

To: La Soupe, Inc. (trademarks@fbtlaw.com)
Subject: U.S. TRADEMARK APPLICATION NO. 87533157 - LA SOUPE CINCINNATI, OHIO - 0646181
Sent: 5/11/2018 2:49:44 PM
Sent As: ECOM113@USPTO.GOV
Attachments: [Attachment - 1](#)
[Attachment - 2](#)
[Attachment - 3](#)

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

**U.S. APPLICATION
SERIAL NO.** 87533157

MARK: LA SOUPE
CINCINNATI, OHIO

87533157

**CORRESPONDENT
ADDRESS:**
MATTHEW D.
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CINCINNATI OH
45202

**GENERAL TRADEMARK
INFORMATION:**
<http://www.uspto.gov/trademarks/index.jsp>
[VIEW YOUR APPLICATION FILE](#)

APPLICANT: La Soupe,
Inc.

**CORRESPONDENT'S
REFERENCE/DOCKET
NO:**
0646181
**CORRESPONDENT
E-MAIL ADDRESS:**

trademarks@fbtlaw.com

SUSPENSION NOTICE: NO RESPONSE NEEDED

ISSUE/MAILING DATE: 5/11/2018

5STATUS OF APPLICATION

Pursuant to TMEP §707.03, applicant is advised of the following status of the application. In an Office action issued on October 24, 2017, the following issues were outstanding with this application:

- (1) Section 2(d) Refusal – Likelihood of Confusion
- (2) Prior-filed Pending Application Requirement
- (3) Translation Requirement
- (4) Disclaimer Requirement
- (5) Color Claim and Mark Description Requirement

On April 23, 2018, applicant responded to the Office action. The examining attorney has determined the following:

- (2) Applicant has **satisfied** the translation requirement.
- (3) Applicant has **satisfied** the disclaimer requirement.
- (4) Applicant's amended mark description and mark drawing are acceptable and made of record, and the requirement is **satisfied**.
- (5) The prior-filed application, Serial No. 87117054, is still pending, and therefore, the application will be **suspended** pending registration or abandonment of the prior-filed application. TMEP §§713.02, 714.04.

Preliminary Response to Applicant's Arguments

Applicant primarily argues that applicant's and registrant's trade channels differ because applicant distributes food directly between organizations, while registrant organizes fundraising events. However, these charitable services are not mutually exclusive. Many entities, such as those discussed in the initial office action, provide the charitable service of direct food distribution to needy people and organizations that help needy people, and organize and conduct charitable fundraising events.

Moreover, the registrant has not limited its trade channels or class of consumers in the identification. The presumption under Trademark Act Section 7(b), 15 U.S.C. §1057(b), is that the registrant is the owner of the mark and that use of the mark extends to all services identified in the registration. The presumption also implies that the registrant operates in all normal channels of trade and reaches all classes of purchasers of the identified services. *In re Melville Corp.*, 18 USPQ2d 1386, 1389 (TTAB 1991); *McDonald's Corp. v. McKinley*, 13 USPQ2d 1895, 1899 (TTAB 1989); *RE/MAX of Am., Inc. v. Realty Mart, Inc.*, 207 USPQ 960, 964-65 (TTAB 1980); see TMEP §1207.01(a)(iii).

Determining likelihood of confusion is based on the description of the services stated in the application and registration at issue, not on evidence of actual use. See *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1323, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014) (quoting *Octocom Sys. Inc. v. Hous. Computers Servs. Inc.*, 918 F.2d 937, 942, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990)). Therefore, the information from registrant's website does not limit the registrant's trade channels or class of consumers for purposes of the likelihood of confusion analysis.

Applicant also asserts that there is no known evidence of actual confusion. "[A] showing of actual confusion is not necessary to establish a likelihood of confusion." *In re i.am.symbolic, llc*, 866 F.3d 1315, 1322, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (quoting *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)); TMEP §1207.01(d)(ii). Furthermore, three years of co-existence is a relatively short time span. Thus, the absence of evidence of actual confusion is not persuasive.

Applicant's arguments do not overcome the likelihood of confusion refusal, and the refusal is **continued and maintained**.

Action Is Suspended

The trademark examining attorney is suspending action on the application for the reason(s) stated below. See 37 C.F.R. §2.67; TMEP §§716 *et seq.*

The effective filing date of the pending application identified below precedes the filing date of applicant's application. If the mark in the referenced application registers, applicant's mark may be refused registration under Section 2(d) because of a likelihood of confusion with that registered mark. See 15 U.S.C. §1052(d); 37 C.F.R. §2.83; TMEP §§1208 *et seq.* Therefore, action on this application is suspended until the earlier-filed referenced application(s) is either registered or abandoned. 37 C.F.R. §2.83(c). A copy of information relevant to this referenced application is attached.

- Application Serial No(s). 87117054

No Response Required

The USPTO will periodically conduct a status check of the application to determine whether suspension remains appropriate, and the trademark examining attorney will issue as needed an inquiry letter to applicant regarding the status of the matter on which suspension is based. TMEP §§716.04, 716.05. Applicant will be notified when suspension is no longer appropriate. See TMEP §716.04.

No response to this notice is necessary; however, if applicant wants to respond, applicant should use the "Response to Suspension Inquiry or Letter of Suspension" form online at <http://teasroa.uspto.gov/rsi/rsi>.

/Marynelle W. Wilson/
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Law Office 113
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Email: marynelle.wilson@uspto.gov

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 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 Trademark Electronic Application System (TEAS) form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

DESIGN MARK

Serial Number

87117054

Status

PUBLISHED FOR OPPOSITION

Word Mark

SOUP

Standard Character Mark

Yes

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

BRUTE LABS Nonprofit Public Benefit Corporation CALIFORNIA 112 Durham Street Menlo Park CALIFORNIA 94025

Goods/Services

Class Status -- ACTIVE. IC 035. US 100 101 102. G & S: Business and marketing consultation services to help establish non-profit organizations and programs and to assist non-profit organizations and programs in planning, managing, and conducting activities; business and marketing consultation services to help establish non-profit organizations and programs in the fields of technology, design, art, craftsmanship, and vocational education and to assist non-profit organizations and programs in the fields of technology, design, art, craftsmanship, and vocational education in planning, managing, and conducting activities; promoting public awareness and public advocacy to promote awareness in the fields of health, education, poverty, development, family matters and the environment.

Goods/Services

Class Status -- ACTIVE. IC 037. US 100 103 106. G & S: Real estate development.

Goods/Services

Class Status -- ACTIVE. IC 041. US 100 101 107. G & S: Organizing and hosting of events for cultural purposes; arranging, organizing, conducting, and hosting social entertainment.

Goods/Services

Class Status -- ACTIVE. IC 043. US 100 101. G & S: Consulting services in the field of providing temporary housing for people who are homeless or at risk of homelessness; providing temporary housing accommodations; arranging temporary housing accommodations.

Goods/Services

Class Status -- ACTIVE. IC 044. US 100 101. G & S: Agricultural advice; providing recommendations for food growing methods.

Filing Date

2016/07/26

Examining Attorney

SMITH, BRIDGETT

Attorney of Record

Aaron D. Hendelman

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