

**To:** Peter J. Phillips([info@lmiplaw.com](mailto:info@lmiplaw.com))  
**Subject:** U.S. Trademark Application Serial No. 97118785 - A PFINGST PRODUCT - PF-19-TM  
**Sent:** August 28, 2022 04:31:07 PM EDT  
**Sent As:** [tmng.notices@uspto.gov](mailto:tmng.notices@uspto.gov)

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**Attachments**

[screenshot-ahdictionary-com-word-search-html-16617178434491](#)

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

**U.S. Application Serial No.** 97118785

**Mark:** A PFINGST PRODUCT

**Correspondence Address:**

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NEW YORK NY 10004 UNITED STATES

**Applicant:** Pfingst & Company, Inc.

**Reference/Docket No.** PF-19-TM

**Correspondence Email Address:** [info@lmiplaw.com](mailto:info@lmiplaw.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 28, 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:

- A. Specimen Refusal -- Website Displays Are Not Point-of-Sale in Nature for Classes 8, 9, and 10
- B. Amended Identification of Goods and Services Required
- C. Multiple-Class Application Requirements
- D. Disclaimer Required
- E. Amended Mark Description Required

### A. SPECIMEN REFUSAL -- WEBSITE DISPLAYS ARE NOT POINT-OF-SALE IN NATURE FOR CLASSES 8, 9, AND 10

**This refusal applies to Classes 8, 9, and 10 and does not bar registration in the other class.**

**Specimen is not an acceptable webpage display.** Registration is refused because the specimen in International Classes 8, 9, and 10 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, while the specimens show the applied-for mark and various goods, the specimens do not show any means by which consumers may immediately consummate a purchase of the goods, such as a "shopping cart" button/link, "Add to Cart" button, or "Buy Now" button.

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](#).

#### ADVISORY -- APPLICANT'S OPTIONS WHEN REFUSAL APPLIES TO SPECIFIC CLASSES

The stated refusal applies to Classes 8, 9, and 10 and does not bar registration in the other class.

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 classes to which the refusal pertains;
- (2) Filing a [Request to Divide Application form](#) (form #3) to divide out the services that have

not been refused registration, so that the mark may proceed toward publication for opposition in the class 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).; or

(3) Amending the basis for such classes, if appropriate. TMEP §806.03(h). (The basis cannot be changed for applications filed under Trademark Act Section 66(a). TMEP §1904.01(a).)

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

## **B. AMENDED IDENTIFICATION OF GOODS AND SERVICES REQUIRED**

A written application must specify the particular goods and/or services on or in connection with which the applicant uses, or has a bona fide intention to use, the mark in commerce. 15 U.S.C. §§1051(a)(2), 1051(b)(2); 37 C.F.R. §2.32(a)(6). To “specify” means to name in an explicit manner. TMEP §1402.01. An identification that fails to identify the goods and services with specificity is indefinite, either because the nature of the goods or services is not clear or because the wording is so broad that it may include goods or services in more than one class. *Id.* The applicant must identify the goods and services specifically to provide public notice and to enable the USPTO to classify the goods and services properly and to reach informed judgments concerning likelihood of confusion under 15 U.S.C. §1052(d). *Id.*

### **International Class 8**

In this case, the entry for "tools for use in the field of metalworking by hobbyists" in International Class 8 is indefinite and too broad. This wording is indefinite because it does not clearly describe applicant's goods. In addition, this wording could identify goods in more than one international class. Class 8 includes hand-operated tools and implements. Motor-driven tools, such as power tools, are usually in Class 7. Thus, because a "tool for use in the field of metalworking by hobbyists" may be motor-driven or hand-operated, this wording by itself is not sufficient to ensure proper classification. Applicant must identify the particular tools using their common commercial or generic name. If the tool has no common commercial or generic name, applicant must describe the tool(s), its main purpose, and its intended uses.

### **International Class 9**

The entry for "tools for use in the field of jewelry" in International Class 9 is indefinite. Applicant must specify the particular tools in Class 9 that it provides, using their common commercial or generic name. If the tool has no common commercial or generic name, applicant must describe the tool(s), its main purpose, and its intended uses.

### **International Class 10**

Similarly, the entry for "tools for use in the fields of dentistry, podiatry, and pedicure" is indefinite. Applicant must specify the particular tools in Class 10 that it provides, using their common commercial or generic name. If the tool has no common commercial or generic name, applicant must describe the tool(s), its main purpose, and its intended uses.

## **International Class 35**

The entries for "distributorship services in the fields of jeweler tools and equipment; dental tools and equipment; podiatry tools and equipment; pedicure tools and equipment; and hobbyist tools and equipment" are indefinite because it appears that applicant has incorrectly used semicolons instead of commas to separate the various fields of its distributorship services.

Applicant must correct the punctuation in the identification to clarify the individual items in the list of services. *See* 37 C.F.R. §2.32(a)(6); TMEP §1402.01(a). Proper punctuation in identifications is necessary to delineate explicitly each product or service within a list and to avoid ambiguity. In general, **commas** should be used in an identification (1) to separate a series of related items identified within a particular category of goods or services, (2) before and after "namely," and (3) between each item in a list of goods or services following "namely" (e.g., personal care products, namely, body lotion, bar soap, shampoo). *Id.* **Semicolons** generally should be used to separate a series of distinct categories of goods or services within an international class (e.g., personal care products, namely, body lotion; deodorizers for pets; glass cleaners). *Id.*

Thus, applicant should replace the semicolons in this entry with commas, if appropriate.

For each instance requiring additional clarification, the examining attorney has provided an example of an acceptable amendment (or the format therefor) below. If the suggestions below are not accurate, applicant is encouraged to use the USPTO's online Identification Manual (see ID Manual link below) to search for acceptable wording to properly identify the intended goods and services.

**EXAMPLE IDENTIFICATION OF GOODS AND SERVICES:** The following is an example of an acceptable identification of goods and services that applicant may adopt, if accurate (additions in **bold**).

### **Class 7**

**Power-operated** tools for use in the field of metalworking by hobbyists, **namely, {specify the particular power tools in Class 7, e.g., bits for power drills}**

### **Class 8**

**Hand-operated** tools for use in the field of metalworking by hobbyists, **namely, {specify the particular hand-operated tools in Class 8, e.g., files being hand-operated tools for smoothing surfaces of metal}**

### **Class 9**

Tools for use in the field of jewelry, **namely, {specify the particular tools in Class 9, e.g., jewelers loupes}**

### **Class 10**

Tools for use in the fields of dentistry, podiatry, and pedicure, **namely, {specify the particular tools in Class 10, e.g., dental burs}**

## Class 35

Distributorship services in the fields of jeweler tools and equipment, dental tools and equipment, podiatry tools and equipment, pedicure tools and equipment, and hobbyist tools and equipment

NOTE: Where brackets and bracketed guidance appear in the above example, input from applicant is required. Any amendments proposed by applicant in response to the requirement for an acceptable identification of goods and/or services must **not** contain brackets.

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

ONLINE ID MANUAL: 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.

For information on how to identify the goods and services in an application, applicant is encouraged to view the [USPTO's Trademark Information Network Video](#) Number 6, "Goods and Services."

### **C. MULTIPLE-CLASS APPLICATION REQUIREMENTS**

The application references goods and/or services based on use in commerce in more than one international class; therefore, applicant must satisfy all the requirements below for each international class:

- (1) **List the goods and/or services by their international class number** in consecutive numerical order, starting with the lowest numbered class (for example, International Class 3: perfume; International Class 18: cosmetic bags sold empty).
- (2) **Submit a filing fee for each international class** not covered by the fees already paid (view the [USPTO's current fee schedule](#)). Specifically, the application identifies goods and services based on use in commerce that are classified in at least **five** classes; however, applicant submitted fees sufficient for only **four** classes. Applicant must either (a) submit the filing fees for the classes not covered by the submitted fees or (b) restrict the application to the number of classes covered by the fees already paid.
- (3) **Submit verified dates of first use of the mark** anywhere and in commerce **for each international class**. [See more information about verified dates of use](#).
- (4) **Submit a specimen for each international class**. The current specimen is acceptable for Class 35; and applicant needs a specimen for Classes 7, 8, 9, and 10. [See more information about specimens](#).

**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)(2), (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).

(5) **Submit a verified statement** that **“The specimen was in use in commerce on or in connection with the goods and/or services listed in the application at least as early as the filing date of the application.”** [See more information about verification.](#)

*See* 37 C.F.R. §2.86(a); TMEP §§1403.01, 1403.02(c).

For an overview of the requirements for a Section 1(a) multiple-class application and how to satisfy the requirements online using the Trademark Electronic Application System (TEAS) form, see the [Multiple-class Application webpage](#).

#### **D. DISCLAIMER REQUIRED**

Applicant must disclaim the word “PRODUCT” because it is merely descriptive of a characteristic 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).

A “disclaimer” is a statement in the application record that an applicant does not claim exclusive rights to an unregistrable component of the mark. *See Schwarzkopf v. John H. Breck, Inc.*, 340 F.2d 978, 979-80, 144 USPQ 433, 433 (C.C.P.A. 1965); TMEP §1213. A disclaimer does not physically remove the disclaimed matter from the mark or otherwise affect the appearance of the mark. *See Schwarzkopf v. John H. Breck, Inc.*, 340 F.2d at 979, 144 USPQ2d at 433; TMEP §1213.

The word "PRODUCT" in the applied for mark means "an item that is made or refined and marketed: *farm products; soaps, detergents, and similar products.*" See attached definition from American Heritage Dictionary.

The application identifies applicant's goods as various tools and distributorship services in the field of tools.

Thus, the word "PRODUCT" merely describes a characteristic of applicant's goods and services because applicant's tools are made or refined and marketed, and applicant's distributorship services feature tools that are made or refined and marketed.

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

**No claim is made to the exclusive right to use “PRODUCT” 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](#).

If applicant does not provide the required disclaimer, the USPTO may refuse to register the entire mark. *See In re Stereotaxis Inc.*, 429 F.3d 1039, 1041, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005); TMEP §1213.01(b).

## **E. AMENDED MARK DESCRIPTION REQUIRED**

Applicant must submit an amended description of the mark because the current one is incomplete and does not describe all the significant aspects of the mark. 37 C.F.R. §2.37; *see* TMEP §§808.01, 808.02. Descriptions must be accurate and identify all the literal and design elements in the mark. *See* 37 C.F.R. §2.37; TMEP §§808 *et seq.*

The following description is suggested, if accurate: **The mark consists of a stylized design of a bur head shape inside a single-line circle, which is surrounded by a shaded, incomplete circle with breaks at the left and right sides. The wording "A PFINGST" appears in the top portion of the shaded, incomplete circle, and the word "PRODUCT" appears in the bottom portion of the shaded, incomplete circle. Several small dots appear in the center of the bur head shape, forming incomplete circles and having the appearance of a spiral.**

## **RESPONDING TO THIS OFFICE ACTION**

**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 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.



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To look up an entry in *The American Heritage Dictionary of the English Language*, use the search window above. For best results, after typing in the word, click on the "Search" button instead of using the "enter" key.

Some compound words (like *bus rapid transit*, *dog whistle*, or *identity theft*) don't appear on the drop-down list when you type them in the search bar. For best results with compound words, place a quotation mark before the compound word in the search window.

[GUIDE TO THE DICTIONARY](#)



## THE USAGE PANEL

The Usage Panel is a group of nearly 200 prominent scholars, creative writers, journalists, diplomats, and others in occupations requiring mastery of language. Annual surveys have gauged the acceptability of particular usages and grammatical constructions.

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## prod-uct<sup>Ⓢ</sup> (prɒdʹʌkt)

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n.

1. Something produced by human or mechanical effort or by a natural process, as:
  - a. An item that is made or refined and marketed: *farm products; soaps, detergents, and similar products; travel products such as vacation trips.*
  - b. Such items considered as a group: *sold a lot of product in May.*
  - c. A preparation, such as a gel, used for styling hair: *began to use product soon after he became famous.*
  - d. A substance resulting from a chemical or nuclear reaction.
2.
  - a. A direct result; a consequence: *"Is history the product of impersonal social and economic forces?" (Anthony Lewis).*
  - b. A person whose characteristics or abilities are the result of certain influences or kinds of experience: *"She is the product of an America in which explicit displays of pride in intellect are considered unseemly" (Yuval Levin).*
3. **Mathematics**
  - a. The number or quantity obtained by multiplying two or more numbers together.
  - b. A scalar product.
  - c. A vector product.

[Middle English, result of multiplication, produced, from Medieval Latin *productum*, result of multiplication, from neuter past participle of Latin *prōducere*, to bring forth; see *PRODUCE*.]

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## United States Patent and Trademark Office (USPTO)

### USPTO OFFICIAL NOTICE

Office Action (Official Letter) has issued  
on August 28, 2022 for  
**U.S. Trademark Application Serial No. 97118785**

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.