

To: Jr Wilkerson, Cedric C(Croesusbusiness@gmail.com)
Subject: U.S. Trademark Application Serial No. 97119324 - CROESUS
Sent: August 25, 2022 05:14:10 PM EDT
Sent As: tmng.notices@uspto.gov

Attachments

[6053238](#)
[screenshot-www-merriam-webster-com-dictionary-Croesus-16613605135401](#)

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

U.S. Application Serial No. 97119324

Mark: CROESUS

Correspondence Address:

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FORT WASHINGTON MD 20744 UNITED STATES

Applicant: Jr Wilkerson, Cedric C

Reference/Docket No. N/A

Correspondence Email Address: Croesusbusiness@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

Introduction

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issues below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a),

2.65(a); TMEP §§711, 718.03.

Summary of Issues

- Section 2(d) - Likelihood of Confusion Refusal
- Mark is Merely Ornamental Feature of Clothing Refusal
- Advisory on Hiring a Private Attorney

Section 2(d) - Likelihood of Confusion Refusal

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 6053238. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the attached registration.

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.

Applicant has applied to register the mark **CROESUS** in standard characters for “Clothing, namely, shirts, jackets, pants, underwear” in International Class 25.

Registrant’s mark is **KROCEUS** in standard characters for “Bathing trunks; Down jackets; Dresses; Girdles; Head wear; Hosiery; Rain suits; Sandals; Scarfs; Short trousers; Ski jackets; Sleeping garments; Sports shoes; Underclothing; Wedding dresses; Wind-jackets; Wind coats; Women’s clothing, namely, shirts, dresses, skirts, blouses; Working overalls” in International Class 25.

Similarity of the 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).

Here, applicant’s mark, **CROESUS**, is confusingly similar to the registered mark, **KROCEUS**.

As will be discussed below, the goods of the applicant and the registrant are legally identical. Where the goods of an applicant and registrant are identical or virtually identical, the degree of similarity between the marks required to support a finding that confusion is likely declines. *See Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 1373, 127 USPQ2d 1797, 1801 (Fed. Cir. 2018) (quoting *In re Viterra Inc.*, 671 F.3d 1358, 1363, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012)); TMEP §1207.01(b).

When comparing marks, “[t]he proper test is not a side-by-side comparison of the marks, but instead whether the marks are sufficiently similar in terms of their commercial impression such that [consumers] who encounter the marks would be likely to assume a connection between the parties.” *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 1373, 127 USPQ2d 1797, 1801 (Fed. Cir. 2018) (quoting *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1368, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012)); TMEP §1207.01(b). The proper focus is on the recollection of the average purchaser, who retains a general rather than specific impression of trademarks. *In re Ox Paperboard, LLC*, 2020 USPQ2d 10878, at *4 (TTAB 2020) (citing *In re Bay State Brewing Co.*, 117 USPQ2d 1958, 1960 (TTAB 2016)); *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018); TMEP §1207.01(b); *see In re St. Helena Hosp.*, 774 F.3d 747, 750-51, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014).

In this case, applicant's mark **CROESUS** is a word with a definable meaning of "a very rich man." *See* attached evidence from *Merriam-Webster Dictionary*. It is likely that a consumer will presume the registered mark **KROCEUS** is a novelty misspelling of "CROESUS." The two words are visually similar. "C" and "K" can both be pronounced in the same manner and so the initial syllable of the words is pronounced the name. Consumers are generally more inclined to focus on the first word, prefix, or syllable in any trademark or service mark. *See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1372, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005) (finding similarity between VEUVE ROYALE and two VEUVE CLICQUOT marks in part because “VEUVE . . . remains a ‘prominent feature’ as the first word in the mark and the first word to appear on the label”); *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 876, 23 USPQ2d 1698, 1700 (Fed Cir. 1992) (finding similarity between CENTURY 21 and CENTURY LIFE OF AMERICA in part because “consumers must first notice th[e] identical lead word”); *see also In re Detroit Athletic Co.*, 903 F.3d 1297, 1303, 128 USPQ2d 1047, 1049 (Fed. Cir. 2018) (finding “the identity of the marks’ two initial words is particularly significant because consumers typically notice those words first”).

The second half of the words "ESUS" and "CEUS" are visually very similar as they both contain the letters "E" and "U" and end with the letter "S." It is likely that these marks would be pronounced similarly. Slight differences in the sound of similar marks will not avoid a likelihood of confusion. *In re Energy Telecomms. & Elec. Ass’n*, 222 USPQ 350, 351 (TTAB 1983); *see In re Viterra Inc.*, 671 F.3d 1358, 1367, 101 USPQ2d 1905, 1912 (Fed. Cir. 2012).

Because the marks look and sound similar and create the same commercial impression, the marks are considered similar for likelihood of confusion purposes.

Relatedness of the Goods

Determining likelihood of confusion is based on the description of the goods stated in the application and registration at issue, not on extrinsic evidence of actual use. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 1307, 128 USPQ2d 1047, 1052 (Fed. Cir. 2018) (citing *In re i.am.symbolic, llc*, 866 F.3d 1315, 1325, 123 USPQ2d 1744, 1749 (Fed. Cir. 2017)).

In this case, the registration uses broad wording to describe underclothing, which presumably encompasses all goods of the type described, including applicant's more narrow "underwear." *See, e.g., In re Solid State Design Inc.*, 125 USPQ2d 1409, 1412-15 (TTAB 2018); *Sw. Mgmt., Inc. v. Ocinomled, Ltd.*, 115 USPQ2d 1007, 1025 (TTAB 2015). Additionally, the applicant uses broad wording to describe "jackets," "pants," and "clothing, namely, shirts" which presumably encompasses all goods of the type described, including registrant's more narrow "down jackets," "ski jackets," "wind-jackets," "short trousers," and "women's clothing, namely shirts." Thus, applicant's and registrant's goods are legally identical. *See, e.g., In re i.am.symbolic, llc*, 127 USPQ2d 1627, 1629 (TTAB 2018) (citing *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp., Inc.*, 648 F.2d 1335, 1336, 209 USPQ 986, 988 (C.C.P.A. 1981); *Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1745 (TTAB 2014); *Baseball Am. Inc. v. Powerplay Sports Ltd.*, 71 USPQ2d 1844, 1847 n.9 (TTAB 2004)).

Additionally, the goods of the parties have no restrictions as to nature, type, channels of trade, or classes of purchasers and are "presumed to travel in the same channels of trade to the same class of purchasers." *In re Viterro Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1268, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002)). Thus, applicant's and registrant's goods and/or services are related.

Accordingly, the goods are considered related for purposes of the likelihood of confusion analysis.

Conclusion

Because the marks are similar and the goods are legally identical, there is a likelihood of confusion as to the source of applicant's goods, and registration is refused pursuant to Section 2(d) of the Trademark Act.

Mark is Merely Ornamental Feature of Clothing Refusal

Registration is refused because the applied-for mark as used on the specimen of record is merely a decorative or ornamental feature of applicant's clothing and, thus, does not function as a trademark to indicate the source of applicant's clothing and to identify and distinguish applicant's clothing from others. Trademark Act Sections 1, 2, and 45, 15 U.S.C. §§1051-1052, 1127; *see In re Lululemon Athletica Can. Inc.*, 105 USPQ2d 1684, 1689 (TTAB 2013); *In re Pro-Line Corp.*, 28 USPQ2d 1141, 1142 (TTAB 1993); TMEP §§904.07(b), 1202.03 *et seq.*

The size, location, dominance, and significance of the alleged mark as used on the goods are all relevant factors in determining the commercial impression of the applied-for mark. *See, e.g., In re Peace Love World Live, LLC*, 127 USPQ2d 1400, 1403 (TTAB 2018) (quoting *In re Hulting*, 107 USPQ2d 1175, 1178 (TTAB 2013)); *In re Lululemon Athletica Can. Inc.*, 105 USPQ2d at 1687 (quoting *In re Right-On Co.*, 87 USPQ2d 1152, 1156 (TTAB 2008)); TMEP §1202.03(a).

With respect to clothing, consumers may recognize small designs or discrete wording as trademarks,

rather than as merely ornamental features, when located, for example, on the pocket or breast area of a shirt. *See* TMEP §1202.03(a). Consumers may not, however, perceive larger designs or slogans as trademarks when such matter is prominently displayed across the front of a t-shirt. *See In re Pro-Line Corp.*, 28 USPQ2d at 1142; *In re Dimitri's Inc.*, 9 USPQ2d 1666, 1667-68 (TTAB 1988); TMEP §1202.03(a), (b), (f)(i), (f)(ii).

In this case, the submitted specimen shows the applied-for mark, **CROESUS**, located directly on the front of t-shirts and the back of jackets, where ornamental elements often appear. *See* TMEP §1202.03(a), (b). Furthermore, the mark is displayed in a relatively large size on the clothing such that it dominates the overall appearance of the goods. While it appears that some of the marks from the specimens appear on the pocket area of the shirt, the mark on the clothing is either cut off so that the entirety of the mark cannot be read or the image is reversed so that the mark does not appear as it does in the drawing. Lastly, the applied-for mark appears to be a design element that is used in a merely decorative manner that would be perceived by consumers as having little or no particular source-identifying significance.

Therefore, consumers would view the applied-for mark as a decorative or ornamental feature of the goods, rather than as a trademark to indicate the source of applicant's goods and to distinguish them from others.

In appropriate circumstances, applicant may overcome this refusal by satisfying one of the following options:

- (1) Submit a different specimen (a verified [“substitute” specimen](#)) that 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 that shows proper trademark use for the identified goods in International Class 25. Examples of acceptable specimens that show non-ornamental use on clothing include hang tags and labels used inside a garment.
- (2) Amend to the [Supplemental Register](#), which is a second trademark register for marks not yet eligible for registration on the Principal Register, but which may become capable over time of functioning as source indicators.
- (3) Claim acquired distinctiveness under Trademark Act Section 2(f) by submitting [evidence](#) that the applied-for mark has become distinctive of applicant's goods; that is, proof that applicant's extensive use and promotion of the mark allowed consumers now directly to associate the mark with applicant as the source of the goods.
- (4) Submit evidence that the applied-for mark is an [indicator of secondary source](#); that is, proof that the mark is already recognized as a source indicator for *other* goods or services that applicant sells/offers.
- (5) Amend the filing basis to [intent to use under Section 1\(b\)](#). This option will later necessitate additional fee(s) and filing requirements.

For an overview of the response options above and instructions on how to satisfy each option online using the Trademark Electronic Application System (TEAS) form, see the [Ornamental Refusal webpage](#).

Response Options to Refusals

Although applicant's mark has been refused registration, applicant may respond to the refusals by submitting evidence and arguments in support of registration.

Response guidelines. For this application to proceed, applicant must explicitly address each refusal. For a refusal, applicant may provide written arguments and evidence against the refusal, and may have other response options if specified above. 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 refusals 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.

Advisory on Hiring a Private Attorney

Because of the legal technicalities and strict deadlines of the trademark application process, applicant is encouraged to hire a private attorney who specializes in trademark matters to assist in this process. The assigned trademark examining attorney can provide only limited assistance explaining the content of an Office action and the application process. USPTO staff cannot provide legal advice or statements about an applicant's legal rights. TMEP §§705.02, 709.06. See [Hiring a U.S.-licensed trademark attorney](#) for more information.

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

/Elizabeth Forrest/
Elizabeth Forrest
Trademark Examining Attorney
Law Office 306
(571) 272-8407
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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

KROCEUS

Mark Punctuated
KROCEUS

Translation
The wording "KROCEUS" has no meaning in a foreign language.

Goods/Services

- IC 025. US 022 039.G & S: Bathing trunks; Down jackets; Dresses; Girdles; Head wear; Hosiery; Rain suits; Sandals; Scarfs; Short trousers; Ski jackets; Sleeping garments; Sports shoes; Underclothing; Wedding dresses; Wind-jackets; Wind coats; Women's clothing, namely, shirts, dresses, skirts, blouses; Working overalls. FIRST USE: 20180419. FIRST USE IN COMMERCE: 20180519

Mark Drawing Code
(4) STANDARD CHARACTER MARK

Design Code

Serial Number
88655507

Filing Date
20191015

Current Filing Basis
1A

Original Filing Basis
1A

Publication for Opposition Date
20200225

Registration Number
6053238

Date Registered
20200512

Owner
(REGISTRANT) Xu,Fang limited company (Ltd.) CHINA 23G,Sangdaya Garden, No.109 Huafa North RD,Futian DIST, Shenzhen ,Guangdong CHINA 518000

Priority Date

Disclaimer Statement

Description of Mark

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

Attorney of Record

Calvin Chai



SINCE 1828

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Croesus

X

Q

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Maryland School for Blind

Donate a Car Baltimore MD

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Croesus

noun

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Word

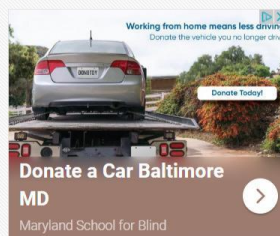
Croe·sus | \ 'krē-səs \

Definition of Croesus

: a very rich man

**DONATE A VEHICLE****Donate a Car Baltimore MD**

Your Vehicle Donation Supports A Great Cause.



WORD OF THE DAY

glitch

[See Definitions and Examples »](#)

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↓ **Synonyms & Antonyms**

↓ **Did you know?**

↓ **Example Sentences**

↓ **Learn More About *Croesus***

Synonyms & Antonyms for *Croesus*

Synonyms

capitalist, deep pocket, fat cat, have, money, moneybags, plutocrat, silk stocking

Antonyms

have-not, pauper

[Visit the Thesaurus for More](#)

Did you know?

The original Croesus was a 6th-century B.C. king of Lydia, an ancient kingdom in what is now Turkey. Croesus conquered many surrounding regions, grew very wealthy, and became the subject of legends. In one legend, he was visited by Solon, the wise Athenian lawgiver. (Historians say this isn't chronologically possible, but it makes a good story.) Solon supposedly told Croesus, who thought he had everything: "Account no man happy before his death." These words made Croesus angry, and he threw the lawmaker out of his court. Croesus would rethink Solon's pronouncement later when his empire was overthrown by the Persians. Croesus' name shows up in the phrase "rich as Croesus," meaning "filthy rich," and it has also entered English as a generic term for someone extremely wealthy.

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Relentless

Unpredictable



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Working from home means less driving.
Donate Your Vehicle to a Great Cause.





Donate a Car Baltimore MD

Your Vehicle Donation Supports A Great Cause.
Pickup Is Free And Tax Deductible.



Examples of *Croesus* in a Sentence

// if you have to ask the price, you're not the *Croesus* for whom this palatial yacht is intended

First Known Use of *Croesus*

1621, in the meaning defined above

Working from home means less driving.
Donate Your Vehicle to a Great Cause.



DONATE A VEHICLE



Donate a Car Baltimore MD

Your Vehicle Donation Supports A Great Cause.
Pickup Is Free And Tax Deductible.

History and Etymology for *Croesus*

Croesus, king of Lydia, famed for his wealth

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Time Traveler for *Croesus*



The first known use of *Croesus* was in 1621

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From the Editors at Merriam-Webster



A Wealth of Words

6 of Our Favorite Terms for Money and Luxury



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Croesus

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Statistics for *Croesus*

Look-up Popularity

Top 9% of words

Cite this Entry

"Croesus." *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/Croesus>. Accessed 24 Aug. 2022.

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KarenCarr295

· 19 March, 2012

...

Delancey place email from a book about Bob Dylan by H. Sounes. "When Peter, Paul and Mary had a massive hit with 'Blowin' in the Wind,' and top-forty success with two further songs written by Dylan, Grossman became as rich as Croesus."

Reply ·  12  · Share

1 reply




MichaelCaufield

· 1 February, 2013

...

In D.H. Lawrence's poem "Tortoise-Shell":

Think of it, in a garden of inert clods.
A brisk, brindled little tortoise, all to himself --
Croesus!...**See more**

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DonBewley

· 29 March, 2011

...

checked the spelling in regards to a character in a story I am writing.

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More Definitions for *Croesus*

Croesus biographical name

Croe-sus | \ 'krē-səs  \

Definition of *Croesus*

died circa 546 B.C. king of Lydia (circa 560–546)

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Names



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Went From Vice To



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Used?

Stupid

As illustrated by some very smart pups

Bikini, bourbon, and badminton were places first

Strength

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identify these garments

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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. 97119324

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.