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

APPLICATION SERIAL NO. 85693717

MARK: IRING

CORRESPONDENT ADDRESS:
AAUXX INC
AAUXX INC
46 WOODLAND AVE
MAYWOOD, NJ 07607-2022

APPLICANT: AAUXX Inc

CORRESPONDENT’S REFERENCE/DOCKET NO: N/A

CORRESPONDENT E-MAIL ADDRESS: jason@aauxx.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER
TO AVOID ABANDONMENT OF APPLICANT’S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT’S COMPLETE RESPONSE TO THIS LETTER WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 11/30/2012

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

SUMMARY OF ISSUES that applicant must address:

· Section 2(d) Likelihood of Confusion Refusal

*85693717*

CLICK HERE TO RESPOND TO THIS LETTER:
http://www.uspto.gov/trademarks/teas/response_forms.jsp
SECTION 2(d) LIKELIHOOD OF CONFUSION REFUSAL

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 3806252. Trademark Act Section 2(d), 15 U.S.C. §1052(d); see TMEP §§1207.01 et seq. See the enclosed registration.

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely that a potential consumer would be confused or mistaken or deceived as to the source of the goods and/or services of the applicant and registrant. See 15 U.S.C. §1052(d). The court in In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) listed the principal factors to be considered when determining whether there is a likelihood of confusion under Section 2(d). See TMEP §1207.01. However, not all the factors are necessarily relevant or of equal weight, and any one factor may be dominant in a given case, depending upon the evidence of record. Citigroup Inc. v. Capital City Bank Grp., Inc., 637 F.3d 1344, 1355, 98 USPQ2d 1253, 1260 (Fed. Cir. 2011); In re Majestic Distilling Co., 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); see In re E. I. du Pont, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity of the goods and services, and similarity of trade channels of the goods and services. See In re Dakin's Miniatures Inc., 59 USPQ2d 1593 (TTAB 1999); TMEP §§1207.01 et seq.

Summary of the Marks

The applicant has applied for the mark “IRING” for use in connection with “carrying cases for cell phones; Cell phone backplates; Cellular phone accessory charms.” The registered mark is “IRINGPRO” for use in connection with “online retail store services featuring downloadable ringtones and downloadable graphics for mobile devices; commercial administration of the licensing of ringtones for mobile devices.”

Similarity of the Marks

The respective marks “IRING” and “IRINGPRO” are substantially similar in sound, appearance, and meaning. The only difference between the marks in regards to appearance is that the applicant deleted the wording “PRO” from the registrant’s mark. The mere deletion of wording from a registered mark may not be sufficient to overcome a likelihood of confusion. See In re Mighty Leaf Tea, 601 F.3d 1342, 94 USPQ2d 1257 (Fed. Cir. 2010); In re Optica Int’l, 196 USPQ 775, 778 (TTAB 1977); TMEP §1207.01(b)(ii)-(iii). Applicant’s mark does not create a distinct commercial impression because it contains the same common wording as registrant’s mark, and there is no other wording to distinguish it from registrant’s mark. Therefore, the marks are substantially similar in regards to appearance.

In addition, the marks in this comparison sound similar, and similarity in sound alone may be sufficient to support a finding that the marks are confusingly 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); TMEP §1207.01(b)(iv).

Lastly, in addition to being substantially similar in regards to sound and appearance, the connotation and commercial impression does not change between the marks when used in connection with the applicant and registrant’s goods and services. Thus, the marks are confusingly similar.

Similarity of the Goods and Services

In addition to the marks being similar in regards to sound, appearance, and meaning, the marks are also used in connection with similar goods and services. In this case the applicant’s mark is used in connection with cell phone accessories, namely, “carrying cases for cell phones; Cell phone backplates; Cellular phone accessory charms.” The registrant’s services are also related to cell phones because the services are “online retail store services featuring downloadable ringtones and downloadable graphics for mobile devices; commercial administration of the licensing of ringtones for mobile devices.” Therefore, the goods and services in this comparison are similar because the applicant’s goods are likely to be sold through the same channels of trade as the registrant’s website, or be featured on the registrant’s website or a website similar to the registrant’s and therefore be encountered by the same consumer.

The goods and services of the parties need not be identical or directly competitive to find a likelihood of confusion. See Safety-Kleen Corp. v. Dresser Indus., Inc., 518 F.2d 1399, 1404, 186 USPQ 476, 480 (C.C.P.A. 1975); TMEP §1207.01(a)(i). Rather, it is sufficient to show that because of the conditions surrounding their marketing, or because they are otherwise related in some manner, the goods and services would be encountered by the same consumers under circumstances such that offering the goods and services under confusingly similar marks would lead to the mistaken belief that they come from, or are in some way associated with, the same source. In re Iolo Techs., LLC, 95 USPQ2d 1498, 1499 (TTAB 2010); see In re Martin’s Famous Pastry Shoppe, Inc., 748 F.2d 1565, 1566-68, 223 USPQ 1289, 1290 (Fed. Cir. 1984); TMEP §1207.01(a)(i).

Generally, the greater degree of similarity between the applied-for mark and the registered mark, the lesser the degree of similarity between the goods and/or services of the respective parties that is required to support a finding of likelihood of confusion. In re Davey Prods. Pty Ltd., 92 USPQ2d 1198, 1202 (TTAB 2009); In re Thor Tech, Inc., 90 USPQ2d 1634, 1636 (TTAB 2009). In this comparison, the respective marks are
substantially similar and therefore the goods and services need not be identical in this comparison in order to find a likelihood of confusion.

The attached Internet evidence consisting of cell phone retailers’ websites show the relatedness of the applicant and registrant’s goods and services. The evidence establishes that the applicant’s goods are likely to be featured on a website similar to the registrant’s that offers downloadable ringtones or downloadable graphics for mobile devices. Please see the attached websites:

http://www.t-mobile.com/shop/addons/accessories/default.aspx?categorycode=21#blId1 (Cases)
http://www.cellularfactory.com/mod7.jsp?a=53 (Ringtones and Cases)
https://www.wireless.att.com/businesscenter/phones-devices/accessories.jsp?wtLinkName=ViewAllPhones&wtLinkLoc=S1&WT.svl=2 (Cases)
http://www.att.com/shop/apps.html#/ (Ringtones)
http://real-store.sprint.com/portal/portal/web/rt/product?noajax=true&id=1041445805&question_box=ringtone&id16=ringtone (Ringtones)
https://products.verizonwireless.com/ (Ringtones)
http://www.verizonwireless.com/b2c/store/accessory?action=accessoryDetails&accessoryId=46201 (Cases)

Evidence obtained from the Internet may be used to support a determination under Section 2(d) that goods and/or 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).

Accordingly, the goods and services are considered related for purposes of the likelihood of confusion analysis and registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 3806252.

Although applicant’s mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

Because of the legal technicalities and strict deadlines involved in the USPTO application process, applicant may wish to hire a private attorney specializing in trademark matters to represent applicant in this process and provide legal advice. Although the undersigned trademark examining attorney is permitted to help an applicant understand the contents of an Office action as well as the application process in general, no USPTO attorney or staff is permitted to give an applicant legal advice or statements about an applicant’s legal rights. TMEP §§705.02, 709.06.

For attorney referral information, applicant may consult the American Bar Association’s Consumers’ Guide to Legal Help at http://www.abanet.org/legalservices/findlegalhelp/home.cfm, an attorney referral service of a state or local bar association, or a local telephone directory. The USPTO may not assist an applicant in the selection of a private attorney. 37 C.F.R. §2.11.

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. See 37 C.F.R. §2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant’s rights. See TMEP §§705.02, 709.06.

/Catherine L. Roehl/
Trademark Examining Attorney
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(571) 272-6120
Catherine.Roehl@USPTO.GOV

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/mailing date before using TEAS, to allow for necessary system updates of the application. For technical assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.
PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at http://tarr.uspto.gov/. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see http://www.uspto.gov/trademarks/process/status/.

DESIGN MARK

Serial Number
77850980

Status
REGISTERED

Word Mark
IRINGPRO

Standard Character Mark
Yes

Registration Number
3806252

Date Registered
2010/06/22

Type of Mark
SERVICE MARK

Register
PRINCIPAL

Mark Drawing Code
(4) STANDARD CHARACTER MARK

Owner
Hladecsk LLC LIMITED LIABILITY COMPANY CALIFORNIA 609 Carmel Ave.
Albany CALIFORNIA 94706

Goods/Services

Disclaimer Statement
NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE THE "I" PREFIX ASSOCIATED WITH APPLE PRODUCTS (IPOD, IPHONE, ETC.) APART FROM THE MARK AS SHOWN.

Filing Date
2009/10/16

Examining Attorney
PELDMAN, DAWN
iRingPro
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http://www.cellularfactory.com/mod7.jsp?e=53
ACCESSORIES

Carry & Protect for the iPhone 4 & 4S (White)  (Choose a different phone)

Otterbox Commuter Series Case Pink  - Item # CFA3099Q

Regular price $34.99
Quantity 1
Add to Cart

This Pink/White OtterBox Commuter Series Case for iPhone 4/4s is a sturdy case that allows full access to your device's functions, without adding a lot of bulk.

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by Petula Clark

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Party Rock...
It Will Rain
The Lazy
Lord F...

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Cases

iPhone 4S Speck Flip CandyShell - White & Pink
- Hard shell exterior with gel-like interior
- Protects from bumps and scratches
- Compatible for iPhone 4 and iPhone 4S
$34.99

iPhone 4S Speck Grip CandyShell - Black
- Textured finger pads on back for gaming grip and long-term comfort
- Protects from bumps and scratches with combining hard plastic and soft rubber
- Compatible for iPhone 4 and iPhone 4S
$34.99

iPhone 4S Textured Utilitarian Cover with Clip - White & Gray
- Flexible shell exterior with clip that turns into a kickstand
- Protects from bumps and scratches
- Compatible for iPhone 4 and iPhone 4S
$34.99

Music & Sounds
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Music & Sounds: HiFi Ringers®

Your favorite songs, right on your phone
There’s no substitute for the real thing. HiFi Ringers are just that: real songs by today’s hottest artists.

Browse these sounds for the tunes that speak to you. You can be sure you’ll make an impact, wherever life takes you.

Don’t sound like the next guy
Real music is cooler than electronic elevator tunes. When you download HiFi Ringers to your capable device, you’re making a statement that’s loud and clear.

Spend less than you think
Clips of real songs by your favorite artists starting at $1.99 each.

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Log into My T-Mobile to browse and buy HiFi Ringers.

Prices are subject to change; taxes & fees additional. Compatible device and existing voice/data plan required. Content and Applications are licensed to you.

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No matter where your on-the-go lifestyle takes you, CNN brings the news directly to you.
Details

TMZ
TMZ is the first entertainment news magazine to cover Hollywood as it really is & and celebrities as they really are.
Details

Explore Verizon Video

Personalization

Ringtones

1. CNN
   Details

2. Gangnam Style
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3. Carol Of The Bells
   Buy

4. Pontoon
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5. One More Night
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IMPORTANT NOTICE REGARDING YOUR TRADEMARK APPLICATION

Your trademark application (Serial No. 85693717) has been reviewed. The examining attorney assigned by the United States Patent and Trademark Office (“USPTO”) has written a letter (an “Office Action”) on 11/30/2012 to which you must respond. Please follow these steps:

1. Read the Office letter by clicking on this link OR go to http://tmportal.uspto.gov/external/portal/tow and enter your serial number to access the Office letter.

   PLEASE NOTE: The Office letter may not be immediately available but will be viewable within 24 hours of this e-mail notification.

   2. Respond within 6 months, calculated from 11/30/2012 (or sooner if specified in the Office letter), using the Trademark Electronic Application System Response to Office Action form. If you have difficulty using the USPTO website, contact TDR@uspto.gov.

3. Contact the examining attorney who reviewed your application with any questions about the content of the office letter:

   /Catherine L. Roehl/
   Trademark Examining Attorney
   Law Office 105
   (571) 272-6120
   Catherine.Roehl@USPTO.GOV

   WARNING

Failure to file any required response by the applicable deadline will result in the ABANDONMENT of your application. Do NOT hit “Reply” to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses. Instead, please use the Trademark Electronic Application System Response to Office Action form.