

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

U.S. APPLICATION SERIAL NO. 79234692

MARK: FOTO

79234692

CORRESPONDENT ADDRESS:

GATEWAY LAW CORPORATION
39 Robinson Road,
#20-03 Robinson Point
Singapore 068911
SINGAPORE

CLICK HERE TO RESPOND TO THIS LETTER:

http://www.uspto.gov/trademarks/teas/response_form.jsp

APPLICANT: Xiaomi Singapore Pte. Ltd.

CORRESPONDENT'S REFERENCE/DOCKET NO:

N/A

CORRESPONDENT E-MAIL ADDRESS:

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

INTERNATIONAL REGISTRATION NO. 1408132

STRICT DEADLINE TO RESPOND TO THIS NOTIFICATION: TO AVOID ABANDONMENT OF THE REQUEST FOR EXTENSION OF PROTECTION OF THE INTERNATIONAL REGISTRATION, THE USPTO MUST RECEIVE A COMPLETE RESPONSE TO THIS PROVISIONAL FULL REFUSAL NOTIFICATION **WITHIN 6 MONTHS** OF THE "DATE ON WHICH THE NOTIFICATION WAS SENT TO WIPO (MAILING DATE)" LOCATED ON THE WIPO COVER LETTER ACCOMPANYING THIS NOTIFICATION.

In addition to the Mailing Date appearing on the WIPO cover letter, a holder (hereafter "applicant") may confirm this Mailing Date using the USPTO's Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. To do so, enter the U.S. application serial number for this application and then select "Documents." The Mailing Date used to calculate the response deadline for this provisional full refusal is the "Create/Mail Date" of the "IB-1st Refusal Note."

This is a **PROVISIONAL FULL REFUSAL** of the request for extension of protection of the mark in the above-referenced U.S. application. See 15 U.S.C. §1141h(c). See below in this notification (hereafter "Office action") for details regarding the provisional full refusal.

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:

- Likelihood of Confusion Refusal
- Identification of Goods and Services
- Significance of the Mark

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. **3951786**. Trademark Act Section 2(d), 15 U.S.C. §1052(d); see TMEP §§1207.01 *et seq.* See the attached registration.

While the applicant seeks to register the mark FOTO for various goods and services including "computer game software for use on mobile and cellular phones," the registered mark FOTO FACE is for "computer game software; computer game software downloadable from a global computer network; video game software."

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.*, ___ F.3d ___, 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/or services, and similarity of trade channels of the goods and/or services. See *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593 (TTAB 1999); TMEP §§1207.01 *et seq.*

COMPARISON OF THE MARKS

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 Fondée 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 Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014) (citing *In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007)); *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988)); TMEP §1207.01(b).

Consumers are generally more inclined to focus on the first word, prefix, or syllable in any trademark or service mark. See *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1372, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005) ("VEUVE . . . remains a 'prominent feature' as the first word in the mark and the first word to appear on the label"); *In re Integrated Embedded*, 120 USPQ2d 1504, 1513 (TTAB 2016) ("[T]he dominance of BARR in [a]pplicant's mark BARR GROUP is reinforced by its location as the first word in the mark."); *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) ("it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered" when making purchasing decisions).

Marks may be confusingly similar in appearance where similar terms or phrases or similar parts of terms or phrases appear in the compared marks and create a similar overall commercial impression. See *Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689, 690-91 (TTAB 1986), *aff'd sub nom. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat'l Ass'n*, 811 F.2d 1490, 1495, 1 USPQ2d 1813, 1817 (Fed. Cir. 1987) (finding COMMASH and COMMUNICASH confusingly similar); *In re Corning Glass Works*, 229 USPQ 65, 66 (TTAB 1985) (finding CONFIRM and CONFIRMCELLS confusingly similar); *In re Pellerin Milnor Corp.*, 221 USPQ 558, 560 (TTAB 1983) (finding MILTRON and MILLTRONICS confusingly similar); TMEP §1207.01(b)(ii)-(iii).

The term FOTO is the first element in the registrant's mark. Consumers are more likely to focus on the term FOTO in the registrant's mark and to call for the registrant's goods by this term. The applicant's mark and the registered mark share the word FOTO. The applicant's mark FOTO creates the same overall commercial impression as the registered mark FOTO FACE.

COMPARISON OF THE GOODS

The compared goods and/or services 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); TMEP §1207.01(a)(i). They 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)); TMEP §1207.01(a)(i).

The applicant's goods, namely, "computer game software for use on mobile and cellular phones," are related to the registrant's goods, namely, "computer game software; computer game software downloadable from a global computer network; video game software" because these goods are in the same or related fields. Accordingly, the goods would be available to the same class of purchasers and would be encountered under circumstances leading one to mistakenly believe that they originate from the same source.

The registration uses broad wording to describe the goods, namely, computer game software, which presumably encompasses all goods of the type described, including applicant's more narrow goods, namely, computer game software for use on mobile and cellular phones. See, e.g., *Sw. Mgmt., Inc. v. Ocinomled, Ltd.*, 115 USPQ2d 1007, 1025 (TTAB 2015); *In re N.A.D., Inc.*, 57 USPQ2d 1872, 1874 (TTAB 2000). Additionally, the goods 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)).

Determining likelihood of confusion is based on the description of the goods and/or services stated in the application and registration at issue, not on evidence of actual use. See *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1323, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014) (quoting *Octocom Sys. Inc. v. Hous. Computers Servs. Inc.*, 918 F.2d 937, 942, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990)).

The trademark examining attorney has attached evidence from the USPTO's X-Search database consisting of a number of third-party marks registered for use in connection with the same or similar goods and/or services as those of both applicant and registrant in this case. This evidence shows that the

goods listed therein, namely, “computer game software for use on mobile and cellular phones,” and “computer game software downloadable from a global computer network; video game software” and are of a kind that may emanate from a single source under a single mark. *See In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1203 (TTAB 2009); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988); TMEP §1207.01(d)(iii).

The fact that the goods of the parties differ is not controlling in determining likelihood of confusion. The issue is not likelihood of confusion between particular goods, but likelihood of confusion as to the source or sponsorship of those goods. *In re Majestic Distilling Co.*, 315 F.3d 1311, 1316, 65 USPQ2d 1201, 1205 (Fed. Cir. 2003); *In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993); TMEP §1207.01.

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Since the marks are similar and the goods/services are related, there is a likelihood of confusion as to the source of applicant’s goods/services. Therefore, applicant’s mark is not entitled to registration.

Applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

Applicant should note the following requirements.

IDENTIFICATION OF GOODS AND SERVICES

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The identification of goods and services is unacceptable because it contains wording that is indefinite. Applicant must amend the identification by listing each item specifically or by its generic or common commercial name. Furthermore, applicant must list each item **only once in the identification**. *See* TMEP §§1402.01, 1402.03.

Applicant should note the suggestions and/or explanations in bold in the proposed identification below.

The applicant is strongly urged to consult the USPTO’s online searchable *U.S. Acceptable Identification of Goods and Services Manual* for assistance with identifying and classifying goods and services in this trademark application. *See* TMEP §1402.04

The international classification of goods and/or services in applications filed under Trademark Act Section 66(a) cannot be changed from the classification the International Bureau assigned to the goods and/or services in the corresponding international registration. 37 C.F.R. §2.85(d); TMEP §§1401.03(d), 1904.02(b).

Therefore, any modification to this wording must identify goods and/or services in the International Classes specified in the application for these goods and/or services.

The following substitute wording is suggested, if appropriate:

International Class 009

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Adapter plugs; cables, electric; cases for smartphones; covers for smartphones; carriers adapted for mobile phones; cases adapted for mobile phones; cases for mobile phones; cell phone cases; cell phone straps; cell phones; cellular phones; computer game software for use on mobile and cellular phones; conference phones; devices for hands-free use of mobile phones; digital phones; door phones; downloadable graphics for mobile phones; downloadable ring tones for mobile phones; dustproof plugs for jacks of mobile phones; earbuds; ear phones; flip covers for smart phones; hands free devices for mobile-phones; hands free kits for phones; holders adapted for mobile phones; keyboards for mobile phones; keyboards for smartphones; leather cases for mobile phones; mobile phone cases; mobile phone covers; mobile phone sets; mobile phone straps; mobile phones; mobile phones for use in vehicles; monopods used to take photographs by positioning a smartphone or camera beyond the normal range of the arm; phone appliances; phone covers; phone extension jacks; phone extension leads; phone plugs; protective cases for smartphones; protective covers for smartphones; protective films adapted for smartphones; smartphones; smartphones in the shape of a watch; smartwatches; stands adapted for mobile phones; straps for mobile phones; watches that communicate data to smartphones; wireless headsets for smartphones; wrist-mounted smartphones; video phones

International Class 035

Advertisement and publicity services by television, radio, mail; advertisement for others on the Internet; advertising; advertising and promotional services; advertising and publicity services; advertising by mail order; advertising flyer distribution for others; advertising in periodicals, brochures and newspapers; advertising in the popular and professional press; advertising services; advertising through all public communication means; **commercial information and advice for consumers in the choice of products and services**; commercial information; compilation of advertisements for use as web pages on the Internet; advertisement via mobile phone networks; commercial information services provided by access to a computer database; compilation and

systemization of information into computer databases; compiling of information into computer databases; computer assisted business information; on-line advertising on a computer network; online advertising via a computer communications network; **promotion services** on a computer network; advertising by transmission of on-line publicity for third parties through electronic communications networks

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International 038

- Advisory services relating to telecommunications; advisory services relating to **leasing of communications equipment**; audio communications services, namely, **[state more specifically the nature of these services in this class, e.g. transmission of audio messages by telecommunications networks]**; audiovisual communication services, namely, **[state more specifically the nature of these services in this class, e.g. transmission of streamed audiovisual recordings via the Internet]**; cellular communications services, **namely, communications by cellular phones**; cellular telephone communication; communication by mobile telephone; communications by cellular phones; communications by means of mobile phones; communications by mobile phones; **telecommunications consultancy**; communications via fibre-optic networks; consultancy services relating to telecommunications; data communication by electronic **mail**; data communication **by electronic mail**; electronic communication services, namely, **communication by electronic computer terminals**; electronic network communications, namely, **transmission of information by electronic communications networks**; mobile radio communications; mobile radio telephone services; mobile telephone communication;; mobile telephone services; mobile **telephony**; **provision of telecommunications information**; provision of electronic communications facilities, namely, **providing facilities for video conferencing**; provision of private mobile radio communication services; rental of communications apparatus; rental of smartphones; car telephone communications services; cellular radio telephone services; communication between computers, namely, **[state more specifically the nature of these services]**; communication by computer **terminals**; communication of information by computer **terminals**; communication services over computer networks, namely, **providing private and secure real time electronic communication over a computer network**; communications by computer terminals; communications by telephone; computer aided transmission of images; computer aided transmission of information and images; computer aided transmission of messages; computer aided transmission of messages and images; computer bulletin board services; computer communications for the transmission of information; computer data transmission services, namely, **electronic transmission of data via computer terminals**; computer intercommunication, namely, **[state more specifically the nature of these services in this class]**; computer network communication services namely, **[state more specifically the nature of these services in this class]**; computer telephony services; computer transmission of information accessed via a code or a terminal; computer transmission services namely, **[state more specifically the nature of these services in this class]**; computer-aided transmission of messages; electronic transmission of data and documents via computer terminals and electronic devices; forwarding of messages by telephone; maritime radio-telephone network services, namely, **[state more specifically the nature of these services in this class]**; broadcasting **programs via a global computer network**; paging services;; pay telephone communication services; providing **user** access to computer networks; providing **user** access to computer software; providing **user** access to online computer databases; providing multiple use access to global computer information networks for the transfer and dissemination of a wide range of information; providing on-line forums for transmission of messages among computer users; providing telecommunications connections to a global computer network; providing user access to a global computer network; providing user access to computer programmes in data networks; providing user access to global computer network and online sites containing information on a wide range of topics; providing user access to global computer networks; provision of access to a global computer network; radio telephone communication services; radio/telephone paging services; rental of access time to global computer networks; rental of cellular telephones; rental of computer communication apparatus and instruments; rental of telecommunication equipment including telephones and facsimile apparatus; rental of telephone apparatus; rental of telephone circuits; rental of telephone lines; rental of telephones; **telephone communication services**; telephone communications; telephone paging services; **prepaid long distance** telephone services; telephone voice messaging services; electronic transmission of data by computer; transmission of information by computer; transmission of information by telephone; **electronic transmission of information on a wide range of topics, including online and over a global computer network**; transmission of information via computers connected to the same telematic network; transmission of messages by computer; transmission of messages by telephone; transmission of telephone calls; video telephone services; providing user access to global computer network; **telecommunication services, namely, wireless telephone services**

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International Class 042

- Design and development of software in the field of mobile applications; design of mobile telephones; smartphone software design; unlocking of mobile phones; updating of smartphone software; advice relating to the design of computer hardware; advisory services relating to computer programming; advisory services relating to computer software; advisory services relating to computer system analysis; advisory services relating to computer system design; advisory services relating to the design and development of computer hardware; analytical services relating to computers; **electronic data back-up services**; computer aided design of molds; computer aided graphic design; **computer system analysis**; **computer database design consultancy** services; computer design; computer design services; computer disaster recovery **planning** services; computer engineering; computer firewall services, namely, **[state specifically the nature of these services]**; computer graphics design services; computer hardware design; **leasing of computers**; computer network configuration services; computer network design for others; computer network services namely, **[state specifically the nature of these services]**; **technical advisory services relating to computer programs**; computer program maintenance services; computer program updating services; computer programming; computer programming consultancy; computer programming in the medical field; computer programming of computer games; computer programming of video games; computer programming services for commercial analysis and reporting; computer rental; **research in the field of computer software and hardware**; computer security consultancy; computer security engineering; computer security services **in the nature of design and development of secure computer hardware, software and systems**; **software installation, repair and maintenance services**]; computer security threat analysis for protecting data; computer services in the nature of hosting web sites for others; **website** design; computer software advisory services; computer software consultancy; computer software consulting; computer software design; computer software development; computer software programming services; computer software rental; computer software rental; computer system analysis; computer system design; computer system integration services; computer systems analysis; computer systems design; computer systems integration services; computer technology consultancy; computer time-sharing; computer virus protection services; computer website design; configuration of computer software; consultancy in the design and development of computer hardware; consultancy in the field of computer security; consultancy in the field of computer software; consultation services relating to computer software; conversion of computer programs and data, other than physical conversion; copying of computer software; creating of computer programs; creating of home pages for computer networks; data conversion of computer programs and data, not physical

conversion; debugging computer software for others; design and development of computer game software; design and development of computer hardware; design and development of computer hardware and software; design and development of computer hardware for the manufacturing industries; design and development of computer software; design and development of wireless computer networks; design and maintenance of computer sites for third parties; design and writing of computer software; design of computer codes; **design of computer databases**; design of computer hardware; design of computer languages; design of computer programs; design of computer software; design of computers; design of computers for others; design of mobile telephones; design of telephones; design, maintenance, development and updating of computer software; design, maintenance, rental and updating of computer software; designing computer software for controlling self-service terminals; developing computer programs for electronic cash register systems; developing computer software; development and creation of computer programmes for data processing; development of computer based networks; development of computer codes; development of computer hardware for computer games; development of computer programmes; development of computer software; development of computer software applications; development of computer systems; diagnosis of faults in computer software; digital compression of computer data; document data transfer from one computer format to another; duplication of computer programs; engineering services relating to computer programming; engineering services relating to computers; **hosting computer sites**; installation and maintenance of computer software; installation of computer software; installation, maintenance and repair of computer software; installation, maintenance and repair of software for computer systems; installation, repair and maintenance of computer software; installing computer programs; rental of computers in a café environment; leasing of computer apparatus; leasing of computer programs; leasing of computers; maintenance and updating of computer software; maintenance of computer software relating to computer security and prevention of computer risks; maintenance of computer software used for operating filling apparatus and machines; modifying of computer programs; monitoring of computer systems by remote access; monitoring of computer systems for detecting unauthorized access or data breach; monitoring of computer systems to detect breakdowns; personal computer hire; preparation of reports relating to computer programs; preparation of reports relating to computers; professional consultancy relating to computer security; providing information on computer technology and programming via a web site; providing information, including online, about design and development of computer hardware and software; provision of information relating to computer programming; provision of information relating to **design of computer programs**; remote computer backup services; rental and maintenance of computer software; rental of computer **hardware**; rental of computer firmware; rental of computer hardware and computer peripherals; rental of computer hardware and computer software; rental of computer hardware and software; rental of computer middleware; rental of computer software and programs; rental of computers; renting computer software; repair of computer software; repair of damaged computer programs; research and development of computer software; research relating to computer programming; research relating to computers; research, development, design and upgrading of computer software; scientific computer programming services; security assessment services for computer networks, being **computer security services for protecting data and information from unauthorized access**; security risk assessment services relating to computer systems, **namely, [state specifically the nature of these services]**; **reproducing** computer programs; **updating** computer software; technical advice relating to operation of computers; **testing of computers**; testing of computer programs; testing of computer software; testing of computers; updating of computer programs for third parties; updating of computer software; updating of computer software relating to computer security and prevention of computer risks; updating of home pages for computer networks; updating of computer programs for memory banks of computer systems; upgrading of computer software; writing and updating computer software; writing of computer programs; writing of computer software; recovery of computer data; development of computer programs recorded on data media designed for use in construction and automated manufacturing (cad/cam); computer software design for others

For assistance with identifying and classifying goods and services in trademark applications, please see the USPTO's online searchable *U.S. Acceptable Identification of Goods and Services Manual*. See TMEP §1402.04.

Applicant's goods and/or services may be clarified or limited, but may not be expanded beyond those originally itemized in the application or as acceptably narrowed. See 37 C.F.R. §2.71(a); TMEP §§1402.06, 1904.02(c)(iv). Applicant may clarify or limit the identification by inserting qualifying language or deleting items to result in a more specific identification; however, applicant may not substitute different goods and/or services or add goods and/or services not found or encompassed by those in the original application or as acceptably narrowed. See TMEP §1402.06(a)-(b). The scope of the goods and/or services sets the outer limit for any changes to the identification and is generally determined by the ordinary meaning of the wording in the identification. TMEP §§1402.06(b), 1402.07(a)-(b). Any acceptable changes to the goods and/or services will further limit scope, and once goods and/or services are deleted, they are not permitted to be reinserted. TMEP §1402.07(e). Additionally, for applications filed under Trademark Act Section 66(a), the scope of the identification for purposes of permissible amendments is limited by the international class assigned by the International Bureau of the World Intellectual Property Organization (International Bureau); and the classification of goods and/or services may not be changed from that assigned by the International Bureau. 37 C.F.R. §2.85(d); TMEP §§1401.03(d), 1904.02(b). Further, in a multiple-class Section 66(a) application, classes may not be added or goods and/or services transferred from one existing class to another. 37 C.F.R. §2.85(d); TMEP §1401.03(d).

SIGNIFICANCE OF THE MARK

To permit proper examination of the application, applicant must explain whether the wording "FOTO" in the mark has any significance in the relevant trade or industry or as applied to applicant's goods and/or services, or if such wording is a "term of art" within applicant's industry. See 37 C.F.R. §2.61(b); TMEP §814. Failure to comply with a request for information is grounds for refusing registration. *In re Harley*, 119 USPQ2d 1755, 1757-58 (TTAB 2016); TMEP §814.

If applicant has questions regarding this Office action, please **telephone** the assigned trademark examining attorney.

WHO IS PERMITTED TO RESPOND TO THIS PROVISIONAL FULL REFUSAL: Any response to this provisional refusal must be personally signed by an individual applicant, all joint applicants, or someone with legal authority to bind a juristic applicant (e.g., a corporate officer or general partner). 37 C.F.R. §§2.62(b), 2.193(e)(2)(ii); TMEP §712.01. If applicant hires a qualified U.S. attorney to respond on his or her behalf, then

the attorney must sign the response. 37 C.F.R. §§2.193(e)(2)(i), 11.18(a); TMEP §§611.03(b), 712.01. Qualified U.S. attorneys include those in good standing with a bar of the highest court of any U.S. state, the District of Columbia, Puerto Rico, and other U.S. commonwealths or U.S. territories. *See* 37 C.F.R. §§2.17(a), 2.62(b), 11.1, 11.14(a); TMEP §§602, 712.01. Additionally, for all responses, the proper signatory must personally sign the document or personally enter his or her electronic signature on the electronic filing. *See* 37 C.F.R. §2.193(a); TMEP §§611.01(b), 611.02. The name of the signatory must also be printed or typed immediately below or adjacent to the signature, or identified elsewhere in the filing. 37 C.F.R. §2.193(d); TMEP §611.01(b).

In general, foreign attorneys are not permitted to represent applicants before the USPTO (e.g., file written communications, authorize an amendment to an application, or submit legal arguments in response to a requirement or refusal). *See* 37 C.F.R. §11.14(c), (e); TMEP §§602.03-.03(b), 608.01.

DESIGNATION OF DOMESTIC REPRESENTATIVE: The USPTO encourages applicants who do not reside in the United States to designate a domestic representative upon whom any notice or process may be served. TMEP §610; *see* 15 U.S.C. §§1051(e), 1141h(d); 37 C.F.R. §2.24(a)(1)-(2). Such designations may be filed online at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

/E.Bradley/
Evelyn Bradley
Trademark Examiner
Law Office 105
(571) 272-9292

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 the Trademark Electronic Application System (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 the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

DESIGN MARK

Serial Number

77861274

Status

SECTION 8 & 15-ACCEPTED AND ACKNOWLEDGED

Word Mark

FOTO FACE

Standard Character Mark

Yes

Registration Number

3951786

Date Registered

2011/04/26

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Electronic Arts Inc. CORPORATION DELAWARE Legal Department 209 Redwood Shores Parkway Redwood City CALIFORNIA 94065

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S: Computer game software; Computer game software downloadable from a global computer network; Video game software. First Use: 2009/11/30. First Use In Commerce: 2009/11/30.

Filing Date

2009/10/30

Examining Attorney

FINK, GINA

Attorney of Record

Vineeta Gajwani

FOTO FACE

DESIGN MARK

Serial Number

87147685

Status

REGISTERED

Word Mark

HOMICIDE SQUAD: HIDDEN CASES

Standard Character Mark

Yes

Registration Number

5176015

Date Registered

2017/04/04

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

G5 Entertainment AB CORPORATION SWEDEN No 18, Birger Jarlsgatan 18 114
34 Stockholm SWEDEN

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Computer game programs; Computer game software; Computer game software
downloadable from a global computer network; Computer game software
for personal computers and home video game consoles; Computer game
software for use on mobile and cellular phones; Computer programs for
video and computer games; Downloadable computer game programs;
Downloadable computer game software via a global computer network and
wireless devices; Downloadable electronic game programs; Electronic
game programs; Electronic game software; Electronic game software for
handheld electronic devices; Electronic game software for wireless
devices; Game software; Interactive game software; Interactive
multimedia computer game programs; Interactive video game programs;
Video game software. First Use: 2016/07/21. First Use In Commerce:
2016/07/21.

Filing Date

2016/08/23

Print: Jul 10, 2018

87147685

Examining Attorney

CROSS, TRACY

Attorney of Record

Christine L. Kopitzke

HOMICIDE SQUAD: HIDDEN CASES

DESIGN MARK

Serial Number

87191549

Status

REGISTERED

Word Mark

INFINITE JETS

Standard Character Mark

Yes

Registration Number

5371151

Date Registered

2018/01/02

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Atypical Games, S.R.L LIMITED LIABILITY COMPANY ROMANIA Intrarea
Calusei NR 9, Sector 2 Bucharest ROMANIA 012357

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Computer game programmes; computer game programs; computer game
software; computer game software downloadable from a global computer
network; computer game software for use on mobile and cellular phones;
downloadable computer game software via a global computer network and
wireless devices; electronic game programs; electronic game software;
electronic game software for cellular telephones; electronic game
software for handheld electronic devices; electronic game software for
wireless devices; interactive game programs; interactive game
software; interactive multimedia computer game programs; interactive
video game programs; video game software. First Use: 2017/11/04.
First Use In Commerce: 2017/11/04.

Filing Date

2016/10/03

Examining Attorney

Print: Jul 10, 2018

87191549

MCCAULEY, BRENDAN

Attorney of Record
Gordon Firemark

Infinite Jets

DESIGN MARK

Serial Number

87269312

Status

REGISTERED

Word Mark

ROGUE LEGION

Standard Character Mark

Yes

Registration Number

5389478

Date Registered

2018/01/30

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Troodo Entertainment Limited limited company (ltd.) CAYMAN ISLANDS F/4
Willow House Cricket Sq. PO Box 2804 Grand Cayman KY1-1112 CAYMAN
ISLANDS

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Computer game programmes downloadable via the Internet; Computer game
programs; Computer game software; Computer game software downloadable
from a global computer network; Computer game software for use on
mobile and cellular phones; Computer game software for personal
computers and home video game consoles; Computer programs for video
and computer games; Computer software, namely, game engine software
for video game development and operation; Downloadable computer game
programs; Downloadable computer game software via a global computer
network and wireless devices; Downloadable electronic game programs;
Downloadable electronic game software for use on mobile and cellular
phones, handheld computers; Game software; Games that accept virtual
or monetary wagers sold as a feature of game software; Interactive
game programs; Interactive game software; Interactive multimedia
computer game programs; Interactive video game programs; Video game
software; Virtual reality game software. First Use: 2016/12/13.

Print: Jul 10, 2018

87269312

First Use In Commerce: 2016/12/13.

Filing Date

2016/12/15

Examining Attorney

LEE-RICHARDSON, BRITTAN

ROGUE LEGION

DESIGN MARK

Serial Number

87349047

Status

REGISTERED

Word Mark

THAUMISTRY

Standard Character Mark

Yes

Registration Number

5376827

Date Registered

2018/01/09

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Bobbates LLC LIMITED LIABILITY COMPANY VIRGINIA 5207 Honeysuckle Court
Centreville VIRGINIA 20120

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Computer game cartridges; Computer game cassettes; Computer game
discs; Computer game programs; Computer game software; Computer game
software downloadable from a global computer network; Computer game
software for use on mobile and cellular phones; Computer game software
for personal computers and home video game consoles; Computer game
tapes; Computer game equipment, namely, discs; Computer programs for
pre-recorded games; Computer software and firmware for playing games
of chance on any computerized platform, including dedicated gaming
consoles, video based slot machines, reel based slot machines, and
video lottery terminals; Downloadable computer game software via a
global computer network and wireless devices; Downloadable computer
programs featuring positionable game piece figures for use in the
field of computer games; Electronic game programs; Electronic game
software; Electronic game software for cellular telephones; Electronic
game software for handheld electronic devices; Electronic game
software for wireless devices; Game software; Interactive audio game

discs containing puzzle, adventure, action, and role playing;
Interactive game software; Interactive multimedia computer game
programs; Interactive video game programs; Video game cartridges;
Video game discs; Video game software; Video game tape cassettes;
Virtual reality game software. First Use: 2017/10/07. First Use In
Commerce: 2017/10/07.

Filing Date

2017/02/24

Examining Attorney

RADCLIFF, BRENT MARCUS

Attorney of Record

Anthony Fama

THAUMISTRY

DESIGN MARK

Serial Number

87401291

Status

REGISTERED

Word Mark

ULTIMATE CHICKEN HORSE

Standard Character Mark

Yes

Registration Number

5334141

Date Registered

2017/11/14

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

4341571 Canada Inc DBA Clever Endeavour Games CORPORATION CANADA 1435
Rue St-Alexandre, Suite 140 Montreal CANADA H3A2G4

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Computer game programmes; Computer game programs; Computer game
software; Computer game software for personal computers and home video
game consoles; Computer game software for use with personal computers,
home video game consoles used with televisions and arcade-based video
game consoles; Computer programs for video and computer games; Video
game software; Video and computer game programs; Computer game
programmes downloadable via the Internet; Computer game software
downloadable from a global computer network; Computer game software
for use on mobile and cellular phones; Computer gaming software for
recreational game playing purposes; Downloadable computer game
programs; Downloadable computer game software via a global computer
network and wireless devices; Downloadable electronic game programs;
Downloadable electronic game software for use on computers, tablets,
phones, and gaming consoles; Electronic game software for cellular
telephones; Electronic game software for handheld electronic devices;
Electronic game software for wireless devices; Interactive game

programs; Interactive game software; Interactive video game programs; Interactive multimedia computer game programs; Recorded computer game programs. First Use: 2014/09/01. First Use In Commerce: 2016/03/04.

Filing Date

2017/04/06

Examining Attorney

CERDA, VICTOR

Ultimate Chicken Horse

DESIGN MARK

Serial Number

87419622

Status

REGISTERED

Word Mark

DUNGEON DELIVERY

Standard Character Mark

Yes

Registration Number

5311401

Date Registered

2017/10/17

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Com2us Corporation CORPORATION REPUBLIC OF KOREA 12F, A-dong, BYC
Highcity B/D 131 Gasandigital 1-ro, Geumcheon-gu Seoul REPUBLIC OF
KOREA

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Game software; Computer game programmes downloadable via the Internet;
Computer game programs; Computer game software; Computer game software
downloadable from a global computer network; Computer game software
for use on mobile and cellular phones; Downloadable computer game
programs; Downloadable computer game software via a global computer
network and wireless devices; Downloadable electronic game programs;
Downloadable electronic game software for use on mobile and cellular
phones; Electronic game programs; Electronic game software; Electronic
game software for cellular telephones; Electronic game software for
handheld electronic devices; Electronic game software for wireless
devices; Interactive game programs; Interactive game software;
Interactive video game programs; Video game software. First Use:
2017/04/20. First Use In Commerce: 2017/04/20.

Filing Date

Print: Jul 10, 2018

87419622

2017/04/21

Examining Attorney
FRAZIER, TAMARA

Dungeon Delivery

DESIGN MARK

Serial Number

87455440

Status

REGISTERED

Word Mark

TALE OF TOAST

Standard Character Mark

Yes

Registration Number

5444912

Date Registered

2018/04/10

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Toasty Leaf AB CORPORATION SWEDEN Husby Västra Fågelhult 180 Nora
SWEDEN 71391

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Computer game software; Computer game software downloadable from a
global computer network; Computer game software for personal computers
and home video game consoles; Computer game software for use on mobile
and cellular phones; Computer programs for video and computer games;
Downloadable computer game programs; Electronic game software for
cellular telephones; Electronic game software for handheld electronic
devices; Interactive video game programs; Video game software. First
Use: 2014/02/21. First Use In Commerce: 2017/11/20.

Filing Date

2017/05/18

Examining Attorney

COLLIER, DAVID

Attorney of Record

Print: Jul 10, 2018

87455440

Zachary Strebeck

Tale of Toast

DESIGN MARK

Serial Number

87504333

Status

REGISTERED

Word Mark

BURGER MASTER

Standard Character Mark

Yes

Registration Number

5395042

Date Registered

2018/02/06

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Shenzhen Runqian Technology Limited limited company (ltd.) CHINA 1216,
Anhui Building, No. 6007, Shennan Avenue, Shatou Street, Futian
District Shenzhen CHINA

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Computer game software downloadable from a global computer network;
Computer game software for personal computers and home video game
consoles; Computer game software for use on mobile and cellular
phones; Computer gaming software for recreational game playing
purposes; Downloadable computer game software via a global computer
network and wireless devices; Downloadable computer game programs;
Downloadable electronic game programs; Electronic game software for
cellular telephones; Electronic game software for handheld electronic
devices; Electronic game software for wireless devices; Electronic
game software; Game software; Graphical user interface software;
Interactive game software; Video game software. First Use:
2014/12/25. First Use In Commerce: 2014/12/25.

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87504333

MARK AS SHOWN.

Filing Date

2017/06/25

Examining Attorney

BELLO, ZACHARY

Burger Master

DESIGN MARK

Serial Number

87594121

Status

REGISTERED

Word Mark

PIRATES & PEARLS

Standard Character Mark

Yes

Registration Number

5437565

Date Registered

2018/04/03

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

G5 Entertainment AB CORPORATION SWEDEN No 18, Birger Jarlsgatan 18 114
34 Stockholm SWEDEN

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Computer game programs; Computer game software; Computer game software
downloadable from a global computer network; Computer game software
for personal computers and home video game consoles; Computer game
software for use on mobile and cellular phones; Computer programs for
video and computer games; Downloadable computer game programs;
Downloadable computer game software via a global computer network and
wireless devices; Downloadable electronic game programs; Electronic
game programs; Electronic game software; Electronic game software for
handheld electronic devices; Electronic game software for wireless
devices; Game software; Interactive game software; Interactive
multimedia computer game programs; Interactive video game programs;
Video game software. First Use: 2017/08/28. First Use In Commerce:
2017/08/28.

Filing Date

2017/09/01

Print: Jul 10, 2018

87594121

Examining Attorney

I, DAVID

Attorney of Record

Christine L. Kopitzke

PIRATES & PEARLS

DESIGN MARK

Serial Number

87646525

Status

REGISTERED

Word Mark

PATHLOCUS

Standard Character Mark

Yes

Registration Number

5469545

Date Registered

2018/05/15

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Loncar Technologies Inc. CORPORATION CANADA 198 Viau Chateauguay,
Quebec CANADA J6K2M5

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Game software; Computer game software; Computer game software
downloadable from a global computer network; Computer game software
for use on mobile and cellular phones; Computer game software for use
with personal computers, home video game consoles used with
televisions and arcade-based video game consoles; Downloadable
computer game programs; Downloadable electronic game software for use
on mobile and cellular phones, tablets, handheld computers, laptop
computers, and desktop computers; Electronic game programs; Electronic
game software; Electronic game software for cellular telephones;
Electronic game software for handheld electronic devices; Electronic
game software for wireless devices; Video game cartridges; Video game
software; Video and computer game programs. First Use: 2017/09/26.
First Use In Commerce: 2017/09/26.

Filing Date

2017/10/16

Print: Jul 10, 2018

87646525

Examining Attorney
CLAYTON, CHERYL

Attorney of Record
Craig Snyder

PATHLOCUS