

To: Pamela Robinson(sales@robinsonsoftbrittle.com)
Subject: U.S. Trademark Application Serial No. 97118529 - PUMPKIN SPICE MARTINI
Sent: August 23, 2022 08:48:26 AM EDT
Sent As: tmng.notices@uspto.gov

Attachments

[90759262](#)

[screenshot-www-webstaurantstore-com-blog-1502-get-ready-for-pumpkin-flavored-everything-html-16612583694941](#)

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

U.S. Application Serial No. 97118529

Mark: PUMPKIN SPICE MARTINI

Correspondence Address:

PAMELA ROBINSON
9991 N. LYLE LOOP STE B
HAYDEN ID 83835 UNITED STATES

Applicant: Pamela Robinson

Reference/Docket No. N/A

Correspondence Email Address: sales@robinsonsoftbrittle.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 23, 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

Search Results and Prior Pending Application
Entity and Citizenship Clarification
Disclaimer Requirement

Search Results and Prior Pending Application

The trademark examining attorney has searched the USPTO's database of registered and pending marks and has found no similar registered marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; see 15 U.S.C. §1052(d). However, a mark in a prior-filed pending application may present a bar to registration of applicant's mark.

The filing date of pending U.S. Application Serial No. 90759262 precedes applicant's filing date. See attached referenced application. If the mark in the referenced application registers, applicant's mark may be refused registration under Trademark Act Section 2(d) because of a likelihood of confusion between the two marks. See 15 U.S.C. §1052(d); 37 C.F.R. §2.83; TMEP §§1208 *et seq.* Therefore, upon receipt of applicant's response to this Office action, action on this application may be suspended pending final disposition of the earlier-filed referenced application.

In response to this Office action, applicant may present arguments in support of registration by addressing the issue of the potential conflict between applicant's mark and the mark in the referenced application. Applicant's election not to submit arguments at this time in no way limits applicant's right to address this issue later if a refusal under Section 2(d) issues.

Entity and Citizenship Clarification

The name of an individual person appears in the section of the application intended for the trademark owner's name; however, the legal entity is set forth as a limited liability company. Applicant must clarify this inconsistency. See 37 C.F.R. §§2.32(a)(2), (a)(3)(i)-(ii), 2.61(b); TMEP §803.02(a).

If applicant is an individual, applicant should simply request that the legal entity be amended to "individual" and must indicate his/her country of citizenship for the record. 37 C.F.R. §2.32(a)(3)(i); TMEP §803.03(a). The applicant may adopt the following, if accurate: The applicant, Pamela Robinson, is a citizen of the United States.

Alternatively, if applicant is a limited liability company, applicant must provide the correct name of the limited liability company and the U.S. state or foreign country of incorporation or organization. 37 C.F.R. §2.32(a)(3)(ii); TMEP §803.03(h). The applicant may adopt the following, if accurate: The applicant, Robinson Soft Brittle, LLC, is a limited liability company of Idaho.

*Select only one.

If, in response to the above request, applicant provides information indicating that it is not the owner of the mark, registration may be refused because the application was void as filed. See 37 C.F.R. §2.71(d); TMEP §§803.06, 1201.02(b). An application must be filed by the party who owns or is entitled to use the mark as of the application filing date. See 37 C.F.R. §2.71(d); TMEP §1201.02(b).

Disclaimer Requirement

The applicant's voluntary disclaimer of a registrable term MARTINI is not necessary, and must be deleted. Because of the disclaimer requirement of the other descriptive wording in the mark (see disclaimer requirement below), an entire mark may not be disclaimed. TMEP §1213.06; *see* 15 U.S.C. §1056(a); *In re Dena Corp. v. Belvedere Int'l Inc.*, 950 F.2d 1555, 1560, 21 USPQ2d 1047, 1051 (Fed. Cir. 1991); *In re JT Tobacconists*, 59 USPQ2d 1080, 1081 n.1 (TTAB 2001). If the applied-for mark is not registrable as a whole, a disclaimer will not make it registrable. TMEP §1213.06. Accordingly, the disclaimer is not accepted and will not be entered into the USPTO's database. *See* TMEP §714.05(a).

However, applicant must provide a disclaimer of the unregistrable part(s) of the applied-for mark even though the mark as a whole appears to be registrable. *See* 15 U.S.C. §1056(a); TMEP §§1213, 1213.03(a). A disclaimer of an unregistrable part of a mark will not affect the mark's appearance. *See Schwarzkopf v. John H. Breck, Inc.*, 340 F.2d 978, 979-80, 144 USPQ 433, 433 (C.C.P.A. 1965).

In this case, applicant must disclaim the wording "PUMPKIN SPICE" because it is not inherently distinctive. These unregistrable term(s) at best are merely descriptive of an ingredient of applicant's goods. *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 <https://www.webrestaurantstore.com/blog/1502/get-ready-for-pumpkin-flavored-everything.html> defines PUMPKIN SPICE as a spice with "a mixture of cinnamon, ginger, nutmeg, allspice, and cloves." The plain meaning of the terms PUMPKIN SPICE immediately tells the customer that the toffee contains pumpkin spice, and thus merely describes an ingredient.

As a result, the terms PUMPKIN SPICE requires disclaiming as being merely descriptive.

An applicant may not claim exclusive rights to terms that others may need to use to describe their goods and/or services in the marketplace. *See Dena Corp. v. Belvedere Int'l, Inc.*, 950 F.2d 1555, 1560, 21 USPQ2d 1047, 1051 (Fed. Cir. 1991); *In re Aug. Storck KG*, 218 USPQ 823, 825 (TTAB 1983). A disclaimer of unregistrable matter does not affect the appearance of the mark; that is, a disclaimer does not physically remove the disclaimed matter from the mark. *See Schwarzkopf v. John H. Breck, Inc.*, 340 F.2d 978, 978, 144 USPQ 433, 433 (C.C.P.A. 1965); TMEP §1213.

If applicant does not provide the required disclaimer, the USPTO may refuse to register the entire mark. *See In re Stereotaxis Inc.*, 429 F.3d 1039, 1040-41, 77 USPQ2d 1087, 1088-89 (Fed. Cir. 2005); TMEP §1213.01(b).

Applicant should submit a disclaimer in the following standardized format:

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

For an overview of disclaimers and instructions on how to satisfy this disclaimer requirement online using the Trademark Electronic Application System (TEAS) form, please go to <http://www.uspto.gov/trademarks/law/disclaimer.jsp>.

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

/William Verhosek/
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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.

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



Mark Punctuated
MARTINI LINEA GELATO

Translation**Goods/Services**

- IC 029. US 046.G & S: Almonds, ground; candied nuts; cocoa butter for food; coconut butter; coconut fat; coconut oil for food; coconut, desiccated; condensed milk; cranberry compote; cream (dairy products); flavoured nuts; fruit jellies; fruit preserved in alcohol; fruit pulp; hazelnuts, prepared; jams; jellies for food; marmalade; nuts - based spreads; nuts, prepared; peanut butter, peanuts, prepared; peas, preserved; powdered milk; pressed fruit paste; vegetable-based cream, whipped cream
- IC 030. US 046.G & S: Almond (confectionery); almond paste; aromatic preparations for food; binding agents for ice creams; cereal preparations; chocolate; chocolate beverages with milk; chocolate decorations for cake; chocolate mousses; chocolate spreads containing nuts; chocolate - based beverages; chocolate - based spreads; chocolate coated nuts; cocoa; cocoa beverages with milk; cocoa - based beverages; coffee flavourings; coffee based beverages; confectionery/sugar confectionery; crème brûlée; dessert mousse (confectionery); dulce de leche; fruit confectionery; fruit coulis (sauces); fruit jellies (confectionery); ginger paste; honey; ice cream; powder for making ice cream; sorbet ices
- IC 031. US 001 046.G & S: Almond fruits; edible flowers (fresh); Almonds (fruits); Hazelnuts; Fresh hazelnuts; Peanuts, fresh; Nuts (fruits); Coconuts; Fresh coconuts; Nuts being fresh; Nuts (fruit); Fresh pine nuts; Fresh pistachio nuts; Cocoa beans, raw; Cocoa beans, raw; Natural seeds; Edible sesame, unprocessed
- IC 035. US 100 101 102.G & S: Advertising; business management; business administration; office functions; procurement services for others (purchasing goods and services for other businesses); administration of consumer loyalty programs; sponsorship search; professional business consultancy; consumer profiling for commercial; demonstration of goods; development of advertising concepts; dissemination of advertising matter; direct mail advertising; distribution of samples; market studies; organization of exhibitions for commercial or advertising purposes; invoicing; organization of trade fairs; bill-posting; commercial administration of the licensing of the goods and services of others; business management of reimbursement programmes for others; market intelligence services; commercial intermediation services; business investigations; marketing research; marketing; targeted marketing; negotiation of business contracts for others; presentation of goods on communication media, for retail purposes; appointment scheduling services (office functions); promotion of goods and services through sponsorship of sports events; sales promotion for others; publication of publicity texts; public relations; providing user reviews for commercial or advertising purposes; telemarketing services; administrative processing of purchase orders; retail services relating to almonds, ground; candied nuts; cocoa butter for food; coconut butter; coconut fat; coconut oil for food; coconut, desiccated; condensed milk; cranberry compote; cream (dairy products); flavoured nuts; fruit jellies; fruit preserved in alcohol; fruit pulp; hazelnuts, prepared; jams; jellies for food; marmalade; nuts - based spreads; nuts, prepared; peanuts, prepared; peas, preserved; powdered milk; pressed fruit paste; whipped cream; almond (confectionery); almond paste; aromatic preparations for food; binding agents for ice creams; cereal preparations; chocolate; chocolate beverages with milk; chocolate decorations for cake; chocolate mousses; chocolate

spreads containing nuts; chocolate - based beverages; chocolate - based spreads; chocolate coated nuts; cocoa; cocoa beverages with milk; cocoa - based beverages; coffee flavourings; coffee based beverages; confectionery/sugar confectionery; crème brûlée; dessert mousse (confectionery); dulce de leche; fruit confectionery; fruit coulis (sauces); fruit jellies (confectionery); sorbet ices; almond fruits; barley; edible flowers (fresh); grains (cereals); oats; wheat

Mark Drawing Code

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

Design Code

080901 261111 261121

Serial Number

90759262

Filing Date

20210607

Current Filing Basis

1B

Original Filing Basis

1B

Publication for Opposition Date**Registration Number****Date Registered****Owner**

(APPLICANT) Unigrà S.r.l. società a responsabilità limitata (srl) ITALY Via Gardizza 9/B Conselice (RA) ITALY 48017

Priority Date**Disclaimer Statement****Description of Mark**

The color(s) blue, light blue, green, white, and red is/are claimed as a feature of the mark. The mark consists of the stylized word "MARTINI" in blue appearing above the wording "LINEA GELATO" in light blue. To the right of the word "MARTINI" appears an ice cream cone design in light blue and below the wording "LINEA GELATO" appears a rectangle shape with the colors green, white, and red inside.

Type of Mark

TRADEMARK. SERVICE MARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

Attorney of Record

Candice E. Kim

WebstaurantStore*blog*

Coupon Codes

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Pumpkin Pie Spice Explained

Pumpkin spice is a staple in grocery stores and coffee shops during the fall and early winter months. It can be found in lattes, pancakes, **fall beers**, and candles, among other popular products. Many people question whether the pumpkin spice craze began with the popular pumpkin spice latte (#PSL), or if pumpkin spice even contains pumpkin at all. Below we'll investigate the history of this classic fall flavor and detail what is in pumpkin spice. We've also included a DIY pumpkin pie spice recipe!

What Is in Pumpkin Spice?

What Is Pumpkin Spice?

Pumpkin spice, also known as **pumpkin pie spice**, is a mixture of cinnamon, ginger, nutmeg, allspice, and cloves. Some pumpkin spice mixes might leave out a spice or two, but most consist of at least two or three of the spices listed above.

Does Pumpkin Spice Have Pumpkin?

No, pumpkin spice does not contain any pumpkin. Pumpkin spice is usually made from an assortment of spices. That being said, you can add ingredients such as pumpkin puree to your pumpkin spice mixture. The flavors of a pumpkin spice mix complement the flavors of pumpkin, and they even work well with other vegetables such as **sweet potatoes** and squash.

Why Is Pumpkin Spice Called Pumpkin Spice?

Pumpkin spice earned the name “pumpkin spice” because it was originally used in cakes and pies that contained pumpkin. In the 1950s and 1960s, spice manufacturers such as McCormick began marketing “pumpkin pie spice” and “pumpkin spice” to save consumers the effort of having to blend the mixture on their own. Over time, it’s become a common ingredient in numerous popular recipes, many of which don’t contain actual pumpkin.



Pumpkin Pie Spice Substitute

If you can’t find pumpkin spice or want to **discover another fall flavor**, consider using apple pie spice. A combination of cinnamon, ginger, nutmeg, allspice, and cloves can function as a suitable pumpkin spice substitute. It’s a good idea to include a fair amount of cinnamon, as it’s the main ingredient used in pumpkin spice. Cloves provide another dominant flavor in pumpkin pie spice, so it’s important to include them as well.

Pumpkin Pie Spice vs Apple Pie Spice

The difference between apple pie spice and pumpkin spice comes down to a slight variation in ingredients. Apple pie spice is made of cinnamon, nutmeg, allspice, ginger, and occasionally cardamom. Pumpkin spice includes a combination of those ingredients except for cardamom, but the key difference between the two is that pumpkin spice contains cloves.

Homemade Pumpkin Pie Spice

If you’ve ever found yourself in the mood to **grind your own spices** and **make your own pumpkin spice blend**, look no further. Below, we’ve provided a recipe for creating your own DIY pumpkin pie spice.

Pumpkin Pie Spice Ingredients

- ☑ 3 Tbsp. ground cinnamon
- ☑ 2 tsp. ground ginger
- ☑ 2 tsp. nutmeg
- ☑ 1 1/2 tsp. ground allspice
- ☑ 1 1/2 tsp. ground cloves
- ☑ 1/2 tsp. ground cardamom (optional)



How to Make Pumpkin Pie Spice

1. Measure out each ingredient and place in a small bowl.
2. Whisk together cinnamon, ginger, nutmeg, allspice, and cloves until combined.
3. Store in an airtight jar or container.

Pumpkin Spice Everything

Pumpkin spice can be found in anything from sweet desserts to beverages to cereal. Though it typically comes in powder form, pumpkin spice **also comes in syrups** that can be used in a variety of recipes. Below, we've included a list of foods and drinks that include pumpkin spice.

- Pumpkin pie
- Pumpkin spice latte
- Pumpkin chai latte
- Pumpkin-flavored coffee
- Pumpkin pie spice muffins, pancakes, and waffles
- Pumpkin maple pecan granola
- Ginger cookies
- Soft pumpkin cookies
- Pumpkin spice sugar cookies



Pumpkin Spice Latte

The first major retailer to capitalize on the pumpkin spice phenomenon was Starbucks. In 2004, they launched their immensely popular Pumpkin Spice Latte, though its history dates back further than that.

In 2003, a former Stanford basketball athlete with an MBA named Peter Dukes led a team that handcrafted the Pumpkin



Spice Latte over 3 months. Within a week of the market test, Starbucks store managers raved about its success in their stores.

Since then, over 200 million Starbucks Pumpkin Spice Lattes have been served, and many coffee shops now serve their own version of the drink. The drink even has its own Twitter and Instagram pages, and the hashtag #PSL has a lively presence over multiple social media platforms.



Even now, the pumpkin spice trend continues to grow. Come fall, you'll be able to find this flavor on the menus of coffee shops and restaurants and in nearly every aisle at the grocery store. Incorporating pumpkin pie spice into your restaurant menu or home-cooked dishes is a great way to add a touch of fall to your dining experience. Just be sure to **label your spices to ensure peak freshness**.



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United States Patent and Trademark Office (USPTO)

USPTO OFFICIAL NOTICE

Office Action (Official Letter) has issued
on August 23, 2022 for
U.S. Trademark Application Serial No. 97118529

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: William Verhosek

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#	Search	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/Search Duration
1	97118529[sn]	1	0	0	0	0:00
2	*pum\$1{"kq"}{v}n*[bi,ti] and live[ld]	328	0	328	328	0:00
3	*{"sz"}p{"iy"}{"csz"}e*[bi,ti] and live[ld]	1796	0	0	0	0:02
4	*mart{v}n*[bi,ti] and live[ld]	1380	0	0	0	0:01
5	2 and (3 4)	15	0	15	15	0:02
6	3 and 4	2	0	2	2	0:02
7	3 and "030"[cc]	1238	0	0	0	0:02
8	(spice spices)[bi,ti] and live[ld]	1277	0	0	0	0:01
9	8 and "030"[cc]	1036	0	0	0	0:00
10	8 and ("030" A B "200")[ic]	732	0	33	33	0:01
11	8 and ("032" A B "200")[ic]	26	0	24	24	0:01
12	8 and ("035" A B "200")[ic]	114	0	75	75	0:01
13	8 and ("042" A B "200")[ic]	22	0	22	22	0:01
14	8 and ("033" A B "200")[ic]	49	0	49	49	0:01
15	4 and "030"[cc]	530	0	530	530	0:01

Session started 08/23/2022 7:59 am

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Adjacency Level 1

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