Applicant hereby responds to the office action issued on August 11, 2009 (the "Office Action") in respect of U.S. Trademark Application Serial No. 77/777,810 (the "Application"). Applicant also wishes to amend the Application, as described below, in response to the Office Action.

Likelihood of Confusion

The Office Action states that there is a likelihood of confusion between Applicant's Mark and the mark in U.S. Registration No. 2,371,004, namely LEARNING AND FUN ROLLED INTO ONE for use in connection with "card games" (the "Cited Mark").

Applicant respectfully submits that its mark is not confusingly similar to the Cited Mark, when the marks are viewed in their entireties and in light of the differences in the respective goods offered under each mark, and other factors enunciated by the court in *Application of E.I. DuPont DeNemours & Co., 476 F.2d 1357, 1361, 177 USPQ 563 (CCPA 1973)*. Applicant therefore requests that the Section 2(d) refusal be withdrawn and that the Applicant's mark be approved for publication.

It is well settled that a likelihood of confusion may be said to exist only where (1) an applicant's mark is similar to the cited registered mark in terms of sound, appearance, or commercial impression and (2) the applicant's goods or services are so related or the activities surrounding their marketing are such that confusion as to their origin is likely. See *Id.; In re August Stork KG, 218 USPQ 823 (TTAB 1983); In re Int'l Telephone and Telegraph Co., 197 USPQ 910 (TTAB 1978)*. In the present case, as argued below, the marks are dissimilar and the goods offered under each mark are distinct and of a nature such that consumers or potential consumers of the goods would not be confused.

Applicant's Mark and the Cited Mark are Dissimilar

Applicant's Mark and the Cited Mark can be readily distinguished in sight, sound, and overall commercial impression. Each of the marks begins with an entirely different word having a totally different meaning – PAPER versus LEARNING. Whereas "paper" is a physical object, "learning" is an intangible idea or concept. The two words look and sound completely different and have entirely different connotations and meanings. Because these words form the first and, arguably, the most prominent portions of the respective marks, the great differences between them serve to greatly distinguish the marks.

Although the two marks share the common terminology "AND FUN ROLLED INTO ONE," that shared portion is of less importance in the minds of consumers than the distinction between PAPER and LEARNING. Applicant submits that the common idiom consisting of multiple things being "rolled into one" is secondary in importance, when examining the commercial impressions of the respective marks, to the identity of the items that are being "rolled up" together. In the case of Applicant's Mark and the Cited Mark, the things being rolled together are entirely different (paper vs. learning). Accordingly, the overall commercial impressions of the marks are entirely distinct. In

summary, Applicant believes that the marks PAPER N' FUN ROLLED INTO ONE is very different in the minds of consumers from LEARNING AND FUN ROLLED INTO ONE, just as both marks would be highly distinct from a mark such as MACHINE GUNS AND FUN ROLLED INTO ONE, because the nature of the differences between all these marks are such that they create vastly different commercial impressions, despite any shared elements.

The Goods are Dissimilar

Applicant first notes that it has significantly amended its identification of goods, as set out in detail below. As part of this amendment, the scope of goods covered in the identification is greatly narrowed. Applicant submits that the much narrower set of goods set forth in the amended identification is completely distinct from the "card games" identified in the Cited Mark Registration. Indeed, the sorts of adhesives, crepe paper, animal forms, picture frames, and related goods that are identified in the Applicant's amended identification of goods are on their face completely different in their nature, purpose, and identity than the playing cards sold by the owner of the Cited Mark.

Not only are the amended goods identified in Applicant's application completely different from those identified in the Cited Mark Registration, they are completely unrelated. Applicant would point out that none of the cited third party registrations contain both the goods identified in Applicant's amended identification and the goods identified in the Cited Mark Registration. Accordingly, there is no probative value to the third party registrations proffered in the Office Action and there is no other evidence to show that the very distinct goods offered under Applicant's Mark and the Cited Mark, respectively, are in any way related. See, e.g., *In re W.W. Henry Co., 82 U.S.P.Q.2d 1213, 1215 (TTAB 2007)*:

> [U]pon review, we find that none of the registrations appear to include goods of the type listed in applicant's application and the cited registration. In particular, none of the registrations cover preparations for the repair of polyolefin surfaces. Thus, the third-party registrations are insufficient to show that applicant's and registrant's goods are of a type that emanate from a single source.

The vast differences and lack of relation between Applicant's goods and those goods offered under the Cited Mark are further proof that the marks would not be subject to confusion in the marketplace.

Summary of Likelihood of Confusion Arguments

Given both the highly significant differences between the marks, as well as the differences in the nature, purpose, and identity of the goods sold under each mark, Applicant submits that it is clear that no confusion is likely between Applicant's Mark and the Cited Mark.

Identification of Goods

The Office Action states that the identification of goods in the application requires amendment because portions of the identification are too broad. Accordingly, Applicant wishes to adopt the following amendment, if it will traverse the objection:

> Adhesives, namely, glue for stationary or household purposes; crepe paper; crepe paper articles for fabrication of three dimensional works of art; crepe paper rolls for fabrication of articles of various shapes and accessories therefore; toys, games, crafts, and playthings, namely plastic and fabric forms of animals, creatures, and birds; toys and crafts, namely, picture frames, bangles, and rings, to which crepe paper rolls are attached for fabrication of three dimensional works of art and accessories therefore; toys, and crafts, namely, cutting machines for cutting crepe paper rolls in various sizes

Filing Basis Clarification

In response to the inquiry in the Office Action, Applicant wishes to specify that it does not intend to rely on Section 44(e) as a basis for registration and requests that the Application be approved for publication based solely on the Section 1(b) filing basis.