

To: Watershed Innovations (info@hydrabARRIER.com)
Subject: U.S. Trademark Application Serial No. 88322332 - HYDRASENSE - N/A
Sent: February 18, 2020 11:34:35 AM
Sent As: ecom105@uspto.gov
Attachments:

United States Patent and Trademark Office (USPTO)
Office Action (Official Letter) About Applicant's Trademark Application

U.S. Application
Serial No. 88322332

Mark:
HYDRASENSE

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Applicant:
Watershed
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Reference/Docket
No. N/A

Correspondence
Email Address:

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NONFINAL OFFICE ACTION

The USPTO must receive applicant's response to this letter within six months of the issue date below or the application will be **abandoned**. Respond using the Trademark Electronic Application System (TEAS). A link to the appropriate TEAS response form appears at the end of this Office action.

Issue date: February 18, 2020

The examining attorney has reviewed applicant's statement of use and determined the following.

SPECIMEN REFUSALS

A. *Specimen Does Not Show Use of the Mark with the Goods in the Application/Statement of Use*

Registration is refused because the specimen does not show the applied-for mark as actually used in commerce in connection with any of the 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); *In re Keep A Breast Found.*, 123 USPQ2d 1869, 1876-79 (TTAB 2017); TMEP §§904, 904.07(a), 1301.04(d), (g)(i). An application based on Trademark Act Section 1(a) must include a specimen showing the applied-for mark as actually used in commerce for each international class of goods and/or services identified in

the statement of use. 15 U.S.C. §1051(a)(1); 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a); *see In re Gulf Coast Nutritionals, Inc.*, 106 USPQ2d 1243, 1247 (TTAB 2013).

Specimens for goods include a photograph of (1) the actual goods bearing the mark; (2) an actual container, packaging, tag or label for the goods bearing the mark; or (3) a point-of-sale display showing the mark directly associated with the goods. *See* 37 C.F.R. §2.56(b)(1), (c); TMEP §904.03(a)-(m). A webpage specimen submitted as a display associated with the goods must show the mark in association with a picture or textual description of the goods and include information necessary for ordering the goods. TMEP §904.03(i); *see* 37 C.F.R. §2.56(b)(1), (c). Any webpage printout or screenshot submitted as a specimen, whether for goods or services, will now be required to include the webpage's URL and the date it was accessed or printed. 37 C.F.R. §2.56(c).

In this case, applicant's goods are as follows: electric pumps; sewage pumps; submersible pumps; sump pumps. The specimen (a website screen shot), however, shows the applied for mark "HYDRASENSE" used only in identifying certain technology and/or a certain sensor that may be used in pumps. In this regard, the specimen says, *in part*:

SMART SENSING TECHNOLOGY FOR TODAY'S MODERN PUMP MANUFACTURERS

HydraSense technology offers the opportunity to add automation to a wide variety of pumps. The smart technology has many benefits:

Automatic Operation – Sensor allows for automatic on/off operation when water is detected.

Adaptable- The sensor can be configured to work with a variety of pump types.

It, therefore, appears *from the specimen* that the mark is used only in connection with a particular sensor that pump (or other technology) manufacturers may use in their pumps. The mark on the specimen is not used in connection with completed pumps in their entirety. Thus, the specimen does not show use of the mark *with the goods actually listed in the statement of use*. Registration is, therefore, refused under Trademark Act Sections 1 and 45.

B. Advisory – Webpage Specimens Must Now Include URL and Date Printed/Accessed

It is noted that applicant's specimen does not contain a URL for the website shown nor the date the specimen was printed/accessed. Please note that, as of February 15, 2020, registration will now be refused when a specimen lacks an URL and/or date printed/accessed. *See* 37 C.F.R. §2.56(c); [Mandatory Electronic Filing & Specimen Requirements](#), Examination Guide 1-20, at V.B. (Rev. Feb. 2020). In this regard, when the URL or date is missing, a specimen is perceived merely as a digital mockup of a webpage that may not yet actually be in use in commerce; so, it fails to show the applied-for mark in actual use in commerce. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a), (c); *see* TMEP §§904, 904.03(g), 904.07(a). As noted above, an application based on Trademark Act Section 1(a) must include a specimen showing the applied-for mark as actually used in commerce for each international class of goods and services identified in the statement of use. 15 U.S.C. §1051(a)(1); 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

C. Responding

Response option. Applicant may respond to this refusal by submitting a different specimen (a verified "[substitute](#)" specimen) that (a) was in actual use in commerce prior to the expiration of the deadline for filing the statement of use and (b) shows the mark in actual use in commerce for the goods and/or services identified in the statement of use. A "verified substitute specimen" is a specimen that is accompanied by 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 prior to expiration of the filing deadline for filing a statement of use." The substitute specimen cannot be accepted without this statement.

Applicant may not withdraw the statement of use. *See* 37 C.F.R. §2.88(f); TMEP §1109.17.

For an overview of this response option and instructions on how to submit a different specimen using the online Trademark Electronic Application System (TEAS) form, see the [Specimen webpage](#).

How to respond. [Click to file a response to this nonfinal Office action.](#)

Please do not hesitate to contact the undersigned with any questions.

/MaureenDallLott/

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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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United States Patent and Trademark Office (USPTO)

USPTO OFFICIAL NOTICE

Office Action (Official Letter) has issued
on **February 18, 2020** for
U.S. Trademark Application Serial No. 88322332

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.

Lott, Maureen D.

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 **February 18, 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.
- [Update your correspondence email address](#), if needed, to ensure you receive important USPTO notices about your application.
- [Beware of misleading notices sent by private companies about your application](#). Private companies not associated with the USPTO use public information available in trademark registrations to mail and email trademark-related offers and notices – most of which require fees. All **official USPTO correspondence** will only be **emailed from the domain “@uspto.gov.”**