

To: Jing Wang(celina6843@outlook.com)
Subject: U.S. Trademark Application Serial No. 97120232 - TKFAKHPOW
Sent: August 25, 2022 11:15:39 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. 97120232

Mark: TKFAKHPOW

Correspondence Address:

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Applicant: Peng, Dekai

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 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.

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.

Digitally created or altered image or mockup is not an acceptable specimen. Registration is refused because the specimen appears to consist of a mock-up and does not show the applied-for mark as actually used in commerce in International Class(es) 9. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a), (c); TMEP §§904.04(a)(iii), 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). “Use in commerce” means (1) a bona fide use of the applied-for mark in the ordinary course of trade (and not merely to reserve a right in the mark), (2) the mark is placed in any manner on the goods, packaging, tags or labels affixed to the goods, or displays that directly associate the mark with the goods and have a point-of-sale nature, and (3) the goods are actually sold or transported in commerce. *See* 15 U.S.C. §1127.

An electronic display or webpage that has been digitally created or altered to include the mark or a mockup of how the mark may be displayed on the electronic display or webpage is not a proper specimen for goods because it does not show actual use of the mark in commerce. *See* 15 U.S.C. §1127; 37 C.F.R. §2.56(c); TMEP §904.04(a)(i).

In this case, Applicant's specimen appears to have been created just for purposes of obtaining a Trademark Registration and not for legitimate usage in commerce. This is demonstrated by the uncharacteristically sloppy placement of the mark on the goods, the overall poor presentation of the goods, and the website associated with the goods which is completely lacking in any functionality. Therefore the specimen does not show actual use of the mark in commerce.

Response options. Applicant may respond to the specimen refusal by satisfying **one** of the following options 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. For instructions on how to submit a different specimen using the online Trademark Electronic Application System (TEAS) form, see the [Specimen webpage](#).

Applicants submitting a webpage as a specimen for goods must include the URL and the date the page was accessed or printed either directly on the specimen itself or in a separate statement, supported by an affidavit or declaration under 37 C.F.R. §2.20 verifying such information. *See* 37 C.F.R. §2.56(c); TMEP §§904.03(i), 1301.04(a).

(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.

If applicant submits an acceptable verified substitute specimen or amends to Section 1(b), the requirement below for additional information/documentation about the original specimen will be withdrawn. The requirement below as to the original specimen will be made final if applicant submits a substitute specimen that is not acceptable or does not amend to Section 1(b), and does not also respond completely to the requirement below.

Additional information/documentation about original specimen(s) required. To permit proper examination of the application record for compliance with use in commerce requirements, applicant must respond to the following requirement for information and documentation about the specimen(s). *See* 37 C.F.R. §2.61(b); TMEP §§814, 904.04(a)(iii). A specimen must show the mark as actually used in commerce, which means use in the ordinary course of trade, and not merely to reserve a right in the trademark. 15 U.S.C. §§1051, 1052, 1127. Because the specimen of record appears to be digitally created or altered, or is a mockup, further information is necessary to determine whether the specimen is in actual use in commerce.

Answer for each specimen/photograph/image previously provided. For any website source, applicant must provide (1) an image of the webpage, (2) the date it was accessed or printed, and (3) the complete URL address. *In re ADCO Indus.-Techs., L.P.*, 2020 USPQ2d 53786, at *2 (TTAB 2020) (citing *In re I-Coat Co.*, 126 USPQ2d 1730, 1733 (TTAB 2018)); TMEP §710.01(b). Providing only a website address or hyperlink to the webpage is not sufficient to make the materials of record. *In re ADCO Indus.-Techs., L.P.*, 2020 USPQ2d 53786, at *2 (citing *In re Olin Corp.*, 124 USPQ2d 1327, 1331 n.15 (TTAB 2017); *In re HSB Solomon Assocs., LLC*, 102 USPQ2d 1269, 1274 (TTAB 2012); TBMP §1208.03); TMEP §814.

(1) Identify the particular good(s) listed in the application for which the specimen(s) was submitted to show use of the mark.

(2) Explain whether the specimen was created for submission with this application. If so, specify the date each specimen was created. If applicant obtained the content of the webpage or image(s) of the goods shown in the specimen(s) from a third-party website, provide the URL of the website and a digital copy of relevant webpage(s) for each image.

(3) For each web-based specimen submission, provide the full name of the online retailer or wholesaler whose webpage is shown in the specimen, the website URL, the access or print date, and a digital copy of the complete webpage showing the goods for sale on the named website.

(4) For each online retailer or wholesaler identified in response to question (3), specify the date the goods bearing the mark were first available for purchase within the United States, the date of the first sale of the goods to or within the United States through that retailer/wholesaler, and whether the goods are still for sale to or within the United States through that retailer/wholesaler. If applicant is the online retailer or wholesaler, provide at least three invoices or other supporting documentation that show payments or

other consideration made and state the dollar amount of sales with or within the United States, redacting personal or private information of buyers as necessary.

(5) If the goods identified in response to question (1) are sold in another type of sales environment, identify the environment (e.g. retail stores, catalogs, trade shows) and provide photographs and/or documentation showing the goods for sale with the mark in that environment, such as photographs of the sales displays or goods on shelves. If the information about how the goods appear in the actual sales environment is not available to applicant, describe how applicant's goods are sold or transported to or within the United States and provide photographs and other documentation showing how applicant's mark appears on the goods and/or its packaging when the goods are sold or transported to or within the United States.

Applicant has a duty to respond directly and completely to this requirement for information. *See In re Ocean Tech., Inc.*, 2019 USPQ2d 450686, at *2 (TTAB 2019) (citing *In re AOP LLC*, 107 USPQ2d 1644, 1651 (TTAB 2013)); TMEP §814. Failure to comply with a requirement for information is an independent ground for refusing registration. *In re SICPA Holding SA*, 2021 USPQ2d 613, at *6 (TTAB 2021) (citing *In re Cheezwhse.com, Inc.*, 85 USPQ2d 1917, 1919 (TTAB 2008); *In re DTI P'ship LLP*, 67 USPQ2d 1699, 1701-02 (TTAB 2003); TMEP §814).

Specimen requirement.

Applicant has applied for a multitude of goods in International Class 9. Note that if an identification is so broad that it encompasses a wide range of products and services, the applicant must submit evidence that it actually uses the mark on a wide range of products and services to obtain registration. *See In re Air Products & Chemicals, Inc.*, 192 USPQ 84, recon. denied 192 USPQ 157 (TTAB 1976); 37 CFR 2.61(b); TMEP §§904.01(a) and 1402.03.

Applicant should submit specimens demonstrating use of the mark on all of the following goods:

Batteries and battery chargers; Battery chargers; Battery chargers for home video game machines; Chargers for batteries; Chargers for electric batteries; Charging appliances for rechargeable equipment; Electric storage batteries; Electrical cells and batteries; Electrical gang boxes; Electrical receptacles; Life jackets for pets; Rangefinders for golf; Rechargeable batteries; Rechargers for electric accumulators; Warning flags

Please note that for every specimen submitted, applicant must clearly provide the common commercial name for the goods to which such specimen relates in order to permit proper examination of the goods. If applicant is unable to provide specimens to support use of these items, applicant must delete these entries, or amend the filing basis for those goods that were not in proper use as of the application filing date to an [intent to use basis under Section 1\(b\)](#). This option will later necessitate additional fees and filing requirements such as providing a specimen for these goods at a subsequent date.

To submit a verified specimen or verified substitute specimen online using the Trademark Electronic Application System (TEAS) response form, (1) answer "Yes" to form wizard question #2; and then, continuing on to the next portion of the form, under the heading "Classification and Listing of Goods/Services/Collective Membership Organization," do the following for each relevant class for which a specimen is being submitted: (2) check the box next to the following statement: "Check here to modify the current classification number; listing of goods/services/the nature of the collective

membership organization; dates of use; and/or filing basis; or to submit a substitute specimen, a foreign registration certificate, or proof of renewal of a foreign registration. If not checked, the changes will be ignored.”; (3) under “Specimen File,” attach a specimen (attachment may not exceed 5 megabytes); (4) describe in the box below where you attached the file what the specimen consists of; and (5) check the box next to the following statement below the specimen description (to ensure that the declaration language is inserted into the form): “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”. Additionally, when submitting a verified specimen, the TEAS online form requires two signatures: one in the “Declaration Signature” section and one in the “Response Signature” section.

Failure to comply with a request to furnish additional specimens is grounds for refusing registration. *In re Harley*, 119 USPQ2d 1755, 1757-58 (TTAB 2016); TMEP §814. Merely stating that evidence is available on applicant’s or a third party website is an insufficient response and will not make the additional specimens of record. *See In re Planalytics, Inc.*, 70 USPQ2d 1453, 1457-58 (TTAB 2004).

How to respond. [Click to file a response to this nonfinal Office action.](#)

If the applicant has any questions or needs assistance in responding to this Office action, please email the assigned examining attorney or call 571-272-9281.

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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 25, 2022 for
U.S. Trademark Application Serial No. 97120232

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: Theodore McBride

Statistics for Case 97120232						
#	Search	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/Search Duration
1	97120232[sn]	1	0	0	0	0:00
2	*t{"ckqx"}\${"fh"}{v}{"ckqx"}*[bi,ti]	812	0	0	0	0:03
3	*pow*[bi,ti]	71127	0	0	0	0:00
4	2 and 3	7	0	2	2	0:01

Session started 08/25/2022 11:09 am

Session ended 08/25/2022 11:09 am

Total search duration 4.00

Session duration 50 seconds

Adjacency Level 1

Near Level 1