

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

February 22, 2022

Steven M. Forte

Smith & Hopen, P.A.

180 Pine Ave. North

Oldsmar FL 34677 United States

United States Patent and Trademark Office

Serial No:	90380677
Mark Logo:	CANNABIS COLLEGE
Applicant:	POB Ventures, LLC
Office Action Of:	September 09, 2021

SECTION 2(e)(1) REFUSAL - MERELY DESCRIPTIVE

The Examining Attorney has refused registration of the proposed mark pursuant to Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1), on the grounds that the mark describes an ingredient, quality, characteristic, function, feature, purpose or use of the relevant goods. For the following reasons, the Applicant respectfully disagrees with the findings and requests that the Examining Attorney reconsider the statutory refusal and allow registration of the Applicant's mark.

Differences in the meanings

A term is merely descriptive if it immediately conveys knowledge of a significant quality, characteristic, function, feature or purpose of the goods or services with which it is used, or intended to be used. See *In re Gyulay*, 820 F.2d 1216 (Fed. Cir. 1987). "On the other hand, if one must exercise mature thought or follow a multi-stage reasoning process in order to determine what product or service characteristics the term indicates, the term is suggestive rather than merely descriptive. [internal citations omitted] . . . incongruity is a strong indication that a mark is suggestive rather than merely descriptive." *In re Tennis in the Round, Inc.*, 199 U.S.P.Q. 196, 197 (T.T.A.B. 1978).

The Examining Attorney's conclusion that Applicant's CANNABIS COLLEGE refers to describe institutions that teach about cannabis. There can be thousand combinations of words and not particularly one and a purchaser would need a deep thought process to come to any

conclusion. To be deemed merely descriptive, a mark must directly provide the consumer with reasonably accurate knowledge of the characteristics of the product or service in connection with which it is used. If the information about the product or service is indirect or vague, then the mark is considered suggestive, not descriptive.

Applicant submits that on the continuum of trademarks, its mark is a suggestive mark, not a descriptive one. Suggestive marks are defined as follows in TMEP § 1209.01(a). “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. See *In re Shutts*, 217 USPQ 363 (TTAB 1983) (SNO-RAKE held not merely descriptive of a snow removal hand tool). See also *In re Quik-Print Copy Shop, Inc.*, 203 USPQ 624 (TTAB 1979), *aff’d*, 616 F.2d 523, 205 USPQ 505 (C.C.P.A. 1980) (QUIK-PRINT held merely descriptive of printing services); *In re Aid Laboratories, Inc.*, 223 USPQ 357 (TTAB 1984) (BUG MIST held merely descriptive of insecticide). Suggestive marks, like fanciful and arbitrary marks, are registrable on the Principal Register without proof of secondary meaning. Therefore, a designation does not have to be devoid of all meaning in relation to the goods and services to be registrable.

Fanciful Combination

The applicant mark **CANNABIS COLLEGE** is a fanciful combination and may result in an inherently distinctive and registrable mark. *In re Bed-Check Corp.*, 226 U.S.P.Q. (BNA) 946, 947-948 (TTAB 1985); *In re Mobile Ray, Inc.*, 224 U.S.P.Q. (BNA) 247 (TTAB 1984); *In re Shop-Vac Corporation*, 219 U.S.P.Q. (BNA) 470 (TTAB 1983). In other words, “[t]he whole, in trademark law, is often greater than the sum of its parts.” *Association of Co-operative Members, Inc. v. Farmland Industries, Inc.*, 216 U.S.P.Q. (BNA) 361 (5th Cir. 1982); see also *California Cooler, Inc. v. Loretto Winery, Ltd.*, 774 F.2d 1451,1455 (9th Cir. 1985) (finding that CALIFORNIA COOLER was not descriptive or generic for a wine cooler from California, “[T]he validity of a trademark is to be determined by viewing the trademark as a whole. . . words which could not individually become a trademark may become one when taken together. . . thus, the composite mark may become a distinguishing mark even though its components individually cannot.”). Combinations of merely descriptive terms have been found registrable where the juxtaposition of the terms is inventive or if the term has an

incongruous meaning as applied to the goods. TMEP § 1209.03(d) states that “a mark comprising a combination of merely descriptive components is registrable if the combination of terms creates a unitary mark with a unique, nondescriptive meaning, or if the composite has a bizarre or incongruous meaning as applied to the goods.”

ACQUIRED DISTINCTIVENESS.

There is no descriptiveness among consumers who hear or see the words. The mark is well renowned in the market since it was launched. The mark is highly recognizable in the market and evidence is shown in below links and consumers have found no descriptiveness:

- <https://www.narcity.com/orlando/orlando-florida-cannabis-school-classes-offer-higher-education>
- <https://miamistandard.news/2021/08/08/first-cannabis-college-named-sativa-university-opens-in-central-florida/>
- <https://www.fox35orlando.com/news/first-cannabis-college-in-central-florida-opens>
- <https://www.cannabisbusinesstimes.com/article/hands-on-cannabis-college-opens-sativa-university-central-florida/>

The high end evidence of consumer recognition through Advertising expenditures and marketing efforts shows the mark has acquired distinctiveness further evidences shown below:



Cannabis College | Learn Sativa University

1710 Gayle Ridge Dr, Apopka, FL

Write a review

4.9 ★★★★★ 1,291 reviews

★★★★★ 4 weeks ago

A full day of learning about cannabis laws, growing, medicinal uses and so much more. Assembly of a tent and lighting set up was very informative and a great way to get hands on experience.

The staff was friendly and helpful, overall a great experience.

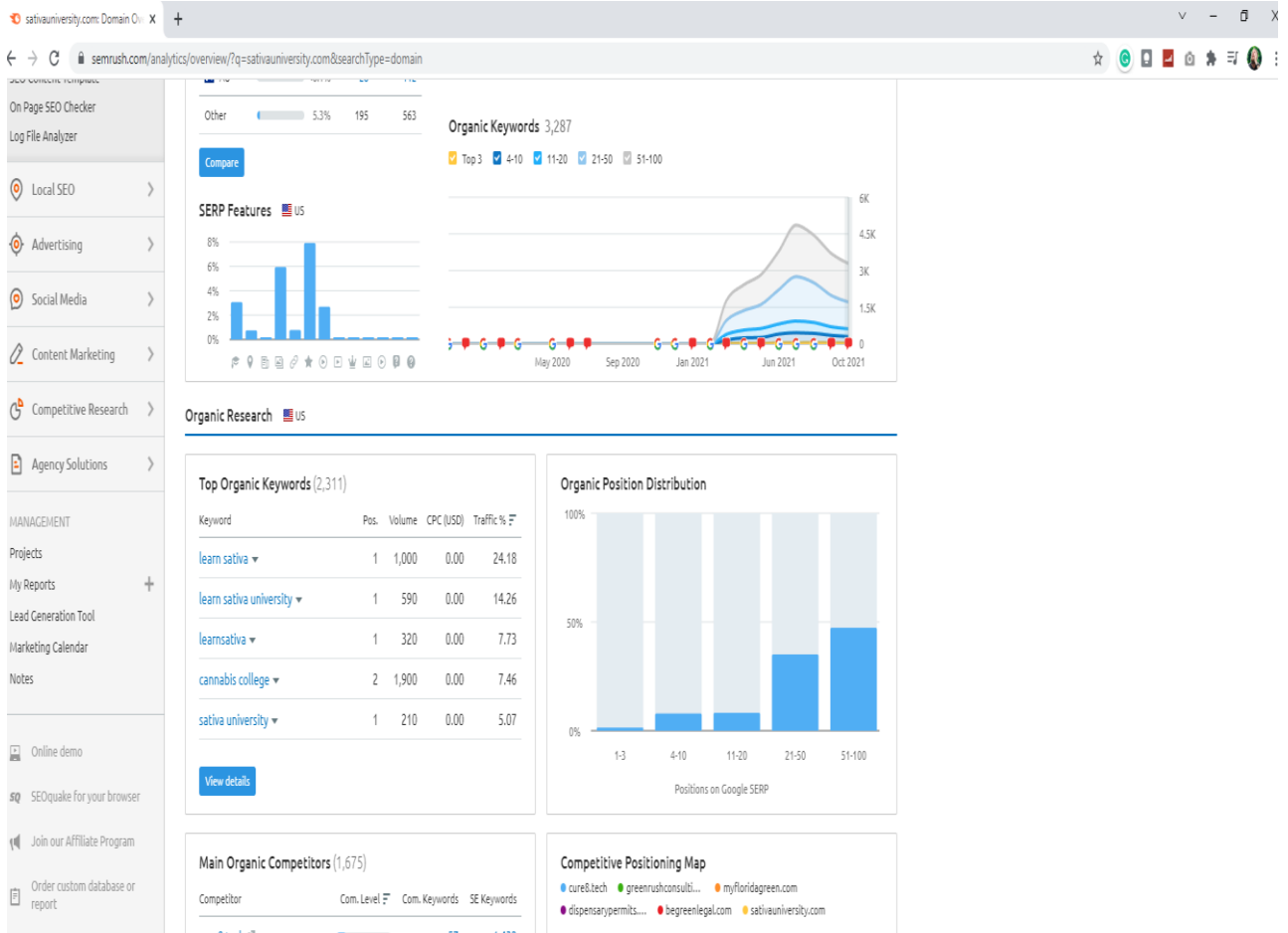
Reply 1

Brenden Maharaj
4 reviews

★★★★★ 4 weeks ago

By far one of the best colleges I've ever attended. If you really wanna pursue a great career in the Cannabis Industry, definitely check out Patrick O'Briens Cannabis College. I promise you won't regret it!!!

Reply Like



Performance

Time period: **May 2021 - Oct 2021**

Overview | Calls | Messages | Bookings | Directions | Website clicks

How people discovered you

46,681

People viewed your Business Profile

Platform and device breakdown

Platform and devices that people used to find your profile

- 35,629 - 76% Google Search - mobile
- 8,259 - 18% Google Search - desktop
- 2,546 - 5% Google Maps - mobile
- 247 - 1% Google Maps - desktop

26,191

Searches triggered your Business Profile

Searches breakdown

Search terms that returned your profile in the results

1	sativa university	13K
2	learn sativa	1,977
3	cannabis college	1,341
4	dispensary near me	1,236
5	learn sativa university	825

[See more](#)

From Cannabis College | Learn Sativa Universi...

Cannabis College providing both Online and Hands-On Cannabis Training

Cannabis College | Learn Sativa Unive on Google

Marijuana Job Fair - Orlando
Feb 1, 9:30 AM - 4:00 PM
Cannabis job fair in Orlando...
Jan 29, 2019
[Learn more](#)

Cannabis College Online
Tommy Chong of Cheech and Chong say's he...
Sep 4, 2018
[Learn more](#)

https://sativauniversity.com

Learn Sativa University | CBD Dispensary, Cannabis College ...

Learn Sativa University is the #1 Online and Hands-on cannabis college in the world - designed for Growers, Budtenders, Medical and Entrepreneurs alike.

Log In

IMPORTANT: If you can not log in, try clicking "reset password" ...

Cannabis College Tuition & Fees

Includes: 8 Hours of Hands-on Training, Budtender/Dispensary ...

Hands-on Cannabis Training

Are you looking for hands-on Cannabis Classes and training ...

More results from sativauniversity.com

Online Cannabis Training

Or 4 easy payments of \$49 - Simply click "Pay Later" during ...

Start Your Cannabis Training!

Cannabis Training - Online & Hands-on at our 5 acre ...

Reviews

The Learn Sativa program is the best & the only cannabis ...

People also ask

- Is learn sativa legit?
- Is Sativa accredited?
- What is sativa certification?
- Is oaksterdam University legit?

https://www.indeed.com

Learn Sativa University in Apopka, FL - Indeed

Jul 27, 2021 - Learn Sativa University is located in Apopka, FL, but also offers classes online. This school offers training in 40 qualifications, ...

Course Length: 4 hours - 2 months
Price: \$199 - \$1,150

Programs: all (40)
Location: Apopka, FL / Online

https://www.instagram.com

Learn Sativa University (@learnsativa) • Instagram photos and ...

Learn Sativa University. Education. #1 Cannabis School in USA Online & Hands-On Cannabis Training FREE Farm Tours (Sun-Thurs)

https://www.miamiherald.com

Florida's Learn Sativa University Promises Higher Education

Aug 17, 2021 - According to Learn Sativa University's website, the university offers online cannabis classes for \$199 and in-person classes for \$299. After ...

https://www.facebook.com

LearnSativa.org - Home | Facebook

LearnSativa.com is the Authority in Dispensary Certifications and Online Career Training. 717 Altaloma Ave, Orlando, FL 32803.

https://www.linkedin.com

Learn Sativa University | LinkedIn

Learn Sativa University | 506 followers on LinkedIn. We help people land jobs and start successful businesses in the \$52.5 billion cannabis industry. You've visited this page many times. Last visit: 10/7/21

Related searches

- is learn sativa university legit
- learn sativa university cost
- learn sativa certification
- is learn sativa university accredited
- learn sativa university coupon code
- learn sativa advanced grow
- learn sativa instagram
- learn sativa final exam

From Cannabis College | Learn Sativa Universi...

Cannabis College providing both Online and Hands-On Cannabis Training

Cannabis College | Learn Sativa Unive on Google

Marijuana Job Fair - Orlando
Feb 1, 9:30 AM - 4:00 PM
Cannabis job fair in Orlando...
Jan 29, 2019
[Learn more](#)

Cannabis College Online
Tommy Chong of Cheech and Chong say's he...
Sep 4, 2018
[Learn more](#)

Reviews

1,291 Google reviews

R "Awesome place, awesome staff, amazing owners and teachers." ★★★★★

e "I enjoyed the instructor method of teaching and the hands on experience!" ★★★★★

M "Great group of people always there to help and answer questions." ★★★★★

View all Google reviews

Profiles

Facebook Instagram Twitter LinkedIn

People also search for

Curaleaf Dispensary Orlando... Cannabis store

Trulieve Orlando Cannabis store

FLUENT Cannabis Dispensa... Cannabis store

Sarterra Wellness - Orlando Cannabis store

David's Mobile CBD Disp... Health consultant

About this data Feedback

CANNABIS COLLEGE Is Suggestive, Not Merely Descriptive of Applicant's Goods

In categorizing a trademark, it is not sufficient to ask whether a term or phrase is descriptive. The statutory test, set out in 15 U.S.C. § 1052(e)(1), is whether the mark or term at issue is merely descriptive. In this context, the term "merely" is to be taken in its ordinary meaning of 'only' or 'solely' -- that is, when considered with the particular goods or services the mark because of its meaning does nothing but describe them. See Trademark Manual of Examining Procedure ("T.M.E.P.") at § 1209.01. Additionally, the "word 'merely' in the Act means that if the mark clearly does not tell the potential customer only what the goods or services are, their function, characteristics, use or ingredients, then the mark [or term] is not 'merely descriptive.'" See MCCARTHY, TRADEMARKS AND UNFAIR COMPETITION (4th ed. 2010) § 11.51 (hereinafter "MCCARTHY'S"); *In re Colonial Stores Inc.*, 394 F.2d 549 (C.C.P.A. 1968); and *In re Quik-Print Copy Shops, Inc.*, 616 F.2d 523, 205 U.S.P.Q. 505, n.7 (C.C.P.A. 1980). Terms which may describe the ingredients of the goods, their characteristics, or the function of the services are nonetheless entitled to registration. See *In re Colonial Stores Inc.*, 394 F.2d 549 (C.C.P.A. 1968); *In re DC Comics, Inc.*, 689 F.2d 1042, 1044 (C.C.P.A. 1982); *In re Reynolds Metals Co.*, 480 F.2d 902 (C.C.P.A. 1973).

A term is merely descriptive only if it immediately conveys an idea of the function, feature or purpose of the goods or services. *Equine Technologies, Inc. v. Equitechnology, Inc.*, 68 F.3d 542, 544 (Fed. Cir. 1995). A suggestive term or mark suggests or alludes to a characteristic or function of the goods or services and is registerable on the Principal Register. *In re Aid Laboratories, Inc.*, 223 U.S.P.Q. 357 (T.T.A.B. 1984); T.M.E.P. § 1209.01(a). It is established law that any doubts regarding whether a mark or portion of a mark is suggestive, as opposed to merely descriptive, are to be resolved in favor of the applicant, i.e., in favor of a finding of suggestiveness and registrability. See *In re Conductive Systems, Inc.*, 220 U.S.P.Q. at 86. Suggestive terms 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. A suggestive term differs from a descriptive term, which immediately tells something about the goods or services. See *In re Shutts*, 217 U.S.P.Q. 363 (T.T.A.B. 1983). See also *In re Quik-Print Copy Shop, Inc.*, 203 U.S.P.Q. 624 (T.T.A.B. 1979), *aff'd*, 616 F.2d 523, 205 USPQ 505 (C.C.P.A. 1980); *In re Aid Laboratories, Inc.*, 223 U.S.P.Q. 357 (T.T.A.B. 1984). Thus, a designation

does not have to be devoid of all meaning in relation to the goods or services to be registerable.

Applicant respectfully submits that the 'CANNABIS COLLEGE' trademark is at worse, a suggestive trademark, requiring the potential consumer to exercise some level of thought process rather than a direct and immediate recognition that the terms "CANNABIS COLLEGE" have some relationship to the services being provided. Federal Courts have held that a trademark should not automatically be viewed as merely descriptive simply because the trademark's elements describe a subset of activities which occur as part of the services for which a trademark is applied for. For example, in *Tumblebus Inc. v. Cranmer* the Sixth Circuit upheld a lower Court's finding that the trademark "TUMBLEBUS" was not merely descriptive, and was instead only suggestive, of mobile-gymnastics instruction services even though the "word 'tumble' does describe a subset of the activities which occur inside Tumblebus Inc.'s 'bus.'" 73 USPQ2d 1561 (6th Cir. 2005).

Competitor's Need Test.

Another test to be applied to determine whether a mark is descriptive is the competitor's need test. The Restatement (Third) of Unfair Competition §14, comment b (1995), sets out the general principle for making the determination. It states, "The classification of a designation as either suggestive or descriptive thus depends upon both the likelihood that prospective purchasers will perceive it as an indication of source and the potential effect on competitors of its appropriation as a trademark by a particular seller." In applying this principle here, Applicant asserts that the mark **CANNABIS COLLEGE** is suggestive when used in connection with Educational services, namely, providing on-line and in-person courses of instruction at the college level. In other words, the message conveyed to the consumer by the mark is not so direct and clear that competitors would be likely to need the terms to advertise or describe their services information.

Existing Registration with USPTO.

The United States Patent and Trademark Office ("PTO") likewise has found that no Merely Descriptive refusal in the following cases.

The USPTO permitted registration of the following marks:

Ex.	MARK
1	<p>CHEAPFLIGHTS</p> <p>Registration No.</p> <p>5435862</p> <p>Providing a website featuring a search engine for bookings of journeys, accommodations tours and car rental services.</p> <p>(Class 042)</p>
2	<p>CHEAPFLIGHTS</p> <p>Registration No.</p> <p>5435861</p> <p>Online transportation reservation services; Rental car reservation; Rental of cars; Transportation consulting services; Travel guide services; Travel ticket reservation service</p> <p>(Class 039)</p>
3	<p>CHEAP DRONES</p> <p>Registration No.</p> <p>4802875</p> <p>Retail store services featuring Radio controlled toy vehicles; Online retail store services featuring radio control multi-copters and replacement parts, specializing in parts aimed towards first person electronics such as small cameras and video transmitter for radio control multi-copters.</p> <p>(Class 035)</p>
4	<p>SUPER CHEAP SIGNS</p> <p>Registration No.</p> <p>4677820</p> <p>Printed paper signs</p> <p>(Class 016)</p>

5	<p>CHEAP WIFI HERE</p> <p>Registration No.</p> <p>4569234</p> <p>Providing multiple user wireless access to the Internet</p> <p>(Class 038)</p>
6	<p>CHEAP AUTO INSURANCE</p> <p>Registration No.</p> <p>3576266</p> <p>Insurance Services, Namely, Insurance Brokerage Services And Insurance Agency Services</p> <p>(Class 36)</p>

The registered cases shown above assures that using word cheap next to provided services is not considered Merely Descriptive and applicant should be given right to register just like other applicants.

Supplemental Register:

Although applicant wishes to get the mark registered on the Principal Register. However, if the arguments are not found to be persuasive by the examiner then the applicant seeks registration on the Supplemental Register.

Disclaimer:

Applicant also requests to submit a disclaimer in the following format:

No claim is made to the exclusive right to use “**COLLEGE**” apart from the mark as shown.

Conclusion

The applicant, therefore, respectfully submits that the criterion to establish a cause of being merely descriptive, has not been met and accordingly solicits allowance of the mark on the principal register.