

To: JUSTIN JOHANSON(justin@innovativeIPLaw.com)
Subject: U.S. Trademark Application Serial No. 97119963 - 3TM
Sent: August 24, 2022 01:38:07 PM 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. 97119963

Mark: 3TM

Correspondence Address:

JUSTIN JOHANSON
JOHANSON PARKER
21920 E. PEGASUS PARKWAY
QUEEN CREEK AZ 85142 UNITED STATES

Applicant: Justin Johanson

Reference/Docket No. N/A

Correspondence Email Address: justin@innovativeIPLaw.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.

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:

- Refusal - Specimen Does Not Show Mark with Class
- Significance of Wording
- Section 2(f) Claim

Does Not Show Mark with Specific Class

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(es) 045. 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).

Specifically, the specimen webpage screen shot shows use of the mark in connection with educational services regarding teaching and training, however the specimen does not state or reference the applicant's services in connection with the applied-for mark. Therefore, the specimen fails to show proper use of the mark in commerce in association with any of the stated services in Class 045.

Examples of specimens. 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).

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](#).

Significance of Wording

To permit proper examination of the application, applicant must clarify whether wording in the mark has any particular significance, as follows:

(1) **Industry significance.** Explain whether the wording “3TM” in the mark has any meaning or significance in the trade or industry in which applicant’s goods and/or services are manufactured or provided, any meaning or significance as applied to applicant’s goods and/or services, or if such wording is a term of art within applicant’s industry.

See 37 C.F.R. §2.61(b); TMEP §814. If the wording has no significance and is not a term of art in the relevant trade or industry or as used with applicant’s goods and/or services, and does not have any geographical or other significance, applicant must provide a statement to that effect. *See* 37 C.F.R. §2.61(b); TMEP §814.

To respond to the above requirement for information, open the appropriate Trademark Electronic Application System (TEAS) response form and enter the serial number, answer “yes” to question 3, and on the “Additional Statement(s)” page in either the “Significance of Wording, Letter(s), or Numeral(s)” text box(es) and/or the “Miscellaneous Statement” text box(es), enter the information and/or explain documentation being submitted with such information and attach it by clicking the button below the text box.

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).

Section 2(f) Claim - Inquiry

Applicant claims that the entire applied-for mark has acquired distinctiveness under Trademark Act Section 2(f).

A claim of acquired distinctiveness may be construed as a concession by applicant that the entire applied-for mark is not inherently distinctive. *See Cold War Museum, Inc. v. Cold War Air Museum*,

Inc., 586 F.3d 1352, 1358, 92 USPQ2d 1626, 1629 (Fed. Cir. 2009) (citing *Yamaha Int'l Corp. v. Hoshino Gakki Co.*, 840 F.2d 1572, 1577, 6 USPQ2d 1001, 1005 (Fed. Cir. 1988)); TMEP §1212.02(b).

If applicant believes that its mark is inherently distinctive and is eligible for registration on the Principal Register without proof of acquired distinctiveness, the applicant has the option to withdrawn this claim. *See* 15 U.S.C. §1052(f); TMEP §1212.02(d).

Applicant may withdraw this claim by instructing the trademark examining attorney to delete it from the application record. *See id.* If applicant does not withdraw the claim, it will remain in the application record and be published on the registration certificate. *See* TMEP §1212.10.

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

/Andrew Rhim/
Andrew Rhim
(571) 272-9711
andrew.rhim@uspto.gov

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. 97119963

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.

Note To The File

Serial Number: 97119963

3TM

Date: 08/24/2022 1:36 pm

Created by: Andrew Rhim

Searched

- Google
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Statistics for Case 97119963						
#	Search	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/Search Duration
1	97119963[sn]	1	0	1	1	0:00
2	97174301	1	0	1	1	0:00
3	"3tm"[bi,ti]	6	3	3	3	0:00
4	("3 tm" or "3t m" or "3 t m")[bi,ti]	3	3	0	0	0:01
5	*3tm*[bi,ti]	8	4	4	4	0:00
6	"3"[bi,ti] or *three*[bi,ti]	48343	0	0	0	0:00
7	("tm" or "t m")[bi,ti]	1610	0	0	0	0:01
8	6 and 7	37	0	0	0	0:00
9	8 not dead	9	0	9	9	0:00
10	7 and "025"[cc]	587	0	0	0	0:01
11	7 not dead	520	0	0	0	0:00
12	10 not dead	208	0	208	208	0:01
13	7 and ("041" or a or b or "200")[ic]	167	0	0	0	0:02
14	7 and ("045" or a or b or "200")[ic]	49	0	0	0	0:01
15	13 not dead	67	0	67	67	0:00
16	14 not dead	24	0	24	24	0:01

Session started 08/24/2022 1:04 pm

Session ended 08/24/2022 1:14 pm

Total search duration 8.00

Session duration 9 minutes 38 seconds

Adjacency Level 1

Near Level 1