

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

APPLICATION SERIAL NO. 79116188

MARK: FX ENGINES

79116188

CORRESPONDENT ADDRESS:

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

APPLICANT: XRAY, s.r.o.

CORRESPONDENT'S REFERENCE/DOCKET NO:

N/A

CORRESPONDENT E-MAIL ADDRESS:

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

INTERNATIONAL REGISTRATION NO. 1124755

STRICT DEADLINE TO RESPOND TO THIS NOTIFICATION: TO AVOID ABANDONMENT OF THE REQUEST FOR EXTENSION OF PROTECTION OF THE INTERNATIONAL REGISTRATION ABOVE, THE USPTO MUST RECEIVE A COMPLETE RESPONSE TO THIS REFUSAL WITHIN 6 MONTHS OF THE "DATE ON WHICH THE NOTIFICATION WAS SENT TO WIPO (MAILING DATE)" LOCATED ON THE WIPO COVER LETTER ACCOMPANYING THIS NOTIFICATION.

The "Mailing Date" appearing on the WIPO cover letter may also be found through the USPTO's Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please enter the U.S. Application Serial Number for this application and select "Documents." The "Mailing Date" is the "Create/Mail Date" of the "IB-1st Refusal Note."

This is a **PROVISIONAL FULL REFUSAL** of the request for extension of protection of the 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.
- (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 United States 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/trademarks/teas/index.jsp>.

THE APPLICATION HAS BEEN PROVISIONALLY REFUSED AS SPECIFIED BELOW.

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.

SEARCH RESULTS

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).

LEGAL ENTITY AND PLACE OF INCORPORATION OMITTED

The application does not include applicant's "Legal Nature" and "Legal Nature: Place Incorporated." Applicant must specify its entity type ("Legal Nature") and citizenship ("Place Incorporated"). 37 C.F.R. §2.32(a)(3)(ii)-(iii); TMEP §§803.01, 803.03 and 803.04.

Acceptable entity types include an individual, a partnership, a corporation or a joint venture. 37 C.F.R. §2.32(a)(3); 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). If applicant's entity type is a partnership or joint venture, applicant must list the names and the national citizenship or the country of organization or incorporation of all the general partners or joint venturers, as well as specify the country under whose laws the partnership or joint venture is organized. 37 C.F.R. §§2.32(a)(3)(ii) and (iii). If applicant's entity type is a corporation or association, applicant must set forth the country under whose laws applicant is organized. 37 C.F.R. §2.32(a)(3)(ii).

SIGNIFICANCE INQUIRY – RESPONSE REQUIRED

Applicant must explain whether "FX" has any meaning or significance in the industry in which the goods are manufactured/provided, or if such wording is a "term of art" within applicant's industry. Applicant must also explain whether this wording identifies a geographic place. *See* 37 C.F.R. §2.61(b); TMEP §814.

Failure to respond to a request for information is an additional ground for refusing registration. *See In re Cheezwhse.com, Inc.*, 85 USPQ2d 1917, 1919 (TTAB 2008); *In re DTI P'ship LLP*, 67 USPQ2d 1699, 1701 (TTAB 2003); TMEP §814.

AMENDMENT TO THE IDENTIFICATION OF GOODS REQUIRED

The identification of goods is indefinite and must be clarified. *See* TMEP §1402.01. Applicant must specify the common commercial or generic name for the goods. If there is no common commercial or generic name, applicant must describe the product and intended consumer as well as its main purpose and intended uses.

Additionally, in the identification of goods, applicant must use the common commercial or generic names for the goods, be as complete and specific as possible, and avoid the use of indefinite words and phrases. If applicant uses indefinite words such as "accessories," "apparatus," "components," "devices," "equipment," "materials," "parts," "systems" or "products," such words must be followed by "namely," followed by a list of the specific goods identified by their common commercial or generic names. *See* TMEP §§1402.01, 1402.03(a).

Finally, the wording “(toys included in class 28)” in the identification of goods is indefinite and must be clarified because it is too broad and includes goods in other international classes. TMEP §§1402.01 and 1402.03. However, any modification to this wording must identify goods in International Class 007, the classification specified in the application for these goods. In this case, the examining attorney is unable to suggest wording that is both sufficiently definite and properly classified. Therefore, applicant is advised to 1) substitute its own definite wording in the proper class or 2) delete this language from the identification. **If applicant requires assistance with identifying acceptable goods and/or services please refer to the online searchable Manual of Acceptable Identifications of Goods and Services at <<http://tess2.uspto.gov/netahtml/tidm.html>>.**

Recommended changes have been highlighted in **bold** and suggestions for amending applicant’s identification of goods are in brackets.

PLEASE NOTE: If applicant adopts the recommended identification of goods, applicant must remove any brackets from the identification of goods and incorporate the bracketed information into the amended description. The identification of goods and/or services contains parentheses. Generally, parentheses and brackets should *not* be used in identifications. Parenthetical information is permitted in identifications only if it serves to explain or translate the matter immediately preceding the parenthetical phrase in such a way that it does not affect the clarity of the identification, e.g., “obi (Japanese sash).” TMEP §1402.12.

Applicant may adopt the following identification of goods, if accurate:

International Class 007: Motors and engines, **except for land vehicles**; motor and engine components, **namely, _____ [applicant to specify the generic or common commercial name for the motor and engine components, e.g., cam sprockets and chains, etc.]** and motor and engine accessories, **namely, _____ [applicant to specify the generic or common commercial name for the motor and engine accessories e.g., piston rings, distributor caps, etc.]** for small-scale remote-controlled vehicle; **model airplane engine timing components in the nature of cam sprockets and chains**; motors and engines, **except for land vehicles** motor and engine components **namely, _____ [applicant to specify the generic or common commercial name for the motor and engine components, e.g., cam sprockets and chains, etc.]** and motor and engine accessories, **namely, _____ [applicant to specify the generic or common commercial name for the motor and engine accessories e.g., piston rings, distributor caps, etc.]** as parts of small-scale remote-controlled vehicle and airplane models.

TMEP §1402.01.

An applicant may amend an identification of goods only to clarify or limit the goods; adding to or broadening the scope of the goods is not permitted. 37 C.F.R. §2.71(a); *see* TMEP §§1402.06 *et seq.*, 1402.07 *et seq.*

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

ADVISORY – 66(a) APPLICATIONS – CLASSIFICATION FOR GOODS/SERVICES CANNOT BE CHANGED

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).

DISCLAIMER REQUIRED

Applicant must disclaim “**ENGINES**” apart from the mark as shown because it is merely descriptive for the goods that applicant will provide. Trademark Act Section 6, 15 U.S.C. §1056(a); TMEP §§1213 and 1213.03(a).

Specifically, **engines** are defined as “machines with moving parts that uses a fuel to produce movement.” *Please see the attached dictionary definitions.* Applicant provides a variety of motors and engines. As such, the term

“**ENGINES**” is merely descriptive for the applicant’s goods.

The following is the accepted standard format for a disclaimer:

No claim is made to the exclusive right to use “**ENGINES**” apart from the mark as shown.

A “disclaimer” is a statement that applicant does not claim exclusive rights to an unregistrable component of a mark; it does not affect the appearance of the mark. TMEP §1213. An unregistrable component of a mark includes wording and designs that merely descriptive or generic of the goods, and is wording or an illustration that others would need to use to describe or show their goods and services in the marketplace. 15 U.S.C. §1052(e); *see* TMEP §§1209.03(f), 1213.03 *et seq.*

RESPONSE GUIDELINES

For this application to proceed toward registration, 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.

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, the trademark will fail to register, and the application fee will not be refunded. *See* 15 U.S.C. §1062(b); 37 C.F.R. §§2.65(a), 2.68(a), 2.209(a); TMEP §§405.04, 718.01, 718.02. 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 live 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).

To expedite prosecution of the application, applicant is encouraged to file its response to this Office action online via the Trademark Electronic Application System (TEAS), which is available at <http://www.uspto.gov/trademarks/teas/index.jsp>. If applicant has technical questions about the TEAS response to Office action form, applicant can review the electronic filing tips available online at http://www.uspto.gov/trademarks/teas/e_filing_tips.jsp and email technical questions to TEAS@uspto.gov.

If applicant has questions about its application or needs assistance in responding to this Office action, please telephone the assigned trademark examining attorney directly at the number below.

/Charisma Hampton/
Charisma Hampton
Trademark Examining Attorney
Law Office 112
571-270-1522
charisma.hampton@uspto.gov

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 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 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/>.


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1 a machine with moving parts that uses a fuel to produce movement, for example in a road vehicle or airplane
a jet/gasoline/diesel/steam engine
 Thesaurus entry for this meaning of engine

2 a vehicle that pulls a train
 Thesaurus entry for this meaning of engine

3 COMPUTING a computer program that performs an essential or special action for other programs
 Thesaurus entry for this meaning of engine

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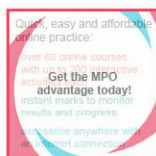
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pheromone party

a social event in which people try to find a partner by smelling pieces of clothing

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Word of the Day

cowl

a part of a piece of clothing that covers the head and shoulders, worn especially by monks

[Word of the Day](#)

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