

**To:** Jeff Levy([trademark@rlflp.com](mailto:trademark@rlflp.com))  
**Subject:** U.S. Trademark Application Serial No. 97120226 - UPON A STAR - 5259.0005  
**Sent:** August 24, 2022 01:51:46 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.** 97120226

**Mark:** UPON A STAR

**Correspondence Address:**

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NEW YORK NY 10003 UNITED STATES

**Applicant:** Inner Peace Studio LLC

**Reference/Docket No.** 5259.0005

**Correspondence Email Address:** [trademark@rlflp.com](mailto:trademark@rlflp.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.

**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 Refusal

## SPECIMEN REFUSAL

**Specimen does not show use in specific class(es).** Registration is refused because the specimen does not show the applied-for mark as actually used in commerce in connection with any of the goods and/or services specified in International Class 009. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); *In re Keep A Breast Found.*, 123 USPQ2d 1869, 1876-79 (TTAB 2017); TMEP §§904, 904.07(a), 1301.04(d), (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 goods and/or 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); *see In re Gulf Coast Nutritionals, Inc.*, 106 USPQ2d 1243, 1247 (TTAB 2013).

Per TMEP §904.03(e), a specimen for audio recordings in Class 009 that shows use of the mark on an internet website must include a “download” or similar link to put the consumer on notice that the identified goods are available for download. Absent such a link or the equivalent thereof, the specimen on its face fails to show use of the mark in commerce for the goods. *In re Rogowski*, 104 USPQ2d 2012, 2014-15 (TTAB 2012).

Here, the specimen does not indicate that the recordings are downloadable, and thus it is unclear whether the recordings are Class 009 downloadable recordings or Class 042 non-downloadable recordings.

**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).

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 and/or 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](#).

**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.

Please 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 24, 2022 for  
**U.S. Trademark Application Serial No. 97120226**

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 97120226						
#	Search	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/Search Duration
1	97120226[sn]	1	0	1	1	0:00
2	*up\$on*[bi,ti] not dead[ld]	1563	0	0	0	0:02
3	*{"sz"}tar*[bi,ti] not dead[ld]	21726	0	0	0	0:00
4	2 and 3	17	0	17	17	0:00
5	2 and "009"[cc]	1037	0	0	0	0:01
6	2 and ("009" "035" "042" a b "200")[ic]	635	0	0	0	0:01
7	2 and ("009" a b "200")[ic]	262	0	262	262	0:02
8	2 and "041"[cc]	846	0	0	0	0:01
9	2 and ("041" "035" "042" a b "200")[ic]	663	0	0	0	0:01
10	2 and ("041" a b "200")[ic]	26	0	0	0	0:00
11	2 and ("041" a b "200")[ic]	300	0	300	300	0:01
12	"upon a star"	35	0	8	8	0:01
13	3 and "009"[cc]	11279	0	0	0	0:00
14	3 and ("009" "035" "042" a b "200")[ic]	6526	0	0	0	0:01
15	3 and ("009" a b "200")[ic]	3413	0	0	0	0:01
16	3 and "041"[cc]	9007	0	0	0	0:00
17	3 and ("041" "035" "042" a b "200")[ic]	6286	0	0	0	0:01
18	3 and ("041" a b "200")[ic]	3273	0	0	0	0:01
19	*{"sz"}tar[bi,ti] not dead[ld]	12790	0	0	0	0:01
20	19 and ("009" "041")[cc]	7473	0	0	0	0:00
21	19 and ("009" "041")[cc]	7473	0	0	0	0:01
22	19 and ("009" "041" "035" "042" a b "200")[ic]	4691	0	0	0	0:01
23	19 and ("009" "041" a b "200")[ic]	3372	0	0	0	0:01
24	19 and ("009" a b "200")[ic]	2064	0	0	0	0:01
25	19 and ("041" a b "200")[ic]	1561	0	0	0	0:01
26	star[bi,ti] not dead[ld]	10825	0	0	0	0:01
27	26 and ("009" "041")[cc]	6415	0	0	0	0:00
28	26 and ("009" "041" "035" "042" a b "200")[ic]	3999	0	0	0	0:01
29	26 and ("009" "041" a b "200")[ic]	2889	0	0	0	0:01
30	26 and ("009" a b "200")[ic]	1714	0	0	0	0:01
31	26 and ("041" a b "200")[ic]	1400	0	0	0	0:01
32	"uponastar"	1	0	1	1	0:00
33	"up on a star"	0	0	0	0	0:01

Session started 08/24/2022 11:28 am

Session ended 08/24/2022 11:38 am

Total search duration 26.00

Session duration 9 minutes 42 seconds

Adjacency Level 1

Near Level 1