

To: RIND SNACKS, INC. (docket@nutter.com)
Subject: U.S. Trademark Application Serial No. 88286869 - RIND SNACKS - 119397-3
Sent: May 29, 2020 11:11:28 AM
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United States Patent and Trademark Office (USPTO)
Office Action (Official Letter) About Applicant's Trademark Application

U.S. Application

Serial No.
88286869

Mark: RIND
SNACKS

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Applicant:
RIND SNACKS,
INC.

**Reference/Docket
No.** 119397-3

**Correspondence
Email Address:**

docket@nutter.com

SUBSEQUENT FINAL OFFICE ACTION

Issue date: May 29, 2020

This FINAL Office action is responsive to applicant's correspondence of April 20, 2020.

Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

- **SUMMARY OF ISSUES**

The Section 2(e)(1) refusal, which was issued in the first Office action, is now re-issued and is made final.

The previous-issued specimen-based refusal is now moot in light of applicant's amendment of the filing basis.

- **SECTION 2(e)(1) REFUSAL - MERELY DESCRIPTIVE**

Registration was initially refused under Section 2(e)(1) because the applied-for mark merely describes a primary feature or ingredient of applicant's goods. In response, applicant amended the application to seek registration on the Supplemental Register, which resulted in withdrawal of the "merely descriptive" refusal. Applicant subsequently amended the application again, to seek registration on the Principal Register. Accordingly, the Section 2(e)(1) refusal is now re-issued, and is made final.

As previously noted, a mark is merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose, or use of an applicant's goods and/or services. TMEP §1209.01(b); *see, e.g., DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1251, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012) (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004)); *In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005) (citing *Estate of P.D. Beckwith, Inc. v. Comm'r of Patents*, 252 U.S. 538, 543 (1920)).

Applicant seeks registration of the mark "RIND SNACKS" for "*Dried fruit-based snacks; Snack mix consisting primarily of processed nuts, and also including dried fruit; Snack mix consisting primarily of processed nuts, seeds, dried fruit and also including chocolate; Nut- and dried fruit- based snack bars.*"

A "rind" is "a usually hard or tough outer layer," and is synonymous with "peel." "Snack" means "a light meal," "food eaten between regular meals" OR "food suitable for snacking." See previously-attached dictionary definitions.

Applicant's goods, as identified, consist of "snacks." Furthermore, the goods contain, or feature, fruit rinds. See attached evidence from rindsnacks.com. Thus, the applied-for mark – RIND SNACKS – directly and unambiguously describes a feature or ingredient of the identified goods.

Applicant argues the term "RIND" has multiple possible meanings, and thus has multiple non-descriptive connotations in the mark. However, descriptiveness is considered in relation to the relevant goods and/or services. *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1254, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012). "That a term may have other meanings in different contexts is not controlling." *Robinson v. Hot Grabba Leaf, LLC*, 2019 USPQ2d 149089, at *5 (TTAB 2019) (citing *In re Canine Caviar Pet Foods, Inc.*, 126 USPQ2d 1590, 1598 (TTAB 2018)); TMEP §1209.03(e). "It is well settled that so long as any one of the meanings of a term is descriptive, the term may be considered to be merely descriptive." *In re Mueller Sports Med., Inc.*, 126 USPQ2d 1584, 1590 (TTAB 2018) (quoting *In re Chopper Indus.*, 222 USPQ 258, 259 (TTAB 1984)).

Similarly, applicant contends that rinds are normally considered inedible or undesirable as food items, and thus the term is incongruous with the identified goods and should not be subject to a “merely descriptive” refusal.

However, this argument is belied by applicant’s own promotional materials, which tout the health and environmental benefits of fruit snacks containing rinds. See attached evidence from rindsnacks.com. Furthermore, there exists a variety of foods consisting of, or containing, rinds. See attached evidence from the following sources:

- <https://www.rindsnacks.com/> AND <https://www.rindsnacks.com/pages/peel-power> (Applicant’s own website, touting the “vitamins, antioxidants, and fiber ... found in the rind” of its snacks.
- <https://www.seattletimes.com/pacific-nw-magazine/dont-compost-those-citrus-peels-turn-them-into-tasty-snacks/> (Article describing a recipe for preserved citrus peels made “from the rinds of oranges, lemons and grapefruit”)
- <https://www.mountainfeed.com/blogs/learn/116942855-candied-citrus-rind-recipe> (recipe for candied citrus rind snacks)
- <https://www.tasteofhome.com/recipes/watermelon-rind-pickles/print/>

The examiner notes that the various goods depicted in the evidence referenced above are encompassed by one or more items in the applicant’s broadly-recited identification of goods. In addition, the evidence generally shows that consumers may be familiar with the use of rinds as an ingredient in food recipes.

In sum, the evidence in the record amply demonstrates that the applied-for mark actually describes a feature or ingredient of the applicant’s goods. Furthermore, the descriptive significance is direct and unambiguous, and would be understood by prospective purchasers encountering the mark *as it is used on or in connection with such goods*. Further still, processed edible fruit rinds are not novel as a food product or ingredient, and the mark itself does not create a double entendre, and does not create multiple simultaneous connotations. As such the mark does not create an incongruity or similar non-descriptive meaning that would justify withdrawal of the present refusal.

Accordingly, the Section 2(e)(1) refusal must be maintained and is now made final.

How to respond. [Click to file a request for reconsideration of this final Office action](#) that fully resolves all outstanding requirements and refusals **and/or** [click to file a timely appeal to the Trademark Trial and Appeal Board \(TTAB\)](#) with the required filing fee(s).

If the applicant has filed an appeal with the TTAB: The appeal will be resumed. When proceedings with respect to the appeal are resumed, the Board will take further appropriate action with regard to any additional ground of refusal. *See Trademark Trial and Appeal Board Manual of Procedure* (TBMP) §1209.01.

/Lief Martin/
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RESPONSE GUIDANCE

- **Missing the response deadline to this letter will cause the application to abandon.** A response or notice of appeal must be received by the USPTO before midnight **Eastern Time** of the last day of the response period. TEAS and ESTTA maintenance or [unforeseen circumstances](#) could affect an applicant’s ability to timely respond.
- **Responses signed by an unauthorized party** are not accepted and can **cause the application to abandon**. If applicant does not have an attorney, the response must be signed by the individual applicant, all joint applicants, or someone with [legal authority to bind a juristic applicant](#). If applicant 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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SKIN-ON SUPERFRUIT SNACKS

When it comes to fruit, it's what's on the outside that counts. That's why Mother Nature added a peel—more vitamins, antioxidants, and fiber are found in the rind than anywhere else. The power is in the peel!

Rind's tangy and chewy blends use the whole fruit. We keep the skin on our slices of the most delicious, sun-dried superfruits to maximize flavor AND nutrition.

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Don't compost those citrus peels! Turn them into tasty snacks

Originally published February 2, 2016 at 7:00 am | Updated February 2, 2016 at 10:32 am



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Say GoodBye To Rodents



1 of 2 | Candied orange peel, made at Columbia City Bakery. It's tasty, and easy to make. All it takes is time. (John Lok/The Seattle Times)

Making candied citrus peels from the rinds of oranges, lemons and grapefruit is easy. It just takes a little time.

By Catherine M. Allchin

Special to The Seattle Times

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ONE OF THE best things about winter is citrus. Cara cara oranges, Meyer lemons, blood oranges, tangerines, pomelos, ruby red grapefruit. The fruit is so delicious, why waste any part? This season, I vowed to eat the peels — by candying them.

Often imported from France or Italy, candied orange and lemon peel is eaten as a special treat or used in baked goods for zingy flavor. But it's far cheaper to make it yourself, and the process is relatively straightforward: Cook peels in a sugar syrup, then air-dry them. It just takes time.

Homemade citrus peel is great to have in your pantry for tossing into breads, cakes, muffins and cookies. The bright strips also make attractive gifts in clear plastic bags or glass jars. Whether eaten as a sweet treat or used as an ingredient, they definitely brighten up a winter's day.

For a tutorial in candied citrus peel, I turned to Karra Wise, the pastry chef at [Columbia City Bakery](#). The bakery relies on house-made orange and lemon peel for its popular pan forte, stollen and panettone. Wise makes a big batch of candied peel several times a year, simmering squares of orange or lemon rind in sugar until soft and translucent. She recommends choosing organic fruit with thick peels, such as navel oranges, and boiling the rind twice before candying to remove bitterness.

When I made these at home, I learned three key things:

- It's OK if the temperature doesn't reach 230 degrees as long as the syrup is thick and the peel is translucent.
- Scraping the pith off every strip is tedious and should be considered optional, depending on the particular citrus you use.

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citrus you use.

- It's hard to let them dry before your husband and children eat them all. These were such a hit, I might never throw peels in the compost again.

While this recipe is for oranges, you can follow the same process for lemon or grapefruit peel. Just make sure to grab whatever citrus is in season, and stash away some of the fabulous peels.

Candied Orange Peels

3 small organic oranges, washed

2 cups water

2 cups sugar, plus a tablespoon or two for tossing

1. Cut ends off oranges, and cut oranges in quarters. Carefully remove peels from the quarters. Reserve oranges for another use.

2. Lay peels flat, and slice into strips about 1/4-inch wide.

3. Bring a pot of water to boil, and boil the peels for two minutes. Do not overboil, or the rind could fall apart.

Drain and rinse the peels. Refill the pot with fresh water, and repeat. Drain and cool.

4. If using citrus with thick, stringy rind, gently scrape each strip with a paring knife to remove the messy white pith. Otherwise, skip this step.

5. In a wide saucepan or skillet, bring 2 cups sugar and 2 cups water to a boil until dissolved. Add rind, and gently simmer 30 to 40 minutes, until the sugar is thick and orange strips are soft and translucent. (If using a candy thermometer, temperature should be about 230 degrees.)

6. Drain rind, and spread on a baking sheet or screen to dry. (Save syrup in the refrigerator for cocktails, sodas or tea.)

7. After several hours, toss strips with sugar and continue to dry overnight. Store in an airtight container for up to two months.

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Karra Wise, Columbia City Bakery

Catherine M. Allehin is a Seattle food writer. Follow her at catherinemallehin.com. John Lok is a Seattle Times staff photographer.

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CANDIED CITRUS RIND RECIPE



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WHAT YOU'LL NEED

EQUIPMENT

Large non-reactive saucepan

INGREDIENTS

Strainer Drying rack and baking sheet (or dehydrator) Le Parfait canning jars	Peels, including pith, from 6 grapefruits, oranges, or other thick skinned citrus fruit 1 cup water, plus more for boiling peels 3 cups sugar 1 vanilla bean
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This recipe is not for the faint of heart. It is powerful, sour, sweet yet bitter, tough yet tender. It is the ultimate balancing act and, perhaps even demands, to be savored. We made it here with grapefruit rinds, whose thick pith yields abundant material. Orange peel and lemon peel are also sublime; use Eureka or Lisbon lemons, rather than Meyer, for the full effect. (Meyer lemons, tangerines and mandarins have a thinner, softer peel, which is not as well suited to the long boiling periods required in this recipe.)

The addition of a vanilla bean elevates this recipe to another aromatic plane. The whole house smells incredible for hours after making it. The kind of smell that makes you swoon when you open the door. The kind of smell that makes you close your eyes and breathe deeply.

I just used the phrase "aromatic plane." Perhaps this recipe has gone to my head...or maybe I am in love.

The leftover syrup (about a pint remains after the last boiling) makes a lovely glaze for any desert, and can be used to flavor drinks as well. Try it with water kefir, kombucha, or club soda. Or mix fresh grapefruit juice with a shot of whiskey and a splash of this syrup. Garnish with a candied peel, and fall in love all over again.

This recipe makes about 2 pints, and can be stored in airtight jars for a month. It comes to us from the beloved "Put 'em Up," a comprehensive preserving guide for the creative cook. Our copy is much dog-eared and smells faintly of grapefruit and vanilla.

By the way, these rinds can also be dipped into melted dark chocolate, if you think you can take it.

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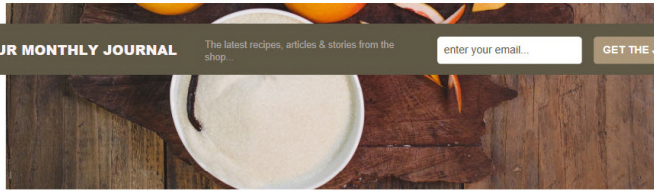


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1. CUT, COOK & STRAIN PEELS



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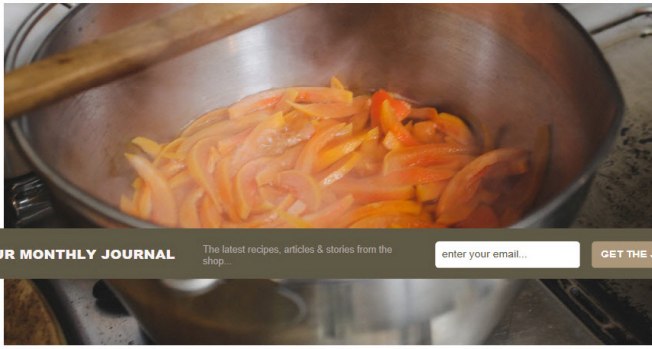
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Cut the peels into 1/4" strips. Cover the peels with cold water in a large non-reactive saucepan and bring to a boil, stirring to ensure that all the peels are heated through. Strain and repeat two more times to remove the bitter flavor from the pith and to soften the peels. After the third round, set aside the peels to drain while you make the syrup.

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quart to experiment with, for later.

2. MAKE THE SYRUP



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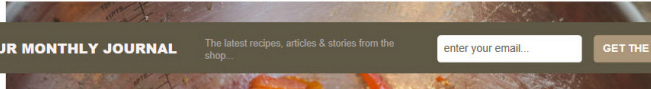
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Bring 1 cup water to a boil and gradually add 4 cups of the sugar, stirring to dissolve.

3. ADD PEELS & SIMMER



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Add the peels and the vanilla bean. Return to a boil, and then reduce to a simmer, cooking gently until the peels are translucent and tender, about 1 hour.

4. DRY AND CANDY PEELS



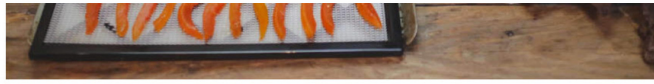
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Remove the peels from the syrup. (Save that syrup for other delicious uses!) Place the peels on a drying rack placed over a baking sheet, and separate them so they don't touch. Let them dry in the open air for 4-5 hours, or place them in a dehydrator to speed up the process.

When quite dry, but still tacky, roll the peels in the remaining 1 cup sugar to coat.

5. STORE & ENJOY



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PEEL POWER KEEP IT REAL, EAT THE PEEL!

We've been eating fruit all wrong! The greatest concentration of vital nutrition is contained in the one part most often discarded – the rind. **More fiber, vitamins and nutrients are packed into the edible outside than the flesh of the fruit alone.** These healthful properties are uniquely concentrated like 'antioxidant armor' at a fruit's front line — the rind.

ANTIOXIDANT ARMOR



That's because the exterior of fruit acts as a defensive barrier against environmental stressors such as extreme temperature variations. As a result, **the most potent and healthful properties are located in the skin.**

**WHICH IS WHY
PEELS ARE
BURSTING WITH FLAVOR
AND NUTRITION.**

RIND encourages consumers to **Keep it Real. Eat the Peel.™** Fruit rinds, on average, contain three to four times the fiber content compared to a serving of the flesh alone. Fiber not only makes a snack more satisfying, but high fiber diets are linked to less heart disease, improved gut health, lower cholesterol and lower obesity rates. As a result of retaining the fruit skin, one 3oz bag of RIND contains as much as 14g of dietary fiber, representing 50% of an individual's recommended daily allowance.* In addition to fiber, rinds also contain greater vitamin and antioxidant concentration than an equivalent serving of a fruit's flesh.

EAT THE RAINBOW! GET TO KNOW RIND'S COLORFUL, SUPERFRUIT STARS:



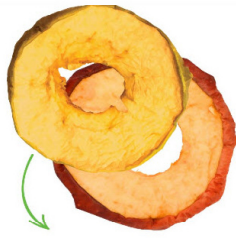
Citrus peels have among the greatest concentration of antioxidants, including nearly **twice the amount of Vitamin C and A per serving** as found in the flesh alone. Citrus peels also have the added benefit of magnesium, copper, calcium and incredible phytochemicals such as flavonoids with **anti-cancer, anti-diabetic and anti-inflammatory** properties. The rind is the only part of an orange that contains these super-flavonoid antioxidants, which work to **reduce cholesterol**. The peel also contains high levels of pectin and the fiber promotes **beneficial bacteria** in the gut.



Kiwis have more **Vitamin C** than lemons and oranges. They're a mean, green powerhouse of nutrition with **high fiber, potassium, folate and magnesium**. Eating the skin triples the fiber and Vitamin C you consume than just eating the flesh alone. Kiwis are also considered excellent for **digestion, heart health and beautiful skin**. Plus, Kiwis are a superfood for **healthy sleep!** Kiwis have one of the **highest levels of serotonin** of any fruit, a feel good hormone that's considered the body's natural 'happiness' drug that promotes relaxation and calm.



Sweet and tangy peach peels are great sources of **Vitamins A and C** as well as **beta-carotene**. The **fiber, potassium, and choline content** in peaches also support heart health. With high phenolic concentration, peaches may also help **regulate cholesterol and reduce the risk of diabetes, obesity and other cardiovascular conditions**. They're also summer in the palm of your hand.



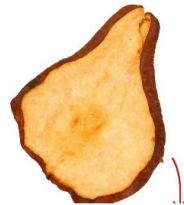
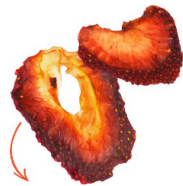
Apple skin is rich in **pectin**, an insoluble fiber that helps **lower cholesterol** and **control blood sugar**, as well as **quercetin**, an **anti-inflammatory antioxidant**. Quercetin has been shown to help **protect and improve memory**. It fights off tissue linked to Alzheimer's disease and other neuro-degenerative problems.



Pineapples are a rich source of **Vitamin C** which supports **immune health**. Additionally, they are an excellent source of essential minerals such as **manganese** and **coppers**, which helps support healthy bones. Pineapples also contain a key enzyme -- **bromelain** -- which is a natural **digestive aid**. Bromelain is a protein-digesting enzyme found in higher concentrations in the core and also aids in **reducing pain and inflammation**.



Meaning "Fruit of the Gods" in Latin, persimmons are delicious and exotic fruits rich in **beta-carotene**, **lycopene** and **lutein** -- all powerhouses for **eye health**. They're also packed with **Vitamins A, C, E** and a variety of B vitamins like **thiamin** and **folic acid**. Persimmons contain organic compounds called catechins, which are known to have **anti-inflammatory properties**. Persimmons are also high in potassium which **helps lower blood pressure**, making them an excellent fruit for heart health. All this...and they taste like nature's candy!



*14G dietary fiber in 3oz serving of RIND Tropical Blend

Heart healthy power in a heart shaped package, strawberries are packed with vitamins, fiber, and particularly high levels of **antioxidants** known as polyphenols. Native to the rose family of plants, strawberries are among the top 20 fruits in antioxidant capacity and an excellent source of **manganese, Vitamin K, folate and potassium**. Just one serving -- about eight strawberries -- provides more **vitamin C** than an orange. Our USA-grown, non GMO certified strawberries are picked at peak ripeness, thinly sliced and gently air dried resulting in a bright, flavorful burst of summer in every bite.

Snack on this...the humble pear is one of the best sources of **dietary fiber** of all fruits and a superfood when it comes to **digestive health**. They contain high amounts of **vitamin C, vitamin K and boron**, which aids in **bone health**. Recent studies have shown that the skin (wink, wink) of pears contain at least three to four times the phytonutrients as the flesh. These **phytonutrients** include antioxidant, **anti-inflammatory** flavonoids, and potentially anti-cancer properties. The skin of the pear also contains roughly half of the fruit's total dietary fiber.

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Taste of Home



Watermelon Rind Pickles

"Waste not, want not" has always been smart advice—especially when it produces pickled watermelon rind that's so refreshing. —Taste of Home Test Kitchen

TOTAL TIME: Prep: 45 min. + chilling
Process: 10 min.
YIELD: 4 pints.

Ingredients

- 8 cups sliced peeled watermelon rind (2x1-in. pieces)
- 6 cups water
- 1 cup canning salt
- 4 cups sugar
- 2 cups white vinegar
- 6 cinnamon sticks (3 inches), divided
- 1 teaspoon whole cloves
- 1 teaspoon whole peppercorns

Directions

1. Place rind in a large nonreactive bowl; stir in water and salt. Refrigerate for several hours or overnight. Rinse and drain well.
2. In a Dutch oven, mix sugar, vinegar, 2 cinnamon sticks, cloves and peppercorns. Bring to a boil. Add rinds; return to a boil. Reduce heat; simmer, uncovered, 10 minutes or until tender. Discard cinnamon sticks.
3. Carefully ladle hot mixture into four hot 1-pint jars, leaving 1/2-in. headspace. Add a remaining cinnamon stick to each jar. Remove air bubbles and adjust headspace, if necessary, by adding hot mixture. Wipe rims. Center lids on jars; screw on bands until fingertip tight.
4. Place jars into canner with simmering water, ensuring that they are completely covered with water. Bring to a boil; process for 10 minutes. Remove jars and cool.

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Subject: U.S. Trademark Application Serial No. 88286869 - RIND SNACKS - 119397-3
Sent: May 29, 2020 11:11:29 AM
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United States Patent and Trademark Office (USPTO)

USPTO OFFICIAL NOTICE

Office Action (Official Letter) has issued
on **May 29, 2020** for
U.S. Trademark Application Serial No. 88286869

Your trademark application has been reviewed by a trademark examining attorney. As part of that review, the assigned attorney has issued an official letter that you must respond to by the specified deadline or your application will be [abandoned](#). Please follow the steps below.

(1) [Read the official letter](#).

(2) **Direct questions** about the contents of the Office action to the assigned attorney below.

/Lief Martin/
Examining Attorney
Law Office 112
571-272-3434
lief.martin@uspto.gov

Direct questions about navigating USPTO electronic forms, the USPTO [website](#), the application process, the status of your application, and/or whether there are outstanding deadlines or documents related to your file to the [Trademark Assistance Center \(TAC\)](#).

(3) **Respond within 6 months** ([or earlier](#), if required in the Office action) from **May 29, 2020**, 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. See the Office action for more information about how to respond

GENERAL GUIDANCE

- [Check the status of your application periodically](#) in the [Trademark Status & Document Retrieval \(TSDR\)](#) database to avoid missing critical deadlines.
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