

RESPONSE TO OFFICE ACTION

The Examining Attorney has refused registration of U.S. Ser. No. 88312094 for JUMBO (the “Mark”), pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), based on a purported likelihood of confusion with a registration for JUMBO, U.S. Reg. No. 4920347 (the “Cited Mark 1”), owned by T.F. & J.H. Braime (Holdings) Plc (“Braime Holdings”) and a prior-filed application for JUMBO, U.S. Ser. No. 87783522 (the “Cited Mark 2”)¹, owned by Raffles Investments (Proprietary) Limited (“Raffles”) (Cited Mark 1 and Cited Mark 2 collectively, the “Cited Marks”). In support of its application, 2121 Atelier Inc. (“Applicant”) respectfully disagrees that confusion is likely and submits the following response.

I. DRAWING AMENDMENT

Applicant hereby withdraws the request to amend the mark in the application.

II. BACKGROUND: APPLICANT’S FOCUS ON PERSONAL DATA AND INFORMATION PRIVACY

Applicant offers a one-of-a-kind, proprietary privacy assistant under JUMBO that allows consumers to protect their online privacy through a centralized mobile app. *See* Ex. 1, https://play.google.com/store/apps/details?id=com.jumboprivacy&hl=en_US, <https://blog.jumboprivacy.com/jumbo-launches-today.html>. Applicant’s JUMBO mobile app scans third party apps, websites, and social media sites and provides actionable recommendations to allow consumers to manage their online activity and content and to decide what content consumers wish to keep, delete or store, thereby ultimately increasing consumers’ privacy and security. *Id.* Using Applicant’s JUMBO app, consumers can delete their old tweets and Facebook posts, limit their search histories on Google, delete lists of videos they’ve watched on YouTube, and delete their own voice recordings on Alexa – all at the tap of a finger. *See id.* “Jumbo saves you hours as well as embarrassment by automatically adjusting 30 Facebook privacy settings to give you more protection, and by deleting your old tweets after saving them to your phone.” *See* Ex. 1, <https://techcrunch.com/2019/04/09/jumbo-privacy-assistant/>.

Since the launch of Applicant’s JUMBO app in April 2019, over 3,100 users have downloaded and rated the app, and Applicant and its JUMBO mark have received notable and positive press coverage in The Washington Post, Vox Media, Forbes, and many other news outlets or technology blogs. *See id.*; *see also* Ex. 1, <https://www.washingtonpost.com/technology/2019/12/31/how-we-survive-surveillance-apocalypse/>, <https://www.forbes.com/sites/forbestechcouncil/2020/01/07/three-things-to-consider-in-the-2020-cybersecurity-landscape/#41c929e67166>, <https://www.fastcompany.com/90335821/this-new-app-manages-your-privacy-for-you-from-facebook-to-alexa>, <https://www.theverge.com/2019/4/9/18300775/jumbo-privacy-app-twitter-facebook>. Applicant displays the Mark prominently on its website, mobile app, and promotional materials. *See* Ex. 1.

¹ Cited Mark 2 is a pending application; although Applicant is not required to respond to an objection based on a pending application, the foregoing response presents arguments that confusion is unlikely to occur between Applicant’s Mark and Cited Mark 2.

A. Applicable Principles of Law

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 (T.T.A.B. 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.”). Furthermore, “[w]e are not concerned 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.” *Electronic Design & Sales Inc. v. Electronic Data Systems Corp.*, 21 USPQ2d 1388, 1391 (Fed. Cir. 1992) (quoting *Witco Chemical Co. v. Whitfield Chemical Co., Inc.*, 418 F.2d 1403, 1405 (C.C.P.A. 1969)).

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

- Similarity and nature of the goods;
- Channels of trade;
- Sophistication of consumers;
- Extent of third party use of similar marks;
- Similarity of the marks; and
- Extent of actual confusion.

See E.I. du Pont de Nemours, 476 F.2d at 1361. Application of these factors here compels the conclusion that confusion is not likely between Applicant’s Mark and the Cited Marks and the Trademark Office should be consistent.

1. The Products Of Applicant’s Mark And The Cited Marks Are Completely Different

There is no likelihood of confusion because the products covered by the Cited Marks are not similar to the products covered by the Applicant’s Mark.

The Trademark Trial and Appeal Board (T.T.A.B.) has held that use and registration of identical marks is not likely to cause confusion if the nature of the goods and services and relevant consumers are distinguishable. 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.*” T.M.E.P. § 1207.01(a)(i) (emphasis added). For example, in *In re Thor Tech, Inc.*, the T.T.A.B. determined that the use of identical marks for towable trailers and trucks was not likely to cause confusion because of the difference in the goods, the channels of trade, and the high degree of consumer care likely to be exercised by the relevant consumers. *See* 113

USPQ2d 1546, 1551 (T.T.A.B. 2015).

The actual use of the Applicant's Mark, on the one hand, and the actual use of the Cited Marks, on the other hand, is evidence that can, and should be, considered by the Examiner. "[W]hen the description of goods for a cited registration is somewhat unclear, as is the case herein, it is improper to simply consider that description in a vacuum." *In re Trackmobile, Inc.*, 15 U.S.P.Q. 2d 1152, 1154 (T.T.A.B. 1990). Without looking to extrinsic evidence to understand the manner in which the purportedly related products are provided by the Applicant and cited registrant/applicant, the Examiner would be improperly relying "upon abstract reasoning" in an effort to give vague and broad terms a definite meaning. *Id.*

Here, the Examiner suggests that the goods covered by Applicant's Mark and the Cited Marks are similar merely because they fall under the general umbrella of computer hardware or software. However, the T.T.A.B. has been consistently deferential to prevailing commercial realities in its caution not to broadly paint all computer and software-related goods and services, with the same brush:

Opposer argues that the parties' products are related because each party provides software programs which process data. We decline to interpret the concept of related goods so broadly. . . . Given the ubiquitous use of computers in all aspects of business in the United States today, this Board and its reviewing Court have rejected the view that a relationship exists between goods and services simply because each involves the use of computers.

Electronic Data Systems Corp. v. EDSA Micro Corp., 23 U.S.P.Q. 2d 1460, 1463 (T.T.A.B. 1992) (also noting "all computer software programs process data, but it does not necessarily follow that all computer programs are related."). The Examiner's assertion that the parties' respective computer hardware/software products are similar by virtue of being related to computers is patently overbroad.

a. No Confusion Exists Between Applicant's Privacy App And The Elevator Buckets Offered Under Cited Mark 1

The Examiner suggests that confusion is likely solely because Braime Holdings' registration covers "computer hardware and firmware." As an initial matter, Applicant's Mark covers computer software – not computer hardware or firmware, which is a program embedded into a hardware device that is a part of the hardware itself. *See* Ex. 2, <https://techterms.com/definition/firmware>. As the T.T.A.B. has repeatedly held, the Examiner cannot paint a broad brush between all computer hardware and software products. *See In re Quadram Corp.*, 228 USPQ 863, 865 (TTAB 1985). "As the computer becomes widely accepted as a common tool used in all phases of businesses and professions, it becomes possible for a trademark on computer products targeted at a specialized market to coexist without confusion with a somewhat similar trademark used on computer products targeted at a quite different specialized market." 4 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 24:44 (5th ed.) (hereinafter "MCCARTHY").

Additionally, the fact that the Examiner points to three companies that produce both software and hardware products—without pointing to some similarity between the function, purpose, nature, or target consumers of Applicant and Braime Holdings’ offerings—does not support a finding of confusion. Indeed, the T.T.A.B. has stated that “in order to support a holding of likelihood of confusion, there must be some similarity between the goods and services at issue herein beyond the fact that each involves the use of computers.” *See Reynolds & Reynolds Co. v. I.E. Systems, Inc.*, 5. U.S.P.Q.2d 1749, 1751*12 (T.T.A.B. 1987). The Examiner has not met the burden of demonstrating that Applicant and Braime Holdings’ products are similar beyond the fact that the products may involve the use of computers.

Here, the goods covered by Applicant’s Mark and Cited Mark 1 are not even remotely similar because Braime Holdings does not use its mark for computer hardware, firmware, or software. To the contrary, Braime Holdings uses Cited Mark 1 in connection with heavy-duty agricultural and industrial elevator buckets, which is intended to hold and transport bulk materials, such as fertilizer, grains, minerals, and other industrial materials. *See* Ex. 3, <https://www.go4b.com/usa/products/elevator-buckets/default.asp>, <https://pdf.directindustry.com/pdf/4b-braime-components/jumbo-cc-s-elevator-buckets/31528-351955.html>. As a company, Braime Holdings focuses on the “manufacture of metal presswork and distribution of bulk material handling components . . . [, specifically, the] supply of goods and services for handling and processing industrial, and in particular, agricultural commodities.” *See* Ex. 3, <https://www.braimegroup.com/about-us>. In line with the company’s focus in the industrial field, the registration for Cited Mark 1 primarily covers industrial products, like elevator buckets, conveyor machinery, lift belts, and electric pulley alignment sensors, and Cited Mark 1 is used for industrial and agricultural elevator buckets. Braime Holdings does not use JUMBO in connection with any software or computer hardware offerings, let alone a cutting-edge privacy assistant mobile app.

In stark contrast to Braime Holdings’ use of Cited Mark 1 for elevator buckets, Applicant uses its Mark for a privacy assistant – a centralized platform that allows consumers to control their data and information privacy on third party websites, apps, and social media sites. Accordingly, there is no overlap between Applicant and Braime Holdings’ products, and there cannot be any likelihood of confusion between Applicant’s Mark and Cited Mark 1.

b. No Confusion Exists Between Applicant’s Privacy App And The Business Management Software Offered Under Cited Mark 2

For the same reasons noted above, the goods covered by Applicant’s Mark and Cited Mark 2 cannot be deemed the same, or even related, merely because both involve offerings related to computer software. *See e.g., Electronic Data Systems*, 23 U.S.P.Q. 2d at 1463; *Reynolds & Reynolds*, 5. U.S.P.Q.2d at 751; *Info. Res. Inc. v. X*Press Info. Servs.*, 6 USPQ2d 1034, 1038 (TTAB 1988). Here too, the Examiner has not met the burden of showing that some similarity exists between Applicant and Raffles’ software products, beyond the fact that they both relate to computers. Cited Mark 2 does not cover any software related to privacy, generally, or protection of personal data and information on third party websites, apps, or social media accounts, specifically. The software products covered by Cited Mark 2 primarily cover business management tools, such as software for producing financial models, customer relationship management, integrating business management intelligence, and communications software for

connecting computer network users. Raffles' business management software serves a different function and purpose than Applicant's privacy assistant. Therefore, without some similarity between the software products at issue, there cannot be a likelihood of confusion. *See Reynolds & Reynolds*, 5. U.S.P.Q.2d at 1751.

In sum, there is no likelihood of confusion between Applicant's Mark and the Cited marks because the marks cover entirely different products.

2. The Parties' Products Are Promoted To Different Consumer Bases In Distinct Channels Of Trade

The T.T.A.B. has found that confusion is unlikely if "the same people do not encounter the marks and products; or, if they did, they would do so only in the context of a lengthy sales process leaving no room for misunderstanding about the sources of the respective products." *Edwards Lifesciences Corporation v. VigiLanz Corporation*, 94 U.S.P.Q.2d 1399, 2010 WL 1514315 (T.T.A.B. 2010). Courts adhere to this requirement because confusion as to the source of goods is unlikely when parties' goods/services, as here, travel through different channels of marketing and trade to different consumers. *See e.g., In re Shipp*, 4 U.S.P.Q. 2d 1174, 1176(T.T.A.B.1987); *Oxford Indus. Inc. v. JBJFabrics Inc.*, 6 U.S.P.Q.2d 1756, 1761 (S.D.N.Y.1988) (holding that the mark JBJ for garments sold through retail channels to consumers, was not confusingly similar to JBJ for converted fabric sold to garment manufacturers in part because the two products were marketed through different channels of trade). As the differences in the respective goods would suggest, Applicant and the owners of the Cited Marks market their respective offerings to different consumer bases in distinct channels of trade.

Applicant's JUMBO app targets tech-savvy consumers who want to protect their personal data privacy and information with ease, and the app is offered through mobile app stores. *See Ex. 1*. Applicant's consumers primarily encounter the JUMBO app on their mobile devices, tablets, and computers, and access the app through an app store. As shown in the screenshot of Applicant's JUMBO app, consumers must elect to download the app before use, and at the time of download, consumers have access to detailed information about the purpose and function of the app, which mitigates any risk of initial interest confusion. *See Ex. 1*. Additionally, after download, consumers must choose which third party accounts (i.e., Facebook, YouTube, Google, Alexa, etc.) they want to monitor using the JUMBO app, and they must input their user name and password information in order to monitor or change the privacy settings for the third party accounts. This last step before using Applicant's app further reducing any risk of confusion because of the highly sensitive nature of user names and passwords for accounts with confidential information (i.e., access to a personal Gmail account). The average consumer, particularly one concerned about data privacy, does not hand over his/her personal email password to a third party without verifying the function, source/owner, and safety of the app itself.

a. The Elevator Buckets Covered by Cited Mark 1 are Offered to Agricultural and Industrial Clients Through Product Catalogues

While consumers encounter Applicant's Mark through an app store, they encounter Cited Mark 1 through a product datasheet or a detailed catalogue with product specifications. *See Ex. 3*, <https://www.go4b.com/Usa/brochures/4B-Bucket-Elevator-Components-Catalog/HTML/54/>.

Consumers cannot impulsively purchase the elevator buckets online because of the industrial nature of the products; rather, they must send a request for information to Braime Holdings and likely obtain a quote before purchase because the buckets “can be a large investment.” See Ex. 3, <https://www.go4b.com/usa/products/elevator-buckets/jumbo-ccs-plastic-elevator-buckets.asp>. Braime Holdings’ target consumers are industrial and agricultural businesses, and the company allows consumers to try samples of the buckets before purchase, which further mitigates any risk of initial interest confusion.

As suggested by the differences in underlying offerings, the target consumers of the Applicant’s Mark (tech-savvy consumers) and Cited Mark 1 (industrial/agricultural businesses) are distinct. Likewise, there is no overlap in the channels of trade in which the respective products are offered. Applicant offers its product through app stores, while Braime Holdings offers its products through catalogs/brochures after a lengthy sales process and a potential trial period during which consumer become intimately familiar with the company and its offerings. Braime Holdings’ products would never appear in an app store, even if Braime Holdings offered computer hardware or firmware under Cited Mark 1, simply because elevator buckets and hardware/firmware themselves are not offered in an app store.

It is highly unlikely that Applicant and Braime Holdings’ respective goods would be encountered by the same consumer or under circumstances that could give rise to the mistaken belief that those goods came from a common source.

b. The Business Management Software Covered by Cited Mark 2 is Offered to Business Clients

For similar reasons as above, there is no overlap in the target consumer bases and channels of trade used by Applicant and Raffles because Raffles does not offer a mobile app or privacy software. Raffles’ business management software is targeted to its business clients, likely after a lengthy sales and vetting process by virtue of how businesses typically vet and purchase software tools. Raffles’ software tools are not offered through an app store given how business software is often offered for sale after a demo, trial period, and a price quote. Furthermore, Raffles’ business clients are distinguished from Applicant’s target consumers who are individuals concerned about their data privacy; the business clients are concerned about satisfying business needs, while Applicant’s consumers are concerned about social media privacy protection for their personal accounts. Because of the differences in the underlying offerings, Applicant and Raffles would not target the same consumers through the same channels of trade, dispelling any reasonable likelihood of confusion.

Finally, Applicant notes that the mere *possibility* that some consumers could encounter both parties’ goods/services is not sufficient for likelihood of confusion. See *August Storck K.G. v. Nabisco, Inc.*, 59 F.3d 616 (7th Cir. 1995) (“Many consumers are ignorant or inattentive, so some are bound to misunderstand no matter how careful a producer is.”).

3. The Parties’ Target Consumers Are Highly Sophisticated

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

1992). “In some instances, buyers of relatively inexpensive goods in *specialized, niche markets* may be very sophisticated as to brands and discerning in their purchases.” MCCARTHY § 23:99 (emphasis added); *see also Clam Corp., Inc. v. Innovative Outdoor Solutions, Inc.*, 89 U.S.P.Q.2d 1314, 2008 WL 5244845 (D. Minn. 2008) (finding that in the specialized market of portable ice fishing shelters, buyers were informed and unlikely to be confused by the color of the accused ice shelters). The parties’ respective consumers are sophisticated and therefore less prone to confusion in purchasing decisions.

Applicant’s consumers are tech-savvy and have chosen to proactively protect their personal data privacy and information by downloading the JUMBO app and by providing their user names and passwords to private accounts, like e-mail and social media accounts, which contain some of the most intimate details about an individual. *See* Ex. 1. Because of the specialized nature of Applicant’s app and the highly sensitive information (i.e., password to a personal email account) that consumers must provide to use the app, Applicant’s consumers are sophisticated and discerning in choosing an appropriate privacy software. Moreover, such decisions are made with care as the source and sponsorship of the respective goods and services are important. When purchasing decisions are made with care, confusion is unlikely. *See* MCCARTHY § 23:99.

Consumers of the Cited Marks are also sophisticated because they are professional or commercial buyers of the specialized products. “Where the relevant buyer class is composed only of professionals or commercial buyers familiar with the field, they are usually knowledgeable enough to be less likely to be confused by trademarks that are similar. Such professional buyers are less likely to be confused than the ordinary consumer.” MCCARTHY § 23:101. Braime Holdings offers its products to industrial and agricultural businesses, and because “buying elevator buckets can be a large investment and important part of [a] business,” these businesses are likely to make careful purchasing decisions. *See* Ex. 3; *see also* MCCARTHY § 23:95 (“If the goods or services are relatively expensive, more care is taken and buyers are less likely to be confused as to source or affiliation.”).

Similarly, Raffles’ business clients are also sophisticated and make careful purchasing decisions when choosing business management software for essential functions, like tracking financial performance and managing customer relationships. These clients are very knowledgeable about their business needs specifically because they are using Raffles’ software products to meet these needs. Moreover, Raffles’ clients would not mistakenly use Applicant’s privacy assistant because it would not serve their traditional business management needs.

Accordingly, Applicant’s sophisticated, tech-savvy consumers are unlikely to confuse Applicant’s one-of-a-kind privacy assistant app with Braime Holdings’ elevator buckets or Raffles’ business management software.


4. There is a Crowded Field of JUMBO Marks Coexisting Peacefully

The Cited Marks exist in a crowded field of nearly identical and closely similar marks. It is well established that where marks coexist in a crowded field, each mark is entitled only to a narrow scope of protection.

The number and nature of similar marks in use on similar goods and services mitigates likelihood of confusion. *See In re E.I. DuPont De Nemours & Co.*, 476 F.2d at 1361. This *DuPont* factor is among those “most relevant” in an *ex parte* case. T.M.E.P. § 1207.01 (d)(x); *see also In re Broadway Chicken, Inc.*, 38 U.S.P.Q.2d 1559, 1565-66 (T.T.A.B. 1996). For example, in *Arrow Distilleries, Inc. v. Globe Brewing Co.*, the court stated that the many uses of the term ARROW show it “has a common appeal to advertisers” and therefore determined the use of ARROW for overlapping products was not confusing. 117 F.2d 347, 351 (4th Cir. 1941).


In light of the Examining Attorney’s focus on computer software and hardware, a review of the USPTO’s trademark registers demonstrates that the consuming public is already exposed to numerous other third-party uses of marks incorporating the term JUMBO in either Classes 9 and 42 or covering computer hardware and software offerings. Examples of JUMBO-formative marks that are on the register covering general software goods and services include:

Mark	Goods and Services	Status	Owner
Jumbocam	Int. Cl. 9 computer application software for mobile phones, portable media players, handheld computers, namely, software for delivering photos and video streams from a mobile device to a video screen	Published (Pending) Intent to Use App 27-DEC-2016 App 87281960	C WIN TECHNOLOGY LLC MASSACHUSETTS LIMITED LIABILITY CO. 117 GARTH ROAD SCARSDALE, NEW YORK, 10583
JUMBOMASTER	Int. Cl. 9 computerized system comprised of computer hardware and computer software for used in the paper industry for predicting and managing paper roll size in real time to reduce waste of paper	Renewed (Registered) App 26-AUG-1994 Reg 26-SEP-1995 App 74566143 Reg 1921704 First Used: NOV-1990 (IC 09) In Commerce: MAR-1994	TECHNOLOGIES PAPETIÈRES H.T.R.C. INC. CANADA CORPORATION SUITE 300 2727 RUE KING OUEST SHERBROOKE, J1L 1C2 CA (CANADA)
JUMBO INTERACTIVE Disclaims: "INTERACTIVE"	Int. Cl. 9 computer software facilitating and managing the online sale of lottery tickets Int. Cl. 42 computer programming services and computer software support services, all of the aforesaid in relation to computer software facilitating and managing the online sale of lottery tickets	Published (Pending) Intent to Use App 19-OCT-2015 App 86791609 First Used: 15-APR-2019 (IC 09) In Commerce: 15-APR-2019 First Used: 15-APR-2019 (IC 42) In Commerce: 15-APR-2019	TMS GLOBAL SERVICES PTY LTD AUSTRALIA CORPORATION LEVEL 1, 601 CORONATION DRIVE TOOWONG QLD 4066, 000 AU (AUSTRALIA)
JUMBO JUMBO	Int. Cl. 9 computer software facilitating and managing the online sale of lottery tickets Int. Cl. 42 computer programming services and computer software support services, all of the aforesaid in relation to computer software facilitating and managing the online sale of lottery tickets	Published (Pending) Intent to Use App 19-OCT-2015 App 86791690 First Used: 15-APR-2019 (IC 09)	

Mark	Goods and Services	Status	Owner
		In Commerce: 15-APR-2019 First Used: 15-APR-2019 (IC 42) In Commerce: 15-APR-2019	
JUMBO 	Int. Cl. 9 computer software facilitating and managing the online sale of lottery tickets Int. Cl. 42 computer programming services and computer software support services, all of the aforesaid in relation to computer software facilitating and managing the online sale of lottery tickets	Published (Pending) Intent to Use App 19-OCT-2015 App 86791726 First Used: 15-APR-2019 (IC 09) In Commerce: 15-APR-2019 First Used: 15-APR-2019 (IC 42) In Commerce: 15-APR-2019	
JUMBO!	Int. Cl. 35 dissemination of advertising for others via on-line electronic communications network Int. Cl. 42 providing computer information regarding software, shareware, freeware by means of regional, national and international computer networks	Renewed (Registered) App 24-AUG-1995 Reg 29-OCT-1996 App 74719926 Reg 2011728 First Used: 17-JUL-1995 (IC 35) In Commerce: 17-JUL-1995 First Used: 17-JUL-1995 (IC 42) In Commerce: 17-JUL-1995	QUINSTREET, INC. DELAWARE CORPORATION 1051 EAST HILLSDALE BLVD. FOSTER CITY, CALIFORNIA, 94404
MUMBO JUMBO	Int. Cl. 9 computer software, firmware and electronics for audio-visual games	Registered App 10-OCT-2006 Reg 26-APR-2011 App 77018249 Reg 3951051 First Used: AUG-2003 (IC 09) In Commerce: AUG-2003	MUMBOJUMBO, LLC TEXAS LIMITED LIABILITY CO. 2019 NORTH LAMAR STREET SUITE 300 DALLAS, TEXAS, 752021738
MUMBO JUMBO	Int. Cl. 9 cd-roms featuring audio-visual computer games; and downloadable audio-visual computer games via a global computer network; downloadable audio-visual computer games to wireless mobile devices; audio-visual computer games adapted to execute on various computerized platforms Int. Cl. 35 online retail store services providing audio-visual computer games by downloading the games via a global computer network and in a tangible medium, namely, cd-roms Int. Cl. 41 entertainment services, namely, providing online audio-visual computer games; and providing information on-line relating to computer games	Renewed (Registered) App 10-OCT-2006 Reg 18-AUG-2009 App 77977473 Reg 3670923 First Used: APR-2003 (IC 09) In Commerce: APR-2003 First Used: APR-2003 (IC 35) In Commerce: APR-2003 First Used: APR-2003 (IC 41) In Commerce: APR-2003	
JUMBO WILD	Int. Cl. 9 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 devices, namely, gaming machines, [slot machines,] bingo machines, with or without video output	Registered App 01-JUN-2010 Reg 01-JAN-2013 App 85051318 Reg 4268644 First Used: 10-OCT-2011 (IC	VIDEO GAMING TECHNOLOGIES, INC. TENNESSEE CORPORATION 308 MALLORY

Mark	Goods and Services	Status	Owner
		09) In Commerce: 10-OCT-2011	STATION ROAD FRANKLIN, TENNESSEE, 37067
JUMBO WILD	Int. Cl. 28 gaming machines, with or without video output, which accept a wager; reconfigurable casino and lottery gaming equipment, namely, gaming machines and operational computer game software therefor sold as a unit; a feature of gaming machines, namely, devices which accept a wager; component feature of electronic gaming machines, namely, an embedded software feature sold as an integral part of devices which accept a wager	Registered App 02-OCT-2018 Reg 13-AUG-2019 App 88140079 Reg 5831909 First Used: 10-OCT-2011 (IC 28) In Commerce: 10-OCT-2011	
BIG PRIZE BUBBLEGUM JUMBO	Int. Cl. 9 computer game software for gaming machines and gaming devices, namely, slot machines and machines which accept a wager	Published (Pending) App 23-AUG-2018 Reg 07-JAN-2020 App 88089812 Reg 5956732 First Used: 26-MAR-2019 (IC 09) In Commerce: 26-MAR-2019	INCREDIBLE TECHNOLOGIES, INC. ILLINOIS CORPORATION 200 CORPORATE WOODS PARKWAY VERNON HILLS, ILLINOIS, 60061
JUMBO	Int. Cl. 38 telecommunication services, namely, telecommunication access services, digital network telecommunications services, transmission of webcasts and podcasts, providing electronic message alerts via the internet, personal communication services and, providing multiple-user access to a global computer network, transmission of voice, data, graphics, images, audio and video by means of telecommunications networks, wireless communication networks, and the internet; communication services, namely, electronic transmission of voices, transmission of voice, audio, visual images and data by telecommunications networks, wireless communication networks, the internet, information services networks and data networks; electronic transmission of data and documents among users of computers; electronic transmission of images, photographs, graphic images and illustrations over a global computer network; transmission of data, audio, video and multimedia files by telecommunications networks, wireless communication networks, the internet, information services networks and data networks; television programme broadcasting; simulcasting broadcast television over global communication networks, the internet and wireless networks; provision of telecommunication access to video and audio content provided via an online video-on-demand service; satellite communication services; telecommunications gateway services	Registered Section 44(D) App 09-JUN-2017 Reg 10-JUL-2018 App 87483232 Reg 5511168	JUMBO PARTNERS LIMITED UNITED KINGDOM PRIVATE LIMITED COMPANY 207 REGENT STREET 3RD FLOOR LONDON, W1B3HH GB (UNITED KINGDOM)
Jumbovision	Int. Cl. 9 electronic apparatus, namely, electronic display boards, plasma display boards, electronic display screens	Registered Supplemental Register App 28-APR-2015 Reg 05-APR-2016 App 86613085 Reg 4934348 First Used: 29-MAY-2015 (IC	ABOUTHERE, LLC CALIFORNIA LIMITED LIABILITY CO. #186 2280 GRASS VALLEY HWY.

Mark	Goods and Services	Status	Owner
		09) In Commerce: 12-JUL-2015	AUBURN, CALIFORNIA, 95603
JUMBO WHEEL OF WINNING	Int. Cl. 28 electronic gaming machines, namely, devices which accept a wager; gaming devices, namely, gaming machines, slot machines, bingo machines, with or without video output; gaming equipment, namely, slot machines with or without video output; gaming machines; gaming machines featuring a device that accepts wagers; gaming machines for gambling; gaming machines including slot machines or video lottery terminals; gaming machines that generate or display wager outcomes; gaming machines, namely, slot machines and video lottery terminals; gaming machines, namely, devices which accept a wager; gaming machines, namely, electronic slot and bingo machines; machines for playing games of chance; reconfigurable casino and lottery gaming equipment, namely, gaming machines and operational computer game software therefor sold as a unit; slot machines	Registered App 08-AUG-2014 Reg 17-OCT-2017 App 86361647 Reg 5311678 First Used: 01-APR-2016 (IC 28) In Commerce: 01-APR-2016	NP IP HOLDINGS LLC NEVADA LIMITED LIABILITY CO. 1505 SOUTH PAVILION CENTER DRIVE LAS VEGAS, NEVADA, 89135
JUMBO	Int. Cl. 37 construction of offshore drilling platforms, mooring systems, jetties, quays, off-load onshore facilities, on-load onshore facilities, subsea-structures and modules and parts for all the foregoing in the field of the offshore oil, gas and energy industry; repair of offshore drilling platforms, mooring systems, jetties, quays, off-load onshore facilities, on-load onshore facilities, subsea-structures and modules and parts for all the foregoing; offshore drilling installations in the field of the offshore oil, gas and energy industry; installation of offshore drilling platforms, mooring systems, jetties, quays, off-load onshore facilities, on-load onshore facilities, subsea-structures and modules and parts for all the foregoing in the field of the offshore oil, gas and energy industry; consultation and information on aforementioned services; advice and planning advice regarding the building, construction, installation, and repair of equipment and installations for the shipping and offshore industry at on/off shore locations on and below sea level the water, ships, floating shipping and offshore material, pipe lines, steel constructions and other civil technical and shipbuilding constructions, industrial installations and machines, or constructions for use in the energy industry Int. Cl. 39 maritime transport, namely, freight ship transport, heavy lift ship transport, barge transport; ship, barge and heavy lift transport services, including in the field of the offshore oil, gas and energy industry; maritime transport, namely, per ship, heavy lift ship or barge of ships, yachts, submarines, rolling stock, dry docks, cranes, dredging installations, parts of drilling and oil platforms, parts for refineries and the petrochemical industry, parts in the field of dock construction, parts in the field of energy industry; supply chain logistics services, namely, storage, transportation and delivery of goods for others by ship, barge or truck and consultation in the field of maritime transport; shipping of goods, project cargo, general cargo; chartering of ships, lifting cranes and	Registered App 24-APR-2014 Reg 07-JUL-2015 App 86261735 Reg 4767051 First Used: 01-JAN-1969 (IC 37) In Commerce: 01-JAN-1969 First Used: 01-JAN-1969 (IC 39) In Commerce: 01-JAN-1969 First Used: 01-JAN-1969 (IC 42) In Commerce: 01-JAN-1969	JUMBO MARITIME B.V. NETHERLANDS BESLOTEN VENNOOTSCHAP (B.V.) HAVENSTRAAT 23 3115 HC SCHIEDAM NL (NETHERLANDS)

Mark	Goods and Services	Status	Owner
	<p>floating offshore material in the context of maritime transport and storage; consultation and information on the aforementioned services</p> <p>Int. Cl. 42 engineering; engineering design for building, installation, construction and repair of apparatus and installations for the shipping and offshore industry, at onshore and offshore locations on and under the water, ships, floating shipping and offshore material, pipe lines, steel constructions and other civil technical and shipbuilding constructions, industrial installations and machines, constructions for use in the energy industry; scientific and industrial research in the field of oil, gas and energy industries, and technical studies, namely, conducting of feasibility studies in the field of new technologies as they relate to the oil, gas and energy industry; technical designs, namely, engineering design in the field of shipping and offshore industry; technical project studies, namely, conducting of feasibility studies in the field of new technologies as they relate to transport and storage of materials as well as in the field of engineering, design and planning for the building, construction and repair of apparatus and installations at onshore and offshore locations, both on and under water, ships, floating shipping and offshore material, pipe lines, steel constructions and other civil technical and shipbuilding constructions and industrial installations and machines</p>		
	<p>Int. Cl. 37 construction of offshore drilling platforms . . .</p> <p>Int. Cl. 39 maritime transport, namely, freight ship transport, heavy lift ship transport, barge transport; ship, barge and heavy lift transport services . . .</p> <p>Int. Cl. 42 engineering; engineering design for building, installation, construction and repair of apparatus and installations for the shipping and offshore industry, at onshore and offshore locations on and under the water, ships, floating shipping and offshore material, pipe lines, steel constructions and other civil technical and shipbuilding constructions, industrial installations and machines, constructions for use in the energy industry; scientific and industrial research in the field of oil, gas and energy industries, and technical studies, namely, conducting of feasibility studies in the field of new technologies as they relate to the oil, gas and energy industry; technical designs, namely, engineering design in the field of shipping and offshore industry; technical project studies, namely, conducting of feasibility studies in the field of new technologies as they relate to transport and storage of materials as well as in the field of engineering, design and planning for the building, construction and repair of apparatus and installations at onshore and offshore locations, both on and under water, ships, floating shipping and offshore material, pipe lines, steel constructions and other civil technical and shipbuilding constructions and industrial installations and machines</p>	<p>Registered</p> <p>App 24-APR-2014</p> <p>Reg 07-JUL-2015</p> <p>App 86261775</p> <p>Reg 4767052</p> <p>First Used: 01-JAN-1999 (IC 37)</p> <p>In Commerce: 01-JAN-1999</p> <p>First Used: 01-JAN-1999 (IC 39)</p> <p>In Commerce: 01-JAN-1999</p> <p>First Used: 01-JAN-1999 (IC 42)</p> <p>In Commerce: 01-JAN-1999</p>	<p>JUMBO MARITIME B.V.</p> <p>NETHERLANDS</p> <p>BESLOTEN</p> <p>VENNOOTSCHAP (B.V.)</p> <p>HAVENSTRAAT 23</p> <p>3115 HC SCHIEDAM</p> <p>NL (NETHERLANDS)</p>

Mark	Goods and Services	Status	Owner
Jumbo	Int. Cl. 9 light emitting diodes (leds); led housings; photodiodes	Registered Section 66(a) (Madrid Protocol) - Filed Section 66(a) (Madrid Protocol) - Current International Priority Claimed Notice of First Refusal App 08-APR-2014 Reg 31-MAR-2015 App 79148142 Reg 4710090	JENOPTIK POLYMER SYSTEMS GMBH GERMANY LIMITED LIABILITY CO. AM SANDBERG 2 TRIPTIS, 07819 DE (GERMANY)
JUMBOCASH	Int. Cl. 36 declining balance debit plan in the nature of debit account services featuring a computer readable card for use in on-campus and off-campus service centers, stores, restaurants, and dining facilities featuring a system of points that are added to an account upon payment to the account and that can be accumulated and exchanged for merchandise and services	Renewed (Registered) App 17-APR-2008 Reg 23-DEC-2008 App 77450948 Reg 3549494 First Used: 17-APR-2008 (IC 36) In Commerce: 17-APR-2008	TUFTS UNIVERSITY MASSACHUSETTS NON-PROFIT CORPORATION BALLOU HALL MEDFORD, MASSACHUSETTS, 02155
JUMBOSWITCH Disclaims: "SWITCH"	Int. Cl. 9 fiber optic communications switches, namely, multi-services switches to access and relay services for ethernet, voice over internet protocol, digital telecommunication signals, and serial binary data signals	Renewed (Registered) Supplemental Register App 27-SEP-2007 Reg 22-JUL-2008 App 77290355 Reg 3474260 First Used: 05-DEC-2007 (IC 09) In Commerce: 05-DEC-2007	TC COMMUNICATIONS, INC. CALIFORNIA CORPORATION 17881 CARTWRIGHT ROAD IRVINE, CALIFORNIA, 92614
JumboMix	Int. Cl. 9 electrical grinding machines and mixing machines for use in laboratories; photographic, cinematographic, optical, apparatus and instruments, namely, cameras, flat panel display screens; microbiological lab sample blender; apparatus for weighing and measuring, namely, scales, dilutors, apparatus for signaling, inspection, life-saving and teaching, namely, microbiological laboratories sample blenders; apparatus for recording, transmitting and reproducing sound or images, namely, magnetically encoded micro tags of plastic, metal or silicate for use in tracing samples; magnetic recording media, namely, blank magnetic recording disks and recording discs; automatic vending machines and mechanisms for coin-operated apparatus; cash registers; calculating machines and data processing equipment, namely, temperature monitors, colony counters; fire extinguishers Int. Cl. 10 surgical, medical, dental and veterinary apparatus and instruments, namely, extra corporeal membrane oxygenator, blood, urine, bile, motions centrifuges; artificial limbs, eyes and teeth; sutures Int. Cl. 28 . . .	Registered CANCELLED SECTION 71 IN INTL. CL. 9 & 28 ONLY O.G. 3- 11-2014 Section 66(a) (Madrid Protocol) - Filed Section 66(a) (Madrid Protocol) - Current Notice of First Refusal App 23-OCT-2006 Reg 02-SEP-2008 App 79034203 Reg 3496119	INTERLAB SàRL FRANCE SàRL 30, CHEMIN DU BOIS DES ARPENTS F-78860 SAINT NOM LA BRETECHE FR (FRANCE)
JUMBOSPRINT	Int. Cl. 7 mechanically and manually actuated transport and handling machines for lifting or gripping of loads with	Renewed (Registered)	J. SCHMALZ GMBH

Mark	Goods and Services	Status	Owner
	<p>the aid of vacuum, namely, vacuum-tube lifters, lifting hoists, handling balancers and replacement parts therefor, namely, vacuum pumps, flow resistors, pressure and vacuum switches, non-return valves, swivel connectors, vacuum hoses, bellows, vacuum pumps and blowers, vacuum reservoirs, mechanical vacuum seals, filters, mechanically operated valves, sectional beams for pneumatic or vacuum lines, hose connectors and rotary connectors, mounting elements and connectors for plungers for suction pads</p> <p>Int. Cl. 9 parts for mechanically and manually actuated transport and handling machines for lifting or gripping of loads with the aid of vacuum, namely, vacuum circuits, vacuum gauges, manometers, vacuum regulators, solenoid valves</p> <p>Int. Cl. 17 non-metal vacuum seals for mechanically and manually actuated transport and handling machines for lifting or gripping of loads with the aid of vacuum</p>	<p>CANCELLED SECTION 8 IN INT. CL. 6. ONLY O.G. 1-16-2007</p> <p>App 09-SEP-1997 Reg 11-SEP-2001 App 75354222 Reg 2487861</p> <p>First Used: APR-1996 (IC 06) In Commerce: SEP-1996 First Used: APR-1996 (IC 07) In Commerce: SEP-1996 First Used: APR-1996 (IC 09) In Commerce: SEP-1996 First Used: APR-1996 (IC 17) In Commerce: SEP-1996</p>	<p>GERMANY CORPORATION AACHER STRASSE 29 D-72293 GLATTEN DE (GERMANY)</p>
<p>JUMBO</p>	<p>Int. Cl. 9 computer hardware; computer hardware and peripheral devices and software for playback, streaming, transmitting, receiving audio-visual media content via the internet; computer software, namely, downloadable computer software for word processing, computer software for document management, for database integration, for producing financial models, for use in database management; computer software for authorizing access to databases; computer software for creating searchable databases; computer software for use in customer relationship management (crm); computer software to automate data warehousing; software that provides real-time, integrated business management intelligence by combining information from various databases and presenting it in an easy-to-understand user interface; computer software, namely, communications software for connecting computer network users; computer software for use in providing multiple user access to a global computer information network; e-commerce software to allow users to perform electronic business transactions via a global computer network; computer software for controlling self-service terminals, for administration of computer networks, for administration of computer local area networks, for use in computer access control, for controlling and managing access server applications, for controlling and managing access server applications, for monitoring and controlling communication between computers and automated machine systems, to maintain and operate computer system, for providing access to the internet; computer software for processing digital images, for processing digital music files, for organizing and viewing digital images and photographs, for creating and editing music and sounds, for creating digital animation and special effects of images, for manipulating digital audio information for use in audio media applications, to enhance the audio-visual capabilities of multimedia applications, namely, for the</p>	<p>Pending Section 44(D) Intent to Use App 12-DEC-2019 App 88724220</p>	<p>UHL TRADING LLC NEW YORK LIMITED LIABILITY CO. 246 WEST BROADWAY NEW YORK, NEW YORK, 10013</p>

Mark	Goods and Services	Status	Owner
	<p>integration of text, audio, graphics, still images and moving pictures; computer games; computer games downloadable from a global computer network; computer games for use on mobile and cellular phones; computer software, namely, computer software for encryption, computer software for running development programs and application programs in a common development environment, computer operating software, computer graphics software, computer anti-virus software, computer software for the creation of firewalls, computer software and firmware for operating system programs, computer aided design (cad) software for general use, computer aided manufacturing (cam) software for general use; computer peripherals, namely, computer mice and mouse pads, computer stands, computer speakers, computer cables, computer card adapters, computer cases, and computer keyboards, joysticks and keypads; interface cards for data processing equipment in the form of printed circuits; computer networking hardware and data communications equipment, namely, electronic communications systems comprised of computer hardware for the transmission of data between two points, computer network adapters, switches, routers, and hubs; computer memory devices, namely, flash memory cards, flash memory expansion modules, memory boards, random access memory cards and secure digital (sd) memory cards; electronic control apparatus, namely, electronic controllers for computer hardware and peripherals excluding gaming apparatus, electric control panels, and computer terminals; electronic circuits and printed electronic circuits; electric wires for communication equipment; graphite and fuel cell electrodes; telephones; radio, television and satellite aerials; batteries, namely, electric storage batteries, galvanic batteries, general purpose batteries, solar batteries, and batteries for cell phones, watches and cameras; microprocessors; computer keyboards; motion picture films about video recordings featuring music and artistic performances, education, entertainment, fashion, sports and culture</p> <p>Int. Cl. 25 clothing, namely, shirts, pants, coats, suits, dresses; casual, children's, evening, exercise, rain, sports and beach footwear; athletic footwear; beach footwear; casual footwear; climbing footwear; exercise footwear; infant footwear; headwear, namely, hats, headbands and caps; swimwear; sportswear; leisurewear, namely, leisure suits and shoes</p> <p>Int. Cl. 41 production of radio and television programmes; film production; educational research services; education and training services, namely, providing classes, seminars, workshops in the fields of art, music and artistic performances, fashion, sports, culture, general human interest, film production, languages, science and technology, law; law enforcement training services; language training services; entertainment services, namely, organizing, arranging, and hosting dancing, beer tasting and cosplay entertainment events, art shows and</p>		

Mark	Goods and Services	Status	Owner
	exhibitions, musical concerts and fashion shows; presenting live musical performances; film distribution; providing television programmes, not downloadable, via video-on-demand transmission services; arranging and conducting seminars in the field of art, music and artistic performances, fashion, sports, culture, general human interest, film production, languages, science and technology, law; arranging and conducting educational congresses in the field of art, music and artistic performances, fashion, sports, culture, general human interest, film production, languages, science and technology, law; publication of electronic books and journals on-line		
Local Jumbo	Int. Cl. 36 financial information services provided on-line from a computer database or a global computer network, namely, providing information in the field of financial classification of companies and securities; financial information and advisory services; financial services, namely, providing information in the fields of foreign currency, commodities, financial derivatives, interest rate products, and equities via the internet and intranet systems; financial affairs and monetary affairs, namely, financial information, management and analysis services; financial research and information services; franchising services, namely, providing financial information and advice regarding the establishment and/or operation of mortgage; insurance and financial information and consultancy services; providing financial information services to mortgage	Pending Intent to Use App 26-NOV-2019 App 88707772	BATAYNEH, SAM UNITED STATES INDIVIDUAL 2134 BENEDICT CANYON DRIVE BEVERLY HILLS, CALIFORNIA, 90210

See Ex. 4 (attaching the TSDR records or registration certificates for each mark).

The peaceful coexistence of the above-referenced third party marks demonstrates that the Cited Marks, much like the other marks identified above, are entitled to only a narrow scope of protection. See *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 1373-74 (Fed. Cir. 2005); TMEP § 1207.01(d)(iii). “Simply put, ‘a mark which is hemmed in on all sides by similar marks on similar goods . . . is merely one of a crowd of marks . . . [and] customers will not likely be confused between any two of the crowd and may have learned to carefully pick out one from the other.’” *Miss World (UK) Ltd. v. Mrs. Am. Pageants, Inc.*, 856 F.2d 1445, 1449 (9th Cir. 1988) (citing MCCARTHY § 11:85). Therefore, the narrow scope of rights enjoyed by any one party over a term nearly identical or similar to JUMBO could not reasonably be deemed to conflict with Applicant’s Mark.

Given the coexistence of numerous marks nearly identical or similar to JUMBO for related products/services, it is apparent that consumers are accustomed to differentiating between multiple unrelated third party JUMBO marks.

5. The Marks Themselves are Sufficiently Dissimilar

Applicant’s Mark is unlikely to be confused with the Cited Marks, because, when viewed in the context of their actual marketplace usage and the differences in the underlying products, the

marks are visually distinguishable, have different connotations, and create distinct commercial impressions. 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). “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 Nat’l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985) (emphasis added).

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 (T.T.A.B. 1987) (holding CROSS-OVER for bras and CROSSOVER for ladies’ sportswear not likely to cause confusion because of the overall commercial impression); *In re Sydel Lingerie Co.*, 197 USPQ 629, 630 (TTAB 1977) (holding BOTTOMS UP for ladies’ and children’s underwear and BOTTOMS UP for men’s clothing not likely to cause confusion, noting that the wording connotes the drinking phrase “Drink Up” when applied to men’s clothing, but does not have this connotation when applied to ladies’ and children’s underwear).

Here, Applicant’s Mark is an arbitrary term when applied to Applicant’s app and related services, and the Mark often appears in the following stylized format:



By contrast, Cited Mark 1 is suggestive of the size of the elevator buckets offered under the mark; the use of JUMBO suggests that the buckets are large enough for heavy-duty agricultural or industrial use. Additionally, Cited Mark 1 appears in the following stylized format:



The addition of an image of an elephant to Cited Mark 1 distinguishes the mark from Applicant’s Mark in appearance and overall commercial impression and further indicates that Cited Mark 1 is suggestive of the large size of the underlying products because elephants are large in size. The addition of the words CC-S ELEVATOR BUCKETS further distinguishes Cited Mark 1 from Applicant’s Mark in appearance, sound, connotation, and overall commercial impression.

Cited Mark 2 does not appear to be in use. However, identical marks must be considered in the context in the underlying offerings, and here, the differences in the underlying offerings, channels of trade, and target consumer bases mitigate any risk of confusion. *See In re Sears*, 2 USPQ2d at 1314.

These differences between the marks, coupled with the differences in the underlying products, the disparate channels of trade, customer sophistication, and crowded field of JUMBO-formative marks, mitigate any risk of confusion.

6. There Is No Evidence of Actual Confusion

Applicant first used the Mark in April 2019 for the goods listed in the application. Since at least April 2019, Applicant's Mark has been peacefully coexisting with the Cited Marks, and Applicant is unaware of any instance of actual confusion with the Cited Marks, or any other third party mark.

III. CONCLUSION

Applicant has responded to all of the issues raised by the Examiner. Applicant respectfully submits that in view of all of the factors discussed above, namely, the differences in the underlying uses, channels of trade, target consumer bases and the marks themselves, consumer sophistication, coexistence of numerous JUMBO-formative marks and lack of actual confusion, Applicant's Mark is not confusingly similar to the Cited Marks.

Accordingly, Applicant submits that the instant application is now in condition for a prompt publication and such favorable action is therefore requested.