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

**APPLICATION SERIAL NO.** 85033835

**MARK:** LADY GAGA LG

**\*85033835\***

**CORRESPONDENT ADDRESS:**

Michael Abrahamson  
EXCITE INTERNATIONAL LLC  
P.O. BOX 3443  
Munster IN 46321-3443

**CLICK HERE TO RESPOND TO THIS LETTER:**  
<http://www.uspto.gov/teas/eTEASpageD.htm>

**APPLICANT:** EXCITE INTERNATIONAL  
LLC

**CORRESPONDENT'S REFERENCE/DOCKET  
NO:**

N/A

**CORRESPONDENT E-MAIL ADDRESS:**

mikeabraha@aol.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: 4/1/2011**

This letter responds to the applicant's correspondence dated March 2, 2011.

The applicant (1) argued against the refusal to register the mark under Section 2(d) with regard to Reg. Nos. 3695038 and 3695129; (2) argued against the potential citation under Section 2(d) with regard to prior-filed Application Serial Nos. 77925278 and 85032486; (3) added a description of the mark; (4) added a disclaimer statement; and, (5) added a statement that the name in the mark does not identify a particular living individual. No. 3 is accepted and made part of the record.

The (1) refusal to register the mark under Section 2(d) with regard to Reg. Nos. 3695038 and 3695129; (2) the potential citation under Section 2(d) with regard to prior-filed Application Serial Nos. 77925278 and 85032486; (3) the requirement for a signed consent to register the name of the particular living individual identified in the mark; and (4) the requirement that the applicant pay an additional \$50 fee for failure to meet TEAS PLUS filing requirements, are maintained and continued.

**NEW ISSUE – REFUSAL – FALSE ASSOCIATION**

Registration is refused because the applied-for mark consists of or includes matter which may falsely suggest a connection with LADY GAGA. Although LADY GAGA is not connected with the goods provided by applicant under the applied-for mark, LADY GAGA is so famous that consumers would presume a connection. Trademark Act Section 2(a), 15 U.S.C. §1052(a); *see* TMEP §§1203.03, 1203.03(e). *See generally* *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imps. Co.*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983); *In re Nuclear Research Corp.*, 16 USPQ2d 1316 (TTAB 1990); *Univ. of Ala. v. BAMA-Werke Curt Baumann*, 231 USPQ 408 (TTAB 1986); *In re Cotter & Co.*, 228 USPQ 202 (TTAB 1985); *Buffett v. Chi-Chi's, Inc.*, 226 USPQ 428 (TTAB 1985).

The following is required for a showing of false connection under Trademark Act Section 2(a):

- (1) The mark sought to be registered is the same as, or a close approximation of, the name or identity previously used by another person or institution;
- (2) The mark would be recognized as such, in that it points uniquely and unmistakably to that person or institution;
- (3) The person or institution identified in the mark is not connected with the goods sold or services performed by applicant under the mark; and
- (4) The fame or reputation of the named person or institution is of such a nature that a connection with such person or institution would be presumed when applicant's mark is used on its goods and/or services.

*In re Peter S. Herrick, P.A.*, 91 USPQ2d 1505, 1507 (TTAB 2009); *In re MC MC S.r.l.*, 88 USPQ2d 1378, 1379 (TTAB 2008); TMEP §1203.03(e); *see also* *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imps. Co.*, 703 F.2d 1372, 1375-77, 217 USPQ 505, 508-10 (Fed. Cir. 1983) (providing foundational principles for the current four-part test used to determine the existence of a false connection).

As the attached articles demonstrate, Lady Gaga is a world famous recording artist, performer, and designer of jewelry. Currently, she is the biggest selling recording artist in the world, she is the most followed person on the public information site Twitter, and she is currently involved in a world tour that will gross over \$200 million dollars. In addition, she recently designed a jewelry bracelet of which \$250,000 worth were sold in just two days. (See attached articles). Thus, applying the four part test for a showing of false connection under Trademark Act Section 2(a), it is clear that the applicant, barring a showing of consent from Lady Gaga, has falsely connected itself with the artist

Specifically, the mark sought to be registered includes the name of the world famous Lady Gaga; the name Lady Gaga is well known throughout the world, and the applicant's mark unmistakably points to the well known artist; there is no evidence provided by the applicant that Lady Gaga is connected to the applicant; and, finally, the fame and reputation of Lady Gaga is of such a nature that a connection with such person or institution would be presumed when applicant's mark is used on its goods.

For the above stated reasons, registration is refused because the applied-for mark consists of or includes matter which may falsely suggest a connection with LADY GAGA.

#### NEW ISSUE – DISCLAIMER INAPPOSITE

The applicant's response includes a voluntary disclaimer of "LADY" or "GAGA". An applicant can disclaim matter voluntarily, regardless of whether the matter is registrable. TMEP §1213.01(c).

However, a disclaimer of this matter is not required.

Therefore, applicant may request to withdraw this disclaimer from the application. If applicant does not expressly request its withdrawal, the disclaimer will remain in the application and will be printed on the registration certificate, should one issue.

Please note, however, that should the applicant not withdraw the voluntary disclaimer, the examining attorney will continue to consider the question of likelihood of confusion, under Section 2(d) of the statute, in relation to the marks as a whole, including any voluntarily disclaimed matter.

**TEAS PLUS APPLICANTS MUST SUBMIT DOCUMENTS ELECTRONICALLY OR SUBMIT FEE:** Applicants who filed their application online using the reduced-fee TEAS Plus application must continue to submit certain documents online using TEAS, including responses to Office actions. *See* 37 C.F.R. §2.23(a)(1). For a complete list of these documents, see TMEP §819.02(b). In addition, such applicants must accept correspondence from the Office via e-mail throughout the examination process and must maintain a valid e-mail address. 37 C.F.R. §2.23(a)(2); TMEP §§819, 819.02(a). TEAS Plus applicants who do not meet these requirements must submit an additional fee of \$50 per international class of goods and/or services. 37 C.F.R. §2.6(a)(1)(iv); TMEP §819.04. In appropriate situations and where all issues can be resolved by amendment, responding by telephone to authorize an examiner's amendment will not incur this additional fee.

/John Dwyer/  
Examining Attorney  
Law Office 116  
Telephone 571-272-9155  
John.Dwyer1@uspto.gov

**TO RESPOND TO THIS LETTER:** Go to <http://www.uspto.gov/teas/eTEASpageD.htm>. 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 examining attorney. **Do not respond to this Office action by e-mail; the USPTO does not accept e-mailed responses.**

**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