

From: [N.Vanderhoop](#)
To: [Fee.Setting](#); [TM.FR.Notices](#); [Cain,Catherine](#)
Subject: Distressed by the proposal to start charging a fee to file a Letter of Protest
Date: Sunday, September 22, 2019 9:35:51 PM

September 22, 2019

To Whom It May Concern:

I am a graphic designer and small business owner in the online retail space, and am writing to state that I am very concerned over the current state of trademark reviews and approvals and am deeply distressed by the most recent proposal to start charging a fee to file a Letter of Protest.

Starting out in this business I learned that what I understood from the guidelines on the uspto.gov website were not at all what was actually occurring in the trademark world with regard to class 025 specifically.

The Trademark Manual of Examining Procedure (TMEP) document of October 2018 provides the constitutional basis for Trademarks and notes citations from the United States Code (U.S.C) as well as the Code of Federal Regulations (C.F.R.). This manual outlines the guidelines and procedures that examining attorneys at the USPTO should be following, but recent practices at the USPTO are inconsistent with the laws and regulations in place, as our community is seeing more and more frivolous, common word/phrase, ornamental only applications being approved.

Hundreds of words and phrases have been approved in class 025 in the last couple years alone which a simple Google, Amazon and Pinterest search should have been enough for refusal on any of the following counts:

1202.03 Refusal on Basis of Ornamentation

1202.04(b) Widely Used Messages

1301.02(a) Matter that Does Not Function as a Service Mark

These serve only as a “land grab” for someone looking to take over a profitable phrase and prevent others (who may be using it already) from using it. These don’t represent a brand as Trademarks intend. They are an abuse of the system. Some examples are:

1. WAR 5544499
2. NEIGHBORHOOD 5505435
3. I'M THE BIG BROTHER 2166736
4. I'M THE BIG SISTER 2153621
5. MOMMY TO BE 5133777
6. FOOTBALL MOM 4783661
7. BASEBALL MOM 4783660
8. SOFTBALL MOM 4783658
9. I WORK HARD 4686987
10. I LOVE MY WIFE 4541673
11. WHAT'S YOUR SUPERPOWER? 4169154
12. DOGS 5843989

As a business owner, I am very concerned and am 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. However, it seems that the USPTO office is not always doing a “complete examination” as they are intended to do, and many applicants are not fully complying with the guidelines and this is being overlooked by the USPTO examining attorneys.

In the case of this last trademark for “Dogs,” a basic [Amazon.com](https://www.amazon.com) search on just apparel shows that the word “Dogs” is being concurrently used by tens of thousands of others. There are numerous other registered trademarks where this is the case, but this is the most recent and one of the most ludicrous examples of what is occurring with regard to the failure to perform a “complete examination” of trademark applications.

Further review of the application shows that 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) shows that the specimen did not meet the guidelines and should have been refused at that point, but hence this was also overlooked. In this case the word “Dogs” could have certainly been refused based on ornamentation.

Finally, beyond the failure of due diligence previously cited, which should have caused a refusal of this mark by the examining attorney, 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.

In light of the current state of negligence in the trademark application review process, as a small business owner, my only 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 running our businesses in order to file LOP's for pending trademarks that somehow incorrectly made it through the "complete examination" of the USPTO.

Consequently, I'm sure you can understand my shock and dismay when I learned 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 in the TMEP, U.S.C. and the C.F.R.. This only serves to stack the deck against small business owners who are seeing more and more common words and phrases taken off the table, by frivolous and ornamental trademark trolls.

I'm pleading that the Commissioner for Trademarks or someone on their team take a close look at the circumstances I outlined above and create a system of checks and balances to ensure that Examining Attorneys are in fact conducting a "complete examination" according to the guidelines.

I'm also pleading that you remove any consideration of charging a fee for LOP's 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 significant (\$100-200) 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). I believe it is only fair to pass on the financial burden of this process to those who are clogging up the system with frivolous trademark applications, rather than the concerned and diligent business owners who will be harmed by the approval of frivolous trademarks. This may help reduce the current influx of frivolous trademark applications being submitted to the USPTO.

Please feel free to contact me with any further questions.

Sincerely,

Nicole Vanderhoop

Graphics Artist/Small Business Owner