IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Amazon Technologies, Inc.		)
		)
Serial No.:	88/002,883	)
		)
Filed:	June 15, 2018	)
		)
Mark:	BLINK	)

OFFICE ACTION RESPONSE

This responds to the Non-Final Office Action issued August 30, 2018, by the United States Patent and Trademark Office.

REMARKS

Applicant ("Amazon") has submitted an Application to register the mark BLINK ("Amazon's Application") for various goods and services in Classes 9, 11, 12, 35, 38, 41, 42, and 45. Amazon has entered various amendments to the applied-for goods and services as part of the TEAS form submitted contemporaneously with this Response, and has divided-out those classes that are not at issue in this Office Action as amended. Beyond the specification requirements, the Examining Attorney has stated that Amazon's Application is not entitled to register at this time because of an alleged likelihood of confusion with several registered marks, namely, Reg. Nos. 5467322; 4872296; 4248699; 4295736; and 4295674 (collectively, the "Third-Party Marks"). Amazon respectfully requests that the Examining Attorney withdraws the 2(d) refusal as to each of the Third-Party Marks.

ARGUMENT

1. <u>There Is No Likelihood of Confusion Between Amazon's Application and the Third-Party Marks.</u>

There is no likelihood of confusion between Amazon's Application and the Third-Party Marks because each of the Third-Party Marks covers distinct goods and/or services as compared

to Amazon's Application, as amended. The Third-Party Marks in Class 11 also appear to peacefully coexist with one another (and at least one other BLINK-formative registration in Class 11), which means they are entitled to only a narrow scope of protection.

In determining a likelihood of confusion, the Examining Attorney must look at all of the relevant likelihood of confusion factors. In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Factors relevant in the analysis of an applicant's mark as to a likelihood of confusion with cited marks include: the relatedness of the goods or services; the similarity or dissimilarity in the marks in terms of appearance, sound and overall commercial impression; the number and nature of similar marks in use on similar goods or services; the strength of the cited marks; and other established facts probative of the effect of use. *Id.*

A. The Applied-for Goods and Services Are Not Sufficiently Related to the Goods and Services of the Third-Party Marks to Create a Likelihood of Confusion.

Where the goods and services 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 marks are identical (which some of the marks cited here are not), confusion is not likely. TMEP § 1207.01(a)(i). Moreover, the mere fact that the mark owners operate in the same broad industry does not establish that the goods and services are related. Nat'l Rural Elec. Coop. Assoc. v. Suzlon Wind Energy Corp., 78 U.S.P.Q.2d 1881, 1885 (TTAB 2006) (holding that publications about the rural electrification industry and wind turbines were not related in such a way that the consumers would assume the goods and services originate from the same source simply because they both involved producing electricity); see also World Triathlon Corp. v. Traditional Medicinal, Inc., 2008 WL 4876562 *7 (TTAB July 29, 2008) ("[bottled water and herb teas] obviously may be ingested as beverages,

but beyond that commonality, there is nothing on the face of the respective identifications of goods to support a finding these goods are similar for our likelihood of confusion analysis.").

Because the goods and services identified in Amazon's Application, as amended, are not closely related to the goods and/or services covered by the Third-Party Marks, this factor weighs strongly against a finding of likelihood of confusion. The specific goods and/or services covered by the Third-Party Marks are discussed further below.

Reg. No. 4295736 and 4295674, owned by Pensar Holdings, LLC for the marks BLINKIE and BLINKIE & Design 

These registrations cover the following goods:

Class 12: Turn signals for vehicles

Pensar's registrations cover vehicle turn signals. Amazon's Application does not cover vehicle turn signals. The goods in Classes 12 of Amazon's Application are limited to land vehicles; concept motor vehicles; vehicle camera mounts; carts; equalizers, drive belts, axles, drive gears, windshields, and other parts and accessories. Therefore, based on the distinct subject matter and function of these land vehicles and other Class 12 goods in the Application as amended, the goods are not sufficiently related to support a likelihood of confusion rejection based on Pensar's registration. See In re Thor Tech, Inc., 113 USPQ2d 1546, 1551 (TTAB 2015) (finding TERRAIN for "recreational vehicles, namely, towable trailers" in Class 12 not likely to cause confusion with identical mark TERRAIN for "motor land vehicles, namely, trucks" in Class 12 given, *inter alia*, the difference in the nature of the automotive goods and channels of trade).

In the event the Examining Attorney finds that Pensar's registration still poses a 2(d) concern with the Application as amended, Applicant respectfully requests that the Examining

Attorney specify the specific goods or subset of goods that form the basis of the Examining Attorney's concerns.

Reg. No. 5467322, owned by Blink Productions Limited for the mark BLINK

This registration covers the following services:

> Class 41: Media production and post-production services, namely, production and post-production services in the fields of video and film

Blink Productions' registration covers media production and post-production services in the fields of video and film. Amazon's Application does not cover media production or post-production services, or any similar functions. The services in Classes 41 of Amazon's Application are limited to audio/video recording services; electronic library services for the supply of electronic information in the form of audio/video information; and consulting and advisory services related to the prior described services. Therefore, based on the distinct subject matter and function of these recording, library, and consultancy services in Amazon's Application, the services are not sufficiently related to support a likelihood of confusion rejection based on Blink Productions' registration.

In the event the Examining Attorney finds that Blink Productions' registration still poses a 2(d) concern with the Application as amended, Applicant respectfully requests that the Examining Attorney specify the specific services or subset of services that form the basis of the Examining Attorney's concerns.

B. The Third-Party Marks in Class 11 Are Entitled Only to a Narrow Scope of Protection Because They Coexist Together on the Principal Register.

The scope of protection afforded to the registered Third-Party Marks in Class 11 is far too narrow to bar registration of Amazon's Application. When evaluating a mark for likelihood

of confusion, an important factor to consider is "the number and nature of similar marks in use on similar goods." DuPont, 476 F.2d at 1361. The more widely used a mark is, the narrower will be its scope of protection, and the less likely that confusion will result. King Candy Co. v. Eunice King's Kitchen, 496 F.2d 1400, 1401, 182 USPQ 108, 109-110 (CCPA 1974) (noting when marks are in widespread use, consumers easily distinguish slight differences in marks as well as differences in goods to which they are applied, "even [when] goods of the parties may be considered 'related'").

When consumers are exposed to several third-party marks for related goods and services, they will look to differences in the marks and the goods or services themselves to distinguish their source. See Gen. Mills, Inc. v. Health Valley Foods, 24 U.S.P.Q.2d 1270, 1278 (TTAB 1992). Evidence of active third-party registrations is relevant in this case to show that the registered Third-Party Marks "are so commonly used that the public will look to other elements to distinguish the source of the goods or services." TMEP § 1207.01(d)(iii); see also In re i.am.symbolic, llc, 866 F.3d 1315, 123 USPQ2d 1744 (Fed. Cir. 2017); Jack Wolfskin Ausrustung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U., 797 F.3d 1363, 116 USPQ2d 1129 (Fed. Cir. 2015); Juice Generation, Inc. v. GS Enters. LLC, 794 F.3d 1334, 1338-40, 115 USPQ2d 1671, 1674-75 (Fed. Cir. 2015).

The term BLINK is heavily diluted on the Principal Register generally, and in Class 11 in particular. The Examining Attorney has cited two Third-Party Marks, which are owned by different registrants for lighting goods in Class 11. These Third-Party Marks coexist with at least one other third party BLINK-formative mark registered for lighting goods in Class 11. This coexistence on the Principal Register means each of the registered Third-Party Marks in Class 11 is entitled to only a narrow scope of protection, which is not broad enough to block Amazon's

Application from registering for distinct goods, as amended. If the registered Third-Party Marks in Class 11 can coexist with one another, then they can certainly coexist with Amazon's Application for distinct goods, as amended. These Third-Party Marks in Class 11 are discussed further below.

Reg. No. 4872296, owned by Satco Products, Inc. for the mark BLINK and Reg. No. 4248699, owned by Blinky, Inc. for the mark BLINKY

Satco's registration covers the following goods:

> Class 11: LED flush mount lighting fixtures and LED retrofit lighting kits

Blinky's registration covers the following goods:

> Class 11: Lighting fixtures; lighting replacement fixtures; lighting retrofit and conversion kits, comprised of the main lighting fixture unit, sensor, and night-light lamp

Satco and Blinky's BLINK and BLINKY registrations, respectively, both cover lighting fixtures and lighting kits.

As an initial matter, Amazon's Application in Class 11 contains various goods that are clearly not related to lighting (*e.g.*, "Apparatus for . . . heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes"). To the extent Satco and Blinky's registrations are cited against Amazon's Application in Class 11 in its entirety, Amazon requests that they be withdrawn as to all non-lighting goods.

Further, Satco's registration of BLINK for LED lighting fixtures and kits is coexisting on the Principal Register with Blinky's registration of BLINKY for lighting fixtures and kits in Class 11. Satco and Blinky's registrations also coexist with WINBLINK (U.S. Reg. No. 5108990) for, *inter alia*, "LED lighting fixtures for indoor and outdoor lighting applications" in Class 11, owned by Boolma. This coexistence on the Principal Register for nearly identical or similar marks covering practically identical goods means the cited Third-Party Marks in Class 11

are entitled to only a narrow scope of protection, which is not broad enough to block Amazon's Application from registering for distinct goods, as amended. Indeed, if Satco's registration can coexist with Blinky and Boolma's registrations, then these registrations can certainly coexist with Amazon's Application, which was amended to clarify (and is further distinguishable on the basis) that its lighting goods are smart home connected devices/goods and not traditional lighting goods.

In the event the Examining Attorney finds that Satco and/or Blinky' registrations still pose a 2(d) concern with the Application as amended, Applicant respectfully requests that the Examining Attorney specify the specific goods or subset of goods that form the basis of the Examining Attorney's concerns.

CONCLUSION

Applicant respectfully submits that there is no likelihood of confusion between Amazon's BLINK application, as amended, and the Third-Party Marks, and respectfully requests that the Examining Attorney withdraw the Section 2(d) refusals as to the Third-Party Marks. Applicant further requests that those Classes, as amended, not at issue in this Office Action which have been divided out be allowed to proceed to publication.

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Respectfully submitted,
AMAZON TECHNOLOGIES, INC.

Date: February 28, 2019

/Allisen Pawlenty-Altman/

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