

The Examining Attorney has initially required that Applicant disclaim the term “Canopy” in the mark on the ground that the term is descriptive of Applicant’s services and/or refused registration of the mark on the Principal Register on the ground that the word “Canopy” is descriptive for Applicant’s goods and services.

As explained below, Applicant believes the Examining Attorney has misunderstood the nature of Applicant’s goods and services and reviewed a defunct project of Applicant that has no relationship to the products and services in this application as a basis for the refusal.

More specifically, to support the refusal, the Examining Attorney cites to definitions of “canopy” as a “roofed structure” and further cites to news references to Applicant’s defunct project in Toronto that discusses “canopies” as part of those proposed structures, *e.g.*

An article entitled “Google’s Sidewalk Labs takes the lead in ‘smart city’ development in Toronto” from the website SmartCityHub.com regarding Sidewalk Labs redevelopment proposal of Quayside, brownfield land around Toronto’s old port:

‘Weather mitigation’

By arranging buildings carefully to produce comfortable microclimates – sheltered by canopies, protected from wind –the time in which it is comfortable to be outside in Toronto’s climate might be doubled.

Similarly, an article entitled “Breaking Ground: Sidewalk Labs Proposes a New Future for Cities” from the website ThePolitic.org provides:

Sidewalk Labs jumped at the opportunity, launching a \$1.4 billion planned development project in Quayside, the first of its kind. They proposed transforming everything—from crosswalks to building materials to weather-adaptive canopies for buildings.

However, as shown in the attached news article from *The Guardian* (and as generally available to review in many other news sources), Applicant abandoned the above-discussed project in May 2020. Accordingly, to the extent the Examining Attorney relies heavily on descriptions of that business and printouts of news articles concerning that project, Applicant submits that those materials are not proper to consider in the context of this application for an entirely different project.

The current “Canopy” and “Canopy Buildings” business of Applicant bears no relationship to the former project in Toronto (Applicant’s business is very diverse and includes businesses that are vastly different).

The current “Canopy” business of Applicant is described as follows at its current Internet website (printout attached herewith):

Sidewalk Labs is exploring the development of an offsite construction company that can deliver high-quality mass timber buildings for more sustainable living and working.

Our end-to-end approach combines craft design and advanced manufacturing to produce customizable buildings with speed and certainty.

As described, Applicant’s “Canopy” business does not consist of building or designing “canopies” or structures that feature canopies – various examples of which are attached to the Office action. Rather, Applicant’s use of the term “Canopy” is merely intended to connote the vague meaning of “canopy” field of construction, generally, *i.e.*, a protective covering.

Applicant further submits that the varied literal definitions from *Merriam-Webster* for the word “Canopy” (attached) demonstrate that Applicant’s use of the mark for a “mass timber” project illustrate that Applicant’s use of the term “Canopy” constitutes a suggestive use:

1. a: a cloth covering suspended over a bed
 b: a cover (as of cloth) fixed or carried above a person of high rank or a sacred object : BALDACHIN
 A canopy hung over the altar.
 c: a protective covering: such as (1): the uppermost spreading branchy layer of a forest (2): AWNING, MARQUEE
 A canopy was erected over the grandstand.
2. an ornamental rooflike structure
3. a: the transparent enclosure over an airplane cockpit
 b: the fabric part of a parachute that catches the air

That Applicant’s proposed “Canopy” business does not fall within any of the literal definitions above is further shown by the third-party articles that describe the nature of the mass timber business identified in Applicant’s application. As discussed in those articles, mass timber businesses relate to a construction type where the primary load-bearing structure is made of either solid or engineered wood.” This type of structure has numerous benefits, as described in the attached articles.

It should be abundantly clear that Applicant’s products and services have nothing to do with a cloth covering for a bed, a cover carried by a person of high rank, an ornamental roof-like structure, or the enclosure for a cockpit/parachute fabric.

Accordingly, Applicant believes the refusal under Section 2(e) should be withdrawn. In sum, the Applicant’s mark is intended to connote the general significance of the term “Canopy” for various types of structures and “coverings,” but the products and do not consist of “canopies” or services related to the construction of canopies. This suggestive meaning does not make Applicant’s

“Canopy” mark descriptive – rather, it makes it a classically suggestive trademark. *See* TMEP § 1209.01(a) (“A designation does not have to be devoid of all meaning in relation to the goods/services to be registrable [on the Principal Register]”). *See also 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); *In re The Noble Co.*, 225 USPQ 749 (TTAB 1985) (NOBURST for liquid antifreeze and rust inhibitor for hot-water-heating systems found to suggest a desired result of using the product rather than immediately informing the purchasing public of a characteristic, feature, function, or attribute); *In re Pennwalt Corp.*, 173 USPQ 317 (TTAB 1972) (DRI-FOOT held suggestive of anti-perspirant deodorant for feet in part because, in the singular, it is not the usual or normal manner in which the purpose of an anti-perspirant and deodorant for the feet would be described).

Applicant’s use of the mark “Canopy” is in line with the marks discussed in the cases above where the marks vaguely suggest a characteristic of the proposed products/service, but do not immediately inform the purchasing public of the characteristics, feature, functions or attributes of the products and services.

Finally, where there are doubts as to registrability of marks, particularly in “dealing with a fine and frequent subject line of demarcation between suggestive and the merely descriptive designation,” doubts in such cases are to be resolved in favor of Applicant. *In re Grand Metropolitan Foodservice, Inc.*, 30 USPQ2d 1974, 1976 (TTAB 1994); *In re Officers’ Organization for Economic Benefits, Ltd.*, 221 USPQ 184, 186 (TTAB 1983).

Applicant submits that, in view of the above, the disclaimer requirement/descriptiveness refusal with regard to the word “Canopy” should be withdrawn.