

**To:** Orlandi, Inc. ([denkpatentlaw@earthlink.net](mailto:denkpatentlaw@earthlink.net))  
**Subject:** U.S. Trademark Application Serial No. 90037727 - KLEANTOUCH - N/A  
**Sent:** May 27, 2021 11:04:19 AM  
**Sent As:** ecom113@uspto.gov  
**Attachments:**

**United States Patent and Trademark Office (USPTO)**  
**Office Action (Official Letter) About Applicant's Trademark Application**

**U.S. Application Serial**  
**No.** 90037727

**Mark:** KLEANTOUCH

**Correspondence Address:**  
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**Applicant:** Orlandi, Inc.

**Reference/Docket No.** N/A

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**SUSPENSION NOTICE**  
**No Response Required**

**Issue date:** **May 27, 2021**

**STATUS OF APPLICATION**

Pursuant to TMEP §716.01, applicant is advised of the following status of the application. In an Office actions issued on October 20, 2020 and December 7, 2020, the following issues were outstanding with this application:

- (1) Section 2(d) Refusal – Likelihood of Confusion
- (2) Prior-filed Pending Application Advisory
- (3) Classification of Goods Requirement

On May 27, 2021, applicant responded to the Office action. The examining attorney has thoroughly reviewed applicant's arguments and had determined the following:

- (1) Applicant's arguments against the Section 2(d) Refusal are unpersuasive, and the refusal is **maintained and continued**.
- (2) Applicant arguments against the classification of goods requirement are unpersuasive, and the refusal is **maintained and continued**.
- (3) The prior-filed application is still pending, and action on this application is **suspended** pending registration or abandonment of the prior-filed application. TMEP §§713.02, 714.04.

Applicant's arguments against the amended classification of goods ignore the clear guidance of the ID manual, which show the hand-sanitizing preparations are in International Class 5.

The USPTO follows the *International Classification of Goods and Services for the Purposes of the Registration of Marks* (also called the "Nice Classification" system), established by the World Intellectual Property Organization, to organize and classify goods and services for the purpose of registering marks. Nice Classification has 45 numbered classes with class headings that describe in broad terms the types of goods and services in each class. See 37 C.F.R. §2.85(a); TMEP §§1401.02, 1401.02(a).

An applicant must adopt the appropriate international classification number for the goods and/or services identified in the application. "Proper classification allows for administrative recordkeeping, enables accurate and efficient public searches of USPTO records, and facilitates examination of applications filed with the USPTO by aligning fees with costs." *In re Carlton Cellars, LLC*, 2020 USPQ2d 10150, at \*2 (TTAB 2020).

Classification of goods and services is a purely administrative matter within the sole discretion of the USPTO. See *In re Faucher Indus. Inc.*, 107 USPQ2d 1355, 1357 (TTAB 2013) (quoting *In re Tee-Pak, Inc.*, 164 USPQ 88, 89 (TTAB 1969)).

Accordingly, applicant may not specify the international class it prefers. The requirement to amend the classification of goods is **maintained and continued**.

Applicant's arguments against the Section 2(d) refusal also ignore clear case law. First, applicant argues that the marks are different in appearance as marketed and sold. However, determining likelihood of confusion is based on the description of the goods stated in the application and registration at issue, not on extrinsic evidence of actual use. See *In re Detroit Athletic Co.*, 903 F.3d 1297, 1307, 128 USPQ2d 1047, 1052 (Fed. Cir. 2018) (citing *In re i.am.symbolic, llc*, 866 F.3d 1315, 1325, 123 USPQ2d 1744, 1749 (Fed. Cir. 2017)). Moreover, applicant's arguments that "the mark of the current application has an obvious design [sic] is quite distinct from what is even related to anything in the prior and cited registration, and therefore, it is believed that the duPont factors argue in favor of the current application, rather than speculatively deciding that a likelihood of confusion prevails, as the examiner suggests." Applicant's arguments have no evidentiary basis because the applied-for mark, the cited registration, and the prior-pending application are all in standard characters with no design elements. Furthermore, applicant's application has a Section 1(b) filing basis, and therefore the statement that the applied for mark "has an obvious design" has no support in the record. Regardless, the design of applicant's goods would be irrelevant for purposes of the likelihood of confusion analysis.

Finally, applicant states, "It would appear that when there is reasonable doubt, the mark of the current application should be published, to see if the prior registrant really feels that he can be harmed through the marketing the Applicant's product." [sic] On the contrary, the overriding concern is not only to prevent buyer confusion as to the source of the goods, but to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. See *In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt regarding a likelihood of confusion determination is resolved in favor of the registrant. TMEP §1207.01(d)(i); see *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988).

Accordingly, the refusal is **maintained and continued**.

ACTION IS SUSPENDED

**The application is suspended** for the reason(s) specified below. See 37 C.F.R. §2.67; TMEP §§716 *et seq.*

The pending application(s) below has an earlier filing date or effective filing date than applicant's application. If the mark in the application(s) below registers, the USPTO may refuse registration of applicant's mark under Section 2(d) because of a likelihood of confusion with the registered mark(s). 15 U.S.C. §1052(d); see 37 C.F.R. §2.83; TMEP §1208.02(c). Action on this application is suspended until the prior-filed application(s) below either registers or abandons. 37 C.F.R. §2.83(c). Information relevant to the application(s) below was sent previously.

- U.S. Application Serial No(s). 88829338

**Suspension process.** The USPTO will periodically check this application to determine if it should remain suspended. See TMEP §716.04. As needed, the trademark examining attorney will issue a letter to applicant to inquire about the status of the reason for the suspension. TMEP §716.05.

**No response required.** Applicant may [file a response](#), but is not required to do so.

/Marynelle W. Wilson/

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**USPTO OFFICIAL NOTICE\_**

Office Action (Official Letter) has issued  
on **May 27, 2021** for  
**U.S. Trademark Application Serial No. 90037727**

Your trademark application has been reviewed by a trademark examining attorney. As part of that review, the assigned attorney has issued an official letter. Please follow the steps below.

- (1) [Read the official letter](#). No response is necessary.
- (2) **Direct questions** about the contents of the Office action to the assigned attorney below.

/Marynelle W. Wilson/  
Marynelle W. Wilson  
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Direct questions about navigating USPTO electronic forms, the USPTO [website](#), the application process, the status of your application, and/or whether there are outstanding deadlines or documents related to your file to the [Trademark Assistance Center \(TAC\)](#).

**GENERAL GUIDANCE**

- [Check the status of your application periodically](#) in the [Trademark Status & Document Retrieval \(TSDR\)](#) database to avoid missing critical deadlines.
- [Update your correspondence email address](#), if needed, to ensure you receive important USPTO notices about your application.
- [Beware of misleading notices sent by private companies about your application](#). Private companies not associated with the USPTO use public information available in trademark registrations to mail and email trademark-related offers and notices – most of which require fees. All **official USPTO correspondence** will only be **emailed from the domain “@uspto.gov.”**