

To: Master 451 LLC (bparker627@yahoo.com)
Subject: U.S. TRADEMARK APPLICATION NO. 88154178 - MASTER 451 FOAM - N/A
Sent: 1/25/2019 9:49:56 AM
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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. 88154178**

MARK: MASTER 451
FOAM

88154178

**CORRESPONDENT
ADDRESS:**
BARRY L PARKER
MASTER 451 LLC
3944 N VINEWOOD
AVE
INDIANAPOLIS, IN
46254

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APPLICANT: Master
451 LLC

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

N/A

**CORRESPONDENT E-
MAIL ADDRESS:**

bparker627@yahoo.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. 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: 1/25/2019

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. §§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).

SUMMARY OF ISSUES:

- Refusal to register – insignia of the United States
- Disclaimer required
- Amendment of description of mark

SECTION 2(b) REFUSAL – INSIGNIA OF THE UNITED STATES

Registration is refused because the applied-for mark includes 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 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.

The attached evidence from the Encyclopedia Britannica shows the flag of 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).

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 by submitting evidence and arguments in support of registration.

If applicant responds to the refusal, applicant must also respond to the requirements set forth below.

DISCLAIMER REQUIRED

Applicant must disclaim the wording "FOAM" because it is not inherently distinctive. This unregistrable term at best is merely descriptive of a quality or characteristic of applicant's goods. *See* 15 U.S.C. §1052(e)(1); *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1251, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012); TMEP §§1213, 1213.03(a).

The attached definition from the Oxford University Press Dictionary defines "foam" as "A lightweight form of polymer or plastic made by

solidifying liquid foam.” See the attached definition 1.3. Applicant’s goods are specifically identified as “Plastic **foam** used for arts and crafts.”

A “disclaimer” is a statement in the application record that an applicant does not claim exclusive rights to an unregistrable component of the mark. See *Schwarzkopf v. John H. Breck, Inc.*, 340 F.2d 978, 979-80, 144 USPQ 433, 433 (C.C.P.A. 1965); TMEP §1213. A disclaimer does not physically remove the disclaimed matter from the mark or otherwise affect the appearance of the mark. See *Schwarzkopf v. John H. Breck, Inc.*, 340 F.2d at 979, 144 USPQ2d at 433; TMEP §1213.

Applicant may respond to this issue by submitting a disclaimer in the following format:

No claim is made to the exclusive right to use “FOAM” apart from the mark as shown.

For an overview of disclaimers and instructions on how to satisfy this issue using the Trademark Electronic Application System (TEAS), see the [Disclaimer webpage](#).

DESCRIPTION OF MARK

Applicant must submit an amended description of the mark because the current one is incomplete and does not describe all the significant aspects of the mark. 37 C.F.R. §2.37; see TMEP §§808.01, 808.02. Descriptions must be accurate and identify all the literal and design elements in the mark. See 37 C.F.R. §2.37; TMEP §§808 *et seq.*

The following description is suggested, if accurate: **The mark consists of a silhouette of a man holding an American flag superimposed over an incomplete circle design. Beneath the design appears the wording “MASTER 451 FOAM.”**

RESPONSE GUIDELINES

For this application to proceed, applicant must explicitly address each refusal and/or requirement in this Office action. For a refusal, applicant may provide written arguments and evidence against the refusal, and may have other response options if specified above. For a requirement, applicant should set forth the changes or statements. Please see “[Responding to Office Actions](#)” and the informational [video “Response to Office Action”](#) for more information and tips on responding.

HIRING OF ATTORNEY – ADVISORY

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.

Please call or email the assigned trademark examining attorney with questions about this Office action. Although the trademark examining attorney cannot provide legal advice or statements about applicant’s rights, the trademark examining attorney can provide applicant with additional explanation about the refusal(s) and/or requirement(s) in this Office action. See TMEP §§705.02, 709.06. Although the USPTO does not accept emails as responses to Office actions, emails can be used for informal communications and will be included in the application record. 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.

/William D Jackson/
Attorney Advisor - Trademarks
U.S. Patent and Trademark Office
Law Office 117
(571) 272-3064
William.Jackson@uspto.gov

TO RESPOND TO THIS LETTER: Go to 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. 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 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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WRITTEN BY: Marc Leepson, Whitney Smith
See Article History

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



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 [Minutemen](#) of Culpeper County, Virginia, for example, included not only the rattlesnake and the “Don’t Tread on Me” motto

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