

To: Big L's Bagels lc (keith@dnotebook.com)
Subject: U.S. Trademark Application Serial No. 90011916 - BIG L'S - N/A
Sent: May 13, 2021 10:27:55 AM
Sent As: ecom115@uspto.gov
Attachments:

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

U.S. Application
Serial No. 90011916

Mark: BIG L'S

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Reference/Docket
No. N/A

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FINAL 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) and/or Electronic System for Trademark Trials and Appeals (ESTTA). A link to the appropriate TEAS response form and/or to ESTTA for an appeal appears at the end of this Office action.

Issue date: **May 13, 2021**

INTRODUCTION

This Office action is in response to applicant's communication filed on January 25, 2021 .

In a previous Office action dated September 28, 2020, the trademark examining attorney refused registration of the applied-for mark based on the following: failure to show the applied-for mark in use in commerce with any of the specified services. The trademark examining attorney maintains and now makes FINAL the refusal(s) and/or requirement(s) in the summary of issues below. *See* 37 C.F.R. §2.63(b); TMEP §714.04.

SUMMARY OF ISSUES MADE FINAL that applicant must address:

- Specimen Unacceptable – Unverified Substitute Specimen

SPECIMEN UNACCEPTABLE – UNVERIFIED SUBSTITUTE SPECIMEN

Specimen not properly verified. The refusal to register the applied-for mark in International Class 43 is now made final because applicant failed to provide in response to the refusal a properly verified specimen showing the mark as actually used in commerce for applicant's goods and/or services. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a), 2.63(b); TMEP §§904, 904.07(a), 1301.04(g)(i). An application based on Trademark Act Section 1(a) must include a specimen, properly verified, 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, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

Applicant was previously refused registration and required to amend the mark and/or submit a verified substitute specimen in International Class 43 to show use of the applied-for mark in commerce because the mark on the original specimen did not match the mark in the mark drawing. In response to each refused international class, applicant provided a substitute specimen that appears to show use of the applied-for mark in commerce but is not verified, as applicant specifically declined to verify the substitute specimen with the required signed declaration. The USPTO does not accept materials submitted as specimens without proper verification. *See* 37 C.F.R. §§2.34(a)(1), 2.59(a)-(b)(1), 2.76(b)(2); *In re Adair*, 45 USPQ2d 1211, 1212 n.2 (TTAB 1997).

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).

Response options. Applicant may respond to this final specimen refusal by satisfying one of the following for each applicable international class:

- (1) Submit a [verification](#) of the previously submitted substitute specimen, attesting that it 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. 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) Submit a different and properly verified 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. The substitute specimen cannot be accepted without the verified statement referenced in (1).
- (3) 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](#).

How to respond. [Click to file a request for reconsideration of this final Office action](#) that fully resolves all outstanding requirements and refusals **and/or** [click to file a timely appeal to the Trademark Trial and Appeal Board \(TTAB\)](#) with the required filing fee(s).

/Jim Hill/
James Hill
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RESPONSE GUIDANCE

- **Missing the response deadline to this letter will cause the application to [abandon](#).** A response or notice of appeal must be received by the USPTO before midnight **Eastern Time** of the last day of the response period. TEAS and ESTTA 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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United States Patent and Trademark Office (USPTO)

USPTO OFFICIAL NOTICE

Office Action (Official Letter) has issued
on **May 13, 2021** for
U.S. Trademark Application Serial No. 90011916

Your trademark application has been reviewed by a trademark examining attorney. As part of that review, the assigned attorney has issued an official letter that you must respond to by the specified deadline or your application will be [abandoned](#). Please follow the steps below.

- (1) [Read the official letter.](#)
- (2) **Direct questions** about the contents of the Office action to the assigned attorney below.

/Jim Hill/
James Hill
Examining Attorney
Law Office 115, USPTO
(571) 270-5682
james.hill@uspto.gov

Direct questions about navigating USPTO electronic forms, the USPTO [website](#), the application process, the status of your application, and/or whether there are outstanding deadlines or documents related to your file to the [Trademark Assistance Center \(TAC\)](#).

(3) **Respond within 6 months** ([or earlier](#), if required in the Office action) from **May 13, 2021**, using the Trademark Electronic Application System (TEAS). The response must be received by the USPTO before midnight **Eastern Time** of the last day of the response period. See the Office action for more information about how to respond

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](#), if needed, to ensure you receive important USPTO notices about your application.
- [Beware of misleading notices sent by private companies about your application.](#) Private companies not associated with the USPTO use public information available in trademark registrations to mail and email trademark-related offers and notices – most of which require fees. All **official USPTO correspondence** will only be **emailed from the domain “@uspto.gov.”**