

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK EXAMINING DIVISION**

APPLICANT : Quicken Loans, LLC)
)
TRADEMARK: PATHFINDER) Young Wolfe
) Trademark Examining Attorney
) Law Office 122
SERIAL NO. : 90/054,376)
)
CLASSES : 42)
)
)
)

RESPONSE TO OFFICE ACTION

Applicant has carefully considered the Office Action mailed on October 1, 2020 and responds as follows:

I. AMENDMENT TO IDENTIFICATION OF SERVICES

The Examining Attorney has requested clarification for some of the items in the Applicant’s identification of services in Class 42. Applicant has therefore amended the identification to read as follows:

Providing temporary use of online non-downloadable software for searching, retrieving, viewing, accessing, sharing and providing data and information in the fields of real estate, consumer lending, mortgages and business loans; providing temporary use of online non-downloadable software for use in transmitting payments, transferring funds, and bill payment; providing temporary use of online non-downloadable software for online banking, financial transaction management, financial planning, financial management, bill tracking and management, financial expense tracking and management, and financial goal tracking.

II. THERE IS NO LIKELIHOOD OF CONFUSION BETWEEN APPLICANT’S MARK AND THE CITED MARK

The Examining Attorney has preliminarily refused registration of Applicant’s PATHFINDER mark (“Applicant’s Mark”) in view of U.S. Registration No. 3,722,093 for the

mark RETIREMENT PATHFINDER (the “Cited Mark”). For the reasons set forth below, Applicant respectfully submits that its mark is not confusingly similar to the Cited Mark.

In considering the question of likelihood of confusion, marks must be examined on a case-by-case basis to determine the appropriate weight given to each likelihood of confusion factor. *See In re Application of E.I. du Pont de Nemours & Co.*, 476 F.2d 1357 (CCPA 1973). While the weight given to the relevant *du Pont* factors may vary, in this case the following factors are relevant and must be considered: (1) the differences in the nature of the parties’ respective services and trade channels, as clarified by the amendment filed concurrently herewith; (2) the sophistication of the relevant consumers; and (3) the differences in the overall commercial impressions made by the parties’ marks. *See* TMEP §1207.01. Each is addressed separately below.

A. Applicant’s Real Estate and Mortgage-Related Software Services are Readily Distinguishable from the Retirement Software Services Offered Under the Cited Mark

The Cited Mark is registered for “providing on-line non-downloadable software for obtaining consumer financial and retirement information and preferences in the field of financial advisory services” in Class 42. According to this list of services, and Registrant’s website located at <https://www.lifeandretirement.aig.com/employers/lp/retirement-pathfinder>, Registrant’s software is primarily focused on collecting consumer financial and retirement information to model retirement scenarios for employees so they can build and manage their retirement savings plan and achieve their retirement goals.


Individuals Financial Professionals Employers LOGIN AIG.COM

AIG Retirement Services Financial Wellness Thought Leadership

Retirement Pathfinder

We believe everyone can have a bright future.

LET'S CONNECT



Help your employees write their own retirement story with Retirement Pathfinder. Our Retirement Pathfinder technology helps analyze your employees' retirement savings plan and get answers to their questions. This interactive tool allows employees to build a personalized retirement plan; all while sitting shoulder-to-shoulder with their financial professional.

More options, more control


Working with your financial professional, Retirement Pathfinder can model retirement scenarios to help your employees gain new insight on their future. It also helps with real-time answers to questions like:

- Am I saving enough to achieve my retirement goals?
- Am I in danger of outliving or depleting my retirement savings?
- Is it possible to guarantee my retirement income?
- How do I convert retirement savings into lifetime income?

Applicant's software does not function to obtain consumer financial and retirement information. Rather, Applicant's software services under the PATHFINDER brand focus on *searching, retrieving, viewing, sharing and displaying* data in fields of real estate, consumer lending, mortgages and business loans for brokers.

Grow Your Business Like Never Before

Leverage The Rocket Brand To Build Yours




Do business at a whole new level.

- Benefit from national advertising that drives clients to your doorstep
- Gain access to the most competitive rates and our extensive network of leads and referrals
- Turbo charge your business with unparalleled training, resources and industry knowledge

Dial Up The Tech

Serve your clients with visibility and control like never before.


- Access the new **Pathfinder**, a first-of-its-kind, centralized platform for Q&A, guidelines, tools and more
- Deliver results with performance-optimized and broker-tested technology tailored to you
- Greater transparency puts you in control to work with more confidence and close faster



Find New Ways To Network

Make more dreams come true for more clients.

- Get more prospecting opportunities and make more dreams come true for more clients
- Unlock a whole new world of opportunities by interacting with the largest referral network in America





Accordingly, Applicant's software *functions* completely differently than the software Registrant offers. In addition to the differences in the functionality of the parties' respective software offerings, they are also each used in entirely different *fields* (i.e., financial advisory services for retirement vs. mortgage-related information for real estate brokers). Given the differences in functionality and fields of use, consumers are not likely to conclude that Applicant's services are in any way related to Registrant's services.

Not only are the parties' services dissimilar, but they are targeted to very different consumers. As the Board has noted, sales to different groups of purchasers through different channels of trade "are sufficient to raise a doubt as to likelihood of confusion." TMEP § 1207.01(a)(i). *See also In re Radiant Color Co.*, 156 U.S.P.Q. 703, 704 (T.T.A.B. 1968). In this case, Registrant's services are targeted to employers (*e.g.*, human resources departments) looking to offer their employees financial advisory services and tools related to retirement. Applicant's services are focused on providing brokers with information on policies, processes and requirements for loans and mortgages. Those who purchase these kinds of software tools and services on behalf of a business know exactly what they are looking for. An employer seeking retirement planning tools to help its employees is not interested in mortgage-related services, and a real estate broker looking for lending resources to streamline their business is not interested in retirement planning services. Indeed, the parties target very different types of clients, who have very different needs and operate in very disparate worlds. It is therefore highly unlikely that either party's clients will encounter, much less be confused by, the other party's mark in the marketplace.

B. The Parties' Respective Consumers are Discerning

Sophistication of the purchaser is often a dispositive element in the likelihood of confusion analysis "because sophisticated end-users may be expected to exercise great care." *Electronic Design & Sales Inc.*, 21 U.S.P.Q.2d at 1392; *See also Weiss Assoc., Inc. v. HRL Assoc., Inc.*, 902 F.2d 1546 (Fed. Cir. 1992). Here, the parties' services are targeted to two very distinct groups of discerning consumers.

Registrant's target clients appear to be companies in search of retirement advisory services, resources and tools that they can offer to their employees. Because retirement plans

and resources are very important and desirable to current or prospective employees, an employer would be savvy and diligent – exercising an incredibly high level of caution – in seeking out potential retirement advisors and tools in order to offer competitive employment benefits to their employees.

In contrast, Applicant’s software services are geared towards real estate brokers and agents looking for solutions to quickly and easily access information about mortgage and loan processes, guidelines and policies to improve efficiency. Such information is essential for brokers and agents to help home buyers and/or sellers with, for example, loan qualification, closing escrow and avoiding loan fallout. Therefore, brokers and real estate agents will exercise the utmost care and diligence prior to purchasing Applicant’s services.

Given the differences between the parties’ respective target consumers, and the heightened care each group is likely to exercise, prospective consumers will readily distinguish Applicant’s mortgage-related software services from the retirement-related software services offered by Registrant.

C. Applicant’s Mark Creates a Very Different Commercial Impression than the Cited Mark

The similarities or dissimilarities between the marks at issue must be compared in their entireties. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ 2d 1689, 1691 (Fed. Cir. 2005). Even slight differences in the appearance, sound, connotation and commercial impression can be sufficient to dispel confusion. “[T]he use of an identical word, even a dominant word, does not automatically mean the two marks are similar.” *Freedom Savs. & Loan Ass’n v. Way*, 757 F.3d 1176, 1183 (11th Cir. 1985) (FREEDOM REALTY not confusingly similar to FREEDOM SAVINGS AND LOAN); *See also In re WGI Innovations, Ltd.* Serial No. 85141753 (TTAB 2013) (FIELDVU for handheld

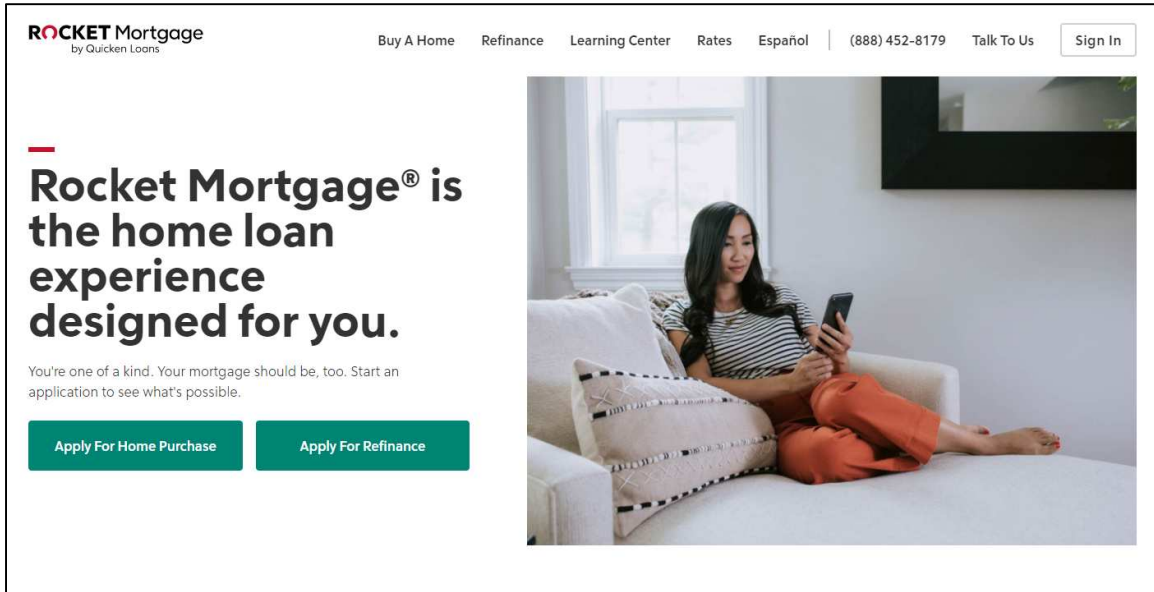
computers, namely game scouting cameras not confusingly similar to FIELDVIEW for a range of goods including software and telecommunications services); *In re Minegar*, Serial No. 86179013 (TTAB 2016). The key is the commercial impression each makes on the consumer.

In this case, the Cited Mark – **RETIREMENT PATHFINDER** – sends a very clear message to consumers: “We help you plan for retirement.” Registrant’s mark is not **MORTGAGE PATHFINDER**, **LOAN PATHFINDER**, or **REAL ESTATE PATHFINDER**. Why? Because Registrant does not offer mortgage, loan or real estate-related services under the **PATHFINDER** mark.

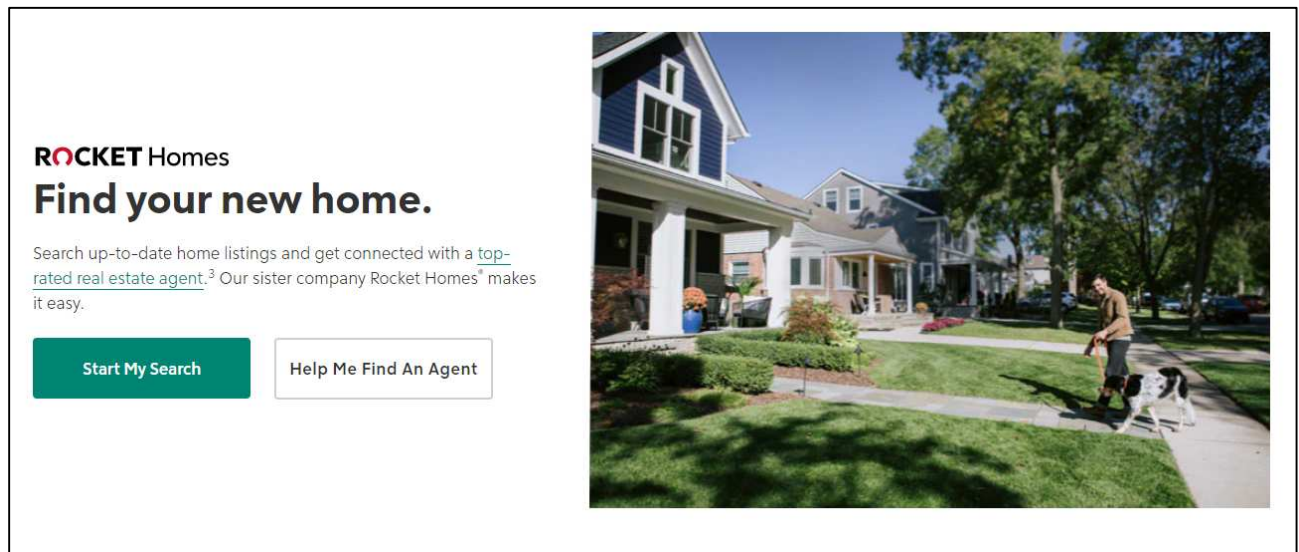
Applicant’s Mark also sends consumers a very clear – albeit very *different* – message. Applicant’s marquis products are its highly successful on-line **ROCKET MORTGAGE** services. When Applicant introduced its **ROCKET MORTGAGE** services in 2016, Applicant completely changed the way consumers view the home financing experience. What was historically a time-consuming, paper-intensive and often painful brick and mortar process, became a streamlined, highly efficient, on-line transaction. Applicant was truly a disrupter in the industry, and its consumer-friendly, on-line mortgage model has been wildly successful. Due in large part to this success, consumers recognize and associate Applicant’s suite of products with Applicant and no one else.

As the Examiner may be aware, Applicant owns an entire family of **ROCKET** marks – including **ROCKET**, **ROCKET MORTGAGE**, **ROCKET MORTGAGE CLASSIC**, **ROCKET LOANS**, **ROCKET REALTY**, **ROCKET HOMES**, **ROCKET HQ**, **ROCKET COMMUNITY FUND**, **ROCKET INNOVATION STUDIO** and many others. Applicant has offered **ROCKET**-branded goods and services since as early as 1998. Applicant’s **ROCKET** product offerings reached new heights of consumer awareness in early 2016 when Applicant’s **ROCKET**

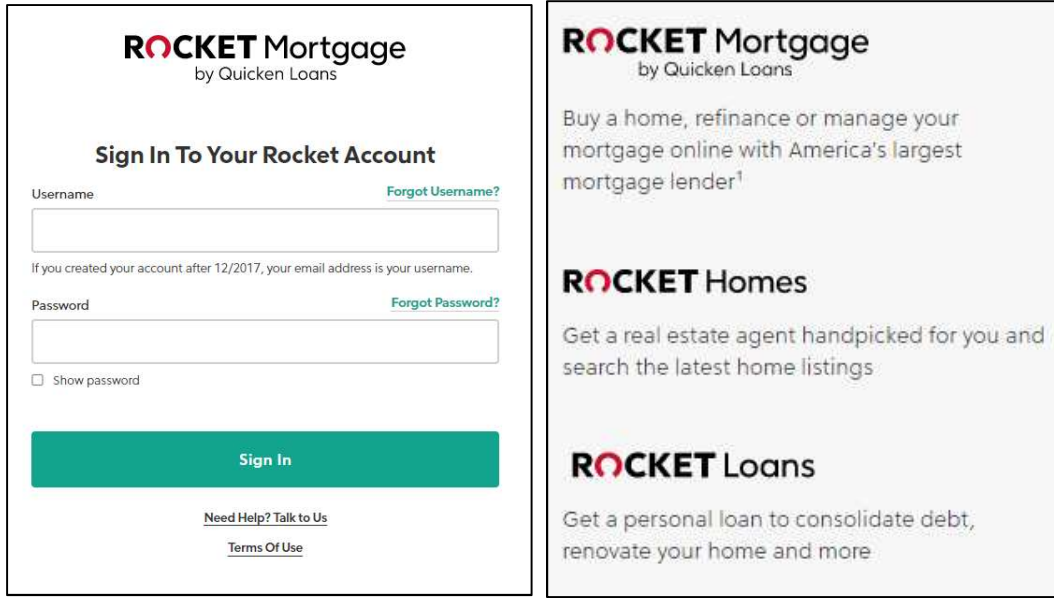
MORTGAGE services were officially “launched” in a television ad shown during Super Bowl 50. Since then, Applicant’s services have been widely advertised on a host of national platforms including via network television ads, satellite radio ads, video spots at electronic gas station pumps and, of course, through Applicant’s website. Below are a few “snips” from Applicant’s website showing Applicant’s various ROCKET marks.



The screenshot shows the Rocket Mortgage website homepage. At the top left is the logo "ROCKET Mortgage by Quicken Loans". To the right of the logo are navigation links: "Buy A Home", "Refinance", "Learning Center", "Rates", "Español", and a phone number "(888) 452-8179". Further right are "Talk To Us" and a "Sign In" button. The main content area features a large headline: "Rocket Mortgage® is the home loan experience designed for you." Below the headline is a sub-headline: "You're one of a kind. Your mortgage should be, too. Start an application to see what's possible." At the bottom of this section are two green buttons: "Apply For Home Purchase" and "Apply For Refinance". To the right of the text is a photograph of a woman with long dark hair sitting on a white sofa, looking at her smartphone. The background shows a bright, modern living room with a window and a framed picture on the wall.

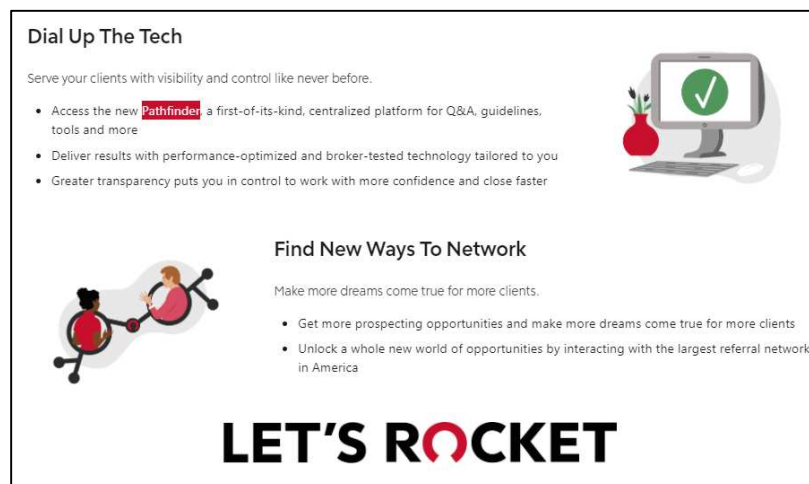


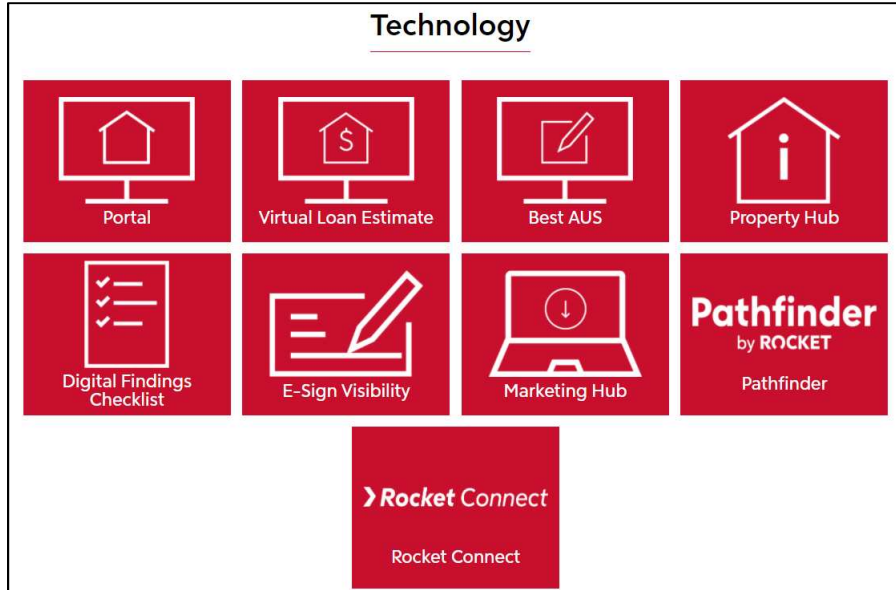
The screenshot shows the Rocket Homes website homepage. On the left side, the logo "ROCKET Homes" is displayed above the headline "Find your new home." Below the headline is a sub-headline: "Search up-to-date home listings and get connected with a top-rated real estate agent.³ Our sister company Rocket Homes[®] makes it easy." At the bottom of this section are two buttons: a green "Start My Search" button and a white "Help Me Find An Agent" button. To the right of the text is a photograph of a large, two-story house with a blue and white exterior. A man is walking a black and white dog on a leash on a sidewalk in front of the house. The scene is set in a sunny, suburban neighborhood with trees and other houses in the background.



When consumers see Applicant’s ROCKET marks in the marketplace, they immediately think of Applicant.

Applicant’s PATHFINDER mark does not exist in a trademark vacuum. Rather, it is a companion to Applicant’s ROCKET family of marks. Indeed, Applicant uses its PATHFINDER mark in close proximity to its ROCKET family of marks (e.g., PATHFINDER BY ROCKET) so that consumers will immediately associate the PATHFINDER platform with Applicant’s ROCKET family. As the screenshots below show, the PATHFINDER brand is deeply intertwined with the ROCKET family of marks.






Given the positioning of the PATHFINDER brand with Applicant’s ROCKET marks, consumers will immediately, and unmistakably, associate the PATHFINDER brand with its well-known and widely advertised ROCKET brands. The Cited Mark simply does not enter into the consumer’s thought process.

D. The Cited Mark is Entitled to Only a Narrow Scope of Protection

Applicant respectfully submits that the Examining Attorney has not fully taken into account other marks incorporating the term PATHFINDER for services related to retirement and employee benefits that coexist on the Register without any likelihood of confusion. Below are a few examples of registered marks that contain the term PATHFINDER and already coexist with the Cited Mark. Copies of the TSDR Records for these marks are attached as Exhibit A.

Mark	Reg. No.	Goods and Services	Owner
PATHFINDER WEALTH MANAGEMENT Disclaims: “WEALTH MANAGEMENT”	Reg. No. 3581091	Class 36: Financial services, namely, personal estate planning and financial retirement planning for individuals	Pathfinder Wealth Management, Inc. 6981 Redanasa Drive Rockford, Illinois 61108
JH TARGET DATE PATHFINDER Disclaims: “TARGET DATE”	Reg. No. 5303042	Class 36: Providing investment option information to financial professionals by means of a website Class 42: Software as a service (SaaS) services featuring software that enables financial professionals to perform investment option analysis and provide information on investment options to customers	John Hancock Retirement Plan Services, LLC 200 Berkeley Street Boston, Massachusetts 02117

Mark	Reg. No.	Goods and Services	Owner
PATHFINDER FORMULA	Reg. No. 5821532	Class 36: Financial services, namely, wealth management services; Financial advice and consultancy services; Financial advisory and consultancy services; Financial advisory and consultancy services, namely, the creation of personalized strategies to achieve financial independence; Financial analysis and research services; Financial and investment services, namely, asset and investment acquisition, consultation, advisory and development; Financial consulting services, namely, expert analysis in finance; Financial evaluation, tracking, analysis, forecasting, consultancy, advisory and research services relating to securities and other financial instruments; Financial information and advisory services; Financial investment brokerage services; Financial planning and investment advisory services; Financial portfolio analysis services; Financial restructuring services; Financial retirement plan consulting services; Financial risk assessment services; Insurance and financial information and consultancy services; Strategic financial advisory services	Silvertree, LLC 2715 Post Road, Suite A Stevens Point, Wisconsin, 544816456
SMARTBEN PATHFINDER	Reg. No. 5406591	Class 36: Administration of employee benefit plans concerning insurance and finance Class 41: Educational services, namely, providing on-line instructional resources, interactive video tutorials and decision making tools in the nature of cost calculators in the field of employee benefits; Providing a website featuring resources, namely, a website featuring primarily non-downloadable publications in the nature of guides, summaries, descriptions, comparisons, instructional videos, interactive question and answer guides in the field of employee benefits plans and also featuring non-downloadable software for providing real-time benefit information, including benefit elections, deductible calculations, out of pocket maximum calculations, co-pay and related consumer cost estimates, and pharmacy information Class 42: Providing a website featuring resources, namely, non-downloadable software for employers to administer benefit programs, including self-service enrollment by employees, decision support for enrollment, change processing, and communicating enrollment and other benefit related information to employers, insurance carriers, payroll providers, third-party administrators, and related parties; Providing an online non-downloadable Internet-based system application featuring technology enabling users to select and enroll in benefit programs, administer benefit programs, and communicate benefit-related information to employers, employees, insurance carriers, payroll providers and other third-parties; Software as a service (SAAS) services featuring software for human resource information management; Software as a service (SAAS) services featuring software for enrollment, administration, communication, compliance and decision support concerning employee benefit programs	Hodges-Mace, LLC 5775-E Glenridge Drive, Suite 500 Atlanta, Georgia, 30328
	Reg. No. 5406590	Class 36: Administration of employee benefit plans concerning insurance and finance Class 41: Educational services, namely, providing on-line instructional resources, interactive video tutorials and decision making tools in the nature of cost calculators in the field of employee benefits; Providing a website featuring resources, namely, a website featuring primarily non-downloadable publications in the nature of guides, summaries, descriptions, comparisons, instructional videos, interactive question and answer guides in the field of employee benefits plans and also featuring non-downloadable	Hodges-Mace, LLC 5775-E Glenridge Drive, Suite 500 Atlanta, Georgia, 30328

Mark	Reg. No.	Goods and Services	Owner
		software for providing real-time benefit information, including benefit elections, deductible calculations, out of pocket maximum calculations, co-pay and related consumer cost estimates, and pharmacy information Class 42: Providing a website featuring resources, namely, non-downloadable software for employers to administer benefit programs, including self-service enrollment by employees, decision support for enrollment, change processing, and communicating enrollment and other benefit related information to employers, insurance carriers, payroll providers, third-party administrators, and related parties; Providing an online non-downloadable Internet-based system application featuring technology enabling users to select and enroll in benefit programs, administer benefit programs, and communicate benefit-related information to employers, employees, insurance carriers, payroll providers and other third-parties; Software as a service (SAAS) services featuring software for human resource information management; Software as a service (SAAS) services featuring software for enrollment, administration, communication, compliance and decision support concerning employee benefit programs	

The above-referenced registrations incorporating the term PATHFINDER for retirement financial planning services, related employee benefit programs, and other related financial investment services, are much more similar to the Cited Mark than Applicant’s Mark is, but they were nevertheless allowed to co-exist on the Register. It also follows that the term PATHFINDER, when used in connection with such services, is only entitled to a narrow scope of protection. As such, the Cited Mark – RETIREMENT PATHFINDER – is also weak and entitled to only very limited protection. It is certainly not strong enough to block registration of Applicant’s PATHFINDER mark, which covers readily distinguishable services – unlike the registrations in the chart above which the USPTO has allowed to coexist with the Cited Mark – and creates an entirely different commercial impression than the Cited Mark. Accordingly, Applicant respectfully submits that consumers will not be confused by the presence of Applicant’s Mark and the Cited Mark in the marketplace, and the two can co-exist without creating a likelihood of confusion.

III. PRIOR-FILED APPLICATION

Applicant respectfully requests the application be suspended pending the final disposition of the earlier-filed application for PATHFINDER (Serial No. 88/617,985).

IV. CONCLUSION

In view of the above, consumers are not likely to conclude that Applicant's Mark is somehow affiliated with the Cited Mark. Applicant therefore respectfully requests that the refusal be withdrawn and the application be suspended pending the final disposition of Serial No. 88/617,985.

Respectfully submitted,

Dated: March 31, 2021

/Alexandra Martinez/

KILPATRICK TOWNSEND & STOCKTON LLP

R. Gwen Peterson
Alexandra Martinez
Two Embarcadero Center, Nineteenth Floor
San Francisco, California 94111
Telephone: (415) 579-0200

*Attorneys for Applicant
Quicken Loans, LLC*