

**To:** JUSTIN JOHANSON([justin@innovativeIPLaw.com](mailto:justin@innovativeIPLaw.com))  
**Subject:** U.S. Trademark Application Serial No. 97119202 - GETSOME  
**Sent:** August 27, 2022 10:25:38 AM 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.** 97119202

**Mark:** GETSOME

**Correspondence Address:**

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**Applicant:** GetSomeRacing 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 OFFICE DATABASE**

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:**

- Specimens Unacceptable

## **REQUIREMENT**

Before this application can proceed in the registration process, the following issue must be addressed.

### **A. Specimens Unacceptable**

Applicant has submitted specimens showing closeups of the mark (in the form "GET SOME RACING") imprinted on the upper left chest area of t-shirts and on the front/back of shirts, on the front of decals, and on a white board on a tabletop where goods are displayed and sold.

#### *Mark in Drawing Differs from Mark on Specimens (Mark Imprinted on Shirts)*

The following refusal/requirement pertains only to the specimens showing the mark imprinted on clothing.

Registration is refused because the specimens do not show the mark in the drawing in use in commerce in International Class 25, 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 closeup specimens display the mark as "GET SOME RACING" (with a space between "GET" and "SOME" and with the addition of the word "RACING"). However, the drawing displays the mark as "GETSOME" (without any space and omitting the word "RACING"). In the photograph showing the shirts displayed on a table, the mark is only partially visible on the front of the shirts and it is not possible to see if the mark appears in the same form as in the drawing or if other matter (such as "RACING") is included. The marks imprinted on the specimens do not match the mark in the drawing. Applicant has thus failed to provide the required evidence of use of the mark in commerce. *See* TMEP §807.12(a).

#### *Mark Shown on Decals is Not Used with Identified Goods*

Registration is refused because the decal specimen does not show the applied-for mark as actually used in commerce in connection with any of the goods specified in International Class 25. 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).

#### *White Board as Shown is Not An Acceptable Store Display*

Registration is refused because the specimen in International Class 25 is not acceptable as a display associated with the goods; thus, the specimen does not properly 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(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).

Product display specimens (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). In this case, the specimen does not show the display matter directly associated with the goods. Specifically, it is not clear from the photograph whether the white board is using "GETSOME" in a trademark fashion on a display associated with the goods or as an indication of what wording the decals feature. The wording on the white board is mostly illegible.

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).

**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).

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 showing the mark in the form shown imprinted on the clothing goods ("GET SOME RACING") 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, while the presentation of "GET SOME" as one word or two is not a material alteration, addition of the distinctive term "RACING" changes the focus of "GET SOME" and its omission from the mark is a material alternation.

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](#).

**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. 97119202**

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.