

To: Richard, Brandon(Djstolova@gmail.com)
Subject: U.S. Trademark Application Serial No. 97120559 - SNIFFYS
Sent: August 27, 2022 02:35:28 PM EDT
Sent As: tmng.notices@uspto.gov

Attachments

[90975832](#)
[86708706](#)

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

U.S. Application Serial No. 97120559

Mark: SNIFFYS

Correspondence Address:

RICHARD, BRANDON
402 24TH STREET
VIRGINIA BEACH VA 23451 UNITED STATES

Applicant: Richard, Brandon

Reference/Docket No. N/A

Correspondence Email Address: Djstolova@gmail.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 27, 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 OF USPTO DATABASE OF MARKS

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

SUMMARY OF ISSUES:

- Advisory - Prior-Filed Pending Applications
- Sections 1, 2, and 45 Refusal - Failure to Function as a Trademark as Used on the Specimen

ADVISORY - PRIOR-FILED PENDING APPLICATIONS

The filing dates of pending U.S. Application Serial Nos. 86708706 and 90975832 precede applicant's filing date. See attached referenced applications. If one or more of the marks in the referenced applications register, applicant's mark may be refused registration under Trademark Act Section 2(d) because of a likelihood of confusion with the registered mark(s). 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 applications.

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 marks in the referenced applications. 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.

SECTIONS 1, 2, AND 45 REFUSAL - FAILURE TO FUNCTION AS A TRADEMARK AS USED ON THE SPECIMEN

Registration is refused because the applied-for mark as used on the specimen of record is merely a decorative or ornamental feature of applicant's clothing and, thus, does not function as a trademark to indicate the source of applicant's clothing and to identify and distinguish applicant's clothing from others. Trademark Act Sections 1, 2, and 45, 15 U.S.C. §§1051-1052, 1127; see *In re Lululemon Athletica Can. Inc.*, 105 USPQ2d 1684, 1689 (TTAB 2013); *In re Pro-Line Corp.*, 28 USPQ2d 1141, 1142 (TTAB 1993); TMEP §§904.07(b), 1202.03 *et seq.*

The size, location, dominance, and significance of the alleged mark as used on the goods are all relevant factors in determining the commercial impression of the applied-for mark. See, e.g., *In re Peace Love World Live, LLC*, 127 USPQ2d 1400, 1403 (TTAB 2018) (quoting *In re Hulting*, 107 USPQ2d 1175, 1178 (TTAB 2013)); *In re Lululemon Athletica Can. Inc.*, 105 USPQ2d at 1687 (quoting *In re Right-On Co.*, 87 USPQ2d 1152, 1156 (TTAB 2008)); TMEP §1202.03(a).

With respect to clothing, consumers may recognize small designs or discrete wording as trademarks, rather than as merely ornamental features, when located, for example, on the pocket or breast area of a shirt. See TMEP §1202.03(a). Consumers may not, however, perceive larger designs or slogans as trademarks when such matter is prominently displayed across the front of a t-shirt. See *In re Pro-Line Corp.*, 28 USPQ2d at 1142; *In re Dimitri's Inc.*, 9 USPQ2d 1666, 1667-68 (TTAB 1988); TMEP §1202.03(a), (b), (f)(i), (f)(ii).

In this case, the submitted specimen shows the applied-for mark, "SNIFFYS", located directly on the front portion of the hat, where ornamental elements often appear. *See* TMEP §1202.03(a), (b). Furthermore, the mark is displayed in a relatively large size on the clothing such that it dominates the overall appearance of the goods. Lastly, the applied-for mark appears to be a slogan that is used in a merely decorative manner that would be perceived by consumers as having little or no particular source-identifying significance.

Therefore, consumers would view the applied-for mark as a decorative or ornamental feature of the goods, rather than as a trademark to indicate the source of applicant's goods and to distinguish them from others.

In appropriate circumstances, applicant may overcome this refusal by satisfying one of the following options:

- (1) Submit a different specimen (a verified ["substitute" specimen](#)) that 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 that shows proper trademark use for the identified goods in International Class 25. Examples of acceptable specimens that show non-ornamental use on clothing include hang tags and labels used inside a garment.
- (2) Amend to the [Supplemental Register](#), which is a second trademark register for marks not yet eligible for registration on the Principal Register, but which may become capable over time of functioning as source indicators.
- (3) Claim acquired distinctiveness under Trademark Act Section 2(f) by submitting [evidence](#) that the applied-for mark has become distinctive of applicant's goods; that is, proof that applicant's extensive use and promotion of the mark allowed consumers now directly to associate the mark with applicant as the source of the goods.
- (4) Submit evidence that the applied-for mark is an [indicator of secondary source](#); that is, proof that the mark is already recognized as a source indicator for *other* goods or services that applicant sells/offers.
- (5) Amend the filing basis to [intent to use under Section 1\(b\)](#). This option will later necessitate additional fee(s) and filing requirements.

For an overview of the response options above and instructions on how to satisfy each option online using the Trademark Electronic Application System (TEAS) form, see the [Ornamental Refusal 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.

ASSISTANCE

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

SNIFFIES

Mark Punctuated

SNIFFIES

Translation

Goods/Services

- IC 025. US 022 039.G & S: Clothing, namely, t-shirts, sweatshirts, underwear; headgear, namely, hats and caps; footwear. FIRST USE: 20200801. FIRST USE IN COMMERCE: 20200801

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Design Code

Serial Number

90975832

Filing Date

20210810

Current Filing Basis

1A;44E

Original Filing Basis

1A;1B;44D

Publication for Opposition Date

Registration Number

Date Registered

Owner

(APPLICANT) Sniffies, LLC LIMITED LIABILITY COMPANY DELAWARE 522 W Riverside Ave, Suite N Spokane WASHINGTON 99201

Priority Date

20210603

Disclaimer Statement

Description of Mark

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

Attorney of Record
Raffi Zerounian

(4) STANDARD CHARACTER MARK

SNIFF

Mark Punctuated

SNIFF

Translation

Goods/Services

- IC 025. US 022 039.G & S: Socks and undergarments

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Design Code

Serial Number

86708706

Filing Date

20150729

Current Filing Basis

1B

Original Filing Basis

1B

Publication for Opposition Date

20200804

Registration Number

Date Registered

Owner

(APPLICANT) Drymax Technologies, Inc. CORPORATION NORTH CAROLINA 3720 La Cruz Way Paso Robles CALIFORNIA 93446

Priority Date

Disclaimer Statement

Description of Mark

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

Attorney of Record
F. Emmett Weindruch

United States Patent and Trademark Office (USPTO)

USPTO OFFICIAL NOTICE

Office Action (Official Letter) has issued
on August 27, 2022 for
U.S. Trademark Application Serial No. 97120559

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: Rhoda Nkojo

Statistics for Case 97120559						
#	Search	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/Search Duration
1	*snif*[bi,ti] and live[lid]	150	0	150	150	0:02
2	*{"szc"}{"n"1:2}{"iy"}f*[bi,ti] and live[lid]	166	0	166	166	0:01
3	*{"szc"}{"n"1:2}{"iy"}ph*[bi,ti] and live[lid]	0	0	0	0	0:00

Session started 08/27/2022 1:47 pm

Session ended 08/27/2022 1:50 pm

Total search duration 3.00

Session duration 3 minutes 3 seconds

Adjacency Level 1

Near Level 1

Note To The File

Serial Number: 97120559

Date: 08/27/2022 1:43 pm

Created by: Rhoda Nkojo

SNIFFYS

Searched

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