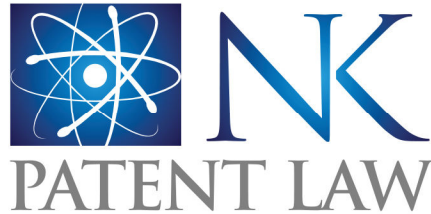


Ani Agrawal
Allyn Elliott
Greg Evans*
Laura Kiefer, PhD
Brian MacDonald, PhD*
Pat Mathavan



Doug Meier
Justin Nifong
Joe Shin
Ted Thomas
*Patent Agent

March 9, 2020

Daniel Stringer
Examining Attorney
Law Office 103
United States Patent and Trademark Office

RE: Serial No. 88200507
Atty Docket No.: 983/2 TM
Mark: **TRIG**
Applicant: STUDIO HAGLER, LLC
Office Action Dated: September 09, 2019

APPLICANT'S RESPONSE TO OFFICE ACTION

Applicant submits this response to the nonfinal office action dated September 09, 2019, with respect to the pending application to register the mark TRIG for use in classes 35 and 42.

I. AMENDMENTS TO DESCRIPTION OF GOODS AND SERVICES

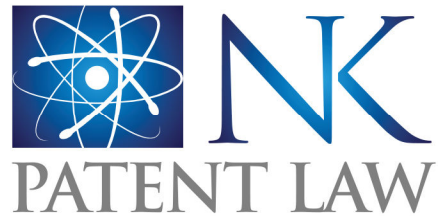
Applicant has amended the description of goods and services as follows:

Class 35 (Canceled)

Class 42: ~~Drafting; Graphic design services; Industrial design; Innovation consulting services; namely, advising others in the areas of product development; Packaging design; Product development and engineering services for others~~

Applicant respectfully submits that the description of goods and services, as amended herein, obviates the likelihood of confusion refusal by significantly distinguishing Applicant's services

Ani Agrawal
Allyn Elliott
Greg Evans*
Laura Kiefer, PhD
Brian MacDonald, PhD*
Pat Mathavan



Doug Meier
Justin Nifong
Joe Shin
Ted Thomas
*Patent Agent

from those of the allegedly conflicting mark. However, to provide additional support, Applicant offers the following remarks below.

II. RESPONSE TO SECTION 2(D) REFUSAL – LIKELIHOOD OF CONFUSION

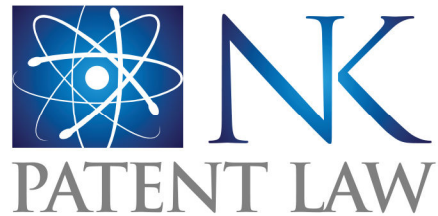
The USPTO asserts that registration of the applied-for mark TRIG is refused because of a likelihood of confusion with the mark in U.S. Reg. No. 4549703 for TRIG YOUR DATA. Applicant respectfully disagrees and offers the following remarks.

In testing for likelihood of confusion under Section 2(d), the *Du Pont* factors are considered, including factors such as the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation, and commercial impression; the similarity or dissimilarity and nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use; the purchasers of the goods (i.e., “impulse” vs. careful, sophisticated purchasing); and the number and nature of similar marks in use on similar goods. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). The most significant of these factors are considered below.

The Trademarks Are Different

Here, Applicant’s mark consists entirely of the phrase TRIG while Registrant’s mark uses the phrase TRIG along with the words “YOUR DATA”. The connotation in Registrant’s mark is that TRIG is a verb acting upon YOUR DATA. No such connotations exist with Applicant’s proposed mark. Such differences in connotation and meaning are key factors in determining the likelihood of confusion. Differing connotations themselves can be determinative, even where identical words with identical meanings are used. *Revlon, Inc. v. Jerrell, Inc.*, 713 F. Supp. 93, 11 U.S.P.Q. 2d 1612, 1616 (S.D.N.Y. 1989) (No likelihood of confusion because the meaning

Ani Agrawal
Allyn Elliott
Greg Evans*
Laura Kiefer, PhD
Brian MacDonald, PhD*
Pat Mathavan



Doug Meier
Justin Nifong
Joe Shin
Ted Thomas
*Patent Agent

and connotation of the marks THE NINES and INTO THE NINETIES are not related. THE NINES suggests the number nine, or nine of something in a group. INTO THE NINETIES is a reference to the decade of the 1990's, and more generally the future; Plaintiff's motion for preliminary injunction is denied.); citing *Clarks of England, Inc. v. Glen Shoe Company*, 465 F. Supp. 375, 379, 209 USPQ 852, 854-55, (S.D.N.Y. 1960) (TREK and STAR TREK for shoes; TREK connotes hiking across the Himalayas; STAR TREK connotes space travel.)

Further Comparison of The Marks

The points of comparison for a mark are appearance, sound, meaning, and commercial impression. See *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 1371, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005) (citing *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973)). A comparison highlighting each of these factors is illustrated below:

1. Appearance:

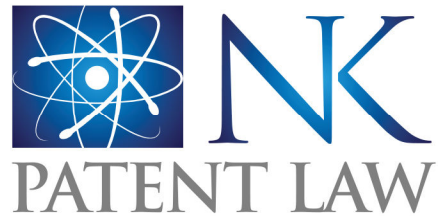
TRIG YOUR DATA vs TRIG

Registrant's mark consists of three, four letter words. Applicant's mark shares only one of these words. Therefore, Applicant's mark is 67% different in appearance from Registrant's mark.

2. Sound:

TRIG YOUR DATA vs **TRIG**
(trIg) (yOR) (dAY-tuh) (trIg)

Ani Agrawal
Allyn Elliott
Greg Evans*
Laura Kiefer, PhD
Brian MacDonald, PhD*
Pat Mathavan



Doug Meier
Justin Nifong
Joe Shin
Ted Thomas
*Patent Agent

From the phonetic spellings above, it can be plainly seen that the pronunciation of Applicant's mark is very different from Registrant's mark.

3. Meaning:

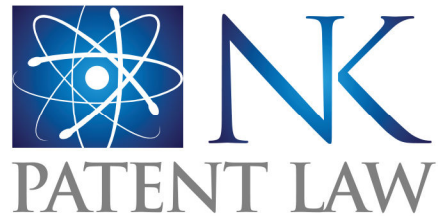
The connotation in Registrant's mark is that TRIG is a verb acting upon the noun DATA, where DATA is the subject of the sentence. No such connotations exists with Applicant's proposed mark, because in Applicant's mark TRIG stands alone. Therefore, Applicant's TRIG operates as a noun, and because it is the totality of the mark, it is the subject as well.

4. Commercial impression:

Looking at the phrases above, it is clear there is a distinctly different commercial impression left by the two marks. Applicant's mark is missing two words, or 67% of Registrant's mark.

Additions or deletions to marks may be sufficient to avoid a likelihood of confusion if the marks in their entireties convey significantly different commercial impressions. See, e.g., *Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 1245, 73 USPQ2d 1350, 1356-57 (Fed. Cir. 2004) (reversing TTAB's holding that contemporaneous use of THE RITZ KIDS for clothing items (including gloves) and RITZ for various kitchen textiles (including barbeque mitts) is likely to cause confusion, because, *inter alia*, THE RITZ KIDS creates a different commercial impression).

Ani Agrawal
Allyn Elliott
Greg Evans*
Laura Kiefer, PhD
Brian MacDonald, PhD*
Pat Mathavan



Doug Meier
Justin Nifong
Joe Shin
Ted Thomas
*Patent Agent

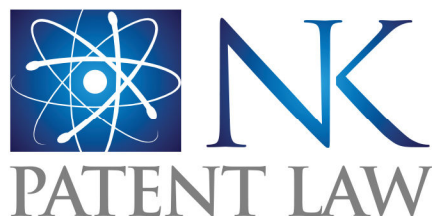
Applicant's mark is being refused because both marks share the term TRIG, even though the overall commercial impressions and connotations are different. However, under the overall impression analysis, there is no rule that confusion is automatic merely because Applicant has a mark that contains in part or in whole another mark. Rather, it is the impression created by the marks as a whole that is important. See, for example, J.T. McCarthy, *McCarthy on Trademarks and Unfair Competition*, §23:41 (4th ed. 2002); *Opryland USA Inc. v. The Great American Music Show, Inc.*, 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992); and *Kangol Ltd. v. KangaROOS U.S.A., Inc.*, 974 F.2d 161, 23 USPQ2d 1945 (Fed. Cir. 1992).

Comparison of Goods & Services

Applicant's mark and Registrant's mark are not identical or nearly identical (as illustrated above). When the marks are not identical, the degree of similarity between the goods and services that is required to support a finding of likelihood of confusion increases. *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1688-89 (Fed. Cir. 1993); *Time Warner Entertainment Co. v. Jones*, 65 USPQ2d 1650 (TTAB 2002); and *In re Opus One Inc.*, 60 USPQ2d 1812 (TTAB 2001).

Applicant's services, as presently amended are, "Engineering services for others". Registrant's services are "Advertising". These services do not overlap. In fact, the services being offered are so **dissimilar**, the USPTO previously *agreed* that there is **no** likelihood of confusion between Applicant and Registrant's marks. Attached to the evidence section is Applicant's original registration (Reg. No. 4066520), which was filed on April 8, 2011, registered on December 6, 2011, and was active until July 13, 2018. Applicant's original registration for TRIG in class 42 (*Drafting; Graphic design services; Industrial design; Innovation consulting services, namely, advising others in the areas of product development;*

Ani Agrawal
 Allyn Elliott
 Greg Evans*
 Laura Kiefer, PhD
 Brian MacDonald, PhD*
 Pat Mathavan



Doug Meier
 Justin Nifong
 Joe Shin
 Ted Thomas
 *Patent Agent

Packaging design; Product development and engineering services for others), was alive and well when Registrant filed for their mark on March 29, 2013, and when it registered on June 17, 2014.

If there is in fact likelihood of confusion, as the USPTO is presently suggesting, then Registrant’s mark should have never registered in view of the original 2011 TRIG mark. The fact that it **did** register, supports Applicant’s contention that there is no likelihood of confusion. The dissimilarity of the marks, combined with the dissimilarity of the goods and services, precludes a finding of likelihood of confusion.

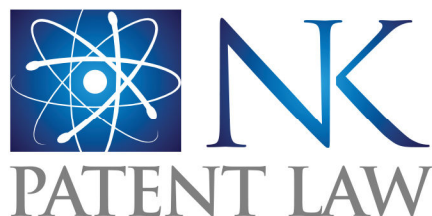
Attached to the evidence section is Applicant’s business listing from the secretary of state’s records. This document shows that Ty Hagler, who filed the original TRIG mark in 2011, is in fact the principal of the company which owns the present application. By way of the present application, Applicant is simply attempting to create a registration having proper ownership.

The Number and Nature of Similar Marks in Use on Similar Goods






The number and nature of similar marks in use on similar goods is a relevant *Dupont* factor. Applicant notes at least a dozen marks that use the term “TRIG” or a phonetic equivalent thereof, in class 42 alone.

Trademark	Logotype	Classes	Database	Owner	Goods & Services Unfold	Status	Dates	Serial
TRIG	TRIG	35, 42	US (USPTO)	STUDIO HAGLER, LLC	35 - Marketing and Brand selection...	Filed	AD: Nov 20, 2018	88200507
DUTCH TRIG	DUTCH TRIG	5, 42	US (USPTO)	BTL BOMENDIENST BV	5 - preparations for the prevention or...	Registered	AD: Oct 19, 1995 RD: Apr 8, 1997	AN: 75007861 RN: 2050413
TRIG YOUR DATA	TRIG YOUR DATA	9, 35, 42, 45	US (USPTO)	FacilityLive OpCo S.r.l.	9 - Mechanisms for coin-operated...	Registered	AD: Mar 29, 2013 RD: Jun 17, 2014	AN: 79131159 RN: 4549703
TRIG LIFE SERVICES	TRIG LIFE SERVICES	35, 36, 41, 42, 44	US (USPTO)	Hanlon, Robert F.	35 - Providing assistance, fitness...	Registered	AD: Jul 28, 2011 RD: Oct 8, 2013	AN: 85383736 RN: 4415288
TRIGO	TRIGO	35, 37, 40, 41, 42	US (USPTO)	TRIGO	35 - Consultancy relating to business...	Filed	AD: Aug 30, 2018	79252521
TRIGGY	Triggy	9, 41, 42	US (USPTO)	Triggy AB	9 - Computer programs in the field of...	Registered	AD: Apr 9, 2018 RD: Oct 1, 2019	AN: 79233568 RN: 5870387

Ani Agrawal
 Allyn Elliott
 Greg Evans*
 Laura Kiefer, PhD
 Brian MacDonald, PhD*
 Pat Mathavan

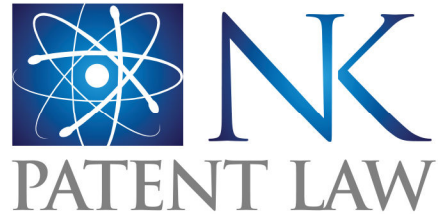


Doug Meier
 Justin Nifong
 Joe Shin
 Ted Thomas
 *Patent Agent

Trademark	Logotype	Classes	Database	Owner	Goods & Services Unfold	Status	Dates	Serial
TRG CLASSIFY	TRG CLASSIFY	42	US (USPTO)	Kernow Capital Corporation	42 - Providing web based services...	Registered	AD: Feb 28, 2013 RD: Dec 3, 2013	AN: 85863247 RN: 4442783
TRG VENDOR MANAGEMENT		42	US states	NATIONAL COORDINATION ALLIANCE LLC		Registered	AD: Sep 2, 2008	KS17817
TRG THE RECON GROUP INC		42	US (USPTO)	THE RECON GROUP, INC.	42 - Providing data encryption services...	Registered	AD: Oct 27, 2014 RD: Nov 22, 2016	AN: 86435812 RN: 5084583
TRG THE ROBERTSON GROUP		42	US (USPTO)	The Robertson Group	42 - Consulting in the field of...	Registered	AD: May 19, 2017 RD: Jun 12, 2018	AN: 87456759 RN: 5489740
TRG TOTAL RESEARCH GROUP LLC		42	US (USPTO)	Total Research Group, LLC	42 - Medical and scientific research...	Filed	AD: Jul 25, 2019	88536756
TRG CLINICAL INFORMATICS ADVISORS		42	US (USPTO)	The Robertson Group	42 - Consulting in the field of...	Registered	AD: Mar 7, 2018 RD: Apr 23, 2019	AN: 87824581 RN: 5731247
THE ROSETTE GROUP OPENING DOORS TO REAL ESTATE TRG		36, 42	US (USPTO)	The RosetteGroup, Inc.	36 - Real estate brokerage 42 - Design...	Registered	AD: Jan 21, 2013 RD: Sep 24, 2013	AN: 85828406 RN: 4406139
GOTRG	goTRG	35, 37, 39, 42	US (USPTO)	The Recon Group	35 - Retail outlets featuring consumer...	Registered	AD: Mar 15, 2018 RD: Dec 25, 2018	AN: 87835010 RN: 5636760

Copies of the various registrations are provided in the evidence section. The law is clear that in instances where there are multiple similar marks, then no mark dominates and that likelihood of confusion may not exist. Third-party registrations may be relevant to show that a mark or a portion of a mark is descriptive, suggestive, or so commonly used that the public will look to other elements to distinguish the source of the goods or services. *See, e.g., In re Hartz Hotel Servs., Inc.*, 102 USPQ2d 1150, 1153-54 (TTAB 2012); *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991); *In re Dayco Products-Eagle motive Inc.*, 9 USPQ2d 1910, 1911-12 (TTAB 1988); *Plus Prods. v. Star-Kist Foods, Inc.*, 220 USPQ 541, 544 (TTAB 1983). Properly used in this limited manner, third-party registrations are similar to dictionaries showing how language is generally used. *See, e.g., Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 917, 189 USPQ 693, 694-95 (C.C.P.A. 1976); *In re J.M. Originals Inc.*, 6 USPQ2d 1393, 1394 (TTAB 1987); *United Foods Inc. v. J.R. Simplot Co.*, 4 USPQ2d 1172, 1174 (TTAB 1987).

Ani Agrawal
Allyn Elliott
Greg Evans*
Laura Kiefer, PhD
Brian MacDonald, PhD*
Pat Mathavan

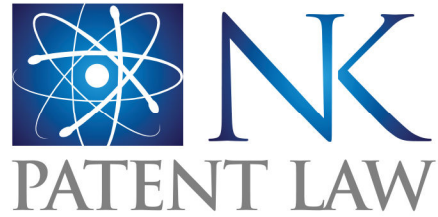


Doug Meier
Justin Nifong
Joe Shin
Ted Thomas
*Patent Agent

Here, the existence of over a dozen similar marks within class 42 is dispositive. Combined with the differences in Applicant's applied for mark, overall commercial impression, and disparate services, Applicant submits that no likelihood of confusion exists.

For these reasons, the USPTO should withdraw its refusal of registration under Section 2(d). The mere *possibility* that relevant consumers might relate the two different marks does not meet the statutorily established test of *likelihood* of confusion. *E.g., In re Hughes Aircraft Company*, 222 U.S.P.Q. 263, 264 (TTAB 1984) ("the Trademark Act does not preclude registration of a mark where there is a possibility of confusion as to source or origin, only where such confusion is *likely*") (emphasis added).

Ani Agrawal
Allyn Elliott
Greg Evans*
Laura Kiefer, PhD
Brian MacDonald, PhD*
Pat Mathavan



Doug Meier
Justin Nifong
Joe Shin
Ted Thomas
*Patent Agent

II. CONCLUSION

Every attempt has been made to place the case in condition for publication and Applicant believes it has addressed all issues raised in the Office Action. Applicant therefore respectfully requests registration of its mark on the Principal Register.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ani Agrawal', with a long horizontal flourish extending to the right.

Ani Agrawal
Attorney of Record, N.C. Bar member
NK Patent Law