





The Examining Attorney has issued an Office Action regarding Applicant’s mark, , Serial No. 88/320,183 (“Applicant’s Mark”), rejecting it on the grounds that Applicant’s Mark is likely to cause confusion with Reg. Nos. 5,007,302 and 5,007,303 for the marks  and IGNITE, both owned by the same owner, Ignite Selling, Inc. (the “Cited Registrations”). As addressed in more detail below, Applicant respectfully asserts that this refusal is inappropriate and should be withdrawn and that Applicant’s Mark should be permitted to pass to publication.


The use of even identical marks, let alone non-identical marks, in the same field or general category of products does not necessarily establish a likelihood of confusion. *See, e.g., Astra Pharmaceutical Products, Inc. v. Beckman Instruments, Inc.*, 718 F.2d 1201 (1st Cir. 1983) (no likelihood of confusion between ASTRA for local anesthetic and ASTRA for blood analyzer machine). “The basic principle in determining confusion between marks is that marks must be compared in their entireties and must be considered in connection with the particular goods or services for which they are used.” *In re National Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985). In this case, Applicant’s Mark is quite different from the Cited Registrations, and the marks cover services that merely fall within the same broad or general category, but which are not the same. In fact, there is significant evidence that weighs against a finding of any likelihood of confusion here.

First, Applicant respectfully disagrees with the Examining Attorney’s statement that the “shared wording” between the Applicant’s Mark and the Cited Registrations “conveys the same meaning of setting fire to something.” Applicant’s Mark, , clearly conveys this meaning, as it contains the design element of flames extending from the letter G across the rest of the word, as indicated in the mark’s description. The Cited Registrations, however, do not in any way convey or suggest anything related to flames or fire. For Reg. No. 5,007,302, the design element, , is

described by the owner in the mark description as “a fanciful person representation,” and the four design codes associated with the mark include the ones for “stick figures,” “person formed by geometric shapes,” “circles that are totally or partially shaded,” and “curved lines, bands, and bars.” There is no reference to fire or flames. On the other hand, Applicant’s Mark has only one design code associated with it, namely, the one for “fire (flames), emanating from objects, words or numbers.”

In addition, the word IGNITE is capable of many interpretations and has numerous definitions beyond just “setting fire to something.” According to the Merriam-Webster dictionary, the word ignite can also mean “to set in motion,” “spark,” or “to give life or energy to (someone or something),” and according to Dictionary.com, it can also mean “to stimulate or provoke”. The Cambridge English Dictionary also lists the definition “to cause a dangerous, excited, or angry situation to begin,” and the MacMillan Dictionary lists “to start a war or argument,” “to start a particular feeling in someone,” and “to make something exciting, or to become exciting.” Furthermore, the Oxford Dictionary lists “to arouse or inflame (an emotion or situation),” and Urban Dictionary adds “to start something” or “to get something going.”

As such, as a word mark on its own, the Cited Registration for IGNITE could invoke any of the above meanings when viewed in a vacuum. However, when viewed in the context of the services covered by the Cited Registrations, namely, “providing sales training programs and seminars,” the likely interpretations are “to spark,” “give life or energy to,” to “stimulate,” “to start something,” or “to get something going,” meaning that the IGNITE programs will jump start or accelerate one’s sales skills. It is even clearer that these, and not “setting fire to something,” are the logical interpretations of the Cited Registrations when IGNITE is viewed together with the

design element included in one of the Cited Registrations,  . As such, the Cited Registrations and the Applicant’s Mark have very distinct meanings and interpretations.

In addition, the design elements used in the Applicant’s Mark and in one of the Cited Registrations create very different visual impressions on a consumer, one of a figure dancing or stretching and one of flames. These two designs are not likely to be confused or considered

remotely similar to each other. Thus, Applicant respectfully asserts that, contrary to the claim in the Office Action, the overall commercial impressions, meanings, and interpretations of the respective marks are entirely distinct, and the differences in the stylizations and design elements are more than sufficient to “obviate the similarities between the marks.”

Applicant’s services and the services covered by the Cited Registrations are also clearly very distinct. The Cited Registrations both cover “Educational services, namely, providing sales training programs and seminars” whereas Applicant’s Mark covers “Educational services, namely, arranging and conducting educational conferences and programs, classes, workshops, seminars in the field of real estate.” The similarities are that both marks generally cover services that are educational in nature and that include programs and seminars. However, the specific topics or areas of focus are different, one is sales and the other is real estate. Given the differences in the marks themselves, as discussed above, the additional distinction between the services is sufficient to eliminate potential confusion. *See, e.g., United Foods, Inc. v. United Air Lines Inc.*, 41 U.S.P.Q.2d 1653, 1662-63 (TTAB 1995) (unpublished decision) (no likelihood of confusion between the mark UNITED EXPRESS for trucking division of food production company and UNITED EXPRESS for airline transportation, even though both services involved the transportation of freight, since one is by truck and the other by airplane and the products are thus unrelated).

It is also quite clear from a study of the USPTO Registry that the mere overlap in the use of the broad terms “educational services,” “programs,” or “seminars” is not enough to render the services provided under these marks the same. In fact, as of the time of this writing, there are 96,705 active applications or registrations on the USPTO register that cover “educational services.” Surely, not all of these marks are used for the same or confusingly similar services. Furthermore, 50,686 of those marks also cover “seminars,” 30,756 also cover “programs,” and 16,004 also cover both “programs” and “seminars.” These numbers clearly indicate that the clarification or specificity added to narrow the focus of any “educational services,” rather than the fact that they are broadly characterized under the umbrella of “educational services,” is the important component of these specifications.

Even more importantly, 65 of the marks covering “educational services” contain a form of the word IGNITE, meaning that many other IGNITE formative marks have been allowed to coexist with each other and register for “educational services.” In fact, almost all of these 65 marks cover some type of training classes, seminars, or workshops in different fields of study: 40 of them cover “seminars,” 24 cover “programs,” and 14 of them cover both “programs” and “seminars.”


IGNITE is therefore clearly a very commonly used and registered word in the context of educational services, which suggests that consumers are able to distinguish between the parties providing various types of seminars and programs using different IGNITE formative marks. Furthermore, not only are there a very large number of coexisting IGNITE formative marks that cover educational services, but many of these marks contain a form of the word IGNITE as their only distinctive element, some examples of which are listed below:


- IGNITING TEEN VOLUNTEERS (TEEN VOLUNTEERS disclaimed) (Reg. No. 3037384)
- IGNITE (Reg. No. 3882566)
- TEACHERS IGNITE (TEACHERS disclaimed) (Reg. No. 4422359)
- THE IGNITE SHOW (SHOW disclaimed) (Reg. No. 4399175)
- IGNITION (Reg. No. 4062434)
- IGNITING BUSINESS (BUSINESS disclaimed) (Reg. No. 4420433)
- IGNITE DEVELOPMENT & GROWTH (DEVELOPMENT AND GROWTH disclaimed) (Reg. No. 4643402)
- IGNIGHT CONFERENCE (CONFERENCE disclaimed) (Reg. No. 4940056)

Surely, if all of these word marks, which contain no distinctive elements aside from a form of the term IGNITE, can coexist on the Registry for educational services, then Applicant’s Mark can coexist as well. All of these coexisting marks make it abundantly clear that there are many different types of educational services and consumers are able to recognize and distinguish between these services and various uses of the term IGNITE and to properly associate each use with its correct source.

In addition, the Cited Registrations are already coexisting with other marks that specifically cover educational services and seminars in the same field, namely, sales. For instance, IGNITE BRILLIANCE (Reg. No. 4045774) and IGNITE DEVELOPMENT & GROWTH (DEVELOPMENT AND GROWTH disclaimed) (Reg. No. 4643402) both predate the Cited Registrations. IGNITE BRILLIANCE covers “conducting classes, seminars, conferences, and workshops in the field of ... sales” and “Providing on-line training courses, seminars, workshops in the field of ... sales,” and IGNITE DEVELOPMENT & GROWTH (DEVELOPMENT AND GROWTH disclaimed) covers “conducting classes, seminar, workshops, presentations, retreats in the field . . . sales training.” If confusion were likely between Applicant’s Mark and the Cited Registrations, then surely the Cited Registrations would not have been permitted to register due to a likelihood of confusion with the prior registrations for IGNITE BRILLIANCE and IGNITE DEVELOPMENT & GROWTH, as the services covered by those marks are much more similar to those covered by the Cited Registrations than are those covered by Applicant’s Mark. Since the Cited Registrations were both allowed to register, Applicant’s Mark should be allowed to register and coexist as well. In fact, it is clear that the evidence found on the USPTO register does not support the current likelihood of confusion refusal.

It should also be noted here that many of the other IGNITE formative marks reiterate the point made above about the term IGNITE having multiple meanings and interpretations beyond just “setting fire to something.” Some of these marks include: IGNITING TEEN VOLUNTEERS, IGNITE BRILLIANCE, IGNITE DEVELOPMENT & GROWTH, TEACHERS IGNITE, IGNITE YOUR PLEASURE, IGNITING HUMAN POTENTIAL, IGNITING TRANSFORMATION, and more. Clearly, no one is suggesting that we set fire to teen volunteers, teachers, human potential, or these other words modified by forms of the term IGNITE.

Practically speaking, Applicant’s Services are narrow and have a limited target audience, namely real estate professionals, and mostly, the franchisees, brokers, and agents affiliated with the Applicant. Applicant’s audience will know who is providing the services under the  mark and Applicant’s consumers are highly unlikely to believe that there is a connection between


the  services associated with the global ERA brand and the sales training programs offered by Ignite Selling, Inc.

Likewise, consumers seeking the Cited Registrations' services are unlikely to encounter Applicant's Mark because Applicant's Mark is very unlikely to be seen by, or known to, the public at large, as it will primarily be directed at and advertised to real estate agents and brokers. Furthermore, according to Ignite Selling, Inc.'s website, <https://igniteselling.com/about-us/representative-clients/>, their clients are in the medical device, technology, business, and financial services industries, not the real estate industry. Therefore, consumers of the services provided under the Cited Registrations and the Applicant's consumers are totally distinct populations unlikely to have any overlap.

Applicant's consumers, established real estate agents and brokers who are sophisticated and well-versed in their field, are also not likely to confuse customer-oriented materials, such as the specimen submitted for the Cited Registrations, especially those with a Copyright statement that indicates the owner is Ignite Selling, Inc., with a training program provided by Applicant. In addition, both real estate professionals and sales professionals want to know by whom they are being educated and are unlikely to utilize a training program absent some faith in the bona fides of the provider. The parties' respective services therefore clearly cater to entirely different, sophisticated, and careful audiences with completely different objectives, making confusion here extremely unlikely. *See, e.g., In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973); *see also, 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 both for machines related to anesthesia); *In re Homeland Vinyl Prods., Inc.*, 81 USPQ2d 1378, 1380, 1383 (TTAB 2006); *In re St. Helena Hosp.*, 774 F. 3d 747 (Fed. Cir. 2014).

In conclusion, Applicant respectfully submits that confusion between Applicant's Mark and the Cited Registrations is highly unlikely and that the Cited Registrations should not pose as obstacles to the registration of Applicant's Mark because of: 1) the overall differences in the

appearances, meanings, connotations, and commercial impressions of the marks themselves, 2) the differences in their covered and provided services, as well as their target audiences, 3) the fact that the Cited Registrations were permitted to register despite the prior registrations for IGNITE BRILLIANCE and IGNITE DEVELOPMENT & GROWTH, and 4) the extensive coexistence of other IGNITE formative marks that cover “educational services.”

Based on all of the above, Applicant respectfully requests that the Examining Attorney withdraw this refusal and permit Applicant’s Mark  to pass to publication.