

To: Ford, Kristin (kristin.lambert10@gmail.com)
Subject: U.S. Trademark Application Serial No. 90872329 - WINE SINSATIONS.COM - N/A
Sent: May 17, 2022 03:47:15 PM
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Attachments: [Attachment - 1](#)

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

U.S. Application Serial No. 90872329

Mark: WINE SINSATIONS.COM

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Reference/Docket No. N/A

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COMBINED EXAMINER'S AMENDMENT/PRIORITY ACTION NONFINAL OFFICE ACTION

The USPTO must receive applicant's response to this letter within six months of the issue date below or the application will be [abandoned](#). Respond using the Trademark Electronic Application System (TEAS). A link to the appropriate TEAS response form appears at the end of this Office action.

Issue date: **May 17, 2022**

PRIORITY ACTION

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

Applicant must address issues shown below. On May 12, 2022, the examining attorney and Kristin Ford discussed the issues below. Applicant must timely respond to these issues. *See* 15 U.S.C. §1062(b); 37 C.F.R. §2.62(a); TMEP §708.05.

PLEASE NOTE: The Office has received the applicant's preliminary amendment filed on May 12, 2022. The applicant's substitute specimen is ***not*** accepted for the reason stated below.

Application Refused—Section 1(a)—Original Specimens in Application Do Not Indicate Use in Relation to the Identified Goods

An application based on Trademark Act Section 1(a) must include a specimen showing the applied-for mark in use in commerce for each international class of goods and/or services identified in the application or amendment to allege use. 15 U.S.C. §1051(a)(1); 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a). The current specimen(s) do not demonstrate proper use of the proposed mark in relation to the goods specified in the application.

Section 45 of the Trademark Act requires use of the mark "on the goods, their containers or the displays associated therewith, or on the tags or

labels affixed thereto”. 15 U.S.C. §1127; TMEP §§901.01, 904.03. Material that functions merely to tell the prospective purchaser about the goods, or to promote the sale of the goods, is not acceptable to support trademark use. Similarly, leaflets, handbills, brochures, advertising circulars and other printed advertising material or informational inserts are generally not acceptable to show trademark use. *In re MediaShare Corp.*, 43 USPQ2d 1304 (TTAB 1997); *In re Schiapparelli Searle*, 26 USPQ2d 1520 (TTAB 1993); *In re Drilco Industrial Inc.*, 15 USPQ2d 1671 (TTAB 1990); *In re ITT Rayonier Inc.*, 208 USPQ 86 (TTAB 1980); *In re Bright of America, Inc.*, 205 USPQ 63 (TTAB 1979); TMEP 904.04(b). However, an instruction sheet may be an acceptable specimen. *In re Ultraflight Inc.*, 221 USPQ 903 (TTAB 1984); TMEP §§904.04(b), (c), 1301.04.

In this case, the submitted specimens consist of (1) photographs of product packaging that show use of a different mark wherein the letter “I” of WINE appears as condom and one leg of the “W” appears as a wine bottle, and (2) a webpage showing the proposed mark with a shop now button.

Product Packaging Specimens Not Acceptable Because They Do Not Match the Applied-For Mark

As an initial matter the specimens comprising the photographs of product packaging wherein the letter “I” in “WINE” appears as a condom is not acceptable because it is different from the applied for mark. An application based on Trademark Act Section 1(a) must include a specimen showing the applied-for mark in use in commerce for each international class of goods and/or services identified in the application or amendment to allege use. 15 U.S.C. §1051(a)(1); 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a). The drawing shows the mark sought to be registered, and must be a substantially exact representation of the mark as used on or in connection with the goods and/or services, as shown by the specimen. 37 C.F.R. §2.51(a); TMEP §807.12(a).

With respect to the product packaging specimens, the mark as depicted on the drawing does not agree with the mark as it appears on the specimen(s) and clarification is required. Specifically, the drawing page of the application displays the mark as the wording “WINE SinSations.com” appearing in stylized font with the letter “W” of “WINE” appearing inside a stemless wine glass and the letter “I” of “WINE” is depicted as a wine bottle with a liquid splash above it. The wording is surrounded by an incomplete circle that resembles a wine stain ring.

The specimen(s) however, depicts the mark as the wording “WINE SinSations.com Condoms” appearing in stylized font with one leg of the letter “W” of “WINE” appearing as a wine bottle with the wording “Condoms” and a liquid splash above it located inside a large stemless wine glass and the letter “I” of “WINE” depicted as a condom. The mark on the specimen does not match the mark in the drawing because there is no wine stain, there is the additional term “Condoms” and the differences in the depiction of the letter “I”.

Because the mark in the drawing is not a substantially exact representation of the mark on these specimens, the applicant has failed to provide the required evidence of use of the applied-for mark in commerce on or in connection with the applicant’s goods. *See* TMEP §807.12(a). Therefore, registration is refused because the product packaging specimens do not show the applied-for mark in the drawing in use in commerce in connection with the goods listed in the application. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a), 1301.04(g)(i).

Please Note: The applicant cannot amend the mark in the drawing to conform to the mark shown on the product packaging specimens, because the difference between these marks is significant and each mark creates a different commercial impression. The USPTO will not accept an amended drawing submitted in response to this refusal because the changes would materially alter the drawing of the mark in the original application or as previously acceptably amended. *See* 37 C.F.R. §2.72(a)-(b); TMEP §807.14. Specifically, adding the term “condoms” as well as the depiction of the term condom would necessarily give a different commercial impression from the originally applied-for mark.

Webpage Specimen Not Acceptable

In addition, the submitted webpage specimen with the wording “shop now” is not acceptable. Although the proposed mark is displayed on the specimen, the specimen is not acceptable to demonstrate use of the proposed mark with the goods listed in the application. The specimen is not acceptable as a display associated with the goods and does not show the applied-for mark as actually used in commerce. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §2.56(a), (b)(1); *see* TMEP §§904, 904.03(g)-(i), 904.07(a). An application based on Trademark Act Section 1(a) must include a specimen showing the applied-for mark as actually used in commerce for each international class of goods identified in the application or amendment to allege use. 15 U.S.C. §1051(a)(1); 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

A webpage or catalog display specimen (1) must show use of the mark directly associated with the goods and (2) such use must be of a point-of-sale nature. 37 C.F.R. §2.56(b)(1). This means that this type of display specimen must include the following:

- (1) A **picture or sufficient textual description of the goods;**
- (2) The **mark associated with the goods;** and
- (3) A **means for ordering the goods** such as a “shopping cart” button/link, an order form, or a telephone number for placing orders.

See In re Sones, 590 F.3d 1282, 1286-89, 93 USPQ2d 1118, 1122-24 (Fed. Cir. 2009); *In re Azteca Sys., Inc.*, 102 USPQ2d 1955, 1957-58 (TTAB 2002); *In re Drilco Industrial Inc.*, 15 USPQ2d 1671, 1673 (TTAB 1990); *In re MediaShare Corp.*, 43 USPQ2d 1304, 1306 (TTAB 1997); *In re Schiapparelli Searle*, 26 USPQ2d 1520, 1522 (TTAB 1993); *In re ITT Rayonier Inc.*, 208 USPQ 86, 88 (TTAB 1980); *In re Bright of America, Inc.*, 205 USPQ 63, 65 (TTAB 1979).

(E.D. Va. 1992); TMEP §904.03(h), (i)-.03(i)(D).

In this case, the specimen does not show sufficient means for ordering the goods. Specifically, there is no “buy now” or “add to cart” button on the webpage specimen. It is noted that clicking on the “shop now” button takes a user to a separate and distinct webpage at which point they can add an item to the cart and purchase the goods—a user cannot directly purchase the goods or add them to an online cart using only the depicted “shop now” button. Accordingly, the submitted webpage is mere advertising, which is not acceptable as a specimen for goods. See *In re Yarnell Ice Cream, LLC*, 2019 USPQ2d 265039, at *15-16 (TTAB 2019) (quoting *In re Siny Corp.*, 920 F.3d 1331, 1336, 2019 USPQ2d 127099, at *2-3 (Fed. Cir. 2019)); see also *Avakoff v. S. Pac. Co.*, 765 F.2d 1097, 1098, 226 USPQ 435, 436 (Fed. Cir. 1985); TMEP §904.04(b), (c).

Accordingly, registration is refused because the specimens do not show the applied-for mark in use in commerce in connection with any of the goods specified in the application or amendment to allege use. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); *In re Graystone Consulting Assocs., Inc.*, 115 USPQ2d 2035, 2037-38 (TTAB 2015); *In re Chengdu AOBi Info. Tech. Co.*, 111 USPQ2d 2080, 2081-82 (TTAB 2011); TMEP §§904, 904.07(a).

Response options. Applicant may respond to this refusal by satisfying one of the following for each applicable international class:

- (1) Submit a different specimen (a verified “[substitute](#)” [specimen](#)) that (a) was in actual use in commerce at least as early as the filing date of the application or prior to the filing of an amendment to allege use and (b) shows the mark in actual use in commerce for the goods and/or services identified in the application or amendment to allege use. A “verified substitute specimen” is a specimen that is accompanied by the following statement made in a signed affidavit or supported by a declaration under 37 C.F.R. §2.20: “The substitute (or new, or originally submitted, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application or prior to the filing of the amendment to allege use.” The substitute specimen cannot be accepted without this statement.

Examples of specimens. Specimens for goods include a photograph of (1) the actual goods bearing the mark; (2) an actual container, packaging, tag or label for the goods bearing the mark; or (3) a point-of-sale display showing the mark directly associated with the goods. See 37 C.F.R. §2.56(b)(1), (c); TMEP §904.03(a)-(m). Leaflets, handbills, advertising circulars, and other advertising materials are generally not acceptable specimens for goods. See TMEP §§904.03 *et seq.* A webpage specimen submitted as a display associated with the goods must show the mark in association with a picture or textual description of the goods and include information necessary for ordering the goods. TMEP §904.03(i); see 37 C.F.R. §2.56(b)(1), (c). **Please Note:** Any webpage printout or screenshot submitted as a specimen **must** include the webpage’s URL and the date it was accessed or printed. 37 C.F.R. §2.56(c).

- (2) Amend the filing basis to [intent to use under Section 1\(b\)](#) (which includes withdrawing an amendment to allege use, if one was filed), as no specimen is required before publication. This option will later necessitate additional fee(s) and filing requirements, including a specimen.

For an overview of the response options referenced above and instructions on how to satisfy these options using the online Trademark Electronic Application System (TEAS) form, see the [Specimen webpage](#).

Application Refused—Substitute Specimen Not Acceptable Because it is Not Properly Verified

An application based on Trademark Act Section 1(a) must include a specimen, properly verified, showing the applied-for mark as actually used in commerce for each international class of goods and/or services identified in the application or amendment to allege use. 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

In its preliminary amendment, the applicant provided a substitute specimen(s) that appears to show proper use of the applied-for mark in commerce but this specimen is **not** verified. The USPTO does not accept materials submitted as specimens without proper verification. See 37 C.F.R. §§2.34(a)(1), 2.59(a)-(b)(1), 2.76(b)(2); *In re Adair*, 45 USPQ2d 1211, 1212 n.2 (TTAB 1997). Accordingly, while the substitute specimen contained in the preliminary response filed on May 12, 2022 would be acceptable to demonstrate use of the applied-for mark in commerce, it cannot be accepted in this case because the applicant has not provided the proper declaration in support this specimen.

Accordingly, registration is refused because the substitute specimen does not show the applied-for mark in use in commerce in connection with any of the goods specified in the application or amendment to allege use. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); *In re Graystone Consulting Assocs., Inc.*, 115 USPQ2d 2035, 2037-38 (TTAB 2015); *In re Chengdu AOBi Info. Tech. Co.*, 111 USPQ2d 2080, 2081-82 (TTAB 2011); TMEP §§904, 904.07(a).

Examples of specimens. Specimens for goods include a photograph of (1) the actual goods bearing the mark; (2) an actual container, packaging, tag or label for the goods bearing the mark; or (3) a point-of-sale display showing the mark directly associated with the goods. See 37 C.F.R. §2.56(b)(1), (c); TMEP §904.03(a)-(m). A webpage specimen submitted as a display associated with the goods must show the mark in association with a picture or textual description of the goods and include information necessary for ordering the goods. TMEP §904.03(i); see 37

C.F.R. §2.56(b)(1), (c). **Please Note:** Any webpage printout or screenshot submitted as a specimen must include the webpage's URL and the date it was accessed or printed on the specimen itself, within the TEAS form that submits the specimen, or in a verified statement under 37 C.F.R. §2.20 or 28 U.S.C. §1746 in a later-filed response. *See* 37 C.F.R. §2.56(c); TMEP §§904.03(i), 1301.04(a).

Response options. Applicant may respond to this final specimen refusal by satisfying one of the following for each applicable international class:

- (1) Submit a [verification](#) of the previously submitted substitute specimen, attesting that it was in actual use in commerce at least as early as the filing date of the application or prior to the filing of an amendment to allege use. A “verified substitute specimen” is a specimen that is accompanied by the following statement made in a signed affidavit or supported by a declaration under 37 C.F.R. §2.20: “The substitute (or new, or originally submitted, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application or prior to the filing of the amendment to allege use.” The substitute specimen ***cannot*** be accepted without this statement.
- (2) Submit a different and properly verified specimen (a verified “[substitute](#)” specimen) that (a) was in actual use in commerce at least as early as the filing date of the application or prior to the filing of an amendment to allege use and (b) shows the mark in actual use in commerce for the goods and/or services identified in the application or amendment to allege use. The substitute specimen cannot be accepted without the verified statement referenced in (1).
- (3) Amend the filing basis to [intent to use under Section 1\(b\)](#) (which includes withdrawing an amendment to allege use, if one was filed), as no specimen is required before publication. This option will later necessitate additional fee(s) and filing requirements, including a specimen.

For an overview of the response options referenced above and instructions on how to satisfy these options using the online Trademark Electronic Application System (TEAS) form, see the [Specimen webpage](#).

EXAMINER'S AMENDMENT

Application has been amended as shown below. As agreed to by the individual identified in the Priority Action section, the examining attorney has amended the application as shown below. Please notify the examining attorney immediately of any objections. TMEP §707. In addition, applicant is advised that amendments to the goods and/or services are permitted only if they clarify or limit them; amendments that add to or broaden the scope of the goods and/or services are not permitted. 37 C.F.R. §2.71(a).

Disclaimer

The application is amended as follows:

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

See 15 U.S.C. §1056(a); TMEP §§1213, 1213.08(a)(i).

Mark Description Statement Amendment

The application is amended as follows:

The mark consists of the wording “WINE SinSations.com” appearing in stylized font with term “WINE” located above and off set to the left of the term “SinSations.com”. The letter “W” of “WINE” appears inside a stemless wine glass and the letter “I” of “WINE” is depicted as a wine bottle with a liquid splash above it. The wording is surrounded by an incomplete circle that resembles a wine stain ring.

See 37 C.F.R. §2.52(b)(1); TMEP §807.07(a)(i), (a)(ii).

Applicant's Response

There is no required format or form for responding to an Office action. For this application to proceed further, the applicant must explicitly address each refusal and/or requirement raised in this Office action. If the action includes a refusal, the applicant may provide arguments and/or evidence as to why the refusal should be withdrawn and the mark should register. The applicant may also have other options specified in this Office action for responding to a refusal and should consider those options carefully. To respond to requirements and certain refusal response options, the applicant should set forth in writing the required changes or statements. For more information and general tips on responding to USPTO Office actions, response options, and how to file a response online, Please see “[Responding to Office Actions](#)” and the informational [video “Response to Office Action”](#) on the USPTO’s website.

If the applicant does not respond to this Office action within six months of the issue/ mailing date, or responds by expressly abandoning the application, the application process will end and the trademark will fail to register. See 15 U.S.C. §1062(b); 37 C.F.R. §§2.65(a), 2.68(a); TMEP §§718.01, 718.02. Additionally, the USPTO will not refund the application filing fee, which is a required processing fee. See 37 C.F.R. §§2.6(a)(1)(i)-(iv), 2.209(a); TMEP §405.04.

When an application has abandoned for failure to respond to an Office action, an applicant may timely file a petition to revive the application, which, if granted, would allow the application to return to active status. See 37 C.F.R. §2.66; TMEP §1714. The petition must be filed within two months of the date of issuance of the notice of abandonment and [may be filed online via the Trademark Electronic Application System \(TEAS\)](#) with a \$100 fee. See 37 C.F.R. §§2.6(a)(15)(ii), 2.66(a)(1), (b)(1)

Responses to Office actions must be properly signed. See 37 C.F.R. §§2.62(b), 2.193(e)(2); TMEP §§712, 712.01. If an applicant is not represented by a U.S.-licensed attorney, the response must be signed by the individual applicant or someone with legal authority to bind a juristic applicant (e.g., a corporate officer or general partner). See 37 C.F.R. §2.193(e)(2)(ii); TMEP §§611.03(b), 611.06(b)-(h), 712.01. In the case of joint applicants, all must sign. 37 C.F.R. §2.193(e)(2)(ii); TMEP §611.06(a).

If an applicant is represented by a U.S.-licensed attorney authorized to practice before the USPTO, the attorney must sign the response. 37 C.F.R. §2.193(e)(2)(i); TMEP §§611.03(b), 712.01. The only attorneys who may sign responses are (1) attorneys in good standing with a bar of the highest court of any U.S. state or territory, or (2) Canadian trademark attorneys or agents [reciprocally recognized](#) by the USPTO's Office of Enrollment and Discipline (OED) who are appointed in connection with a U.S.-licensed attorney. See 37 C.F.R. §§2.17(a), 11.14(a), (c), (e). Foreign attorneys, other than recognized Canadian trademark attorneys or agents, do not have authority to sign responses. See 37 C.F.R. §§2.17(e), 11.14(c)(1), (e). If an applicant is initially represented by an attorney, and then later retains another U.S.-licensed attorney from a different firm, the newly retained attorney may not sign responses until the applicant files a new power and/or revocation of attorney. See 37 C.F.R. §2.18(a)(7); TMEP §604.03. **Please Note:** In all cases, the signer must be identified by first and last name and title or position. 37 C.F.R. §2.193(d).

If the applicant has technical questions about the TEAS response to Office action form, applicant can review the electronic filing tips available online at <http://www.uspto.gov/teas/eFilingTips.htm> and email technical questions to TEAS@uspto.gov.

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

/Michael Tanner/
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How to respond. [Click to file a response to this nonfinal Office action.](#)

RESPONSE GUIDANCE

- **Missing the response deadline to this letter will cause the application to [abandon](#).** The response must be received by the USPTO before midnight **Eastern Time** of the last day of the response period. TEAS maintenance or [unforeseen circumstances](#) could affect an applicant's ability to timely respond.
- **[Responses signed by an unauthorized party](#)** are not accepted and can **cause the application to [abandon](#)**. If applicant does not have an attorney, the response must be signed by the individual applicant, all joint applicants, or someone with [legal authority to bind a juristic applicant](#). If applicant has an attorney, the response must be signed by the attorney.
- If needed, find [contact information for the supervisor](#) of the office or unit listed in the signature block.

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