

*Office of the USPTO, Commissioner
600 Dulany St, Alexandria, VA 22314*

Serial # 87869449

*Service Mark: **Novemberteenth / Aprilteenth***

Commissioner Hirshfeld,

Introduction

Like so many applicants registering for a Service Mark (Mark), I have no intent to thoroughly perform the tasks assigned to a trademark examiner, but, from my vantage point, I must provide this stringent message due to how my Mark application is being treated and where it is going, something I've seen before—too many times. As you read more about this unjust treatment of my application, you will witness the process of a "catch 22" is being applied, which no doubt places the present day USPTO, a two-century-old U.S. Patent prestigious institution, again, in an embarrassing and precarious position (at risk), through my lens...

As mentioned, because I've seen this scenario in the past within the ranks of the USPTO, I will provide an example later.

Emphasis upon My Deliberation ...

- 1. I created a Mark (trademark) name using two portmanteaus--see the "**Abstracts and History...**" section for definition--with the thought of facilitating the Examiner's search;*
- 2. I used the "Goods and/or Services" description closest to/for what this respective Mark's use is and will continue to be, upon my website and its subpage(s), which serves as 1 of the 5 types of mass media that explains why I chose the "Good and/or Services" definition: "Entertainment services, namely, providing a web site featuring photographic, video and presentation prose featuring Colonial History"; and*
- 3. I am very pleased to reveal, finally for the record, another misstep occurred relative to a Mark (trademark) I applied for 25 years ago, yes, a generation ago [for the Mark "Miss/Mrs. Nubian Pageant" to express my dissatisfaction, because I was not given the opportunity to complete a survey, per the USPTO, so, herein it lies, and see **why** I feel this way, based upon the embarrassing facts in the "**Abstracts and History...**" section]. And, if that sentiment continues upon that unacceptable course,*

let this document serve as my customer dissatisfaction with the hope that this current misstep is used as part of the Examiner's job evaluation and further as an example for others not to follow...

Argument

The need to write you, as the new Commissioner, has arrived unfortunately; my communication with the past commissioners, as you may suspect by now, is not the 1st time in doing so within the past 25 years. As a bona fide applicant for a Mark and paid its respective application fee, I again am being led into a direction unbefitting me. This is the 2nd issuance of an office action by your office challenging the acceptance of this applied for Mark.

As you will witness, in my response to the 1st respective office action (dtd. 1/10/19), I, in earnest, responded with overwhelming evidence proving that my applied for Mark is more than what the USPTO characterized it as:

"Section 2(e)(1) General Refusal-Descriptive: Registration is refused because the applied-for mark merely describes a feature of applicant's services. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); see TMEP §§1209.01(b), 1209.03 et seq."

And now, this 2nd office action...much to my surprise, leaps into a diversion, and I quote:

"Does Not Show Mark with Specific Classes: Registration is refused because the specimen does not show the applied-for mark in use in commerce in connection with any of the services specified in International Class 41 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); In re Keep A Breast Found., 123 USPQ2d 1869, 1876-79 (TTAB 2017); In re Graystone Consulting Assocs., Inc., 115 USPQ2d 2035, 2037-38 (TTAB 2015); TMEP §§904, 904.07(a), 1301.04(d), (g)(i). 'Specifically, the applicant's specimens are a single proclamation that does not show providing a web site featuring photographic, video and presentation proses featuring Colonial History.' The applicant's specimens fail to indicate that the applicant is offering any type of website featuring presentations about Colonial History."

*These illogical positions, quite frankly, do not make sense, and again quite frankly...contradict what I have provided as evidence for my Mark, given the fact that my website shows in great depth, my specimen's use in commerce which was submitted to the USPTO back in April 2018. As a matter of fact, my specimen which is displayed on my website (attachments # 1 & 68 and subpage "NPS Blog Posts & Comments") is also displayed/advertised on Amazon.com (attachment # 71); the interesting thing is...the Examiner did not digitally capture pictures of it being advertised on the Barnes&Noble.com and/or Google Play Books websites. One could only logically think, considering this overwhelming proof, that because it is being used in commerce upon these major mass media commercial websites, gave the Examiner **cause** to make the following statement in his 1st office action:*

"Whether consumers could guess what the product [or service] is from consideration of the mark alone is not the test. In re Am. Greetings Corp., 226 USPQ 365, 366 (TTAB 1985)."

In other words, the Examiner is not challenging "whether consumers could guess what the product [or service] is from consideration of the Mark" because of the overwhelming display/advertising upon my website and these major mass media commercial websites.

Now, let's talk a little about my specimen...it contains a public domain picture of Queen Sophia Charlotte of England who ruled in the 18th Century (attachment # 1, e.g.) along with the portmanteau words "Novemberteenth" and "Aprilteenth," which comprise, respectively the combination of the words November and eighteenth with April and nineteenth. Specifically, the content contained upon the specimen reflects, in short, the context contained in the document called "Instructions to George Yardley" or what historians call "The Great Charter" of 1619 (what I call the survivors' **document of freedom because it is the beginning of the system of Indentured Servitude and the end of slavery for the survivors of the Virginia Colony**) that was **issued** in November 18, 1618 by the Virginia Company of London; but it was **delivered** to the European Slave Survivors on April 19, 1619 who endured Slavery and Starvation during the 1st 12 years of the Virginia Colony, 1607 to 1619 AD.

The additional content upon the specimen, after the "+" (plus sign shown in attachment # 1), in summary is self-explanatory, which is the context of a 12-page document issued in 1624 AD written by the Survivors (as stated) who expressed their enslaved conditions endured, viz., how they were treated during this 1st 12 years of the Virginia Colony, 1607 to 1619 AD. This sacred document was issued 5 years later after their **document of freedom**, and it is not well known by our American Brothers & Sisters or contained within our written history books that reflect the beginning (the 1st 12 years) of the Virginia Colony, 1607 AD.

If you look carefully, this specimen contains all what's necessary to understand the specific colonial history period mentioned, and it serves as my eBook cover to a 124-page book advertised on Amazon's website as noted and captured in attachment # 72, and on an eBook club's repository, attachments # 63 & 64.

Now...besides using my website the last 25 years for advertising Nubian Pageant Systems activities and Community Service Projects, it also showcases **the following** for the Mark "Novemberteenth / Aprilteenth" that fulfills advertising, provides **presentation prose featuring colonial history** for its respective Goods and/or Services, contrary to what is characterized by the Examiner; let's take a closer look at what my website deliberately contains, if you have a moment:

1. A (slideshow) video of pictures of the Nubian Pageant Family & Friends, which is associated with my "Nubian Pageant Systems" Mark, e.g. "Mrs. Nubian Hawaii 1997" posing with President Obama (attachment # 64) and what follows is a picture of her and Mrs. Obama. To read this titleholder's testimony about the pageant, its scholarship program provided her and how she got to meet the Obamas, visit the subpage "Titleholder Testimonial";
2. The other slideshow below on this same homepage is dedicated to my two eBooks and Android App I developed through Android programming, but for this Mark, one can see my specimen is shown in attachments # 1 & 68 and my subpage "NPS Blog Posts & Comments". But to view and read the main narrative, intended for the public and Examiner, inasmuch as the Examiner did not digitally capture my presentation prose of the specific colonial history, please feel free to visit my website's homepage at: www.nubian-pageants.com – I would like to know why the Examiner did not digitally capture my presentation prose from my homepage that accommodates my specimen used in commerce; and what's equally important is:
3. Within the specimen is a photograph that is public domain, as noted earlier, of a person whom I deliberately chose to help announce this theme, also shown in attachments # 1 & 68 and subpage "NPS Blog Posts & Comments".

Anyone who views my website and its subpage(s) cannot escape the presentation prose of colonial history the Examiner denies, which is why the Examiner does not challenge this notion, mentioned earlier.

Given these facts and profound proof, I will not waste my time, or "spin my wheels" any further responding to and/or following the direction of a 2nd Office Action officially filed by the assigned Examiner, who has taken the position to disregard the specimen I initially submitted (April 20, 2018) with its respective presentation prose featuring colonial history upon my website, and who has therefore created a diversion to follow that does not apply.

*Here's what's interesting...the Examiner took the time to capture over 75 digital pictures (per Office Action Outgoing, Aug. 02, 2018) of live activity from several websites showcasing my Mark. **Why didn't the Examiner take a complete digital picture of my presentation prose featuring colonial history which lies upon my homepage (top page), that which is so obvious...the Examiner only captures a digital picture of the storylines for my two eBooks published (attachment # 67), and what immediately follows is a slideshow for each respective eBook cover (attachment # 68).***

Moreover, from the use of my Mark, my website has also turned into a tool/medium for collaboration about the Mark's theme via its "NPS Blog Posts & Comments" featuring hundreds of comments from the public.

FYI, within my response to the Examiner's 1st Office Action, I provided examples of comments from the public about their perception of the Mark's brand--it doesn't get any better than that. When you have a moment, take a look at my response to the 1st Office Action or my website's blog that showcases the public's comments that range in the hundreds.

Examiner's Actions and My Questions...

1. Blatant disregard for the specimen and its respective presentation prose featuring Colonial History that are presented upon my homepage (top page). I would like to know what website this Examiner is looking at because I know it's not mine.

2. Office Actions:

*a. **1st Office Action** - "General Refusal-Descriptive: Registration is refused because the applied-for mark merely describes a feature of applicant's services."*

*My response: In my response, I provided an amplification of proof that disproves the suggested reason for refusal, given what I mentioned as proof of my specimen's use in commerce, advertising and its supported narrative for presentation proeses featuring colonial history upon my website (homepage) and other eBook website repositories which you have/will witness; and quite frankly, from 20/20 hindsight, I determined my continued efforts were to no avail, which tells me I wasted my precious time; how can an Examiner evaluate an application properly or perform his/her job if certain items (matters of fact) are ignored? What is this, a joke (or **DELIBERATE DECEPTION, which really backfired upon thyself**) given and*

providing the state of play as a diversion/"catch 22" scenario, using over 75 digitally captured pictures for confusion?

b. 2nd Office Action - "Does Not Show Mark with Specific Classes: Registration is refused because the specimen does not show the applied-for mark in use in commerce in connection with any of the services specified in International Class 41 in the application."

My response: This is astounding logic and very embarrassing for the USPTO. Nothing is farther from the truth - Here, the Examiner is doubling down to disregard proof provided in my 1st response to his official 1st Office Action. Also, reference is made to an international class I did not assign to my Mark; he in fact assigned the international class and he's using it against me—what kind of operation is this?

3. And to add insult to injury, also contained within the 2nd Office Action is the Examiner's quick reference to 2 trademark TTABs, pointing to the process of appeals that do not apply, and they are, as noted earlier:

"In re Keep A Breast Found., 123 USPQ2d 1869, 1876-79 (TTAB 2017); In re Graystone Consulting Assocs., Inc., 115 USPQ2d 2035, 2037-38 (TTAB 2015); TMEP §§904, 904.07(a), 1301.04(d), (g)(i)."

And get this...attached to this reference, which is obvious, is his thinking that he will set the impending direction to follow (a diversion); but the Examiner was not so quick to look at trademark precedent(s) whose requisite documents match, e.g., the trademark presented in example "b." below.

4. My questions: I have so many questions about this situation, it's not funny, but I will limit them to only five, because I know you are busy...

a. What is the problem here, and why won't the Examiner recognize my obvious presentation prose that reflects the facts about the early 1600s AD, the Virginia Colonial Records that are stated upon my website, specifically, making reference to: 1) the Records for the Virginia Company of London, attachment #s 2 & 70, 2) the London Court Records associated with the Virginia Colony, attachment #s 2 & 70, and 3) not to mention the 3 Charters granted by King James to the Virginia Company of London to colonize the Virginia Colony? The fact that the Examiner did not capture a digital picture of my presentation prose featuring colonial history from my website's homepage (top page) only reinforces his declared statement of denial outlined in the 2nd office action, which is again:

"...Specifically, the applicant's specimens are a single proclamation that does not show providing a web site featuring photographic, video and presentation proeses featuring Colonial History. The applicant's specimens fail to indicate that the applicant is offering any type of website featuring presentations about Colonial History."

Again, nothing is farther from the truth, and he's got to be joking here...

b. With reference to a trademark precedent, see the "Hard Evidence..." section below for specifics. Here goes the question: Why has the USPTO accepted the specimens used for this Mark and its respective presentation prose for: "Roots: The Saga of an American Family..." that associates itself with Black Slavery in America, but attempting not to accept my specimen

and its presentation prose provided on my website's homepage, which is similar in measure for an eBook cover that associates itself with White Slavery in the Virginia Colony? There is something wrong with that picture; I won't call it what it looks like...I'll leave it to your imagination;

*c. How would you feel if you performed a 6-yr. research project, and someone denies your diligent work? – **subjecting yourself to having to transcribe and read the Virginia Colonial records written in Early Modern English, not Modern English;***

d. Why does it have to take the application applicant, who has paid an application fee, to write and force the Commissioner to assess the professional work quality of a trademark lawyer? Again, there is something wrong with having to do this and a waste of time. This, certainly, is not fair to any U.S. Citizen, and you know it...

e. Why did the Examiner capture the presentation proses featuring the colonial history of my other eBook with its questions to the reader, attachment # 5, and my Android App, attachments # 9, 10 & 11, and not capture the presentation prose featuring the colonial history for this Mark: "Novemberteenth / Aprilteenth"? I can tell you why...if there was a digitally captured attachment for it, the Examiner would not have been able to create a 2nd office action; let's face it, this is very obvious...

Hard Evidence (tradename precedent) to prove that the USPTO granted the following trademark its status for "Published for Opposition"

"Roots: The Saga of an American Family" - Specimens with presentation prose for its... for eBook cover available for eBook platforms: kindle and/or Nook, and for its hard book cover.

"Image of website featuring Roots entertainment information"

"Roots website featuring entertainment information"

"Roots e-book cover"

Serial Number 87077958

Filing Date: June 20, 2016

Published for Opposition: November 8, 2016

Professional Advice for the relatively new USPTO Commissioner, Senior Staff on down and Examiner

1. Commissioner & Senior Staff on down: As a professional, I assumed the USPTO had a Body Code of Ethics or it provides, by now, 25 years later for its examiners, value added courses to

effectively/efficiently evaluate applications. It certainly looks like I was wrong in my assumption. I trust, howbeit, one day it will because the continuance of such missteps from the hands of a, supposedly highly trained, trademark lawyer only continues to embarrass the international reputation, through my lens, of this prestigious 200-year old institution of our country. Further...I assume/trust you will assign a Senior Examiner to seek an honest work performance for this Mark's application instead of relying on one that seeks and promotes deception for whatever motive... (to say the least, what a waste of valuable resources...having to start this process all over again with another Examiner).

2. Examiner: *I suspect you are a relatively young man with a promising future, so, this is a word only for the wise: I'm sure you've heard this before, so I'll make it very simple. You never know who you're going to professionally work with in the present or future. And don't forget, you are **never ever** beyond reproach, especially when a professional body code of ethics looms over you and/or your professional line of work regardless of who you work for (even if it's for a large company, such as the USPTO), or should you so desire to pass a state bar exam to retain a license...*

I can go on and on, but I'm not here to lecture; I would be remiss if I didn't express how I felt about this misstep performed upon my application that was only meant to be a straight forward application; it was not meant to be a circus or placed in a "catch 22" situation.

Abstracts and History for internal and eventual public record for the New Generation(s) to come

1. Novemberteenth & Aprilteenth are portmanteaus, the blending of November + eighteenth and April + nineteenth;

2. I have applied for a number of Marks (trademarks) [and Copyright(s) via the U.S. Copyright Office] for over 25 years now (1/10th of the USPTO's existence), since 1993. And back then, the USPTO put forth unreasonable obstacles, but at this juncture I don't know which trademark application's effort is worse, the one associated when the USPTO lost my application for 3 years and after my formal letter to the Commissioner it was finally found, or this one which aligns itself with disregarding its respective presentation prose featuring colonial history and requisite documents (and use in commerce) for submittal and diverting attention to a scenario that does not apply; and

3. As to the Mark (tradenname) lost for 3 years "Miss/Mrs. Nubian Pageant," one can see, from hindsight, its existence has consistently fulfilled its "Goods and/or Services" intent, which has been and continues to be: "Pageants in the nature of competitions on the basis of the participant's appearance, cultural heritage, knowledge and social skills." For evidence, take a glance, again, at my website: www.nubian-pageants.com;

a. Miss/Mrs./Mr. Ebony World () Pageant - filing date: March 1993 | Abandonment Date: January 1994;

b. Nubian Pageant Systems - filing date: December 1994 | Published for Opposition: December 1995 (cured within 1 year); and

c. Miss/Mrs. Nubian Pageant - filing date: September 1995 | Published for Opposition: December 1998 (accrued for 3 years), not to mention the Mark finally appearing in the Principal Register in January 2002, shown in the "Prosecution History" File.

Conclusion...

*Quite frankly, I am truly tired of having to escalate these matters to the USPTO Commissioner and higher to resolve a simple Mark (tradename) matter for a supposedly and highly trained trademark lawyer for the USPTO. As a U.S. Citizen, paying a fee for a service to be performed, with the attempt to make it easier for the trademark lawyer(s) to perform his/her job, I again have to endure unwarranted obstacles sprung upon me again for seeking a Mark to help promote authentic historical facts--**the Virginia Colonial Records**--associated with our great country, the good old USA. My website is in no way slandering and/or promoting vulgarity, but is as stated, **promoting authentic historical facts**.*

*I don't have time, or won't waste my time any longer playing games, or have the interest to pursue rabbit holes from which the Examiner has assigned for pleasure (obviously it backfired), or time to highlight the USPTO's Body Code of Ethics, or assume that the USPTO does or does not have job training to effective/efficiently evaluate a Mark's evidence upon its merits -- **let's hope this is a wake-up call for the Examiner**. Nor will I perform the Examiner's job to perform searches to challenge his inadequate search, because I'm not receiving the Examiner's salary. It is appalling, to say the least, that I have to stoop this low, again, to point out obvious gross missteps. And, as a result of having almost 50 years of corporate mid and senior level experience and over 25 years (1/10th of the USPTO's existence) of trademark application submittals, I thought I have seen everything...*

So, with all this to digest for clarity, from this letter of expression, I truly hope you understand my deep concern again...

I trust you will follow through and make sure these missteps do not continue to persistent. Finally, I would like, from your behalf, a reply regarding these missteps that corrective action will be taken. Specifically, I would like for you to respond to my 5 questions posed earlier, Mr. Commissioner.

Looking forward to your impending personal response

I Remain

/George Rainey Jr./

*CC: 1. Deputy Commissioner
2. Head of Law Office 112*