

**To:** Al Tafour, Omar Marwan([Banginfishandchicken@gmail.com](mailto:Banginfishandchicken@gmail.com))  
**Subject:** U.S. Trademark Application Serial No. 97119402 - BANGIN' FISH & CHICKEN  
**Sent:** August 25, 2022 12:07:12 PM EDT  
**Sent As:** [tmng.notices@uspto.gov](mailto:tmng.notices@uspto.gov)

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**Attachments**

[97036883](#)  
[6731639](#)  
[6084143](#)  
[97041534](#)

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

**U.S. Application Serial No.** 97119402

**Mark:** BANGIN' FISH & CHICKEN

**Correspondence Address:**

Al Tafour, Omar Marwan  
32 S Tollgate Rd  
Owings Mills MD 21117 UNITED STATES

**Applicant:** Al Tafour, Omar Marwan

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

**Correspondence Email Address:** [Banginfishandchicken@gmail.com](mailto:Banginfishandchicken@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 25, 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.

## **SECTION 2(d) REFUSAL**

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in each of the below listed U.S. Registration Nos. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See each attached registration.

6731639 BANGIN' BANGIN' for Bar services; Catering services; Providing of food and drink via a mobile

truck; Restaurant services; Serving of food and drink/beverages.

6084143 BANGIN BUNS HOT CHICKEN & design for Restaurant services; Restaurant services, including sit-down service of food and take-out restaurant services; Restaurant services, namely, providing of food and beverages for

consumption on and off the premises; Fast casual restaurants featuring chicken; Fast-food restaurant

services.

Trademark Act Section 2(d) bars registration of an applied-for mark that is so similar to a registered mark that it is likely consumers would be confused, mistaken, or deceived as to the commercial source of the goods and/or services of the parties. *See* 15 U.S.C. §1052(d). Likelihood of confusion is determined on a case-by-case basis by applying the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973) (called the “*du Pont* factors”). *In re i.am.symbolic, llc*, 866 F.3d 1315, 1322, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017). Any evidence of record related to those factors need be considered; however, “not all of the *DuPont* factors are relevant or of similar weight in every case.” *In re Guild Mortg. Co.*, 912 F.3d 1376, 1379, 129 USPQ2d 1160, 1162 (Fed. Cir. 2019) (quoting *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1406, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997)).

Although not all *du Pont* factors may be relevant, there are generally two key considerations in any likelihood of confusion analysis: (1) the similarities between the compared marks and (2) the relatedness of the compared goods and/or services. *See In re i.am.symbolic, llc*, 866 F.3d at 1322, 123 USPQ2d at 1747 (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103, 192 USPQ 24, 29 (C.C.P.A. 1976) (“The fundamental inquiry mandated by [Section] 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks.”); TMEP §1207.01.

## **COMPARISON OF MARKS**

Marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1321, 110 USPQ2d 1157, 1160 (Fed. Cir. 2014) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1371, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005)); TMEP §1207.01(b)-(b)(v). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) (citing *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)), *aff’d per curiam*, 777 F. App’x 516, 2019 BL 343921 (Fed. Cir. 2019); TMEP §1207.01(b).

In this instance, applicant's mark is BANGIN' FISH & CHICKEN with "fish & chicken" disclaimed. Although applicant's mark is marginally stylized, the registrants' marks are either a standard character mark, or, reinforce the association with chicken with the image of a chicken. A mark in typed or standard characters may be displayed in any lettering style; the rights reside in the wording or other literal element and not in any particular display or rendition. *See In re Viterra Inc.*, 671 F.3d 1358, 1363, 101 USPQ2d 1905, 1909 (Fed. Cir. 2012); *In re Mighty Leaf Tea*, 601 F.3d 1342, 1348, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010); 37 C.F.R. §2.52(a); TMEP §1207.01(c)(iii). Thus, a mark presented in stylized characters and/or with a design element generally will not avoid likelihood of confusion with a mark in typed or standard characters because the word portion could be presented in the same manner of display. *See, e.g., In re Viterra Inc.*, 671 F.3d at 1363, 101 USPQ2d at 1909; *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 1041, 216 USPQ 937, 939 (Fed. Cir. 1983) (stating that "the argument concerning a difference in type style is not viable where one party asserts rights in no particular display"). Where "chicken" is the primary and disclaimed featured dish for each of the restaurants, the appearance of the design of a chicken merely strengthens, rather than distances, the likelihood that source confusion between restaurants featuring chicken would exist among consumers desiring a meal of chicken.

The use of the portion "BANGIN" thus creates the dominant source indicating feature of the applicant's mark. Although marks are compared in their entireties, one feature of a mark may be more significant or dominant in creating a commercial impression. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 1305, 128 USPQ2d 1047, 1050 (Fed. Cir. 2018) (citing *In re Dixie Rests.*, 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997)); TMEP §1207.01(b)(viii), (c)(ii). Greater weight is often given to this dominant feature when determining whether marks are confusingly similar. *See In re Detroit Athletic Co.*, 903 F.3d at 1305, 128 USPQ2d at 1050 (citing *In re Dixie Rests.*, 105 F.3d at 1407, 41 USPQ2d at 1533-34).

Each mark uses the same portion and thus creates a likelihood of source confusion.

### **COMPARISON OF GOODS/SERVICES**

In this instance, applicant's services are recited as "Restaurant" thus encompassing all those of the registrants, including the more narrowly recited types of restaurants, such as "Fast casual restaurants featuring chicken" which is a mainstay of applicant's featured food as well.

When analyzing an applicant's and registrant's goods and/or services for similarity and relatedness, that determination is based on the description of the goods and/or services in the application and registration at issue, not on extrinsic evidence of actual use. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1323, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014) (quoting *Octocom Sys. Inc. v. Hous. Computers Servs. Inc.*, 918 F.2d 937, 942, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990)).

In this case, the goods and/or services in the application and registration(s) are identical. Therefore, it is presumed that the channels of trade and class(es) of purchasers are the same for these goods and/or services. *See Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 1372, 127 USPQ2d 1797, 1801 (Fed. Cir. 2018) (quoting *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012)). Thus, applicant's and registrant's goods and/or services are related.

Hence, the overall similarities between the Registrant's and Applicant's marks and goods and/or services, and the commercial impressions that they create, are greater than the differences, and refusal of registration of Applicant's mark under Section 2(d) is appropriate.

If applicant responds to the refusal(s), applicant must also respond to the requirement(s) set forth below.

### **PRIOR-FILED APPLICATION**

The filing date of pending of each U.S. Application Serial No. 97036883 and 97041534 precedes applicant's filing date. See attached referenced applications. 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.

**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

NASHVILLE STYLE  
Bangin Buns  
HOT CHICKEN

**Mark Punctuated**

NASHVILLE STYLE BANGIN BUNS HOT CHICKEN

**Translation**

**Goods/Services**

- IC 043. US 100 101.G & S: Fast-food restaurant services; Restaurant services; Restaurant services featuring chicken; Restaurant services, namely, providing of food and beverages for consumption on and off the premises; Restaurant services, including sit-down service of food and take-out restaurant services. FIRST USE: 20210101. FIRST USE IN COMMERCE: 20210101

**Mark Drawing Code**

(4) STANDARD CHARACTER MARK

**Design Code**

**Serial Number**

97036883

**Filing Date**

20210921

**Current Filing Basis**

1A

**Original Filing Basis**

1A

**Publication for Opposition Date**

**Registration Number**

**Date Registered**

**Owner**

(APPLICANT) ROBK, INC CORPORATION CALIFORNIA 12714 Sherman Way North Hollywood CALIFORNIA 91605

**Priority Date**

**Disclaimer Statement**

**Description of Mark**

**Type of Mark**

SERVICE MARK

**Register**

PRINCIPAL

**Live Dead Indicator**

LIVE

**Attorney of Record**

Michael Peng

**(4) STANDARD CHARACTER MARK**

BANGIN' BANGIN'

**Mark Punctuated**

BANGIN' BANGIN'

**Translation**

**Goods/Services**

- IC 043. US 100 101.G & S: Bar services; Catering services; Providing of food and drink via a mobile truck; Restaurant services; Serving of food and drink/beverages. FIRST USE: 20200615. FIRST USE IN COMMERCE: 20200615

**Mark Drawing Code**

(4) STANDARD CHARACTER MARK

**Design Code**

**Serial Number**

90843017

**Filing Date**

20210722

**Current Filing Basis**

1A

**Original Filing Basis**

1A

**Publication for Opposition Date**

20220301

**Registration Number**

6731639

**Date Registered**

20220524

**Owner**

(REGISTRANT) Slutty Vegan ATL, LLC LIMITED LIABILITY COMPANY GEORGIA 489 Edgewood Ave SE Atlanta GEORGIA 30312

**Priority Date**

**Disclaimer Statement**

**Description of Mark**

**Type of Mark**

SERVICE MARK

**Register**

PRINCIPAL

**Live Dead Indicator**

LIVE

**Attorney of Record**

Jami A. Gekas



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



**Mark Punctuated**

BANGIN BUNS HOT CHICKEN

**Translation**

**Goods/Services**

- IC 043. US 100 101.G & S: Restaurant services; Restaurant services, including sit-down service of food and take-out restaurant services; Restaurant services, namely, providing of food and beverages for consumption on and off the premises; Fast casual restaurants featuring chicken; Fast-food restaurant services. FIRST USE: 20180402. FIRST USE IN COMMERCE: 20180402

**Mark Drawing Code**

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

**Design Code**

031503 031524

**Serial Number**

88686732

**Filing Date**

20191111

**Current Filing Basis**

1A

**Original Filing Basis**

1A

**Publication for Opposition Date**

20200407

**Registration Number**

6084143

**Date Registered**

20200623

**Owner**

(REGISTRANT) Nshan Nshanyan INDIVIDUAL UNITED STATES 3620 Haven Way Burbank CALIFORNIA 91504

**Priority Date**

**Disclaimer Statement**

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "HOT CHICKEN" APART FROM THE MARK AS SHOWN

**Description of Mark**

Color is not claimed as a feature of the mark. The mark consists of the words "BANGIN BUNS" and "HOT CHICKEN" in stylized font, partially encircling a stylized running chicken.

**Type of Mark**

SERVICE MARK

**Register**

PRINCIPAL

**Live Dead Indicator**

LIVE

**Attorney of Record**

Michael Peng

(4) STANDARD CHARACTER MARK

Bangin Buns

**Mark Punctuated**

BANGIN BUNS

**Translation**

**Goods/Services**

- IC 043. US 100 101.G & S: Restaurant; Restaurant services featuring chicken; Restaurant services, including sit-down service of food and take-out restaurant services; Restaurant services, namely, providing of food and beverages for consumption on and off the premises; Fast casual restaurants; Fast-food restaurant services. FIRST USE: 20200101. FIRST USE IN COMMERCE: 20200101

**Mark Drawing Code**

(4) STANDARD CHARACTER MARK

**Design Code**

**Serial Number**

97041534

**Filing Date**

20210923

**Current Filing Basis**

1A

**Original Filing Basis**

1A

**Publication for Opposition Date**

**Registration Number**

**Date Registered**

**Owner**

(APPLICANT) ROBK, INC DBA Bangin Buns CORPORATION CALIFORNIA 12714 Sherman Way North Hollywood CALIFORNIA 91605

**Priority Date**

**Disclaimer Statement**

**Description of Mark**

**Type of Mark**

SERVICE MARK

**Register**

PRINCIPAL

**Live Dead Indicator**

LIVE

**Attorney of Record**

Michael Peng

## United States Patent and Trademark Office (USPTO)

### USPTO OFFICIAL NOTICE

Office Action (Official Letter) has issued  
on August 25, 2022 for  
**U.S. Trademark Application Serial No. 97119402**

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.