

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

December 5, 2016

Mr. Jordan A. Baker
Trademark Examining Attorney
Law Office 102
United States Patent and Trademark OfficeF

RE: Serial No: 87033538
 Mark: **LEAF**
 Applicant: LTN GLOBAL COMMUNICATIONS, INC.
 Office Action of: August 22, 2016

APPLICANT’S RESPONSE TO OFFICE ACTION

Applicant LTN Global Communications, Inc. (“Applicant”) thanks the examiner for careful consideration of this application and responds as follows to the Office Action dated August 22, 2016.

I. Introduction

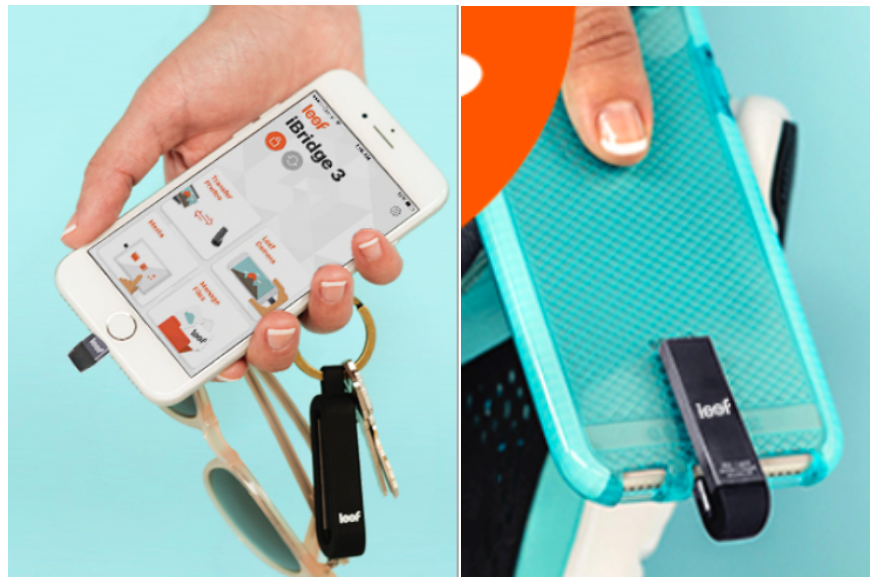
The Examining Attorney has refused registration of Applicant’s mark, LEAF (‘Applicant’s Mark’), under Trademark Act Section 2(d), 15 U.S.C. §1052(d) on the ground of likelihood of confusion between Applicant’s Mark and the mark LEEF with registration No. 4397626, (the “Cited Mark”) owned by Leef Innovation Ltd (the “Registrant”).

The Cited Mark, LEEF, is registered under classifications 009 and 042 and its identification of goods under classification 009 is “USB (universal serial bus) hubs; USB (universal serial bus) operating software; USB (universal serial bus) hardware; RAM (random access memory) card; Memory expansion modules; Memories for use with computers; Blank USB flash drives; Flash memory card; Computer hardware; Computer memory hardware; Computer software and hardware for upload, storage, retrieval, download, transmission and delivery of digital content.” LEEF’s identification of services under classification 042 is “Design and development of computer

hardware; Design and development of consumer electronics; Design and development of hardware for upload, storage, retrieval, download, transmission and delivery of digital content” in class 042. In essence, the Cited Mark, LEEF, is used in connection with storage devices, e.g. USB, RAM, Flash memory, etc., that contains digital content. Below is a screenshot of the Registrant’s website (www.leefco.com) depicting products associated with the mark LEEF.

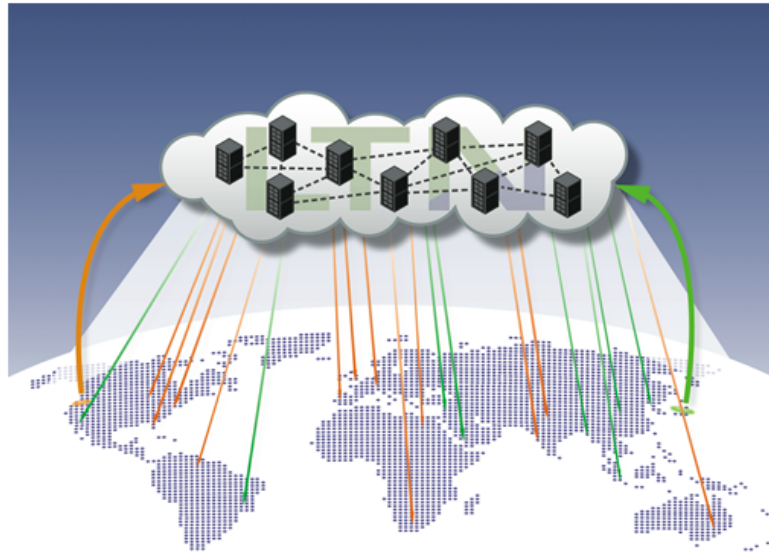


Also depicted below are pictures of Registrant’s storage device connected to a mobile device for transmission and delivery of digital content, e.g., video, audio, pictures, etc.



Applicant seeks to register the mark LEAF under classification 009 with the following identification of goods: “Digital media streaming devices; Telecommunications and data networking hardware, namely, devices for transporting and aggregating voice, data, and video communications across multiple network infrastructures and communications protocols; Video transmission apparatus.”

Depicted below is the infrastructure of the applicant's telecommunications and data networking hardware showing digital media streaming devices transporting and aggregating voice, data, and video over a worldwide network. For example, applicant's devices/appliances can be used by broadcasters, e.g., CNN, FOX, etc., to stream an interview live to viewers.



As more fully set forth below, Applicant's Mark should proceed to registration because given the distinction between the marks, dissimilarity between their identification of goods, as well as the sophistication of likely consumers, no likelihood of confusion would result from Applicant's use of the mark 'LEAF' in connection with devices for streaming media and Registrant's use of the mark 'LEEF' for USB's as well as software and hardware for transmission of digital media.

II. Likelihood of Confusion refusal

The Action states that Applicant's Mark and the Cited Mark are confusingly similar for the following reasons: similarity of the marks as well as similarity and nature of the goods and services.

A. Applicant's Mark, 'LEAF' is not similar to the Cited Mark, 'LEEF'

In the Action, the Examiner concludes that the two marks are similar because “[t]he marks are highly similar in appearance, with the second “E” in Registrant’s mark replaced by an “A” in Applicant’s mark” and additionally because “the marks are essentially phonetic equivalents and thus sound similar.” This conclusion is incorrect because it fails to take into consideration the dissimilarity in meaning or connotation of the two marks, which is part of the first factor under *In re E. I. DuPont DeNemours & Co.*

“Even marks that are identical in sound and/or appearance may create sufficiently different commercial impressions when applied to the respective parties’ goods or services so that there is no likelihood of confusion.” See, e.g., *In re Sears, Roebuck & Co.*, 2 USPQ2d 1312, 1314 (TTAB 1987) TMEP §1207.01(b)(v). Therefore, the analysis for similarity or dissimilarity of the marks must include examination of the marks in their entireties as to appearance, sound, as well as connotation and commercial impression. “The focus is on the recollection of the average purchaser who normally retains a general, rather than specific, impression of trademarks” E.g., *In re Ass’n of the U.S. Army*, 85 USPQ2d 1264, 1267-68 (TTAB 2007).

Applicant does not dispute that the marks are similar to the extent that they phonetically sound the same and that they look similar in appearance. However, this similarity by itself is not enough to refuse registration. This is because Applicant’s Mark is not similar to the Cited Mark in terms of meaning, connotation, and in commercial impression especially when viewed in relation to their identification of goods/services.

Registrant’s Mark, LEEF, is an abstract word with no meaning, which has been registered for goods related storage devices that contains digital content and delivery of the digital content to another device. Therefore, the connotation and commercial impression of the mark ‘LEEF’ is suggestive of storage devices for digital content, but not for digital media streaming devices.

On the other hand, Applicant’s Mark, LEAF, will be associated with devices and hardware for streaming digital media, video transmission apparatus, and devices for transporting and aggregating voice, data, and video communications across multiple network infrastructures and

communications protocols, which will be used in the field of telecommunications. Therefore, the connotation and commercial impression of Applicant's Mark, which is associated with streaming devices for telecommunication purposes will be different from the Cited Mark, which is associated with storage devices. Accordingly, the Cited Mark and Applicant's Mark are not similar because they have different meaning and connotation and leave different commercial impression in the mind of the average purchaser.

B. Applicant's Goods Are Not Similar to the Goods Offered Under the Cited Mark

As state above, Applicant's goods are for "Digital media streaming devices; Telecommunications and data networking hardware, namely, devices for transporting and aggregating voice, data, and video communications across multiple network infrastructures and communications protocols; Video transmission apparatus" under classification 009. The term "streaming" refers to the process of transmitting or receiving data as a steady continuous flow. Therefore, the description 'digital media streaming devices' refers to devices which transmit digital media in a streaming manner, examples of which include Apple TV and Google Chromecast. 'Telecommunications and data networking hardware' refers to hardware used for the purpose of telecommunication and Applicant's description specifically refers to hardware for transporting voice, data, and video across several networks and communication channels. 'Video transmission apparatus' refers to a device which delivers streaming video data over a communication channel.

In this case, Applicant's identification of goods mainly refers to devices and hardware used in the field of telecommunication for streaming and transmitting of digital media including video. Applicant's product associated with the Mark LEAF will be an integrated device combining an appliance, encoder and decoder, along with the functionality to transmit and receive live video. This is evidenced in the attached two articles from Applicant's website, www.ltnglobal.com, describing LTN's product associated with the mark LEAF. Accordingly, Applicant's identification of goods can be described as hardware devices used in telecommunication for streaming and transmitting digital media.

On the other hand, the Cited Mark, LEEF is used for goods relating to "USB (universal serial bus) hubs; USB (universal serial bus) operating software; USB (universal serial bus)

hardware; RAM (random access memory) card; Memory expansion modules; Memories for use with computers; Blank USB flash drives; Flash memory card; Computer hardware; Computer memory hardware; Computer software and hardware for upload, storage, retrieval, download, transmission and delivery of digital content” in class 009. This identification of goods mainly refers to hardware such as USB’s as well as computer hardware for storage uploading, and downloading data. This is evidenced by the products associated with the mark LEEF which are sold on Registrant’s website, as shown above. For the foregoing reasons, it is respectfully submitted that goods associated with Applicant’s Mark and the Cited Mark are not closely related.

C. Likelihood of confusion is unlikely because Applicant and Registrant’s goods Are Purchased by Sophisticated Consumers

It is well-settled that the likelihood of confusion is reduced where purchasers and potential purchasers of the products or services are sophisticated. *See Electronic Design & Sales, Inc. v. Electronic Data Systems Corp.*, 954 F.2d 713, 718 (Fed. Cir. 1992) (no confusion between identical marks where, *inter alia*, both parties’ goods and services “are usually purchased after careful consideration by persons who are highly knowledgeable about the goods or services and their source.”) The likely purchasers of Registrant’s services would be consumers looking to buy additional storage or memory cards/card readers for their devices such as an iPhone. Therefore, the purchaser of a product associate with ‘LEEF’ would have at the minimum a basic understanding of technology to understand USB drives/card readers. In other words, Registrant’s goods are offered to consumers in a mass market for storage devices, e.g., USB devices.

The likely purchasers of Applicant’s goods which will be associated with LEAF would be persons sufficiently knowledgeable about hardware, communications technology, and generally information technology. As it can be seen on Applicant’s website at www.ltnglobal.com, examples of their clients include CNN, Fox New, Microsoft, etc. which exercise careful and due consideration before purchasing Applicant’s products. Therefore, Applicant’s purchasers would be sophisticated customers, which will be likely to exercise a high level of care and are not likely to be confused into thinking Applicant’s products originate from, or are sponsored by, Registrant or vice versa.

The realities of the marketplace here compel the conclusion that a sophisticated consumer would not believe that USB drives or memory cards under Registrant's mark, 'LEEF', would be associated with streaming devices in the field of telecommunication offered under Applicant's Mark, 'LEAF'. Therefore, from a consumer standpoint, confusion between Applicant and Registrant's services is highly unlikely.

III. REFUSAL BASED ON PRIOR PENDING APPLICATION

The Action additionally refuses registration of Applicant's mark, LEAF, based on likelihood of confusion with pending U.S. application No. 86840222, LEEF. This cited pending application is owned by the same Registrant, Leef Innovation Ltd. Additionally, the application lists the same identification of goods as the above-discussed registration. Therefore, it is respectfully submitted that based on the arguments above, there will be no likelihood of confusion between Applicant's Mark LEAF and pending mark LEEF with application no. 86840222.

IV. CONCLUSION

In view of the reasons set forth above, Applicant respectfully requests reconsideration of the issues raised in the Action.

Dated: December 5, 2016

Respectfully submitted,

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