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Applied for Mark	YAB
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DESCRIPTION OF THE RECORD

This document is an appeal brief to the Trademark Trial and Appeal Board (TTAB). The final argument in the subsequent office action (official letter) regarding my trademark application, serial number 85677484 (which Kevin Kurrus originally filed on July 16, 2012 seeking to obtain a trademark for the stylized character cluster including the letters Y, A, and B, in that order).

STATEMENT OF ISSUES

The final argument in the subsequent office action (official letter) regarding my trademark application, serial number 85677484, states that the likelihood of confusion determination is found in two key considerations 1) the marks are confusingly similar and 2) the services are closely related. In this document, I continue to argue why I believe neither of these considerations are valid in terms of refusing the registration of my trademark application.

The two key considerations from the USPTO office action (official letter) about my trademark application, the final action, which I received on 12/26/13, states, under section 2(d) Refusal Likelihood of Confusion, that the two key considerations are the similarity of marks and similarity or relatedness of services. These are essentially two of the same reasons stated in the first office action I received on 11/15/12. Besides the fact that I followed up on all of TM attorney Amy C. Kelly's suggestions, my trademark application is still being denied for the same reasons as those I addressed the first time around, which again were under the guidance and direction of trademark examining attorney Amy C. Kelly. Also, as I outlined, the differences between the two marks in these two areas are considerably different and I have outlined the reasons why previously in this document.

RECITATION OF THE FACTS

The appearances of the two marks are significantly different. When applying for this trademark online, the USPTO required me to describe my mark in words, and I did so as descriptively as I could at that time. I wrote that the mark was a ‘stylized logo including the letters Y, A, and B, in that order, where the letters are merged together’. I understand that the marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression, but there are far more differences between the two marks in all of these categories than there are similarities.

There are significant differences in the visual perceptions of the two marks other than just the center vowel. In terms of appearance, the YUB trademark is essentially three separate, standard characters, only connected at the top between the ‘Y’ and the ‘U’ and between the ‘U’ and the ‘B’. The *YAB* mark on the other hand is a stylized, single character cluster, where the long stem of the ‘Y’ is also the first leg of the ‘A’ and the second leg of the ‘A’ is also the spine of the ‘B’. The *YAB* mark is also layered with three images of the same icon on top of one another, and not just one layer like the YUB icon. Furthermore, the different formatting of the *YAB* mark, with a thicker, bolder, stylized font is another clear difference between the two marks.

In terms of sound and pronunciation, the YUB mark is easy to pronounce once the public sees it. The letters of the YUB mark are presented in standardized form, without significant integration to each other. The *YAB* mark, with its integrated letters forming the stylized character cluster, needs to be analyzed by the public first before one can recognize what letters it is comprised of. Then, after recognizing the letters the mark is comprised of, the public can attempt to pronounce the sound of the mark. The rationale presented in the final office action is too general to recognize the obvious major differences between these two marks. By the generalized rationale in the final office action, “Also as argued in the previous Office action, the marks may have similar pronunciations. Because it is impossible to predict how the public will pronounce a mark, any audible distinction in applicant’s “A” and

registrant's "U" would not be distinctive and would not serve to overcome the stronger similarities in the way the marks are pronounced.", it would be nearly impossible to predict how the public will pronounce anything. Therefore, the final notice office action on this point is not a sound argument. To predict the way the public will pronounce anything could be applied to any situation in any field or context. There are also completely different sounds when pronouncing the vowels, 'A' and 'U', of the two marks. These are significant differences between the two marks in terms of their initial and overall impressions and interpretations.

As far as the connotations and commercial impressions of the different marks, the public's interpretations of the two marks will be largely based on the aforementioned differences in the appearances and pronunciations of the marks, as well as the services associated with each of the marks.

There is very little likelihood that the public will confuse the two marks based on the initial and long term views of the marks, the pronunciation of the marks, and the services associated with each of the marks. The two marks would not appear exceedingly similar when initially viewed by the public and more time will only allow the public to further distinguish the two marks. For what it is worth, the YUB icon is not present on the Buy.com website, which is the service the mark is associated with, and the original applicant for the YUB trademark has sold his company to another party. The only similarity between the two marks is a 'Y' and a 'B' and there are no reasonable similarities between the two marks in terms of the services.

The similarity and nature of services consideration is not a legitimate argument either. The initial online trademark application process I followed only allowed me to select, "providing a social networking website for entertainment purposes", as the closest category to describe the services my mark is associated with. This general description of services was too broad to allow the patent attorney to discern between the services associated with my mark and the services of the YUB trademark. This was not a fair claim to make for the refusal to register my mark because I had no other choice of service categories that

would come close to matching my mark's associated services. Even in one of my many telephone conversations with Trademark Attorney, Amy Kelly, did acknowledge that I had no other choice in terms of choice description for the services of my mark due to the online registration option I initially choose for this trademark application.

While the final argument states that the 'similarity or relatedness of the services' may lead to a likelihood of confusion, in reality the trademarks and their respective services are completely different. The YUB mark is associated with Buy.com, which is a website in the field of locating products, describing products, rating products, pricing products, and comparing prices of products (See 'Buy.com Drawings' which have been previously submitted on 5/11/13).

The YAB mark, on the other hand, is associated with Yabahaba.com, which is an online, shared calendar application that facilitates communication, coordination and scheduling for users to plan get-togethers and share event information with other users. (See '*YAB Drawings 5-11-13*' and '*YAB Drawings-Brief Descriptions 5-11-13*' which have been previously submitted on 5/11/13). Users have their own personal Yabahaba calendars and can upload and/or manually enter their contacts' information, create and share events, and invite or inform individuals from their contacts to their events. Inviting/sharing events automatically e-mails the invitees and updates their Yabahaba calendars with the events. Invitees can accept or decline events sent to them from their Yabahabs calendars. These responses send immediate and automated e-mails to the inviter and update the inviter's Yabahaba calendar.

The services of the two marks are not similar, commercially related, nor do they travel the same trade channels. The two different marks are not associated with websites that provide the same services at all. The YAB mark is associated with Yabahaba.com, which is a calendar application and is nothing like the Buy.com website the YUB mark is associated with. There are no purchasers from Yabahaba.com and we do not provide consumer incentives for purchasing from merchants via discounts, rebates or cash back

programs as Buy.com does. Again, because the description of services in the trademark application process was so limited, the services of the two marks were initially and incorrectly confused, and unfortunately they still remain confused in the eyes of the reviewing trademark attorney. The functionality and services of each of the websites are entirely different in terms of their respective objectives and functions and the argument to deny my trademark application based on the ‘similarity or relatedness of services’ is unreasonable and erroneous.

In addition, I followed all of the reviewing attorney's recommendations on this trademark application and I amended this application based on her suggestions, so why did the trademark attorney still deny the application even after I followed each and every one of her recommendations to correct my initial trademark application? Also, the trademark attorney assigned to my application gave me this description, “Applicant seeks to register its mark for use in connection with the following amended services: Online social networking services for entertainment purposes provided through an interactive website featuring an online calendar of scheduled events occurring on the web that may be shared by others, in Class 45.”, to amend my initial application. However, she still denied my application, in part based on the exact language she gave me regarding the services of my mark. As a result, my application was rejected, in part, for that language that she provided me. This is not a fair or sound argument for denial of my application, as I could have used other language that may not have resulted in the rejection of my application.

The services of these two different marks are completely different. The words ‘social’ and ‘interactive’ are the only similarities in the descriptions of the services. The Trademark Attorney did not make a sound argument to suggest that these two words would lead to confusion of the public. Again, this language was provided to me by Amy Kelly, the original examine attorney. Also, the term ‘network’, which was used, has a number of different definitions: 1) network: an arrangement of intersecting horizontal and vertical lines, and 2) network: a group or system of interconnected people or things. These definitions are not a justification for suggesting that the services between the website services of our mark

and the website services of their mark are similar. In reality, the services of the two websites associated with each mark are completely different.

When reviewing the subsequent final office action it reads, "In short, applicant's services consist of an interactive online calendar where the user may create and share events and invite or inform other users of these events. Registrant's services consist of a website which facilitates social interactions. In the subsequent final office action, the Trademark Attorney then lists three other online social calendaring websites. Why did the Trademark Attorney mention these sites here in this document and not in the initial final office action letter? If the reason my application was initially denied rejected was because of the similarities the Trademark Attorney perceived of my mark and the YUB mark, why mention these other online applications in the subsequent office action. They have no relevance to the initial reasons the Trademark Attorney rejected my application. This argument brings new online applications into the conversation when they were never mentioned in the initial office action. There was no previous confusion with my mark and the services of these other online applications. The denial of my mark was based on the YUB mark and its related services. The Trademark Attorney's argument here has nothing to do with the YUB mark and therefore is not relevant and should not be accepted as a reasonable argument or reason to deny my trademark application.

Further, the trademark attorney had knowledge of the YUB mark and the services behind both marks, and yet she still gave me the language to my amended application which ultimately she continued to deny my amended application due to the exact language she provided to me. The examining attorney was very helpful, but this is not fair to myself or anyone else who applies for a trademark and follows the suggestions and advice of the examining attorney. While I followed the recommendations of the examining attorney, the reality is that the services of the two marks are not closely related at all. The only commonality between the services of the two marks is that they are both websites. The services of the two marks are neither identical nor competitive and users do not purchase goods from our site like they do

from the site of the other mark. This is yet another reason the two sites would not be related on the mind of the public.

The initial final office action refusing registration of this mark was sent because, according to the Trademark Attorney, I neither satisfied nor overcame all requirements previously raised. However, I followed all of the recommendations and directions of Trademark Attorney, Amy C. Kelly, and still the final office action refused the registration of my mark. This is wrong as I followed all of the steps outlined for me by the reviewing Trademark Attorney and because there are so many differences between the two marks in description, usage, designs, and description of services.

ARGUMENT

Furthermore, as the overriding concern in the subsequent final office action stated, “The overriding concern is not only to prevent buyer confusion as to the source of the 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). Consequently, any doubt regarding a likelihood of confusion determination is resolved in favor of the registrant. *In re Power Distrib., Inc.*, ___ USPQ2d ___, Ser. No. 77825939, 2012 TTAB LEXIS 402, at *12 (Sept. 29, 2012); TMEP §1207.01(d)(i); *see In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1025 (Fed. Cir. 1988). For the reasons stated herein and based on the evidence of record, the refusal under Trademark Act Section 2(d) is **FINAL** with respect to the mark YUB in U.S. Registration No. 3501822. *See* 15 U.S.C. §1052(d); 37 C.F.R. §2.64(a).” This is not a fair or sound argument. The two websites and their services are not much alike at all and neither are their marks. The public is not buying products or services from our website like they are from the buy.com website. There are advertisers on our website, but users cannot purchase goods directly from our website. Furthermore, only registered users of my website can access and utilize the functionality of our services in the mark associated with our site.

For the buy.com website, the public does not have to register for them to purchase products or services from their site.

Also, in response to the subsequent final action letter, I addressed the following items (please see red font for the trademark attorney's claims and look directly below for my counterarguments to each of those claims. Please look at this with a fresh pair of eyes):

In its November 23, 2012, response, pro se applicant addressed the requirements but offered no arguments or evidence against the Section 2(d) refusal.

On December 26, 2012, the examining attorney noted that the outstanding requirements had been resolved, but made the refusal under Section 2(d) final.

On May 11, 2013, applicant filed a request for reconsideration and for the first time presented substantive arguments and evidence in support of registration.

Based on the feedback and suggestions provided to me by the trademark attorney, I followed her guidance and recommendations from our telephone conversations and he never indicated that I could submit arguments as evidence against the 2(d) final at that point in the application process.

If a request for reconsideration presents new evidence that is significantly different from evidence previously submitted, the examining attorney must issue an "Examiner's Subsequent Final Refusal," with a six-month response clause.

I followed her advice and she never mentioned about submitting evidence the first time. That is the only reason I did not submit anything, and I would have had I been made aware by the TM attorney. I followed all other recommendations and counsel she provided me and this previous point is the only reason I did not submit anything and consequently the reason the TM attorney refused registration of my TM. This is not fair.

Hence, this Subsequent Final Refusal is issued, enabling applicant to respond to the examining attorney before filing an appeal.

This point was never made clear to me by the trademark attorney.

The marks use the same three-letter pattern, both commencing with Y and ending with B. For purposes of a likelihood of confusion analysis, the only meaningful differences between the marks are the center vowel and applicant's stylized presentation.

No they do not. Ours is a character cluster that integrate the three letters. No, there are other significant differences between the two marks.

As both marks both start and end with the same consonant sounds, any variation in the "A" and "U" vowel sounds, even when articulated by a most careful speaker and heard by a most careful listener, is so subtle as to be likely not appreciated.

This is subjective and only the TM attorney's opinion. Also, our services are completely different.

It has been established that a mark in standard characters may be displayed in any lettering style; that is, in this instance, registrant's rights reside in the literal element YUB and not in any particular display or rendition.

But this still does not lend the YUB trademark to appear as the stylized character cluster that is my mark.

Therefore, the marks are not as confusingly similar as indicated by the TM attorney.

Thus, a mark presented in stylized characters (such as applicant's YAB mark) generally will not avoid likelihood of confusion with a mark in standard characters (such as registrant's YUB mark) because the standard-character mark could be presented in the same manner of display as the stylized-character mark.

But the YUB mark was not registered as a stylized mark. If there is no difference, then why have trademark applicants indicate whether the mark is in standard characters it stylized form. If there is no difference then what is the point. There has to be a difference and therefore this is not a legitimate argument for the rejection of my trademark application. What's more, the YUB mark does not appear anywhere on the buy.com website, which is the services related to that mark.

In a likelihood of confusion determination, the services are compared to determine whether they are similar or commercially related or travel in the same trade channels. It is sufficient that the services of the applicant and the registrant are related in some manner or that the conditions surrounding their marketing are such that they are likely to be encountered by the same persons under circumstances that, because of the marks used in connection therewith, would lead to the mistaken belief that they originate from the same source. TMEP §1207.01.

This is speculation and opinion, and not based in facts or evidence.

The attached Internet evidence consists of screen shots from several third party websites discussing different social calendaring applications and websites, all of which offer social interactions via shared calendars under one mark. These marks include UpTo, Skedj, Family Tree, and the following:

Plango - Plango is a mobile social calendar on Facebook. With Plango you can easily set up private group activities with your closest friends, buddies, and family members on the go. Reach everyone in minutes using push notifications and free SMS.

- Social planning of private get-togethers*
- Invite friends to activities using push notifications and free SMS*
- Coordinate plan details and last minute changes with group messages*
- Check latest updates and see who's coming with Inbox*

Eugene a Go-Go - Eugene A Go-Go is the place where you can find out about all of the arts and culture activities happening throughout Eugene and our surrounding community - from festivals, performances and exhibits to classes, auditions and ways to engage with the arts through volunteer and board opportunities. ... Anyone can use the site, either as an anonymous patron or a logged-in user. ... We encourage artists, arts producers and art patrons to experience the cross-organizational collaboration

possible with the site. ... Connect with other people with your interests via our unique social networking system.

Kalendi - Share calendars with your employees, students, customers, and remote workers from any Web-enabled device in the world! Setup a group calendar to track meetings, conference calls, and project deadlines. Setup unlimited calendars to share across teams, departments, or remote locations.

These have nothing to do with my mark, it's related services, any alleged similarities between the services of my mark and the YUB mark, or the trademark attorney's reasons for refusing the registration of my mark as it relates to the YUB mark.

This evidence establishes, then, that the same entity commonly provides the relevant services and markets the services under the same mark. It also establishes the relevant services are provided through the same trade channels and used by the same classes of consumers. Therefore, applicant's and registrant's services are considered related for likelihood of confusion purposes.

This is quite a stretch. It is subjective and based on the opinion of the trademark attorney but not rooted in evidence.

In addition to the third-party registrations already of record, the trademark examining attorney has included below the response guidelines of this Office action further evidence from the USPTO's X-Search database consisting of additional third-party marks registered for use in connection with the same or similar services as those of both applicant and registrant in this case. This evidence shows that the listed therein, namely social interaction websites and social calendar websites, are of a kind that may emanate from a single source under a single mark.

Did the trademark attorney even look at the two websites (the services related to my mark and those related to the YUB mark)? One look for a few minutes at each of the websites and it will be easy and apparent to see that the two services of each of these marks are not related at all. The website services

mentioned in the subsequent final office action have nothing to do with my mark or the trademark application process.

Based on the evidence of record, the services are considered closely related.

This has nothing to do with the issue at hand. Simply look at the two websites and you will see just how different and completely unrelated they are.

When undergoing a likelihood of confusion analysis with regard to the services at issue, the question of likelihood of confusion is determined based on the description of the services stated in the application and registration at issue, not on extrinsic evidence of actual use.

The prudent a room here is to look at both websites. That will clear up this issue and eliminate any inaccurate perceptions digesting that the services of the two marks are closely related.

Unfortunately, applicant's contention that registrant's YUB mark is only associated with its Class 35 services is not captured within the four-corners of the cited registration. Again, when comparing services, a likelihood of confusion analysis must rely on the registrant's identification of the services as stated in its registration, not on extrinsic evidence of actual use.

Even the description of services are different in Class 45, this is a flaw in the trademark application process and does not allow for a fair opportunity for applicant such as myself in this situation.

Providing information and a database via a website for facilitating social introductions and interactions. Neither applicant's identification or registrant's identification provide restrictions as to the nature, type, channels of trade, or classes of purchasers. Therefore, it is presumed that these services travel in all normal channels of trade, and are available to the same class of purchasers.

This is way too broad if a generalization of the two services. If any one of the claims made by the Trademark attorney are reasons to deny registration rights for an applicant, then any trademark applicant could be denied a registered trademark based on the explanation of the trademark attorney here.

The overriding concern is not only to prevent buyer confusion as to the source of the 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).

No one is buying anything from the website associated with my mark. The trademark attorney has failed to acknowledge this as well as every other difference between my website and the website associated with the YUB trademark. There are so many differences that there are hardly any similarities between the two websites. A quick glance at both websites online will make that apparent. Instead, the trademark attorney makes arbitrary and unrelated points to deny my trademark application.

SUMMARY

To summarize, for all of the aforementioned reasons pointed out and all of the other reasons I included in previous documentation I submitted on this trademark application and related appeals, I am requesting a reconsideration and that my trademark application be re-reviewed to realize the significant differences between the two marks and their respective services. My hope is still that after careful review of the two different marks, their respective services, and the arguments I raised in this document, that it will be determined that these two marks are really not that similar and that trademark rights are granted to my mark.

Thank you very much for your time!

Appreciatively,

Dr. Kevin Kurrus