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To: Palin, Sarah L. (tvf@cplawak.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85170226 - SARAH PALIN - N/A
Sent: 11/29/2010 4:11:47 PM
Sent As: ECOM105@USPTO.GOV
Attachments:

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

APPLICATION SERIAL NO. 85170226**MARK:** SARAH PALIN***85170226*****CORRESPONDENT ADDRESS:**

THOMAS VAN FLEIN
CLAPP PETERSON VAN FLEIN TIEMESSEN &
THO
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<http://www.uspto.gov/teas/eTEASpageD.htm>

APPLICANT: Palin, Sarah L.

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

N/A

CORRESPONDENT E-MAIL ADDRESS:
tvf@cplawak.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: **11/29/2010****TEAS PLUS APPLICANTS MUST SUBMIT DOCUMENTS ELECTRONICALLY OR SUBMIT FEE:**

Applicants who filed their application online using the reduced-fee TEAS Plus application must continue to submit certain documents online using TEAS, including responses to Office actions. *See* 37 C.F.R.

§2.23(a)(1). For a complete list of these documents, see TMEP §819.02(b). In addition, such applicants must accept correspondence from the Office via e-mail throughout the examination process and must maintain a valid e-mail address. 37 C.F.R. §2.23(a)(2); TMEP §§819, 819.02(a). TEAS Plus applicants who do not meet these requirements must submit an additional fee of \$50 per international class of goods and/or services. 37 C.F.R. §2.6(a)(1)(iv); TMEP §819.04. In appropriate situations and where all issues can be resolved by amendment, responding by telephone to authorize an examiner's amendment will not incur this additional fee.

The referenced application has been reviewed by the assigned trademark examining attorney. 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.

SEARCH

The trademark examining attorney has searched the Office's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; *see* 15 U.S.C. §1052(d).

CONSENT

Registration is refused because the applied-for mark, SARAH PALIN, consists of a name identifying a particular living individual whose consent to register the mark is not of record. Trademark Act Section 2(c), 15 U.S.C. §1052(c); *see Ross v. Analytical Tech. Inc.*, 51 USPQ2d 1269 (TTAB 1999) (holding registration of opposer's surname without consent was prohibited by Trademark Act Section 2(c)); *In re McKee Baking Co.*, 218 USPQ 287 (TTAB 1983) (holding mark comprising a sign on which the portrait of a young girl appears below the words LITTLE DEBBIE registrable upon furnishing of consent); *In re Steak & Ale Rest. of Am., Inc.*, 185 USPQ 447 (TTAB 1975) (holding the wording PRINCE CHARLES unregistrable under Section 2(c) because it identified a particular living individual whose consent was not of record); TMEP §1206.

The examining attorney notes the applicant is Sarah Palin, the name specified as the mark. However Ms. Palin did not personally sign the application. As stated in TMEP section 106.04(b):

Application Must be Personally Signed. Consent may be presumed only where the individual whose name or likeness appears in the mark *personally* signs the application. If the application is signed by an authorized signatory, consent to register the name or likeness must be obtained from the individual. This is true even where the name or likeness that appears in the mark is that of the individual applicant.

Please note this refusal will be withdrawn if applicant provides written consent from the individual identified in the applied-for mark. *See* TMEP §1206. This written consent must include a statement of the party's consent to applicant's registration of the identifying matter as a trademark, and not just the party's consent to permit applicant to use the mark. *See Reed v. Bakers Eng'g & Equip. Co.*, 100 USPQ 196, 199 (PTO 1954); TMEP §1206.04(a).

ADDITIONAL FEE

Applicant must submit an additional application processing fee of \$50 per class because the application as filed does not meet the TEAS Plus application requirements in 37 C.F.R. §2.22(a). 37 C.F.R. §§2.6(a)(iv) and 2.22(b). The following application requirement(s) were not met: No. 18; If the mark includes an individual's

name or portrait, either (i) a statement that identifies the living individual whose name or likeness the mark comprises and written consent of the individual, or (ii) a statement that the name or portrait does not identify a living individual. Please see the requirement(s) and/or refusal(s) above for more information.

SPECIMEN

The class 35 specimens are not acceptable because they do not show use of the applied-for mark in connection with any of the services specified 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 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).

In this case, the specimen submitted for the “Information about political elections” is a news story on the Fox® Network about Ms. Palin. The specimens submitted for the “Providing a website featuring information about political issues” are postings on Facebook®. The specimen does not show use of the mark as “providing a website featuring...”. Rather the proposed mark merely appears as a posting name.

None of these specimens show use of the mark SARAH PALIN in relation to the services specified of “Information about political elections” and “Providing a website featuring information about political issues”. Therefore, applicant must submit the following:

- (1) A substitute specimen for the class 35 services showing the mark in use in commerce for each class of goods and/or 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 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 services are signs, photographs, brochures, website printouts or advertisements that show the mark used in the actual sale or advertising of the services. *See* TMEP §§1301.04 *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 and/or services 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 class 35 specimen does not show the applied-for mark in use in commerce as a service mark for the identified services. 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). Please note the specimens submitted for the class 41 services are acceptable.

ASSISTANCE

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

/Karen K. Bush/
Trademark Examining Attorney
Law Office 105
571-272-9136
Karen.Bush@uspto.gov

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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.

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