

**To:** Michelle K. Bray([michelle.bray@karglobal.com](mailto:michelle.bray@karglobal.com))  
**Subject:** U.S. Trademark Application Serial No. 97120628 - BACKLOT CARS  
**Sent:** August 24, 2022 11:32:11 PM EDT  
**Sent As:** [tmng.notices@uspto.gov](mailto:tmng.notices@uspto.gov)

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**Attachments**

[screenshot-www-lexico-com-en-definition-car-16613982081671](#)

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

**U.S. Application Serial No.** 97120628

**Mark:** BACKLOT CARS

**Correspondence Address:**

MICHELLE K. BRAY  
11299 N. ILLINOIS STREET  
CARMEL IN 46032 UNITED STATES

**Applicant:** BacklotCars, Inc.

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

**Correspondence Email Address:** [michelle.bray@karglobal.com](mailto:michelle.bray@karglobal.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.

**SUMMARY OF ISSUES:**

- Sections 1 and 45 Refusal - Unacceptable Specimen (Limited to Class 9 only);
- Requirement - Mark Description;
- Requirement - Identification of Goods and Services;
- Requirement - Disclaimer Statement.

## SEARCH OF USPTO'S DATABASE OF MARKS; NO CONFLICTING MARK(S) FOUND

The trademark examining attorney has searched the USPTO's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; *see* 15 U.S.C. §1052(d). However, applicant must respond to the refusal(s) and requirement(s) set forth below.

## SECTIONS 1 AND 45 REFUSAL - UNACCEPTABLE SPECIMEN THIS PARTIAL REFUSAL APPLIES TO INTERNATIONAL CLASS 9 ONLY

**Specimen is not an acceptable display for software.** Registration is refused because the specimen in International Class 9 is not acceptable as a display associated with downloadable software and does not show the applied-for mark as actually used in commerce. 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)(1); TMEP §§904, 904.03(e), (g), 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).

A display specimen for downloadable software (1) must show use of the mark directly associated with the goods and (2) such use must be of a point-of-sale nature. 37 C.F.R. §2.56(b)(1). To show use of a point-of-sale nature, a specimen generally must provide sufficient information to enable the user to download or purchase the software from a website. *See* TMEP §904.03(e) (citing *In re Azteca Sys., Inc.*, 102 USPQ2d 1955, 1957 (TTAB 2012)).

In this case, the specimen does not provide the means to enable the user to download or purchase the software from the website. *See In re Sones*, 590 F.3d 1282, 1286-89, 93 USPQ2d 1118, 1122-24 (Fed. Cir. 2009); *In re Azteca Sys., Inc.*, 102 USPQ2d at 1957; TMEP §904.03(e), (i). Accordingly, such material is mere advertising, which 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).

**Examples of specimens.** Specimens for downloadable software include instruction manuals or screen printouts from (1) webpages showing (a) the mark associated with the software and (b) ordering or purchasing information or information sufficient to download the software, (2) the actual program while running that shows the mark in the title bar, or (3) launch screens that show the mark in an introductory message box that appears after opening the program. *See* TMEP §904.03(e), (i), (j). 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 software 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.

Additionally, applicant may respond to the stated refusal by submitting evidence and arguments against the refusal. In addition, applicant may respond by doing one of the following:

(1) Deleting the class to which the refusal pertains;

(2) Filing a [Request to Divide Application form](#) (form #3) to divide out the goods and/or services that have not been refused registration, so that the mark may proceed toward publication for opposition in the classes to which the refusal does not pertain. *See* 37 C.F.R. §2.87. *See generally* TMEP §§1110 *et seq.* (regarding the requirements for filing a request to divide). If applicant files a request to divide, then to avoid abandonment, applicant must also file a timely response to all outstanding issues in this Office action, including the refusal. 37 C.F.R. §2.87(e)

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](#).

#### REQUIREMENT - MARK DESCRIPTION

The drawing shows the applied-for mark on a black background; however, the application does not state whether the color black is a feature of the mark. Applicant must clarify this inconsistency. TMEP §807.07(d); *see* 37 C.F.R. §2.61(b).

To clarify how black, white and/or gray are being used in the mark, applicant may satisfy one of the following:

(1) If **black, white and/or gray are a feature of the mark**, applicant must amend the color claim to include them and amend the description to identify where black, white and/or gray appear in the literal and/or design elements of the mark. The following color claim and description are suggested, if accurate:

Color claim: “The colors black and white are claimed as a feature of the mark.”

Description: The mark consists of the word "BACKLOT" in all white caps over a parking space design in white containing the word CARS in all white caps below the wording "BACKLOT," all appearing on a black background.

(2) If **black, white and/or gray** are not a feature of the mark, the following description is suggested, if accurate:

Description: The mark consists of the word "BACKLOT" in all caps over a parking space design containing the word CARS in all caps below the wording "BACKLOT." The color black represents background, shading, and/or transparent areas is are not part of the mark.

TMEP §807.07(d).

## REQUIREMENT – IDENTIFICATION OF GOODS AND SERVICES

The goods in International Class 9 are acceptable as written. The services in International Class 36 and International Class 42 are also acceptable as written. Similarly, the wording "providing an online marketplace which connects sellers and buyers via an online platform for the wholesale remarketing and sale of motor vehicles" in International Class 35 is acceptable.

However, the remaining wording in International Class 35 must be clarified. Specifically, applicant has classified "providing business services, namely, preparing motor vehicle inspection reports for remarketed motor vehicles" in Class 35; however, it appears that the proper classification of the services is Class 42 as these services are closely related to motor vehicle inspections, a Class 42 service. Therefore, applicant may respond by (1) reclassifying these services in the proper international class, or (2) deleting "providing business services, namely, preparing motor vehicle inspection reports for remarketed motor vehicles" from the application. *See* 37 C.F.R. §§2.86(a), 6.1; TMEP §§1403.02 *et seq.*

The wording "providing web-based transportation services for transporting and tracking of goods, namely, motor vehicles" in indefinite and needs to be clarified because the exact nature of "web-based transportation services" is unclear. Additionally, this wording is too broad and could include services in other international classes. *See* 37 C.F.R. §2.32(a)(6); TMEP §§1402.01, 1402.03. For example, this wording could encompass web-based transportation management logistics services to facilitate transporting and tracking of motor vehicles in Class 35 and providing a website featuring online non-downloadable software that enables users to arrange transport and tracking of motor vehicles in Class 42.

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.

Applicant may adopt the following identification, if accurate [changes are shown in **bold typeface**]:

CLASS 9 – "Providing a downloadable mobile application which connects sellers and buyers of motor vehicles facilitating the sale of motor vehicles;"

CLASS 35 – "Providing an online marketplace which connects sellers and buyers via an online

platform for the wholesale re-marketing and sale of motor vehicles; Providing web-based transportation services for transporting motor vehicles, **namely, providing web-based transportation management logistics services to facilitate transporting and tracking of motor vehicles;**"

CLASS 36 – "Financial services, namely, automotive dealer financing;" and

CLASS 42 – "Providing temporary use of online non-downloadable software which connects sellers and buyers via an online platform for the wholesale re-marketing and sale of motor vehicles; **Motor vehicle inspection services, namely,** preparing motor vehicle inspection reports for re-marketed motor vehicles; Providing web-based transportation services, namely, **providing a website featuring online non-downloadable software that enables users to arrange** transport and tracking of motor vehicles."

Applicant may amend the identification to clarify or limit the goods and services, but not to broaden or expand the goods and 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 services may not later be reinserted. *See* TMEP §1402.07(e).

#### REQUIREMENT DISCLAIMER STATEMENT

Applicant must disclaim the wording "CARS" because it is merely descriptive of a feature or purpose of applicant's goods and services. *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 Lexico.com by Oxford Dictionary shows the wording CAR means refers to "a four-wheeled road vehicle that is powered by an engine and is able to carry a small number of people." Meanwhile, as specified in the identification, applicant's goods and services are used for "wholesale remarketing and sale of motor vehicles" and "transporting and tracking of goods, namely, motor vehicles." Therefore, the wording CARS immediately informs consumers that applicant's goods and services are used to facilitate the sale of cars. The wording CARS therefore describes a feature or purpose of applicant's goods and services and must be disclaimed.

Applicant may respond to this issue by submitting a disclaimer in the following format:

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

For an overview of disclaimers and instructions on how to provide one using the Trademark Electronic Application System (TEAS), see the [Disclaimer webpage](#).

**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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Oxford English and Spanish Dictionary, Synonyms, and Spanish to English Translator

US DICTIONARY

car

Vrbo  
ONLY WHOLE  
VACATION HOMES

FIND YOURS

Home &gt; US English &gt; car

Definition of car in English:

**car**

See synonyms for car

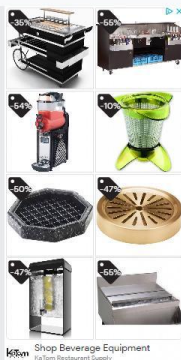
Translate car into Spanish

**NOUN**

- 1 A four-wheeled road vehicle that is powered by an engine and is able to carry a small number of people.  
*'she drove up in a car'*  
[+ More example sentences](#) [+ Synonyms](#)
- 1.1 A railroad vehicle for passengers or freight.  
*'the first-class cars'*  
[+ More example sentences](#) [+ Synonyms](#)
- 1.2 The passenger compartment of an elevator, cableway, airship, or balloon.  
*'he was in the elevator when the car stuck'*  
[+ More example sentences](#)
- 1.3 *literary* A chariot.  
*'And then Krishna and Arjuna, seated on the same car (chariot), blew their celestial conches'*  
[+ More example sentences](#)

**Pronunciation****car**

/kɑː/ /kɑr/

**Origin**Late Middle English (in the second sense, borrowed via Italian from Old Northern French *car*).Shop Beverage Equipment  
KaTom Restaurant SupplyShop Beverage Equipment  
KaTom Restaurant Supply**WORD OF THE DAY****otherwise**

/ˈɒðəwɪz/

ADVERB

Does English Have More Words  
Than Any Other Language?**'Adverse' or 'Averse'?**Which of the following is  
correct?

- ☐ He gave up after an adverse  
court ruling

**TRENDING WORDS**

Most popular in the world

1. cuddle
2. neddy
3. guerrilla art
4. nitto
5. liegeman

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## United States Patent and Trademark Office (USPTO)

### USPTO OFFICIAL NOTICE

Office Action (Official Letter) has issued  
on August 24, 2022 for  
**U.S. Trademark Application Serial No. 97120628**

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: Miroslav Novakovic

Statistics for Case 97120628						
#	Search	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/Search Duration
1	97120624[sn]	1	0	0	0	0:00
2	*ba{"ckqx"1:2}*[bi,ti] and live[ld]	15434	0	0	0	0:01
3	*lot*[bi,ti] and live[ld]	9558	0	0	0	0:01
4	*{"ckqx"1:2}ar*[bi,ti] and live[ld]	62499	0	0	0	0:01
5	*v{v0:2}h{v0:2}{"ckqx"1:2}{v0:2}l*[bi,ti] and live[ld]	1114	0	0	0	0:01
6	2 and 3	30	0	30	30	0:00
7	2 and 4	323	0	323	323	0:02
8	3 and 4	154	0	154	154	0:02
9	(2 3) AND 5	5	0	5	5	0:01
10	*ba{"ckqx"1:2}*[bi,ti] and live[ld] and *l{v1:2}t*[bi,ti] and live[ld] not 6	1277	0	0	0	0:04
11	*ba{"ckqx"1:2}*[bi,ti] and live[ld] and *l{v}t*[bi,ti] and live[ld] not 6	1249	0	25	26	0:01
12	(071111 Roads, streets, intersections, highways without lines or dividers)[dc] and live[ld]	1332	0	0	0	0:03
13	(261103 Incomplete rectangles)[dc] and live[ld]	3893	0	0	0	0:02
14	12 and 13	4	0	4	4	0:00
15	(12 13) and (2 3)	43	0	4	43	0:01

Session started 08/24/2022 8:14 pm

Session ended 08/24/2022 8:26 pm

Total search duration 20.00

Session duration 12 minutes 48 seconds

Adjacency Level 1

Near Level 1