IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	AppliedVR, Inc.
Serial No.:	88281369
Mark:	RELIEVRX
Filing Date:	Jan. 29, 2019
Class:	9
To:	Commissioner for Trademarks P.O. Box 1451 Alexandria, VA 22313-1451
Attn:	Linda Orndorff Trademark Examining Attorney Law Office 111

RESPONSE TO OFFICE ACTION DATED APRIL 11, 2019

The Examining Attorney has cited three prior pending applications that may potentially conflict with Applicant's mark RELIEVRX ("Applicant's Mark") and lead to a refusal of registration pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d). The Examining Attorney has also requested that Applicant clarify the identification of services. Applicant agrees to adopt the Examining Attorney's proposed language, as discussed in further detail below. In support of registrability, Applicant AppliedVR, Inc. ("Applicant") submits the following response.

I. AMENDMENT TO IDENTIFICATION

Applicant accepts the Examining Attorney's suggested revision as follows (language to be added is bolded for the Examining Attorney's convenience):

> **Downloadable** software for healthcare providers and patients for use in connection with the treatment of pain and anxiety, tracking patient activity and biometric markers, and educating patients regarding of pain, anxiety, mood, and coping skills

Applicant's requested amendments are consistent with TMEP § 1402.06(a) and the Examining Attorney's recommendation; thus, Applicant respectfully requests that the amendments be accepted.

II. ARGUMENT AGAINST LIKELIHOOD OF CONFUSION REFUSAL

The Examining Attorney has stated that Applicant's Mark may be refused registration pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), based on the Examining Attorney's concern regarding possible confusion with two pending applications that have since issued as U.S. Registration Nos. 5832357 and 5832358 (collectively, the "PMC Marks") owned by Pain Management Company, LLC ("PMC"), and U.S. Application No. 88250290 owned by Fennema & Zantema V.O.F. (the "Fennema Mark") (all three collectively, the "Cited Marks"):

Mark	Goods/Services Description	Owner
RELIEVR App. No. 88250290 Filing Date: January 4, 2019	Class 44: Downloadable virtual reality game software	Fennema & Zantema V.O.F.
RELIEVE RX App. No. 88223050 Filing Date: December 10, 2018 Reg. No. 5832357 Reg. Date: August 12, 2019	Class 39: Pharmacy packaging service that aligns, sorts and packages a patient's medications by date and time into individual packets	Pain Management Company, LLC
RelieveRX Delivering Compassion...Dispensing Care! App. No. 88223078 Filing Date: December 10, 2018 Reg. No. 5832358 Reg. Date: August 13, 2019	Class 39: Pharmacy packaging service that aligns, sorts and packages a patient's medications by date and time into individual packets	Pain Management Company, LLC

On March 27, 2019, the Fennema Mark was issued an office action, for which a response was due on September 27, 2019. However, the owner of the Fennema Mark did not file an office action response on or before September 27, 2019. Pursuant to TMEP § 718.06, Applicant

respectfully submits that, if no response was received by the USPTO by September 27, 2019, the application for the Fennema Mark must be considered to be abandoned as of the day after the date on which a response was due. If a petition to revive under is not timely filed, the Fennema Mark will never present a bar to registration under Section 2(d). *See* TMEP §§ 1714.01(a)(i), 1714.01(d). Therefore, Applicant respectfully requests that this Application be suspended pending disposition of the Fennema Mark. Applicant also may submit additional arguments in response to the Examiner's Section 2(d) refusal in the event that the Application is not suspended and/or that the Fennema Mark is not abandoned.

Applicant presents arguments below in support of registration by addressing the issue of the potential conflict between Applicant's Mark and the cited PMC Marks. Applicant also may submit additional arguments in response to a future Examining Attorney's Section 2(d) refusal in the event that the present response to office action does not prevent such a refusal. However, in the event the Examining Attorney does issue a formal Section 2(d) refusal citing the PMC Marks, Applicant respectfully requests that action on this application be suspended pending final disposition of the cited pending Fennema Mark.

III. BACKGROUND

Applicant AppliedVR is a digital medicine pioneer, using virtual reality to treat pain and anxiety in patients with serious health conditions. *See* **Exhibits A-B**. According to one recent report, Applicant's technology is being used by 30,000 patients through more than 200 medical providers in eight countries. *See* **Exhibit C**.

The owner of the PMC Marks, on the other hand, targets pharmacy practices as their customers for their "Pharmacy packaging service that aligns, sorts and packages a patient's medications by date and time into individual packets," as they seek to help pharmacies improve

their internal business operations. *See* **Exhibit D** (specimen of use submitted December 10, 2018 in U.S. Trademark Application Serial No. 88223078).

IV. LIKELIHOOD OF CONFUSION FACTORS

It is well-established that likelihood of confusion between marks is "related not to the *nature* of the mark but to its *effect* 'when applied to the goods of the applicant.' The only *relevant* application is made in the marketplace. The words 'when applied' do not refer to a mental exercise, but to all of the known circumstances surrounding use of the mark." *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1360-61 (C.C.P.A. 1973) (original emphasis); *see also Electronic Data Sys. Corp. v. EDSA Micro Corp.*, 23 U.S.P.Q. 2d 1460, 1464 (TTAB 1992) ("Section 2(d) of the Trademark Act is concerned about the likelihood of confusion, not some theoretical possibility built on a series of imagined horrors.").

In determining whether there is a likelihood of confusion, courts assess many factors, including, as particularly relevant here:

1. The similarity of the marks in their entireties in appearance, sound, connotation, meaning, and overall commercial impression;
2. The relatedness of the goods or services; and
3. The conditions under which and buyers to whom sales are made, i.e., "impulse" vs. careful, sophisticated purchasing.

E.I. du Pont de Nemours, 476 F.2d at 1361.

Application of these factors, as set forth below, leads inevitably to the conclusion that confusion is not likely between Applicant's Mark and the PMC Marks.

1. The Marks are Sufficiently Dissimilar in Meaning, Appearance, Sound, Connotation, and Overall Commercial Impression to Avoid Confusion

Applicant's Mark is not likely to be confused with the PMC Marks, because, when viewed in their entireties, the marks convey different meanings, appearances, and commercial impressions.

See E.I. du Pont de Nemours, 476 F.2d at 1361. "There is no general rule as to whether letters or designs will dominate in composite marks; nor is the dominance of letters or design dispositive of the issue." *In re Electrolyte Labs. Inc*., 929 F.2d 645, 647, 16 USPQ2d 1239, 1240 (Fed. Cir. 1990). In a Section 2(d) analysis, one must review the respective marks in their entireties and its "cumulative effect." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 192 USPQ 24, 29 (CCPA 1976). "It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion." *Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 1007 (C.C.P.A. 1981).

"[W]here common words of the English language are used as trademarks," even "a slight difference" may be sufficient to avoid confusion. *Playboy Enterprises, Inc. v. Chuckleberry Pub.*, Inc., 486 F. Supp. 414, 421 (S.D.N.Y. 1980). A one-letter difference can be sufficient to distinguish marks when considered in combination with other factors, such as the sophistication of the consumers and the differences in goods and services. *See, e.g., Steiger Tractor, Inc. v. Steiner Corporation*, 221 U.S.P.Q. 165 (TTAB 1984) (noting that a "one letter difference cannot be entirely ignored" and finding no likelihood of confusion between STEIGER and STEINER based on "the cumulative differences between the marks at issue and between the goods . . . coupled with the sophistication and care exercised by purchasers"); *In re REACH ELECTRONICS, INC.*, 175 U.S.P.Q. 734 (TTAB 1972) (finding no likelihood of confusion between REACH and REAC based on differences in marks and fact that "the goods of the parties are directed to different segments of the electronics field").

Moreover, even marks that are identical in sound and/or appearance may create sufficiently different commercial impressions when applied to the respective parties' goods or services so that there is no likelihood of confusion. *See, e.g., In re Sears, Roebuck & Co.*, 2 USPQ2d 1312, 1314

(TTAB 1987) (holding CROSS-OVER for bras and CROSSOVER for ladies' sportswear not likely to cause confusion, noting that the term "CROSS-OVER" was suggestive of the construction of applicant's bras, whereas "CROSSOVER," as applied to registrant's goods, was "likely to be perceived by purchasers either as an entirely arbitrary designation, or as being suggestive of sportswear which "crosses over" the line between informal and more formal wear . . . or the line between two seasons"). Similarly, marks that share identical words or terms can be found not confusing based on differences in their overall commercial impression, sound, and appearance. *Planet Hollywood, Inc. v. Hollywood Casino Corporation,* 80 F. Supp. 2d 815, 880 (E.D. Ill. 1999) (finding that identical word appearing in a different type style and dominance not confusing).

Here, the marks are not identical, and have different sounds, appearances, meanings, connotations, and commercial impressions. The PMC Marks consist of two separate words, "RELIEVE" and "RX," whereas Applicant's Mark consists of the single, coined term RELIEVRX. In this case, the one-letter difference and the lack of a space is highly significant. Applicant's Mark omits the "e" in "relieve" very intentionally, combining RELIEV– and –RX to place the letters "V" and "R" next to each other in order to suggest a connection with virtual reality, as discussed further below. Particularly when considered combination with other factors, including the differences in goods and services and the sophistication of the relevant consumers, these differences in sound, appearance, spelling, and punctuation are sufficient to render consumer confusion unlikely, just like the differences between STEIGER and STEINER, or REACH and REAC.

Moreover, as in the CROSSOVER case, Applicant's Mark and the PMC Marks create entirely different commercial impressions when considered in connection with their respective goods. Applicant's Mark, as applied to Applicant's goods, is a clever wordplay that capitalizes on

the meaning of "VR." The "RELIEV" in Applicant's Mark suggests that the covered software is a "reliever" of some sort, while the "RX" suggests that it has a connection to the medical community (as opposed to, for example, humanitarian or financial relief). The dominant and most significant portion of Applicant's Mark, however, is the unique use of "VR," which immediately suggests to consumers that Applicant's software involves virtual reality. The most common definition of the acronym VR is "virtual reality," *see* **Exhibit E**, and the commercial impression of Applicant's Mark is shaped by the fact that consumers are likely to understand the "VR" in RELIEVRX as a shorthand for "virtual reality." Moreover, Applicant's products and services, as shown on Applicant's website, are extremely virtual-reality focused. *See* **Exhibit A.** The use of Applicant's Mark in the context of not only Applicant's goods and services, but also Applicant's brand name (AppliedVR) and Applicant's family of other VR-formative marks (including RelieVR and EaseVR), further impacts and supports this commercial impression. *See* **Exhibits F-G.** In context, consumers will read Applicant's Mark as RELIE – VR – X – connecting the "VR" in Applicant's Mark with the virtual reality products and services offered by Applicant.

By contrast, the PMC Marks, in context and as applied to PMC's "pharmacy packaging service," are likely be perceived by consumers as relating to pharmacies and medication. The PMC Marks are most likely to be read by consumers as RELIEVE – RX, which does not have any connection with VR or the connotation of virtual reality, and which further supports the different overall commercial impressions of the two marks.

When taken together and viewed in their entirety, these differences are sufficient to distinguish Applicant's Mark from the PMC Marks and to obviate any likelihood of confusion.

2. Confusion is Unlikely Because The Products and Services Covered by Applicant's Mark and the Cited Marks are Distinct

There is also no likelihood of confusion because the pharmacy packaging services covered by the PMC Marks are not meaningfully similar to or overlapping with the software products covered by Applicant's Mark.

The goods offered under Applicant's Mark are "downloadable software for healthcare providers and patients for use in connection with the treatment of pain and anxiety, tracking patient activity and biometric markers, and educating patients regarding of pain, anxiety, mood, and coping skills" in Class 9. By contrast, the services offered under the PMC Marks are "pharmacy packaging service that aligns, sorts and packages a patient's medications by date and time into individual packets" in Class 39.

Each of these products occupies a unique and separate niche in the market. In fact, the Trademark Trial and Appeal Board ("TTAB") has repeatedly held, including in a precedential decision, that differences in function or purpose can prevent a likelihood of confusion. *See Aries Sys.Corp. v. World Book, Inc.*, 26 U.S.P.Q. 2d 1926, 1932 (TTAB 1993) (finding KNOWLEDGE FINDER and INFORMATION FINDER not confusingly similar because, inter alia, "[s]uch products, rather than being…simply computer programs utilized for facilitating research of medical and related scientific topics, are designed to search databases of vastly different levels of content for, concomitantly, significantly different purposes."); *Embarcadero Techs., Inc. v. RStudio, Inc.*, 105 U.S.P.Q. 2d 1825, 1840 (TTAB 2013) (precedential) (finding no confusion between RSTUDIO and ER/STUDIO where "the respective software products possess very different functions and purposes"); *PerkinElmer Health Science., Inc. v. Atlas Database Software Corp.*, 2011 TTAB LEXIS 405, at *39 (TTAB Dec. 22, 2011) ("The mere fact that the parties' goods fall under the broad category of software for use in laboratories is not a sufficient basis upon

which to find that they are related for purposes of likelihood of confusion…The goods perform different functions and are used for different purposes."); *cf. Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 1244-45, 73 USPQ2d 1350, 1356 (Fed. Cir. 2004) (reversing TTAB's holding that contemporaneous use of RITZ for cooking and wine selection classes and RITZ for kitchen textiles is likely to cause confusion, because the relatedness of the respective goods and services was not supported by substantial evidence).

Multiple district courts have similarly found that confusion is not likely just because products fall "within the same general field." *Echo Drain v. Newsted*, 307 F. Supp. 2d 1116, 1125 (C.D. Cal. 2003) (quoting *Harlem Wizards Entertainment Basketball, Inc. v. NBA Properties, Inc.*, 952 F.Supp. 1084, 1095 (D.N.J.1997)) (finding no likelihood of confusion between ECHO DRAIN and ECHOBRAIN even though they were both music bands, where bands played different types of music); *see also Matrix Motor Co. v. Toyota Jidosha Kabushiki Kaisha*, 290 F. Supp. 2d 1083, 1092 (C.D. Cal. 2003) (confusion between MATRIX for race cars and passenger cars unlikely, even if products were "superficially within the same category"); *see also The Learning Internet v. Learn.com, Inc.*, No. CV 07-227-AC, 2009 WL 6059550, at *21 (D. Or. Nov. 25, 2009), *report and recommendation adopted,* No. CV 07-227-AC, 2010 WL 1141351 (D. Or. Mar. 18, 2010) (granting summary judgment and finding no likelihood of confusion even though "the products are arguably related under LCI's broad characterization of educational materials delivered over the Internet," where "both the functionality and the customers of the respective products are distinct").

Moreover, the inquiry into the similarity of goods and services is "ultimately one of common sense and common experience." *ITT Corporation v. XTRA Corporation, et al.*, 225 USPQ 723 (D. Mass. 1985) (citing *Dwinell-Wright Co. v. National Fruit Product Co.*, 60 USPQ 304 (1st

Cir. 1944)). "[I]f the goods or 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, confusion is not likely*." TMEP § 1207.01(a)(i) (emphasis added).

Here, common sense and common experience dictate that the goods covered by Applicant's Mark and the PMC Marks cannot be deemed the same as or even related to each other merely because both involve offerings related to medical care. Rather, Applicant's software products and PMC's pharmacy packaging services have different functions and serve different purposes. Pharmacy packaging services, for example, address the logistical aspects of physical medication. The PMC marks are registered and use in connection with services relating to the internal business operations of pharmacies. Applicant's software for healthcare providers and patients, on the other hand, addresses the mental and cognitive aspects of patient care, offering a patient-facing digital solution for practitioners in hospitals and patients at home seeking alternatives or supplements to traditional medication. These goods or services 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.

3. The Conditions Under Which The Products And Services Are Offered, and The Buyers To Whom Sales Are Made, Weigh Against a Likelihood of Confusion

Likelihood of confusion is determined from the perspective of the consumer. Thus the classes of consumers to whom the goods are sold, the channels of trade through which the goods are sold, and the conditions under which the goods are purchased are also all relevant when determining whether confusion is likely. TMEP §1207.01.

The likelihood of confusion is reduced where potential purchasers of the products are distinct groups. *See Electronic Design & Sales v. E.D.S.*, 954 F.2d 713, 718 (Fed. Cir. 1992). The

conditions under which the products are sold can also minimize the likelihood of confusion. When products are sold to sophisticated consumers who make careful purchasing decisions, for example, consumer confusion is unlikely. *See, e.g., In re N.A.D., Inc.*, 754 F.2d 996, 999-1000, 224 USPQ 969, 971 (Fed. Cir. 1985) (concluding that, because only sophisticated purchasers exercising great care would purchase the relevant goods, there would be no likelihood of confusion merely because of the similarity between the marks NARCO and NARKOMED); *In re Homeland Vinyl Prods., Inc.*, 81 USPQ2d 1378, 1380, 1383 (TTAB 2006). "[T]he more sophisticated the consumer and the more care and attention that goes into purchasing a product, the less likely confusion will result." *Primepoint, LLC v. PrimePay Inc.*, 545 F. Supp. 2d 426, 439 (D.N.J. 2008); *see also, EMSL Analytical, Inc. v. Testamerica Analytical Testing Corp.*, 2006 WL 892718 *8 (D.N.J. April 4, 2006) ("Where the parties' customers are sophisticated and the purchase process requires close analysis by the buyer, confusion is often unlikely"); *Electronic Design & Sales Inc. v. Electronic Data Systems Corp.*, 954 F.2d. 713, 718 (Fed. Cir. 1992) (citation omitted). Purchasers with a "reasonably focused need" or "specific purpose" or plan involving the product will have a higher degree of care. *See Haydon Switch & Instrument, Inc. v. Rexnord, Inc.*, 4 USPQ2d 1510, 1517 (D. Conn. 1987). In *Haydon Switch*, for example, the court noted that that the parties' customers "enter[ed] the marketplace in search of specific products for specific industrial purposes" and concluded that the likelihood of confusion was "remote." *Id.*

Finally, purchasers of expensive goods are less likely to buy casually, and more likely to purchase only after careful consideration. *Weiss Assoc., Inc. v. HRL Assoc., Inc.*, 902 F.2d 1546, 14 USPQ2d 1840 (Fed. Cir. 1990); *see, e.g., McGregor-Doniger, Inc. v. Drizzle, Inc.*, 599 F.2d 1126, 1137, 202 USPQ 81, 92 (2d Cir. 1979) (holding purchasers of women's coats priced from $100-$900 "to be sophisticated and knowledgeable about women's apparel"). "'[T]here is always

less likelihood of confusion where goods are expensive and purchased after careful consideration.'" *Electronic Design & Sales Inc. v. Electronic Data Systems Corp.*, 954 F.2d. 713, 718 (Fed. Cir. 1992) (citation omitted).

In *Edwards Lifesciences Corporation v. Vigilanz Corporation*, a precedential decision, the TTAB dismissed an opposition and found no likelihood of confusion on facts very similar to the case at hand. *See* No. 91154210 (TTAB Apr. 14, 2010). The marks at issue were VIGILANZ for "near real-time computer monitoring system comprised of a software application and database that anticipates and detects possible adverse drug events, and alerts healthcare providers to adverse drug events" in Class 9 and VIGILANCE for "heart monitors" in Class 10. The TTAB found, among other things, that the conditions under which and buyers to whom sales are made, i.e. "impulse" vs. careful, sophisticated purchasing weighed against a likelihood of confusion. The TTAB's discussion of this factor begins by noting that "[j]ust based on the products involved in this proceeding, one would expect that all of the purchasers would exercise a high degree of care when making their purchasing decision. Nothing in the record is to the contrary." *Id.* The TTAB further went on to note that "[b]oth products are expensive," costing thousands of dollars, and "opposer's heart monitors and applicant's computer system are purchased and licensed only after careful consideration by persons who are highly knowledgeable about the products." *Id.* The TTAB concluded that there was no "practical likelihood of confusion; rather the extent of any possible confusion is d*e minimis*," noting that the concern was not "with the mere theoretical possibilities of confusion, deception or mistake or with de minimis situations but with the practicalities of the commercial world, with which the trademark laws deal." *Id.* (quoting *Electronic Design & Sales Inc. v. Electronic Data Systems Corp*., 954 F.2d 713, 21 USPQ2d 1388, 1391 (Fed. Cir. 1992)).

Here, as in *Edwards Lifesciences Corporation*, the buyers to whom sales are made, the conditions of purchase, the expense of the products, and the practicalities of the commercial world in which Applicant's software and PMC's pharmacy packaging services are offer all weigh against a finding that confusion is likely. First, the potential purchasers of the parties' respective goods and services are distinct groups. Applicant targets technologically advanced healthcare providers and patients seeking digital treatments for pain and anxiety, and patient-facing software solutions for tracking patient activity and biometric markers, and educating patients regarding of pain, anxiety, mood, and coping skills. The owner of the PMC Marks, on the other hand, targets pharmacies seeking better ways to run their businesses.

The likelihood of consumer confusion is further reduced because the parties' respective offerings are marketed to sophisticated consumers who make careful purchasing decisions. Doctors and patients alike are likely to exercise care as the diagnosis and treatment of health conditions are not the types of activities that are undertaken casually. "[I]t is common knowledge that even ordinary consumers tend to exercise some sophistication when it comes to decisions relating to healthcare." *Carefirst of Maryland Inc. v. FirstHealth of the Carolinas Inc.*, 77 USPQ2d 1492, 1503 (TTAB 2005). Purchasers either seeking a pharmacy packaging service to manage their medications, or considering using a cutting-edge software solution for medical treatment, will "proceed cautiously and deliberately in making their choice," because "there are few things more important in life than health and well being," and a decision regarding healthcare "is a very important decision for a person or [medical professional] to make." *Id.* Many of Applicant's customers are institutional entities and healthcare professionals, sophisticated actors operating in a highly regulated field. Even Applicant's individual customers must have some level of sophistication to download, install, and properly use Applicant's virtual reality software. The

sophistication required for healthcare providers and patients to purchase medical software from Applicant indicates that these purchasers would be expected to exercise greater care. These are not casual, impulse purchasers that would be susceptible to confusion.

Moreover, as in *Haydon Switch*, purchasers of both Applicant's software and PMC's pharmacy packaging services enter the marketplace with a reasonably focused need, seeking either digital healthcare software to manage pain, anxiety, and other chronic health conditions, or a pharmacy packaging service to organize physical medicine. These potential purchasers have a specific intended purpose for Applicant's software products or PMC's pharmacy packaging services, further indicating that they will have a higher degree of care.

Finally, Applicant's virtual reality software, and the hardware required to use said software, are expensive, costing $700 for a headset and accessories, plus $3,000 for a one-year content license. *See* **Exhibit H.** This cost, and the requirement of a renewable software license, further indicates that purchasers of Applicant's software are less likely to buy casually, and more likely to purchase only after careful consideration.

In sum, Applicant's Mark for software and the PMC Marks for pharmacy packaging services are no more likely to be confused than the VIGILANZ mark for medical monitoring software and the VIGILANCE mark for heart monitors at issue in *Edwards Lifesciences*. Based on the healthcare-related nature of the products and services involved in this proceeding, the expensive cost of Applicant's offerings, and the conditions of purchase requiring a license, all of the purchasers of the goods and services at issue are likely to exercise a high degree of care when making their purchasing decision. In light of these commercial realities, there is no practical likelihood of confusion.

V. SUMMARY OF THE FACTORS

Applicant's Mark is not likely to be confused with the PMC Marks because (1) Applicant's Mark, and the PMC Marks differ in sound, appearance, meaning, connotation, and overall commercial impression, including because Applicant's Mark connotes a connection with virtual reality, which the PMC Marks do not; (2) the goods covered by Applicant's Mark (software for treatment of pain, anxiety, and other chronic conditions), and the services offered under the PMC Marks (pharmacy packaging services) are not sufficiently related that the public will be confused as to their source; and (3) the goods offered under Applicant's Mark and the services offered under the PMC Marks occupy different niches in the market, are expensive, and are sold to sophisticated consumers seeking products with a specific function under conditions that require careful purchasing. Based on all of the foregoing, Applicant respectfully submits that the factors set forth above compel the conclusion that Applicant's Mark is not confusingly similar to the PMC Marks.

VI. CONCLUSION

With the foregoing response, Applicant believes that it has fully addressed the issues raised in the Office Action, and that the Application is in condition for publication or, in the alternative, suspension pending the final disposition of U.S. Application No. 88250290.