

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)  
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

APPLICATION SERIAL NO. 79104911

MARK:

**\*79104911\***

CORRESPONDENT ADDRESS:

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[http://www.uspto.gov/trademarks/teas/response\\_forms.jsp](http://www.uspto.gov/trademarks/teas/response_forms.jsp)

APPLICANT: VODAX, a.s.

CORRESPONDENT'S  
REFERENCE/DOCKET NO:

N/A

CORRESPONDENT E-MAIL ADDRESS:

**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:**

**INTERNATIONAL REGISTRATION NO. 1096443**

This is a **PROVISIONAL FULL REFUSAL** of the trademark and/or service mark in the above-referenced U.S. application. *See* 15 U.S.C. §1141h(c).

**WHO IS PERMITTED TO RESPOND TO THIS PROVISIONAL FULL REFUSAL:**

Applicant may respond directly to this provisional refusal Office action if applicant is not represented by an authorized attorney. *See* 37 C.F.R. §2.193(e)(2)(ii). Otherwise, applicant's authorized attorney must respond on applicant's behalf. *See* 37 C.F.R. §2.193(e)(2)(i). However, **the only attorneys who are authorized to sign responses and practice before the USPTO** in trademark matters are as follows:

- (1) **Attorneys in good standing with a bar of the highest court of any U.S. state**, the District of Columbia, Puerto Rico, and other federal territories and possessions of the United States; and
- (2) **Canadian agents/attorneys** who represent applicants located in Canada and (a) are registered with the USPTO and in good standing as patent agents or (b) have been granted reciprocal recognition by the USPTO.

*See* 37 C.F.R. §§2.17(e), 2.62(b), 11.1, 11.5(b)(2), 11.14(a), (c); TMEP §§602, 712.03.

Foreign attorneys, other than authorized Canadian attorneys, are not permitted to represent applicants before the USPTO. *See* 37 C.F.R. §§2.17(e), 11.14(c), (e); TMEP §602.03-.03(b). That is, foreign

attorneys may not file written communications, authorize an amendment to an application, or submit legal arguments in response to a requirement or refusal, among other things. *See* 37 C.F.R. §11.5(b)(2); TMEP §§602.03(c), 608.01. If applicant is represented by such a foreign attorney, applicant must respond directly to this provisional refusal Office action. *See* 37 C.F.R. §2.193(e)(2)(ii).

## **DESIGNATION OF DOMESTIC REPRESENTATIVE:**

The USPTO encourages applicants who do not reside in the U.S. to designate a domestic representative upon whom notices or process may be served. 15 U.S.C. §§1051(e), 1141h(d); 37 C.F.R. §2.24(a)(1)-(2); *see* TMEP §610. Such designations may be filed online at <http://www.uspto.gov/teas/index.html>.

## **THE APPLICATION HAS BEEN PROVISIONALLY REFUSED AS FOLLOWS:**

The referenced application has been reviewed by the assigned trademark examining attorney. The 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.

### **No Conflicting Marks Noted**

The trademark examining attorney has searched the Office's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2 (d). TMEP §704.02; *see* 15 U.S.C. §1052(d). However, the applicant must respond to the following informalities within the prescribed six-month response period in order to avoid abandonment.

### **Identification of Goods**

The identification of goods is unacceptable as indefinite because the true nature of a portion of the goods is unclear. The applicant should adopt the following changes to the identification, if accurate, TMEP §1402.01:

**NOTE:** An applicant may amend an identification of goods and/or services only to clarify or limit the goods and/or services; adding to or broadening the scope of the goods and/or services is not permitted. 37 C.F.R. §2.71(a); *see* TMEP §§1402.06 *et seq.* In addition, in an application filed under Trademark Act Section 66(a), an applicant ***may not change the classification of goods and/or services*** from that assigned by the International Bureau in the corresponding international registration. 37 C.F.R. §2.85(d); TMEP §§1401.03(d), 1904.02(b). Further, in a multiple-class Section 66(a) application, an applicant may not transfer goods and/or services from one existing international class to another. 37 C.F.R. §2.85(d); *see* TMEP §§1402.07(a), 1904.02(c).

***International Class 5:*** The wording “spa waters” is indefinite and the applicant must list each item that applies individually by using its common commercial name (e.g., spa water, namely, mineral, vitamin or nutritionally enhanced water,” in International Class 5.; or “spa waters, namely, sea water for medicinal and therapeutic bathing,” in International Class 5.). As noted above, the goods must be properly classified in International Class 5.

***International Class 32:*** The applicant should adopt the following identification with changes, if accurate:

“Mineral water; spring water; *still drinking* water for babies; packed drinking water; *drinking* water for athletes; isotonic *sports drinks containing electrolytes* for athletes; non-alcoholic fruit juice beverages; energy *drinks*,” in International Class 32.

For further assistance with identifying and classifying goods and/or services in trademark applications, please see the online searchable *Manual of Acceptable Identifications of Goods and Services* at <http://tess2.uspto.gov/netahtml/tidm.html>. See TMEP §1402.04.

### **Color Claim & Mark Description Omitted**

The applicant has submitted a color drawing and designated that the mark appears in color, but has not specified the colors claimed as a feature of the mark or provided a mark description that identifies the literal and design elements and specifies where all the colors appear in those elements. Applications for marks depicted in color must include a complete list of all the colors claimed as a feature of the mark and a mark description of the literal and design elements that specifies where all the colors appear in those elements. 37 C.F.R. §§2.37, 2.52(b)(1); see TMEP §§807.07(a) *et seq.*

If black, white and/or gray are not being claimed as a color feature of the mark, the applicant must state that the colors black, white and/or gray represent background, outlining, shading and/or transparent areas and are not part of the mark. TMEP §807.07(d). Generic color names must be used in the color claim and mark description, e.g., magenta, yellow, turquoise. TMEP §807.07(a)(i)-(a)(ii).

Therefore, applicant must provide a color claim and a mark description specifying where all the colors appear in the mark. The following color claim and mark description are suggested, if accurate:

#### ***1) If the color white is being claimed as a color:***

**COLOR CLAIM:** The colors blue and white are claimed as a feature of the mark.”; and

**MARK DESCRIPTION:** The mark consists of the design of a blue silhouette of a women with wings comprised of seven water drops for each wing. The bottom four water drops appear in solid blue and the upper three water drops appear in the colors blue and white.

***OR***

#### ***2) If the color white appearing in the mark simply represents transparent areas:***

**COLOR CLAIM:** The color blue is claimed as a feature of the mark.”; and

**MARK DESCRIPTION:** The mark consists of the design of a blue silhouette of a women with wings comprised of seven blue water drops for each wing. The color white appearing in the

mark represents transparent areas and is not being claimed as a feature of the mark.

### **Entity & Citizenship**

The applicant must specify its form of business or type of legal entity and its national citizenship or foreign country of organization or incorporation. *See* 37 C.F.R. §§2.32(a)(3)(i)-(ii), 7.25(a)-(b); TMEP §§803.03, 803.04, 1904.02(a). This information is required in all U.S. trademark applications, including those filed under Trademark Act Section 66(a) (also known as “requests for extension of protection of an international registration to the U.S.”). *See* 37 C.F.R. §§2.32(a)(3)(i)-(ii), 7.25(a)-(b); TMEP §§803.03, 803.04, 1904.02(a).

Acceptable entity types include an individual, a partnership, a corporation, a joint venture, or the foreign equivalent thereof. *See* 37 C.F.R. §2.32(a)(3)(i)-(ii); TMEP §§803.03 *et seq.*

If applicant’s entity type is an individual, applicant must indicate his or her national citizenship for the record. 37 C.F.R. §2.32(a)(3)(i); TMEP §803.04. If applicant’s entity type is a corporation, association, partnership, joint venture, or the foreign equivalent, applicant must set forth the foreign country under whose laws applicant is organized or incorporated. 37 C.F.R. §2.32(a)(3)(ii); TMEP §§803.03(b)-(c), 803.04. For an association, applicant must also specify whether the association is incorporated or unincorporated. TMEP §803.03(c).

If applicant is organized under the laws of a foreign province or geographical region, applicant should specify both the foreign province or geographical region and the foreign country in which the province or region is located. *See* TMEP §803.04. To provide this information online via the Trademark Electronic Application System (TEAS) response form, applicant must (1) locate the “Entity Type” heading and select “Other;” (2) locate the “Specify Entity Type” heading and select “Other” under the Foreign Entity option, and enter in the free-text field below both applicant’s entity type and the foreign province or geographical region of its organization (e.g., partnership of Victoria); and (3) locate the “State or Country Where Legally Organized” heading and select the appropriate foreign country (e.g., Australia) under the Non-U.S. Entity option. *See id.*

If the applicant has any questions or needs assistance with the present application, please telephone the assigned examining attorney.

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**TO RESPOND TO THIS LETTER:** Go to [http://www.uspto.gov/trademarks/teas/response\\_forms.jsp](http://www.uspto.gov/trademarks/teas/response_forms.jsp).

Please wait 48-72 hours from the issue/ mailing date before using TEAS, to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail [TEAS@uspto.gov](mailto: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 Trademark Applications and Registrations Retrieval (TARR) at <http://tarr.uspto.gov/>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, 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/teas/eTEASpageE.htm>.