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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

September 26, 2016

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Re: Mark: CASSIOPEIA  
Appl. No.: 86/837,204  
Applicant: LG Electronics Inc.  
Office Action dated March 24, 2016  
Our Ref.: 3449-2575US1

**APPLICANT'S RESPONSE TO OFFICE ACTION**

The following is the response of Applicant, LG Electronics Inc., by counsel, to the Office Action dated March 24, 2016. Applicant thanks the Examining Attorney for the thorough consideration given the present application.

**Section 2(d) Refusal -Likelihood of Confusion**

The Examining Attorney refused registration pursuant to Section 2(d), 15 U.S.C. § 1052(d), on the ground that the mark is likely to be confused with the marks in Registration Nos. 2219426, 3987016, and 4607828. For the following reasons, Applicant respectfully disagrees with this refusal and requests that the Examining Attorney reconsiders and allows registration of Applicant's mark.

The Examining Attorney relies on the similarity of the marks, similarity and nature of the goods, and similarity of the trade channels of the goods in the refusal based on Section 2(d).

While Applicant respectfully disagrees with the Examining Attorney's conclusion regarding

likelihood of confusion, in order to advance prosecution, Applicant has amended its identification of goods to include only "Smart phones," so that any goods which the Examining Attorney may consider to be similar to the cited registrations' goods are deleted. The Applicant's amended identification of goods no longer includes goods or services that are completely encompassed by or overlap with the goods of the cited registrations because none of the cited registrations include "smart phones." Due to the differences between Applicant's and Registrants' products, it is unlikely that a prospective purchaser of either company's product would believe there is any relationship between the two companies or their respective goods.

Where the goods of the Applicant and Registrant are different, the Examining Attorney bears the burden of showing that Applicant's and Registrants' different goods would commonly be provided by the same source. *E.g., In re Shipp*, 4 USPQ2d 1174, 1176 (TTAB 1987) (Examining Attorney's argument that small segment of market would be familiar with both Applicant's use of PURITAN in connection with dry cleaning services and Registrants' uses of PURITAN in connection with dry cleaning equipment and dry cleaning chemicals rejected due to lack of proof of trade practices and failure to show likelihood, rather than possibility, of confusion; refusal reversed). There is no evidence of record that the companies' respective goods are in any way related for purposes of the likelihood of confusion analysis.

In addition, there is no per se rule that goods or services sold in the same field or industry are similar or related for purposes of likelihood of confusion. *See Cooper Industries, Inc. v. Repcoparts USA, Inc.*, 218 USPQ 81, 84 (TTAB 1983); *Lloyd's Food Products, Inc. v. Eli's, Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993) (reversing likelihood of confusion cancellation of LLOYD'S for barbecued meats based on LLOYD's for restaurant services). Goods or services

"may fall under the same general product category but operate in distinct niches. When two products are part of distinct sectors of a broad product category, they can be sufficiently unrelated that customers are not likely to assume the products originate from the same mark." *Checkpoint Systems, Inc. v. Check Point Software Technologies, Inc.*, 269 F.3d 270, 288 (3rd Cir. Oct. 19, 2001). There is no evidence that Applicant's goods, "smart phones," are in any way related to or similar to the goods in the cited registrations.

Given Applicant's amendments to the identification of goods, there is no likelihood that consumers will be confused as to the source of the respective goods offered in connection with Applicant's mark and the marks in the cited registrations. Accordingly, Applicant respectfully requests that the statutory refusal be withdrawn and that the application be permitted to proceed to publication.

**Foreign Registration Status:**

The Applicant responds that it intends to rely upon BOTH the intent-to-use filing basis under Section 1(b) and the Section 44(d) priority basis. Applicant notes that the foreign registration has not yet issued, and will select either the Section 1(b) or Section 44(e) basis upon the completion of the prosecution of Korean priority application 40-2015-0054856.

\* \* \*

There being no other issues raised in the Office Action, Applicant believes that the present application will be in condition for allowance once a basis is elected. If the Examiner has any questions concerning this application, the Examiner is requested to contact Robert J. Kenney at (703) 205-8000 in the Washington, D.C. area.