

IN THE UNITED STATES PATENT AND TRADEMAEK OFFICE

28, June,2019

Kim Teresa Moninghoff

Trademark Examining Attorney

Law Office 113

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RE: Applicant: HANGZHOU INSHOT TECH CO.,LTD.

Serial No.: 88175584

Class: 009

Trademark:



**RESPONSE TO
FIRST AND NON-FINAL OFFICE ACTION DATE 8, February, 2018**

Dear Kim Teresa Moninghoff,

Pursuant to a refusal register applicant's trademark on the principal register, applicant hereby respond to this office action and requests that the Examining Attorney considers and reconsiders the argument noted below in applicant's response. applicant explicitly requests that the Examining Attorney withdraw the present refusal

to register applicant's mark



and allow applicant's application to proceed to publication.

ARGUMENT IN RESPONSE

The previously identified application has been carefully reviewed in relation to a first and non-final Office Action dated 8, February, 2018(hereinafter called "Office Action"). Applicant respectfully requests that the Examining Attorney withdraw the ground for refusal: section 2(d) likelihood of confusion, and request for

reconsideration, and the evidence, the arguments and the authorities presented herein in the following argument section.

I. EXAMINING ATTORNEY’S GROUNDS FOR REFUSAL

1). LIKELIHOOD OF CONFUSION: likelihood of confusion with a prior pending



trademark Serial No. 88055722 for mark

2) REQUIREMENT 1: Amended Color Claim and Mark Description.

3) REQUIREMENT 2: Requirement for Additional Specimens.


II. APPLICANT RESPONSE TO THE ABOVE REFUSAL GROUNDS

In this section, the applicant will response to all refusal grounds and submit the argument with evidence.


Applicant’s company introduction and history

HANGZHOU INSHOT TECH CO.,LTD (here after called”INSHOT”) is a Chinese limited company with its headquarters and principle place of business at Rm. 2002, 20/F Huaxing Century Bldg., No. 317, Wantang Rd., Xihu Dist., Hangzhou, Zhejiang China. As you know INSHOT is a famous photo/video sharing and editing service, software application, and social network company in China, and we will go to the world in the future.Since the launch of its photo sharing and social networking service and software application in April 23,2018 (see attached as Exhibit “A”),







INSHOT has continuously used the trademark ”  ” U.S. Application Serial No. 88175584 in interstate commerce in the united states in connection with its goods and




service. INSHOT is also the owner of the mark”  ” and has continually used these marks in interstate commerce in the United States in connection with its goods and services since April 2018. Reflecting its trademark rights, INSHOT owns U.S. registrations and applications for The mark consists of a multi-colors with red, orange, white, and purple mixed square background with a stylized white letter P inside . besides the two mention above trademarks, the applicant also applied to extend the protection of many of his trademarks in the United State(see the attached as Exhibit “B”), including the following:


Trademark	Reg. No.	Reg. Date
1).INSHOT	5074796	01.11.2016


2).		5185359	18.04.2017
3).		5621783	04.12.2018
4).		5621784	04.12.2018
5).		88231422	17.12.2018
6).		87877069	13.04.2018

All the mention above trademarks has been used in commerce in the United States in connection with its goods and service(class 9 ,relating to photo/video sharing and editing service, software application) . The apps in the Google Play have been installs by user over 100000 times.(see attached Exhibit “C”) Therefore, INSHOT is a famous photo/video sharing and editing service, software application, and social network company, and the company's trademarks has a very big impact on the market. Applicants should have exclusive rights to these trademarks.



Applicant’s trademark has been used in commerce

Since the launch of its photo sharing and social networking service and software application in April 23,2018, INSHOT has continuously used the trademark ”  ” U.S. Application Serial No. 88175584 in interstate commerce in the China and in the united states in connection with its goods and service. Which is earlier with the



pending trademark”  ” U.S. Application Serial No. 88055722. see attached reference documents , we will easily find that the applicant’s mark has been use in the commerce on April 23,2018, which precedes the filling date of pending U.S. Application Serial No. 88055722 which it’s application filing date is Jul. 27, 2018.



according to the TRDR of the USPTO, We found that the the mark “  ” has

been filed on Jul. 27, 2018 based on an intent to used. (see attached as Exhibit “D”) Which we can conclude that this mark has no been used in commerce yet. So

Applicant’s right in the mark”  ” predate any right which anyone can claim in the mark”  ”. Applicant has priority with respect to the marks at issue because it used its Marks long before the No. 88055722 application.



The status of the cited trademark is refusal

we have search the trademark”  ” with application Serial No. 88055722 in the USPTO and has found that the status of this trademark is pending.(see attached as Exhibit “D”) There is an office action has been issued to the applicant of the trademark”  ” and he haven’t respond to the office action yet. We can conclude that maybe he doesn’t have a very strong willing to register this trademark , because he is intent to used this mark not has used this mark in commerce.

Considering that the mark “  ”is pending , there is a great possibility that this trademark will be abandoned. So the applicant’s mark “  ” should not be refused, the applicant’s mark should be normal publish and register.


two trademarks are not similar


The trademark examining attorney has provisional refuse the applicant’s trademark for a potential similar trademarks. After we compared the differences between the two trademarks, we think that there is no likelihood of confusion exists between the mark


“  ” and the mark”  ”.

INSHOT is a very famous company focus on photo/video sharing and editing service and software application. Our designer has pay a lot of effort to create the mark with original design, and has use this mark in commerce with relating goods and service since April 23,2018. After comparing with this two marks , we find some obvious difference between them:

1. The overall shape of the design is different . the description of our applicant's mark is: The mark consists of a square in shades of yellow, orange, red, pink, and purple, containing a white stylized "P" and white dot. The description of his mark is : The mark consists of stylized letter "P" contained in the design of a Bird. Compared with this two mark , we found that the Significant element of our applicant's mark is square background,colors and letter "P".but the Significant element of the

“  ” is a design of a bird and letter “p”.There are obvious differences between birds and squares. So It is easy for consumers to distinguish the differences between the two trademarks, no likelihood of confusion exists between this two marks.

2. The color of the two marks is different. The multi-colors with red, orange, white, and purple is one of the dominant feature of the mark. But the mark"  ” is black and white, and there is only one color on the mark. As we know color has a great impact on people's first eye. Consumer will easily find the difference between this two marks for a different visual impact of the color.

3. The goods are different: the applicant's goods are focus on photo/video sharing and editing service and software application,most goods belong to nice class 090.The goods of trademark”  are focus on Communication navigation equipment, which is belong to nice class 0907. so there is difference between the goods of the two marks .

With the above Very obvious difference between the two trademarks , applicant argue that the use and register of the applicant's trademark will not cause confusion,mistake

nor deceive the relevant consumers with respect to the registrant's trademark.

Color Claim and Mark Description

Applicant has submit an amended description of the mark and agrees with the following color claim and mark description:

Color claim: The colors yellow, orange, red, pink, purple, and white are claimed as a feature of the mark.

Description: The mark consists of a square in shades of yellow, orange, red, pink, and purple, containing a white stylized "P" and white dot.

Requirement for Additional Specimens

Applicant has amend the goods in the application and has submit proper specimens for this application.

III. CONCLUSION

In summary, above the discussion indicate that there is no likelihood of confusion between Applicant's mark and pending mark. There are significant differences in the two respective marks . And Applicant's goods are unrelated to Registrant's goods. also applicant's mark has been used in commerce since April 23,2018 , the trademarks has a very big impact on the market. All such factors, in totality, demonstrate there is not likely to be any confusion as between Applicant's mark and Registrant's mark. Accordingly, Applicant strongly believes that the correct determination herein is that Applicant's mark is not likely to be confused with Registrant's cited mark. Applicant requests that the Examining Attorney reconsiders the refusal based on an alleged likelihood of confusion and withdraw this ground for refusal.

EXHIBIT A

T Teen
Violence
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Contains Ads
Ads are placed by the app developer.
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App info

Version 1.176.32

Updated on Apr 15, 2019

Downloads 10,000,000+ downloads

Download size 11.07 MB

In-app purchases \$0.99 - \$7.99 per item

Offered by InShot Inc.

Released on Apr 23, 2018

App permissions [See More](#)

EXHIBIT B

Global Brand Database

Perform a trademark search by text or image in brand data from multiple national and international sources, including trademarks, appellations of origin and official emblems. V: 2019-07-01 02:49

Data from 9 ARIPO member states available Over 407000 records added	A new AI-powered image search available Use the "Concept" Strategy	2019-04-01	Data from Registro Nacional Costa Rica available Over 326000 records added	2019-03-21	International Nonproprietary Names from WHO available	2019-02-08	Data from North Macedonia available Over 33500 records added	2018-12-21	Free webinar NEWS Global Brand Databases Webinars
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SEARCH BY

Brand Names Numbers Dates Class Country

Image Class (All) = e.g. 05.07.13, apple AND tree

Goods/Services Class (Nice) = e.g. 25, footwear

CURRENT SEARCH

HOL:INSHOT × GS_NICE:9 ×

FILTER BY

Source Image Status Origin App. Year * Expiration *

AE TM	0	AU TM	0	BH TM	0	BN TM	0
BW TM	0	CA TM	0	CH TM	0	CL TM	0
CR TM	0	DE TM	0	DK TM	0	DZ TM	0
EE TM	0	EG TM	0	EM TM	0	ES TM	0
FR TM	0	GE TM	0	GH TM	0	GM TM	0
ID TM	0	IL TM	0	IS TM	0	IT TM	0

Display: List Sort: Value - asc

Brand	Source	Status	Relevance	Origin	Holder	Number	App. Date	Image Class	Nice Cl.	Image
XPLAYER	US TM	Active	20	US	Hangzhou <i>INSHOT</i> Tech Limited	87660526	2017-10-26			
No Verbal Elements	US TM	Pending	19	US	HANGZHOU <i>INSHOT</i> TECH CO.,LTD.	88469394	2019-06-12	US.16.03, US.26.01, US.26.09	9	
No Verbal Elements	US TM	Pending	19	US	HANGZHOU <i>INSHOT</i> TECH CO.,LTD.	88231422	2018-12-17	US.16.03, US.24.17, US.26.11	9	
GLITCHCAM	US TM	Pending	19	US	HANGZHOU <i>INSHOT</i> TECH CO.,LTD	88209677	2018-11-28		9	
P	US TM	Pending	19	US	HANGZHOU <i>INSHOT</i> TECH CO.,LTD	88175599	2018-10-31	US.26.01, US.26.09, US.26.17	9	
P	US TM	Pending	19	US	HANGZHOU <i>INSHOT</i> TECH CO.,LTD	88175584	2018-10-31	US.26.01, US.26.09	9	
No Verbal Elements	US TM	Inactive	19	US	HANGZHOU <i>INSHOT</i> TECH CO.,LTD	87877102	2018-04-13	US.26.09, US.26.11	9	
No Verbal Elements	US TM	Active	19	US	HANGZHOU <i>INSHOT</i> TECH CO.,LTD	87877108	2018-04-13	US.01.15, US.15.05, US.16.01	9	
No Verbal Elements	US TM	Active	19	US	HANGZHOU <i>INSHOT</i> TECH CO.,LTD	87877069	2018-04-13	US.11.07, US.16.03, US.26.09	9	
No Verbal Elements	US TM	Active	19	US	HANGZHOU <i>INSHOT</i> TECH CO.,LTD	87877088	2018-04-13	US.26.09, US.26.11	9	
No Verbal Elements	US TM	Active	15	US	HANGZHOU <i>INSHOT</i> TECH CO., LTD.	87154837	2016-08-30	US.26.01, US.26.09, US.26.17	9	
INSHOT	US TM	Active	15	US	HANGZHOU <i>INSHOT</i> TECH CO., LTD.	86769529	2015-09-25		9	

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EXHIBIT C

Photo Editor Pro - Apps on Google Play

https://play.google.com/store/apps/details?id=photo.editor.photoeditor.photoeditorpro

应用 生活 站点 工作 All applications -... Monetization Man... Firebase console Homepage - Mate... App Store Connect Trademark Electro...

Google Play Search

App Categories Home Top Charts New Releases

My apps Shop Games Family Editors' Choice Account Payment methods My subscriptions Redeem Buy gift card My wishlist My Play activity Parent Guide




Photo Editor Pro


InShot Inc. Photography ★★★★★ 105,918

Teen


Contains Ads · Offers in-app purchases
This app is compatible with all of your devices.

Installed

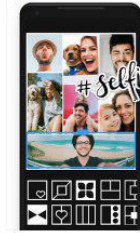
Pro Filter Effects



Double Exposure



Collage Maker



Blur Photo




Photo Editor Pro offers everything you want to edit pictures. A host of stylish effects, filters, grids and draw tools help you create an eye-catcher, even if you've never edited a photo before. With Photo Editor Pro, you can directly post your artworks to Instagram, Whatsapp, Facebook etc. Unlock your creativity, and edit pictures like a pro!

Similar See more




Photo Editor-Axiem Systems
Amazing all-in-one Photo Editor with effects, stickers.
★★★★★





Photo Editor PR Gamma Play
Powerful photo editor with many amazing filters, effects, frames.
★★★★★



Square Pic - Blur tianyanjun
Insta Square Fit / Sparkle Sweet Camera / Snap Pic / Blur
★★★★★


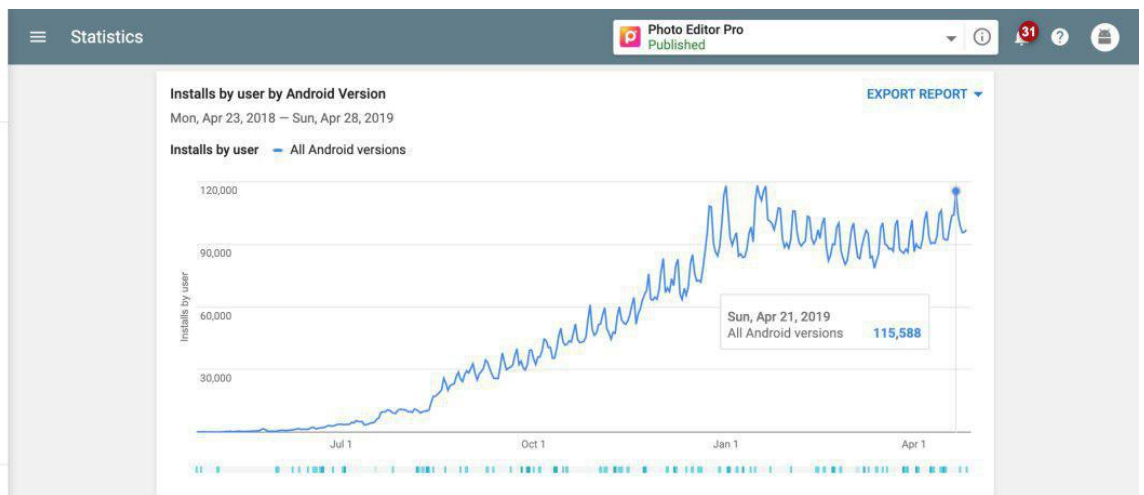


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- Firebase
- Functions
- ML Kit
- Quality**
 - Crashlytics
 - Performance
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- Analytics**
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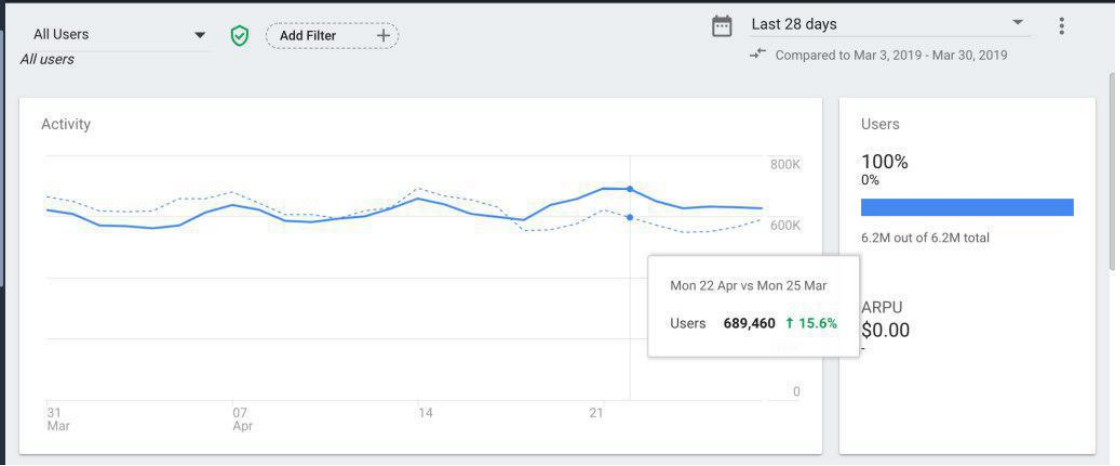


EXHIBIT D

Generated on: This page was generated by TSDR on 2019-07-01 00:56:01 EDT

Mark: P



US Serial Number: 88055722

Application Filing Date: Jul. 27, 2018

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Trademark, Service Mark

Status: A non-final Office action has been sent (issued) to the applicant. This is a letter from the examining attorney requiring additional information and/or making an initial refusal. The applicant must respond to this Office action. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date: May 16, 2019

Mark Information

Mark Literal Elements: P

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of stylized letter "P" contained in the design of a Bird.

Color(s) Claimed: Color is not claimed as a feature of the mark.

Design Search Code(s): 03.15.24 - Stylized birds and bats

03.15.25 - Doves; Robins; Cardinals; Crows; Woodpeckers; Other birds; Pigeons; Ravens
26.01.02 - Circles, plain single line; Plain single line circles

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (()) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Equipment for receiving, processing, and transmitting voice, video, data and information via telecommunications and wireless signals, satellite and computers, namely, receivers, receiver modules, modulators, transmitters, multiplexers, decoder boxes, data processors, integrated circuits, set-top boxes primarily comprised of a receiver and circuitry, computer operating hardware and software for use in the aforementioned goods, satellite dishes, satellite earth stations, and very small aperture terminals (VSAT); Computer software for administration of computer networks; Network routers; Wireless routers

International Class(es): 009 - Primary Class

U.S Class(es): 021, 023, 026, 036, 038

Class Status: ACTIVE

Basis: 1(b)

For: Telecommunications services, namely, the transmission of voice, video, data and documents via satellite, telephone and computer; telecommunications gateway services; providing telecommunications connections to a global computer network; broadcasting programs via a global computer network; electronic transmission of messages and data; video broadcasting and video messaging services; audio broadcasting; and providing multiple-user access to a global computer information network; video-conferencing services; video streaming services; video messaging services

International Class(es): 038 - Primary Class

U.S Class(es): 100, 101, 104

Class Status: ACTIVE

Basis: 1(b)

For: Computer consultation and integration of computer systems and networks; design of fixed and mobile satellite, wireless and computer communication networks for others; consulting services in connection with fixed and mobile satellite, wireless and computer communication networks; and testing, analysis, and evaluation of the goods and services of others for the purpose of certification; virtual network telecommunications services, namely, providing an interface for application sharing, presentation broadcasts, web page sharing, polling and instant messaging; and providing a web-based interface which transparently converts audio and video material from one user application to another

International Class(es): 042 - Primary Class

U.S Class(es): 100, 101

Class Status: ACTIVE

Basis: 1(b)

Basis Information (Case Level)

Filed Use: No	Currently Use: No	Amended Use: No
Filed ITU: Yes	Currently ITU: Yes	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: Peatalk Corporation

Owner Address: 9555 W Sam Houston Pkwy South Suite 160
Houston, TEXAS 77099
UNITED STATES

Legal Entity Type: CORPORATION

State or Country TEXAS
Where Organized:

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Javier Gomez

Attorney Primary docket2@remarkable.legal
Email Address:

Attorney Email Yes
Authorized:

Correspondent

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PORTLAND, OREGON 97208
UNITED STATES

Phone: 503-549-4854

Correspondent e-mail: docket2@remarkable.legal

Correspondent e-mail Yes
Authorized:

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
May 16, 2019	NOTIFICATION OF NON-FINAL ACTION E-MAILED	
May 16, 2019	NON-FINAL ACTION E-MAILED	
May 16, 2019	NON-FINAL ACTION WRITTEN	69803
Nov. 16, 2018	NOTIFICATION OF LETTER OF SUSPENSION E-MAILED	
Nov. 16, 2018	LETTER OF SUSPENSION E-MAILED	
Nov. 16, 2018	SUSPENSION LETTER WRITTEN	69803
Nov. 16, 2018	EXAMINER'S AMENDMENT ENTERED	88888
Nov. 16, 2018	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	
Nov. 16, 2018	EXAMINERS AMENDMENT E-MAILED	
Nov. 16, 2018	EXAMINERS AMENDMENT -WRITTEN	69803

Nov. 14, 2018 ASSIGNED TO EXAMINER
Aug. 03, 2018 NOTICE OF DESIGN SEARCH CODE E-MAILED
Aug. 02, 2018 NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM
Jul. 31, 2018 NEW APPLICATION ENTERED IN TRAM

69803

TM Staff and Location Information

TM Staff Information

TM Attorney: LE, KHUONG M

Law Office Assigned: LAW OFFICE 118

File Location

Current Location: TMO LAW OFFICE 118- EXAMINING
ATTORNEY ASSIGNED

Date in Location: May 16, 2019