

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

OFFICE ACTION (OFFICIAL LETTER) ABOUT REGISTRANT'S TRADEMARK

REGISTRATION

REGISTRATION NO. 2884856

REGISTRANT: BLUE SUN BIODIESEL LLC

CORRESPONDENT'S ADDRESS:

Steve Bond
Blue Sun Biodiesel
3440 Youngfield St, Suite 409
Wheat Ridge, CO 80033

September 8, 2010



**CLICK HERE TO RESPOND
TO THIS LETTER:**

<http://www.uspto.gov/teas/e7>

[EASpageC.htm](#)

MARK: BLUE SUN

CORRESPONDENT'S REFERENCE/DOCKET NO. N/A

CORRESPONDENT'S EMAIL ADDRESS:

POST REGISTRATION OFFICE ACTION

ISSUE/MAILING DATE: 9/8/2010

RE: Registration Number 2884856

The Sections 8 & 15 Combined Affidavit was received on August 16, 2010. The Section 15 portion of the combined affidavit is acknowledged. However, the Section 8 portion is not accepted for the reason(s) set forth below.

The specimen submitted with the Section 8 Affidavit is unacceptable because it consists of advertising material for goods and does not show use of the registered mark on the goods or on packaging for the goods. *See* TMEP §904.04(b)-(c).

Material that functions merely to tell prospective purchasers about the goods, or to promote the sale of the goods, is unacceptable to show trademark use. TMEP §904.04(b). Invoices, business cards, announcements, price lists, listings in trade directories, order forms, bills of lading, leaflets, brochures, advertising circulars and other printed advertising material, while normally acceptable for showing use in connection with services, generally are not acceptable specimens for showing trademark use in connection with goods. *See In re MediaShare Corp.*, 43 USPQ2d 1304, 1307 (TTAB 1997); *In re Schiapparelli Searle*, 26 USPQ2d 1520, 1522 (TTAB 1993); TMEP §904.04(b)-(c).

Therefore, the owner must submit the following:

(1) A substitute specimen showing current use of the registered mark in commerce for each class of goods specified in the registration; and

(2) The following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: **“The substitute specimen was in use in commerce during the relevant period for filing the 6-year Section 8.”** 37 C.F.R. §2.161(g); TMEP §1604.12(c).

Examples of specimens for goods are tags, labels, instruction manuals, containers, photographs that show the mark on the actual goods or packaging, or displays associated with the actual goods at their point of sale. *See* TMEP §§904.03 *et seq.*

The following statement and declaration under 37 C.F.R. §2.20 can be used to verify the Combined Affidavit, if properly signed and dated:

The owner was using the mark in commerce on or in connection with the goods and/or services identified in the registration for which use of the mark in commerce is claimed, as evidenced by the submitted specimen, during the relevant period for filing the 6-year Section 8, that is, between the 5th and 6th year anniversary after the date of registration or the date of publication under 15 U.S.C. §1062 .

The mark has been in continuous use in commerce for five (5) consecutive years after the date of registration or the date of publication under 15 U.S.C. §1062(c), and is still in use in commerce on or in connection with all goods and/or services listed in the existing registration. There has been no final decision adverse to the owner’s claim of ownership of such mark for such goods and/or services, or to the owner’s rights to register the same or to keep the same on the register; and there is no proceeding involving said rights pending and not disposed of either in the United States Patent and Trademark Office or in the courts.

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statement may jeopardize the validity of this document, declares that s/he is properly authorized to execute this document on behalf of the owner, and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

Signature of Authorized Person

JERRY WASHBURN
Type or Print Name

13 Sept 10
Date

The following persons are authorized to sign a Combined Affidavit on behalf of the owner:

- (1) A person with legal authority to bind the owner;
- (2) A person with firsthand knowledge of the facts and actual or implied authority to act on behalf of the owner; and
- (3) An attorney as defined in 37 C.F.R. §11.1 who has actual or implied written or verbal power of attorney from the owner.

37 C.F.R. §2.161(b); TMEP §1604.08(a).

RESPONSE TIME DEADLINE: A complete response must be received within 6 months from the issuance date of this Office action or prior to expiration of the 6th year anniversary date on September 14, 2010, whichever is later. The owner must respond to all inquiries set forth in this Office action to avoid cancellation of the registration. 37 C.F.R. §2.163(b)-(c); TMEP §§1604.16, 1604.17(a).

DEFICIENCY SURCHARGE INFORMATION: A \$100 deficiency surcharge must be submitted if the response to this Office action is received by the Office after September 14, 2010 date of 6th year anniversary. 37 C.F.R. §§2.6, 2.164(a)(1); TMEP §1604.17(a). (Note: This only applies when the response time deadline above falls after the 6th year anniversary date.)

ADVISORY: If a response to this Office action is not filed within the response deadline above, and time remains in the grace period, the owner may avoid cancellation of its registration by filing a new affidavit of use within the grace period. 37 C.F.R. §2.163(c). Additional fees are required to file a new affidavit during the grace period. 37 C.F.R. §2.161(d)(1)-(2). For more information about this, please contact the undersigned.

Sincerely,


Tamika Whitsey
TM Specialist

Post Registration Division

571-272-4321 office

571-273-4321 fax

tamika.whitsey@uspto.gov

TO RESPOND TO THIS LETTER: Use the Trademark Electronic Application System (TEAS) Response to Post-Registration Office action form at <http://www.uspto.gov/teas/eTEASpageC.htm>. Please wait 48-72 hours from the issue/ mailing date before using TEAS, to allow for necessary system updates of the registration. For *technical* assistance with online forms, e-mail TEAS@uspto.gov.

WHO MUST SIGN THE RESPONSE: It must be personally signed by (1) an individual registrant; (2) someone with legal authority to bind registrant (i.e., a corporate officer, a general partner, all joint applicants); or (3) an authorized attorney, if one is

appointed to represent registrant. If a registrant is represented by an attorney, the attorney must sign the response.

CHECK THE STATUS OF THE REGISTRATION: To check the status of your registration at any time, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov/>. Please keep a copy of the complete TARR screen. 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/teas/eTEASpageE.htm>.

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED SPECIALIST.

PLEASE ENCLOSE THIS FORM WITH YOUR RESPONSE

****This form must be included with your response to ensure proper fee processing.****

Registration No. 2884856

The Post Registration Paralegal has determined that the amounts indicated below are outstanding:

\$ _____ Section 8 affidavit filing fee (fee code 6205)

\$ _____ Section 8 affidavit grace period surcharge (fee code 6206)

\$ _____ Section 8 affidavit deficiency surcharge (fee code 6207)

\$ _____ Section 9 renewal application filing fee (fee code 6201)

\$ _____ Section 9 renewal application grace period surcharge (fee code 6203)

\$ _____ Section 9 renewal application deficiency surcharge (fee code 6204)

\$ _____ Section 15 affidavit filing fee (fee code 6208)

\$ _____ Section 7 correction (registrant error) filing fee (fee code 6212)

\$ _____ Section 7 amendment filing fee (fee code 6214)

\$ _____ Section 7 issue new certificate of registration filing fee (fee code 6211)

\$ 100 _____ Deficiency surcharge Sec. 8—if response filed after September 14, 2010(fee code 6207)

Date