IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mark: HIIT CAMP
Serial No. 87596074

ARGUMENT IN SUPPORT OF APPLICANT'S RESPONSE TO OFFICE ACTION

The applicant World Gym International, LLC (or "Applicant") respectfully requests that the examining attorney reconsider his initial finding that the HIIT CAMP mark is merely descriptive. For the reasons described below, the Applicant's mark is suggestive and therefore registrable on the Principal Register.

The examining attorney bears the burden of demonstrating that a mark is merely descriptive, with any ambiguity or doubt to be resolved in applicant's favor. *See In Re Bel Paese Sales Company*, 1 U.S.P.Q.2d 1233, 1236 (TTAB 1986). "There is often a thin line of demarcation between a suggestive term and a merely descriptive term, and . . . any doubt with respect to the issue of descriptiveness should be resolved in Applicant's behalf." *See also In Re Conductive Sys., Inc*., 220 U.S.P.Q. (BNA) ¶ 84 (T.T.A.B. Sept. 27, 1983) ("it is clear that [] doubts [regarding a mark's descriptive nature] are to be resolved in favor of applicant"); t the doubt should be resolved in applicant's behalf and the mark published in accordance with Section 12(a) for opposition purposes thereby enabling any person who believes that he would be damaged by the registration of said mark to present evidence to that effect not present herein. *In Re Pennwalt Corp.,* 173 U.S.P.Q. (BNA) ¶ 317 (T.T.A.B. Mar. 29, 1972) (concluding that mark DRI-FOOT was not descriptive and that all doubt as to descriptiveness should be resolved in favor of applicant).

In the instant office action, the examining attorney states that "the mark HIIT CAMP would be understood as describing a feature, function, purpose or characteristic of the services, namely, providing a place where people can engage in high intensity interval training." Beyond this conclusory statement, the office action makes no mention of *why* the mark in this context is merely descriptive. The examining attorney cites the definitions of "HIIT" and "CAMP" and attaches third-party registrations using these terms. However, there is no actual argument presented as to why this evidence would support the finding that the mark is descriptive. This showing falls short of meeting the examiner's burden.

Under the relevant standard, Applicant's mark is not merely descriptive, but *suggestive*. "If consumer response [to a mark] requires any sort of 'multistage reasoning process' to identify the characteristic of the product which the mark suggests, then the mark should not be regarded as 'merely descriptive." *Lahoti v. Vericheck, Inc*., 636 F.3d 501, 506 (9th Cir. 2011) (internal citations and quotations omitted) (affirming finding that mark VERICHECK was suggestive and not merely descriptive). Under the "imagination test," the relevant inquiry concerns "how quickly and easily consumers grasp the nature of the product from the information conveyed." 2 McCarthy on Trademarks and Unfair Competition § 11:67 (5th ed.)

Here, the mark does not immediately suggest the nature of the services but requires a multistage reasoning process. Contrary to the Examining Attorney's assumption, "HIIT CAMP" does not have an obvious meaning in the context of Applicant's services. The word "CAMP" has multiple meanings. Indeed, the dictionary excerpt attached to the Office Action lists no fewer than nine definitions of "camp." Courts have recognized that where a word in a mark has multiple meanings, such term does not and cannot provide an "immediate" understanding of the services such that it might be deemed merely descriptive. *See, e.g., In re Hutchinson Tech. Inc*., 852 F.2d 552, 555 (Fed. Cir. 1988) (holding that HUTCHINSON TECHNOLOGY mark is not descriptive because "[t]he term 'technology'. does not convey an immediate idea of the 'ingredients, qualities, or characteristics of the goods listed in [the] application."); *In Re Siemens Stromberg-Carlson* 1999 WL 1062812, at *2 (Nov. 19, 1999) (Terms comprising mark "FAST FEATURE PLATFORM" have multiple meanings and are not "merely descriptive").

A couple of the definitions of "camp" refer to a secluded physical location, *e.g*., a "a cabin or shelter or group of such buildings" or "a place in the country that offers simple group accommodations and organized recreation or instruction." These possible meanings of "camp" do not at all describe Applicant's services, which do not require participants to travel and lodge at such a location but are in fact exercise and fitness services offered in a traditional gym setting. Again, this ambiguity created by the term "camp" means that it cannot be considered "merely descriptive." *In Re Diet Tabs, Inc.*, (T.T.A.B. Jan. 30, 1986) 231 U.S.P.Q. (BNA) ¶ 587 (DIET TAB mark is not descriptive because of ambiguity created by two possible meanings: "diet tablet" or "dietary tablet").

Moreover, of the multiple meanings of "CAMP," the one specified by the Examining Attorney does not immediately describe Applicant's services, even as distilled by the Examining Attorney (*i.e.*, "a place where people can engage in high intensity interval training"). To wit, the definition of "camp" cited by the Examining Attorney reads: "a place where athletes engage in intensive training, especially preseason training." This clearly is meant to refer to the preparation of professional athletes for a season of athletic competition. Arriving from this definition to Applicant's services requires a mental leap that proves that the mark is suggestive. Applicant's services are not for athletes' preseason preparation, but are for members of the general public who wish to improve their fitness through casual exercise.

Even assuming *in arguendo* that HIIT and CAMP were both descriptive words (they are not), two or more descriptive words can be combined together into a mark that is, as a whole, suggestive or fanciful and thus appropriate for registration (*e.g.*, the mark "HIIT SCHOOL", Reg. No. 5450481). *Application of Colonial Stores, Inc.*, 394 F.2d 549, 549 (C.C.P.A. 1968) (while "sugar" and "spice" are both descriptive of bakery products, court found that "SUGAR & SPICE" as a whole may be properly registered); *W.G. Reardon Laboratories v. B. & B. Exterminators*, 71 F.2d 515 (4th Cir. 1934) (descriptive terms "mouse" and "seed" together as "MOUSE SEED" not descriptive). Applicant's association of the rigorous intensity of professional athletics with a general exercise and nutrition program for average people seeking to improve their health and fitness is incongruous. The HIIT CAMP mark is sufficiently removed from the nature of the services themselves that customers will require "imagination and

perception" to determine what Applicant is selling. *Pom Wonderful LLC v. Hubbard*, 775 F.3d 1118, 1126 (9th Cir. 2014) (mark is suggestive which "requires customers to use some additional imagination and perception to decipher the nature of [applicant's] goods.")

For similar reasons, Applicant should not be required to disclaim the term "HIIT." This is particularly true with regard to Class 25 goods. Applicant's Class 25 application is for clothing. While consumers may choose to wear this clothing while performing high intensity interval training, this does not make "HIIT" descriptive of the use of the clothing. Merely suggesting one possible result of a product's use is insufficient to render a term descriptive. *See Application of Realistic Co.* (C.C.P.A. 1971) 440 F.2d 1393, 1394e (mark that "suggest[s] a possible result of the intended use of the [product]" is not descriptive). The Examining Attorney has not provided any evidence of any third-party use of the term "HIIT" to describe clothing. This lack of evidence indicates that the mark is not descriptive. *Firestone Tire & Rubber Co. v. Goodyear Tire & Rubber Co.* (C.C.P.A., Apr. 1, 1976, No. 76-504) 1976 WL 21295, at *2. Competitors have no need to use the term "HIIT" in connection with their clothing. Because "HIIT" is not descriptive of Applicant's Class 25 goods, there is no need to disclaim it from the mark.

CONCLUSION

For the foregoing reasons, Applicant respectfully requests that the examining attorney reconsider his initial position with respect to and allow Applicant's mark to proceed to publication.