

To: Brotherhood Beyond the Flag Foundation (jeff.cambre@brotherhoodbeyondtheflag.org)
Subject: U.S. TRADEMARK APPLICATION NO. 88297741 - BROTHERHOOD BEYOND THE FLAG - N/A
Sent: 5/1/2019 5:28:29 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.
88297741

MARK: BROTHERHOOD BEYOND
THE FLAG

88297741

CORRESPONDENT ADDRESS:
BROTHERHOOD BEYOND THE
FLAG FOUNDATION
BROTHERHOOD BEYOND THE
FLAG FOUNDATION
124 BLUEBONNET OAK CT
BUNNLEVEL, NC 28323

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APPLICANT: Brotherhood Beyond the
Flag Foundation

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

**CORRESPONDENT E-MAIL
ADDRESS:**

jeff.cambre@brotherhoodbeyondtheflag.org

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: 5/1/2019

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).

REFUSAL – REPRESENTATION OF U.S. FLAG

Registration is refused because the applied-for mark includes a representation of the United States flag. 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 Britannica.com shows a picture of the U.S. flag. The applied-for mark includes this particular designation. Thus, the applied-for mark is in violation of Section 2(b).

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

If applicant chooses to respond to the refusal(s) to register, then applicant must also respond to the requirement(s) set forth below.

AMENDMENT OF IDENTIFICATION OF SERVICES REQUIRED

The wording "Accepting and administering monetary charitable contributions on behalf of Brotherhood Beyond the Flag Foundation" in the identification of services is indefinite and must be clarified. *See* 37 C.F.R. §2.32(a)(6); TMEP §1402.01. The acceptance of money on behalf of applicant's own company does not identify a registrable service. The type of identification selected by applicant contemplates instead that applicant specify the purpose for which the charitable contributions will be administered.

Following are examples for amendment:

"Accepting and administering monetary charitable contributions to assist United States service persons serving in combat zones or wounded and in military hospitals."

"Accepting and administering monetary charitable contributions to fund medical research."

"Accepting and administering monetary charitable contributions for natural disaster relief funds."

Applicant may amend the identification to clarify or limit the goods and/or services, but not to broaden or expand the goods and/or services beyond those in the original application or as acceptably amended. *See* 37 C.F.R. §2.71(a); TMEP §1402.06. Generally, any deleted goods and/or services may not later be reinserted. *See* TMEP §1402.07(e).

STATEMENT OF BASIS REQUIRED

Applicant has not specified a filing basis in the application. An application must specify and meet the requirements of at least one filing basis. 37 C.F.R. §§2.32(a)(5), 2.34(a); TMEP §806. Accordingly, applicant must (1) amend the application to specify clearly at least one filing basis, and (2) satisfy all the requirements for the basis or bases asserted.

An applicant may add one or more of the following four bases to an application after filing:

- (1) **Use of the mark in commerce** under Trademark Act Section 1(a);
- (2) **A bona fide intention to use the mark in commerce** under Section 1(b);
- (3) **A foreign registration** of the same mark for the same goods and/or services in an applicant's country of origin, under Section

- (4) **A claim of priority based on an earlier-filed foreign application** of the same mark for the same goods and/or services, which is filed within six months after the filing date of the foreign application, under Section 44(d).

Although an applicant may assert more than one basis, an applicant may not assert both Section 1(a) for use and Section 1(b) for intent to use for identical goods and/or services. 37 C.F.R. §2.34(b); TMEP §806.02(b).

For more information about the different legal requirements for each basis, for submitting more than one basis, and for instructions on how to satisfy these requirements online using the Trademark Electronic Application System (TEAS) form, please go to the [Basis webpage](#).

DISCLAIMER REQUIRED

Applicant must provide a disclaimer of the unregistrable part(s) of the applied-for mark even though the mark as a whole appears to be registrable. See 15 U.S.C. §1056(a); TMEP §§1213, 1213.03(a). A disclaimer of an unregistrable part of a mark will not affect the mark's appearance. See *Schwarzkopf v. John H. Breck, Inc.*, 340 F.2d 978, 979-80, 144 USPQ 433, 433 (C.C.P.A. 1965).

In this case, applicant must disclaim the wording "FOUNDATION" because it is not inherently distinctive. These unregistrable term(s) at best are merely descriptive of an ingredient, quality, characteristic, function, feature, purpose, or use of applicant's goods and/or services. 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).

This portion of the mark will merely indicate to consumers the nature of applicant's business – "an institution financed by donation...to aid research, education, the arts, etc." (See attached dictionary evidence).

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

No claim is made to the exclusive right to use "FOUNDATION" 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](#).

CLARIFICATION REGARDING COLOR REQUIRED

Applicant must clarify whether color is being claimed as a feature of the mark. See 37 C.F.R. §§2.37, 2.52(b)(1), 2.61(b); TMEP §§807.07(a) *et seq.* The drawing shows the mark only in black and white; however, the application includes a statement that colors in addition to black and white are claimed as a feature of the mark.

To clarify whether color is claimed as a feature of the mark, applicant may satisfy one of the following:

- (1) **If color is not a feature of the mark**, applicant must submit a statement (a) that color is not a feature of the mark and request that the color claim be deleted from the application, and (b) describing the literal and design elements in the mark that omits any reference to color. See 37 C.F.R. §2.37; TMEP §§808.01, 808.02. In this case, applicant may delete the color claim because it would not materially alter the mark. See 37 C.F.R. §2.72; TMEP §807.14. However, any other amendments will not be accepted if they would materially alter the mark. 37 C.F.R. §2.72; *see* TMEP §§807.07(e), 807.14 *et seq.*

The following description is suggested, if accurate:

The mark consists of the words "BROTHERHOOD BEYOND THE FLAG FOUNDATION". A U.S. flag appears below the word "BROTHERHOOD" and above the phrase "BEYOND THE FLAG". The word "FOUNDATION" appears on the last line.

- (2) **If color is a feature of the mark**, applicant must submit a (a) color drawing that matches the colors in the color claim, (b) list all the colors that are claimed as a feature of the mark, if the current color claim is not complete, and (c) describe the literal and design elements in the mark that specifies where the colors appear in those elements. 37 C.F.R. §§2.37, 2.52(b)(1); *see* TMEP §807.07(a)-(a)(ii). Generic color names must be used to describe the colors in the mark, e.g., red, yellow, blue. TMEP §807.07(a)(i)-(ii). If black, white, and/or gray represent background, outlining, shading, and/or transparent areas and are not part of the mark, applicant must so specify in the description. See TMEP §807.07(d).

The following color claim and description are suggested, if accurate:

Color claim: “The colors <specify> are claimed as a feature of the mark.”

Description: Applicant may utilize the suggested description of the mark in option #1 above and indicate the coloring used for each element and wording.

TMEP §807.07(e).

For more information about drawings and instructions on how to submit a new drawing and a color claim and/or description online using the Trademark Electronic Application System (TEAS) form, see the [Drawing webpage](#).

ADVISORY

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.

If applicant has questions about its application or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

/Michelle E. Dubois/
Trademark Attorney
U.S. Patent & Trademark Office
Law Office 107
(571) 272-5887
michelle.dubois@uspto.gov

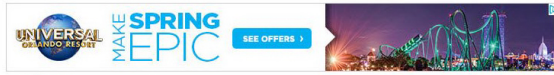
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All informal e-mail communications relevant to this application will be placed in the official application record.

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/>.

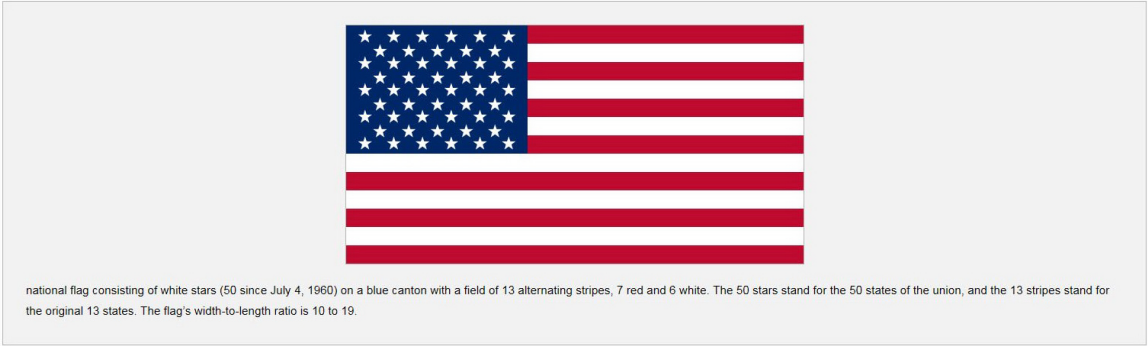
TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.



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



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" colled-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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