I.

LIKELIHOOD OF CONFUSION REFUSAL

On April 23, 2019, the U.S. Patent and Trademark Office (the "Office") issued an Office Action refusing registration of Applicant's application for the mark DCX ("Applicant's Mark"). The identification of Applicant's Class 28 goods (as amended in this response) specifies *"Gaming devices, namely, slot machines and bingo machines, with or without video output; Electronic gaming machines, namely, devices which accept a wager; Gaming machines for gambling; Gaming machines for gambling including slot machines or video lottery terminals; Reconfigurable casino and lottery gaming equipment, namely, gaming machines and operational computer game software therefor sold as a unit*" under Trademark Act § 2(d), U.S.C. § 1052(d), based upon an alleged likelihood of confusion with Registration No. 5650559 (the "Cited Registration") for the mark LDCX (the "Cited Mark") registered by Yanghui Cheng, an individual from Guangdong, China and shortly thereafter assigned to Shenzhen Hengsen Technology Trade Co., Ltd. (the "Registrant") and covering the Class 28 goods "*Amusement game machines; Apparatus for electronic games adapted for use with an external display screen or monitor; Gaming keypads; and Video game consoles*," among other goods.

Applicant respectfully disagrees with the Examining Attorney's conclusion that there is a likelihood of confusion between Applicant's Mark and the Cited Mark when these marks are used with the parties' respective goods. In support of its argument, Applicant submits that: (1) Applicant's goods are unrelated to the goods covered by the Cited Registration, travel through separate channels of trade, and are targeted towards different customers; (2) Applicant's Mark and the Cited Mark present different meanings when considered in the context of the parties' respective goods; and (3) the Patent and Trademark Office has previously concluded that the differences between Applicant's Mark and the Cited Mark are sufficient to preclude any potential consumer confusion. Therefore, Applicant respectfully submits that the refusal to register Applicant's Mark under Section 2(d) is improper and should be withdrawn.

A. Applicant's Goods are Unrelated to the Goods in the Cited Registration and Travel Through Different Channels of Trade

Even the separate use of the same mark by different parties will not result in consumer confusion if the parties use the mark with goods and/or services that are sufficiently distinct, are offered through different channels of trade, and are targeted towards different groups of consumers. *See, e.g., M2 Software Inc. v. M2 Communications Inc.*, 450 F.3d 1378, 1384 (Fed. Cir. 2006) (finding no likelihood of confusion between marks M2 and M2 COMMUNICATIONS since "[t]he unrelated nature of the parties' goods and their different purchasers and channels of trade are factors that weigh heavily against [an allegation of likely consumer confusion]. It is difficult to establish likelihood of confusion in the absence of overlap as to either factor."); *In re Eyefluence, Inc.*, Serial No. 86/249,068 (TTAB January 10, 2017) (non-precedential) (reversing refusal to register mark EYEOS based on a registration for identical mark since "the goods at issue are not related and that their customers and channels of trade do not significantly overlap. This factor weighs heavily against a finding of likelihood of confusion"); *In re T.F. & J.H. Braime (Holdings) Plc.*, Serial No. 86/119,248 (TTAB December 1, 2015) (non-precedential) (reversing refusal to register mark JUMBO based on registration for identical mark due to lack of probative evidence that the goods are sufficiently related for likely consumer confusion); *In re Harlow – HRK Sales & Marketing, Inc.*, Serial No. 85937185 (TTAB August 20, 2015) (non-precedential) (reversing refusal to register mark SDM based on

registration for identical mark due to lack of probative evidence that the services are likely to emanate from a single source).

In the present case, Applicant submits that its use of Applicant's Mark with the Class 28 goods identified in the application is not likely to result in consumer confusion with the Cited Mark due at least to the overall differences between the nature of Applicant' goods and the Registrant's goods, the differences between the channels of trade, and the differences between the targeted purchasers of the parties' respective goods and services. Applicant is a participant in the casino gaming industry, which is an industry that is highly regulated by Tribal, State, and Federal authorities and features goods and services that may only be purchased by adults of legal gaming age (at least 18 years old). Applicant's goods are gaming machines that are exclusively used within the casino gaming industry for wagering and playing games of chance. Applicant's goods are highly regulated, and are only offered within casinos and select other facilities that have been authorized by the relevant governmental authorities to permit gambling. In addition, the targeted purchasers of Applicant's goods are the owners and operators of casinos and other gambling facilities. Gaming machines are a vital revenue source of a casino, and accordingly the relevant purchasers of Applicant's goods will be highly sophisticated consumers with significant familiarity with the casino gaming industry that will exercise heightened care when deciding whether to purchase the Applicant's goods.

The Registrant's goods appear to be novelty items, and there is no evidence that Registrant's goods have any nexus to gambling or relate in any manner to the highly regulated casino gaming industry. Nor is there any evidence that the Registrant is involved in the casino gaming industry. While Registrant has identified its goods as including "Amusement game machines; Apparatus for electronic games adapted for use with an external display screen or monitor; Gaming keypads; and Video game consoles," there does not appear to be any evidence of Registrant having used the Cited Mark in connection with such goods, let alone goods that may be used in the casino gaming industry. As reflected in **Exhibit A**, the specimens of use Registrant submitted in the process of registering the Cited mark reflect use on (1) a children's toy top,[1] and (2) a children's plush toy, which suggests that to the extent Registrant provides game machines or similar goods, the goods are merely children's toys and novelty items.

There is no evidence that the Registrant has expanded its business from the tabletop board game industry into the casino gaming industry, and the barriers to entry in the casino gaming industry are significant. For instance, with respect to Indian gaming, each Tribe is its own sovereign nation and awards contracts to companies (like Applicant) based on long-standing relationships and ties. Likewise, commercial casino gaming is a difficult industry to break into, with several long-established companies dominating the market for gaming equipment and associated software. As stated above, this is also a highly-regulated industry requiring approval at many different levels: federal, state, and local authorities all have different licensing rules and regulations, and it can sometimes take years to receive the approval necessary to sell gaming software equipment in various locales. To compete in the casino gaming industry, a company must be able to develop, implement, and support high-speed, interactive, entertaining, and engaging wagering games as well as offer flexible software and firmware systems for delivering, managing, recording, tracking, and auditing both gaming and player activity. Additionally, Applicant and its competitors utilize state-of-the-art network, database, and online transaction processing technologies that can be viewed at the casino, zone, bank, manufacturer,

[1] This first-submitted specimen was not accepted by the Office.

denomination, or even individual machine level. That the Registrant (which clearly appears to be primarily within the tabletop board game industry) could overcome these barriers or that consumers would generally expect that such a company could compete in the casino gaming industry is highly unlikely.

Rather, based on the evidence of record, the Registrant's goods are simply children's toys and novelty items that do not relate in any manner to casino games, slot games, or gambling. The channels of trade for the Registrant's goods are the typical lightly-regulated channels of trade for toys and novelty items. Unlike Applicant's goods, the Registrant's goods do not appear to be offered within a casino or other select facility authorized for gambling activity, and the targeted consumers of the Registrant's goods would be children and adults purchasing toys for children.

Accordingly, Applicant's goods will not travel through the normal channels of trade of the goods of the Cited Registration, nor will the goods of the Cited Registration travel through the respective channels of trade of Applicant's goods, and moreover there is little chance that the goods of the Registrant would ever move through the same channels of trade as Applicant's goods. The Board has held that differences between channels of trade can effectively negate any likelihood of confusion, even in cases where the marks and goods are identical or closely related. *See University of Southern California v. The University of South Carolina*, Opposition No. 91/125,615 (TTAB, August 1, 2008) (non-precedential). In *Southern California*, registrant Southern California opposed applicant South Carolina's application to register an "SC" design for, among other products, clothing in Class 25. Southern California owned a registration for a similar "SC" design for Class 25 clothing. The Board found the marks to be confusingly similar and the Class 25 goods to be closely related, but noted that the fact that Southern California restricted its Class 25 goods to those "offered and sold at university-controlled outlets" was "highly significant." *Id.* at 14-15. Though South Carolina had not restricted the channels of trade for its goods, the Board reasoned that California's "university-controlled outlets" were not among the normal trade channels in which Carolina's Class 25 goods would be sold, eliminating "any possibility that purchasers might encounter Carolina's Class 25 goods in California's trade channels, or vice versa." The Board concluded that:

> the dissimilarity of the trade channels under the third *du Pont* factor outweighs all of the other *du Pont* factors in our likelihood of confusion analysis, including the similarity of the marks under the first *du Pont* factor, the similarity of the goods under the second *du Pont* factor, and the evidence discussed below in connection with the other pertinent *du Pont* factors. In a particular case, a single *du Pont* factor may be dispositive.

Id. at 16.

Given the separate channels of trade of Applicant's goods and the goods of the Cited Registration, this factor sufficiently precludes any likelihood of consumer confusion from occurring in the present case. *See also Virgin Enterprises Limited v. Steven E. Moore*, Opposition No. 91/192,733 (TTAB August 31, 2012) (non-precedential) (Noting that "[b]y limiting his goods to those for agricultural planting purposes, applicant has limited its channels of trade to those that are unlikely to include opposer's listed goods and services" in concluding that consumer confusion was unlikely between the marks VIRGIN FARMS and Design and VIRGIN); *In re G.H.L. International, Inc.*, Serial No. 77/886,169 (TTAB September 25, 2012)

(non-precedential) (Board finds no likelihood of confusion based in part on lack of evidence that goods at issue are sold in the same retail outlets).

Where the differences between the channels of trade preclude any possible consumer confusion, the Board has held that consideration of the other du Pont factors is unnecessary. *See, e.g., In re HerbalScience Group LLC*, 96 USPQ2d 1321, 1324-25 (TTAB 2010) (Board concludes that "because of the differences in the channels of trade and customers for applicant's and the registrant's goods, there is virtually no opportunity for confusion to arise. Accordingly, we need not consider the [other du Pont factors]"). Under Board precedent, the Examining Attorney need not consider any other factors to conclude that there is no opportunity for confusion to occur between Applicant's Mark and the Cited Mark.

As explained above, Applicant's goods are within a completely different industry than the goods of the Cited Registration, are subject to much more extensive governmental regulation and oversight, travel through different channels of trade, and are purchased by different classes of consumers for completely different purposes. Accordingly, the only arguable connection between Applicant's goods and the Registrant's goods are that they both relate in some general manner to "games." The Board has consistently held that "to demonstrate that goods are related, it is not sufficient that a particular term may be found which may broadly describe the goods." *In re W.W. Henry Co.*, 82 USPQ2d 1213, 1215 (TTAB 2007) (citing *General Electric Co. v. Graham Magnetics Inc.*, 197 USPQ 690 (TTAB 1977) and *Harvey Hubbell Inc. v. Tokyo Seimitsu Co., Ltd.*, 188 USPQ 517 (TTAB 1975)). *See also Calypso Technology, Inc. v. Calypso Capital Management LP*, 100 USPQ2d 1213 (TTAB 2011) (noting that "in order to find that goods and services are related, there must be more of a connection than that a single term, in this case 'financial field,' may be used to generally describe them," and concluding the differences between the parties' goods and services sufficient to preclude confusion); *In re Woodstream Corporation*, Serial No. 77/798,045 (TTAB January 25, 2013) (non-precedential) (reversing refusal and finding confusion unlikely because shared terms were highly suggestive and "while the goods are clearly related to the extent that both fall under the general category of pest control…and there is some evidence of such goods being offered by a single source (including applicant), at least, under a house mark…the goods are different….and serve different purposes"). Thus, the mere fact that the Registrant's goods and the Applicant's goods may have some extenuated connection to "games" is not sufficient to support a finding of likely consumer confusion in view of the differences between the parties' goods in purpose, channels of trade, and targeted consumers.

B. Applicant's Mark and the Cited Mark Differ in Sight, Sound, Meaning, and Commercial Impression

The mere presence of some similarities between two marks does not necessarily create a likelihood of confusion. The TMEP instructs that "[a]dditions or deletions to marks may be sufficient to avoid a likelihood of confusion if: (1) the marks in their entireties convey significantly different commercial impressions; or (2) the matter common to the marks is not likely to be perceived by purchasers as distinguishing source because it is merely descriptive or diluted." TMEP § 1207.01(b)(iii). *See also Citigroup Inc. v. Capital City Bank Group, Inc.*, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011).

In recognition of this principle, the Board has repeatedly determined in recent cases that even marks that differ by only a single term are unlikely to be confused where the marks present distinguishable meanings when considered as a whole. *See, e.g., In re The West Retail Group*

Limited, Serial No. 86/050,612 (TTAB October 28, 2015) (reversing Examining Attorney and finding differences between marks WREN and CABOTWRENN sufficient to preclude consumer confusion); *In re Appgraft LLC*, Serial No. 85/843,178 (TTAB July 9, 2015) (not precedential) (no likelihood of confusion between OBSERVANT and OBSERVANT OWL, since "the fact that both marks contain the term OBSERVANT is not a sufficient basis for us to conclude that the marks are confusingly similar…Considering the specific marks and goods before us, under the first du Pont factor, we find the meaning and overall commercial impression made by the mark OBSERVANT OWL to be sufficiently dissimilar from the cited mark OBSERVANT to render confusion unlikely even though the goods are overlapping); *In re Fivepals, LLC*, Serial No. 85/924,540 (TTAB February 9, 2016) (not precedential) (finding no likelihood of confusion between ALICE and KATE ALICE despite the fact that the goods and services are "legally identical" since the marks are "more dissimilar than they are similar" when considered in their entireties); *In re Americas Health and Wellness Fund LLC*, Serial No. 86265852 (TTAB December 11, 2015) (not precedential) (no likelihood of confusion between LUBDUB and DUB due to differences between the marks, despite overlap between the goods); *Consolidated Artists BV v. Camille Beckman Corporation*, Opposition No. 91/188,863 (TTAB February 16, 2012) (not precedential) (finding MANGO BEACH not confusingly similar to MANGO for identical goods due to differences between marks in meaning and commercial impression).

The Federal Circuit has instructed that "marks tend to be perceived in their entireties," and therefore, "all components thereof must be given appropriate weight" when determining whether two marks are likely to be confused by consumers. *In re Hearst Corp.*, 982 F.2d 493, 494, 25 U.S.P.Q.2d 1238 (Fed. Cir. 1992). The Federal Circuit has also cautioned that "no element of a mark is ignored simply because it is less dominant, or would not have trademark significance if used alone." *In re Electrolyte Laboratories, Inc.*, 913 F.2d 930, 16 USPQ 2d 1239 (Federal. Cir. 1990), corrected, 929 F.2d 645 (Federal. Cir. 1990); *see also Juice Generation, Inc. at* 1676 ("Our predecessor court explained that 'a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion.'….That does not preclude consideration of components of a mark; it merely requires heeding the common-sense fact that the message of a whole phrase may well not be adequately captured by a dissection and recombination.").

Here, the Office Action focuses on the shared letters "DCX" between the Applicant's Mark and the Cited Mark, but has not given proper consideration to the distinguishing features of Applicant's Mark and the Cited Mark, and the distinct meanings and commercial impressions created by such features. Indeed, when viewed in their entireties (as the Federal Circuit recently reminded the Board it must do), Applicant's Mark and the Cited Mark differ sufficiently in meaning, appearance, sound, and connotation, and create distinct commercial impressions capable of identifying separate sources.

1. Applicant's Mark and the Cited Mark Differ in Sight and Sound

Applicant's Mark consists solely of the letters "DCX" and does not include an "L" at the beginning of the mark, which differentiates the Applicant's Mark from the Cited Mark visually and aurally. As the Board has repeatedly observed, the first term featured in a mark present significant influence in the manner in which the mark is interpreted and remembered by consumers. "[P]urchasers in general are inclined to focus on the first word or portion in a trademark." *In re Aloxxi International Corporation*, Serial No. 85/117,551 (TTAB August 14, 2012) (not precedential); *see also Presto Products, Inc. v. Nice-Pak Products, Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) ("it is often the first part of a mark which is likely to be impressed

upon the mind of a purchaser and remembered"). There is also no evidence on the record to suggest that the marks have the same meaning.

Applicant therefore submits that Applicant's Mark and the Cited Mark feature important visual and aural differences that preclude consumer confusion from occurring in the marketplace, particularly given the significant differences between the commercial impressions of the marks when the marks are each considered as a whole.

2. The Marks Have Distinct Commercial Impressions When Viewed In Their Entireties

The Office Action states that Applicant's Mark and the Cited Mark are confusingly similar because "applicant's mark is likely to appear to prospective purchasers as a shortened form of registrant's mark," and that "applicant's mark does not create a distinct commercial impression from the registered mark because it contains some of the wording in the registered mark and does not add any wording that would distinguish it from that mark." This seems plainly incorrect. Neither Applicant's Mark nor the Cited mark consist of words (plural) and each instead appears as a unitary collection of letters (i.e., a single word), and there is not basis for concluding that removing the first letter from a word results in a shortened version of the same word.

Indeed, omitting a first letter from a word is a significant omission and in no way an accepted manner of shortening or contracting a word. Applicant is unable to come up with an example of such a case and the pretense seems somewhat startling. The English language is replete with instances where omitting a first letter results in a word having entirely different meaning – not a confusingly similar word. For example, "plane" doesn't shorten to "lane," "mother" doesn't shorten to "other," and "ladder" doesn't shorten to "adder."

The Office Action cites law for the proposition that "merely omitting some of the wording from a registered mark may not overcome a likelihood of confusion," but that law appears inapplicable in the present case. The Cited Mark and Applicant's Mark are not combinations of words but are instead combinations of letters. In most cases (the present case included), Applicant submits that omission of a letter results in an entirely different word that is indeed capable of providing a distinct commercial impression.

Moreover, Applicant notes that even if the cases cited in the Office Action were applicable in the present case, finding a likelihood of confusion in the present case based on the cited rationale would be inconsistent with prior actions taken by the Office. On numerous occasions, the Office has concluded that a mark used with goods for the casino game industry is unlikely to be confused with a mark used with general computer game software when the only difference between the marks is the removal or addition of a common term. For example, the Office has allowed the following registrations to coexist on the Register:

Mark / Reg. No. / App. No.	**Goods/Services**	**Owner**
MAGIC FLOWER RN: 4473882 SN: 85846150	(Int'l Class: 28) electronic gaming machines, namely, devices which accept a wager	Aristocrat Technologies Australia Pty LTD.

Mark / Reg. No. / App. No.	Goods/Services	Owner
FLOWER RN: 3674174 SN: 77507072	(Int'l Class: 09) computer game software and video game software	Sony Interactive Entertainment LLC
MAGIC PHARAOH RN: 4413158 SN: 85686294	(Int'l Class: 09) programs for operating electric and electronic apparatus for games, amusement and/or entertainment purposes; computer software for computer games on the internet and for games on mobile phones; software for on-line games; calculating apparatus in coin-operated machines and parts for the aforesaid goods (Int'l Class: 28) electric and electronic coin and token-operated entertainment machines and amusement machines; electric and electronic apparatus for games, amusement or entertainment purposes; coin-operated gaming machines, entertainment machines and lottery machines; automatic gaming machines; the aforesaid automatic machines and apparatus operating in networks (Int'l Class: 41) casino services; operating a jackpot system involving one or more automatic slot machines, namely a jackpot or prize with a fixed minimum value which increases until the jackpot is won	Igt Germany Gaming GmbH
PHARAOH RN: 2563684 SN: 76291464	(Int'l Class: 09) computer game software and instruction manuals sold therewith	Activision Publishing, Inc.
PANDA MAGIC RN: 5304290 SN: 86968366	(Int'l Class: 28) electronic gaming machines, namely, devices which accept a wager	Aristocrat Technologies Australia Pty LTD.
PANDA RN: 4704499 SN: 85949469	(Int'l Class: 09) computer game software for gaming machines, namely, slot machines and video lottery terminals; computer software and firmware for games of chance on any computerized platform, including dedicated gaming consoles, video based slot machines, reel based slot machines, and video	Everi Games Inc.

Mark / Reg. No. / App. No.	Goods/Services	Owner
	lottery terminals; gaming software that generates or displays wager outcomes of gaming machines	
CELTIC MAGIC RN: 5814235 SN: 87674741	(Int'l Class: 09) computer game programs; computer game software; computer game software downloadable from a global computer network; computer game software for gambling machines; computer game software for use on mobile and cellular phones; computer software and firmware for playing games of chance on any computerized platform, including dedicated gaming consoles, video based slot machines, reel based slot machines, and video lottery terminals; electronic game programs; electronic game software; interactive game programs; interactive game software; downloadable computer game programs; downloadable computer game software via a global computer network and wireless devices; downloadable electronic game programs	King Show Games, Inc.
CELTICS and Design  RN: 2832204 SN: 75602072	(Int'l Class: 09) audio, video, computer and laser discs; pre-recorded audio and video cassettes; pre-recorded audio and video tapes, pre-recorded compact discs, pre-recorded computer discs, all relate to basketball; computer accessories, namely mouse pads, mice, disc cases, computer carry-on cases, keyboard wrist pads, computer monitor cardboard frames, all related to basketball; computer programs featuring information, statistics and/or trivia about basketball; downloadable computer programs featuring information, statistics and/or trivia about basketball; computer operating systems; computer software for use as a screen saver featuring basketball themes; downloadable computer software for use as a screen saver featuring basketball themes; video game software; downloadable video game software; video game cartridges and video game machines for use with televisions; radios and telephones; binoculars; sunglasses and eyeglass cases; magnets	Banner Seventeen, LLC

Mark / Reg. No. / App. No.	Goods/Services	Owner
FIRE MAGIC RN: 4709141 SN: 86115336	(Int'l Class: 09) computer game software for gaming machines including slot machines or video lottery terminals; computer software and firmware for games of chance on any computerized platform, including dedicated gaming consoles, video based slot machines, reel based slot machines, and video lottery terminals; gaming software that generates or displays wager outcomes of gaming machines	Everi Games Inc.
FIRE RN: 4261682 SN: 77806434	(Int'l Class: 09) gaming devices, namely, gaming machines, slot machines, bingo machines, with or without video output; gaming machines featuring a device that accepts wagers; gaming machines that generate or display wager outcomes; gaming machines, namely, devices which accept a wager; gaming machines, namely, electronic slot and bingo machines; machines for playing games of chance	Eclipse Gaming Systems, LLC
FIRE RN: 5095736 SN: 85984230	(Int'l Class: 28) handheld unit for playing electronic games, other than those adopted for use with an external display screen or monitor; games featured on a portable handheld device	Amazon Technologies, Inc.
FIRE RN: 1521074 SN: 73699307	(Int'l Class: 28) coin-operated amusement games	Williams Electronics Games, Inc.
GENIE MAGIC RN: 2564866 SN: 75676205	(Int'l Class: 09) machines for playing games of chance	Aristocrat Technologies Australia Pty Limited
GENIE RN: 5200475 SN: 86566368	(Int'l Class: 09) downloadable software in the nature of a mobile application for electronic devices that allows consumers to access information on a wide range of products through the usage of image recognition and augmented reality technologies, downloadable mobile applications for analyzing shopping purchases by socially conscious criteria; downloadable mobile applications for analyzing shopping purchases made through television shows, computer programs for electronic devices,	Genie Quest LLC

Mark / Reg. No. / App. No.	Goods/Services	Owner
	application video and computer games; interactive video game programs and interactive social media video game programs; downloadable mobile applications for use as a training tool, namely, software that provides training programs in the use of, repair, maintenance and installation of aircraft equipment, vehicle equipment and computer equipment, all of the aforementioned not relating to television programming or television broadcasting	
MAGIC MERLIN RN: 3734282 SN: 78093544	(Int'l Class: 09) gaming equipment, namely, slot machines, with or without video output	Igt Canada Solutions Ulc
MERLIN RN: 2079540 SN: 74496089	… (Int'l Class: 28) kits containing science experiments and magic tricks, christmas ornaments, board games, computer board games, juggling balls, pins and sticks with a magical or mythical motif, such as castles, unicorns, fairies, angels or the like, but not representing any particular mythical person from the arthurian legend	Dwork, Paul
MAGIC OF THE NILE SN: 87678094 (Notice of Allowance issued on April 24, 2018)	(Int'l Class: 28) gaming machines, namely, devices which accept a wager; reconfigurable casino and lottery gaming equipment, namely, gaming machines and operational computer game software therefor sold as a unit	Igt
NILE SN: 87286314 (Notice of Allowance issued on July 4, 2017)	(Int'l Class: 09) downloadable digital music, video recordings, audio, graphics, and moving images in the field of entertainment (Int'l Class: 41) entertainment services, namely, providing on-line non-downloadable interactive computer games, digital music, video, audio, graphics, and moving images in the field of entertainment; providing information relating to entertainment on the topics	Aphid, Inc.

Mark / Reg. No. / App. No.	Goods/Services	Owner
	of celebrities and crew, motion pictures, television programs, computer games, and radio programs via a global communications network; electronic publishing services online and on cd, namely, publication of electronic books, magazines, journals, periodicals, music, newsletters, visual works and audiovisual works, all these works being those of others	
MAGIC WAND RN: 4842159 SN: 86265441	(Int'l Class: 09) software for games of chance; gaming software that generates or displays wager outcomes (Int'l Class: 41) entertainment services, namely, providing on-line games of chance and wagering games	Bally Gaming, Inc., Dba Bally Technologies
WANDS RN: 5299067 SN: 86922665	(Int'l Class: 09) computer game software; computer game entertainment software; downloadable electronic games programs; video game software; games software for use on mobile phones, tablets and other electronic mobile devices; games software downloadable to mobile phones, tablets and other electronic mobile devices; computer software applications featuring computer games; virtual reality game software; augmented reality game software; computer programs for video and computer games; electronic game software; electronic game software for wireless devices (Int'l Class: 41) electronic game services provided by means of the internet; electronic game services, namely, providing temporary use of non-downloadable computer and video games; providing non-downloadable electronic games for mobile phones, tablets and other electronic mobile devices; providing interactive single and multi-player electronic games via the internet; publishing of computer game software, electronic games and video game software; video game entertainment services, namely, providing online computer and video games; operation of online game sites, namely, providing a website featuring online computer and video games; electronic game	Cortopia Ab

Mark / Reg. No. / App. No.	Goods/Services	Owner
	services, namely, provision of computer games online, on online social networks, and by means of a global computer network	
MEDUSA MAGIC! SN: 87325256 (Notice of Allowance was issued on 8/1/2017; now abandoned for failure to file a Statement of Use)	(Int'l Class: 41) entertainment services, namely, providing on-line computer games and game applications, enhancements within online computer games, and game applications within online computer games; providing online reviews of computer games, and providing of information relating to computer games; providing an internet website portal in the field of computer games and gaming; entertainment services, namely, providing virtual environments in which users can interact through social games for recreational, leisure or entertainment purposes	Playtika LTD.
MEDUSA RN: 4799962 SN: 85484847	(Int'l Class: 09) interactive game programs, computer-gaming software for gambling machines; computer game programs downloadable via the internet; interactive reel and slot game programs (Int'l Class: 41) entertainment, amusement and recreational services, namely, casino gaming, gambling services and gaming services provided online and via gaming machines; entertainment services, namely, providing temporary use of non-downloadable interactive games	Nextgen Gaming Pty LTD
SAFARI MAGIC RN: 4782260 SN: 85644497	(Int'l Class: 09) gaming equipment namely, a networked gaming system comprised primarily of computer hardware and software for calculating payouts, jackpots for progressive games, generating and modifying bonuses and providing bonus signage	Bally Gaming, Inc., Dba Bally Technologies
SAFARI RN: 4325094 SN: 85378075	(Int'l Class: 09) gaming machines, namely, electronic slot and bingo machines; video lottery terminals	Everi Games Inc.

Mark / Reg. No. / App. No.	Goods/Services	Owner
TIGER MAGIC RN: 5662950 SN: 87784154	(Int'l Class: 28) gaming machines, namely, devices which accept a wager	Ags LLC
TIGER RN: 2745416 SN: 74560235	(Int'l Class: 28) interactive toys with or without synthetic speech; namely, dolls; board games; hand-held, table-top, wristband, and electronic game machines with liquid crystal displays or synthetic speech, or both; and electronic educational parlor game machines	Hasbro, Inc.
TRIPLE MAGIC RN: 4502771 SN: 85789768	(Int'l Class: 09) computer software and firmware for games of chance on any computerized platform, including dedicated gaming consoles, video based slot machines, reel based slot machines, and video lottery terminals	Ainsworth Game Technology Limited
TRIPLES RN: 2168284 SN: 75155276	(Int'l Class: 09) gaming equipment, namely, slot machines and video slot machines with video output capability	Everi Games Inc.

TSDR records for the above-cited registrations are attached hereto as **Exhibit B**. This evidence clearly shows that the Office has determined on several prior occasions that marks that are more similarly situated than Applicant's Mark and the Cited Mark are able to peacefully co-exist on the Principal Register and in the marketplace, and Applicant respectfully submits that the Office's goal of consistent examination should persuade the Examining Attorney to exercise similar examination practice in the present case and withdraw the refusal to register.

C. SUMMARY OF ARGUMENTS AGAINST LIKELIHOOD OF CONFUSION

A likelihood of confusion analysis should not focus on "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." *Mini Melts, Inc. v Reckitt Benckiser LLC*, 118 USPQ2d 1464, 1478 (TTAB 2016) (quoting *Elec. Design & Sales Inc. v. Elec. Data Sys. Corp.*, 21 USPQ2d 1388, 1391 (Fed. Cir. 1992). Here, the evidence of record shows that Applicant's goods are unrelated to the Registrant's goods, travel through different channels of trade, and target different consumer. Accordingly, Applicant's use and registration of Applicant's Mark with its goods is highly unlikely to result in consumer confusion with the Cited Mark, particularly in view of the differences between the marks in sight, sound, and meaning. Applicant therefore respectfully requests that the Examining Attorney withdraw the refusal to register Applicant's Mark due to an alleged likelihood of confusion with the Cited Registration permit the application to proceed towards publication.

CONCLUSION

In view of the foregoing, Applicant respectfully requests that the refusal to register Applicant's Mark be withdrawn, and that the application be allowed for publication. If there is an issue that can be resolved by a telephone conference, the Examining Attorney is invited to contact Applicant's attorney.