MOUSE TRAP, App. No. 90330549

The Examining Attorney has refused the registration of Applicant's MOUSE TRAP Mark based on alleged likelihood of confusion with the mark MOUSETRAP FILMS LLC and Design (Reg. No. 4288222) (the "Cited Mark"). Applicant respectfully disagrees with the Examining Attorney's refusal because there are sufficient distinctions between the marks and the underlying services such that confusion is unlikely. Furthermore, there are additional differences which further obviate any likelihood of confusion between the Mark and the Cited Mark, including:

1. The dissimilarity of established, likely-to-continue trade channels.

2. The conditions under which and buyers to whom sales are made, i.e., "impulse" vs. careful, sophisticated purchasing (see TMEP §1207.01(d) (vii)).

3. The number and nature of similar marks in use on similar goods (see TMEP §1207.01(d) (iii)).

TMEP §1207.01; *In re E.I. DuPont DeNemours & Co*., 476 F.2d 1357, 1361 (C.C.P.A. 1973).

Accordingly, and as set forth more fully below, the likelihood of confusion between Applicant's Mark and the Cited Mark is, at best, *de minimis*. As such, Applicant respectfully requests that the Examining Attorney reconsider the refusal of registration.

A. The Mark is Dissimilar in Appearance, Sound and Commercial Impression from the Cited Mark.

In determining whether marks are confusingly similar, the marks must be compared in their entireties for overall appearance, sound and commercial impression. *In re 1776, Inc.*, 223 U.S.P.Q. 186, 187 (T.T.A.B. 1984). Marks should not be dissected into segments when comparing them. *Id.*; *In re Loew's Theatres, Inc.*, 218 U.S.P.Q. 956, 956 (T.T.A.B. 1983). Even subtle differences in marks can be enough to create distinct commercial impressions. *See Aries Systems Corp. v. World Book Inc.*, 26 U.S.P.Q.2d 1926, 1932-33 (T.T.A.B. 1993) (no likelihood of confusion between INFORMATION FINDER and KNOWLEDGE FINDER, both for computer programs); *In re Quadram Corp.*, 228 USPQ 863, 866 (T.T.A.B. 1985) (no likelihood of confusion between MICROFAZER for computer hardware and FASER for computer programs); *In re Software Design, Inc.*, 220 U.S.P.Q. 662 (T.T.A.B. 1983) (no likelihood of confusion between DOX for computer programming services and DOC'S for custom manufacture of computer systems). As detailed below, the differences

between the Mark and Cited Mark are more than sufficient to obviate any likelihood of confusion.

Properly considered in their entireties, Applicant's Mark is distinguishable from the Cited Mark, making confusion extremely unlikely. The marks are significantly different in sight, sound and connotation. Visually, the marks are easily distinguishable given the highly stylized nature of the Cited Mark, which includes a design element as well as the literal elements. While the Applicant's Mark is two words, the Cited Mark consists of three words and a significant design element.

With respect to differences in sound, consumers who encounter Applicant's Mark are likely to read the full literal elements resulting in an obviously different pronunciation from that of the Cited Mark. Furthermore, the connotations associated with Applicant's Mark create a distinct and highly suggestive commercial impression not shared by the Cited Mark.

Furthermore, within the Cited Mark, the term MOUSETRAP is combined with the terms FILM, LLC and it will therefore bring to mind a production/film distribution company that imparts upon consumers a very different impression that that of Applicant's Mark.

In contrast, Applicant's consists only of the terms MOUSE TRAP and these terms are uniquely associated with Applicant, given its use of the MOUSE TRAP mark for decades in connection with Applicant's well-known MOUSE TRAP game, which is the subject of US. Reg. No. 3072603 and an abandoned registration for a stylized version of Applicant's Mark, US. Reg. No. 0788691, which was originally registerd in 1965. Print outs of the TESS records associated with these registrations are attached.

In light of these differences and the history associated with Applicant's Mark, the marks have distinct commercial impressions that make confusion unlikely.

B. The Services Offered Under the Mark are Distinct from Those Offered Under the Cited Mark.

Applicant's Mark covers an ongoing entertainment series – and more specifically, a series related to its iconic physical board game. In contrast, the Cited Mark relates to production/distribution services and not the specific title of an ongoing series. Production companies operate "behind the scenes" and do not typically share their names with the shows that they produce. For example, the specimen submitted in connection with the Cited Mark shows that the mark is used as the name of a distribution company as opposed to a series – the Cited Mark is

used to designate the distribution company (and not the name of or source of the actual content in the show). See Exhibit B. In this case, it is unlikely that the marks will be confused.

The fact that the goods and services offered under Mark and Cited Mark are in the broad field of entertainment generally is not a sufficiently strong nexus to support a finding that consumers are likely to believe such emanate from a common source. Where goods or services have specialized and distinct purposes or uses, confusion is unlikely. See *Electronic Data Systems Corp. v. EDSA Micro Chip*, 23 U.S.P.Q.2d 1460, 1463 (T.T.A.B. 1992); *Information Resources v. X*Press Information*, 6 U.S.P.Q.2d 1034, 1038 (T.T.A.B. 1988). Even where the goods and services are from the same general field of commerce, there is no presumption of confusion. *In re Quadram Corp.*, at 865 (regarding computer hardware and software); see also *M2 Software, Inc. v. M2 Commc'ns, Inc.*, 450 F.3d 1378, 1383 (Fed. Cir. 2006) (finding no likelihood of confusion between "M2" for computer software for the film and music industries and "M2 COMMUNICATIONS" for educational CD-ROMs for the medical and healthcare fields as any overlap would only be incidental and that it would be inappropriate to presume relatedness given the "pervasiveness" of software and software related goods in society).

Furthermore, in this case, the descriptions covered by Applicant's application and the Cited registration are sufficiently narrow and distinct, consistent with the narrow and distinct offerings by the parties. Applicant's description covers only entertainment services in the nature of "an ongoing series." The Cited Mark covers only "back of the house" production and distribution-related services. Likewise, the Cited Registration does not cover the title of an ongoing series. As such, the services are not sufficiently related to warrant a finding of confusion. *See In re Lil Fats, Inc. dba Coast 2 Coast Mixtapes*, Serial No. 85404979 (TTAB August, 8, 2013)(not precedential).

Indeed, the TMEP itself distinguishes between the type of "behind the scenes" services like those offered by the Registrant, including production services or broadcasting services, from use of mark as the name or title of a program. *In re WAY Media, Inc.*, Serial No. 86325739 (TTAB June 3, 2016). This further shows that the distinction between the services offered by Applicant and those offered by Registrant and distinguishable and distinct. Given the narrow and specialized services described in both the Cited Registration and Applicant's application, the marks are unlikely to be confused.

C. The Goods and Services Offered Under the Mark are Offered Under Established, Likely-to-Continue Trade Channels Distinct from Those Through Which the Services Offered Under the Cited Mark Appear to be Offered Through.

The registrant for the Cited Mark offers distribution services for film festivals. The consumers of the registrant's marks are those festival organizers and content owners who wish to find a distribution outfit for their films.

In contrast, Applicant's Mark is intended to be used as a title for an entertainment series to communicate to the general consumer audience (most likely families and children) that the series originates from/relates to the iconic Hasbro board game MOUSE TRAP. Accordingly, Applicant's mark will appear to end-user television watchers, who will rely upon the impression of Applicant's Mark (and its association with the iconic board game) to determine whether or not to watch the series. Applicant's marketing would be directed not to the festival organizers or content providers, but to the average television watcher, making the channels of trade and likely marketing techniques quite different than those offered under the Cited Mark.

Given that those who regularly encounter Registrant's Mark are likely to be sophisticated members of the television industry looking for a sophisticated distribution company, and Applicant's Mark is targeted towards average, every day television watchers, the ways in which the marks will be seen and the people to whom the marks are shown are very different. These differences weigh against a finding of confusion.

D. Conclusion

Taken singularly, any of the above-described differences between the marks, their respective functionalities, the likely customers and trade channels, or the sophistication of consumers and care with which purchasing decisions are made, should be adequate to demonstrate that confusion is unlikely. When these elements are taken together, it is evident that Applicant's Mark is not confusingly similar to the Cited Mark and accordingly is registrable. It is extremely unlikely that consumers of services associated with the Cited Mark and Applicant's game show will overlap in such a way that confusion is likely to occur. Thus, even if confusion were to occur, it will be *de minimis*.

For the foregoing reasons Applicant's Mark is unlikely to be confused with the Cited Mark. In light of the above, Applicant respectfully requests that the Examining Attorney reconsider the refusal and allow Applicant's Mark to proceed to registration.