September 22, 2019

To Whom It May Concern:

On the USPTO.gov website the guidelines for filing trademarks are outlined in excellent detail. I am a small business owner in the online retail space. When I was starting my business, I reviewed the trademark process and guidelines provided on this website. I initially felt confident that if I ever needed to trademark my business name, I understood what was involved and that the USPTO was very diligent in ensuring only proper trademarks would be registered. However, after only being in business for a few minutes I quickly learned that what I read in the guidelines on the uspto.gov website were not at all what was occurring in the trademark world. And seemingly especially with regard to class 025.

Having previous experience in public service, having worked for the State of Florida. I went to the website and located the Trademark Manual of Examining Procedure (TMEP) October 2018. This document provides the constitutional basis for Trademarks and pulls together citations from the United States Code (U.S.C) as well as the Code of Federal Regulations (C.F.R.). This manual sets forth the guidelines and procedures that examining attorneys at the USPTO should be following, however there are several current practices at the USPTO that are inconsistent with the laws and regulations in place. I am not an attorney; I am just a very concerned small business owner looking to protect my business as well as the small businesses of countless others, just as the U.S.C. and C.F.R. sets out to ensure.

Here are the inconsistencies in regulations versus current USPTO practices that I have experienced: TMEP 704 Initial Examination>704.01. The initial examination of an application by the examining attorney must be a complete examination. A complete examination includes a search for conflicting marks and an examination of the written application, any voluntary amendment(s) or other documents filed by applicant before an initial Office action is issued (see TMEP §702.01), the drawing, and any specimen(s) or foreign registration(s), to determine whether the mark is eligible for the type of registration requested, whether amendment is necessary, and whether all required fees have been paid. The examining attorney's first Office action must be complete, so the applicant will be advised of all requirements for amendment and all grounds for refusal, with the exception of use-related issues that are considered for the first time in the examination of an amendment to allege use under 15 U.S.C. §1051(c) or a statement of use under 15 U.S.C. §1051(d) in an intent-to-use application. The key language above is a "complete examination" which does not seem to be occurring in many applications.

Many applicants are not fully complying with the following guidelines and this is being overlooked by the USPTO examining attorneys. As a small business owner, what is my recourse when the government agency responsible for ensuring frivolous trademarks won't be registered is negligent in their duties in upholding the trademark laws? My main recourse is to file a letter of protest (LOP) according to the USPTO.gov site and the TMEP 1715 Letters of Protest in Pending Application. Countless other small business owners and I have to take important time away from running our businesses in order to file LOP's for pending trademarks that somehow incorrectly made it through the "complete examination" of the USPTO.

I'm sure you can understand my frustration when I discovered that the USPTO is proposing to begin charging a fee of $100-$200 for each LOP submitted by small business owners like me, which we have to file in order to prevent trademarks from being registered that clearly violate the guidelines set forth in the TMEP, U.S.C. and the C.F.R. I'm pleading that the Commissioner for Trademarks or someone on their

team take a close look at the evidence I have submitted and create a system of checks and balances to ensure that Examining Attorneys are indeed conducting a “complete examination” according to your guidelines. I’m also asking that you remove any consideration of charging a fee for LOP’s until changes have been made at the USPTO ensuring that the constitutional basis for trademarks is being followed. Additionally, if a fee must be charged, I would propose charging a fee to applicants whose applied-for mark does not function as a mark and receives a “failure-to-function” refusal according to TMEP 904.07(b). This may help reduce the current influx of frivolous trademark applications being submitted to the USPTO. This will surely decrease the amount of LOP that are being filed.

Please feel free to reach out to me with any further questions.

A Concerned Small Business Owner

Justine Alderman