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Subject: U.S. TRADEMARK APPLICATION NO. 85155120 - TRELLIS - 6499A-200105 - Request for Reconsideration Denied - Return to TTAB - Message 1 of 2

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

U.S. APPLICATION SERIAL NO. 85155120

MARK: TRELLIS

CORRESPONDENT ADDRESS:

LISA M DUROSS

HARNESS DICKEY & PIERCE PLC

5445 CORPORATE DR

TROY, MI 48098

GENERAL TRADEMARK INFORMATION:

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APPLICANT: Avocent Huntsville Corp.

CORRESPONDENT'S REFERENCE/DOCKET NO:

6499A-200105

CORRESPONDENT E-MAIL ADDRESS:

docketingtm@hdp.com

SECOND REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 9/24/2015

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. §2.63(b)(3); TMEP §§715.03(a)(ii)(B), 715.04(a). The following requirement(s) and/or refusal(s) made final in the Office action dated 3/28/14 are maintained and continue to be final: Trademark Act Section 2(d) likelihood of confusion with the

mark in U.S. Registration No. 1557241 for the mark TRELLIS for "Installing computer networks and computer cabling". See TMEP §§715.03(a)(ii)(B), 715.04(a).

In the present case, applicant's request has not resolved all the outstanding issues, nor does it raise a new issue or provide any new or compelling evidence with regard to the outstanding issue in the final Office action. In addition, applicant's analysis and arguments are not persuasive nor do they shed new light on the issues.

Applicant requested reconsideration based on the proposed amendment to:

- 1. Delete Class 037 and
- 2. Amend Class 042 to "consultation services in the field of data center infrastructure management; information technology consultation"

Although the amendments are acceptable and entered into the record, they do not obviate the refusal.

In a likelihood of confusion determination, the marks in their entireties are compared for similarities in appearance, sound, connotation, and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973); TMEP §1207.01(b)-(b)(v).

In the present case, applicant's mark is TRELLIS and registrant's mark is TRELLIS. Thus, the marks are identical in terms of appearance and sound. In addition, the connotation and commercial impression of the marks do not differ when considered in connection with applicant's and registrant's respective services. Therefore, the marks are confusingly similar.

Applicant's services as amended are:

"Consultation services in the field of data center infrastructure management; information technology consultation"

Registrant's services are:

"Installing computer networks and computer cabling"

Applicant's services are still closely related to registrant's services. The evidence of record confirms this and there is no evidence to the contrary. Applicant's only argument against the refusal was to state, "Applicant respectfully maintains that the cancellation and the amendments to the identification of goods and recitation of services of its application obviate the partial refusal under Trademark Act Section 2(d)." This statement is unpersuasive and unsupported. The new amendment to the identification of services merely deletes some of the services but retains the same services which were the subject of the refusal and thus nothing obviates the refusal.

To the extent applicant has any arguments against the finding that the marks are identical and the services are closely related, please note that the evidence of record and logic confirms that the computer-related services are closely related. Attached to the 3/28/14 Final Office Action was Internet evidence demonstrating that the services of the parties travel in the same channels of trade and are closely related or competitive, namely, evidence from Atlanta IT Service, Centex, and The Pennsylvania State University demonstrating that various IT consultation services (identified by applicant) and installation services (identified by registrant) are offered by a single source and in the same channels of trade. Applicant appears to concede that this evidence is accurate and supports the refusal. The attached Internet evidence consists of additional evidence from Avaren, Azalea Technology, BBH Solutions, Forward Slash Technology, LANtek, Litzia, nDevix, Netwise Resources, Second Son Consulting, Inc., Skynet Innovations, SmartCents Consulting, and Pro Source, supporting the existing evidence of record and confirming that the services are closely related and commonly offered by a single source. This evidence establishes that the same entity commonly provides the relevant services and markets the services under the same mark, that the relevant services are sold or provided through the same trade channels and used by the same classes of consumers in the same fields of use, and that the services are similar or complementary in terms of purpose or function, namely, to provide computer-related services from installation to maintenance to consulting on the same. Therefore, applicant's and registrant's services are considered related for likelihood of confusion purposes. See, e.g., In re Davey Prods. Pty Ltd., 92 USPQ2d 1198, 1202-04 (TTAB 2009); In re Toshiba Med. Sys. Corp., 91 USPQ2d 1266, 1268-69, 1271-72 (TTAB 2009).

Evidence obtained from the Internet may be used to support a determination under Section 2(d) that services are related. *See, e.g., In re G.B.I. Tile & Stone, Inc.*, 92 USPQ2d 1366, 1371 (TTAB 2009); *In re Paper Doll Promotions, Inc.*, 84 USPQ2d 1660, 1668 (TTAB 2007). The Internet has become integral to

daily life in the United States, with Census Bureau data showing approximately three-quarters of American households used the Internet in 2013 to engage in personal communications, to obtain news, information, and entertainment, and to do banking and shopping. See In re Nieves & Nieves LLC, 113 USPQ2d 1639, 1642 (TTAB 2015) (taking judicial notice of the following two official government publications: (1) Thom File & Camille Ryan, U.S. Census Bureau, Am. Cmty. Survey Reports ACS-28, Computer & Internet Use in the United States: 2013 (2014), available at http://www.census.gov/content/dam/Census/library/publications/2014/acs/acs-28.pdf, and (2) The Nat'l Telecomms. & Info. Admin. & Econ. & Statistics Admin., Exploring the Digital Nation: America's Emerging Online Experience (2013), available at

http://www.ntia.doc.gov/files/ntia/publications/exploring_the_digital_nation -

<u>americas emerging online experience.pdf</u>). Thus, the widespread use of the Internet in the United States suggests that Internet evidence may be probative of public perception in trademark examination.

Furthermore, although the services are not identical, where the marks of the respective parties are identical as they are in this case, the relationship between the relevant services need not be as close to support a finding of likelihood of confusion. *See In re Shell Oil Co.*, 992 F.2d 1204, 1207, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993); *In re House Beer, LLC*, 114 USPQ2d 1073, 1077 (TTAB 2015); *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202 (TTAB 2009); TMEP §1207.01(a).

A consumer encountering the mark TRELLIS in connection with applicant's "Consultation services in the field of data center infrastructure management; information technology consultation" services will incorrectly believe that the services originate from the same source as the registrant's TRELLIS "Installing computer networks and computer cabling" services. As a result, because of the confusingly similar marks and closely related services, registration is refused under Trademark Act Section 2(d).

Accordingly, the request is denied.

If applicant has already filed a timely notice of appeal with the Trademark Trial and Appeal Board, the Board will be notified to resume the appeal. *See* TMEP §715.04(a).

If no appeal has been filed and time remains in the six-month response period to the final Office action, applicant has the remainder of the response period to (1) comply with and/or overcome any outstanding final requirement(s) and/or refusal(s), and/or (2) file a notice of appeal to the Board. TMEP §715.03(a)(ii)(B); see 37 C.F.R. §2.63(b)(1)-(3). The filing of a request for reconsideration does not stay or extend the time for filing an appeal. 37 C.F.R. §2.63(b)(3); see TMEP §§715.03, 715.03(a)(ii)(B), (c).

/Ms. Tasneem Hussain/

Trademark Examining Attorney

Law Office 118

tasneem.hussain@uspto.gov (preferred)

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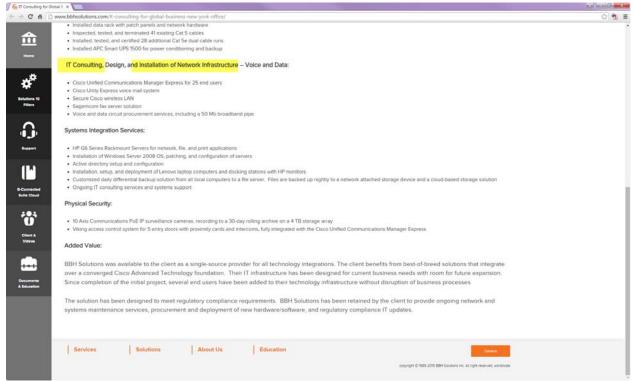
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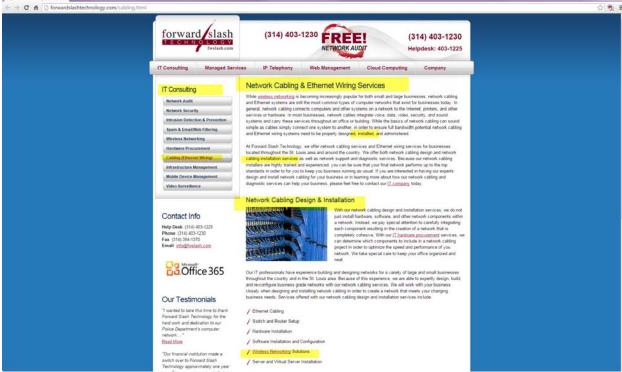
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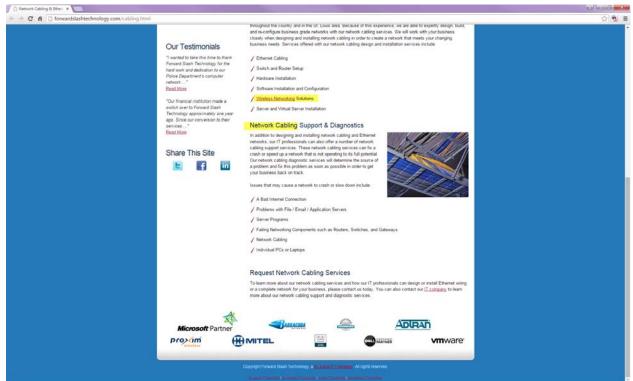


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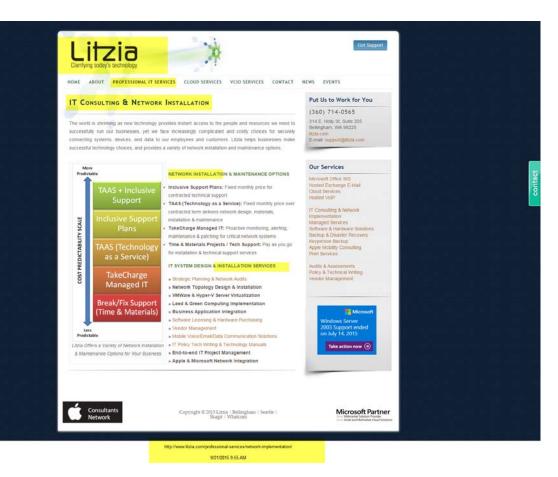
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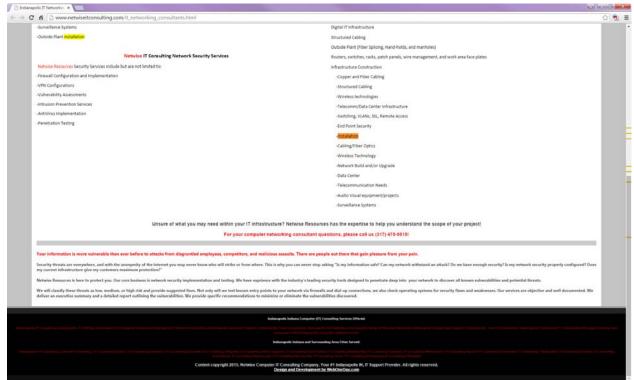
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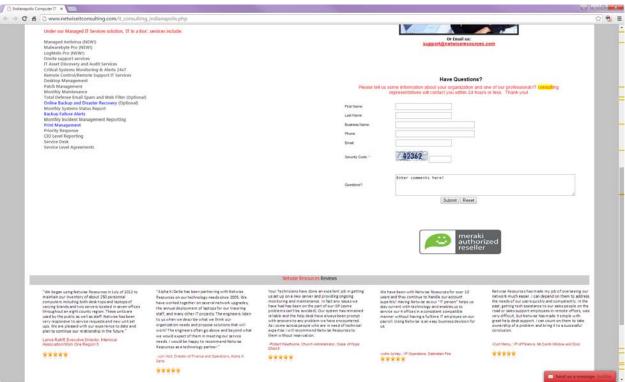


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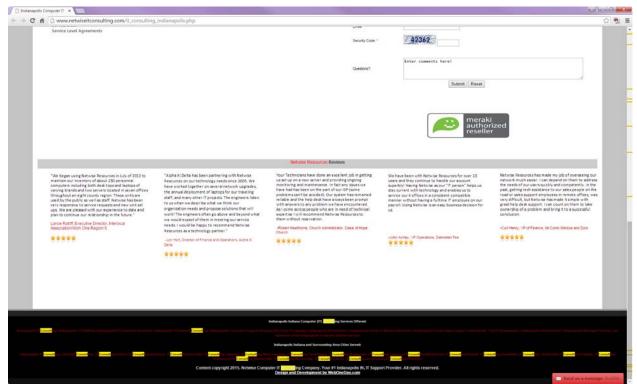
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