

To: Vixster LLC (mcerrati@belzerlaw.com)
Subject: U.S. Trademark Application Serial No. 90102264 - SANDBAR LIFE - N/A
Sent: June 14, 2021 12:10:29 PM
Sent As: ecom113@uspto.gov
Attachments:

United States Patent and Trademark Office (USPTO)
Office Action (Official Letter) About Applicant's Trademark Application

U.S. Application
Serial No. 90102264

Mark: SANDBAR
LIFE

Correspondence
Address:
Michael C. Cerrati
BELZER PC
2905 BULL
STREET
SAVANNAH, GA
31405

Applicant: Vixster
LLC

Reference/Docket No.
N/A

Correspondence
Email Address:

mcerrati@belzerlaw.com

SUSPENSION NOTICE
No Response Required

Issue date: **June 14, 2021**

STATUS OF APPLICATION

Pursuant to TMEP §716.01, applicant is advised of the following status of the application. In an Office action issued on December 10, 2020, the following issues were outstanding with this application:

- (1) Section 2(d) Refusal – Likelihood of Confusion
- (2) Prior-filed Pending Applications Advisory
- (3) Inquiry Concerning Change of Entity State of Organization

On June 10, 2021, applicant responded to the Office action. In light of applicant's amendments detailed below, the examining attorney has determined the following:

- (1) Applicant's arguments against the Section 2(d) Refusal are not persuasive, and the refusal is **maintained and continued**.
- (2) Applicant's arguments against the pending application are not persuasive, and the instant application will be **suspended** pending

registration or abandonment of the prior-filed application.

- (3) The statement concerning the change of entity state of organization is acceptable and made of record, and the requirement is **satisfied**. TMEP §§713.02, 714.04.

Preliminary Response to Applicant's Arguments

Applicant argues that, when compared in their entirety, the impression of the marks is different. Although wording in the marks differs, the marks overall both convey the idea of a sandbar or beach. The additional term "BEACHWEAR" in the registered mark is generic and has been disclaimed. And the additional term "LIFE" in the applied-for mark is, as applicant notes, increasingly popular; this "increasing popularity" weakens the term "LIFE" such that purchasers are less likely to rely on it to determine the source of the goods. Thus, while the entirety of the marks have differences in sound and appearance, the identical term "SANDBAR" is likely to be the most significant to consumers in determining the source of the goods and creating the overall commercial impression of the marks.

Applicant references case in which the marks were identical for related goods but were not found to be confusingly similar. However, these cases are inapposite. Here, the source-indicating term SANDBAR does not create different impressions with respect to applicant's and registrant's goods—the term suggests clothing to be worn for a relaxed, laid-back lifestyle. Applicant's assertion that purchasers will rely on the term "LIFE" to distinguish source because they are seeking "distinctive lifestyle products" disregards that applicant's goods are clothing. Purchasers with a general recollection of the marks are likely to believe, mistakenly, that SANDBAR-formative marks for clothing emanate from the same source. Thus, the Section 2(d) refusal is **maintained and continued**.

Concerning the prior-filed application, applicant argues that there is no likelihood of confusion because the goods are different. The fact that the goods of the parties differ is not controlling in determining likelihood of confusion. The issue is not likelihood of confusion between particular goods, but likelihood of confusion as to the source or sponsorship of those goods. *In re Majestic Distilling Co.*, 315 F.3d 1311, 1316, 65 USPQ2d 1201, 1205 (Fed. Cir. 2003); *In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993); TMEP §1207.01. Accordingly, the application is **suspended** pending further prosecution of the prior-filed application.

ACTION IS SUSPENDED

The application is suspended for the reason(s) specified below. *See* 37 C.F.R. §2.67; TMEP §§716 *et seq.*

The pending application(s) below has an earlier filing date or effective filing date than applicant's application. If the mark in the application(s) below registers, the USPTO may refuse registration of applicant's mark under Section 2(d) because of a likelihood of confusion with the registered mark(s). 15 U.S.C. §1052(d); *see* 37 C.F.R. §2.83; TMEP §1208.02(c). Action on this application is suspended until the prior-filed application(s) below either registers or abandons. 37 C.F.R. §2.83(c). Information relevant to the application(s) below was sent previously.

- U.S. Application Serial No(s). 88882095

Suspension process. The USPTO will periodically check this application to determine if it should remain suspended. *See* TMEP §716.04. As needed, the trademark examining attorney will issue a letter to applicant to inquire about the status of the reason for the suspension. TMEP §716.05.

No response required. Applicant may [file a response](#), but is not required to do so.

/Marynelle W. Wilson/
Marynelle W. Wilson
Examining Attorney
Law Office 113
Phone: 571-272-7978
Email: marynelle.wilson@uspto.gov

To: Vixster LLC (mcerrati@belzerlaw.com)
Subject: U.S. Trademark Application Serial No. 90102264 - SANDBAR LIFE - N/A
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United States Patent and Trademark Office (USPTO)

USPTO OFFICIAL NOTICE_

Office Action (Official Letter) has issued
on **June 14, 2021** for

U.S. Trademark Application Serial No. 90102264

Your trademark application has been reviewed by a trademark examining attorney. As part of that review, the assigned attorney has issued an official letter. Please follow the steps below.

- (1) [Read the official letter](#). No response is necessary.
- (2) **Direct questions** about the contents of the Office action to the assigned attorney below.

/Marynelle W. Wilson/
Marynelle W. Wilson
Examining Attorney
Law Office 113
Phone: 571-272-7978
Email: marynelle.wilson@uspto.gov

Direct questions about navigating USPTO electronic forms, the USPTO [website](#), the application process, the status of your application, and/or whether there are outstanding deadlines or documents related to your file to the [Trademark Assistance Center \(TAC\)](#).

GENERAL GUIDANCE

- [Check the status of your application periodically](#) in the [Trademark Status & Document Retrieval \(TSDR\)](#) database to avoid missing critical deadlines.
- [Update your correspondence email address](#), if needed, to ensure you receive important USPTO notices about your application.
- [Beware of misleading notices sent by private companies about your application](#). Private companies not associated with the USPTO use public information available in trademark registrations to mail and email trademark-related offers and notices – most of which require fees. All **official USPTO correspondence** will only be **emailed from the domain “@uspto.gov.”**