

**RESPONSE TO OFFICE ACTION**

Applicant submits the following arguments in response to the Office Action dated December 31, 2015.

**THERE IS NO LIKELIHOOD OF CONFUSION**

The Examining Attorney has issued a final refusal to register Applicant's mark LEGION under Section 2(d), 15 U.S.C. § 1052(d), alleging a likelihood of confusion with the mark shown in U.S. Registration No. 4665996. For the reasons set forth below, Applicant submits that confusion is not likely, and requests reconsideration of the refusal.

**A. The Parties' Goods and Services Are Sufficiently Different Such That Confusion is Not Likely**


Applicant seeks registration for its mark LEGION for "entertainment services in the nature of a television series featuring drama and live action adventure; providing on-line information in the field of television and video entertainment featuring drama and live action adventure via the Internet; entertainment services in the nature of non-downloadable videos and images featuring television shows about drama and live action adventure transmitted via the Internet and wireless communication networks; on-line journals, namely, blogs featuring personal opinions in the field of general interest, drama and live action adventure." In short, Applicant's application covers only entertainment programming and other content.

Applicant's mark identifies an upcoming Fox television series based on the Marvel X-MEN franchise. It centers on a man previously diagnosed with Schizophrenia who is realizing that he is actually a mutant.


The cited registration, on the other hand covers “entertainment services, namely, production of computer-generated imagery and computer-generated graphics; production and distribution of motion pictures, television programs and internet-based programs.” In short, the cited registration covers only production services.

According to information found on Registrant’s website, located at [www.vfxlegion.com](http://www.vfxlegion.com), Legion is a post-production, visual effects studio with an innovative business model that utilizes a worldwide pool or “legion” of talent working remotely to edit media content with special visual effects before it is released by studios in final film or program form. (Exhibit A.) Legion itself does not produce any television programs or films, but works on content produced by others.

Although the Examining Attorney has correctly noted that the same large media companies such as Disney, Sony, Universal, and Warner Bros. commonly produce and then market media content, this does not make all media content per se related. To the contrary, there is no per se rule as there are countless examples of coexisting marks owned by different entities, both on the Federal Register and in the marketplace, for *production* of entertainment content on the one hand, and then the *content itself* on the other hand. Examples of such coexisting marks on the Federal Register are shown below:

<b>MARK</b>	<b>STATUS</b>	<b>G/S</b>	<b>OWNER</b>
THE SHIELD	Renewed Reg. 2695870	Entertainment services ion the nature of a television series featuring dramas	Twentieth Century Fox Film Corporation
	No refusals, pending App. 86401644	Production of television programs; film production	Archie Comic Publications, Inc.
OUTKAST	Registered 4339716	Entertainment services in the nature of the production of motion pictures,	High Schoolers, LLC

<b>MARK</b>	<b>STATUS</b>	<b>G/S</b>	<b>OWNER</b>
		television programs, video recordings and audio recordings	
OUTCAST	Allowed App. 86419798	Entertainment services in the nature of a television series featuring drama; providing on-line information in the field of television and video entertainment featuring drama via the Internet; entertainment services in the nature of non-downloadable videos and images featuring television shows about drama transmitted via the Internet and wireless communication networks; on-line journals, namely, blogs featuring personal opinions in the field of general interest and drama; all of the foregoing relating to a television series featuring a paranormal drama	Fox International Channels
THE LEGEND	Registered Reg. 4561747	Production and distribution of audio and video works and materials, namely, television programs, radio programs, films, television shows and game shows	Castaway Television Productions LLC
LEGENDS	Registered Reg. 4621921	Entertainment services in the nature of a television series featuring mysteries and spies	Twentieth Century Fox Film Corporation
SIRENS	Registered Reg. 4538782	Entertainment services in the nature of a television series featuring comedy; providing on-line information in the field of television and video entertainment featuring comedy via the Internet; entertainment services in the nature of non-downloadable videos and images featuring television shows transmitted via the Internet and wireless communication networks	Twentieth Century Fox Film Corporation
SIREN STUDIOS	Registered Reg. 4326553	Film production, production of radio and television programs, Videotape film production; rental of stage and movie equipment, namely, camera equipment, lighting equipment and grip equipment, and production supplies	Siren Productions, LLC
ANGEL	Registered Reg. 4123538	Information services relating to music, entertainment, games and entertainment-related events provided on-line from a computer; production of live entertainment features	EMI (IP) Limited
ANGEL	Renewed	Entertainment services in the nature	Twentieth Century

<b>MARK</b>	<b>STATUS</b>	<b>G/S</b>	<b>OWNER</b>
	Reg. 2417706	of a dramatic television series	Fox Film Corporation
	Registered Reg. 3659410	Arranging and conducting educational conferences; motion picture film production; production of television programs; entertainment in the nature of on-going television programs in the field of spiritual matters; all of the foregoing relating to the field of spiritual matters and not relating to sports or a sports team	Jesus Ministries International Corporation
ZOO	Registered Reg. 4857885	Entertainment services, namely, a continuing television series featuring drama, rendered through the media of television, cable, satellite, radio, telephone and broadband systems, and via the Internet, and portable and wireless communication devices; providing non-downloadable entertainment programs via a video-on-demand services and information in the field of entertainment rendered via the Internet, and portable and wireless communication devices	CBS Studios Inc.
ZOOMEDIA	Renewed Reg. 2585541	Production of motion picture films, video tapes, television shows, plays and interactive media not covering the subject of children's education and entertainment in the nature of original programs combining any mix of photography, video, 2-D and 3-D animation, still montage and audio distribution or CD-RO, digital video disk and over on-line distribution services	Russell Levine, Individual
CURIOSITY	Registered Reg. 4045893	Entertainment services in the nature of a non-fiction television series geared towards adults that explores science, civilization, and self-improvement	Curiosity Project LLC
CURIOSITY	Registered Reg. 4045893	Video and audio recording and production	Curiosity, Inc.
THE CURIOSITY COMPANY	Registered Reg. 2482595	Entertainment services, namely production and distribution of comedy programs for viewing via television, cable, satellite, and video media	Matt Groening

GOTHAM	Registered Reg. 4748692	Entertainment services in the nature of live-action, comedy, drama, animated and/or reality television programs; production of live-action comedy, drama, animated and/or reality television programs	DC Comics Warner Communications, Inc.
GOTHAM ENTERTAINMENT GROUP	Registered Reg. 3272060	Production and distribution of motion picture films; production of video discs and video tapes	Joel Roodman
OFF THE RECORD	Renewed Reg. 1177625	Entertainment Services-namely Rendition of a Radio Program Featuring Interviews with Music Personalities	Westwood One, Inc.
OFF THE RECORD STUDIO	Registered Reg. 4933376	Consultation and advice regarding musical selections and arrangements for sound recordings and live performances; Entertainment services by a musical artist and producer, namely, musical composition for others and production of musical sound recordings; Production of musical sound recording; Production of sound recordings; Sound recording studios	Andrew R. Hill, Individual

(PTO printouts, Exhibit B.)

These references are highly relevant to show that the PTO consistently finds the production of entertainment content and the content itself sufficiently different, *even when the marks are identical*, for finding confusion not likely. Moreover, given the large number of coexisting marks for such services, they cannot be explained away as mere mistakes or aberrations. Just as the differences in these goods and services resulted in a finding of no likelihood of confusion for identical or virtually identical marks, the differences between the services covered in the cited Registration and Fox’s television series compels the same result.

The Examining Attorney argues that both marks are presumed to travel in all “normal channels of trade” unless otherwise indicated. It is clear from the face of the

cited Registration, however, that the channels of trade are limited to professionals in the film/television industries. General consumers would have no need for Registrant's services, will not encounter the services, and the purchasers of Registrant's services are sophisticated. Because the channels of trade are different, when combined with the differences in the services, confusion is not likely.

### **CONCLUSION**

For the foregoing reasons, Applicant submits that there is no likelihood of confusion between Applicant's mark and the cited Registration. Accordingly, Applicant respectfully requests that the Examining Attorney withdraw the refusal of registration, and allow the application to proceed to publication.