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Subject: U.S. TRADEMARK APPLICATION NO. 77908876 - BLACK BOOK - N/A - EXAMINER BRIEF

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UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

U.S. APPLICATION SERIAL NO. 77908876

MARK: BLACK BOOK



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GENERAL TRADEMARK INFORMATION:

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

TTAB INFORMATION:

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

APPLICANT: Romantic Tours, Inc.

CORRESPONDENT'S REFERENCE/DOCKET NO:

N/A

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EXAMINING ATTORNEY'S APPEAL BRIEF

The applicant has appealed the trademark examining attorney's refusal to register the trademark "BLACK BOOK" for software services in International Class 42, under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d).

FACTS

Applicant applied for registration on the Principal Register of the mark "BLACK BOOK" for "Providing on-line non-downloadable software for keeping track of online companions and organizing online communications, correspondence history, events, profiles and preferences in the field of online relationships and dating" in International Class 42.

The examining attorney suspended action on the application pending the disposition of several prior pending applications.

The examining attorney refused registration under Section 2(d) of the Trademark Act based on U.S. Registration No. 4051248 for the mark "XXXBLACKBOOK" for various services in International Classes 35, 38, 41, 42, and 45, and U.S. Registration Nos. 3926282 and 4065116 for the marks "BLACKBOOK27" and "BLACKBOOK27" in stylized form for Internet based introduction and social networking services in International Class 45. Web page evidence from online dating websites was included to prove the relatedness of the services.

Applicant submitted a response arguing against the Section 2(d) refusal. Applicant argued that the cited marks were different because each contained additional letters or numbers as part of the single word "blackbook" while the applicant's mark was for the separate words "black book." Applicant argued that "black book" was highly suggestive, if not descriptive, for a social address book for potential dates. Applicant provided dictionary excerpts showing the connotation of "black book" in the context of dating. Applicant also submitted evidence of dating-related products and websites using the term in the

field of dating, for “picking up girls,” and for contacting escorts. Applicant reasoned that the term was weak in the dating services field because five registrations co-existed in related fields. Applicant then argued that its services were not for dating services but for providing software used in conjunction with “online relationships and dating.”

The examining attorney addressed the applicant’s arguments in the final action. The refusal based on U.S. Registrations Nos. 3926282 and 4065116 was withdrawn. The refusal based on U.S. Registration No. 4051248 for “XXXBLACKBOOK” was continued. The final action demonstrated that the marks were sufficiently similar in their entirety, “weak” or descriptive marks were still entitled to protection, and the services were related. Additional evidence was provided from several dating companies demonstrating that these types of companies offer both software applications with identical features as the applicant’s software, and services such as the registrant’s communication, message transmission, forum, and website services for meetings and discussions.

Applicant submitted a request for reconsideration to the final action. Applicant focused its argument on the visual difference between the marks and the purported connotation of the “XXX” wording at the beginning of the registrant’s mark. Applicant relied on Wikipedia printouts to argue that “XXX” was understood to refer to pornography. Applicant argued that the “XXX” portion was the dominant feature of the registered mark, and this would result in a different commercial impression. Applicant also argued that the software applications presented as evidence in the final action were different from the “on-line, non-downloadable software” provided by the applicant. Finally, applicant indicated that no evidence was provided that adult websites offered software relating to dating.

The request for reconsideration was denied because the applicant’s arguments were unpersuasive. The examining attorney reiterated that the marks were similar in appearance and the services were related. The examining attorney provided supplemental evidence, including dictionary

evidence, demonstrating that “XXX” had other meanings that were relevant in the context of dating and relationships. Additional evidence was included from four adult-oriented pornographic websites showing that these types of companies offered website or software in the field dating amongst their range of services. This evidence was provided in direct response to the issue raised in the request for reconsideration concerning a lack of evidence of pornographic websites offering software relating to dating.

This appeal follows the final refusal based on a likelihood of confusion under Section 2(d).

ARGUMENT

THE MARKS OF THE APPLICANT AND REGISTRANT ARE HIGHLY SIMILAR AND THE SERVICES ARE RELATED SUCH THAT THERE EXISTS A LIKELIHOOD OF CONFUSION UNDER SECTION 2(d) OF THE TRADEMARK ACT.

The examining attorney reiterates that the 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 services. 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, and similarity and nature of the services. 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.*

A. THE WORDING IN THE MARKS IS SIMILAR.

Applicant seeks to register the mark "BLACK BOOK." The registrant owns U.S. Registration No. 4051248 for "XXXBLACKBOOK."

Marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *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). Similarity in any one of these elements may be sufficient to find the marks confusingly similar. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); see *In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007); TMEP §1207.01(b).

Applicant's mark consists of the combination of two terms, "BLACK" and "BOOK." Registrant's mark includes these two terms combined without the spacing. The difference with the spacing between the terms is minimal and insignificant. The evidence submitted in Exhibit 2 of applicant's appeal brief demonstrates that "blackbook" and "black book" are used in a similar manner, with no regard to the spacing between the terms. It is well established that marks may be confusingly similar in appearance where similar terms appear in the compared marks and create a similar overall commercial impression.

See Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce, 228 USPQ 689, 690-91 (TTAB 1986), *aff'd sub nom. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat'l Ass'n*, 811 F.2d 1490, 1495, 1 USPQ2d 1813, 1817 (Fed. Cir. 1987) (finding COMMCASH and COMMUNICASH confusingly similar); *In re Corning Glass Works*, 229 USPQ 65, 66 (TTAB 1985) (finding CONFIRM and CONFIRMCELLS confusingly similar); TMEP §1207.01(b)(ii)-(iii); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1271 (TTAB 2009) (finding VANTAGE TITAN and TITAN confusingly similar); *In re Computer Sys. Ctr. Inc.*, 5 USPQ2d 1378, 1381 (TTAB 1987) (finding CSC ADVANCED BUSINESS SYSTEMS and CSC confusingly similar); *In re U.S. Shoe Corp.*, 229 USPQ 707, 709 (TTAB 1985) (finding CAREER IMAGE and CREST CAREER IMAGES confusingly similar); *In re Energy Images, Inc.*, 227 USPQ 572, 573 (TTAB 1985) (finding SMART-SCAN and SMART confusingly similar); *In re Collegian Sportswear, Inc.*, 224 USPQ 174, 176 (TTAB 1984) (finding COLLEGIAN OF CALIFORNIA and COLLEGIENNE confusingly similar); *In re Pierre Fabre S.A.*, 188 USPQ 691, 692 (TTAB 1975) (finding PEDI-RELAX and RELAX confusingly similar).

The primary difference in appearance between the marks is with the beginning portion of the registrant's mark, "XXX." Applicant argued that these three letters in registrant's mark created a different connotation from its mark. Applicant discussed that consumers would focus on this beginning portion because the term "black book" or "blackbook" was weak.

Applicant's argument concerning the weakness of the term "black book" or "blackbook" is unpersuasive. Applicant attached evidence from four online dictionaries defining the term "little black book" or "black book." The definitions reflect that, generally, the term refers to a book or guide containing information on acquaintances dated or to be dated. Applicant provided five examples of third-party use showing the term used on a dating website, iPhone application, book for "picking up girls," an adult escort service, and a book on "dating secrets." Finally, applicant provided evidence of five registrations that included the term "black book" or "blackbook."

Applicant correctly noted that “with respect to dating services, distinctive elements differentiate marks that otherwise include “blackbook.”” Three of the five registrations that applicant listed were already cited against applicant’s mark, and one of the registrations has been cancelled and is entitled to little probative value. Regardless, each of the registrations includes a distinct element lacking in the applicant’s mark. The registrations have additional wording, letters, or numerals to distinguish the marks from each other. Applicant’s mark has no additional wording, letters, or numerals to distinguish it from the other registrations. Additionally, the term “black book” or “blackbook” has not been disclaimed, registered under Trademark Act Section 2(f) based on acquired distinctiveness, or registered on the Supplemental Register in any of these registrations. Four of the five registrations are for dating services, matchmaking services, or introduction and social networking services in International Class 45. The cited registration includes similar services in International Class 45 in addition to other services in multiple classes. The services listed in four of the third-party registrations are different from those at issue and thus do not show that the relevant wording is commonly used in connection with the pertinent services. If the term “black book” or “blackbook” was weak, it would only appear to be weak for dating type services in International Class 45. Applicant has not demonstrated that the term is weak for software services or website services in International Class 42, or message transmission, chat room, and forum type services in International Class 38.

Applicant has not provided any registrations or pertinent evidence demonstrating that the term is weak for any other services. Applicant’s argument that the common element in the marks was weak diluted, or so widely used that it should not be afforded a broad scope of protection is not persuasive. The weakness or dilution of wording in a mark is generally determined in the context of the number and nature of similar marks in use in the marketplace in connection with similar services. *See Nat’l Cable Television Ass’n, Inc. v. Am. Cinema Editors, Inc.*, 937 F.2d 1572, 1579-80, 19 USPQ2d 1424, 1430 (Fed. Cir. 1991); *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973).

Applicant has not provided sufficient evidence to support its assertion that the term “blackbook” or “black book” is weak for anything beyond books or dating/matchmaking services in International Class 45. Thus, consumers would not discount the term “blackbook” or “black book” to focus on the “XXX” difference between the marks.

As indicated above, applicant’s focus on the “XXX” portion of the registrant’s mark is misguided. Applicant’s mark would be perceived as a variation of the registrant’s mark, with this beginning portion having been simply omitted or deleted. Deletion of wording from a registered mark is often not sufficient to overcome a likelihood of confusion. *See In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257 (Fed. Cir. 2010); *In re Optica Int’l*, 196 USPQ 775, 778 (TTAB 1977); TMEP §1207.01(b)(ii)-(iii). In this case, applicant’s mark does not create a separate or distinct commercial impression because it contains the same common wording as the registered mark, and there is no other wording in applicant’s mark to distinguish it from the registered mark. Consumers would believe applicant’s mark was connected to the registrant because of the identical “black book” wording used in marks.

Applicant’s argument that the addition of the “XXX” created a different commercial impression is unpersuasive. Applicant argued that the “XXX” created a pornographic connotation. The only evidence that applicant supplied to support its position was in its 11/24/14 request for reconsideration, and this evidence was from the Wikipedia encyclopedia. Applicant provided no other evidence to corroborate the information from Wikipedia. The Board has noted that evidence from Wikipedia may be unreliable because anyone can enter and edit the entries found therein. The Board stated as follows:

[T]he Board will consider evidence taken from Wikipedia so long as the non-offering party has an opportunity to rebut that evidence by submitting other evidence that may call into question the accuracy of the particular Wikipedia information. Our consideration of Wikipedia evidence

is with the recognition of the limitations inherent with Wikipedia (e.g., that anyone can edit it and submit intentionally false or erroneous information)....

As a collaborative online encyclopedia, Wikipedia is a secondary source of information or a compilation based on other sources. As recommended by the editors of Wikipedia, the information in a particular article should be corroborated. The better practice with respect to Wikipedia evidence is to corroborate the information with other reliable sources, including Wikipedia's sources.

In re IP Carrier Consulting Grp., 84 USPQ2d 1028, 1032-33 (TTAB 2007).

The examining attorney rebutted the applicant's Wikipedia evidence in the 12/19/14 correspondence. The evidence from InternetSlang.com demonstrated that "XXX" referred to "kisses." The Collins Dictionary evidence further informed that "kisses" were an expression of greeting or love. In the context of the registrant's mark, this connotation is more likely than a pornographic connotation because "kisses" as greetings or expressions of love would be seen as the typical or sought after behavior in the field of relationships and dating. The Board is requested to take notice of the attached dictionary evidence from the Oxford Dictionary (© 2015 Oxford University Press) showing that "XXX" could also refer to the Roman numeral thirty. The definition evidence is being provided at this time to relieve any doubt that "XXX" has another commonly recognized meaning. In the context of the registrant's mark, the numeral could be interpreted as signifying the target age group for registrant's services. This is a likely connotation because dating websites often attempt to sort users into categories such as age. The evidence shows that the "XXX" could have other meanings, and these other meanings would not alter the consumer impression that the applicant's mark was connected to the registrant.

Even if the connotation of "XXX" was that of pornography, applicant itself has already provided evidence in Exhibit 2 that pornographic materials and adult-oriented content are often associated with

the term “blackbook” or “black book.” The “Blackbook Directory” evidence includes a description from an escort enticing customers with her “busty with a nice perky bum” look, and her “wild naughty session,” including an overnight price rate. “The Player’s Black Book” evidence indicates that the book is “NOT Your Guide To Finding Your Soul Mate...This Is Your Guide To Getting LAID,” and the “The Little Black Book of Dating Secrets” evidence similarly includes an emphasis on “approaching the girls” and “getting laid.” Applicant’s evidence shows that the term “blackbook” or “black book” has a connection to pornographic materials and adult-oriented content on its own, separate from the “XXX” term. Thus, applicant’s “BLACK BOOK” would not create a separate and distinct commercial impression from the registrant’s “XXXBLACKBOOK.”

As indicated previously, the test is not whether the marks can be distinguished in a side-by-side comparison, but rather whether the marks are sufficiently similar in their entireties that confusion as to the source of the services offered under applicant’s and registrant’s marks is likely to result. *Midwestern Pet Foods, Inc. v. Societe des Produits Nestle S.A.*, 685 F.3d 1046, 1053, 103 USPQ2d 1435, 1440 (Fed. Cir. 2012); *Edom Labs., Inc. v. Lichter*, 102 USPQ2d 1546, 1551 (TTAB 2012); TMEP §1207.01(b). The focus is on the recollection of the average purchaser, who normally retains a general rather than specific impression of trademarks. *L’Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1438 (TTAB 2012); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975); TMEP §1207.01(b). The difference with the “XXX” and the spacing between “BLACK” and “BOOK” would not alter the consumer commercial impression that the marks were connected because the terms in the applicant’s mark are identical to the majority of the wording in the registrant’s mark, and the connotations are similar, if not identical. The marks are sufficiently similar in their entireties.

B. THE SERVICES ARE RELATED.

Applicant's services are "Providing on-line non-downloadable software for keeping track of online companions and organizing online communications, correspondence history, events, profiles and preferences in the field of online relationships and dating" in International Class 42.

Registrant's services include "Chat room services for social networking; telecommunication services, namely, transmission of webcasts; providing on-line chat rooms for transmission of messages and photographs among computer users interested in meeting other people concerning personal relationship issues; electronic transmission of messages and images relating to dating; providing email services, namely, providing access to email boxes on a dating website; electronic transmission of mail and user-provided information, personal profiles and information via the Internet; instant messaging services via the Internet; electronic transmission of information and sound and video clips; providing on-line forums for transmission of messages among computer users; chat room services for social networking; providing on-line electronic bulletin boards for transmission of messages among computer users concerning personal relationship issues" in International Class 38, and "Hosting online websites for others for organizing and conducting online meetings, gatherings and interactive discussions" in International Class 42. The examining attorney is not addressing relatedness of the services for International Classes 35, 41 and 45 of the cited registration.

The services 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 services 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)); *Gen. Mills Inc. v. Fage Dairy Processing Indus. SA*, 100 USPQ2d 1584, 1597 (TTAB 2011); TMEP §1207.01(a)(i). With respect to applicant’s and registrant’s services, the question of likelihood of confusion is determined based on the description of the services stated in the application and registration at issue. *See, e.g., Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369-70, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012); *Octocom Sys. Inc. v. Hous. Computers Servs. Inc.*, 918 F.2d 937, 942, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990).

Applicant’s software services are related to registrant’s chat room, message transmission, messaging, bulletin board, and hosting website services. First, applicant specifically limited its identification to the fields of “online relationships and dating.” The registrant’s International Class 38 services also specifically include “personal relationship” and “dating” subject matter. Registrant’s International Class 42 services do not include any limitations as to subject matter, and thus, these services should be interpreted as encompassing the same subject matter as the applicant’s services. Broad identifications are presumed to encompass all services of the type described. *See In re Jump Designs, LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006) (citing *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981)); *In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992). Thus, the field of the registrant’s services is identical to and encompasses the field of the applicant’s services.

The Internet evidence attached in previous Office actions demonstrated that the same entity provided the relevant services and marketed the services under the same mark, and that the relevant services were offered through the same trade channels and used by the same classes of consumers in the same fields of use. Evidence obtained from the Internet may be used to support a determination under Trademark Act Section 2(d) that 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).

Applicant is providing software in the field of relationships and dating that includes a function of keeping track of companions, and organizing communications, events, and correspondence. Registrant's website for organizing meetings and gatherings, and conducting discussions, and its provision of chat rooms, forums, and message transmission services are similar, if not identical to the function provided by applicant's online software. Furthermore, the evidence demonstrates that several companies provide these same types of services.

The Match.com web page evidence, provided in the 11/7/13 Office action, showed that the company hosts a website in the field of dating. The services include organization of profiles such as "Removing Profiles From Search Results," "Blocking and Unblocking," and "Favorites – Adding/Removing a Favorite." The "About Match.com" page informed that it allowed users to organize "preferences regarding the person they're searching for," and it provided communication services through its "'anonymous" email network." The Match.com blog website demonstrated that it organized and conducted meetings and gatherings for users through "the launch of thousands of live events for members across the country!" The Match.com software evidence, provided in the 5/23/14 Office action, showed that it provides a software application in the field of dating. The software application allows users to "browse profiles, upload photos, and exchange emails anywhere." The software description informed that with a Match subscription, users could "Exchange emails," "See who's peeked at your profile," and "Check out who likes your photos." With these social media, uploading, and email features, the downloadable software application includes online aspects, similar to an online software service. The evidence shows that the company offers software for organizing and tracking companion profiles and communications, as well as hosting websites for gatherings, and email and messaging services.

The OKCupid web page evidence, provided in the 11/7/13 Office action, demonstrated that the company provided an online dating website that used a math-based matching system. The OKCupid software evidence, provided in the 5/23/14 Office action, showed that it provides a software application in the field of dating. The company noted that users “Get all the great features of OKCupid.com on your hand computer,” including the ability to “Meet and chat with new people,” “Rate profiles and discover mutual matches,” and “Find people using our powerful matching algorithms.” This evidence establishes that the company hosts a website where users can engage in meetings and discussions with potential dates, offers chat and message transmission services, and provides software through both its website and through its matching algorithm for tracking the most suitable companions for the user.

Additional web page evidence from dating companies was provided in the 5/23/14 Office action. Zoosk offers a software application, and the company touted its matchmaking engine to ensure a better match. The company informed that its software gave users the opportunity to “Browse millions of singles,” “Start winking and messaging singles,” “upload photos,” “See who’s viewed you,” and “Use unlimited chat to get to know other local singles better.” The Zoosk web page highlights its “Chat Anytime/Anywhere” feature, and the company provides “Zoosk Messenger” software to “Meet New People” and to “See Who’s Online.” This evidence shows that Zoosk is offering messaging and chat services, as well as software for tracking and organizing date or companion profiles.

The PlentyofFish company markets a POF software application for dating. The software screenshot shows that “Messages” and “Conversations” can be organized into categories such as “Locals.” The company described that its singles send “more than 200 million messages a week,” and the software application lets users “Send and receive messages on the go,” “Message people nearby, online,” “Upload images,” “Discover who viewed your profile,” and “Review your Matches.” The PlentyofFish website evidence included inbox and online forums for message transmission. This

evidence shows that the company provides software for organizing dating communications and profiles, for tracking of nearby potential dates or companions, and the company also offers forum services and message transmission services.

Applicant argued that the cited mark was for “dating services and actual communications seemingly related to online adult dating, sex and/or pornography.” This argument is not supported by the registrant’s actual identification. Registrant’s services in International Classes 38 and 42 do not include adult or pornography type services. The services in International Class 38 include but are not limited to dating and personal relationship issue subject matter. The services in International Class 42 are not limited to a particular subject matter. Applicant’s assertion that the registrant’s services are in some way limited to this particular field is tenuous. While registrant does offer adult-related services in other classes, there is no such limitation or specification of such content for the classes at issue. As indicated above, the relatedness of services analysis is limited to the services as listed in the application and registrant’s identifications in International Classes 38 and 42.

In the 11/24/14 request for reconsideration, applicant mentioned that the evidence of downloadable software applications did not establish that the applicant’s software services and the registrant’s services were commonly provided by the same entities. As illustrated above, the evidence does demonstrate this connection. While the evidence specifically includes downloadable software applications, this software includes the exact same features provided through applicant’s services. Furthermore, the description for each of the software applications makes it clear that the software includes online features and capabilities similar to those offered by the registrant’s software. The evidence also shows that it is common industry practice for companies in the field of dating and relationships to offer software for tracking and managing potential date companions, communications, and preferences, as well as offering various communication services to allow users to chat, message,

and engage in interactions, and hosting a website to allow users to meet, gather and conduct discussions.

In the 11/24/14 request for reconsideration, applicant also specifically indicated that “no evidence that adult (i.e., pornographic) websites commonly offer any software whatsoever relating to dating” was provided. First, as discussed above, registrant’s services at issue do not specifically include adult or pornographic subject matter. Applicant’s focus on pornographic website materials is unfounded. Second, even if a pornographic connection is established, evidence has been provided that shows that adult-oriented websites also offer dating services. Applicant’s objection to the inclusion of this evidence is without merit. This evidence was attached to the response to applicant’s request for reconsideration. Evidence submitted in response to a request for reconsideration that is filed with a notice of appeal is still a part of the application record. See *In re Davey Products Pty Ltd.*, 92 USPQ2d 1198, 1201 (TTAB 2009); *In re Giger*, 78 USPQ 1405, 1406-07 (TTAB 2006); TBMP §1207.04. The LivePornDating web page informed that users “will meet singles that love to watch porn and perform porn related activities on themselves for you to watch. Even better, you can join them.” The PornDatingSite web page allowed members to “view profiles, send flirts, and modify your profile,” and the front page included a pornographic image of a woman. The FAQ/Help pages of both websites discussed features including email or messaging, chat room services, and the ability to manage “Favorite” members. Ashley Madison described itself as an “extramarital affair company” and “website for finding cheating partners.” The company’s website included instant messaging, priority electronic mail, message collection, blocking and searching features. The AdultFriendFinder website included a “Sign Up Now!” tab for users to start finding other members to date, and a live model chat with pornographic categories such as “MILF,” “Shaved Pussy,” “Ass Play,” and “Masturbation.” The company also offered software, describing that “you can do all the things you do on your computer right from your smartphone or tablet.” The software included the capability to browse member profiles, send

email messages, view cams, and chat. This evidence shows that adult-oriented content and software or software services in the dating fields are related.

The same companies offer website services for conducting discussions, or chat room and message transmission type services, along with software for tracking companions, communications, and correspondence. As the services of the respective parties are closely related, the degree of similarity between the marks required to support a finding of likelihood of confusion is not as great as would apply with diverse services. *In re J.M. Originals Inc.*, 6 USPQ2d 1393, 1394 (TTAB 1987); *see Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 1242, 73 USPQ2d 1350, 1354 (Fed. Cir. 2004); TMEP §1207.01(b). Any doubt regarding a likelihood of confusion determination is resolved in favor of the registrant. TMEP §1207.01(d)(i); *see Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988).

CONCLUSION

For the foregoing reasons, the refusal to register on the basis of §2(d) of the Trademark Act, 15 U.S.C. §1052(d) should be affirmed.

Respectfully submitted,

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HOME » US ENGLISH » THIRTY

thirty

Syllabification: thir·ty
Pronunciation: /ˈtɪrði/



Definitions of **thirty** in English:
cardinal number (plural **thirties**)

- 1. The number equivalent to the product of three and ten; ten less than forty; 30:
'thirty or forty years ago'
'thirty were hurt'
'thirty of her school friends'
(Roman numeral: xxx, XXX)

MORE EXAMPLE SENTENCES

- 11. (**thirties**) The numbers from thirty to thirty-nine, especially the years of a century or of a person's life:
'a woman in her thirties'
'she was a famous actress in the thirties'

MORE EXAMPLE SENTENCES

- 12. Thirty years old:
'I've got a long way to go before I'm thirty'

MORE EXAMPLE SENTENCES

- 13. Thirty miles an hour:
'going about thirty'

Origin

Old English *thritig* (see *three*, -ty). The spelling with initial *thi-* is recorded in the 15th century, and has been the prevalent form since the 16th century.

Derivatives

thirtieth

Pronunciation: /-tiθ/
ordinal number

EXAMPLE SENTENCES

thirtyfold

Pronunciation: /ˈtɪrðiˌfɔld/
adjective & adverb

EXAMPLE SENTENCES

Words that rhyme with thirty

Alberti, Bertie, dirty, fifty, shirty

Definition of **thirty** in:

- British & World English dictionary

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Nearby words

- thirteenth
- thirteenth cheque
- thirty
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- Thirty-nine Articles

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- thirty-eight
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- thirty-something
- thirty-two-mo
- thirty-year rule
- Thirty Years War

Result list for thirty

Translate thirty

- into Arabic
- into Chinese
- into French
- into German
- into Italian
- into Portuguese
- into Russian
- into Spanish

WORD OF THE DAY

cynosure

Pronunciation: sɪnəˈʃʊər

NOUN

a person that is the center of attention...

See full definition

SIGN UP TO WORD OF THE DAY

