

ATTORNEY DOCKET NO.: 000123-0014

Mark: HOLA

Serial No. 88/453,882

RESPONSE TO OFFICE ACTION NO. 1

This is in response to Office Action No. 1, dated August 24, 2019 in connection with the above-referenced application.

I. SECTION 2(d) REFUSAL

In that Office Action, the Examining Attorney refused registration of Applicant's mark based on his opinion that there is a likelihood of confusion with prior Registration Nos. 5552935 and 3325527. For the detailed reasons set forth below, Applicant respectfully disagrees with the Examining Attorney's assessment and requests that the rejection be withdrawn, as (1) HOLA is an acronym that stands for "House of Living Art" and not "hello"; (2) the HOLA products are sold via an import/export agency via mail order services featuring "House of Living Art" or HOLA goods; and (3) the Examining Attorney has presented no persuasive evidence that consumers are likely to (a) view Applicant's mark as a Spanish-language word, (b) mistakenly translate it to "hello" in English, and (c) be confused with the marks HELLO HOME for kitchen appliances, food service items, and slippers and HELLO for office furniture.

A. Applicant's Mark is Sufficiently Distinguishable from the Cited Marks Due to Differences in the Sight, Sound, and Meaning of the Marks, Along with Applicant's Family of HOLA-Formative Marks

Applicant's Mark is HOLA, which stands for "House of Living Art" and is part of a family of HOLA-formative marks. Applicant has used its HOLA family of marks for a number of years throughout the world (see attached Exhibit 1 showing the specimens of use for HOLA (Stylized) in the US in connection with Applicant's previous registration for the mark and a website in Asia showing use of the HOLA mark for various home goods and furniture-- <http://www.hola.com.cn/gyhola>). In Taiwan, for example, Applicant's HOLA mark has been registered since 1998 and has developed worldwide fame as its stores have been offering home décor and other household products in its stores in various countries since the late 1990s.

Applicant's HOLA goods are offered under its logo and frequently occur with Chinese characters, as Applicant's loyal base of followers began in Asia and its reputation spread to the US with sales occurring in America under its HOLA (Stylized) mark at least as early as February 26, 2008. Applicant's began its use of its HOLA GO mark in Taiwan in 2017 and the US in 2019.

Cited Registration No. 3325527 for the mark HELLO

Applicant owns live Registration No. 5489366 for the mark HOLA GO covering "*Import-export agencies; mail order services featuring a wide variety of consumer goods of others; providing television home shopping services in the field of general consumer merchandise; on-line retail store services featuring a wide variety of consumer goods of others; provision of information and advice to consumers regarding the selection of products and items to be purchased; retail department stores; promoting the goods and services of others by means of operating an on-line shopping mall with links to the retail web sites of others; retail store services featuring a wide variety of consumer goods of others; wholesale and retail store services featuring furniture, household goods,*" including the types of goods that are listed in the specification of the present HOLA application.

Applicant is also the owner of Registration No. 3790627 for the mark HOLA (Stylized) (now cancelled due to an inadvertent failure to file an Affidavit under Sections 8 & 15 in 2016) for, among other things, “Furniture covering, namely, fitted fabric furniture covers; Covering of plastic for furniture, namely, fitted plastic furniture leg covers for floor protection purposes and fitted plastic furniture covers; Furniture coverings of textile, namely, fitted textile fabric furniture covers; Furniture coverings of textile, namely, fitted textile fabric furniture covers; Fitted fabric furniture covers.”


Neither of Applicant’s prior HOLA-formative marks were blocked by Registration No. 3325527, which has been alive since 2007. In fact, the HELLO mark for furniture has been around for 70+ years and Applicant’s HOLA mark has been in use in US interstate commerce since 2008. In over a decade, there has never been an instance of actual confusion between Applicant’s products and the HELLO office furniture products. This is because each brand is extremely well-known in their respective fields and consumers know that Applicant’s HOLA mark stands for “House of Living Art” and is **not** a Spanish translation of Registrant’s HOME mark. In fact, Registrant’s own description of goods is “office seating for an office facility **which is sold through an exclusive network of office furniture dealers**” [emphasis added] not household goods, as are sold by Applicant through its website targeted primarily to Chinese speaking consumers who live in the US and are familiar with Applicant’s family of marks.

Cited Registration No. 5552935 for the mark HELLO HOME

The HELLO HOME mark was filed on November 21, 2016 for, among other things, “on-line retail store services featuring household goods and appliances” while Applicant’s HOLA GO registration was filed on January 26, 2017 for, among other things, “wholesale and retail store services featuring furniture, household goods.” Again, the prior HELLO HOME registration was not cited as a bar to Applicant’s HOLA GO mark, because the marks are completely different. More importantly, the HELLO HOME / HOLA / HOLA GO marks have been used in interstate commerce together since 2010 (when Registrant first began use of HELLO HOME on kitchen appliances) with zero instances of actual confusion. A decade of peaceful co-existence is strong evidence that there is **no** likelihood of confusion between Applicant’s mark and the HELLO HOME registration.

In other words, the marks below have been allowed in view of each other and there have been no instances of actual confusion regarding any of the marks in this chart (see Exhibit 2 for full TESS records for these marks):

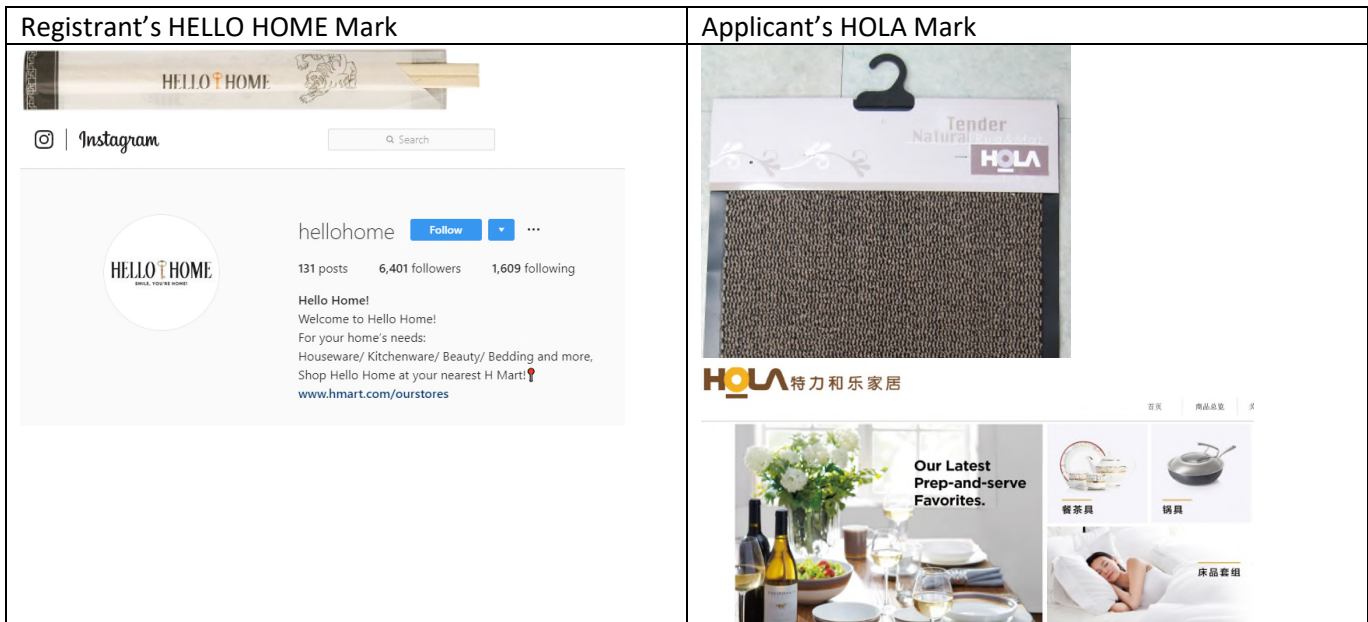
US Reg /App No.	Mark	Goods
5552935	HELLO HOME	Electric food processors; electric juicers; electric vacuum cleaners (Cl. 7); Convection ovens; electric cooking pots; electric cooking stoves; electric grills; electric kettles; electric toasters; humidifiers; electric fans; electric heating fans (Cl. 11); Bowls; chopsticks; disposable gloves for home use; disposable plastic gloves for general use; disposable plastic gloves for use in the food service industry; drying racks for laundry; drying racks for washing; household utensils, namely, strainers; household utensils, namely, steamers; kettles, non-electric; mugs; pans; pot lids; pots; woks; clothes drying racks (Cl. 21); Slippers (Cl. 25); On-line retail store services featuring household goods and appliances (Cl. 35)
3325527	HELLO	Office furniture, namely, office seating for an office facility which is sold through an exclusive network of office furniture dealers (Cl. 20)
5489366	HOLA GO	Import-export agencies; mail order services featuring a wide variety of consumer goods of others; providing television home shopping services in the field of general consumer merchandise; on-line retail store services featuring a wide variety of consumer goods of others; provision of information and advice to consumers regarding the selection of products and items to be purchased; retail department stores; promoting the goods and services of others by means of

US Reg /App No.	Mark	Goods
		operating an on-line shopping mall with links to the retail web sites of others; retail store services featuring a wide variety of consumer goods of others; wholesale and retail store services featuring furniture, household goods (Cl. 35)
3790627 (now cancelled)	<p>HOLA</p> 	<p>Electric fruit presses (Cl. 7); Tableware not of precious metal, namely, knives, forks and spoons (Cl. 8); Lamps; Light bulbs; Decorative electric lights; Fluorescent lamps; Pocket searchlights; Lanterns; Chandeliers; Ceiling lights; Flash lights; Electric night lights; Electric spotlights; Light kits comprising of a ceiling lamp fixture with fans; Electric fans, namely, electrically operated desk, stand and wall fans; Electric stoves; Electric radiators; Barbecues; Electric grills; Electric ovens; Grilling apparatus, namely, lava rocks; Roasting spits; Grilling and roasting apparatus, namely, ceramic briquettes, lighters; Lava rocks for use in barbecue grills; Electric griddles; Hot air blowers for roasting; Rotisseries; Furnace grates; Gas burners and accessories for gas burners, namely, metal brackets for gas burners all sold as a unit; Gas boilers; Solar furnaces; Apparatus for roasting food, namely, roasting jacks and rotisseries; Cooking apparatus, namely, microwave ovens (Cl. 11); Unfitted furniture covers of paper; Table cloths of paper; Table mats of paper; Table napkins of paper (Cl. 16); Toilet cases sold empty (Cl. 18); Towel racks; Furniture covering, namely, fitted fabric furniture covers; Covering of plastic for furniture, namely, fitted plastic furniture leg covers for floor protection purposes and fitted plastic furniture covers; Furniture coverings of textile, namely, fitted textile fabric furniture covers; Furniture coverings of textile, namely, fitted textile fabric furniture covers; Fitted fabric furniture covers (Cl. 20); Pots; Cooking pot sets; Non-electric cooking utensils, namely, wire baskets, grill covers and batter dispensers; Drinking vessels; Basins and bowls; Cruets; Ceramics for household purposes, namely, ceramic grinding beads for use in wet millings, ceramic tissue box covers and knobs of ceramic; Utensils for household purposes, namely, graters, spatulas and sieves; Kitchen utensils, namely, strainers and turners; Kitchen containers; Non-electric fruit presses; Heat-insulated containers for food and beverages; Portable coolers; Ice pails; Gridirons for use on barbecue grills; Ironing boards; Cleaning instruments, namely, cloths for cleaning, dustbins, mops and buckets; Toilet utensils, namely, toilet paper holders; Sponges for household purposes; Combs; Brush goods, namely, brushes for pets; Clothes pegs; Drying racks for laundry; Sprinkling devices, namely, empty spray bottles; wash tubs; Camping grills; Dutch ovens; Roasting apparatus, namely, roasting dishes and pans (Cl. 21); Bags or nets for washing clothes, namely, mesh lingerie bags and net bags for washing hosiery (Cl. 22); Bath linens; Bed blankets; Bed clothes, namely, bed linens and bed sheets; Bed covers; Bed covers of paper; Bed linen; Bedspreads; Billiard cloth; Receiving blankets; Bolting cloth; Cotton fabrics; Furniture covering of textile, namely, unfitted textile fabric furniture covers; Covering of plastic for furniture, namely, unfitted plastic furniture covers; Coverlets; Fitted fabric toilet lid covers; Covers for cushions; Unfitted fabric covers for furniture; Curtain holders of textile material, namely, curtain tie-backs; Curtains of textile and plastic; Door curtains; Face towels of textile; Furniture coverings of plastic, namely, unfitted plastic furniture covers; Furniture coverings of textile, namely, unfitted textile fabric furniture covers; Unfitted fabric furniture covers; Towels for glass; Gummed waterproof cloth other than for stationery use; Sackcloths; Handkerchiefs; Household linen; Net curtains; Pillow shams; Pillowcases; Sheets, namely, bath sheets and bed sheets;</p>

US Reg /App No.	Mark	Goods
		Shower curtains of textile and plastic; Table cloths not of paper; Table linens; Table mats not of paper; Table napkins of textile; Fabric table runners; Towels; Traced cloths for embroidery; Traveling rugs and Lap robes (Cl. 24); Artificial flowers; Artificial fruits; Artificial garlands; Wreaths of artificial flowers; Chenille and passementerie; Heat adhesive patches for decoration of textile articles; Elastic ribbons; Embroidery; Festoons, namely, garlands of artificial flowers and ribbons looped between two points; Prize ribbons; Tapes for curtain headings, namely, hook and eye fastening tapes, hook and loop fastening tapes and hook and pile fastening tapes; Hair accessories, namely, twistors for making top knots; Arts and crafts findings, namely, pompoms; Wigs; Snap fasteners; Spangles for clothing; Zippers; Hair ornaments; False hair; Darning needles; Buttons; Brooches; Boxes for needles; Barrettes and hair-slides; Belt clasps; Brassards; Fastenings for clothing, namely, buttons, zippers and buckles; Ornamental novelty badges and buttons; Picot and lace; and Needles (Cl. 26); Japanese rice straw mats; Rugs; Carpets; Door mats; Bath mats; Automobile carpets; Floor Coverings; Non-slip mats; Reed mats; Gymnastic mats; Linoleum; Vinyl floor coverings; Wallpaper; Wall hangings, not of textile; Artificial turf; Carpet underlay (Cl. 27); Sales promotion for others, namely, publicity and sales promotion services; Import-export agencies; Procurement services for others, namely, purchasing goods and services for other businesses; Shop window dressing; Organization of trade fairs for commercial and advertising purposes; Organization of exhibitions for commercial and advertising purposes; Advertising agencies; Advertising by mail order; Advertising services, namely, providing television advertising for others by the production of television commercials; On-line advertising on a computer network; Data search in computer files for others, namely, searches of human resources data provided in person and via a global computer network; Commercial information agencies; Commercial and industrial management assistance; Business management and organization consultancy; Marketing research; Economic forecasting; Office machines and equipment rental; Rental of vending machines; Auctioneering; Public relations; and Personnel recruitment (Cl. 35).

As for the visual and aural differences in the marks, the cited Registrations and Applicant’s mark share only the letters “H” and “O”. More importantly, Applicant’s mark is pronounced “H-O-L-A” (as if someone were spelling the mark out) because it stands for “House of Living Art,” whereas the cited registrations are for HELLO HOME and HELLO. Even if the marks are not encountered via the spoken word, they are visually different as well. Registrant’s marks are spelled differently and the portion that the Examining Attorney deems similar ends in an “O.” In contrast, Applicant’s mark begins with “H-O” and not only has a completely separate ending, it tracks the same wording as Applicant’s other registrations for HOLA (Stylized) and HOLA GO, both of which are well-known by consumers.

In addition, the marks as they appear on Applicant’s goods and Registrant’s goods (as well as their respective social media pages and websites) are quite different:



Accordingly, due to Applicant's well-known family of marks and the visual and aural differences in the cited Registrations as compared in their entireties to Applicant's HOLA mark, there is no likelihood of confusion.

B. The Doctrine of Foreign Equivalents Does Not Apply

Contrary to well-settled law on the issue, the Examining Attorney here treated the application of the doctrine of foreign equivalents as mandatory, rather than discretionary. See, e.g., *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 73 U.S.P.Q.2d 1689, 1696 (Fed. Cir. 2005) (“[T]he doctrine of foreign equivalents is not an absolute rule and should be viewed merely as a guideline.”); *In re Am. Safety Razor Co.*, 2 U.S.P.Q.2d 1459, 1460 (TTAB 1987).

The doctrine of foreign equivalents applies only “when it is likely that the ordinary American purchaser would stop and translate [the word] into its English equivalent.” *Palm Bay Imports*, 73 U.S.P.Q.2d at 1696. In this context, the term “ordinary American purchaser” refers to one who is knowledgeable in the language. See *In re Thomas*, 79 U.S.P.Q.2d 1021, 1024 (TTAB 2006) (“[O]rdinary American purchaser . . . refers to the ordinary American purchaser who is knowledgeable in the foreign language.”). In applying the doctrine of foreign equivalents to the examination of Applicant's Mark, the Examining Attorney improperly presumed that the ordinary American purchaser will stop and translate Applicant's HOLA mark into the Spanish word for “hello,” and he improperly implied that the burden of proof is on Applicant to provide evidence to substantiate that such translation will not happen. Notwithstanding the fact that such a requirement is improper, Applicant has provided evidence that relevant consumers are not likely to stop and translate the mark.

In other words, the doctrine of foreign equivalents is not based on a presumption that the ordinary American purchaser will stop and translate the mark. It would be improper to apply the doctrine of foreign equivalents to every mark which happens to be comprised of a foreign term that *could* be translated by a person knowledgeable in that language. Instead, the opposite of the Examining Attorney's position is true—evidence must be presented “to support an inference that U.S. consumers are likely to translate the mark.” *Lazzaroni USA Corp. v. Steiner Foods, B&R Classics, LLC*, No. 05-4476, 2006 WL 932345, at *3-4 (D.N.J. Apr. 11, 2006) (“Defendants have offered no evidence to support an inference that U.S. consumers are likely to translate the mark, and so the predicate condition for application of the doctrine of foreign equivalents has not been satisfied.”).

The Examining Attorney's evidence in relation to the doctrine of foreign equivalents consists solely of an online translation of the Spanish word "hola" into the English word meaning "hello" and does not prove that the doctrine of foreign equivalents should apply. For example, if a mark had an "ROI" component, it would not be a given that US consumers would view it as the French word for "king" and then believe it to come from the same source as goods/services under a "KING"-formative mark. This is because ROI is also a common acronym meaning "Return on Investment" in English. Similarly, consumers encountering a mark with a "PAX" component would not necessarily view it as the Latin word for "peace" even though many of the Baby Boomers in America were forced to take Latin in school as children and/or learned the Latin word in church at a time when mass was conducted in great part in the Latin language. This is because "PAX" is also a military acronym that can mean several things—from "passengers" to "personnel" to naming military bases or systems or explosives (see attached Exhibit 3). Accordingly, anyone in the military who also knew Latin would pause and observe the mark more carefully instead of making an immediate translation and assumption. And even in with respect to an English word, consumers seeing the word "kiss" might immediately think of the "KISS principle" meaning "Keep It Simple Stupid" instead of thinking that a KISS-formative mark has only one meaning—especially if it were applied to consulting services, for example.

In this case, HOLA does not automatically mean "hello," even to native speakers of Spanish who live in the US. For example, HOLA is the acronym for several Latin-focused organizations, such as the "Hispanic Organization of Latin Actors," the "Hispanic Outreach Leadership Alliance," the "Home of Latin Artists," and many others (see attached Exhibit 4). Arguably, Spanish speaking consumers living in the US would be quite familiar that HOLA is a common acronym for numerous organizations, several of which cater to the Latin community, as well as some that are unrelated to Hispanic references. In fact, it's more likely that not that such consumers would presume the mark stands for four words beginning with the letters of Spanish word for "hello" than to assume it was a literal translation of that word, given the numerous organizations that such consumers would be exposed to living in the US. Based on the numerous meanings of the word "kokoro," Applicant submits that, even if the ordinary American purchaser who makes the step of translation may potentially translate "HOLA" to "hello," the Examining Attorney has offered no evidence that the ordinary American purchaser is *likely* to do so.

More importantly, the Spanish word "hola" or the English word "hello" have no meaning whatsoever with respect to Applicant's goods, so it is even less likely that a person would translate the mark. For example, the Examining Attorney's argument might have some merit if Applicant's mark contained the Italian word "bambino" for "baby clothing" or the like. Consumers are far more likely to look at a mark and view it as a translation when the word describes the goods / services. That is not the case here—especially where Applicant's target audience is Chinese-speaking Americans, not the Latino community (see Exhibit 1).

Here, the Examining Attorney offered no evidence to support the application of the doctrine of foreign equivalents in this case beyond a cursory exhibit of a translation of the word "hola." As noted above, Applicant has provided ample evidence that the doctrine of foreign equivalents is inapplicable in this case since the ordinary American purchaser is unlikely to translate the HOLA mark and even if it did, it would associate the mark with Applicant's family of HOLA-formative marks that have been in use in interstate commerce for a decade. The doctrine of foreign equivalents may not apply when the foreign word has more than one meaning and it is not sufficient for the Examining Attorney to rely solely on a translation of the word in the mark identified in the application as found in a single dictionary definition.

There is no basis to presume, as the Examining Attorney did, let alone to deem it "likely," that the ordinary American purchaser who is knowledgeable in Spanish "would stop and translate" Applicant's HOLA mark into any "English equivalent," particularly the word "hello." Indeed, it is recognized that "there are foreign expressions that even those familiar with the language will not translate, accepting the term as it is." *In re Tia Maria, Inc.*, 188

U.S.P.Q. 524, 525 (TTAB 1975) (holding that consumers will not translate TIA MARIA as the name of a Mexican restaurant because the marketplace makes it unfeasible for them to do so). See also *In re Pan Tex Hotel Corp.*, 190 U.S.P.Q. 109, 110 (TTAB 1976) (concluding that consumers are unlikely to translate LA POSADA when used as the name of a motor hotel into its English equivalent of “the inn,” because “la posada” creates a different commercial impression in English than it does in Spanish).

Accordingly, Applicant’s mark is sufficiently distinguishable from the cited marks due to the differences noted above and the evidence submitted herewith that the doctrine of foreign equivalents does not apply.

C. Applicant’s Goods are Sufficiently Distinguishable from the Cited Marks Due to Differences in the Goods, the Respective Uses for Those Goods, and the Sophistication of Relevant Consumers

The Examining Attorney has presented no evidence regarding the sophistication of relevant consumers, nor did it address the fact that Applicant’s “office desks” are for home use and are meant to be artistic pieces that are both functional and enhance the beauty of your home. Registrant’s HOME branded desks are used in workspaces around the world. Registrant specializes in commercial spaces and business furniture for offices, not home décor and its primary consumers are architects, designers, and the like in the higher education, government, and health spaces (see Exhibit 5). As such, its consumers are highly sophisticated customers who are purchasing large quantities of products for commercial projects that likely have huge budgets as compared to the consumers of Applicant’s goods, who buy items in smaller quantities for their homes.

Conversely, the HELLO HOME goods that are sold in the US at the grocery store H Mart (see details below) are very low priced and not likely to be confused with Applicant’s goods meant to adorn and beautify the home at a reasonable price.

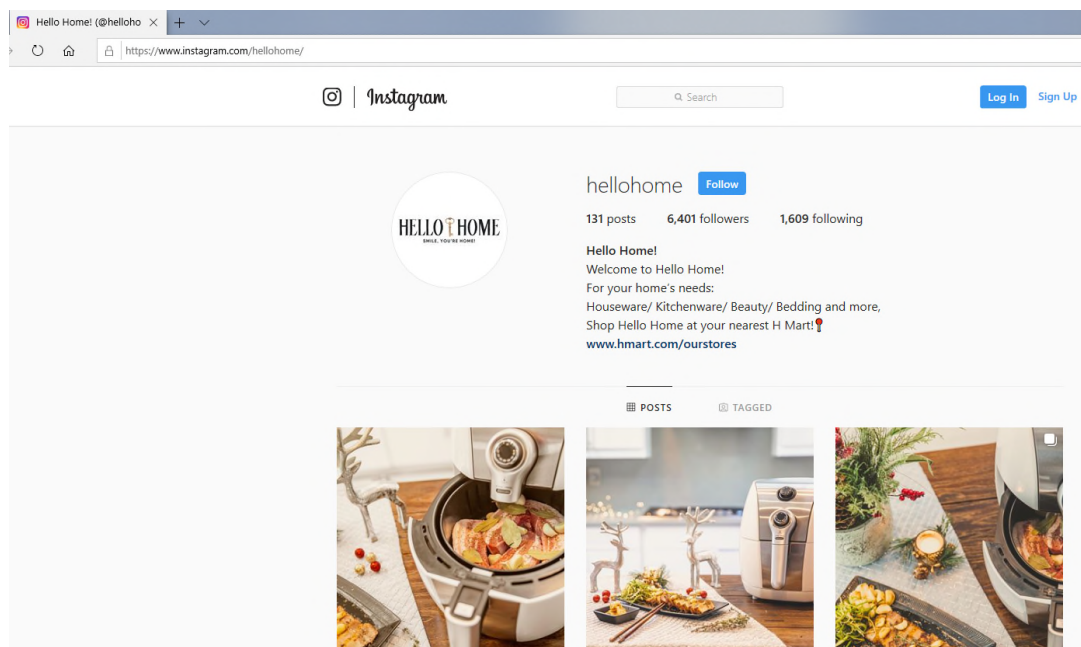
At the very least, the Examining Attorney should take into consideration the differences in the intended purposes of the respective goods and the sophistication of the relevant consumers of Applicant’s goods versus the Registrants’ goods.

D. Applicant’s Goods and Services Travel in Sufficiently Different Trade Channels From those of the Cited Registrations’ Goods and Services Such That Confusion Is Not Likely

To sustain a rejection under Section 2(d), the Examining Attorney must consider differences in the channels of trade, even if that factor alone is not determinative of the outcome of his analysis. In *In re Bentley Motors Ltd.*, Serial No. 85325994 (December 3, 2013) [not precedential], the Board reversed a refusal to register where the mark BENTLEY for perfume, cosmetics, and glassware was “sold only in authorized vehicle dealers and authorized vehicle service outlets” notwithstanding the fact that prior registrations for BENTLEY, BENTLEY UNIVERSITY and BENTLEY ORGANIC existed that covered similar or identical goods. The Examining Attorney there objected to Applicant’s mark based on the fact that the prior registration had no limitation as to its channels of trade.

In the case at hand, we have the reverse situation. The prior registration for HELLO for office furniture is **expressly limited to** “office seating for an office facility which is sold through an exclusive network of office furniture dealers” on the face of the registration. Applicant’s goods are never sold in such a manner to these particular consumers. However, even if such consumers were to become aware of Applicant’s products, they would not be confused as the differences in their presentation, sale, and means of purchase are so different (see Exhibits 1 and 5).

With respect to the HELLO HOME goods, Registrant appears to sell HELLO HOME goods in the US solely via the grocery store H Mart (www.hmart.com/ourstores--as can be seen on its Instagram page):



Again, perhaps there are customers that both shop at H Mart and are aware of Applicant's HOLA goods, but if so, they have to go to disparate places to purchase those items. Online purchases from H Mart can only be made via its website at: <https://www.hmart.com/shipping-delivery> or in one of its physical locations, whereas Applicant's goods that are sold in the US currently must be ordered from its website. In other words, consumers would have to already know the various urls from which to purchase the respective goods and/or would encounter HELLO HOME products in an H Mart brick and mortar store, none of which sell Applicant's goods.

Furthermore, an Internet search shows that (a) Google translates "hola" to "Hi," not "hello," and that (b) a search for either of Applicant's HOLA mark or Registrant's HELLO HOME marks will never yield results for the other trademark owner's goods. (See Exhibit 6 showing the first page of the results of those Internet searches—100 hits per page).

In summary, in contrast to the evidence submitted herewith, the Examining Attorney has provided no support for the presumption that these are the same channels of trade and has made no clear showing of how this necessary element factors into his rejection analysis. However, given the clear differences in the channels of trade between Applicant's goods and the Registrants' respective goods, no likelihood of confusion exists.

II. AMENDED IDENTIFICATION OF GOODS REQUIREMENT

The Examining Attorney requested that Applicant amend the goods as follows—please delete the identification as filed and substitute the following therefor:

Humidifiers for household use; aroma diffusers, namely, electric operated aromatherapy units, in Class 11;

Mobile storage cart for domestic use, in Class 12;

Bookcases; Coffee tables; Office desks; Ladder-style shelves; Corner shelves; End tables; Vanity mirrors; Mirrors featuring LED lights and aroma diffusers in the nature of electric aromatherapy units as component parts of the mirrors; Floating wall shelves; Kitchen furniture, namely, ready to assemble mobile kitchen islands , in Class 20; and

Cookware, namely, cast iron pots, ceramic pots and pans; saucepans; non-electric woks and stir-fry pans, in Class 21.

III. TRANSLATION AND CLAIM OF OWNERSHIP

As an English translation is required for foreign wording in a mark, the Examining Attorney has requested a translation of HOLA in the Office Action. However, although HOLA is not an English word, in the context of Applicant's mark, it is an acronym for the English phrase, "House of Living Art." This acronym is also present in US Registration No. 5489366 for the mark HOLA GO, also owned by Applicant, wherein the mark was accepted without a translation. Thus, Applicant respectfully submits that it does not require translation.

If appropriate, Applicant hereby authorizes the Examining Attorney to enter a claim of ownership to Applicant's prior registration for the HOLA GO mark in Class 35 for "Import-export agencies; mail order services featuring a wide variety of consumer goods of others; providing television home shopping services in the field of general consumer merchandise; on-line retail store services featuring a wide variety of consumer goods of others; provision of information and advice to consumers regarding the selection of products and items to be purchased; retail department stores; promoting the goods and services of others by means of operating an on-line shopping mall with links to the retail web sites of others; retail store services featuring a wide variety of consumer goods of others; wholesale and retail store services featuring furniture, household goods" (Reg. No. 5489366).

IV. CONCLUSION

It is the Examining Attorney's burden to prove that the doctrine of equivalents is applicable, and there has been no showing of evidence regarding same. In addition, the Examining Attorney has failed to provide evidence as to overlapping channels of trade, lack of sophistication of consumers, and other relevant factors in any likelihood of confusion analysis. Therefore, for the reasons set forth above, Applicant respectfully requests that the Examining Attorney remove the 2(d) objection and send the application to publication, timely notice of which is hereby requested.