

Mark: ALBAN
Serial No.: 88059518
Applicant: Duke University
Class: 41
Attorney Ref.: 29836-00021

In response to the Section 2(d) refusal, Applicant, Duke University, hereby submits an executed Consent to Registration and Use in which the owner of the cited registration (Reg. No. 1956450), Protestant Episcopal Cathedral Foundation, expressly consents to the registration of Applicant's mark. More specifically, Applicant and Registrant believe that there is and will be no likelihood of confusion resulting from the simultaneous registration of Applicant's mark and the cited mark because, among other things: (1) the differences in the marks in sight, sound, meaning, and commercial impression; and (2) the parties' respective goods and services are different from one another and are provided to different groups of consumers through different channels of trade.

To further emphasize the differences in the parties' respective goods and services, and in compliance with the Consent to Registration and Use agreed upon by the parties, Applicant is submitting with this Response a request to amend the services covered by its application.

It is established that consent agreements "should be given great weight, and that the USPTO should not substitute its judgment concerning likelihood of confusion for the judgment of the real parties in interest without good reason . . ." TMEP. § 1207.01(d)(viii); *see also In re E.I. du Pont de Nemours & Co.*, 476 F.2d at 1363, 177 USPQ at 568 (C.C.P.A. 1973) ("[W]hen those most familiar with use in the marketplace and most interested in precluding confusion enter agreements designed to avoid it, the scales of evidence are clearly tilted. It is at least difficult to maintain a subjective view that confusion will occur when those directly concerned say it won't."). In this case, given that (1) Registrant consents to the registration of Applicant's mark and agrees that the registration will not create a likelihood of confusion, and (2) there are substantial differences between, among other things, the parties' respective marks, their respective goods and services, and their respective channels of trade, Applicant respectfully requests that the Section 2(d) refusal be withdrawn and that Applicant's application be approved for publication.

This Response to Office Action is respectfully submitted on January 16, 2020.

/William B. Cannon/