

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/706879

MARK: PEBBLE



CORRESPONDENT ADDRESS:

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GENERAL TRADEMARK INFORMATION:
<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: L-3 Communications Corp.

CORRESPONDENT'S REFERENCE/DOCKET NO:

N/A

CORRESPONDENT E-MAIL ADDRESS:

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE:

Applicant is requesting reconsideration of a final refusal issued/mailed October 23, 2008.

After careful consideration of the law and facts of the case, the examining attorney must deny the request for reconsideration for the reasons set forth below.

Reconsideration Denied – Section 2(d) Final Refusal Continued

Applicant's mark is PEBBLE for

“Signal intelligence system comprised of satellites, satellite receivers, radio receivers and computer hardware for remotely detecting and monitoring radio frequency activity” in International Class 009.

The registered mark is PEBL for a variety of communications equipment in International Class 009 including,

“radio receivers, radio transceivers, radio transmitters, two-way radios, antennas; radio transceivers and receivers for data, voice, image and video communication; computer software for sending and receiving short messages and electronic mail and for filtering non-text information from the data; and computer software and programs used for transmission and reproducing and receiving of sound, images, video and data over a telecommunications network”.

In this case, the parties' marks *are* highly similar in appearance and commercial impression, and are

identical in sound.

As previously noted, there is no correct pronunciation of a trademark because it is impossible to predict how the public will pronounce a particular mark. *In re Great Lakes Canning, Inc.*, 227 USPQ 483, 484 (TTAB 1985); TMEP §1207.01(b)(iv); *see In re Energy Telecomm. & Elec. Assoc.*, 222 USPQ 350, 351 (TTAB 1983). The marks in question could clearly be pronounced the same; such similarity in sound alone may be sufficient to support a finding of likelihood of confusion. *See RE/MAX of Am., Inc. v. Realty Mart, Inc.*, 207 USPQ 960, 964 (TTAB 1980); *Molenaar, Inc. v. Happy Toys Inc.*, 188 USPQ 469, 471 (TTAB 1975); TMEP §1207.01(b)(iv).

In its request for reconsideration, the applicant provides *no supporting case law* for its assertion that “the burden to disprove such an assumption [regarding mark pronunciation] should not be placed upon the Applicant”.

Nevertheless, Applicant ignores the fact that the record contains more than a mere “assumption” about how the Registrant’s mark is pronounced. In this case, the record contains evidence that the registrant promotes the fact that its mark is pronounced as “pebble”. (*See* previously supplied web page printouts.)

The parties’ marks are essentially phonetic equivalents and thus sound similar. Similarity in sound alone may be sufficient to support a finding of likelihood of confusion. *RE/MAX of Am., Inc. v. Realty Mart, Inc.*, 207 USPQ 960, 964 (TTAB 1980); *Molenaar, Inc. v. Happy Toys Inc.*, 188 USPQ 469, 471 (TTAB 1975); *see* TMEP §1207.01(b)(iv).

With respect to the parties’ goods, the fact that the goods or services of the parties differ is *not controlling* in determining likelihood of confusion. [Emphasis added.] The issue is not likelihood of confusion between particular goods or services, but likelihood of confusion as to the *source* of those goods or services. [Emphasis added.] *In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993); *Safety-Kleen Corp. v. Dresser Indus., Inc.*, 518 F.2d 1399, 1404, 186 USPQ 476, 480 (C.C.P.A. 1975); TMEP §1207.01.

A determination of whether there is a likelihood of confusion is made solely on the basis of the goods and/or services identified in the application and registration, without limitations or restrictions that are not reflected therein. *In re Dakin’s Miniatures, Inc.*, 59 USPQ2d 1593, 1595 (TTAB 1999); TMEP §1207.01(a)(iii). If the cited registration describes the goods and/or services broadly and there are no limitations as to their nature, type, channels of trade or classes of purchasers, then it is presumed that the registration encompasses all goods and/or services of the type described, that they move in all normal channels of trade, and that they are available to all potential customers. *In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992); *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981); TMEP §1207.01(a)(iii).

“Signals intelligence” can be defined as

A category of intelligence comprising either individually or in combination all *communications* intelligence, electronic intelligence, and foreign instrumentation signals intelligence, *however transmitted*. [Emphasis added.]

(*See* attached definition from www.dtic.mil.)

Despite Applicant’s arguments to the contrary, there is not a lot of difference between the parties’ goods. Simply put, Applicant’s “signal intelligence system”, like any such communications intelligence gathering system, is comprised of communications equipment such as that specified in the cited

registration. (See also previously supplied third party registrations.)

The goods and/or services of the parties need not be identical or directly competitive to find a likelihood of confusion. See *Safety-Kleen Corp. v. Dresser Indus., Inc.*, 518 F.2d 1399, 1404, 186 USPQ 476, 480 (C.C.P.A. 1975); TMEP §1207.01(a)(i). Rather, they need only be related in some manner, or the conditions surrounding their marketing are such that they would be encountered by the same purchasers under circumstances that would give rise to the mistaken belief that the goods and/or services come from a common source. *In re Total Quality Group, Inc.*, 51 USPQ2d 1474, 1476 (TTAB 1999); TMEP §1207.01(a)(i); see, e.g., *On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086-87, 56 USPQ2d 1471, 1475-76 (Fed. Cir. 2000); *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1566-68, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

Moreover, communications equipment and equipment for gathering communications-related intelligence are frequently offered by the same parties in the same channels of trade. In fact, communications equipment and related intelligence gathering equipment are offered under the same mark, and in the same channels of trade, *by the instant applicant*. (See previously supplied U.S. Registration No. 2531073 for L3 COMMUNICATIONS and previously supplied web page printouts from Applicant's website, as well as previously supplied third party registrations.)

Any goods or services in the registrant's normal fields of expansion should be considered when determining whether the registrant's goods and/or services are related to the applicant's goods and/or services. TMEP §1207.01(a)(v); see *In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581 1584 (TTAB 2007). Evidence that third parties offer the goods and/or services of both the registrant and applicant suggest that it is likely that the registrant would expand their business to include applicant's goods and/or services. In that event, customers are likely to believe the goods and/or services at issue come from or, are in some way connected with, the same source. *In re 1st USA Realty Prof'ls*, 84 USPQ2d at 1584 n.4; see TMEP §1207.01(a)(v).

The overriding concern is not only to prevent buyer confusion as to the source of the goods and/or services, but to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. See *In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, 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, 1025 (Fed. Cir. 1988).

Accordingly, applicant's request for reconsideration is *denied* and the final refusal under Trademark Act Section 2(d) is continued. The time for appeal runs from the date the final action was issued/mailed. 37 C.F.R. Section 2.64(b); TMEP Section 715.03(c). If applicant has already filed a timely notice of appeal, the application will be forwarded to the Trademark Trial and Appeal Board (TTAB).

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signals intelligence

(DOD) 1. A category of intelligence comprising either individually or in combination all communications intelligence, electronic intelligence, and foreign instrumentation signals intelligence, however transmitted. 2. Intelligence derived from communications, electronic, and foreign instrumentation signals. Also called SIGINT. See also communications intelligence; electronic intelligence; intelligence; foreign instrumentation signals intelligence.

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