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Subject: U.S. TRADEMARK APPLICATION NO. 86156209 - EARLY HEART ATTACK CARE - N/A - Request for
Reconsideration Denied - Return to TTAB

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

U.S. APPLICATION SERIAL NO. 86156209

MARK: EARLY HEART ATTACK CARE



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GENERAL TRADEMARK INFORMATION:

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

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APPLICANT: Society of Cardiovascular Patient Care

CORRESPONDENT'S REFERENCE/DOCKET NO:

N/A

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THIRD REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 8/16/2015

This Office action is in response to applicant's communication filed on July 15, 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 following made final in the Office action dated January 26, 2015, is maintained and continue to be final: Section 2(e)(1) Merely Descriptive Refusal. See TMEP §§715.03(a)(ii)(B), 715.04(a).

In the present case, applicant's request has not resolved the outstanding issues, nor does it raise a new issue or provide any new or compelling evidence with regard to the outstanding issue 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.

Applicant's Argument and Examining Attorney's Response

In its most recent request for reconsideration, applicant contests the examining attorney's evidence showing the descriptiveness of applicant's mark, arguing that the real world evidence consists "exclusively on articles written by reports and printed in newspapers and similar publications" and that the authors (newspaper reporters) are not the relevant purchasing public for applicant's services. Instead, applicant contends that its purchasing public consists of medical professionals, persons in the medical community, and patients. Applicant argues that there is no indication from these real world articles that these consumers do not recognize applicant as the source of EARLY HEART ATTACK CARE awareness services.

The examining attorney disagrees. The simple fact that there are so many instances of highly descriptive uses of "early heart attack care" with no attribution, reference, acknowledgment, or mention of applicant indeed serves as evidence that the general public (*which includes medical professionals, persons in the medical community, and patients*) does not associate applicant with its identified EARLY HEART ATTACK CARE awareness services.

The examining attorney's evidence is sufficient to show consumer perception and common uses of trademarks. Contrary to applicant's contention, it has been established that material obtained from the Internet is generally accepted as competent evidence. See *In re Nieves & Nieves LLC*, 113 USPQ2d 1639, 1644-47 (TTAB 2015) (accepting Internet evidence to show false suggestion of a connection and that a name identified a particular living individual whose written consent to register was required); *In re Jonathan Drew Inc.*, 97 USPQ2d 1640, 1641-42 (TTAB 2011) (accepting Internet evidence to show

geographic location was well-known for particular goods); *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202-03 (TTAB 2009) (accepting Internet evidence to show relatedness of goods in a likelihood of confusion determination); *In re Leonhardt*, 109 USPQ2d 2091, 2098 (TTAB 2008) (accepting Internet evidence to show descriptiveness); *In re Rodale Inc.*, 80 USPQ2d 1696, 1700 (TTAB 2006) (accepting Internet evidence to show genericness); *In re Joint-Stock Co. "Baik"*, 80 USPQ2d 1305, 1308-09 (TTAB 2006) (accepting Internet evidence to show geographic significance); *In re Gregory*, 70 USPQ2d 1792, 1793, 1795 (TTAB 2004) (accepting Internet evidence to show surname significance); TBMP §1208.03; TMEP §710.01(b).

The Internet has become integral to daily life in the United States, with Census Bureau data showing approximately three-quarters of American households used the Internet in 2013 to engage in personal communications, to obtain news, information, and entertainment, and to do banking and shopping. See *In re Nieves & Nieves LLC*, 113 USPQ2d at 1642 (taking judicial notice of the following two official government publications: (1) Thom File & Camille Ryan, U.S. Census Bureau, Am. Cmty. Survey Reports ACS-28, *Computer & Internet Use in the United States: 2013* (2014), available at <http://www.census.gov/content/dam/Census/library/publications/2014/acs/acs-28.pdf>, and (2) The Nat'l Telecomms. & Info. Admin. & Econ. & Statistics Admin., *Exploring the Digital Nation: America's Emerging Online Experience* (2013), available at http://www.ntia.doc.gov/files/ntia/publications/exploring_the_digital_nation_-_americas_emerging_online_experience.pdf).

Thus, the widespread use of the Internet in the United States suggests that Internet evidence may be probative of public perception in trademark examination.

Any doubt regarding the mark's descriptiveness should be resolved on applicant's behalf. *E.g.*, *In re Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 828 F.2d 1567, 1571 4 USPQ2d 1141, 1144 (Fed. Cir. 1987); *In re Grand Forest Holdings, Inc.*, 78 USPQ2d 1152, 1156 (TTAB 2006). In the present case, however, the evidence of record leaves no doubt that the mark is merely descriptive.

Based on the wealth of evidence contained in this record and the legal support cited herein, the Office has easily met its burden to show that the applied-for mark, EARLY HEART ATTACK CARE, merely describes applicant's public awareness services, to wit:

Promoting collaboration within the scientific, research and provider communities to achieve advances in the field of recognition, evaluation, and treatment of early heart attack symptoms;

Promoting public awareness of recognition, evaluation, and treatment of early heart attack symptoms; Promoting public interest and awareness of recognition, evaluation, and treatment of early heart attack symptoms, in Class 35.

In turn, based on the insufficiency of the evidence and lack of substantiation for its claims, applicant has not met its burden to show applicant's success in educating the public to associate the claimed mark with a single source for purposes of acquired distinctiveness. TMEP §1212.06(b).

Therefore, applicant's request must be denied.

General Information

In this instance, applicant may respond to this denial by amending the application to seek registration on the **Supplemental Register**. See 15 U.S.C. §1091; 37 C.F.R. §§2.47, 2.75(a); TMEP §§801.02(b), 816.

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).

Assistance

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official

application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §§2.62(c), 2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. *See* TMEP §§705.02, 709.06.

/amyckelly/

U.S. Patent and Trademark Office

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