

Application respectfully makes a request for reconsideration. No evidence in the record supports a refusal that the services for the cited mark are “related in some manner and/or if the circumstances surrounding the marketing are such that they could give rise to the mistaken belief that [the services] emanate from the same source.”

The cited mark’s services are: Brand concept and brand development services for corporate clients; Marketing and branding services, namely, performing consumer insight and brand strategy of company logos; Social media strategy and marketing consultancy focusing on helping clients create and extend their product and brand strategies by building virally engaging marketing solutions.

Applicant’s services are “Marketing services, namely lead generation for the real estate industry”.

When the relatedness of the goods and services is not evident, well known, or generally recognized, "something more" than the mere fact that the goods and services are used together must be shown. *In re St. Helena Hosp.*, 774 F.3d at 754, 113 USPQ2d at 1087 (finding that *substantial evidence* did not support relatedness of hospital-based residential weight and lifestyle program and printed materials dealing with physical activity and fitness). Evidence of a large number of third-party registrations covering both the goods and services at issue may suffice. The examining attorney must provide evidence showing that the goods and services are related to support a finding of likelihood of confusion. *See, e.g., In re White Rock Distilleries Inc.*, 92 USPQ2d 1282, 1285 (TTAB 2009). The classification of goods and services has no bearing on the question of likelihood of confusion. *See Jean Patou, Inc. v. Theon Inc.*, 9 F.3d 971, 975, 29 USPQ2d 1771, 1774 (Fed. Cir. 1993).

In this case, there is no evidence to demonstrate any relatedness between the two services in the record. The record does not include any registered marks (or even applications) where the two different types of services are offered by the same services provider.

Instead, a collection of four website printouts are offered to support the assertion that the relevant services are offered through the same trade channels. However, all four webpages offer customer relationship management platforms (CRM). Bold Leads does not “helping clients create and extend their product and brand strategies...” Bold Leads generates leads through ad campaigns – there is no mention of branding services. Real Geeks uses “Facebook marketing tools” as part of its platform, but this is not synonymous or related to branding services. In fact, none of the services offered by Bold Leads, Real Geeks, Market Leader, or BoomTown! encompass the cited mark’s services.

There appears to be an error in logic underlying the relatedness assertion. Admittedly both “Brand concept and brand development services for corporate clients; Marketing and branding services, namely, performing consumer insight and brand strategy of company logos; Social media strategy and marketing consultancy focusing on helping clients create and extend their product and brand strategies by building virally engaging marketing solutions” (Branding) and “Marketing services, namely lead generation for the real estate industry” (Lead Generation) fall within the concepts of marketing and advertising, but it does not equate that all marketing and advertising is Branding and all marketing and advertising is Lead Generation. Branding and Lead Generation are distinct subsets of marketing and advertising. If the logic presented in the final office action were applied to another fact pattern we would have the result that a bear is a dog. Bears are mammals and dogs are mammals; therefore bears are dogs.

Furthermore, if the goods or services in question are not related or 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). There is no evidence in the record that the services would be encountered by the same buyers or that they are marketing to the same audiences or that they are offered by the same services provider.

Finally, there is no evidence that the services would be offered to buyers who would make impulsive buying decisions. Circumstances suggesting care in purchasing may tend to minimize the likelihood of confusion. *See, e.g., In re N.A.D., Inc.*, 754 F.2d 996, 999-1000, 224 USPQ 969, 971 (Fed. Cir. 1985) (concluding that, because only sophisticated purchasers exercising great care would purchase the relevant goods, there would be no likelihood of confusion merely because of the similarity between the marks NARCO and NARKOMED); *Primrose Ret. Cmty., LLC v. Edward Rose Senior Living, LLC*, 122 USPQ2d 1030, 1039 (TTAB 2016) (finding that, “even in the case of the least sophisticated purchaser, a decision as important as choosing a senior living community will be made with some thought and research, even when made hastily”); *In re Homeland Vinyl Prods., Inc.*, 81 USPQ2d 1378, 1380, 1383 (TTAB 2006)

As demonstrated by the evidence submitted by Applicant in the response to the initial office action, the consumers of Carrot Creative services are large, publically traded companies. In addition, the consumers of Carrot services are likewise sophisticated, quasi-professional real estate brokers. Neither of these categories of consumers is likely to be impulsive in making a buying decision and the buying process involves a business decision. There is no evidence in the record that the buyers of the respective services would be confused as to the source of goods due to the purchasing circumstances.