

**RESPONSE TO OFFICE ACTION**  
**RE: APP. SER. NO. 88242829 for the mark**



INFORMALITIES OF RECORD

Before dealing with the issues regarding the requested disclaimer for “360”, Applicant will deal with the informalities of record. In that regard:

1. As regards the cited prior filed applications (Ser. Nos. 8737402 and 87537725) owned by True Thrive Limited, and potential resulting Section 2(d) citation, Applicant herein is in the process of assigning its application, Ser. No 88242829, to “True Thrive Limited”.
2. Applicant hereby amends the literal portion of the mark to “+360”.

THE REQUESTED DISCLAIMER

The Trademark Attorney states that “...Applicant must disclaim the wording “360” because it merely describes a feature of applicant’s goods, and thus is an unregistrable component of the mark.”

The Examining Attorney refers to a single dictionary reference defining “360” as: “a 360 degree turn especially done very rapidly”. The Examining Attorney argues: “In the context of sweeping and cleaning robotic devices this wording describes goods capable of 360 degree sensing and movement and therefore must be disclaimed.” We respectfully disagree.

The following argument will be focused on the term “360.”

The term “360” has many meanings. Per Wiktionary, (<https://en.wiktionary.org/wiki/360-degree>), “360” is defined as:

1. Covering all 360 degrees of a [circle](#).
2. (*by extension*) [Comprehensive](#); incorporating all [points of view](#). quotations ▼
3. Able to [turn freely](#) about an [axis](#). quotations ▼

*The dressing room had a **360-degree** mirror.*

Applicant respectfully directs the Examining Attorney to number 2 of the definition above, which states that the term 360 has the meaning of “Comprehensive; incorporating all points of view.” As such, the term “360” merely suggests that the machine cleans thoroughly and offers a desired result.

In fact, the term “360” does not describe the movement of the goods as the Applicant’s robot vacuum cleaner actually travels in a straight line until it encounters an obstacle. At that point, it widely turns and travels in another straight line path until it encounters another obstacle, again and again. Conceivably it eventually maps out the entire surroundings during each turn, but it will take multiple turns each less than 360 degree to finish mapping a 360 degree surrounding

Clearly a word can be descriptive of certain goods or services and function as a trademark for other goods or services. Indeed, a mark can be generic of certain goods or services, and function as a trademark for related goods or services. For example, the word "polo" is generic as applied to polo shirts and polo coats, descriptive as applied to other shirts and coats, and fanciful as applied to other articles of wearing apparel. *See Polo Fashions, Inc. v. Extra Special Products, Inc., et al*, 200 USPQ 161, 165 (DC SNY, 1976).


The issue of descriptiveness is not determined in the abstract. It is determined in relation to the goods or services for which registration is sought, the context in which the mark sought to be registered is being used, and possible significance the term would have to the average consumer of the services because of the manner of its use. In this case, there is nothing in the

record to suggest that Applicant's use is anything other than trademark or service mark use, the Trademark Attorney's presumption notwithstanding.

*In In re Urbano*, 51 USPQ2d 1776 (TTAB 1999), the Applicant sought to register SIDNEY 2000 for advertising, business and communications services. The application was rejected in part as being merely descriptive. The Board reversed the refusal holding at page 1780:

Considering, first, the Section 2(e)(1) refusal on the ground of mere descriptiveness, the test for determining whether a mark is merely descriptive is whether the involved term immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used, or intended to be used. *In re Bright - Crest, Ltd.*, 204 USPQ 591 (TTAB 1979); *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986). Because we have found that the primary significance of the phrase SYDNEY 2000 is as a reference to the Olympic Games, to which the phrase points uniquely, we find that, when considered in connection with applicant's services, SYDNEY 2000 is not merely descriptive, and the Examining Attorney's refusal on this ground is reversed.


The mark in issue is a composite mark. The meaning and connotation of the term “360” must be analyzed along with the other portions of Applicant’s mark in order to determine the

meaning and commercial impression of the term “360”. , The mark is: 

Viewed together, the mark forms a distinctive mark which is suggestive and not descriptive of the goods in the application. The general consumer is invited to experience what applicant’s goods have to offer, which is thorough cleaning as a result of the censor. The plus symbol of the mark suggests that the goods perform way beyond expectation, that it offers comprehensive cleaning. In other words, the mark when view as a whole, suggests a desirable result for a vacuum.

Moreover, the trademark +360, with design, simply invites imagination and thought and therefore does not merely describe Applicant's goods. See, by way of example, 15 USC § 1052(e)(1) (For a mark to be unregistrable because it is descriptive, the mark must be merely descriptive). The word 'merely' in Section 2(e)(1) is purposeful. Thus, "if the mark clearly does not tell the potential customer only what the goods are, their function, characteristics, use or ingredients, then the mark is not 'merely descriptive.'" *In re Intelligent Med. Sys. Inc.*, 5 U.S.P.Q.2d 1674, 1675 (TTAB 1987) (emphasis in original). Moreover, to be descriptive, a term must immediately convey this type of information with a "degree of particularity" see *Greek Holdings v. Bissell Homecare*, Opposition No.91173831, 2010 WL985352, (TTAB Feb. 16, 2010) (citing, *inter alia*, *PiusProds. v. Med. Modalities Assocs., Inc.*, 211 U.S.P.Q. 1199, 1204-1205 (TTAB 1981)). Here, the applicant's vacuum does not sweep and clean in a 360 degree movement. Therefore, the mark should not require a disclaimer. In fact, the machine maps the location to be cleaned during the turn when it hits obstacles but travels in straight lines. See illustrations below.



Therefore, by its very nature, “ 360”, weighs in favor of a finding of suggestiveness as it requires the consumer to undergo a mental leap regarding the product's attributes. *See The Noble Company*, 225 U.S.P.Q. at 750 (despite suggesting a result of using the product - prevention of bursting pipes - the court found that consumers would have to interpret the Noburst mark on the goods in order to understand the connection). Such a mental leap, which is not almost instantaneous, strongly indicates that the mark is suggestive, not descriptive. *See Nautilus Group, Inc. v. Icon Health & Fitness, Inc.*, 372 F.3d 1330, 1340 (Fed. Cir. 2004).

Further, it is highly unusual to link the word “360” with a plus “+” symbol. The very presentation itself show that the general consumer must know that there is more to the story than just the ordinary definition for the term “360.”

Another test for distinguishing between descriptive and suggestive terms focuses on "how immediate and direct is the thought process from a term to the particular product." *AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341, 349 (9th Cir. 1979). The more direct the process, the more likely the term is to be descriptive; the more thought, imagination, or perception required to link the mark with the goods, the more likely the term is to be suggestive. The term "360" does describe partially the trajectory of the machine absent any impediments, however the purpose of the machine is to clean amongst impediments and with the desired result that an entire room would ultimately be vacuumed. 360 is not only the number of degrees in a circle, when viewed with the plus “+” symbol, somehow connect that to beyond the movement, and imagine that the mark relates to how desirable is the result of which it can be achieved by the consumer who buys the machine.

In *In re Universal Water Systems, Inc.*, Serial No. 15,921, 209 U.S.P.Q. 165, (T.T.A.B.1980), the Board ruled that the term “purity” is suggestive when used in connection with water filtering units, water filter cartridges and water softening units. The Board in that case is of the opinion that...

the word "purity" is a noun which is defined in Webster's Third New International Dictionary (Unabridged 1965 Edition) as: "the quality or state of being pure". It is a rather abstract concept which in our opinion does not immediately convey or describe any aspect of applicant's goods or the purpose for which they are used. Rather, as applicant has contended, it is **suggestive of the desired result of the use of those goods**, and as such is not merely descriptive of them within the meaning of Section 2(e)(1) of the Statute. Cf. *In re the Realistic Company*, 169 USPQ 610 (CCPA, 1971) ["CURV" not merely descriptive of permanent wave curling solutions]; *In re Frank J. Curran Co.*, 189 USPQ 560 (TTAB, 1975) ["CLOTHES

FRESH" not merely descriptive of clothes and shoe spray deodorant]; In re Recovery, Inc., 196 USPQ 830 (TTAB, 1977) ["RECOVERY" not merely descriptive of services of, inter alia, providing group therapy in the form of self-help aftercare to follow psychiatric or other professional counseling and/or treatment, and training lay leaders to provide such therapy]; In re C.J. Webb, Inc., 182 USPQ 63 (TTAB, 1974) ["BRAKLEEN" need not be disclaimed apart from applicant's mark as a whole because even assuming that it is the phonetic equivalent of "brake clean," it is not merely descriptive of a chemical composition for cleaning and [\*167] [\*167] degreasing automotive brake parts]; and In re Pennwalt Corporation, 173 USPQ 317 (TTAB, 1972) ["DRI-FOOT" not merely descriptive of an anti-perspirant deodorant for feet]. In our opinion, our reasoning in In re Recovery, Inc., supra, is equally applicable here:

"It has been recognized that there is but a thin line of distinction between a suggestive and a merely descriptive term, and it is often difficult to determine when a term moves from the realm of suggestiveness into the sphere of impermissible descriptiveness . . . . The difficulty in determining the suggestiveness or descriptiveness of a mark is vividly demonstrated in this case. The term 'RECOVERY', when considered in light of applicant's services appears, at first blush, to possess a descriptive significance. But, to articulate the manner in which the term 'RECOVERY' describes those services, one cannot come up with an immediate response, but rather must engage in a mental process involving imagination, speculation, and possibly stretching the meaning of the word to fit the situation. It is unlikely that the average person would engage in this exercise at the point of contact with this term in the advertising or rendering of applicant's services. Considering that the term 'RECOVERY' is prominently displayed on applicant's literature in such a manner that the viewer's attention is directly and immediately drawn to the word; that the word is used therein as a mark to identify the source of the services described therein; that 'RECOVERY' does not in any real or specific sense describe the particular services rendered by applicant; and that the registration sought by applicant would not preclude others from using 'RECOVERY' in a descriptive sense to convey its descriptive meaning, it is concluded that the scales of thought in this case tip in the direction of suggestiveness rather than descriptiveness."

Similarly, the term "360" requires some mental leap of the consumer in an effort to find out what it really means. As such, we respectfully argue that a disclaimer is not required.

Moreover, the applied for mark is a unitary mark therefore requesting a disclaimer in this case is not appropriate. If the matter that comprises the mark or relevant portion of the mark is unitary, no disclaimer of an element, whether descriptive, generic, or otherwise, is required. *Dena Corp. v. Belvedere Int'l, Inc.*, 950 F.2d at 1561, 21 USPQ2d at 1052. *TMEP 1213.5* states that a mark or portion of a mark is considered "unitary" when it creates a commercial impression separate and apart from any unregistrable component. The test for unitariness inquires whether the elements of a mark are so integrated or merged together that they cannot be regarded as separable. *See In re EBS Data Processing*, 212 USPQ 964, 966 (TTAB 1981) ; *In re Kraft, Inc.*, 218 USPQ 571, 573 (TTAB 1983) . The inquiry focuses on "how the average purchaser would encounter the mark under normal marketing of such goods and also . . . what the reaction of the average purchaser would be to this display of the mark." *Dena Corp. v. Belvedere Int'l, Inc.*, 950 F.2d 1555, 1561, 21 USPQ2d 1047, 1052 (Fed. Cir. 1991) (quoting *In re Magic Muffler Serv., Inc.*, 184 USPQ 125, 126 (TTAB 1974)). The Court of Appeals for the Federal Circuit has set forth the elements of a unitary mark:


A unitary mark has certain observable characteristics. Specifically, its elements are inseparable. In a unitary mark, these observable characteristics must combine to show that the mark has a distinct meaning of its own independent of the meaning of its constituent elements. In other words, a unitary mark must create a single and distinct commercial impression.

*TMEP 1213.05 (b)(iii)* also stated that "even if none of the considerations discussed above apply, there may be something about the components of the mark that joins them together and transforms them into a unitary phrase or slogan. If other considerations, such as word pattern, double entendre, and incongruity (see *TMEP §§1213.05(c)-1213.05(e)*), or the context, rhetorical structure, or some other aspect of the mark creates a distinct meaning or commercial



impression that is more than its constituent parts, the phrase should be deemed unitary for purposes of a disclaimer. For example, a descriptive word can be combined with non-descriptive wording in such a way that the descriptive significance of the word in relation to the goods is lost and the combination functions as a unit. This happens when the combination itself has a new meaning.”

Here, the mark is “logo” plus “+” plus 360. The mark is not “360.” It is not even “+

360.” It is  which creates a new and unitary meaning and commercial impression separate and apart from its individual elements. The unitary mark as a whole suggests that the machine can do more, that it not only cleans thoroughly, but also offers a desired result.

Respectfully submitted,

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