

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

November 2, 2017

Odessa Bibbins  
Trademark Examining Attorney  
Law Office 118  
United States Patent and Trademark Office

RE: Serial No. 87327783  
Mark: STAGE  
Applicant: BUBBLE, INC.  
Office Action of: 5/2/2017

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**APPLICANT’S RESPONSE TO OFFICE ACTION**

The following is the response of Applicant, Bubble, Inc., by counsel, to the Office Action sent on May 2, 2017.

**LIKELIHOOD OF CONFUSION REFUSAL**

The Examining Attorney has refused registration of the proposed mark STAGE pursuant to Trademark Act Section 2(d), 15 U.S.C. 1052(d), on the grounds that the mark is likely to be confused with the mark in U.S. Registration No. 4506676. Because the Registrant’s and Applicant’s marks pertain to different services, Applicant respectfully disagrees with the Examiner’s findings and requests that the Examining Attorney reconsider the statutory refusal and allow registration of Applicant’s mark.

**Marks at Issue**

Applicant has applied for the mark STAGE in standard character form for a computer application software for mobile phones and computers, for a location based social network. Registrant Belkin International, Inc. owns U.S. Reg. No. 4506676 for the mark STAGE in standard character form for “downloadable software in the nature of a mobile application for use in browsing, searching, capturing, creating, editing, annotating, highlighting, organizing,

assembling, indexing, storing, synchronizing, recognizing, sharing, transmitting and displaying digital images, files, photographs and footage and animated images, including audio, text, binary, still images, video, graphics, digital content and multimedia files.”

### **The Services Provided Under the Marks are Different**

Pursuant to *In re E.I. du Pont de Nemours & Co.*, 476 F. 2d 1357, 177 USPQ 563 (CCPA 1973), no likelihood of confusion exists between Applicant’s mark and Registrant’s mark because of wholesale differences in the services provided under the marks. The nature and scope of a party’s services must be determined on the basis of the services recited in the application or registration. TMEP § 1207.01(a)(iii); *Stone Lion Capital Partners, L.P. v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014).

Here, Applicant provides computer application software (an “app”) for mobile phones and computers. This app is for a *location based social network*. In contrast, Registrant Belkin International, Inc. merely provides downloadable software for use in storing digital images, and additional capabilities such as searching and editing such images. Nothing in Registrant’s description of the use of its mark relates to social networking whatsoever; nor is it location based. The only similarity in the use of the two marks is that both Registrant and Applicant use the mark in the context of computer software. However, this fact alone is insufficient to support the determination that confusion among consumers is likely.

Indeed, the Examining Attorney has provided no evidence that the services provided by this Applicant are related to the services provided by this Registrant, nor any evidence of actual confusion. Applicant respectfully requests that the Examining Attorney reconsider the statutory refusal and allow registration of Applicant’s mark.

### **The Relevant Customers are Sophisticated**

The *duPont* factors also include consideration of the conditions under which and buyers to whom sales are made, *i.e.* “impulse” vs. careful, sophisticated purchasing. *du Pont*, 476 F.2d at 1361. Here, Applicant’s services are not purchased on impulse, but instead are purchased with great care after deliberate consideration of all available social network apps. In view of the sophistication of the relevant customers, Applicant’s mark is not likely to generate consumer confusion.

### **Evidence of Third Party Use**

The *duPont* factors include consideration of the “number and nature of similar marks in use on similar goods.” *du Pont*, 476 F.2d at 1361. If the evidence establishes that the consuming public is exposed to third-party use of similar marks on similar goods, it “is relevant to show that a mark is relatively weak and entitled to only a narrow scope of protection.” TMEP § 1207.01(d)(iii). Here, the numerous registrations that include the word “STAGE” support the conclusion that Registrant’s use of “STAGE,” by itself, does not have source identifying significance. This factor weighs in favor of Applicant.

### **CONCLUSION**

In conclusion, when viewed in their entirety, Applicant’s mark and Registrant’s mark are used for dissimilar services and, in view of the sophistication of the relevant customers, Applicant’s mark is not likely to generate consumer confusion. Thus, Applicant respectfully requests that the Examining Attorney reconsider the statutory refusal and allow registration of Applicant’s mark.

Applicant has responded above to all issues raised in the Office Action. If any further information or response is required, please contact Applicant's attorney. The attorney may be reached by telephone at 573-201-3691.

Respectfully submitted,

/Fredericka J. Sowers/

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