

## **Applicant's Request for Reconsideration**

The following is the Request for Reconsideration of Applicant, Industrial Craft Inc., by counsel, for its response to the Final Office Action dated September 27, 2019.

Applicant respectfully requests reconsideration of Examining Attorney's final refusal, and states as follows:

In the September 27, 2019, Final Office Action, the Examining Attorney continued with the refusal to register Applicant's trademark INDUSTRIAL CRAFT for the following services:

Retail store services featuring interior décor, home accessories, and consumer electronics; Computerized on-line ordering featuring general merchandise and general consumer goods; On-line retail store services featuring furniture, tableware, kitchenware, and electronic accessories (IC 35)

on the basis that the mark is merely descriptive for said services.

Applicant respectfully requests that the Examining Attorney reconsider the refusal in light of the following additional arguments presented against a merely descriptive refusal. Applicant incorporates its prior arguments and evidence with this response.

Applicant takes the position that the trademark INDUSTRIAL CRAFT is ambiguous.

A mark is merely descriptive if it *immediately* describes the ingredients, qualities or characteristics of the goods or services, or if it conveys information regarding a function, purpose or use of the goods or services. *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-218 (CCPA 1978).

A mark will have a "degree of particularity" to be merely descriptive. *See In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1514 (TTAB 2016); *Plus Products v. Medical Modalities Associates, Inc.*, 211 USPQ 1199, 1204-05 (TTAB 1981). Descriptiveness is not considered in the abstract. Rather, it is considered in relation to the particular goods for which registration is sought, the context in which it is being used, and the possible significance that the term would have to the average purchaser of the goods because of the manner of its use or intended use. *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 964 (Fed. Cir. 2007).

It is not fatal that a mark is informational. Consumers can be informed by suggestions as well as description. *In re Reynolds Metals Co.*, 480 F.2d 296 (CCPA 1973).

A mark is suggestive, however, as is the case here, if imagination, thought, or perception is required to reach a conclusion as to the nature of the goods or services. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). A designation does not have to be

devoid of all meaning in relation to the goods/services to be registrable. TMEP § 1209.01(a).

The Board has continually held that marks that fail to describe something *particular* about the goods and services are suggestive. See, e.g., *In re TMS Corp. of the Americas*, 200 USPQ 57, 59 (TTAB 1978) (finding that “because the mark ‘THE MONEY SERVICE’ is composed of commonly used words of the English language, it suggests a number of things, but yet falls short of describing applicant's services in any one degree of particularity”); *Plus Products v. Medical Modalities Associates, Inc.*, 211 USPQ 1199, 1204-05 (TTAB 1981) (holding the marks Zn-PLUS, Mn-PLUS, and CA-PLUS not merely descriptive of vitamin supplements because “[a]t most, each of these marks suggest the presence in the particular product of the chemical material identified by the symbol and something more as other ingredients”); *In re Hollywood Stock Exchange. LLC*, Serial No. 78389911 (Nov. 2, 2006) [not precedential] (finding that the mark “GAMESTUDIO” as applied to a simulated securities exchange game accessible through a global computer information network is ambiguous in the minds of the relevant consumer).

Both the term INDUSTRIAL and the term CRAFT can refer to multiple meanings, and the mark INDUSTRIAL CRAFT could easily be interpreted by consumers to have any number of meanings, and in fact, practically an infinite number of meanings. The mark falls far short of describing Applicant’s services any one degree of particularity.

The term “industrial” can be related to medicine, music, factories, pharmaceuticals, utilities, fishing, water, car-manufacturing, robots, aircraft, entertainment, farming, mining of all types, aerospace, heavy equipment, general constructions, weapons manufacturing, or the stock exchange, among many other others.

The term “craft” can relate to any type of skill, including, but not limited to, sewing, quilting, hand lettering, stitching, textiles, applique, embroidery, journaling, jewelry making, pottery, woodworking, paper crafts, decorating, cake design, dyeing, leatherwork, metalwork, weaving, glass blowing, lacemaking, macramé, floral design, origami, bookbinding, scrapbooking, and stained-glass work.

To reach the conclusion that the term INDUSTRIAL CRAFT immediately describes the underlying services is simply too myopic. While the terms INDUSTRIAL and CRAFT are commonly used words, clearly, the mark INDUSTRIAL CRAFT suggests any number of things, and falls far short of describing Applicant’s services in any one degree of particularity.

Applicant’s trademark INDUSTRIAL CRAFT, when taken as a whole, creates multiple commercial meanings and impressions that only suggest a connection to the identified services, without immediately describing them with any degree of particularity.

The Examining Attorney bears the burden of demonstrating that the mark is merely descriptive. *In re Merrill Lynch, Pierce, Fenner, and Smith, Inc.*, 828 F.2d 1567, 1571

(Fed. Cir. 1987). When doubts exist as to whether a mark is merely descriptive, those doubts should be resolved in favor of the Applicant. *In re Grand Metropolitan Food Service Inc.*, 30 USPQ2d 1974, 1976 (TTAB 1994).

Applicant's INDUSTRIAL CRAFT mark, much like THE MONEY SERVICE mark at issue in *In re TMS Corp.*, suggests any number of things, is ambiguous, and, simply put, falls far short of describing Applicant's ser with any degree of particularity. *Id.*; 200 USPQ 57.

For the foregoing reasons, Applicant respectfully requests withdrawal of the Examining Attorney's final refusal under Section 2(e).