

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Energy Partner Network Inc

Serial No.: 88921147

Filed: May 18, 2020


Mark: The logo for Energy Partner Network, featuring a stylized circular arrow icon to the left of the text "ENERGY PARTNER NETWORK" stacked vertically.

Examiner: Chioma (Bata) Oputa, Law Office 103

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

RESPONSE TO OFFICE ACTION

In response to Examiner's Office Action dated August 24, 2020 please note the

following. The Applicant has applied to register  in International Trademark Class 045 for the following goods: "Online social networking services in the field of renewable energy and clean energy; Online social networking services in the field of renewable energy and clean energy provided via a website" under Section 1(a).

PREMATURE USE REFUSAL

The Examining Attorney refused registration since the specimen allegedly shows that Applicant has not used the applied-for mark in commerce in connection with the identified services as of the application filing date. *See*, Trademark Act Sections 1(a) and 45, 15 U.S.C. §§1051(a), 1127; 37 C.F.R. §2.34(a)(1)(i); and TMEP §§ 904 and 1301.03(a). Specifically, the

Examining Attorney asserted that the specimen of record indicates that Applicant's services launched in July 2020, and the application filing date is May 18, 2020.

Since Applicant's services were rendered in commerce as of the application filing date, Applicant is instantly submitting (1) a substitute specimen showing the applied-for mark in use in commerce for the services specified in the application; 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 at least as early as the application filing date" in accordance with 37 C.F.R. § 2.59(a); TMEP §904.05; and 37 C.F.R. §2.193(e)(1). Applicant believes that these submission address the premature use refusal and as such, Applicant's proposed mark should be registered.

SPECIMEN

The Examining Attorney also asserts that the webpage specimen did not include the required date printed/accessed, and registration is refused because the specimen is not acceptable as a webpage specimen. *See*, 37 C.F.R. § 2.56(c) and Mandatory Electronic Filing & Specimen Requirements, Examination Guide 1-20, at V.B. (Rev. Feb. 2020).

In response, Applicant is instantly submitting (1) a verified statement, in a signed affidavit or supported by a declaration under 37 C.F.R. §2.20 or 28 U.S.C. §1746, specifying the URL of the original webpage specimen and the date it was accessed or printed and (2) a different specimen (a verified "substitute" specimen), including the URL and date accessed/printed on it, that (a) was in actual use in commerce at least as early as the filing date of the application or prior to the filing of an amendment to allege use and (b) shows the mark in actual use in commerce for the goods and/or services identified in the application or amendment to allege

use. Moreover, Applicant is also instantly submitting the following statement made in a signed affidavit or supported by a declaration under 37 C.F.R. §2.20: “The substitute (or new, or originally submitted, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application or prior to the filing of the amendment to allege use.”

Applicant believes that these submission address the specimen issue and as such, Applicant’s proposed mark should be registered.

DISCLAIMER REQUIRED

The Examining Attorney further asserted that Applicant must disclaim the wording “ENERGY PARTNER NETWORK” because it is merely descriptive of an ingredient, quality, characteristic, function, feature, purpose, or use of applicant’s goods and/or services. *See*, 15 U.S.C. §1052(e)(1); *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1251, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012); and TMEP §§ 1213 and 1213.03(a).

In response, Applicant is submitting a disclaimer in the following format, in conjunction with the Examining Attorney’s suggestion, “No claim is made to the exclusive right to use “ENERGY PARTNER NETWORK” apart from the mark as shown.” Applicant believes that these submission address the disclaimer issue and as such, Applicant’s proposed mark should be registered.

Respectfully submitted,

/James Klobucar/
James Klobucar
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