



Letter of protest practice tip

You can use the letter of protest to give the USPTO evidence about the registrability of a trademark in a pending application that belongs to another trademark owner. A fee is required for a letter of protest.

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Include evidence supporting a reason to refuse registration or issue a requirement

We only consider letters of protests that include a specific, relevant legal ground (i.e., reason) for a USPTO examining attorney to refuse registration or issue a requirement in a pending application. The reason is typically that registration is prohibited by a federal law or the applicant has not met the requirements of a particular rule regarding registering a trademark. You must include evidence to show that registration is prohibited or that the applicant hasn't met the requirements. See [Trademark Manual of Examining Procedure \(TMEP\) section 1715.01](https://tmep.uspto.gov/RDMS/TMEP/current#/current/TMEP-1700d1e867.html) (<https://tmep.uspto.gov/RDMS/TMEP/current#/current/TMEP-1700d1e867.html>) for more about this.

Appropriate reasons

We'll only consider your letter of protest if it complies with all requirements, including that you provided a reason appropriate in ex parte examination and evidence to support your reason. Here are some common reasons raised in letters of protest:

- The trademark in the protested application is **likely to be confused** with a trademark in a U.S. registration or prior pending application.
- The trademark in the protested application is **merely descriptive** of or **generic** for the identified goods or services.
- The trademark in the protested application **suggests a false connection** with the protestor or some other party.
- The trademark in the protested application is a **widely used or commonplace message** and does not function as a trademark.
- A **registered trademark appears in the identification** of the goods or services in the protested application.
- The **specimens of use** in the protested application feature an image that is used by third parties without the mark in question or an image that appears in multiple prior registrations or applications all bearing different marks.

Inappropriate reasons

We typically do not consider letters of protest that identify the reasons below because these reasons are not appropriate for ex parte examination.

- The protestor claims **common law prior use** of the trademark in the protested application.
- The protestor claims that the applicant is not the **owner** of the trademark in the protested application.
- The protestor **disagrees with the examining attorney's** examination of the protested application.

When you file affects the evidence you need

File your letter of protest as soon as possible after the application is filed and preferably before the trademark is **published for opposition** by third parties.

Letters of protest **filed before publication** must include evidence that is relevant to the stated reason(s) to refuse registration or issue a requirement.

Letters of protest **filed after publication** must include evidence that establishes a **prima facie** (<https://www.merriam-webster.com/dictionary/prima%20facie>) case for refusing registration or issuing a requirement based on the stated reason(s). A letter of protest filed after publication and after the 30-day opposition period is too late and will usually not be considered.

Filing a letter of protest

How to file a letter of protest

Use the Trademark Electronic Application System (TEAS) **Letter of Protest form** (<https://teas.uspto.gov/ccr/lop>).

What to include in a letter of protest

Reason for your letter of protest. To identify the reason for the refusal or requirement you would like considered, select the appropriate radio button(s) on the form.

Evidence. You must submit relevant, objective evidence that supports the reason for the refusal or requirement you want considered. If your letter of protest complies with this and all other requirements, only evidence relevant to the reason in your letter of protest will be forwarded to the examining attorney. The letter of protest itself, and any arguments, aren't forwarded to the examining attorney. See below regarding **appropriate evidence** for more information.

Index of evidence that identifies the reason the evidence supports. You must include an itemized index that identifies all documents you're including as evidence. The index must provide a concise, factual description of the reason that each item supports. Don't identify yourself or your representatives in the index, and don't include any legal arguments or persuasive language.

Expand all | Collapse all

› See example format for an index of evidence

Amount of evidence. Include no more than 10 items of evidence for each specified reason in your letter of protest, and no more than 75 pages of evidence total. If you have a special circumstance that requires more evidence, you must include a detailed explanation of your situation. Otherwise, your letter of protest will not be considered.

Your email address.

Required fee. See [fee schedule for current fee \(/learning-and-resources/fees-and-payment/uspto-fee-schedule#7011\)](#).

Only one application. You must file a separate letter of protest for each application you wish to protest.

Appropriate evidence

Webpage evidence. Any webpage evidence must include the URL and the date the webpage was accessed or printed on the evidence itself or on a page attached to the evidence, not on the index. See [37 C.F.R. section 2.149\(f\)\(4\)\(iii\) \(https://tmep.uspto.gov/RDMS/TFSR/current#/current/ch37_d311a9_31ac3_164.html\)](#) and TMEP section [710.01\(b\) \(https://tmep.uspto.gov/RDMS/TMEP/current#/current/TMEP-700d1e1280.html\)](#).

Only relevant, non-duplicative evidence. Submit succinct evidence that is directly relevant to the reason identified in the letter of protest.

Don't provide duplicate evidence, and provide only the most relevant evidence. For example, if there are numerous examples of relevant third-party registrations or webpages, provide the most relevant 10 examples. More than 10 total items of evidence to support each ground will be considered duplicative and may result in the letter of protest not being considered. See [37 C.F.R. section 2.149\(f\)\(3\)\(i\) \(https://tfsr.uspto.gov/RDMS/TFSR/2020-02-15#/current/ch37_d311a9_31ac3_164.html\)](#) and [TMEP section 1715.05\(b\) \(https://tmep.uspto.gov/RDMS/TMEP/current#/current/TMEP-1700d1e1017.html\)](#).

One piece of evidence per page. Submit each piece of evidence on a single page. If a page contains multiple webpages of evidence and some of the information on the page is irrelevant, the page won't be forwarded to the examining attorney.

Likelihood of confusion evidence. If the issue in your letter of protest is a likelihood of confusion with registered trademarks or trademarks in prior pending applications, you must provide the registration and/or serial number(s) and evidence showing relatedness of the goods and/or services.

If you identify more than five registrations or applications, only the first five will be considered. [TMEP section 1715.05\(b\) \(https://tmep.uspto.gov/RDMS/TMEP/current#/current/TMEP-1700d1e1017.html\)](#).

If the issue is a likelihood of confusion and the goods and services in the prior registrations or applications aren't **identical** to those in the protested application, you must provide objective third-party evidence showing that the goods and/or services are related. [TMEP section 1715.05\(a\) \(https://tmep.uspto.gov/RDMS/TMEP/current#/current/TMEP-1700d1e996.html\)](#). If this evidence includes third-party registrations, provide an electronic copy of the registration from either TESS or TSDR that shows the current status and owner. A mere list of the registrations or a copy of a search report is not sufficient. And all such submitted registrations must be based on use of the trademark in commerce.

Evidence that a trademark is descriptive or generic. If the issue in your letter of protest is descriptiveness/genericness of the trademark in the protested application, provide evidence showing that others use the trademark, or portions of it, in a descriptive or generic manner for the same goods or services in the protested application. Or, provide excerpts from the dictionary showing the meaning of the trademark. Submitting only a list of websites is insufficient, and a letter of protest with such a list and no other evidence will not be considered. See [TMEP section 710.01\(b\) \(https://tmep.uspto.gov/RDMS/TMEP/current#/current/TMEP-700d1e1249.html\)](#) for guidance on internet postings.

If the issue is descriptiveness/genericness and your evidence includes third-party registrations, include an electronic copy of the registration from either TESS or TSDR that shows the current status and owner. A mere list of the registrations or a copy of a search report is insufficient. See **TMEP section 710.03** (<https://tmep.uspto.gov/RDMS/TMEP/current#/current/TMEP-700d1e1463.html>) regarding evidence of third-party registrations.

Evidence that the specimen not in use in commerce. If the issue in your letter of protest is that an applicant's specimen is not in use in commerce, submit evidence demonstrating one or more of the following:

- Third parties use the same image without the trademark in question.
- The specimen was digitally created or altered.
- The specimen was not in use on or prior to the date it was submitted.

Evidence showing **only** that a product can't currently be found on retail websites will not be considered, unless you also submit other evidence of nonuse.

Evidence that a trademark is a widely used message. If the issue in your letter of protest is that the public would perceive the trademark in the protested application as a widely used message or common phrase, provide evidence showing that various sources use the phrase in the marketplace, such that the public would not perceive the wording as a trademark identifying the source of goods or services. You should include screenshots of webpages showing a variety of products bearing the commonly used phrase, such as t-shirts, mugs, keychains, etc. You might submit evidence showing that people use the phrase in everyday speech such as in news articles, webpages, and blogs. See **TMEP section 710.01(b)** (<https://tmep.uspto.gov/RDMS/TMEP/current#/current/TMEP-700d1e1249.html>) for guidance on internet evidence. For more information about the widely used message refusal, see **TMEP section 1202.04(b)** (https://tmep.uspto.gov/RDMS/TMEP/current#/current/ch2200_d29b4b_25b93_92.html).

Prosecution history unnecessary. Don't submit a copy of the prosecution history for the protested application or the relevant registrations or prior pending applications that form the basis for the letter of protest. This information is part of our records and can be reviewed as needed.

Evidence to support a refusal or requirement that has already issued. If your evidence isn't redundant, this new evidence may be forwarded to the examining attorney for consideration.

Don't include irrelevant evidence. Don't include information about or evidence of alleged prior use, evidence of alleged incidents of actual confusion, or declarations. These matters and evidence are relevant only for inter partes proceedings at the Trademark Trial and Appeal Board.

More information

See **37 C.F.R. section 2.149** (https://tfsr.uspto.gov/RDMS/TFSR/2020-02-15#/current/ch37_d311a9_31ac3_164.html) and **TMEP section 1715** (<https://tmep.uspto.gov/RDMS/TMEP/current#/current/TMEP-1700d1e853.html>).

Questions

Call the petitions office at 571-272-8950.

Submit feedback about this page to **Trademarks**.

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