

From: [Rhyannon P](#)
To: [Fee.Setting](#); [TM.FR Notices](#); [Cain, Catherine](#)
Subject: Fee proposal
Date: Monday, September 2, 2019 3:54:08 PM

Sept 3, 2019

To Whom It May Concern:

Recently it has come to my attention that on the USPTO.gov website there is a suggestion of proposing a \$100-\$200 fee to file a LOP (letter of protest) (along with other fee increases) and the public is allowed to comment. I am a citizen and small business owner who occasionally uses the net to sell items and I have to do my own research to make sure I am not infringing on the rights of others, so I am protesting this fee change for a number of reasons. Keep in mind I am not a lawyer and doing my best to be clear.

One reason, I believe the burden of fees for trademarks is on the person *applying* for the trademark, if they had completed a thorough search and completed their due diligence then the examining attorneys would have less issues with processing Letters of protests. The public would find less need to protest and the fee to process and have your attorney's do their job should always befall the person applying for the trademark due to their lack of investigation in the first place!

Secondly, the regulations in place state that the examining attorneys will conduct a complete examination:

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 above regulation states the will examining attorney will let the applicant know if they have paid all fees. Clearly even the regulations note that the applicant is responsible for whatever burdens and fees are put on the examining attorney and its office. The regulations continues to support that the examining attorneys are to do **a complete examination** :

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

Therefore the burden is still on the *applicant* by not doing their due diligence, Additionally, if a fee must be charged, I would propose charging a fee to applicants whose 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 .

I am very disappointed in how many trademarks have slipped by the examining attorneys and the office of USPTO should be ashamed considering such things have slipped through are in public use and clearly known or easy to find, food items, animal names (descriptions), time, matters of pregnancy and family structures, every day occurrences and simple words, common English language etc. Such examples as:

- GINGER 552271
- DUH 5535385
- THIS IS JUST GENIUS 5741096
- REMATCH 5693289
- IT'S A BEAUTIFUL DAY TO BE ALIVE 5658196
- 1970 5651855
- HIPPIE VIBE 5613418
- I ONLY MAKE BOYS 5576414
- WAR 5544499
- NEIGHBORHOOD 5505435
- BE THE MAN 5489044
- BIRD NERD 5417471
- GREETINGS FROM 5381513
- THE BEST KIND OF DAD 5313209
- MEGALODON 5306714
- GREATEST GUITARIST EVER 5287747
- BUSY MOM 5250857
- NOT TODAY 5247946
- VOLLEYBALL LIFE 5180887
- MOMMY TO BE 5133777
- FOOTBALL MOM 4783661

- BASEBALL MOM 4783660
- SOFTBALL MOM 4783658
- I LOVE MY BIG SISTER 4749476I
- WORK HARD 4686987
- I LOVE MY WIFE 4541673
- NO SLEEP 3812057
- I'M THE BIG BROTHER 2166736
- I'M THE BIG SISTER 2153621
- WORKING HARD SO MY DOG CAN HAVE A GOOD LIFE 5534946
- EVERYTHING OFFENDS ME 5555286
- I WILL WIN 5542855
- MISTAKES 5544220
- DOGS 584398

It is outrageous to let this slip by and then try to put the burden on the protestors when the applicants clearly are not following the rules and the examining attorneys are letting it through! The Commissioner of Trademarks should be appalled at these examples and many others that have been approved.

Thirdly and lastly, the burden you put on the people who protest is unfair to those who are not able to determine their established "words" are being trademarked. Such as "Mommy to be" stated above. There are thousands of examples of this on the net with hundreds of different designers/companies using them. They have prior (I am assuming) looked at the trademarks and determined that is something in every day usage and should not be trademarked. Now, you suggest the fee come from everyone who protests who has (we have to assume) already did their due diligence already and are in fact letting your examining attorneys know that applicant did **not** do their due diligence and the examining attorneys have overlooked that it is already in use or something that is everyday usage and should not be approved.

This is an unfair burden put on protestors, plain and simple. It hurts innocent people and business. So, I'm sure you can understand my frustration when I discovered that the USPTO is proposing to charge 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 in the TMEP, U.S.C. and the C.F.R. The fee should be on the applicant filing frivolous applications.

Thank you,

Rebecca Pearson