

## **AUDIOGO (and design) Response to Office Action (App No. 88337227)**

This Response is timely filed in response to the Office Action dated May 30, 2019.

### **Section 2(d) Refusal**

The Examining Attorney refused registration of Applicant's mark as to the applied-for services under Trademark Act §2(d), on the grounds that there is a likelihood of confusion with U.S. Registration No. 4266402. The cited registration has since been cancelled after the registrant failed to file a Declaration of Use and/or Excusable Nonuse under §8 of the Trademark Act. Accordingly, Applicant respectfully requests that the Examiner withdraw the section 2(d) refusal.

### **Identification of Services**

The Examining Attorney requested that Applicant clarify the wording "software as a service" in the identification of services in Class 42. Applicant hereby amends the identification to delete that wording, as submitted with this Response.

### **Disclaimer Requirement**

The Examining Attorney requested that Applicant disclaim the wording "AUDIO." On August 19, 2019, Applicant filed an Amendment to Allege Use, in which it submitted an amended drawing of the mark, which contains a non-material alteration deleting the space in the wording "AUDIO GO." Because "AUDIOGO" now appears as a unitary term in the amended mark, the disclaimer should no longer be required, per TMEP section 1213.05. Applicant respectfully requests that the Examiner withdraw the disclaimer requirement.

### **Mark Drawing and Color Claim**

The Examining Attorney requested that Applicant clarify whether color is a feature of the mark. This issue was addressed in Applicant's August 19, 2019 Amendment to Allege Use, in which Applicant confirmed that it does not claim color in the mark, submitted an amended black and white drawing of the mark, and submitted a revised mark description adopting the Examiner's suggested language, "The mark consists of 'AUDIOGO' with three vertical lines appearing over the word 'GO.'"