

To: Paul Davis Cooper (pauldaviscooper@gmail.com)
Subject: U.S. TRADEMARK APPLICATION NO. 88033113 - STATESMAN LAW GROUP - N/A
Sent: 10/30/2018 4:01:48 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.** 88033113

MARK: STATESMAN
LAW GROUP

88033113

**CORRESPONDENT
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APPLICANT: Paul Davis
Cooper

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

N/A

**CORRESPONDENT E-
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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: 10/30/2018

the issue below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

SEARCH OF OFFICE’S DATABASE OF MARKS

The trademark examining attorney has searched the Office’s database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; *see* 15 U.S.C. §1052(d).

TRADEMARK ACT, SECTION 2(B) REFUSAL

Registration is refused because the applied-for mark includes a simulation of the flag of the United States. Trademark Act Section 2(b), 15 U.S.C. §1052(b); *see* TMEP §1204. Trademark Act Section 2(b) bars registration of marks that include simulations of the flag, coat of arms, or other insignia of the United States, any state or municipality of the United States, or any foreign nation. TMEP §§1204, 1204.01(a).

A simulation refers to “something that gives the appearance or effect or has the characteristics of an original item.” *In re Family Emergency Room LLC*, 121 USPQ2d 1886, 1887 (TTAB 2017) (quoting *In re Advance Indus. Sec., Inc.*, 194 USPQ 344, 346 (TTAB 1977)); TMEP §1204. Whether the relevant matter in the mark is a simulation is determined by a visual comparison of the mark and the actual flag, coat of arms, or other insignia in question. *See In re Family Emergency Room LLC*, 121 USPQ2d at 1887 (citing *In re Advance Indus. Sec., Inc.*, 194 USPQ at 346); TMEP §1204.

When comparing the mark and the actual flag, coat of arms, or other insignia, the focus is on the relevant purchasers’ general recollection of the flag, coat of arms, or other insignia, “without a careful analysis and side-by-side comparison.” *In re Family Emergency Room LLC*, 121 USPQ2d at 1888 (quoting *In re Advance Indus. Sec., Inc.*, 194 USPQ at 346). The public should be considered to retain only a general or overall, rather than specific, recollection of the various elements or characteristics of design marks. *See In re Advance Indus. Sec., Inc.*, 194 USPQ at 346.

The following factors are considered when determining whether a design in a mark would be perceived as a flag, coat of arms, or other insignia of the United States, any state or municipality of the United States, or any foreign nation:

- (1) The colors, if any, that appear in the design;
- (2) The presentation of the mark, such as any stylization of the design and its relationship to other elements in the mark;
- (3) The presence of any words or other designs on the drawing; and
- (4) The use of the mark on the specimen(s), if one is provided, or in the record.

TMEP §1204.01(a) (citing *In re Family Emergency Room LLC*, 121 USPQ2d at 1888).

The attached evidence from Encyclopedia Britannica shows the flag from the United States. The applied-for mark includes this particular designation. Thus, the applied-for mark includes the actual flag of the United States, in violation of Section 2(b). The evidence was found using the GOOGLE search engine at the following:

<https://www.britannica.com/topic/flag-of-the-United-States-of-America>

The public would perceive the design in the mark as the flag of the United States because it contains the same number of stars and stripes arranged in the same manner as the U.S. flag. As no claim is made to color in the applied-for mark, it is presumed that the flag depicted in the applied-for mark could be displayed in the same colors as the U.S. flag. However, even if the flag is displayed in black and/or white (as in the specimen of use), the flag contains the unmistakable features of the U.S. flag. This is also true despite the “waving” appearance of the flag and the fact that it is held by a horse rider. The public would unequivocally perceive the design in the mark as the flag of the United States.

Based on the foregoing, registration is refused under Trademark Act, Section 2(b).

Trademark Act Section, 2(b) is an absolute bar to registration on the Principal and Supplemental Registers. Trademark Act Sections 2(b) and 23(a), (c), 15 U.S.C. §§1052(b), 1091(a), (c); *see* TMEP §§1204, 1204.04(a).

Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

CLOSING

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.

/Jean H. Im/
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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/>.

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



Flag of the United States of America

WRITTEN BY: Marc Leepson, Whitney Smith
[See Article History](#)

Alternative Titles: Old Glory, Star-Spangled Banner, Stars and Stripes



national flag consisting of white stars (50 since July 4, 1960) on a blue canton with a field of 13 alternating stripes, 7 red and 6 white. The 50 stars stand for the 50 states of the union, and the 13 stripes stand for the original 13 states. The flag's width-to-length ratio is 10 to 19.

After the [American Revolution](#) began, the first, unofficial national flag—known as the Continental Colours (or, sometimes, as the Grand Union Flag, the Cambridge Flag, the Somerville Flag, or the Union Flag)—was hoisted on a towering 76-foot (23-metre) liberty pole at Prospect Hill in Charlestown (now in [Somerville](#)), Massachusetts, on January 1, 1776; it was raised at the behest of Gen. [George Washington](#), whose headquarters were nearby. The flag had 13 horizontal stripes (probably of red and white or of red, white, and blue) and, in the canton, the first version of the British Union Flag ([Union Jack](#)). As the flag of the Continental Army, it flew at forts and on naval vessels. Another popular early flag, that of the 1765 Sons of Liberty, had only nine red and white stripes. Various versions of “Don’t Tread on Me” coiled-rattlesnake flags appeared on many 18th-century American colonial banners, including several flown by military units during the Revolutionary War. The version carried by the [Mendocinos](#) of Culpeper County, Virginia, for example, included not only the rattlesnake and the “Don’t Tread on Me” motto



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units during the Revolutionary War. The version carried by the [Minutemen](#) of Culpeper County, Virginia, for example, included not only the rattlesnake and the "Don't Tread on Me" motto but also Virginia patriot [Patrick Henry](#)'s famous words "Liberty or Death."



The first official national flag, formally approved by the [Continental Congress](#) on June 14, 1777, was the Stars and Stripes. That first Flag Resolution read, in toto, "Resolved, that the flag of the United States be thirteen stripes, alternate red and white; that the union be thirteen stars, white in a blue field representing a new constellation." The layout of the stars was left undefined, and many patterns were used by flag makers. The designer of the flag—most likely Congressman Francis Hopkinson, a signer of the [Declaration of Independence](#) from Philadelphia—may have had a ring of stars in mind to symbolize the new constellation. Today that pattern is popularly known as the "[Betsy Ross flag](#)," although the widely circulated story that she made the first Stars and Stripes and came up with the ring pattern is unsubstantiated. Rows of stars (4-5-4 or 3-2-3-2-3) were common, but many other variations also existed. The new [Stars and Stripes](#) formed part of the military colours carried on September 11, 1777, at the Battle of the Brandywine, perhaps its first such use.



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