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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	85727628
Applicant	Inflection Point Retail, LLC
Applied for Mark	INFLECTION POINT MOBILE
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Submission	Applicants Request for Remand and Amendment
Attachments	19148.7 Req for Remand.pdf(161159 bytes )
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Date	05/14/2014

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Applicant: Inflection Point Retail, LLC  
In the matter of Trademark Application No. 85/727,628  
Filed on September 12, 2012  
Mark: **INFLECTION POINT MOBILE**

**REQUEST FOR REMAND AND AMENDMENT**

Applicant hereby files a Request for Remand and Amendment in the above-identified Trademark Application Ex Parte Appeal.

Applicant proposes the following amendment to the description of goods for Class 09: Downloadable computer software application for use in providing product pricing comparisons for goods and services of others; Downloadable computer software application via mobile electronic devices for use in providing promotional and marketing information, offers, inventory promotions, inventory marketing and inventory purchasing for the goods and services of others.

Applicant recently divided Class 35 (Application Serial No. 85/981,379) from the subject application as a result of the Examining Attorney accepting the identification for Class 35 and maintaining the rejection of Class 09. The divided Class 35 application has been published by the United States Patent and Trademark Office.

By this amendment, Applicant has amended the description to more distinctly identify the type of goods for Class 09 and aligned the identification of goods for Class 09 with the services accepted for the Class 35 application.

The owner of cited U.S. Registration Nos. 3,224,842 and 3,638,992 provides services to more sophisticated customers who then market that software under a name of the customer's choosing. The owner of the cited marks does not market the software they develop under their own name. Applicant respectfully asserts that the customers who purchase consulting services and customized software development services are more sophisticated than those who purchase "downloadable computer software applications via mobile electronic devices" and operate in a different channel of trade.

In the Reconsideration Letter the Examining Attorney has contended that companies that provide off the shelf software products also provide customized software marketed under the same mark and in the same channels of trade. However, the evidence provided by the Examining Attorney illustrates companies that provide off the shelf and customized software for a specific channel of trade, i.e. DataTread providing software for the wholesale tire industry; Innovative Software Solutions Inc. providing software for businesses to use internally to assist in providing a better service for their customers; Lyris providing a software platform that is marketed under Lyris's customers marks. Further, Applicant respectfully suggests that the fact that a single company provides software for both off the shelf products and customized products is not evidence that both products operate in the same channels of trade.

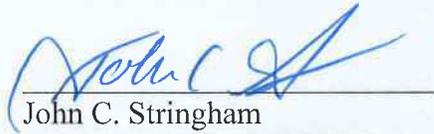
Applicant respectfully asserts that in view of Applicant's clarifying amendment, registration of Applicant's mark is not likely to confuse consumers as to the source of Applicant's goods *vis-à-vis* the marks contained in U.S. Registration Nos. 3,224,842 and 3,638,992, and therefore good cause exists for remand. Applicant respectfully requests the refusal of registration because of a likelihood of confusion with the marks in U.S.

Registration Nos. 3,224,842 and 3,638,992 under Trademark Act Section 2(d) be withdrawn.

Applicant respectfully requests allowance of the present application. Applicant respectfully requests the Ex Parte Appeal be closed.

DATED this 14th day of May, 2014.

Respectfully submitted,



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