


**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**SERIAL NO.** : 88114330

**FILING DATE** : September 12, 2018

**MARK** : The logo for 'Sugar POP' features the word 'Sugar' in a black, cursive script font positioned above the word 'POP'. 'POP' is rendered in a large, bold, sans-serif font with a grey-to-black gradient.

**APPLICANT** : Fourstar Group, Inc.

**EXAMINING ATTORNEY** : Deirdre G. Robertson

**RESPONSE TO OFFICE ACTION**

Applicant supplies this response to Office Action issued by Examining Attorney on October 23, 2018. For the reasons stated below, Applicant respectfully requests that the mark be approved for publication.

I. Applicant's Mark is not Merely Descriptive

A mark is merely descriptive of goods in the meaning of Section 2(e)(1) if it directly conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose, or use thereof. *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). In the present case, Applicant's mark is not merely descriptive of the goods because the mark does not clearly tell the customers *only* their functions, characteristics, use or ingredients of the goods. *In re Colonial Stores, Inc.*, 394 F.2d 549, 157 USPQ 382 (CCPA 1968). *Only* when a mark does immediately deliver accurate or distinct knowledge of the ingredients, qualities, or characteristic of Applicant's goods, the mark is 'merely' descriptive of the goods. *Blisscraft of Hollywood v. United Plastics Company*, 294 F.2d 694 131 USPQ 55 (2<sup>nd</sup> Cir. 1961); *Equine Technologies, Inc. v. Equitechnology, Inc.*, 68 F.3d 542, 544 (Fed. Cir. 1995).

Applicant's mark is suggestive because reasoning process, imagination, thought, or perception is required to determine a characteristic or feature of the goods that the mark

indicates. *In re Mayer-Beaton Corp.*, 223 USPQ 1347, 1349 (TTAB 1984); *See In re Abcor Dev. Corp.*, 200 USPQ 215, 218. When a mark may be viewed as descriptive in a way, the mark would be suggestive if it can be perceived as suggestive in another way. *See* 2 J. Thomas McCarthy, Trademarks and Unfair Competition Section 11:19 at 11-28 (the d. 2000) (“A mark that connotes two meanings... one possibly descriptive, and the other suggestive of some other association... can be called suggestive, as the mark is not ‘merely’ descriptive.”).

Examining Attorney asserts that “SUGAR POP” merely describes a feature of Applicant’s goods “lollipops, candy kabobs, gummy candies, marshmallow candies, gumballs, bubble gum, dextrose candy, jelly candy, chocolate.” However, Applicant finds that ‘sugar’ and ‘pop’ have different and, at the same time, significant meanings than what suggested by Examining Attorney. While a word, ‘sugar,’ has a meaning of sweet matter, it also means (i) ‘to make palatable or attractive’; (ii) ‘a term of endearment or an affectionate form of address’; (iii) ‘kiss’; (iv) ‘an expression of love.’ Exhibit A. The word, ‘pop,’ has a very significant meaning than other meanings: ‘pop’ is a suggestive term for the pop culture. Exhibit B. Also, it means: (i) ‘make a light explosive sound’; (ii) ‘go somewhere for a short time, often without notice; (iii) ‘bulge or appear to bulge when opened wide, especially as an indication of surprise; (iv) ‘appear brighter or more striking in juxtaposition with something of a different or complementary color’; (v) ‘father.’ Exhibit C. Moreover, Applicant’s mark includes design elements: (i) ‘sugar’ is in stylized form; (ii) ‘sugar’ is placed over ‘pop’; (iii) ‘pop’ is at least four times bigger than ‘sugar’; and (iv) ‘pop’ is multiple times extrabold. It is obvious that ‘pop’ is the term that the general public would primarily perceive when they encounter Applicant’s mark. Based on these circumstances, we may reasonably conclude that when the general consumers encounter Applicant’s mark, they would very likely think of something connected with the pop culture rather than the meaning suggested by Examining Attorney. It is unreasonable to assume that the general consumers would automatically and immediately think of one meaning, among other more significant different meanings. Thus, Applicant’s mark is not merely descriptive: it does not “forthwith” give accurate or distinct knowledge of the characteristics of those goods and services. *See Blisscraft of Hollywoods*, 131 USPQ 55.

Therefore, Applicant’s mark is rather suggestive because a term is suggestive if imagination, thought, or perception is required to conclude the nature of the goods or services. *See In re Gyulay*, 3 USPQ2d 1009; *See Maidenform, Inc. v. Munsingwear, Inc.*, 195 USPQ 297 (SDNY 1977) (holding mark UNDERNEATH IT ALL for ladies’ undergarments is suggestive as “the terms do more than convey an immediate idea of the ingredients, qualities, or characteristics” of the undergarments); *See In re George Weston Ltd.*, 228 USPQ 57, 58 (TTAB 1985) (holding mark SPEEDI BAKE does not immediately convey the ingredients, qualities, or characteristics of dough that quickly bakes into bread); *See also In re Wells Fargo & Co.*, 231 USPQ 116 (TTAB 1986) (holding an exercise of “mental gymnastics” is required in determining the “descriptive significance” of mark EXPRESS SAVINGS for banking services); *In re Southern National Bank of North Carolina*, 219 USPQ 1231 (TTAB 1983) (holding mark MONEY 24 does not immediately convey the ingredients, qualities, or characteristics of the services for accessing one’s money by use of an ATM machine on a 24-hour basis). In addition, if “mature thought or follow a multi-stage reasoning process” is required to determine attributes

of goods or services which the mark applied for, the mark is suggestive. *See* 2 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* sec 11:67 (2004). As Applicant's mark would be likely recognized by the general consumers as something related to the pop culture, the word, 'sugar,' would be likely recognized by the general consumers as an adjective to emphasize the 'pop.' The consumers will need to imagine, think, or perceive to conclude the nature of the goods when they encounter the mark.

Applicant's mark does not give accurate or distinct knowledge of the characteristics of those goods and does not automatically convey an idea of ingredients, qualities, or characteristics of Applicant's goods. The other significant meanings of 'sugar' and 'pop' and the combination of the words in Applicant's mark result in an incongruous and unique meaning. Therefore, Applicant's mark is suggestive as the mark requires "mental gymnastics" to determine the "descriptive significance" of Applicant's mark.

## II. Conclusion

The distinction between being merely descriptive and being suggestive is analyzed intuitively rather than through logical analysis. *In re George Weston Ltd.*, 228 USPQ 57, 58. In addition, USPTO determines the question in favor of Applicant. *In re Women's Publishing Co.*, 23 USPQ2d 1876, 1878 (TTAB 1992); *In re Merrill, Lynch, Pierce Fenner & Smith, Inc.*, 822 F.2d 1567, 4 USPQ2d 1141, 1144 (Fed. Cir. 1987). Thus, if there is any doubt between mere descriptiveness and suggestiveness, the doubt should be determined according to the policy of USPTO and in favor of Applicant. The doubt will be resolved through the opposition process.

For the foregoing reasons, Applicant respectfully requests that Examining Attorney withdraw the rejection and that the instant Application be passed to publication and such action is courteously solicited.