

**To:** VANESSA C. HEW([vhew@cozen.com](mailto:vhew@cozen.com))  
**Subject:** U.S. Trademark Application Serial No. 90867301 - LIKE  
**Sent:** October 31, 2023 03:28:43 PM EDT  
**Sent As:** [tmng.notices@uspto.gov](mailto:tmng.notices@uspto.gov)

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## Attachments

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

**U.S. Application Serial No.** 90867301

**Mark:** LIKE

**Correspondence Address:**

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NEW YORK NY 10007  
UNITED STATES

**Applicant:** The Livekindly Company, Inc.

**Reference/Docket No.** N/A

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## SUBSEQUENT FINAL OFFICE ACTION

**Issue date:** October 31, 2023

This Office action is in response to applicant's communication filed on November 7, 2022.

The trademark examining attorney issued a final Office action in this application on December 2, 2022. On June 2, 2023, applicant responded by filing a notice of appeal to the Trademark Trial and Appeal Board (Board). Applicant filed a Request for Remand and a Petition for Expungement with the Board on June 2, 2023. The Board has denied applicant's request for suspension of the application pending disposition of the expungement proceeding and did not institute the expungement proceeding against U.S. Registration No. 5293525 (LIKE). The request for remand was granted on June 7, 2023, and the application was remanded to the trademark examining attorney for consideration of the request.

The request for remand does not raise a new issue and the likelihood of confusion refusals under Trademark Act Section 2(d) is maintained. Upon issuance of this subsequent final Office action, the application will be returned to the Board for resumption of the appeal. *See* TBMP §1204; TMEP §715.04(b). Any further request for the trademark examining attorney to consider this application must

be made via a request for remand to the Board, for which good cause.

The requirement for an acceptable identification and classification of goods and services is also maintained and made final for the reasons set forth below. *See* TMEP §1402.01; 7 C.F.R. §2.64(a).

#### SUMMARY OF ISSUES MADE FINAL:

- SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION
- IDENTIFICATION OF GOODS AND SERVICES INDEFINITE – AMENDMENT REQUIRED

#### **MAINTAINED: SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION**

On June 2, 2023, applicant filed a Request for Remand stating that and requested that "the above-referenced application be remanded so that the Examiner can consider this evidence of non-use." However, evidence of non-use constitutes as collateral attack against a registered mark, which is prohibited. Applicant argues that the owner of the cited registration no. 5293525 has abandoned its trademark and/or service mark due to nonuse. However, a trademark or service mark registration on the Principal Register is prima facie evidence of the validity of the registration and the registrant's exclusive right to use the mark in commerce in connection with the specified goods and/or services. *See* 15 U.S.C. §1057(b); TMEP §1207.01(d)(iv).

Thus, evidence and arguments that constitute a collateral attack on a cited registration, such as information or statements regarding a registrant's nonuse of its mark, are not relevant during ex parte prosecution. *See In re Dixie Rests.*, 105 F.3d 1405, 1408, 41 USPQ2d 1531, 1534-35 (Fed. Cir. 1997); *In re Peebles Inc.*, 23 USPQ2d 1795, 1797 n.5 (TTAB 1992); TMEP §1207.01(d)(iv). Such evidence and arguments may, however, be pertinent to a formal proceeding before the Trademark Trial and Appeal Board to cancel the cited registration.

Additionally, with respect to the refusals issued in connection with U.S. Trademark Registration Nos. 5001010 and 6219122, applicant stated that "Applicant will assign ownership of the application to its sister company, Livekindly Germany GmbH, thus the products will emanate from the same source." Therefore, until applicant can exhibit a "unity of control" over the nature and quality of the goods and/or services in connection with which the trademarks and/or service marks are used, and a "unity of control" over the use of the trademarks and/or service marks, the likelihood of confusion with the cited registration nos. 5001010 and 6219122 is maintained. *See In re Wella A.G.*, 5 USPQ2d 1359, 1361 (TTAB 1987); *see also* TMEP §1201.07.

As previously mentioned in the December 2, 2022 Final Action, applicant must provide a written statement explaining the nature of the legal relationship between the parties. In addition, if neither party owns all or substantially all of the other party, and USPTO records do not show their joint ownership of the application or cited registration, applicant must provide a detailed written explanation and documentary evidence showing the parties' "unity of control" over the nature and quality of the goods and/or services in connection with which the trademarks and/or service marks are used, and the parties' "unity of control" over the use of the trademarks and/or service marks. *See* TMEP §1201.07(b)(i)-(iii). This statement and, if necessary, explanation must be verified with an affidavit or signed declaration under 37 C.F.R. §2.20. TMEP §1201.07(b)(ii)-(iii); *see* 37 C.F.R. §2.193(e)(1).

#### **MAINTAINED: IDENTIFICATION OF GOODS AND SERVICES INDEFINITE –**

## **AMENDMENT REQUIRED**

Applicant's response did not resolve all outstanding requirements to amend to the identification of goods and/or services. Therefore, the requirement to amend the identification to clarify or limit the goods and/or services is maintained.

**The Board has been notified to resume the appeal. See TMEP §715.04(b).**

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## **RESPONSE GUIDANCE**

- **Missing deadline to responding to this letter will cause the application to [abandon](#).** A response, appeal, or extension request must be received by the USPTO before 11:59 p.m. **Eastern Time** of the last day of the response deadline. Trademark Electronic Application System (TEAS) and Electronic System for Trademark Trials and Appeals (ESTTA) [system availability](#) could affect an applicant's ability to timely respond. For help resolving technical issues with TEAS, email [TEAS@uspto.gov](mailto:TEAS@uspto.gov).
- **[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.

## United States Patent and Trademark Office (USPTO)

### USPTO OFFICIAL NOTICE

Office Action (Official Letter) has issued  
on October 31, 2023 for  
**U.S. Trademark Application Serial No. 90867301**

A USPTO examining attorney has reviewed your trademark application and issued an Office action. You must respond to this Office action to avoid your application abandoning. Follow the steps below.

- (1) **[Read the Office action](#)**. This email is NOT the Office action.
- (2) **Respond to the Office action by the deadline** using the Trademark Electronic Application System (TEAS) or the Electronic System for Trademark Trials and Appeals (ESTTA), as appropriate. Your response and/or appeal must be received by the USPTO on or before 11:59 p.m. **Eastern Time** of the last day of the response deadline. Otherwise, your application will be **[abandoned](#)**. See the Office action itself regarding how to respond.
- (3) **Direct general questions** about using USPTO electronic forms, the USPTO [website](#), the application process, the status of your application, and whether there are outstanding deadlines to the [Trademark Assistance Center \(TAC\)](#).

After reading the Office action, address any question(s) regarding the specific content to the USPTO examining attorney identified in the Office action.

### 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](#)** to ensure you receive important USPTO notices about your application.
- **[Beware of trademark-related scams](#)**. Protect yourself from people and companies that may try to take financial advantage of you. Private companies may call you and pretend to be the USPTO or may send you communications that resemble official USPTO documents to trick you. We will never request your credit card number or social security number over the phone. Verify the correspondence originated from us by using your serial number in our database, [TSDR](#), to confirm that it appears under the “Documents” tab, or contact the [Trademark Assistance Center](#).

- **Hiring a U.S.-licensed attorney.** If you do not have an attorney and are not required to have one under the trademark rules, we encourage you to hire a U.S.-licensed attorney specializing in trademark law to help guide you through the registration process. The USPTO examining attorney is not your attorney and cannot give you legal advice, but rather works for and represents the USPTO in trademark matters.