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Subject: Opposition to Proposed Fee for Letters of Protest
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USPTO

Re: Opposition to Proposed Fee for Letters of Protest

To whom it may concern:

I am writing to express my opposition to the USPTO's proposed fee for Letters of Protest.

Over the past few years, many common words and phrases that do not function as a source identifier have been trademarked, not as a way to identify a company or brand, but simply as a way to squash competition in the marketplace. As you know, a trademark is supposed to consist of a recognizable sign, design, or expression which identifies and protects products or services of a particular source.

Many new marks being submitted - and registered - are very common expressions used in an ornamental or informational way by thousands of creators and businesses, often long before the applicant's use, are therefore not unique to any particular brand, and do not in any way identify a particular company or source.

Letters of Protest give individuals, small businesses, and entrepreneurs the ability to speak up and point out to the USPTO that a new application doesn't identify products or services of a particular source but is rather merely ornamental, informational, or has been in widespread use for many years. We, the interested individuals, are spending our time looking for evidence, gathering it and sending it to the USPTO to aid in their decisions - essentially acting as free research assistants.

Searching online for widespread use should be a USPTO requirement for every examiner considering a class 025, 009, 014, 016, 021, or 035 application, but that does not seem to be happening. Because if it were, many "marks" would immediately be rejected. In addition, many words and phrases are being registered with obviously ornamental or informational use, fake specimens, or no specimens at all.

Many recently registered marks (for example DOGS Registration 5843989; Serial 88299285; Registration Date August 27,2019; Goods & Services IC025; FIRST USE: 20190213; FIRST USE IN COMMERCE: 20190213) are merely ornamental or informational, and fail to function as a mark as per USPTO regulations. A simple online search by the examiner would have shown this... and unfortunately no LOP was filed for DOGS to bring it to the examiner's attention.

I appreciate that the USPTO receives thousands of trademark registration applications monthly. I can only imagine how many applications any one lawyer or employee of the USPTO must review! The LOPs can actually help the examiners in doing their due diligence.

In addition to providing free research and a more complete perspective on an applied-for

mark, having the ability to file Letters of Protest for free offers a more even playing ground for the public and small businesses. A \$100 fee will effectively silence individuals and small businesses from pointing out what should be easily discoverable to an examiner in an online search of the terms. “Trademark bullies” are being allowed to eliminate competition by getting frivolous marks through a system that has been overwhelmed with new applications, and has not been conducting complete research or following its own guidelines.

I am an artist who has been creating t-shirts and other goods for sale since 1991. I search every word and saying on TESS before creating my products. I respect the trademarks and copyrights of others as I expect them to respect mine. Last year, I used the term “classy” in an online listing to describe one of my designs: “Get this classy and elegant design for your favorite person.” I received a takedown notice for using the word “classy” and it wasn't even on the goods, in the design, or used in any way to indicate source – it's an adjective! This is just one example of the overreach that is occurring in the online marketplace when common words and phrases are allowed to be registered without due consideration of all available evidence.

I simply want the trademark process to work as it is supposed to as it is stated in the USPTO code. Today, in practice, it is not. That is why having a free Letter of Protest process is so vital. It's not completely effective in preventing frivolous trademarks, but it's at least something that can help provide additional evidence to the examination process.

Please don't restrict access to the voices and help of the people by approving this fee. And please consider changing the examiner's trademark review process to include an online search to rule out widespread use.

Thank you for your time and consideration,

L Morgan
Artist & Small Business Owner