

**Response to Office Action for
U.S. Trademark Application No. 88484226
MARATHON OG**

I. No Likelihood of Confusion with Any of the Cited Registrations or Applications

In the Office Action, the cited marks are 12 different MARATHON-based marks owned by 6 different owners:

MARATHON (Reg. No. 0856151)
MARATHON (Reg. No. 1468570)
MARATHON (Reg. No. 3071385)
MARATHON (Reg. No. 4436383)
MARATHON II
MARATHON III
MARATHON & Arrows Design
WHAT'S YOUR MARATHON?
MARATHON FOOD CENTER & Gas Station Configuration
M MARATHON & Design
MARATHON GINSENG & Chinese Characters and Running Ginseng Root Design
MARATHON SPORTSWEAR

Clearly, coexistence among MARATHON-based marks has been permitted and tolerated. Indeed, these cited marks illustrate that many MARATHON-based marks have been able to coexist with each other based on relatively minor differences in the marks and the goods/services, and Applicant's mark should similarly be permitted to coexist.

Applicant's mark is the unique mark MARATHON OG. None of the cited marks contain "OG" or anything similar to "OG".

The term "OG" gives Applicant's mark an appearance that is unique and distinguishable from all of the cited marks. As noted above, none of the cited marks contain "OG" or anything that visually resembles the term "OG".

The term "OG" also gives Applicant's mark a sound/pronunciation that is unique and distinguishable from all of the cited marks. Whether consumers pronounce the term "OG" as "AWG" or "OH JEE," such pronunciations are unlike the sound of any part of any of the cited marks – there is nothing in the cited marks that sounds like "AWG" or "OH JEE".

In addition, the term "OG" gives Applicant's mark a meaning and commercial impression that is unique and distinguishable from all of the cited marks. The term "OG" suggests the slang phrase "ORIGINAL GANGSTER," which connotes toughness, originality, legitimacy, authenticity, gangster lifestyle, etc. There is nothing in any of the cited marks that conveys such connotations.

Given that so many MARATHON-based marks are already coexisting (including the 12 cited marks), and given the fact that the term “OG” gives Applicant’s mark a unique appearance, sound and meaning that are readily distinguishable from the appearance, sound and meaning of each cited mark, confusion is not “likely,” and this application should be permitted to proceed to the publication stage.

II. Examining Attorney’s Request for Information

To Applicant’s knowledge, MARATHON has never been used as a varietal or cultivar name, and MARATHON has never been used or will be used in connection with a plant patent, utility patent, or certificate for plant-variety protection.

III. Applied-For Mark is Not a Varietal Name

As stated in Section II above, to Applicant’s knowledge, MARATHON is not a varietal name. MARATHON is a common English term with several different meanings and connotations (none of which relate to seeds or plants), and it is certainly not Applicant’s intent to use a varietal name in Applicant’s mark MARATHON OG or for Applicant’s mark MARATHON OG to suggest to consumers anything relating to any varietal name.

Furthermore, there was no evidence attached to the Office Action that proved (or even suggested) that MARATHON is a varietal name.

Accordingly, the varietal-related refusal pertaining to Class 31 should be withdrawn.

IV. Amendment of Description of Class 11 Goods

Elsewhere in this electronic Response, Applicant has amended this application’s identification of goods in accordance with the Examining Attorney’s instructions.

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Based on the foregoing, Applicant respectfully requests that the refusal be withdrawn and that the application be approved for publication as amended. Thank you.