

## ARGUMENT

Applicant submits this response to the Office Action mailed November 28, 2018, which refused registration of Applicant's mark FLARE on the basis of an alleged likelihood of confusion with several registrations (U.S. Registration Nos. 2,699,686; 4,877,445; and 5,135,029) and a pending application (Application Serial No. 79/236297).

Applicant respectfully requests that the application be allowed. As explained in greater detail below, the amended goods for Applicant's mark differ from the goods in the cited registrations and application such that confusion is unlikely. Moreover, the common elements between Applicant's mark and the cited registrations and application are weak, as evidenced by the numerous marks cited in the Office Action. For these reasons, Applicant respectfully requests that the application be approved for publication.

**A. There is no likelihood of confusion, because Applicant's amended goods and services are different than the goods in the cited marks**

Applicant submits that there is no likelihood of confusion between Applicant's mark and the cited marks because the respective parties' goods are significantly different in view of the accompanying amendments to Applicant's goods.

In evaluating the likelihood of confusion, consideration must be given to the similarities or dissimilarities in the goods or services with which the respective marks are used. *See In re E.I. DuPont de Nemours Co.*, 177 U.S.P.Q. 563 (CCPA 1973). In addition, the Board and the courts have repeatedly allowed even identical marks to be registered or used when the goods or services are different, even in cases in which the goods are somewhat related. *See, e.g., In re Spinal USA*, 2013 TTAB LEXIS 316 (TTAB 2013) (ACCUFIT for medical and surgical apparatus versus ACCUFIT for orthopedic footwear, soles and supports); *In re Mars, Inc.* 222 U.S.P.Q. 938 (Fed. Cir. 1984) (CANYON for citrus fruits versus CANYON for candy bars); *The*

*Pep Boys -- Manny, Moe and Jack v. The Edwin F. Guth Co.*, 94 U.S.P.Q. 158 (CCPA 1952) (CADET for lighting fixtures versus CADET for storage batteries); *In re Sears, Roebuck and Co.*, 2 U.S.P.Q. 2d 1312, (TTAB 1987) (CROSS-OVER for brassieres versus CROSSOVER for ladies sportswear); *In re Massey-Ferguson Inc.*, 222 U.S.P.R. 367 (TTAB 1983) (ECOM not confusingly similar to E-COM, both for goods and services involving computers).

Here, Applicant's amended goods are different for the following reasons.

**1. U.S. Registration No. 2,699,686 for the mark FLARE**

This registration covers personal locating alarm systems for use in public or private facilities in Class 9. Applicant's amended Class 9 goods relate to personal security devices in the form of smart jewelry featuring electronic components enabling users to connect wirelessly to computers and smartphones and to send and receive voice, data, and image transmissions, as well as downloadable mobile applications for communicating with a wearable personal security device. Inasmuch as Applicant's amended Class 9 goods do not relate to personal locating alarm systems within a public or private facility, there is no confusion with the cited registration.

**2. U.S. Registration No. 4,877,445 for the mark FLARE**

This registration covers computer application software on mobile phones for GPS-based emergency response in Class 9. Applicant's amended Class 9 goods relate to personal security devices in the form of smart jewelry featuring electronic components enabling users to connect wirelessly to computers and smartphones and to send and receive voice, data, and image transmissions, as well as downloadable mobile applications for communicating with a wearable personal security device. Inasmuch as Applicant's amended Class 9 goods do not relate to GPS-based emergency response software on a mobile phone, there is no confusion with the cited registration.

**3. U.S. Registration No. 5,135,029 for the mark FLARE**

This registration covers alarm central units, burglar alarms, and electronic and computer goods in Class 9. Applicant's amended Class 9 goods relate to personal security devices in the form of smart jewelry featuring electronic components enabling users to connect wirelessly to computers and smartphones and to send and receive voice, data, and image transmissions, as well as downloadable mobile applications for communicating with a wearable personal security device. Inasmuch as Applicant's amended Class 9 goods do not relate to alarm central units, burglar alarms, and electronic and computer goods related thereto, there is no confusion with the cited registration.

**4. Application Serial No. 79/236297 for the mark FLARE CONNECT**

This pending application covers telecommunication and video and audio devices and apparatuses in Class 9. Applicant's amended Class 9 goods relate to personal security devices in the form of smart jewelry featuring electronic components enabling users to connect wirelessly to computers and smartphones and to send and receive voice, data, and image transmissions, as well as downloadable mobile applications for communicating with a wearable personal security device. Inasmuch as Applicant's amended Class 9 goods do not relate to telecommunication and video and audio devices and apparatuses, there is no confusion with this application.

Therefore, Applicant respectfully submits that a finding of no likelihood of confusion is warranted for Applicant's mark FLARE given the differences in the respective goods.

**B. There is no likelihood of confusion, because Applicant's amended goods move in different channels of trade from those in the cited registrations and application.**

The goods as identified in the instant application and the cited registrations and prior application do not move in the same channels of trade and are not offered to the same customers.

*Octocom Sys., Inc. v. Houston Computer Servs., Inc.*, 918 F.2d 937, 943 (Fed. Cir. 1990); *In re Spinal USA*, 2013 TTAB LEXIS 316 (TTAB 2013). Specifically, Applicant's amended Class 9 goods are drawn to personal security devices in the form of smart jewelry featuring electronic components enabling users to connect wirelessly to computers and smartphones, with wearable devices capable of sending and receiving voice, data, and image transmissions - goods that are marketed to young women for self-protection against uncomfortable and unsafe social situations.

In contrast, the personal locating alarm systems for use in private or public facilities of U.S. Registration No. 2,699,686 concern the workplace safety of professionals; the computer application software for GPS-based emergency response on mobile phones of U.S. Registration No. 4,877,445 is marketed to users who wish to openly seek help through their mobile phones, as opposed to the discreet wearable personal security devices or smart jewelry of the instant application; the burglar alarms and related electronic and computer software of U.S. Registration No. 5,135,029 concern home security systems targeted at homeowners; and the audio and video equipment of Application Serial No. 79/236297 is marketed to customers seeking musical entertainment, rather than a discreet escape to safety.

Therefore, Applicant respectfully submits that a finding of no likelihood of confusion is warranted for Applicant's mark FLARE given the differences in the respective channels of trade of the goods.

**C. There is no likelihood of confusion since the common elements with the cited marks are weak.**

When commonly used elements are in marks, likelihood of confusion is reduced. *See In re America's Best Chocolate, Inc.*, 169 U.S.P.Q. 53 (TTAB 1971). "A portion of a mark may be weak in the sense that such portion is descriptive, highly suggestive, or is in common use by many other sellers in the market." *McCarthy, Thomas J., McCarthy on Trademarks and Unfair*

*Competition* § 23:48 (2011); *see Colgate-Palmolive Co. v. Carter-Wallace, Inc.*, 167 U.S.P.Q. 529 (CCPA 1970).

The Office Action cited three registrations and one pending application featuring the term FLARE. By definition, the term FLARE is weak and entitled to very narrow scope of protection. In fact, a search of USPTO records shows that there are at least 46 active registrations in Class 9 whose mark encompasses the word “FLARE,” 6 of which are one-word marks with the word “FLARE” alone, just like the cited registrations, and thus have a similar commercial impression as the cited registrations. *See* chart below. Copies of these registrations are attached as **Exhibit 1**. Therefore, it is clear that the mark in the cited registrations is weak since the public is very often exposed to the term “FLARE” in relation to goods in Class 9.

Page Number	Reg. No.	MARK
1-2	5689406	WILLA FLARE
3-4	5612587	AIRFLARE
5-7	5604864	FLAREBOLT
8-9	5570604	MIGHTYFLARE
10-12	5546825	LENS FLARE STILLWATER
13-15	5402304	FLARE
16-17	5476261	FLARE.IQ
18-20	5381964	MISFIT FLARE
21-22	5434288	FLARE
23-25	5335264	JOBFLARE
26-28	4905598	FLAREGUN
29-31	5362283	FLAREGAMES
32-34	5271678	SUNFLARE
35-37	4861762	CARE-FLARE
38-40	5157430	SALESFLARE
41-42	4587866	PURPLE FLARE
43-45	5038663	MYFLARE ALERT THE SIMPLE SAFETY SOLUTION

46-48	4778822	HIGH&THEWAY FLARES
49-51	4989582	FLAREMAP
52-54	4709018	TWISTED FLARE PORT
55-56	4581782	FLARES
57-59	4506514	SIGNAL FLARE
60-62	4061249	CLOUDFLARE
63-65	4300079	CHEMFLARE
66-67	4320693	FLARE
68-72	4021906	SOLARFLARE
73-75	4450396	FLARE
76-78	4452599	DATAFLARE
79-83	4900050	SMARTFLARE
84-86	4832339	CAROLINA FLARE
87-89	5435438	NUFLARE
90-92	5283144	NUFLARE NFTBOOK
93-96	4643035	FLARE AUDIO
97-99	5220271	FLARETECH
100-102	3107066	POLILIGHT-FLARE
103-105	3734366	FLARE
106-114	3341567	QUADRAFLARE
115-117	3376089	FLAREALERT
118-120	3331104	BITFLARE
121-123	3628868	TURBOFLARE ALERT
124-128	3044370	FLARE
129-131	3901841	BEARFLARE
132-136	2996679	SOLARFLARE
137-138	2882741	POWERFLARE
139-141	2787879	EFLARE
142-144	2673416	RESCUE LASER FLARE

In view of the foregoing arguments, Applicant respectfully requests that the USPTO withdraw its 2(d) refusal and approve Applicant's mark for publication.