Applicant Digarc Inc. seeks registration of the trademark **EXPLORE** for "*Cloud computing featuring software for use by prospective college students to be able to compile, analyze, and collect data about colleges and their degree programs"*. The examining attorney has refused registration of Applicant's Mark under Section 2(d), 15 U.S.C. §1052(d); see TMEP §§1207.01 et seq., because of likelihood of confusion with the registered mark **EXPLORE** for "*Providing online non-downloadable software for higher educational institutions, namely, online software for providing institutions the ability to access, use and export student data for analysis, reporting, modeling, and integrating with other software programs, all for the purpose of improving student success*" ("the Cited Mark"). Applicant respectfully disagrees that registration of its mark should be denied on the grounds of likelihood of confusion with the Cited Mark.

In order for the two trademarks at issue to cause confusion, it must be shown that the services are related in some manner and/or that conditions and activities surrounding their marketing are such that they *would or could be encountered by the same persons* under circumstances that could, because of similarities between the marks used, give rise to the mistaken belief that they originate from or are in some way associated with the same producer. *Coach Servs. v. Triumph Learning*, 101 USPQ2d at 1722; *In re Binion*, 93 USPQ2d 1531, 1534-35 (TTAB 2009). Here, Applicant's services are expressly identified as being "for use by college students". On the other hand, the services of the Cited Mark are "for higher educational institutions". *See In re*

*Javelin Capital Markets, LLC*, Serial No. 85438946, (TTAB June 30 2015) ("Applicant's "financial exchange, namely, execution services regarding the trading of derivatives" and Registrant's "venture capital services, namely, providing financing to emerging and start-up companies" are distinctly different activities that move in different channels of trade and to different classes of consumers. In other words, the conditions and activities surrounding marketing of these services are such that they would not be encountered by same persons under circumstances that could, because of similarities of marks used with them, give rise to the mistaken belief that they originate from or are in some way associated with the same producer"); and *In re HerbalScience Group LLC*, 96 USPQ2d 1321 ("There is nothing in this record to show that a normal channel of trade for dietary and nutritional supplements is that they are sold to the companies that would purchase applicant's identified goods. Because we find that the amendment to restrict applicant's channel of trade means "there is virtually no opportunity for confusion to arise…we need not consider the other du Pont factors discussed by the examining attorney and applicant").

Because the marks at issues will never be encountered by the same purchaser, there can be no confusion. Applicant thus respectfully requests that the examining attorney withdraw the refusal to register under Section 2(d) and approve Applicant's Mark for publication in due course.