

United States Patent and Trademark Office

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ASI Computer Technologies, Inc.,)	Response to Suspension Notice
)	Application No. 88/346,245
)	Stylized mark "ASI"
Applicant)	
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**RESPONSE TO SUSPENSION NOTICE FOR TRADEMARK APPLICATION FOR
REGISTRATION ON THE PRINCIPAL REGISTER**

The Trademark Examining Attorney issued a Suspension Notice on October 16, 2019, maintaining her refusal to the stylized mark "ASI", Application Serial No. 88/346,245 under Section 2(d) of the Trademark Act. Specifically, the Examiner has suspended the application pending the final outcome of Application No. 79255226 (the "Foreign Application") owned by Verein zur Förderung busfähiger Interfaces für binäre Aktuatoren und Sensoren e.V ("Verein").

Applicant filed and was granted an Extension of Time to Oppose the Foreign Application on January 2, 2020, and the parties have subsequently and successfully negotiated and executed a Consent Agreement addressing the perceived likelihood of confusion raised by the Examining Attorney. Consequently, Applicant comes now and respectfully submits the attached Consent Agreement for the Examining Attorney's consideration, and respectfully requests that the Examining Attorney's initial statutory refusal to allow the Application to proceed to publication for registration on the Principal Register be reversed.

**CONSENT AGREEMENT SHOULD BE GIVEN GREAT WEIGHT WITHIN A
SECTION 2(d) ANALYSIS**

A consent agreement that makes representations about both parties' beliefs regarding a likelihood of confusion signed by both parties should be given great weight. TMEP §1207.01(d)(viii); See *In re Four Seasons Hotels Ltd.*, 987 F.2d 1565, 26 USPQ2d 1071 (Fed. Cir. 1993); *In re N.A.D. Inc.*, 754 F.2d 996, 224 USPQ 969 (Fed. Cir. 1985). A proper consent

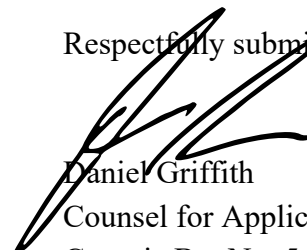
agreement should include both parties' beliefs regarding the likelihood of confusion and/or indicate that both parties have agreed to undertake certain actions to avoid confusion. *Id.* The Court of Customs and Patent Appeals has stated, "[W]hen those most familiar with use in the marketplace and most interested in precluding confusion enter agreements designed to avoid it, the scales of evidence are clearly tilted. It is at least difficult to maintain a subjective view that confusion will occur when those directly concerned say it won't. A mere assumption that confusion is likely will rarely prevail against uncontroverted evidence from those on the firing line that it is not." *In re E.I. du Pont de Nemours & Co.*, 476 F.2d at 1363, 177 USPQ at 568 (C.C.P.A 1973). As a result, consent agreements should be given great weight when analyzing a perceived likelihood of confusion under Section 2(d).

Here, the parties have entered into a consent agreement pursuant to the requirements outlined above, wherein each has made representations regarding the absence of a likelihood of confusion, and each party has also agreed to make qualifying amendments to the respective goods and services description language in each application further alleviating the possibility of likelihood of confusion. As a result, the parties maintain and reassert their shared belief that their respective customers are separate and distinct and are composed of different and sophisticated customers seeking different sorts of goods and/or services that are typically distributed and sold via different trade channels. Thus, Applicant respectfully submits that the agreement entered into by the parties constitutes a valid consent agreement for consideration by the Examining Attorney within the Section 2(d) framework.

CONCLUSION

Applicant believes that it has adequately addressed the Examining Attorney's concerns regarding her initial perceived likelihood of confusion under Section 2(d) of the Trademark Act and, accordingly, respectfully requests the initial refusal be reversed and the application be allowed to proceed to publication for registration on the Principal Register.

Respectfully submitted,



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