

From: Richards, Susan

Sent: 11/20/2015 2:56:21 PM

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Subject: U.S. TRADEMARK APPLICATION NO. 85882685 - WEATHER DOG - P406 - Request for
Reconsideration Denied - Return to TTAB

Attachment Information:

Count: 17

Files: Helmsley the Weather Dog_1.jpg, Weather Dog App_1.jpg, Weather Dog App_2.jpg, wd1-1.jpg, wd1-2.jpg, wd1-3.jpg, wd2-1.jpg, wd2-2.jpg, wd2-3.jpg, wd2-4.jpg, mobileph2-1.jpg, mobileph2-2.jpg, mobileph2-3.jpg, youtube1-1.jpg, youtube1-2.jpg, youtube1-3.jpg, 85882685.doc

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 85882685

MARK: WEATHER DOG



CORRESPONDENT ADDRESS:

AUDRA KEMP

COLLEN IP

80 S HIGHLAND AVENUE

OSSINING, NY 10562-5615

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/trademarks/index.jsp>

[VIEW YOUR APPLICATION FILE](#)

APPLICANT: Schmittty Says, LLC

CORRESPONDENT'S REFERENCE/DOCKET NO:

P406

CORRESPONDENT E-MAIL ADDRESS:

trademark@collenip.com

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 11/20/2015

The trademark examining attorney has carefully reviewed applicant's request for reconsideration and is denying the request for the reasons stated below. See 37 C.F.R. §2.63(b)(3); TMEP §§715.03(a)(ii)(B), 715.04(a).

The Examining Attorney acknowledges and accepts the amendment deleting Classes 28 and 41 from the application.

The requirement concerning the identification of goods for Class 28 is withdrawn as Class 28 has been deleted from the application. The requirement concerning the identification of services for Class 41 is withdrawn as that class has been deleted from the application. The requirement concerning multi-class applications is also withdrawn.

The amended disclaimer is NOT acceptable and has not been entered in the application for two reasons. First, the refusal to register on the ground that the applied-for mark is merely descriptive has been made FINAL with respect to the goods in Class 9. The amended disclaimer is also not acceptable because the word "dog" is descriptive for the goods in Class 18. The Applicant submitted a disclaimer of the word "dog" in its March 18, 2015 Response.

The Applicant has *again* refused to submit information concerning the goods and services in this application. Failure to comply with a request for information can be grounds for refusing registration. *In re AOP LLC*, 107 USPQ2d at 1651; *In re DTI P'ship LLP*, 67 USPQ2d at 1701-02; TMEP §814. In the August 28, 2014 Response, the Applicant stated:

The Examiner has requested further information about the mark. Applicant's mark is filed under an intent-to-use basis. Other than the numerous examples submitted as evidence in the Examiner's Office Action, and given the unique nature of Applicant's mark, Applicant does not have further samples of specific advertisements or promotional materials.

In its March 18, 2015 Response, the Applicant further stated:

The Examiner continues to request more information about all of the goods and services. Applicant has previously addressed this request and, in particular, has emphasized the intent to use basis of the application and that the goods and services are not yet in use. Thus, Applicant does not believe that it has relevant information at this time. TMEP Section 814.

If the actual nature of some of the goods or services that are identified in the application are deemed unclear to the Examiner, then the Examiner should indicate specifically which goods and services are unclear, and why they are unclear. Applicant does not understand the continued request, as the goods and services as identified in the application have well-understood meanings and are clearly defined on their face.

It is an undue burden on Applicant to find images and advertising of products and services that, as defined in the application, “are in the public knowledge.” Under TMEP Section 814, “The examining attorney should explain why the information is needed, if the reason is not obvious.” In this case, the reason is not obvious. Applicant requests to know which specific product or service is not in the public knowledge, and for those specific products or services, what information is needed and why. TMEP Section 814.

This application has been refused registration on the ground that the applied-for mark is merely descriptive of the goods and services in the application and requests have been made for the application to provide evidence or information about the goods or services. Each of these requests has also included an explanation that the information and material requested are necessary to permit proper examination of the application. Since the Applicant has been aware of the refusal to register and the explanation for the request, this is not a situation where the reason for the request is “not obvious.” Moreover, the Applicant’s claim that the request is burdensome is not compelling since the Applicant itself has elected to seek registration of the applied-for mark for goods and services in multiple classes. Therefore, the Applicant’s arguments are not persuasive.

The Applicant’s attention is invited to the attached print outs from MOBILEPHONES.COM and THEWEATHERDOG.BLOTSPOT.COM showing descriptive or generic use of “weather dog” in connection with software applications and an online journal. (See also attached print outs from *Tech for Real Life*, available at DOWNLOADS.TOMSGUIDE.COM, *Weather Dog APK*, available at DOWNLOADATOZ.COM, and from *Weather Dog App*, available at YOUTUBE.COM).

The following requirement(s) and/or refusal(s) made final in the Office action dated April 24, 2015 are maintained and continue to be final: 1) The merely descriptive refusal with respect to the goods in Class 9. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); see TMEP §§1209.01(b), 1209.03 et seq.; 2) The Request for Information. 37 C.F.R. §2.61(b); TMEP §§814, 1402.01(e); see *In re AOP LLC*, 107 USPQ2d 1644, 1650-51 (TTAB 2013); *In re Cheezwhse.com, Inc.*, 85 USPQ2d 1917, 1919 (TTAB 2008); *In re DTI P'ship LLP*, 67 USPQ2d 1699, 1701-02 (TTAB 2003). 37 C.F.R. §2.61(b); TMEP §§814, 1402.01(e); see *In re Planalytics, Inc.*, 70 USPQ2d 1453, 1457-58 (TTAB 2004). See TMEP §§715.03(a)(ii)(B), 715.04(a).

The following requirement(s) and/or refusal(s) made final in the Office action are withdrawn: The requirements concerning the identification of goods for Class 28 and the identification of services for Class 41 and the requirements concerning multi-class applications. See TMEP §§715.03(a)(ii)(B), 715.04(a).

In the present case, applicant's request has not resolved all the outstanding issue(s), nor does it raise a new issue or provide any new or compelling evidence with regard to the outstanding issue(s) in the final Office action. In addition, applicant's analysis and arguments are not persuasive nor do they shed new light on the issues. Accordingly, the request is denied.

If applicant has already filed a timely notice of appeal with the Trademark Trial and Appeal Board, the Board will be notified to resume the appeal. See TMEP §715.04(a).

If no appeal has been filed and time remains in the six-month response period to the final Office action, applicant has the remainder of the response period to (1) comply with and/or overcome any outstanding final requirement(s) and/or refusal(s), and/or (2) file a notice of appeal to the Board. TMEP §715.03(a)(ii)(B); see 37 C.F.R. §2.63(b)(1)-(3). The filing of a request for reconsideration does not stay or extend the time for filing an appeal. 37 C.F.R. §2.63(b)(3); see TMEP §§715.03, 715.03(a)(ii)(B), (c).

/Susan A. Richards/

Susan A. Richards

Law Office 103

(571) 272-8266

susan.richards@uspto.gov

The Weather Dog

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About Me

The Weather Dog
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Monday, November 3, 2008

Helmley almost took a short fall off his doggy box on the weather wall this morning. He was a little eager to snap his treat out of the air and you can tell he over-extended himself a bit. Fortunately, he found a little bit of his grace and caught his balance. The box is about three feet from the concrete floor, which is quite a fall with his short legs and bulky build.

Posted by The Weather Dog at 9:28 AM No comments

Sunday, November 2, 2008



Posted by The Weather Dog at 9:34 AM No comments

Monday, October 13, 2008

Today looks like I'll get a mostly cloudy, but dry morning dog walk. This afternoon is showing promise for partly sunny skies and mid 60's in the Eugene/Springfield area.

Posted by The Weather Dog at 9:48 AM No comments

Sunday, October 12, 2008

My aching paw

A lesser dog would crumble under such pain. I had to get my rear left paw checked yesterday and the doctor, nurses and staff gave me lots of love. They're not exactly sure what's wrong, but it's inflamed, swollen and I can't stop licking it. Dad's making me wear a cone on my head, so I can't chew it. But simply, I look ridiculous.

PS It's not the camera adding the extra pounds. The doctor says I need to lose a few. I say it's just more to love.

Posted by The Weather Dog at 9:27 AM No comments

Saturday, October 11, 2008

My 1st post

Hold my friends.

As I "bark" on my first post, I feel a little nervous and excited. It's a sleepy Saturday, but I need to learn how to maintain my blog, so I can please all my adoring fans. Sloppy wet kisses and snoots for you. xoxo -Helmley

Posted by The Weather Dog at 4:08 AM No comments

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App of the week: Weather Dog

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Written by [Charlotte Farnwell](#) on 17th June 2015

With the sun having finally made an appearance this weekend, the British public has declared that summer is officially here. Or so we hope. With our famous Great British weather, nothing is ever certain, which is why this week's app of the week is great for planning your schedule - or your wardrobe - for the week ahead.

Weather Dog

As you might have guessed, Weather Dog, in simple terms, is a weather app. It's not, however, just your bog standard weather app! Rather than displaying the day's forecast with pretty pictures of sun and rain clouds, Weather Dog doubles up as your own virtual pet dog...



Using Accuweather.com's daily and weekly weather forecasts, Weather Dog visualises the upcoming conditions using his body: if it's blowing a gale outside, watch Weather Dog's ears flap in the wind, and if he's sat in the snow shivering, you know you'll be needing a coat.



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What's more, the app enables you to discern when the weather is doing outside with one single glance, because Weather Dog's background changes to reflect the current climate, you won't find yourselves having to interpret what various symbols or numbers found in traditional weather forecasts actual mean.

The app uses your phone's GPS to pin-point your exact location and also lets you explore the weather in any town or city from across the globe. Amongst the fun elements of the app, Weather Dog is accurate in providing you with an indication of predicted rain, wind speed and temperature, meaning you can trust the app's every forecast.

And if you're really bored after finding what the sun is doing outside, the app even allows you to stroke Weather Dog on his nose (think Tamagotchi) or wake him up if it's he's dozed off under the stars. If you're lucky you'll even hear him bark!

The app really is just a light-hearted take on the traditional weather app, and recreates those Tamagotchi memories from your childhood.

To download the app:
The app is completely free to download for iOS and Android mobile phones.
Written by [Charlotte Kewenaw](#)

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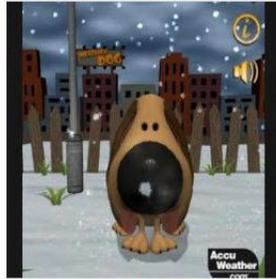
License model: Freeware

Language:

Release date: 1/13/12

File size: 107.81 Kb

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[See all screenshots](#)

About Weather Dog

DESCRIPTION



Be informed by the weather on your **Android** with **Weather Dog**.

Weather Dog is a free app for the **Android** by FTRD UK which a fun info weather application in advanced 3D graphics.

Top 3 News And Weather



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With **Weather Dog**, you will be provided with both informative and engaging visualizations of the weather forecast at the users geographical location, using Accuweather.com's 3-day forecast web service data.

The app creates a dynamic scene in which it rains, snows, wind blows and clouds move that includes an animated dog that responds to the weather conditions during the day and night that provides an experience that is engaging and fun.

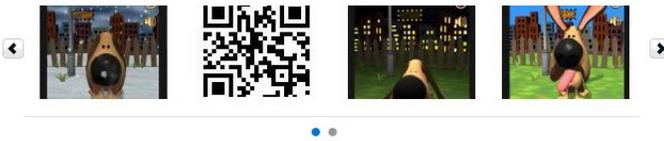
Weather Dog also features: 3 day forecast provided by Accu Weather, Day and night weather conditions, Worldwide city search, Temperature, Wind Speed, Precipitation, Animated display of weather including rain, snow, clouds and wind effects and an Interactive 3D dog!

Download the **Weather Dog** now and have fun while being informed of the weather.

You may visit the Tom's Guide for more of the [best free game apps for the Android](#).

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Screenshots For Weather Dog



More information about Weather Dog

>There is 1 screenshot available for Weather Dog

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Weather Dog APK

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Weather Dog App for Android

Weather Dog is a Weather for Android. You can download last version of Weather Dog Apk for android tablet or phone totally free here, the file name is com.orange.labs.weatherdog.apk, the latest version is 1.1, file size:15M, updated on Jan 13, 2012,you may need 3-5 seconds on the downloading com.orange.labs.weatherdog.apk process.

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Price:0

Weather Dog Description from Publisher:

Weather Dog is a fun application that demonstrates how the advanced 3D graphics available in smart phones can provide both informative and engaging visualisations of the weather forecast in the users geographical location.

Using Accuweather.com's 3-day forecast web service data we create a dynamic scene in which it rains, snows, winds blow and clouds move. An interactive animated dog responds to the weather conditions during the day and night that provides an experience that is engaging and fun like no other weather application.

Features:

- 3 day forecast provided by Accu Weather
- Day and night weather conditions
- Worldwide city search
- Temperature, Wind Speed, Precipitation
- Animated display of weather including rain, snow, clouds and wind effects
- Interactive 3D dog

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Reviews for Weather Dog APK



larevoltosa HTC Desire HD

★★★★★

#weather forecast One of the best! What a lovely little app. All the basic information you need at home or around the world regarding the weather. With a great animated dog and background. One of the best weather apps out there. Recommended.



CleosMM Huawei Y220-U00

★★★★★

Good app... But...! It really needs an update.. Make the dog more interactive with different backgrounds :-). Recommend to get Weather Dog APK.

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App of the week: Weather Dog

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Written by Charlotte Kerfrestiel on 10th June 2013



With the sun having finally made an appearance this weekend, the British public has declared that summer is officially here. Or so we hope. With our famous Great British weather, nothing is ever certain, which is why this week's app of the week is great for planning your schedule- or your wardrobe- for the week ahead.

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As you might have guessed, Weather Dog, in simple terms, is a weather app. It's not, however, just your bog standard weather app! Rather than displaying the day's forecast with pretty pictures of sun and rain clouds, Weather Dog doubles up as your own virtual pet dog...



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And if you're really bored after finding what the sun is doing outside, the app even allows you to stroke Weather Dog on his nose (think Tamagotchil) or wake him up if it's he's dozed off under the stars. If you're lucky you'll even hear him bark!

The app really is just a light-hearted take on the traditional weather app, and recreates those Tamagotchi memories from your childhood.

To download the app:

The app is completely free to download for iOS and Android [mobile phones](#).

Written by [Charlotte Kertrestel](#)

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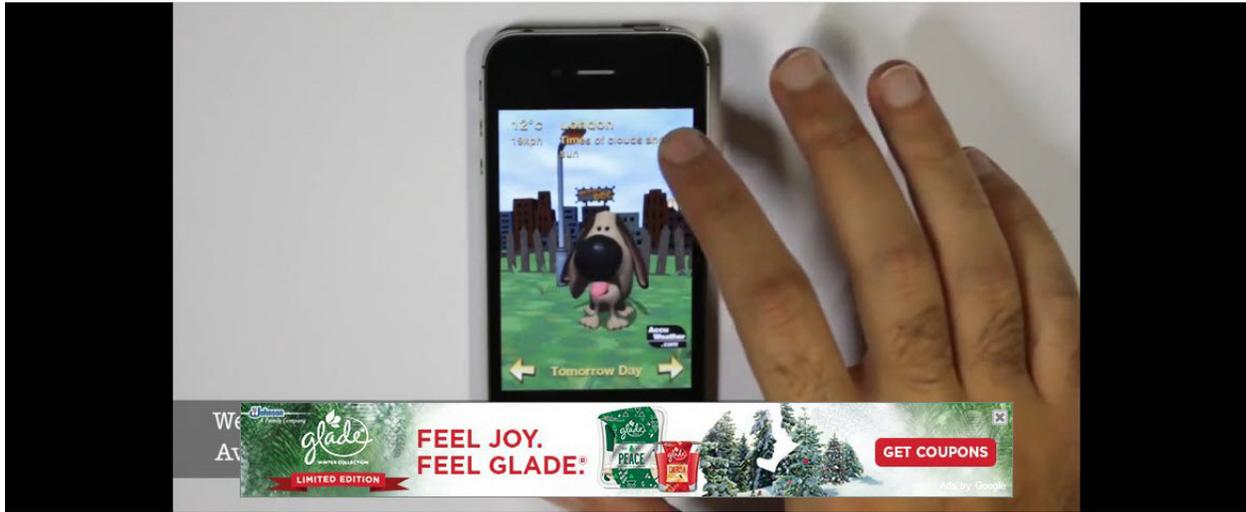
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Weather Dog App

Dark Energy Recordings

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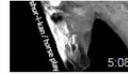
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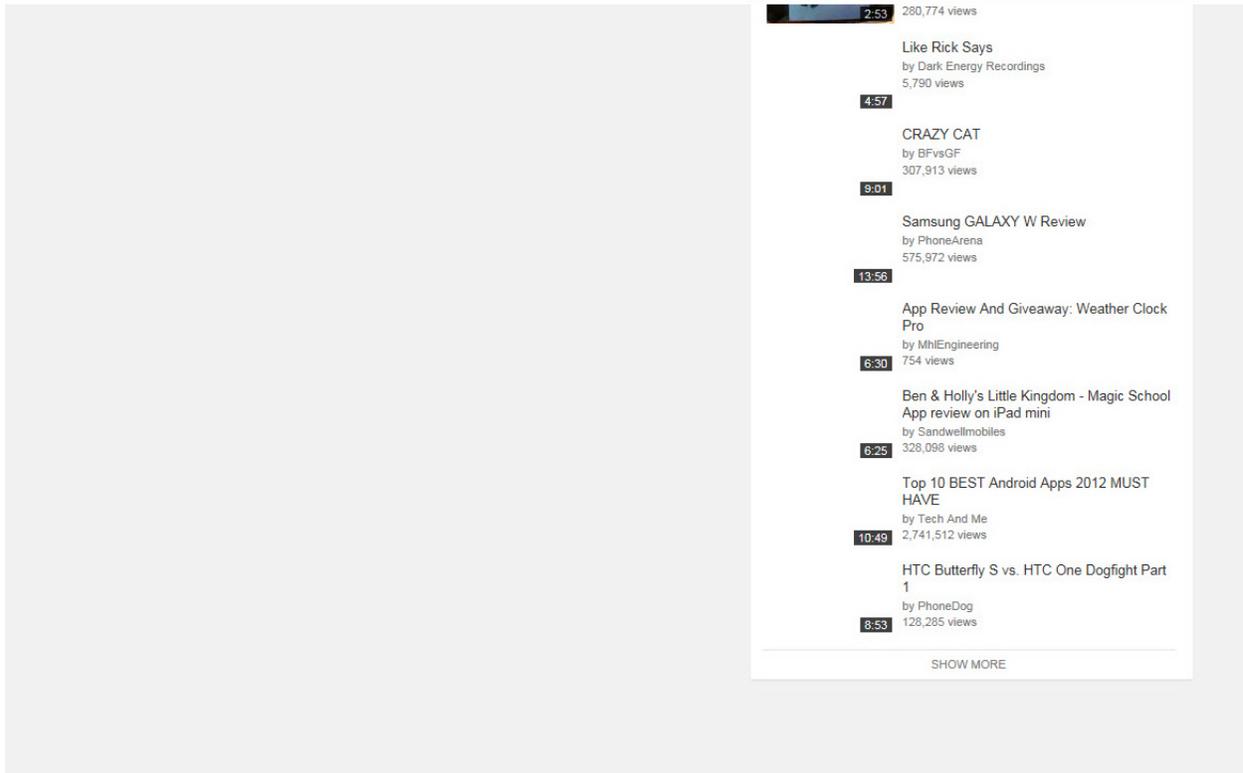
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