

## Request for Reconsideration after Final Action

**The table below presents the data as entered.**

Input Field	Entered
<b>SERIAL NUMBER</b>	86736048
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 120
<b>MARK SECTION</b>	
<b>MARK</b>	HEALTHCARE FOR WHAT'S NEXT
<b>STANDARD CHARACTERS</b>	YES
<b>USPTO-GENERATED IMAGE</b>	YES
<b>MARK STATEMENT</b>	The mark consists of standard characters, without claim to any particular font style, size or color.
<b>EVIDENCE SECTION</b>	
<b>EVIDENCE FILE NAME(S)</b>	
<b>ORIGINAL PDF FILE</b>	<a href="#">evi_665424120-20161004162246497113_ . Request for Reconsideration.pdf</a>
<b>CONVERTED PDF FILE(S) (27 pages)</b>	<a href="#">\\TICRS\EXPORT17\IMAGEOUT17\867\360\86736048\xml1\RFR002.JPG</a>
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<b>GOODS AND/OR SERVICES SECTION (current)</b>	
INTERNATIONAL CLASS	044
<b>DESCRIPTION</b>	
Provision of home healthcare services; hospital and healthcare services; medical care, specifically, hospital and health care services; physician services; health care services; hospitals; managed health care services; medical services; medical clinics; medical counseling services; providing medical profile and medical record analysis and assessments that are designed to identify characteristics that may be indicative of diseases before a patient is diagnosed	
FILING BASIS	Section 1(b)
<b>GOODS AND/OR SERVICES SECTION (proposed)</b>	
INTERNATIONAL CLASS	044
<b>TRACKED TEXT DESCRIPTION</b>	
Provision of home healthcare services; hospital and healthcare services; medical care, specifically, hospital and health care services; physician services; health care services; hospitals; managed health care services; medical services; medical clinics; medical counseling services; providing medical profile and medical record analysis and assessments that are designed to identify characteristics that may be indicative of diseases before a patient is diagnosed; <a href="#">all of which are for use in connection with patient care</a>	
<b>FINAL DESCRIPTION</b>	
Provision of home healthcare services; hospital and healthcare services; medical care, specifically, hospital and health care services; physician services; health care services; hospitals; managed health care services; medical services; medical clinics; medical counseling services; providing medical profile and medical record analysis and assessments that are designed to identify characteristics that may be indicative of diseases before a patient is diagnosed; all of which are for use in connection with patient care	
FILING BASIS	Section 1(b)
<b>SIGNATURE SECTION</b>	
RESPONSE SIGNATURE	/Mary Katherine Schweih/
SIGNATORY'S NAME	Mary Katherine Schweih
SIGNATORY'S POSITION	Attorney of Record, Illinois Bar Member
DATE SIGNED	10/04/2016
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
<b>FILING INFORMATION SECTION</b>	
SUBMIT DATE	Tue Oct 04 17:48:57 EDT 2016
TEAS STAMP	USPTO/RFR-XX.XX.XXX.XX-20 161004174857589850-867360 48-5704bd3aef63d2a8ef96f4 7ab769ef7438c79f41a1d2cef 4a584157c26eac32b-N/A-N/A

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PTO Form 1960 (Rev 10/2011)  
OMB No. 0651-0050 (Exp 07/31/2017)

## Request for Reconsideration after Final Action

### To the Commissioner for Trademarks:

Application serial no. **86736048** HEALTHCARE FOR WHAT'S NEXT(Standard Characters, see ) has been amended as follows:

#### EVIDENCE

##### Original PDF file:

[evi\\_665424120-20161004162246497113 . Request for Reconsideration.pdf](#)

##### Converted PDF file(s) ( 27 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

[Evidence-7](#)

[Evidence-8](#)

[Evidence-9](#)

[Evidence-10](#)

[Evidence-11](#)

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[Evidence-21](#)

[Evidence-22](#)

[Evidence-23](#)

[Evidence-24](#)

[Evidence-25](#)

[Evidence-26](#)

[Evidence-27](#)

#### CLASSIFICATION AND LISTING OF GOODS/SERVICES

##### Applicant proposes to amend the following class of goods/services in the application:

**Current:** Class 044 for Provision of home healthcare services; hospital and healthcare services; medical care, specifically, hospital and health care services; physician services; health care services; hospitals; managed health care services; medical services; medical clinics; medical counseling services; providing medical profile and medical record analysis and assessments that are designed to identify characteristics that may be indicative of diseases before a patient is diagnosed

Original Filing Basis:

**Filing Basis: Section 1(b), Intent to Use: *For a trademark or service mark application:*** As of the application filing date, the applicant had a bona fide intention, and was entitled, to use the mark in commerce on or in connection with the identified goods/services in the application. ***For a collective trademark, collective service mark, or collective membership mark application:*** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization. ***For a certification mark application:*** As of the application filing date, the

applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users in connection with the identified goods/services, and the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

**Proposed:**

**Tracked Text Description:** Provision of home healthcare services; hospital and healthcare services; medical care, specifically, hospital and health care services; physician services; health care services; hospitals; managed health care services; medical services; medical clinics; medical counseling services; providing medical profile and medical record analysis and assessments that are designed to identify characteristics that may be indicative of diseases before a patient is diagnosed; [all of which are for use in connection with patient care](#)

Class 044 for Provision of home healthcare services; hospital and healthcare services; medical care, specifically, hospital and health care services; physician services; health care services; hospitals; managed health care services; medical services; medical clinics; medical counseling services; providing medical profile and medical record analysis and assessments that are designed to identify characteristics that may be indicative of diseases before a patient is diagnosed; all of which are for use in connection with patient care

**Filing Basis: Section 1(b), Intent to Use: For a trademark or service mark application:** As of the application filing date, the applicant had a bona fide intention, and was entitled, to use the mark in commerce on or in connection with the identified goods/services in the application. **For a collective trademark, collective service mark, or collective membership mark application:** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization. **For a certification mark application:** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users in connection with the identified goods/services, and the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

**SIGNATURE(S)**

**Request for Reconsideration Signature**

Signature: /Mary Katherine Schweih/ Date: 10/04/2016

Signatory's Name: Mary Katherine Schweih

Signatory's Position: Attorney of Record, Illinois Bar Member

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the owner's/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the owner/holder in this matter: (1) the owner/holder has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 86736048

Internet Transmission Date: Tue Oct 04 17:48:57 EDT 2016

TEAS Stamp: USPTO/RFR-XX.XX.XXX.XX-20161004174857589

850-86736048-5704bd3aef63d2a8ef96f47ab76

9ef7438c79f41a1d2cef4a584157c26eac32b-N/

A-N/A-20161004162246497113

## **HEALTHCARE FOR WHAT'S NEXT REQUEST FOR RECONSIDERATION ARGUMENT**

In response to the Office action of April 4, 2016, Applicant requests that Examiner reconsider Examiner's position and permit HEALTHCARE FOR WHAT'S NEXT to proceed to publication for opposition. Please consider the following in support of registration:

Applicant has submitted an application for the mark HEALTHCARE FOR WHAT'S NEXT for use in Class 44 in connection with "provision of home healthcare services; hospital and healthcare services; medical care, specifically, hospital and health care services; physician services; health care services; hospitals; managed health care services; medical services; medical clinics; medical counseling services; providing medical profile and medical record analysis and assessments that are designed to identify characteristics that may be indicative of diseases before a patient is diagnosed; all of which are for use in connection with patient care."

The Examining Attorney refuses registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d), because the Examining Attorney believes that Applicant's mark is likely to cause confusion with READY NOW FOR WHAT'S NEXT, registered to Haz/Mat DQE, Inc. ("Haz/Mat") for use, in relevant part, in Class 41 for use in connection with "educational services, namely, conducting programs, workshops, seminars, and simulation drills, in the fields of healthcare, safety, disaster preparedness and management, hazardous material and contamination management, and medical and emergency care; training and assessment in the fields of healthcare, safety, disaster preparedness and management, hazardous material and contamination management, and medical and emergency care" (Reg. No. 3,987,631); and WHAT'S NEXT, registered also to Haz/Mat for use, in relevant part, in Class 41 for use in connection with "educational services, namely, conducting programs, workshops, seminars, and simulation drills, in the fields of safety, disaster preparedness and management, hazardous material and contamination management, and medical and emergency care and distribution of course materials in connection therewith, and education consulting related thereto; training and assessment in the fields of safety, disaster preparedness and management, hazardous material and contamination management, and medical and emergency care" (Reg. No. 4,203,527) (the "Cited Registrations").

For all the reasons set forth below, Applicant respectfully disagrees with this conclusion and requests that the Examining Attorney reconsider Examiner's position. Applicant submits that no likelihood of confusion exists between its proposed mark and the Cited Registrations. Therefore, the proposed mark should be published for opposition and allowed to proceed toward registration on the Principal Register.

**APPLICANT'S MARK IS NOT CONFUSINGLY SIMILAR TO THE REGISTERED MARKS.**

Trademark law prohibits use of a senior user's mark on products and services "which would reasonably be thought by the buying public to come from the same source, or thought to be affiliated with, connected with, or sponsored by, the trademark owner." *See Sands, Taylor & Wood Co. v. Quaker Oats Co.*, 978 F.2d 947, 958 (7th Cir. 1992) (quoting 2 J. McCarthy, TRADEMARKS AND UNFAIR COMPETITION § 24.3 at 66 (2d ed. 1984)). In respect to the term "likelihood" in the likelihood of confusion standard, "[t]he [Lanham] Act refers to likelihood, not the mere possibility of confusion." *Bongrain Int'l (Am.) Corp. v. Delice de France, Inc.*, 811 F.2d 1479, 1486 (Fed. Cir. 1987) (emphasis added). Proof that confusion is only "possible" is insufficient to establish that confusion is likely. *See Vitek Sys., Inc. v. Abbott Labs.*, 675 F.2d 190, 216 U.S.P.Q. 476 (8th Cir. 1982); *A&H Sportswear Co. v. Victoria's Secret Stores, Inc.*, 926 F. Supp. 1233, 1268 (E.D. Pa. 1996), *aff'd*, 49 U.S.P.Q.2d 1493 (3d Cir. 1999); *Estee Lauder Inc. v. The Gap, Inc.*, 108 F.3d 1503, 1511 (2d Cir. 1997); *Star Fin. Serv., Inc. v. AASTAR Mortg. Corp.*, 89 F.3d 5, 10 (1st Cir. 1996) ("We require evidence of a 'substantial,' likelihood of confusion – not a mere possibility"). The mere fact that one mark brings another mark to mind is not sufficient to establish a likelihood of confusion as to the source of the services. *Application of Ferrero*, 479 F.2d 1395, 1397 (C.C.P.A. 1973).

The basic principle in determining confusion between marks is that they must be compared in their entireties and must be considered in connection with the particular goods or services for which they are used. *Glenwood Labs. v. Am. Home Prods. Corp.*, 455 F.2d 1384, 1385 (C.C.P.A. 1972); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058, 224 U.S.P.Q. 749, 750-51 (Fed. Cir. 1985). The factors pertinent to the issue of likelihood of confusion are set forth in *In re*

*E.I. DuPont DeNemours & Co.*, 476 F.2d 1357, 1361 (C.C.P.A. 1973).<sup>1</sup> When reviewing a trademark using the *DuPont* factors, “it is the duty of the examiner, the board, and [the] court to find, upon consideration of all the evidence, whether or not confusion appears likely.” *Id.* at 1362 (emphasis added). Not all of the 13 factors identified in *DuPont* are relevant or of similar weight in every case. See *Opryland USA Inc. v. Great Am. Music Show*, 970 F.2d 847, 850 (Fed. Cir. 1992).

In view of the relevant *DuPont* factors, some of which were not considered by the Examiner, Applicant contends that there is no likelihood that consumer confusion will result from Applicant’s registration or continued use of the HEALTHCARE FOR WHAT’S NEXT mark because: (i) HEALTHCARE FOR WHAT’S NEXT and the Cited Registrations are readily distinguishable with respect to appearance, sound, connotation, and commercial impression; (ii) the relevant parties’ services differ significantly; (iii) the relevant parties’ target consumers and the trade channels used by the relative parties differ significantly; and (iv) the conditions under which the targeted audience consumes each party’s goods and services, i.e., sophisticated purchasing, weigh against likelihood of confusion.

**1. HEALTHCARE FOR WHAT’S NEXT Is Readily Distinguishable from the Cited Registrations in Appearance, Sound, Connotation, and Commercial Impression.**

HEALTHCARE FOR WHAT’S NEXT is so different from the Cited Registrations in terms of sight, sound, connotation, and overall commercial impression – particularly in light of the descriptiveness of the Cited Registrations and the weakness of the terms “WHAT’S NEXT” in the Cited Registrations – that confusion should not be likely.

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<sup>1</sup> The *DuPont* factors are: (1) the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation, and commercial impression; (2) the similarity or dissimilarity and nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use; (3) the similarity or dissimilarity of established, likely-to-continue trade channels; (4) the conditions under which and buyers to whom sales are made, i.e., “impulse” vs. careful, sophisticated purchasing; (5) the fame of the prior mark (sales, advertising, length of use); (6) the number and nature of similar marks in use on similar goods; (7) the nature and extent of any actual confusion; (8) the length of time during and conditions under which there has been concurrent use without evidence of actual confusion; (9) the variety of goods on which a mark is or is not used (house mark, “family” mark, product mark); (10) the market interface between applicant and the owner of a prior mark; (11) the extent to which applicant has a right to exclude others from use of its mark on its goods; (12) the extent of potential confusion, i.e., whether *de minimis* or substantial; and (13) any other established fact probative of the effect of use. See *id.*

When comparing two marks, they must be viewed in their entirety; since marks tend to be perceived in their entireties; all components must be given appropriate weight, and it is improper to “dissect” a mark into composite parts. *Rockwood Chocolate Co., Inc. v. Hoffman Candy Co.*, 54 C.C.P.A. 1061, 1065 (1967) (holding “each case requires consideration of the effect of the entire mark including any term in addition to that which closely resembles the opposing mark”); *In re Loew’s Theatres, Inc.*, 218 U.S.P.Q. 956 (TTAB 1983), *aff’d*, 226 U.S.P.Q. 865 (Fed. Cir. 1985) (finding that when comparing the marks in their entirety, HERITAGE and DISTINCTIVE BY HERITAGE, both for use in connection with cigarettes, are not likely to be confused). One feature of a mark may be more significant than another, and it is not improper to give more weight to the dominant feature of a mark in determining likelihood of confusion. *In re Nat’l Data Corp.*, 753 F.2d 1056 (Fed. Cir. 1985) (“There is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties. Indeed, this type of analysis appears to be unavoidable.”)

Although Applicant’s HEALTHCARE FOR WHAT’S NEXT mark shares the terms “what’s” and “next” with the Cited Registrations, when viewed in their entireties the marks are not likely to be confused because the additional, leading, predominant term HEALTHCARE so distinguishes Applicant’s mark from READY FOR WHAT’S NEXT and WHAT’S NEXT that confusion is not likely. This is especially the case in light of the arguable weakness of the terms “WHAT’S NEXT” as demonstrated below.

When comparing marks, the test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression so that confusion as to the source of the goods offered under the respective marks is likely to result. *Everett W. James v. Andrea Gallagher*, 2011 WL 5600323 (T.T.A.B. 2011) (not precedential) (The connotation and commercial impression of CREATING YOUR FUTURE and RETHINKING YOUR FUTURE found to be sufficiently different that, on the balance, consumer confusion is unlikely between the marks); *In re C. Preme Ltd., LLC*, 2013 WL 5407250 (T.T.A.B. 2013) (not precedential) (While not ignoring that both marks included the letters “PREME,” C – PREME not sufficiently similar to the actual word SUPREME that confusion is likely even when the goods are nearly identical).

Similar to the marks in *Everett W. James* and *In re C. Preme*, the meaning and commercial impression of the mark HEALTHCARE FOR WHAT'S NEXT is so different from the meaning and commercial impression of WHAT'S NEXT and READY FOR WHAT'S NEXT, that confusion should not be likely. Contrary to Examiner's assertion, "what's next" does not mean the same thing – "preparing for the future" – in each respective mark. Further, when determining commercial impression of a mark, it is improper to focus only on portions of the mark, instead of the mark as a whole. Applicant's mark, when viewed in its entirety, conveys the impression of providing cutting-edge technology and state-of-the-art medical treatment directly to its patients. The Cited Registrations, on the other hand, convey the impression of preparing to respond to emergency and disaster situations. Indeed, READY FOR WHAT'S NEXT and WHAT'S NEXT merely *describe* the services offered under the registrations, namely, education and training services intended to prepare professionals emergency responders in the field of disaster/emergency response, specifically, educating responders on how to prepare for and manage disaster situations such as natural disasters and situations involving hazardous material and contamination. HEALTHCARE FOR WHAT'S NEXT, on the other hand, is suggestive of the provision of forward-thinking medical services. In other words, the "what's next" in Applicant's mark refers to cutting edge technology, whereas the "what's next" in the Registered Marks refers to what a professional should do in response to an emergency just around the corner.

Applicant notes that a large number of marks comprising "what's" and "next" are able to coexist on the register. For example, a search of the register reveals that the following registrations all coexist with READY FOR WHAT'S NEXT and WHAT'S NEXT in the International Class for medical services or otherwise for use in connection with medical-related goods and services:

- SEE WHAT'S NEXT is registered to Darrell White for use in connection with, among other things, "medical and ophthalmologic services, namely, diagnosis and treatment of vision impairment and diseases of the eye; laser, lasik, and other surgical procedures to correct and improve vision; fitting of eyeglasses, sunglasses, contact lenses, and other vision correction and enhancement products" (Reg. No. 3,137,009);

- SHAPING WHAT’S NEXT is published in the name of Shire Pharmaceuticals for use in connection with “a full line of pharmaceuticals; providing medical information and health care information in connection with patient support programs; providing medical information and health care information to improve understanding about pharmaceuticals and medical treatments by health care providers, patients, patients’ families and the general public” (Ser. No. 86/955,132);
- BRINGING YOU WHAT’S NEXT is registered to Growmark, Inc., for use in connection with “consulting services in the field of energy usage management and energy efficiency; agricultural cooperative services, namely, cooperative advertising and marketing services and wholesale and retail distributorships of agricultural products; agronomic consulting services” (Reg. No. 4,689,793);
- WHAT’S NEXT IN HEALTHCARE MARKETING COMMUNICATIONS is registered to SPM Marketing & Communications, Inc., for use in connection with “advertising and marketing services, namely, development of marketing strategies and concepts, brand concept and brand development, and promoting the brand identity and services of hospitals, health systems, physicians and other healthcare related businesses” (Reg. No. 4,523,002); and
- WHAT’S NEXT is registered to Better Waze Inc. for use in connection with “On-line social networking services in the field of health and medical information, advice, support, information and research and care options” (Reg. No. 4,215,034).

(See Exhibit A attached hereto.). In addition, a search of the register reveals that the following registrations all coexist with READY FOR WHAT’S NEXT and WHAT’S NEXT in connection with providing information or educational services in Class 41:

- WHAT’S NEXT is registered to What’s Nxt, LLC, for use in connection with, among other things, “providing a searchable online guide featuring information on community arts and entertainment” (Reg. No. 4,414,558);
- DISCOVERING WHAT’S NEXT is registered to the Executive Service Corps of New England, Inc. for use in connection with, among other things, “educational services, namely, sponsoring or providing forums, workshops, seminars, classes, lectures, symposia and meetings on jobs and careers, housing and residences,

hobbies, education, civic activities, community activities and initiatives, and volunteer, educational and medical organizations and resources for retired persons and person entering or about to enter retirement; and job and career counseling services” (Reg. No. 3,363,413);

- POWERED TO DO WHAT’S NOW, POWERED TO DO WHAT’S NEXT is registered to Philadelphia University for use in connection with “educational services, namely, providing instruction and training at the undergraduate and graduate levels and continuing and professional education classes in the fields of architecture, business, design, engineering, fashion, health, science and textiles; providing educational research programs for the study of architecture, business, design, engineering, fashion, health, science and textiles; providing continuing and professional education conferences, seminars and workshops in the fields of architecture, business, design, engineering, fashion, health, science and textiles; conducting conferences, seminars and workshops relating to the study of architecture, business, design, engineering, fashion, health, science and textiles; publication of newsletters, monographs, newspapers, books, commemorative programs and other electronic and printed publications relating to the educational services provided, none of the aforementioned services being for advertising materials; and entertainment services in the nature of the presentation of a variety of intercollegiate sporting events, namely, baseball, basketball, golf, lacrosse, softball, cross-country running, rowing, tennis and volleyball events” (Reg. No. 4,149,140);
- WHAT’S NEXT LA is registered to Beacon Economics LLC for use in connection with “educational services, namely, conducting conferences in the field of business and the economy and distribution of educational materials in connection therewith” with a disclaimer of “LA” (Reg. No. 4,509,854);
- WHAT’S NEXT CLUB is registered to Roseanne Amoils for use in connection with “professional coaching services in the field of life, career, and business” (Reg. No. 4,219,813); and
- FIGURE OUT WHAT’S NEXT is registered to Department of Defense for use in connection with, among other things, “providing information to young adults

about college education options; providing information to young adults about selecting colleges and universities” (Reg. No. 4,017,042).

(See Exhibit B attached hereto.)

The existence of such a large number of marks containing the terms “what’s next” for use in connection with medical-related services and/or for use in connection with information or education services indicates that the terms “what’s next” for use in connection with medical and/or information/education services are weak, and thus should not be afforded strong trademark protection. Where a party has a weak mark, competitors may come closer to the mark than would be the case with a strong mark. *Sure-Fit Prods. Co., v. Saltzson Drapery Co.*, 117 U.S.P.Q. 925 (1958); *In re Box Solutions Corp.*, 79 U.S.P.Q.2d 1953 (T.T.A.B) (BOX SOLUTIONS & Design for computer hardware was found not confusingly similar to BOX and Design for computers and computer peripherals due to the weakness of the term BOX in the computer industry). In this case, the only shared terms between Applicant’s mark and the Cited Registrations are the weak terms “what’s next,” and as noted above, the use of those terms in the Registered Marks merely describes training/education to prepare professionals for disasters and emergencies. Even if Applicant were a competitor of Haz/Mat, which it is not, the differences in Applicant’s mark with the addition of the predominant leading term HEALTHCARE FOR distinguish the mark so much from the shared, weak terms of Haz/Mat’s marks, that confusion should not be likely—at most, there is the mere *possibility* of confusion, not a likelihood.

Particularly in view of these peacefully coexisting registered marks, Applicant asserts that HEALTHCARE FOR WHAT’S NEXT is sufficiently different from both READY FOR WHAT’S NEXT and WHAT’S NEXT in appearance, sound, and commercial impression to avoid giving rise to a likelihood of consumer confusion. Applicant respectfully submits that if the above-referenced marks can coexist with each other—and with the cited READY NOW FOR WHAT’S NEXT and WHAT’S NEXT marks—then Applicant’s mark should similarly be able to coexist without giving rise to a likelihood of consumer confusion.

## **2. Applicant’s Direct-to-Patient Healthcare Services are Clearly Not Related to Registrant’s Emergency/Disaster Education Services**

In the present application, the direct-to-patient medical services offered by Applicant are easily distinguishable from the educational and training services offered by Registrant. Whereas HEALTHCARE FOR WHAT’S NEXT is used in connection with direct patient care in Class 44

(i.e., the provision of home healthcare services, hospital and healthcare services, medical care, physician services, health care services, etc.) the Cited Registrations are for use in relevant part in connection with the provision of educational and training services regarding hazardous materials and emergency/disaster response in Class 41. Therefore, even on the face of things, the respective marks are for use in connection with such unrelated services that confusion should not be likely. The point raised by the Examiner, that a hospital provider may train and educate its employees, is a tenuous connection of relatedness of goods, and at most raises the possibility of confusion based on goods and services, namely educational training for employees and professionals, which are not identified in the application for Applicant's proposed mark, which does not reach the threshold required for a finding of likelihood of confusion.

Likelihood of confusion is determined on the basis of the goods and/or services as they are identified in the application and registration. *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 1267-68, 62 U.S.P.Q.2d 1001, 1004-05 (Fed. Cir. 2002); *In re Shell Oil Co.*, 992 F.2d 1204, 1207 n.4, 26 U.S.P.Q.2d 1687, 1690 n.4 (Fed. Cir. 1993); TMEP § 1207.01(a)(iii); *DuPont*, 476 F.2d at 1363. "The fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 U.S.P.Q. 24, 29 (C.C.P.A. 1976); see also *Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 1244-45, 73 U.S.P.Q.2d 1350, 1356 (Fed. Cir. 2004) (reversing TTAB's holding that contemporaneous use of RITZ for cooking and wine selection classes and RITZ for kitchen textiles is likely to cause confusion, because the relatedness of the respective goods and services was not supported by substantial evidence); *Local Trademarks, Inc. v. Handy Boys Inc.*, 16 U.S.P.Q.2d 1156, 1158 (TTAB 1990) (finding liquid drain opener and advertising services in the plumbing field to be such different goods and services that confusion as to their source is unlikely even if they are offered under the same marks); *Quartz Radiation Corp. v. Comm/Scope Co.*, 1 U.S.P.Q.2d 1668, 1669 (TTAB 1986) (holding QR for coaxial cable and QR for various apparatus used in connection with photocopying, drafting, and blueprint machines not likely to cause confusion because of the differences between the parties' respective goods in terms of their nature and purpose, how they are promoted, and who they are purchased by).

Applicant is an integrated healthcare delivery system providing direct patient care to its consumers. The services offered under Applicant's mark fall under Class 44, medical services. In

particular, the services offered, all of which are offered directly to patients, include provision of home healthcare services; hospital and healthcare services; medical care; physician services; hospitals; managed health care services; medical services; medical clinics; and medical counseling services. These services do not cover, and do not include, educational or training services.

Registrant's services, on the other hand, consist of educational and training services in the fields of safety, disaster preparedness and management, hazardous material and contamination management, healthcare, and medical and emergency care. According to their website, available at <https://www.dqready.com/Healthcare-Emergency-Management.aspx>, Haz/Mat provides emergency response training services to professionals, including healthcare facilities. The specimens for READY NOW FOR WHAT'S NEXT, attached hereto as Exhibit C, do not show education services but instead show a spill kit used to contain incidental chemical spills and a standard decontamination shower system, and the specimen for WHAT'S NEXT, attached hereto as Exhibit D, references a decontamination sustainment program for emergency response training for hospital staff. Simply stated, Haz/Mat does not use the Cited Registrations in connection with the actual rendering of medical services to patients.

A consumer seeking Registrant's disaster response training in its professional capacity would not believe that training services are related to Applicant simply because the two companies offer services that contain the terms "what's next" in them. Medical services are a broad field, and it would be an improper expansion of trademark rights to assume that training and education services for emergency response professionals are likely to be confused with direct-to-patient medical services. Because Applicant and Registrant offer services that are dissimilar in nature and attract different customers, no likelihood of confusion will result from simultaneous use of the marks.

Based on the foregoing, Applicant contends that the services offered under Applicant's mark do not fall within the same field as those offered under the Cited Registrations. Even if they did, the mere fact that "two products or services fall within the same general field... does not mean that they... are sufficiently similar to create a likelihood of confusion." *Harlem Wizards Entm't Basketball, Inc. v. NBA Props., Inc.*, 952 F. Supp. 1084, 1095 (D.N.J. 1997) (comparing shows performed by the Harlem Wizards to that performed by the NBA competitive basketball team, the Washington Wizards and finding that the two were dissimilar). When comparing the

basketball shows by the Harlem Wizards to the performance of the Washington Wizards, the Court found that they were dissimilar in a myriad of ways. For example, as a show basketball team, the Court found that plaintiff simply did not play NBA level competitive basketball. Thus, the Court found that when every aspect of the two teams was compared, there was glaring dissimilarity.” *Id.* at 1095. Thus, even though basketball services were performed under the parties’ marks, and even though both parties’ marks contained the term “wizards,” the overall differences were sufficient to avoid a likelihood of confusion. Similarly, even though both Applicant and Registrant both arguably offer services in the medical field, the overall differences in the nature of the services are sufficient such that confusion would be unlikely.

**3. The Target Consumers and Trade Channels of the Applicant’s Services Are Not Similar to Those of Registrant.**

Examiner improperly failed to consider the third *DuPont* factor, which weighs in the favor of Applicant, in its refusal to register Applicant’s mark. The third *DuPont* factor concerns “[t]he similarity or dissimilarity of established, likely-to-continue trade channels.” *DuPont*, 476 F.2d at 1361. Typically, where trade channels differ, confusion as to either source of origin or sponsorship is unlikely. Where, as in this case, the services of one party are sold to one class of buyers in a different marketing context than the services of another seller, the likelihood that a single group of buyers will be confused by similar trademarks is lessened. *See McCormick & Co., v. B. Manischewitz Co.*, 206 F.2d 744 (6th Cir. 1953). An analysis of this factor supports registration of Applicant’s mark. “[L]ikelihood of confusion is supported if the goods and services are related in some manner or because of marketing circumstances, the marks are likely to be encountered by the same persons under conditions that could give rise to the mistaken belief that they are in some way associated with the same source.” *In re Appetito Provisions Co. Inc.*, 3 U.S.P.Q.2d 1553, 1557 (T.T.A.B. 1987); If the goods or services in question are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source, then, even if the marks are identical confusion is not likely. *See, e.g., Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1371, 101 U.S.P.Q.2d 1713, 1723 (Fed. Cir. 2012) (affirming the Board’s dismissal of opposer’s likelihood-of-confusion claim, noting “there is nothing in the record to suggest that a purchaser of test preparation materials who also purchases a luxury handbag would consider the goods to emanate from the same source,” though both were

offered under the COACH mark); *In re Thor Tech, Inc.*, 113 U.S.P.Q.2d 1546, 1551 (TTAB 2015) (finding use of identical marks for towable trailers and trucks not likely to cause confusion, given the difference in the nature of the goods and their channels of trade and the high degree of consumer care likely to be exercised by the relevant consumers).

Applicant has expressly limited its application to cover only direct-to-patient services. Applicant's HEALTHCARE FOR WHAT'S NEXT mark is targeted directly to consumers of medical and healthcare services. On the other hand, the Cited Registrations are targeted directly to professionals who need to be trained for emergency and disaster preparedness and management. The target market for Applicant's services differ so greatly from Registrant's market that the respective parties' services necessarily move in different channels of trade. Therefore, confusion as to the source of origin of these services is highly unlikely.

Examiner's observation that the same entities that provide hospital services may be the same entities that provide educational services in the field of emergency care is flawed because it completely ignores the target consumer. First, although a hospital may train its employees in emergency care, these employees and other entities that provide hospital and medical care and patient services and the entities that provide emergency response services are not the target audience for Applicant's mark. Second, patients receiving medical and emergency care are not the target audience of Haz/Mat's Cited Registrations. Applicant respectfully submits that Examiner's observation does not take into account the perspective and experience of the respective consumer and target audience for each mark..

In short, the nature of the services in the established and likely-to-continue trade channels for the services and the conditions under which and buyers to whom sales are made serve to prevent a likelihood of confusion as to the origin or affiliation. To the extent there would be an overlap in the trade channels for the services of the Applicant and the services of the Registrant, no likelihood of confusion will exist from simultaneous use of the marks, given the different services that are sought by the consumer. Applicant further notes that even if there were some theoretical potential for overlap, given the wording of the respective parties' recitations of goods, confusion is unlikely to result in view of the meaningful differences between the relevant marks in terms of appearance, sound, and meaning, as discussed in detail above, and in view of the differences in the parties' industries as described herein. The fact that the parties do not market through the same channels of trade is further evidence of no likelihood of confusion. *Mr. Hero*

*Sandwich Sys., Inc. v. Roman Meal Co.*, 781 F.2d 884, 888-89 (Fed. Cir. 1986); *Amstar Corp. v. Domino's Pizza, Inc.*, 615 F.2d 252, 262 (5th Cir. 1980). Therefore, the third *DuPont* factor also weighs in favor of registering Applicant's mark.

#### **4. The Conditions Under Which The Public Would Encounter Applicant's and Registrant's Services Differ Considerably.**

Examiner improperly failed to consider another *DuPont* factor, which weighs in the favor of Applicant, in its refusal to register Applicant's mark. An analysis of the additional *DuPont* factor, the "conditions under which and buyers to whom sales are made" (*i.e.*, 'impulse' vs. careful, sophisticated purchasing), also favors registration. *See DuPont*, 476 F.2d at 1361. Courts have specifically stated that sophisticated consumers are less likely to be confused where goods are of the type that will be purchased after careful consideration. *See, e.g., Pignons S.A. DeMecanique de Precision v. Polaroid Corp.*, 657 F.2d 482, 489 (1st Cir. 1981) (finding that the marks ALPA and ALPHA were not confusingly similar based in part on the sophistication of prospective purchasers). Indeed, "[s]ophisticated consumers may be expected to exercise greater care." *Id.* As cogently explained in *Astra Pharmaceutical Prods., Inc. v. Beckman Instruments, Inc.*, 718 F.2d 1201, 1206, 220 U.S.P.Q. 786 (1st Cir. 1983), "[i]f likelihood of confusion exists, it must be based on the confusion of some relevant person, *i.e.*, a customer or purchaser. And there is always less likelihood of confusion where goods are expensive and purchased after careful consideration." Simply stated, the greater the degree of sophistication of customers or purchasers, the less likely the confusion. We respectfully submit that the Examining Attorney failed to consider the degree of care purchasers are likely to exercise when selecting services of the type provided by the Applicant, specifically medical, emergency, and health care-related services. *Sun-Fun Prods., Inc. v. Suntan Research & Dev., Inc.*, 656 F.2d 186, 189 (5th Cir. 1981). When the likelihood of confusion is considered in the light of the habits of Applicant and Registrant's respective consumers, no confusion would result.

Consumers exercise considerable care when seeking out medical services. Applicant provides healthcare services directly to patients. A potential medical services patient is unlikely to seek training in emergency response, and a professional seeking training in emergency response is not likely to seek medical services as a patient. Given the complexity involved with the provision of medical services, potential patients are sophisticated and informed. Likewise, given the professional and specialized nature of education and training in emergency/disaster

response, Registrant's services cater to sophisticated and informed consumers. It is likely that consumers of each respective service would exercise a heightened degree of care when selecting their services, and are likely to be extremely conscientious in their selections. In view of the fact that the relevant services are not of the type that would be subject to "impulse" selection, any likelihood of confusion as to the source of Applicant's or Registrant's services is remote. *See generally Astra Pharm. Prods., Inc.*, 718 F.2d at 1206.

#### **5. Conclusion**

For all the reasons set forth above, Applicant respectfully submits that the proposed mark is not confusingly similar to the cited registration. Therefore, Applicant respectfully requests that Examiner reconsider its position and permit HEALTHCARE FOR WHAT'S NEXT to proceed to publication for opposition.

Exhibit A

Int. Cls.: 35 and 44

Prior U.S. Cls.: 100, 101, and 102

United States Patent and Trademark Office

Reg. No. 3,137,009

Registered Aug. 29, 2006

**SERVICE MARK  
PRINCIPAL REGISTER**

**SEE WHAT'S NEXT**

WHITE, DARRELL (UNITED STATES INDIVIDUAL)  
2237 CROCKER ROAD, SUITE 100  
WESTLAKE, OH 44145

FOR: RETAIL STORE SERVICES ASSOCIATED WITH THE PROVISION OF OPHTHALMOLOGIC SERVICES, FEATURING EYEGASSES, SUNGLASSES, CONTACT LENSES, AND OTHER VISION CORRECTION AND ENHANCEMENT PRODUCTS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 1-5-2005; IN COMMERCE 1-5-2005.

FOR: MEDICAL AND OPHTHALMOLOGIC SERVICES, NAMELY, DIAGNOSIS AND TREATMENT OF VISION IMPAIRMENT AND DISEASES OF THE

EYE; LASER, LASIK, AND OTHER SURGICAL PROCEDURES TO CORRECT AND IMPROVE VISION; FITTING OF EYEGASSES, SUNGLASSES, CONTACT LENSES, AND OTHER VISION CORRECTION AND ENHANCEMENT PRODUCTS, IN CLASS 44 (U.S. CLS. 100 AND 101).

FIRST USE 1-5-2005; IN COMMERCE 1-5-2005.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 78-529,003, FILED 12-8-2004.

DAVID H. STINE, EXAMINING ATTORNEY



UNITED STATES PATENT AND TRADEMARK OFFICE

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

Jul 27, 2016

### NOTICE OF PUBLICATION

1. Serial No.:  
86-955,132
2. Mark:  
SHAPING WHAT'S NEXT  
(STANDARD CHARACTER MARK)
3. International Class(es):  
5, 44
4. Publication Date:  
Aug 16, 2016
5. Applicant:  
Shire Pharmaceuticals Holdings Ireland L

The mark of the application identified appears to be entitled to registration. The mark will, in accordance with Section 12(a) of the Trademark Act of 1946, as amended, be published in the *Official Gazette* on the date indicated above for the purpose of opposition by any person who believes he will be damaged by the registration of the mark. If no opposition is filed within the time specified by Section 13(a) of the Statute or by rules 2.101 or 2.102 of the Trademark Rules, the Commissioner of Patents and Trademarks may issue a notice of allowance pursuant to section 13(b) of the Statute.

Copies of the trademark portion of the *Official Gazette* containing the publication of the mark may be obtained from:

The Superintendent of Documents  
U.S. Government Printing Office  
PO Box 371954  
Pittsburgh, PA 15250-7954  
Phone: 202-512-1800

By direction of the Commissioner.

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**Email Address(es):**

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CHI:3030364.7

# United States of America

United States Patent and Trademark Office

## WHAT'S NEXT IN HEALTHCARE MARKETING COMMUNICATIONS

**Reg. No. 4,523,002**

**Registered Apr. 29, 2014**

**Int. Cl.: 35**

**SERVICE MARK**

**PRINCIPAL REGISTER**

SPM MARKETING & COMMUNICATIONS, INC. (ILLINOIS CORPORATION)  
15 WEST HARRIS, SUITE 300  
LA GRANGE, IL 60525

FOR: ADVERTISING AND MARKETING SERVICES, NAMELY, DEVELOPMENT OF MARKETING STRATEGIES AND CONCEPTS, BRAND CONCEPT AND BRAND DEVELOPMENT, AND PROMOTING THE BRAND IDENTITY AND SERVICES OF HOSPITALS, HEALTH SYSTEMS, PHYSICIANS AND OTHER HEALTHCARE RELATED BUSINESSES, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 9-27-2013; IN COMMERCE 9-27-2013.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 85-830,365, FILED 1-23-2013.

PAUL E. FAHRENKOPF, EXAMINING ATTORNEY



*Michelle K. Lee*

Deputy Director of the United States  
Patent and Trademark Office

**United States of America**  
United States Patent and Trademark Office

# WHAT NEXT

**Reg. No. 4,215,034**

**Registered Sep. 25, 2012**

**Int. Cl.: 45**

**SERVICE MARK**

**PRINCIPAL REGISTER**

BETTER WAZE INC. (FLORIDA CORPORATION)  
2119 FINCHLEY RD  
CARMEL, IN 46032

FOR: ON-LINE SOCIAL NETWORKING SERVICES IN THE FIELD OF HEALTH AND MEDICAL INFORMATION, ADVICE, SUPPORT, INFORMATION AND RESEARCH AND CARE OPTIONS, IN CLASS 45 (U.S. CLS. 100 AND 101).

FIRST USE 9-1-2011; IN COMMERCE 9-1-2011.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 85-347,187, FILED 6-15-2011.

BILL DAWE, EXAMINING ATTORNEY



*David J. Kybas*

Director of the United States Patent and Trademark Office

Exhibit B

**United States of America**  
United States Patent and Trademark Office

# WHAT'S NXT

**Reg. No. 4,414,558**

**Registered Oct. 8, 2013**

**Int. Cls.: 16 and 41**

**TRADEMARK**

**SERVICE MARK**

**PRINCIPAL REGISTER**

WHAT'S NXT, LLC (MARYLAND LIMITED LIABILITY COMPANY)  
10 PUBLIC SQUARE  
HAGERSTOWN, MD 21740

FOR: PRINTED PUBLICATIONS, NAMELY, COMMUNITY ARTS AND ENTERTAINMENT GUIDES, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 9-12-2012; IN COMMERCE 9-12-2012.

FOR: PROVIDING A SEARCHABLE ONLINE GUIDE FEATURING INFORMATION ON COMMUNITY ARTS AND ENTERTAINMENT, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 9-12-2012; IN COMMERCE 9-12-2012.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 85-866,308, FILED 3-4-2013.

KEVIN DINALLO, EXAMINING ATTORNEY



*Kevin Dinallo*  
Deputy Director of the United States Patent and Trademark Office

Int. Cls.: 35 and 41

Prior U.S. Cls.: 100, 101, 102, and 107

Reg. No. 3,363,413

United States Patent and Trademark Office

Registered Jan. 1, 2008

**SERVICE MARK  
PRINCIPAL REGISTER**

DISCOVERING WHAT'S NEXT

DISCOVERING WHAT'S NEXT: REVITALIZING  
RETIREMENT, INC. (MASSACHUSETTS COR-  
PORATION)  
492 WALTHAM STREET  
WEST NEWTON, MA 02465

FOR: PROVIDING CAREER NETWORKING SER-  
VICES, JOB-SEEKING ASSISTANCE SERVICES, EM-  
PLOYMENT SKILLS AND REQUIREMENTS  
ASSESSMENT SERVICES TO PERSONS WHO ARE  
RETIRING OR HAVE RETIRED FROM ONE JOB  
OR CAREER AND WISH TO OBTAIN OTHER JOBS  
OR CAREERS; AND REFERRAL SERVICES IN THE  
FIELD OF ADULTS CHANGING TO NEW JOBS,  
CAREERS, HOUSING, RESIDENCES, HOBBIES,  
EDUCATION, CIVIC ACTIVITIES, COMMUNITY  
ACTIVITIES AND INITIATIVES, AND RETIRE-  
MENT, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 11-7-2002; IN COMMERCE 11-7-2002.

FOR: EDUCATIONAL SERVICES, NAMELY,  
SPONSORING OR PROVIDING FORUMS, WORK-

SHOPS, SEMINARS, CLASSES, LECTURES, SYMPO-  
SIA AND MEETINGS ON JOBS AND CAREERS,  
HOUSING AND RESIDENCES, HOBBIES, EDUCA-  
TION, CIVIC ACTIVITIES, COMMUNITY ACTIV-  
ITIES AND INITIATIVES, AND VOLUNTEER,  
EDUCATIONAL AND MEDICAL ORGANIZA-  
TIONS AND RESOURCES FOR RETIRED PERSONS  
AND PERSON ENTERING OR ABOUT TO ENTER  
RETIREMENT; AND JOB AND CAREER COUNSEL-  
ING SERVICES, IN CLASS 41 (U.S. CLS. 100, 101 AND  
107).

FIRST USE 2-1-2005; IN COMMERCE 2-1-2005.

THE MARK CONSISTS OF STANDARD CHAR-  
ACTERS WITHOUT CLAIM TO ANY PARTICULAR  
FONT, STYLE, SIZE, OR COLOR.

SN 78-752,899, FILED 11-14-2005.

DAWN FELDMAN, EXAMINING ATTORNEY

# United States of America

United States Patent and Trademark Office

POWERED TO DO WHAT'S NOW,  
POWERED TO DO WHAT'S NEXT

**Reg. No. 4,149,140**

**Registered May 29, 2012**

**Int. Cl.: 41**

**SERVICE MARK**

**PRINCIPAL REGISTER**

PHILADELPHIA UNIVERSITY (PENNSYLVANIA NON-PROFIT CORPORATION)  
HENRY AVENUE AND SCHOOL HOUSE LANE  
PHILADELPHIA, PA 19144

FOR: EDUCATIONAL SERVICES, NAMELY, PROVIDING INSTRUCTION AND TRAINING AT THE UNDERGRADUATE AND GRADUATE LEVELS AND CONTINUING AND PROFESSIONAL EDUCATION CLASSES IN THE FIELDS OF ARCHITECTURE, BUSINESS, DESIGN, ENGINEERING, FASHION, HEALTH, SCIENCE AND TEXTILES; PROVIDING EDUCATIONAL RESEARCH PROGRAMS FOR THE STUDY OF ARCHITECTURE, BUSINESS, DESIGN, ENGINEERING, FASHION, HEALTH, SCIENCE AND TEXTILES; PROVIDING CONTINUING AND PROFESSIONAL EDUCATION CONFERENCES, SEMINARS AND WORKSHOPS IN THE FIELDS OF ARCHITECTURE, BUSINESS, DESIGN, ENGINEERING, FASHION, HEALTH, SCIENCE AND TEXTILES; CONDUCTING CONFERENCES, SEMINARS AND WORKSHOPS RELATING TO THE STUDY OF ARCHITECTURE, BUSINESS, DESIGN, ENGINEERING, FASHION, HEALTH, SCIENCE AND TEXTILES; PUBLICATION OF NEWSLETTERS, MONOGRAPHS, NEWSPAPERS, BOOKS, COMMEMORATIVE PROGRAMS AND OTHER ELECTRONIC AND PRINTED PUBLICATIONS RELATING TO THE EDUCATIONAL SERVICES PROVIDED, NONE OF THE AFOREMENTIONED SERVICES BEING FOR ADVERTISING MATERIALS; AND ENTERTAINMENT SERVICES IN THE NATURE OF THE PRESENTATION OF A VARIETY OF INTERCOLLEGIATE SPORTING EVENTS, NAMELY, BASEBALL, BASKETBALL, GOLF, LACROSSE, SOFTBALL, CROSS-COUNTRY RUNNING, ROWING, TENNIS AND VOLLEYBALL EVENTS, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 6-10-2011; IN COMMERCE 7-11-2011.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 85-371,691, FILED 7-14-2011.

TINA L. SNAPP, EXAMINING ATTORNEY



*David J. Kappas*

Director of the United States Patent and Trademark Office

**United States of America**  
United States Patent and Trademark Office

**WHAT'S NEXT LA?**

**Reg. No. 4,509,854**

**Registered Apr. 8, 2014**

**Int. Cl.: 41**

**SERVICE MARK**

**PRINCIPAL REGISTER**

BEACON ECONOMICS LLC (CALIFORNIA LIMITED LIABILITY COMPANY)  
1299 FOURTH STREET, SUITE 400  
SAN RAFAEL, CA 94901

FOR: EDUCATIONAL SERVICES, NAMELY, CONDUCTING CONFERENCES IN THE FIELD OF BUSINESS AND THE ECONOMY AND DISTRIBUTION OF EDUCATIONAL MATERIALS IN CONNECTION THEREWITH, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 0-0-2009; IN COMMERCE 0-0-2009.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "LA", APART FROM THE MARK AS SHOWN.

SER. NO. 86-016,691, FILED 7-22-2013.

HENRY S. ZAK, EXAMINING ATTORNEY



*Michelle K. Lee*

Deputy Director of the United States  
Patent and Trademark Office

# United States of America

United States Patent and Trademark Office

## What's Next Club

**Reg. No. 4,219,813**

**Registered Oct. 9, 2012**

**Int. Cl.: 41**

**SERVICE MARK**

**PRINCIPAL REGISTER**

ROSEANNE AMOILS (UNITED STATES INDIVIDUAL)  
54 ELLSWORTH ROAD  
LARCHMONT, NY 10538

FOR: PROFESSIONAL COACHING SERVICES IN THE FIELD OF LIFE, CAREER, AND BUSINESS, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 10-1-2007; IN COMMERCE 10-1-2007.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 77-387,105, FILED 2-2-2008.

AISHA CLARKE, EXAMINING ATTORNEY



*David J. Kyffers*

Director of the United States Patent and Trademark Office

# United States of America

United States Patent and Trademark Office

## FIGURE OUT WHAT'S NEXT

**Reg. No. 4,017,042**

**Registered Aug. 23, 2011**

**Int. Cls.: 35 and 41**

**SERVICE MARK**

**PRINCIPAL REGISTER**

DEPARTMENT OF DEFENSE (UNITED STATES AGENCY OF THE UNITED STATES GOVERNMENT)  
THE PENTAGON  
WASHINGTON, DC 20301

FOR: PROVIDING CAREER INFORMATION TO YOUNG ADULTS; PROVIDING INFORMATION TO YOUNG ADULTS ABOUT MILITARY SERVICE OPPORTUNITIES, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 8-10-2010; IN COMMERCE 8-10-2010.

FOR: PROVIDING INFORMATION TO YOUNG ADULTS ABOUT COLLEGE EDUCATION OPTIONS; PROVIDING INFORMATION TO YOUNG ADULTS ABOUT SELECTING COLLEGES AND UNIVERSITIES, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 8-10-2010; IN COMMERCE 8-10-2010.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 85-101,111, FILED 8-5-2010.

MARIA-VICTORIA SUAREZ, EXAMINING ATTORNEY



*David J. Kybas*

Director of the United States Patent and Trademark Office

Exhibit C

The screenshot shows a web browser window displaying the DQE website. The browser's address bar shows the URL: <http://www.dqeready.com/productdetail.aspx?o=63>. The page features the DQE logo with the tagline "Ready now for what's next." and a navigation menu with links for Products, Shopping Cart, About DQE, News/Media, and Site Map. A search bar is located in the top right corner.

The main content area is titled "Spill Kit - 5 Gallon". It includes a "Back to Products" link, a "0 Items in Shopping Cart" notification, and a "View Shipping Cart" button. The product is priced at \$68.50. A dropdown menu shows the selection "HMS1400 Spill Kit - 5 gallon", and a quantity field is set to "1". An "Add to Cart" button is visible.

The "Product Description" section states: "Complete 5 gallon kit to quickly contain incidental chemical spills." The "Specifications" list includes:

- 5-gallon bucket w/screw lid
- Hazardous waste label
- Absorbent socks (2) - 3.25" x 42"
- Putty sticks (2)
- Absorbent pads (6)
- Absorbent pillows (2)
- Pair of nitrile gloves
- Goggles
- Sold individually

The "Related Equipment/Items" section lists "Splash Protection Kit" and "Spill Kits - 20 & 95 Gallon". The "Additional Information" section contains a "Questions About This Product? Contact Us" button.

At the bottom of the page, the copyright notice reads: "©2007 DQE, Inc. | About DQE | Terms & Conditions | Contact Us | Site Map | Home".

HazMat Boot Liners | DQE - BRT's Internet Explorer

http://www.dqready.com/productdetail.aspx?p=147

Product Search

Contact Us | 800-355-4628

Ready now for what's next™

Products | Shopping Cart | About DQE | News/Media | Site Map

Back to Products 0 Items in Shopping Cart  
[View Shopping Cart](#)

**HazMat Boot Liners**



Price: \$20.00  
 Selection:   
 Quantity:

**Product Description**  
 Thick inner boot liners increase safety by providing a temporary barrier when doffing contaminated protective clothing.

**Specifications**

- 3mm thickness
- Box of 30 (25 pair)

**Related Equipment/Items**

- Tingley HazProof® Response Boots
- North HazMat Knee Boots
- Economy HazMat Boots

**Additional Information**

[Questions About This Product?](#)  
[Contact Us](#)

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http://www.dqready.com/default.aspx Trusted sites 100%

CHI:3030364.7

# Exhibit D



## Healthcare Training and Consulting

Emergency Management Planning

Hospital Incident Command

Decontamination

Hospital Decon Site Survey

Awareness Level Training

Operations Level Training

Instructor Training

Refresher Training

Online Decon Training

Hazardous Material Incident Plan

Hospital Decontamination Drill  
What's Next Decon Sustainment Program

Hospital Evacuation



### What's Next™ Decontamination Sustainment Program

Maintaining a level of response capability in a skill that is used infrequently can be challenging for any program. Once emergency response training for decontamination is complete, sometimes it's difficult to determine the next steps to sustain your level of preparedness. DQE's Sustainment Program is a response to common requests from hospitals for:

- An efficient and affordable means to provide ongoing training to hospital staff
- A standardized mentoring program that could be easily maintained by an internal instructor and/or coordinator
- A process to provide ongoing support to program management and hospital leadership

#### OVERVIEW

#### DETAILS

#### ADDITIONAL INFO

The **What's Next™ Decontamination Sustainment Program** is available on a yearly basis to all DQE clients, once a decontamination program is completed. One year of the program is included with the purchase of the Decon Operations Level Training Course or the Decon Instructor Training Course.

Philosophy | Experience | Clients | Staff

#### STAY CONNECTED

- Email Us
- Request Information
- Upcoming Conferences
- READYNOW News

#### HICS Training

"I've seen some of the best speakers in the United States. I would like to say that (the DQE instructors) and the quality of their presentation and materials meets and even exceeds the speakers that I have seen. Thank you for bringing this quality of education to Yankton, SD!"

*Avera Sacred Heart,  
Communications Supervisor*