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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91267205
Party	Defendant Peeknest Inc
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Submission	Opposition/Response to Motion
Filer's Name	Idris Motiwala
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Signature	/Idris Motiwala/
Date	12/13/2021
Attachments	Applicants Cross Motion for Summary Judgment and Response.pdf(535161 bytes) Supporting Declaration of Rayyan Faris.pdf(226695 bytes) Supporting Declaration of Idris Motiwala.pdf(103047 bytes) Motiwalaw Dec Exhibit 1.pdf(1312766 bytes) Motiwalaw Dec Exhibit 2.pdf(23686 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Nest Egg Labs, Inc.

Opposer,

v.

Peeknest, Inc.

Applicant

Opposition Proceeding No. 91267205

Application Serial No.: 88746125

Mark: NEST

**APPLICANT’S CROSS-MOTION FOR SUMMARY JUDGMENT AND
RESPONSE TO OPPOSER’S MOTION FOR SUMMARY JUDGMENT**

Applicant Peeknest, Inc. (“Applicant”) respectfully moves the Honorable Trademark Trial and Appeal Board (the “Board”), pursuant to Federal Rule of Civil Procedure 56 and TBMP 528, for summary judgment dismissing Nest Egg Labs, Inc. (“Nest Egg”)’s opposition to Applicant’s Application to register the mark NEST in Application Serial No. 88/746,125. The Board should deny Opposer’s Motion for Summary Judgment and grant Applicant’s Cross Motion for Summary Judgment.

In support of this motion and response, Applicant relies upon the attached memorandum and supporting declarations of Mr. Rayyan Faris and Idris Motiwala, Esq.

Respectfully Submitted,

Dated: December 13, 2021

By: /Idris Motiwala/
Idris Motiwala
Texas Bar No. 24102252
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Memorandum of Law

I. Introduction and Relevant Background

In 2018, Applicant began developing an application called “Moovsi,” a platform that helps people manage their move. After months of research, surveys, and feedback, Applicant concluded that most struggles with moving comes with people owning too many items so that they forget about certain items during the move. The applicant decided to focus on solving this problem and create a platform that makes it easy for people to see and manage their stuff in order to prevent them from accumulating too much stuff.

As Applicant began developing an application to solve the problem it identified, it began thinking about names for the new application. As “Nest” is a widely used word in reference to “home” and “safe space,” it made sense for the Applicant to consider this term in naming the new idea. Other applications that use the word nest include “Nest”, a smart home management app owned by Google, and “Nestead”, an organization and management app for a user’s personal belongings. In search for a unique, rhythmic, and memorable name for the new idea, the applicant came up with the unique word “Peeknest” that combines “Peek” to see, and “Nest”, home or safe space. The name accurately described the Applicant’s intention with the idea, which is to make it easy for people to see their stuff. Since the name was available across all domains and social media platforms, the applicant went ahead with the name “Peeknest”.

The applicant further explored this concept and was the first to popularize the word “Nest” in its user experience and mobile application. Peeknest continues to be the only app that uses the word “Nest” and the terms “Nest it” and “Nesting” to refer to the act of cataloging and tracking items. Applicant launch its initial webpage on May 14, 2018. After developing this name, Applicant paid for a trademark search to ensure no existing companies were using similar

marks on August 8, 2019. Since release, Applicant's product is available in at least 175 countries through the Apple App Store. Rog.2.

Opposer has tried and failed to obtain a trademark on a "Nest" mark. Since Opposer cannot claim the "Nest" mark as its own, it uses an overly broad description adopted in its "Nest Egg" mark to attempt to limit Applicant's use of its established mark. Opposer does not have standing to bring this opposition as it does not have any rights to a "Nest" mark. Even if Opposer is found to have standing, there is no likelihood of confusion between Opposer's "Nest Egg" mark and Applicant's "Nest" mark. While there are disputed facts in this case, there are no genuine issues of material fact, and pursuant to Federal Rule of Civil Procedure 56(c) and Trademark Trial and Appeal Board Manual of Procedure ("TBMP") § 528.01, Applicant moves for summary judgment that (1) Opposer has no standing to bring this Opposition and (2) there is no likelihood of confusion between Opposer's "Nest Egg" mark and Applicant's "Nest" Mark.

II. Statements of Disputed Facts

Applicant's Admissions

On August 26, 2021, Opposer served its First Set of Requests for Admissions on Applicant. Applicant did not response to Opposer's First Set of Requests for Admissions. These responses are deemed admitted pursuant to Fed. R. Civ. P. 36(a). However, an admission can be withdrawn if the withdrawal would (1) promote the presentation of the merits of the action and (2) permitting the withdrawal of the admission will not prejudice the Opposer in maintaining the Opposition on the merits. Fed. R. Civ. P. 36(b); *see also American Auto Ass'n v. AAA Legal Clinic*, 930 F.2d 1117, 1119 (5th Cir. 1991). A formal motion to withdraw a deemed admission is not required and an opposition to a motion for summary judgment is effectively treated as a motion to withdraw an admission. *Bergemann v. United States*, 820 F.2d 1117, 1120-1121 (10th Cir. 1987); *see also*

Friedman v. Live Nation Merch. Inc., 833 F.3d 1180, 1185 (9th Cir. 2016); *United States v. Petroff-Kline*, 557 F.3d 285, 294 (6th Cir. 2009). Additionally, a request to withdraw may be imputed from a party's actions. *Chancellor v. City of Detroit*, 2006 U.S. Dist. LEXIS 83442, at *7 (E.D. Mich. Sept. 15, 2006).

The first prong of the test is satisfied when upholding the admissions would “practically eliminate any presentation of the merits of the case.” *Conlon v. United States*, 474 F.3d 616, 622 (9th Cir. 2007). Allowing the admissions to stand would not allow this case to move forward with the merits of this case as they are erroneous and there is still sufficient time for Opposer to put forward its case.

The second prong of the test is met as Opposer is not prejudiced by permitting the withdrawal of the admission. The fact that Opposer now has to convince TTAB of the truth of its allegations is not sufficient to find prejudice. *Sonoda v. Cabera*, 225 F.3d 1035, 1039 (9th Cir. 2001). In fact, courts have held that relying on admissions in preparing a motion for summary judgment is not sufficient to find prejudice under this test. *See e.g. Raiser v. Utah County*, 409 F.3d 1243, 1246 (10th Cir. 2005); *In re Durability Inc.*, 212 F.3d 551, 556 (10th Cir. 2000); *FDIC v. Prusia*, 18 F.3d 637, 640 (8th Cir. 1994). Additionally, as discussed more specifically below, Applicant responses to other discovery made it clear that the admissions Opposer relies on are factually inaccurate. Therefore, Opposer was not prejudiced by relying on the Admissions and the second prong is fulfilled.

List of disputed admissions

As discussed above, a response in opposition to a motion for summary judgment is treated as a motion to withdraw deemed admissions and both prongs required to allow withdrawal of

admissions are met. Accordingly, the TTAB should not accept the Opposer's assertions of fact based on Applicant's erroneous admissions, including but not limited to the admissions cited by the Opposer which are listed below:

1. RFA 82: The NEST Mark and the NEST EGG Mark make the same commercial impressions on consumers.

Applicant does not believe the two marks make the same commercial impressions on consumers. Applicant's NEST mark is used to describe the collections in the application where users organize their stuff, and the action "to Nest", "Nesting" was widely used in Applicant's app and in communications and marketing to refer to cataloging and keeping track of items. This is a unique and identifiable use of the word "Nest" and Applicant is not aware of any other application which uses the term Nest in this way.

2. RFA 10: NEST is the dominant portion of the NEST EGG Mark.

"Nest Egg" is a distinct word from "Nest," and the different definitions bring different impressions to the mind of customers. Specifically, "Nest Egg" means "a sum of money saved for the future,"¹ which invokes thoughts about retirement.²

3. RFA 15: Applicant's Goods and Opposer's Goods are identical.

Applicant and Opposer's products are dissimilar. While both Applicant and Opposer sell inventory management products, Applicant focuses on home inventory management. Faris Dec. ¶ 6. In contrast, Opposer advertises its "next generation stock management" for larger businesses

¹ *Nest Egg*, Lexico Dictionary by Oxford University Press, https://www.lexico.com/en/definition/nest_egg

² The use of "Nest Egg" for retirement is so common that there are numerous apps called "Nest Egg" related to financial planning on the App store. Opposer's app has a strong financial planning aspect to it.

including “retail, healthcare, logistics, and information technology” including tracking transactions and value. <https://nestegg.cloud/>.

4. RFA 44: Applicant’s Goods and Opposer’s Goods are marketed and sold to the same consumers.

Applicant focuses its product for home inventory while Opposer’s business is focused on business consumers.

III. Statements of Undisputed Facts

1. Applicant is the owner of the NEST application 88/746,125 to register the mark NEST, in a standard character format, and identifies the subject goods as:

“Function of downloadable software for use in displaying, grouping and organizing images and descriptions of possessions sold as a component of downloadable software in the nature of a mobile application for users to capture images and descriptions in order to catalog, organize, and inventory belongings, goods, service providers, experiences, documents, notes, and media; none of the foregoing relating to home or building automation or smart home or smart building products or services” in International Class 9.

2. Opposer is the owner of the U.S. Registration No. 6,236,897 which covers the NEST EGG Mark, in a standard character format, for:

Downloadable, computer application software for mobile phones, namely, software for assisting with the collection of data, organization and creating an inventory of items; downloadable computer software that provides web-

based access to applications and services through a web operating system or portal interface in International Class 9; and Computer programming services; Consulting services in the field of the design of software that models, analyzes organization and inventory of various items; Design and development of computer software for computer software and systems for the hosting of computer website and storage of data; Design and development of market research software tools; Preparation, update, installation and maintenance of computer software; Providing a web site featuring technology that enables users to access platform software specializing in organizing and inventory management of various items; Software as a service (SAAS) services, namely, hosting software for use by others for use in analyzing, measuring, evaluating, and optimizing organization and personal inventory management and data organization in International Class 42.

3. Opposer is the owner of the suspended application to register a “Nest” mark, Application No. 88/799352, in a standard character format and identifies the subject goods as:

Non-downloadable, computer application software for mobile phones, namely, software for assisting with the collection of data, organization and creating an inventory of items; downloadable, computer software that provides web-based access to applications and services through a web operating system or portal interface; mobile user interfaces, namely, interactive computer kiosk systems comprised primarily of computers, computer hardware, computer peripherals, and computer touchscreens,

used to, catalog, collaborate, organize, manage, and inventory belongings, goods, services, experiences, documents, and notes.

4. Opposer's Application No. 88/799352 was suspended due to (1) a failure to provide a specimen showing the use of the "Nest" mark in commerce and (2) the identification of goods provided by Opposer is indefinite.

5. The relevant trade channels are identical.

IV. Argument

a. Opposer has no rights in the NEST Mark and thus has no Standing

Opposer does not have a valid claim to senior rights in the NEST Mark. Opposer bases this claim on the registration of its "NEST EGG" Mark. Specifically, Opposer states that since "NEST" is the first portion of the "NEST EGG" Mark, Opposer has rights to the mark "NEST." This is simply not true. The fact that Nest Egg uses nest as part of a two-word mark reduces the chance that a likelihood of confusion would be found. *See e.g. Citigroup Inc. v. Capital City Bank Group*, 637 F.3d 1344 (5th Cir. 2011); *Juice Generation, Inc. v. GS Enters, LLC*, 794 F.3d 1334 (Fed. Cir. 2015). Further "Nest Egg" is a distinct word from "Nest," and the different definitions bring different impressions to the mind of customers. Specifically, "Nest Egg" means "a sum of money saved for the future," which invokes thoughts about retirement. *See Supra*.

Additionally, Opposer's claims to the "NEST" have already been rejected by the USPTO. Opposer filed for trademark protection on the mark NEST on February 15, 2020. Dec. of Motiwala Ex. 1. On May 15, 2020 the USPTO issued an office action which rejected the application for multiple reasons, including the fact that the specimen provided by the Opposer displayed the NEST EGG mark. The USPTO found that the Opposer did not have a trademark right in NEST since the

specimen provided by the Opposer “include[d] the additional distinctive term ‘Egg’” and “failed to provide the required evidence of use of the [NEST] mark in commerce. Opposer responded to this office action by substituting the specimen with a business card which included a slogan that used the NEST mark. However, business cards are generally considered advertising and are not acceptable as specimens for use on goods. Dec. of Motiwala Ex. 2; TMEP §904.04(b); See *In re Yarnell Ice Cream, LLC*, 2019 USPQ2d 265039, at *15-16 (TTAB 2019) (quoting *In re Siny Corp.*, 920 F.3d 1331, 1336, 2019 USPQ2d 127099, at *2-3 (Fed. Cir. 2019)); see also *Avakoff v. S. Pac. Co.*, 765 F.2d 1097, 1098, 226 USPQ 435, 436 (Fed. Cir. 1985); TMEP §904.04(b), (c). Since the suspension letter was issued in December of 2020, Opposer has failed to provide the USPTO with any valid specimen. Accordingly, Opposer has no rights to the NEST Mark and does not have standing to oppose this Application.

Any claims by the Opposer that the suspension of its application of the NEST mark should not matter as it has common law rights in the NEST mark are invalid. First, Opposer has failed to prove to the TTAB that it has rights in the NEST mark through its application process. Instead, Opposer relies on an overly broad description of another mark, its NEST EGG mark, to make its argument. Second, the mere assertion of common law use does not in itself establish that a party has the right to exclude others from use of its mark. *McDonald’s Corp. v. McSweet LLC*, 2014 TTAB LEXIS 351, *44 (TTAB Sept. 29, 2014). As Opposer has failed to show it has any rights in the NEST mark, it does not have standing to bring this Opposition.

b. Applicant’s Use of NEST

Unlike Opposer, Applicant actually uses the NEST mark as evidenced in the specimens it submitted with its application. Since Applicant began development, the term “Nest” has been used to describe the collections in the application where users organize their stuff, and the action “to

Nest”, “Nesting” was widely used in the app and in communications and marketing to refer to cataloging and keeping track of items. This is a unique and identifiable use of the word “Nest” and Applicant is not aware of any other application which uses the term Nest in this way. Belous Dec. Exhibit 3 at ROG 6.

c. Likelihood of Confusion

Even if Opposer is found to have standing, there is no likelihood of confusion between Opposer and Applicant’s marks. As discussed in detail above, Opposer has failed to show it has any rights in the NEST Mark. Instead, Opposer attempts to get around proving its rights by relying on an overly broad description of goods used in its Nest Egg mark to assert that Applicant’s mark creates a likelihood of confusion in the market.³ As Opposer does not have rights in the NEST mark there is no likelihood of confusion between Applicant and Opposer’s marks. Even if the TTAB were to consider the Opposer’s overly broad NEST EGG mark, the *DuPont* factors discussed below do not support a finding of likelihood of confusion.

i. Not Strong or Famous

Opposer claims its marks are strong and famous, and thus entitled to a wide scope of protection, however this is not true. To bolster its claims, Opposer points to a “nest” design element it uses along with its mark. Opp. M. S. J. pg. 6. Opposer’s use of design elements as a separate logo are not relevant to this inquiry. Opposer additionally relies on a logo it uses solely on its business cards “look for the nest in the App Store.” *Id.* As discussed above, business cards are generally considered advertising and are not acceptable as specimens for use on goods. *Supra*

³ The broad description of goods used in the NEST EGG mark was not allowed in Opposer’s NEST application. Further, Applicant’s NEST Application contains a narrower description of goods than Opposer’s NEST EGG application.

Pg. 9. Additionally, Opposer claims that due to the fact that it has used its Nest Egg mark in commerce for more than ten years, it is entitled to protection as a famous mark. This is simply not true. The length of time a mark is used in commerce does not necessarily grant that mark protection as a “famous mark.” *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1205 (TTAB 2009); *Safer Inc. v. OMS Invs. Inc.*, 2010 TTAB LEXIS 51, *34 (TTAB Feb. 23, 2010). Opposer’s final claim to bolster its claims that the mark is famous is that “Nest” is the dominant portion of the “Nest Egg” mark. Applicant has addressed this argument above. *Supra* Pg. 8-9.

Strong and famous marks are generally entitled to a wide scope of protection. *McDonald’s Corp. v. McSweet LLC*, 112 USPQ 2d 1268, 1280 (TTAB 2014); *L’Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1437 (TTAB 2012). However, unlike McDonald’s and L’Oreal’s marks, Opposer’s marks are not that famous. The general public is not aware of the Nest Egg Application. In fact, when Applicant began developing its application, it was not even aware of the Nest Egg Application. Faris Dec. ¶ 7, 9; *see also* Belous Dec. Exhibit 3 at ROG 8. It is the duty of the Opposer are the party asserting that its mark is famous to clearly prove it. *North Face Apparel Corp. v. Sanyang Indus. Co.*, 2015 TTAB LEXIS 328, *23 (TTAB Mar. 31, 2015); *Bd. Of Regents, Univ. of Tex. Sys. V. S. III. Miners, LLC*, 2014 TTAB LEXIS 92, *37 (TTAB Mar. 13, 2014). Opposer has failed to do so. Opposer’s mark is not strong and famous and should not be given the wide latitude of legal protection that is given to famous marks.

ii. Marks are not the Same

Applicant and Opposer’s marks are not identical. Marks must be considered in their entirety in order to determine likelihood of confusion. *Juice Generation Inc. v. GS Enters LLC*, 794 F.3d 1334, 1340 (Fed. Cir. 2015); *In re Nat’l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985) (“[L]ikelihood of confusion cannot be predicated on dissection of a mark, that is, on only part

of mark.”). While it is true that Applicant’s NEST mark is also a part of Opposer’s NEST EGG Mark, the NEST EGG mark leaves a different impression on consumers. “Nest Egg” is a distinct word from “Nest,” and the different definitions bring different impressions to the mind of customers. Specifically, “Nest Egg” means “a sum of money saved for the future,”⁴ which invokes thoughts about retirement.⁵ In contrast Applicant’s use of the word “Nest” is intended to invoke feelings about a safe space to store items. The average consumer would not be confused by Applicant’s use of the word “Nest” within its application.

iii. Sophistication of Customers

Customers of home inventory products tend to conduct research into various applications before deciding on an application. While the applications provided by both Applicant and Opposer are inexpensive, the true cost to the consumer comes from the monthly subscription offered by each. Faris Dec. ¶ 8. Consumers may trial multiple inventory software to determine which software offers the best product. As consumers continue to do research on each product through trial periods to determine which products best fits their needs, the customers of these products are sophisticated.

iv. Number of Similar Marks

When there are multiple entities using similar marks, the closer an Applicant’s mark can come without causing a likelihood of confusion. *In re i.am.symbolic, llc*, 866 F.3d 1315, 1327 (Fed. Cir. 2017). As noted in the office actions issued in both this case and in the case of Opposer’s mark, there are multiple marks with some form of NEST for sale in the same channel of trade (i.e. the Google Play Store or Apple App Store). Additionally, a simple search for NEST or NEST EGG

⁴ *Nest Egg*, Lexico Dictionary by Oxford University Press, https://www.lexico.com/en/definition/nest_egg

⁵ The use of “Nest Egg” for retirement is so common that there are numerous apps called “Nest Egg” related to financial planning on the App store. Further, Winprogger’s app has a strong financial aspect to it.

in the Apple App Store will bring forth a wealth of applications. Faris Dec. ¶ 4. With this many similar marks there is a narrower range of protection on both Applicant and Opposer's marks and the TTAB should not find a likelihood of confusion in this matter.

v. Relevant Consumers are not Identical

Applicant and Opposer's products are dissimilar. While both Applicant and Opposer sell inventory management products, Applicant focuses on personal inventory management. Faris Dec. ¶ 6. In contrast, Opposer advertises its "next generation stock management" for larger businesses including "retail, healthcare, logistics, and information technology." <https://nestegg.cloud/>; Das Decl. Ex. 1. Although both applications handle inventory, the difference between focusing on the home consumer and business consumer is relevant to the TTAB's inquiry and weighs the scales in favor of a finding of no likelihood of confusion.

vi. Applicant did not Intend to Trade on Opposer's Goodwill.

Applicant did not adopt the NEST mark in bad faith. While intent of a party is not a *DuPont* factor, it can be examined by the TTAB as strong evidence that confusion is likely. *See e.g. Jewelers Vigilance Comm. Inc. v. Ullenberg Corp.*, 853 F.2d 888, 891 (Fed. Cir. 1988). Opposer erroneously states that Applicant intended to trade on Opposer's goodwill when it adopted the NEST mark. In making this assertion, Opposer relies on an erroneous admission, one which Opposer knew was not true due to Applicant's responses to interrogatories. Belous Dec. Exhibit 3 at ROG 9, 12. In fact, Applicant detailed the development of its NEST mark in great detail in its response to interrogatory:

As "Nest" is a widely used word in reference to "home" and "safe space," it made sense for the Applicant to consider this term in naming

the new idea. Other applications that use the word nest include “Nest”, a smart home management app owned by Google, and “Nestlead”, an organization and management app for a user’s personal belongings.⁶

In search for a unique, rhythmic, and memorable name for the new idea, the applicant came up with the unique word “Peeknest” that combines “Peek” to see, and “Nest”, home or safe space. The name accurately described the Applicant’s intention with the idea, which is to make it easy for people to see their stuff at home. Since the name was available across all domains and social media platforms, the applicant went ahead with the name “Peeknest”.

The applicant further explored this concept and was the first to popularize the word “Nest” in its user experience and mobile application. Peeknest continues to be the only app that uses the word “Nest” and the terms “Nest it” and “Nesting” to refer to the act of cataloging and tracking items. The trademark is our intention to protect our use of the word in this manner.

Applicant did not know of Opposer’s mark when it created its NEST mark. In fact, Applicant conducted a trademark search before beginning to use the NEST mark. Belous Dec. Exhibit 3 at ROG 4. Even if Applicant did, mere knowledge of a mark is not evidence of bad faith. *Action Temp. Servs., Inc. v. Labor Force Inc.*, 870 F.2d 1563, 1566 (Fed. Cir. 1989). Furthermore, Applicant did not and does not intent to trade on any goodwill Opposer may have in its NEST

⁶ The Nestlead app has since been discontinued. Information regarding this application can be found here: <https://appadvice.com/app/nestlead/1194415447>.

EGG mark. Faris Dec. ¶ 9. In fact, Applicant believes that the two parties goods and marks are distinct and unique. *Id.* The TTAB should not find that Applicant acted in bad faith and thus bad faith should not be a consideration in the TTAB's likelihood of confusion analysis.

V. Conclusion

Because Opposer has no standing in this case, has no rights in the NEST mark, and there is no likelihood of confusion between Opposer's NEST EGG Mark and Applicant's NEST Mark, Applicant respectfully requests that the Board deny the Opposer's motion for summary judgment and grant Applicant's motion for summary judgment that (1) Opposer lacks standing to bring this Opposition and (2) find that there is no likelihood of confusion between Opposer's NEST EGG Mark and Applicant's NEST Mark.

Dated: December 13, 2021

/s/ Idris Motiwala
Idris Motiwala
TX Bar: 24102252
Attorney for Applicant

Certificate of Service

I hereby certify that a true and complete copy of the foregoing Applicant's Cross-Motion For Summary Judgment and Response to Opposer's Motion for Summary Judgment and the accompanying Memorandum of Law has been served on Nest Egg Labs, Inc. by forwarding said copy on December 13, 2021 via email to: Relani Belous at relani@belouslaw.com.

By: /Idris Motiwala/
Idris Motiwala
Law Office of Idris Motiwala

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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NEST EGG LABS, INC.,

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PEEKNEST, INC.,

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Opposition Proceeding No.

91267205

Application Serial No.: 88/746,125

Mark: NEST

**DECLARATION OF RAYYAN FARIS IN SUPPORT OF APPLICANT'S MOTION FOR
SUMMARY JUDGMENT**

Pursuant to 28 U.S.C. § 1746, Rayyan Faris declares under penalty of perjury as follows:

1. I am the President of Applicant, Peeknest, Inc. ("Applicant"), and I submit this declaration in support of Applicant's Cross-Motion For Summary Judgment And Response To Opposer's Motion For Summary Judgment and to place before the Honorable Trademark Trial and Appeal Board true and accurate copies of pertinent information, documents, and exhibits.
2. I am fully familiar with the facts set forth herein from my own personal knowledge or through access to the records and books of Applicant.
3. In 2018, Applicant began developing an application called "Moovsi," a platform that helps people manage their move. After months of research, surveys, and feedback, Applicant concluded that most struggles with moving comes with people owning too many items so that they forget about certain items during the move. The applicant decided to focus on solving this problem and create a platform that makes it easy for people to see and manage their stuff

in order to prevent them from accumulating too much stuff.

4. As Applicant began developing an application to solve the problem it identified, it began thinking about names for the new application. As "Nest" is a widely used word in reference to "home" and "safe space," it made sense for the Applicant to consider this term in naming the new idea. There are a wealth of other applications that use the word nest include "Nest", including but not limited to a smart home management app owned by Google, and "Nestthead", an organization and management app for a user's personal belongings. In search for a unique, rhythmic, and memorable name for the new idea, the applicant came up with the unique word "Peeknest" that combines "Peek" to see, and "Nest", home or safe space. The name accurately described the Applicant's intention with the idea, which is to make it easy for people to see their stuff. Since the name was available across all domains and social media platforms, the applicant went ahead with the name "Peeknest".
5. The applicant further explored this concept and was the first to popularize the word "Nest" in its user experience and mobile application. Peeknest continues to be the only app that uses the word "Nest" and the terms "Nest it" and "Nesting" to refer to the act of cataloging and tracking items. Applicant launch its initial webpage on May 14, 2018. After developing this name, Applicant paid for a trademark search to ensure no existing companies were using similar marks on August 8, 2019. Since release, Applicant's product is available in at least 175 countries through the Apple App Store. Rog.2.
6. Peeknest is a visual planner for stuff which can be used for home inventory, shopping & gift planning, outfit curation, and other use cases to organize one's personal life.
7. I am not aware of any alleged or actual confusion between my product and the product offered by Nest Egg Labs, Inc.
8. Peeknest makes a profit by selling its customers various levels of subscription. These

subscriptions are not impulse buys as consumers can trial the application to determine if it meets their needs before use. The pricing provided by Peeknest is \$6.99 per month, \$29.99 for six months, \$34.99 for an annual license, or \$119.99 for a lifetime license.

9. I conducted a trademark search in 2019 and did not find any licensed trademarks for my Peeknest application, including for our use of “Nest.” Additionally, I was not aware of Nest Egg Labs’ application and have not and do not intend to trade on any goodwill Nest Egg has in its brand. Our products are targeted at different consumers and my use of the Nest mark is completely unique from “Nest Egg.”

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13th day of December, 2021.

A handwritten signature in black ink that reads "Rayyan Faris". The signature is written in a cursive, flowing style with a long horizontal line extending from the bottom of the name.

Rayyan Faris
President
Peeknest, Inc

Certificate of Service

It is hereby certified that a copy of the foregoing “Declaration of Rayyan Faris In Support Of Applicant’s Cross-Motion For Summary Judgment And Response To Opposer’s Motion For Summary Judgment” has been served on Opposer’s Attorney, Relani Belous of the Belous Law Corporation , via electronic mail to relani@belouslaw.com.

/s/ Idris Motiwala

Idris Motiwala
Attorney for Applicant

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**DECLARATION OF IDRIS MOTIWALA IN SUPPORT OF APPLICANT'S CROSS-
MOTION FOR SUMMARY JUDGMENT AND RESPONSE TO OPPOSER'S MOTION
FOR SUMMARY JUDGMENT**

Pursuant to 28 U.S.C. § 1746, Idris Motiwala declares under penalty of perjury as follows:

1. I am an attorney licensed to practice in the State of Texas and the attorney of record for Applicant, Peeknest, Inc. ("Applicant"), in the above-referenced Opposition Proceeding. I have personal knowledge of the facts set forth below and if called upon and sworn as a witness I could and would competently testify as set forth below.

2. I submit this declaration in support of Applicant's Cross-Motion for Summary Judgment and Response to Opposer's Motion for Summary Judgment and to place before the Honorable Trademark Trial and Appeal Board true and accurate copies of pertinent documents and exhibits.

3. Exhibit 1 consists of a true and accurate copy of the Opposer's U.S. Application No. 88/799352 for its NEST mark obtained from the U.S. Patent and Trademark Office's TSDR database.

4. Exhibit 2 consists of a true and accurate copy of the Suspension Letter

issued in Opposer's US Application No. 88/799352 for its NEST mark obtained from the U.S. Patent and Trademark Office's TSDR database.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 13th day of December 2021.

/s/ Idris Motiwala

Idris Motiwala

Certificate of Service

It is hereby certified that a copy of the foregoing “Declaration of Idris Motiwala In Support Of Applicant’s Cross-Motion For Summary Judgment And Response To Opposer’s Motion For Summary Judgment” has been served on Opposer’s Attorney, Relani Belous of the Belous Law Corporation , via electronic mail to relani@belouslaw.com.

/s/ Idris Motiwala

Idris Motiwala
Attorney for Applicant

Trademark/Service Mark Application, Principal Register

Serial Number: 88799352

Filing Date: 02/15/2020

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	88799352
MARK INFORMATION	
*MARK	Nest
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	Nest
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Winprogger LLC
*MAILING ADDRESS	500 W Hamilton Avenue, #1641
*CITY	Campbell
*STATE (Required for U.S. applicants)	California
*COUNTRY/REGION/JURISDICTION/U.S. TERRITORY	United States
*ZIP/POSTAL CODE (Required for U.S. and certain international addresses)	95011
*EMAIL ADDRESS	XXXX
LEGAL ENTITY INFORMATION	
TYPE	limited liability company
STATE/COUNTRY/REGION/JURISDICTION/U.S. TERRITORY WHERE LEGALLY ORGANIZED	California
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	009
*IDENTIFICATION	Computer application software for mobile phones, namely, software for assisting with the collection of data, organization and creating an inventory of items; Computer software that provides web-based access to applications and services through a web operating system or portal interface; a mobile interface to capture, catalog, collaborate, organize, manage, and inventory belongings, goods, services, experiences, documents, notes, and media.
FILING BASIS	SECTION 1(a)

FIRST USE ANYWHERE DATE	At least as early as 05/05/2011
FIRST USE IN COMMERCE DATE	At least as early as 05/05/2011
SPECIMEN FILE NAME(S)	
JPG FILE(S)	\\TICRS\EXPORT18\IMAGEOUT18\887\993\88799352\xml1\ APP0006.JPG
ORIGINAL PDF FILE	SPE0-71845022-20200215172 328901541 . elligent Inventory Management Software for Small Business 1 .pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT18\IMAGEOUT18\887\993\88799352\xml1\ APP0003.JPG
ORIGINAL PDF FILE	SPE0-71845022-20200215172 328901541 . app-store-preview-web-cloud.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT18\IMAGEOUT18\887\993\88799352\xml1\ APP0004.JPG
ORIGINAL PDF FILE	SPE0-71845022-20200215172 328901541 . b2c-AppStoreScreenShot7-6p5inch-1.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT18\IMAGEOUT18\887\993\88799352\xml1\ APP0005.JPG
ORIGINAL PDF FILE	SPE0-71845022-20200215172 328901541 . Screen shot.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT18\IMAGEOUT18\887\993\88799352\xml1\ APP0007.JPG
ORIGINAL PDF FILE	SPE0-71845022-20200215172 328901541 . site-usage-home-page-es.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT18\IMAGEOUT18\887\993\88799352\xml1\ APP0008.JPG
SPECIMEN DESCRIPTION	Website and screenshots of use
ATTORNEY INFORMATION	
NAME	Relani Belous
ATTORNEY DOCKET NUMBER	WP-Nest
ATTORNEY BAR MEMBERSHIP NUMBER	XXX
YEAR OF ADMISSION	XXXX
U.S. STATE/ COMMONWEALTH/ TERRITORY	XX
STREET	PO Box 40095
CITY	Pasadena
STATE	California
COUNTRY/REGION/JURISDICTION/U.S. TERRITORY	United States
ZIP/POSTAL CODE	91114
EMAIL ADDRESS	Relani@BelousLaw.com
CORRESPONDENCE INFORMATION	
NAME	Relani Belous
PRIMARY EMAIL ADDRESS FOR CORRESPONDENCE	Relani@BelousLaw.com
SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES)	NOT PROVIDED

FEE INFORMATION	
APPLICATION FILING OPTION	TEAS Standard
NUMBER OF CLASSES	1
APPLICATION FOR REGISTRATION PER CLASS	275
*TOTAL FEES DUE	275
*TOTAL FEES PAID	275
SIGNATURE INFORMATION	
SIGNATURE	/RBELOUS/
SIGNATORY'S NAME	Relani Belous
SIGNATORY'S POSITION	Attorney of Record, California Bar Member
SIGNATORY'S PHONE NUMBER	310-686-1053
DATE SIGNED	02/15/2020

Trademark/Service Mark Application, Principal Register

Serial Number: 88799352

Filing Date: 02/15/2020

To the Commissioner for Trademarks:

MARK: Nest (Standard Characters, see [mark](#))

The literal element of the mark consists of Nest. The mark consists of standard characters, without claim to any particular font style, size, or color.

The applicant, Winprogger LLC, a limited liability company legally organized under the laws of California, having an address of
500 W Hamilton Avenue, #1641
Campbell, California 95011
United States
XXXX

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 009: Computer application software for mobile phones, namely, software for assisting with the collection of data, organization and creating an inventory of items; Computer software that provides web-based access to applications and services through a web operating system or portal interface; a mobile interface to capture, catalog, collaborate, organize, manage, and inventory belongings, goods, services, experiences, documents, notes, and media.

In International Class 009, the mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest at least as early as 05/05/2011, and first used in commerce at least as early as 05/05/2011, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods/services, consisting of a(n) Website and screenshots of use.

JPG file(s):

[Specimen File1](#)

Original PDF file:

[SPE0-71845022-20200215172 328901541 _elligent_Inve ntory_Management_Software_for_Small_Business_1_.pdf](#)

Converted PDF file(s) (1 page)

[Specimen File1](#)

Original PDF file:

[SPE0-71845022-20200215172 328901541 _app-store-pre view-web-cloud.pdf](#)

Converted PDF file(s) (1 page)

[Specimen File1](#)

Original PDF file:

[SPE0-71845022-20200215172 328901541 _b2c-AppStoreS creenShot7-6p5inch-1.pdf](#)

Converted PDF file(s) (1 page)

[Specimen File1](#)

Original PDF file:

[SPE0-71845022-20200215172 328901541 _Screen_shot.pdf](#)

Converted PDF file(s) (1 page)

[Specimen File1](#)

Original PDF file:

[SPE0-71845022-20200215172 328901541 _site-usage-ho me-page-es.pdf](#)

Converted PDF file(s) (1 page)

[Specimen File1](#)

The owner's/holder's proposed attorney information: Relani Belous. Relani Belous, is a member of the XX bar, admitted to the bar in XXXX, bar membership no. XXX, is located at
PO Box 40095

Pasadena, California 91114

United States

Relani@BelousLaw.com

The docket/reference number is WP-Nest.

Relani Belous submitted the following statement: The attorney of record is an active member in good standing of the bar of the highest court of a U.S. state, the District of Columbia, or any U.S. Commonwealth or territory.

The applicant's current Correspondence Information:

Relani Belous

PRIMARY EMAIL FOR CORRESPONDENCE: Relani@BelousLaw.com SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES): NOT PROVIDED

Requirement for Email and Electronic Filing: I understand that a valid email address must be maintained by the applicant owner/holder and the applicant owner's/holder's attorney, if appointed, and that all official trademark correspondence must be submitted via the Trademark Electronic Application System (TEAS).

A fee payment in the amount of \$275 has been submitted with the application, representing payment for 1 class(es).

Declaration

☒ **Basis:**

If the applicant is filing the application based on use in commerce under 15 U.S.C. § 1051(a):

- The signatory believes that the applicant is the owner of the trademark/service mark sought to be registered;
- The mark is in use in commerce on or in connection with the goods/services in the application;
- The specimen(s) shows the mark as used on or in connection with the goods/services in the application; and
- To the best of the signatory's knowledge and belief, the facts recited in the application are accurate.

And/Or

If the applicant is filing the application based on an intent to use the mark in commerce under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e):

- The signatory believes that the applicant is entitled to use the mark in commerce;
- The applicant has a bona fide intention to use the mark in commerce on or in connection with the goods/services in the application; and
- To the best of the signatory's knowledge and belief, the facts recited in the application are accurate.

☒ To the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive.

☒ To the best of the signatory's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the allegations and other factual contentions made above have evidentiary support.

☒ The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Declaration Signature

Signature: /RBELOUS/ Date: 02/15/2020

Signatory's Name: Relani Belous

Signatory's Position: Attorney of Record, California Bar Member

Payment Sale Number: 88799352

Payment Accounting Date: 02/18/2020

Serial Number: 88799352

Internet Transmission Date: Sat Feb 15 17:43:19 ET 2020

TEAS Stamp: USPTO/BAS-XX.XX.XX.XX-202002151743194178

37-88799352-71052063d79ef87ede84e2247745

e129263697e419d34dea8bc1eba72c6d70bc-CC-

43170413-20200215172328901541

Nest

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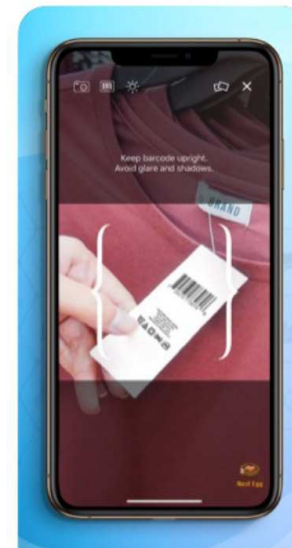
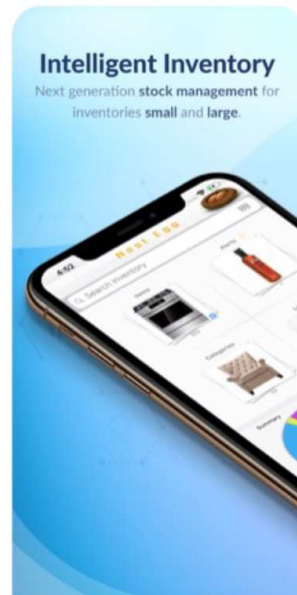
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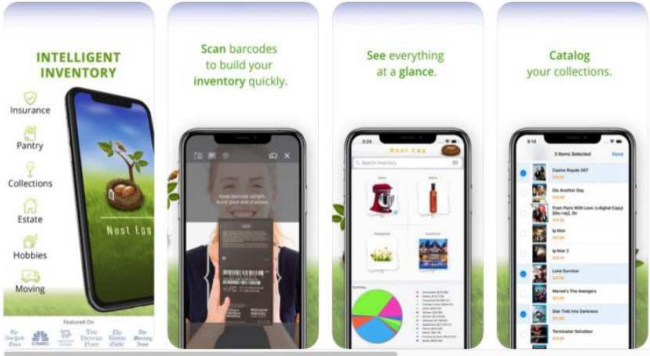
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Screenshots iPhone iPad



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What's New

[Version History](#)
Version 4.1.64

Enhancements and bug fixes.
- Fixes a bug when expanding categories/locations in Summary
- Fixes an issue reported by C.M.
- Fixes an issue that prevents entering country information

Ratings and Reviews

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4.4 out of 5 31 Ratings

★★★★★
Ratata, Jodi, 01/12/2019

Best of them all!
Not sure why there are these many critics [more](#)

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★★★★★
Rhemlow, 01/04/2019

Great app
I've just finished reviewing 5 inventory [more](#)

Developer Response,
Thank you for your feedback and review!

★★★☆☆
BART12, 11/11/2019

Manual entry
Scanned an item and the only thing [more](#)

Developer Response,
Hello BART12, [more](#)

Information

Seller Winprogger LLC
Size 30 MB
Category Utilities
Compatibility Requires iOS 11.0 or later. Compatible with iPhone, iPad, and iPod touch.
Languages English, Arabic, Croatian, Danish, Dutch, Finnish, French, German, Greek, Hungarian, Italian, Japanese, Korean, Malay, Polish, Portuguese, Russian [more](#)
Age Rating 4+
Copyright ©2011-2019 Winprogger LLC
Price Free
[Developer Website](#) [App Support](#) [License Agreement](#) [Privacy Policy](#)

Supports

Family Sharing
With Family Sharing set up, up to six family members can use this app.

More By This Developer



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To: NEST EGG LABS INC. (Relani@BelousLaw.com)
Subject: U.S. Trademark Application Serial No. 88799352 - NEST - WP-Nest
Sent: December 11, 2020 05:54:31 PM
Sent As: ecom108@uspto.gov
Attachments:

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

U.S. Application
Serial No. 88799352

Mark: NEST

Correspondence
Address:
Relani Belous
PO BOX 40095
PASADENA CA
91114

Applicant: NEST
EGG LABS INC.

Reference/Docket No.
WP-Nest

Correspondence
Email Address:

Relani@BelousLaw.com

SUSPENSION NOTICE
No Response Required

Issue date: December 11, 2020

This Office action is in response to applicant's communication filed on 11/14/20.

Applicant's Response, Dated 11/14/20

In its response, dated 11/14/20, applicant amended the identification of goods. However, a portion of the identification of goods remains indefinite. Accordingly, the examining attorney *continues and maintains* the requirement that applicant amend the indefinite portion of the

identification of goods. *See explanation below.*

In addition, in an attempt to obviate the refusal entitled “Refusal – Mark Differs on Drawing and Specimen – Material,” applicant submitted a substitute specimen. Although the substitute specimen *obviates* the refusal entitled “Refusal – Mark Differs on Drawing and Specimen – Material,” it is unacceptable to show use of the applied-for mark on or in connection with any of the applied-for goods in International Class 09. Accordingly, the refusal to register the applied-for mark because applicant failed to provide evidence of use of the mark in commerce is ***continued and maintained***. *See specimen refusal below.*

Next, in response, applicant submitted arguments against the Trademark Act Section 2(d) Likelihood of Confusion refusal with U.S. Registration Nos. 4886016, 5001921, 5639103, 5657282, 5639133 and 5723117. The examining attorney has carefully reviewed and considered applicant’s arguments and is not persuaded. Accordingly, the examining attorney ***continues and maintains*** the Trademark Act Section 2(d) Likelihood of Confusion refusal with U.S. Registration Nos. 4886016, 5001921, 5639103, 5657282, 5639133 and 5723117, and reserves the right to fully address applicant’s arguments upon the final disposition of cited prior pending Application Serial Nos. 88709645, 88655231, 88478295, 88478292, 88478290, 88478288, 88478286, 88655229, 88655227, 88671239.

Finally, in its response, applicant failed to expressly address the citation of prior pending Application Serial Nos. 88624927, 88709645, 88655231, 88478295, 88478292, 88478290, 88478288, 88478286, 88655229, 88655227, 88671239 and 87608702, which may serve as a potential bar to registration of the applied-for mark under Trademark Act Section 2(d). As a preliminary matter, the examining attorney points out that cited prior pending Application Serial Nos. 88624927 and 87608702 have abandoned, and thus, no longer serve as a potential bar to registration of the applied-for mark under Trademark Act Section 2(d). Accordingly, the citation of Application Serial Nos. 88624927 and 87608702 is hereby ***withdrawn*** as moot. However, the examining attorney ***continues and maintains*** the citation of prior pending Application Serial Nos. 88709645, 88655231, 88478295, 88478292, 88478290, 88478288, 88478286, 88655229, 88655227 and 88671239 ***herein***.

Suspension

The application is suspended for the reason(s) specified below. *See 37 C.F.R. §2.67; TMEP §§716 et seq.*

The pending application(s) below has an earlier filing date or effective filing date than applicant’s application. If the mark in the application(s) below registers, the USPTO may refuse registration of applicant’s mark under Section 2(d) because of a likelihood of confusion with the registered mark(s). 15 U.S.C. §1052(d); *see* 37 C.F.R. §2.83; TMEP §1208.02(c). Action on this application is suspended until the prior-filed application(s) below either registers or abandons. 37 C.F.R. §2.83(c). Information relevant to the application(s) below was sent previously.

- U.S. Application Serial No(s). 88709645, 88655231, 88478295, 88478292, 88478290, 88478288, 88478286, 88655229, 88655227 and 88671239

Refusal(s) and/or requirement(s) maintained and continued. The following refusal(s) and/or requirement(s) is/are maintained and continued:

- Section 2(d) Likelihood of Confusion Refusal
- Specimen Refused – Advertising Material Not Acceptable for Goods [See below]
- Identification of Goods is Indefinite – Applies to Specific Goods ONLY [See below]

Specimen Refused – Advertising Material Not Acceptable for Goods

Advertising for goods is not an acceptable specimen. Registration is refused because the substitute specimen, submitted in applicant’s response, dated 11/14/20, appears to be mere advertising and does not properly show the applied-for mark as actually used in commerce in International Class 09. 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, 904.04(b), 904.07(a). 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 identified in the application or amendment to allege 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).

Specifically, applicant submitted a business card that features the mark NEST and references the ability to find it in the app store. However, pursuant to TMEP §904.04(b), business cards are generally considered advertising, and therefore, are not acceptable as specimens of use on goods.

Advertising is not acceptable as a specimen for goods. *See In re Yarnell Ice Cream, LLC*, 2019 USPQ2d 265039, at *15-16 (TTAB 2019) (quoting *In re Siny Corp.*, 920 F.3d 1331, 1336, 2019 USPQ2d 127099, at *2-3 (Fed. Cir. 2019)); *see also Avakoff v. S. Pac. Co.*, 765 F.2d 1097, 1098, 226 USPQ 435, 436 (Fed. Cir. 1985); TMEP §904.04(b), (c). Advertising includes online advertising banners appearing on search-engine results pages or in social media, advertising circulars and brochures, price lists, and business cards. *See* TMEP §904.04(b).

Examples of specimens. 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 must include the webpage's URL and the date it was accessed or printed on the specimen itself, within the TEAS form that submits the specimen, or in a verified statement under 37 C.F.R. §2.20 or 28 U.S.C. §1746 in a later-filed response. *See* 37 C.F.R. §2.56(c); TMEP §§904.03(i), 1301.04(a).

Response options. Applicant may respond to this refusal by satisfying one of the following for each applicable international class:

- (1) Submit a different specimen (a verified [“substitute” specimen](#)) that (a) was in actual use in commerce at least as early as the filing date of the application or prior to the filing of an amendment to allege use and (b) shows the mark in actual use in commerce for the goods identified in the application or amendment to allege 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 at least as early as the filing date of the application or prior to the filing of the amendment to allege use.” The substitute specimen cannot be accepted without this statement.
- (2) Amend the filing basis to [intent to use under Section 1\(b\)](#) (which includes withdrawing an amendment to allege use, if one was filed), as no specimen is required before publication. This option will later necessitate additional fee(s) and filing requirements, including a specimen.

For an overview of the response options referenced above and instructions on how to satisfy these options using the online Trademark Electronic Application System (TEAS) form, see the [Specimen webpage](#).

Identification of Goods is Indefinite – Applies to Specific Goods ONLY

The wording “Non-downloadable, computer application software for mobile phones, namely, software for assisting with the collection of data, organization and creating an inventory of items” in the identification of goods is indefinite and must be clarified because it lacks the requisite specificity as to the format of computer application software properly classified in International Class 09. *See* 37 C.F.R. §2.32(a)(6); TMEP §1402.01. More specifically, the examining attorney points out that “Downloadable” and “recorded” goods are in International Class 09, whereas providing their temporary, online non-downloadable use is a service in International Class 42. *See* TMEP §1402.03(d). Applicant may substitute the following wording, if accurate: “[Specify format in Class 09, e.g., Downloadable, Recorded] computer application software for mobile phones, namely, software for assisting with the collection of data, organization and creating an inventory of items.”

Note: The examining attorney sets forth below, the suggested changes to the identification of goods in bold and italicized font.

Applicant may substitute the following wording, if accurate:

“**{Specify format in Class 09, e.g., Downloadable, Recorded}** computer application software for mobile phones, namely, software for assisting with the collection of data, organization and creating an inventory of items; downloadable, computer software that provides web-based access to applications and services through a web operating system or portal interface; mobile user interfaces, namely, interactive computer kiosk systems comprised primarily of computers, computer hardware, computer peripherals, and computer touchscreens, used to, catalog, collaborate, organize, manage, and inventory belongings, goods, services, experiences, documents, and notes”; in International Class 09.

Scope of Goods (Advisory)

Applicant's goods may be clarified or limited, but may not be expanded beyond those originally itemized in the application or as acceptably amended. *See* 37 C.F.R. §2.71(a); TMEP §1402.06. Applicant may clarify or limit the identification by inserting qualifying language or deleting items to result in a more specific identification; however, applicant may not substitute different goods or add goods not found or encompassed by those in the original application or as acceptably amended. *See* TMEP §1402.06(a)-(b). The scope of the goods sets the outer limit for any changes to the identification and is generally determined by the ordinary meaning of the wording in the identification. TMEP §§1402.06(b), 1402.07(a)-(b). Any acceptable changes to the goods will further limit scope, and once goods are deleted, they are not permitted to be reinserted. TMEP §1402.07(e).

For assistance with identifying and classifying goods and services in trademark applications, please see the USPTO's online searchable [U.S. Acceptable Identification of Goods and Services Manual](#). *See* TMEP §1402.04.

See id. These refusal(s) and/or requirement(s) will be made final once this application is removed from suspension, unless a new issue arises. *See* TMEP §716.01.

Suspension process. The USPTO will periodically check this application to determine if it should remain suspended. *See* TMEP §716.04. As needed, the trademark examining attorney will issue a letter to applicant to inquire about the status of the reason for the suspension. TMEP §716.05.

No response required. Applicant may [file a response](#), but is not required to do so.

/Brian P. Callaghan/
Trademark Examining Attorney
Law Office 108
Phone: (571) 272-4906
Email: brian.callaghan@uspto.gov

To: NEST EGG LABS INC. (Relani@BelousLaw.com)
Subject: U.S. Trademark Application Serial No. 88799352 - NEST - WP-Nest
Sent: December 11, 2020 05:54:32 PM
Sent As: ecom108@uspto.gov
Attachments:

United States Patent and Trademark Office (USPTO)

USPTO OFFICIAL NOTICE_

Office Action (Official Letter) has issued
on **December 11, 2020** for

U.S. Trademark Application Serial No. 88799352

Your trademark application has been reviewed by a trademark examining attorney. As part of that review, the assigned attorney has issued an official letter. Please follow the steps below.

- (1) [Read the official letter](#). No response is necessary.
- (2) **Direct questions** about the contents of the Office action to the assigned attorney below.

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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 \(TAC\)](#).

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.
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