

To: Maren C. Perry(nytrademarks@kslaw.com)
Subject: U.S. Trademark Application Serial No. 97118765 - LOL STUDIOS
Sent: August 24, 2022 05:00:08 PM EDT
Sent As: tmng.notices@uspto.gov

Attachments

[screenshot-www-merriam-webster-com-dictionary-studios-166137000617315214218](#)

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

U.S. Application Serial No. 97118765

Mark: LOL STUDIOS

Correspondence Address:

Maren C. Perry
King & Spalding LLP
1185 Avenue of the Americas
New York NY 10036 UNITED STATES

Applicant: HARTBEAT, LLC

Reference/Docket No. N/A

Correspondence Email Address: nytrademarks@kslaw.com

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:

- Section 2(d) Refusal
- Disclaimer Required

SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 5214218. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the attached registration.

The applicant seeks registration for the standard character LOL STUDIOS for Cinematographic adaptation and editing; Editing of television programmes; Editing or recording of sounds and images; Entertainment media production services for motion pictures, television and Internet; Entertainment services in the nature of development, creation, production and post-production services of multimedia entertainment content; Entertainment services in the nature of development, creation, production, distribution, and post-production of motion pictures; Entertainment services in the nature of development, creation, production, distribution, and post-production of television shows; Entertainment services, namely, multimedia production services; Entertainment services, namely, production of special effects including model-making services and related physical production elements for use in motion pictures; Entertainment services, namely, providing advice and information for music, video and film concept and script development; Film directing, other than advertising films; Film editing; Music composition services; Post-production editing services in the field of music, videos and film; Production and distribution of independent motion pictures; Production of video and creation of visual effects for others for use in DVDs, television programs and on web sites; Sound mixing; Video editing; Video production services in international class 041.

The registrant's mark is the design mark LOL for Entertainment services, namely, development, creation, production and post-production of website entertainment content; providing a website that displays trending news and information content in the field of entertainment based on social media; multimedia entertainment services in the nature of recording, production and post-production services in the fields of music and video; entertainment services, namely, providing a website featuring video presentations featuring news and information in the field of entertainment and current event news reporting in international class 041.

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.

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

Both marks contain the term LOL. 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) (holding COMMCASH and COMMUNICASH confusingly similar); *In re Corning Glass Works*, 229 USPQ 65, 66 (TTAB 1985) (holding CONFIRM and CONFIRMCELLS confusingly similar); *In re Pellerin Milnor Corp.*, 221 USPQ 558, 560 (TTAB 1983) (holding MILTRON and MILLTRONICS confusingly similar); TMEP §1207.01(b)(ii)-(iii).

The dominant element in both mark is the term LOL because the remaining wording in the applicant's mark will be disclaimed. Although marks are compared in their entireties, one feature of a mark may be more significant or dominant in creating a commercial impression. *See In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Nat’l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 751 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii). Disclaimed matter that is descriptive of or generic for a party’s goods and/or services is typically less significant or less dominant when comparing marks. *In re Detroit Athletic Co.*, 903 F.3d 1297, 1305, 128 USPQ2d 1047, 1050 (Fed. Cir. 2018) (citing *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997)); TMEP §1207.01(b)(viii), (c)(ii). Consequently, the dominant elements in both marks are identical and the marks are confusingly similar.

The services are related

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). While the wording is slightly different, both the applicant and registrant provide "development, creation, production and

post-production" services and related audio, video, and multimedia services. For example the registrant provides development, creation, production and post-production ... for website entertainment content. The applicant provides the same services for multimedia entertainment content, which presumably encompasses all services of the type described, including registrant's more narrow services. *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). In other words, website entertainment content is a type of multimedia entertainment content. 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)). Consequently, the applicant provides services that are either highly related or legally identical to the registrant's services.

In conclusion, the marks are confusingly similar and the services are related. Registration is thus refused under Trademark Act Section 2(d), 15 U.S.C. §1052(d).

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

If applicant responds to the refusal(s), applicant must also respond to the requirement(s) set forth below.

DISCLAIMER REQUIRED

Applicant must disclaim the wording "STUDIOS" because it is merely descriptive of an ingredient, quality, characteristic, function, feature, purpose, or use of applicant's goods and/or services. *See* 15 U.S.C. §1052(e)(1); *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1251, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012); TMEP §§1213, 1213.03(a).

The attached evidence from Merriam-Webster Dictionary shows this wording means:

2a: a place where motion pictures are made

b: a company that produces motion pictures

3: a place maintained and equipped for the transmission of radio or television programs

4: a place where audio recordings are made

Thus, the wording merely describes applicant's services because it merely describes the type of services and the where the services will be performed.

Applicant may respond to this issue by submitting a disclaimer in the following format:

No claim is made to the exclusive right to use STUDIOS" apart from the mark as shown.

For an overview of disclaimers and instructions on how to provide one using the Trademark Electronic Application System (TEAS), see the [Disclaimer webpage](#).

RESPONSE GUIDELINES

Response guidelines. For this application to proceed, applicant must explicitly address each refusal and/or requirement in this Office action. For a refusal, applicant may provide written arguments and evidence against the refusal, and may have other response options if specified above. For a requirement, applicant should set forth the changes or statements. Please see “[Responding to Office Actions](#)” and the informational [video “Response to Office Action”](#) for more information and tips on responding.

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

/R.M. Herrera/
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(571) 272-1909
roselle.herrera@uspto.gov

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.



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studios

[Dictionary](#)[Thesaurus](#)

studio noun



Save

Word

stu·dio | \ 'stü-dē-(,)ō , 'styü-\

plural **studios**

Definition of *studio*

- a** : the working place of a painter, sculptor, or photographer
b : a place for the study of an art (such as dancing, singing, or acting)
- a** : a place where motion pictures are made
b : a company that produces motion pictures
- : a place maintained and equipped for the transmission of radio or television programs
- : a place where audio recordings are made
- : STUDIO APARTMENT

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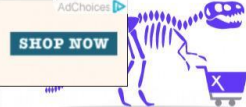
HEALTHY, HYDRATED
HAIR IS WAITING

IT TAKES *Poise*

Maui
MOISTURE

SHOP NOW

go extinct.



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Complete Order

- ↓ Example Sentences
- ↓ Phrases Containing *studio*
- ↓ Learn More About *studio*

STAYS 10X DRIER
THAN THE LEADING
PERIOD LINER




IT TAKES *Poise*

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UNIVERSAL CROSSWORD

A daily challenge for crossword fanatics.

TAKE THE QUIZ »

Examples of *studio*

// the president of a n

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THAN THE LEADING
PERIOD LINER



HEALTHY, HYDRATED
HAIR IS WAITING

IT TAKES *Poise*

Maui
MOISTURE

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go extinct.



IT TAKES *Poise*

BUY NOW

Recent Examples on the Web

// Miller's behavior in Hawaii prompted an emergency meeting of Warner Bros. and DC executives to discuss the actor's future with the *studio* and The Flash franchise.

— Kat Rouza, *Rolling Stone*, 16 Aug. 2022

not used, nothing more, 10 Aug. 2022

// Southern California's film industry has had to contend with a shortage of *studio* space amid surging demand.

— Julia Wick, *Los Angeles Times*, 16 Aug. 2022

// The Alchemist's Euphoria is Kasabian's seventh *studio* set, and first to feature founding guitarist player Sergio Pizzorno on lead vocals, following the July 2020 departure of frontman Tom Meighan in controversial circumstances.

— Lars Brandle, *Billboard*, 16 Aug. 2022

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These example sentences are selected automatically from various online news sources to reflect current usage of the word 'studio.' Views expressed in the examples do not represent the opinion of Merriam-Webster or its editors. [Send us feedback](#).

Phrases Containing *studio*

[studio apartment](#)



HEALTHY, HYDRATED
HAIR IS WAITING



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First Known Use of *studio*

1800, in the meaning defined at [sense 1a](#)

STAYS 10X DRIER
THAN THE LEADING PERIOD LINER



IT TAKES Poise
BUY NOW

History and Etymology for *studio*

Latin *studium*, "study, learning, devotion, diligence"

italian, literally, study, from Latin *studium*

Learn More



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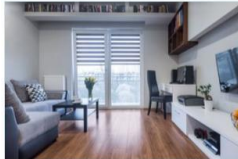
Time Traveler for *studio*



The first known use of *studio* was in 1800

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From the Editors at Merriam-Webster



9 Words for Places People Call 'Home'

What do you call your digs?

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Statistics for *studio*

Last Updated

18 Aug 2022

Look-up Popularity

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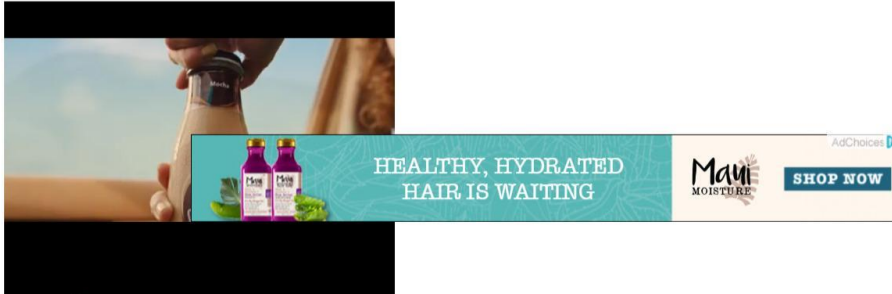
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"Studio." *Merriam-Webster.com Dictionary*, Merriam-Webster, .

Style: MLA

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WongwongHeichit · 16 June, 2011

I'll be in my studio, studio.....

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More Definitions for studio

studio noun
stu·dio | \ 'stü-dē-ō , 'styū-
plural studios

Kids Definition of studio

- 1 : the place where an artist, sculptor, or photographer works
- 2 : a place for the study of an art
- 3 : a place where music is made
- 4 : a place from which a radio or television broadcast is made

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More from Merriam-Webster on *studio*

Thesaurus: All synonyms and antonyms for *studio*

Nglish: Translation of *studio* for Spanish Speakers

Britannica English: Translation of *studio* for Arabic Speakers

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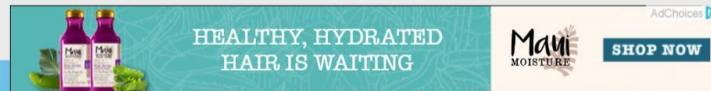
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As illustrated by some very
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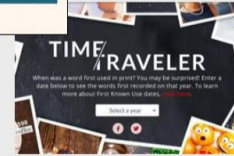
10 Words from Place Names

Bikini, bourbon, and
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'Pride': The Word That Went From Vice to Strength

Do you take pride in Pride?



When Were Words First Used?

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(literally) drives some



'All Intensive Purposes'



Lay vs. Lie



Hot Mess

public is a hot mess"



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DAMAGE REPAIR



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MOISTURE

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(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS



Mark Punctuated

LOL

Translation

Goods/Services

- IC 041. US 100 101 107.G & S: Entertainment services, namely, development, creation, production and post-production of website entertainment content; providing a website that displays trending news and information content in the field of entertainment based on social media; multimedia entertainment services in the nature of recording, production and post-production services in the fields of music and video; entertainment services, namely, providing a website featuring video presentations featuring news and information in the field of entertainment and current event news reporting. FIRST USE: 20101112. FIRST USE IN COMMERCE: 20101112

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Code

260121

Serial Number

87254835

Filing Date

20161202

Current Filing Basis

1A

Original Filing Basis

1A

Publication for Opposition Date

20170314

Registration Number

5214218

Date Registered

20170530

Owner

(REGISTRANT) BuzzFeed, Inc. CORPORATION NEW YORK 111 E. 18th St. New York NEW YORK

10003

Priority Date

Disclaimer Statement

Description of Mark

The color(s) black and yellow is/are claimed as a feature of the mark. The mark consists of the designation "LOL" in black within a yellow shaded circle.

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

Attorney of Record

Michelle Mancino Marsh

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. 97118765

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.