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Sent: 3/27/2015 11:08:36 AM

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Subject: U.S. TRADEMARK APPLICATION NO. 77711842 - TOUR - N/A - Request for Reconsideration Denied - Return to TTAB - Message 1 of 7

\*\*\*\*\*

Attachment Information:

Count: 16

Files: we-1.jpg, we-2.jpg, wes-1.jpg, wes-2.jpg, duplicate name 54780 wes-1.jpg, duplicate name 54780 wes-2.jpg, sam-1.jpg, sam-2.jpg, sam2-1.jpg, sam2-2.jpg, sam3-1.jpg, sam3-2.jpg, sony1-1.jpg, sony1-2.jpg, sony2-1.jpg, 77711842.doc

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)  
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

**U.S. APPLICATION SERIAL NO.** 77711842

**MARK:** TOUR



**CORRESPONDENT ADDRESS:**

Kimberly Eckhart

Apple Inc.

MS: 169-3IPL

1 Infinite Loop

Cupertino CA 95014

**GENERAL TRADEMARK INFORMATION:**

<http://www.uspto.gov/trademarks/index.jsp>

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**APPLICANT:** BEATS ELECTRONICS, LLC

**CORRESPONDENT'S REFERENCE/DOCKET NO:**

N/A

**CORRESPONDENT E-MAIL ADDRESS:**

trademarkdocket@apple.com

**REQUEST FOR RECONSIDERATION DENIED**

**ISSUE/MAILING DATE:** 3/27/2015

The trademark examining attorney has carefully reviewed applicant's request for reconsideration and is denying the request for the reasons stated below. See 37 C.F.R. §2.63(b)(3); TMEP §§715.03(a)(ii)(B), 715.04(a). The following requirement(s) and/or refusal(s) made final in the Office action dated

9/6/2014 are maintained and continue to be final: Refusal under Trademark Act Section 2(d). See TMEP §§715.03(a)(ii)(B), 715.04(a).

In the present case, applicant's request has not resolved all the outstanding issue(s), nor does it raise a new issue or provide any new or compelling evidence with regard to the outstanding issue(s) in the final Office action. In addition, applicant's analysis and arguments are not persuasive nor do they shed new light on the issues. Accordingly, the request is denied.

If applicant has already filed a timely notice of appeal with the Trademark Trial and Appeal Board, the Board will be notified to resume the appeal. See TMEP §715.04(a).

The examining attorney notes that applicant amended the identification of goods in the request for reconsideration. Therefore, the refusal under 2(d) is modified and discussed below.

### **SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION**

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark(s) in U.S. Registration No(s). 4388322 (TOUR). Trademark Act Section 2(d), 15 U.S.C. §1052(d); see TMEP §§1207.01 *et seq.* See the registration attached to 2/6/2014 Office action.

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely a potential consumer would be confused, mistaken, or deceived as to the source of the goods of the applicant and registrant. See 15 U.S.C. §1052(d). A determination of likelihood of confusion under Section 2(d) is made on a case-by case basis and the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) aid in this determination. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d 1344, 1349, 98 USPQ2d 1253, 1256 (Fed. Cir. 2011) (citing *On-Line Careline, Inc. v. Am. Online, Inc.*, 229 F.3d 1080, 1085, 56 USPQ2d 1471, 1474 (Fed. Cir. 2000)). Not all the *du Pont* factors, however, are necessarily relevant or of equal weight, and any one of the factors may control in a given case, depending upon the evidence of record. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d at 1355, 98 USPQ2d at 1260; *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); see *In re E. I. du Pont de Nemours & Co.*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity and nature of the goods, and similarity of the trade channels of the goods. See *In re Viterra Inc.*, 671 F.3d 1358, 1361-62, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593, 1595-96 (TTAB 1999); TMEP §§1207.01 *et seq.*

### **Similarity of Marks**

In a likelihood of confusion determination, the marks in their entireties are compared for similarities in appearance, sound, connotation, and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973); TMEP §1207.01(b)-(b)(v).

In the present case, applicant's mark is TOUR and registrant's mark is TOUR. Thus, the marks are identical in terms of appearance and sound. In addition, the connotation and commercial impression of the marks do not differ when considered in connection with applicant's and registrant's respective goods.

Therefore, the marks are confusingly similar.

### **Similarity of Goods**

The goods of the parties need not be identical or even competitive to find a likelihood of confusion. See *On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) (“[E]ven if the goods in question are different from, and thus not related to, one another in kind, the same goods can be related in the mind of the consuming public as to the origin of the goods.”); TMEP §1207.01(a)(i).

The respective goods need only be “related in some manner and/or if the circumstances surrounding their marketing [be] such that they could give rise to the mistaken belief that [the goods and/or services] emanate from the same source.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)); TMEP §1207.01(a)(i).

Where the marks of the respective parties are identical or virtually identical, the relationship between the relevant goods need not be as close to support a finding of likelihood of confusion. See *In re Shell Oil Co.*, 992 F.2d 1204, 1207, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993); *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202 (TTAB 2009); *In re Thor Tech, Inc.*, 90 USPQ2d 1634, 1636 (TTAB 2009); TMEP §1207.01(a).

In this case, applicant's goods are "*Headphones and earphones, namely, in-ear headphone tips*" in International Class 9. Registrant's goods include goods such as "*Apparatus for recording, transmission or reproduction of data, sound or images, namely, electronic handheld units, mobile phones, telephones, smartphones, personal digital assistants (PDAs) for the wireless transmission of data and/or voice signals; electronic handheld units, mobile phones, telephones, smartphones, personal digital assistants (PDAs), with capabilities of e-mail, pager, fax, radio, personal organizer, cellular connectivity, wireless Internet connectivity, mp3 player, satellite navigational system, GPS (Global Positioning System) receiver, global positioning system data logger for recording and classification of trips, digital camera, digital video camera and/or computer operating system; electronic handheld units for recording, organizing, transmitting, playing and reviewing text, data, video and audio files, and accessories for electronic handheld units, telephones, mobile phones, smartphones, and personal digital assistants (PDAs) for the wireless transmission of data and/or voice signals, namely, batteries, battery chargers, speakers, headsets, microphones, belt clips, holsters, carrying cases, battery covers, battery doors, charging pods, docking/charging cradles, holders, desktop stands, data cables, electric adapter cables and electrical wires; car kits for the adaptation of portable communication apparatus and instruments for use in vehicles, comprising antennas, antenna transmission wires, antenna adapters, cables, car phones, handsfree microphones, phone holders, speakers, car chargers for mobile telephone batteries, handsfree holders*" in International Class 9.

Applicant offers headphones and earphones in the nature of in-ear headphone tips, which are commonly sold along with or side by side with electronic devices such as mobile phones, mp3 players and handheld units for playing audio files. The attached internet evidence consists of screenshots from various websites showing in-ear headphone tips and three or more of the following goods offered under the same mark: mobile phones, mp3 players, handheld units for playing audio files, speakers, data cables, cameras and chargers and/or headsets for aforesaid devices (See attached screenshots from [www.bestbuy.com](http://www.bestbuy.com), [www.amazon.com](http://www.amazon.com), [www.bose.com](http://www.bose.com) and [www.apple.com](http://www.apple.com), taken on 3/26/2015). The screenshots show that brands such as Sony®, Apple®, Plantronics®, Bose®, JBL®, Klipsch®, Skullcandy®, Modal®, Sol Republic®, Samsung®, Westone® and Nokia® offer in-ear headphone tips and goods such as registrant's under the same mark. This evidence establishes that the same entity commonly manufactures/provides the relevant goods and markets the goods under the same mark, the relevant goods are sold or provided through the same trade channels and used by the same classes of consumers in the same fields of use, and the goods are similar or complementary in terms of purpose or function.

Therefore, applicant's and registrant's goods are considered related for likelihood of confusion purposes. *See, e.g., In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202-04 (TTAB 2009); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1268-69, 1271-72 (TTAB 2009).

Evidence obtained from the Internet may be used to support a determination under Trademark Act Section 2(d) that goods and/or services are related. *See, e.g., In re G.B.I. Tile & Stone, Inc.*, 92 USPQ2d 1366, 1371 (TTAB 2009); *In re Paper Doll Promotions, Inc.*, 84 USPQ2d 1660, 1668 (TTAB 2007).

Considering all of the above, the applied-for mark is refused registration under Trademark Act Section 2(d).

/Colleen E. Mulcrone/

Colleen E. Mulcrone

Examining Attorney

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571-272-6049

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Westone - UM Pro 4.3' 3.5mm Replacement Headphone Cable - Black

Model: 78961 | SKU: 1902742 | Customer Rating: Be the first to write a review.

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**\$99.99**

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Overview Specifications Ratings & Reviews Accessories Protection & Services

Product Availability

Shipping: Usually ships in 6-10 business days. See when you can get it





 Store Pickup: Not Available

Special Offers

 See (2) Special Offers

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### What's Included

- UM Pro 4.3 3.5mm Replacement Headphone Cable

### Ratings & Reviews

Be the first to write a review.

[Write a Review](#)

Control your listening experience with this Westone UM Pro 78561 replacement cable, which measures 4.3' and features a straight twisted cable design for use with your Adventure Series, ES, AC, UM Pro or W Series headphones.

### Product Features

**Wide range of compatibility**  
Including most Adventure Series, ES, AC, UM Pro and W Series headphones.

**Built-in microphone**  
Along with phone control allows simple hands-free conversations.

**Straight twisted cable with MMCX connector**  
For a secure connection.

**Tangle-resistant design**  
For hassle-free use.



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### Westone - STAR Silicone Ear Tips - Gray/Orange

Enlarge

Model: 62805 | SKU: 1902041 | Customer Rating: ☆☆☆☆ Be the first to write a review.

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#### Product Availability

Shipping: Usually ships in 6-10 business days  
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Store Pickup: Not Available

#### Special Offers

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#### Cardholder Offer

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### What's Included

- STAR Silicone Ear Tip

### Ratings & Reviews

Be the first to write a review.

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Designed for use with most in-ear headphones, these Westone STAR 62805 silicone ear tips feature STAR flex zones that help you achieve a custom fit for optimal noise isolation during listening sessions.

### Product Features

**Compatible with most in-ear headphones**  
For use with your existing pair.

**Silicone construction**  
Creates a durable design and offers biocompatibility.

**STAR flex zones**  
Conform to your ear for a precise fit that blocks ambient noise.

**Smooth bore stem with direct-coupled exit port**  
Maintains accurate sound quality.

Product images, including color, may differ from actual product appearance.

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### Westone - ADV Alpha Earbud Headphones - Black

Model: 78400 | SKU: 1902651 | Customer Rating: ☆☆☆☆ Be the first to write a review.

PRICE MATCH GUARANTEE

Add to Cart

\$149.99

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Add to Registry

Overview Specifications Ratings & Reviews Accessories Protection & Services

#### Product Availability

Shipping: Usually ships in 3-5 business days  
See when you can get it

Store Pickup: Not Available





Special Offers

See (2) Special Offers

Cardholder Offers

See (2) Financing Offers

### What's Included

- ADV Alpha Earbud Headphones
- STAR silicone ear tips, True-Fit foam ear tips
- AWACS reflective cable, travel case, cleaning tool

Enjoy music and calls in any environment with these Westone ADV Alpha 79400 headphones, which feature Up and Over cable routing and a durable magnesium unbody design. The built-in buttons and microphone make it easy to control your device.



#### Headphones Buying Guide

Learn about different headphone styles, noise cancellation and more >

### Ratings & Reviews

Be the first to write a review.

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### Product Features

#### Earbud design

Directs sound into the ear for a full listening experience.

**Single, extended-range 6.5mm micro driver**  
In each ear delivers powerful audio.

#### Up and Over cable routing

Along with a magnesium unbody design allows durable and convenient use.

#### 3-button system and microphone



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### Samsung - Galaxy S 5 Cell Phone - Electric Blue (Sprint)

Model: SPHG000BLS | SKU: 4810001 | Customer Rating: ★★★★★ 4.6 (1,999 customer reviews)

Enlarge



Color: Blue



**\$1.00**  
With 2-year contract  
**\$27.09/month**  
For 24 months with Sprint EasyPay\*  
**\$799.99**  
Replacement device  
\*Sprint Easy Pay offer for well-qualified buyers. Select interest after adding device to package.

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**\$1.00**  
With 2-year contract  
**ON SALE**  
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Overview Specifications Ratings & Reviews Accessories



#### Product Availability

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**Store Pickup:** Check Stores. Learn more about store pickup

#### Special Offers

See (5) Special Offers

#### Cardholder Offers



See (2) Financing Offers

### What's Included

- Samsung Galaxy S 5 Cell Phone
- Battery
- USB data cable/charger
- Wired stereo headset
- Owner's manual

**Samsung Galaxy S5 Cell Phone for Sprint:** This cell phone offers a stylish design and fast processing power for multitasking. It complements your active lifestyle, letting you monitor your heart rate with the touch of a finger, map out your run and achieve your nutritional goals.

Sprint Easy Pay option available in store. [Learn more](#)

### Ratings & Reviews

#### Overall Customer Rating:

★★★★★ **4.6**  
(1,999 Reviews)

95% of customers would recommend this product to a friend (1,895 out of 1,999)

[See All 1,999 Reviews](#) [Write a Review](#)

Samsung.com Rating: ★★★★★  
(648 Reviews)

### Product Features

#### Quad-core 2.6GHz speed processor with 2GB of RAM

Delivers outstanding overall performance for opening and running applications, flipping through menus, running home screens and more.

#### Android 4.4.2 KitKat OS

This operating system optimizes memory and improves touch-screen response, so you can do more faster. Just say "Ok Google" to launch voice search, send a text, get directions or even play a song.

#### 4G LTE speed

Provides fast Web connection for downloading apps, streaming content and staying connected with social media.

#### 5.1" Super AMOLED HD touch screen

High-definition touch screen displays texts, e-mails, games, photos and videos with clarity.

#### 16.0MP rear-facing camera

Auto Focus snaps clearer action shots, and Selective Focus lets you focus on what's important by blurring the background and accentuating the main subject in defined detail. Also includes 2.0MP front-facing camera.

#### 16GB internal memory plus microSD slot

Provides plenty of storage space for your contacts, music, apps and more. Expand storage up to 128GB by adding a microSD card (sold separately).

#### Heart rate sensor lets you measure your heart rate through your fingertip

Plus, monitor your health with the custom services offered by S Health. Log and check your exercise, food intake and heart rate in real time.

#### A rugged build for outdoor use

An IP67 certification means this phone is dustproof and can be submerged in up to a meter of water for up to 30 minutes. Plus, you can still use touch screen features while wearing gloves.



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### Samsung - Muse 4GB\* MP3 Player - White

Model: YP-W1NAWIS | SKU: 8620142 | Customer Rating: ★★★★★ 5.0 (1 customer review)

[Add to Cart](#)

**\$44.99**

CLEARANCE

SAVE \$15 (Reg. \$59.99)

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Overview Specifications Ratings & Reviews Accessories Protection & Services



#### Product Availability

Shipping: Not Available

Store Pickup: [Check Stores](#)  
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### Special Offers

 [See \(2\) Special Offers](#)

### Cardholder Offer

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### What's Included

- Samsung Muse 4GB MP3 Player
- Stereo headset (EHS61)
- 3.5mm micro USB adapter, 3.5mm USB adapter
- Owner's manual

### Ratings & Reviews

#### Overall Customer Rating:

 **5.0**

(1 Review)

100% of customers would recommend this product to a friend (1 out of 1)

[See 1 Review](#) [Write a Review](#)

Transfer music from your compatible Samsung Galaxy mobile phone to this Samsung Muse YP-W1NAWISTA MP3 player that features 4GB of memory to store plenty of songs. The SoundAlive technology provides high-quality audio.

### Product Features

#### 4GB\* internal flash memory

For storing songs.

#### SoundAlive technology

Provides an optimized audio experience.

#### Supported formats

Include MP3, WMA, FLAC and OGG, so you can listen to your music.

#### 3 switches

For mode (shuffle or continuous play), on/off/SoundAlive and hold functions allow easy operation.

#### Clip-on design

Helps secure the MP3 player while you're on the go.

#### Muse Sync App

Allows you to directly transfer music from most Samsung Galaxy mobile phones, including Galaxy Note, Galaxy



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### eForCity - Earphone Bundle for Samsung Galaxy S3 S4 - Silver Blue Black

Enlarge

SKU: 1306834085 | Customer Rating: ☆☆☆☆ Be the first to write a review.  
Sold & Shipped by: eForCity Seller Rating: 4.25 out of 5  
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Marketplace

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**\$14.59**

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Overview Specifications Ratings & Reviews



#### Product Availability

Marketplace Item  
Sold & Shipped by: eForCity  
Shipping: Seller usually ships within 1-2 business days  
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### What's Included

- 1 x Black In-Ear Headset w/ On-off
- 1 x Silver In-Ear Headset w/ On-off
- 1 x Hot Pink In-Ear Headset w/ On-off
- 1 x Blue In-Ear Headset w/ On-off

### Ratings & Reviews

Be the first to write a review.

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TX Universal 3.5mm In-Ear Stereo Headset w/ On-off & Mic, Black Enjoy Hands-free conversations with this in ear stereo headset w/ On Off switch Includes integrated earpieces and microphone Cord mounted ON/OFF button which lets you take calls and hang up easily. Excellent sound quality and super clear sound. Keep your hands free and on the wheel Color: Black Accessory ONLY. Phone not included.

TX Universal 3.5mm In-Ear Stereo Headset w/ On-off & Mic, Silver Enjoy Hands-free conversations with this in ear stereo headset w/ On Off switch Includes integrated earpieces and microphone Cord mounted ON/OFF button which lets you take calls and hang up easily. Excellent sound quality and super clear sound. Keep your hands free and on the wheel Color: Silver / White Accessory ONLY. Phone not included.

TX Universal 3.5mm In-Ear Stereo Headset w/ On-off & Mic, Hot Pink Enjoy Hands-free conversations with this in ear stereo headset w/ On Off switch Includes integrated earpieces and microphone Cord mounted ON/OFF button which lets you take calls and hang up easily. Excellent sound quality and super clear sound. Keep your hands free and on the wheel Color: Hot Pink / White Accessory ONLY. Phone not included.

TX Universal 3.5mm In-Ear Stereo Headset w/ On-off & Mic, Blue Enjoy Hands-free conversations with this in ear stereo headset w/ On Off switch Includes integrated earpieces and microphone Cord mounted ON/OFF button which lets you take calls and hang up easily. Excellent sound quality and super clear sound. Keep your hands free and on the wheel Color: Blue / White Accessory ONLY. Phone not included.

### Product Features



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### Sony - Xperia T2 Ultra 4G Cell Phone (Unlocked) - Black

Model: D5316 | SKU: 9241029 | Customer Rating: 4.3 (153 customer reviews)

PRICE MATCH GUARANTEE

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**\$249.99**

ON SALE

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Overview Specifications Ratings & Reviews Protection & Services



#### Product Availability

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#### Special Offers

See (2) Special Offers

#### Cardholder Offers



### Cardholder Offers

 [See \(2\) Financing Offers](#)



### What's Included

- Sony Xperia T2 Ultra 4G Cell Phone (Unlocked)
- Battery (3000 mAh)
- Charger
- Owner's manual

Enjoy streaming media in crisp detail with this Sony Xperia T2 Ultra cell phone, which features a 6" touch screen with IPS technology that showcases photos, videos and Web content in high-definition. The 13.0MP camera captures clear, detailed images.

 **Cell Phone Buying Guide**  
[Learn about phone plans, types of phones and more.](#)

### Ratings & Reviews

#### Overall Customer Rating:

★★★★☆ **4.3**  
(153 Reviews)

90% of customers would recommend this product to a friend (136 out of 153)

[See All 153 Reviews](#) [Write a Review](#)

sony.com Rating: **★★★★☆**  
(2 Reviews)

### Product Features

**STAMINA mode**  
Automatically turns off functions when the display is not in use to conserve battery power.

**Android 4.4 KitKat operating system**  
Allows you to stay connected and productive on the go.

**DLNA capability**  
Allows easy wireless media streaming.

\* Unlocked cell phones are compatible with GSM carriers, including AT&T and T-Mobile; also compatible with GSM SIM cards, including H20 and NET10.

**Wi-Fi network**  
For Internet capability while in range of a Wi-Fi signal.

**6" high-definition touch screen**  
With TRILUMINOS display for mobile and IPS technologies and 1280 x 720p resolution simplifies navigation and delivers clear images with striking detail and rich, vibrant colors.

\* Phone will not work with Sprint, Verizon, Boost Mobile, Virgin Mobile or any other CDMA carriers. Please contact your carrier prior to purchasing to confirm your carrier will support voice and data on this unlocked GSM device.

**8GB internal memory**  
Provides ample storage space for your contacts, music, apps and more. A microSD card slot enables you to expand storage by up to 32GB (card not included).

**Qualcomm Snapdragon Processor**  
1.4GHz Qualcomm MSM8920 quad-core processor with 1GB RAM for reliable performance.

**Water-resistant** (IP55)



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### Sony - NWZ-E380 Series Walkman 8GB\* Video MP3 Player - Black

Model: NWZE380BLK | SKU: 1695436 |  
Customer Rating: 4.3 (216 customer reviews)

[Enlarge](#)

Color: Black



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#### Product Availability

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