

THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: The Most Unknown LLC

SERIAL NO: 90/717,693

FILED: May 18, 2021

MARK: PARTICLES BY XO

RESPONSE

This is a Response to the Office Action dated February 2, 2022. The period for Response extends to and includes August 2, 2022.

REMARKS

2(d) Refusal

In the Office Action, the Examining Attorney has initially refused registration on the basis of an alleged likelihood of confusion with the following United States Trademark Registration:

SOUND PARTICLES SOUND PARTICLES (Stylized), Reg. No. 4,982,153, a registration in Class 9 for Apparatus for recording, transmission, processing and reproduction of sound, images or data; Computer software for creating and editing music and sounds; Computer software for sound editing; Downloadable computer software for sound editing, owned by Sound Particles, S.A.

Applicant respectfully submits that for all of the reasons set forth below, no likelihood of confusion exists between the subject mark and the registered mark cited by the Examiner.

The Respective Marks Are Sufficiently Distinct

The subject mark PARTICLES BY XO and the cited mark SOUND PARTICLES (Stylized) are sufficiently distinct in appearance, meaning and commercial impression

such that no likelihood of confusion will exist. In light of the differences described below, the respective marks can and will peacefully co-exist.

The subject mark is comprised of the words "PARTICLES BY" and the letters XO. By contrast, the cited mark is comprised of the words "Sound Particles" depicted in a stylized font. The fact that the subject mark uses the word "Particles" as the first word in the mark followed by the wording "By XO," whereas the first word in the cited mark is "Sound" followed by the word "Particles" (both words depicted in a stylized font), results in the respective marks being substantially distinct from one another in appearance, meaning and commercial impression. There is no question that the additional elements utilized in the respective marks serve to create entirely distinct commercial impressions and eliminate the possibility that consumers will be confused simply because each mark includes the widely used word "Particles." When the respective marks are considered in their entireties, consumers who encounter the marks will be able to distinguish them from one another and will not mistakenly believe that the respective services emanate from the same source. Since the respective marks will be viewed by consumers in their entireties, the distinct commercial impressions created by the respective marks should be given great weight in the analysis.

It has been repeatedly held that where the respective marks in their entireties convey significantly different commercial impressions, no likelihood of confusion will be found. See e.g., *Shen Manufacturing Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 73 USPQ2d 1350 (Fed. Cir. 2004) (RITZ and THE RITZ KIDS create different commercial impressions); *In re Farm Fresh Catfish Co.*, 231 USPQ 495 (TTAB 1986) (CATFISH BOBBERS for fish held not likely to be confused with BOBBER for restaurant services);

In re Shawnee Milling Co., 225 USPQ 747 (TTAB 1985) (GOLDEN CRUST for flour held not likely to be confused with ADOLPH'S GOLD'N CRUST and design for coating and seasoning for food items); In re S.D. Fabrics, Inc., 223 USPQ 54 (TTAB 1984) (DESIGNERS/FABRIC (stylized) for retail fabric store services held not likely to be confused with DAN RIVER DESIGNER FABRICS and design for textile fabrics).

The Parties Respective Goods Are Substantially Distinct

Not only are the respective marks substantially dissimilar, the parties' respective goods are entirely distinct and provided through entirely distinct trade channels, thereby even further eliminating any possibility of consumer confusion.

The cited registration covers the following the goods: "apparatus for recording, transmission, processing and reproduction of sound, images or data; computer software for creating and editing music and sounds; computer software for sound editing; downloadable computer software for sound editing." Based on Applicant's investigation, the cited mark was used in connection with a computer software product used for making and editing sound. The cited registrant describes its products on its website as follows: "Sound Particles is an immersive audio software capable of generating thousands (even millions) of sounds in a virtual 3D audio world. Creating highly complex sounds has never been this quick." In addition, the cited registrant indicates that its goods are sold to and used by third parties who create sound for movies, television and video games. Attached hereto at **Tab A** are printouts from the cited registrant's website describing the cited registrant's products.

By contrast, the subject mark will be used in connection with earphones and headphones that will be sold to consumers for general use. There is no question that

the goods of the respective parties are distinct in nature, are sold to entirely different classes of consumers and are provided through entirely distinct trade channels. Applicant does not sell computer software or other goods used to make or edit sound, and the cited registrant does not sell earphones or headphones. As such, the differences between the respective goods, classes of consumers and trade channels further demonstrates that no likelihood of confusion will exist.

Applicant respectfully submits that for all of the reasons set forth above, no likelihood of confusion exists between the subject mark and the mark covered by the cited registration.

Third Party Marks

It should also be pointed out that the cited marks are co-existing with several other marks that include the word PARTICLE or close variations thereof that cover services that are as distinct from the cited registrant's services as Applicant's services. The fact that the cited registrant's marks are co-existing with these marks owned by third parties is further evidence that no likelihood of confusion will exist between the subject mark and the cited mark. Applicant draws the Examiner's attention to the following references:

PARTICLE, Reg. No. 4,917,782, a registration in Class 9 for Data processing equipment and computers; circuit boards; microcontrollers; antennas for wireless communications apparatus; power supplies; integrated circuit modules; wireless transmitters and receivers; computer software development tools; semiconductors; software for general purpose embedded applications, namely, for use in internet-connected embedded devices and embedded devices with radios; semiconductors with embedded software for use in internet-connected embedded devices and embedded devices with radios; integrated circuits; integrated circuit components being relay sensors and actuators for network connected products; wireless communication hardware in the nature of computer hardware, integrated circuit chips and computer chips featuring electronic sensors for sensing light, weather, ambient atmosphere, sound, temperature, motion and movement, magnetic fields, location, photo, video,

biometrics, pressure, radioactivity, color, liquid flow, orientation, touch and wind speed; software development tools for general purpose embedded applications; downloadable open source application software, namely, computer software for use in software development, owned by Particle Industries, Inc.



, PARTICLEWORKS and design, Reg. No. 5,404,758, a registration in Class 9 for Electronic circuits; CD-ROMs and DVDs recorded with computer programs for simulation and for development of computer games, embedded computer systems and artificial intelligence; Downloadable electronic publications in the nature of newsletters in the field of computer programs for simulation and for development of computer games, embedded computer systems and artificial intelligence; magnetic or optical data carriers recorded with video or music; Downloadable computer programs for simulation and for development of computer games, embedded computer systems and artificial intelligence; Electronic data files, namely, image files or music files downloadable via Internet and mobile phone network, owned by Prometech Software, Inc.

PARTIKAL, Reg. No. 5,992,522, a registration in Class 9 for USB cables; Electric charging cables; Battery chargers; wireless battery chargers, owned by vCharged, LLC DBA Partikal.

PARTICLESHOP, Reg. No. 6,242,274, a registration in Class 9 for Downloadable and recorded computer software for editing computer graphics, digital art, images, illustrations, photographs, and paintings, owned by Corel Corporation.

THE GOD PARTICLE, Serial No. 90/461,629, a pending intent to use based application in Class 9 for Downloadable computer software for processing digital music files, owned by The Penua Project Inc.

PARTICLE TRACKER SOM, Reg. No. 6,556,142, a registration in Class 9 for computer hardware modules for use in Internet of Things (IoT) electronic devices; data processing equipment and computers; circuit boards; microcontrollers; antennas for wireless communications apparatus; integrated circuit modules; wireless transmitters and receivers; semiconductors; semiconductors with embedded operating system software for use with embedded devices that connect to the internet and with embedded devices with radios; integrated circuits; integrated circuit components being relay sensors and actuators for network connected products; wireless communication hardware in the nature of computer hardware, integrated circuit chips and computer chips featuring electronic sensors for sensing light, weather, ambient atmosphere, sound, temperature, motion and movement, magnetic fields, location, photo, video, biometrics, pressure, radioactivity, color, liquid flow, orientation, touch and wind speed; SIM cards; 2G and 3G modems; hardware development kit, comprised primarily of integrated circuit modules, microprocessors, cellular modems, cellular modules, power supply, power adapters, user interface components, circuit boards, computer chips, and microcontrollers; cellular modems; cellular modules; 802.15.4 wireless network

modules; wireless communication modules, namely, cellular modules, LTE modules and 802.15.4 wireless network modules; LTE modems; radio nodes in the nature of wireless network repeaters for wireless mesh networks; radio transmitters; radio receivers; antennas; recorded computer software development tools; computer software and firmware for delivering wireless connectivity for use in Internet of Things (IoT) electronic devices; integrated circuits, computer hardware modules, recorded computer software and firmware for facilitating wireless radio frequency communications between Internet of Things (IoT) electronic devices; computer equipment, namely, hardware, recorded software and recorded firmware for use in creating, using and maintaining mesh networks, including stand-alone nodes, radio frequency modules, and related components for reading, sharing, processing and controlling information among such stand-alone nodes, radio frequency modules, and related components; Recorded computer firmware for system on module hardware and software integration, namely, recorded computer firmware for providing an interface between system on module hardware and operating systems; Recorded computer software and computer hardware for operating system on a module integrated solutions; Electronic components for computers in the nature of industrial embedded system on a module solutions built on a single circuit board for use by original equipment manufacturers of electronic devices computers, namely, computer-on-modules; computers, namely, system on module; Recorded computer operating software and hardware development kits comprised of printed circuit board assemblies (PCBA), computer interface boards, system on modules in the nature of computers, computer cables, power supply, power adapters; computer network hubs, switches and routers; computer control hardware, namely, gateway routers; computer hardware and micro processors for touch screens; temperature sensors; pressure sensors; humidity sensors; proximity sensors; location sensors being GPS sensors; altitude sensors being GPS sensors; visual sensors being optical sensors; sound sensors; downloadable computer software, namely, application programming interface (API) software for accessing, monitoring and controlling hardware; computer software, namely, downloadable middleware for software application integration; computer software, namely, downloadable middleware for running in an embedded hardware environment for the purpose of monitoring and controlling hardware; downloadable computer software for running in an embedded hardware environment for the purpose of monitoring and controlling hardware; Electronic navigational and positioning apparatus and instruments; Satellite electronic navigational apparatus and structural replacement parts therefor; Downloadable software for satellite navigation systems, namely, downloadable software for viewing maps; satellite-aided navigation systems, namely, global navigation satellite system (GNSS) apparatus and structural replacement parts therefor; GPS apparatus and structural replacement parts therefor; global navigation satellite system (GNSS) based receivers and structural replacement parts therefor; GPS-based receivers and structural replacement parts therefor; Electronic protection systems for global navigation satellite system (GNSS) receivers comprising antenna arrays, electronic filters and digital signal processing units for global navigation satellite system (GNSS) receivers; High-frequency antennas; Antenna arrays; global navigation satellite system (GNSS) antenna arrays; Antenna cables; Downloadable computer software for creating and executing

computational protection algorithms in time, frequency and space domain to ensure access to global navigation satellite systems (GNSS), owned by Particle Industries, Inc.

Printouts from TESS of all of the above-referenced registrations are attached hereto at

Tab B.

All issues raised in the Office Action are believed to have been addressed.

Favorable action is respectfully requested.