

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Facebook, Inc. )  
)  
MARK: LASSO ) Xheneta Ademi  
) Examining Attorney  
SERIAL NO.: 88/187,086 ) Law Office 122  
)  
CLASSES: 9, 35, 38, 41, 42, 45 )  
)  
FILING DATE: November 8, 2018 )

**RESPONSE TO OFFICE ACTION**

Applicant has received and reviewed the second non-final Office Action dated October 23, 2019, from Examining Attorney Xheneta Ademi, Law Office 122, regarding the above-referenced application and has carefully considered its contents. Therein, the Examining Attorney continues and maintains the preliminarily refusal of registration of the mark underlying the above-referenced application (“Applicant’s Mark”) on the grounds that there may be a likelihood of confusion with the marks LASSOIT (U.S. Reg. No. 4495564), LASSO (U.S. Reg. No. 4606030), LASSO (U.S. Reg. No. 5550303) LASSO (U.S. Reg. No. 5550304), LASSO (U.S. Reg. No. 4609038), LASSO (U.S. Reg. No. 4609040), LASSO (U.S. Reg. No. 5152169), LASSOO (U.S. Reg. No. 4281317), LASSO (U.S. Reg. No. 4744608), and LASSO PRODUCTIONS (U.S. Reg. No. 3501357) (collectively the “Cited Marks”). The Examining Attorney also requests further amendments to the description of goods and services in International Classes 35, 41 and 45. Applicant responds to the issues raised by the Examining Attorney as follows.

**I. APPLICANT’S MARK IS NOT CONFUSINGLY SIMILAR TO THE CITED MARKS**

The Examining Attorney has suggested that Applicant’s Mark, LASSO, may be confusingly similar to the Cited Marks, each of which is registered in connection with a particular type of software, a specific kind of promotional service (employment services, consumer surveys, etc.), or certain entertainment services. For the reasons set forth below, Applicant submits that Applicant’s Mark is not confusingly similar to the Cited Marks, and should be passed to publication.

The Court of Customs and Patent Appeals in *In re Du Pont de Nemours & Co.*, 476 F.2d 1357, 1362 (C.C.P.A. 1973), listed thirteen factors to be considered in determining if there is a likelihood of confusion under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d) (2006). According to the Court, the following, when of record, must be considered when testing for likelihood of confusion:

- (1) **The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression;**
- (2) **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;**
- (3) **The similarity or dissimilarity of established, likely-to-continue trade channels;**
- (4) The conditions under which, and buyers to whom, sales are made, *i.e.*, “impulse” vs. careful, sophisticated purchasing;
- (5) The fame of the prior mark (sales, advertising, length of use);
- (6) **The number and nature of similar marks in use on similar goods;**
- (7) The nature and extent of any actual confusion;

- (8) The length of time during and conditions under which there has been concurrent use without evidence of actual confusion;
- (9) The variety of goods on which a mark is or is not used (house mark, “family” mark, product mark);
- (10) The market interface between applicant and the owner of a prior mark;
- (11) The extent to which the applicant has a right to exclude others from use of its mark on its goods;
- (12) The extent of potential confusion, i.e., whether de minimis or substantial; and
- (13) **Any other established fact probative of the effect of use.**

*Du Pont*, 476 F.2d at 1361 (emphasis added as to factors particularly relevant here) (RALLY for polishing and cleaning agent not likely to be confused with RALLY for all-purpose detergent).

In the present case, the following factors weigh against confusion between Applicant’s Mark and the Cited Marks:

- (1) The dissimilarity in the marks as to appearance, connotation and commercial impression;
- (2) Dissimilarity of the marks as to the nature of the goods and services;
- (3) Differences in the established and likely-to continue channels of trade;
- (4) The peaceful co-existence of a large number of LASSO and phonetically equivalent LASO marks on the Principal Register for a variety software, advertising and entertainment-related goods and services; and
- (5) Applicant bears no intent whatsoever to trade off the goodwill of any third-party, including any owner of the Cited Marks.

No likelihood of confusion exists here because likelihood of confusion turns “not [on] the nature of the mark alone, but rather [on] the mark’s effect when applied to the goods of the

applicant.” *Id.*, 476 F.2d at 1360 (RALLY for polishing and cleaning agent not likely to be confused with RALLY for all-purpose detergent). “The words ‘when applied’ do not refer to a mental exercise, but to all of the known circumstances surrounding use of the mark” in the marketplace. *Id.* at 1360-61. The totality of the factors indicate that consumers will be able to distinguish between the origin of the services offered under Applicant’s Mark and the origin of the goods offered under the Cited Mark, especially as the Board has already determined that consumers can differentiate between the Cited Marks and numerous other LASSO variants without confusion as to the sources of goods or services, including software, advertising and entertainment services.

**A. Applicant’s Mark is Distinguishable from Each of the Cited Marks**

**1. LASSOO (Reg. No. 4281317) – Gemalto SA**

The Examining Attorney has continued and maintained her refusal of Applicant’s Mark on the basis of likelihood of confusion with LASSOO (Reg. No. 4281317), owned by Gemalto SA and previously registered in broadly Classes 35 and 38 for online advertising and the transmission of data and information. In addition to the arguments set forth in Applicant’s response to the Office Action dated July 29, 2019, Applicant notes that the registration for LASSOO was cancelled on August 30, 2019 due to the registrant’s failure to file an acceptable declaration under Section 71, and therefore cannot be a barrier to registration of Applicant’s Mark.

**2. LASSOIT (Reg. No. 4495564) and LASSO (Reg. No. 4606030) – Ospoto, Inc.**

Applicant respectfully disagrees with the maintenance of the refusal of Applicant’s Mark on the basis of the LASSOIT and LASSO registrations held by Ospoto, Inc. in Class 9 for “[c]omputer application software for use on computers, laptops, mobile devices, mobile phones,

tablets, personal digital assistants, namely, software for marketing, evaluating, locating, and making and accepting offers for the sale of goods and services; Computer e-commerce software to allow users to perform electronic business transactions via a global computer network". As noted in Applicant's response to the Examiner's initial office action, the goods described by these applications differ from those of Applicant and are not likely to lead to confusion, and LASSOIT creates a wholly distinct overall commercial impression from Applicant's Mark.

As previously noted, Applicant's goods in Class 9 describe software for social networking and posting and modifying content in a social networking context which is distinct from – and not likely to be confused with – Ospoto, Inc.'s software which addresses e-commerce transactions and making and accepting offers for the sale of goods and services. Although Applicant maintains its goods in Class 9 are distinct and distinguishable from those of Ospoto, Inc., Applicant voluntarily agrees to make additional amendments to its Class 9 description in order to further address the concerns of the Examining Attorney, namely (amendments reflected in bold):

INTERNATIONAL CLASS 9: Downloadable computer software for social networking; downloadable computer software for creating, managing, and interacting with an online community; downloadable computer software for creating, editing, uploading, downloading, accessing, viewing, posting, displaying, tagging, blogging, streaming, linking, annotating, indicating sentiment about, commenting on, embedding, transmitting, and sharing or otherwise providing electronic media or information via computer, the internet, and communication networks; downloadable computer software for modifying and enabling transmission of images, audio, audio visual and video content and data; downloadable computer software for modifying photographs, images and audio, video, and audio-visual content with photographic filters and augmented reality (AR) effects, namely, graphics, animations, text, drawings, geotags, metadata tags, hyperlinks; downloadable computer software for the collection, editing, organizing, modifying, transmission, storage and sharing of data and information; downloadable computer software for sending and receiving electronic message alerts, notifications and reminders; downloadable computer software for integrating electronic data with real world environments for the purposes of entertainment, education, communicating, and social networking; downloadable computer

software for wireless content, data and information delivery; downloadable computer software, namely, mobile application for social networking; downloadable computer software for creating, managing and accessing groups within virtual communities; downloadable computer software for viewing and interacting with a feed of images, audio, audio-visual and video content and associated text and data; downloadable computer software for sending and receiving electronic messages, graphics, images, audio and audio visual content via computer the internet and communication networks; downloadable computer software for processing images, graphics, audio, video, and text; downloadable computer software for managing social networking content, interacting with a virtual community, and transmission of images, audio, audio-visual and video content, photographs, videos, data, text, messages, comments, advertisements, media advertising communications and information; **excluding computer software for e-commerce, e-business, the making and acceptance of offers for the sale of goods and services, job search and recruitment services, and downloadable software for incentivizing in-person group gatherings.**

In addition, the objection based on the LASSOIT registration should be withdrawn due to the visual, phonetic, and connotative differences between this mark and Applicant's Mark.

LASSOIT, a compound combination of "LASSO" and "IT", presents a unitary mark, such that its "elements are so integrated or merged together than they cannot be regarded as separable".

TMEP §1231.05. Accordingly, the differences in sight and sound created by the inclusion of "IT" cannot be disregarded. LASSOIT is also connotatively distinct in that it suggests a directive or command to catch a person or thing (i.e. "lasso it!") . In contrast, LASSO, standing alone does not create a similar impression of being ordered or the sense or the urgency accompanying such order. LASSO and LASSOIT therefore create distinct commercial impressions that are not likely to lead to confusion.

### **3. LASSO (Reg. No. 5152169) – Lasso, LLC**

The Examining Attorney has also maintained and continued her objection with regard to the LASSO (Reg. No. 5152169) registration, owned by Lasso, LLC, and registered in Classes 9 and 35 for employment recruitment software and services. As previously discussed in

Applicant's initial response, this objection should be withdrawn because the goods and services in Lasso, LLC's registration are distinct from Applicant's Mark.

Applicant reiterates that the goods and services described by the Lasso, LLC's registration are facially distinct from those of Applicant. While Lasso, LLC's software and services relate to finding employment or employees, Applicant's application describes software for social networking and narrowly tailored promotional and advertising services (namely, providing links to the retail websites of others and an online platform for third-party advertisers to create multimedia advertising material and communicate with consumers via the internet and communications networks"). Notwithstanding, in order to address the objection raised and maintained by the Examining Attorney, Applicant voluntarily agrees to further amend its description of goods in Class 9 and services in Class 35 to explicitly exclude job search and recruitment services from Applicant's software and promotional services. Applicant's further amended Class 9 description is reflected in the preceding section. With regard to Class 35, Applicant agrees to amend its description as follows (changes reflected in bold):

**INTERNATIONAL CLASS 35: Marketing, advertising and promotion services, namely, providing links to the retail websites of others and an online platform for third-party advertisers to create multimedia advertising material and communicate with consumers via the internet and communications networks; promoting the goods and services of others namely, providing links to the retail websites of others and an online platform for third-party advertisers to create multimedia advertising material and communicate with consumers via the internet and communications networks; advertising and information distribution services, namely, providing classified advertising space in the nature of providing links to the retail websites of others and an online platform for third-party advertisers to create multimedia advertising material and communicate with consumers via the internet and communications networks; advertising via electronic media, namely, providing links to the retail websites of others and an online platform for third-party advertisers to create multimedia advertising material and communicate with consumers; promoting the goods and services of others by means of distributing video advertising on the internet and communication networks; **excluding job search and recruitment services and consumer survey services.****

Although Applicant maintains that there is no confusion between its services as-filed and/or previously amended, it further argues that the foregoing changes eliminate any of the alleged overlap between Applicant's Class 9 and Class 35 descriptions and those of Lasso, LLC.

**4. LASSO & Design (Reg. No. 5550303) and LASSO (Reg. No. 5550304) – RoundmUp, LLC**

As previously discussed in Applicant's response to the initial office action, Applicant's Class 9 goods are also unlikely to be confused with those in the LASSO & Design (Reg. No. 5550303) and LASSO (Reg. No. 5550304) registrations, both owned by RoundmUp, LLC, and registered in Class 9 for "[c]omputer application software for mobile phones, namely, software for incentivizing users to bring together friends for group gatherings". These registrations describe software with a wholly distinct function from Applicant's software. While RoundmUp's registration is for software that aims to bring groups of users together for in-person interactions ("...bring together friend for group *gatherings*") (*emphasis added*), Applicant's software is for on-line/virtual social networking services primarily focused on sharing short-form videos (i.e. *virtually* posting videos and/or photographs, modifying and "enabling transmission of" *digital* images and/or videos, "interacting with a *virtual* community", "software for creating, managing and accessing groups within *virtual* communities", "software for viewing and interacting with a *feed* of images, audio, audio-visual and video content and associated text and data", "software for processing images, graphics, audio, video, and text", etc.) (*emphasis added*) that do not involve incentives, such as the deals and discounts for in-person dining at restaurants allegedly offered by RoundmUp LLC. See Exhibit A (a true and correct copy of [https://play.google.com/store/apps/details?id=com.lasso&hl=en\\_US](https://play.google.com/store/apps/details?id=com.lasso&hl=en_US)). This distinction (in-person vs. online) is clear on the face of the descriptions, and consumers are unlikely to confuse



software geared at fostering gatherings in real life vs. software for sharing videos and images with a virtual, online community.

Although Applicant maintains that the description of goods for Applicant's Mark in Class 9 are sufficiently distinct to avoid confusion, Applicant voluntarily agrees to further clarify its identification to explicitly exclude "downloadable software for incentivizing in-person group gatherings" as reflected in Section 2 above.

**5. LASSO (Reg. No. 4609038) and LASSO & Design (Reg. No. 4609040) – VFlyer Inc.**

Similarly, Applicant respectfully disagrees with the maintenance and continuance of the Examining Attorney's objection on the basis of the LASSO (Reg. No. 4609038) and LASSO & Design (Reg. No. 4609040) registrations, owned by VFlyer Inc. Both marks are registered in Class 42 for software for the following service: "[a]pplication service provider (ASP) featuring software for use in data collection and enhancement in the field of real estate, namely, extracting, summarizing, organizing, annotating, supplementing, storing or displaying information for analysis". This service is facially distinct from those described in Applicant's application, particularly in light of Applicant's prior amendment to remove "application service provider (ASP)" from Class 42. Notwithstanding, in order to address the Examining Attorney's objection, Applicant agrees to further amend its Class 42 identification of services as follows (changes reflected in bold):

**INTERNATIONAL CLASS 42: Computer services, namely, creating online virtual communities for registered users to engage in social, business and community networking; providing temporary use of non-downloadable computer software for social networking, creating a virtual community, and for transmission of audio, video, images, text, content and data; providing temporary use of non-downloadable software for electronic messaging; application service provider featuring application programming interface (API) software for electronic messaging and transmission of audio, video, images, text, content and data; providing temporary use of non-downloadable computer software for electronic messaging; computer software design in the field of augmented reality and virtual**

reality effects for use in modifying photographs, images, videos and audio-visual content; providing temporary use of non-downloadable computer software for modifying photographs, images and audio, video, and audio-video content with photographic filters and augmented reality (AR) effects, namely, graphics, animations, text, drawings, geotags, metadata tags, hyperlinks; platform as a service (PAAS) featuring software platforms for social networking, managing social networking content, creating a virtual community, and for transmission of images, audio-visual and video content, photographs, videos, data, text, messages, advertisements, media advertising communications and information; providing online facilities, namely, web interfaces and mobile interfaces in the nature of providing temporary use of non-downloadable software for sending and receiving electronic messages, instant messages, electronic message alerts and reminders, photographs, images, graphics, data, audio, videos and audio-visual content via the internet and communication networks; providing temporary use of non-downloadable computer software for use in facilitating online social networking services; application service provider (ASP) services featuring software for enabling or facilitating online social networking services; providing temporary use of non-downloadable computer software for use in taking and editing photographs and recording and editing videos; application service provider (ASP) featuring software for enabling or facilitating taking and editing photographs and recording and editing videos; providing online facilities, namely, application service provider (ASP) featuring software for use in enabling users to upload, modify, and share audio, video, photographic images, text, graphics and data; **excluding non-downloadable software in the field of real estate.**

**6. LASSO (Reg. No. 4744608) - Creative & Response Research Services, Inc.**

LASSO (Reg. No. 4744608), owned by Creative & Response Research Services, Inc., is registered in Class 35 for “consumer survey services”. Although Applicant maintains that these services are different from the service included in its Class 35 Application on their face (which are narrowly tailored with regard to “providing links to the retail websites of others and an online platform for third-party advertisers to create multimedia advertising material and communicate with consumers”), Applicant agrees to amend its identification to explicitly exclude “consumer survey services” (changes reflected in bold):

INTERNATIONAL CLASS 35: Marketing, advertising and promotion services, namely, providing links to the retail websites of others and an online platform for third-party advertisers to create multimedia advertising material and communicate with consumers via the internet and communications networks; promoting the goods and services of others namely, providing links to the retail websites of others and an online platform for third-party advertisers to create multimedia advertising

material and communicate with consumers via the internet and communications networks; advertising and information distribution services, namely, providing classified advertising space in the nature of providing links to the retail websites of others and an online platform for third-party advertisers to create multimedia advertising material and communicate with consumers via the internet and communications networks; advertising via electronic media, namely, providing links to the retail websites of others and an online platform for third-party advertisers to create multimedia advertising material and communicate with consumers; promoting the goods and services of others by means of distributing video advertising on the internet and communication networks; **excluding job search and recruitment services and consumer survey services.**

**7. LASSO PRODUCTIONS (Reg. No. 3501357) - Gregory S. Wolske**

The Examining Attorney has also continued and maintained her objection to Applicant's Mark on the basis of potential likelihood of confusion with the mark LASSO PRODUCTIONS (Reg. No. 3501357), owned by Gregory S. Wolske and registered in Class 41 for "[m]ultimedia entertainment services in the nature of recording, production and post-production services in the fields of music, video, and films".

Applicant maintains that its services in Class 41 as-filed and as previously amended eliminate the possibility of confusion with Mr. Wolske's registration. The mark LASSO PRODUCTIONS relates to the registrant's provision of recording, production and post-production services that are rendered by Mr. Wolske to third-party business clients, not directly to consumers. We note that although PRODUCTIONS is disclaimed from the mark, the inclusion of this word is indicative of the type of clientele served by Mr. Wolske, which is primarily composed of businesses, such as law firms, insurance companies, and computer equipment companies. See Exhibit B, (a true and correct copy of <http://www.gregwolske.com/Greg-Wolske-Director-DP-About-Bio.htm>). In contrast, Applicant's services in Class 41 describe services that are rendered to consumers themselves, namely, individual app and/or software users (not to businesses).

Furthermore, the content available through Applicant's services is created, published, recorded, shared, and produced by third-party users - not the Applicant itself. As is clear from Applicant's description of services, Applicant publishes, displays, and facilitates the sharing of such content but is not the originator. Mr. Wolske's services and registration instead relate to that registrant's recording, production and post-production of content on behalf of its clientele. Accordingly, Applicant reiterates its arguments that a likelihood of confusion with LASSO PRODUCTIONS is not likely, and Applicant's Mark should be permitted to proceed to publication.

**B. The Field of LASSO Marks is Crowded and the Scope of Protection for Such Marks is Narrow**

In addition to the foregoing, Applicant reiterates the argument with regard to each of the Cited Marks included in the Examining Attorney's Section 2(d) refusal, that Applicant's Mark should be allowed to proceed to publication for the additional reason that the field of LASSO marks crowded and the scope of protection afforded to each of these registrations is narrow.

Federal courts and the Board have long recognized that the coexistence of third-parties' use and/or registration of similar marks is evidence of the scope of protection to be accorded to the prior mark. *See, e.g., Nat'l Motor Bearing Co. v. James-Pond-Clark*, 266 F.2d 799, 803, 121 U.S.P.Q. 515 (C.C.P.A. 1959) (finding CIRCLE SEAL and Sea Lion Design for valves not confusingly similar to Sea Lion Design for O-rings); *Shoe Corp. of Am. v. Juvenile Shoe Corp.*, 266 F.2d 793, 796, 121 U.S.P.Q. 510 (C.C.P.A. 1959) (finding LAZY PALS and LAZY BONES, both for shoes, not confusingly similar); *In re Broadway Chicken, Inc.*, 38 U.S.P.Q.2d 1559, 1565-66, 1996 WL 253841, \*3-5 (TTAB March 26, 1996) (finding BROADWAY PIZZA and BROADWAY CHICKEN, both for restaurant services, not confusingly similar).

As illustrated by the several Cited Marks included in the Examining Attorney's January 30, 2019 and October 23, 2019 office actions, as well as the additional LASSO-based marks included in Exhibit C (*see Exhibits D - O*, true and correct copies of the electronic equivalents of the registration certificates provided by the USPTO for the live marks included in Exhibit C), the field of LASSO marks registered in connection with software, entertainment, and promotional services is crowded and arguably diluted, supporting a narrow scope of protection for prior marks. The crowded field also suggests that consumers are accustomed to paying attention to the non-common variations among LASSO marks. *See In re Broadway Chicken*, 1996 WL 253841 at \*3.

**E. Applicant Adopted the LASSO Mark in Good Faith**

"[C]ourts regularly include intent as one of the factors to be considered in evaluating the likelihood of confusion." RESTATEMENT (THIRD) OF UNFAIR COMPETITION § 22, Reporter's Note to cmt. b, at 248 (1995); *see* 4 MCCARTHY, MCCARTHY ON TRADEMARKS & UNFAIR COMPETITION § 23:110 ("It is well established that an intent of the alleged infringer to gain through confusing customers or others is relevant to the issue of likelihood of confusion...."). Applicant adopted the LASSO mark without any predatory intent. In choosing this mark, Applicant did not adopt it to trade on anyone's reputation, including that of any of the owners of the Cited Marks.

**F. Under an Application of All the Relevant Factors, Confusion Is Highly Unlikely**

"A showing of mere possibility of confusion is not enough; a *substantial likelihood* that the public will be confused must be shown." *Omaha Nat'l Bank v. Citibank (South Dakota), N.A.*, 633 F. Supp. 231, 234, U.S.P.Q. 51 (D. Neb. 1986) (*emphasis added*). Applicant submits that all relevant factors set forth in *DuPont* clearly support Applicant. Under these circumstances, and absent "*substantial doubt*," Applicant's application should pass to

publication. *In re Mars, Inc.*, 741 F.2d 395, 396, 222 U.S.P.Q. 938 (Fed. Cir. 1984) (*emphasis supplied*) (finding CANYON for candy bar not likely to be confused with CANYON for fruit).

### III. AMENDMENT TO THE IDENTIFICATION OF GOODS AND SERVICES

As stated in the corresponding section of this response to the Office Action regarding the identification of goods and services, Applicant agrees to the Examiner's proposed further amendments (underlined) and submits further voluntary amendments (bold), namely:

INTERNATIONAL CLASS 9: Downloadable computer software for social networking; downloadable computer software for creating, managing, and interacting with an online community; downloadable computer software for creating, editing, uploading, downloading, accessing, viewing, posting, displaying, tagging, blogging, streaming, linking, annotating, indicating sentiment about, commenting on, embedding, transmitting, and sharing or otherwise providing electronic media or information via computer, the internet, and communication networks; downloadable computer software for modifying and enabling transmission of images, audio, audio visual and video content and data; downloadable computer software for modifying photographs, images and audio, video, and audio-visual content with photographic filters and augmented reality (AR) effects, namely, graphics, animations, text, drawings, geotags, metadata tags, hyperlinks; downloadable computer software for the collection, editing, organizing, modifying, transmission, storage and sharing of data and information; downloadable computer software for sending and receiving electronic message alerts, notifications and reminders; downloadable computer software for integrating electronic data with real world environments for the purposes of entertainment, education, communicating, and social networking; downloadable computer software for wireless content, data and information delivery; downloadable computer software, namely, mobile application for social networking; downloadable computer software for creating, managing and accessing groups within virtual communities; downloadable computer software for viewing and interacting with a feed of images, audio, audio-visual and video content and associated text and data; downloadable computer software for sending and receiving electronic messages, graphics, images, audio and audio visual content via computer the internet and communication networks; downloadable computer software for processing images, graphics, audio, video, and text; downloadable computer software for managing social networking content, interacting with a virtual community, and transmission of images, audio, audio-visual and video content, photographs, videos, data, text, messages, comments, advertisements, media advertising communications and information; **excluding computer software for e-commerce, e-business, the making and acceptance of offers for**

**the sale of goods and services, job search and recruitment services, and downloadable software for incentivizing in-person group gatherings.**

INTERNATIONAL CLASS 35: Marketing, advertising and promotion services, namely, providing links to the retail websites of others and providing space on a website and mobile application an online platform for third-party advertisers to create multimedia advertising material and communicate with consumers via the internet and communications networks; promoting the goods and services of others namely, providing links to the retail websites of others and providing space on a website and mobile application an online platform for third-party advertisers to create multimedia advertising material and communicate with consumers via the internet and communications networks; advertising and information distribution services, namely, providing classified advertising space in the nature of providing links to the retail websites of others and providing space on a website and mobile application an online platform for third-party advertisers to create multimedia advertising material and communicate with consumers via the internet and communications networks; advertising via electronic media, namely, providing links to the retail websites of others and providing space on a website and mobile application an online platform for third-party advertisers to create multimedia advertising material and communicate with consumers; promoting the goods and services of others by means of distributing video advertising on the internet and communication networks; **excluding job search and recruitment services and consumer survey services.**

INTERNATIONAL CLASS 41: Entertainment services, namely, providing a mobile application featuring displaying photographic, audio, and video presentations featuring user generated content containing digital images, photos, text, graphics, music, audio, video clips, multimedia content, and visual and audio performances; photosharing and video sharing services in the nature of entertainment services, namely, providing an online interactive database of videos and user generated content containing digital images, photos, text, graphics, music, audio, video clips, multimedia content, and visual and audio performances; electronic digital video, audio, and multimedia publishing services for others.

INTERNATIONAL CLASS 42: Computer services, namely, creating online virtual communities for registered users to engage in social, business and community networking; providing temporary use of non-downloadable computer software for social networking, creating a virtual community, and for transmission of audio, video, images, text, content and data; providing temporary use of non-downloadable software for electronic messaging; application service provider featuring application programming interface (API) software for electronic messaging and transmission of audio, video, images, text, content and data; providing temporary use of non-downloadable computer software for electronic messaging; computer software design in the field of augmented reality and virtual reality effects for use in modifying photographs, images, videos and audio-visual content; providing temporary use of non-downloadable computer software for

modifying photographs, images and audio, video, and audio-video content with photographic filters and augmented reality (AR) effects, namely, graphics, animations, text, drawings, geotags, metadata tags, hyperlinks; platform as a service (PAAS) featuring software platforms for social networking, managing social networking content, creating a virtual community, and for transmission of images, audio-visual and video content, photographs, videos, data, text, messages, advertisements, media advertising communications and information; providing online facilities, namely, web interfaces and mobile interfaces in the nature of providing temporary use of non-downloadable software for sending and receiving electronic messages, instant messages, electronic message alerts and reminders, photographs, images, graphics, data, audio, videos and audio-visual content via the internet and communication networks; providing temporary use of non-downloadable computer software for use in facilitating online social networking services; application service provider (ASP) services featuring software for enabling or facilitating online social networking services; providing temporary use of non-downloadable computer software for use in taking and editing photographs and recording and editing videos; application service provider (ASP) featuring software for enabling or facilitating taking and editing photographs and recording and editing videos; providing online facilities, namely, application service provider (ASP) featuring software for use in enabling users to upload, modify, and share audio, video, photographic images, text, graphics and data; user verification services, namely, providing user authentication of personal identification information using single sign-on technology for online network environments and software applications; identification verification services, namely, providing user authentication of personal identification information using single sign-on technology for online network environments and software applications; **excluding non-downloadable software in the field of real estate.**

INTERNATIONAL CLASS 45: Internet-based social networking services; online social networking services; ~~user verification services, namely, providing authentication of personal identification information; identification verification services, namely, providing authentication of personal identification information~~

#### IV. CONCLUSION

Having fully responded to the matters raised in the initial Office Action dated January 30, 2019 and the subsequent Office Action dated October 23, 2019, Applicant respectfully



requests the Examining Attorney's objections be withdrawn, and that Applicant's application be passed to publication in due course.

Dated: April 23, 2020

Respectfully submitted,

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