IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Utility Associates, Inc.
Serial No.:	97/430,849
Mark:	ROCKET
Filed:	February 11, 2022
TM Attorney:	Cayla Keenan
Law Office:	305

Applicant Utility Associates, Inc. ("Applicant") files this response to the Final Office Action dated February 14, 2023, and respectfully requests that the Examining Attorney reconsider Applicant's previous assertions and assertions set forth below. A Notice of Appeal is being filed concurrently with this response.

Applicant seeks to register its stylized mark shown above ("Applicant's Mark") in Class 009 for "Cameras; ~~cell phones~~; digital cameras and microphones; Communications apparatus in the nature of ~~cellular phones and~~ microphones; and Downloadable computer software for operating an internal cellular modem that provides secure wireless access points for integrated services through secure Internet connections and automatic wireless offload with an integrated mobile communications modem and an integrated digital video and audio recorder that enables full, secure automation of evidence gathering and situational awareness; computer hardware, namely, a communications device with an internal cellular modem that provides secure wireless access points for integrated services through secure Internet connections and automatic wireless offload with an integrated mobile communications modem and an integrated digital video and audio recorder that enables full, secure automation of evidence gathering and situational awareness; downloadable computer software for operating a device with built-in digital video recording capabilities utilizing cameras on vehicles to capture and review video and provide on-board diagnostics to allow monitoring of vehicle engine operating parameter IDs (PIDs) reported by the vehicle's diagnostics output, namely, O2 levels, oil pressure, particulate level, fuel flow, vehicle ID Number (VIN), seat belt buckled status, and engine trouble codes; computer hardware, namely, a mobile communications device with built-in digital video recording capabilities utilizing cameras on vehicles to capture and review video and provide on-board diagnosis to allow monitoring of vehicle engine operating parameter IDs reported by the vehicle's diagnostics output, namely, O2 levels, oil pressure, particulate level, fuel flow, vehicle ID Number (VIN), seat belt buckled status, and engine trouble codes; downloadable computer software for operating a policy-based audio and video recording device that integrates with cameras worn on the body and integrates with vehicle sensors to record actions of an automobile; computer hardware, namely, a mobile communications device, namely a policy-based video recording device that integrates with cameras worn on the body to record video and images and which integrates with vehicle sensors to record actions taken

by an automobile; downloadable computer software for operating a wireless access point devices used to track the global positioning system (GPS) location and status of first responder and utility company vehicles; Global positioning system (GPS) apparatus to track the location and status of first responder and utility company vehicles, all for use in the fields of law enforcement, emergency services, and persons in the chain of evidence; ~~Articles of protective clothing with built in armor for protection against accident or injury, namely bullet proof vest and clothing~~" ("Applicant's Goods"). Applicant is amending its listing of goods in class 009 by deleting the goods marked through above. Additionally, Applicant is deleting its listings of goods/services in classes 25 and 42, thereby obviating the refusal regarding the class 025 goods.

In the Office Action, registration of Applicant's Mark is refused based on an alleged likelihood of confusion with the mark ROCKET, Registration No. 4,111,127 ("First Cited Mark"). The First Cited Mark was registered by Sullivans, Inc. ("First Registrant") in connection with goods including "Articles of protective clothing, namely, jackets, pants, jeans, gloves and shirts for wear by motorcyclists for protection against accident or injury" in Class 009 ("First Registrant's Goods"). Applicant has deleted class 25 and has deleted "Articles of protective clothing with built in armor for protection against accident or injury, namely bullet proof vest and clothing" from its listing in class 009. Since these listings were the bases for the refusal related to the First Cited Mark, Applicant respectfully asserts that the refusal vis-à-vis the First Cited Mark has been obviated. Applicant therefore requests reconsideration regarding the refusal related to the First Cited Mark.

In the Office Action, registration of Applicant's Mark is refused based on an alleged likelihood of confusion with the mark ROCKET, Registration No. 4,558,159 ("Second Cited Mark"). The Second Cited Mark was registered by UBIQUITI INC. ("Second Registrant") in connection with goods including "Radio devices, namely, devices for outdoor wireless radio transmission as part of an outdoor wireless network; outdoor radio receivers and transmitters used as part of an outdoor wireless network; outdoor wireless transceiver radio used as part of an outdoor wireless network" in Class 009 ("Second Registrant's Goods"). Applicant's arguments related to the Second Cited Mark are provided in more detail below.

In the Office Action, registration of Applicant's Mark is refused based on an alleged likelihood of confusion with the logo mark ROCKET, Registration No. 5,487,430 ("Third Cited Mark"). The Third Cited Mark was registered by Jon Dabney ("Third Registrant") in connection with goods including "Hats, shirts, hoodies, Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, sweatshirts" in Class 025 ("Third Registrant's Goods"). Applicant has deleted class 25 and has deleted "Articles of protective clothing with built in armor for protection against accident or injury, namely bullet proof vest and clothing" from its listing in class 009. Since these listings were the bases for the refusal related to the Third Cited Mark, Applicant respectfully asserts that the refusal vis-à-vis the Third Cited Mark has been obviated. Applicant therefore requests reconsideration regarding the refusal related to the Third Cited Mark.

In the Office Action, registration of Applicant's Mark is refused based on an alleged likelihood of confusion with the stylized mark ROCKET, Registration No. 6,237,786 ("Fourth Cited Mark"). The Fourth Cited Mark was registered by Shenzhen Surpass Tech Co.,Ltd. ("Fourth Registrant") in connection with goods including "Electric coils; Electromagnetic coils; Electronic apparatus

and instruments for controlling, adjusting and testing of drives and motors; Electronic coils; Electronic controls for motors; Electronic motor switches for switching off motors; Electronic motor vehicle ignition tuning kits comprised of an electronic control unit that monitors engine performances and delivers re-calculated sensor values to the original engine control unit to increase engine performance; Electronic power supplies for driving electric motors" in Class 009 ("Fourth Registrant's Goods"). Applicant's arguments related to the Second Cited Mark are provided in more detail below.

The First Cited Mark, the Second Cited Mark, the Third Cited Mark, and the Fourth Cited Mark are hereinafter collectively referred to as the "Cited Marks".

Applicant respectfully disagrees with the refusal and submits that Applicant's Mark should be approved for publication and allowed because no likelihood of confusion would exist between Applicant's Mark and the Cited Marks given the differences in the marks themselves and the respective goods, the sophistication of relevant purchasers, and the fact that there are multiple federal registrations for the mark ROCKET coexisting on the Principal Register owned by different companies and all covering services in class 009.

SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION

I. DISCUSSION

Applicant's arguments that have been made in previous response(s) are incorporated herein by reference. According to the DuPont factors, marks are deemed so similar as to be confusing if they are alike in sound, sight, meaning and overall commercial impression. *In re E.I. DuPont de Nemours & Co.*, 177 USPQ 563, 567 (C.C.P.A. 1973). Among the various factors are the similarity of the marks as to appearance, sound, meaning, and relatedness of the goods and/or services. *See In re Opus One, Inc.*, 60 USPQ2d 1812 (TTAB 2001); *In re Dakin's Miniatures, Inc.*, 59 USPQ2d 1593 (TTAB 1999); *In re Azteca Rest. Enters., Inc.*, 50 USPQ2d 1209 (TTAB 1999); TMEP §§ 1207.01 *et seq.* Here, differences in the marks themselves as well as the differences in the services are such that confusion, although possible, is not *likely*.

A. Differences in Sight, Sound, Meaning, and Commercial Impression of the Marks

Marks must be compared in their entireties and as they appear in the marketplace. *DuPont*, 177 USPQ at 567. Composite marks that are alleged to be confusing must be considered by viewing the marks as a whole, rather than dissecting the marks into their component parts, since it is the overall commercial impression on an ordinary prospective purchaser that determines whether there is a likelihood of confusion. When analyzing marks under a likelihood of confusion analysis, the whole mark must be considered. *Massey Junior College, Inc. v. Fashion Institute of Technology*, 181 USPQ 272 (1974). It is improper to predicate a finding of likelihood of confusion on only a portion of a mark. *In re National Data Corp.*, 244 USPQ 749 (1985).

Therefore, the trademarks at issue must be considered in their entireties, and all components of the mark must be given equal weight. *Opryland USA Inc. v. Great American Music Show, Inc.*, 970 F.2d 847, 851 (Fed. Cir. 1992) ("when it is the entirety of the marks that is perceived to the public, it is the entirety of the marks that must be compared"); *see also Keebler Co. v. Murray Baking*

Products, 9 USPQ2d 1736 (Fed. Cir. 1989) (holding no likelihood of confusion between PECAN SANDIES and PECAN SHORTIES, both for cookies); *In re Hearst Corp.*, 25 USPQ2d 1238 (Fed. Cir. 1992) (holding no likelihood of confusion existed between VARGA GIRL and VARGAS for identical goods). "The marks must be considered as a whole, including the disclaimed matter, in evaluating the similarity to other marks. T.M.E.P. § 1213.10. Here, Applicant's Mark differs in sight and commercial impression from the Fourth Cited Mark as shown below as follows:

ROCKET 

Regarding both the Second Cited Mark and the Fourth Cited Mark, even if two compared marks are identical, other factors must be weighed to properly determine whether there is in fact a likelihood of confusion. When determining whether marks may cause a likelihood of confusion, TMEP § 1207.01(a)(iv) provides: "[t]he facts in each case vary and the weight to be given each factor may be different in light of the varying circumstances; thus, there can be no rule that certain goods or services are *per se* related, such that there must be a likelihood of confusion from the use of similar marks in relation thereto."

Past case law has identified three criteria which are applied to determine whether two identical trademarks are confusingly similar. Those criteria include: [1] the goods/services must be different; [2] the goods/services must be sold through different channels of trade; and, [3] the goods/services must be sold to different classes of consumers, or different discriminating purchasers. *See Electronic Design and Sales, Inc. v. Electronic Data Systems, Corp.*, 954 F. 2d 713, 21 USPQ2d 1388 (Fed. Cir. 1992), *reh'g denied*, 1992 U.S. App. LEXIS 1505 (Fed. Cir. 4, 1992), *reh'g, en banc, denied*, 1992 U.S. App. LEXIS 2473 (Fed. Cir. Feb. 20, 1992) (No likelihood of confusion between E.D.S. for computer services and E.D.S. for power supplies and battery chargers, even though there was some overlap in markets); *see also Local Trademarks, Inc. v. Handy Boys, Inc.*, 16 USPQ2d 1156 (TTAB 1990) (Confusion not likely between applicant's LITTLE PLUMBER for liquid drain opener and Opposer's use of the same mark for advertising services marketed to plumbing contractors) and *Quartz Radiation Corp. v. Comm/Scope Co.*, 1 USPQ2d 1668 (TTAB 1986) (QR for coaxial cable not confusingly similar to QR for various electronic products and devices including lamps and tubes related to the photocopying field). Here, all three of the criteria listed above are met. Applicant's Goods are different from the goods offered under the Cited Marks, the channels of trade for the respective goods are different because Applicant services a niche market with a very unique product, and the types of purchasers of Applicant's Goods would be highly sophisticated. For these reasons, purchasers are unlikely to be confused or otherwise conclude that Applicant's Goods sold under Applicant's Mark and the Registrants' goods sold under the Cited Marks are related or originate from a single source.

B. Differences in the Goods

Regarding the goods, the Office Action asserts that Applicant's Goods are sufficiently related for likelihood of confusion purposes. Although the goods are different, the Office Action alleges that the same entity commonly provides the goods and markets the goods under the same mark.

Applicant respectfully submits that Applicant's Goods are not sufficiently related to the goods of the Cited Marks such that confusion is likely to occur. Applicant's Goods are specifically targeted toward hardware and downloadable software including software "for operating an internal cellular modem that provides secure wireless access points for integrated services through secure Internet connections and automatic wireless offload with an integrated mobile communications modem and an integrated digital video and audio recorder that enables full, secure automation of evidence gathering and situational awareness." In contrast, the Second Cited Mark covers "[r]adio devices, namely, devices for outdoor wireless radio transmission as part of an outdoor wireless network; outdoor radio receivers and transmitters used as part of an outdoor wireless network; outdoor wireless transceiver radio used as part of an outdoor wireless network". Although related, these goods are not the same as Applicant's Goods. Applicant's Goods are defined for a specific set of purposes including integrated digital video and audio recorder that enables full, secure automation of evidence gathering and situational awareness as well as computer software for operating a device with built-in digital video recording capabilities utilizing cameras on vehicles to capture and review video and provide on-board diagnostics to allow monitoring of vehicle engine operating parameter IDs (PIDs) reported by the vehicle's diagnostics output, namely, O2 levels, oil pressure, particulate level, fuel flow, vehicle ID Number (VIN), seat belt buckled status, and engine trouble codes.

The Fourth Cited Mark covers "Electric ***coils***; Electromagnetic ***coils***; ***Electronic apparatus and instruments for controlling, adjusting and testing of drives and motors***; Electronic ***coils***; Electronic ***controls for motors***; Electronic ***motor switches for switching off motors***; ***Electronic motor vehicle ignition tuning kits comprised of an electronic control unit that monitors engine performances and delivers re-calculated sensor values to the original engine control unit to increase engine performance; Electronic power supplies for driving electric motors***" (emphasis added). The language quoted above that is italicized represents goods that are completely different and unrelated to Applicant's Goods.

Because Applicant's Goods are specific and unique, they differ from the goods offered under the Second Cited Mark and the Fourth Cited Mark. Therefore, consumer confusion would not be likely.

C. Sophistication of Purchasers

Regarding sophistication of purchasers, section 1207.01(d)(vii) states the following:

> 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. Cmtys., LLC v. Edward Rose Senior Living, LLC*, 122 USPQ2d 1030, 1039 (TTAB 2016) ("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").

The types of buyers of Applicant's products would be highly sophisticated—often governmental entities with very specific technical needs. This significantly reduces the chance of consumer confusion whether a potential buyer was looking for Applicant's Goods or the goods offered under one of the Cited Marks. In the latter case, a potential buyer would quickly understand that the goods being offered by Applicant are not general outdoor wireless networks (Second Cited Mark) or electric coils and related parts (Fourth Cited mark). They are very specific products for a niche market. Therefore, the chances of consumer confusion are low and not likely.

II. CONCLUSION

When considering all of the applicable DuPont factors together as required and not separately in a vacuum, the culmination results in a situation where there is the possibility of confusion but not a likelihood of confusion as required under the law to uphold a refusal to register Applicant's mark. The possibility of confusion is not the standard—a likelihood of confusion is the standard. *See In re Hughes Aircraft Company*, 222 U.S.P.Q. 263, 264 (TTAB 1984) ("the Trademark Act does not preclude registration of a mark where there is a ***possibility*** of confusion as to source or origin, only where such confusion is likely") (emphasis added). After weighing all of the DuPont factors set forth above and considering particularly the differences between the marks themselves and the services offered by Applicant and those offered by the other applicant, there is no likelihood of confusion between the marks.

The foregoing is submitted as a full and complete response to the office action identified above. The present application is believed to be in condition for allowance, and it is respectfully requested that the mark be passed to publication and/or registration. If this response is deemed, for whatever reason, to be incomplete, the Examining Attorney is invited to contact the undersigned via telephone or e-mail at her convenience to resolve any remaining matter.