

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

U.S. Application Serial No. 79285363

Mark: AFFINEUR DE FROMAGES DEPUIS 1886

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Reference/Docket No. N/A

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NONFINAL OFFICE ACTION

International Registration No. 1530245

Notice of Provisional Full Refusal

Deadline for responding. The USPTO must receive applicant's response **within six months of the "date on which the notification was sent to WIPO (mailing date)"** located on the WIPO cover letter, or the U.S. application will be abandoned. To confirm the mailing date, go to the USPTO's Trademark Status and Document Retrieval (TSDR) database, select "US Serial, Registration, or Reference No.," enter the U.S. application serial number in the blank text box, and click on "Documents." The mailing date used to calculate the response deadline is the "Create/Mail Date" of the "1B-1st Refusal Note."

Respond to this Office action using the USPTO's Trademark Electronic Application System (TEAS). A link to the appropriate TEAS response form appears at the end of this Office action.

Discussion of provisional full refusal. This is a provisional full refusal of the request for extension of protection to the United States of the international registration, known in the United States as a U.S. application based on Trademark Act Section 66(a). *See* 15 U.S.C. §§1141f(a), 1141h(c).

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issues below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

Summary of Issues:

- Search results
- Requirement for mark description statement
- Requirement for translation statement
- Requirement for disclaimer statement
- Requirement for amended identification of goods and services
- Advisory regarding potential future refusal
- Requirement for appointment of U.S.-licensed attorney

Search Results

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

Requirement for Mark Description Statement

Applicant must submit a description of the mark. 37 C.F.R. §2.37; *see* TMEP §§808.01, 808.02. Applications for marks not in standard characters must include an accurate and concise description of the entire mark that identifies all the literal and design elements. *See* 37 C.F.R. §2.37; TMEP §§808 *et seq.* In this case, the drawing of the mark is not in standard characters.

The following description is suggested, if accurate: **The mark consists of the stylized wording "MARGOT fromages sa" and Greek cross inside a shaded banner across the lower part of a band inside concentric circles; above this appears an image of three mountain peaks, three**

evergreen trees, shadowed hills and moon within a circle; above this image inside the concentric circles appears the stylized wording “Affineur de fromages depuis 1886”; on the left and right of the mountain scene and wording appears a floral design.

Requirement for Translation Statement

To permit proper examination of the application, applicant must submit an English translation of the foreign wording in the mark. 37 C.F.R. §§2.32(a) (9), 2.61(b); see TMEP §809. The following English translation is suggested: **The English translation of “Affineur de fromages depuis 1886” and “fromages sa” in the mark is “<specify>” and “<specify>”.** TMEP §809.03.

Requirement for Disclaimer Statement

Applicant must disclaim descriptive and non-distinctive wording in the mark because it is merely informational about the goods and/or services and are commonly used in applicant’s particular industry; thus the terms do not function as a mark. See 15 U.S.C. §§1051-1053, 1127; *In re Boston Beer Co.*, 198 F.3d 1370, 1372-74, 53 USPQ2d 1056, 1058-59 (Fed. Cir. 1999); *In re Aerospace Optics, Inc.*, 78 USPQ2d 1861, 1864 (TTAB 2006); TMEP §§807.14(a), 1202.04, 1213.03(a), (b).

Determining whether a term functions as a trademark or service mark depends on how such matter would be perceived by the relevant public. *In re Eagle Crest, Inc.*, 96 USPQ2d 1227, 1229 (TTAB 2010); *In re Aerospace Optics, Inc.*, 78 USPQ2d at 1862; TMEP §1202.04. “The more commonly a [term] is used, the less likely that the public will use it to identify only one source and the less likely that it will be recognized by purchasers as a trademark [or service mark].” *In re Hulting*, 107 USPQ2d 1175, 1177 (TTAB 2013) (quoting *In re Eagle Crest, Inc.*, 96 USPQ2d at 1229); TMEP §1202.04.

Non-English wording that is merely descriptive, deceptively misdescriptive, geographically descriptive, generic, or informational in connection with the identified goods and/or services, is an unregistrable component of the mark that is subject to disclaimer. TMEP §§1213.03(a), 1213.08(d); see *Bausch & Lomb Optical Co. v. Overseas Fin. & Trading Co.*, 112 USPQ 6, 8 (Comm’r Pats. 1956). The disclaimer must refer to the actual non-English wording that appears in the mark, not the English translation of that wording. TMEP §1213.08(d).

Applicant may respond to this issue by submitting a disclaimer in the following format:

No claim is made to the exclusive right to use “Affineur de Fromages Deupis 1886” and “Fromages SA” apart from the mark as shown.

For an overview of disclaimers and instructions on how to provide one using the Trademark Electronic Application System (TEAS), see the [Disclaimer webpage](#).

Amended Identification of Goods/Services Required

Some of the wording in the identification of goods and services in International Classes 29, 35 and 39 is indefinite and too broad. This wording must be clarified because it is not clear what the goods and services are and could identify goods and services in more than one international class. See 37 C.F.R. §2.32(a)(6); TMEP §§1402.01, 1402.03, 1904.02(c), (c)(ii). For example, “milk and dairy products” may be found in International Classes 29 (“milk” and “milk curds”) and 30 (“ice milk” and “cocoa beverages with milk”).

Applicant may amend the identification to clarify or limit the goods and/or services, but not to broaden or expand the goods and/or services beyond those in the original application or as acceptably amended. See 37 C.F.R. §2.71(a); TMEP §1402.06. Generally, any deleted goods and/or services may not later be reinserted. See TMEP §1402.07(e).

Additionally, for applications filed under Trademark Act Section 66(a), the scope of the **identification for purposes of permissible amendments is limited by the international class assigned by the International Bureau of the World Intellectual Property Organization (International Bureau); and the classification of goods and/or services may not be changed from that assigned by the International Bureau.** 37 C.F.R. §2.85(d); TMEP §§1401.03(d), 1904.02(b). Further, in a multiple-class Section 66(a) application, classes may not be added or goods and/or services transferred from one existing class to another. 37 C.F.R. §2.85(d); TMEP §1401.03(d). Therefore, although the goods and/or services may be classified in several international classes, **any modification to this wording must identify goods and services in International Classes 29, 35 and 39 only, the classes specified in the application for these goods and services.** See TMEP §1904.02(c), (c)(ii).

Applicant may adopt the following wording in International Classes 29, 35 and 39, if accurate:

IC 29: Milk **PRODUCTS EXCLUDING ICE CREAM, ICE MILK AND FROZEN YOGURT** and dairy products, **NAMELY, <specify dairy goods within IC 29, e.g., CHEESE AND CHEESE-BASED SNACK FOODS>**, all the aforesaid goods are of Swiss origin.

IC 35: Advertising; commercial business management; commercial administration **OF THE LICENSING OF THE GOODS AND SERVICES OF OTHERS; PROVIDING** office functions; all the aforesaid services are of Swiss origin.

IC 39: Transport **OF GOODS**; packaging and storage of merchandise, **NAMELY, <SPECIFY THE GOODS BEING PACKAGED AND STORED>**; all the aforesaid services are of Swiss origin.

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.

Advisory Regarding Potential Future Refusal under Section 2(b)

Applicant is advised that a refusal under Trademark Act Section 2(b) will issue if the specimen submitted with the Section 71 affidavit of use shows the cross-and-square white and red color scheme of the flag of the Swiss Confederation (Switzerland). See attached excerpt from the *Columbia Gazetteer of the World* showing the Swiss flag. Trademark Act Section 2(b), 15 U.S.C. §1052(b); see TMEP §1204. Trademark Act Section 2(b) bars registration of marks that include the flag, coat of arms, or other insignia of the United States, any state or municipality, or any foreign nation. TMEP §1204.

Requirement for U.S.-Licensed Attorney

Applicant must be represented by a U.S.-licensed attorney at the USPTO to respond to or appeal the provisional refusal. An applicant whose domicile is located outside of the United States or its territories is foreign-domiciled and must be represented at the USPTO by an attorney who is an active member in good standing of the bar of the highest court of a U.S. state or territory. 37 C.F.R. §§2.11(a), 11.14; *Requirement of U.S.-Licensed Attorney for Foreign-Domiciled Trademark Applicants & Registrants*, Examination Guide 4-19, at I.A. (Rev. Sept. 2019). An individual applicant's domicile is the place a person resides and intends to be the person's principal home. 37 C.F.R. §2.2(o); Examination Guide 4-19, at I.A. A juristic entity's domicile is the principal place of business; i.e., headquarters, where a juristic entity applicant's senior executives or officers ordinarily direct and control the entity's activities. 37 C.F.R. §2.2(o); Examination Guide 4-19, at I.A. Because applicant is foreign-domiciled, applicant must appoint such a U.S.-licensed attorney qualified to practice under 37 C.F.R. §11.14 as its representative before the application may proceed to registration. 37 C.F.R. §2.11(a). See [Hiring a U.S.-licensed trademark attorney](#) for more information.

Only a U.S.-licensed attorney can take action on an application on behalf of a foreign-domiciled applicant. 37 C.F.R. §2.11(a). Accordingly, the USPTO will not communicate further with applicant about the application beyond this Office action or permit applicant to make future submissions in this application. And applicant is not authorized to make amendments to the application.

To appoint or designate a U.S.-licensed attorney. To appoint an attorney, applicant should submit a completed Trademark Electronic Application System (TEAS) [Change Address or Representation](#) form. The newly-appointed attorney must submit a TEAS [Response to Examining Attorney Office Action](#) form indicating that an appointment of attorney has been made and address all other refusals or requirements in this action, if any. Alternatively, if applicant retains an attorney before filing the response, the attorney can respond to this Office action by using the appropriate TEAS response form and provide his or her attorney information in the form and sign it as applicant's attorney. See 37 C.F.R. §2.17(b)(1)(ii).

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

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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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Switzerland

Switzerland

Geography

Population

Economy

History: 1648 to 1910

History: 1919 to Present

Government

Country Flag



Switzerland

TYPE OF PLACEcountry, republic

LOCATIONSwitzerland

POPULATION7,554,661

Switzerland or Swiss Confederation, French *Confédération Suisse*, Italian *Confederazione Svizzera*, German *Schweizerische Eidgenossenschaft*, Romansch *Confederaziun Svizra*, republic (= 15,940 sq mi/41,284 sq km; 2004 estimated population 7,450,867; 2007 estimated population 7,554,661), central Europe; • *Bern*; other large cities are *Zürich*, *Basel*, and *Geneva*.

Geography

Switzerland borders on *France* in the W and SW, with the *Jura* mountains and *Lake Geneva* (traversed by the *Rhône River*) forming the frontier; in the N it is separated from *Germany* by the *Rhine River* and *Lake Constance*; to E neighbors are *Austria* and *Nachtrestein*; in the SE and S it is divided from *Italy* by the Alpine crests, *Lake Lugano*, and *Lago Maggiore*. In the NW, the *Jura* mountains occupy about 15% of the country; the *Alps*, in the S, occupy about 60%; in between is a long, relatively low plateau, the *Mittelland*, crossed by the *Aare River* and containing lakes *Neuchâtel* and *Zürich*. Alpine communications are assured by numerous passes and by railroad tunnels, notably the *Jura*berg, *St. Gotthard*, and *Simplon*.

Population

German, French, Italian, and Romansh (a Rhaeto-Roman dialect spoken in parts of the *Grisons*) are the national languages of Switzerland. German dialects (*Schwyzerdütsch*) are spoken by about 63% of the inhabitants; French, spoken by about 18%, predominates in the W; Italian, spoken by about 10%, is the language of *Ticino*, in the S, and of half the foreign workers in Switzerland. The few Romansh-speakers (less than 1%) are in the canton of *Grisons*, in the SE. Approximately 40% of the population is Protestant and 46% Roman Catholic. Unbreak the number streak of most families

Protestant and 46% Roman Catholic. Although the country absorbed many foreign workers after World War II, especially from Italy, slight rises in the unemployment rate have resulted in popular initiatives to restrict immigration. There are universities at Lausanne, Geneva, Bern, Basel, Zurich, St. Gallen, Neuchâtel, and Fribourg.

Economy

Switzerland has a highly successful market economy based on international trade and banking. Its standards of living, worker productivity, quality of education, and health care are higher than those of any other European country. Inflation is low, and unemployment is negligible. The economy is dependent on foreign guest workers, who represent approximately 10% of the labor force. Agriculture employs less than 5% of the population; only 10% of the land is arable, and the primary agricultural products are cattle, pigs, dairy goods, sugar beets, potatoes, and grains. Mineral resources are scarce, and most raw materials and many food products must be imported. Tourism, which adds significantly to the economy, would help to balance Switzerland's trade deficit, except that Swiss tourists spend nearly as much abroad as foreign tourists do in Switzerland. Electricity is generated chiefly from hydroelectric and nuclear power sources. Switzerland has a worldwide reputation for the high quality of its export manufacture, which include motors, generators, turbines, and diverse high-tech products, such as pharmaceuticals, watches, and precision instruments; and processed foods, such as chocolate. Switzerland's most important trading partners are Germany, France, Italy, and the U.S. Due to its central location in Western Europe, its control of the major routes from N. Europe to the Mediterranean, and to the stability of its politics, economy, and currency, Switzerland has become one of the world's leading financial centers. The banking, insurance, shipping, and freighting industries accommodate the enormous amount of international trade going through Switzerland. However, concern about pollution created by the huge amount of truck traffic has led the Swiss to seriously consider a ban on through-truck traffic.

In 58 B.C.E. the Helvetii who inhabited the country were conquered by the Romans (see Avenches commune, Augst, Chur). In the 5th century C.E., the country was invaded from the E by German-speaking Alemanni and from the W by Burgundians who had become romanized to the extent of speaking proto-French. The boundary between the languages of the two groups has scarcely moved since then. Hapsburg encroachments on the privileges of the three mountainous localities of Uri, Schwarz, and Unterwalden resulted in the conclusion (1291) of a defensive league among them. The league repeatedly defeated the Hapsburgs at Morgarten (1315) and joined by Lucerne, Zürich, Zug, Glarus, and Bern) at Sempach (1386) and Näfels (1388). In the 15th century the Swiss Confederation rose to the first rank as a military power. The conquest of Baselau, Thurgau, and the valleys of Ticino, which were ruled as subject territories until 1798, was followed by Swiss victories over Charles the Bold of Burgundy (1476-1477) and over Emperor Maximilian I, who in 1499 granted Switzerland virtual independence.

By 1543, the admission to the Confederation of Fribourg, Solothurn, Basel, Schaffhausen, and Appenzel had raised the number of cantons to thirteen. The conquest by Bern of Vaud from Savoy (1536), and close alliances with the Grisons, Geneva, and St. Gallen, further enlarged the Confederation, but Switzerland's importance as a European power was broken when the French defeated the Swiss at Marignano in 1515. A

"perpetual alliance" with France (1516) and neutrality became the basis of Swiss policy. Swiss mercenaries, however, continued to serve abroad for three centuries. The cantons, loosely bound by a federal diet and by individual treaties and often torn by internal feuds, were seriously split by the Reformation, preached by Zwingli at Zürich and by Calvin at Geneva. The Catholics, led by the *four Forest Cantons*, defeated the Protestants in battle; the Treaty of *Sappe*, (1531) preserved Catholicism in Lucerne, Uri, Schwyz, Unterwalden, Zug, Fribourg, and Solothurn. National unity almost disappeared for more than two centuries. Formal independence was recognized by the Peace of *Westphalia* in 1648.

History: 1648 to 1959

Invading French armies established the *Helvetic Republic* (1798–1803). Napoleon's Act of Mediation (1803) partially restored the old, mostly Germanic, confederation. At the Congress of Vienna, the Pact of Restoration (1815) substantially reestablished the old regime. However, it added nine new cantons, including most of the romance language areas. By the Treaty of Paris (1815), Swiss neutrality was guaranteed for all time. Economic setbacks led to the rise of the Radical party, which favored greater centralization. Opposition to centralization centered in the Catholic rural cantons, which in 1845 formed a defensive alliance, the Sonderbund. After a brief and almost bloodless civil war (1847) the victorious Radicals transformed the confederation into one federal state under a new constitution adopted in 1848 (and recast in 1874). National unity grew, and progressive legislation (such as railroad nationalization and social insurance) was enacted. Armed neutrality was maintained throughout World Wars I and II. Switzerland was a member of the League of Nations.

History: 1959 to Present

In 1959, Switzerland became a member of the European Free Trade Association (EFTA), and in 1972 it signed an industrial free-trade agreement with the European Common Market. In the 1950s, French-speaking inhabitants of the N Jura region of Bern canton petitioned for independence from Bern canton. After a national referendum in 1974, the *Jura* became the twenty-third canton of the Swiss Confederation. In 1992, the country applied for membership in the European Union (EU), but as the Swiss public has rejected EU membership in two referendums (1992 and 2001), the emphasis has switched to bilateral trade resolutions between Switzerland and the EU. In the mid-1990s, Switzerland's international reputation was tarnished because of revelations of Swiss banks' extensive cooperation with the Nazis during World War II, their aid in converting Jewish-owned wealth into "Nazi Gold," and their attempts to conceal these activities in the years since the war. A majority of voters and cantons approved joining the United Nations (UN) in 2002. The 1999 and 2003 national elections saw the nationalist, conservative Swiss People's Party win an increasing share of the vote, making it the most significant political party.

Government

Switzerland is a confederation governed under the constitution of 1848 as revised in

Switzerland is a confederation governed under the constitution of 1874 as revised in 1998 (effective 2000). The president, who is both head of state and head of government, is elected annually by the legislature. The cabinet, or Federal Council, is the main executive body; it is composed of seven members elected for four years by the legislature. The bicameral legislature, or Federal Assembly, consists of the forty-six seat Council of States, with two members from each canton and one from each half-canton, and the 200-seat National Council, whose members are popularly elected. All legislators serve four-year terms. Switzerland frequently employs the referendum as well as the popular initiative to achieve political change. Switzerland's cantons and half-cantons remain sovereign in many respects; cantonal constitutions differ widely. In Unterwalden, Glarus, and Appenzell, the entire electorate legislates directly in yearly outdoor meetings called *Landsgermeinden*; elsewhere, a unicameral legislative council and an elected executive council are common. President Pascal Couchepin has been the head of state and government since January 2008.

Switzerland consists of twenty-six federated states, made up of twenty cantons and six half-cantons. They are listed here in the conventional Swiss order in which Zürich, Bern, and Lucerne come first, followed by the other cantons in the order of their accession to the Confederation (date shown in parentheses). Doubled or tripled names are in the official languages of the respective cantons. The cantons and half-cantons are Zürich (1551), Bern/Berne (1553), Lucerne (1532), Uri (1291), Schwyz (1291), Obwalden (1291), Nidwalden (1291), Glarus (1252), Zug (1352), Fribourg/Freiburg (1481), Solothurn (1481), Basel-Stadt (1501), Basel-Land (1501), Schaffhausen (1501), Appenzell Ausser Rhoden (1513), Appenzell Inner Rhoden (1513), St. Gallen (1803), Graubünden/Grigioni/Grischun (1803; see Grisons), Aargau (1803), Thurgau (1803), Ticino (1803), Vaud (1803), Valais/Vallée (1815), Neuchâtel (1815), Geneva (1815), and Jura (1978). Of the half-cantons, Obwalden and Nidwalden form Unterwalden, Basel-Stadt and Basel-Land form Basel, and Ausser-Rhoden and Inner-Rhoden form Appenzell.

Citations

MLA
"Switzerland." *Columbia Gazetteer of the World Online*. 2020. Columbia University Press. 15 Jun. 2020. <<http://www.columbiagazetteer.org/main/ViewPlace/139471>>

Chicago Manual of Style
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