

**From:** [Emily Everhart](#)  
**To:** [Fee.Setting](#); [TM.FR Notices](#); [Cain, Catherine](#)  
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To Whom It May Concern:

I am a very concerned small business owner in the retail online space looking to protect my business as well as the small businesses of countless others, just as the United States Code (U.S.C.) and the Code of Federal Regulations (C.F.R.) set out to ensure.

I firmly believe that the ability to protect a brand via a trademark is important and necessary. However, there is a current influx of frivolous trademark applications being submitted to the USPTO that do not follow laws and regulations.

The Trademark Manual of Examining Procedure (TMEP) October 2018 is a document that provides the constitutional basis for Trademarks and pulls together citations from the U.S.C. as well as the C.F.R. This manual sets the guidelines and procedures that examining attorneys at the USPTO should be following, however, there are several current practices at the USPTO that are dis-congruent and at times blatantly out of compliance with the laws and regulations in place. This has already negatively impacted thousands of small business owners like myself.

It has become common practice for individuals in the online space to attempt a trademark on a common, widely used word or phrase that is not at all an identifier of their brand or business. This is done to remove competition on everyday, popular words or concepts. Once the frivolous trademark is registered, they then go to the thousands of others using this common term and demand licensing payment, threaten litigation, or issue serial take-downs on e-commerce platforms through assertion of the mark. They have no brand associated with these frivolous trademarks, but are using the USPTO in ways it was not intended.

This is very disheartening. It happens over and over again. Frivolous trademarks are given a registration number meaning that at a minimum they made it past the examining attorney's "complete examination" and certainly should have received a "failure-to-function" refusal on the grounds that they do not function as a trademark or service mark according to TMEP 904.07(b).

What is my recourse when the government agency responsible for ensuring that frivolous trademarks won't be registered is negligent in their duties in upholding the trademark laws?

My main recourse is to file a letter of protest (LOP) according to the USPTO.gov site and the TMEP 1715 Letters of Protest in Pending Application. Countless other small business owners and I have to take important time away from our business in order to file LOPs for pending trademarks that somehow incorrectly made it through the "complete examination" of the USPTO.

You can imagine my frustration to discover that the USPTO is proposing to begin charging a fee of \$100-\$200 for each LOP submitted by small business owners like me, which we have to file in order to prevent trademarks from being registered that clearly violate the guidelines set forth the the TMEP, U.S.C. and the C.F.R.

I'm pleading that the Commissioner for Trademarks or someone on their team take a close look at what is happening and create a system of checks and balances to ensure that Examining Attorneys are indeed conducting a "complete examination" according to your guidelines.

I'm also asking that you remove any consideration of charging a fee for LOPs until changes have been made at the USPTO ensuring that the constitutional basis for trademarks is being followed.

Additionally, if a fee must be charged, I would propose charging a fee to applicants whos applied-for mark does not function as a mark and receives a "failure-to-function" refusal according to TMEP 904.07(b). This may help reduce the current influx of frivolous trademark applications being submitted to the USPTO.

Thank you for your consideration of this matter.

A Concerned Small Business Owner,

Emily Everhart