

**Petition To Revive Abandoned Application - Failure To Respond Timely To  
Final Office Action**

**To the Commissioner for Trademarks:**

**MARK:** TRANSIT

**SERIAL NUMBER:** 88131294

**Applicant:** Peavey Electronics Corporation

**Examining Attorney:** Jeffrey Sjogren

**PETITION**

Applicant has firsthand knowledge that the failure to respond to the Office Action by the specified deadline was unintentional and requests the USPTO to revive the abandoned application. This application was unintentionally abandoned for not submitting a response requesting reconsideration to the final office action issued by the Examining Attorney.

**RESPONSE TO FINAL OFFICE ACTION**

**Likelihood of Confusion**

This letter hereby serves as a response to the Office Action, dated August 5, 2019, regarding the application for the mark “TRANSIT” in international class 9 (“Applicant’s Mark”). In the Office Action, the Examining Attorney issued a Section 2(d) Refusal for Likelihood of Confusion between Applicant’s Mark and the U.S. Registration No. 4534609.

Applicant respectfully requests the refusal of Applicant’s Mark to be reconsidered because consumers are not likely to be confused by Applicant’s Mark and Registrant’s mark and the Goods of Applicants Mark are readily distinguishable from Registrants Mark in function and consumer use. In light of the following, and the below requested amendment to the Application, it is respectfully requested that the Examining Attorney reconsiders the final action pursuant to TBMP 715.02 and that the Applicant’s Mark be allowed to proceed to registration.

A mark may be likely to cause confusion where, when used in commerce, it “so resembles a registered mark ‘as to be likely, when used on or in connection with the goods [or services] of the applicant, to cause confusion, or to cause mistake, or to deceive.’” *Packard Press, Inc. v. Hewlett-Packard Co.*, 227 F.3d 1352, 1356 (Fed. Cir. 2000) (quoting from 15 U.S.C. § 1052(d) (1994)).

In determining “Likelihood of Confusion,” the Examining Attorney and courts agree that the factors set forth in *In re E. I. duPont de Nemours & Co.*, 476 F.2d 1357, 1361 (C.C.P.A. 1973) must be applied on a case by case basis. *In re i.am.symbolic, llc*, 866 F.3d 1315, 1322 (Fed. Cir. 2017). The question is not whether the goods or services are likely to be confused themselves, but rather if a “likelihood of confusion” exists as to the source of said goods or services because of the marks. *In re Rexel, Inc.*, 233 U.S.P.Q. 830, 831 (T.T.A.B. 1984).

Here, the Examining Attorney notes that the most important factors in *du Pont* are (1) similarity of the marks and (2) similarity or relatedness of the goods. See *In re E. I. duPont de Nemours & Co.*, 476 F.2d at 1362.

Here, Applicant submits that the marks while identical in sound and appearance, will not be confused due to the second controlling factor in *du Pont*. Applicant argues that the classification of goods of Applicant's Mark and Registrant's Mark are neither the same, nor similar. While the goods do exist in the overall realm of music, the goods themselves sit in an entirely different spectrum of function. Applicant further contends that the below amendment to the identification of goods alleviates any remote or potential of likelihood of confusion, as raised by the Examining Attorney.

Plainly, Applicant's "preamplifiers for musical instruments" are not sought by the same consumers that are purchasing "loud speakers, portable loud speakers, wireless loud speakers, and portable loud speakers with microphones," as consumers of the Registrant's goods. Registrant's goods, as they appear in commerce, are used specifically for the playback of music; they are Bluetooth speakers that have certain attachments to make them portable. See Exhibit A and See also [https://www.youtube.com/watch?v=vPUWKrt\\_gdM](https://www.youtube.com/watch?v=vPUWKrt_gdM). Evidently, this product has no ability to have a musical instrument, such as a guitar or bass, plug into it to and Registrant's goods cannot function as a preamplifier or effects pedal.

On the other hand, Applicant's goods are solely designed to be a preamplifier and effects pedal for use in connection with a musical instrument, specifically guitar and/or bass. See attached hereto as Exhibit B. First and foremost, unlike Registrant's good, Applicant's goods are not speakers, nor contain a speaker, they cannot emit *any* sound. The Applicant's goods are a preamplifier used on the floor of the stage with effects which allow the player of a guitar or bass, in one built-in unit to tune their instrument by using the product as an electronic tuner and to adjust effects such as compression, notch filter, pre-shape, boost, chorus, delay and reverb among other simple equalizer controls. Thus the process is that a guitar or bass first must plug into the Applicant's goods, the sound is then adjusted with the Applicant's goods, and then the consumer has the option of outputting the sound via a headphone jack for practice or and XLR balanced, or dry output (raw sound) to some form of speaker, PA, or amplifier. Here is a video that shows exactly what this product does: <https://www.youtube.com/watch?v=Dgwj5QfPlXc> .

To recap, the consumers of Registrant's goods are those listening to prerecorded music, by a Bluetooth or RCA output capable audio source, while the consumers of Applicant's goods are those who are specifically playing an electrical music instrument. Applicant's goods specifically do not contain speakers, and do not have the capability of playback of prerecorded audio like the Registrant's Bluetooth speakers. There will be no consumer confusion, as Applicant's Mark does not pertain to speakers or playback devices of music of any kind, while Registrant's Mark only pertains to speakers and playback devices.

Therefore, to further eliminate the potential for any consumer confusion, the Applicant hereby amends the application as follows:

Amendment of Identification of Goods:

**ORIGINAL:** Class 009: Musical instrument electrical amplifiers and preamplifiers.

**NEW:** Class 009: Preamplifiers for musical instruments.

**Conclusion**

Applicant requests that the USPTO revive Applicant's abandoned application due to the unintentional nature of the failure to respond to the Official USPTO Office Action.

Likewise, the Applicant requests that the USPTO reconsider its Final Office Action based on the amendment to the application and the fact that there is no likelihood of confusion because there is no similarity or relatedness of the goods in question as explained in detail above.

The Applicant respectfully requests that the Examining allow the application for Serial Number 88131294 for "TRANSIT" in international class 009 to proceed toward registration on the Principal Register.

Respectfully Submitted by:

/Ronald S. Bienstock/\_\_\_\_\_

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