

**To:** M & W INDUSTRIAL EQUIPMENT CORP.([kurt@inet-pc.com](mailto:kurt@inet-pc.com))  
**Subject:** U.S. Trademark Application Serial No. 97120650 - FORKLIFTTRADER  
**Sent:** August 24, 2022 03:05:52 PM EDT  
**Sent As:** [tmng.notices@uspto.gov](mailto:tmng.notices@uspto.gov)

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**Attachments**

[screenshot-www-merriam-webster-com-dictionary-trader-16613666390751](#)  
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**United States Patent and Trademark Office (USPTO)  
Office Action (Official Letter) About Applicant's Trademark Application**

**U.S. Application Serial No.** 97120650

**Mark:** FORKLIFTTRADER

**Correspondence Address:**

M & W INDUSTRIAL EQUIPMENT CORP.  
1610 PEARL STREET  
WAUKESHA WI 53186 UNITED STATES

**Applicant:** M & W INDUSTRIAL EQUIPMENT CORP.

**Reference/Docket No.** N/A

**Correspondence Email Address:** [kurt@inet-pc.com](mailto:kurt@inet-pc.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.

## **SEARCH**

The trademark examining attorney has searched the USPTO database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). 15 U.S.C. §1052(d); TMEP §704.02.

## **SUMMARY OF ISSUES:**

- Descriptive
- Unacceptable Specimen

## **SECTION 2(e)(1) REFUSAL - MERELY DESCRIPTIVE**

Registration is refused because the applied-for mark merely describes a feature, ingredient, characteristic, purpose, function, intended audience of applicant's goods and/or services. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); *see* TMEP §§1209.01(b), 1209.03 *et seq.*

A mark is merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose, or use of an applicant's goods and/or services. TMEP §1209.01(b); *see, e.g., In re TriVita, Inc.*, 783 F.3d 872, 874, 114 USPQ2d 1574, 1575 (Fed. Cir. 2015) (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004)); *In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005) (citing *Estate of P.D. Beckwith, Inc. v. Comm'r of Patents*, 252 U.S. 538, 543 (1920)). However, the determination of whether a mark is merely descriptive is made in relation to an applicant's goods and/or services, not in the abstract. *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1254, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012); *In re The Chamber of Commerce of the U.S.*, 675 F.3d 1297, 1300, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); TMEP §1209.01(b). “Whether consumers could guess what the product [or service] is from consideration of the mark alone is not the test.” *In re Am. Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

In this case, applicant has applied to register the mark FORKLIFT TRADER, in connection with the following goods: fork lift trucks.

As demonstrated by the attached dictionary evidence, the term "trader" is defined as a merchant. Please see the attached evidence. In addition, applicant's identification indicates that the goods are fork lift trucks. Therefore, the wording, FORKLIFT TRADER merely describes the goods because it immediately conveys information about them, namely, that they originate from a merchant that provides fork lifts. In addition, the attached evidence from applicant's website further confirms the descriptive significance as describing a merchant/dealer specializing in forklifts. Please see the attached evidence.

Generally, where the individual components of a mark retain their descriptive meaning in relation to the goods as here, the combination results in a composite mark that is itself descriptive and not registrable. *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1516 (TTAB 2016) (citing *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1317-18 (TTAB 2002)); TMEP §1209.03(d); *see, e.g., DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1255, 103 USPQ2d 1753, 1758 (Fed. Cir. 2012) (holding SNAP SIMPLY SAFER merely descriptive for various medical devices, such as hypodermic,

aspiration, and injection needles and syringes); *In re Fallon*, 2020 USPQ2d 11249, at \*12 (TTAB 2020) (holding THERMAL MATRIX merely descriptive of a heat-responsive, malleable liner that is an integral component of an oral dental appliance).

Only where the combination of descriptive terms creates a unitary mark with a unique, incongruous, or otherwise nondescriptive meaning in relation to the goods and/or services is the combined mark registrable. *See In re Omniome, Inc.*, 2020 USPQ2d 3222, at \*4 (TTAB 2019) (citing *In re Colonial Stores, Inc.*, 394 F.2d 549, 551, 157 USPQ 382, 384 (C.C.P.A. 1968); *In re Shutts*, 217 USPQ 363, 364-65 (TTAB 1983)); *In re Positec Grp. Ltd.*, 108 USPQ2d 1161, 1162-63 (TTAB 2013).

In this case, both the individual components and the composite result are descriptive of applicant's goods and do not create a unique, incongruous, or nondescriptive meaning in relation to the goods .

Applicant should note the following additional ground for refusal.

**UNACCEPTABLE SPECIMEN OF USE -- Advertising for goods is not an acceptable specimen.**

Registration is also refused because the specimen appears to be mere advertising and does not properly show the applied-for mark as actually used in commerce in International Class(es) 12. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.04(b), 904.07(a). An application based on Trademark Act Section 1(a) must include a specimen showing the applied-for mark as actually used in commerce for each international class of goods identified in the application or amendment to allege use. 15 U.S.C. §1051(a)(1); 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

Specifically, applicant submitted an excerpt from applicant's website showing use of the mark with respect to applicant's merchant services. The mark does not appear to identify particular forklifts but the service providing used forklift sales and rentals.

Advertising is not acceptable as a specimen for goods. *See In re Yarnell Ice Cream, LLC*, 2019 USPQ2d 265039, at \*15-16 (TTAB 2019) (quoting *In re Siny Corp.*, 920 F.3d 1331, 1336, 2019 USPQ2d 127099, at \*2-3 (Fed. Cir. 2019)); *see also Avakoff v. S. Pac. Co.*, 765 F.2d 1097, 1098, 226 USPQ 435, 436 (Fed. Cir. 1985); TMEP §904.04(b), (c). Advertising includes online advertising banners appearing on search-engine results pages or in social media, advertising circulars and brochures, price lists, and business cards. *See* TMEP §904.04(b).

**Examples of specimens.** Specimens for goods include a photograph of (1) the actual goods bearing the mark; (2) an actual container, packaging, tag or label for the goods bearing the mark; or (3) a point-of-sale display showing the mark directly associated with the goods. *See* 37 C.F.R. §2.56(b)(1), (c); TMEP §904.03(a)-(m). A webpage specimen submitted as a display associated with the goods must show the mark in association with a picture or textual description of the goods and include information necessary for ordering the goods. TMEP §904.03(i); *see* 37 C.F.R. §2.56(b)(1), (c). Any webpage printout or screenshot submitted as a specimen must include the webpage's URL and the date it was accessed or printed on the specimen itself, within the TEAS form that submits the specimen, or in a verified statement under 37 C.F.R. §2.20 or 28 U.S.C. §1746 in a later-filed response. *See* 37 C.F.R. §2.56(c); TMEP §§904.03(i), 1301.04(a).

**Response options.** Applicant may respond to this refusal by satisfying one of the following for each applicable international class:

(1) Submit a different specimen (a verified “[substitute](#)” [specimen](#)) that (a) was in actual use in commerce at least as early as the filing date of the application or prior to the filing of an amendment to allege use and (b) shows the mark in actual use in commerce for the goods identified in the application or amendment to allege use. A “verified substitute specimen” is a specimen that is accompanied by the following statement made in a signed affidavit or supported by a declaration under 37 C.F.R. §2.20: “The substitute (or new, or originally submitted, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application or prior to the filing of the amendment to allege use.” The substitute specimen cannot be accepted without this statement.

(2) Amend the filing basis to [intent to use under Section 1\(b\)](#) (which includes withdrawing an amendment to allege use, if one was filed), as no specimen is required before publication. This option will later necessitate additional fee(s) and filing requirements, including a specimen.

For an overview of the response options referenced above and instructions on how to satisfy these options using the online Trademark Electronic Application System (TEAS) form, see the [Specimen webpage](#).

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

## **RESPONDING TO THIS OFFICE ACTION**

**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.

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

Applicant is further advised that 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.



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Dictionary

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# trader noun

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trād-er | \ 'trā-dər \

## Definition of *trader*

- 1 : a person whose business is buying and selling or barter: such as
  - a : MERCHANT
  - b : a person who buys and sells (something, such as stocks or commodities futures) in search of short-term profits
- 2 : a ship engaged in the coastal or foreign trade

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### Synonyms for *trader*

#### Synonyms

dealer, merchandiser, merchant, tradesman, trafficker

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### Examples of *trader* in a Sentence

// She is a stock *trader*.

// early explorers and fur *traders*

#### Recent Examples on the Web

// For Elon Musk, his relationship with the *trader* is essential to maintaining a steady supply for his gigafactories.

— Vivienne Walt, *Fortune*, 5 Aug. 2022

// The London *trader* and brokerage has agreed to sell its financial-services division, ED&F Man Capital Markets, which has 450 employees and made more than \$235 million in revenue last year, to crosstown rival Marex Group.

— *WSJ*, 1 Aug. 2022

// Russian media have speculated that Griner could be exchanged for prominent Russian arms *trader* Viktor Bout, who is imprisoned in the United States, and that Paul Whelan, an American imprisoned in Russia for espionage, may also figure in an

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— Vladimir Isachenkov, *Anchorage Daily News*, 27 July 2022

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[free trader](#)      [day trader](#)

**First Known Use of *trader***

1566, in the meaning defined at [sense 1](#)

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**Share *trader***




**Time Traveler for *trader***

**T** The first known use of *trader* was in 1566

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**MS** **Mirka Style** · 15 May, 2022

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## More Definitions for *trader*

**trader** **noun**

trad·er | \ ˈtrā-dər  \

**Kids Definition of *trader***

- 1** : a person who trades
- 2** : a ship engaged in commerce

**More from Merriam-Webster on *trader***

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trad-er<sup>ˈdɛr</sup> (trɪˈdɛr)

n.

1. One that trades; a dealer; a gold trader; a trader in bonds.
2. Nautical A ship employed in foreign trade.

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Thousands of entries in the dictionary include etymologies that trace their origins back to reconstructed proto-languages. You can obtain more information about these forms in our online appendices.

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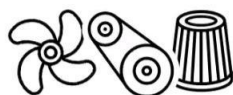
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+ What is the most common forklift size?

+ Do you need a certification to operate a forklift?

+ Do you need recertification to drive forklifts?



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Office Action (Official Letter) has issued  
on August 24, 2022 for  
**U.S. Trademark Application Serial No. 97120650**

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: Ingrid Eulin

Statistics for Case 97120650						
#	Search	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/Search Duration
1	97120650[sn]	1	0	0	0	0:00
2	*trader*[bi,ti]	2840	0	0	0	0:01
3	2 and "012"[cc]	999	0	0	0	0:01
4	2 and ("012" or "035" or a or b or "200")[ic]	700	0	198	198	0:01

Session started 08/23/2022 11:02 am

Session ended 08/24/2022 2:42 pm

Total search duration 3.00

Session duration 1 days 3 hours 40 minutes 4 seconds

Adjacency Level 1

Near Level 1