

From: Ferraiuolo, Dominic

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Subject: U.S. TRADEMARK APPLICATION NO. 86029696 - PLEIADES - 108084-00002 - Request for  
Reconsideration Denied - Return to TTAB

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Attachment Information:

Count: 1

Files: 86029696.doc

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

<b>U.S. APPLICATION SERIAL NO.</b> 86029696  <b>MARK:</b> PLEIADES	
<b>CORRESPONDENT ADDRESS:</b> ELLIOTT J. STEIN  STEVENS & LEE, P.C.  100 LENOX DR STE 200  LAWRENCEVILLE, NJ 08648-2332	<b>GENERAL TRADEMARK INFORMATION:</b>  <a href="http://www.uspto.gov/trademarks/index.jsp">http://www.uspto.gov/trademarks/index.jsp</a>  <a href="#">VIEW YOUR APPLICATION FILE</a>
<b>APPLICANT:</b> Pleiades Consulting Inc.	
<b>CORRESPONDENT'S REFERENCE/DOCKET NO:</b>  108084-00002  <b>CORRESPONDENT E-MAIL ADDRESS:</b>  ejs@stevenslee.com	

**REQUEST FOR RECONSIDERATION DENIED**

**ISSUE/MAILING DATE: 1/8/2015**

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. §2.64(b); TMEP §§715.03(a)(2)(B), (a)(2)(E), 715.04(a). The requirement(s) and/or refusal(s) made final in the Office action dated June 18, 2014 are maintained and continue to be final. See TMEP §§715.03(a)(2)(B), (a)(2)(E), 715.04(a).

**Amended Identification Limiting Scope Of Goods Accepted-Does Not Overcome Refusal**

Applicant's amended identification of goods namely "Small robotic aerial vehicles for non-military or non-governmental use" is accepted.

Turning to applicant's arguments for registration and against a likelihood of confusion, the following is presented. The fact that purchasers are sophisticated or knowledgeable in a particular field does not necessarily mean that they are sophisticated or knowledgeable in the field of trademarks or immune from source confusion. TMEP §1207.01(d)(vii); see, e.g., *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d. 1317, 1325, 110 USPQ2d 1157, 1163-64 (Fed. Cir. 2014); *Top Tobacco LP v. N. Atl. Operating Co.*, 101 USPQ2d 1163, 1170 (TTAB 2011).

Applicant's amended identification of goods namely "Small robotic aerial vehicles for non-military or non-governmental use" makes it clear that the goods emanate from the private sector as opposed to military or government sources. However, it is the private sector that provides military and government departments and agencies through, for example, government and military contracts. Therefore, the sources of the goods in issue are highly likely to be the same and the use of marks that comprise identical wordings with the same unique and arbitrary meanings, as in this case, is likely to create a likelihood of confusion for buyers and users in the marketplace. While the end uses of the goods may differ in specific applications, the source of these specialized goods is highly likely to be the same. For example, the military could use goods that are the same or similar to applicant's goods for certain information gathering missions and that would be a commercial application through a government or military contract. The class(es) of purchasers of these goods is also highly likely to overlap as purchasers move from one sector of the economy to another sector with their highly specialized knowledge and information about satellites, drones and other small aerial robotic vehicles. In another example of commercial overlap, the attachment at pages 2-10 of the final office action dated June 18, 2014 posits the question of satellites versus drones, a type of small robotic aerial vehicle, for delivering Internet.

Applicant concedes the *DuPont* factors cited against registration of the applied-for mark in favor of the cited registration in the final office action, namely similarity of the marks and relatedness of the goods. Applicant argues, however, that two other *du Pont* factors namely, the similarity or dissimilarity of established, likely to continue trade channels and the conditions under which, and buyers to whom,

sales are made, sufficiently distinguishes the goods so that although the marks may be nearly identical in this case, there is not a likelihood of confusion. However, the fact that purchasers may be sophisticated in their field or industry does not mean they are sophisticated about trademarks. In addition, since it appears highly likely that the manufacturing source of the goods in issue is very likely to overlap as shown by the attachments to the final office action dated June 18, 2014. For example, farm drones and satellites as shown on pages 20-22 are likely to provide information to farmers. Governmental agencies that interact with farmers will likely be provided with relevant farm and crop information from the same drones and satellites. In addition, any useful relevant information, as well as the best technical achievements would likely be transferred to military sources and providers of technology and information to both military and government departments and agencies. The gathering of information via drones and satellites is a convergence industry that then feeds the various public and private educational, governmental and military needs, as well as social media as shown by the attachments at pages 2-10 of the final office action dated June 18, 2014.

The atmospheric and weather satellites referenced in the attachments at pages 11-14 and 15-19 of the final office action dated June 18, 2014 appear highly likely to provide the information and data that these goods are used to provide to all sectors of the economy from a single source. The attachments at Exhibit A provided with applicant's response dated May 27, 2014 state that anyone can use the goods and that the goods run various apps. The attachments at Exhibit B provided with applicant's response dated May 27, 2014 show the registrant's website featuring information about goods that appear in the cited registration in connection with its Pleiades mark. Although these appear to show that the goods in issue come from different ends of the market, namely the high-end satellites and drones and the low-end robotic aerial vehicles, the use of identical marks on these goods is likely to lead to confusion as to the source of the goods by purchasers and users of the goods and the information and data the goods are used to provide.

Although applicant states in its declaration in support of registration that it will initially provide its goods for recreational and hobby use, it also states that there are possible commercial applications. This means that based on the goods as specified in the application, namely "Small robotic aerial vehicles for non-military or non-governmental use" when compared to the registrant's goods including "satellites for scientific purposes" and for "satellite imagery and data", there is a definite overlap of these goods for trademark registration purposes when it comes to identical and nearly identical marks. Therefore, an analogy to laundry and dry cleaning is not assistive in the analysis of a likelihood of confusion in this application.

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, 1026 (Fed. Cir. 1988).

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.

The filing of a request for reconsideration does not extend the time for filing a proper response to a final Office action or an appeal with the Trademark Trial and Appeal Board (Board), which runs from the date the final Office action was issued/mailed. *See* 37 C.F.R. §2.64(b); TMEP §715.03, (a)(2)(B), (a)(2)(E), (c).

If time remains in the six-month response period to the final Office action, applicant has the remainder of the response period to comply with and/or overcome any outstanding final requirement(s) and/or refusal(s) and/or to file an appeal with the Board. TMEP §715.03(a)(2)(B), (c). However, if applicant has already filed a timely notice of appeal with the Board, the Board will be notified to resume the appeal. *See* TMEP §715.04(a).

/DominicJFerraiuolo/

Examining Attorney, U.S.P.T.O.

Law Office 102

tel: 571-272-9156

fax: 571-273-9102

email: dominic.ferraiuolo@uspto.gov