2014

Signatory's Name: Adrienne Betz

Signatory's Position: President

The signatory has confirmed that he/she is not represented by either an authorized attorney or Canadian attorney/agent, and that he/she is either (1) the applicant or (2) a person(s) with legal authority to bind the applicant; and if an authorized U.S. attorney or Canadian attorney/agent previously represented him/her in this matter, either he/she has filed a signed revocation of power of attorney with the USPTO or the USPTO has granted the request of his/her prior representative to withdraw.

Serial Number: 86318538

Internet Transmission Date: Wed Oct 08 10:24:15 EDT 2014

TEAS Stamp: USPTO/ROA-XX.XXX.XX.XX-20141008102415473

614-86318538-5003276a636a3d4e2aabf57fde4

c029f5abdab5729a1ba30deee13f35eca91a31b-

N/A-N/A-20141008101900730241

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Little Adi + Co.
Serial No.: 86/318538
Filed: June 24, 2014
Word Mark: LITTLE ADI + CO.

RESPONSE TO SEPTEMBER 30, 2014 OFFICE ACTION

Potential Section 2(d) – Likelihood of Confusion

Applicant submits a preliminary response to the potential section 2(d) refusal; however, Applicant reserves all rights to provide a detailed and more descriptive response if the Examining Attorney raises a Section 2(d) refusal in a subsequent Office Action.

Applicant's Word Mark

LITTLE ADI + CO.

025: Babies' pants; Bottoms for children and babies; Children's and infants' cloth bibs; Hats; Headbands; Scarves; Shirts for children and babies; Shorts for children and babies; Sweatshirts; T-shirts; Tops for children and babies

Cited Registered Mark

LIL' LADY

025: hosiery, namely, socks, panty hose and tights not sold in bridal specialty shops or boutiques

LITTLE LADY BY FOREVER YOURS

025: flower girl dresses sold exclusively in bridal specialty shops

Preliminary Response with Reservation of Rights

The USPTO suggests that it will refuse registration of Applicant's mark, LITTLE ADI + CO., "because of a likelihood of confusion with the above cited registered marks. "[T]he question of confusion is related not to the nature of the mark but to its effect 'when applied to the goods of the applicant.'" *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1360, 177 USPQ 563, 566 (C.C.P.A. 1973). The United States Court of Customs and Patent Appeals listed thirteen factors to weigh in the likelihood of confusion analysis and stated that all of the factors must be considered "when of record." *Id.* at 1361. The Examining Attorney has indicated that similarity of the marks, similarity of the goods and/or services, and similarity of trade channels of the goods and/or services support the issuance of the 2(d) refusal.

VISUAL DISTINCTIONS

A similar phrase found in two marks is not dispositive of a confusing similarity between the marks when the marks give off different commercial expressions. *See Kellogg Co. v. Pack'em Enterprises, Inc.*, 951 F.2d 330 (Fed. Cir. 1991). When Applicant's mark is compared to the cited

registrations the appearance is not similar.

LITTLE ADI + CO.	(Baby clothes)
LIL' LADY	(hosiery)
LITTLE LADY BY FOREVER YOURS	(flower girl dresses sold in bridal shops)

Visually, the applied for mark includes distinct visual elements, namely, the "+" and "CO." These two elements are distinguishable features of the Applicant's mark. Furthermore, the cited registrations share the term "LADY." Whereas, the Applicant's mark is "ADI." The Applicant's marks include a different visual spelling and can be pronounced differently than the elements in the cited registrations.

DISTINCTIONS AMONGST THE GOODS

When compared to the cited registrations, Applicant's goods are sufficiently different to allow Applicant's goods to travel in different channels of trade. While the Applicant's goods are for infants and babies, the goods in the cited registrations are specifically directed towards 'hosiery' and 'bridal flower girl dresses.' Different registrants own the cited registrations. If hosiery and bridal dresses can exist on the principal register without a likelihood of confusion, certainly the Applicant's baby related clothing can as well, especially considering the fact that the Applicant's mark is much less similar than the cited registrations.

In order to further eliminate a likelihood of confusion, Applicant has amended the goods to the following description:

"Tops for children and babies not sold in bridal specialty shops or boutiques; Babies' pants not consisting of hosiery; Bottoms for children and babies not sold in bridal specialty shops or boutiques and not consisting of hosiery; Children's and infants' cloth bibs; Hats; Headbands; Scarves"

CHANNELS OF TRADE ARE DIFFERENT

The Channels of Trade are distinctly different. The cited registration for LITTLE LADY BY FOREVER YOURS restricts the channels of trade to goods being offered exclusively at bridal specialty shops or boutiques. It is highly unlikely that Applicant's goods will be offered at bridal specialty shops. Therefore, a 2(d) refusal analysis of the Channels of Trade would conclude in the Applicant's favor.

SIMILAR MARKS ARE CAPABLE OF REGISTRATION

Applicant further asserts that the USPTO has found a mark capable of registration, even in cases where the marks are nearly identical and are covered under the same classification. Furthermore, courts have long held that the addition of different terms to a common element appreciably reduces the likelihood of confusion between two marks. See *US Trust v. U.S. States Trust Co.*, 210 F. Supp. 2d 9, 27-28 (D. Mass 2002) (UNITED STATES TRUST COMPANY not confusingly similar to UNITED STATES TRUST COMPANY OF BOSTON, both for financial services); *Colgate Palmolive Co. v. Carter-Wallace, Inc.*, 432 F.2d 1400, 1402, 167 U.S. P. Q. 529, 530 (C.C.P.A. 1970) (PEAK PERIOD not confusing similar to PEAK); *Servo Corp. Am. v. Servo-Tek Prod. Co.*, 289 F. 2d 955, 981 129 U.S.P.Q. 352, 353 (C.C.P.A. 1961) (SERVOSPEED not confusingly similar to SERVO); Sweats

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