

From: jay@madlabs.ca
To: [TM FR Notices](#)
Subject: Proposed Letter of Protest (LOP) Fees
Date: Sunday, September 29, 2019 3:49:13 PM
Attachments: [2019 mad labs logo email sig.png](#)
Importance: High

To Whom It May Concern,

The fact that fees for filing LOPs is even in question due to the USPTO's inability to follow your own guidelines is absolutely ridiculous.

Charging a \$100~ fee to the person filing a Letter of Protest is even more frivolous than the filings that the LOPs are intended to curb.

The Trademark Manual of Examining Procedure (TMEP) provides the constitutional basis for Trademarks and pulls together citations from the United States Code (U.S.C) as well as the Code of Federal Regulations (C.F.R.). This manual sets forth the guidelines and procedures that examining attorneys at the USPTO should be following, however there are several current practices at the USPTO that are inconsistent with the laws and regulations in place. I am not an attorney; I am just a very concerned small business owner looking to protect my business as well as the small businesses of countless others, just as the U.S.C. and C.F.R. sets out to ensure.

Here are the inconsistencies in regulations versus current USPTO practices that I have experienced: TMEP 704 Initial Examination > 704.01 The initial examination of an application by the examining attorney must be a complete examination. A complete examination includes a search for conflicting marks and an examination of the written application, any voluntary amendment(s) or other documents filed by applicant before an initial Office action is issued (see TMEP §702.01), the drawing, and any specimen(s) or foreign registration(s), to determine whether the mark is eligible for the type of registration requested, whether amendment is necessary, and whether all required fees have been paid. The examining attorney's first Office action must be complete, so the applicant will be advised of all requirements for amendment and all grounds for refusal, with the exception of use-related issues that are considered for the first time in the examination of an amendment to allege use under 15 U.S.C. §1051(c) or a statement of use under 15 U.S.C. §1051(d) in an intent-to-use application. The key language above is a "complete examination" which does not seem to be occurring in many applications. Many applicants are not fully complying with the following guidelines and this is being overlooked by the USPTO examining attorneys. 15 U.S.C. §1051(a)(3)(D) to the best of the verifier's knowledge and belief, no other person has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion,

or to cause mistake, or to deceive, except that, in the case of every application claiming concurrent use, the applicant shall— (i) state exceptions to the claim of exclusive use; and (ii) shall specify, to the extent of the verifier’s knowledge— (I) any concurrent use by others; (II) the goods on or in connection with which and the areas in which each concurrent use exists; (III) the periods of each use; and (IV) the goods and area for which the applicant desires registration. An excellent example of failure to verify this information is evident for the recently registered trademark for the word “Dogs” (Registration Number 5843989; Serial Number 88299285; Registration Date August 27, 2019; Goods and Services IC 025 US 022 039). A simple Amazon.com search on just apparel shows that the word “Dogs” is being concurrently used by tens of thousands of others. I could cite several other registered trademarks where this is evident, but this is the most recent and one of the most ludicrous examples of what is occurring with regard to a supposed “complete examination” of trademark applications. If I were the Commissioner of Trademarks I’d be terribly embarrassed that my organization permitted the registration of a trademark on the word “Dogs” which is a clear example that my office is not upholding their responsibility of ensuring that the statues regulating the registration of trademarks is being upheld in the United States. The examining attorney is also responsible for verifying the “specimen” that the applicant submits meets the regulations outlined in both TEMP 806.01(a) Use in Commerce - §1(a) and TMEP 904. Upon review of the submitted specimen for the same example above “Dogs” (Registration Number 5843989; Serial Number 88299285; Registration Date August 27, 2019; Goods and Services IC 025 US 022 039) you will clearly see that the specimen did not meet the guidelines and should have been refused at that point, but hence this was also overlooked. Though, the previously cited steps that should have caused a refusal of this mark by the examining attorney were missed, certainly the review of whether the word “Dogs” would function as a trademark would be a basis for refusal since this word functions as common English language.

I could go on citing more regulations, but instead I’ll offer additional examples that show blatant disregard of a “complete examination” clause of the TMEP on the next page for several trademarks in class IC 025. Each of these frivolous trademarks has a registration number meaning that at a minimum they made it past the examining attorney’s “complete examination” and certainly all of them should have received a “failure-tofunction” refusal on the grounds does not function as a trademark or service mark according to TMEP 904.07(b).

Examples of such frivolity:

I NEED A COFFEE THE SIZE OF MY BUTT Registration Number: 5173376
CHUBBY MERMAIDS Reg. No. 5612856

FARM Reg. No. 4175875

HOLD MY BEER & WATCH THIS Reg. No. 5043980

JESUS Reg. No. 3232057

1776 Reg. No. 5385816

GIRL LOVES CHRISTMAS Reg. No. 4746869

CAT Reg. No. 1298364

DOGS Reg. No. 5843989

Regards,

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est. 2001