

## REMARKS

### Serial No. 87/654,425

On February 6, 2018, the Trademark Office issued an initial refusal to register Applicant's Trademark Application, citing U.S. Registration No. 3,727,293 for trademark ASTRA in International Class 009 ("Cited Registration) under Section 2(d). Applicant respectfully submits that there is no likelihood of confusion between Applicant's trademark and the Cited Registration for at least the following reasons.

#### **I. Different Identification of Goods and Channels of Trade**

The identification of goods associated with Applicant's trademark differs significantly from the class of goods associated with the Cited Registration. Also, to further ensure there is no confusion, Applicant hereby amends its description of goods in Class 009 to "mobile data receivers namely GNSS receivers, and Doppler systems; and satellites". Applicant's application is very specific as recited herein. The Cited Registration's goods are described as Radio frequency identification (RFID) readers and antennas and associated hardware and operating system computer software for use in RFID applications. RFID readers and antennas are not GNSS receivers, Doppler systems and satellites, but a passive device. The consumers, channels of trade and classes of purchasers are also very different.

Courts have recognized that even in cases where the compared trademarks are identical, a significant difference in the class of goods resulted in the TTAB finding no likelihood of confusion. *Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 1244-45, 73 USPQ2d 1350, 1356 (Fed. Cir. 2004) (reversing TTAB's holding that contemporaneous use of RITZ for cooking and wine selection classes and RITZ for kitchen textiles is likely to cause confusion, because the relatedness of the respective goods and services was not supported by substantial evidence); *Local Trademarks, Inc. v. Handy Boys Inc.*, 16 USPQ2d 1156, 1158 (TTAB 1990) (finding liquid drain opener and advertising services in the plumbing field to be such different goods and services that confusion as to their source is unlikely even if they are offered under the same trademarks).

The class of goods associated with Applicant's mark *only* includes "mobile data receivers namely GNSS receivers, and Doppler systems; and satellites in International Class 009. On the other hand, the Cited Registration is not associated with GNSS receivers, Doppler systems and satellites in any way, but rather *only* associated with Radio frequency identification (RFID)

readers and antennas and associated hardware and operating system computer software for use in RFID applications. Thus, the description of goods differs greatly. For various reasons, there is a significant difference between the goods associated with Applicant's trademark, channels of trade and consumers.

Applicant's goods would be marketed to companies and governments interested in space weather monitoring. On the other hand, the Cited Registration is currently marketed to consumers interested in identification of products. These two classes of consumers would be marketed in very different ways. A company or government seeking space weather monitoring goods is not the same as a consumer interested in identification of products. If the goods in question are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source, then, even if the trademarks are identical, confusion is not likely. *See, e.g., Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1371, 101 USPQ2d 1713, 1723 (Fed. Cir. 2012) (affirming the Board's dismissal of opposer's likelihood-of-confusion claim, noting "there is nothing in the record to suggest that a purchaser of test preparation materials who also purchases a luxury handbag would consider the goods to emanate from the same source" though both were offered under the COACH mark).

## **II. The Number and Nature of Similar Marks in Use on Similar Goods or Services**

The Examining Attorney has cited only one registration against the subject application. The Examiner has failed to take into consideration the crowded field of "ASTRA" and "ASTRA-themed" marks. As of today, there are 114 "live" hits of applications and registrations listed in TESS which consist of the word ASTRA. Of the 114 hits, there are 17 "ASTRA" or "ASTRA-themed" applications and registrations in Class 009.

Example registrations are listed below. The fact that many ASTRA marks co-exist on the Principal Register is proof that Applicant's mark is not likely to confuse the relevant consumer.

Patent and Trademark Office records reveal several "ASTRA" marks for closely related goods and services in class 009. A representative sample of these Registrations are shown below:

<b>Mark/Reg./Ser.No.</b>	<b>Owner</b>	<b>Goods/Services</b>	<b>Status</b>
ASTRA #1,970,011	Gasboy International Incorporated PA	Class 009	Reg. as of 04/23/1996
ASTRA #2,337,628	Wyatt Technology Corporation CA	Class 009	Reg. as of 01/11/2000
ASTRA IIIB #3,663,595	Celestaire of Kansas Inc. KS	Class 009	Reg. as of 08/04/2009
ASTRA #4,363,025	Candelis, Inc. CA	Classes 009 and 042	Reg. as of 07/09/2013
Orbbec Astra #4,863,285	Orbbec 3D Tech. Int'l. Inc. MI	Class 009	Reg. as of 12/01/2015
ASTRA LIGHT ENGINE # 4,380,687	Lumencor, Inc. OR	Class 009	Reg. as of 08/06/2013
ASTRAFORGE #4,421,610	Vobius Software LLC MI	Class 009	Reg. as of 10/22/2013

“A mark that is hemmed in on all sides by similar marks on similar goods or services cannot be very 'distinctive.' It is merely one of a crowd of similar marks. In such a crowd, customers will not likely be confused between any two of the crowd and may have learned to carefully pick out one from the other.” 2 *McCarthy on Trademarks and Unfair Competition* § 11:85 (4<sup>th</sup> ed.). Here, Applicant notes that many ASTRA marks co-exist with each other and numerous registrations, not just the Cited Registration, for marks that include the word “ASTRA” for similar goods and services related to goods/services in Class 009 as outlined below. This crowded field of “astra” and “astra-themed” marks for closely related goods and services means that Registrant’s rights in its mark are narrow, and that even small differences

between the marks are sufficient to avoid the risk of confusion as to source. *See, e.g., Miss World (UK) Ltd. v. Mrs. Am. Pageants, Inc.*, 856 F.2d 1445, 1449 (9th Cir. 1988).

The existence of multiple third-party registrations creates a “crowded field,” in which “each member of the crowd is relatively ‘weak’ in its ability to prevent use by others in the crowd.” *Id.* “Evidence of widespread third-party use, in a particular field, of marks containing a certain shared term is competent to suggest that purchasers have been conditioned to look to other elements of the marks as a means of distinguishing the source of the goods or services in the field.” *In re Broadway Chicken, Inc.*, 38 U.S.P.Q.2d 1559, 1565-6 (T.T.A.B. 1996) (in view of third-party uses and registrations of “Broadway” for restaurant services, confusion was not likely between BROADWAY CHICKEN and BROADWAY PIZZA and BROADWAY BAR AND PIZZA); *accord In re Bed & Breakfast Registry*, 791 F.2d 157, 158 (Fed. Cir. 1986) (given large number of marks using common feature for similar services, BED & BREAKFAST REGISTRY not likely to cause confusion with BED & BREAKFAST INTERNATIONAL); *see also King Candy Co. v. Eunice King's Kitchen, Inc.*, 182 U.S.P.Q.2d 108, 109-110 (C.C.P.A. 1974) (where marks “are of such non-arbitrary nature or so widely used . . . the public easily distinguishes slight differences in the marks,” making confusion unlikely).

Printouts of the United States Patent and Trademark Office records for these registrations are attached hereto as Exhibit A and made of record. As explained above, this crowded field is evidence of the narrowness of Registrant’s rights in the Cited Registration, and of the enhanced likelihood that consumers will notice even small differences between the marks and therefore not be confused as to source.

**III. Other Probative Evidence Supports the Conclusion that Confusion between Applicant’s Mark and the Cited Registration is Unlikely.**

“[C]ourts regularly include intent as one of the factors to be assessed in evaluating likelihood of confusion.” Restatement (Third) of Unfair Competition § 22, Reporter’s Note to comment b, at 248 (1995). Here, Applicant has no intent to trade upon the reputation of any other person or company when adopting its mark, including the reputation of the owner of the Cited Registration. This factor also supports registration of Applicant’s Mark. “A showing of mere possibility of confusion is not enough; a substantial likelihood that the public will be

confused must be shown.” *Omaha Nat’l Bank v. Citibank* (S.D.), N.A., 633 F. Supp. 231, 234, 229 U.S.P.Q. 51, 52 (D. Neb. 1986) (emphasis added). Applicant submits that such a likelihood does not exist in the present case.

**IV. Conclusion**

Based upon all the foregoing, Applicant respectfully requests that the Office withdraw the refusal to register Serial No. 87/654,425 for **ASTRA** and approve the application for Publication for opposition purposes.

Respectfully submitted,

Atmospheric & Space Technology Research Associates, LLC

/Scott J. Hawranek/

Attorney for Applicant