

**To:** Smith, Jessica ([jessica.standley@hotmail.com](mailto:jessica.standley@hotmail.com))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 87681223 - BLANK BEAUTY - N/A  
**Sent:** 6/28/2018 10:21:01 PM  
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**Attachments:**

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

**U.S. APPLICATION  
SERIAL NO.** 87681223

**MARK:** BLANK BEAUTY \*87681223\*

**CORRESPONDENT**

**ADDRESS:**  
SMITH, JESSICA  
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LETTER:**

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**APPLICANT:** Smith, Jessica

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

N/A

**CORRESPONDENT E-  
MAIL ADDRESS:**

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**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. A RESPONSE TRANSMITTED THROUGH THE TRADEMARK ELECTRONIC APPLICATION SYSTEM (TEAS) MUST BE RECEIVED BEFORE MIDNIGHT **EASTERN TIME** OF THE LAST DAY OF THE RESPONSE PERIOD.

**ISSUE/MAILING DATE:** 6/28/2018

**THIS IS A FINAL ACTION.**

This letter responds to applicant's communication filed on May 30, 2018. The following requirement(s) is now made FINAL: Disclaimer; Identification and Owner Name Change. See 37 C.F.R. §2.64(a).

***DOMESTIC PRO SE APPLICANT MAY WISH TO SEEK TRADEMARK COUNSEL***

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](#); an online directory of legal professionals, such as [FindLaw®](#); or a local telephone directory. The USPTO, however, may not assist an applicant in the selection of a private attorney. 37 C.F.R. §2.11.

## SUMMARY OF ISSUES:

- Ownership Change – Assignment Required
- Disclaimer
- Identification

### OWNERSHIP – Request to Change Owner Name Denied

In the January 29, 2018 preliminary response to office action, the applicant requested that the second owner name (Mariah Snell) be amended; however, applicant did not provide or record in the USPTO database ownership transfer documentation or any other documentation showing transfer of title nor did the applicant indicate whether the assignee is a successor to applicant's business. An intent-to-use application is void if, prior to filing an allegation of use, the application is assigned to a party other than either a successor to the applicant's business or to a portion of the applicant's business to which the mark pertains, if that business is ongoing and existing. 15 U.S.C. §1060(a)(1); 37 C.F.R. §3.16; TMEP §501.01(a); *see Cent. Garden & Pet Co. v. Dorskocil Mfg. Co.*, 108 USPQ2d 1134, 1146 (TTAB 2013); *Clorox Co. v. Chem. Bank*, 40 USPQ2d 1098, 1105-06 (TTAB 1996).

Accordingly, the request to amend the applicant name was denied until (1) clear chain of title to the new party has been established and (2) a statement that the assignee is a successor to applicant's business was provided. 37 C.F.R. §2.61(b); TMEP §814.

**In its May 30, 2018 response**, the applicant attempted to merely delete Mariah Snell, one of the joint owners listed in the application, from the record without filing the amendment through our Assignments Branch, as previously instructed. Given that the applicant did not comply with the requirements for changing the ownership of the application, the refusal to amend the owner(s) of the application is maintained and **MADE FINAL**.

To establish chain of title to the application, one of the following must be satisfied:

- (1) The new owner must (a) record an assignment, name change, or other documentation affecting title with the USPTO's Assignment Recordation Branch showing a clear chain of title to the mark in the new owner; and (b) promptly notify the trademark examining attorney that the documentation has been recorded.; *OR*
- (2) The new owner must file either (a) a written statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20, explaining in detail the chain of title to the new owner; or (b) documentation showing transfer of title to the new owner. However, the registration will not issue in the name of the new owner without recording chain of title documentation with the USPTO and notifying the trademark examining attorney, as specified in (1) above.

TMEP §502.01; *see* 15 U.S.C. §1060; 37 C.F.R. §§2.193(e)(1), 3.73(b)(1); TMEP §502.02(a).

**\*Assignments and other documents affecting title may be filed electronically.** There is a fee for recording ownership changes. 37 C.F.R. §§2.6(b)(6), 3.41(a); TMEP §503.03(d). Recording an assignment or other ownership transfer document does not constitute a response to an Office action. TMEP §503.01(d). Applicant must still file a separate response to this Office action. *See id.*

### DISCLAIMER

Applicant must disclaim the wording “**BEAUTY**” because it merely describes a 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 previously attached evidence from an online dictionary shows this wording means “the quality or aggregate of qualities in a person or thing that gives pleasure to the senses or pleasurably exalts the mind or spirit.” Therefore, the wording merely describes an important feature of the applicant's goods, specifically, that they include cosmetic products used to enhance a person's appearance to give pleasure to the senses.

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 “BEAUTY” 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>

Given that the applicant did not comply with the request of the above-listed requirement, the requirement is **MADE FINAL**.

### **IDENTIFICATION**

Applicant applied for the following: cosmetics; make-up; lipstick; blush; skin bronzer; eyeshadow; skin highlighter; eyeliner; false eyelashes; mascara; eyebrow products, namely, eyebrow pencil, gels, eyebrow colors; eyebrow cosmetics; false eyebrows; non-medicated skincare preparations; cosmetic preparations for skin care; *creams; lotions* ; cosmetic oils

Applicant must further clarify the wording “gels” and “creams; lotions” listed in the identification because it is indefinite and must be revised to list intended goods by common commercial name or phrasing that clearly identifies the intended goods. See TMEP §§1402.01, 1402.03.

Applicant may change this wording to, if accurate, in Class 3:

cosmetics; make-up; lipstick; blush; skin bronzer; eyeshadow; skin highlighter; eyeliner; false eyelashes; mascara; eyebrow products, namely, eyebrow pencil, **eye gels**, eyebrow colors; eyebrow cosmetics; false eyebrows; non-medicated skincare preparations; cosmetic preparations for skin care; **cosmetic creams; body lotions**; cosmetic oils

### *Identification Manual*

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](#). See TMEP §1402.04.

### *Indefinite Terms*

Moreover, each identification must be specific and all-inclusive; therefore, applicant should refrain from using open-ended wording such as “including” or “and the like” and replace this wording with “namely” followed by the respective goods listed by their common commercial names. TMEP §§1402.01 and 1402.03(a). The identification must be specific and all-inclusive.

### *Amending Identification/Broadening Scope*

Applicant’s goods may be clarified or limited, but may not be expanded beyond those originally itemized in the application or as acceptably amended. See 37 C.F.R. §2.71(a); TMEP §1402.06. Applicant may clarify or limit the identification by inserting qualifying language or deleting items to result in a more specific identification; however, applicant may not substitute different goods or add goods not found or encompassed by those in the original application or as acceptably amended. See TMEP §1402.06(a)-(b). The scope of the goods sets the outer limit for any changes to the identification and is generally determined by the ordinary meaning of the wording in the identification. TMEP §§1402.06(b), 1402.07(a)-(b). Any acceptable changes to the goods will further limit scope, and once goods are deleted, they are not permitted to be reinserted. TMEP §1402.07(e).

Given that the applicant did not comply with the request of the above-listed requirement, the requirement is **MADE FINAL**.

### ***PROPER RESPONSE TO FINAL ACTION***

Applicant must respond within six months of the date of issuance of this final Office action or the application will be abandoned. 15 U.S.C. §1062(b); 37 C.F.R. §2.65(a). Applicant may respond by providing one or both of the following:

- (1) a response [filed using the Trademark Electronic Application System \(TEAS\)](#) that fully satisfies all outstanding requirements and/or resolves all outstanding refusals; and/or
- (2) an appeal to the Trademark Trial and Appeal Board [filed using the Electronic System for Trademark Trials and Appeals \(ESTTA\)](#) with the required filing fee of \$200 per class.

37 C.F.R. §2.63(b)(1)-(2); TMEP §714.04; see 37 C.F.R. §2.6(a)(18); TBMP ch. 1200.

In certain rare circumstances, an applicant may respond by [filing a petition to the Director](#) pursuant to 37 C.F.R. §2.63(b)(2) to review procedural issues. TMEP §714.04; see 37 C.F.R. §2.146(b); TBMP §1201.05; TMEP §1704 (explaining petitionable matters). There is a fee required for filing a petition. 37 C.F.R. §2.6(a)(15).

## **PRO SE RESPONSE GUIDELINES and ABANDONMENT ADVISORY**

For this application to proceed further, applicant must explicitly address each refusal and/or requirement raised in this Office action. If the action includes a refusal, applicant may provide arguments and/or evidence as to why the refusal should be withdrawn and the mark should register. Applicant may also have other options specified in this Office action for responding to a refusal and should consider those options carefully. To respond to requirements and certain refusal response options, applicant should set forth in writing the required changes or statements. For more information and general tips on responding to USPTO Office actions, response options, and how to file a response online, see “[Responding to Office Actions](#)” on the USPTO’s website.

If applicant does not respond to this Office action within six months of the issue/ mailing date, or responds by expressly abandoning the application, the application process will end and the trademark will fail to register. See 15 U.S.C. §1062(b); 37 C.F.R. §§2.65(a), 2.68(a); TMEP §§718.01, 718.02. Additionally, the USPTO will not refund the application filing fee, which is a required processing fee. See 37 C.F.R. §§2.6(a)(1)(i)-(iv), 2.209(a); TMEP §405.04.

When an application has abandoned for failure to respond to an Office action, an applicant may timely file a petition to revive the application, which, if granted, would allow the application to return to active status. See 37 C.F.R. §2.66; TMEP §1714. The petition must be filed within two months of the date of issuance of the notice of abandonment and [may be filed online via the Trademark Electronic Application System \(TEAS\)](#) with a \$100 fee. See 37 C.F.R. §§2.6(a)(15)(ii), 2.66(a)(1), (b)(1).

PLEASE NOTE:

**The USPTO proposes to change federal trademark rules to require** applicants and registrants to (1) file submissions concerning applications and registrations online using the USPTO’s Trademark Electronic Application System (TEAS) and (2) provide and maintain an accurate email address for receiving correspondence from the USPTO. [See the Mandatory Electronic Filing Rules webpage for more information.](#)

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.

**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 \$125 per 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 or e-mail without incurring this additional fee.

/S. Young/  
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**TO RESPOND TO THIS LETTER:** Go to [http://www.uspto.gov/trademarks/teas/response\\_forms.jsp](http://www.uspto.gov/trademarks/teas/response_forms.jsp). Please wait 48-72 hours from the issue/ mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail [TEAS@uspto.gov](mailto:TEAS@uspto.gov). For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

**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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