

To: CHRISTOPHER STOLLER PENSION AND PROFIT S ETC. (
Ldms40@gmail.com)
Subject: U.S. TRADEMARK APPLICATION NO. 77424372 - STEALTH - N/A
Sent: 7/9/2010 3:35:42 PM
Sent As: ECOM111@USPTO.GOV
Attachments:

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

APPLICATION SERIAL NO. 77424372

MARK: STEALTH

77424372

CORRESPONDENT ADDRESS:

STOLLER PENSION AND; STOLLER
PENSION AND
Christopher Stoller Pension and Profit S
7115 W. North Ave #272
Oak Park IL 60302

CLICK HERE TO RESPOND TO THIS LETTER:
<http://www.uspto.gov/teas/eTEASpageD.htm>

APPLICANT: CHRISTOPHER STOLLER
PENSION AND PROFIT S ETC.

**CORRESPONDENT'S REFERENCE/DOCKET
NO:**

N/A

CORRESPONDENT E-MAIL ADDRESS:

Ldms40@gmail.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 7/9/2010

This Office action is in response to applicant's communication filed on June 8, 2010. The refusal to register based on Section 2(d) of the Trademark Act is maintained and continued. In addition, please note that the following prior pending applications are still pending: 77006475, 77222311, 77258287,

77258362, 77336186. Application Ser Nos. 77354102 77153372 have registered, but the examining attorney will not issue a refusal pursuant to TMEP 1208.02(d) until the remaining potentially conflicting applications are resolved in order to avoid piecemeal refusals. Moreover, please note a new information requirement with respect to applicant's dates of use, as well as the remaining requirements with respect to the application processing fees, substitute specimens, and information requirements relating to the relationship between Leo D. Stoller and applicant, as well as the date of formation of Christopher Stoller Pension and Profit Sharing Plan LLC and the name of the individual identified as the registered officer/agent of the limited liability company filed with the Registrar General Department of the Commonwealth of the Bahamas, which are all maintained and continued as outlined below.

Insufficient Fees for Processing Returned Check

Applicant submitted an additional application processing fee of \$50 per class because applicant did not comply with the requirement to file its response to the Office action via the Trademark Electronic Application System (TEAS). 37 C.F.R. §§2.6(a)(iv), 2.23(a)(1) and 2.23(b).

However, although applicant submitted a check with its response, the check was returned to the Office unpaid. As a result, applicant must now submit an *additional* fee of \$50 for processing the returned check. 37 C.F.R. §2.6(b)(12); TMEP §§202.03(a)(i) and 405.02(a).

Substitute Specimens Refused – Proof of Use in Commerce Not Established

In response to the requirement for acceptable substitute specimens, applicant has submitted digital images.

The examining attorney must review all specimens to determine whether: (1) the applied-for mark appears on the specimen; (2) the specimen shows that the applied-for mark is in “use in commerce;” and (3) the specimen shows use for the specific goods/services identified. TMEP §904.07(a).

Applicant indicates that the substitute specimens are not printer's proofs but actual specimens showing the mark in use in commerce. Printer's proofs are printed materials in draft form used for making corrections before a final print run. As such, they are not disseminated to the public and do not show use of the mark in the ordinary course of trade on the actual goods that are sold or transported in commerce. See *In re The Signal Cos.*, 228 USPQ 956, 957-58 n.4 (TTAB 1986); TMEP §§904.04(a), 904.07(a). Applicant describes the submitted specimens as showing “actual use in commerce.” However, the specimens are not acceptable because they do not appear to be photographs of the goods with the mark appearing on them, but rather digitally altered images of objects to which the mark has been added. If such images are disseminated in hard copy or are posted on a website, such use would constitute advertising of the goods and not serve to demonstrate adequate use of the mark in commerce as a trademark.

Trademark Act Section 45 requires that the mark be in “use in commerce” and defines such term to mean “the bona fide use of a mark in the ordinary course of trade.” 15 U.S.C. §1127. A mark is used in commerce in relation to goods when it is used on the goods, containers for the goods, displays associated with the goods or tags or labels affixed to the goods, and the goods are sold or transported in commerce. 15 U.S.C. §1127; TMEP §901.01; *see* 37 C.F.R. §2.56(b)(1).

An application based on Section 1(a) must include a specimen showing the applied-for mark in use in commerce for each class of goods. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

Therefore, applicant must submit the following:

- (1) A substitute specimen showing the mark in use in commerce for each class of goods 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 filing date of the application.”** 37 C.F.R. §2.59(a); TMEP §904.05; *see* 37 C.F.R. §2.193(e)(1). If submitting a substitute specimen requires an amendment to the dates of use, applicant must also verify the amended dates. 37 C.F.R. §2.71(c); TMEP §904.05.

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.*

If applicant cannot satisfy the above requirements, applicant may amend the application from a use in commerce basis under Section 1(a) to an intent to use basis under Section 1(b), for which no specimen is required. *See* TMEP §806.03(c). However, if applicant amends the basis to Section 1(b), registration will not be granted until applicant later amends the application back to use in commerce by filing an acceptable allegation of use with a proper specimen. *See* 15 U.S.C. §1051(c), (d); 37 C.F.R. §§2.76, 2.88; TMEP §1103.

To amend to Section 1(b), applicant must submit the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: **“Applicant has had a bona fide intention to use the mark in commerce on or in connection with the goods listed in the application as of the filing date of the application.”** 37 C.F.R. §2.34(a)(2); TMEP §806.01(b); *see* 15 U.S.C. §1051(b); 37 C.F.R. §§2.35(b)(1), 2.193(e)(1).

Pending receipt of a proper response, registration is refused because the specimen does not show the applied-for mark in use in commerce as a trademark. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

The following is a sample declaration for a verified substitute specimen for use in a paper response:

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that *the substitute specimen was in use in commerce at least as early as the filing date of the application*; all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

(Signature)

(Print or Type Name and Position)

(Date)

Substitute Specimens – Additional Specimens Required for Each Class

Applicant has not submitted sufficient substitute specimens to substantiate its claim of use of the mark in commerce. Applicant has applied for a wide range of items and, although it is usually not necessary to submit a specimen for each product or service specified in a class, the examining attorney may request additional specimens under 37 C.F.R. §2.61(b) if the range of items is wide or the class contains unrelated items. Therefore, applicant must submit additional substitute specimens for International Classes 12, 25 and 28 showing the applied-for mark in use in commerce in connection with a *variety* of the goods specified in that class.

As mentioned above, the application is incomplete because it does not include specimens showing use of the applied-for mark in commerce for the goods identified in the application. An application based on Trademark Act Section 1(a) must include a specimen showing the applied-for mark in use in commerce for each class of goods and/or services. Trademark Act Sections 1(a)(1) and 45, 15 U.S.C. §§1051(a)(1), 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a). Applicant must also submit additional specimens showing the applied-for mark in use in commerce for multiple items in each class. 37 C.F.R. §2.61(b) Such specimens are necessary to provide supporting evidence of facts recited in the application.

Dates of Use – Additional Information Required

The examining attorney notes that applicant has indicated it was formed "on or about 2007." Nevertheless, the dates of use of the mark on each and every item listed in the application is "1/00/1981." The USPTO treats this as January 31, 1981. TMEP §903.06 As the applicant was not in existence at the time of such use, applicant must explain this discrepancy.

If the first use anywhere or the first use in commerce was by a predecessor in title to the applicant, or by a related company of the applicant (see 15 U.S.C. §§1055 and 1127), the dates of use clause should state that the use on this date was by the applicant's predecessor in title, or by a related company of the applicant, as the case may be. See 37 C.F.R. §2.38(a); TMEP §903.05 While it is generally not necessary to give the name of the predecessor in title or the related company, in the present case the examining attorney requires applicant to provide the names of the individuals or entities whose interest precedes the present applicant and to whose use the dates provided may be attributed. Applicant must also indicate any chain of title from said predecessor to the current applicant. 37 C.F.R. §2.61(b) Such explanation is necessary to provide supporting evidence of facts recited in the application.

Additional Inquiries

Applicant indicates that it occupies office space with Leo Stoller, that Leo Stoller does not own any stock/shares or interest in the entity Christopher Stoller Pension & Profit Sharing Plan Ltd, and that the date of formation of Christopher Stoller Pension & Profit Sharing Plan Ltd was on or about 2007. The examining attorney notes that although applicant indicates in its response that it merely occupies office space with Leo Stoller and that "he is NOT associated with this Applicant nor is Central Mfg Co., Stealth Industries, Inc., Sentra Industries, Inc., or any other entity that Leo Stoller was or is associated with," the email address entered for confirmation of the submission of the filing is "LEO STOLLER," ldms4@hotmail.com. It thus appears Mr. Stoller has some connection to the applicant by being named to receive confirmation of the filing. Therefore, in order for the examining attorney to reach an informed determination concerning the registrability of the mark, the applicant must respond to the following inquiries relating to its composition and ownership. 37 C.F.R. §2.61(b); TMEP §814

Applicant must indicate any position(s) held and title(s) used by Leo D. Stoller (e.g. officer, director, partner, managing executive, employee) in respect to the incorporated or otherwise legally formed entity Christopher Stoller Pension and Profit Sharing Plan LLC, and beginning and ending dates of such position(s).

The specific date of formation of Christopher Stoller Pension and Profit Sharing Plan LLC and the name of the individual identified as the registered officer/agent of the limited liability company filed with the Registrar General Department of the Commonwealth of the Bahamas.

If applicant has questions about the application or this Office action, please telephone the assigned trademark examining attorney at the telephone number below.

/Renee McCray/
Trademark Examining Attorney
Law Office 111
571.272.9388

TO RESPOND TO THIS LETTER: Use the Trademark Electronic Application System (TEAS) response form at <http://teasroa.uspto.gov/roa/>. Please wait 48-72 hours from the issue/ mailing date before using TEAS, to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at <http://tarr.uspto.gov/>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. 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>.

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IMPORTANT NOTICE REGARDING YOUR TRADEMARK APPLICATION

Your trademark application (Serial No. 77424372) has been reviewed. The examining attorney assigned by the United States Patent and Trademark Office (“USPTO”) has written a letter (an “Office action”) on **7/9/2010** to which you must respond (*unless the Office letter specifically states that no response is required*). Please follow these steps:

1. **Read** the Office letter by clicking on this [link](http://tportal.uspto.gov/external/portal/tow?DDA=Y&serial_number=77424372&doc_type=OOA&)
http://tportal.uspto.gov/external/portal/tow?DDA=Y&serial_number=77424372&doc_type=OOA&

OR go to <http://tportal.uspto.gov/external/portal/tow> and enter your serial number to access the Office letter. If you have difficulty accessing the Office letter, contact TDR@uspto.gov.

PLEASE NOTE: The Office letter may not be immediately available but will be viewable within 24 hours of this e-mail notification.

2. **Contact** the examining attorney who reviewed your application if you have any questions about the content of the Office letter (contact information appears at the end thereof).

3. **Respond** within 6 months, calculated from **7/9/2010** (*or sooner if specified in the Office letter*), using the Trademark Electronic Application System (TEAS) [Response to Office Action form](#). If you have difficulty using TEAS, contact TEAS@uspto.gov.

ALERT:

Failure to file any required response by the applicable deadline will result in the [ABANDONMENT](#) (loss) of your application.

Do NOT hit “Reply” to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses.

