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

Proceeding	91185884
Party	Plaintiff Dating DNA, LLC
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Submission	Motion to Amend Pleading/Amended Pleading
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Date	08/29/2008
Attachments	opposition.pdf (1 page)(595915 bytes)

Likelihood of Confusion

The applicant's mark, when used on or in connection with the identified services, so resembles the mark in U.S. Registration No. 3245349 and Application No. 77091424 as to be likely to cause confusion, to cause mistake, or to deceive. TMEP section 1207. See the enclosed registration.

The applicant's mark must be analyzed in two steps to determine whether there is a likelihood of confusion. First, you must look at the marks themselves for similarities in appearance, sound, connotation and commercial impression (*VisualDNA v Dating By DNA/Dating DNA*). In re *E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Second, you must compare the goods or services to determine if they are related or if the activities surrounding their marketing are such that confusion as to origin is likely. In re *August Storck KG*, 218 USPQ 823 (TTAB 1983); In re *International Telephone and Telegraph Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Products Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978).

The marks of the parties are highly similar. The applicant has applied to register the mark "VISUADNA." The registered mark is "DATING BY DNA" and the registrant's other pending mark is "DATING DNA." The dominant portion of each mark is the term DNA which is identical in sound, appearance, and meaning. As a result, the marks are confusingly similar.

The services of the applicant are highly related to the services of the registrant so as to cause a likelihood of confusion. The applicant's services are Personal and social services rendered by others to meet the needs of individuals, namely, social networking services, social introduction and dating services; Internet based social networking services; visually profiling consumers for networking, social, and personal purposes; analyzing personality and personal profile information data for networking, social and personal purposes. The registrant's services are dating and matching making services. Registrant's other pending "DATING DNA" mark's services are Computer dating services; Dating services; Internet based social networking, introduction, and dating services; Marriage partner introduction or dating services; On-line identity reliability investigation in the field of on-line dating and claims made about age, gender; Reminder services in the area of upcoming important dates and events; Video dating services; Web site services featuring on-line dating club.

The services are virtually identical since both include dating and matchmaking/Internet social networking services/social introduction services. These types of services are likely to be marketed in the same channels and encountered by the same consumers.

Since the marks of the parties are very similar and the services are essentially identical, registration must be refused on the Principal Register under section 2(d) of the Trademark Act.