

The following remarks are responsive to the Final Office Action dated August 2, 2017.

I. THE REFUSAL

The Office Action rejected registration of Applicant's mark PALADIN covering "Lighting apparatus, namely, electric lighting fixtures capable of projecting patterns, dimensions and colors" in International Class 009 based on Trademark Act Section 2(d); Likelihood of Confusion over:

Registration No. 5019369 for PALADIN mark covering "LED luminaires; LED lighting systems comprised of work lights and case lights, each sold together with lighting accessories" in International Class 011.

Applicant responds as follows.

II. ARGUMENT

If the goods or services in question are not marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source, then, even if the marks are identical, confusion is not likely. See, e.g., *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1371, 101 USPQ2d 1713, 1723 (Fed. Cir. 2012).

As mentioned previously, Registrant's PALADIN marked goods are "portable LED remote area light[ing]" designed "[f]or emergencies, fires, or outdoor evening events." Moreover, Registrant's PALADIN lighting products are marketed and advertised for use by police officers, construction workers and firefighters. These products are clearly marketed to the emergency and/or disaster workers. Registrant's products have a very specific and narrow purpose, to shed light on a darken crime/disaster scene. The lighting tends to be very bright and clear so disaster workers can see what/who needs attention. Marketing to these industries is separate and apart from the industries catered to by Applicant, specifically, owners/operators of theme parks, cruise ships, casinos, corporate/special events, nightclubs and lounges, concerts and live stage events, exhibitions, television and theater as well as houses of worship.

Moreover, Applicant sells its products through a network of dealers and distributors who install and/or maintain the products marked PALADIN. Thus, Applicant's actual customers are its dealer and distributor network, not the general public. These dealers and distributors are highly specialized customers involved in the entertainment lighting and special effects industry. These customers cater to the installation and/or creation of special effects lighting events, not the generic lighting of produce and art pieces. Special effects lighting includes colors, movement, incorporated sound and atmospheric effects, none of which are considered by Registrant. Thus, the ultimate end user, owners/operators nightclubs, lounges, clubs, live event venues, have a very distinct use case that is clearly separate from Registrant's customer's use cases. Here, Applicant's downstream customers are trying to create a unique experience using light, sound and atmospheric (e.g., fog machine) elements, not just light up groceries or a piece of art. Thus, Applicant's and Registrant's products travel in different markets and are marketed to different customers such that never shall there be overlap for a potential likelihood of confusion to occur.

III. CONCLUSION

Based on the foregoing remarks, Applicant respectfully submits that the application is in condition for publication. The Examining Attorney is invited to telephone the attorney of record if it appears a phone conference would further this application in any way.