

**To:** Marjeanne's Creations, LLC ([mcreations01@hotmail.com](mailto:mcreations01@hotmail.com))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 86654940 - ANTI-INFLAMMATORY NUMBS UP! - N/A  
**Sent:** 9/15/2015 5:31:05 PM  
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**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)  
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

**U.S. APPLICATION SERIAL NO.** 86654940

**MARK:** ANTI-INFLAMMATORY NUMBS UP!

**\*86654940\***

**CORRESPONDENT ADDRESS:**

MARJEANNE'S CREATIONS, LLC  
7346 Hollow Corners Rd  
Almont, MI 48003-8011

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**APPLICANT:** Marjeanne's Creations, LLC

**CORRESPONDENT'S REFERENCE/DOCKET NO :**

N/A

**CORRESPONDENT E-MAIL ADDRESS:**

[mcreations01@hotmail.com](mailto:mcreations01@hotmail.com)

**OFFICE ACTION**

**STRICT DEADLINE TO RESPOND TO THIS LETTER**

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

**ISSUE/MAILING DATE:** 9/15/2015

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issues below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

**SUMMARY OF ISSUES IN THIS OFFICE ACTION:**

- SEARCH RESULTS: PRIOR-FILED APPLICATION
- REQUIREMENT: IDENTIFICATION OF GOODS CLARIFICATION NEEDED
- REQUIREMENT: DISCLAIMER NEEDED

**SEARCH RESULTS: PRIOR-FILED APPLICATION**

The filing date of pending U.S. Application Serial No. **86564465** precedes applicant's filing date. See attached referenced application at Exhibit A. If the mark in the referenced application registers, applicant's mark may be refused registration under Trademark Act Section 2(d) because of

a likelihood of confusion between the two marks. *See* 15 U.S.C. §1052(d); 37 C.F.R. §2.83; TMEP §§1208 *et seq.* Therefore, upon receipt of applicant's response to this Office action, action on this application may be suspended pending final disposition of the earlier-filed referenced application.

In response to this Office action, applicant may present arguments in support of registration by addressing the issue of the potential conflict between applicant's mark and the mark in the referenced application. Applicant's election not to submit arguments at this time in no way limits applicant's right to address this issue later if a refusal under Section 2(d) issues.

#### **REQUIREMENT: IDENTIFICATION OF GOODS CLARIFICATION NEEDED**

The wording in the identification of goods is indefinite and must be clarified because it contains a slash which functions like the word "or". *See* TMEP §1402.01.

An application must specify, in an explicit manner, the particular goods or services on or in connection with which the applicant uses, or has a bona fide intention to use, the mark in commerce. *See* 15 U.S.C. §1051(a)(2), (b)(2); 37 C.F.R. §2.32(a)(6); TMEP §1402.01. Generally, the terminology "and/or" and "or" is not sufficiently explicit language in identifications because it is not clear whether applicant is using the mark, or intends to use the mark, on all the identified goods or services. *See* TMEP §1402.03(a).

For example, "modems and/or monitors" could be read to mean "modems or monitors" and thus it is unclear which goods applicant intends to identify. Applicant could amend the identification to "modems" alone, or "monitors" alone, or "modems and monitors" if applicable. Therefore, applicant should replace "and/or" with "and" in the identification of goods or services, if appropriate, or rewrite the identification with the "and/or" deleted and the goods or services specified using definite and unambiguous language.

#### **SUGGESTED IDENTIFICATION OF GOODS**

Instructions and suggested changes are shown in bold text. Applicant may adopt the following identification of goods, if accurate:

INTERNATIONAL CLASS 5: All natural, non-medicated, therapeutic topical creams for the treatment of sports injuries, neck pain, sore **and** stiff muscles, sciatic nerve relief, and arthritis

*See* TMEP §1402.01.

An applicant may only amend an identification to clarify or limit the goods, but not to add to or broaden the scope of the goods. 37 C.F.R. §2.71(a); *see* TMEP §§1402.06 *et seq.*, 1402.07.

For assistance with identifying and classifying goods and services in trademark applications, please see the USPTO's online searchable *U.S. Acceptable Identification of Goods and Services Manual* at <http://tess2.uspto.gov/netahtml/tidm.html>. *See* TMEP §1402.04.

#### **REQUIREMENT: DISCLAIMER NEEDED**

Applicant must disclaim the wording "ANTI-INFLAMMATORY" because it merely describes an ingredient, quality, characteristic, function, feature, purpose, or use of applicant's goods, and thus is an unregistrable component of the mark. *See* 15 U.S.C. §§1052(e)(1), 1056(a); *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1251, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012) (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004)); TMEP §§1213, 1213.03(a).

The attached evidence from the *Macmillan Dictionary* shows the wording "ANTI-INFLAMMATORY" means "a drug taken to reduce inflammation." Applicant's goods are identified as "All natural, non-medicated, therapeutic topical creams for the treatment of sports injuries, neck pain, sore/stiff muscles, sciatic nerve relief, and arthritis" in International Class 5. Attached at Exhibit C, is evidence from the applicant's website, [www.migraineawayandmore.com](http://www.migraineawayandmore.com), showing applicant's goods are a "Powerful All Natural Roll On **Anti-Inflammatory.**" Therefore, the wording "ANTI-INFLAMMATORY" merely describes a characteristic of the applicant's identified goods.

An applicant may not claim exclusive rights to terms that others may need to use to describe their goods in the marketplace. *See Dena Corp. v. Belvedere Int'l, Inc.*, 950 F.2d 1555, 1560, 21 USPQ2d 1047, 1051 (Fed. Cir. 1991); *In re Aug. Storck KG*, 218 USPQ 823, 825 (TTAB 1983). A disclaimer of unregistrable matter does not affect the appearance of the mark; that is, a disclaimer does not physically remove the disclaimed matter from the mark. *See Schwarzkopf v. John H. Breck, Inc.*, 340 F.2d 978, 978, 144 USPQ 433, 433 (C.C.P.A. 1965); TMEP §1213.

If applicant does not provide the required disclaimer, the USPTO may refuse to register the entire mark. *See In re Stereotaxis Inc.*, 429 F.3d 1039, 1040-41, 77 USPQ2d 1087, 1088-89 (Fed. Cir. 2005); TMEP §1213.01(b).

Applicant should submit a disclaimer in the following standardized format:

**No claim is made to the exclusive right to use “ANTI-INFLAMMATORY” apart from the mark as shown.**

For an overview of disclaimers and instructions on how to satisfy this disclaimer requirement online using the Trademark Electronic Application System (TEAS) form, please go to <http://www.uspto.gov/trademarks/law/disclaimer.jsp>.

#### **ADVISORY: RESPONDING TO THIS OFFICE ACTION**

**TEAS PLUS OR TEAS REDUCED FEE (TEAS RF) APPLICANTS – TO MAINTAIN LOWER FEE, ADDITIONAL REQUIREMENTS MUST BE MET, INCLUDING SUBMITTING DOCUMENTS ONLINE:** Applicants who filed their application online using the lower-fee TEAS Plus or TEAS RF application form must (1) file certain documents online using TEAS, including responses to Office actions (see TMEP §§819.02(b), 820.02(b) for a complete list of these documents); (2) maintain a valid e-mail correspondence address; and (3) agree to receive correspondence from the USPTO by e-mail throughout the prosecution of the application. See 37 C.F.R. §§2.22(b), 2.23(b); TMEP §§819, 820. TEAS Plus or TEAS RF applicants who do not meet these requirements must submit an additional processing fee of \$50 per international class of goods and/or services. 37 C.F.R. §§2.6(a)(1)(v), 2.22(c), 2.23(c); TMEP §§819.04, 820.04. However, in certain situations, TEAS Plus or TEAS RF applicants may respond to an Office action by authorizing an examiner’s amendment by telephone without incurring this additional fee.

#### **ADVISORY: APPLICANT MAY WISH TO HIRE A SPECIALIST ATTORNEY**

Because of the legal technicalities and strict deadlines involved in the USPTO application process, applicant may wish to hire a private attorney specializing in trademark matters to represent applicant in this process and provide legal advice. Although the undersigned trademark examining attorney is permitted to help an applicant understand the contents of an Office action as well as the application process in general, no USPTO attorney or staff is permitted to give an applicant legal advice or statements about an applicant’s legal rights. TMEP §§705.02, 709.06.

For attorney referral information, applicant may consult the American Bar Association’s Consumers’ Guide to Legal Help at <http://www.abanet.org/legalservices/findlegalhelp/home.cfm>, an attorney referral service of a state or local bar association, or a local telephone directory. The USPTO may not assist an applicant in the selection of a private attorney. 37 C.F.R. §2.11.

**OFFICE ACTION QUESTIONS:** If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. See 37 C.F.R. §§2.62(c), 2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, **the trademark examining attorney may not provide legal advice or statements about applicant’s rights**. See TMEP §§705.02, 709.06.

/Tina Brown/  
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**All informal e-mail communications relevant to this application will be placed in the official application record.**

**WHO MUST SIGN THE RESPONSE:** It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

**PERIODICALLY CHECK THE STATUS OF THE APPLICATION:** To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov) or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

**TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS:** Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

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# EXHIBIT A

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