

To: Atlas Holdings Group, Inc. (pctrademarks@perkinscoie.com)
Subject: U.S. TRADEMARK APPLICATION NO. 87775383 - ACCESS COIN - 123517.4000
Sent: 5/16/2018 9:42:52 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. 87775383

MARK: ACCESS COIN

87775383

CORRESPONDENT ADDRESS:

LINDSAY B. ALLEN
PERKINS COIE LLP
1201 THIRD AVENUE, SUITE 4900
SEATTLE, WA 98101

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APPLICANT: Atlas Holdings Group, Inc.

CORRESPONDENT'S REFERENCE/DOCKET

NO:

123517.4000

CORRESPONDENT E-MAIL ADDRESS:

pctrademarks@perkinscoie.com

OFFICE ACTION

I. 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: 5/16/2018

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §82.62(a); 2.65(a); TMEP §§711, 718.03

SUMMARY OF ISSUES that applicant must address:

- ADVISORY: Earlier-Filed Applications
- ADVISORY: Ownership of Earlier-Filed Applications
- Section 2(e)(1) Refusal – Merely Descriptive Mark
- ADVISORY: Supplemental Register Unavailable Until Valid AAU Is Filed
- Identification of Goods and Services Requires Amendment

OFFICE SEARCH

The trademark examining attorney has searched the USPTO's database of registered and pending marks and has found no similar registered marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; *see* 15 U.S.C. §1052(d). However, marks in prior-filed pending applications may present a bar to registration of applicant's mark.

ADVISORY: EARLIER-FILED APPLICATIONS

The filing dates of pending U.S. Application Serial Nos. 87772515 and 87772532 precede applicant's filing date. See attached referenced applications. If one or more of the marks in the referenced applications register, applicant's mark may be refused registration under Trademark Act Section 2(d) because of a likelihood of confusion with the registered mark(s). *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 applications.

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 marks in the referenced applications. 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.

ADVISORY: OWNERSHIP OF EARLIER-FILED APPLICATIONS

If the marks in the potentially conflicting prior-filed applications have been assigned to applicant, applicant may provide evidence of ownership of the marks to avoid a possible refusal under Trademark Act Section 2(d) based on a likelihood of confusion. *See* 15 U.S.C. §1052(d); TMEP §812.01.

Applicant may provide evidence of ownership of the marks by satisfying one of the following:

- (1) Record the assignment with the USPTO's Assignment Recordation Branch (ownership transfer documents such as assignments can be filed online at <http://etas.uspto.gov>) and promptly notify the trademark examining attorney that the assignment has been duly recorded.
- (2) Submit copies of documents evidencing the chain of title.
- (3) Submit the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: **"Applicant is the owner of Application Serial Nos. 87772515 and 87772532."** To provide this statement using the Trademark Electronic Application System (TEAS), use the **"Response to Office Action"** form; answer "yes" to wizard questions #3 and #10; then, continuing on to the next portion of the form, in the "Additional Statement(s)" section, check the box for "Miscellaneous Statement" and write in the free form text field for the "Miscellaneous Statement" that "Applicant is the owner of Application Serial Nos. 87772515 and 87772532," inserting the relevant application serial number(s); and follow the instructions within the form for signing. The form must be signed twice; a signature is required both in the "Declaration Signature" section and in the "Response Signature" section.

TMEP §812.01; *see* 15 U.S.C. §1060; 37 C.F.R. §§2.193(e)(1), 3.25, 3.73(a)-(b); TMEP §502.02(a).

Recording a document with the Assignment Recordation Branch does not constitute a response to an Office action. TMEP §503.01(d).

SECTION 2(e)(1) REFUSAL - MERELY DESCRIPTIVE

Registration is refused because the applied-for mark merely describes a feature, characteristic, purpose, function or use of applicant's goods and services. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); *see* TMEP §§1209.01(b), 1209.03 *et seq.*

A mark is merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose, or use of an applicant's goods and/or services. TMEP §1209.01(b); *see, e.g., In re TriVita, Inc.*, 783 F.3d 872, 874, 114 USPQ2d 1574, 1575 (Fed. Cir. 2015) (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPO2d 1370, 1371 (Fed. Cir. 2004)); *In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75

USPQ2d 1420, 1421 (Fed. Cir. 2005) (citing *Estate of P.D. Beckwith, Inc. v. Comm'r of Patents*, 252 U.S. 538, 543 (1920)).

The determination of whether a mark is merely descriptive is made in relation to an applicant's goods and/or services, not in the abstract. *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1254, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012); *In re The Chamber of Commerce of the U.S.*, 675 F.3d 1297, 1300, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); TMEP §1209.01(b); *see, e.g., In re Polo Int'l Inc.*, 51 USPQ2d 1061, 1062-63 (TTAB 1999) (finding DOC in DOC-CONTROL would refer to the "documents" managed by applicant's software rather than the term "doctor" shown in a dictionary definition); *In re Digital Research Inc.*, 4 USPQ2d 1242, 1243-44 (TTAB 1987) (finding CONCURRENT PC-DOS and CONCURRENT DOS merely descriptive of "computer programs recorded on disk" where the relevant trade used the denomination "concurrent" as a descriptor of a particular type of operating system). "Whether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." *In re Am. Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

In the present case, the attached dictionary definition of "access" and the attached third-party website evidence explaining and using the term "coin" in connection with cryptocurrencies, shows that "coin" is a common term of art in applicant's industry which refers to the basic unit of any cryptocurrency, while the identification of goods and services explicitly states that the goods and services relate to "accessing" cryptocurrency and/or blockchain technologies. Therefore, the wording merely describes that applicant's goods and services allow users to "access" a cryptocurrency "coin."

Material obtained from the Internet is generally accepted as competent evidence in trademark examination. *See In re Jonathan Drew Inc.*, 97 USPQ2d 1640, 1641-42 (TTAB 2011); *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202-03 (TTAB 2009); *In re Leonhardt*, 109 USPQ2d 2091, 2098 (TTAB 2008); TBMP §1208.03; TMEP §710.01(b).

In light of the foregoing, the applied-for mark is merely descriptive of applicant's goods and services, and the application is refused under Section 2(e)(1) of the Trademark Act.

Although applicant's mark has been refused registration, applicant may respond to the refusal by submitting evidence and arguments in support of registration. However, if applicant responds to the refusal, applicant must also respond to the requirements set forth below the following advisory.

ADVISORY: SUPPLEMENTAL REGISTER

Although an amendment to the Supplemental Register would normally be an appropriate response to this refusals, such a response is not appropriate in the present case. The instant application was filed under Trademark Act Section 1(b) and is not eligible for registration on the Supplemental Register until an acceptable amendment to allege use meeting the requirements of 37 C.F.R. §2.76 has been timely filed. 37 C.F.R. §2.47(d); TMEP §§816.02, 1102.03.

If applicant files an acceptable allegation of use and also amends to the Supplemental Register, the application effective filing date will be the date applicant met the minimum filing requirements under 37 C.F.R. §2.76(c) for an amendment to allege use. TMEP §§816.02, 1102.03; *see* 37 C.F.R. §2.75(b). In addition, the undersigned trademark examining attorney will conduct a new search of the USPTO records for conflicting marks based on the later application filing date. TMEP §§206.01, 1102.03.

IDENTIFICATION OF GOODS AND SERVICES REQUIRES AMENDMENT

The wording listed below from the identification of goods and services is indefinite and/or too broad and must be clarified for the reasons stated. *See* 37 C.F.R. §2.32(a)(6); TMEP §1402.01.

The wording "*providing on-line non-downloadable computer software for use in blockchain technology*" is indefinite and must be clarified because it is unclear how this software relates to such "blockchain technology," such as whether it is for accessing such technologies, for developing such technologies, or for contributing to the computing resources employed by such technologies.

Suggested Wording

Applicant may adopt the following identification of goods and services, if accurate (suggested changes shown in **bold** typeface):

Class 9: [unchanged]

Class 36: [unchanged]

Class 42:

*Providing temporary use of on-line non-downloadable software and applications for use in accessing, reading, tracking, and using blockchain technology; providing on-line non-downloadable computer software for use in **developing, modifying, and contributing computing resources to blockchain technology**; Software as a service (SAAS) services featuring software for clearing. allocation.*

compliance, recordation and settlement of trading related to bitcoins, cryptocurrency, digital tokens, collateral for derivatives, derivative contracts, virtual currency, and digital currency; platform as a service (PAAS) featuring computer software platform for authenticating, facilitating, matching, processing, clearing, storing, receiving, tracking, transferring, and submitting trade data, exchanging of trading transaction details, and management of the overall trading lifecycle; providing temporary use of on-line non-downloadable software and applications for use in enabling users to access and direct incentives to vote, govern, interact, transact, and make decisions based on the blockchain technology; electronic data storage, namely, providing a blockchain technology-based, distributed database ledger for the storage of public, private or encrypted data, transactions and information;

Applicant's goods and/or services 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 and/or services or add goods and/or services 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 and/or services 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 and/or services will further limit scope, and once goods and/or services are deleted, they are not permitted to be reinserted. TMEP §1402.07(e).

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.

RESPONSE GUIDELINES

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.

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.

/Wendell S. Phillips III/
Trademark Examining Attorney
Law Office 110
(571) 272-5271
wendell.phillips@uspto.gov

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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 or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

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