

To: Loyd's Touch LLC(bloyd@loydstouch.com)
Subject: U.S. Trademark Application Serial No. 97118919 - LE' GUARDIAN
Sent: August 22, 2022 11:11:21 AM EDT
Sent As: tmng.notices@uspto.gov

Attachments

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

U.S. Application Serial No. 97118919

Mark: LE' GUARDIAN

Correspondence Address:

LOYD'S TOUCH LLC
PO BOX 65704
LOS ANGELES CA 90065 UNITED STATES

Applicant: Loyd's Touch 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 22, 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 Results

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.

Specimen is not an acceptable webpage display. Registration is refused because the specimen in International Class(es) 5 is not acceptable as a display associated with the goods 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. §2.56(a), (b)(1); *see* TMEP §§904, 904.03(g)-(i), 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 webpage or catalog display specimen (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). This means that this type of display specimen must include the following:

- (1) A **picture or sufficient textual description of the goods**;
- (2) The **mark associated with the goods**; and
- (3) A **means for ordering the goods** such as a “shopping cart” button/link, an order form, or a telephone number for placing orders.

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 1955, 1957-58 (TTAB 2012); *In re Dell Inc.*, 71 USPQ2d 1725, 1727 (TTAB 2004); *Lands’ End v. Manbeck*, 797 F. Supp. 511, 514, 24 USPQ2d 1314, 1316 (E.D. Va. 1992); TMEP §904.03(h), (i)-.03(i)(D).

In this case, the specimen does not show sufficient means for ordering the goods. Specifically, there is no “shopping cart” button/link, order form, or telephone number for placing orders visible on the webpage.

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 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). As specified above, 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](#).

Mark Differs on Drawing and Specimen

Mark shown on drawing does not match mark on specimen. Registration is refused because the specimen does not show the mark in the drawing in use in commerce in International Class(es) 5, which is required in the application or amendment to allege use. 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, 904.07(a), 1301.04(g)(i). The mark appearing on the specimen and in the drawing must match; that is, the mark in the drawing “must be a substantially exact representation of the mark” on the specimen. *See* 37 C.F.R. §2.51(a)-(b); TMEP §807.12(a).

In this case, the specimen displays the mark as Le' Guardian. However, the drawing displays the mark as Le' Guardian and design. The mark on the specimen does not match the mark in the drawing because the design element does not appear on the specimen. Applicant has thus failed to provide the required evidence of use of the mark in commerce. *See* TMEP §807.12(a).

Response options. Applicant may respond to this refusal by satisfying one of the following:

(1) **Submit a different specimen** (a verified “[substitute](#)” [specimen](#)) for each applicable international class that (a) shows the mark in the drawing in actual use in commerce for the goods and/or services in the application or amendment to allege use, and (b) 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.

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)(1), (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).

(2) **Submit a request to 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 such as providing a specimen.

The USPTO will not accept an amended drawing submitted in response to this refusal because the changes would materially alter the drawing of the mark in the original application or as previously acceptably amended. *See* 37 C.F.R. §2.72(a)-(b); TMEP §807.14. Specifically, deletion of the design element would create a mark with a different overall commercial impression.

For more information about drawings and instructions on how to satisfy these response options using the online Trademark Electronic Application System (TEAS) form, see the [Drawing webpage](#).

Color Claim

Applicant must clarify whether color is being claimed as a feature of the mark. *See* 37 C.F.R. §§2.37, 2.52(b)(1), 2.61(b); TMEP §§807.07(a) *et seq.* The drawing shows the mark in particular colors; however, the color claim indicate(s) that the colors can vary or change such that the mark may be used in color combinations different from those shown on the drawing.

An applicant may seek registration of only one mark in a single application. 37 C.F.R. §2.52; TMEP §807.01; *see* 15 U.S.C. §1051; *In re Int'l Flavors & Fragrances Inc.*, 183 F.3d 1361, 1366, 51 USPQ2d 1513, 1516-17 (Fed. Cir. 1999); *In re Hayes*, 62 USPQ2d 1443, 1445-46 (TTAB 2002). A mark with a changeable or “phantom” element such as varying or changing colors is generally considered to be more than one mark. *See In re Hayes*, 62 USPQ2d at 1445. In addition to the requirement to select one mark, the colors in the drawing of the mark, color claim, and description must match. *See* 37 C.F.R. §2.52(b)(1); TMEP §§807.07 *et seq.*

Applicant may clarify whether color is a feature of the mark by satisfying one of the following:

(1) **If applicant is not limiting the application to particular colors**, applicant must submit a (a) new drawing of the mark in black and white only, with no other colors, (b) statement authorizing deletion of any color claim, if appropriate, and (c) description of the literal and design elements in the mark that omits any reference to color. A registration for a mark with a black-and-white drawing covers depictions of the mark in all possible color combinations and is not limited to any particular color scheme. *See In re Data*

Packaging Corp., 453 F.2d 1300, 1302, 172 USPQ 396, 397 (C.C.P.A. 1972); TMEP §807.14(e)(i). In this case, amending the mark to delete color would not be considered a material alteration; however, any other amendments to the drawing will not be accepted if they would materially alter the mark. 37 C.F.R. §2.72; *see* TMEP §§807.07(c), 807.14 *et seq.*

The following description is suggested, if accurate:

The mark consists of the stylized wording "Le' Guardian" next to a silhouette of a woman.

(2) If **applicant is limiting the application to particular colors**, applicant must submit a (a) new drawing showing the mark in the specific colors for which registration is sought, or confirmation that the original drawing shows the mark for which registration is sought, and (b) an amended color claim that deletes the reference changeable or varying colors and restricts the color claim and description to only those colors in the new or original drawing, as appropriate. Generic color names must be used to describe the colors in the mark, e.g., red, yellow, blue. TMEP §807.07(a)(i)-(ii). If black, white, and/or gray represent background, outlining, shading, and/or transparent areas and are not part of the mark, applicant must so specify in the description. *See* TMEP §807.07(d).

The following color claim and description are suggested, if accurate:

Color claim: **"The colors magenta is claimed as a feature of the mark."**

Description: **"The mark consists of the stylized wording "Le' Guardian" in magenta next to a silhouette of a woman in magenta.**

See TMEP §807.07(a)(i)-(ii).

For more information about drawings and instructions on how to submit a color claim and/or description online using the Trademark Electronic Application System (TEAS) form, see the [Drawing webpage](#).

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.

Because of the legal technicalities and strict deadlines of the trademark application process, applicant is encouraged to hire a private attorney who specializes in trademark matters to assist in this process. The assigned trademark examining attorney can provide only limited assistance explaining the content of an Office action and the application process. USPTO staff cannot provide legal advice or statements about an applicant's legal rights. TMEP §§705.02, 709.06. *See* [Hiring a U.S.-licensed trademark attorney](#) for more information.

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 22, 2022 for
U.S. Trademark Application Serial No. 97118919

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: Ronald McMorrow

Statistics for Case 97118919						
#	Search	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/Search Duration
1	*guard{"i,e,y"}{v}n* or *gard{"i,e,y"}{v}n*[bi,ti]	4065	0	0	0	0:02
2	"le" or "la"[bi,ti]	47162	0	0	0	0:01
3	1 and 2	18	9	8	8	0:00
4	020326[dc]	5143	0	0	0	0:01
5	020324[dc]	15757	0	0	0	0:00
6	040703[dc]	21330	0	0	0	0:00
7	1 and (4 or 5 or 6) not dead[lid]	6	0	6	6	0:00
8	"005	62	0	0	0	0:01
9	"005"[ic] or "200"[ic] or "a"[ic] or "b"[ic]	523344	0	0	0	0:01
10	9 and 1 not dead[lid]	53	0	53	53	0:01
11	9 and (4 or 5 or 6) not dead[lid]	729	0	729	729	0:02
12	"005"[cc]	3398670	0	0	0	0:01
13	12 and 1 not 10 not dead[lid]	445	0	445	445	0:02
14	hygiene[gs] or pads[gs]	195354	0	0	0	0:01
15	1 and (4 or 5 or 6) and 14 not dead[lid]	1	0	1	1	0:00

Session started 08/22/2022 10:31 am

Session ended 08/22/2022 11:03 am

Total search duration 13.00

Session duration 32 minutes 6 seconds

Adjacency Level 1

Near Level 1