

From: Rhim, Andrew

Sent: 11/18/2019 7:24:39 PM

To: TTAB EFiling

CC:

Subject: U.S. Trademark Application Serial No. 86410359 - HPS - 09745.81848A - EXAMINER BRIEF

\*\*\*\*\*

Attachment Information:

Count: 1

Files: 86410359.doc

**United States Patent and Trademark Office (USPTO)**

**U.S. Application Serial No.** 86410359

**Mark:** HPS

**Correspondence Address:**

JOSEPH S HEINO

DAVIS & KUELTHAU SC

111 E KILBOURN AVENUE SUITE 1400

MILWAUKEE, WI 53202

**Applicant:** Health Payment Systems, Inc.

**Reference/Docket No.** 09745.81848A

**Correspondence Email Address:**

jheino@dkattorneys.com

**EXAMINING ATTORNEY'S APPEAL BRIEF**

The applicant has appealed the Trademark Examining Attorney's final refusal to register the mark HPS and design for "Payment processing services in the field of healthcare payments" on the ground of likelihood of confusion under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d).

I. FACTS

The applicant has applied for registration on the Principal Register for the mark HPS and design for use with "Payment processing services in the field of healthcare payments" in International Class 036. Registration was refused under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), based on a likelihood of confusion with Registration No. 4725291 for the mark HPS for use with "Financial services, namely, credit card, debit card, bank card, smart card, prepaid card, stored value card, prepaid cash card, bank-issued stored value card, bank-issued prepaid cash card, stored value smart card, prepaid payment card and smart phone and mobile device payment accounts transaction processing services; credit card, debit card, bank card, smart card, prepaid card, stored value card, prepaid cash card, bank-issued stored value card, bank-issued prepaid cash card, stored value smart card, prepaid payment card and smart phone and mobile device payment accounts verification services; check verification and processing services; credit card, debit card, bank card, smart card, prepaid card, stored value card, prepaid cash card, bank-issued stored value card, bank-issued prepaid cash card, stored value smart card, prepaid payment card and smart phone and mobile device payment accounts authorization services; electronic payment services involving electronic processing and subsequent transmission of bill payment data; providing electronic processing of credit card, debit card, bank card, smart card, prepaid card, stored value card, prepaid cash card, bank-issued stored value card, bank-issued prepaid cash card, stored value smart card, prepaid payment card and smart phone and mobile device payment accounts transactions via a proprietary and secure financial global computer network; credit card, debit card, bank card, smart card, prepaid card, stored value card, prepaid cash card, bank-issued stored value card, bank-issued prepaid cash card, stored value smart card and prepaid payment card account services featuring a computer readable card; electronic funds transfer services; payroll tax debiting services; providing online financial services to restaurants and other retail merchants, namely, providing financial account management services and financial clearance services in the nature of clearing and reconciling

financial transactions for restaurants and other retail establishments; clearing and reconciling financial transactions via a global computer network; providing account transaction information to merchants, namely, credit card, debit card, bank card, smart card, prepaid card, stored value card, prepaid cash card, bank-issued stored value card, bank-issued prepaid cash card, stored value smart card, prepaid payment card and smart phone and mobile device payment accounts transactions information and balances via a secure Internet website; information, advisory and consultancy services related to credit card, debit card, bank card, smart card, prepaid card, stored value card, prepaid cash card, bank-issued stored value card, bank-issued prepaid cash card, stored value smart card, prepaid payment card and smart phone and mobile device payment accounts transaction processing services; information, advisory and consultancy services related to credit card, debit card, bank card, smart card, prepaid card, stored value card, prepaid cash card, bank-issued stored value card, bank-issued prepaid cash card, stored value smart card, prepaid payment card and smart phone and mobile device payment accounts transaction processing practices for restaurants and other retail establishments; financial transaction services, namely, providing secure commercial transactions and payment options using a mobile device at a point of sale; loyalty program payment processing services; information services, namely, financial information provided by electronic means" as to be likely, when used in connection with the identified services, to cause confusion or to cause mistake or to deceive. A Final refusal under Section 2(d) of the Trademark Act was issued on December 13, 2018. This appeal follows the Examining Attorney's Final refusal under Section 2(d) of the Trademark Act, and also follows the Examining Attorney's denial of the applicant's Request for Reconsideration issued on July 22, 2019.

## II. ARGUMENT

**THE MARKS OF THE APPLICANT AND THE REGISTRANT ARE CONFUSINGLY SIMILAR IN SOUND, APPEARANCE, AND COMMERCIAL IMPRESSION AND THE SERVICES ARE CLOSELY RELATED SUCH THAT**

## **THERE EXISTS A LIKELIHOOD OF CONFUSION OR MISTAKE UNDER SECTION 2(D) OF THE TRADEMARK ACT.**

Trademark Act Section 2(d) bars registration of an applied-for mark that is so similar to a registered mark that it is likely consumers would be confused, mistaken, or deceived as to the commercial source of the services of the parties. See 15 U.S.C. §1052(d). Likelihood of confusion is determined on a case-by-case basis by applying the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973) (called the “*du Pont* factors”). *In re i.am.symbolic, llc*, 866 F.3d 1315, 1322, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017). Only those factors that are “relevant and of record” need be considered. *M2 Software, Inc. v. M2 Commc’ns, Inc.*, 450 F.3d 1378, 1382, 78 USPQ2d 1944, 1947 (Fed. Cir. 2006) (citing *Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 1241, 73 USPQ2d 1350, 1353 (Fed. Cir. 2004)); see *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1744 (TTAB 2018).

Although not all *du Pont* factors may be relevant, there are generally two key considerations in any likelihood of confusion analysis: (1) the similarities between the compared marks and (2) the relatedness of the compared services. See *In re i.am.symbolic, llc*, 866 F.3d at 1322, 123 USPQ2d at 1747 (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103, 192 USPQ 24, 29 (C.C.P.A. 1976) (“The fundamental inquiry mandated by [Section] 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks.”).

### **A. THE MARKS ARE HIGHLY SIMILAR**

Marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1321, 110 USPQ2d 1157, 1160 (Fed. Cir. 2014) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1371, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005)); TMEP §1207.01(b)-(b)(v). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) (citing *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)).

When comparing marks, “[t]he proper test is not a side-by-side comparison of the marks, but instead whether the marks are sufficiently similar in terms of their commercial impression such that [consumers] who encounter the marks would be likely to assume a connection between the parties.” *Cai v. Diamond Hong, Inc.*, \_\_\_ F.3d \_\_\_, 127 USPQ2d 1797, 1801 (Fed. Cir. 2018) (quoting *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1368, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012)). The proper focus is on the recollection of the average purchaser, who retains a general rather than specific impression of trademarks. *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) (citing *In re St. Helena Hosp.*, 774 F.3d 747, 750-51, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014); *Geigy Chem. Corp. v. Atlas Chem. Indus., Inc.*, 438 F.2d 1005, 1007, 169 USPQ 39, 40 (CCPA 1971)).

In this case, the applicant seeks to register the mark HPS and design. Although not identical, the applicant’s mark and cited registrant’s mark are highly similar in sound, appearance, and commercial impression.

The marks are highly similar in sound because the applicant’s mark HPS and design and mark HPS in the cited registration share the identical letters HPS. The marks are essentially phonetic equivalents and could clearly be pronounced the same and thus sound similar. *In re White Swan Ltd.*, 8

USPQ2d 1534, 1535 (TTAB 1988); see *In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007). Therefore, it is clear in the present case that the applicant's and registrant's marks are similar in sound.

Because the marks share the identical letters HPS, the marks are also similar in appearance. The applicant states that there is no likelihood of confusion between its mark and the registrant's mark when the marks are considered in their entireties. Applicant argues that visually, the marks create distinct commercial impressions and it would be inappropriate to focus exclusively on the similarity of the acronyms HPS and give no weight to the design element of the applicant's mark. Applicant's Appeal Brief at p. 6. The examining attorney respectfully disagrees. Marks must be compared in their entireties and should not be dissected; however, a trademark examining attorney may weigh the individual components of a mark to determine its overall commercial impression. *In re Detroit Athletic Co.*, 903 F.3d 1297, 1305, 128 USPQ2d 1047, 1050 (Fed. Cir. 2018) ("[Regarding the issue of confusion,] there is nothing improper in stating that . . . more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties." (quoting *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 751 (Fed. Cir. 1985))).

When evaluating a composite mark consisting of words and a design, the word portion is normally accorded greater weight because it is likely to make a greater impression upon purchasers, be remembered by them, and be used by them to refer to or request the goods and/or services. *In re Aquitaine Wine USA, LLC*, 126 USPQ2d 1181, 1184 (TTAB 2018) (citing *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012)). Thus, although marks must be compared in their entireties, the word portion is often considered the dominant feature and is accorded greater weight in determining whether marks are confusingly similar, even where the word portion has been disclaimed. *In re Viterra Inc.*, 671 F.3d at 1366-67, 101 USPQ2d at 1911 (citing *Giant Food, Inc. v. Nation's Foodservice, Inc.*, 710 F.2d 1565, 1570-71, 218 USPQ2d 390, 395 (Fed. Cir. 1983)).

In this case, the examining attorney has considered both the applicant's mark and registrant's mark in their entireties. Upon such consideration, it is determined that the letters HPS in applicant's mark are the dominant feature and accorded greater weight because, as wording, it is likely to make a greater impression upon purchasers, be remembered by them, and be used by them to refer to or request the services. Further, there is no evidence of record presented by the applicant or otherwise that shows that the comma-shaped design features in applicant's mark are likely to make a greater impression upon purchasers than the acronym HPS or used by purchasers to refer to or request the services. It is clear that the letters HPS of the marks at issue are identical in sound and similar in appearance and therefore, the addition of the design elements in applicant's mark does not obviate the similarity of the marks in this case.

It is further noted that the cited registered mark is in standard characters. A mark in typed or standard characters may be displayed in any lettering style; the rights reside in the wording or other literal element and not in any particular display or rendition. *See In re Viterra Inc.*, 671 F.3d 1358, 1363, 101 USPQ2d 1905, 1909 (Fed. Cir. 2012); *In re Mighty Leaf Tea*, 601 F.3d 1342, 1348, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010); 37 C.F.R. §2.52(a). Thus, a mark presented in stylized characters and/or with a design element generally will not avoid likelihood of confusion with a mark in typed or standard characters because the word portion could be presented in the same manner of display. *See, e.g., In re Viterra Inc.*, 671 F.3d at 1363, 101 USPQ2d at 1909; *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 1041, 216 USPQ 937, 939 (Fed. Cir. 1983) (stating that "the argument concerning a difference in type style is not viable where one party asserts rights in no particular display"). In this case, neither the stylized lettering HPS nor the design elements of the applicant's mark are sufficient to avoid a likelihood of confusion with the cited registered mark because the cited mark HPS is registered in standard characters, meaning that it can be used or presented in any lettering style, including the same lettering style as displayed in the applicant's mark.



The applicant states that the marks at issue in the present case are similar to marks addressed in the prior case *Association of Co-op. Members, Inc. v. Farmland Industries, Inc.*, 684 F.2d 1134, 1141, 216 U.S.P.Q. 361 (5<sup>th</sup> Cir. 1982) where it was determined that when a composite mark includes both words and a design, the design element is likely to dominate if it is more conspicuous or well known to the purchasing public. Applicant states that as with the design in the *Association* case, the applicant's mark with design element in the present case is visually and significantly distinct from the cited mark and therefore sufficiently dissimilar to avoid confusion. Applicant's Appeal Brief at p. 6-8. The examining attorney respectfully disagrees. When viewing the applicant's mark, the double comma design element appears off-center and to the lower right of the letters HPS, which appears prominently in the center of the mark and in bold lettering. Therefore, visually the comma design portion of applicant's mark cannot be considered more conspicuous than the letters HPS of the mark. Further, there is no evidence of record presented by the applicant that the double comma design portion of its mark is well known or more well known to the purchasing public than the HPS letter portion of the mark. Therefore, the design element of the applicant's mark does not distinguish the applicant's mark from the cited mark such that a likelihood of confusion is avoided.

Further, prior decisions and actions of other trademark examining attorneys in registering other marks have little evidentiary value and are not binding upon the USPTO or the Trademark Trial and Appeal Board. TMEP §1207.01(d)(vi); see *In re USA Warriors Ice Hockey Program, Inc.*, 122 USPQ2d 1790, 1793 n.10 (TTAB 2017). Each case is decided on its own facts, and each mark stands on its own merits. *In re USA Warriors Ice Hockey Program, Inc.*, 122 USPQ2d at 1793 n.10 (quoting *In re Boulevard Entm't*, 334 F.3d 1336, 1343, 67 USPQ2d 1475, 1480 (Fed. Cir. 2003)).

The applicant also states that the owner of the cited mark uses the wording "Heartland A Global Payments Company" as its only brand identifier to the public whereas the applicant uses its mark liberally and literally on its website. Applicant states that inspection of the specimen filed by the owner

of the cited mark shows small token use of the cited mark on its submitted specimen. See specimen of the cited registration as Exhibit A, Page 10, of applicant's Response to Office Action filed on November 19, 2018. Applicant argues that the specimen filed by the owner of the cited mark is unacceptable and should have been rejected by this Office, and moreover the website of the owner of the cited mark is almost devoid of any use of the letters HPS. Applicant states that it appears that the owner of the cited mark has adopted the name HEARTLAND as its key branding mechanism of choice on its website, and this fact supports registration of applicant's mark when the cited mark is considered "in its entirety." Applicant's Appeal Brief at p. 8-10. The examining attorney respectfully disagrees. The marks are compared as they appear in the drawing of the application and in the registration; the USPTO does not consider how an applicant and registrant actually use their marks in the marketplace. *In re Aquitaine Wine USA, LLC*, 126 USPQ2d 1181, 1186 (TTAB 2018) (citing *In re i.am.symbolic, llc*, 866 F.3d 1315, 1324, 123 USPQ2d 1744, 1749 (Fed. Cir. 2017)). Therefore, the applicant's argument that applicant uses "Heartland A Global Payments Company" as its only brand identifier and HEARTLAND as its key branding mechanism is irrelevant to the likelihood of confusion analysis.

Further, the applicant's argument that the specimen filed by the owner of the cited mark shows only small token use of the cited mark and that the website of the owner of the cited mark is almost devoid of any use of the letters HPS does not negate the fact that the cited registration is an active and valid registration. A trademark or service mark registration on the Principal Register is prima facie evidence of the validity of the registration and the registrant's exclusive right to use the mark in commerce in connection with the specified services. See 15 U.S.C. §1057(b).

Thus, evidence and arguments that constitute a collateral attack on a cited registration, such as information or statements regarding a registrant's nonuse of its mark, are not relevant during ex parte prosecution. See *In re Dixie Rests.*, 105 F.3d 1405, 1408, 41 USPQ2d 1531, 1534-35 (Fed. Cir. 1997); *In re Peebles Inc.*, 23 USPQ2d 1795, 1797 n.5 (TTAB 1992). Such evidence and arguments may, however, be

pertinent to a formal proceeding before the Trademark Trial and Appeal Board to cancel the cited registration.

Further, when considered in their entireties, the applicant's mark and cited registrant's mark are similar in commercial impression. The applicant's and registrant's marks share the identical sounding, similar appearing, and dominant lettering HPS. Because both marks are identical in part and similar in appearance, they also share a similar overall commercial impression that suggests to consumers that the services are rendered by an entity associated with or identified by an abbreviation or acronym.

Based on the analysis above, the marks are sufficiently similar for a finding of likelihood of confusion.

#### **B. THE SERVICES OF THE PARTIES ARE CLOSELY RELATED**

The services of the parties need not be identical or even competitive to find a likelihood of confusion. See *On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) (“[E]ven if the goods in question are different from, and thus not related to, one another in kind, the same goods can be related in the mind of the consuming public as to the origin of the goods.”). The respective services need only be “related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that [the goods and/or services] emanate from the same source.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)).

The applicant argues that special attention be drawn to an “identifier” of the services in the cited mark and that the following “identifier” places special emphasis on the following registrant’s services “providing online financial services to restaurants and other retail merchants, namely, providing financial account management services and financial clearance services in the nature of clearing and reconciling financial transactions for restaurants and other retail establishments” with applicant emphasizing that the services provided under the cited mark are consumer-driven services involving consumer spending and “card-type” services that are also consumer-driven. Applicant argues that its payment processing services pertain to healthcare spending, which is not consumer/merchant spending and/or banking services via bank cards or bank-issued cards. Applicant also states that the “identifier” language (as identified above) in the cited registration is completely devoid of any reference to terms “healthcare” (including the portion “health”) which appear in the applicant’s services. Therefore, applicant argues that its services and the registrant’s services are unrelated. Applicant’s Appeal Brief at p. 4-5. The examining attorney respectfully disagrees. Applicant’s argument that the cited registrant’s services are “consumer-driven” involving consumer spending and are “card-type” services is unpersuasive because it does not take into account the entire range of services as stated in the cited registration. Determining likelihood of confusion is based on the description of the services stated in the application and registration at issue, not on extrinsic evidence of actual use. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 1307, 128 USPQ2d 1047, 1052 (Fed. Cir. 2018) (citing *In re i.am.symbolic, llc*, 866 F.3d 1315, 1325, 123 USPQ2d 1744, 1749 (Fed. Cir. 2017)).

In this case, the cited registration uses broad wording to describe “electronic payment services involving electronic processing and subsequent transmission of bill payment data,” which presumably encompasses all services of the type described, including the applicant’s more narrow “Payment processing services in the field of healthcare payments.” *See, e.g., In re Solid State Design Inc.*, 125 USPQ2d 1409, 1412-15 (TTAB 2018); *Sw. Mgmt., Inc. v. Ocinomled, Ltd.*, 115 USPQ2d 1007, 1025 (TTAB

2015). Thus, applicant's and registrant's services are legally identical. See, e.g., *In re i.am.symbolic, llc*, 127 USPQ2d 1627, 1629 (TTAB 2018) (citing *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp., Inc.*, 648 F.2d 1335, 1336, 209 USPQ 986, 988 (C.C.P.A. 1981); *Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1745 (TTAB 2014); *Baseball Am. Inc. v. Powerplay Sports Ltd.*, 71 USPQ2d 1844, 1847 n.9 (TTAB 2004)).

Additionally, the services of the parties have no restrictions as to nature, type, channels of trade, or classes of purchasers and are "presumed to travel in the same channels of trade to the same class of purchasers." *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1268, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002)). In this case, the absence of the wording "healthcare" in the cited registrant's identification of services is immaterial. Because the registrant's services "electronic payment services involving electronic processing and subsequent transmission of bill payment data" are not limited as to channels of trade or classes of purchasers, it is presumed that that these services move in all channels of trade normal for such services and are available to all potential classes of ordinary consumers of such services. Therefore, despite applicant's contention, it is presumed that registrant's services extend to the field of "healthcare" payments, just as the applicant's services explicitly do, and therefore the applicant's and registrant's services are related.

The applicant also argues that the third party website evidence provided by the examining attorney in its Final Office action (sent to applicant on December 13, 2018) relates to ways and means for paying "merchants", not making healthcare provider/insurance payments. Applicant therefore states that such evidence is unpersuasive on the question of relatedness of the services. Applicant's Appeal Brief at p. 5-6. The examining attorney respectfully disagrees. The webpage from Electronic Merchant Services indicates that it is a "payment processor" and provides payment processing services "for all types of business including ... service delivery." See attachment at page 16 of the Final Office action sent to applicant on December 13, 2018. This evidence supports the conclusion that this entity

provides payment processing services for service-based businesses, which would include payment processing in the field of healthcare services. Also, the webpage from Bluepay Payment Processing indicates that it provides “Payment Solutions for your Business” and “POS Payment Solutions” where payment cards are processed at the point of sale. See attachment at pages 17-18 of the Final Office action sent to applicant on December 13, 2018. This evidence supports the conclusion that this entity’s services are not exclusive to paying “merchants” but are provided to all types of businesses which would include service-based businesses.

Further, it is also clear from the applicant’s website that its payment processing services include the electronic processing of payments. See attachment at pages 7-8 of the Final Office action sent to applicant on December 13, 2018. Applicant’s website discusses the applicant’s payment processing services in an electronic format where the applicant electronically processes bills in an easy-to-read, consolidated statement and makes such bills available to consumers via computer where consumers have the option to pay bills online. Therefore, this evidence also supports the conclusion that the applicant’s services are electronic payment services involving the electronic processing and subsequent transmission of bill payment data, which are same type of services provided by the registrant.

Therefore, the evidence of record establishes that the applicant and registrant in this case provide highly similar services and that these services are sold or provided through the same trade channels and used by the same classes of consumers in the same fields of use. 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).

Based on the analysis above, the applicant’s and registrant’s services are sufficiently related for a finding of likelihood of confusion.

### C. SUMMARY

Since the marks of the applicant and registrants are highly similar, and the services of the parties are closely related, there is a substantial likelihood that purchasers would confuse the source of these services.

### III. CONCLUSION

For the foregoing reasons, the refusal to registration under Section 2(d) of the Trademark Act should be affirmed.

Respectfully submitted,

/Andrew Rhim/

Examining Attorney

United States Patent & Trademark Office

Law Office 101

(571) 272-9711

andrew.rhim@uspto.gov

Ronald Sussman

Managing Attorney

Law Office 101