

REMARKS

1. LIKELIHOOD OF CONFUSION

Regarding likelihood of confusion, the issue is whether the public will be confused as to their source according to the TMEP. It is whether the consuming public would consider the goods to be related to be each other. It is in this sense of relatedness that matters in the likelihood of confusion analysis. Moreover, if the goods or services 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. TMEP 1207.01(a)(i).

In the office action dated October 30, 2019, the examiner provided a number of attachments to show that likelihood of confusion exists. According to the examiner, these attachments establishes that “the same entity commonly manufactures, produces, or provides data processing services, transmission of data services and provision of data and analysis all in the field of traffic, and software for data analysis and markets these services under the same mark, these services are sold or provided through the same trade channels and used by the same classes of consumers in the same fields of use, and these services are similar or complementary in terms of purpose or function.” (emphasis added).

In support of examiner’s conclusion, the examiner listed various webpages (attachments. Applicant references each one below.

In Latom.eng reference which is shown in pages 8-12 (Attachments 3-7) of the office action, this shows that the engineering department of Florida Atlantic University has a traffic engineering department.

The examiner indicated that he/she included a reference to Fau.edu. However, no such reference was found.

Flir.com which is shown on pages 13-16 (Attachments 8-11) of the office action is a traffic company.

Trafficast.com which is shown on pages 17-26 (Attachments 12-21) of the office action is a traffic company.

In Cattlab.umd.edu reference which is shown in pages 27-32 (Attachments 22-27) of the office action, this shows a transportation lab in a university setting.

In reviewing these attachments, the examining attorney has failed to show that the “the same entity commonly manufactures, produces, or provides data processing services, transmission of data services and provision of data and analysis all in the field of traffic.”

The statement made by the examining attorney indicates that the examining attorney believes that data analysis companies, not only performs data analysis in the field of traffic but commonly performs data analysis for all fields of traffic. Applicant respectfully disagrees. The examining attorney provided three data points. Three data points do not establish a commonality or trend in the industry.

The attachments provided by the examining attorney indicates that data analysis is involved in traffic and transportation engineering services. However, it does not show that data analysis companies commonly performs data analysis for traffic.

More importantly, the examining attorney has not shown the perspective of the consuming public in viewing a data analysis software platform and a traffic company. Applicant submits that the examiner's conclusory statement identified above is in error. Attached is a google search results for data analysis. The search results show the top 100 google search results for data analysis.

Based on our review of the google search results, we did not find that any search result related to traffic. The significance of this lack of relationship between data analysis and traffic shows that data analysis companies do not commonly perform analysis in all fields of traffic as alleged by the examining attorney. Moreover, data analysis software is not commonly marketed under the same mark as other services in relation to traffic and transportation engineering. The consuming public for data analysis software is different from consumers of traffic and transportation engineering services. Internet users looking for data analysis services are not interested in traffic and transportation engineering services. Hence, the prevalence or commonality alleged by the examining attorney has not been established by the examining attorney.

Based on the foregoing, there is no likelihood of confusion.

2. IDENTIFICATION OF THE GOODS

Applicant accepts the proposed goods/services description by the examiner.

Based on the foregoing, all of the objections and reasons for refusal have been overcome. Thus, the instant application should be allowed.