

To: Mueller, Andreas (andreas.mueller01@gmail.com)
Subject: U.S. TRADEMARK APPLICATION NO. 87094382 - KEEP AMERICA GREAT - N/A
Sent: 11/17/2016 4:15:57 PM
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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. 87094382

MARK: KEEP AMERICA GREAT

87094382

CORRESPONDENT ADDRESS:

MUELLER, ANDREAS
1834 8TH ST NW
WASHINGTON, DC 20001

**CLICK HERE TO RESPOND TO THIS
LETTER:**

http://www.uspto.gov/trademarks/teas/response_forms.jsp

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APPLICANT: Mueller, Andreas

CORRESPONDENT'S REFERENCE/DOCKET

NO:

N/A

CORRESPONDENT E-MAIL ADDRESS:

andreas.mueller01@gmail.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: 11/17/2016

TEAS PLUS OR TEAS REDUCED FEE (TEAS RF) APPLICANTS – TO MAINTAIN LOWER FEE, ADDITIONAL

REQUIREMENTS MUST BE MET, INCLUDING SUBMITTING DOCUMENTS ONLINE: Applicants who filed their application online using the lower-fee TEAS Plus or TEAS RF application form must (1) file certain documents online using TEAS, including responses to Office actions (see TMEP §§819.02(b), 820.02(b) for a complete list of these documents); (2) maintain a valid e-mail correspondence address; and (3) agree to receive correspondence from the USPTO by e-mail throughout the prosecution of the application. See 37 C.F.R. §§2.22(b), 2.23(b); TMEP §§819, 820. TEAS Plus or TEAS RF applicants who do not meet these requirements must submit an additional processing fee of \$50 per international class of goods and/or services. 37 C.F.R. §§2.6(a)(1)(v), 2.22(c), 2.23(c); TMEP §§819.04, 820.04. However, in certain situations, TEAS Plus or TEAS RF applicants may respond to an Office action by authorizing an examiner's amendment by telephone or e-mail without incurring this additional fee.

Non-Final Action

This file has been returned to the examining attorney for correction of an error. The mark must be refused as a slogan that cannot have source-identifying significance.

Registration Refused – Slogan

Registration is refused because the applied-for mark as used on the specimen of record is merely a decorative or ornamental feature of applicant's clothing and, thus, does not function as a trademark to indicate the source of applicant's clothing and to identify and distinguish applicant's clothing from others. Trademark Act Sections 1, 2, and 45, 15 U.S.C. §§1051-1052, 1127; see *In re Lululemon Athletica Can. Inc.*, 105 USPQ2d 1684, 1689 (TTAB 2013); *In re Pro-Line Corp.*, 28 USPQ2d 1141, 1142 (TTAB 1993); TMEP §§904.07(b), 1202.03 *et seq.*

When evaluating a mark that appears to be ornamental, the size, location, dominance, and significance of the alleged mark as applied to the goods are all relevant factors in determining the commercial impression of the applied-for mark. See, e.g., *In re Lululemon Athletica Can. Inc.*, 105 USPQ2d at 1687 (quoting *In re Right-On Co.*, 87 USPQ2d 1152, 1156 (TTAB 2008)); *In re Dimitri's Inc.*, 9 USPQ2d 1666, 1667 (TTAB 1988); TMEP §1202.03(a).

With respect to clothing, consumers may recognize small designs or discrete wording as trademarks, rather than as merely ornamental features, when located, for example, on the pocket or breast area of a shirt. See TMEP §1202.03(a). Consumers may not, however, perceive larger designs or slogans as trademarks when such matter is prominently displayed across the front of a t-shirt. See *In re Pro-Line Corp.*, 28 USPQ2d at 1142 (holding BLACKER THE COLLEGE SWEETER THE KNOWLEDGE centered in large letters across most of the upper half of a shirt, to be a primarily ornamental slogan that was not likely to be perceived as a source indicator); *In re Dimitri's Inc.*, 9 USPQ2d at 1667-68 (holding SUMO used in connection with stylized depictions of sumo wrestlers and displayed in large lettering across the top-center portion of t-shirts and caps, to be an ornamental feature of the goods that did not function as a trademark); TMEP §1202.03(a), (b), (f)(i), (f)(ii).

In this case, the submitted specimen shows the applied-for mark, KEEP AMERICA GREAT, located directly on the upper-center area of the front of the shirt shown, the front portion of the hat shown, and the side of the sunglasses shown, where ornamental elements often appear. See TMEP §1202.03(a), (b). Furthermore, the mark is displayed in a relatively large size on the clothing such that it dominates the overall appearance of the goods. Lastly, the applied-for mark appears to be a slogan that is merely decorative and has little or no particular source-identifying significance.

Therefore, consumers would view the applied-for mark as a decorative or ornamental feature of the goods, rather than as a trademark to indicate the source of applicant's goods and to distinguish them from others.

In appropriate circumstances, applicant may overcome this refusal by satisfying one of the following options:

- (1) Submit a different specimen (a verified "substitute" specimen) that 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 that shows proper trademark use for the identified goods in International Class 25. Examples of acceptable specimens that show non-ornamental use on clothing include hang tags and labels used inside a garment.
- (2) Amend to the [Supplemental Register](#), which is a second trademark register for marks not yet eligible for registration on the Principal Register, but which may become capable over time of functioning as source indicators.
- (3) Claim acquired distinctiveness under Trademark Act Section 2(f) by submitting [evidence](#) that the applied-for mark has become distinctive of applicant's goods; that is, proof that applicant's extensive use and promotion of the mark allowed consumers now directly to associate the mark with applicant as the source of the goods.
- (4) Submit evidence that the applied-for mark is an [indicator of secondary source](#); that is, proof that the mark is already recognized as a source indicator for *other* goods or services that applicant sells/offers.
- (5) Amend the filing basis to [intent to use under Section 1\(b\)](#). This option will later necessitate additional fee(s) and filing

requirements.

For an overview of *all* response options referenced above and instructions on how to satisfy each option online using the Trademark Electronic Application System (TEAS) form, please go to <http://www.uspto.gov/trademarks/law/ornamental.jsp>.

General Information

For this application to proceed further, applicant must explicitly address each refusal and/or requirement raised in this Office action. If the action includes a refusal, applicant may provide arguments and/or evidence as to why the refusal should be withdrawn and the mark should register. Applicant may also have other options for responding to a refusal and should consider such options carefully. To respond to requirements and certain refusal response options, applicant should set forth in writing the required changes or statements. For more information and general tips on responding to USPTO Office actions, response options, and how to file a response online, see “[Responding to Office Actions](#)” on the USPTO’s website.

If applicant does not respond to this Office action within six months of the issue/ mailing date, or responds by expressly abandoning the application, the application process will end and the trademark will fail to register. *See* 15 U.S.C. §1062(b); 37 C.F.R. §§2.65(a), 2.68(a); TMEP §§718.01, 718.02. Additionally, the USPTO will not refund the application filing fee, which is a required processing fee. *See* 37 C.F.R. §§2.6(a)(1)(i)-(iv), 2.209(a); TMEP §405.04.

Where the application has been abandoned for failure to respond to an Office action, applicant’s only option would be to file a timely petition to revive the application, which, if granted, would allow the application to return to active status. *See* 37 C.F.R. §2.66; TMEP §1714. There is a \$100 fee for such petitions. *See* 37 C.F.R. §§2.6, 2.66(b)(1).

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §§2.62(c), 2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant’s rights. *See* TMEP §§705.02, 709.06.

Because of the legal technicalities and strict deadlines involved in the USPTO application process, applicant may wish to hire a private attorney specializing in trademark matters to represent applicant in this process and provide legal advice. Although the undersigned trademark examining attorney is permitted to help an applicant understand the contents of an Office action as well as the application process in general, no USPTO attorney or staff is permitted to give an applicant legal advice or statements about an applicant’s legal rights. TMEP §§705.02, 709.06.

For attorney referral information, applicant may consult the [American Bar Association’s Consumers’ Guide to Legal Help](#), an attorney referral service of a state or local bar association, or a local telephone directory. The USPTO may not assist an applicant in the selection of a private attorney. 37 C.F.R. §2.11.

/Doritt Carroll/
Trademark Examining Attorney, Law Office 116
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fax: 571-273-9138

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/ mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

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.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at

<http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

MY CART 0



GARY JOHNSON

JILL STEIN

MAKE AMERICA THINK AGAIN

HATS

PRODUCTS



KEEP AMERICA GREAT HAT

~~69.00~~ 69.00

\$24.99 ~~\$30.00~~

Color



Quantity

1

ADD TO CART

This unique hat Asks the reader to "Keep America Great". A Parody of Donald Trump's infamous Make America Great Again Hat, this hat is a one-size-fits-all adjustable 6007 Five-Panel Flat Bill Cap.

- 100% cotton twill
- Structured, five-panel, high-profile
- Green undervisor
- Sewn eyelets
- Snapback closure

All Hats are made to order and are embroidered in our factory in Los Angeles, CA.

Time to ship is 2-5 business days on most orders.

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*Uh oh...IE 7 can't display all the features of our site.
May we suggest an alternative browser? Because you won't want to miss out on all this goodness.*

Keep America Great T-Shirts & Shirts

Department

All Products

< Clothing

< Kids & Baby

< Baby

T-Shirts (2)

T-Shirts (2)

< Men

T-Shirts (24)

< Women

T-Shirts (7)

Fit

Standard (30)

Unisex (15)

Fitted (6)

Feature

Made in the USA (4)

All-Over Print (2)

Raglan (2)

Ringer (1)

Unisex (1)

Display: Show: 60 Sort: Popular 35 results



Keep America Great - Dump Trump T-Shirt
\$20.05



Keep Calm and Make America Great All-Over Print Shirt
\$44.15



Keep America Great T-Shirt
\$20.70



- Henley (1)
- Design Options -
 - Customizable (36)
 - Template Products (1)
- Fabric -
 - 100% Cotton (33)
 - Blends (1)
- Price -
 - \$5 to \$15 (2)
 - \$15 to \$25 (23)
 - \$25 to \$50 (10)
- Designer Store -
 - PolitClothes.com
 - Dana's Designs
 - BlockArtSimplicity
 - JomaJo
 - ElectionAndPolitics
 - Best Political Stuff
 - ElectionUSA
 - Grafitees
 - BKink-Hawaii
 - Awakening_42
 - Mash_Up
- Maker -
 - Zazzle Apparel (33)
 - Jakprints (2)
- Brand -
 - Hanes (7)
 - American Apparel (4)
 - Alternative Apparel (1)
 - Bella+Canvas (1)
- Events & Occasions -
 - [Other \(11\)](#)
- Politicians -



Keep Calm and Make America Great Again
T-Shirt
\$24.25



Keep Calm and Make America Great - .png
T-Shirt
\$20.05



Keep US Great T-Shirt
\$19.40



Dump Trump T-Shirt
\$15.95



2016 Campaign T-Shirt (No Clinton or Trump)
\$14.95



Keep US Great T-Shirt
\$20.10



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Keep US Great T-Shirt
\$16.75



Don't Drumpf & drive - Gray T-Shirt
\$22.95



Keep Calm - Dump Trump T-Shirt
\$20.05



Don't Drumpf & drive - Black T-Shirt
\$22.95



Don't Drumpf & drive v2 T-Shirt
\$15.20



Don't Drumpf & drive T-Shirt
\$15.25



Dump Trump t shirt
\$21.95



Keep America Great #NeverTrump T-Shirt
\$18.70



Dump Trump T-Shirt
\$21.95





Keep US Great T-Shirt
\$24.25



Keep Calm and Make America Great T-Shirt
\$28.35



Dump Trump 2016-A T-Shirt
\$24.25



Dump Trump 2016-A T-Shirt
\$33.00



Keep Calm and Make America Great All-Over Print Shirt
\$44.15



Dump Trump 2016-A Toddler T-shirt
\$21.10





NO Votes for Trump! T-Shirt
\$18.45



Keep Calm and Make America Great Baby
T-Shirt
\$15.80



Keep Calm and Make America Great
T-Shirt
\$28.35



Donald Trump For President 2016 Black
And White T-Shirt
\$26.35



Keep Calm and Make America Great
T-Shirt
\$36.95



Keep Calm and Make America Great
T-Shirt
\$28.35



Keep US Great Baby T-Shirt
\$14.50



Keep Calm and Make America Great
T-Shirt



Keep Calm and Make America Great
T-Shirt

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Top

\$21.90

\$32.05



Keep Calm and Make America Great
T-Shirt
\$34.50



Dump Trump 2016-A T-Shirt
\$21.10

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A c D J M V

To: Mueller, Andreas (andreas.mueller01@gmail.com)
Subject: U.S. TRADEMARK APPLICATION NO. 87094382 - KEEP AMERICA GREAT - N/A
Sent: 11/17/2016 4:16:00 PM
Sent As: ECOM116@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

**IMPORTANT NOTICE REGARDING YOUR
U.S. TRADEMARK APPLICATION**

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED
ON **11/17/2016** FOR U.S. APPLICATION SERIAL NO. 87094382

Your trademark application has been reviewed. The trademark examining attorney assigned by the USPTO to your application has written an official letter to which you must respond. Please follow these steps:

(1) **READ THE LETTER** by clicking on this [link](#) or going to <http://tsdr.uspto.gov/>, entering your U.S. application serial number, and clicking on "Documents."

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

(2) **RESPOND WITHIN 6 MONTHS** (or sooner if specified in the Office action), calculated from **11/17/2016**, using the Trademark Electronic Application System (TEAS) response form located at http://www.uspto.gov/trademarks/teas/response_forms.jsp.

Do NOT hit "Reply" to this e-mail notification, or otherwise e-mail your response because the USPTO does NOT accept e-mails as responses to Office actions.

(3) **QUESTIONS** about the contents of the Office action itself should be directed to the trademark examining attorney who reviewed your application, identified below.

/Doritt Carroll/
Trademark Examining Attorney, Law Office 116
doritt.carroll@uspto.gov
phone: 571-272-9138
fax: 571-273-9138

WARNING

Failure to file the required response by the applicable response deadline will result in the ABANDONMENT of your application. For more information regarding abandonment, see <http://www.uspto.gov/trademarks/basics/abandon.jsp>.

PRIVATE COMPANY SOLICITATIONS REGARDING YOUR APPLICATION: Private companies **not** associated with the USPTO are using information provided in trademark applications to mail or e-mail trademark-related solicitations. These companies often use names that closely resemble the USPTO and their solicitations may look like an official government document. Many solicitations require that you pay "fees."

Please carefully review all correspondence you receive regarding this application to make sure that you are responding to an official document from the USPTO rather than a private company solicitation. All official USPTO correspondence will be mailed only from the "United States Patent and Trademark Office" in Alexandria, VA; or sent by e-mail from the domain "@uspto.gov." For more information on how to handle private company solicitations, see http://www.uspto.gov/trademarks/solicitation_warnings.jsp.

