

SERIAL: 87624882
MARK: LT (logo)
APPLICANT: LIVETUBE LTD.

Response to Office Action dated January 12, 2018

The Examining Attorney issued a refusal to register the above-referenced Application (the “Applied-for Mark”) on the grounds that there is a likelihood of confusion with Registration 4,962,617 (the “Cited Registration”). The rejection is only as to Class 42.

Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely that a potential consumer would be confused, mistaken or deceived as to the source of the goods and/or services of the applicant and registrant. *See* 15 U.S.C. §1052(d).

In a “likelihood of confusion” determination, the marks are compared for similarities in their appearance, sound, meaning or connotation and commercial impression and the similarity of the goods and services. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973); TMEP §1207.01(b).

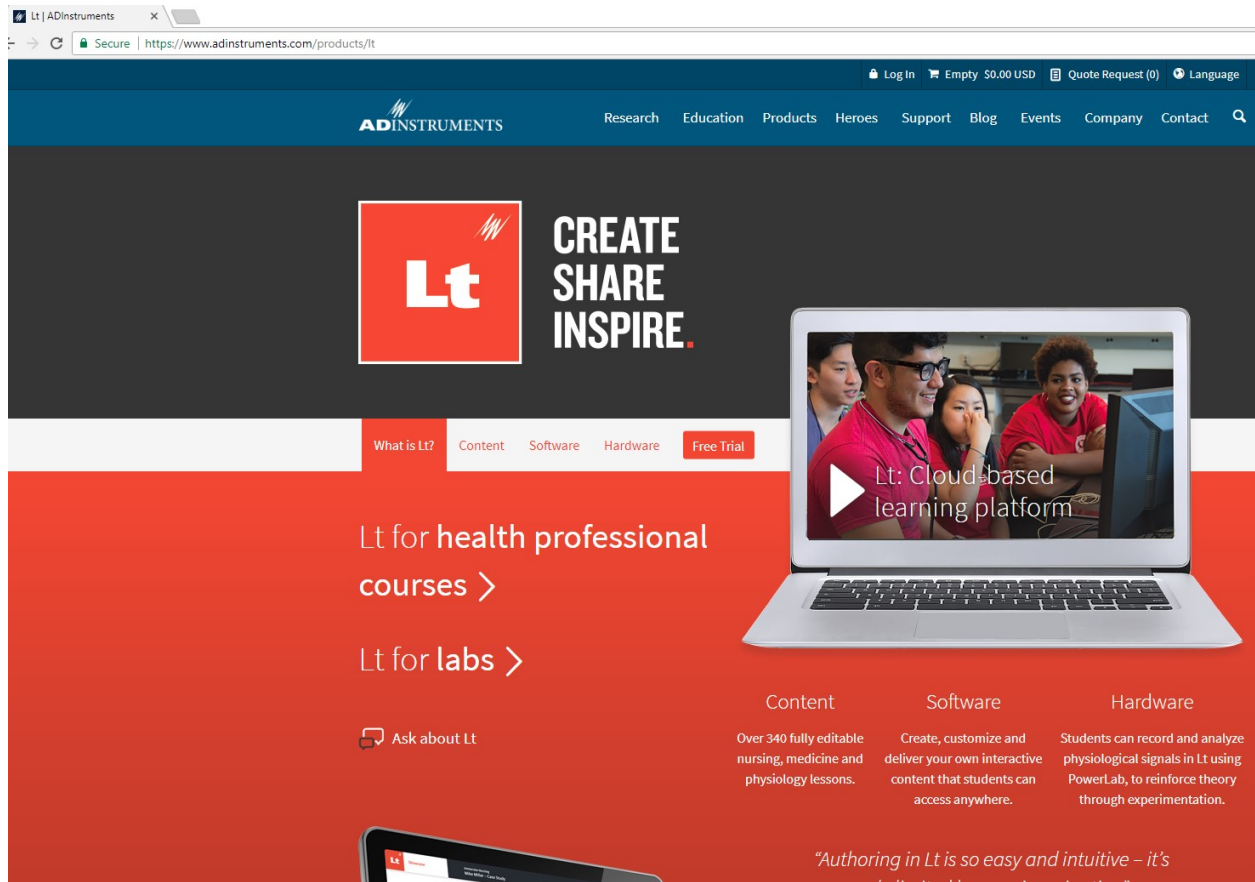
Applicant responds that, for two reasons, the Application does not create a likelihood of confusion with the Cited Registration. Not only are the marks themselves different, the goods are in different streams of commerce.

The Cited Registration is a standard character mark “LT” in class 42 is for the goods “Consultancy, advisory and information services relating to or connected with software, application software and software applications; design, research, development, computer network configuration services, adaptations, implementation, installation and leasing of software, application software and software applications delivered online or as downloadable applications; technical support services, namely, troubleshooting and diagnosing problems with computer software, computer programming and computer hardware and software installation; maintenance and repair of software, application software and software applications delivered online or as downloadable applications; Electronic data storage and hosting of digital content on the Internet; software as a service (SAAS) featuring software for accessing, interacting with and completing educational material, and creating managing, editing and delivering interactive content for training, assessment, analysis, and communication purposes; cloud computing services featuring software for accessing, interacting with and completing educational material, and creating managing, editing and delivering interactive content for training, assessment, analysis, and communication purposes; computer services, namely, designing and installing custom software applications for others; software as a service (SAAS) services featuring software for educators which features the creation, management, editing, and delivering of interactive content for training, assessment, analysis and communication purposes; consultancy, advisory and information services relating to or connected with all the aforementioned services”

The Application in Class 42 is for “Application service provider (ASP), namely, hosting computer software applications of others; Application service provider (ASP) featuring software for use in transmitting of multimedia content via the Internet and other computer and

communications networks; hosting of digital multimedia content, including digital entertainment and educational multimedia content, for others on the Internet.”

The Cited Registration is used as a platform for individuals to watch and share educational videos. Below is a screen shot taken from the website showing the services in use with the Cited Registration. More can be found at <https://www.adinstruments.com/products/Lt>



The Applied-for Mark is a platform by which individuals stream newsworthy activities or events. The basis is journalistic, evidenced by the description located on its webpage which states that “the LiveTube App enables everyone to become a reporter. Go Live with your smart

phone and send us exciting stories and breaking news. Our team of professional journalists will check every live stream and put you in front of viewers around the globe...” Individuals looking for educational videos or individuals looking to upload their videos to be featured as live news would not likely confuse the two services. Further, the services are not impulse-buy services. Rather, consumers would have plenty of time to understand the difference between the services. Notably, the Applied-for Mark is for services where consumers receive money, whereas the Cited Registration is for services where consumers are required to pay.

The marks themselves are different, providing a different commercial impression. The Applied-for Mark is stylized, whereas the Cited Registration is standard characters. The mark is a logo mark with the following design:

