

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

Ser. No.: 88256715

Mark: ULTRACLEAR

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Correspondent's Reference/Docket No.:
2806-1082

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RESPONSE TO OFFICE ACTION

This is in response to the Office Action issued on April 5, 2019 for Ser. No. 88256715 for the mark ULTRACLEAR ("Applicant's Mark"). Applicant respectfully requests that the application be promptly approved for publication.

I. RESPONSES TO THE EXAMINER'S REQUESTS FOR INFORMATION ABOUT GOODS/SERVICES.

Question 1: Does ULTRA, CLEAR, ULTRA CLEAR, or ULTRACLEAR have any significance as applied to the goods and/or services other than trademark and/or service mark significance?

Response to Question 1: The mark ULTRACLEAR is not yet in use in connection with any goods or services. The term "ULTRACLEAR" will not be descriptive or generic in connection with any of the goods identified in the Application.

Question 2: Does ULTRA, CLEAR, ULTRA CLEAR, or ULTRACLEAR have any significance in the relevant trade or industry other than trademark and/or service mark significance?

Response to Question 2: The mark ULTRACLEAR is not yet in use in connection with any goods or services. The term "ULTRACLEAR" will not be descriptive or generic in connection with any of the goods identified in the Application.

Question 3: If available, the applicant will provide a website address at which the goods and/or services are offered and/or the mark is used. If no website is available, then the applicant will state this fact for the record.

Response to Question 3: The mark ULTRACLEAR is not currently in use on a website.

Question 4: Do/Will any of applicant's identified goods include or contain marijuana, cannabis, hemp, industrial hemp, marijuana-based preparations, cannabis-based preparations, hemp-based preparations, extracts or derivatives from marijuana, cannabis or hemp, including tetrahydrocannabinol (THC) or cannabidiol (CBD), synthetic marijuana, or any other controlled substance under the CSA?

Response to Question 4: Applicant understands that federal law prohibits the manufacture or distribution of marijuana, cannabis, hemp, industrial hemp, marijuana-based preparations, cannabis-based preparations, hemp-based preparations, extracts or derivatives from marijuana, cannabis or hemp, including tetrahydrocannabinol (THC) or cannabidiol (CBD), synthetic marijuana, and other controlled substances (with the exception of any product which is not a food, beverage, nutritional supplement, or pet treat and which contains the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3% on a dry weight basis). The goods set forth in the identification of goods in the Application do *not* include or contain any goods noncompliant with federal law.

Question 5: Do/Will any of applicant's identified goods include or contain CBD?

Response to Question 5: Applicant understands that federal law prohibits the manufacture or distribution of CBD (with the exception of any product which is not a food, beverage, nutritional supplement, or pet treat and which contains the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3% on a dry weight basis). The goods set forth in the identification of goods in the Application do *not* include or contain any goods noncompliant with federal law.

Question 6: Do/Will any of applicant's identified goods include or contain hemp or hemp oil?

Response to Question 6: Applicant understands that federal law prohibits the manufacture or distribution of hemp or hemp oil (with the exception of any product which is not a food, beverage, nutritional supplement, or pet treat and which contains the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3% on a dry weight basis). The goods set forth in the identification of goods in the Application do *not* include or contain any goods noncompliant with federal law.

Question 7: Do/Will any of applicant's identified goods contain more than a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis?

Response to Question 7: Applicant understands that federal law prohibits the manufacture or distribution of goods containing a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent on a dry weight basis. The goods set forth in the identification of goods in the Application do *not* include or contain any goods noncompliant with federal law.

Question 8: If applicant's goods do or will contain oils, extracts, ingredients or derivatives from the plant *Cannabis sativa L* which has more than 0.3 percent delta-9 tetrahydrocannabinol on a dry weight basis, identify the part or parts of the plant used in obtaining the oils, extracts, ingredients or derivatives.

Response to Question 8: Applicant understands that federal law prohibits the manufacture or distribution of goods containing a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent on a dry weight basis. The goods set forth in the identification of goods in the Application do *not* include or contain any goods noncompliant with federal law.

Question 9: If the “hemp” is grown in the United States of America, was the hemp used in the goods obtained from an authorized grower or supplier of industrial hemp from a hemp growing pilot program set up under the 2014 Farm Bill?

Response to Question 9: Applicant understands that under federal law industrial hemp legitimately may be grown or cultivated either pursuant to Section 7606 of the 2014 Farm Bill or in connection with a DEA permit. The goods set forth in the identification of goods in the Application do *not* include or contain any goods noncompliant with federal law.

Question 10: Do or will applicant's identified goods include CBD which is derived from, oils, extracts or ingredients from plants other than *Cannabis sativa L*?

Response to Question 10: Applicant understands that federal law prohibits the manufacture or distribution of CBD (with the exception of any product which is not a food, beverage, nutritional supplement, or pet treat and which contains the plant *Cannabis sativa L*. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3% on a dry weight basis). The goods set forth in the identification of goods in the Application do *not* include or contain any goods noncompliant with federal law.

Question 11: Upon information and belief, do applicant's identified goods and services comply with the Controlled Substances Act?

Response to Question 11: Applicant understands that federal law prohibits the manufacture or distribution of goods and services that do not comply with the federal Controlled Substances Act. The goods set forth in the identification of goods in the Application do *not* include or contain any goods noncompliant with federal law.

Question 12: Applicant must submit a written statement indicating whether the goods identified in the application comply with the Controlled Substances Act (CSA), 21 U.S.C. §§801-971. *See* 37 C.F.R. §2.69; TMEP §907.

Response to Question 12: Applicant understands that federal law prohibits the manufacture or distribution of goods and services that do not comply with the federal Controlled Substances Act. The goods set forth in the identification of goods in the Application do *not* include or contain any goods noncompliant with federal law.

Question 13: To permit proper examination of the application, applicant must submit additional product information about applicant's goods because the nature of such goods is not clear from the present record. *See* 37 C.F.R. §2.61(b); TMEP §814. The requested product information should include fact sheets, instruction manuals, advertisements and promotional materials, and/or a photograph of the identified goods. If these materials are unavailable, applicant should submit similar documentation for goods of the same type, explaining how its own product will differ. Applicant must also describe in detail the nature, purpose, and channels of trade of the goods. Factual information about the goods must clearly indicate how they operate, their salient features, and their prospective customers and channels of trade.

Response to Question 13: Under the mark ULTRACLEAR, Applicant intends to offer goods containing cannabis as allowed by applicable state law, and also intends to offer goods that do not contain any substances prohibited by federal law. Applicant intends that this federal Application, and its ensuing federal registration, will cover *only* goods compliant with federal law.

Question 14: Will some or all of the goods be clear?

Response to Question 14: The mark ULTRACLEAR is not yet in use in connection with any goods or services. The term "ULTRACLEAR" will not be descriptive or generic in connection with any of the goods identified in the Application.

II. THERE IS NO BASIS FOR THE "CONDITIONAL UNLAWFUL USE REFUSAL – MARIJUANA RELATED GOODS".

The Examiner stated that "if the identified goods, in whole or in part, are not compliant with the Controlled Substances Act (CSA), 21 U.S.C. §§801-971, then registration is refused." The goods set forth in the identification of goods in the Application do *not* include or contain any goods noncompliant with federal law. Therefore, the conditional refusal has no basis and should be withdrawn.

Under the mark ULTRACLEAR, Applicant intends to offer goods containing cannabis as allowed by applicable state law, and also intends to offer goods that do not contain any substances prohibited by federal law. Applicant intends that this federal Application, and its ensuing federal registration, will cover *only* goods compliant with federal law.

Applicant respectfully notes that the identification of goods in the Application expressly excludes “any goods which are noncompliant with the Controlled Substances Act, 21 U.S.C. §§801-971.” Applicant hereby reiterates that the goods set forth in the identification of goods in the Application do *not* include or contain any goods noncompliant with federal law. Under 15 U.S.C. § 1057(b), the scope of a U.S. trademark registration is limited to “the goods or services specified in the certificate.” *See Harry Winston, Inc. v. Bruce Winston Gem Corp.*, 111 U.S.P.Q.2d 1419 (T.T.A.B. 2014) (noting that “[t]he identification of goods appearing in the application . . . defines the scope of the registration that applicant seeks”). Since the identification of goods in the Application expressly excludes “any goods which are noncompliant with the Controlled Substances Act, 21 U.S.C. §§801-971,” the mere existence of any goods noncompliant with federal law cannot affect the registrability of this Application.

III. CONCLUSION.

Applicant respectfully requests that the Application be promptly published for opposition.