

Likelihood of Confusion

The Examining Attorney has cited Registration No. 4806474 for the mark APERTURE1 against Applicant's BRAND APERTURE mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d) on the grounds that there may be a likelihood of confusion between the respective marks. Applicant respectfully disagrees with the Examining Attorney's initial finding, and requests that the citation be withdrawn based on the arguments presented below.

The Examining Attorney must determine whether the goods and services for which the marks are used are of such a nature that they would likely be encountered by the same persons who could mistakenly believe that they originate from the same source. In rendering this assessment, the Examining Attorney should consider a number of factors, including, who the services are marketed to, and who the respective intended customers are. Trademark Manual of Examining Procedure Section 1207.01(a)(1). *See, e.g., Local Trademarks, Inc. v. Handy Boys, Inc.*, 16 USPQ2d 1156 (TTAB 1990)(LITTLE PLUMBER for liquid drain opener held not confusingly similar to LITTLE PLUMBER for advertising services); Quartz Radiation Corp. v. Comm/Scope Co., 1 USPQ2d 1668 (TTAB 1986) (QR for coaxial cables held not confusingly similar to the same work for lamps, tubes, and other products related to the photocopying field.)

As identified in its description, Applicant's amended services are as follows:

“Brand research and analytics, namely, brand evaluation services, brand concept and brand development services for corporate and individual clients”

Conversely, the relevant Registrant's services cover:


“Marketing services, namely, advisory and consultancy services in the area of customer strategy and measurable engagement”

It is clear that Registrant’s services directed to marketing and consultancy are distinguishable from Applicant’s “brand evaluation, brand concept and brand development” services to end users. Applicant’s services assist companies in their “branding” techniques while Registrant’s services assist companies with marketing their goods and/or services. In addition, Applicant’s mark BRAND APERTURE is telltale of its services in that it assists a company or individual with successful branding of their goods and/or services. It is even less likely that relevant consumers of Registrant’s services would confuse their marketing and consumer engagement with the branding services of Applicant. The marks are also visually distinguishable, i.e., BRAND APERTURE and APERTURE1. The only commonality between the two is the term APERTURE.

The Examining Attorney must determine whether the goods or services for which the marks are used are of such a nature that they would likely be encountered by the same persons who could mistakenly believe that they originate from the same source. In rendering this assessment, the Examining Attorney should consider a number of factors, including, who the goods are marketed to, and who the respective intended customers are. *See, e.g., Local Trademarks, Inc. v. Handy Boys, Inc.*, 16 USPQ2d 1156 (TTAB 1990)(LITTLE PLUMBER for liquid drain opener held not confusingly similar to LITTLE PLUMBER for advertising services); *Quartz Radiation Corp. v. Comm/Scope Co.*, 1 USPQ2d 1668 (TTAB 1986)(QR for coaxial cables held not confusingly similar to the same work for lamps, tubes, and other products related to the photocopying field.)

Applicant maintains that the services of the respective parties are marketed, sold and presented in entirely different channels of trade, i.e., marketing vs. branding. Both sets of services are of a distinctive nature, and thus, distinguishable to consumers. Applicant would be reaching potential “start-up” customers having an interest mainly in “branding” themselves or their company, not marketing. Applicant and Registrant will promote their services to different end users so as to preclude any potential for confusion. The potential customers for each distinct set of services are sophisticated and possess sufficient knowledge so as to minimize any potential for confusion.

Applicant also notes that there are other APERTURE marks on the Principal Register that coexist with the cited registration APERTURE1, as follows:

MARK REG. NO.	SERVICES
APERTURE 2731926	Class 35: Business consulting services in the field of facility, space, personnel and technology management and in the field of computer software programming and implementation to assist facility and technology personnel management
 global aperture 3843582	Class 35: Providing information services in the field of business strategic planning, namely, business initiative structuring, business management consulting, business meeting management training, and business venture management, excluding services in the field of facility, space, personnel and technology management, and excluding services in the field of computer software programming and implementation to assist facility and technology personnel management
EMOTIONAL APERTURE MEASURE 4982375	Class 35: Business management consulting in the field of team development; Business organization and management consulting; Consulting services in business organization and management; Consulting services in the field of human resources development, namely, for the promotion of employee retention, career growth, and increased productivity for employees and employers

It is not uncommon for the Trademark Office to allow similar marks in the same International Class for related goods to coexist on the Principal Register. This appears to be the case with the cited registration. It is requested that the same consideration be afforded to the Applicant.

Conclusion

In view of the arguments presented here, Applicant requests that the subject application be approved and moved on to publication.



Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Fri Jan 17 03:48:06 EST 2020

[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [SEARCH OG](#) [BOTTOM](#) [HELP](#)

Please logout when you are done to release system resources allocated for you.

Record 1 out of 1

[TSDR](#) [ASSIGN Status](#) [TTAB Status](#) (Use the "Back" button of the Internet Browser to return to TESS)

APERTURE

Word Mark APERTURE

Goods and Services IC 035. US 100 101 102. G & S: BUSINESS CONSULTING SERVICES IN THE FIELD OF FACILITY, SPACE, PERSONNEL AND TECHNOLOGY MANAGEMENT AND in the field of COMPUTER SOFTWARE PROGRAMMING AND IMPLEMENTATION TO ASSIST FACILITY AND TECHNOLOGY PERSONNEL MANAGEMENT. FIRST USE: 19890800. FIRST USE IN COMMERCE: 19890800

Mark Drawing Code (1) TYPED DRAWING

Serial Number 76448258

Filing Date September 10, 2002

Current Basis 1A

Original Filing Basis 1A

Published for Opposition April 8, 2003

Registration Number 2731926

Registration Date July 1, 2003

Owner (REGISTRANT) Aperture Technologies, Inc. CORPORATION DELAWARE 9 Riverbend Drive South Stamford CONNECTICUT 06907

(LAST LISTED OWNER) VERTIV IT SYSTEMS, INC. CORPORATION DELAWARE 4991 CORPORATE DRIVE HUNTSVILLE ALABAMA 35805

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Michael P. Brennan and Lisa M. DuRoss

Prior 2432645

Registrations

Type of Mark SERVICE MARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20140111.

Renewal 1ST RENEWAL 20140111

**Live/Dead
Indicator** LIVE

[TESS HOME](#)

[NEW USER](#)

[STRUCTURED](#)

[FREE FORM](#)

[BROWSE DICT](#)

[SEARCH OG](#)

[TOP](#)

[HELP](#)

[| HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)



Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Fri Jan 17 03:48:06 EST 2020

[TESS HOME](#) | [NEW USER](#) | [STRUCTURED](#) | [FREE FORM](#) | [BROWSE DICT](#) | [SEARCH OG](#) | [BOTTOM](#) | [HELP](#)

Please logout when you are done to release system resources allocated for you.

Record 1 out of 1

[TSDR](#) | [ASSIGN Status](#) | [TTAB Status](#) (Use the "Back" button of the Internet Browser to return to TESS)



Word Mark	GLOBAL APERTURE
Goods and Services	IC 035. US 100 101 102. G & S: Providing information services in the field of business strategic planning, namely, business initiative structuring, business management consulting, business meeting management training, and business venture management, excluding services in the field of facility, space, personnel and technology management, and excluding services in the field of computer software programming and implementation to assist facility and technology personnel management. FIRST USE: 20081205. FIRST USE IN COMMERCE: 20081205
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	26.05.09 - Triangles made of geometric figures, objects, humans, plants or animals 26.05.15 - Four or more triangles; Triangles - four or more 26.05.21 - Triangles that are completely or partially shaded 26.05.25 - Triangles with one or more curved sides
Trademark Search Facility Classification Code	SHAPES-COLORS-3-OR-MORE Design listing or lined for three or more colors SHAPES-TRIANGLES Triangular shaped designs and marks including incomplete triangles
Serial Number	77641445
Filing Date	December 30, 2008
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	June 22, 2010
Registration Number	3843582
Registration Date	September 7, 2010
Owner	(REGISTRANT) Global Aperture, Inc. CORPORATION CALIFORNIA #8-437 800 S. Pacific Coast Highway Redondo Beach CALIFORNIA 902774778
Attorney of Record	Marc E. Hankin

Description of Mark The color(s) black, blue, gold and gray is/are claimed as a feature of the mark. The mark consists of a black triangle with curved sides centered between a gold triangle with curved sides, a blue triangle with curved sides and a gray triangle with curved sides, all above the stylized black wording "GLOBAL APERTURE".

Type of Mark SERVICE MARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR).

Live/Dead Indicator LIVE

[TESS HOME](#)

[NEW USER](#)

[STRUCTURED](#)

[FREE FORM](#)

[BROWSE DICT](#)

[SEARCH OG](#)

[TOP](#)

[HELP](#)

[|.HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)



Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Fri Jan 17 03:48:06 EST 2020

[TESS HOME](#) | [NEW USER](#) | [STRUCTURED](#) | [FREE FORM](#) | [BROWSE DICT](#) | [SEARCH OG](#) | [BOTTOM](#) | [HELP](#)

Please logout when you are done to release system resources allocated for you.

Record 1 out of 1

[TSDR](#) | [ASSIGN Status](#) | [TTAB Status](#) (Use the "Back" button of the Internet Browser to return to TESS)

Emotional Aperture Measure

Word Mark EMOTIONAL APERTURE MEASURE

Goods and Services IC 035. US 100 101 102. G & S: Business management consulting in the field of team development; Business organization and management consulting; Consulting services in business organization and management; Consulting services in the field of human resources development, namely, for the promotion of employee retention, career growth, and increased productivity for employees and employers. FIRST USE: 20100600. FIRST USE IN COMMERCE: 20100600

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 86768880

Filing Date September 25, 2015

Current Basis 1A

Original Filing Basis 1A

Published for Opposition April 5, 2016

Registration Number 4982375

Registration Date June 21, 2016

Owner (REGISTRANT) Sanchez- Burks, Jeffrey INDIVIDUAL UNITED STATES 1410 West Washington Street Ann Arbor MICHIGAN 48103

Attorney of Record JungJin Lee

Type of SERVICE MARK

Mark
Register PRINCIPAL-2(F)
Live/Dead
Indicator LIVE

[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [SEARCH OG](#) [TOP](#) [HELP](#)

[|.HOME](#) | [SITE INDEX](#)| [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)