

Serial No.: 88/694,021
Response to Office Action of February 26, 2020
Attorney Docket: MBLST-032T

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Media Blast & Abrasive, Inc.)	Law Office:	118
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Serial No.:	88/694,021)	Examining Attorney:	Lee-Anne Berns
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Filed:	November 15, 2019)		
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For:	HYDROSLURRY)		
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RESPONSE TO OFFICE ACTION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Commissioner:

In response to the Office Action mailed February 26, 2020, please consider the following remarks:

Remarks begin on page 2 of this paper.

REMARKS

In the Office Action, the Examining Attorney refused registration of Applicant's mark on the Principal Register on the grounds that Applicant's mark, HYDROSLURRY, is merely descriptive under Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1). For the reasons below, Applicant respectfully submits that Applicant's mark, when viewed as a whole, is not merely descriptive in relation to the identified services: "ABRASIVE BLAST CLEANING MACHINES, NAMELY, ABRASIVE BLASTING CABINET FOR MACHINE PARTS; ABRASIVE BLASTING CABINETS, NAMELY, POWERED MACHINES FOR FINISHING METALS OR OTHER MATERIALS FOR MACHINE PARTS."

According to the argument set forth in the Office Action, "'HYDRO' merely describes that applicant's abrasive blast cleaning machines use hydro-blasting or water-based pressure" and "the term 'SLURRY' describes use of a slurry mixture in the blasting process." However, the weight of the evidence makes it clear that so-called "hydro-blasting" is *non-abrasive*. See the following examples:

- Wikipedia, "Abrasive blasting"
 - o "Hydro blasting is not a form of abrasive blasting as no abrasive media is used. Hydro-blasting, commonly known as water blasting, is commonly used because it usually requires only one operator. In hydro-blasting, a highly pressured stream of water is used to remove old paint, chemicals, or buildup without damaging the original surface."
- Blast & Wash Systems, "Abrasive Wet Blast Equipment"
 - o "High pressure parts washer blast (no abrasive) *Hydro Blast Max*"
- PressureJet, "Hydro Blasting Machine"
 - o "Hydroblasting is a technique for cleaning external surfaces, which relies entirely on the sheer force of water from a pressurized source to achieve the desired cleaning effect on the intended surface. Abrasives, toxic and potentially harmful chemicals are not used in hydroblasting systems."

The evidence includes only a single contrary example, in which an old article from November 29, 2012 describes a "Hydro-blast process" as "Sand is mixed with water and propelled by water pressure." This definition appears to be an outlier, however, and does not accurately reflect current usage as demonstrated by the weight of the evidence.

Considering the well-understood meaning of “hydro-blasting” as referring to a non-abrasive technology, Applicant’s mark, HYDROSLURRY, would not be regarded as describing a feature, characteristic, purpose, or function of applicant’s goods, which are “**ABRASIVE** BLAST CLEANING MACHINES, NAMELY, **ABRASIVE** BLASTING CABINET FOR MACHINE PARTS; **ABRASIVE** BLASTING CABINETS, NAMELY, POWERED MACHINES FOR FINISHING METALS OR OTHER MATERIALS FOR MACHINE PARTS.” Indeed, Applicant’s combination of the prefix “HYDRO” with “SLURRY” is incongruous within the meaning of TMEP § 1209.01(a):

Incongruity is a strong indication that a mark is suggestive rather than merely descriptive. *In re Tennis in the Round Inc.*, 199 USPQ 496, 498 (TTAB 1978) (TENNIS IN THE ROUND held not merely descriptive for providing tennis facilities, the Board finding that the association of applicant's marks with the phrase "theater-in-the-round" created an incongruity because applicant's tennis facilities are not at all analogous to those used in a "theater-in-the-round"). The Board has described incongruity in a mark as "one of the accepted guideposts in the evolved set of legal principles for discriminating the suggestive from the descriptive mark," and has noted that the concept of mere descriptiveness "should not penalize coinage of hitherto unused and somewhat incongruous word combinations whose import would not be grasped without some measure of imagination and ‘mental pause.’” *In re Shutts*, 217 USPQ 363, 364–5 (TTAB 1983) (SNO-RAKE held not merely descriptive of a snow-removal hand tool); *see also In re Vienna Sausage Mfg. Co.*, 156 USPQ 155, 156 (TTAB 1967) (FRANKWURST held not merely descriptive for wieners, the Board finding that although "frank" may be synonymous with "wiener," and "wurst" is synonymous with "sausage," the combination of the terms is incongruous and results in a mark that is no more than suggestive of the nature of the goods); *In re John H. Breck, Inc.*, 150 USPQ 397, 398 (TTAB 1966) (TINT TONE held suggestive for hair coloring, the Board finding that the words overlap in significance and their combination is somewhat incongruous or redundant and does not immediately convey the nature of the product); *cf. In re Getz Found.*, 227 USPQ 571, 572 (TTAB 1985) (MOUSE HOUSE held fanciful for museum services featuring mice figurines made up to appear as human beings, the Board finding that the only conceivable meaning of "mouse house," i.e., a building at a zoo in which live and/or stuffed mice are displayed, is incongruous).

By way of example, in finding the mark SNO-RAKE to be incongruous and thus not merely descriptive, the Board reasoned that “the idea of a ‘rake’ or ‘raking’ does indeed sit strange in terms of application to snow and, at best, is suggestive of a capacity for gathering up snow with an implement or using an action that hardly fits any of the common conceptions of ‘rake’ or ‘raking’.” *In re Shutts*, 217 U.S.P.Q. (BNA) 363, 364 (Trademark Trial & App. Bd.

February 25, 1983). In the same way, Applicant's mark HYDROSLURRY is incongruous because the term "hydro" in the field of blast cleaning evokes non-abrasive water blasting, which does not use a slurry. For at least this reason, Applicant submits that the mark HYDROSLURRY is suggestive at best and should not be refused registration as being merely descriptive.

Regarding the Examining Attorney's request for information, answers are provided below.

Factual information about the goods that must clearly indicate how they operate, their salient features, and their prospective customers and channels of trade.

- Applicant's goods are wet abrasive blasting machines, which may sometimes generically be referred to as vapor blasting machines. For example, as described on Applicant's website, "[t]he Hurricane Wet Blast Machine uses a seal-less slurry pump to agitate the abrasive and water into a slurry mixture. ... The wet slurry mixture is pumped directly to the abrasive blast gun where compressed air pressure accelerates the mixture to the desired pressure rating."

Answers to specific questions presented in the Office Action:

1. Does "HYDRO", "SLURRY" and/or "HYDROSLURRY" describe any feature, quality, or characteristic of the applicant's goods? If so, please specify meaning of these terms as applied to the goods in the application.
 - a. The term "slurry" has its ordinary meaning. As explained above, the term "hydro" suggests the use of water in an incongruous way because so-called "hydro-blasting" does not involve the use of an abrasive or slurry. The term "hydroslurry" is a coined term and has no meaning.
2. Are the terms, "HYDRO", "SLURRY" and/or "HYDROSLURRY" marketed, advertised or described in applicant's fact sheets, brochures or marketing information as having any meaning in relation to the applicant's goods? If so, please provide copies of such materials.
 - a. No. See Applicant's website <https://www.mediablast.com/>.

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3. Do applicant's abrasive blast cleaning machines utilize water or hydro-blasting in the abrasive blasting process?
 - a. They utilize water but not hydro-blasting as the term is known in the field.
4. Do applicant's abrasive blast cleaning machines utilize slurry or slurry blasting in the abrasive blasting process?
 - a. Yes.
5. Do the terms "HYDRO", "SLURRY" and/or "HYDROSLURRY" have any meaning or significance in the industry in which the goods are provided? If so, please specify meaning in the relevant industry.
 - a. "Slurry" has its ordinary meaning in the industry. "Hydro" is associated with "hydro-blasting" as explained above, not with abrasive blasting or the use of a slurry. "Hydroslurry" is Applicant's coined term.

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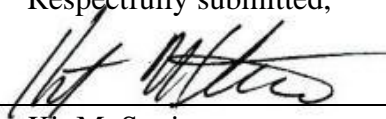
CONCLUSION

In view of the foregoing remarks, Applicant respectfully requests that the refusal be withdrawn and that the mark be passed to prompt publication. To the extent the Examining Attorney has any questions, requires additional information or has any suggestions to resolve any outstanding issues that may exist, she is invited to contact Applicant's counsel at the number listed below. If any additional fee is required, please charge Deposit Account Number 50-2304.

Respectfully submitted,

Date: August 3, 2020

By: _____



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