

To: Cameron Mitchell(cmitchell@counxel.com)
Subject: U.S. Trademark Application Serial No. 97120588 - ILP - 00969
Sent: August 24, 2022 11:39:37 AM EDT
Sent As: tmng.notices@uspto.gov

Attachments

[5031720](#)

**United States Patent and Trademark Office (USPTO)
Office Action (Official Letter) About Applicant's Trademark Application**

U.S. Application Serial No. 97120588

Mark: ILP

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Applicant: Haste, Inc.

Reference/Docket No. 00969

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NONFINAL OFFICE ACTION

The USPTO must receive applicant's response to this letter within six months of the issue date below or the application will be [abandoned](#). Respond using the Trademark Electronic Application System (TEAS). A link to the appropriate TEAS response form appears at the end of this Office action.

Issue date: August 24, 2022

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:

- Partial Section 2(d) Refusal - Likelihood of Confusion with Regard to Class 36
- Classification and Identification of Services

PARTIAL SECTION 2(d) REFUSAL - LIKELIHOOD OF CONFUSION WITH REGARD TO CLASS 36

THIS PARTIAL REFUSAL APPLIES TO CLASS 36 ONLY

Applicant has applied to register ILP in standard characters for "Payment exchange services of micro- and nano-transactions of cryptocurrency utilizing blockchain technology" in Class 36, and "Providing online gaming platform for competitive video games" in Class 41.

The stated refusal refers to International Class 36 only and does not bar registration in the other class.

Registration of the applied-for mark is partially refused because of a likelihood of confusion with the mark ILP in U.S. Registration No. 5031720. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the attached registration.

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 goods and/or 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). Any evidence of record related to those factors need be considered; however, “not all of the *DuPont* factors are relevant or of similar weight in every case.” *In re Guild Mortg. Co.*, 912 F.3d 1376, 1379, 129 USPQ2d 1160, 1162 (Fed. Cir. 2019) (quoting *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1406, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997)).

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 goods and/or 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.”); TMEP §1207.01.

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)), *aff’d per curiam*, 777 F. App’x 516, 2019 BL 343921 (Fed. Cir. 2019); TMEP §1207.01(b).

Similarity of the Marks

The applicant has applied for the mark ILP. The cited mark is ILP, owned by 402 Technologies, S.A.

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)), *aff’d per curiam*, 777 F. App’x 516, 2019 BL 343921 (Fed. Cir. 2019); TMEP §1207.01(b).

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.*, 901 F.3d 1367, 1373, 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)); TMEP §1207.01(b). The proper focus is on the recollection of the average purchaser, who retains a general rather than specific impression of trademarks. *In re Ox Paperboard, LLC*, 2020 USPQ2d 10878, at *4 (TTAB 2020) (citing *In re Bay State Brewing Co.*, 117 USPQ2d 1958, 1960 (TTAB 2016)); *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018); TMEP §1207.01(b); *see In re St. Helena Hosp.*, 774 F.3d 747, 750-51, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014).

In the present case, applicant’s mark is ILP and registrant’s mark is ILP. These marks are identical in appearance, sound, and meaning, “and have the potential to be used . . . in exactly the same manner.” *In re i.am.symbolic, llc*, 116 USPQ2d 1406, 1411 (TTAB 2015), *aff’d*, 866 F.3d 1315, 123 USPQ2d 1744 (Fed. Cir. 2017). Additionally, because they are identical, these marks are likely to engender the same connotation and overall commercial impression when considered in connection with applicant’s and registrant’s respective goods and/or services. *Id.*

Relatedness of the Services

The applicant’s services at issue are “Payment exchange services of micro- and nano-transactions of cryptocurrency utilizing blockchain technology” in Class 36.

The registrant’s relevant services are “Providing electronic processing of electronic payments via a global computer network” in Class 36.

The services are compared to determine whether they are similar, commercially related, or travel in the same trade channels. *See Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369-71, 101 USPQ2d 1713, 1722-23 (Fed. Cir. 2012); *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1165, 64 USPQ2d 1375, 1381 (Fed. Cir. 2002); TMEP §§1207.01, 1207.01(a)(vi).

The compared 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).

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 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 registration use broad wording to describe "Providing electronic processing of electronic payments via a global computer network", which presumably encompasses all services of the type described, including applicant's more narrow "Payment exchange services of micro- and nano-transactions of cryptocurrency utilizing blockchain technology". *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 highly related *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)).

Thus, 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).

The overriding concern is not only to prevent buyer confusion as to the source of the services, but to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. *See In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt regarding a likelihood of confusion determination is resolved in favor of the registrant. TMEP §1207.01(d)(i); *see Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988).

Accordingly, because the marks are significantly similar and the services are highly related, purchasers are likely to be confused as to the source of the services. Thus, registration is partially refused pursuant to Section 2(d) of the Trademark Act.

Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration. Applicant should note the following advisory.

ADVISORY: PARTIAL REFUSAL RESPONSE OPTIONS

Applicant may respond to the stated refusal by submitting evidence and arguments against the refusal. In addition, applicant may respond by doing one of the following:

- (1) Deleting the class to which the refusal pertains;
- (2) Filing a [Request to Divide Application form](#) (form #3) to divide out the goods and/or services that have not been refused registration, so that the mark may proceed toward publication

for opposition in the class to which the refusal does not pertain. *See* 37 C.F.R. §2.87. *See generally* TMEP §§1110 *et seq.* (regarding the requirements for filing a request to divide). If applicant files a request to divide, then to avoid abandonment, applicant must also file a timely response to all outstanding issues in this Office action, including the refusal. 37 C.F.R. §2.87(e); or

(3) Amending the basis for that class, if appropriate. TMEP §806.03(h). (The basis cannot be changed for applications filed under Trademark Act Section 66(a). TMEP §1904.01(a).)

Applicant must address the following requirement.

CLASSIFICATION AND IDENTIFICATION OF SERVICES

The identification of services in Classes 36 and 42 is indefinite and/or misclassified and must be clarified or reclassified to ensure proper analysis.

In Class 36, the wording “Providing online gaming platform for competitive video games” in the identification of services is indefinite and must be clarified to further specify the nature of the services, as set forth below. *See* 37 C.F.R. §2.32(a)(6); TMEP §1402.01. Additionally, this wording is misclassified, as such software is classified in Class 42.

In Class 41, the wording “Payment exchange services of micro- and nano-transactions of cryptocurrency utilizing blockchain technology” in the identification of services is indefinite and must be clarified to further specify the nature of the services, as set forth below. *See* 37 C.F.R. §2.32(a)(6); TMEP §1402.041

Applicant may adopt the following suggestions, if accurate:

036: Payment exchange services **in the nature of cryptocurrency exchange services, namely, processing** micro- and nano-transactions of cryptocurrency utilizing blockchain technology

042: Providing **temporary use of online non-downloadable software in the nature of an** online gaming platform for **playing** competitive video games

Applicant may amend the identification to clarify or limit the services, but not to broaden or expand the services beyond those in the original application or as acceptably amended. *See* 37 C.F.R. §2.71(a); TMEP §1402.06. Generally, any deleted services may not later be reinserted. *See* TMEP §1402.07(e).

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.

RESPONSE GUIDELINES

Please call or email the assigned trademark examining attorney with questions about this Office action. Although an examining attorney cannot provide legal advice, the examining attorney can provide additional explanation about the refusal(s) and/or requirement(s) in this Office action. *See* TMEP §§705.02, 709.06.

The USPTO does not accept emails as responses to Office actions; however, emails can be used for informal communications and are included in the application record. *See* 37 C.F.R. §§2.62(c), 2.191; TMEP §§304.01-.02, 709.04-.05.

How to respond. [Click to file a response to this nonfinal Office action.](#)

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RESPONSE GUIDANCE

- **Missing the response deadline to this letter will cause the application to [abandon](#).** The response must be received by the USPTO before midnight **Eastern Time** of the last day of the response period. TEAS maintenance or [unforeseen circumstances](#) could affect an applicant's ability to timely respond.
- **[Responses signed by an unauthorized party](#)** are not accepted and can **cause the application to [abandon](#)**. If applicant does not have an attorney, the response must be signed by the individual applicant, all joint applicants, or someone with [legal authority to bind a juristic applicant](#). If applicant has an attorney, the response must be signed by the attorney.
- If needed, **find [contact information for the supervisor](#)** of the office or unit listed in the signature block.

(4) STANDARD CHARACTER MARK

ILP

Mark Punctuated

ILP

Translation

Goods/Services

- IC 036. US 100 101 102.G & S: Providing electronic processing of electronic payments via a global computer network. FIRST USE: 20151006. FIRST USE IN COMMERCE: 20151006

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Design Code

Serial Number

86885735

Filing Date

20160125

Current Filing Basis

1A

Original Filing Basis

1A

Publication for Opposition Date

20160614

Registration Number

5031720

Date Registered

20160830

Owner

(REGISTRANT) 402 TECHNOLOGIES, S.A. CORPORATION LUXEMBOURG 10, RUE ANTOINE JANS
L-1820 LUXEMBOURG LUXEMBOURG 198312 (LAST LISTED OWNER) INTERLEDGER
FOUNDATION NON-PROFIT FOUNDATION CALIFORNIA 785 MARKET ST STE 1300 SAN
FRANCISCO CALIFORNIA 94103

Priority Date

Disclaimer Statement

Description of Mark

Type of Mark

SERVICE MARK

Register
PRINCIPAL

Live Dead Indicator
LIVE

Attorney of Record
Catherine M.C. Farrelly

United States Patent and Trademark Office (USPTO)

USPTO OFFICIAL NOTICE

Office Action (Official Letter) has issued
on August 24, 2022 for
U.S. Trademark Application Serial No. 97120588

A USPTO examining attorney has reviewed your trademark application and issued an Office action. You must respond to this Office action in order to avoid your application abandoning. Follow the steps below.

- (1) **[Read the Office action](#)**. This email is NOT the Office action.
- (2) **Respond to the Office action by the deadline** using the Trademark Electronic Application System (TEAS). Your response must be received by the USPTO on or before 11:59 p.m. **Eastern Time** of the last day of the response period. Otherwise, your application will be **[abandoned](#)**. See the Office action itself regarding how to respond.
- (3) **Direct general questions** about using USPTO electronic forms, the USPTO **[website](#)**, the application process, the status of your application, and whether there are outstanding deadlines to the **[Trademark Assistance Center \(TAC\)](#)**.

After reading the Office action, address any question(s) regarding the specific content to the USPTO examining attorney identified in the Office action.

GENERAL GUIDANCE

- **[Check the status](#) of your application periodically** in the **[Trademark Status & Document Retrieval \(TSDR\)](#)** database to avoid missing critical deadlines.
- **[Update your correspondence email address](#)** to ensure you receive important USPTO notices about your application.
- **[Beware of trademark-related scams](#)**. Protect yourself from people and companies that may try to take financial advantage of you. Private companies may call you and pretend to be the USPTO or may send you communications that resemble official USPTO documents to trick you. We will never request your credit card number or social security number over the phone. And all official USPTO correspondence will only be emailed from the domain “@uspto.gov.” Verify the correspondence originated from us by using your Serial Number in our database, **[TSDR](#)**, to confirm that it appears under the “Documents” tab, or contact the **[Trademark Assistance Center](#)**.

- **Hiring a U.S.-licensed attorney.** If you do not have an attorney and are not required to have one under the trademark rules, we encourage you to hire a U.S.-licensed attorney specializing in trademark law to help guide you through the registration process. The USPTO examining attorney is not your attorney and cannot give you legal advice, but rather works for and represents the USPTO in trademark matters.

User: Nathaniel Pettican

Statistics for Case 97120588						
#	Search	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/Search Duration
1	"haste inc"[on]	7	0	2	2	0:00
2	("i l p" "i lp" "il p" *ilp*)[bi,ti] and live[lid]	414	0	0	0	0:02
3	2 and ("036" "042")[cc]	126	0	126	126	0:02

Session started 08/24/2022 10:07 am

Session ended 08/24/2022 10:13 am

Total search duration 4.00

Session duration 5 minutes 40 seconds

Adjacency Level 1

Near Level 1