

To: Mueller, Andreas (andreas.mueller01@gmail.com)
Subject: U.S. TRADEMARK APPLICATION NO. 87094382 - KEEP AMERICA GREAT - N/A
Sent: 1/2/2017 3:50:10 PM
Sent As: ECOM116@USPTO.GOV
Attachments:

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

U.S. APPLICATION SERIAL NO. 87094382

MARK: KEEP AMERICA GREAT

87094382

CORRESPONDENT ADDRESS:
MUELLER, ANDREAS
1834 8TH ST NW
WASHINGTON, DC 20001

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

http://www.uspto.gov/trademarks/teas/response_forms.jsp

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APPLICANT: Mueller, Andreas

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

N/A

CORRESPONDENT E-MAIL ADDRESS:

andreas.mueller01@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. A RESPONSE TRANSMITTED THROUGH THE TRADEMARK ELECTRONIC APPLICATION SYSTEM (TEAS) MUST BE RECEIVED BEFORE MIDNIGHT **EASTERN TIME** OF THE LAST DAY OF THE RESPONSE PERIOD.

ISSUE/MAILING DATE: 1/2/2017

TEAS PLUS OR TEAS REDUCED FEE (TEAS RF) APPLICANTS – TO MAINTAIN LOWER FEE, ADDITIONAL REQUIREMENTS MUST BE MET, INCLUDING SUBMITTING DOCUMENTS ONLINE: Applicants who filed their application online using the lower-fee TEAS Plus or TEAS RF application form must (1) file certain documents online using TEAS, including responses to Office actions (see TMEP §§819.02(b), 820.02(b) for a complete list of these documents); (2) maintain a valid e-mail correspondence address; and (3) agree to receive correspondence from the USPTO by e-mail throughout the prosecution of the application. See 37 C.F.R. §§2.22(b), 2.23(b); TMEP §§819, 820. TEAS Plus or TEAS RF applicants who do not meet these requirements must submit an additional processing fee of \$50 per international class of goods and/or services. 37 C.F.R. §§2.6(a)(1)(v), 2.22(c), 2.23(c); TMEP §§819.04, 820.04. However, in certain situations, TEAS Plus or TEAS RF applicants may respond to an Office action by authorizing an examiner’s amendment by telephone or e-mail without incurring this additional fee.

Non-Final Action

This non-final action is necessary to clarify the basis for the refusal to register the applicant’s mark. The applicant’s mark is refused because it is an information slogan that cannot, under any circumstances, function as a trademark. For this reason, the additional specimens submitted by the applicant do not affect the refusal.

Registration Refused – Failure to Function

Registration is refused because the applied-for mark merely conveys an informational social, **political**, religious, or similar kind of message; it does not function as a trademark to indicate the source of applicant’s goods and to identify and distinguish them from others. Trademark Act Sections 1, 2, 3, and 45, 15 U.S.C. §§1051-1053, 1127; see *In re Hulting*, 107 USPQ2d 1175, 1177 (TTAB 2013) (holding NO MORE RINOS!, a slogan meaning “No More Republicans In Name Only,” not registrable for a variety of paper items, shirts, and novelty buttons because the mark **would be perceived as a commonly used political slogan and not a trademark**); *In re Eagle Crest, Inc.*, 96 USPQ2d 1227, 1229-31 (TTAB 2010) (holding ONCE A MARINE, ALWAYS A MARINE not registrable for clothing items because the mark would be perceived as an old and familiar Marine expression and not a trademark); *In re Volvo Cars of N. Am., Inc.*, 46 USPQ2d 1455, 1460-61 (TTAB 1998) (holding DRIVE SAFELY not registrable for automobiles and automobile parts because the mark would be perceived as a familiar safety admonition and not a trademark); TMEP §1202.04.

Determining whether a term or slogan functions as a trademark or service mark depends on how it would be perceived by the relevant public. *In re Eagle Crest, Inc.*, 96 USPQ2d at 1229; *In re Aerospace Optics, Inc.*, 78 USPQ2d 1861, 1862 (TTAB 2006); TMEP §1202.04. Slogans or terms that merely convey an informational message are not registrable. *In re Eagle Crest, Inc.*, 96 USPQ2d at 1229 (citing *In re Boston Beer Co.*, 198 F.3d 1370, 53 USPQ2d 1056 (Fed. Cir. 1999)). The more commonly a term or slogan is used in everyday speech, the less likely the public will use it to identify only one source and the less likely the term or slogan will be recognized by purchasers as a trademark or service mark. See *In re Hulting*, 107 USPQ2d at 1177 (quoting *In re Eagle Crest, Inc.*, 96 USPQ2d at 1229); TMEP §1202.04.

The evidence attached to the office action dated November 17, 2016, showed that the applicant’s slogan is commonly used as a counter to the “Make America Great Again” phrase, and thus functions to advocate for openness and inclusiveness, among other things. Because consumers are accustomed to seeing this slogan or term commonly used in everyday speech by many different sources, the public will not perceive the term or slogan as a trademark or service mark that identifies the source of applicant’s goods and/or services but rather only as conveying an informational message.

An applicant **may not overcome** this refusal by attempting to amend the application to seek registration on the Supplemental Register or to assert a Section 2(f) claim of acquired distinctiveness. TMEP §1202.04; see *In re Eagle Crest, Inc.*, 96 USPQ2d at 1229.

General Information

For this application to proceed further, applicant must explicitly address each refusal and/or requirement raised in this Office action. If the action includes a refusal, applicant may provide arguments and/or evidence as to why the refusal should be withdrawn and the mark should register. Applicant may also have other options for responding to a refusal and should consider such options carefully. To respond to requirements and certain refusal response options, applicant should set forth in writing the required changes or statements. For more information and general tips on responding to USPTO Office actions, response options, and how to file a response online, see “[Responding to Office Actions](#)” on the USPTO’s website.

If applicant does not respond to this Office action within six months of the issue/ mailing date, or responds by expressly abandoning the application, the application process will end and the trademark will fail to register. See 15 U.S.C. §1062(b); 37 C.F.R. §§2.65(a), 2.68(a); TMEP

§§718.01, 718.02. Additionally, the USPTO will not refund the application filing fee, which is a required processing fee. See 37 C.F.R. §§2.6(a)(1)(i)-(iv), 2.209(a); TMEP §405.04.

Where the application has been abandoned for failure to respond to an Office action, applicant's only option would be to file a timely petition to revive the application, which, if granted, would allow the application to return to active status. See 37 C.F.R. §2.66; TMEP §1714. There is a \$100 fee for such petitions. See 37 C.F.R. §§2.6, 2.66(b)(1).

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. See 37 C.F.R. §§2.62(c), 2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. See TMEP §§705.02, 709.06.

Because of the legal technicalities and strict deadlines involved in the USPTO application process, applicant may wish to hire a private attorney specializing in trademark matters to represent applicant in this process and provide legal advice. Although the undersigned trademark examining attorney is permitted to help an applicant understand the contents of an Office action as well as the application process in general, no USPTO attorney or staff is permitted to give an applicant legal advice or statements about an applicant's legal rights. TMEP §§705.02, 709.06.

For attorney referral information, applicant may consult the [American Bar Association's Consumers' Guide to Legal Help](#), an attorney referral service of a state or local bar association, or a local telephone directory. The USPTO may not assist an applicant in the selection of a private attorney. 37 C.F.R. §2.11.

/Doritt Carroll/

Trademark Examining Attorney, Law Office 116

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TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For technical assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

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 the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or 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/trademarks/teas/correspondence.jsp>.

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UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

IMPORTANT NOTICE REGARDING YOUR
U.S. TRADEMARK APPLICATION

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED
ON **1/2/2017** FOR U.S. APPLICATION SERIAL NO. 87094382

Your trademark application has been reviewed. The trademark examining attorney assigned by the USPTO to your application has written an official letter to which you must respond. Please follow these steps:

(1) **READ THE LETTER** by clicking on this [link](#) or going to <http://tsdr.uspto.gov/>, entering your U.S. application serial number, and clicking on "Documents."

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

(2) **RESPOND WITHIN 6 MONTHS** (*or sooner if specified in the Office action*), calculated from **1/2/2017**, using the Trademark Electronic Application System (TEAS) response form located at http://www.uspto.gov/trademarks/teas/response_forms.jsp. A response transmitted through TEAS must be received before midnight **Eastern Time** of the last day of the response period.

Do NOT hit "Reply" to this e-mail notification, or otherwise e-mail your response because the USPTO does NOT accept e-mails as responses to Office actions.

(3) **QUESTIONS** about the contents of the Office action itself should be directed to the trademark examining attorney who reviewed your application, identified below.

/Doritt Carroll/

Trademark Examining Attorney, Law Office 116

doritt.carroll@uspto.gov

phone: 571-272-9138

fax: 571-273-9138

WARNING

Failure to file the required response by the applicable response deadline will result in the ABANDONMENT of your application. For more information regarding abandonment, see <http://www.uspto.gov/trademarks/basics/abandon.jsp>.

PRIVATE COMPANY SOLICITATIONS REGARDING YOUR APPLICATION: Private companies **not** associated with the USPTO are using information provided in trademark applications to mail or e-mail trademark-related solicitations. These companies often use names that closely resemble the USPTO and their solicitations may look like an official government document. Many solicitations require that you pay “fees.”

Please carefully review all correspondence you receive regarding this application to make sure that you are responding to an official document from the USPTO rather than a private company solicitation. All official USPTO correspondence will be mailed only from the “United States Patent and Trademark Office” in Alexandria, VA; or sent by e-mail from the domain “@uspto.gov.” For more information on how to handle private company solicitations, see http://www.uspto.gov/trademarks/solicitation_warnings.jsp.