

**Serial No.: 88180204**

**Mark: LUNNA**

**RESPONSE TO OFFICE ACTION**

In response to the Office Action issued on November 28, 2018, Applicant states that it has amended its identification and classification of goods. Applicant respectfully requests that the Examining Attorney reconsider and withdraw the Section 2(d) refusal to register the subject mark. As applied to the amended goods and when considered in its entirety, Applicant’s LUNNA mark is not confusingly similar to the LUNA marks that is the subject of the cited application, U.S. Ser. No. 87579093 (the “Cited Mark”). Applicant also states that the other cited prior pending application, U.S. Ser. No. 86510147 for LUNA PETUNIA was abandoned on April 1, 2019 and may no longer serve as a bar to Applicant’s mark.

**NO LIKELIHOOD OF CONFUSION**

In determining whether a likelihood of confusion exists between two marks, a number of factors must be considered, including the relatedness of the goods or services as described in the application and registration. *See, e.g., In re E.I. DuPont de Nemours & Co.*, 476 F.2d 1357 (C.C.P.A. 1973); *see also* TMEP 1207.01. When the above factors and rules are considered, it becomes clear that no confusion is likely between Applicant’s mark and the Cited Mark. Applicant submits that the goods of the parties are so distinct that no confusion is likely.

The details of the marks at issue are set forth as follows:

<b>Description</b>	<b>Mark</b>	<b>Ser./Reg. No.</b>	<b>Goods/Services</b>
Applied-For Mark	LUNNA	Ser. No. 88180204	As amended on 5/28/19:  IC 009: holders adapted for mobile phones  IC 012: Aftermarket automobile accessories, namely, fitted seat covers, steering wheel covers, interior organizers specially adapted for fitting in vehicles, license plate frames, seat belt shoulder pads, decorative vent clips, interior bag hooks specially adapted for fitting in vehicles, and emblems, namely, automotive hood ornaments  IC 027: vehicle floor mats
Cited Mark  Owned by: Zoox, Inc. 1149 Chess Drive Foster City, CA 94404	LUNA	Ser. No. 87579093	IC 012: Land vehicles and conveyances in the nature of automobiles; Self-driving transport vehicles; Unmanned conveying land vehicles; Passenger carrying vehicles, namely, land vehicles; Electric vehicles, namely, automobiles; Road vehicles; Driverless cars; Mobility

			<p>conveyances namely, automated people movers; Mobility vehicles, namely, passenger shuttles; Industrial vehicles, namely, semi-trailer trucks; Passenger motor vehicles, namely, land vehicles; Unmanned vehicles, namely, land vehicles; Transportation robots, namely, robotic transport vehicles</p> <p>IC 039: Transportation of passengers by motorized vehicle, namely, by land vehicle mobility devices; Transportation of passengers by vehicle through a network of transportation providers, namely, by land vehicle mobility devices and conveyances in the nature of driverless mobility devices</p>
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See **Exhibit A** for details of the cited LUNA application.

No likelihood of confusion arises in this case because the goods and services offered under Applicant’s Mark and the Cited Mark differ in nature, function, purpose, and underlying field of use, namely automotive accessories versus land vehicles and transportation services. More specifically, Applicant’s Mark relates to automotive accessories – Applicant does not sell land vehicles or provide transportation services.

As an initial matter, the owner (“Zoox”) of the Cited Mark has conceded that automotive accessories are distinct from the goods and services covered by the Cited Mark. During prosecution of the Cited Mark LUNA, the Examiner issued an Office Action citing U.S. Registration No. 4971021 for LUNAJETS for “Transport of goods, passengers and travelers by air; organization of the transportation of goods, passengers and travelers by air; escorting of travelers; booking of seats for travel; travel reservation, namely, making reservations and bookings for transportation; travel organization; transport brokerage; airplane rental and chartering; chartering of airplanes; organization and reservation of chartered flights; advice in relation to all the aforesaid services” as the basis of the Examiner’s Section 2(d) refusal. See **Exhibit B** for the referenced Office Action; **Exhibit C** for details of the LUNAJETS registration. The Examiner also cited prior filed applications U.S. Ser. No. 86510147 for LUNA PETUNIA for, among other things, “Land vehicles; scooters; bicycles; tricycles; small wagons for children; children’s car seats” and U.S. Ser. No. 87132160 for LUNACYCLE for, among other things, “Bicycle frames for electric bicycles; Electric bicycles; Electric bicycle parts, namely, brake sensors, electric bicycle motors, electric bicycle mid-drives, bicycle sprockets” as a basis for a potential Section 2(d) refusal. See **Exhibit B**; **Exhibit D** for details of the LUNA PETUNIA and LUNACYCLE applications. The Cited Mark Luna is currently suspended. See **Exhibit E**, Suspension Letter.

In Zoox’s response to the Office Action issued for the Cited Mark LUNA, Zoox explicitly states that its mark “related to land vehicles, in particular autonomous land vehicles.” **Exhibit F**, Zoox’s Office Action Response at 9. Zoox further states that “there is no likelihood of confusion between its marks and the prior pending applications noted by the Examiner. *The marks and their respective goods and services*

are so distinct that no confusion is likely.” **Exhibit F** at 12 (emphasis added). By its Response, the owner of the Cited Mark has effectively disclaimed automotive accessories from the goods and services covered by the cited LUNA application.

Moreover, prior TTAB decisions make clear that merely coexisting in such a broad automotive field does not compel a finding that the goods or services are related. *See, e.g., In re Randakk’s Cycle Shakk, LLC*, Ser. No. 86128904 (TTAB April 22, 2015) (finding online retail store services featuring motorcycle parts and accessories not related to electric motors for land vehicles); *In re Vision Wheel, Inc.*, Ser. Nos. 7798758 and 77498755 (TTAB July 28, 2010) (vehicle wheels found to be unrelated to automobiles and engines); *In re Hyundai Motor America*, Ser. No. 78889340 (TTAB Sept 14, 2009) (finding automobiles not closely related to automobile tires “given the current marketing conditions for the replacement tire industry and the totally disparate channels of trade between tires and automobiles.”); *In re The Boler Company*, Ser. No. 77059048 (TTAB Feb. 17, 2009) (finding application for trailer suspension systems not likely to cause confusion with registration for tires), collectively attached as **Exhibit G**. Although Applicant recognizes that the TM Office is not bound by prior decisions, Applicant respectfully states that the marks and their respective goods and services are similarly so distinct that no confusion is likely.

### **CONCLUSION**

Having responded to the Examining Attorney’s Office Action, Applicant respectfully submits that the Application is now in proper condition for publication, notification of which Applicant requests at the Examining Attorney’s convenience. If it would advance the prosecution of this Application, Applicant invites the Examining Attorney to telephone the undersigned.