
To: Divine Brothers Company (bdivine@divinebrothers.com)
Subject: U.S. Trademark Registration No. 3575461 - RED LION - N/A
Sent: 08/20/19 07:11:23 AM
Sent As: prg@uspto.gov
Attachments:

United States Patent and Trademark Office (USPTO)
Office Action (Official Letter) About Owner's Trademark Registration

U.S. Registration No.
3575461

Mark: RED LION

Correspondence Address:
Divine Brothers
Company
200 Seward Avenue
Utica, NY 13502

Owner: Divine Brothers
Company

Reference/Docket No.
N/A

**Correspondence Email
Address:**

bdivine@divinebrothers.com

OFFICE ACTION

The USPTO must receive the owner's response to this letter within the **time period specified below**. Respond using the Trademark Electronic Application System (TEAS). A link to the appropriate TEAS response form appears below.

Issue date: August 20, 2019

The Combined Section 8 Affidavit & Section 9 Renewal Application was received on July 16, 2019. The Section 9 portion of the combined filing can be granted. However, the Section 8 portion is not accepted for the reason(s) set forth below.

I. SPECIMEN DEFICIENCY – ADVERTISING MATERIAL

The specimen submitted with the Section 8/9 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 10-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.*

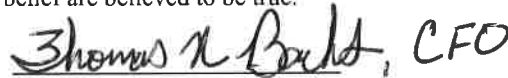
II. SAMPLE DECLARATION

The following statement and declaration under 37 C.F.R. §2.20 can be used to verify the Combined Section 8 Affidavit & Section 9 Renewal Application, 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 10-year Section 8, that is, within the one year before the end of a 10-year period after the date of registration, or during the ensuing grace period.

Renewal of the registration is requested.

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
Thomas W. Barks
Type or Print Name
8/20/2019
Date

The following persons are authorized to sign a Combined Section 8 Affidavit & Section 9 Renewal Application 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 §§804.04 and 1604.08(a).

III. SIGNATURE ON RESPONSE - ADVISORY

Responses to Office actions must be properly signed. 37 C.F.R. §§2.163(b), 2.184(b)(2); *see* TMEP §712. If the owner has retained an attorney, the attorney must sign the response; the owner cannot sign the response. TMEP §605.02. However, if the owner was previously represented by an attorney, and the owner later retains a different attorney, the newly retained attorney cannot sign responses until a new power of attorney signed by the owner is filed. TMEP §602.01. Paralegals and secretaries cannot sign responses for attorneys. *See* TMEP §602.03.

The only attorneys who can practice before the USPTO in trademark matters are (1) attorneys in good standing with a bar of the highest court of any U.S. state (including the District of Columbia, Puerto Rico and other federal territories and possessions) or (2) Canadian agents/attorneys reciprocally recognized by the USPTO's Office of Enrollment and Discipline (OED) who are appointed in connection with a U.S.-licensed attorney, and who are representing trademark registrants located in Canada. *See* 37 C.F.R. §§2.17(a), 11.1 11.14, 11.14(a), (c), (e). Foreign attorneys (other than recognized Canadian attorneys) cannot sign responses or otherwise represent registrants before the USPTO. *See* 37 C.F.R. §11.14(c).

If the owner is not represented by an attorney, the response must be signed by the owner or by someone with legal authority to bind the owner (i.e., a corporate officer of a corporate owner, the equivalent of an officer for unincorporated organizations or limited liability company owners, a general partner of a partnership owner, each owner for registrations with multiple individual owners, etc.). 37 C.F.R. §§2.163(b), 2.184(b)(2); *see* TMEP §§712-712.01(a)(viii).

A non-attorney who is authorized to verify facts on behalf of an owner under 37 C.F.R. §2.33(a)(2) (such as trademark administrators,

accountants, business managers, administrative assistants, and personal assistants) cannot sign responses to Office actions unless he or she also has legal authority to bind the owner. See TMEP §§712.03 and 804.04.

IV. RESPONSE GUIDELINES

RESPONSE TIME DEADLINE: A complete response must be received within 6 months from the issuance date of this Office action. The owner must respond to all inquiries set forth in this Office action to avoid cancellation and/or expiration of the registration. *If a response is not received, the registration will cancel and/or expire in its entirety.* 37 C.F.R. §§2.163(b)-(c) and 2.184(b)(1); TMEP §§1604.16, 1604.17(b) and (c), and 1606.13(b).

DEFICIENCY SURCHARGE REQUIRED: The owner must submit a \$100 deficiency surcharge with its response to this Office action if the response is submitted online using the Trademark Electronic Application System (“TEAS”). A \$200 deficiency surcharge must be submitted if the response is submitted on paper. 37 C.F.R. §§2.6, 2.164(a)(2) and 2.185(a)(2).

How to respond. [Click to file a Response to Post-Registration Office action.](#)

Direct questions about this Office action to the Post Registration staff member below.

/Shawnee Letsa/
Trademark Specialist
Post Registration Division
571-272-9626 Direct
571-273-9626 Fax
Shawnee.letsa@uspto.gov

RESPONSE GUIDANCE

- **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 owner’s ability to timely respond.
- **Responses signed by an unauthorized party** are not accepted or processed. If the owner does not have an attorney, the response must be signed by the individual owner, all joint owners, or someone with legal authority to bind a juristic owner. If the owner 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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United States Patent and Trademark Office (USPTO)

USPTO Official Notice

Office action (Official Letter) has issued
on 08/20/2019 for
U.S. Trademark Registration No. 3575461

Your trademark document has been reviewed by a Post Registration staff member. As part of that review, the assigned staff member has issued you an official letter that you must respond to by the specified deadline. Please follow the steps below.

(1) Read the official letter.

(2) Direct questions about the contents of the official letter to the staff member identified in the letter. Direct questions about navigating USPTO electronic forms, the USPTO [website](#), the registration maintenance process, the status of your registration, and/or whether there are outstanding deadlines or documents related to your file to the [Trademark Assistance Center \(TAC\)](#).

(3) Response may be required. Carefully review the Office action to determine (1) if a response is required, (2) the applicable response time period, and (3) how to respond using the Trademark Electronic Application System (TEAS). The response must be received by the USPTO before midnight **Eastern Time** of the last day of the response period.

GENERAL GUIDANCE

Check the status of your registration 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 registration.

Beware of misleading notices sent by private companies about your registration. Private companies not associated with the USPTO often use public information provided in USPTO trademark registrations to mail and email trademark-related offers and notices—most of which require fees. These companies often have names similar to the USPTO. All **official USPTO correspondence** will only be **emailed from the domain "@uspto.gov."** For a current list of companies the USPTO has received complaints about, information on how to identify these offers and notices, and what to do if you receive one, see the [misleading notices webpage](#).