

April 18, 2019

*Via E-Filing*

Commissioner for Trademarks  
Alexandria, VA 22313-1451

**Re: Application Serial No.: 88065268**  
**Mark: FLYER**  
**Filing Date: August 3, 2018**  
**Applicant: Kitty Hawk Corporation**  
**Office Action Mailing Date: October 19, 2018**  
**Examining Attorney: Barbara A. Gold, Esq.**

**RESPONSE TO OFFICE ACTION**

Kitty Hawk Corporation (“Applicant”) hereby responds to the Office Action mailed on October 19, 2018. The Office Action preliminarily refused the application to register the mark FLYER (Applicant’s Mark”) under Section 2(e) because the mark is, allegedly, merely descriptive.

**I. Identification of Goods and Recitation of Services**

Applicant has amended its identification of goods and recitation of services to address the Examining Attorney’s concerns. Specifically, it amends them to read as follows:

Class 12: Air or water vehicles; **land** vehicles and products for locomotion by land; apparatus for locomotion **vehicles for travel** by land, air, or water  
Class 39: **Air and land** transportation services  
Class 41: Providing recreational aviation flights **in aircraft**

**II. Refusal of Registration – Merely Descriptive**

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“To be refused registration on the Principal Register under §2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), a mark must be merely descriptive or deceptively misdescriptive of the goods or services to which it relates. A mark is considered merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose, or use of the specified goods or services.” TMEP 1209.01(b). *See In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987) (APPLE PIE held merely descriptive of potpourri).

“Suggestive marks are those that, when applied to the goods or services at issue, require imagination, thought, or perception to reach a conclusion as to the nature of those goods or services. Thus, a suggestive term differs from a descriptive term, which immediately tells something about the goods or services.” TMEP 1209.01(a). *See In re George Weston Ltd.*, 228 USPQ 57 (TTAB 1985) (SPEEDI BAKE for frozen dough found to fall within the category of suggestive marks because it only vaguely suggests a desirable characteristic of frozen dough, namely, that it quickly and easily may be baked into bread). Marks which are suggestive may be registered on the Principal Register without proof of secondary meaning. TMEP 1209.01(a).

Applicant maintains that its mark, FLYER, is not descriptive of its goods and services for the following reasons: (i) a consumer must engage in mature thought or follow a multi-stage reasoning process to actually determine the significant attributes of Applicant’s goods and services, and (ii) the primary significance of the mark is not descriptive in nature.

Applicant's FLYER trademark is suggestive of Applicant's goods and services. "A mark that vaguely suggests a desirable characteristic of the product, or one that uses the mark in a manner not usually associated with the terms, will be considered suggestive." TMEP 1209.01(a), *see In re MBNA America Bank N.A.*, 340 F.3d 1328, 67 USPQ2d 1778, 1780 (Fed. Cir. 2003); *In re George Weston Ltd.*, 228 USPQ 57 (TTAB 1985); *In re Pennwalt Corp.*, 173 USPQ 317 (TTAB 1972). Moreover, "a designation does not have to be devoid of all meaning in relation to the goods/services to be registrable." TMEP 1209.01(a)

In contrast, to be descriptive, Applicant's mark must immediately convey information as to the services with a "degree of particularity." *Plus Products v. Medical Modalities Associates, Inc.*, 211 USPQ 1199, 1204-1205 (TTAB 1981) (emphasis added). Here, Applicant's use of the term "FLYER" in connection with its goods and services does not immediately describe the services with any "degree of particularity." "Flyer" may evoke a leaflet or handbill advertising an event or product. It could refer to a red toy wagon, or a participant in acrobatic gymnastics. It has been applied to a National Hockey League team from Philadelphia, and to refer to a reckless or speculative venture. Therefore, the common definitions of the term do not immediately convey with any "degree of particularity" the nature of Applicant's goods and services.

Absent the required "degree of particularity," Applicant's mark should be deemed suggestive.

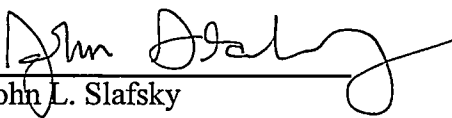
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**III. Conclusion**

Applicant respectfully submits that the Application should now proceed to publication.

Respectfully submitted,

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

By:   
John L. Slafsky

*Attorney for Applicant  
Kitty Hawk Corporation*