I. INTRODUCTION

This Amendment and Response is made in response to the Office Action issued June 19, 2017 and is timely filed. Please note that the subject application was assigned by Beijing Qihoo Technology Company Limited to True Thrive Limited, a Cayman Islands corporation, on December 12, 2017, and the assignment was filed with the USPTO on December 18, 2017.

II. SECTION 2(D) REFUSAL

A. Reg. Nos. 4246971, 4246970, 4246968, 4238811, 4246973, and App. No. 87/082241

In the Office Action, the Examining Attorney noted a likelihood of confusion of with foregoing registrations and application, all owned by True Thrive Limited. Applicant filed an assignment of its application on December 18, 2017 assigning the entire goodwill and interest in its mark to True Thrive Limited. Therefore, these registrations are no longer a bar to registration of Applicant's Mark.

B. Reg. No. 4147180 for PLUS360

The Examining Attorney has also preliminarily refused registration of Applicant's Mark based on a perceived likelihood of confusion under Trademark Act Section 2(d), 15 U.S.C. § 1052(d) with Registration No. 4147180. The Examiner has taken the position that the client's "computer application software for mobile phones, portable media players and handheld computers" and "downloadable applications used for mobile phones" are related to the goods and services in Reg. No. 4147180, namely, "computer software used by school districts for financial management, human resources management, student records management, management of special education and student learning and performance management" and "application service provider (ASP) services featuring computer software used by school districts for financial management, human resources management, student records management, management of special education and student learning and performance management."

As is more readily apparent from the revisions Applicant proposes herein to its identification of goods, Applicant's goods are focused on security. Registrant's goods, on the other hand, are clearly for use for financial management and human resources. Applicant respectfully submits that the differences between the parties' goods satisfactorily addresses the Examiner's concerns about likelihood of confusion and requests that its application be approved for publication.

C. Reg. No. 4448979 for 360PLUS

The Examining Attorney has also preliminarily refused registration of Applicant's Mark in Class 9 for various goods based on a perceived likelihood of confusion under Trademark Act Section 2(d), 15 U.S.C. § 1052(d) with Reg. No. 4448979 for 360PLUS

owned by Olloclip, LLC (the “Cited Registration”) for “lenses for cameras; lenses for cameras incorporated in mobile electronic devises”. For the reasons set forth below, Applicant respectfully submits that there is no likelihood of confusion and requests that the Examining Attorney withdraw her refusal to register.

The visual and aural dissimilarities between the parties’ marks weigh against a finding of likelihood of confusion. There is a noticeable difference in the appearance and sound of the marks that would help consumers distinguish between the two marks on different products. The present office action states: “Similarity in any one of these elements [referring to appearance, sound, connotation and commercial impression] may be sufficient to find the marks confusingly similar. *[citations omitted]*.” Applicant emphasizes that a—if not the—key word in the cited rule is “may.” There is in fact no rule that confusion is *automatically* likely if a junior user has a mark that contains in part the whole of another’s mark. 4 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 23:41 (4th ed.) (“It should be noted that under the overall impression analysis, there is no rule that confusion is automatically likely if a junior user has a mark that contains in part the whole of another’s mark”); collecting cases, including, *Colgate-Palmolive Co. v. Carter-Wallace, Inc.*, 432 F.2d 1400, 1401, 167 USPQ 529, 530 (CCPA 1970). The issue of likelihood of confusion does not turn solely upon a prominent or single feature of a mark, but must be decided based on the overall impression of the respective marks. *Massey Junior College, Inc. v. Fashion Inst. of Technology*, 492 F.2d 1399, 1402, 181 USPQ 272, 273-74; *Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 1007, 212 USPQ 233, 234 (CCPA 1981); *Estate of P.D. Beckwith, Inc. v. Comm’r of Patents*, 252 U.S. 538, 545-46 (1920). There are many instances where Courts and the Board have held that marks with portions in common, for similar goods or services, were not likely to be confused because the marks included other elements which served to distinguish the marks. See *Witco Chem. Co. v. Whitfield Chem. Co.*, 418 F.2d 1403, 1406 (1965) (finding that the WHIT-prefix marks at issue, both of which were used for industrial chemicals, are “readily distinguishable in sound, appearance, and possible suggestive significance”); *Time, Inc. v. Petersen Pub’g Co.*, 173 F.3d 113 (2d Cir. 1999) (TEEN not confusingly similar to TEEN PEOPLE).

Additions or deletions to marks may be sufficient to avoid a likelihood of confusion if: (1) the marks in their entireties convey significantly different commercial impressions; or (2) the matter common to the marks is not likely to be perceived by purchasers as distinguishing source because it is merely descriptive or diluted.” TMEP § 1207.01(b)(iii). In the present case, both circumstances apply. Applicant’s Mark begins with a large 3-dimension ball with a plus sign in the center. To the right of the ball are the stylized numbers 360. The Cited Registration is simply "360 PLUS." As a result, Applicant’s mark conveys a significantly different commercial impression from the Cited Registration. Moreover, 360 will not be considered by consumers as identifying source, as evidenced by the numerous registrations for third party marks incorporating 360.

When considered in their entirety, the marks are sufficiently dissimilar in sight, sound, and meaning that there is no likelihood of confusion. In view of the foregoing, Applicant respectfully requests withdrawal of the section 2(d) refusal.

III. PARTIAL DISCLAIMER

The Examining Attorney states that Applicant must disclaim the wording "360" for network monitoring cameras for surveillance; intelligent cameras; camcorders for automobiles, namely, camcorders for recording the real-time traffic status into audios and videos files in the process of vehicle traveling; cameras apart from the mark as shown. . Applicant agrees to submit a disclaimer on the wording "360" and makes the following disclaimer:

> No claim is made to the exclusive right to use "360" for "network monitoring cameras for surveillance; intelligent cameras; camcorders for automobiles, namely, camcorders for recording the real-time traffic status into audios and videos in the process of vehicle traveling; cameras" in International Class 09 apart from the mark as shown.

IV. CLARIFICATION OF IDENTIFICATION OF GOODS

The Examining Attorney asserts that the Applicant's identification of its good in International Classes 9 is indefinite and must be clarified. In accordance with the Examining Attorney's request, Applicant has amended the identification of goods as noted below.

Class 9: "computer operating programs, recorded; recorded computer game programs for recreational game playing purposes; computer hardware; data processing equipment, namely, smart watches; smart watches; laptop computers; computer peripheral devices; computer memory devices; electronic wearable units for the wireless receipt, storage and transmission of data and messages; remote control apparatus for computers, computer hardware, smartphones, smartwatches, smart robots, cameras; electronic device software drivers that allow computer hardware and electronic devices to communicate with each other; wearable monitors, namely, wearable video monitors, wearable touchscreen monitors; pedometers; time recording apparatus; wearable activity trackers; apparatus for transmission of communication; smart phones; mobile telephones; wireless routers; portable communication apparatus, namely, handsets, personal digital assistants and portable multimedia players; network monitoring cameras for surveillance; intelligent cameras; electronic data recorders for automobiles; camcorders for automobiles, namely, camcorders for recording the real-time traffic status into audio and video files in the process of vehicle traveling; cabinets for loudspeakers; headsets for telephones, mobile telephones, computers; selfie sticks being hand-held monopods for smartphones and cameras; cameras; measuring instruments and apparatus for measuring data usage, camera angles; electrical plugs and sockets; burglar, fire, smoke, and gas alarms for alarm monitoring system; glasses and sunglasses; batteries, electric; chargers for electric batteries; computer software, namely, computer security software for detection, blocking and removal of computer viruses, featuring to scan, detect and delete, remove and guard against

potentially harmful software viruses; mobile phones security software, namely, software for system cleaning, optimization, and for preventing mobile phones from infection of virus; computer application software for mobile phones, portable media players and handheld computers, namely, software for use in system anti-virus infection, cleaning, optimization, for cooling central processing unit (CPU) and optimizing the battery performance that may be downloaded from a global computer network, software for receiving and transmission of message in the nature of data, text, language, sound, image and video to achieve wireless data communication, software to enable the transmission of mapping, navigation, traffic and point-of-interest information to telecommunications networks, cellular telephones and navigation devices; computer software, namely, computer software for securing users to browse webpages in safety in the nature of antivirus computer software; humanoid robots with artificial intelligence for personal, educational and entertainment use; virtual reality headsets; downloadable applications used for mobile phones, namely, software for system cleaning, optimization, and for preventing mobile phones from infection of virus, software for receiving and transmission of message in the nature of data, text, language, sound, image and video to achieve wireless data communication, software to enable the transmission of mapping, navigation, traffic and point-of-interest information to telecommunications networks, cellular telephones and navigation devices; smart rings."

Applicant's amendment of these descriptions in Class 9 will also be reflected in the appropriate response form section.

V. MULTI-CLASS APPLICATION UNNECESSARY

The Examining Attorney has stated that Applicant's application identifies goods in more than one international class. Applicant believes that the amendments to its identification of goods, as proposed above, appropriately restricts the application to Class 9 alone.

VI. CONCLUSION

For the foregoing reasons, Applicant respectfully requests that the Examining Attorney withdraw the present refusal and pass this application to publication. The Examining Attorney is invited to contact Applicant's attorney at (415) 882-3200 if further discussion on this application is warranted.