

**To:** Dazzle Up, LLC ([dsar@brookspierce.com](mailto:dsar@brookspierce.com))  
**Subject:** U.S. Trademark Application Serial No. 88436944 - SIMPLY SOUTHERN - N/A  
**Sent:** July 11, 2019 01:07:06 PM  
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[Attachment - 2](#)  
[Attachment - 3](#)  
[Attachment - 4](#)

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

**U.S. APPLICATION  
SERIAL NO.** 88436944

**MARK:** SIMPLY  
SOUTHERN

**\*88436944\***

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**APPLICANT:** Dazzle  
Up, LLC

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

N/A

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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:** July 11, 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:**

- Section 2(b) Refusal – Flag of the United States of America
- Mark Description Required

**SECTION 2(b) REFUSAL – FLAG OF THE UNITED STATES OF AMERICA**

Registration is refused because the applied-for mark includes a simulation of the flag of the United States of America. 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 Britannica shows an actual flag from the United States of America. The applied-for mark is nearly identical to the U.S. flag, as it merely swaps the color black for the white portions of the flag, and the color white for the red and blue portions of the flag. The applied-for mark is also in the same rectangular shape as the U.S. flag, and includes additional wording that is below and separable from the black and white flag.

The public would perceive the design in the mark as the flag of the United States of America because the applied-for mark is merely a white and black version of the U.S. flag, there is no stylization of the design, and the additional wording is separable from the flag design.

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. Applicant must address the following requirement.

**MARK DESCRIPTION REQUIRED**

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 stylized, American flag in black and white with alternating white and black horizontal bars, black stars, a white background for the stars, and the white wording “SIMPLY SOUTHERN” below the flag, all surrounded by a black, rectangular border.**

#### **RESPONSE GUIDELINES**

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.

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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](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>.

# Flag of the United States of America

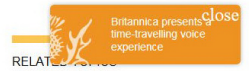
WRITTEN BY: Marc Leepson, Whitney Smith  
See Article History

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



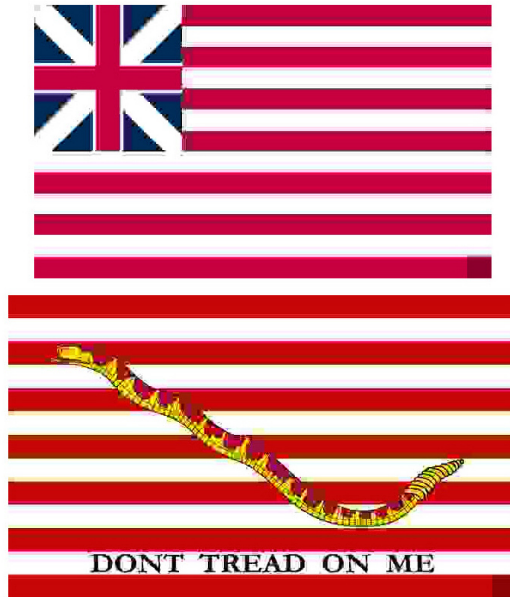
national flag consisting of white stars (50 since July 4, 1960) on a blue canton with a field of 13 alternating stripes, 7 red and 6 white. The 50 stars stand for the 50 states of the union, and the 13 stripes stand for the original 13 states. The flag's width-to-length ratio is 10 to 19.

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" 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 but also Minuteman [Patrick Henry's](#) famous words "No Taxation Without Representation."



- RELATED TOPICS
- Flag
  - Knight v. Board of Regents of the University of the State of New York
  - Betsy Ross
  - West Virginia State Board of Education v. Barnette
  - Flags of the United States
  - Great Seal of the United States

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.

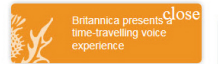


- [Great seal of the United States](#)
- [United States](#)



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