Trademark Trial and Appeal Board Electronic Filing System. https://estta.uspto.gov

ESTTA Tracking number: **ESTTA1271377**

Filing date: **03/10/2023**

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

Ex Parte Appeal - Serial No.	88791552
Appellant	xx network SEZC
Applied for mark	XX
Correspondence address	ERIC EAGLE HARTMANS HARTMANS LAW 1590 ROSECRANS AVE., STE. D-225 MANHATTAN BEACH, CA 90266 UNITED STATES Primary email: ehartmans@hartmanslaw.com Secondary email(s): support@hartmanslaw.com 310-954-8512 x1
Submission	To file a supplemental brief
Attachments	Supplemental Brief for Appellant SN 88791552.pdf(80634 bytes)
Filer's name	Eric Eagle Hartmans
Filer's email	ehartmans@hartmanslaw.com
Signature	/Eric Eagle Hartmans/
Date	03/10/2023

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

In re Application of xx network SEZC Serial No. 88791552 Filed: 02/10/2020 Trademark: XX	Law Office 110 Trademark Attorney: Ellen J.G. Perkins

Supplemental Brief for Appellant

Appellant submits the following supplemental comments regarding the additional evidence supplied by the Examining Attorney:

The Federal Circuit held that the amount of evidence necessary to show goods and services are related varies depending on the goods and services being compared. On the one hand, goods and services that are intuitively, obviously, and facially related. Those goods and services may be deemed "related" with less evidence. The Court held that evidence of the sale or offering of such the goods and services together may be sufficient evidence. On the other hand, goods and services which are not obviously and facially related, or are obscure, require more than just the sale or offering of the goods together to show that they are "related," within the DuPont analysis. They require 'something more.'

The court in *Shen Mfg. Co. v. Ritz Hotel, Ltd.*, 393 F.3d 1238, 1346 1244 (Fed. Cir. 2004) stated: "That two goods are used together, however, does not, in itself, justify a finding of

relatedness. "[T]he test is not that goods and services must be related if used together, but merely that that finding is part of the underlying factual inquiry as to whether the goods and services at issue ... can be related in the mind of the consuming public as to the origin of the goods."" (quoting Packard Press, 227 F.3d at 1358.)

The court in *In re Coors Brewing Co.*, 343 F.3d 1340 (Fed. Cir. 2003) noted that "something more" is required for relatedness between restaurant services and food and beverages because food/beverages and restaurant services are not overlapping or obviously related. When reviewing evidence of third-party registrations, third party uses, and other evidence, the court found insufficient evidence of widespread bottling of beer by restaurants to conclude those goods and services are related.

The Federal Circuit reviewed a Board finding, in *In re St. Helena Hosp.*, 774 F.3d 747 (Fed. Cir. 2014), that "consumers are likely to believe that health care services and "similarly marked" printed materials come from the same source or are somehow connected with or sponsored by a common company based on several examples of organizations that render health care services and distribute printed materials." The Board had declined to apply the 'something more' standard. (Id at 752.) Applying *Shen Mfg.,* the court held that:

> In circumstances in which the types of goods and services in question are well-known or otherwise generally recognized as having a common source of origin, the PTO's burden to establish relatedness will be easier to satisfy. See Coors, 343 F.3d at 1347 (stating that a mark for a brewpub "would clearly be related" to a mark for beer); Hewlett–Packard, 281 F.3d at 1268 (holding that a registration for "electronic transmission of data and documents via computer terminals" is "closely related" to a registration "covering facsimile machines, computers, and computer software"). That is not the case here. In situations like the present, in which the relatedness of the goods and services is obscure or less evident, the PTO will need to show "something more" than the mere fact that the goods and services are "used together." (In re St. Helena Hosp., 774 F.3d 747, 753-754 (Fed. Cir. 2014).)

In this case, the 'something more' standard should apply because of the complex nature of the goods and services in the application and because any relationship between applicant's and registrant's goods/services is obscure and not self-evident.

The evidence provided by the Examining Attorney, including that submitted in the most recent denial of the reconsideration, shows the relationship, which occurs some of the time, between digital currencies and blockchains. However, the fact that cryptocurrencies use blockchain technology is not the same as saying that cryptocurrency exchanges offer blockchain software, or that consumers assume that such services originate from the same source. The use of the term blockchain and reference to blockchain software for marketing and advertising by various exchanges, which themselves use centralized technology, does not satisfy the 'something more' standard.

Respectfully submitted,

/Eric Eagle Hartmans/

Attorney for Appellant

California State Bar Member (SBN 249845)
Hartmans Law
1590 Rosecrans Ave., Ste. D-225
Manhattan Beach, CA 90266
ehartmans@hartmanslaw.com
(310) 954-8512
Dated: March 10, 2023