

# UNITED STATES PATENT AND TRADEMARK OFFICE

**SERIAL NO:** 76/618689

**APPLICANT:** Brian Regan

**\*76618689\***

**CORRESPONDENT ADDRESS:**  
RUPAK NAG  
2170 CENTURY PARK E APT 1210  
LOS ANGELES, CA 90067-2247

**RETURN ADDRESS:**  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**MARK:** TAKE LUCK!

**CORRESPONDENT'S REFERENCE/DOCKET NO:** BR-TM002

Please provide in all correspondence:

**CORRESPONDENT EMAIL ADDRESS:**

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

## OFFICE ACTION

**RESPONSE TIME LIMIT:** TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE MAILING OR E-MAILING DATE.

Serial Number 76/618689

The assigned examining attorney has reviewed the referenced application and determined the following.

*Proposed Mark Fails to Function as a Service Mark*

Registration is refused because the proposed mark, as used on the specimen of record, does not function as a service mark to indicate the source of the services. Trademark Act Sections 1, 2, 3 and 45, 15 U.S.C. §§1051, 1052, 1053 and 1127; *In re Moody's Investors Service Inc.*, 13 USPQ2d 2043 (TTAB 1989); *In re Signal Companies, Inc.*, 228 USPQ 956 (TTAB 1986); *In re Hughes Aircraft Co.*, 222 USPQ 263 (TTAB 1984); TMEP §§1301.02 *et seq.*

The specimen consists of an excerpt of dialogue from the applicant's stand-up comedy routine and the mark appears as a spoken phrase within the dialogue. The mark does not function as a service mark on the specimen because it does not identify any services performed by the applicant, or function in any advertising capacity. It is merely a phrase in a joke.

The specimen of record, along with any other relevant evidence submitted with the application, is reviewed and analyzed in order to determine whether a term is being properly used as a service mark. *In re Volvo Cars of North America*, 46 USPQ2d 1455 (TTAB 1998); *In re Morganroth*, 208 USPQ 284 (TTAB 1980). Not all words, designs, symbols or slogans used in the sale or advertising of goods or services function as marks, even though they may have been adopted with the intent to do so. A designation cannot be registered unless ordinary purchasers would be likely to regard it as an indicator of origin for the services identified in the application. *In re Moody's Investors Service Inc.*, 13 USPQ2d 2043 (TTAB 1989); TMEP §§1301.02 *et seq.*

The trademark examining attorney will reconsider this refusal if applicant submits both (1) a substitute specimen showing use as a service mark, and (2) a written statement that "the substitute specimen was in use in commerce at least as early as the application filing date," verified with a notarized affidavit or a signed declaration under 37 C.F.R. §2.20. 37 C.F.R. §2.59(a); TMEP §904.09.

Please note the additional ground for refusal.

#### *Proposed Mark Fails to Function as a Trademark*

Registration is refused because the proposed mark, as used on the specimen of record, does not function as a trademark to indicate the source of the identified goods. Trademark Act Sections 1, 2 and 45, 15 U.S.C. §§1051, 1052 and 1127; *In re Remington Products Inc.*, 3 USPQ2d 1714 (TTAB 1987); TMEP §§1202 *et seq.*

The specimen consists of an excerpt of dialogue from the applicant's stand-up comedy routine and the mark appears as a spoken phrase within the dialogue. The mark does not function as a trademark on the specimen because it does not identify any goods for sale by the applicant, nor is it connected to any goods in any manner.

The specimen of record, along with any other relevant evidence submitted with the application, is reviewed and analyzed in order to determine whether a term is being properly used as a trademark. *In re Bose Corp.*, 546 F.2d 893, 192 USPQ 213 (C.C.P.A. 1976); *In re Volvo Cars of North America*, 46 USPQ2d 1455 (TTAB 1998). Not all words, designs, symbols or slogans used in the sale or advertising of goods or services function as marks, even if they may have been adopted with the intent to do so. A designation cannot be registered unless ordinary purchasers would regard it as a source-indicator for the goods. *In re Manco, Inc.*, 24 USPQ2d 1938 (TTAB 1992); TMEP §§1202 *et seq.*

This refusal will be withdrawn if applicant submits both (1) a substitute specimen showing use as a trademark, and (2) a statement that "the substitute specimen was in use in commerce at least as early as the application filing date," verified with a notarized affidavit or a signed declaration under 37 C.F.R. §2.20. 37 C.F.R. §2.59(a); TMEP §904.09.

The following is a properly worded declaration under 37 C.F.R. Section 2.20. At the end of the response, the applicant should insert the declaration signed by someone authorized to sign under 37 C.F.R. Section 2.33(a).

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that the facts set forth in this application are true; all statements made of his/her own knowledge are true; and all statements made on information and belief are believed

to be true.

---

(Signature)

---

(Print or Type Name and Position)

---

(Date)

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration. Please note that the refusals to register the mark extend to all of the goods and services, regardless of classification. If the applicant does respond, please address the following informalities.

*Citizenship*

The applicant must indicate his national citizenship for the record. Trademark Act Section 1, 15 U.S.C. Section 1051; 37 C.F.R. Section 2.33(a)(1)(ii); TMEP section 802.04.

*Entity Uncertain*

The preamble of the application does not identify the nature of the entity. The applicant must clarify the type of entity for the record.

*Identification of the Goods*

The identification of goods is unacceptable as indefinite. The applicant may adopt the following identification, if accurate:

Class 21: Coffee mugs;

Class 25: Clothing, namely, (identify specific items, such as, t-shirts and pants). TMEP section 804.

The wording "souvenirs" in the identification of goods is unacceptable as indefinite. The applicant must amend the identification to specify the commercial name of the goods. If there is no common commercial name for the product, the applicant must describe the product and its intended uses. TMEP section 804.

**Please see the PTO web site for acceptable language for the goods at**

**Trademark Acceptable Identification of Goods and Services Manual**

<http://www.uspto.gov/web/offices/tac/doc/gsmmanual/>

In the identification, the applicant must use the common commercial names for the goods, be as complete and specific as possible and avoid the use of indefinite words and phrases. If the applicant chooses to use indefinite terms, such as "accessories," "components," "devices," "equipment," "materials," "parts," "systems" and "products," then those words must be followed by the word "namely" and the goods listed by their common commercial names. TMEP sections 804 and 804.08(c).

Please note that, while an application may be amended to clarify or limit the identification, additions to the identification are not permitted. 37 C.F.R. Section 2.71(a); TMEP section 804.09. Therefore, the applicant may not amend to include any goods that are not within the scope of goods set forth in the present identification.

*Recitation of the Services*

The recitation of services is unacceptable as indefinite. The applicant must adopt the following suggestion, if accurate:

Class 41: Entertainment services, namely, live stand-up comedy performances. TMEP section 1301.05.

Please note that, while an application may be amended to clarify or limit the recitation, additions to the recitation are not permitted. 37 C.F.R. Section 2.71(b); TMEP section 1402.06. Therefore, the applicant may not amend to include any services that are not within the scope of the services recited in the present recitation.

*Additional Classes*

The application identifies goods and services that may be classified in several international classes. Therefore, the applicant must either: (1) restrict the application to the number of class(es) covered by the fee already paid, or (2) pay the required fee for each additional class(es). 37 C.F.R. §2.86(a)(2); TMEP §§810.01, 1401.04, 1401.04(b) and 1403.01.

If the applicant prosecutes this application as a combined, or multiple#class, application based on use in commerce under Trademark Act Section 1(a), 15 U.S.C. §1051(a), the applicant must comply with each of the following:

- (1) The applicant must specifically identify the goods and services in each class and list the goods and services by international class with the classes listed in ascending numerical order. TMEP §1403.01.

(2) The applicant must submit a filing fee for each international class of goods/services not covered by the fee already paid. 37 C.F.R. §§2.6(a)(1) and 2.86(b); TMEP §§810.01 and 1403.01. Effective January 1, 2003, the fee for filing a trademark application is \$335 for each class. This applies to classes added to pending applications as well as to new applications filed on or after that date.

(3) The applicant must submit:

(a) dates of first use and first use in commerce and one specimen for each class that includes goods or services based on use in commerce under Trademark Act Section 1(a). The dates of use must be at least as early as the filing date of this application, 37 C.F.R. §§2.34(a)(1) and 2.86(a), and the specimen(s) must have been in use in commerce at least as early as the filing date of the application, and/or

(b) a statement of a bona fide intention to use the mark in commerce on or in connection with all the goods or services specified in each class that includes goods or services based on a bona fide intention to use the mark in commerce under Trademark Act Section 1(b), where such statement was not included for the goods or services in the original application.

(4) The applicant must submit an affidavit or a declaration under 37 C.F.R. §2.20 signed by the applicant to verify (3) above. 37 C.F.R. §§2.59(a) and 2.71(c).

#### *Search for References*

The examining attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d). TMEP section 1105.01.

#### **NOTICE: FEE CHANGE**

Effective January 31, 2005 and pursuant to the Consolidated Appropriations Act, 2005, Pub. L. 108-447, the following are the fees that will be charged for filing a trademark application:

- (1) \$325 per international class if filed electronically using the Trademark Electronic Application System (TEAS);
- or

(2) \$375 per international class if filed on paper

These fees will be charged not only when a new application is filed, but also when payments are made to add classes to an existing application. If such payments are submitted with a TEAS response, the fee will be \$325 per class, and if such payments are made with a paper response, the fee will be \$375 per class.

The new fee requirements will apply to any fees filed on or after January 31, 2005.

#### **NOTICE: TRADEMARK OPERATION RELOCATION**

The Trademark Operation has relocated to Alexandria, Virginia. Effective October 4, 2004, all Trademark-related paper mail (except documents sent to the Assignment Services Division for recordation, certain documents filed under the Madrid Protocol, and requests for copies of trademark documents) must be sent to:

**Commissioner for Trademarks**  
**P.O. Box 1451**  
**Alexandria, VA 22313-1451**

Applicants, attorneys and other Trademark customers are strongly encouraged to correspond with the USPTO online via the Trademark Electronic Application System (TEAS), at <http://www.uspto.gov/teas/index.html>.

/Susan Leslie DuBois/

Law Office 111

phone 571-272-9154

fax 571-273-9154

#### **HOW TO RESPOND TO THIS OFFICE ACTION:**

- **ONLINE RESPONSE:** You may respond formally using the Office's Trademark Electronic Application System (TEAS) Response to Office Action form (visit <http://www.uspto.gov/teas/index.html> and follow the instructions, but if the Office Action issued via email you must wait 72 hours after receipt of the Office Action to respond via TEAS).
- **REGULAR MAIL RESPONSE:** To respond by regular mail, your response should be sent to the mailing return address above and include the serial number, law office number and examining attorney's name in your

response.

**STATUS OF APPLICATION:** To check the status of your application, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov>.

**VIEW APPLICATION DOCUMENTS ONLINE:** Documents in the electronic file for pending applications can be viewed and downloaded online at <http://portal.uspto.gov/external/portal/tow>.

**GENERAL TRADEMARK INFORMATION:** For general information about trademarks, please visit the Office's website at <http://www.uspto.gov/main/trademarks.htm>

**FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY SPECIFIED ABOVE.**

\*\*\* User:sdubois \*\*\*

#	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/ Search Duration	Search
01	4774	N/A	0	0	0:01	*take*[bi,ti]
02	2592	N/A	0	0	0:01	*luck*[bi,ti] or *luk*[bi,ti]
03	5	4	1	1	0:01	1 and 2
04	11236	N/A	0	0	0:01	*tayk*[bi,ti] or *tac*[bi,ti] or *tayc*[bi,ti]
05	2	1	1	1	0:01	4 and 2

Session started 6/7/2005 10:09:38 AM

Session finished 6/7/2005 10:10:43 AM

Total search duration 0 minutes 5 seconds

Session duration 1 minutes 5 seconds

Default NEAR limit=1ADJ limit=1

Sent to TICRS as Serial Number: 76618689

## FILING RECEIPT FOR TRADEMARK APPLICATION

Nov 13, 2004

This acknowledges receipt on the FILING DATE of the application for registration for the mark identified below. The FILING DATE is contingent upon all minimum filing date requirements being met. Your application will be considered in the order in which it was received. Action on the merits should be expected from the United States Patent and Trademark Office (USPTO) approximately six months from the FILING DATE. When inquiring about this application, include the SERIAL NUMBER, FILING DATE, OWNER NAME and MARK.

RUPAK NAG  
2170 CENTURY PARK E APT 1210  
LOS ANGELES, CA 90067-2247

**ATTORNEY  
REFERENCE NUMBER**  
BR-TM002

### PLEASE REVIEW THE ACCURACY OF THE FILING RECEIPT DATA.

A request for correction to the filing receipt should be submitted within 30 days. Such request may be submitted by mail to: Commissioner for Trademarks , P.O. Box 1451 , Alexandria , VA 22313-1451 ; by fax to 703-308-9096; or by e-mail to [tmfiling.receipt@uspto.gov](mailto:tmfiling.receipt@uspto.gov). The USPTO will review the request and make corrections when appropriate.

SERIAL NUMBER: 76/618689  
FILING DATE: Nov 1, 2004  
REGISTER: Principal  
LAW OFFICE:  
MARK: TAKE LUCK!  
MARK TYPE(S): Service Mark  
DRAWING TYPE: Stylized words, letters, or numbers  
FILING BASIS: Sect. 1(a) (Use in Commerce)

ATTORNEY: Rupak Nag  
OWNER: Brian Regan (NOT PROVIDED, Unknown)  
2170 Century Park East  
Suite 1210  
Los Angeles , CALIFORNIA 900672247

FOR: Stand-up comedy performance; clothing; coffee mugs; and souvenirs  
INT. CLASS: 041  
FIRST USE: Jun 1, 1988      USE IN COMMERCE: Oct 1, 1988

ALL OF THE GOODS/SERVICES IN EACH CLASS ARE LISTED

ADDITIONAL INFORMATION MAY BE PRESENT IN THE USPTO RECORDS



11-01-2004

U.S. Patent & TMOtc/TM Mail Rcpt Dt. #67

APPLICANT : Brian Regan

BUSINESS ADDRESS : 2170 Century Park East  
Suite 1210  
Los Angeles, CA 90067-2247

DATE OF FIRST USE ANYWHERE : On or before June 1, 1988

GOODS/SERVICES : Stand-up comedy performance; clothing;  
coffee mugs; and souvenirs in International  
Class 41.

**Take Luck!**

U.S. Patent & TM Ofc/TM



**76618689**

## **Specimen - "TAKE LUCK!"**

(transcribed from an audio recording of live performance)

You ever start to say something and in the middle of what you are saying you decide to say something else completely different. Ya know... there's already words out there. These friends were leaving the other day and I started to say... "Hey, Take Care!" - and I decided to say "good luck" instead, like half way through - - ya know so it came out neither - see ya later, Brian - "Take Luck! - Take Luck! ... and care - take care of the luck - good luck taking care of the luck you might have ...."



11-01-2004

U.S. Patent & TMOtc/TM Mail Rcpt Dt. #67

APPLICANT : Brian Regan

BUSINESS ADDRESS : 2170 Century Park East  
Suite 1210  
Los Angeles, CA 90067-2247

DATE OF FIRST USE ANYWHERE : On or before June 1, 1988

GOODS/SERVICES : Stand-up comedy performance; clothing;  
coffee mugs; and souvenirs in International  
Class 41.

**Take Luck!**

U.S. Patent & TM Ofc/TM



**76618689**

76618689

TRADEMARK APPLICATION SERIAL NO. \_\_\_\_\_

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE  
FEE RECORD SHEET

11/05/2004 TMCCANTS 00000031 76618689

01 FC:6001

335.00 OP

(310) 785-9660  
rnag2002@hotmail.com

Oct. 18, 2004

BOX NEW APP – FEE  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

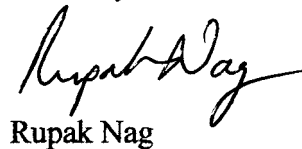
Re: New Trademark Application

Dear Sir:

Enclosed herewith please find an application for registration of a trademark including the cost as identified below:

APPLICANT: Brian Regan  
MARK: Take Luck!  
CLASS(ES): 41  
REFERENCE NO.: BR-TM002  
FILING FEE: \$335 (per class 3/2004)

Sincerely,



Rupak Nag

RN/  
Enclosures

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark: Take Luck!

International Class No.: 41

Reference No.: BR-TM002

TO THE COMMISSIONER FOR TRADEMARKS

Applicant: Brian Regan

Business Address: 2170 Century Park East  
Suite 1210  
Los Angeles, California 90067-2247

GOODS AND/OR SERVICES

The above-identified applicant requests registration of the trademark/service mark shown in the accompanying drawing in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. § 1051 et seq., as amended) for:

Stand-up comedy performance; clothing; coffee mugs; and souvenirs in International Class 41.

BASIS FOR APPLICATION

Applicant is using the mark in commerce on or in connection with the above-identified goods/service (15 U.S.C. § 1051(b), as amended). One specimen showing the mark as used in commerce is submitted with this application.

- Date of first use of the mark anywhere: On or before June 1, 1988.

- Date of first use of the mark in commerce which the U.S. Congress may regulate:  
On or before October 1, 1988.
- Type of commerce: Interstate
- Manner or mode of use of mark on or in connection with the goods/services: In spoken word during a live comedy performance, on video and audio recordings of live comedy performance, on printed materials, on advertising and promotional materials, and in other ways customary to the trade.

#### POWER OF ATTORNEY

Applicant hereby appoints Rupak Nag, Registration No. 37,493, to prosecute this application to register, to transact all business in the United States Patent and Trademark Office in connection therewith, and to receive the certificate of registration. Please direct all telephone calls to Rupak Nag at telephone no. (310) 785-9660.

#### DECLARATION

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine of imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he is properly authorized to execute this application on behalf of the applicant; he believes the applicant to be the owner of the trademark sought to be registered, or, if the application is being filed under 15 U.S.C. 105(b), he believes the applicant to be entitled to use such mark in commerce; to the best of his knowledge and belief no other person, firm,

FROM : THE REGANS  
10/14/2004 13:01

5166869009

PHONE NO. : 310 859 4735  
TCCOct. 14 2004 09:37AM P1  
Page 04

corporation, or association has the right to use the above-identified mark in commerce, either in the identical form or in such near resemblance thereto as may be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive, and all statements made of his own knowledge are true and all statements made on information and belief are believed to be true.

Brian Regan

Dated: 10/14/04By:   
Name: Brian Regan

Rupak Nag  
Attorney for Applicant  
2170 Century Park East  
Suite 1210  
Los Angeles, CA 90067-2247  
Telephone: (310) 785-9460  
Facsimile: (310) 843-9703  
Email address: [mag2002@hotmail.com](mailto:mag2002@hotmail.com)