

**To:** Delaila J. Estefano, Esq.([delaila@estefanolaw.com](mailto:delaila@estefanolaw.com))  
**Subject:** U.S. Trademark Application Serial No. 97120555 - RIGOLEONART  
**Sent:** August 27, 2022 06:09:46 PM EDT  
**Sent As:** [tmng.notices@uspto.gov](mailto:tmng.notices@uspto.gov)

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**Attachments**

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

**U.S. Application Serial No.** 97120555

**Mark:** RIGOLEONART

**Correspondence Address:**

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CORAL GABLES FL 33134 UNITED STATES

**Applicant:** RIGO LEON ART LLC

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

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**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 marks that would bar registration under Trademark Act Section 2(d). 15 U.S.C. §1052(d); TMEP §704.02.

### **SUMMARY OF ISSUES:**

- Specimen Unacceptable in International Class 41
- Requirement - Amend Identification and/or Classification of Goods and Services
- Multiple-Class Application Requirements

### **SPECIMEN UNACCEPTABLE IN INTERNATIONAL CLASS 41**

**Specimen does not show direct association between mark and services.** Registration is refused because the specimen does not show a direct association between the mark and the services and fails to show the applied-for mark as actually used in commerce with the identified services in International Class(es) 41. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a), (b)(2); TMEP §§904, 904.07(a), 1301.04(f)(ii), (g)(i). 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 services 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).

When determining whether a mark is used in connection with the services in the application, a key consideration is the perception of the user. *In re JobDiva, Inc.*, 843 F.3d 936, 942, 121 USPQ2d 1122, 1126 (Fed. Cir. 2016) (citing *Lens.com, Inc. v. 1-800 Contacts, Inc.*, 686 F.3d 1376, 1381-82, 103 USPQ2d 1672, 1676 (Fed Cir. 2012)). A specimen must show the mark used in a way that would create in the minds of potential consumers a sufficient nexus or direct association between the mark and the services being offered. *See* 37 C.F.R. §2.56(b)(2); *In re Universal Oil Prods. Co.*, 476 F.2d 653, 655, 177 USPQ2d 456, 457 (C.C.P.A. 1973); TMEP §1301.04(f)(ii).

To show a direct association, specimens consisting of advertising or promotional materials must (1) explicitly reference the services and (2) show the mark used to identify the services and their source. *In re The Cardio Grp., LLC*, 2019 USPQ2d 227232, at \*2 (TTAB 2019) (quoting *In re WAY Media, LLC*, 118 USPQ2d 1697, 1698 (TTAB 2016)); TMEP §1301.04(f)(ii). Although the exact nature of the services does not need to be specified in the specimen, there must be something that creates in the mind of the purchaser an association between the mark and the services. *In re Adair*, 45 USPQ2d 1211, 1215 (TTAB 1997) (quoting *In re Johnson Controls Inc.*, 33 USPQ2d 1318, 1320 (TTAB 1994)).

In the present case, the submitted specimen consists of a screenshot from applicant's webpage showing the applied-for mark and a depiction of a completed mural. The specimen is unacceptable because there is no reference to the mural art painting services identified in the application. While the specimen depicts a completed mural, such a picture does not establish that applicant provides the service of painting said mural for others. This depiction of a mural is vague and provides no context for the services such that applicant's services could be any variety of services not listed in the identification, including, photography services. As such, the specimen fails to create in the mind of the purchaser an association between the applied-for mark and the applied-for services because it is unclear from the specimen exactly what activity or services applicant is engaging in or providing. Thus, the specimen fails to show a direct association between the mark and the services.

**Examples of specimens.** Specimens for services must show a direct association between the mark and the services and include: (1) copies of advertising and marketing material, (2) a photograph of business signage or billboards, or (3) materials showing the mark in the sale, rendering, or advertising of the services. *See* 37 C.F.R. §2.56(b)(2), (c); TMEP §1301.04(a), (h)(iv)(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 services 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. However, if applicant responds to the refusal(s), applicant must also respond to the requirement(s) set forth below.

### **REQUIREMENT - AMEND IDENTIFICATION AND/OR CLASSIFICATION OF GOODS AND SERVICES**

For the reasons set forth below, specific wording in the identification of goods and services is misclassified and must be further clarified.

#### **International Class 19**

Applicant has classified the following goods and/or services in International Class 19: “sculptures of fiberglass and metal.” However, the proper classification for each item is as follows:

International Class 6: Sculptures of metal;

International Class 21: Sculptures made out of fiberglass.

Additionally, applicant has provided the application fee(s) for only 1 international class(es). Thus, not all international classes in the application are covered by the application fee(s). Because of this disparity, applicant must clarify the number of classes for which registration is sought. *See* 37 C.F.R. §§2.32(d), 2.86(a).

Applicant may respond by (1) adding one or more international class(es) to the application, and reclassifying the above goods and/or services accordingly; or (2) deleting from the application the goods and/or services for all but the number of international class(es) for which the application fee was submitted. *See* 37 C.F.R. §§2.86(a), 6.1; TMEP §§1403.02 *et seq.* If applicant adds one or more international classes to the application, applicant must comply with the multiple-class application requirements specified in this Office action.

Accordingly, if accurate, applicant may adopt any or all of the following identifications, with suggested language specified in bold:

International Class 6: **Sculptures of metal;**

International Class 16: Art pictures in the nature of drawings; art pictures in the nature of paintings; art pictures on canvas; art prints on canvas; framed art pictures; framed graphic art reproductions; graphic art prints; graphic fine art prints; original art pictures on canvas; photographic or art mounts

International Class 19: Sculptures of concrete;

International Class 21: **Sculptures made out of fiberglass;**

International Class 25: Pants; shirts; t-shirts; hats; jackets; sweat shirts;

International Class 41: Mural art painting services.

### **Scope Advisory**

Applicant may amend the identification to clarify or limit the goods and/or services, but not to broaden or expand the goods and/or services beyond those in the original application or as acceptably amended. *See* 37 C.F.R. §2.71(a); TMEP §1402.06. Generally, any deleted goods and/or services may not later be reinserted. *See* TMEP §1402.07(e).

For assistance with identifying and classifying goods and services in trademark applications, please see the USPTO's online searchable [\*U.S. Acceptable Identification of Goods and Services Manual\*](#). *See* TMEP §1402.04.

### **MULTIPLE-CLASS APPLICATION REQUIREMENTS**

The application references goods and/or services based on use in commerce in more than one international class; therefore, applicant must satisfy all the requirements below for each international class:

- (1) **List the goods and/or services by their international class number** in

consecutive numerical order, starting with the lowest numbered class (for example, International Class 3: perfume; International Class 18: cosmetic bags sold empty).

(2) **Submit a filing fee for each international class** not covered by the fee(s) already paid (view the [USPTO's current fee schedule](#)). Specifically, the application identifies goods and/or services based on use in commerce that are classified in at least 6 classes; however, applicant submitted a fee(s) sufficient for only 4 class(es). Applicant must either (a) submit the filing fees for the classes not covered by the submitted fees or (b) restrict the application to the number of classes covered by the fees already paid.

(3) **Submit verified dates of first use of the mark** anywhere and in commerce for each international class. [See more information about verified dates of use.](#)

(4) **Submit a specimen for each international class.** The current specimen is acceptable for class(es) 16, 19, and 25; and applicant needs a specimen for class(es) 6, 21, and 41. [See more information about specimens.](#)

**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).

Specimens for services must show a direct association between the mark and the services and include: (1) copies of advertising and marketing material, (2) a photograph of business signage or billboards, or (3) materials showing the mark in the sale, rendering, or advertising of the services. *See* 37 C.F.R. §2.56(b)(2), (c); TMEP §1301.04(a), (h)(iv)(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).

(5) **Submit a verified statement** that “**The specimen was in use in commerce on or in connection with the goods and/or services listed in the application at least as early as the filing date of the application.**” [See more information about verification.](#)

*See* 37 C.F.R. §2.86(a); TMEP §§1403.01, 1403.02(c).

For an overview of the requirements for a Section 1(a) multiple-class application and how to satisfy the requirements online using the Trademark Electronic Application System (TEAS) form, see the [Multiple-class Application webpage](#).

## **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.

## 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. 97120555**

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.



Statistics for Case 97120555						
#	Search	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/Search Duration
1	*rigoleonart*[bi,ti] and live[ld]	1	0	1	1	0:01
2	*rigo*[bi,ti] an dlive[ld]	871297	0	0	0	0:04
3	*leon*[bi,ti] and live[ld]	1291	0	0	0	0:01
4	*art*[bi,ti] and live[ld]	79718	0	0	0	0:01
5	*r{"iey"1:2}{"gj"1:2}o{v0:1}{"l"1:2}{"iey"1:2}{v0:1}{"n"1:2}{v0:1}{"r"1:2}t*[bi,ti] and live[ld]	1	0	1	1	0:01
6	*r{"iey"1:2}{"gj"1:2}o*[bi,ti] and live[ld]	1757	0	0	0	0:02
7	*l{"iey"1:2}{v0:1}n*[bi,ti] and live[ld]	119534	0	13	13	0:02
8	*a{"r"1:2}t*[bi,ti] and live[ld]	79764	0	0	0	0:01
9	2 and 3 and 4	2	0	2	2	0:00
10	2 and (3 4)	8664	0	0	0	0:00
11	3 and 4	25	0	22	22	0:00
12	6 and 7 and 8	5	0	5	5	0:03
13	6 and (7 8)	66	0	66	66	0:04
14	7 and 8	2564	0	0	0	0:02
15	le{"iey"0:1}{v0:1}n*[bi,ti] and live[ld]	4940	0	0	0	0:01
16	6 and "016"[cc]	614	0	0	0	0:02
17	6 and "019"[cc]	418	0	418	418	0:02
18	6 and "05"[cc]	0	0	0	0	0:01
19	6 and "025"[cc]	515	0	515	515	0:02
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28	15 and "016"[cc]	2209	0	0	0	0:00
29	15 and "019"[cc]	1267	0	0	0	0:01
30	15 and "025"[cc]	1467	0	0	0	0:00
31	15 and "041"[cc]	2422	0	0	0	0:00
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33	15 and ("014" a b "200")[ic]	103	0	103	103	0:01

Statistics for Case 97120555						
#	Search	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/Search Duration
34	15 and ("018" a b "200")[ic]	91	0	91	91	0:01
35	15 and ("025" a b "200")[ic]	347	0	347	347	0:01
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37	15 and ("035" a b "200")[ic]	644	0	573	573	0:01
38	15 and ("042" a b "200")[ic]	536	0	489	489	0:01
39	6 and "006"[cc]	449	0	0	0	0:01
40	6 and "021"[cc]	497	0	0	0	0:02
41	15 and "021"[cc]	1509	0	0	0	0:00
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46	6 and ("006" a b "200")[ic]	35	0	35	35	0:01
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48	47 and (6 8)	0	0	0	0	0:03
49	051502[dc] and live[ld]	4105	0	0	0	0:01
50	180706[dc] and live[ld]	778	0	5	778	0:01
51	49 and 50	2	0	2	2	0:00

Session started 08/27/2022 3:25 pm

Session ended 08/27/2022 5:08 pm

Total search duration 68.00

Session duration 1 hours 43 minutes 43 seconds

Adjacency Level 1

Near Level 1

# Note To The File

Serial Number: 97120555

Date: 08/27/2022 3:24 pm

Created by: Rhoda Nkojo



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## Searched

- Google
- Applicant's website